

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  
E-mail: arl-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 4483

5890/DWHZ  
21 September 2011

Phil G. Towner  


Re: Claim Number: N10036-1394

Dear Mr. Towner:

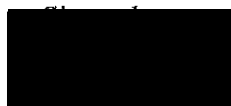
The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-1394 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-1394.

Mail reconsideration requests to:

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

  
Claims Adjudication Division  
National Pollution Funds Center  
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1394
Claimant	Phil G. Towner
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$50,000.00

### ***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 09 September 2011, Phil G. Towner (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$50,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Prior to the Deepwater Horizon oil spill, the Claimant was employed as a contract welder at an auto shop manufacturing rims for cars and also worked as a barber in a barbershop, with both employers located in Gulfport, Mississippi.<sup>1</sup> The Claimant stated he was laid-off from both jobs in March of 2010.<sup>2</sup> The Claimant asserted that he attempted to find employment after being laid-off, but due to the Deepwater Horizon oil spill, he was unable to find any work.<sup>3</sup> Claimant asserted he has lost earnings due to his extended unemployment.<sup>4</sup>

The Claimant provided the following explanation for his sum certain of \$50,000.00: the Claimant stated that he took classes so he could be employed as part of the oil spill cleanup effort but was never hired.<sup>5</sup> The Claimant further stated that if he were hired, he would have earned \$50,000.00.<sup>6</sup>

### ***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

<sup>1</sup> PHONECON between the NPFC and the Claimant on 15 September 2011.

<sup>2</sup> PHONECON between the NPFC and the Claimant on 15 September 2011.

<sup>3</sup> PHONECON between the NPFC and the Claimant on 15 September 2011.

<sup>4</sup> PHONECON between the NPFC and the Claimant on 15 September 2011.

<sup>5</sup> PHONECON between the NPFC and the Claimant on 15 September 2011.

<sup>6</sup> PHONECON between the NPFC and the Claimant on 15 September 2011.

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 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(c).

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***

#### **The Claimant's Submission to the OSLTF**

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

- Optional OSLTF Claim Form received 09 September 2011;
- Hand-written letter from the Claimant, undated (1);
- Internal Revenue Service Tax Return Transcript for tax period ending 31 December 2008;
- Internal Revenue Service Tax Return Transcript for tax period ending 31 December 2009;
- Internal Revenue Service Tax Return Transcript for tax period ending 31 December 2010;
- Pay stubs from Ports America Gulfport Longshoremen for dates 18 April 2011, 04 July 2011, 25 July 2011, 01 August 2011;
- Hand-written letter from the Claimant, undated (2);
- Photocopies of the Claimant's Mississippi Identification Card and TWIC Card;

- Article from the National Resources Defense Center titled 'Analysis of the Impacts One Year Later' dated 20 April 2011;
- Article from Earthjustice dated 10 October 2011;
- Article from The Guardian titled "Oil spill approaches Gulf Coast, threatening economy and environment" dated 30 April 2010;
- Article from Earthjustice titled 'Preventing More BP-Type Oil Disasters'; and
- Article from Earthjustice titled 'Commission Blames Entire Oil Industry for Gulf Oil Spill'.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF.<sup>7</sup> The Claimant was assigned Claimant ID # 3116817 and Claim # 171848. The EAP Claim was denied on 06 December 2010.<sup>8</sup> Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF.<sup>9</sup> The FRF claim was assigned Claim # 9161065. The FRF Claim was denied on 21 May 2011.<sup>10</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that Claimant was unable to find employment after the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1394 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically, GCCF Claim #'s 171848 (EAP) and 9161065 (FRF).

#### **NPFC Determination**

The claim is denied. 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.

This claim is denied because the Claimant has not proven he suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant stated he had two jobs in 2010 prior to the Deepwater Horizon oil spill; as a contract welder at an auto shop and a barber at a barbershop.<sup>11</sup> However, the Claimant admitted that he was let go from both of these jobs in March of 2010, well before the Deepwater Horizon oil spill occurred.<sup>12</sup> Furthermore, the NPFC is unable to confirm that the Claimant worked at all in 2010 since the Claimant's submitted tax return from 2010 indicates income of \$0.00 and there were no other financial documents from 2010 provided.<sup>13</sup>

After acknowledging that he didn't lose his employment due to the Deepwater Horizon, Claimant asserted that his loss stems from his inability to find work<sup>14</sup> due to the Deepwater Horizon oil spill.<sup>15</sup> When asked to elaborate how specifically the oil spill affected his job search, the Claimant's only response was that "business slowed down".<sup>16</sup> Claimant was unable to offer any further explanation linking his alleged loss to the Deepwater Horizon oil spill. Accordingly, the Claimant has failed to prove that his alleged loss

<sup>7</sup> GCCF Claimant Status page.

<sup>8</sup> GCCF Denial Letter dated 06 December 2011.

<sup>9</sup> GCCF Claimant Status page.

<sup>10</sup> GCCF Denial Letter dated 21 May 2011.

<sup>11</sup> PHONECON between the NPFC and the Claimant on 15 September 2011.

<sup>12</sup> PHONECON between the NPFC and the Claimant on 15 September 2011.

<sup>13</sup> Internal Revenue Service Tax Return Transcript for tax period ending 31 December 2010.

<sup>14</sup> The NPFC notes that although the Claimant asserts he remains unemployed due to the Deepwater Horizon oil spill, his submission to the NPFC includes pay stubs from Ports America Gulfport Longshoremen for dates 18 April 2011, 04 July 2011, 25 July 2011 and 01 August 2011.

<sup>15</sup> PHONECON between the NPFC and the Claimant on 15 September 2011.

<sup>16</sup> PHONECON between the NPFC and the Claimant on 15 September 2011.

was due to the Deepwater Horizon oil spill as opposed to other factors such as a generally declining economy.

This claim is denied because the Claimant has 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, 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: *9/20/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: