

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
29 May 2013

James Harvey


Re: Claim Number: N10036-1931

Dear Mr. Harvey,

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 N10036-1931 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 N10036-1931.

Mail reconsideration requests to:

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


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

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1931
Claimant	James Harvey
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$15,000.00

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 15 May 2013, Mr. James Harvey, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$10,000.00 in loss of profits or impairment of earning capacity damages and \$5,000.00 in real or personal property damages, allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant lives in Laplace, Louisiana, and appears to have been employed by a restaurant in Metairie, Louisiana at the time of the oil spill.² The Claimant alleged that due to the oil spill, he was "out of work for two years and lost [his] house, job and car."³

Because the Claimant has only identified to have sustained financial losses, and not losses due to damage to real or personal property caused by the Deepwater Horizon oil spill, this claim is categorized as a claim for \$15,000.00 in loss of profits or impairment of earning capacity damages.

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.

¹ Optional OSLTF Claim Form, received on 15 May 2013.

² Wage and Income Transcript indicate that the Claimant was employed by Copeland's Cheesecake Bistro in 2010.

³ Optional OSLTF Claim Form, received on 15 May 2013.

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, received on 15 May 2013;
- Wage and Income Transcript, 2009;
- Wage and Income Transcript, 2010;

The Claimant alleged that this claim was first presented to the Responsible Party on 20 September 2010.⁴ The Claimant stated that the Responsible Party has not acted on this claim as of the date of its submission to the NPFC.⁵ The NPFC does not have the information necessary to verify this assertion.

On 15 May 2013 the Claimant submitted this claim to the NPFC asserting to have sustained \$10,000.00 in loss of profits or impairment of earning capacity damages, as well as \$5,000.00 in real or personal property damages. The NPFC will adjudicate this claim to the extent that presentment requirements have been satisfied. If any of the damages subject of this claim were not presented to and denied by the Responsible Party, these damages are denied for failing to meet presentment requirements.⁶

Furthermore, evidence 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).⁷

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 the NPFC to those rights.

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.

Furthermore, this claim is denied on its merits. In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction in income, and (2) that the financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant appears to have worked for several employers throughout 2009 and 2010 and does not provide any indication as to how his employment may have been affected by the oil spill. In support of this claim, the Claimant provides records of his earnings in 2009 and 2010, showing that he earned less in 2010 than in 2009. However, the Claimant has not provided any proof that

⁴ Optional OSLTF Claim Form, received on 15 May 2013.

⁵ Optional OSLTF Claim Form.

⁶ 33 C.F.R. § 136.103(a).

⁷ The Claimant lives in Laplace, Louisiana, where he was employed at the time of the oil spill. It appears as though the Claimant is in Economic and Property Damage Class zone C. <http://www.laed.uscourts.gov/OilSpill/5.pdf>

might indicate that the reduction in his 2010 earnings was caused by damage to real property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount \$15,000.00, 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. 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 Claims Adjudication Division* 

Date of Supervisor's Review: *5/29/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: