

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7010 0780 0001 8634 2418

5890/DWHZ
12 December 2013

Mr. Paul Scurto


Re: Claim Number: N10036-2008

Dear Mr. Scurto:

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 N10036-2008 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 N10036-2008.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100


Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-2008
Claimant	Paul Scurto
Type of Claimant	Corporate
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$421,800.00

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 25 November 2013, Mr. Paul Scurto ("Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$421,800.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant states he and his wife were developing a waterfront property into a neighborhood of twelve homes and twelve boat slips located in Mary Esther, Florida. As marketing of the project beginning in late 2009 yielded a positive response, the Claimant states he moved forward with the project and borrowed the funds to begin developing the property. The Claimant states that, as a result of the spill, everyone with which he and his wife had been in serious conversations (save for one contract) "walked away." According to the claim, the project, which was originally slated to be complete in mid-2011 has only recently began to pick up again, and is projected to be finished by late-2014.

Because of this, the Claimant states he lost money as a result due to three additional years of interest paid on his loans, as well as compensation for time worked.

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

¹ Optional OSLTF Form, 25 November 2013.

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 Form, 25 November 2013;
- Claim Cover Letter, 25 November 2013;
- Internal Soundview Landing Profit and Loss Statement, January 2010-December 2012;
- Internal Soundview Landing Transaction Detail by Account Statements, January-December 2010;
- Internal Soundview Landing Transaction Detail by Account Statements, January-December 2011;
- Internal Soundview Landing Transaction Detail by Account Statements, January-December 2012;
- Various emails between prospective buyers and the Claimant's wife, 2010;
- Copy of the mortgage for the affected land area, signed by Claimant on 01 November 2006.

The Claimant alleged that this claim was first presented to the Responsible Party and that the RP denied payment on this claim.² On 25 September 2013, the Claimant presented this claim to the NPFC, seeking \$421,800.00 in loss of profits or impairment of earning capacity. 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.³

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).⁴

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 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.

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 E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, even if the Claimant was not included in the Settlement Class, this claim is denied on its merits. In order to prove a claim for loss of profits or impairment of earning capacity damages, a claimant must provide evidence sufficient to prove (1) that the claimant sustained a loss or reduction in income, and (2) that the loss was caused by damage to real or personal property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

The Claimant alleged that, as a result of the oil spill, he did not realize contracts for a housing development planned on land he owned until 2013, and thus suffered economic damages. However, he does not provide documentation to show how the projections were derived—that the project was, in fact, projected by planners and investors to be finished by mid-2011—where it would show that the oil spill caused a delay in the completion. The Claimant only provides transaction histories and a Profit-Loss statement—but these in and of themselves do not show that a loss was incurred, as it doesn't differentiate what is a normal cost of business and what is not. Furthermore, as this business was a startup, there are no comparables to show that the costs incurred by this business were abnormal and a result of the spill.

The Claimant also does not provide secured contracts that fell through as a result of the spill. He has provided many emails where he and/or his wife responded to general inquiry emails (one which included someone who said that she would no longer pursue the property due to the spill), but no actual sales and or contracts that were canceled. Without these, there is no proof that the project would have been

² Optional OSLTF Claim Form, 25 November 2013.

³ 33 C.F.R. § 136.103(c)(2).

⁴ At the time of the spill, the Claimant was living/operating within Economic Loss Zone C.

completed on time, either, because the Claimant hasn't shown that the lots were sold and the custom-building had begun, a step that appears to be a necessary step in the completion of this project (as is exemplified in the housing community advertisement and email descriptions to potential buyers included in the claim submission). The Claimant states he now has buyers and thus funding. With no documentation of lost contracts, there is no evidence that the Claimant suffered any damages as a result of the spill.

It should be noted that, though the Claimant has provided documentation of a mortgage for the property, it is unclear whether or not he was the owner and/or developer of the project, showing he has full rights to any claimed losses for this development. The email signature states that the Claimant and his wife may have been working with or for a development firm under the title of Shahid & Godfrey Executive Real Estate at the time of the incident. It appears that this company is no longer heading the project, and that both Mr. Godfrey and Ms. Shahid were penalized by the State of Florida for practice issues in 2013, of which it can't be determined if they were related to the Claimant's property or not. Additionally, it appears the planned community project is now operated by Coastal States Contractors, Inc. (CSC). Though research has shown Mr. Kelly Taylor (CSC President) and Ms. Chelsea Taylor (Secretary) have a working, real estate partnership with the Claimant, it still remains unclear as to whether or not the Claimant retains all rights to recover losses or damages related to this project.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that it sustained a financial loss in the amount of \$421,800.00, 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 belonging to the E&PD Settlement and is therefore, not eligible for OSLTF compensation.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/12/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: