

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

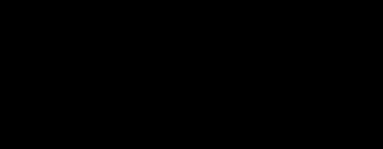
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd., Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 800-280-7118  
E-mail: [arl-pf-npfcclaimsinfo@uscg.mil](mailto:arl-pf-npfcclaimsinfo@uscg.mil)  
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1570 0001 4803 7971

5890

26 July 2012

Florida BP Claims, Inc.  


RE: Claim Number: N10036-1826

Dear Ms. Byers:

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 N10036-1826 involving Deepwater Horizon. 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 N10036-1826.

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: (1) Claim Summary / Determination Form

Copy to: Gary V. Guarino  


CERTIFIED MAIL

Number: 7011 1570 0001 4803 7988

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1826
Claimant	: Gary G, Inc.
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$38,937.00

### ***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.

On 8 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 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 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

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

On 29 May 2012, Gary Guarino, as owner of Gary G., Inc. (jointly referred to as 'the Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$38,937.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.<sup>1</sup> The Claimant is a mortgage broker located in Palm Harbor, Florida, and asserts that he lost potential clients and business in 2010 due to the economic impact of the oil spill on the area.<sup>2</sup> Palm Harbor is an unincorporated community on the Gulf of Mexico coast, within Pinellas County and about 25 miles north of St. Petersburg, Florida.<sup>3</sup> The Claimant also asserts that he dissolved the Corporation, Gary G., Inc., in 2010 due, in part, to the BP oil spill.<sup>4</sup>

On 30 May 2012, the Claimant requested all documentation and communications with regards to the claim to be sent to Florida BP Claims, 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 § 2702(b) of OPA.

<sup>1</sup> Optional OSLTF Claim Form signed 2 May 2012 and received 29 May 2012.

<sup>2</sup> Claimant's letter, 'To Whom It May Concern', dated 12 February 2012.

<sup>3</sup> [http://en.wikipedia.org/wiki/Palm\\_Harbor,\\_Florida](http://en.wikipedia.org/wiki/Palm_Harbor,_Florida), last accessed on 23 July 2012.

<sup>4</sup> Claimant's letter, 'To Whom It May Concern', dated 12 February 2012.

<sup>5</sup> Claimant-signed Authorization to Release Information signed by Gary V. Guarino on 30 May 2012.

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.
- (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.

Pursuant to 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 OSLTF**

To support this claim, the Claimant presented the following documentation:

- Optional OSLTF Claim Form received on 29 May 2012.
- Claimant's unsigned, undated letter to the GCCF.
- Claimant's letter, 'To Whom It may Concern', dated 23 February 2012 with satellite image of the Courtney Campbell Causeway.

- Saunders, Greenfield & Co. letter dated 2 February 2012 with summary of loans closed by month for the years 2008, 2009 and 2010.
- Florida BP Claims, Inc., monthly summary of Gross Income for 2008, 2009, 2010 and 2011.
- Production Sheets (monthly) for January '08 through December '11.
- Claimant's Florida Driver License issued 19 August 2010.
- License and Registration Status History.
- 2008 Form 1120S for Gary G, Inc. with Schedules A, B, K, L, M-1, M-2 & K-1; Form 4562; and Federal Statements, Reports & Worksheets.
- 2009 Form 1120S for Gary G, Inc. with Schedules A, B, K, L, M-1, M-2 & K-1; Form 4562; and Federal Statements, Reports & Worksheets.
- 2010 Form 1120S for Gary G, Inc. with Schedules A, B, K, L, M-1, M-2 & K-1; Form 4562; and Federal Statements, Reports & Worksheets. (Final Return)

The Claimant indicates having submitted a claim to the responsible party on 17 February 2012.<sup>6</sup> The Claimant also indicates that the responsible party has denied his claim.<sup>7</sup>

The NPFC conducted independent review of claim presentation to the GCCF. The NPFC confirmed that an Interim Payment (IP) Claim was presented to the GCCF.<sup>8</sup> The GCCF assigned Claimant Identification Number 3578303 to the Claimant and Claim Number 9567101 to the claim.<sup>9</sup> The NPFC also notes that, according to the GCCF determination on the IP Claim, the claim was presented for Lost Profits & Lost Earning Capacity.<sup>10</sup>

OPA requires that a Claimant first present their claim to the RP. If a claim is denied or ninety days has elapsed since the claim was presented to the RP, a Claimant may present their claim to the Fund for adjudication and possible payment. Here, the NPFC verified that the Claimant first presented their claim to the RP. Accordingly, the NPFC can adjudicate this claim, but only up to the amount first presented to the RP. Any claimed amount in excess of what was presented to the RP is denied for improper presentment.

### **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.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. 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

<sup>6</sup> Optional OSLTF Claim Form signed 2 May 2012 and received 29 May 2012.

<sup>7</sup> Optional OSLTF Claim Form signed 2 May 2012 and received 29 May 2012.

<sup>8</sup> GCCF Claimant Status report accessed on 30 May 2012.

<sup>9</sup> GCCF Claimant Status report accessed on 30 May 2012 and GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 7 April 2012.

<sup>10</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 7 April 2012.

a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

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 BP Settlement, then he should submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

Furthermore, this claim is also denied under OPA's loss of profits damage category, as the Claimant has failed to prove that he has sustained a financial loss as a result of the Deepwater Horizon oil spill.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses. The Claimant was given 14 days to respond to the letter, dated 18 June 2012.<sup>11</sup> To date, no response has been received.

The NPFC has considered all documentation and information presented by the Claimant.

This claim is denied because the Claimant failed to prove that the amount of the alleged loss is the result of the Deepwater Horizon oil spill.

#### Failure to Prove Loss of Earnings

The Claimant asserts a loss of income in 2010 due to the Deepwater Horizon oil spill.<sup>12</sup> The Claimant asserts a loss of income/profits in 2010 indicating that he lost potential clients and business due to the economic impact of the oil spill on the area.<sup>13</sup> The Claimant provided, among other things—explanation letters; the number of loans closed by month in 2008, 2009 & 2010; a summary of gross profit by month for 2008, 2009 & 2010; production sheets for January 2008 through December 2011; and corporate taxes for 2008, 2009 & 2010.

The Claimant has not provided sufficient financial documentation for which his alleged loss can be measured; therefore, the alleged losses are not proven.

If the Claimant submits a Request for Reconsideration to the NPFC, additional financial evidence should be provided to prove the loss. Additional evidence should include at least—evidence of business taxes paid in 2008, 2009, and 2010; monthly pay information for 2008, 2009, and 2010; broker's license in effect for 2010; a complete copy of correspondence with the GCCF including any other claims and comment letters; monthly P&L Statements for 2008 through the business' closing; breakdown of the types of closings by type of product, monthly in 2008, 2009, and 2010; an explanation of the production sheets that were provided through December 2011 when Gary G., Inc. was closed in 2010; a summary of Pinellas County closing data for 2010 and 3 years before the oil spill, including identification of any beachfront or waterfront properties; information on any cancellations of orders or services that were made due

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<sup>11</sup> NPFC letter dated 18 June 2012.

<sup>12</sup> Optional OSLTF Claim Form signed 2 May 2012 and received 29 May 2012.

<sup>13</sup> Optional OSLTF Claim Form signed 2 May 2012 and received 29 May 2012.

to the oil spill, including the amount of lost income due to the cancellation; and an explanation of your mortgage fees, how your compensation is calculated, and if they are paid by the lender or by the mortgage client.

#### Failure to Prove Causation

The Claimant asserts that a loss of income occurred due to the oil spill.<sup>14</sup> The NPFC will not presume causation or lack thereof based upon business type or location. Causation is an element of every claim that must be proven the Claimant. Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill.

The Claimant has not provided documentation supporting that his claimed losses were due to the oil spill; that he had cancellations because of the oil spill; or that the alleged losses were not caused by the economy or other factors, rather than the oil spill.

The Claimant has not proven that the Deepwater Horizon oil spill was the cause of his alleged losses. If the Claimant submits a request for Reconsideration to the NPFC, evidence linking his losses to the Deepwater Horizon oil spill, not other factors, must be submitted in order for the claim to be successful.<sup>15</sup>

This claim is denied for the following reasons: (1) the Claimant is considered to have settled his claim by virtue of belonging to the economic damages class associated with the CSSP; (2) the Claimant has failed to demonstrate his alleged loss through financial documentation; and (3) the Claimant has failed to demonstrate that his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil (i.e., the Deepwater Horizon oil spill).

Claim Supervisor: NPFC  *Judication Division*

Date of Supervisor's Review: 7/26/12

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>14</sup> Optional OSLTF Claim Form signed 2 May 2012 and received 29 May 2012.

<sup>15</sup> Other factors would include, at least the collapse of the housing market, SAFE Act, Restoring American Financial Stability Act, and New Federal Reserve Truth in Lending Regulations.