

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
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 8787

5890/DWHZ
23 October 2012

Mr. Patrick N. Cogan



Re: Claim Number: N10036-1870

Dear Ms. Healy:

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 N10036-1870 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 N10036-1870.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1870
Claimant	Patrick Cogan
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity/Real Property
Amount Requested	\$60,000.00

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 4 September 2012 Mr. Patrick Cogan ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$60,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant alleged to have been working as a "commercial long line and net fisherman" in the Gulf of Mexico.² The Claimant stated that "I could not work at the time of the incident, due to the ban on fishing in the Gulf of Mexico."³ As a result of his inability to fish, the Claimant alleged that he "was unable to make a living to properly support [his] family or make the necessary payments on the home, boat and vehicle, in turn, causing [him] to relinquish ownership."⁴

Due to losses in income allegedly resulting from the oil spill, the Claimant reported to have sustained losses totaling approximately \$180,000.00.⁵ The Claimant seeks recovery of \$60,000.00 from the OSLTF.⁶

APPLICABLE LAW

¹ Optional OSLTF Claim Form, signed on 20 August 2012.

² Letter from the Claimant to the NPFC, 11 August 2012.

³ Letter from the Claimant to the NPFC, 11 August 2012.

⁴ Letter from the Claimant to the NPFC, 11 August 2012.

⁵ Letter from the Claimant to the NPFC, 11 August 2012.

⁶ Letter from the Claimant to the NPFC, 11 August 2012.

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.

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

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 20 August 2012;
- Letter from the Claimant to the NPFC, 11 August 2012;
- Email from the Claimant to the NPFC, regarding supporting documentation, 20 August 2012;

- 2008, 2009, 2010, Forms 1099-MISC, showing respective earnings of \$12,382.26, \$4,033.06 and \$15,803.33;
- 2008 Schedule C (Form 1040) and supporting statement, showing business profit of \$288.00;
- 2009 Schedule C (Form 1040) and supporting statement, showing business profit of \$423.00;
- 2010 schedule C (Form 1040) and supporting statement, showing business profit of -\$12,634.00;
- Chart showing monthly gross income, January 2008 – April 2011;
- Detainer Warrant, 9 March 2010;
- Landing Data, January 1, 2008 – 2011, and;
- Map showing Economic Loss Settlement Zones.

On 4 September 2012, the Claimant presented this claim to the NPFC, seeking \$60,000.00 in loss of profits or impairment of earning capacity damages.⁷ The Claimant alleged that this claim was first presented to the responsible party, as required by OPA.⁸ The Claimant provided “BP oil claim # 100056690.”⁹

The NPFC does not have information necessary to independently verify that the same damages now presented to the NPFC were first presented to the responsible party. However, the NPFC will adjudicate this claim to the extent that these damages were first presented to, and either denied by, or left pending for a period greater than 90 days, by the responsible party.¹⁰ Any damages now before the NPFC which do not meet presentment requirements under OPA, are denied.

Documentation provided in this claim submission indicates that the Claimant has opted out of the Deepwater Horizon Economic & Property Damage Settlement class (“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.

In order to prove a claim for loss of profits or 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 has failed to provide evidence sufficient to prove that he sustained a financial loss in a certain amount, or to prove that his loss was caused by the Deepwater Horizon oil spill.

1. Failure to substantiate claimed financial loss.

The Claimant alleged to have sustained a loss of at least \$60,000.00 as a result of the Deepwater Horizon oil spill. The Claimant’s loss calculation includes financial losses associated with the loss of his home, car and boat, which the Claimant alleged to have been unable to afford as a result of his loss of income following the oil spill.¹¹ However, these losses are not compensable under OPA, which limits allowable

⁷ Optional OSLTF Claim Form signed on 20 August 2012.

⁸ 33 C.F.R. § 136.103(a).

⁹ Optional OSLTF Claim Form signed on 20 August 2012.

¹⁰ 33 C.F.R. § 136.103(c)(2).

¹¹ Letter from the Claimant to the NPFC 11 August 2012.

compensation to “the actual net reduction or loss of earnings or profits suffered.”¹² Furthermore, the Claimant has not provided evidence to document any of these alleged losses.

Additionally, the Claimant has not provided evidence to prove that his income actually decreased in any particular amount for a certain time period following the oil spill. Tax documentation indicates that the Claimant’s income dropped substantially from 2009 to 2010. However, tax documents are not supported by corresponding landing data included in this claim submission. For example, the Claimant’s business tax form for 2009 indicates that the Claimant’s gross sales as a commercial fisherman totaled \$55,385.00 in that year.¹³ However, annual landing data for 2008 through 2011, shows that the Claimant made no landings in 2009. Therefore, tax documents provided by the Claimant, which do not seem to reflect corresponding landing data, are insufficient to prove how much, if any income the Claimant might have lost in the period following the Deepwater Horizon oil spill.

2. Failure to prove that allege loss resulted from the oil spill.

The Claimant alleged that he was unable to fish due to fishing bans in the Gulf of Mexico following the oil spill. In support of this assertion, the Claimant provided landing data for 2008 through 2011. However, this data indicates that the Claimant did not fish in 2009, and only fished in November and December in 2010. It is unclear why the Claimant did not report any landings in 2009, or in 2010 for the months prior to the oil spill. Therefore, the NPFC cannot determine that the oil spill and not other factors which caused the Claimant not to fish from November 2008 through May 2010, were no longer affecting the Claimant at the time of the oil spill. Additionally, as noted above, the Claimant’s pre-oil spill tax documentation is not supported by accompanying landing data.

Furthermore, a copy of a detainer warrant documenting the Claimant’s eviction from his home, appears to have been executed more than one month prior to the oil spill, on 9 March 2010. This evidence therefore fails to support the Claimant’s assertion that he was unable to make payments on his home as a result of effects of the oil spill.

Finally, the NPFC notes that the Claimant has failed to identify exactly where he was fishing prior to the oil spill, or to prove that the waters where he fished were actually closed for a particular period of time as a result of the spill.

Based on the foregoing, the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount \$60,000.00, or (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.

<p>Claim Supervisor: <i>NPF</i> </p> <p>Date of Supervisor’s Review: <i>10/23/12</i></p> <p>Supervisor’s Action: <i>Denial approved</i></p> <p>Supervisor’s Comments:</p>

¹² 33 C.F.R. § 136.235.

¹³ 2009 Schedule C (Form 1040).