

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: 7011 1570 0001 4803 7933

5890
26 July 2012

Donald Tucker


RE: Claim Number: N10036-1791

Dear Mr. Tucker:

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 N10036-1791 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for further explanation.

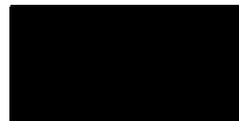
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1791.

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	: N10036-1791
Claimant	: Donald Tucker
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$28,000.00

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.

On 8 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 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 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT

On 7 May 2012, Donald Tucker (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$28,000.00 in loss of profits and impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹ The Claimant asserts that he sold seafood door-to-door around Mobile, Alabama, and the Florida Panhandle before the oil spill.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.

¹ Optional OSLTF Claim Form received 7 May 2012.

² Phone conversation between Claimant and NPFC Staff on 16 May 2012.

- (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.

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.

Pursuant to 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 OSLTF

To support this claim, the Claimant presented the following documentation:

- Optional OSLTF Claim Form received on 7 May 2012.
- Claimant's authorization for the GCCF to provide the NPFC with his claim documents at the GCCF pertaining to the 20 April 2010 oil spill.
- GCCF Notice of Determination on Emergence Advance Payment Claim (undated).
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 22 October 2011.

The Claimant indicates that he submitted a claim to the responsible party on 15 September 2010.³ The Claimant also indicates that his claim has been denied by the responsible party.⁴

The NPFC reviewed the information presented by the Claimant and conducted an independent investigation of claim presentation. The NPFC confirmed presentment to the GCCF of an Emergency Advance Payment (EAP) Claim, Claim No. 7298, an Interim Payment (IP) Claim,

³ Optional OSLTF Claim Form received 7 May 2012.

⁴ Optional OSLTF Claim Form received 7 May 2012.

Claim No. 9380190, a Full Review/Final Payment (FRF) Claim, Claim No. 9019871, and a Quick Payment (QP) Claim, Claim No. 9439571, for lost earnings & profits.⁵ The GCCF assigned Claimant Identification No. 1149623 to the Claimant.⁶ The NPFC confirmed that a payment of \$13,400.00 was made on the EAP Claim and that the IP Claim was denied.⁷ The NPFC also confirmed that both the FRF Claim and the QP Claim remained under review.⁸

Based upon the information provided and verification by the NPFC, this claim for loss of profits and impairment of earning capacity can be adjudicated in the full amount of damages presented to the GCCF. Amounts claimed in excess of that amount are denied for lack of presentment to the responsible party.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

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.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. 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 rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the BP Settlement, then he should submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

Furthermore, this claim is also denied under OPA's loss of profits damage category, as the Claimant has failed to prove that he has sustained a financial loss as a result of the Deepwater Horizon oil spill.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses. The Claimant was given 14 days to respond to the letter, dated 8 June 2012.⁹

⁵ GCCF Claimant Status accessed on 8 May 2012.

⁶ GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 22 October 2011.

⁷ GCCF Claimant Status accessed on 8 May 2012, GCCF Notice of Determination on Emergence Advance Payment Claim, and GCCF Denial letter on Interim Payment/Final Payment Claim dated 22 October 2011.

⁸ GCCF Claimant Status accessed on 8 May 2012.

⁹ Optional OSLTF Claim Form received 7 May 2012.

To date, the Claimant has not responded to that request. On 19 July 2012, the NPFC was contacted by the Claimant and informed that he was “dropping” his claim before the NPFC.¹⁰

The Claimant asserts a loss of income due to the Deepwater Horizon oil spill.¹¹ The Claimant has provided no documentation with his initial claim to show a loss of income or to establish the causal link between his alleged loss and the Deepwater Horizon oil spill. The Claimant did authorize the GCCF to provide the NPFC with a copy of documents in his GCCF claim file but to date the NPFC has not been able to obtain the documents.¹² It is the Claimant’s responsibility to document his claim. If he desires to return on reconsideration, Claimant should provide all evidence previously provided to the GCCF and any additional information that he believes will substantiate his loss of earnings and that his alleged loss was due to the Deepwater Horizon oil spill.

This claim is denied for the following reasons: (1) the Claimant is considered to have settled his claim by virtue of belonging to the economic damages class associated with the CSSP; (2) the Claimant has failed to adequately demonstrate his alleged loss through financial documentation; and (3) the Claimant has failed to demonstrate that his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil (i.e., the Deepwater Horizon oil spill).

Claim Supervisor: *NPFC [REDACTED] ation Division*

Date of Supervisor’s Review: *7/26/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹⁰ Phone Conversation between Claimant and NPFC representative 19 July 2012. Claimant also reported receiving, but not picking, up certified mail from the NPFC and also not returning NPFC emails.

¹¹ Optional OSLTF Claim Form received 7 May 2012.

¹² Claimant’s authorization letter dated 7 May 2012, forwarded by the NPFC to the GCCF on 8 May 2012.