

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
12 January 2011

Mr. Justin Ciaciura
[REDACTED]

Re: Claim Number: N10036-1624

Dear Mr. Ciaciura:

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 N10036-1624 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 N10036-1624.

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	N10036-1624
Claimant	Justin R. Ciaciura
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$154,670.00

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 27 December 2011, Mr. Justin Ciaciura, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$154,670.00 in loss of profits and earning damages resulting from the Deepwater Horizon oil spill.¹

From 2009 to present, the Claimant has worked as a diver for Ranger Offshore, Inc. (Ranger).² Prior to the oil spill, the Claimant was conducting diving operations on board the MAKO, servicing oil platforms at Eugene Island Block 128 in the Gulf of Mexico.³ At the time of the oil spill, however, the Claimant was injured and unable to dive.⁴ According to dive logs, the Claimant did not dive from 25 March 2010 until 26 September 2010.⁵ The Claimant alleged that he was injured at about the time of the Deepwater Horizon oil spill, and that he was medically cleared to resume diving operations sometime in August of 2010.⁶ Throughout the time when the Claimant was not medically cleared to dive, the Claimant worked in the “shop” earning “less than half of what [the Claimant] makes when [the Claimant] is doing his job as a diver.”⁷

The Claimant alleged that the contract under which he was working at the time of the oil spill was cancelled due to the spill.⁸ Although the Claimant could not have worked as a diver on the contract from April – August 2010, the Claimant alleged that he would have continued to be paid at his offshore rate had the contract not been cancelled.⁹ Furthermore, the Claimant alleged that following the oil spill, there were fewer jobs, causing him to sustain further earning losses once he was able to resume diving.¹⁰ The Claimant stated that “the new agency has slowed the permit process which affects our workload.”¹¹

¹ Optional OSLTF Claim Form, signed on 20 December 2011.

² Description of employment and loss calculation, signed 26 December 2011.

³ Dive logs provided by the Claimant.

⁴ PHONECON: NPFC Staff and the Claimant, 9 January 2012.

⁵ Dive Logs, provided by the Claimant.

⁶ PHONECON: NPFC Staff and the Claimant, 9 January 2012.

⁷ Description of employment and loss calculation, signed 26 December 2011.

⁸ PHONECON: NPFC Staff and the Claimant, 9 January 2012.

⁹ PHONECON: NPFC Staff and the Claimant, 9 January 2012.

¹⁰ Description of employment and loss calculation, signed 26 December 2011.

¹¹ Optional OSLTF Claim Form, signed on 20 December 2011.

The Claimant seeks \$154,670.00 from the OSLTF for losses incurred due to the cancellation of the contract on which he had been working prior to the oil spill, as well as the lack of work after the Claimant was medically cleared to resume diving.¹²

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.

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.

¹² Description of employment and loss calculation, signed 26 December 2011.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed on 20 December 2011;
- Description of employment and loss calculation, signed 26 December 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 3 August 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 20 August 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 17 September 2011;
- GCCF Follow-Up to Previous Denial Letter, 28 October 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 7 December 2011;
- Email from the Claimant to the GCCF, 3 November 2011;
- Letter from the Claimant to the GCCF, 23 July 2011;
- Letter from the Claimant to the GCCF re: GCCF denial, 15 August 2011;
- Letter from the Claimant to the GCCF, 1 November 2011;
- List of companies for which the Claimant has worked;
- Copy of the Claimant's divers'/medical certifications;
- Letter from Ranger Offshore, Inc. confirming the Claimant's employment, 9 September 2011;
- 2007 Form W-2 Wage and Tax Statement, showing wages of \$31,679.40 paid to the Claimant by Tiburon Divers, Inc.;
- 2008 Form W-2 Wage and Tax Statement, showing wages of \$60,550.20 paid to the Claimant by Tiburon Divers, Inc.;
- 2009 Form W-2 Wage and Tax Statement, showing wages of \$71,825.03 paid to the Claimant by Tiburon Divers, Inc.;
- 2010 Form W-2 Wage and Tax Statement, showing wages of \$13,192.71 paid to the Claimant by Tiburon Divers, Inc.;
- 2010 Form W-2 Wage and Tax Statement, showing wages of \$19,337.95 paid to the Claimant by Ranger Offshore, Inc.;
- 2009 Corrected 1099G State Form;
- 2009 Form 1099-INT;
- Texas Workforce Commission's Unemployment Benefits Services, Payment Summary List;
- 2007 Form 1099-MISC;
- 2007 Form 1040;
- 2008 Form 1040;
- 2009 Form 1040;
- 2010 Form 1040;
- Tiburon Divers, Inc., Check History Report, 1/1/2008 – 12/31/2009;
- Direct Deposit Earnings Statement, 12 March 2010 – 19 August 2011;
- Invoices, showing payment made to Claimant for bed rest study, 27 November 2011;
- Dive Logs, 2/25/08 – 9/23/11;
- Fax from the Claimant to the NPFC, stating reason for loss of income;
- Fax from the Claimant, noting payment to Ranger Offshore and to fellow employees;

Prior to presentment to the NPFC, the Claimant presented two Full Review Final (FRF1 & FRF2) claims to the RP/GCCF, seeking loss of profits and earning damages.¹³ The Claimant was assigned Claimant ID # 1629272 and the FRF claims were assigned Claim #s 9426028 and 9526648 respectively.¹⁴

The FRF claims were denied on 7 December 2011.¹⁵

On 27 December 2011, the Claimant submitted this claim to the NPFC, seeking \$154,670.00 in loss of profits damages.¹⁶ The NPFC may adjudicate this claim to the extent that these damages were first presented to the RP/GCCF.¹⁷ Any damages now presented to the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentment.¹⁸

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 based on (1) the cancellation of a diving contract under which the Claimant had been working, and (2) a general decrease in work, allegedly resulting from the Deepwater Horizon oil spill.

In terms of the cancellation of the diving contract, the Claimant has not provided evidence to prove that the contract was in fact cancelled, or to show that the cancellation was due to the Deepwater Horizon oil spill and not due to other factors such as the subsequent drilling and permitting regulations. The Claimant has also failed to provide evidence that would indicate that in spite of the Claimant's inability to dive while injured, he would have continued to earn his offshore rate during the time that he was injured and working in the "shop."

In terms of the general decrease in work following the Deepwater Horizon oil spill, the Claimant has failed to provide evidence to prove that any lack of work was caused by oil discharged due to the Deepwater Horizon oil spill.

The NPFC contacted Ranger to attempt to ascertain whether or not the Claimant lost earnings as a result of the Deepwater Horizon oil spill. A human resources manager could not provide information to verify that the Claimant would have continued to earn his offshore rate in spite of his inability to dive during the period in which he was injured.¹⁹ The human resources manager was also unable to provide information as to whether or not divers aboard the MAKO were unable to dive due to the discharge of oil caused by the Deepwater Horizon oil spill.²⁰

¹³ GCCF Claimant Status, accessed on 11 January 2012.

¹⁴ GCCF Claimant Status, accessed on 11 January 2012.

¹⁵ GCCF Claimant Status, accessed on 11 January 2012.

¹⁶ Optional OSLTF Claim Form, signed on 20 December 2011.

¹⁷ 33 C.F.R. § 136.103(a).

¹⁸ 33 C.F.R. § 136.103(a).

¹⁹ Emails from the NPFC to Ranger, Human Resources Manager, 9 January 2012.

²⁰ Emails from the NPFC to Ranger, Human Resources Manager, 9 January 2012. The Human Resources Manager indicated that those aboard the vessel, JOE G. JR. were unable to dive due to the oil spill, but could not provide information regarding divers aboard the MAKO.

Should the Claimant chose to pursue this claim on reconsideration, the Claimant should provide a contract, or other evidence from Ranger, indicating that injured divers who are unable to dive, continue to earn their offshore rate throughout the pendency of the contract on which they had been working. The Claimant should also provide evidence to prove that the contract under which he had been working was in fact cancelled due to the discharge of oil resulting from the Deepwater Horizon oil spill as opposed to other reasons.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a financial loss in the amount of \$154,670.00, and (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *1/12/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: