

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

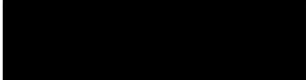


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4803 9760

5890/DWHZ  
28 June 2012

Gustavo Sanches Martinez  


Re: Claim Number: N10036-1802

Dear Mr. Martinez:

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 N10036-1802 involving the Deepwater Horizon oil spill. 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 N10036-1802.

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	N10036-1802
Claimant	Gustavo Sanches Martinez
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$30,000.00

### ***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.

### ***CLAIM AND CLAIMANT***

On 10 May 2012, Gustavo Sanches Martinez (the claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$30,000.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the spill, the Claimant was working as a server at the Columbia Restaurant in Sarasota, Florida.<sup>2</sup> The Claimant alleged that his wages began to drop after the oil spill as the result of a decline in tourism in Sarasota County.<sup>3</sup>

In order to calculate his losses, the Claimant compared previous earnings with his actual earnings in 2010 and 2011 to reach a sum certain of \$30,000.00.

### ***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 Section 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.
- (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.

<sup>1</sup> Optional OSLTF Claim Form, signed 3 May 2012.

<sup>2</sup> Hardship Letter from the Claimant, undated.

<sup>3</sup> Hardship Letter from the Claimant, undated.

- (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.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission to the OSLTF**

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

- Optional OSLTF Claim Form, signed 3 May 2012;
- Hardship Letter from the Claimant, undated;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 26 April 2012;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 26 March 2012;
- 2008 Individual Tax Return;
- 2009 Individual Tax Return;
- 2010 Individual Tax Return;
- 2011 Individual Tax Return;
- Masterfile Audit Report, dated 19 January 2012;
- Earnings Statement for November 2006 through December 2010;
- Paystubs, date range unknown;
- Letter from Claimant to NPFC, dated 5 June 2012;
- Drivers of Local Supply and Demand, National Association of Realtors;
- Article: "Economist: Spill Will Stall Recovery By A Year", published 29 July 2010;
- Article: "Florida Attracts Record Number of Tourists in 2011", published 16 February 2012;
- Article: "BP Pays \$40 Million to Region's Businesses", published 21 August 2011;
- Copy of GCCF Interim Payment Claim, 9 March 2012.

Prior to presentment to the NPFC, the Claimant presented an Interim Payment (IP) claim to the RP/GCCF, seeking loss of profits and wages.<sup>4</sup> The Claimant was assigned claimant ID 3581396 and the IP claim was assigned claim # 9577222.<sup>5</sup> The RP/GCCF denied payment on this claim.

Prior to presentment to the NPFC, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages.<sup>6</sup> The Claimant retained claimant ID 3581396 and the FRF claim was assigned claim #9587835.<sup>7</sup> The RP/GCCF denied payment on this claim.

Prior to presentment to the NPFC, the Claimant presented a second FRF claim to the RP/GCCF, seeking loss of profits and wages.<sup>8</sup> The Claimant retained claimant ID 3581396 and the FRF claim was assigned claim #9592898.<sup>9</sup> The RP/GCCF denied payment on this claim.

On 10 May 2012, the Claimant submitted this claim to the NPFC, seeking \$30,000 in loss of profits and impairment of earning capacity damages.<sup>10</sup> The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.<sup>11</sup> Any damages now before the NPFC, which were not first presented to the RP/GCCF are denied for improper presentment.

### **NPFC Determination**

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. 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 this claim.

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. This claim is denied because the Claimant has not provided documentation sufficient to prove any losses were attributable to the oil spill.

The only documentation provided by the Claimant to show causation was a personal letter written to the GCCF contending that declining tourism caused by the oil spill resulted in reduced earnings.<sup>12</sup> This is insufficient evidence for the NPFC to link any alleged losses to the oil spill and independent research conducted by the NPFC does not support the Claimant's argument. According to Sarasota County Tax Collections report for fiscal year 2011, a period of time after the oil spill, total collections increased by 5% countering the assertion that tourism was in decline.<sup>13</sup> This is called into further question when considering the article submitted by the Claimant noting that Florida attracted a record number of tourists in 2011.<sup>14</sup>

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<sup>4</sup> GCCF Claimant Status, accessed 16 May 2012.

<sup>5</sup> GCCF Claimant Status, accessed 16 May 2012.

<sup>6</sup> GCCF Claimant Status, accessed 16 May 2012.

<sup>7</sup> GCCF Claimant Status, accessed 16 May 2012.

<sup>8</sup> GCCF Claimant Status, accessed 16 May 2012.

<sup>9</sup> GCCF Claimant Status, accessed 16 May 2012.

<sup>10</sup> Optional OSLTF Claim Form, signed 3 May 2012.

<sup>11</sup> 33 C.F.R. § 136.103(a).

<sup>12</sup> Hardship Letter from the Claimant, undated.

<sup>13</sup> Sarasota County Tourist Development Tax report, at A-2; This calculation takes into account the increase in tax rate from 4.5% to 5% in May 2011.

<sup>14</sup> Article: "Florida Attracts Record Number of Tourists in 2011", published 16 February 2012.

Furthermore, in a letter dated 22 May 2012, the NPFC requested additional information from the Claimant including financial documentation from the Claimant's employer demonstrating any alleged loss that could be linked to the oil spill.<sup>15</sup> In order to find a claim compensable, the NPFC must verify both that the Claimant's employer sustained a loss and that this loss was directly attributable to the oil spill. The Claimant was unable to provide this information, and based on the documents contained in the claim submission, the NPFC is unable to draw a causal link between the Claimant's alleged losses and the Deepwater Horizon oil spill.

Should the Claimant choose to request reconsideration, he must provide documentation demonstrating a decline in business at his place of employment, or other evidence that specifically links his loss to the Deepwater Horizon incident.

This claim is denied because the Claimant failed to meet his burden to demonstrate that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil as opposed to other economic factors plaguing the Gulf.

  
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/28/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>15</sup> NPFC Request for Additional Information, 22 May 2012.