

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: 7012 2210 0001 7215 0049

5890/DWHZ
25 April 2013

Mr. Cary Toland
[REDACTED]

Re: Claim Number: N10036-1902

Dear Mr. Toland,

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 N10036-1902 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 N10036-1902.

Mail reconsideration requests to:

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

Sincerely,
[REDACTED]

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure (1): Claim Summary/Determination

Enclosure (2): Evidence Submitted in Support of Claim N10036-1902

cc: La Reta, Inc.
[REDACTED]

By Certified Mail:
No. 7012 2210 0001 7215 0032

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1902
Claimant	La Reta, Inc.
Type of Claimant	Private (US)
Type of Claim	Real or Personal Property/Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$975,124.66

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 April 2013, Cary M. Toland, Esq., on behalf of La Reta, Inc. (collectively, "the Claimant") submitted a claim to the NPFC, seeking to recover \$816,124.66 in loss of profits or impairment of earning capacity damages and \$159,000.00 in real or personal property damage allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is a commercial fishing vessel ported in Brownsville, Texas. At the time of the oil spill, the Claimant had licenses and permits to operate the M/V Nightwatch to fish shrimp in the Gulf of Mexico.

The Claimant alleged that the M/V Nightwatch "sank days after the spill off the coast of Louisiana when it could not get to its usual Louisiana port and mechanic due to the spill."² Due to the sinking of the vessel, the Claimant seeks to recover real or personal property damages in the amount of \$159,000.00, which the Claimant alleged was the market value of the vessel at the time it sunk.

The Claimant also seeks to recover \$816,124.55 in loss of profits or impairment of earning capacity damages, which the Claimant alleged to have sustained due to their inability to participate in the remainder of the 2010 fishing season as a result of the loss of the M/V Nightwatch. Using prior year fish catch reports the Claimant calculated a one-year economic loss of \$204,031.16 and multiplied this amount by four to reach their claimed loss of profits damages amount of \$816,124.66.

¹ Optional OSLTF Claim Form dated 4 April 2013.

² Letter from Cary Toland to Deepwater Horizon Economic Claims Center dated 5 December 2012.

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.

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.

In order to prove a claim for Real or Personal Property damage under OPA, 33 C.F.R. § 136.215 requires that a claimant provide evidence to prove, in part:

- (1) An ownership or leasehold interest in the property;
 - (2) That the property was injured or destroyed;
 - (3) The cost of repair or replacement; and
 - (4) The value of the property both before and after injury occurred.
- (b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish –

- (5) That the property was not available for use and, if it had been, the value of that use;
- (6) Whether or not substitute property was available and, if used, the costs thereof; and
- (7) That the economic loss claimed was incurred as a result of the injury to or destruction of the property.

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:
See, Enclosure (2).

On 4 April 2013, the Claimant submitted this claim to the NPFC seeking to recover \$816,124.66 in loss of profits or impairment of earning capacity damages and \$159,000.00 in real or personal property loss allegedly resulting from the Deepwater Horizon oil spill.³ Prior to submitting this claim to the NPFC, the Claimant submitted a claim to the BP, the responsible party (RP), via the Deepwater Horizon Economic Claims Center (DHECC). According to the Claimant, the claim is pending with RP/DHECC.

Because this claim was first presented to the RP through the DHECC, the NPFC deems OPA presentment requirements to have been met. The NPFC may therefore properly adjudicate this claim to the extent that all damages now presented were included in this claim as first presented to the DHECC.⁴

Furthermore, evidence in this claim submission indicates that the location of the Claimant's business excludes them from the Economic and Property Damage and Class Action Settlement (the E&PD Settlement).⁵

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 any claim for costs or damages under OPA, a claimant must provide evidence to prove that the damage or cost was incurred as a result of "the discharge, or substantial threat of discharge of oil . . ." ⁶ This claim is denied because the Claimant has not provided any evidence to prove that its alleged losses were caused by the oil spill.

³ Optional OSLTF Claim Form dated 4 April 2013.

⁴ 33 C.F.R. § 136.103(a)/Referencing the Deepwater Horizon Deepwater Horizon Economic and Property Damage Class Action Settlement.

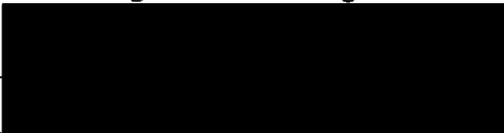
⁵ It is unclear as to whether or not the Claimant filed a Short Form Joinder to pursue a cause of action through the MDL-2179. According to 33 U.S.C. § 1013(2), "[n]o claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim." Where appropriate, however, the NPFC may deny such a claim.

⁶ 33 C.F.R. § 136.1(a)(1).

The basis for this claim is the sinking of the M/V Nightwatch and the Claimant's consequent loss of fishing revenue as a result of their inability to utilize the sunken vessel. The M/V Nightwatch was reported to sink "shortly after the oil spill" subsequent to receiving repairs in Morgan City, Louisiana. The Claimant has not provided any evidence to indicate that the vessel was physically harmed by the discharge of oil from the Deepwater Horizon oil spill, thereby causing it to sink.⁷ Rather, the Claimant asserts that the vessel sank "when it could not get to its usual port and mechanic due to the spill."⁸ Because the Claimant has not provided evidence to indicate that the vessel sank as a result of the oil spill this claim for \$159,000.00 in real or personal property damage is denied.

Likewise, the portion of this claim for loss of profits or impairment of earning capacity damages in the amount of \$816,124.66 is also denied, as the Claimant's loss of fishing revenue was caused by the sinking of the subject vessel and not by the discharge of oil resulting from the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove that they sustained a financial loss in the amount of \$816,124.66, or that they incurred \$159,000.00 in real or personal property damages as a result of the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

Claim Supervisor:  *MPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/25/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ Quality Diesel Service, Inc. invoice dated 5 May 2010.

⁸ Letter from the Claimant to the "Deepwater Horizon Economic Claims Center" 5 December 2012.

Enclosure (2)
Evidence Presented in Support of
NPFC Claim # N10036-1902

- 1) La Reta, Inc. Optional OSLTF Claim Form dated 4/4/2013 received at NPFC 8/4/2013
- 2) Compact disc PDF documents:
 1. Sammy Snod.pdf dated 10/18/2012
 2. yellow form Deepwater Horizon.pdf dated 7/10/2012
 3. 08receipt evid la reta.pdf dated 2/7/2012
 4. 2007 Tax Return.pdf dated 10/28/2010
 5. 2008 Tax Return.pdf dated 10/28/2010
 6. 2009 Tax Return.pdf dated 10/28/2010
 7. 2010 Shrimp Catch Report 2.pdf dated 10/28/2010
 8. 3316 LA RETA black form DEEPWATER HORIZON.pdf dated 7/10/2012
 9. Certif of Documentation.pdf dated 10/28/2010
 10. LA RETA copy.pdf dated 12/5/2012
 11. la reta fishery permits.pdf dated 9/25/2012
 12. la reta.pdf dated 9/25/2012
 13. la retalic.pdf dated 9/25/2012
 14. la retaTHE JAKE M 2011 for sammy.pdf dated 10/18/2012
 15. laretacomparison.pdf dated 1/9/2013
 16. Sammy Snodgrass. Lic Purchase History.PDF dated 12/10/2012
 17. Scan_Doc0028.pdf dated 10/18/2012
 18. SWs-1 LA RETA2.pdf dated 12/5/2012
 19. Third la reta inc. response to deficiency letter.pdf dated 12/5/2012