

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
26 August 2011

Mr. Gerard B. Schneller
Re: Mr. Michael Angelovic
300 N. Tucker Blvd., Suite 801
St. Louis, MO 63101

Re: Claim Number: N10036-1204

Dear Mr. Schneller:

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 N10036-1204 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 N10036-1204.

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 Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1204
Claimant	Mr. Michael Angelovic
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$52,159.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 15 June 2011, Attorney Gerard B. Schneller, legal representative of Mr. Michael Angelovic (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$52,159.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant worked as a commissioned drug sales representative in Destin, Fl. The Claimant alleged that hospitals around Destin lost revenue due to a decrease in tourism in the summer of 2010, affecting their ability to continue to purchase drugs from him as they had in previous years.²

Claimant seeks \$52,159.00 in compensation for lost sales, allegedly resulting from effects of the Deepwater Horizon oil spill.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ Optional OSLTF Claim Form dated 13 June 2011.

² Letter from Claimant to "BP Claims Dept" 8 November 2010.

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed by Claimant and legal representative, 13, June 2011;
- Cover letter signed by attorney, 13 June 2011;
- Article, *BP to pay \$1.4M to Bay Medical Center*, www.uslifeline.com, 9 June 2011;
- Letter from Claimant to "BP Claims Dept," 8 November 2010;
- Document titled "2010 Annual Bonus Trend;"
- Earnings Statement, showing payment made on 14 May 2010;
- Earnings Statement, showing payment made on 13 August 2010;
- 2010 Minerva Monthly Sales record;
- Record of sales for West Florida, labeled Q1, Q2, Q3, Q4, undated;
- 2009 Clinical Business manager Sales Incentive Compensation Plan, 18 pages plus appendix;
- 2009 Quarterly Bonus payouts;
- Earnings Statement, 15 May 2009;
- Email Re: Q1 2009 Incentive Compensation Payout Letter;
- Earnings Statement, 14 August 2009;
- Email Re: Q2 2009 Incentive Compensation Payout Letter;

- Earnings Statement, showing payment made on 13 November 2009;
- Email re: Q3 2009 Incentive Compensation Payout Letter;
- Earnings Statement, showing payment made on 12 February 2010;
- Email re: Q4 2009 Incentive Compensation Payout Letter;
- 2008 Quarterly Bonus payouts;
- Earnings Statement, showing payment made on 15 May 2008;
- Earnings Statement, showing payment made on 14 November 2008;
- Email Re: IC Payout Notification Q3-2008;
- Earnings Statement, showing payment made on 13 February 2009;
- Email re: Cubicin Only IC Payout Notification Q4-2008;
- 2007 Quarterly Bonus payouts;
- Earnings Statement, showing payment made on 15 May 2007;
- Earnings Statement, showing payment made on 15 August 2007;
- Earnings Statement, showing payment made on 15 November 2007;
- Email re: IC Payout Notification Q2-2007;
- Earnings Statement, showing payment made on 15 February 2008;
- 2007 Clinical Business Manager Sales Incentive Compensation Plan Summary;
- Email re: FINAL Cube of Excellence Winners, 30 January 2008;
- Document stating 2006 annual bonus total;
- Earnings Statement, showing payment made on 15 February 2007;
- Earnings Statement, showing payment made on 29 December 2006.

On 23 August 2010, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF for lost wages and earnings in the amount of \$4,700.00. Claimant was assigned ID 1148179, and the EAP claim was assigned claim # 3872.

Claimant also presented a Final Payment claim for \$4,700.00 in lost profits and earnings, on 23 August 2010, which was assigned claim # 9016564. EAP and Final Claims were denied by the RP/GCCF.

On 1 January 2011, Claimant presented a First Quarter Interim Claim (ICQ12011) to the RP/GCCF for lost profits and wages in the amount of \$52,159.00, which is the amount now before the NPFC.

Because the claim now before the NPFC has been first presented to the RP/GCCF in ICQ12011, this NPFC determination shall address the Claimant's loss of profits and earnings capacity claim in the amount of \$52,159.00.

Claimant's Optional OSLTF Claim form indicates that the Claimant filed a claim in the multidistrict litigation now pending in the United States District Court for the Eastern District of Louisiana (MDL-2179 In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf Of Mexico, on April 20, 2010) against BP (the "MDL") on 20 April 2011.³ Although under the statute, the NPFC may not approve and certify the payment of a claim during the pendency of an action in court to recover costs which are the subject of the claim, the NPFC may adjudicate such a claim to determine whether it may be compensable. Where appropriate, such a claim may be denied.

³ Optional OSLTF Claim Form, 13 June 2011.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that his 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support his claim.

The NPFC reviewed all information and documentation provided by the Claimant. In order to prove a claim for loss of profits and earning capacity, the Claimant must prove (1) that he sustained a financial loss, and (2) that loss was a result of harm caused by the discharge or substantial threat of discharge of oil. Although the Claimant's financial records indicate a loss of income in 2010, he has not demonstrated any causal link between his losses and the Deepwater Horizon oil spill.

Financial documentation provided by the Claimant, indicate that the Claimant's sales were decreasing in the period leading up to the Deepwater Horizon oil spill. In the months immediately following the oil spill, the Claimant's sales either remained steady or increased. For example, in April of 2010, the Claimant reached only 65% of his sales quota.⁴ On the other hand, the Claimant reached 90% of his quota in May of 2010, 81% in June 2010, and 93% in July of 2010. These records fail to indicate that the Claimant's sales were affected by the Deepwater Horizon oil spill.

Furthermore, the Claimant earned a 2009 bonus in the amount \$35,818.00, and does not provide evidence to support his claim that his bonus would have increased an additional \$52,159.00 in 2010.⁵ In fact, the documentation showing the Claimant's First Quarter 2010 sales, indicated that the Claimant's 2010 sales were on track to be lower than sales in 2009.⁶

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$52,159.00, and (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 a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/26/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: 

⁴ 2010 monthly sales records.

⁵ Letter from Claimant to "BP Claims Dept," 8 November 2010.

⁶ Claimant's First Quarter bonus in 2009 was \$8,000.00 compared to a bonus of only \$5,830 in the First Quarter of 2010.