

U.S. Department of  
Homeland Security

United States  
Coast Guard

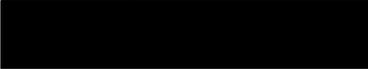


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4666 9946

5890/DWHZ  
21 September 2011

Mr. Gabriel Bush  


Re: Claim Number: N10036-1353

Dear Mr. Bush:

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 N10036-1353 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 N10036-1353.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

Sincerely,  


National Pollution Funds Center  
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1353
Claimant	Mr. Gabriel Bush
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$16,000.00

### ***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 29 August 2011, Mr. Gabriel Bush (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$16,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working for Cajun Seafood, Inc. in Mobile, Alabama.<sup>2</sup> According to the Claimant, Cajun Seafood Inc. provides seafood wholesale to retailers and also operates as a seafood restaurant.<sup>3</sup> The Claimant alleged that he was hired on 6 April 2009 and was let go on 16 May 2010, "due to loss of business from the oil spill in the gulf."<sup>4</sup>

The Claimant seeks \$16,000.00 in lost earnings due to loss of his position with Cajun Seafood, Inc.<sup>5</sup>

### ***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.

<sup>1</sup> Optional OSLTF Claim Form, dated 29 August 2011.

<sup>2</sup> Letter from Cajun Seafood, Inc. to GCCF, 16 May 2010.

<sup>3</sup> PHONECON: NPFC Staff and the Claimant, 2 September 2011.

<sup>4</sup> Letter from Cajun Seafood, Inc. to GCCF, 16 May 2010.

<sup>5</sup> Optional OSLTF Claim Form, dated 29 August 2011.

- (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, dated 29 August 2011;
- Email from the Claimant to NPFC Staff, 29 August 2011;
- Fax Cover Letter, 29 August 2011;
- Hardship Letter from the Claimant to the NPFC, 29 August 2011;
- Letter from Cajun Seafood, Inc. to GCCF, 16 May 2010;
- Copy of the Claimant's Driver's License and Social Security card;
- Tax Return Transcripts, 2009 and 2010.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF. The Claimant was assigned Claimant ID 3156468 and EAP was assigned Claim # 211339. The Claimant requested \$11,124.00 in damages, and was paid \$11,200.00 by the RP/GCCF on 30 October 2010.<sup>6</sup>

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<sup>6</sup> GCCF Claimant Status, Accessed on 15 August 2011.

The Claimant also presented a Full Review Final Payment claim (FRF) to the RP/GCCF on 21 October 2010.<sup>7</sup> FRF was assigned Claim #9037280. As of the date of this letter, this claim remains under review with the RP/GCCF.<sup>8</sup>

Because the Claimant's FRF has been under review for over 90 days, the NPFC may properly adjudicate this claim, as it was first presented to the RP/GCCF.<sup>9</sup> This NPFC determination shall address the Claimant's FRF in the amount of \$16,000.00, as presented to the NPFC on 29 August 2011, to the extent that this amount was presented in the Claimant's FRF.<sup>10</sup> Any damage amount now before the NPFC, which was not first claimed in the FRF is denied.

### **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.

In support of this claim, the Claimant provided a letter, allegedly written and signed by the owners of Cajun Seafood, Inc., stating that the Claimant had been let go from his position with the company "due to loss of business from the oil spill in the gulf."<sup>11</sup> In order to verify this information, the NPFC contacted the Claimant's former employer, Cajun Seafood, Inc. A representative of the company stated that the Claimant's loss of position had nothing to do with the Deepwater Horizon oil spill.<sup>12</sup> The representative further stated that no one at Cajun Seafood has ever written a letter on behalf of an employee filing a claim stemming from the Deepwater Horizon oil spill, and that Cajun Seafood, Inc. did not write the letter included in the Claimant's submission, specifically.<sup>13</sup>

Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. § 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

This claim is denied because the Claimant has materially misrepresented substantial elements of this claim in order to try to obtain funds from the Federal Government.

Claim Supervisor: NPFC [REDACTED]

Date of Supervisor's Review: 9/20/11

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>7</sup> Optional OSLTF Claim Form, dated 29 August 2011.

<sup>8</sup> GCCF, Claimant Status, accessed on 15 September 2011.

<sup>9</sup> 33 C.F.R. § 136.103(c)(2).

<sup>10</sup> 33 C.F.R. § 136.103(c)(2).

<sup>11</sup> Letter from Cajun Seafood, Inc. to GCCF, 16 May 2010.

<sup>12</sup> PHONECON: NPFC Staff and Cajun Seafood, Inc., 15 Sept. 2011.

<sup>13</sup> PHONECON: NPFC Staff and Cajun Seafood, Inc., 15 Sept. 2011.