

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  
Number: 7011 1570 0001 4803 8381

5890/DWHZ  
06 August 2012

Rapid Claims Recovery



Re: Claim Number: N10036-1848

Dear Mr. Gadsen:

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 N10036-1848 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 N10036-1848.

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

CC:



By Certified Mail  
7011 1570 0001 4803 9241

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1848
Claimant	Mr. Antone Gadsen
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$5,000.00

### ***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 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 the 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 02 May 2012, and the CSSP began processing claims on 04 June 2012.

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

On 21 June 2012, Rapid Claims Recovery, on behalf of Mr. Antone Gadsen (Claimant), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.<sup>1</sup>

The Claimant's documentation does not indicate his profession or employer, but does allege that a drop in tourism in the Tampa, Florida area resulted in reduced wages and tips for the Claimant.<sup>2</sup> As a result, the Claimant filed this claim seeking \$5,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.<sup>3</sup>

### ***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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. 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.

<sup>1</sup> Optional OSLTF Claim Form, received 21 June 2012.

<sup>2</sup> Optional OSLTF Claim Form, received 21 June 2012.

<sup>3</sup> Optional OSLTF Claim Form, received 21 June 2012.

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; and
- (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 NPFC**

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

- Optional OSLTF Form, signed 21 June 2012; and
- GCCF Correspondence re: Proposed Settlement of BP Deepwater Horizon Litigation, dated 29 May 2012.

On 21 June 2012, the Claimant presented this claim to the NPFC, seeking \$5,000.00 in loss of profits and impairment of earning capacity damages.<sup>4</sup> The Claimant stated that prior to presenting this claim to the NPFC; he presented a claim to the RP/GCCF.<sup>5</sup> The NPFC will

<sup>4</sup> Optional OSLTF Claim Form, received 21 June 2012.

<sup>5</sup> Optional OSLTF Claim Form, received 21 June 2012.

presume that the subject matter for the RP/GCCF claim is the same as that now before the NPFC—i.e. that a drop in tourism, caused by the Deepwater Horizon incident, resulted in the Claimant suffering reduced earnings. Accordingly, this Claim Summary Determination presumes that the Claimant's prior claim satisfies OPA presentation requirements and addresses only those damages sought in the Claimant's prior submission to the RP/GCCF. Any damages not first presented to the RP/GCCF are denied for improper presentment.<sup>6</sup>

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).

### **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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

As an initial matter, it appears that the Claimant is a member of the E&PD 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 E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in a request for reconsideration of this claim.

Furthermore, this claim for loss of profits and impairment of earning capacity damages is also denied on its merits, as the Claimant has failed to establish either a financial loss or that his alleged loss is the result of the Deepwater Horizon incident. In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

The Claimant is seeking \$5,000.00 in loss of profits and impairment of earning capacity damages.<sup>7</sup> In a letter dated 26 June 2012, the NPFC requested that the Claimant provide supporting documentation and answers to questions in order to substantiate his alleged loss.<sup>8</sup> The Claimant did not respond to the request for additional information. Accordingly, the NPFC will review the claim based on the documentation originally submitted to the NPFC.

The Claimant's evidence does not establish how he calculated the losses alleged. According to the Claimant's Optional OSLTF Claim Form, it appears that he reached this figure by "[c]alculating damages from wages and tips."<sup>9</sup> The Claimant has not, however, provided the

<sup>6</sup> 33 C.F.R. § 136.103(a).

<sup>7</sup> Optional OSLTF Claim Form, received 21 June 2012.

<sup>8</sup> NPFC Request for Additional Information, dated 26 June 2012.

<sup>9</sup> Optional OSLTF Claim Form, received 21 June 2012.

NPFC with documentation supporting this allegation. This allegation, without more, is insufficient to establish that the Claimant has suffered a financial loss in the amount alleged.

The Claimant has also failed to prove that the Deepwater Horizon incident caused his alleged financial loss. The Claimant has not provided evidence linking the Deepwater Horizon incident with his alleged losses except for an allegation on his Optional OSLTF Claim Form that the Deepwater Horizon incident caused a drop in tourism, and specifically traffic through the Tampa airport, resulting in his wages and tips declining.<sup>10</sup> The Claimant has not, however, identified the nature of his employment or the source of his income at the time of the oil spill.

Accordingly, the Claimant's claim of \$5,000.00 is denied in its entirety because the Claimant has failed to demonstrate (1) a financial loss in the amount claimed, and (2) 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 discharge of oil. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.

Claim Supervisor: NPFC  Division

Date of Supervisor's Review: 8/6/12

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>10</sup> Optional OSLTF Claim Form, received 21 June 2012.