

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1640
Claimant	: William Davies
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$7,216.60

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 17 January 2012, William G. Davies III (the Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$52,436.80 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant worked for The St. Petersburg Times (“Times”) selling newspapers, as well as selling advertisement space in the newspapers, to major hotel chains and resorts on the beach in St. Petersburg, Florida.¹ The Claimant asserted that, at the end of 2010 and the beginning of 2011, it became apparent that the Deepwater Horizon oil spill was having a severe effect on tourism at St. Pete Beach.² The reduction in customers at the hotels on the beach led to a reduction in newspaper sales.³ This Claimant asserted that the extended period of decline in newspaper sales led to restructuring at the Times and the elimination of the Claimant’s job, along with his entire department, on 4 October 2011.⁴

The Claimant calculated his loss by adding together his lost 2011 salary (\$5,217.60) with eligible bonus money he lost due to the layoff (\$2,000.00) for a total of \$7,217.60 in lost wages in 2011.⁵ He also requested his entire lost salary from 2012, which he based on what his 2011 salary should have been (\$45,219.20), for a combined sum certain of \$52,436.80 in damages.⁶

Prior to presenting this claim to the NPFC, the Claimant filed an Interim III (ICQ32011) claim for loss of profits with the GCCF on 16 July 2011 in the amount of \$16,000.00.⁷ The Claimant was assigned Claimant ID # 3531300 and Claim # 9418418. This claim was denied by the

¹ Letter from the Claimant, dated 12 December 2011.

² Letter from the Claimant, dated 12 December 2011.

³ Letter from the Claimant, dated 12 December 2011.

⁴ Letter from the Claimant, dated 12 December 2011.

⁵ Letter from the Claimant to the NPFC, dated 10 January 2012.

⁶ Letter from the Claimant to the NPFC, dated 10 January 2012.

⁷ Report from the GCCF, dated 16 February 2012.

GCCF.⁸ The Claimant also filed two Full Review Final Payment claims for loss of profits with the GCCF; Claim # 9445853 on 29 August 2011 for \$8,000.00 (FRF1) and Claim # 9449001 on 18 October 2011 for \$51,000.00 (FRF2).⁹ Both of these claims were denied by the GCCF.¹⁰ Lastly, the Claimant filed an Interim IV (ICQ42011) claim with the GCCF for loss of earnings on 04 December 2011 in the amount of \$7,216.60.¹¹ He was assigned Claim # 9542570. The GCCF denied this claim on 28 February 2012.¹²

REQUEST FOR RECONSIDERATION:

On April 26, 2012, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on March 26, 2012 on the basis that (1) some of the Claimant's alleged damages were for future losses and not compensable under OPA, and (2) the Claimant failed to prove that his alleged loss was due to the Deepwater Horizon oil spill.

Non-Compensable Damages

The Claimant indicated that his claimed damages to the NPFC included the value of his entire 2012 salary from the Times.¹³ However, under 33 CFR § 136.235, "the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*."¹⁴ Therefore, the Claimant cannot be compensated for any prospective damages that might accrue in the future. Consequently, all losses for future earnings in 2012 asserted by the Claimant are non-compensable under OPA and therefore were denied.

Failure to Prove Causation

The remainder of this claim was denied because the Claimant failed to prove he experienced a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted this his position at the Times was eliminated due to reduced newspaper sales precipitated by a decline in tourism related to the Deepwater Horizon oil spill.¹⁵ However, statistics provided by the St. Petersburg/Clearwater Area Convention and Visitors Bureau do not support the Claimant's assertions of reduced tourism in the area in 2010, or in 2011.

The statistics indicated that there was a .2% increase in total visitors to the area for the period of May through August of 2010, compared to the corresponding period in 2009.¹⁶ Specifically regarding the category of visitors that includes hotel guests, there was a 1.1% increase for the May through August period in 2010.¹⁷ This pattern held true for the period of September through December of 2010 as well, where there was a 2.6% increase in total visitors over the corresponding period in 2009, with a 4% increase in the specific category of visitors including

⁸ Denial Letter on Interim Payment/Final Payment Claim, dated 20 July 2011.

⁹ Report from the GCCF, dated 16 February 2012.

¹⁰ Report from the GCCF, dated 16 February 2012.

¹¹ Report from the GCCF, dated 16 February 2012.

¹² Denial Letter on Interim Payment/final Payment Claim, dated 28 February 2012.

¹³ Letter from the Claimant to the NPFC, dated 10 January 2012.

¹⁴ Emphasis added.

¹⁵ Letter from the Claimant, dated 12 December 2011.

¹⁶ St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, retrieved on 20 March 2012 from: <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>

¹⁷ St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, retrieved on 20 March 2012 from: <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>

hotel guests.¹⁸ The statistics show that visitor numbers continued to increase during 2011. For the entire 2011 year, the area experienced an increase of 3.8% in total visitors over 2010, with a 6.4% increase in the specific category of visitors including hotel guests.¹⁹

Furthermore, the NPFC noted that the Claimant's separation letter from the Times did not mention a specific reason for the termination of the Claimant's position.²⁰ On 16 February 2012, the NPFC contacted the Times to inquire as to the reason for his termination and specifically asked whether it occurred as a result of the Deepwater Horizon oil spill. The Times indicated that it would not give the NPFC any specific information regarding the reason for the Claimant's layoff.²¹ However, the NPFC was able to acquire several news articles published by the Times regarding employee layoffs and budget cuts for the paper. The first article, published prior to the Deepwater Horizon oil spill on 24 September 2009, included a memo written by the CEO of the Times, Paul Tash. This memo stated that, due to a "prolonged economic storm" and after "it was clear the recession would go longer and deeper than predicted," the Times cut salaries for all employees and health care benefits for retirees.²² The memo further mentioned that these cuts "are part of a plan to re-structure the company on a smaller revenue base."²³

The NPFC located a second article published on 08 September 2011 by the Times. It also included news of budget cuts and planned job reductions at the newspaper. A letter from Paul Tash to the staffers was included in the article; it again referenced the effects of the "recession" and a "sputtering economy."²⁴ Later, after the job cuts were announced, another article was published on 11 October 2011, which included a letter written by the Editor of the Times. This letter addressed the layoffs, stating that, "the work is underway to restructure our newsroom, adjust our leadership ranks and lower our costs in this terrible economy."²⁵ Considering all the above, the Claimant failed to prove that his alleged loss was a result of the Deepwater Horizon oil spill, as opposed to other factors, such as the long-term effects of a poor economy.

This claim was denied because (1) some of the damages claimed are not compensable under OPA since they are for future losses, and (2) the Claimant failed to meet his burden to demonstrate that the alleged loss was 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.

¹⁸ St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, retrieved on 20 March 2012 from: <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>

¹⁹ Visit St. Petersburg/Clearwater December 2011 Visitor Profile, retrieved on 20 March 2012 from: <http://www.pinellascvb.com/statistics/2011-12-%20Visitor%20Profile.pdf>

²⁰ Letter to Claimant from St. Petersburg Times, dated 03 October 2011.

²¹ PHONECON between the NPFC and The St. Petersburg Times on 16 February 2012.

²² "St. Petersburg Times announces 5 percent, across-the-board pay cut for staffers," Tampa Bay Times, retrieved on 20 March 2012 from: <http://www.tampabay.com/blogs/media/2009/09/st-petersburg-times-announces-5-percent-across-the-board-pay-cut-html>

²³ "St. Petersburg Times announces 5 percent, across-the-board pay cut for staffers," Tampa Bay Times, retrieved on 20 March 2012 from: <http://www.tampabay.com/blogs/media/2009/09/st-petersburg-times-announces-5-percent-across-the-board-pay-cut-html>

²⁴ "Pay for staffers at St. Petersburg Times cut five percent for five months under new cost-saving plan," Tampa Bay Times, retrieved on 20 March 2012 from: <http://www.tampabay.com/blogs/media/content/pay-staffers-st-petersburg-times-cut-five-percent-five-months-under-new-cost-saving-plan>

²⁵ "Layoffs under way at the St. Petersburg Times as editor sends memo to staff," Tampa Bay Times, retrieved on 20 March 2012 from: <http://www.tampabay.com/blogs/media/content/layoffs-under-way-st-petersburg-times-editor-sends-memo-staff>

RECONSIDERATION CLAIM ANALYSIS:

The Claimant requested reconsideration which was received by the NPFC on April 26, 2012. The Claimant provided a two-page letter that requested his claim be reconsidered. The Claimant states he is providing new information which consists of newspaper articles from the Tampa Bay Times local newspaper and Bay News 9 media coverage of the Gulf Oil Spill. Claimant states that the news articles directly contradict the NPFC's denial of his claim.

The Claimant has also amended his alleged loss amount from \$ 52,436.80 to \$7,216.60. The Claimant calculated his sum certain on reconsideration at the weekly rate of pay of \$869.60 from November 25, 2011 to the end of the year which the Claimant states consisted of 6 weeks totaling \$5,217.60 plus an additional loss amount of \$2,000.00 for fourth quarter bonus losses he states he would have made had he not lost his job. The Claimant's total alleged loss on reconsideration is \$7,216.60.

NPFC Determination on Reconsideration

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.

The NPFC performed a complete review of the documentation presented by the Claimant. The request for reconsideration was a two-page letter with no new information other than news articles the Claimant asserts contradicts the NPFC's denial and the Claimant amended his sum certain on reconsideration from \$52,436.80 to \$7,216.60.

One news article provided by the Claimant on reconsideration dated April 20, 2012 entitled "*Two years later, a local look back at the Gulf oil spill*" references the CEO of Tradewinds Resort in St. Pete Beach, Mr. Tim Bogott as saying 2010 was one of the worst years in his 36 year career in the tourism industry. The Tradewinds location was identified as one of the Claimant's customers and as such, the Claimant states the referenced news article proves the tourist industry was the worst.

The NPFC has determined that the statement in the news article is only a statement not supported by statistics unlike the statistics the NPFC referenced in its initial denial determination which was provided directly from the St. Petersburg/Clearwater Area Convention Center and Visitors Bureau Annual Profile data.

Additionally, the Claimant argues he should not be penalized because his former employer will not provide information to the NPFC on the nature of the Claimant's loss of employment with them. While the NPFC did reach out to the Claimant's former employer in hopes of obtaining detailed information on the exact cause of the Claimant's termination, the governing claims regulations state that the burden is on the Claimant to provide the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

As addressed in the NPFC's initial denial determination, the Claimant's termination letter does not state the exact reason for the Claimant's termination and when coupled with the statements made by the CEO of the Times in 2009 and 2011, it is evident other issues had been plaguing the newspaper for quite some time. The first article published prior to the Deepwater Horizon oil spill on 24 September 2009, included a memo written by the CEO of the Times, Paul Tash. This memo stated that, due to a "prolonged economic storm" and after "it was clear the recession would go longer and deeper than predicted," the Times cut salaries for all employees and health care benefits for retirees.²⁶ The memo further mentioned that these cuts "are part of a plan to restructure the company on a smaller revenue base."²⁷

The NPFC also previously pointed out that a second article was published on 08 September 2011 by the Times. That article included news of budget cuts and planned job reductions at the newspaper. A letter from Paul Tash to the staffers was included in the article and it again referenced the effects of the "recession" and a "sputtering economy."²⁸

Later, after the job cuts were announced, another article was published on 11 October 2011, which included a letter written by the Editor of the Times. This letter addressed the layoffs, stating that, "the work is underway to restructure our newsroom, adjust our leadership ranks and lower our costs in this terrible economy."²⁹

In consideration of the arguments made by the Claimant on reconsideration along with his amended loss amount, the NPFC has determined that this claim is again denied upon reconsideration because the Claimant has failed to meet his burden to demonstrate that the alleged loss was 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: *Thomas Morrison*

Date of Supervisor's review: *5/16/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

²⁶ "St. Petersburg Times announces 5 percent, across-the-board pay cut for staffers," Tampa Bay Times, retrieved on 20 March 2012 from: <http://www.tampabay.com/blogs/media/2009/09/st-petersburg-times-announces-5-percent-across-the-board-pay-cut-html>

²⁷ "St. Petersburg Times announces 5 percent, across-the-board pay cut for staffers," Tampa Bay Times, retrieved on 20 March 2012 from: <http://www.tampabay.com/blogs/media/2009/09/st-petersburg-times-announces-5-percent-across-the-board-pay-cut-html>

²⁸ "Pay for staffers at St. Petersburg Times cut five percent for five months under new cost-saving plan," Tampa Bay Times, retrieved on 20 March 2012 from: <http://www.tampabay.com/blogs/media/content/pay-staffers-st-petersburg-times-cut-five-percent-five-months-under-new-cost-saving-plan>

²⁹ "Layoffs under way at the St. Petersburg Times as editor sends memo to staff," Tampa Bay Times, retrieved on 20 March 2012 from: <http://www.tampabay.com/blogs/media/content/layoffs-under-way-st-petersburg-times-editor-sends-memo-staff>

U.S. Department of
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United States
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5/16/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7520

William Davies
[REDACTED]

RE: Claim Number: N10036-1640

Dear Mr. Davies:

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 N10036-1640 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

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

Encl: Claim Summary / Determination Form