

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3428

5890/DWHZ
May 14, 2012

Kenneth Collins


RE: Claim Number: N10036-1783

Dear Mr. Collins:

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 N10036-1783 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

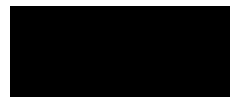
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1783.

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	: N10036-1783
Claimant	: Kenneth Collins
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$15,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 1 May 2012, Kenneth Collins (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$15,000.00 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 is a hotel worker from Metairie, LA who alleges that the oil spill caused him to lose days and time at work.¹ He claims he was wrongfully forced to take a quick payment from the GCCF.²

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

¹ Optional OSLTF Claim Form and submission letter

² Optional OSLTF Claim Form and submission letter

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, Claimant submitted the following:

- Optional OSLTF Claim Form
- Undated submission letter providing Claimant's explanation
- Copy of driver's license
- 2009 and 2010 W2s
- 2011 federal tax return

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$15,000.00.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF.³ He was assigned Claimant ID #3049273 and claim #103279. This claim was denied on October 28, 2010.⁴ The Claimant filed an Interim Payment Claim (ICQ12011) that was assigned claim #9220587. This claim was paid in the amount of \$1,000.00.⁵ Claimant filed his Full Review Final claims with the GCCF, Full Review Final Claim 1 (FRF1) was assigned Claim #9030046 and Full Review Final Claim 2 (FRF2) was

³ GCCF online Claim Status report

⁴ GCCF Denial Letter dated October 28, 2010

⁵ GCCF Determination Letter on Interim Payment/Final Payment Claim dated April 13, 2011

assigned Claim #9220584.⁶ Finally, the GCCF paid him a Quick Payment Claim that was assigned claim ID #9364207.⁷ The Quick Payment was in the amount of \$5,000.00.

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that he lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1783 considers and addresses the earnings claimed in all four of the claims presented to the responsible party, specifically; GCCF Claim #'s 103279 (EAP), 9220587 (ICQ12011), 9030046 (FRF1), and 9220584 (FRF2).

NPFC Determination

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 \$6,000.00⁸ 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.

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 \$5,000 Quick Payment for which GCCF reportedly required a full and final release of rights against any 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 request reconsideration. If so, the Claimant 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 from BP or GCCF, or that any payments received are for damages other than those included in this claim for \$15,000.00 to the NPFC, the Claimant should explain the circumstances fully. If the Claimant disagrees that he has signed any release of his claims against the responsible party, including any release in return for a Quick Payment, the Claimant should fully explain the circumstances in his request for reconsideration.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/14/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ GCCF online Claim Status report

⁷ GCCF online Claim Status report

⁸ \$5,000.00 Quick Payment plus \$1,000.00 Interim quarter 1 2011 payment equals \$6,000.00.