

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  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7507

5890/DWHZ  
28 November 2011

Terence Clay Brooks  
[REDACTED]

Re: Claim Number: N10036-1419

Dear Mr. Books:

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 N10036-1419 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 N10036-1419.

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	N10036-1419
Claimant	Terence Clay Brooks
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity, Loss of Subsistence Use
Amount Requested	\$30,000.00

### ***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 August 2011, Terence Clay Brooks, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$20,000.00 in loss of profits and impairment of earnings capacity and \$10,000.00 in loss of subsistence use, for a total of \$30,000.00 in damages that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant worked as a fisherman in the Louisiana regions of Cocodrie, Chavin, Dulac and Pointe Aux Chenes.<sup>1</sup> The Claimant sold some of his catch and used the rest for his personal consumption.<sup>2</sup> The Claimant asserted that, due to the Deepwater Horizon oil spill, the fishing areas referenced above were closed, preventing the Claimant from fishing.<sup>3</sup> As a result of not being able to fish in those areas, the Claimant asserted he lost income in 2010, as well as the loss of his own personal consumption of seafood.<sup>4</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 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

<sup>1</sup> Optional OSLTF Claim Form received 03 August 2011.

<sup>2</sup> Optional OSLTF Claim Form received 03 August 2011.

<sup>3</sup> Optional OSLTF Claim Form received 03 August 2011.

<sup>4</sup> Optional OSLTF Claim Form received 03 August 2011.

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 his claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form received 03 August 2011;
- Letter from the Claimant dated 22 July 2011;
- Emails between the Claimant and the GCCF with dates 02 January 2011 and 03 January 2011;
- Emails between the Claimant and the GCCF with dates 17 January 2011 and 19 January 2011;
- Emails between the Claimant and the GCCF dated 15 February 2011;
- Emails between the Claimant and the GCCF dated 23 May 2011;

- Emails between the Claimant and the GCCF dated 10 June 2011;
- Emails between the Claimant and the GCCF dated 29 June 2011;
- State of Louisiana Department of Wildlife and Fisheries Licensing, Official Commercial License with expiration date 31 December 2007;
- Photocopy of Louisiana Commercial License [writing unreadable];
- Fishing Trip Receipts for dates 02 March 2009, 06 March 2009, 28 March 2009 (2);
- Fishing Trip Receipts for dates 03 April 2009 (5) and 22 April 2009;
- Fishing Trip Receipts for dates [no date] May 2009, 01 May 2009, 14 May 2009, 16 May 2009 (2) and 28 May [no year];
- Fishing Trip Receipts for dates 30 May 2009 (3), 03 June 2009 (3).

Prior to presenting this Claim to the NPFC and before the formation of the GCCF, the Claimant filed a claim with BP on 02 June 2010.<sup>5</sup> BP issued payment on this claim in the amount of \$2,000.00.<sup>6</sup> Additionally, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of profits and impairment of earnings capacity on 10 September 2010 in the amount of \$6,000.00.<sup>7</sup> The Claimant was assigned Claimant ID # 1072098 and Claim # 61474. The GCCF issued payment in the amount of \$6,000.00 for the EAP claim on 27 June 2011.<sup>8</sup> Additionally, the Claimant filed Full Review Final Payment claims with the GCCF on 02 November 2010 for loss of earning, real property damages, and loss of subsistence use. The Claimant was assigned Claim # 9014054 for the loss of earnings claim (FRF1) in the amount of \$10,000.00.<sup>9</sup> The Claimant was assigned Claim # 9014054 for the real property damages claim (FRF2), which lacked a sum certain.<sup>10</sup> The Claimant was assigned Claim # 9014054 for the loss of subsistence use claim (FRF3) in the amount of \$5,000.00.<sup>11</sup> Lastly, the Claimant filed a Quick Pay (QP) claim with the GCCF on 12 January 2011.<sup>12</sup> The Claimant was assigned Claim # 9205407. The GCCF issued final payment on the QP claim.<sup>13</sup>

### **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.

Information available to the NPFC indicates that the Claimant both requested and accepted a Quick Pay Final Claim Payment with the GCCF and signed a Release and Covenant Not to Sue.<sup>14</sup> Pursuant to the standard GCCF Release and Covenant Not to Sue, the Claimant has released to the RP/GCCF any rights to additional recovery regarding this injury.<sup>15</sup> If the Claimant disagrees with the NPFC's position in this regard and pursues reconsideration of this NPFC determination, he will be required provide a copy of any and all waivers and covenants signed by the Claimant regarding injuries

<sup>5</sup> Report from the GCCF dated 21 November 2011.

<sup>6</sup> Report from the GCCF dated 21 November 2011.

<sup>7</sup> Report from the GCCF dated 21 November 2011.

<sup>8</sup> GCCF Notice of Determination, Emergency Advance Payment dated 27 June 2011.

<sup>9</sup> Report from the GCCF dated 21 November 2011.

<sup>10</sup> Report from the GCCF dated 21 November 2011.

<sup>11</sup> Report from the GCCF dated 21 November 2011.

<sup>12</sup> Report from the GCCF dated 21 November 2011.

<sup>13</sup> Report from the GCCF dated 21 November 2011; Claimant's GCCF Claimant Status Page.

<sup>14</sup> GCCF letter to Claimant dated 18 November 2011.

<sup>15</sup> GCCF Release and Covenant Not to Sue.

related to the Deepwater Horizon oil spill. Further, if the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in his request for reconsideration.

This claim is denied because the Claimant accepted Quick Pay final payment from the GCCF, releasing his rights regarding losses related to the Deepwater Horizon oil spill to the RP/GCCF and is therefore ineligible for compensation from the OSLTF.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/28/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: