

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

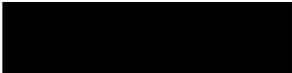


Director  
National Pollution Funds Center  
United States Coast Guard

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: 7012 2210 0001 7215 0926

5890/DWHZ  
10 July 2014

Mr. John Held  


Re: Claim Number: N10036-2027

Dear Mr. Held:

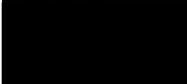
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-2027 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-2027.

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	N10036-2027
Claimant	John Held
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$519,764.00

***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 25 June 2014, Mr. John Held ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$519,764.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

Claimant states he was working for Omega Proteins Corporation during the time of the oil spill and he asserts that his pay was affected because his employer was trying to mitigate its damages and preserve cash following the oil spill. He claims that the company was forced to close one of its three facilities as a result of the oil spill. Claimant further asserts that his employer cut back on fishing grounds for two of the three plants in the Gulf.

***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;

<sup>1</sup> Optional OSLF Claim Form, 17 June 2014.

- (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 Form, 17 June 2014;
- Denial Letter from BP Claims Program to Claimant, dated 10 June 2014;
- Claim Description Letter from Claimant;
- Claimed Costs Breakdown for Claimant;
- Omega Protein Press Release, dated 29 April 2010;
- Omega Protein Press Release, dated 1 July 2010;
- Copy of State of TX Driver's License for Claimant;
- 2007-2010 Federal Tax Returns for Claimant;
- 2007-2010 W-2s for Claimant.

The Claimant states that this claim was first presented to the Responsible Party (RP) and that the RP denied payment on this claim.<sup>2</sup> On 25 June 2014, the Claimant presented this claim to the NPFC, seeking \$519,764.00 in loss of profits or impairment of earning capacity. The NPFC will adjudicate the claim to

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<sup>2</sup> Optional OSLTF Claim Form, 17 June 2014, as well as BP Claims Program Denial letter, 10 June 2014.

the extent that presentment requirements have been satisfied. If any damages subject of this claim were not first presented to and denied by the RP, these damages are denied for improper presentment.

Evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement).<sup>3</sup>

### **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 Class. While he did not appear to live in the settlement zones, the company for which he worked, Omega Protein, states the facilities affected by the oil spill were Moss Point, Morgan City and Abbeville—all of which are in the economic loss settlement zones. 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, even if the Claimant was not included in the Settlement Class, this claim is also denied on its merits. 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 seeks to recover \$519,764.00 in lost profits and earnings due to his inability to earn income with Omega Protein following the oil spill. The amount of compensation potentially available to any claimant seeking loss of profits damages is limited to the "actual net reduction or loss of earnings or profits suffered."<sup>4</sup> Speculative future losses are therefore not compensable under OPA.

Financial documentation included with this claim submission fails to indicate that the Claimant sustained an uncompensated loss of earnings after the oil spill. Rather, the Claimant's tax returns document the Claimant's earnings increased in 2010 as compared to the Claimant's earnings in 2009. The Claimant reported profits of \$1,037,801.53, \$1,729,996.74, \$231,630.08 and \$480,045.08 in 2007, 2008, 2009, and 2010.<sup>5</sup> Having presented no other financial documentation to support this claim, the Claimant has failed to demonstrate that he sustained an uncompensated financial loss in 2010.

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<sup>3</sup> At the time of the spill, the locations in which the Claimant was working were within Economic Loss Settlement Zones B and D.

<sup>4</sup> 33 C.F.R. § 136.235.

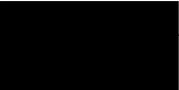
<sup>5</sup> See, 2007-2010 Income tax returns included in claim submission.

The Claimant alleged that the spill caused Omega Proteins to become leary of the economy and it shut down one of its three facilities in the Gulf area. According to Omega Protein's press release, its facility at Moss Point was to be relocated to other facilities, Morgan City being the main one, and the Abbeville location to assist as needed. This move was to last up to four weeks, with the possibility of lasting longer. The Claimant has not shown that the alleged threat to Omega Protein's facilities or its shareholders (as described in the company's 29 April and 1 July 2010 press releases) has adversely affected his salary.

Additionally, it appears that the Claimant was already experiencing a decline in salary well before the oil spill. According to his W2s, his salary from 2007-2010 was as follows:

2007	\$1,037,801.53
2008:	\$1,729,996.74
2009:	\$231,630.08
2010:	\$480,045.08

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 of \$519,764.00, 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.

Claim Supervisor: NP  *Judication Division*

Date of Supervisor's Review: *7/10/14*

Supervisor's Action: *Denial approved*

Supervisor's Comments: