

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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Arlington, VA 20598-7100
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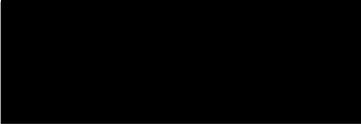
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1570 0001 4803 7926

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16 July 2012

Hampton's Welding and Fabrication, Inc.



RE: Claim Number: N10036-1797

Dear Mr. Hampton:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1797 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for further explanation.

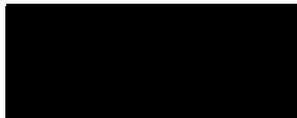
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-1797.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1797
Claimant	: Hampton's Welding and Fabrication, Inc.
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$175,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating certain individual and business claims on behalf of BP.

On 8 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT

On 8 May 2012, Calvin Hampton, on behalf of his company, Hampton's Welding and Fabrication. (Jointly referred to as 'the Claimant'), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$175,000.00 in loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant is a business that specializes in the repair of equipment that is used in delivering drilling mud to supply boats. The Claimant is located in New Orleans, Louisiana, and asserts that the oil spill greatly affected the customers he primarily works with, as well as causing him to lose other contracts.²

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.

¹ Optional OSLTF Claim Form signed 1 May 2012 and received 8 May 2012.

² Optional OSLTF Claim Form signed 1 May 2012 and received 8 May 2012 and phone conversation between Claimant and NPFC Staff on 3 July 2012.

- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for—

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

Pursuant to 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant presented the following documentation:

- Optional OSLTF Claim Form signed 1 May 2012 and received 8 May 2012.
- Monthly Profit & Loss Statements for January through December 2008;
- Monthly Profit & Loss Statements for January through December 2009;
- Monthly Profit & Loss Statements for January through December 2010;
- Cover letter from Stephen Yost, LLC, dated 14 November 2011 to Claimant, enclosing 2010 Federal Tax Return and 2010/2011 Louisiana Corporation Income and Franchise Tax Return;
- 2010 Tax Form 1120S, U.S. Income Tax Return for an S Corporation, with Form 7004 Application for Automatic Extension of Time; Schedules A, B, K, L, M-1, M-2, & K-1; Form 4562; and Federal Statements;
- 2010 Louisiana Corporation Income Tax/ Franchise Tax Return for 2010/2011 – with Schedules NRC and RC; Schedules A, A-1, C, D, E, F, G, H, and I; Calculation of Corporate Taxable Income Worksheet; S Corporation Exclusion Calculation; Louisiana Statements; Federal Worksheet summary; Federal Schedule K Worksheet; Schedule M-2 Reconciliation; and 2010 Federal Depreciation Schedule;

- Cover letter from Stephen Yost, LLC, dated 11 November 2010 to Claimant, enclosing 2009 Federal Tax Return and 2009/2010 Louisiana Corporation Income and Franchise Tax Return;
- 2009 Tax Form 1120S, U.S. Income Tax Return for an S Corporation, with Schedules A, B, K, L, M-1, M-2, & K-1; Form 4562; and Federal Statements;
- 2009 Louisiana Corporation Income Tax/ Franchise Tax Return for 2009/2010 – with Schedules NRC and RC; Schedules A, A-1, C, D, E, F, G, H, and I; Calculation of Corporate Taxable Income Worksheet; S Corporation Exclusion Calculation; and Louisiana Statements;
- Cover letter from Stephen Yost, LLC, dated 11 November 2010 to Claimant, enclosing 2008 Federal Tax Return and 2008/2009 Louisiana Corporation Income and Franchise Tax Return;
- 2008 Tax Form 1120S, U.S. Income Tax Return for an S Corporation, with Schedules A, B, K, L, M-1, M-2, & K-1; Form 4562; and Federal Statements;
- 2008 Louisiana Corporation Income Tax/ Franchise Tax Return for 2008/2009 – with Schedules NRC and RC; Schedules A, A-1, C, D, E, F, G, H, and I; Louisiana Statements; Calculation of Corporate Taxable Income Worksheet; and S Corporation Exclusion Calculation;
- Fax reply to NPFC Information Request, addressing Documentation Requested and Requested Explanations and Questions, dated 26 June 2012;
- List of Customer Contacts with company names, titles and phone numbers;
- Fax dated 11 July 2012 containing copy of Quick Payment Final Claim Form and Release and Covenant Not to Sue (Business), executed on 29 May 2012.

The Claimant indicates having submitted a claim to the responsible party. The Claimant also indicates that the responsible party had issued a settlement amount based on a certain formula, but he was not satisfied by the offer.³

The NPFC conducted an independent investigation of claim presentation and payments. Prior to presentation of this claim to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF, seeking lost earnings or profits damages.⁴ The Claimant was assigned Claimant Identification No. 3391207 and the EAP Claim was assigned No. 461355.⁵ The RP/GCCF denied payment on this claim in a letter dated 6 December 2010.⁶

The Claimant then submitted a Fourth Quarter Interim Payment Claim (ICQ42011) to the RP/GCCF, again seeking lost earnings or profits damages. The ICQ42011 was assigned Claim No. 9548682 and the RP/GCCF issued payment on this claim in the amount of \$52,114.39.⁷

The Claimant also submitted a Full Review Final Payment (FRF) Claim to the RP/GCCF, again seeking loss of earnings or profits damages. The FRF Claim was assigned Claim No. 9452728 and the RP/GCCF issued a Final Payment offer, which the Claimant did not accept.

Lastly, the Claimant submitted a Quick Payment Final Claim, which was issued Claim No. 9585380. The RP/GCCF issued a payment of \$25,000.00 on the Quick Payment Final Claim.

³ Optional OSLTF Claim Form signed 1 May 2012 and received 8 May 2012.

⁴ GCCF Claimant Status, accessed on 15 May 2012.

⁵ GCCF Claimant Status, accessed on 15 May 2012.

⁶ GCCF letter to Hampton's Welding & Fabrication dated 6 December 2010.

⁷ GCCF Determination Letter on Interim Payment/Final Payment Claim, dated 14 February 2012.

Based upon the information provided by the Claimant and the NPFC's independent investigation, and that the subject of this claim is the same as the claims presented to the GCCF – loss of profits/ earnings due to the Deepwater Horizon oil spill – this claim can be adjudicated in the full amount of damages presented to the NPFC, \$175,000.00.

NPFC Determination

This claim is denied because the Claimant has accepted final payment from the RP/GCCF [Transition Process] and signed a Release and Covenant Not To Sue in return for this Final Payment. By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury. The Release executed by the Claimant specifically states:

[i]n consideration of payment in the amount of \$25,000.00, Claimant hereby releases and forever discharges, and covenants not to sue BP Exploration & Production Inc. ("BP") and the other Released Parties, [. . .] for any losses, damages, costs, expenses, injuries, claims, causes of actions, liabilities, or other relief that Claimant has or may have [. . .] arising from or relating in any way to the [Deepwater Horizon oil spill].⁸

Furthermore, language in the document states that:

Released Parties means anyone who is or could be responsible or liable in any way for the [Deepwater Horizon oil spill] or any damages related thereto, whether a person, company or governmental entity, including (but not limited to) BP, other potentially responsible or liable parties, including but not limited to the parties listed in Attachment A to this Release, the federal Oil Spill Liability Trust Fund and any state or local fund, and each of their respective Affiliates as defined above.⁹

Therefore, the Claimant has waived rights to further recovery regarding the losses presented to the NPFC. Any payment from the OSLTF requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the OSLTF.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in his request for reconsideration.

This claim is denied because the Claimant has accepted final payment from the RP/GCCF and signed a Release and Covenant Not to Sue which makes him ineligible to recover any costs from the OSLTF.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/16/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ GCCF Quick Payment Final Claim Form and Release and Covenant Not to Sue (Business), executed on 29 May 2012.

⁹ GCCF Quick Payment Final Claim Form and Release and Covenant Not to Sue (Business), executed on 29 May 2012.