

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

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Arlington VA 20598-7100  
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Toll-Free: 1-800-280-7118  
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NPFCCCLAIMSINFO@uscg.mil

5890

August 26, 2014

CERTIFIED MAIL NUMBER:

Number: 7012 2210 0001 7215 0995

Van Duc Tang



RE: N10036-2031

Dear Mr. Antalan:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number N10036-2031 involving DEEPWATER HORIZON - N10036 spill.

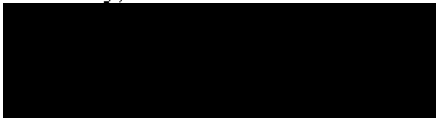
This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

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 N10036-2031.

Mail reconsideration request to:

Director  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Boulevard  
Arlington, VA 20598-7100

Sincerely,



DORNA HILDEBERG  
Claims Manager  
U.S. Coast Guard

Enclosures: Claim Summary / Determination

Copy: Van Duc Tang  
16203 Westheimer, suite 106  
Houston, TX 77082

Certified Number: 7012 2210 0001 7215 1008

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	N10036-2031
<b>Claimant:</b>	Van Duc Tang d/b/a CHO SAIGON
<b>Type of Claimant:</b>	Individual
<b>Type of Claim:</b>	Loss of Profits and Earnings
<b>Claim Manager:</b>	Donna Hellberg
<b>Amount Requested:</b>	\$40,000,000.00

### *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 August 2014, Mr. Michael Antalan of Antalan & Associates, LLC, on behalf of Mr. Van Duc Tang d/b/a CHO SAIGON ("the Claimant"), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$38,000,000.00 in loss of profits or impairment of earning capacity damages and \$2,000,000.00 in loss of subsistence use damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant states that he, d/b/a CHO SAIGON, lost approximately 75% of its annual earnings as a direct result of the Deepwater Horizon oil spill incident. Claimant states that on or about June 2010, it attempted to supplement its earnings by creating a start-up "Crawfish" seafood wholesale/retail business which generated gross earnings of approximately \$64,843.00, to wit, was insufficient to sustain business operations.

Claimant further asserts that on or about August 15, 2011, as a result in the decline in sales for CHO SAIGON, Claimant's principle place of business was foreclosed upon. Claimant asserts it has lost and is unable to replace \$1,204,268.54 in annual contracts for seafood wholesales in and along the Gulf Coast. Finally, Claimant asserts that as a result of the Deepwater Horizon oil spill, he has failed to file his IRS 2010, 2011 and 2012 tax returns because he is unable to pay any/all past or present outstanding tax debts currently due and payable.

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<sup>1</sup> Optional OSLF Claim Form, 13 July 2013.

The Claimant is seeking to recover \$40,000,000.00 in total compensation although an itemized accounting of how the alleged loss has been calculated or exactly what period these alleged losses are claimed for, has not been provided.

### ***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 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 the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2712(h)(2), no claim may be presented under this section for recovery of damages unless the claim is presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of natural resource damages under section 2702(b)(2)(A) of this title, if later, the date of completion of the natural resources damage assessment under section 2706(e) of this title.

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, 13 July 2013;
- Cover Letter from Attorney for Claimant, 13 August 2014;
- Additional Cover Letter from Attorney for Claimant, 11 August 2014;
- Appeal Letter from Attorney for Claimant to MDL 2179, 24 May 2013;
- DWH EP&D Claim Form dated 5 July 2012;
- BP's Opposition to Claimant's Appeal (2 pages), undated;
- 2009 Schedule C Profit or Loss form From Business;
- Claimant Objection and Reply Memorandum in Support of Economic Claim to EP&D (6 pages), 18 June 2013
- DWH Notice of Appeal Panel Decision dated 2 July 2013;
- USB device which was blank upon receipt by the NPFC.

The Claimant alleged that this claim was first presented to the Responsible Party and that the RP denied payment on this claim.<sup>2</sup> On 19 August 2014, the Claimant, through its Counsel of Record, presented this claim to the NPFC, seeking \$38,000,000.00 in loss of profits or impairment of earning capacity and \$2,000,000.00 in loss of subsistence use damages. The NPFC will adjudicate the claim to the extent presentment requirements have been satisfied. If any damages subject of this claim were not first presented to and denied by the RP, these damages are denied for improper presentment.<sup>3</sup>

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>4</sup>

### **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)

<sup>2</sup> Optional OSLTF Claim Form, 13 July 2013.

<sup>3</sup> 33 C.F.R. § 136.103(c)(2).

<sup>4</sup> At the time of the spill, the Claimant was providing services within the economic settlement loss zones.

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.

The Claimant alleged that he lost income and annual contracts following the Deepwater Horizon oil spill.<sup>5</sup> However, the Claimant has not presented evidence to indicate whether or not any alleged loss was due to the oil spill incident or other factors.

Additionally, the Claimant based the claim amount on totals that could not be ascertained. Claimant does not show how he derived a total alleged loss of \$40,000,000.00 and for what period is being claimed for losses he can prove by way of financial documentation to show he was affected by the spill. Finally, 33 USC 2712(h)(2) provides that "no claim may be presented under this section for recovery of damages unless the claim is presented within three years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care..." The statute of limitations in OPA is strictly applied, and there is no provision which allows for its waiver and as such, this claim is also denied on that basis.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount of \$40,000,000.00, (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, and (3) he failed to file his claim within the statute of limitations for damage claims, 33 USC 2712(h)(2).

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/26/14*

Supervisor's Action: *Denial approved*

Supervisor's Comments: