

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
18 September 2014

Mr. Rick Schillaci


Re: Claim Number: N10036-2033

Dear Mr. Schillaci:

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 N10036-2033 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 N10036-2033.

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	N10036-2033
Claimant	Rick Schillaci
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$35,900.00

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 5 September 2014, Mr. Rick Schillaci ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$35,900.00 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 states he was working for Omega Protein Inc. but had been offered a position with a new company, Gulf Bait, LLC, which his employment was to begin May 15, 2010 as their General Manager. The Claimant asserts that the position was later withdrawn by Gulf Bait, LLC due to the Deepwater Horizon oil spill incident.

In a letter from Gulf Bait, LLC to the Claimant dated November 3, 2009, it states that Gulf Bait, LLC was waiting to receive a contract from the State of Louisiana for funding of their proposed business plan to supply much needed bait to the Louisiana crawfish and crab industry. The letter also states that a financial backing firm, The Sisung Group, agreed to provide the remaining funding for the project.

Claimant asserts that because of the uncertainty in the Gulf, The Sisung Group pulled its financial support for Gulf Bait, LLC. The Claimant alleges that since The Sisung Group pulled its financial support to Gulf Bait, LLC, that company refused a \$1,000,000.00 grant that was being given to it by the State of Louisiana. The Claimant alleges that because his offer of employment was withdrawn by Glf Bait, LLC, he is claiming the difference in salary between

¹ Optional OSLF Claim Form, 28 August 2014.

what he made in 2010 and 2011 with his current employer, Omega Protein Inc., vice what he would have allegedly made with Gulf Bait, LLC had that company fulfilled its business plan less a partial payment the Claimant received from the GCCF in the amount of \$12,000.00.

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.

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, 28 August 2014;
- Claim Cover Letter written by Claimant, 28 August 2014;
- BP Claims Center Denial Letter for Claimant, 25 April 2014;
- Claimant Payroll Differential Spreadsheet;
- Employment Letter from Gulf Bait, LLC to Claimant, 3 November 2009;
- Business Plan Letter from Sisung Group to Claimant, 25 January 2010;
- State of Louisiana Business Registration for Gulf Bait, LLC;
- State of Louisiana Contract Terms Letter for Gulf Bait, LLC
- Letter from Sisung Group to Mr. Randall Womack, Gulf Bait, withdrawing funding, 14 July 2010.

The Claimant states that this claim was first presented to the Responsible Party (RP) and that the RP denied payment on this claim.² On 5 September 2014, the Claimant presented this claim to the NPFC, seeking \$35,900.00 in loss of profits or impairment of earning capacity. The NPFC will adjudicate the claim to the extent 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).³

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.

Initially, it appears that the Claimant is a member of the E&PD Settlement Class. 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.

² Optional OSLTF Claim Form, 28 August 2014, as well as BP Claims Program Denial letter, 25 April 2014.

³ At the time of the spill, the locations in which the Claimant was living within Economic Loss Settlement Zone D.

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.

As an initial matter, any and all damages claimed for losses in 2010 through September 4, 2011 are denied on the basis that the Claimant failed to present its claim to this office within 3 years after the date on which the injury and its connection with the discharge were reasonably discoverable with the exercise of due care. 33 U.S.C. § 2712(h)(2) provides that "no claim may be presented under this section for recovery of damages unless the claim is presented within three years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care..." The statute of limitations in OPA is strictly applied, and there is no provision which allows for its waiver and as such, losses from 2010 through September 4, 2011 are denied.

The Claimant alleged that due to the uncertainty in the Gulf following the Deepwater Horizon oil spill, Gulf Bait, LLC, a company for which he possessed a letter of intent to hire effective May 2010 and dated November 3, 2009, lost its alleged funding from a venture capitalist firm identified as The Sisung Group, thus causing him the inability to begin employment. Based on the evidence presented and research performed, the Claimant has not shown by a preponderance of the evidence that Gulf Bait's decision not to hire him, as well as losing funding from its venture capitalist, the Sisung Group, were a direct result of the oil spill.

Furthermore, it appears that the State of Louisiana was going to fund a project headed by Gulf Bait, LLC and award it a grant with the understanding that Gulf Bait, LLC filed an Annual Report and got the firm in good standing with the Secretary of State.⁴ The Claimant states in his claim submission that he understood the annual report was to be filed, but that the contract was awarded to another company a year or so later. The NPPC researched the corporate standing of Gulf Bait, LLC and obtained documentation through the Secretary of State that indicates Gulf Bait, LLC's corporate status was revoked by the Secretary of State.

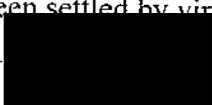
It is important to note that even if the Claimant had been able to demonstrate that any alleged loss was a direct result of the oil spill, under 33 CFR § 136.235, "the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*."⁵ Therefore, the Claimant cannot be compensated for any prospective damages that might accrue in the future. Consequently, to the extent losses claimed by the Claimant are for future losses, those damages are non-compensable under OPA and likewise denied.

⁴ See, June 16, 2010 letter from the State of Louisiana to Gulf Bait, LLC

⁵ Emphasis added.

While the Claimant has asserted losses that were never actually incurred since they were based on a prospective offer of employment and the subsequent loss of prospective employment was never proven to be a direct result of the oil spill, those losses are not OPA compensable and therefore denied.

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 \$35,900.00, 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *9/18/14*

Supervisor's Action: *Denial approved*

Supervisor's Comments: