

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 1-800-280-7118  
E-mail: arl-pf-mpfc@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 8795

5890/DWHZ  
16 February 2012

Natural Family Physicians, Inc.  
c/o Law Offices of [REDACTED]  
P.O. Box 337  
Naples, Florida 34106

Re: Claim Number: N10036-1590

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 the claim number N10036-1590 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 N10036-1590.

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

Claimant: Natural Family Physicians, Inc  
4536 SW 3<sup>rd</sup> Avenue  
Cape Coral, Florida 33914

By CERTIFIED MAIL – RETURNED RECEIPT # 7011 1570 0001 4802 8764

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1590
Claimant	Natural Family Physicians
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$64,149.00

### ***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 1 December 2011 the Natural Family Physicians through its attorney, David A. Dancu (NFP/The Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$64,149.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant owns and operates a holistic medical practice in Cape Coral, Florida. The Claimant alleged that the oil spill caused a “dramatic reduction in tourism” which negatively impacted the local economy, causing residents to be unable to continue to use his services.<sup>2</sup> Specifically, the Claimant stated that “tourists were reluctant to come to Florida, specifically the [southwest] Florida area, because of the potential dangers and media coverage showing the traveling oil slick.”<sup>3</sup> According to the Claimant, the “city’s revenue is very much dependent upon tourism. When tourists spend the money in our city, locals who have earned that money, spend it.”<sup>4</sup>

The Claimant alleged to have incurred actual losses of \$34,149.00 and anticipates incurring future losses of \$30,000.00.<sup>5</sup> The Claimant does not specify the period covered by this claim.

### ***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

---

<sup>1</sup> Optional OSLTF Claim Form, signed on 29 November 2011.

<sup>2</sup> Claimant’s statement to the GCCF dated 15 June 2011.

<sup>3</sup> Optional OSLTF Claim Form, signed on 29 November 2011.

<sup>4</sup> Claimant’s statement to the GCCF dated 15 June 2011.

<sup>5</sup> Claimant’s statement to the GCCF dated 15 June 2011.

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.
- (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 submitted the following documentation:

- Optional OSLTF Claim Form, received on 1 December 2011;
- Correspondence signed by Robert Murdoch of Natural Family Physicians, Inc, dated 29 November 2011, and giving his counsel, David Dancu permission to act on his behalf and as his representative before the NPFC;
- Correspondence from Claimant's counsel David Dancu dated 1 December 2011;
- Claim Cover letter from Claimant's counsel David Dancu dated 15 November 2011;
- Correspondence from Claimant's counsel providing information requested from NPFC, dated 8 December 2011;
- Correspondence from the Claimant to the GCCF explaining his rationale and basis for the claim for loss of profits, dated 15 June 2011;
- Affidavit of the Montessori Academy (Belkis Young) dated 8 July 2011;
- Affidavit of Karen Sharpe dated 15 July 2011;

- Affidavit of Philip Dyer dated 20 July 2011;
- Affidavit of Ashco & Associates (Ashley Cohen) dated 29 July 2011; and
- Affidavit of Amy Wittman dated 15 July 2011<sup>6</sup>

Prior to presentment to the NPFC, the Claimant presented a Full Review Final (FRF) Claim to the RP/GCCF seeking loss of profits and earnings damages in the amount of \$34,149.00.<sup>7</sup> The Claimant was assigned GCCF Claimant ID #3525559 and the EAP claim was assigned GCCF Claim # 9399722.<sup>8</sup> This claim was denied by the GCCF.<sup>9</sup>

On 1 December 2011 the Claimant presented this claim to the NPFC, seeking \$64,149.00 in loss of profits and impairment of earning capacity damages.<sup>10</sup> Claims previously presented by the Claimant to the RP/GCCF total \$34,149.00<sup>11</sup>. OPA requires that any claim for costs or damages presented to the NPFC, be first presented to the RP.<sup>12</sup> Because the Claimant has presented damages to the NPFC which exceed the amount of damages presented to the RP by \$30,000.00, this claim is initially denied in this amount.

### **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 this claim.

As noted above, \$30,000.00 of the alleged damages presented in this claim is initially denied, as these damages were not first presented to the RP/GCCF prior to being presented to the NPFC.<sup>13</sup>

Regarding the remaining \$34,149.00 in alleged lost profits damages, the Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a financial loss in this amount and (2) that the alleged loss was due to the discharge of oil resulting from the Deepwater Horizon oil spill.

In his initial submission to the NPFC, the Claimant presented various affidavits from patients, noting that they observed a decline in the Claimant's business following the Deepwater Horizon oil spill.<sup>14</sup> However, the Claimant failed to provide actual financial documentation to show if, and to what extent he may have sustained a financial loss. The Claimant also failed to provide documentation sufficient to prove that the alleged loss was due to the discharge of oil resulting from the Deepwater Horizon oil spill.

In a letter dated 2 December 2012, the NPFC requested that the Claimant provide certain information to further develop this claim. Among other items, the NPFC requested that the Claimant provide financial documentation, such as income tax returns, to demonstrate that the

<sup>6</sup> Claimant's Submission to the NPFC

<sup>7</sup> GCCF United States Coast Guard Report, 4 January 2012.

<sup>8</sup> GCCF United States Coast Guard Report, 4 January 2012.

<sup>9</sup> GCCF United States Coast Guard Report, 4 January 2012

<sup>10</sup> Optional OSLTF Claim Form, dated 1 December 2011.

<sup>11</sup> GCCF United States Coast Guard Report, 4 January 2012

<sup>12</sup> 33 C.F.R. § 136.103(a)

<sup>13</sup> 33 C.F.R. § 136.103(a).

<sup>14</sup> Copies of various affidavits included in Claimant's submission to the NPFC.

Claimant sustained an actual financial loss, and to identify the extent of the alleged loss. The NPFC also requested that the Claimant provide documentation, including a list of clients, to show that the Claimant's alleged loss was due to the Deepwater Horizon oil spill.<sup>15</sup> As of the date of this determination, the Claimant has failed to respond.

Additionally, the NPFC notes that tourism statistics for Lee County, Florida fail to support the Claimant's assertion that the oil spill caused a "dramatic reduction in tourism."<sup>16</sup> For example, total visitation to Lee County in August of 2010, increased by 22.7%, as compared to total visitation in August of 2009.<sup>17</sup> For the year of 2010, total visitation increased by 2.3% as compared to 2009, with the percentage of individuals staying in paid accommodations, increasing by 4.9%.<sup>18</sup>

Based on documentation provided by the Claimant, as well as independent research conducted by the NPFC, this claim is denied because the Claimant failed to meet his burden to demonstrate (1) that the claim was properly presented to the Responsible Party, (2) that he sustained a loss in the amount of \$64,149.00, and (3) 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: *2/16/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

---

<sup>15</sup> NPFC request for additional information, dated 2 December 2011.

<sup>16</sup> See, [www.leevcb.com](http://www.leevcb.com).

<sup>17</sup> Lee County Visitors & Convention Bureau, Monthly Visitor Profile Report, August 2010, available at, <http://www.leevcb.com/content/monthly-visitor-profile-reports>. Accessed on 15 February 2012.

<sup>18</sup> Lee County Visitors & Convention Bureau, Annual Visitors Profile Summary Report, 2010, available at, <http://www.leevcb.com/content/annual-visitor-profile-summary-reports>,. Accessed on 15 February 2012.