

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
Number: 7011 1570 0001 2446 2681

5890/DWHZ
8 March 2012

Mr. Todd Duet



Re: Claim Number: N10036-1636

Dear Mr. Duet:

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 N10036-1636 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 N10036-1636.

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	N10036-1636
Claimant	Mr. Todd Duet
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$42,500.00

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 13 January 2012, Mr. Todd Duet (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$42,500.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

Pay stubs provided by the Claimant indicate that at the time of the oil spill, the Claimant was an employee of Tetra Applied Technologies, LLC. The Claimant has not specifically indicated how the oil spill may have affected his employment or his earnings with the company.

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.

¹ Email from the Claimant to the NPFC, noting sum certain amount of \$42,500.00, 5 January 2012.

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:

- Email dated, 5 January 2012, noting sum certain of \$42,500.00;
- Optional OSLTF Claim Form, received on 13 January 2012;
- 2010 Form W-2 Wage and Tax Statement, showing payment made to the Claimant totaling \$116,228.42;
- Monthly Ultipro Statements of earnings and deductions, 2010, 2011;
- 2010 Form 1040, showing wages of \$116,228.00;
- 2008 Form W-2 Wage and Tax Statement, showing payment made to the Claimant totaling \$124,179.72;
- 2009 Form W-2 Wage and Tax Statement, showing payment made to the Claimant totaling \$128,478.04;
- Emails from the claimant to the NPFC, 27, 28 February, 31 January 2012;

On 20 October 2010, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$50,000.00.² The Claimant was assigned Claimant ID # 3237370 and the EAP claim was assigned claim # 292651.³ This claim was denied by the RP/GCCF.

On 8 February 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$5,000.00.⁴ The FRF claim was assigned claim # 9280315, and was also denied.⁵

On 5 January 2012, the Claimant presented this claim to the NPFC, seeking \$42,500.00 in loss of profits and impairment of earning capacity damages.⁶ The NPFC may adjudicate this claim to the extent that the damages now presented to the NPFC have first been presented to and denied by the RP/GCCF.⁷ Because claims previously submitted to the RP/GCCF exceed the amount of damages now presented to the NPFC, the NPFC may fully adjudicate this claim for loss of profits and impairment of earning capacity damages in the amount of \$42,500.00. Additionally, because the subject matter of the Claimant's claim before the NPFC appears to be the same as both of Claimant's GCCF Claims, specifically GCCF Claim #'s 292651 and 9290315, this Claim Summary Determination considers and addresses both of the Claimant's GCCF claims.

NPFC Determination

² GCCF United States Coast Guard Report, 21 February 2012.

³ GCCF United States Coast Guard Report, 21 February 2012.

⁴ GCCF United States Coast Guard Report, 21 February 2012.

⁵ GCCF United States Coast Guard Report, 21 February 2012.

⁶ Email from the Claimant to the NPFC, 5 January 2012.

⁷ 33 C.F.R. § 136.103(a).

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.

In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must provide evidence sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In a letter dated 19 January 2012, the NPFC requested that the Claimant provide certain additional documentation in support of this claim.⁸ Among other items, the Claimant was asked to provide an explanation as to how the Deepwater Horizon oil spill specifically affected his employment.⁹ As of the date of this determination, the Claimant has failed to respond to this request.

Considering all documentation provided by the Claimant, the NPFC is unable to identify the exact nature of the work that the Claimant was involved in at the time of the oil spill and cannot determine how or to what extent the Claimant's income may have been affected by the oil spill. Furthermore, the Claimant has not provided documentation or other evidence to demonstrate how he calculated his losses to arrive at his claimed loss amount of \$42,500.00.

This claim is therefore denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$42,500.00, 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: *3/8/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ NPFC Request for additional information, 19 January 2012.

⁹ NPFC Request for additional information, 19 January 2012.