

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 800-280-7118  
E-mail: arl-pf-npfcclaimsinfo@uscg.mil  
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7012 2210 0001 7214 9807

5890/DWHZ  
19 July 2013

Tuong Van Tran  
[REDACTED]

Re: Claim Number: N10036-1960

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 the claim number N10036-1960 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 N10036-1960.

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

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1960
Claimant	Tuong Van Tran
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$220,000.00

### ***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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

### ***CLAIM AND CLAIMANT***

On 19 June 2013, Mr. Tuong Van Tran ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$220,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is based in Marrero, Louisiana, and appears to have been the owner and operator of a fishing vessel from at least 2007 – 2009.<sup>2</sup> The Claimant has not provided evidence to indicate the nature of his work in 2010.<sup>3</sup> The Claimant stated that he "sign[ed] a Settlement agreement, [but the] GCCF didn't tell [him] about the captain claim."<sup>4</sup> It seems then, that the Claimant likely signed a Settlement agreement on behalf of the fishing vessel he owned and operated prior to the oil spill, and is also attempting to recover individual losses sustained in his capacity as a captain aboard the fishing vessel.

The Claimant has not provided evidence to indicate how he arrived at his sum certain of \$220,000.00.

### ***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

---

<sup>1</sup> Optional OSLTF Claim Form, unsigned.

<sup>2</sup> The Claimant provides income tax returns for those years, but fails to indicate how he was earning income in 2010 or thereafter.

<sup>3</sup> Optional OSLTF Claim Form, signed on 12 June 2010.

<sup>4</sup> Optional OSLTF Claim Form, signed on 12 June 2010.

water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF 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. 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; and
- (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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission to the NPFC**

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 12 June 2013;
- Handwritten contact information for "PSC";

- Certificate of vessel documentation, issued 23 April 2013;
- Copy of the Claimant's driver's license;
- Resident fishing permit documentation, 2013;
- 2007 Form 1040, showing business income of \$40,435.00;
- 2007 Schedule C (Form 1040), showing gross sales of \$314,150.00 and net profit of \$40,435.00;
- 2007 Schedule SE (Form 1040);
- 2007 Form 4562;
- 2007 Form 2210;
- 2007 Schedule EIC (Form 1040A or 1040);
- 2007 Form 8812;
- State income tax returns, Louisiana, filed 13 April 2008;
- 2008 Form 1040, showing business income of \$44,995.00;
- 2008 Form 4562;
- 2008 Schedule C (Form 1040), showing gross sales of \$350,403.00 and net profit of \$44,995.00;
- 2008 Schedule A (Form 1040);
- 2008 Schedule SE (Form 1040);
- 2008 Form 8812;
- 2008 Form 1040, showing adjusted gross income of \$3,634;
- 2009 Form 4562;
- 2009 Form 8812;
- 2009 Schedule C (Form 1040), showing gross sales of \$208,713.00 and net profit of -\$7239.00;
- 2009 Form 1040, showing business income of -\$7,239.00.

Prior to presenting this claim to the NPFC, the Claimant submitted various claims to the GCCF and CSSP. A claim status report routinely provided by the RP to the Coast Guard, indicates that the Claimant was compensated an Emergency Advance Payment of \$42,000.00, and a Final Payment of at least \$298,824.71. The Claimant also received a VoO charter payment of at least \$88,400.00. These losses appear to have been compensated to the Claimant as the owner of his business. The Claimant also presented a claim for individual losses, which was denied by the RP.<sup>5</sup> In total, claim records indicate that the Claimant was compensated at least \$429,224.71 by the RP or its agents.

On 19 June 2013, the Claimant submitted this claim to the NPFC, seeking \$220,000.00 in loss of profits or impairment of earning capacity damages. The Claimant indicates that these losses are for his "captain claim," which was denied by the RP.<sup>6</sup>

Furthermore, evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement).<sup>7</sup>

### **NPFC Determination**

---

<sup>5</sup> RP/Coast Guard Claim Status Report, 20 June 2013.

<sup>6</sup> Optional OSLTF Claim Form, signed on 12 June 2013.

<sup>7</sup> The Claimant indicates that he was working in the fishing industry in Marrero, La at the time of the spill, and would therefore be a member of the Class unless he had opted out.

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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

As an initial matter, it appears that the Claimant is a member of the E&PD Settlement Class. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the claimant no longer has rights to the claim and therefore cannot subrogate the NPFC to those rights.

Furthermore, a routinely generated claim status report submitted to the NPFC by the RP, indicates that the Claimant has accepted a final payment from the GCCF, thereby settling this claim. The Claimant has not provided the NPFC with a copy of the signed Release form, but the standard GCCF Final Release and Covenant Not To Sue includes the following language:

[r]eleased Parties means anyone who is or could be responsible or liable in any way for the Incident or any damages related thereto, whether a person, company or governmental entity, including . . . the federal Oil Spill Liability Trust Fund . . .

As stated above, 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 Fund. The subrogation of the Claimant's rights to BP is made clear in the release by the following language:

[t]his Release is not intended to prevent any of the Released Parties from exercising their respective rights of contribution, subrogation, or indemnity under the Oil Pollution Act of 1990 ("OPA") or any other law. As this Release is fully and completely resolving, together with all other Claims, Claimant's claim under OPA, BP is hereby subrogated to any and all rights that Claimant has arising from the Incident.

Furthermore, even if the Claimant was not included in the Settlement Class and had not signed a Release in exchange for final payment, this claim would also be denied on its merits. In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained an uncompensated loss or reduction in income, and (2) that the financial loss was caused by damage to real property or natural resources caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant has received payments of at least \$429,224.71 from BP or other entity acting on BP's behalf. This far exceeds the amount of income after expenses that the Claimant earned in any year prior to the oil spill, according to tax documentation provided for the years 2007, 2008 and 2009. The NPFC can only make payments on losses which are uncompensated. In this instance, it appears that any loss the Claimant may have sustained would have been fully compensated by payments previously made to the Claimant by the RP.

Furthermore, it appears as though the Claimant participated in the Vessel of Opportunity (VoO) program during the oil spill response.<sup>8</sup> According to federal regulations, calculations for

---

<sup>8</sup> RP/Coast Guard Claim status report, 20 June 2013.

compensation potentially available to a claimant “must clearly reflect adjustments for . . . [a]ll income resulting from an incident.”<sup>9</sup> The Claimant has not provided any record of his earnings after 2009, including failing to provide record of his earnings as a VoO contractor. As such, the NPFC has no way to determine how much, if any income allegedly lost by the Claimant has been compensated by both BP/GCCF payments and by the Claimant’s VoO earnings.

Furthermore, the Claimant has not provided evidence sufficient to prove that his income was adversely affected by damage to real property or natural resources caused by the oil spill. The Claimant alleged that he was unable to fish as a result of the oil spill. However, the Claimant has not provided any evidence to indicate that he indeed had acquired requisite fishing licenses in the year 2010, nor has he provided trip tickets or other evidence to indicate that he usually fished in areas that were closed as a result of the spill and spill response. The Claimant has therefore failed to prove that the oil spill had any effect on his income or regular fishing practices in 2010.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained an uncompensated financial loss in the amount of \$220,000.00, or (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 discharge of oil. Additionally, this claim is considered to have been settled by virtue of the Claimant having accepted final payment from the GCCF and also belonging to the E&PD Settlement.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *7/19/2013*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

---

<sup>9</sup> 33 C.F.R. § 136.235(a).