

U.S. Department of
Homeland Security

**United States
Coast Guard**




Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
18 April 2012

Mr. Anthony Kevin Faoutas


Re: Claim Number: N10036-1646

Dear Mr. Faoutas:

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 N10036-1646 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 N10036-1646.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1646
Claimant	Anthony Faoutas
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$44,847.59

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 20 January 2012, Mr. Anthony Faoutas, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$44,847.59 in loss of profits and impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is the President of a surf shop in Destin, Florida. The Claimant stated the oil spill caused him to be unable to pay his salary beginning in May of 2010. The Claimant stated, "I did not pull salary during January 2010 thru April 2010 and was to start drawing salary as of May, but was not able to as a result of business decline due to the oil spill."²

The Claimant asserts that his personal salary losses have not been compensated and therefore seeks \$44,847.59 in lost personal income as a result of the Deepwater Horizon oil spill.

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:

- (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

¹ Optional OSLTF Claim Form, signed on 10 January 2012.

² Email from the Claimant to the GCCF, 13 October 2010.

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, signed on 10 January 2012;
- 2008 Form W-2 Wage and Tax Statement, showing earnings of \$16,153.92;
- 2009 Form W-2 Wage and Tax Statement, showing earnings of \$21,538.56;
- 2010 Form W-2 Wage and Tax Statement, showing earnings of \$9,423.12;
- Paystub detail, 10/15/2011, \$864.88;
- GCCF Denial of Quick Payment Final Claim, 28 December 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 25 June 2011;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 23 March 2011;
- GCCF Claim Submission, including the following:
 - Authorization and Release to access GCCF documentation;
 - GCCF Form Generated Online;
 - GCCF Interim Payment Claim Form;
 - GCCF Quick Payment Final Claim Form;
 - Copy of the Claimant's driver's license;
 - GCCF Change of Address Request;
 - Copy of the Claimant's car insurance policy;
 - USPS Official Change of Address Confirmation Letter;
 - Aqua Surf Shop Payroll Summary; 1/7/2009 – 10/28/2009;
 - Record of unemployment compensation, 5/16/10 – 5/29/10;
 - Record of unemployment compensation, 5/2/10 – 5/15/10;
 - 2008 Form 1040, showing adjusted gross income of \$71,852.00;
 - 2009 Form 1040, showing adjusted gross income of (-\$67,140.00);
 - Handwritten letter from the Claimant to the GCCF;
 - Handwritten letter from the Claimant to the GCCF, 1 April 2011;
 - Handwritten statement from the Claimant to the GCCF, noting that the Claimant had not received any pay or income during the last quarter of 2010;

- 2010 Form W-2 Wage and Tax Statement, showing wages of \$9,423.12;
- Handwritten statement from the Claimant, noting that he did not pay himself a salary from January – April 2010, undated;
- Various emails from the Claimant to the GCCF, regarding the Claimant’s salary in 2010;
- Letter from the GCCF to the Claimant, requesting additional information, 8 October 2010;
- Letter from the GCCF to the Claimant, denying Emergency Advance Payment claim, 24 November 2010;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 23 March 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 25 June 2011;

Prior to presentment of this claim to the NPFC, the Claimant filed a claim with the RP/GCCF for losses incurred by his business, the Aqua Surf Shop, under Claimant ID 1147985.³ On behalf of his business, the Claimant received payments from BP and from the GCCF, of \$15,408.00 and \$28,400.00.⁴

On 30 September 2010, the Claimant submitted an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages of \$24,000.00. The Claimant was assigned Claimant ID 3052755 and the EAP claim was assigned claim # 106998.⁵ The RP/GCCF denied payment on this claim.

On 1 March 2011, the Claimant presented a First Quarter Interim Claim (ICQ12011) to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages in the amount of \$21,904.00.⁶ The Claimant was assigned Claimant ID 3052755 and the ICQ10211 was assigned claim # 9293845. The RP/GCCF issued payment of \$9,745.21 on this claim.⁷

On 1 April 2011, the Claimant presented a Second Quarter Interim Claim (ICQ22011) to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages in the amount of \$5,050.00. The ICQ22011 was assigned claim # 9341858 and was also denied by the RP/GCCF.⁸

On 2 December 2011, the Claimant presented a Quick Pay Final claim (Quick Pay) to the RP/GCCF. The Quick Pay claim was assigned claim # 9542820 and was also denied.⁹

On 20 January 2012, the Claimant submitted this claim to the NPFC, seeking loss of profits and impairment of earning capacity damages of \$44,847.59.¹⁰ The NPFC may adjudicate this claim to the extent that these damages were first presented to and denied by the RP/GCCF.¹¹ Any damages now presented to the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentment.

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

³ Email from GCCF to the NPFC re claim presentment, 22 February 2012.

⁴ Email from GCCF to the NPFC re claim presentment, 22 February 2012.

⁵ GCCF United States Coast Guard Report, 3 March 2012.

⁶ GCCF United States Coast Guard Report, 3 March 2012.

⁷ GCCF United States Coast Guard Report, 3 March 2012.

⁸ GCCF United States Coast Guard Report, 3 March 2012.

⁹ GCCF United States Coast Guard Report, 3 March 2012.

¹⁰ Optional OSLTF Claim Form, signed on 20 January 2012.

¹¹ 33 C.F.R. § 136.103(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.

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an uncompensated financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In a letter dated 9 March 2012, the NPFC requested that the Claimant support this claim with certain additional documentation to prove that the Claimant sustained an uncompensated loss, and to show that the loss was due to the effects of the Deepwater Horizon oil spill. Among other items, the NPFC requested that the Claimant provide tax documentation and other financial records to indicate the extent of the Claimant's business losses.¹² This information is necessary for the NPFC to determine whether or not the \$53,553.30 in payments made to the Claimant and his business have fully compensated the Claimant for any financial losses he may have incurred.

The NPFC requested that the Claimant respond to the additional information request within 14 days of the date of the NPFC letter. As of the date of this determination, the Claimant has failed to respond. Therefore, the NPFC is unable to determine whether or not the Claimant's financial losses have been fully compensated by payments made by the RP/GCCF.

Furthermore, the Claimant has not provided evidence that would show that any losses he may have incurred were a result of the Deepwater Horizon oil spill. Rather, evidence provided by the Claimant indicates that he was not drawing a salary prior to the oil spill from January through April of 2010.¹³ The Claimant has not provided evidence to show that the factors preventing him from drawing a salary prior to the oil spill did not continue to affect him after the oil spill. Furthermore, the Claimant has not provided proof, such as the monthly profit and loss statements requested by the NPFC, to show that his business earnings actually declined in the period following the oil spill.¹⁴

Based on the information currently before the NPFC, this claim is denied because the Claimant has failed to meet his burden to demonstrate (1) that he sustained an uncompensated loss in the amount of \$44,847.59, and (2) 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: *4/18/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² NPFC Request for additional information, 9 March 2012.

¹³ Email from the Claimant to the GCCF, 13 October 2010.

¹⁴ NPFC Request for additional information, 9 March 2012.