

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

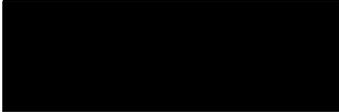


Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd., Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 1-800-280-7118  
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 1871

5890/DWHZ  
13 September 2011

Luis A. Padilla  


Re: Claim Number: N10036-1322

Dear Mr. Padilla:

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 your claim number N10036-1322 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1322.

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

Enclosures: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1322
Claimant	Luis A. Padilla
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$4,500.00

### ***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 certain individual and business claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 16 August 2011, Luis A. Padilla (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$4,500.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is employed by Boland Marine & Industrial Company, LLC.<sup>1</sup> Boland Marine & Industrial provides support for cargo vessels moving oil and petroleum for various offshore oil rigs.<sup>2</sup> Specific to the Claimant's submission, the Claimant is employed as an outside machinist for Boland Marine.<sup>3</sup> The Claimant asserted that as a result of the Deepwater Horizon oil spill, Boland Marine reduced his weekly working hours and by extension the Claimant lost income in 2010.<sup>4</sup>

The Claimant did not provide an explanation for his calculation of his sum certain of \$4,500.00.

### ***APPLICABLE LAW***

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

<sup>1</sup> 2010 W-2 Wage and Tax Statement from Boland Marine & Industrial LLC.

<sup>2</sup> PHONECON between NPFC and Boland Marine & Industrial dated 29 August 2011.

<sup>3</sup> Letter from Walter Haley dated 14 April 2011.

<sup>4</sup> Letter from Claimant to Saxon, undated (1).

by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(e).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 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 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**

In support of his claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form received 16 August 2011;
- Letter from the Claimant to NPFC dated 28 July 2011;
- Letter from Walter Haley dated 14 April 2011;
- 2008 Form 1040 Individual Federal Tax Return;
- 2009 Form 1040 Individual Federal Tax Return;
- Letter to the Claimant dated 12 May 2010 regarding Claimant's mortgage;
- Letter, in Spanish, from Saxon to Claimant dated 08 April 2010;
- 2010 W-2 Wage and Tax Statement from Boland Marine & Industrial LLC;
- Saxon Financial Statement dated 25 April 2010;
- Pay stubs for dates: 05 October 2010-12 October 2010;

- Letter from the Claimant to Saxon, undated (1);
- Letter from the Claimant to Saxon, undated (2);
- Pay stubs from Boland Marine & Industrial LLC for dates:
  - o 18 April 2010, 02 May 2010-30 May 2010, 04 July 2010-18 July 2010, 05 September 2010-26 September 2010, 17 October 2010-24 October 2010, 28 November 2010-26 December 2010, 03 April 2011-17 April 2011, 19 June 2011-26 June 2011, 03 July 2011-17 July 2011,
- Letter from Saxon to the Claimant dated 16 February 2010;
- 2009 W-2 Wage and Tax Statement from Boland Marin & Industrial LLC;
- Letter from Saxon to the Claimant dated 06 April 2010;
- Saxon Financial Statement dated 05 August 2010;
- Cash Sale for property, State of Louisiana, Parish of Jefferson, dated 12 May 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed a Full Review Final (FRF) Claim with the GCCF on 20 October 2010 in the amount of \$10,947.00 in loss of profits and impairment of earnings capacity.<sup>5</sup> He was assigned Claimant ID # 3240138 and Claim ID # 9051818. The FRF Claim was denied on 29 April 2011.<sup>6</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill the Claimant's work hours were reduced and by extension he lost income. The NPFC deems that the Claimant's GCCF claim were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1322 considers and addresses the earnings claimed in the claim presented to the responsible party up to \$4,500.00, specifically; GCCF Claim # 9051818.

### **NPFC Determination**

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. The NPFC considered all documentation presented by the Claimant.

The claim is denied because the Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. The Claimant failed to provide a connection between this purported loss and the Deepwater Horizon oil spill. In his submission to the NPFC, the Claimant provided a letter from Boland Marine & Industrial Company, discussing the Claimant's reduced working hours. In an effort to verify the Claimant's submission, the NPFC contacted Boland Marine to discuss the Deepwater Horizon oil spill's effect on Boland Marine and the Claimant's working hours. During the conversation, Boland Marine stated that the drilling moratorium, combined with the Deepwater Horizon oil spill, contributed to a slowdown in marine traffic.<sup>7</sup> Boland Marine stated that as a result, the company reduced the hours of its employees to reduce overhead.<sup>8</sup> Accordingly, the Claimant's alleged loss was not a direct result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount claimed, and (2) that the alleged loss is due to the injury,

<sup>5</sup> Report from the GCCF dated 07 September 2011.

<sup>6</sup> GCCF Denial Letter dated 29 April 2011.

<sup>7</sup> PHONECON between NPFC and Boland Marine & Industrial Company, LLC dated 29 August 2011.

<sup>8</sup> PHONECON between NPFC and Boland Marine & Industrial Company, LLC dated 29 August 2011.

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: *9/13/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: