

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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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
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5890/DWHZ  
8 March 2012

[REDACTED]  
c/o Law Offices of Attorney Jeff Keel, Esq.  
4045 Henderson Blvd.  
Tampa, FL 33629

Re: Claim Number: N10036-1658

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 N10036-1658 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 N10036-1658.

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: Anthony Chillemi

[REDACTED]  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7011 1570 0001 2446 4050

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1658
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$14,474.20

### ***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 27 January 2012, Jeff Keel, Esq., on behalf of Mr. Anthony Chillemi, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$14,474.20 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working as a Poker Dealer in the Card Room of the St. Petersburg Kennel Club/Derby Lane Greyhound Race Track.<sup>2</sup> The Claimant alleged to have sustained a loss of income of \$7,237.10 in 2010 due to a decrease in tourism in Pinellas County following the Deepwater Horizon oil spill, asserting that “tourists cancelled or postponed visits to Pinellas area due to the spill.”<sup>3</sup>

In order to calculate his losses, the Claimant multiplied his alleged actual losses by 2, to reach a “final claim settlement offer” of \$14,474.20.<sup>4</sup>

### ***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.

<sup>1</sup> Optional OSLTF Claim Form, signed on 12 January 2012.

<sup>2</sup> Letter from the Claimant’s employer, 21 July 2011.

<sup>3</sup> Optional OSLTF Claim Form, signed on 12 January 2012.

<sup>4</sup> Claim Calculation document.

- (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, signed on 12 January 2012;
- Authorization for Legal Representation, signed on 12 January 2012;
- Claim Calculation document;
- GCCF Follow-Up to Previous Denial Letter, 14 October 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 15 September 2011;
- Payroll Summary Report by Calendar For the Reporting Period 01/01/2010 – 12/31/2010;
- Letter from the Claimant's employer, verifying employment and pay rate, 21 July 2011;
- 2008 W-2 Wage and Tax Statement, showing yearly earnings of \$54,927.07;
- 2009 W-2 Wage and Tax Statement, showing yearly earnings of \$41,869.62;
- 2010 W-2 Wage and Tax Statement, showing yearly earnings of \$51,259.88;

On 24 August 2011 the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$14,747.00.<sup>5</sup> The Claimant was assigned Claimant ID # 1629729 and the FRF claim was assigned claim # 9443282.<sup>6</sup> The RP/GCCF denied payment on this claim.

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<sup>5</sup> GCCF United States Coast Guard Report, 21 February 2012.

<sup>6</sup> GCCF United States Coast Guard Report, 21 February 2012.

On 27 January 2012, the Claimant submitted this claim to the NPFC, seeking \$14,747.00 in loss of profits and impairment of earning capacity damages.<sup>7</sup> The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.<sup>8</sup> Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$14,747.00.

### **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.

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 actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

#### 1. Failure to demonstrate an actual financial loss.

The Claimant alleged that he sustained a \$7,237.10 loss in salary and tip earnings due to decreases in tourism following the Deepwater Horizon oil spill in 2010.<sup>9</sup>

However, the Claimant's pay stubs fail to demonstrate that the Claimant's pay actually decreased in the period following the oil spill. Rather, the Claimant's earnings vary from pay period to pay period, indicating no discernable decrease for any particular period. Furthermore, the Claimant's W-2 Wage and Tax Forms indicate that in 2008, 2009 and 2010, the Claimant reported respective earnings of, \$54,927.07, \$42,869.62 and \$51,259.88.<sup>10</sup> Because the Claimant's earnings increased by 19.57% from 2009 to 2010, and because the Claimant's pay stubs do not indicate that his earnings dropped following the oil spill, financial documentation provided by the Claimant fails to indicate that the Claimant sustained a loss or reduction in income in 2010.

#### 2. Failure to prove loss due to Deepwater Horizon oil Spill.

The Claimant asserts that a decrease in tourism in Pinellas County following the oil spill resulted in his alleged loss of income in 2010.<sup>11</sup>

However, 2010 Pinellas County tourism statistics indicate that tourism in the summer and fall of 2010 did not decrease as compared to the previous year. The 2010 Annual Visitors Profile for Pinellas County indicates that the number of visitors to the county in May, June, July and August 2010, actually increased as compared to those months of 2009.<sup>12</sup> Likewise, the Visitors Profile indicates that expenditures in the spring and summer months of 2010, did not drop, but remained

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<sup>7</sup> Optional OSLTF Claim Form, signed on 12 January 2012.

<sup>8</sup> 33 C.F.R. § 136.103(a).

<sup>9</sup> Claim Calculation document; Optional OSLTF Claim Form, signed on 12 January 2012.

<sup>10</sup> 2008, 2009, 2010 Form W-2 Wage and Tax Statements.

<sup>11</sup> Optional OSLTF Claim Form, signed on 12 January 2012.

<sup>12</sup> St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>, at 6. Accessed on 3 January 2012.

at 2009 levels.<sup>13</sup> These statistics are further supported by Pinellas County Bed Tax collections, which indicate year over year increases starting in July of 2010 and continuing through 2011.<sup>14</sup>

Furthermore, information available from the Florida Division of Pari-Mutuel Wagering indicates that gross revenue in the Card Room at the St. Petersburg Kennel Club (the Card Room) where the Claimant was working as a Poker Dealer at the time of the spill, increased in 2010 as compared to 2009. For example, gross receipts in July 2009 were reported at \$645,649.00, compared to \$784,147.00 in July of 2010.<sup>15</sup> Additionally, total yearly revenue for the Card Room for fiscal year 2009/2010 was reported at \$7,290,452.50, as compared to \$8,565,706.00 for fiscal year 2010/2011.<sup>16</sup>

Based on the foregoing, the Claimant has failed to demonstrate that the oil spill negatively affected tourism in Tampa generally, or caused a loss of business at the Card Room specifically.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$14,747.00, 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: *3/8/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>13</sup> St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, Available at, [www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf](http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf), at 7. Accessed on 3 January 2012.

<sup>14</sup> Pinellas County, CVB statistics, Bed Tax Information. Available at, [www.pinellascvb.com/cms/index.php?id=6](http://www.pinellascvb.com/cms/index.php?id=6). Accessed on 3 January 2012.

<sup>15</sup> Florida Division of Pari-Mutual Wagering, Office of Revenue and Financial Analysis, Cardroom Gross Receipts and Tax, Available at, <http://www.myfloridalicense.com/dbpr/pmw/PMW-Statistics.html>, Accessed on 6 March 2012.

<sup>16</sup> *Id.*