

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5923

5890/DWHZ
08 November 2011

Anthony Morgan

[REDACTED] 40

Re: Claim Number: N10036-1407

Dear Mr. Morgan:

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 your claim number N10036-1407 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1407.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1407
Claimant	Anthony Morgan
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$75,000.00
Type of Claim	Real or Personal Property Damage
Amount Requested	\$85,000.00

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.

CLAIM AND CLAIMANT

On 14 September 2011, Anthony Morgan (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$75,000.00 in loss of profits and impairment of earnings capacity and \$85,000.00 in real or personal property damage that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant operates a taxi business, D'Iberville City Taxi Service¹ in D'Iberville, Mississippi.² The Claimant asserts that due to the Deepwater Horizon oil spill, the tourism industry in the D'Iberville, Mississippi region collapsed, reducing the demand for taxi services in the area.³ As a result of the decreased demand for taxi services, the Claimant asserts he lost income in 2010.⁴ Additionally, the Claimant asserts the reduction in the tourism industry has led to his home being placed in foreclosure.⁵

The Claimant provided the following explanation regarding the calculation of his sum certain of \$75,000.00 for loss of profits and impairment of earnings capacity: the Claimant took his business' income before the oil spill of (\$16,000.00) and added the business' probable income for the post-oil spill period (\$16,000.00) for a total of \$32,000.00.⁶ The Claimant then subtracted the 2009 earnings of \$10,000.00 for a total loss of \$22,000.00.⁷ The claimant then multiplied this amount by three, representing three years of losses, for a product of \$66,000.00.⁸ The Claimant then multiplied this by

¹ City of D'Iberville Privilege License 2011 from 01 November 2010 to 31 October 2011.

² Hardship Letter dated 15 August 2011.

³ Hardship Letter dated 15 August 2011.

⁴ The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, Question # 6.

⁵ The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, Question # 8.

⁶ The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, Question # 7.

⁷ The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, Question # 7.

⁸ The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, Question # 7.

fifteen percent, representing an increase in growth, for a product of \$9,000.00⁹ and added this to the previous total of \$66,000.00 for a sum certain of \$75,000.00 in loss of profits and impairment of earnings capacity.¹⁰

The Claimant provided the following explanation regarding the calculation of his sum certain of \$85,000.00 for real or personal property damage: the Claimant stated that he is in the process of losing his home to foreclosure.¹¹ The Claimant stated that the appraised value of the home is \$85,000.00,¹² which became the Claimant's sum certain of \$85,000.00 for real or personal property damage.¹³

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.

Pursuant to the claims regulations, 33 C.F.R. 136.315, a claimant must establish the following to prove damage to real or personal property:

- (a) An ownership or leasehold interest in the property;
- (b) That the property was injured or destroyed;

⁹ The NPFC notes that \$66,000.00 multiplied by 15% yields a product of \$9,900.00 and not the \$9,000.00 proposed by the Claimant. Because \$9,000.00 was used by the Claimant in the calculation of his sum certain, the NPFC will utilize that number as well.

¹⁰ The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, Question # 7.

¹¹ The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, Question # 8.

¹² ¹²

¹³ The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, Question # 8.

- (c) The cost or repair or replacement;
- (d) The value of the property both before and after injury occurred.

In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish:

- (a) That the property was not available for use and, if it had been, the value of that use;
- (b) Whether or not substitute property was available and, if used, the costs thereof;
- (c) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

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.

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

The Claimant's Submission to the OSLTF

In support of his claim, the Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, received 14 September 2011;
- Photocopies of the Claimant's Mississippi Driver License and Social Security Card;
- City of D'Iberville Privilege License 2011 from 01 November 2010 to 31 October 2011;
- Hardship Letter dated 15 August 2011;
- Letter from Shapiro & Massey, LLC to the Claimant dated 24 February 2011;
- 2010 Form 1040 Federal Tax Return;
- 2009 Form 1040 Federal Tax Return;
- 2008 Form 1040 Federal Tax Return;
- Spreadsheet titled 'Gross Income for 2008';
- Spreadsheet titled 'Gross Income for 2009';
- Spreadsheet titled 'Gross Income for 2010'; and
- Partial GCCF Interim Payment Claim Form;
- The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, document request #'s 1-9 and answers to questions 1-14;
- 2009 Form 1040 Schedule C-EZ Federal Tax Return;
- 2010 Form 1040 Schedule C Federal Tax Return;
- Photocopy of the Claimant's Mississippi Driver License;
- City of D'Iberville Privilege License from 01 November 2008-31 October 2009;

- Gateway Insurance Company policy information for D'Iberville City Cab, Inc.;
- Lighthouse Insurance Services Receipt for Payment dated 20 September 2011;
- Spreadsheet titled Schedule of Automobiles as of 16 July 2011;
- Warrant for case of Midfirst Bank v. Anthony R. Morgan and Ella Deon Morgan, And/Or Any Unknown Tenants or Occupants dated 08 September 2011;
- Photocopy of 'The Gazette' dated 2nd Quarter April-June 2011;
- Mississippi Insurance Identification Card for period 16 July 2010-16 July 2011;
- Photocopies of business advertisements, one of which is the Claimant's business;
- Letter from the Claimant to Keesler Air force Base Pass & I.D. dated 27 June 2011;
- Letter from the Claimant to Deepwater Horizon (BP) Claims Office;
- Photocopy of the Claimant's business card;
- Medical Transportation Proposal;
- List titled 'Vehicle Availability';
- Taxi Rate information for the Claimant's business;
- Office/Service Center Lease Agreement between Vitzi Inc. and the Claimant dated 20 January 2010;
- Blueprint schematic of the Claimant's former office;
- United States Postal Service Customer's Receipt with photocopy of Mississippi Power Company receipt.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Months Claim with the GCCF on 20 November 2010 in the amount of \$3,600.00 for loss of profits and impairment of earnings capacity.¹⁴ The Claimant was assigned Claimant ID # 3423374 and Claim ID # 502149. The EAP Claim was denied on 07 December 2010.¹⁵ Additionally, the Claimant filed an Interim Payment Claim Quarter III 2011 (ICQ32011) on 30 August 2011 in the amount of \$75,000.00 for loss of profits and impairment of earnings capacity.¹⁶ The Claimant was assigned Claim ID # 9446741. The ICQ32011 Claim is currently in the review process and a determination has yet to be issued upon it.¹⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the demand for the Claimant's taxi business plummeted and as a result caused the Claimant to lose income. The NPFC deems the Claimant's EAP GCCF claim to be properly presented to the RP and properly presented to the NPFC.¹⁸ Accordingly, this Claim Summary Determination for NPFC Claim N10036-1407 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim # 502149 (EAP).

NPFC Determination

The claim is denied. 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 NPFC considered all documentation presented by the Claimant.

PRESENTMENT

¹⁴ Report from the GCCF dated 06 October 2011.

¹⁵ GCCF Denial Letter dated 07 December 2010.

¹⁶ Report from the GCCF dated 06 October 2011.

¹⁷ GCCF Claimant Status page.

¹⁸ Under 33 C.F.R. § 136.103(c) the NPFC does not have presentment over a claim until the RP denies the claim or the claim has not been settled within 90 days after the presentment of the claim to the RP. There has not been a decision on the ICQ32011 claim by the RP to date and the claim was not presented to the GCCF until 30 August 2011.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Regarding presentment of claims to the GCCF asserting loss of profits and impairment of earnings capacity, the Claimant presented an EAP Claim to the GCCF for loss of profits and impairment of earnings capacity on 20 November 2010 in the amount of \$3,600.00.¹⁹ Additionally, the Claimant presented an ICQ32011 Claim for loss of profits and impairment of earnings capacity to the GCCF on 30 August 2011 in the amount of \$75,000.00.²⁰ The Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$75,000.00 to the NPFC.²¹ Under 33 C.F.R. § 136.103(c) the NPFC does not have presentment over a claim until the RP denies the claim or the claim has not been settled within 90 days after the presentment of the claim to the RP. There has not been a decision on the ICQ32011 claim by the RP to date²² and the claim was not presented to the GCCF until 30 August 2011.²³ Thus, any claimed amount of damages exceeding \$3,600.00 for loss of profits and impairment of earnings capacity was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(c) and is therefore denied.

Regarding presentment of claims to the GCCF asserting real or personal property damages, the Claimant presented a claim for real or personal property damages in the amount of \$85,000.00 to the NPFC.²⁴ Although the Claimant has presented both an EAP Claim and an ICQ32011 Claim to the GCCF, neither claim included any claimed damages for real or personal property damage.²⁵ Thus, there are no amount of damages regarding real or personal property damages properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and any amount of damages for real or personal property presented to the NPFC are therefore denied.

LOSS OF PROFITS AND IMPAIRMENT OF EARNINGS CAPACITY

Additionally, the claim is denied because the alleged loss in the amount of \$75,000.00 is not 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.

The Claimant asserts that due to the Deepwater Horizon oil spill, the tourism industry in the D'Iberville, Mississippi region collapsed, reducing the demand for the Claimant's taxi business.²⁶ By extension, the Claimant asserts his business suffered reduced income.²⁷ The Claimant, however, fails to prove that he suffered a loss due to the Deepwater Horizon oil spill. The Claimant fails to provide evidence regarding the effect of the Deepwater Horizon oil spill on his taxi business. In an effort to obtain more information regarding the effect of the Deepwater Horizon oil spill on the Claimant's business, the NPFC requested additional documentation from the Claimant.²⁸ The NPFC requested, among other items, full and complete profit and loss statements from 2008-2010, bank statements for the Claimant's business from 2008-2010, taxi trip receipts for the Claimant's business from 2008-2010 and documentation of any trip cancellations that occurred due to the Deepwater Horizon oil spill.²⁹ Although the Claimant provided a response to the NPFC's Request for Additional Information, he failed to provide the specific documentation mentioned above.³⁰

¹⁹ Report from the GCCF dated 06 October 2011.

²⁰ Report from the GCCF dated 06 October 2011.

²¹ Optional OSLTF Claim Form received 14 September 2011.

²² GCCF Claimant Status page.

²³ Report from the GCCF dated 06 October 2011.

²⁴ Optional OSLTF Claim Form received 14 September 2011.

²⁵ Report from the GCCF dated 06 October 2011.

²⁶ Hardship Letter dated 15 August 2011.

²⁷ Hardship Letter dated 15 August 2011.

²⁸ NPFC Request for Additional Information dated 21 September 2011.

²⁹ NPFC Request for Additional Information dated 21 September 2011.

³⁰ The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, document request #'s 1-9 and answers to questions 1-14.

In response to the NPFC's question³¹ asking for a list of reoccurring customers, Claimant listed one, Global Trans Services Inc. In an effort to verify the Claimant's assertion that the Deepwater Horizon oil spill affected the Claimant's business with Global Trans Services, the NPFC contacted Global Trans Services. In a subsequent phone conversation, the NPFC was informed that the Deepwater Horizon oil spill had no effect on the Claimant's relationship with Global Trans Services.³² Accordingly, the Claimant fails to prove that he suffered a loss due to the Deepwater Horizon oil spill.

Furthermore, the Claimant has not proven that he suffered a financial loss due to the Deepwater Horizon oil spill at all. Examining the financial information³³ provided by the Claimant, the Claimant collected gross receipts of \$22,123.00³⁴ in 2010 compared to receipts of \$14,040.00³⁵ in 2009 and \$14,140.00³⁶ in 2008. Although the Claimant's gross business receipts in 2009 and 2008 are identical to the business income of \$14,040.00³⁷ and \$14,140.00³⁸ for those respective years, the Claimant's 2010 business income of \$10,346.00³⁹ is \$11,777.00 less than the 2010 business gross receipts. As discussed above, the Claimant failed to respond to the NPFC's Request for Additional Information regarding full and complete profit and loss statements. Accordingly, the Claimant fails to prove that the suppressed business income in 2010 is due to the Deepwater Horizon oil spill and not a rise in business expenditures or a rise in the cost of goods used in the Claimant's business. Thus, the Claimant fails to prove he suffered a loss in 2010 that is isolated to the effects of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to make proper presentment for loss of profits and impairment of earnings capacity exceeding \$3,600.00 as well as for any real or personal property damages. Additionally, the Claimant failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount claimed, and (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 Review: *11/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³¹ The Claimant's response to the NPFC's Request for Additional Information received 29 September 2011, Question # 5.

³² PHONECON between the NPFC and Global Trans Services Inc. dated 03 October 2011.

³³ The NPFC notes that the Claimant's financial information is incomplete, as only gross receipts are listed and lacked a detailed breakdown of expenses and other accounting information. Additionally the NPFC made a request for full and complete profit and loss statements so as to further evaluate the Claimant's claim. As discussed above, the Claimant failed to provide this requested information. Accordingly, the NPFC evaluated the Claimant's claim with the originally submitted financial data.

³⁴ Spreadsheet titled 'Gross Income for 2010'.

³⁵ Spreadsheet titled 'Gross Income for 2009'.

³⁶ Spreadsheet titled 'Gross Income for 2008'.

³⁷ 2009 Form 1040 Federal Tax Return.

³⁸ 2008 Form 1040 Federal Tax Return.

³⁹ 2010 Form 1040 Federal Tax Return.