

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
7/26/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 8008

Jesus Casas


RE: Claim Number: N10036-1727

Dear Mr. Casas:

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 N10036-1727 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.


Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1727
Claimant	: Jesus Casas
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$50,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 22 Mar 2012, Jesus P. Casas (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$50,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a commercial fisherman in the Gulf of Mexico from Naples, Florida.¹ The Claimant asserted that he was unable to sell his catch due to the Deepwater Horizon oil spill and, as well, that the oil spill caused the crabs and fish in the Gulf of Mexico to die resulting in a loss of available product.² The Claimant asserted that his loss of earnings as a fisherman also resulted in the foreclosure of his house.³

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF in the amount of \$40,000.00 on 27 October 2010.⁴ The Claimant was assigned Claimant ID # 3297612 and Claim # 354043 and received payment in the amount of \$22,700.00 on 10 November 2010.⁵ The Claimant also filed a Quick Payment Final Claim with GCCF on 01 January 2011 and was assigned Claim # 9155392.⁶ The Claimant received payment in the amount of \$25,000.00 on 18 January 2011.⁷

The NPFC denied the claim originally on May 2, 2012 because based on the information available to the NPFC, the Claimant accepted Final Payment from the RP/GCCF in the amount of \$25,000.00.⁸ The Claimant executed a Release and Covenant Not to Sue in return for this

¹ Optional OSLTF Claim Form, dated 02 February 2012.

² Optional OSLTF Claim Form, dated 02 February 2012.

³ Letter of claim explanation from the Claimant, undated.

⁴ Report from the GCCF, dated 17 April 2012.

⁵ Notice of Determination Emergency Advance Payment.

⁶ Report from the GCCF, dated 17 April 2012.

⁷ Notice of Quick Payment Final Claim Determination, dated 18 January 2011.

⁸ Report from the GCCF, dated 17 April 2012.

Final Payment.⁹ By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury. The GCCF letter to Claimant, dated 18 January 2011 specifically states:

A wire transfer in the amount of \$25,000.00 was sent to the account indicated on your Gulf Coast Claims Facility ("GCCF") Quick Payment Final Claim form which represents your Final Payment from the Gulf Coast Claims Facility ("GCCF") for damages suffered as a result of the Deepwater Horizon Oil Spill (the "Spill") on April 20, 2010.¹⁰

Furthermore, language in the document stated that:

You submitted a Quick Payment Final Claim to resolve your claims. You also signed and submitted a release and Covenant Not to Sue in which you waived and released any claims that you have or may have in the future against BP and all other potentially responsible parties with regard to the Spill (except claims for Bodily Injury or Securities Claim). The GCCF has accepted your signed Release and your claims with the GCCF are now fully and finally resolved.¹¹

Therefore, the Claimant has waived rights to further recovery regarding the losses presented to the NPFC. 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 OSLTF.

The NPFC advised the Claimant that if he believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in a request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill.

REQUEST FOR RECONSIDERATION:

On June 11, 2012, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The Claimant stated in his request for reconsideration that his family is going through difficult times and that he lost his home¹². The Claimant provided a copy of a news article whereby the Claimant is featured in the article therefore the Claimant asserts the article proves and explains the amount of pounds that could have been harvested prior to the spill and that now a fisherman can't even catch 70% of what he could previously.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or

⁹ Notice of Quick Payment Final Claim Determination, dated 18 January 2011.

¹⁰ Notice of Quick Payment Final Claim Determination, dated 18 January 2011.

¹¹ Notice of Quick Payment Final Claim Determination, dated 18 January 2011.

¹² The Order to Show Cause for Entry of Final Judgment of Foreclosure Pursuant to Florida Statute 702.10, executed by the court on June 4, 2010, reflects that Claimant's home was in foreclosure proceedings before the BP oil spill that occurred in April 2010; therefore, the loss of the home was not due to the oil spill.

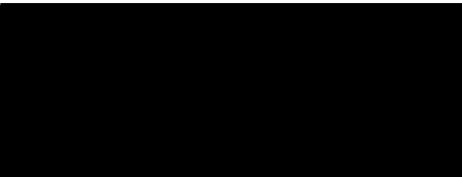
impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon review of all of the Claimant's information, the Claimant's financial documentation indicates that in 2010, the Claimant made a net profit of \$14,600.00; in 2009, the Claimant made a net profit of \$15,992.00¹³ and in 2008, the Claimant made a net profit of \$3,768 from fishing. As discussed in the initial denial dated May 2, 2012, the Claimant received compensation totaling \$47,700.00 (\$22,700.00 in November 2010 and \$25,000.00 in January 2011) from BP and the GCCF.¹⁴ Claimant executed a release a covenant not to sue and released any and all claims against BP he had or may have in the future. As a result of the BP and GCCF payments the Claimant received total income of \$62,300.00 in 2010 and 2011. This is more than double the Claimant's wage earnings in either 2008 or 2009. Thus, the NPFC determined that the Claimant has been fully compensated for any loss of wages allegedly sustained in 2010 and 2011, as a result of the Deepwater Horizon oil spill.

In summary the Claimant received a total of \$62,300.00 between 2010 and 2011, which more than compensated the Claimant for the \$50,000 in alleged loss of profits submitted to the NPFC. Additionally, upon receipt of the \$25,000 from the GCCF the Claimant executed a covenant not to sue and released his rights to the responsible party.

This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: 7/26/12

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

¹³ 2008, 2009, 2010 Form 1040s.

¹⁴ GCCF United States Coast Guard Report, 23 January 2012.