

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
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7071

5890/DWHZ
31 October 2011

Hai Phi Tran
[REDACTED]

Re: Claim Number: N10036-1486

Dear Mr. Tran:

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 N10036-1486 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 N10036-1486.

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	N10036-1486
Claimant	Hai Phi Tran
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$33,972.08

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 12 October 2011, Hai Phi Tran, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$33,972.08 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 as an oyster processor in the Mobile, Alabama region.¹ The Claimant asserted that due to the Deepwater Horizon oil spill, he suffered reduced income.²

The Claimant provided the following explanation regarding his calculation of his sum certain of \$33,972.08: the Claimant took his average pay of \$536.53 a week and multiplied it by fifty-two weeks for a total amount of \$27,899.56 and then multiplied that amount by 80.43% for a total amount of \$22,439.62.³

The Claimant then took that number and subtracted his 2010 actual earnings of \$1,819.10 for a difference of \$20,620.52.⁴ The Claimant then multiplied this sum by four, representing a future recovery factor, for a product of \$82,482.08.⁵ The Claimant then took this number and subtracted the total payments made by BP in the amount of \$48,510.00, for a total of \$33,972.08.⁶ The Claimant then adopted this number as his sum certain.⁷

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 Letter from the Claimant.

² Letter from the Claimant.

³ Letter from the Claimant.

⁴ Letter from the Claimant.

⁵ Letter from the Claimant.

⁶ Letter from the Claimant.

⁷ Letter from the Claimant.

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 OSLTF Claim Form received 12 October 2011;
- Letter from the Claimant;
- State of Alabama Department of Industrial Relations Unemployment Compensation Agency Employer Wage Report dated 18 May 2010;
- Letter from Coast Seafood (1);
- Letter from Coast Seafood (2) dated 13 July 2011;
- GCCF Determination Letter dated 08 June 2011;
- 2009 Form 1040 Federal Tax Return;

- 2009 Form W-2 Wage and Tax Statement from Coast Seafood Corporation;
- 2010 Form W-2 Wage and Tax Statement from Coast Seafood Corporation;
- Letter from the Claimant to the GCCF.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF for loss of profits and impairment of earnings capacity.⁸ The Claimant was assigned Claimant ID # 1067573 and Claim ID # 8194. The GCCF issued payment on this claim on 07 October 2010 in the amount of \$15,000.00.⁹ Additionally, the Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011) with the GCCF.¹⁰ The Claimant was assigned Claim ID # 9318875. The GCCF presented the Claimant with an offer for Final Payment on the Claimant's ICQ12011 on 08 June 2011 in the amount of \$26,796.70.¹¹ The Claimant accepted the GCCF Final Payment on 10 June 2011.¹² The Claimant executed a release and covenant not to sue.¹³ Additionally, the Claimant filed an Interim Payment Claim Quarter II 2011 (ICQ22011) with the GCCF.¹⁴ The Claimant was assigned Claim ID # 9392137. No decision¹⁵ has yet been issued on the ICQ22011.¹⁶ The Claimant also filed a Full Review Final (FRF) Claim with the GCCF.¹⁷ The Claimant was assigned Claim ID # 9011510. The Claimant's acceptance of Final Payment precludes further action from being taken regarding the Claimant's FRF Claim.¹⁸

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 due to the Deepwater Horizon oil spill, the Claimant suffered reduced income. 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 N10036-1486 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim #'s 8194 (EAP), 9318875 (ICQ12011), 9392137 (ICQ22011) and 9011510 (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.

Based on the information available to the NPFC, the Claimant has accepted a Final Payment from the RP/GCCF in the amount of \$26,796.70.¹⁹ The Claimant has executed a Release and Covenant Not To Sue in return for this Final Payment.²⁰ By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.²¹ The Release executed by the Claimant specifically states:

⁸ GCCF Claimant Status page.

⁹ GCCF Notice of Determination Emergency Advance Payment dated 07 October 2010.

¹⁰ GCCF Claimant Status page.

¹¹ GCCF Determination Letter dated 08 June 2011.

¹² GCCF Claimant Status page.

¹³ GCCF Release and Covenant Not To Sue Letter dated 14 June 2011.

¹⁴ GCCF Claimant Status page.

¹⁵ The NPFC notes that although no decision has yet been reached on the ICQ22011, the Claimant has accepted a Final Payment and the accompanying Release and Covenant Not To Sue. See discussion in NPFC Determination for the effect of the Claimant electing to accept Final Payment from the GCCF.

¹⁶ GCCF Claimant Status page.

¹⁷ GCCF Claimant Status page.

¹⁸ GCCF Claimant Status page.

¹⁹ GCCF Claimant Status page.

²⁰ GCCF Release and Covenant Not to Sue dated 14 June 2011.

²¹ GCCF Release and Covenant Not to Sue dated 14 June 2011.

[i]n consideration of payment in the amount of \$26,796.70, 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].²²

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.²³

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 recover from the OSTLF.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *10/29/11*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

²² GCCF Release and Covenant Not to Sue dated 14 June 2011.

²³ GCCF Release and Covenant Not to Sue dated 14 June 2011.