

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: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7651

5890/DWHZ
22 November 2011

William Edward Tunstall
[REDACTED]

Re: Claim Number: N10036-1435

Dear Mr. Tunstall:

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 N10036-1435 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 N10036-1435.

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	N10036-1435
Claimant	William Edward Tunstall
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$48,000.00

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 21 September 2011, William Edward Tunstall, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$48,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was employed by J.P. Williams Machine & Fabrication, Inc. (Williams Machine) in Moss Point, Mississippi.¹ Specifically, the Claimant was a manager overseeing all fabrication projects for a contract job with the Omega Protein Company.² The Claimant asserts that due to the Deepwater Horizon oil spill, the demand for Williams Machine's services plummeted, and as a result, the Claimant was laid off.³ Due to the Claimant losing his job at Williams Machine, he asserted he suffered reduced income.⁴

The Claimant did not provide an explanation regarding the calculation of his sum certain of \$48,000.00.

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).

¹ Hand-written letter from the Claimant dated 20 September 2011.

² Hand-written letter from the Claimant dated 20 September 2011.

³ Hand-written letter from the Claimant dated 20 September 2011, Letter from J.P. Williams Machine dated 08 June 2010.

⁴ Hand-written letter from the Claimant dated 20 September 2011.

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 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 Oil Spill Liability Trust Fund (OSLTF) Claim Form received 21 September 2011;
- Hand-written letter from the Claimant dated 20 September 2011;
- Letter from J.P. Williams Machine dated 08 June 2010;
- Letter from J.P. Williams Machine to BP Claims Dept. dated 08 June 2010;
- Letter from BP to the Claimant dated 04 August 2010;

- 2008 Form W-2 Wage and Tax Statement from Performance Contractors, Inc.;
- 2008 Form W-2 Wage and Tax Statement from Construction Resource Solution;
- 2008 Form W-2 Wage and Tax Statement from Reliant Staffing, Inc.;
- 2008 Form W-2 Wage and Tax Statement from Marine Contracting Group LLC;
- 2009 Form W-2 Wage and Tax Statement from J.P. Williams Machine and Fabrication;
- 2009 Form W-2 Wage and Tax Statement from Masse Contracting, Inc.-Mississippi;
- 2010 Form W-2 Wage and Tax Statement from Masse Contracting, Inc.-Mississippi;;
- 2010 Form W-2 Wage and Tax Statement from J.P. Williams Machine and Fabrication;
- Pay Stubs from J.P. Williams for period: 18 February 2010-26 May 2010;
- Pay Stub from Masse Contracting, Inc.-Mississippi dated 11 February 2010;
- GCCF Attachment A: Evaluation of Claim.

Prior to presenting this claim to the NPFC, the Claimant filed a claim with BP.⁵ BP issued payment on this claim on 04 June 2010 in the amount of \$20,196.22.⁶ Additionally, the Claimant filed an Emergency Advance Payment (EAP) One Month Claim with the GCCF for loss of profits and impairment of earnings capacity on 30 August 2010 in the amount \$5,784.00.⁷ The Claimant was assigned Claimant ID # 1132263 and Claim ID # 39130. The GCCF issued payment on this claim on 24 December 2010 in the amount of \$28,500.00.⁸ Additionally, the Claimant filed a Supplemental (SUPP1) Claim with the GCCF for loss of profits and impairment of earnings capacity on 13 December 2010 in the amount of \$5,784.00.⁹ The Claimant was assigned Claim ID # 4061584. The SUPP1 Claim was denied on 15 December 2011.¹⁰

Additionally the Claimant filed a Supplemental (SUPP2) Claim with the GCCF for loss of profits and impairment of earnings capacity on 13 December 2010 in the amount of \$5,784.00.¹¹ The Claimant was assigned Claim ID # 4061593. The SUPP2 Claim was denied on 15 December 2010.¹² Additionally, the Claimant filed a Supplemental (SUPP3) Claim with the GCCF for loss of profits and impairment of earnings capacity on 13 December 2010 in the amount of \$5,784.00.¹³ The Claimant was assigned Claim ID # 4061594. The SUPP3 Claim was denied on 15 December 2010.¹⁴ Additionally, the Claimant filed a Supplemental (SUPP4) Claim with the GCCF for loss of profits and impairment of earnings capacity on 13 December 2010 in the amount of \$5,784.00.¹⁵ The Claimant was assigned Claim ID # 4061597. The SUPP4 Claim was denied on 15 December 2010.¹⁶ Additionally, the Claimant filed a Supplemental (SUPP5) Claim with the GCCF for loss of profits and impairment of earnings capacity on 13 December 2010 in the amount of \$5,784.00.¹⁷ The Claimant was assigned Claim ID # 4061601. The SUPP5 Claim was denied on 15 December 2010.¹⁸ Additionally, the Claimant filed a Supplemental (SUPP6) Claim with the GCCF for loss of profits and impairment of earnings capacity on 13 December 2010 in the

⁵ Report from the GCCF dated 02 November 2011.

⁶ Report from the GCCF dated 02 November 2011.

⁷ Report from the GCCF dated 02 November 2011.

⁸ GCCF Notice of Determination, Emergency Advance Payment dated 24 December 2010.

⁹ Report from the GCCF dated 02 November 2011.

¹⁰ GCCF Denial Letter dated 15 December 2010.

¹¹ Report from the GCCF dated 02 November 2011.

¹² GCCF Denial Letter dated 15 December 2010.

¹³ Report from the GCCF dated 02 November 2011.

¹⁴ GCCF Denial Letter dated 15 December 2010.

¹⁵ Report from the GCCF dated 02 November 2011.

¹⁶ GCCF Denial Letter dated 15 December 2010.

¹⁷ Report from the GCCF dated 02 November 2011.

¹⁸ GCCF Denial Letter dated 15 December 2010.

amount of \$5,784.00.¹⁹ The Claimant was assigned Claim ID # 4061603. The SUPP6 Claim was denied on 15 December 2010.²⁰ Additionally, the Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011) with the GCCF for loss of profits and impairment of earnings capacity on 30 December 2010 in the amount of \$17,400.00.²¹ The Claimant was assigned Claim ID # 9106820. The GCCF presented the Claimant with an offer for Final Payment on the Claimant's ICQ12011 on 20 July 2011 in the amount of \$13,122.14.²² Before acting upon the GCCF Final Payment Offer, the Claimant filed an Interim Payment Claim Quarter II 2011 (ICQ22011) with the GCCF for loss of profits and impairment of earnings capacity on 01 April 2011 in the amount of \$17,400.00.²³ The Claimant was assigned Claim ID # 9341504. Regarding the GCCF Final Payment Offer discussed above, the Claimant accepted the GCCF Final Payment on 18 October 2011.²⁴ Additionally, the Claimant executed a Release and Covenant Not To Sue.²⁵

Based upon the evidence provided by the Claimant, it appears that the subject matter for Claimant's GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, demand for the services of Williams Machine plummeted and as a result the Claimant was laid off. The NPFC deems that Claimant's GCCF claims as properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1435 considers and addresses the claims presented to the responsible party, specifically 39130 (EAP), 4061584 (SUPP1), 4061593 (SUPP2), 4061594 (SUPP3), 4061597 (SUPP4), 4061601 (SUPP5), 4061603 (SUPP6), 9106820 (ICQ12011) and 9341504 (ICQ22011).

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.

Based on the information available to the NPFC, the Claimant has accepted a Final Payment from the RP/GCCF in the amount of \$13,122.14.²⁶ The Claimant has executed a Release and Covenant Not To Sue in return for this Final Payment.²⁷ By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.²⁸ The Release executed by the Claimant specifically states:

[i]n consideration of payment in the amount of \$13,122.14, Claimant hereby releases and forever discharges, and covenants not to sue BP Exploration & Production Inc. ("BP") and the other Released Parties, [. . .] for any losses, damages, costs, expenses, injuries, claims, causes of actions, liabilities, or other relief that Claimant has or may have [. . .] arising from or relating in any way to the [Deepwater Horizon oil spill].²⁹

¹⁹ Report from the GCCF Dated 02 November 2011.

²⁰ GCCF Denial Letter dated 15 December 2010.

²¹ Report from the GCCF dated 02 November 2011.

²² GCCF Determination Letter dated 20 July 2011.

²³ Report from the GCCF dated 02 November 2011.

²⁴ GCCF Claimant Status page.

²⁵ Report from the GCCF dated 02 November 2011, GCCF Release and Covenant Not to Sue dated 20 October 2011.

²⁶ GCCF Claimant Status Page and Report from the GCCF dated 02 November 2011.

²⁷ GCCF Release and Covenant Not to Sue dated 20 October 2011.

²⁸ GCCF Release and Covenant Not to Sue dated 20 October 2011.

²⁹ GCCF Release and Covenant Not to Sue dated 20 October 2011.

Furthermore, language in the document states that:

Released Parties means anyone who is or could be responsible or liable in any way for the [Deepwater Horizon oil spill] or any damages related thereto, whether a person, company or governmental entity, including (but not limited to) BP, other potentially responsible or liable parties, including but not limited to the parties listed in Attachment A to this Release, the federal Oil Spill Liability Trust Fund and any state or local fund, and each of their respective Affiliates as defined above.³⁰

Therefore, the Claimant has waived rights to further recovery regarding the losses presented to the NPFC. Any payment from the OSLTF requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the OSLTF.

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. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill.

This claim is denied because the Claimant has accepted final payment from the RP/GCCF and is ineligible to receive compensation from the OSTLF.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/22/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³⁰ GCCF Release and Covenant Not to Sue dated 20 October 2011.