

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

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US COAST GUARD  
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5890/DWHZ  
23 April 2012

Qui Van Ngo  
[REDACTED]

RE: Claim Number: N10036-1540

Dear Mr. Ngo:

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 claim number N10036-1540 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. 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 N10036-1540.

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	N10036-1540
Claimant	Qui Van Ngo
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$3,560.38

### ***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 2 November 2011, Qui Van Ngo (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$3,560.38 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant allegedly worked as a deckhand on a shrimp boat named Miscees Mary<sup>1</sup> in 2005 and 2006.<sup>2</sup> The Claimant did not resume work as a deck hand until January of 2010 earning \$3,500.00<sup>3</sup> on a new boat named Hong Nga II.<sup>4</sup> The Claimant did not work again until November 2010 allegedly due to the Deepwater Horizon oil spill and earned \$4,500.00.<sup>5</sup> The Claimant alleges that he made \$25,505.00 for six months in 2006 and alleges that he should have made the same for 2010 and 2011.<sup>6</sup> The Claimant further alleges a diminished amount of shrimp in the Gulf of Mexico after the oil spill which made his earnings decrease from the 2006 numbers.<sup>7</sup>

### ***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 § 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.

<sup>1</sup> See Letter from Claimant dated 27 February 2011.

<sup>2</sup> See Optional OSLTF claim form dated 24 October 2011.

<sup>3</sup> Affidavit from Boat Captain dated 16 December 2010.

<sup>4</sup> See Optional OSLTF claim form dated 24 October 2011.

<sup>5</sup> Affidavit from Boat Captain dated 16 December 2010.

<sup>6</sup> See Letter from Claimant dated 27 February 2011.

<sup>7</sup> See Optional OSLTF claim form dated 24 October 2011.

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.
- (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 his claim, the Claimant submitted:

- 1) Optional OSLTF claim form dated 24 October 2011.
- 2) Explanatory letter from the Claimant dated 27 February 2011.
- 3) Explanatory letter from the Claimant dated 29 February 2011.
- 4) Affidavit from the Claimant stating his work history undated.
- 5) Copy of Louisiana Identification Card.
- 6) Copy of Social Security Card.
- 7) Letter from Claimant stating he made \$35,000.00 a year prior to the oil spill undated.
- 8) Affidavit from Tony Nguyen, the Captain, certifying that the Claimant was going to work for him during the shrimp season of 2010 dated 16 December 2010.
- 9) GCCF Determination letter on Interim Payment/Final Payment Claim dated 11 October 2011.

- 10) Letter regarding settlement check for \$20,000.08 for an accident on 02 July 2006 dated 15 April 2008.
- 11) Copy of final settlement for accident dated 07 March 2008.
- 12) Copy of check for \$20,000.08 dated 15 April 2008.
- 13) Letter from Nghi Nguyen owner of Hong Nga II stating the Claimant worked for him in 2011.
- 14) Check for \$4,500.00 dated 02 November 2010.
- 15) Check for \$1,200.00 dated 31 May 2011.
- 16) Check for \$1,174.00 dated 20 June 2011.
- 17) Check for \$816.00 dated 27 July 2011.
- 18) Check for \$1,000.00 dated 11 August 2011.
- 19) Check for \$2,000.00 dated 06 September 2011.
- 20) Check for \$965.00 dated 06 September 2011.
- 21) Check for \$831.00 dated 30 October 2011.
- 22) Affidavit from Boat Owner Nghi Nguyen stating the employment history for the Claimant and stating he paid him \$3,500.00 and \$6,500.00 totaling \$10,000.00 for 2010 dated 23 March 2011.
- 23) Letter from Boat Owner Nghi Nguyen dated 06 May 2011 stating he paid the Claimant \$3,500.00 on 15 February 2010 and describing the gap in Claimant's employment.
- 24) Invoice from Milt's Seafood Plant dated 27 July 2011.
- 25) Louisiana Department of Wildlife and Fisheries dealer receipt form dated 16 May 2011.
- 26) 2009 W-2 from Seafood International Inc. for \$478.00.
- 27) 2009 Form 1040 US Individual Income Tax Return.
- 28) 2010 1099 from Hong Nga Inc for \$8,000.00.
- 29) 2010 W-2 from Dynaminc Industries for \$130.00.
- 30) 2010 W-2 from Seafood International Inc. for \$708.00.
- 31) Form 1040 US Individual Income Tax Return.
- 32) 2011 1099 from Hong Nga Inc. for \$5,045.00
- 33) 2011 W-2 from Seafood International Inc. for \$697.00.
- 34) 2011 Form 1040 US Individual Income Tax Return.

Claimant seeks lost earnings and impairment of earnings capacity in the amount of \$3,560.38.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 03 December 2010 in the amount of \$21,000.00.<sup>8</sup> He was assigned Claimant ID #3010351 and claim #4031238. This claim was denied on 10 December 2010.<sup>9</sup> Additionally, Claimant filed four Interim claims with the GCCF, Interim 1 Claim (ICQ12011) was assigned GCCF claim #9265219 on 31 January 2011 for \$18,000.00. The GCCF paid ICQ12011 in the amount of \$3,560.38.<sup>10</sup> Interim 3 Claim (ICQ32011) was assigned GCCF claim #9410813 on 06 July 2011 for \$25,000.00. The GCCF sent a final payment offer to the Claimant in the amount of \$25,000.00 for ICQ32011.<sup>11</sup> Interim 5 Claim (ICQ52012) was assigned GCCF claim #9559285 on 23 January 2012 for \$25,000.00. ICQ52012 has an additional Subsistence portion with claim #9559723 for \$4,000.00; the NPFC was not presented with a Subsistence claim. The GCCF issued a Quick Pay in the amount of \$25,000.00 as a final payment under claim #9587584.

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims except the Subsistence ICQ52012 is the same as the subject matter of his claim

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<sup>8</sup> Report from the GCCF dated 21 February 2012.

<sup>9</sup> GCCF Denial Letter dated 10 December 2010.

<sup>10</sup> Report from the GCCF dated 21 February 2012.

<sup>11</sup> Report from the GCCF dated 21 February 2012.

before the NPFC, i.e., that the Claimant had an impairment to earnings and wages from shrimping as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's four GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1540 considers and addresses the earnings claimed in all of the four claims presented to the responsible party, specifically; GCCF Claim #'s 4031238 (EAP), 9265219 (ICQ12011), 9410813 (ICQ32011), and 9559723 (ICQ52012), and 9587584, except the Subsistence portion of ICQ52012.

### **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 or destruction or loss of real or personal property or 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. The NPFC considered all the documentation submitted by the Claimant.

Based on information submitted by the Claimant and information available to the NPFC, BP and the GCCF paid a total of \$28,560.38 to the Claimant as compensation for this claim to NPFC. According to information from the GCCF, the Claimant executed a Release and Covenant Not to Sue in return for the Quick Payment. By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.<sup>12</sup> The Release signed by the Claimant specifically applies to,

all of a claimant's "affiliates," including a claimant's "spouse, heirs, beneficiaries, agents, estates, executors, administrators, personal representatives, subsidiaries, parents, affiliates, partners, limited partners, members, joint venturers, *shareholders*, et al. (emphasis added).<sup>13</sup>

This claim is denied because it appears from the record that the Claimant has fully settled his claims with BP/GCCF, and that BP and GCCF have compensated the Claimant, including a \$25,000 Quick Payment for which GCCF reportedly required a final and full release of rights against any responsible party. The Claimant has not addressed these payments or otherwise provided any information to show the Claimant has any rights to recover any of the amount claimed here from a responsible party. The Fund will not pay what has already been compensated and any Fund payment is subject to acquiring rights to recover from the responsible party.

If the Claimant disagrees with this determination to deny the claim, he may make a request for reconsideration. If the Claimant requests reconsideration, he should provide any and all documentation of any payments received from BP or GCCF, including any related agreements or releases signed by the Claimant. If the Claimant disagrees that any payments have been received by him from BP or GCCF, or that any payments received are for damages other than those included in this claim for \$3,560.38 to the NPFC, the Claimant should explain the circumstances fully. If the Claimant disagrees that he has signed any release of his claims against a responsible party, including any release in return for a Quick Payment, the Claimant should fully explain the circumstances in the request for reconsideration.

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<sup>12</sup> GCCF Release and Covenant Not To Sue signed on or about April 6, 2012.

<sup>13</sup> GCCF Release and Covenant Not To Sue signed on or about April 6, 2012.

This claim is denied because the Claimant has signed a Release and Covenant Not To Sue thereby precluding additional payment from the Oil Spill Liability Trust Fund.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/23/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: