

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8696

5890/DWHZ
10 February 2012

USA FutureTech, Inc.
Attn: [REDACTED]
2891 New Hanover Square Rd.
Gilbertsville, PA 19525

Re: Claim Number: N10036-1609

Dear Captain Dunlap:

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 N10036-1609 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 N10036-1609.

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	N10036-1609
Claimant	USA FutureTech, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$78,748.00

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 16 December 2011, Billy Wayne Dunlap, on behalf of USA FutureTech, Inc. , (collectively the “Claimant”), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$78,748.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a small business that performs construction/remodeling and environmental remediation in the New Orleans area.¹ The Claimant asserts reduced business due to the Deepwater Horizon oil spill.² The Claimant attributes the loss of business to the general economic conditions in the New Orleans area and the economic “ripple effect” from the Deepwater Horizon oil spill’s influence on the commercial fishing market and tourism industry.³

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

¹ Letter of claim explanation from the Claimant to the NPFC, dated 2 December 2011.

² Letter of claim explanation from the Claimant to the NPFC, dated 2 December 2011.

³ Letter of claim explanation from the Claimant to the NPFC, dated 2 December 2011.

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.

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:

- Letter of claim explanation from the Claimant to the NPFC, dated 2 December 2011;
- GCCF letter and information packet dated 28 October 2010;
- Claimant's GCCF claim packet dated 23 November 2010;
- Email from the GCCF to the Claimant, dated 8 December 2010;
- Screenshot of the Claimant's On-line "Claimant Information";
- GCCF Claim Form;

- Summary of Options for Submission of Final and Interim Payment Claim, dated 17 December 2010;
- Letter from GCCF to Claimant, dated 26 January 2011;
- Letter from GCCF to Claimant, dated 31 January 2011;
- 2010 Form 1099-MISC from V.A. Financial Services Center;
- GCCF denial letter dated 22 April 2011;
- GCCF follow-up to denial letter dated 12 October 2011;
- 2010 Form 1120 Federal Income Tax Return;
- 2009 Form 1120 Federal Income Tax Return;
- 2008 Form 1120 Federal Income Tax Return;
- 2007 Form 1120 Federal Income Tax Return;
- USA FutureTech, Inc. worksheet on earnings and profits from 2006-2010.
- Incorporation documents and general information on USA FutureTech;
- Airline Oaks Trailer Park lease agreement dated 2 February 2010;
- Storage facility invoices from 2007-2009;
- Various documentation of the Claimant's submission of "Dualzorb" to according the requirements of the NCP;
- Various internet/newspaper articles regarding Deepwater Horizon oil spill;
- Oxford International report entitled "Potential Impact of the Gulf Oil Spill on Tourism";
- Claimant's letter in response to requested additional information, dated 12 January 2012;
- Claimant's "Labor and Material Lien" dated 26 April 2010;
- Sales Invoices from the 2008, 2009, and 2010;
- Contract agreement for "renovations" dated 7 July 2006;
- 2006 Form 1099-MISC from Litton Loan Servicing
- 2007 Form 1099-MISC from Litton Loan Servicing;
- Contract agreement dated 6 November 2006;
- 2006 Form 1099-MISC from SSA;
- USA FutureTech, Inc. "Assumptions Made Worksheet."

Prior to presenting this claim to the NPFC, the Claimant filed Full Review Final claim for loss of earnings with the GCCF on 8 December 2010 in the amount of \$78,748.00.⁴ The Claimant was assigned Claimant ID # 03226905 and Claim # 9058583 (FRF1). This claim was denied by the GCCF.⁵

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim regarding loss of earnings is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced reduced earnings in his construction business. The NPFC deems that the Claimant's GCCF claim was properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1609 considers and addresses the earnings claimed in the claim presented to the responsible party regarding loss of earnings, specifically; GCCF Claim #9058583 (FRF1).

⁴ Report from the GCCF dated 2 February 2012.

⁵ Report from the GCCF dated 2 February 2012.

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.

This claim is denied because the Claimant failed to prove he suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that homeowners were “unable to carry out home improvement construction service due to the spill and unable to continue with improvement on property due to the potential loss of revenue.”⁶ The Claimant contends that the spill created a “ripple effect” that caused homeowners and businesses to reduce their spending on renovations, expansions, and new construction.⁷ As well, the Claimant notes that, because of a decrease in property values, there has been an increase in home foreclosures which has decreased homeowners’ willingness to make improvements to their homes.⁸

However, the Claimant concedes that “[t]he economy is to blame for some of the decline in the construction line of business across the nation....”⁹ Also, when asked about the reason for the significant variance in earnings from year to year, the Claimant responded “Over the past three years, the availability of funds for contracting jobs is smaller and resources are harder to find.”¹⁰ Furthermore, the Claimant did not provide any documentation of contracts or projects that were cancelled specifically due to the Deepwater Horizon oil spill. Accordingly, the Claimant failed to prove that any individual loss he experienced occurred as a result of the Deepwater Horizon oil spill, as opposed to other factors such as the declining national housing market and other economic factors.

This claim is denied because the Claimant failed to meet his burden to demonstrate a loss in the amount claimed or 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: *2/10/12*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

⁶ Letter of claim explanation from the Claimant to the NPFC, dated 2 December 2011.

⁷ Letter of claim explanation from the Claimant to the NPFC, dated 2 December 2011.

⁸ Letter of claim explanation from the Claimant to the NPFC, dated 2 December 2011.

⁹ Letter of claim explanation from the Claimant to the NPFC, dated 2 December 2011.

¹⁰ Claimant’s letter in response to requested additional information, dated 12 January 2012.