

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 1288

5890/DWHZ
05 July 2012

Jorge Martinez


Re: Claim Number: N10036-1788

Dear Mr. Martinez:

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 N10036-1788 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 N10036-1788.

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	N10036-1788
Claimant	Jorge Martinez
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$28,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 03 May 2012, Jorge Martinez (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$28,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant alleges that the business he worked for, Gulf Fleet Holding Inc., had to enter into bankruptcy due to the Deepwater Horizon oil spill.¹ The Bankruptcy Court approved the sale of the company's assets to Odyssey Marine, Inc. on 29 April 2011.² Gulf Fleet Holding Inc. filed for Chapter 11 in the United States Bankruptcy Court for the Western District of Louisiana on 14 May 2011.³ The Claimant alleges he lost his job and earnings as a result of the bankruptcy and subsequent sale.⁴

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 23 April 2012 at question 2.

² News article at http://www.williamblair.com/Pages/news_story_dept.asp?uid=1845&depID=3.

³ News article at http://www.williamblair.com/Pages/news_story_dept.asp?uid=1845&depID=3.

⁴ Optional OSLTF claim form dated 23 April 2012 and letter of explanation from the Claimant dated 23 April 2012.

- (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 his claim, the Claimant submitted the following:

- Optional OSLTF claim form dated 23 April 2012;
- Claimant's letter of explanation dated 23 April 2012;
- Paystub dated 28 August 2008 from Gulf Fleet Holding Inc.;
- Paystub dated 07 May 2009 from Gulf Fleet Holding Inc.;
- Paystub dated 03 June 2010 from Gulf Fleet Holding Inc.;
- GCCF denial letter on Interim Payment/Final Payment claim dated 27 September 2011;
- Article from William Blair dated 03 May 2011;
- Article from Bloomberg Businessweek about Gulf Fleet Management LLC;
- 2008 form 1040 U.S. Individual Income Tax Return;
- 2008 W-2 from Gulf Fleet Management LLC for \$70,664.95;
- 2009 form 1040 U.S. Individual Income Tax Return;
- 2009 W-2 from Gulf Fleet Management LLC for \$54,670.61.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$28,000.00.

Prior to presenting his claim to the NPFC, the Claimant filed a Full Review Final claim (FRF1) with the GCCF on 16 September 2011 in the amount of \$28,000.00.⁵ He was assigned Claimant ID #3550987 and claim #9491491 and was denied.⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter for his GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that he lost his job and earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant's denied GCCF claim (FRF1) to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1788 considers and addresses the earnings claimed in GCCF claim #3550987 (FRF1).

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 or destruction or loss of real or personal property or 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. The NPFC considered all the documentation submitted by the Claimant.

In order to prove a claim for loss of profits and impairment of earning capacity damages, a Claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate his claim.⁷ The letter requested, among other things, Claimant's 2010 tax returns, W-2s, and a point of contact or reference from Gulf Fleet Holdings Inc. for an accurate accounting of the Claimant's losses and verification of causation. The letter was sent on 15 May 2012. On 21 May 2012, the Claimant acknowledged receipt of the letter.⁸ To date no response has been received by the NPFC. The NPFC accordingly proceeded to evaluate the claim with the sparse evidence the Claimant had originally submitted.

The Claimant's company filed for Bankruptcy on 14 May 2010 and was sold on 03 May 2011 to Odyssey Marine Inc.⁹ The Claimant states that he cannot get a letter from Gulf Fleet Holdings because "obtaining such document was impossible due to the company being bought by Odyssey Marine, Inc."¹⁰ Based on the aforementioned statement, the NPFC requested contact information and/or a reference from the Claimant's previous employment however none was provided.¹¹ The NPFC is unable to determine the cause of Gulf Fleet Holdings Inc.'s filing for chapter 11 on 14 May 2010,¹² less than a month after the oil spill occurred.

The Claimant provided 2008 and 2009 W-2s and tax returns showing earnings from Gulf Fleet Holdings Inc.¹³ The Claimant further provided a paystub dated 29 May 2010 from Gulf Fleet

⁵ Report from the GCCF dated 21 May 2012.

⁶ Report from the GCCF dated 21 May 2012.

⁷ USPS tracking # 7011 1570 0001 4803 7995.

⁸ USPS tracking # 7011 1570 0001 4803 7995.

⁹ News article at http://www.williamblair.com/Pages/news_story_dept.asp?uid=1845&depID=3.

¹⁰ Claimant's letter of explanation dated 23 April 2012.

¹¹ NPFC's request for additional information dated 15 May 2012 at documentation requested 1.

¹² News article at http://www.williamblair.com/Pages/news_story_dept.asp?uid=1845&depID=3.

¹³ 2008 and 2009 W-2s and form 1040 for the Claimant using earnings from Gulf Fleet Holdings Inc.

Holdings, Inc.¹⁴ Thus it is evident that the Claimant continued working for some duration after the oil spill. However, the Claimant did not provide the requested W-2 for 2010 and the 2010 tax return in order for the NPFC to be able to accurately assess the alleged loss of earnings totaling \$28,000.00.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his 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 [REDACTED] Claims Investigation Division*

Date of Supervisor's Review: *7/5/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁴ Paystub from Gulf Fleet Holdings Inc. dated 29 May 2010.