

U.S. Department of  
Homeland Security

United States  
Coast Guard



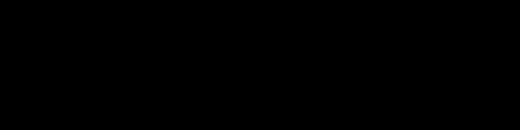
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 2489

5890/DWHZ  
29 September 2011

Comprehensive Dentistry of Orange Beach



Re: Claim Number: N10036-1326

Dear Dr. Dunavant:

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 N10036-1326 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 N10036-1326.

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     | N10036-1326   |
| Claimant         | Comprehensive Dentistry of Orange Beach             |
| Type of Claimant | Corporate (US)                                      |
| Type of Claim    | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$43,081.00   |

### ***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 23 August 2011, Dr. Andrew Dunavant, on behalf of Comprehensive Dentistry of Orange Beach (collectively "the Claimant") presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$43,081.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

From 2002 to 2008, the Claimant split time between the two dental practices: Comprehensive Dentistry of Orange Beach and Facio Aesthetic & Implant Dentistry.<sup>2</sup> In 2008, the Claimant consolidated these practices into one location at Comprehensive Dentistry of Orange Beach.<sup>3</sup> The Claimant alleged that due to general economic effects of the oil spill on the Gulf Coast economy, the Claimant lost income when people stopped scheduling non-emergency dental procedures.<sup>4</sup>

This claim is for loss of income from the period 20 April 2010 to 20 January 2011 in the amount of \$43,081.00.<sup>5</sup>

### ***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:

<sup>1</sup> Optional OSLTF Claim Form dated 16 August 2011.

<sup>2</sup> Letter (handwritten) from Claimant to the GCCF, undated

<sup>3</sup> Letter (handwritten) from Claimant to the GCCF, undated

<sup>4</sup> Letter (handwritten) from Claimant to the GCCF, undated

<sup>5</sup> Optional OSLTF Claim Form dated 16 August 2011.

- (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 undertake, 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 16 August 2011;
- Map showing office location;
- Copy of Emergency Advance Payment Submission, mailed 17 September 2010;
- Letter from the Claimant, describing losses;
- Letter from GCCF to the Claimant, noting payment of EAP, 7 October 2010;
- SOFTDENT records of expenses, income and patients, 2002- 2010;
- GCCF Re-Review Determination Letter on Final Payment Claim, 2 August 2011, offering final payment of \$25,000.00;
- GCCF Election Form For determination Letter on Lost Profits Claim, showing 31 October 2011 as date of expiration of final offer;
- 2004 Form 1040, showing adjusted gross income of \$169,323.00;
- 2004 Schedule A, Form 1040;
- 2004 Schedule B, Form 1040;
- 2004 Schedule C, Form 1040;
- 2004 Schedule E, Form 1040;
- Schedule SE, Form 1040;

- 2005 Form 1040, showing adjusted gross income of \$180,0x.xx;
- 2005 Schedule A, Form 1040;
- 2005 Schedule C, Form 1040;
- 2005 Schedule SE, Form 1040;
- 2006 Form 1040, showing adjusted gross income of \$196,296.00;
- 2006 Schedule A, Form 1040;
- 2006 Schedule C, Form 1040;
- 2006 Schedule D, Form 1040;
- 2006 Schedule E, Form 1040;
- 2006 Schedule SE, Form 1040;
- 2007 Form 1040, showing adjusted gross income of \$195,914.00;
- 2007 Schedule A, Form 1040;
- 2007 Schedule C, Form 1040;
- 2007 Schedule C, Form 1040;
- 2007 Schedule SE, Form 1040;
- 2008 Form 1040, showing adjusted gross income of \$50,330.00 (with rental loss of \$25,000.00)
- 2008 Schedule A, Form 1040;
- 2008 Schedule C, Form 1040;
- 2008 Schedule E, Form 1040;
- 2008 Schedule SE, Form 1040;
- 2009 Form 1040, showing adjusted gross income of \$154,983.00 (with real estate earnings of \$54,971.00);
- 2009 Schedule A, Form 1040;
- 2009 Schedule C, Form 1040;
- 2009 Schedule E, Form 1040;

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF, claiming lost wages and earnings in the amount of \$137,068.00.<sup>6</sup> This claim was assigned claim # 63800 and the Claimant was assigned ID 3013181.<sup>7</sup> This claim was paid in the amount of \$137,100.00 on 1 August 2011.<sup>8</sup>

On 23 February 2011, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) for loss of profits and earnings to the RP/GCCF, in the amount of \$43,081.00,<sup>9</sup> which was assigned claim # 9310544. The Claimant did not receive an interim payment and was offered final payment of \$25,000.00 on 5 April 2011, which the Claimant has not accepted to date.<sup>10</sup>

On 23 August 2011, the Claimant presented this claim for \$43,081.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Therefore this NPFC determination shall address this claim for loss of profits and earnings capacity in the amount of \$43,081.00, as presented to the RP/GCCF in ICQ12011.

<sup>6</sup> GCCF Claimant Status, accessed on 26 September 2011.

<sup>7</sup> GCCF Claimant Status, accessed on 26 September 2011.

<sup>8</sup> GCCF Letter provided by Claimant.

<sup>9</sup> PHONECON: Claimant and NPFC Staff, 25 August 2011.

<sup>10</sup> Letter from GCCF to Claimant, 2 August 2011.

## 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 the claim.

The Claimant alleged that due to general economic effects of the oil spill in Orange Beach, Alabama, people stopped scheduling nonemergency dental procedures, resulting in the Claimant's loss of income.<sup>11</sup> In order to prove a claim for loss of profits and impairment of earnings capacity, the Claimant must demonstrate (1) that he sustained a loss of profits, and (2) that the loss of profits was due to the discharge or substantial threat of discharge of oil, caused by the Deepwater Horizon oil spill.

The Claimant alleged that he sustained a general decrease in business following the oil spill.<sup>12</sup> In a letter dated 25 August 2011 and received by the Claimant on 1 September 2011, the NPFC requested that the Claimant provide certain information, such as monthly profit and loss statements, as well as 2010 income tax returns in order to show that the Claimant sustained an actual loss of profits in 2010 following the oil spill.<sup>13</sup> The NPFC requested that the Claimant provide a response within 14 days of the date of the letter requesting additional information. To date, the Claimant has not responded. Therefore, the Claimant has not sufficiently proven that business in fact decreased beginning in May of 2010, or that he lost profits as a result of the Deepwater Horizon oil spill.

Furthermore, the NPFC requested information to establish that the Claimant's alleged loss of income was in fact caused by the oil spill, such as records of cancellations of scheduled procedures, or documentation to show that regular patients stopped scheduling procedures following the oil spill.<sup>14</sup> As previously indicated, the Claimant has not responded to this request, therefore the Claimant has not provided documentation to show that his loss of income was caused by the discharge of oil caused by the Deepwater Horizon oil spill.

The NPFC reviewed all information and documentation provided by the Claimant. This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained an actual calculable loss of profits totaling \$43,081.00, 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 a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *9/29/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>11</sup> PHONECON: Claimant and NPFC Staff, 25 August 2011.

<sup>12</sup> Letter (handwritten) from the Claimant to the NPFC, undated

<sup>13</sup> Letter from the NPFC requesting additional information, 25 August 2011.

<sup>14</sup> Letter from the NPFC requesting additional information, 25 August 2011.