

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
3 October 2011

Mr. Tywain Decarlos Peters
[REDACTED]

Re: Claim Number: N10036-1445

Dear Mr. Peters:

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 N10036-1445 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 N10036-1445.

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	N10036-1445
Claimant	Mr. Tywain Peters
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$22,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 26 September 2011, Mr. Tywain Peters (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$22,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant alleged that he was laid off from his position at the “Shop and Save Fish Market” due to effects of the Deepwater Horizon oil spill.² Specifically, the Claimant stated that he “lost his job due to the oil spill and [is] now receiving unemployment benefits.”³

The Claimant stated that he has been compensated \$8,800.00, but that he actually sustained losses totaling \$22,000.00, which is the amount that the Claimant now seeks from the OSLTF.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.
- (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.

¹ Optional OSLTF Claim Form, dated 19 September 2011.

² PHONECON: NPFC Staff and the Claimant, 28 September 2011.

³ Optional OSLTF Claim Form, dated 19 September 2011.

⁴ Optional OSLTF Claim Form, dated 19 September 2011.

- (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 this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 19 September 2011;
- Claimant profile data, claim date 9/20/09;
- Claimant profile data, claim date 12/12/10;
- Letter from the Claimant, describing losses;
- IRS Form 1040A, 2009, showing adjusted gross income of \$11,118.00;
- IRS Form 1040, 2010, showing adjusted gross income of \$11,253.00;
- IRS Form 1040A, 2007, showing adjusted gross income of \$10,856.00;
- IRS Form 1040A, 2008, showing adjusted gross income of \$11,076.00;

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment claim (EAP) to RP/GCCF. The Claimant was assigned Claimant ID 1057845 and EAP was assigned Claim # 3028468. This claim was paid in the amount of \$3,800.00 on 22 December 2010.⁵

The Claimant also submitted a Full Review Final claim (FRF) to the RP/GCCF, which was assigned Claim # 9010667. Information available to the NPFC indicates that the Claimant accepted a Quick Pay final payment regarding this claim.⁶

⁵ GCCF Claimant Status, accessed on 28 September 2011.

⁶ GCCF Claimant Status, accessed on 28 September 2011.

On 26 September 2011, the Claimant presented this claim to the NPFC seeking \$22,000.00 in loss of profits and impairment of earnings capacity. The NPFC may adjudicate this claim to the extent that it was first presented to the RP/GCCF. Any damage amounts now before the NPFC, which were not first presented to the RP/GCCF are denied for improper presentment.⁷

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, 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 this claim.

This claim is denied because, (1) the Claimant has accepted a Quick Pay final payment, waiving any rights he may have to recover damages from the OSLTF regarding this incident, (2) the Claimant has not demonstrated that he sustained an actual financial loss, and (3) the Claimant has not established that any losses he may have incurred were caused by effects of the Deepwater Horizon oil spill.

1. Release of Rights to the GCCF

Information available to the NPFC indicates that the Claimant has received an EAP and Quick Pay payment totaling \$8,800.00.⁸ The RP/GCCF requires that a Claimant execute a Release and Covenant Not to Sue in return for a Quick Pay final payment.⁹ Because the Claimant has accepted a Quick Pay final payment, and signed a Release and Covenant Not to Sue, the Claimant has released any rights to additional recovery regarding this injury to the RP/GCCF.¹⁰

Any payment from the Oil Spill Liability Trust Fund (the Fund) 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 Fund.

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.¹¹ 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.

2. No Showing of Financial Loss

In order to prove a claim for loss of profits and impairment of earnings capacity, a Claimant must demonstrate that he sustained an actual loss or reduction of profits or earnings capacity. According to the Claimant's IRS Account Transcripts, the Claimant reported an adjusted gross income of \$11,076.00 in 2008, \$11,118.00 in 2009 and \$11,253.00 in 2010.¹² The Claimant has not demonstrated that his income was either lost or reduced in 2010 following the Deepwater Horizon oil spill. Rather, the Claimant's income remained steady in 2008, 2009 and 2010. Therefore, the Claimant has not demonstrated that he sustained an actual financial loss.

⁷ 33 C.F.R. §136.103(a).

⁸ Optional OSLTF Claim Form, dated 19 September 2011.

⁹ The Claimant stated the he could not provide a copy of the Notice of Quick Payment Determination.

¹⁰ Standard GCCF Notice of Quick Payment Final Claim Determination.

¹¹ 33 C.F.R. § 136.115.

¹² IRS Account Transcripts, provided by the Claimant.

3. No Showing of Effects of the Deepwater Horizon Oil Spill.

In order to prove a claim for loss of profits and impairment of earnings capacity, a Claimant must demonstrate that any losses the Claimant sustained were caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant has not provided any documentation to demonstrate that the losses he alleged to have incurred were caused by the Deepwater Horizon oil spill. In a phone conversation with the NPFC, the Claimant stated that he lost his job with “Shop and Save Fish Market” (Market) in Mobile, Alabama due to effects of the Deepwater Horizon oil spill.¹³ A representative of the Market (actually called the “Shop and Save *Meat* Market”) stated that the Claimant was let go from his position for reasons unrelated to the oil spill.¹⁴

This claim is denied because (1) The Claimant accepted a Quick Pay final payment, releasing his rights regarding losses related to the Deepwater Horizon oil spill to the RP/GCCF, (2) the Claimant has not demonstrated that he sustained a financial loss, and (3) has not demonstrated that the losses the Claimant alleged to have incurred, were caused by effects of the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *10/2/11*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹³ PHONECON: NPFC Staff and the Claimant, 28 September 2011.

¹⁴ PHONECON: NPFC Staff and Shop and Save Meat Market.