

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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Arlington, VA 20598-7100  
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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Number: 7011 1570 0001 4803 8473

5890/DWHZ

9 August 2012

Rapid Claims Recovery



Re: Claim Number: N10036-1849

Dear Mr. Covington:

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 N10036-1849 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 N10036-1849.

Mail reconsideration requests to:

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

Signature  
  
Division  
National Pollution Funds Center  
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

cc: Curtis Covington  
3608 E. North St.  
Tampa, FL 33610

By Certified Mail:  
No. 7011 1570 0001 4803 8480

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1849
Claimant	Curtis Covington
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 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 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 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

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

On 21 May 2012, Rapid Claims Recovery on behalf of Mr. Curtis Covington (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant appears to have been working as a restaurant server.<sup>2</sup> From the information provided, the NPFC is unable to determine exactly where or in what capacity the Claimant worked but the Claimant states the oil spill caused a reduction in hours and tips, as well as fewer tourists "to cater to."<sup>3</sup>

In order to calculate his losses, the Claimant looked at loss of promotions, work hours, and tips and reached the requested sum certain of \$5,000.00.<sup>4</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 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

<sup>1</sup> Optional OSLTF Claim Form, signed 11 May 2012.

<sup>2</sup> Optional OSLTF Claim Form, signed 11 May 2012.

<sup>3</sup> Optional OSLTF Claim Form, signed 11 May 2012.

<sup>4</sup> Optional OSLTF Claim Form, signed 11 May 2012.

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.
- (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***

### **Presentment**

On or before 21 May 2012, the Claimant presented a claim to the RP/GCCF, seeking loss of profits and wages damages in an unknown amount.<sup>5</sup> To prove presentment, the Claimant provided correspondence that he received from the GCCF that contains his name but not his GCCF Claimant ID number. The Claimant ID and claim number cannot be ascertained from the information provided.

On 21 June 2012, the Claimant submitted this claim to the NPFC seeking \$5,000.00 in loss of profits and impairment of earning capacity damages.<sup>6</sup> The NPFC may adjudicate this claim to

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<sup>5</sup> Optional OSLTF Claim Form, dated 11 May 2012.

<sup>6</sup> Optional OSLTF Claim Form, dated 11 May 2012.

the extent that these damages have first been presented to the RP/GCCF.<sup>7</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.

As an initial matter, it appears that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (E&PD Settlement). This claim is therefore considered to have been settled, and the Claimant is therefore 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 his request for reconsideration of this claim.

This claim is denied for improper presentment because the Claimant has failed to prove that he first presented his claim to the RP/GCCF in accordance with the claims regulations at 33 C.F.R. § 136.103. OPA presentment requires that "all claims for removal costs or damages must be presented first to the responsible party . . . ." Here, the evidence presented by the Claimant does not establish that his claim was first presented to the RP/GCCF and he has not provided a claim number or claimant identification number associated with any Deepwater Horizon RP claims process.

Additionally, this claim is denied under OPA's loss of profits damage category because 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 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.

In a letter dated 29 June 2012, the NPFC requested that the Claimant provide additional documentation to meet the requirements of the law listed above, including (1) completed copies of income tax returns, (2) financial documentation from the Claimant's place of employment, and (3) copies of claims and correspondence with the GCCF.<sup>8</sup>

The NPFC requested that the Claimant respond to the additional information request within 14 days of the date of the letter. As of the date of this determination, the Claimant has failed to respond. Information included in the Claimant's original submission is insufficient to determine where the Claimant actually worked, much less prove that the Claimant's place of employment

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<sup>7</sup> 33 C.F.R. § 136.103(a).

<sup>8</sup> NPFC Request for Additional Information, 29 June 2012.

actually sustained losses attributable to the Deepwater Horizon oil spill. Without documentation showing the nature of the Claimants work, his place of employment, and the oil spill's impact on that place of business, the Claimant has not established either that he has experienced a financial loss or that his alleged loss is due to the Deepwater Horizon oil spill.

Accordingly, this claim is denied (1) for improper presentment, (2) because the Claimant has failed to meet his burden to demonstrate either that he sustained a loss in the amount of \$5,000.00 or 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, and (3) because the Claimant is considered to have settled his claim by virtue of belonging to the economic damages class associated with the CSSP

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/9/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: