

U.S. Department of
Homeland Security

**United States
Coast Guard**

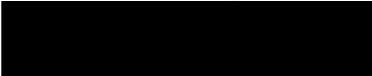


Director
National Pollution Funds Center
United States Coast Guard

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 2445 1814

5890/DWHZ
18 July 2013

Mr. F. Gerald Maples


Re: Claim Number: N10036-1962

Dear Mr. Maples:

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 N10036-1962 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 N10036-1962.

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

CC: Mr. Sean Seat

Certified Return Receipt Requested
Number: 7011 1570 0001 2445 1838

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1962
Claimant	Sean M. Seat
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$269,333.90

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 27 June 2013, Mr. F. Gerald Maples, the attorney on behalf of Mr. Sean Seat ("the Claimant"), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$269,333.90 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a Saturation (SAT) diver for Cal Dive International. The Claimant alleged that as a result of the oil spill, there was an "88% drop of issuance for drilling permits, which has resulted in a lack of work for all oilfield workers in the Gulf, especially for SAT divers, which is a 'deepwater' profession."² As a result, the Claimant has had to take surface diving work, which paid far less than SAT dive operations, and saw a reduction in dive work as a whole.

The lack of both work and higher paying dive jobs caused the Claimant to sustain the loss of earnings that are the subject of this claim. The Claimant alleged that the lack of work in the Gulf caused him to sustain losses of \$134,666.95 in 2010 and \$134,666.95 in 2011, for a total loss of \$269,333.90.

¹ See both the cover letter signed by Mr. F. Gerald Maples, dated 6/7/2013, and the Deepwater Horizon Oil Pollution Act form, 6/3/2013, both submitted to the NPFC by the claimant with the claim on 6/27/2013.

² Explanation of claim, pg. 1

Based on W2s provided from 2006 through 2009, the average gross income earned by the Claimant per year amounted to approximately \$151,251.785.³ As he only made a gross income of \$44,789.09 in 2010, he calculates the damages to be \$106,462.69 in 2010, estimating it to be the same, \$106,462.69 in 2011. This would total a loss of profits in the amount of \$212,925.38. However, in the claim cover letter provided with the claim, the Claimant claims \$134,666.95 in lost wages, basing it on the salary averages from 2008-2010 (though the claims manager could not ascertain how this total was derived), and the same \$134,666.95 for 2011, totaling the claimed \$269,333.90.

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;

³ See both Exhibits B and D, submitted to the NPFC with the claim by the claimant on 6/27/2013.

- (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:

- Claim Cover Letter, 7 June 2013;
- Deepwater Horizon Oil Pollution Act presentment Form, 13 June 2013;
- Statement from Mr. Sean M. Seat, (Exhibit A);
- Claimant answer sheet for Question C.3 (Exhibit B);
- OPA 33 USC 2702 references (Exhibit C)
- 2006 W2 for Claimant, totaling \$162,560.00 (Exhibit D);
- 2007 W2 for Claimant, totaling \$144,908.96 (Exhibit D);
- 2008 W2 for Claimant, totaling \$166,002.25 (Exhibit D);
- 2009 W2 for Claimant, totaling \$131,535.93 (Exhibit D);
- GCCF Denial Letter and Notice for Claimant, dated 8/23/2011 (Exhibit E).

Prior to submitting this claim to the NPFC, the Claimant attempted to recover loss of profits or impairment of earning capacity damages through the GCCF. The GCCF denied payment due to lack of documentation to support that the loss of income was due to the oil spill.⁴ The Claimant also presented the claim to the Deepwater Horizon Claims Center, which denied payment on the claim in a letter dated 5 April 2013.⁵

On 25 June 2013, the Claimant presented this claim to the NPFC, seeking to recover \$269,333.90 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill. The NPFC does not have evidence sufficient to establish the amount of damages previously presented to and denied by the GCCF, but will adjudicate this claim to the extent that presentment requirements have been satisfied. If any damages now presented to the NPFC were not first presented to the RP or its agent, these damages are denied for improper presentment.⁶

⁴See GCCF Denial Letter (Exhibit E), submitted to the NPFC with the claim by the claimant on 6/25/2013..

⁵ See the Deepwater Horizon Claims Center, Denial Notice, dated 4/05/2013.

⁶ 33 C.F.R. § 136.103(c)(2).

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 evidence sufficient to prove (1) that the claimant sustained a loss or reduction in income, and (2) that the loss was caused by damage to real or personal property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

The Claimant alleged that his working hours were reduced and was forced to move from SAT diving to surface dive jobs as a result of the decline in business activity in the Gulf of Mexico caused by a “reduction in drilling permits” issued after the Deepwater Horizon oil spill.⁷ However, the Claimant has not presented evidence to indicate that a particular job or project was cancelled due to the oil spill itself, or closures of federal waters for response purposes. Rather, the Claimant’s losses appear to have been caused by changes in drilling and permitting regulations implemented after the oil spill. These losses therefore, which were not caused by “damage to real or personal property or natural resources” resulting from “the discharge or substantial threat of discharge of oil” are not losses that can be compensated by the OSLTF.

Lastly, the Claimant based the claim amount on totals that could not be ascertained, as the average income for 2008 through 2010, based on the W2s provided by the Claimant, actually amounts to approximately \$114,109.09. The Claimant also does not provide information with which to verify the calculated losses claimed for 2011.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove that his 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.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *7/18/13*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

⁷ See Statement from Mr. Sean M. Seat, (Exhibit A), pg. 1, submitted to the NPFC with the claim by the claimant on 6/27/2013.