

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4666 7881

5890/DWHZ  
2 September 2011

Mr. Thomas L. d'Aquin  


Re: Claim Number: N10036-1306

Dear Mr. d'Aquin:

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 N10036-1306 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 N10036-1306.

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	N10036-1306
Claimant	Mr. Thomas d'Aquin
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$100,000.00

### ***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 16 August 2011, Mr. Thomas d'Aquin (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$100,000.00 in loss of profits and impairment of earnings capacity damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is the founder, president, and sole employee of ACES Tennis Foundation (the foundation).<sup>2</sup> The Claimant established the foundation, with branches in Mississippi and Louisiana, in order to provide free tennis lessons to "at risk youths."<sup>3</sup> The lessons are all taught by the Claimant.<sup>4</sup>

The Claimant alleged to have received income from two sources: (1) a major donor who contributed approximately \$100,000.00 annually,<sup>5</sup> and (2) students who paid for private lessons.<sup>6</sup> According to the Claimant, the donor discontinued funding the foundation because of the decrease in the number of students following the Deepwater Horizon oil spill,<sup>7</sup> and for other reasons that are unclear to the NPFC.<sup>8</sup>

Additionally, the Claimant alleged that the oil spill caused students to cancel tennis lessons, which resulted in losses to the foundation, and subsequently a reduction in the Claimant's salary.<sup>9</sup> The Claimant alleged that the loss of funding, as well as the loss of students, resulted in a loss to the Claimant in the amount of \$100,000.00.<sup>10</sup>

<sup>1</sup> Optional OSLTF Claim Form, dated 15 August 2011.

<sup>2</sup> PHONECON: Claimant and NPFC Staff, 17 August 2011.

<sup>3</sup> [www.acesennisfoundation.com](http://www.acesennisfoundation.com), (Accessed on 1 September 2011).

<sup>4</sup> [www.acesennisfoundation.com](http://www.acesennisfoundation.com), (Accessed on 1 September 2011).

<sup>5</sup> Letter from the Claimant to the GCCF, 4 August 2011.

<sup>6</sup> PHONECON: Claimant and NPFC Staff, 25 August 2011.

<sup>7</sup> PHONECON: NPFC Staff and Sara Lavagna, 24 August 2011.

<sup>8</sup> See, Letter from Sara Lavagna, 21 July 2010, wherein Mrs. Lavagna stated that she was discontinuing donations to the foundation because she found it "a little embarrassing to be ask[ed] the questions that [she] was asked concerning the BP Oil Spill."

<sup>9</sup> Letter from ACES Tennis Foundation to GCCF, 4 August 2011.

<sup>10</sup> Optional OSLTF Claim Form, dated 15 August 2011.

## ***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 Section 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 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 this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 15 August 2011;
- Letter from Aces Tennis Foundation, noting the Claimant's employment with the company, 27 July 2011;

- Letter from Aces Tennis Foundation to GCCF, 4 August 2011;
- Letter from Aces Tennis Foundation to GCCF, 4 August 2011;
- Email from Claimant to NPFC 15 August 2011;
- Notice of Quick Payment Final Claim Determination, 10 January 2011;
- 2008 Form 1099-MISC, unsigned;
- Letter signed by Sara Lavagna, 21 July 2010;
- Email from Fred Burdick, UPSTA, addressed to “MS Chapter Members” 14 July 2010;
- List of former clients;
- 2009 Form 1099-MISC, unsigned.

Prior to presentment to the NPFC, the Claimant presented a Third Quarter Interim Claim (ICQ32011) and a Full Review Final (FRF) Claim to the RP/GCCF. Claimant was assigned Claimant ID 7193307; ICQ32011 was assigned claim # 9431001; FRF was assigned claim # 9421845. Both claims were denied on 13 August 2011. A determination from the GCCF states, “[a] claim submitted under a separate tax identification number for losses pertaining to this same business has already been paid by the GCCF. You cannot recover more than once for the same loss on your business.”<sup>11</sup>

The Claimant distinguishes the losses, stating that the loss submitted in the Claimant’s first submission to the GCCF concerned losses sustained by the Claimant’s non-profit organization.<sup>12</sup> The Claimant’s second submission, which is the subject of ICQ32011 and FRF, concerns the Claimant’s personal losses as an employee of the non-profit organization.<sup>13</sup>

On 16 August, 2011, Claimant presented this claim for \$100,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Because the Claimant has previously submitted these losses to the RP/GCCF, this determination shall address Claimant’s losses to the extent presented to the RP/GCCF, in the amount of \$100,000.00 as currently before the NPFC. This claim is denied in any amount now before the NPFC, which was not first presented to the RP/GCCF.

### **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) 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 this claim.

The NPFC reviewed all information and documentation provided by the Claimant. This claim is denied because (1) the Claimant has signed a Covenant and Release Not to Sue, waiving rights to further recovery, (2) the Claimant has materially misrepresented elements of this claim, (3) the Claimant has failed to provide evidence to show that he’s suffered a loss, and (4) the Claimant has failed to show that any loss sustained was a result of the Deepwater Horizon oil spill.

<sup>11</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 13 August 2011.

<sup>12</sup> Response to Request for Additional Information, 22 August 2011.

<sup>13</sup> PHONECON: Claimant and NPFC Staff, 17 August 2011.

## 1. Release of Rights to the GCCF

The Claimant first submitted a claim to the RP/GCCF for losses sustained by ACES Tennis Foundation (the foundation).<sup>14</sup> The foundation, of which the Claimant is the sole member, accepted a final payment from the GCCF in the amount of \$25,000.00.<sup>15</sup>

On behalf of the foundation, the Claimant executed a Release and Covenant Not to Sue in return for final payment.<sup>16</sup> By signing this document, the Claimant has released the RP/GCCF, and any rights to additional recovery regarding this injury.<sup>17</sup>

Any payment from the Oil Spill Liability Trust Fund (the Fund) 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 Notice of Quick Payment Final Determination Form (the Notice) indicates that all claims resulting from the Deepwater Horizon incident have been "fully and finally resolved."<sup>18</sup> Because the Claimant is the sole owner, board member and employee of the foundation,<sup>19</sup> the Claimant's losses as an employee of the foundation are indistinguishable from the losses sustained by the foundation.<sup>20</sup> The Claimant has therefore waived his rights to further recovery regarding losses incurred as an owner or employee of the foundation.

If the Claimant 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 his request for reconsideration.<sup>21</sup> 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.

## 1. Material Misrepresentation

The Claimant has misrepresented material elements of this claim. Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. § 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

The Claimant alleged that he sustained a loss of profits due to (1) a donor's withdrawal of her offer to continue to make donations to the organization, and (2) cancellations of lessons by students.<sup>22</sup> In a letter dated 17 August 2011, the NPFC requested that the Claimant provide a list of students who cancelled tennis lessons due to the effects of the oil spill. The Claimant responded to this request via email on 22 August 2011, providing a list of 199 names and phone numbers.<sup>23</sup> In a phone conversation on 25 August 2011, the Claimant confirmed that this list

<sup>14</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 13 August 2011.

<sup>15</sup> Notice of Quick Payment Final Claim Determination, 10 January 2011.

<sup>16</sup> Notice of Quick Payment Final Claim Determination, 10 January 2011.

<sup>17</sup> Notice of Quick Payment Final Claim Determination, 10 January 2011.

<sup>18</sup> Notice of Quick Payment Final Claim Determination, 10 January 2011.

<sup>19</sup> PHONECON: Claimant and NPFC Staff, 17 August 2011.

<sup>20</sup> In the GCCF Notice of Quick Payment Final Claim Determination letter (the Notice), The Claimant attempted to black-out the line of the address which states, "ATTN: Thomas L. D'Aquin." However, it is clear that the Notice was marked to the Claimant's attention.

<sup>21</sup> 33 C.F.R. § 136.115.

<sup>22</sup> Optional OSLTF Claim Form, 15 August 2011

<sup>23</sup> Email from the Claimant to NPFC, 22 August 2011.

contained only the names of clients who cancelled lessons following the Deepwater Horizon oil spill.<sup>24</sup>

The NPFC called thirty of the 199 names provided, and spoke directly with seventeen of these individuals. Only one individual confirmed to have cancelled tennis lessons due to financial hardships incurred after the oil spill.<sup>25</sup> The remaining sixteen individuals either (1) knew the Claimant in some capacity, but had never taken tennis lessons, (2) cancelled tennis lessons for reasons unrelated to the oil spill, or (3) did not recognize the Claimant's name at all.<sup>26</sup> Furthermore, each of the individuals who stated that they had previously taken tennis lessons with the Claimant also stated that they had paid for these lessons. However, the Claimant has not provided any documentation of income from paid lessons, as requested by the NPFC.<sup>27</sup>

Additionally, as noted above, the Claimant attempted to alter the Notice of Quick Payment Final Claim Determination form by obscuring his name in the address line.<sup>28</sup>

## 2. No Showing of Financial Loss

According to 33 C.F.R. § 136.233, the claimant must provide documentation sufficient to show that the claimant's *income was reduced* (emphasis added) as a consequence of injury to, destruction of, or loss of property or natural resources.

The Claimant has failed to provide any record of income to substantiate (1) any donations made to ACES Tennis Foundation, or (2) payments made by students taking private tennis lessons. Additionally, the Claimant states in his submission to the GCCF, that the Claimant "has been working and been paid from ACES in 2010 and before."<sup>29</sup> However, Claimant has not provided any record of 2010 income.<sup>30</sup>

In a certified letter to the Claimant, as well as in subsequent conversations, the NPFC requested that the Claimant provide documentation of his actual income.<sup>31</sup> However, the Claimant has not sufficiently responded to these requests and has not sufficiently demonstrated that his income was reduced following the Deepwater Horizon oil spill.

The Claimant provided unsigned copies of 2008 and 2009 Form 1099s, showing payments to the Claimant from ACES Tennis Foundation in the amounts of \$100,500.00 in 2008 and \$101,000.00 in 2009. However, the NPFC was unable to verify the source of this income, or that these forms represented the Claimant's actual earnings in 2008 and 2009. Should the Claimant decide to request reconsideration, he will need to address all deficiencies noted by the NPFC but will also need to obtain IRS Transcript Histories to substantiate the income for 2008, 2009 and 2010 as asserted.

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<sup>24</sup> PHONECON: Claimant and NPFC Staff, 25 August 2011.

<sup>25</sup> PHONECON: NPFC Staff and Client, 25 August 2011.

<sup>26</sup> PHONECON: NPFC Staff and alleged client, 26 August 2011.

<sup>27</sup> Letter Requesting Additional Information, 17 August 2011; PHONECON: Claimant and NPFC Staff, 25 August 2011.

<sup>28</sup> Notice of Quick Payment Final Claim Determination, 10 July 2011.

<sup>29</sup> Letter from ACES Tennis Foundation to GCCF, 4 August 2011.

<sup>30</sup> Letter Requesting Additional Information, 17 August 2011.

<sup>31</sup> Letter Requesting Additional Information, 17 August 2011; PHONECON: Claimant and NPFC Staff, 25 August 2011.

### 3. No Showing of Effects by Deepwater Horizon Oil Spill

As discussed under the second heading of this determination, the list of names provided by the Claimant failed to provide information sufficient to substantiate the assertion that the Claimant lost students due to the Deepwater Horizon oil spill. Furthermore, in the Claimant's submission, the Claimant also attributed the loss of students to the heat in Biloxi, Mississippi, stating that "students are not participating in sports outside," and students "do not want to go out in the heat."<sup>32</sup> Therefore, the Claimant has not demonstrated that any loss he might have sustained resulted solely from effects of the Deepwater Horizon oil spill as opposed to other reasons.

Furthermore, the Claimant has not demonstrated that the decision of the Claimant's sole donor to cease funding the foundation was somehow caused by the Deepwater Horizon oil spill. In a letter from the donor to the foundation she states, "I find it a little embarrassing to be ask[ed] the questions that I was asked concerning the BP Oil Spill . . . I will not be agreeable for any funding to whatever program you have."<sup>33</sup>

Although the donor's reasons for withdrawal are unclear, it is clear that other factors unrelated to the oil spill prompted the donor's decision to cease her funding of the foundation.

This claim is denied because the Claimant (1) has been fully compensated by the RP/GCCF and has waived his rights to further recovery regarding this injury by signing a full and final release, (2) has materially misrepresented elements of this claim, (3) has failed to provide documentation sufficient to demonstrate that he sustained a financial loss, and (4) has failed to provide evidence to show that any loss he might have sustained was a result of the Deepwater Horizon oil spill.

Claim Supervisor:  *NPIC Claims Adjudication Division*

Date of Supervisor's Review: *9/2/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>32</sup> Optional OSLTF Claim Form, dated 15 August 2011.

<sup>33</sup> Letter from Sara Lavagna to ACES Tennis Foundation, 21 July 2010.