

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
16 July 2012

Ricardo Nolasco Moreno


Re: Claim Number: N10036-1806

Dear Mr. Ricardo Nolasco Moreno:

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 N10036-1806 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 N10036-1806.

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	N10036-1806
Claimant	Ricardo Nolasco Moreno
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$50,000.00

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 08 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 15 May 2012, Ricardo Nolasco Moreno (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$50,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant owns a franchise of Supershuttle, operating a 2007 Ford E350 Van XLT providing transportation of people from Tampa International Airport to surrounding destinations.¹ The Claimant alleges a reduction in tourism due to the Deepwater Horizon oil spill to the Tampa area and the Tampa International airport.² Thus he asserts he had a loss of earnings for 2010 in the amount of \$50,000.00.³

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

¹ Supershuttle unit franchise agreement and Commercial Vehicle Lease Agreement with Blue Van Leasing Corporation executed 09 January 2009.

² Optional OSLTF claim form dated 01 May 2012 at 10 and letter of explanation dated 01 May 2012.

³ Optional OSLTF claim form dated 01 May 2012 at 3.

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.
- (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.

Under 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 his claim, the Claimant submitted:

- Optional OSLTF claim form dated 01 May 2012
- List of Documentation
- Claimant's letter dated 01 May 2012
- Claimant calculations dated 01 May 2012

- Second letter of explanation dated 01 May 2012
- Witness letter from Luis Valencia dated 05 May 2012
- Copy of Florida drivers license
- Copy of Social Security card
- Copy of Employment Authorization Card
- Letter explaining immigration status dated 01 May 2012
- Article from US Citizenship & Immigration Services dated 12 March 2012
- I765 Application for Employment Authorization
- I821 Application for Temporary Protected Status
- Copy of Employment authorization card
- Copy of payments to USCIS
- Supershuttle unit franchise agreement
- Commercial Vehicle Lease Agreement executed 09 January 2009
- 2010 Form 1040X Amended U.S. Individual Income Tax Return
- 2009 Form 1040 U.S. Individual Income Tax Return
- 2010 Form 1040 U.S. Individual Income Tax Return
- 2010 W-2 detail report
- Profit and loss statements for 01 January through 30 December 2009
- Profit and loss statements for 01 January through 30 December 2010
- Gross revenue comparison for 2009 and 2010

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$50,000.00.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF and he was assigned Claimant ID #1033619 and claim #49988.⁴ This claim was denied on 02 November 2010.⁵ Additionally, the Claimant filed an Interim Q3 claim (ICQ32011) with GCCF #9492296 which was under "re-review" by the GCCF as of 23 May 2012.⁶ Based upon the evidence presented, it appears that presentment requirements are therefore satisfied to the extent that the damage amount now before the NPFC does not exceed that presented to the GCCF. Any damage amount now presented to the NPFC, which were not first presented to the GCCF are denied for improper presentment.

Further, based upon the evidence presented by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that he had a decline of tourists flying into Tampa International airport as a result of the Deepwater Horizon oil spill. Accordingly, this Claim Summary determination for NPFC Claim N10036-1806 considers and addresses the earnings claimed in both of his claims presented to the responsible party, specifically; GCCF Claim #'s 49988(EAP) and 9492296 (ICQ32011).

The evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

⁴ GCCF online status page.

⁵ GCCF Denial Letter dated 02 November 2010.

⁶ GCCF Claimant Status page for Claimant ID # 1033619 retrieved 23 May 2012.

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 or destruction or loss of real or personal property or 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 the claim. The NPFC considered all the documentation submitted by the Claimant.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the BP Settlement, he should then submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

Furthermore, this claim would be denied under OPA's loss of profits damage category, as the Claimant has failed to prove that he has sustained a financial loss as a result of the Deepwater Horizon oil spill.

In order to prove a claim for loss of profits and impairment of earning capacity 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.

The Claimant operates a van providing transportation services to travelers arriving at Tampa International Airport.⁷ The Claimant alleges a loss of \$50,000.00 consisting of \$35,706.47 for lost gross sales, \$6,070.53 for prepaid fares, \$3,035.25 for cash tips, \$1,000.00 for personal investment into company, and \$4,187.75 for health insurance and special education for his son.⁸ According to the Claimant's Schedule Cs for 2009 and 2010, the Claimant had a decrease of sales in the amount of \$35,708.00, and a decrease in Net Income in the amount of \$15,887.00.⁹ While the Claimant does show a reduction in net income for 2010 compared to 2009, the amount of \$15,887.00 is \$34,113.00 less than the \$50,000.00 claimed.

The Claimant alleges the causation of the lost net income to be attributable to a decline in travelers using the Tampa International Airport after the Deepwater Horizon oil spill which occurred 20 April 2010. The Claimant provided no documentation to support his allegation besides his loss of earnings for 2010 when compared to 2009.¹⁰

NPFC staff checked Hillsborough County Visitor statistics and Tampa International Airport's total inbound passengers for 2004 through 2010.¹¹ Total visitors for 2009 were 15.05 million and

⁷ Letter of explanation dated 01 May 2012 and Optional OSLTF claim form dated 01 May 2012.

⁸ Letter showing claim calculation dated 01 May 2012.

⁹ Forms 1040 U.S. Individual Income Tax Returns Schedule Cs for 2009 and 2010.

¹⁰ 2009 and 2010 profit and loss statements and 2009 and 2010 tax returns.

¹¹ <http://www.visittampabay.com/includes/media/docs/2011-Research-Synopsis.pdf>.

for 2010 were 13.93 million, a reduction of 1.12 million or 7.4%. However the Claimant services passengers of air travel at the Tampa International Airport.¹² Inbound passengers for Tampa International Airport in 2008 were 9.1 million and declined 6.6% to 8.5 million for 2009.¹³ The trend continued downward in 2010 to 8.2 million but was a mere 3.5% decline as opposed to the previous 2009 decline of 6.6%.¹⁴ Since the trend during the period upon which the Claimant's claim is based declined at a lower rate between 2009 and 2010 than in the prior year, it is not evident that Tampa International Airport received a decline of travelers as a result of the Deepwater Horizon oil spill as opposed to other factors that were merely carrying over from prior years. As such, the Claimant has not established by a preponderance of the evidence that his alleged loss of earnings was due to the oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) a loss in the amount claimed, and (2) that his 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.

Claim Supervisor:  *NPFC Claims Adjudication Division*

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹² Optional OSLTF claim form dated 01 May 2012 and letter of explanation dated 01 May 2012.

¹³ <http://www.visittampabay.com/includes/media/docs/2011-Research-Synopsis.pdf>.

¹⁴ <http://www.visittampabay.com/includes/media/docs/2011-Research-Synopsis.pdf>.