

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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5890
9 March 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2988

Eduardo Espinoza
[REDACTED]

RE: Claim Number: N10036-1568

Dear Mr. Espinoza:

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 N10036-1568 involving Deepwater Horizon. 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 N10036-1568.

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: (1) Claim Summary / Determination Form
(2) Documentation Presented by the Claimant, N10036-1568

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1568
Claimant	: Eduardo Espinoza
Type of Claimant	: Individual (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$41,372.79

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 16 November 2011, Eduardo Espinoza, (referred to as “the Claimant”) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$41,372.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ This loss is associated with the loss of a single property rental, as well as with a lack of clientele for interpreting/translating services that did not materialize in 2010 because of impacts of the Deepwater Horizon oil spill.²

The Claimant owns a town house in Naples, Florida, which he rented to seasonal visitors beginning in 2009 and also acts as a self-employed interpreter and translator for French-, Spanish- and Portuguese-speaking vacationers to the Naples and Fort Myers area.³ The Claimant is a citizen of Canada and United States Legal Resident Alien, with primary residence in Naples, Florida.⁴

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 § 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:

¹ Optional OSLTF Claim Form signed 7 November 2011 and received 16 November 2011.

² Claimant letter to NPFC dated 7 November 2011.

³ Claimant letter to NPFC dated 7 November 2011 and Claimant Affidavit dated 5 November 2010.

⁴ Claimant Affidavit dated 5 November 2010, U.S. (DHS) Permanent Resident Card A# 096-567-623 and Florida Driver License E215-205-63-060-0.

- (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 presented a large amount of documentation, which is summarized in Enclosure (2).

Based upon the information received from the Claimant and independent verification by the NPFC, the Claimant presented two claims to the GCCF on 10 December 2010, both for \$16,350.00, and was issued GCCF Claimant Identification # 7210257.⁵ On his Emergency Action Payment (EAP) Claim, GCCF Claim # 4033728 was issued and, on his GCCF Full Review Final Claim (FRF), GCCF Claim # 9069733 was issued. The NPFC also verified that both of these claims have been denied.⁶

Because the EAP and FRF claims presented to the RP/GCCF each were for a damage amount of \$16,350.00 and the damage amount presented to the NPFC was \$41,372.79, the NPFC can be

⁵ Optional OSLTF Claim Form received 16 November 2011, GCCF Letter dated 13 December 2010, GCCF Denial Letter on Interim Payment/Final Payment Claim dated 22 April 2011, and GCCF – U.S. Coast Guard Report as of 16 February 2012.

⁶ GCCF Denial Letter on Interim Payment/Final Payment Claim dated 22 April 2011 and GCCF – U.S. Coast Guard Report as of 16 February 2012

adjudicated only for the amount presented to the RP/GCCF.⁷ Amounts claimed to the NPFC in excess of \$16,500.00 are denied for lack of proper presentation to the Responsible Party.⁸

Further, because the subject matter of the EAP and FRF claims appear to be based upon the same subject matter, i.e. loss of profits and earning capacity resulting from the loss of rental income and from the loss of interpreting and translating service fees, the NPFC deems this Claim Summary Determination as being outcome determinative for both of the Claimant's prior GCCF claims.

The Claimant's documentation includes correspondence with the GCCF, a number of affidavits and statutory declarations, two lease documents, tax forms for the years 2008, 2009 and 2010, a Canada passport, a Florida Driver License, and a U.S. (DHS) Permanent Resident Alien Card.

The Claimant provided documentation of a lease for his house during the period 1 May through 31 August 2010.⁹ The Claimant also provided documentation of a lease to another party during the period 1 December 2009 through 1 March 2010.¹⁰ A second part of the amount claimed is for the loss of income due to cancellation of the 1 May to 31 August 2010 lease allegedly due to the oil spill.¹¹

The Claimant states that his clients for interpreting and translating services are mostly French Canadian retirees visiting Southwest Florida during the winter and summer.¹² He also states that some clients are from South America and Europe. The second component of the amount claimed is for loss of income due to a lack demand for interpreting and translating, due to the oil spill.¹³

NPFC Determination

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. 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 has considered all documentation presented by the Claimant.

This claim is denied because the Claimant has failed to prove (1) that he has incurred loss of profits or impairment of earnings capacity damages in the amount alleged and (2) that his alleged loss was due to the Deepwater Horizon spill.

(1) Failure to prove damages:

The first element a claimant must prove in a lost profits or impairment of earnings capacity claim is that the claimant has incurred the alleged damages. Regarding the lost lease income, the

⁷ 33 U.S.C. §136.103(a).

⁸ 33 U.S.C. §136.103(a).

⁹ Residential Lease signed 1 May 2010 by Eduardo Espinoza and Mauro Gonzalez, for 7650 Bristol Circle, Naples, FL from 1 May to 31 August 2010.

¹⁰ Residential Lease signed 15 November 2009 by Eduardo Espinoza and Daniel Bouchard, for 7650 Bristol Circle, Naples, FL from 1 December 2009 to 1 March 2010.

¹¹ Statutory Declaration by Mauro Gonzalez before attorney Stephanie Valois of the Quebec Bar on 7 September 2011 (Original in French, with translation to English by Adrian J. Alpendre on 15 September 2011).

¹² Notarized Affidavit of Eduardo E. Espinoza on 5 November 2010.

¹³ Notarized Affidavit of Eduardo E. Espinoza on 29 October 2010.

Claimant provided evidence of having leased his home prior to the oil spill, as well as a lease for the period 1 May to 31 August 2010. The Claimant also provided a notarized affidavit from the lessee indicating that he cancelled the lease.¹⁴ It is unclear, however, if the Claimant calculated lost profits from the cancelled lease on his house over a three-month or four-month period, beginning 1 May 2010. Further, the NPFC was unable to reach the lessee, who lives in Montreal, Quebec, to confirm the lease, to confirm if any payments were made on the lease, and to resolve the apparent discrepancy over the length of the lease.

Regarding the alleged loss relating to his translation services, the Claimant did not present evidence of historical income from his translation and interpreting business for specific clients but only annual income reported on taxes.¹⁵ 2009 income for translation was \$39,110.00¹⁶ and 2010 income was \$4,176.00.¹⁷

One of the persons, whose notarized affidavit was provided, indicated that she is a realtor who normally had French Canadian seasonal customers in May through October (working class, summer vacationers) and January through April (snowbirds). Each season, she added, she hired the services of the Claimant, who is fluent in four languages.¹⁸ During a phone conversation with this realtor, she stated that she normally paid the Claimant in cash, about \$200 per hour for shorter engagements and, for one two-week engagement in 2009; she paid the Claimant \$3,000.¹⁹ The Claimant stated that he received an hourly rate of \$200 to \$230 per hour.²⁰ The Claimant did not provide documentation of any agreements with customers or real estate agents for 2010 engagements that were either completed or cancelled. The Claimant also stated that he accepted cash payments only and did not trust banks.²¹

In light of the above, the Claimant has failed to prove his damages because the documentation he has provided is insufficient in its ability to be authenticated.

(2) Failure to prove causation:

The second element a claimant must prove in a lost profits or impairment of earnings capacity claim is that the alleged loss is due to the oil spill. Here, the Claimant provided a notarized statement from the lessee in that he cancelled the agreements they had previously with the Claimant "Due to the bad news coming from the oil spill incident in the Gulf of Mexico area".²² The NPFC was unable to reach the lessee, who lives in Montreal, Quebec, to confirm the reason for cancelling the lease, as well as how and when the cancellation was made.

Regarding the Claimant's interpreting and translation service losses, no documentation has been provided to show that reductions in earnings for this business in 2010 were the result of the Deepwater Horizon oil spill, not other factors, such as general economic conditions.

The NPFC notes that its' own independent investigation into the background of this claim reveals that the tourism in the Naples/Fort Meyer Florida area was not down overall between

¹⁴ Statutory Declaration by Mauro Gonzalez before attorney Stephanie Valois of the Quebec Bar on 7 September 2011 (Original in French, with translation to English by Adrian J. Alpendre on 15 September 2011).

¹⁵ 2008, 2009 and 2010 Forms 1040 Schedule C for Eduardo Espinoza, Interpreter and Translation Services.

¹⁶ 2009 Form 1040 Schedule C for Eduardo Espinoza, Interpreter and Translation Services.

¹⁷ 2010 Form 1040 Schedule C-EZ for Eduardo Espinoza, Interpreter and Translation Services.

¹⁸ Notarized Affidavit of Linda Ester Tejada Arosemena on 27 October 2010.

¹⁹ Summary of phone conversation between Linda Tejada and NPFC Staff on 23 November 2011.

²⁰ Summary of phone conversation between the Claimant and NPFC Staff on 9 January 2012.

²¹ Summary of phone conversation between the Claimant and NPFC Staff on 9 January 2012.

²² Statutory Declaration by Mauro Gonzalez before attorney Stephanie Valois of the Quebec Bar on 7 September 2011 (Original in French, with translation to English by Adrian J. Alpendre on 15 September 2011).

2009 and 2010.²³ The inability to verify specific cancellations submitted as evidence, coupled with the stability of the tourism markets, as indicated by the statistical evidence, leads the NPFC to conclude that the Claimant has not met his burden of proof on this claim.

Accordingly, this claim is denied for the following reasons: (1) the Claimant has failed to sufficiently demonstrate that he incurred damages in the amount alleged and (2) the Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *3/9/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

²³ Naples, Marco Island, Everglades Convention & Visitors Bureau Tourist Tax Collections History Calculated by Month Payed by Guests, dated 22 July 2011, http://www.paradisecoast.com/media_center/research_files/colliercountytouristdevelopmenttaxcollectionchart.pdf, last accessed 8 March 2012.

Enclosure (2)
Documentation Presented by Claimant
N10036-1568

Documentation provided by the Claimant

1. Optional OSLTF Claim Form signed 7 November 2011 and received 16 November 2011.
2. Claimant letter to NPFC dated 7 November 2011.
3. GCCF letter dated 13 December 2010.
4. GCCF Denial Letter on Interim Payment/Final Payment Claim dated 22 April 2011.
5. Notarized Affidavit of Eduardo E. Espinoza on 5 November 2010.
6. Notarized Affidavit of Linda Esther Tejada Arosemena on 27 October 2010.
7. Notarized Affidavit of Priscilla Bletterman on 12 September 2011.
8. U.S. Bank Home Mortgage statement to Eduardo Espinoza dated 20 October 2011 for property at 7650 Bristol Circle, Naples, FL.
9. Notarized Affidavit of Eduardo E. Espinoza on 29 October 2010.
10. Notarized Affidavit of Vincent Torres on 5 October 2011.
11. Statutory Declaration by Mauro Gonzalez before attorney Stephanie Valois of the Quebec Bar on 7 September 2011 (Original in French, with translation to English by Adrian J. Alpendre on 15 September 2011).
12. Statutory Declaration by Samuel Noo before attorney Stephanie Valois of the Quebec Bar on 5 September 2011 (Original in French, with translation to English by Adrian J. Alpendre on 15 September 2011).
13. Residential Lease signed 1 May 2010 by Eduardo Espinoza and Mauro Gonzalez, for 7650 Bristol Circle, Naples, FL from 1 May to 31 August 2010.
14. Residential Lease signed 15 November 2009 by Eduardo Espinoza and Daniel Bouchard, for 7650 Bristol Circle, Naples, FL from 1 December 2009 to 1 March 2010.
15. 2010 Form 1040 Schedule C-EZ for Eduardo Espinoza, Interpreter and Translation Services.
16. 2009 Form 1040 Schedule C for Eduardo Espinoza, Interpreter and Translation Services.
17. 2008 Form 1040 Schedule C for Eduardo Espinoza, Interpreter and Translation Services.
18. Canada Passport issued to Eduardo Espinoza, Canadian national, Passport No. JQ539536
19. Pages 14 and 15 of the Visa section of passport.
20. 2010 W-2 Form from Express Services, Inc.
21. 2010 W-2 Form from Legal Aid Serv. of Brow. City, Inc.
22. 2010 Form 1040 w/Schedules C-EZ, SE, & M and Worksheets & Depreciation Reports.
23. 2009 Form 1040 w/Schedules C, SE, L & M and Worksheets & Depreciation Reports.
24. 2008 Form 1040 w/Form 8829, Schedules C & SE.
25. Form 4506T-EZ for the IRS to provide tax information to the NPFC, if requested.
26. Florida Driver License E215-205-63-060-0.
27. U.S. (DHS) Permanent Resident Card A# 096-567-623.