

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1417
Claimant	: ACES Tennis Foundation
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
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 claims for certain individual and business claims on behalf of BP.

### **CLAIM AND CLAIMANT:**

On 16 September 2011, Thomas d'Aquin, on behalf of ACES Tennis Foundation (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$785,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant operates a tennis instruction school in the Biloxi, Mississippi area.<sup>1</sup> The Claimant asserts that as a result of the Deepwater Horizon oil spill, the largest donor to his tennis school decided to abandon her residency in the Gulf Coast region.<sup>2</sup> The Claimant further asserts that because the donor did not wish to live in the region anymore, she withdrew her monetary support for the school,<sup>3</sup> and without the financial support of the donor, the school suffered a reduction in participants,<sup>4</sup> and a loss of profits.

The Claimant did not provide a calculation to explain his sum certain of \$785,000.00.

Prior to presenting this Claim to the NPFC, the Claimant filed a claim with BP on 21 June 2010.<sup>5</sup> This claim was denied.<sup>6</sup> Additionally, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF for loss of profits and impairment of earnings capacity on 23 August 2010 in the amount of \$10,000.00.<sup>7</sup> The Claimant was assigned Claimant ID # 1102129 and Claim ID # 5507. The GCCF granted payment on the EAP on 08 January 2011 in the amount of \$10,000.00.<sup>8</sup> Additionally, the Claimant accepted a Quick Pay Final Payment, Claim

<sup>1</sup> Optional OSLTF Claim Form received 16 September 2011.

<sup>2</sup> PHONECON between the NPFC and the Claimant dated 23 September 2011.

<sup>3</sup> PHONECON between the NPFC and the Claimant dated 23 September 2011.

<sup>4</sup> PHONECON between the NPFC and the Claimant dated 23 September 2011.

<sup>5</sup> Report from the GCCF dated 06 October 2011.

<sup>6</sup> Report from the GCCF dated 06 October 2011.

<sup>7</sup> Report from the GCCF dated 06 October 2011.

<sup>8</sup> GCCF Notice of Determination dated 08 January 2011.

ID # 9000854, on 10 January 2011, in the amount of \$25,000.00.<sup>9</sup> The Claimant filed an Interim Payment Claim Quarter III 2011 (ICQ32011) with the GCCF for loss of profits and impairment of earnings capacity on 23 July 2011 in the amount of \$100,000.00.<sup>10</sup> The GCCF denied the ICQ32011 Claim because of Claimant's previous acceptance of a Quick Pay Final Payment.<sup>11</sup>

The NPFC denied the claim originally on October 13, 2011 for two reasons. First, the \$785,000 claim had not been properly or completely presented to the RP prior to presentment to the NPFC. As noted above the Claimant presented an EAP claim with the GCCF for loss of profits and impairment of earnings capacity on 23 August 2010 in the amount of \$10,000.00.<sup>12</sup> The Claimant accepted a Quick Pay Final Payment from the GCCF on 10 January 2011 in the amount of \$25,000.00.<sup>13</sup>

Additionally, the Claimant presented an ICQ32011 to the GCCF for a loss of profits on 23 July 2011 in the amount of \$100,000.00.<sup>14</sup> However, the ICQ32011 claim was filed with the GCCF after accepting the Quick Pay Final Payment from the GCCF.<sup>15</sup> Thus, the Claimant waived his right to present additional claims to the RP/GCCF. Thus, any claimed amount of damages exceeding \$25,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and was therefore denied by the NPFC.

The NPFC denied the claim for a second reason. Based on the information available to the NPFC, the Claimant accepted a Final Payment from the RP/GCCF in the amount of \$25,000.00.<sup>16</sup> In order to accept a Quick Pay Final Payment, a Claimant must execute a Release and Covenant Not to Sue in return for the GCCF's final payment.<sup>17</sup> By signing this Release and Covenant Not to Sue, a Claimant has released to the RP/GCCF any rights to additional recovery regarding losses arising from the Deepwater Horizon oil spill.<sup>18</sup>

Any payment from the OSLTF requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF when the Claimant accepted the Quick Pay final payment, the Claimant cannot also recover from the OSLTF.

In its denial the NPFC stated that if the Claimant believed that payments received from the RP/GCCF were for damages other than those that were the subject of the claim, the Claimant must explain this in his request for reconsideration. 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 as well as a duplicate copy of what he presented to the GCCF in order to prove the costs he was paid are not the same.

Thomas d'Aquin presented a separate but associated \$100,000 claim with the NPFC as an employee of ACES Tennis Foundation. The NPFC claim # for that claim submission is N10036-1306 which was denied on September 2, 2011 because the Claimant (1) had been fully

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<sup>9</sup> GCCF Notice of Quick Payment Final Claim Determination dated 10 January 2011.

<sup>10</sup> Report from the GCCF dated 06 October 2011.

<sup>11</sup> Report from the GCCF dated 06 October 2011.

<sup>12</sup> Report from the GCCF dated 06 October 2011.

<sup>13</sup> GCCF Notice of Quick Payment Final Claim Determination dated 10 January 2011.

<sup>14</sup> Report from the GCCF dated 06 October 2011.

<sup>15</sup> Report from the GCCF dated 06 October 2011.

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

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

<sup>18</sup> GCCF Release and Covenant Not to Sue.

compensated by the RP/GCCF and waived his rights to further recovery regarding this injury by signing a full and final release, (2) materially misrepresented elements of his claim, (3) failed to provide documentation sufficient to demonstrate that he suffered a financial loss, and (4) failed to provide evidence to show that any loss he might have suffered was a result of the Deepwater Horizon oil spill.<sup>19</sup> Mr. d'Aquin did not request reconsideration of that claim.

### **REQUEST FOR RECONSIDERATION:**

The Claimant requested reconsideration of NPFC Claim N10036-1417, which was received by the NPFC on October 19, 2011 via email. The Claimant provided a two-page letter requesting reconsideration. No other information or documentation was provided by the Claimant in support of his arguments on reconsideration. The Claimant identified his sum certain on reconsideration as \$85,000.00 vice the original \$785,000.00 written on the Claimant's Optional OSLTF Claim Form that was signed and dated on September 13, 2011.<sup>20</sup>

### **REQUEST FOR RECONSIDERATION and CLAIMANT'S CLAIM ANALYSIS:**

The NPFC has summarized the Claimant's written assertions in his request for reconsideration letter as follows:

- The Claimant argues several facts regarding his claims and executed documents with the GCCF. He states that he filed two separate claims; one was for "that year" and the other was for... long term and the duration of either funds or funding for the time that Ms. Lavagna had agreed upon." He also states that GCCF acknowledges two claims in a letter dated June 22, 2011. The two claims are #7193307 and #1102129. GCCF paid Claim # 1102120.
- The Claimant notes that in letters that Ms. Lavagna sent to the GCCF she stated that because of the news, the way Mr. Feinberg was lying and misrepresenting everything and her becoming ill on Gulf shrimp that she decided not to pay the balance to the foundation.
- The Claimant discusses issues he has with Claim No. N10036-1417 before the NPFC. The Claimant states staff mischaracterized him and discriminated against him. He states he is only asking for the balance of his second distinct claim and that he is requesting \$140,000.00 minus donations received and the first distinct claim and that he is entitled to \$85,000.00.
- The Claimant further argues that he should sue because the NPFC said he was asking for \$785,000.00. The Claimant further states that it is ridiculous that an employee of the NPFC called his list of clients associated with ACES Tennis Foundation as that could have been disastrous. The Claimant argues that he believes the NPFC employee violated privacy laws and states he is in contact with the Attorney General.

### **NPFC Determination on Reconsideration**

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<sup>19</sup> The NPFC references the Claimant's other submission as an employee of ACES Tennis Foundation because information presented in that claim subsequently crosses over to this claim, which is on behalf of the ACES Tennis Foundation only.

<sup>20</sup> Optional OSLTF Claim Form received 16 September 2011.

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration, including the two-page letter provided with the request for reconsideration.

After reviewing the Claimant's reconsideration letter, the NPFC offers the following:

- Claimant's letters states that he filed two separate claims; one was for "that year" and the other was for...long term and the duration of either funds or funding for the time that Ms. Lavagna had agreed upon." These statements relate to the GCCF claims and communications and the NPFC only has knowledge about what has been presented directly to the NPFC and the GCCF has made to the NPFC about Claimant's presentment to them as required by 33 CFR 136.103(a).

The NPFC agrees that the Claimant has presented two claims to the NPFC to date. Claim # N10036-1306 was a claim for \$100,000.00 of lost profits for the Claimant, Thomas d'Aquin, as an employee of ACES Tennis Foundation. That claim was for alleged reduced wages associated with his employment with ACES Tennis Foundation because the business was allegedly adversely affected by the Deepwater Horizon oil spill incident. As noted above that claim was denied on September 2, 2011.

The second claim is this claim submission identified as claim # N10036-1417, which was presented by ACES Tennis Foundation and signed by Thomas d'Aquin as President of the Foundation. The Claimant's OSLTF Claim Form requested \$785,000.00 and was signed on September 13, 2011.

The NPFC agrees that the Claimant received payment from GCCF. The NPFC can confirm that a GCCF letter dated June 22, 2011 identifies two claim submissions to the GCCF. One submission identified as #1102129 with the Claimant name identified as ACES Tennis Foundation, received a \$10,000.00 Emergency Advance Payment on September 27, 2010 and also received a Quick Pay payment in the amount of \$25,000.00 on March 20, 2011. According to this letter the other submission, identified as #7193307, was not paid because the claim form was illegible.

There is other evidence in the record reflecting that the Claimant received payment from GCCF. The Claimant provided to the NPFC a copy of an email response he received from Senator Vitter's office dated September 7, 2011 that had attached to it a response from Senator Vitter office dated August 5, 2011 that stated his office received information from the GCCF confirming that ACES Tennis Foundation c/o Thomas d'Aquin received payment of \$10,000.00 and a final Quick Pay payment of \$25,000.00 along with a Release and Covenant Not

To Sue. This settled and finalized all claims from ACES Tennis Foundation to the GCCF.

- The Claimant states he is only asking for the balance of his second claim. The Claimant states that he is requesting \$140,000.00 minus donations received and the first distinct claim and that he is entitled to \$85,000.00. The NPFC acknowledges that his claim is for \$85,000 but states that his claim form presented to the NPFC on September 16,2011 did not clearly state that his sum certain was \$85,000.
- The Claimant argues that the NPFC should not have called his list of clients associated with ACES Tennis Foundation as that could have been disastrous. He believes that this violated privacy laws. Claimant provided that listing via email dated August 22, 2011 as part of claim # N10036-1306. The Claimant, at no time, stated the information provided allegedly in support of his claimed losses was not to be confirmed; therefore, the NPFC proceeded with verifying all information provided and associated with ACES Tennis Foundation. Further, it is not unusual for the NPFC to contact persons or businesses to confirm assertions made by Claimants in support of their claims.

The NPFC considered all information presented by the Claimant on reconsideration. His arguments are not always clear or concise and certain arguments related to his issues with GCCF cannot be addressed by the NPFC. The GCCF and the NPFC are two separate and distinct entities with independent claims processes; therefore it is not possible to cross reference in depth the information submitted by a claimant to the GCCF and then to the NPFC.

The NPFC denies this claim on reconsideration because information in the administrative record and confirmed by GCCF evidences that ACES Tennis Foundation, c/o Thomas d'Aquin, was paid \$25,000.00 final payment and executed a Release and Covenant Not To Sue. Therefore, the claim presented to the NPFC for alleged lost profits cannot be paid from the Fund. Additionally, the Claimant failed to demonstrate a loss in the amount claimed, or that the alleged loss was a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *11/7/11*

Supervisor Action: *Denial on reconsideration approved*

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]@uscg.mil  
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5890  
11/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1570 0001 4802 6197

ACES Tennis Foundation  
ATTN: [REDACTED]  
134 B Oak Grove Place  
Biloxi, MS 39530

RE: Claim Number: N10036-1417

Dear [REDACTED]:

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 claim number N10036-1417 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

Thomas S. Morrison  
Chief, Claims Adjudication Division  
U.S. Coast Guard

ENCL: Claim Summary / Determination Form