

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL ACTION

PINELLAS MARINE SALVAGE, INC., and
JOHN MAVROGIANNIS

Plaintiffs,

vs.

KENNETH R. FEINBERG, and
FEINBERG ROZEN, LLP,
d/b/a GULF COAST CLAIMS FACILITY

Defendants.

CASE NO. 11-1744 CI 013
522011CA001744XX CC

FILED
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APR 25 2011
KENT HARRIS
CLERK OF CIRCUIT COURT

COMPLAINT

COMES NOW Plaintiffs, PINELLAS MARINE SALVAGE, INC. (hereinafter "PMS") and JOHN MAVROGIANNIS, by and through their undersigned attorney, file this action against Defendants KENNETH R. FEINBERG, an individual (hereinafter "Feinberg"); FEINBERG ROZEN, LLP, a District of Columbia limited liability partnership (hereinafter "Feinberg Rozen"); and GULF COAST CLAIMS FACILITY, an entity established by Feinberg acting through and as a partner of Feinberg Rozen, doing business in the State of Florida (hereinafter "GCCF"), and allege as follows:

NATURE OF ACTION

1. On April 20, 2010, an explosion and fire occurred aboard the mobile offshore drilling unit Deepwater Horizon. On the morning of April 22, 2010, the Deepwater Horizon sank

resulting in a massive oil spill incident. Oil flowed into the Gulf of Mexico unchecked for nearly five months. Millions of barrels of oil were discharged into the Gulf of Mexico and upon adjoining shorelines, causing immense environmental and economic harm to the entire region.

2. On August 23, 2010, Defendant GCCF, an entity established by Defendant Feinberg acting through and as a partner of Defendant Feinberg Rozen, replaced the claims process which BP had established to fulfill its obligations as a responsible party pursuant to the Oil Pollution Act of 1990 (hereinafter "OPA"). The protocol established by the defendants sets forth the procedure for the submission and resolution by Defendant GCCF of claims by individuals and businesses for costs and damages incurred as a result of the Deepwater Horizon oil spill incident.

3. All Defendants herein have misled Plaintiffs by fraudulently, recklessly, negligently and/or knowingly stating the protocol under which Defendant GCCF operates is structured to be compliant with OPA and apply the standards of OPA.

4. All Defendants herein have misled Plaintiffs by fraudulently, recklessly, negligently and/or knowingly employing a "Delay, Deny, Defend" strategy against Plaintiffs. This strategy, commonly used by unscrupulous insurance companies, is as follows: "Delay payment, starve claimant, and then offer the economically and emotionally-stressed claimant a miniscule percent of all damages to which the claimant is entitled. If the financially ruined claimant rejects the settlement offer, he or she may sue."

5. Under OPA, claims for damages must be presented first to the responsible party. In the event that a claim for damages is either denied or not paid by the responsible party within 90 days, the claimant may elect to commence an action in court against the responsible party or to

present the claim to the Oil Spill Liability Trust Fund (hereinafter "OSLTF").

6. Under OPA, the 90-day period for Defendant GCCF to honor the claim of Plaintiff PMS began to run when Plaintiff PMS first submitted its claim to BP on July 3, 2010, and cannot be reset by Defendant GCCF. OPA does not allow the responsible party to "re-advertise" a claim through any other entity, for the purposes of "resetting" this period.

7. All Defendants herein have misled Plaintiffs by fraudulently, recklessly, negligently and/or knowingly delaying payment by informing and requiring Plaintiff PMS, who had already submitted an Emergency Advance Payment ("EAP") claim to BP, the responsible party, to resubmit its EAP claim to Defendant GCCF, and wait at least *another* 90 days for Defendant GCCF to not pay its claim before Plaintiff PMS could commence an action in court against the responsible party or could present the claim to the OSLTF.

8. All Defendants herein have misled Plaintiffs by fraudulently, recklessly, negligently and/or knowingly delaying payment by requiring Plaintiff PMS, who had already resubmitted an EAP claim, to submit a Final Payment claim to Defendant GCCF and wait at least *another* 90 days for Defendant GCCF to not pay its claim before Plaintiff could commence an action in court against the responsible party or could present the claim to the OSLTF.

9. All Defendants herein have misled Plaintiffs by fraudulently, recklessly, negligently and/or knowingly delaying payment by telling Plaintiffs "claims will be paid within 90 days after substantiation." Unbeknownst to Plaintiffs and most claimants, according to Defendant GCCF, substantiation means "the claim has been received and reviewed by GCCF." This definition of substantiation allows a claim to be received and held "under review" indefinitely by Defendant GCCF. When Defendant GCCF finally "substantiates" the claim, the claimant is told he or she

will be paid within 90 days.

10. Defendant Feinberg has misled Plaintiffs by fraudulently, recklessly, negligently and/or knowingly using the fear of costly and protracted litigation to coerce Plaintiff PMS to accept grossly inadequate settlements from Defendant GCCF. During widely-reported town hall meetings organized to promote GCCF, Defendant Feinberg repeatedly tells victims of the BP oil spill: "The litigation route in court will mean uncertainty, years of delay and a big cut for the lawyers." and "I take the position, if I don't find you eligible, no court will find you eligible."

11. Defendants Feinberg and GCCF, on their website, indicate the following in the section entitled "Frequently Asked Questions": "To be paid on a Full Review Final Payment Claim, you will have to release and waive any claims that you have or may have in the future against BP and all other potentially responsible parties with regard to the Spill or to submit any claim for payment to the National Pollution Funds Center, the Coast Guard office responsible for evaluating and approving Oil Pollution Act claims, or in court."

12. Defendants Feinberg and GCCF have misled Plaintiffs by fraudulently, recklessly, negligently and/or knowingly failing to inform them that: (a) no claimant should receive any less compensation in the GCCF claims process than they are entitled to under OPA; and (b) under OPA, the term "claim" means "a request, made in writing for a *sum certain*, for compensation for damages or removal costs resulting from an oil spill incident" and any acceptance for a lesser amount *shall not* preclude the claimant from pursuing future recovery for unrecovered amounts with the OSLTF or through litigation.

13. Defendant Feinberg, for the purpose of benefiting himself and Defendant Feinberg Rozen and limiting BP's liability, has misled Plaintiffs by fraudulently, recklessly, negligently

and/or knowingly publicly advising during well-reported town hall meetings, on a number of occasions, potential claimants that the fund which he administers is fully funded in the amount of \$20 billion. At the end of 2010, the most the fund would have had in its escrow account would have been \$5 billion.

14. As of the date of the filing of this Complaint, approximately 237 days have passed since Plaintiff John Mavrogiannis presented a claim for damages to BP, on behalf of Plaintiff PMS, and 97 days have passed since Defendant GCCF allowed Plaintiff to file the GCCF claim form (GCCF 2000-C) for final payment online.

15. This case is brought by Plaintiffs under the following causes of action: (a) Gross Negligence; (b) Negligence; (c) Negligence Per Se; (d) Fraud; (e) Fraudulent Inducement; (f) Promissory Estoppel; and (g) Unjust Enrichment.

JURISDICTION AND VENUE

16. This is an action for damages which exceeds fifteen thousand dollars (\$15,000.00).

17. Venue in this judicial district is proper under Florida Statute § 48.193 because the tortious acts and injuries alleged in this action were committed in Pinellas County, Florida and Defendants operate, conduct, engage in, or carry on a business or business venture in Pinellas County, Florida.

PARTIES

18. Plaintiff Pinellas Marine Salvage, Inc. is a close corporation organized under the laws of the State of Florida. Pinellas Marine Salvage, Inc., believed to be the only full-service marine salvage facility on the west coast of Florida serving the Gulf Coast states of Louisiana,

Mississippi, Alabama and Florida, was founded in January, 1997 by Plaintiff John Mavrogiannis for the purpose of addressing a strong market need for used and refurbished marine parts, supplies and vessels. The company's principal place of business is located in Pinellas County at 198 E. Oakwood Street, Tarpon Springs, FL 34689.

19. Plaintiff John Mavrogiannis is a resident of Pinellas County, Florida, Founder and President of Pinellas Marine Salvage, Inc.

20. Defendant Feinberg is a resident of the District of Columbia and Founder and Managing Partner of Defendant Feinberg Rozen and Founder and Administrator of Defendant GCCF.

21. Defendant Feinberg Rozen is a District of Columbia limited liability partnership with its principal place of business in Washington, D.C. and Founder of Defendant GCCF.

22. Defendant GCCF is an entity established by Defendant Feinberg and Defendant Feinberg Rozen with 13 offices located in the State of Florida including an office located in Pinellas County at 2551 Drew Street, Suite 301, Clearwater, FL 33765.

BACKGROUND FACTS

23. At approximately 10 p.m. on April 20, 2010, the U.S. Coast Guard District Eight command center in New Orleans, Louisiana received a report of an explosion and fire aboard the mobile offshore drilling unit Deepwater Horizon. On the morning of April 22, 2010, the Deepwater Horizon sank, resulting in a massive oil spill incident. Oil flowed into the Gulf of Mexico unchecked for months. Ultimately, the "Macondo Well" was finally sealed on September 19, 2010, nearly five months after the blowout began. By that time, millions of barrels of oil had

been discharged into the Gulf of Mexico and upon adjoining shorelines, causing immense environmental and economic harm to the entire region.

24. OPA requires BP Exploration & Production Inc. (hereinafter "BP"), as the designated "responsible party" for the Deepwater Horizon oil spill, to establish a procedure for the payment or settlement of claims for damages resulting from this oil spill incident.

25. In the initial months after this oil spill incident, BP directly received and paid interim claims arising from the oil spill. During the initial four months, BP contracted with one or more claims adjusting firms to assist in handling claims.

26. On June 16, 2010, President Obama announced that BP agreed to set aside \$20 billion to pay economic damage claims to individuals and businesses affected by the Deepwater Horizon oil spill. President Obama stated, "Another important element is that this \$20 billion fund will not be controlled by either BP or by the government. It will be put in a escrow account, administered by an impartial, independent third party."

27. At the request of the White House and BP, Defendant Feinberg, acting through and as Managing Partner of Defendant Feinberg Rozen, established Defendant GCCF to independently administer and where appropriate settle and authorize the payment of certain claims asserted against BP as a result of the explosion at the Deepwater Horizon rig and consequent spillage of oil into the Gulf of Mexico.

28. On August 6, 2010, BP created the Deepwater Horizon Oil Spill Trust. The Trust Agreement provides, "To secure the payment and performance of its obligations to make the contributions to the Trust hereunder, BP hereby agrees to grant, convey, and/or assign to the Trust first priority perfected security interests in production payments pertaining to BP's U.S. oil

and natural gas production."

29. The Trust Agreement further provides that BP shall contribute: (a) "THREE BILLION DOLLARS (\$3,000,000,000) to the Trust on or about August 9, 2010; (b) an additional TWO BILLION DOLLARS (\$2,000,000,000) to the Trust, in one or more installments, during the fourth calendar quarter of 2010 and by no later than December 31, 2010; and (c) an additional ONE BILLION TWO HUNDRED FIFTY MILLION DOLLARS (\$1,250,000,000) to the Trust, in one or more installments, during and prior to the end of each calendar quarter commencing with the first calendar quarter of 2011 and continuing through the last calendar quarter of 2013."

30. On August 23, 2010, Defendant GCCF, spearheaded by Defendant Feinberg and Defendant Feinberg Rozen, replaced the original BP claims process and commenced performing BP's obligations under OPA with respect to private economic loss claims.

31. The nature of the relationship between BP and Defendant Feinberg and Defendant Feinberg Rozen has been memorialized in a written agreement between Defendant Feinberg Rozen and BP, which was negotiated over a period of several months and was finalized and executed on January 6, 2011. Section 11 of the agreement, titled "Independent Contractor; No Agency," states:

"It is the express intention of the parties that Feinberg Rozen shall be an independent contractor throughout the Term of this Agreement. Except as otherwise agreed to by the parties, nothing in this Agreement shall in any way be construed to constitute Feinberg Rozen as an agent or representative of BP, and Feinberg Rozen shall otherwise perform the Services hereunder as an independent contractor. The execution of this Agreement shall not be construed to create an attorney-client relationship between BP and Feinberg Rozen, and the provision of Services hereunder shall not constitute, or be otherwise construed to constitute, provision of legal advice from Feinberg Rozen, or any of its partners or employees, to BP."

I. The BP Claim Process Sequence of Events

32. On July 3, 2010, Plaintiff John Mavrogiannis presented a claim for damages on behalf of Plaintiff PMS to BP, the responsible party. This claim included 55 pages of supporting documentation. As required by 33 U.S.C. § 2701(3), the claim was "a request, made in writing for a sum certain, for compensation for damages resulting from an oil spill incident." BP approved the PMS claim for damages for a payment of \$13,000.00 per month for 6 months.

33. On July 3, 2010, Plaintiff John Mavrogiannis received a check on behalf of Plaintiff PMS in the amount of \$5,000.00. The check was issued by ESIS, Inc. on behalf of BP for an "Advance on Loss of Income."

34. On or about August 6, 2010, Plaintiff John Mavrogiannis received a second check on behalf of PMS in the amount of \$5,000.00. This second check was also issued by ESIS, Inc. on behalf of BP for an "Advance on Loss of Income."

II. The GCCF Claim Process Sequence of Events

35. At all times material herein, Defendants Feinberg, Feinberg Rozen and GCCF claim the protocols under which Defendant GCCF operates are structured to be compliant with OPA and apply the standards of OPA.

36. At all times material herein, Defendant Feinberg publicly advises potential claimants that they do not need to hire a lawyer and will be much better off accepting what he offers rather than going to court.

37. On August 23, 2010, as demanded by Defendant Feinberg and Defendant GCCF, Plaintiff John Mavrogiannis refiled, on behalf of Plaintiff PMS, the \$78,000.00 claim with

Defendant GCCF. This claim was originally submitted to BP on July 3, 2010 for damages incurred by Plaintiff PMS as a result of the Deepwater Horizon oil spill incident.

38. On October 11, 2010, Plaintiff PMS, by and through its attorney, sent a letter to BP requesting payment in the amount of \$68,000.00 plus accrued interest. This represents the amount due after subtracting the \$10,000.00 received from BP by Plaintiff PMS from the total claim of \$78,000.00. The letter stated, "It is my understanding that BP is committed to paying all legitimate claims for damages resulting from the Deepwater Horizon incident. Given that BP has already approved the PMS claim for a six-month emergency advance payment of \$78,000.00, BP obviously believes that the PMS claim is legitimate."

39. On October 20, 2010, Plaintiff PMS, by and through its attorney, sent a letter to Defendant Feinberg and Defendant GCCF requesting payment in the amount of \$68,000.00 plus accrued interest. The letter reminded Defendants, "As of the date of this letter, it has been 109 days since Mr. John Mavrogiannis, the president of PMS, presented a claim for damages on behalf of PMS to BP."

40. On October 22, 2010, Plaintiff PMS, through its attorney, received a telephone call from a representative of Defendant GCCF who would only identify himself as "Luke." Luke stated, "The PMS claim is deficient. Profit and Loss Statements are required for August, 2010 and September, 2010." This request for supporting documentation was made by Defendant GCCF 111 days after BP had already approved the PMS claim for a six-month emergency advance payment of \$78,000.00.

41. On October 22, 2010, during the same telephone conversation with Luke, attorney for Plaintiff PMS requested approval to file an amended claim which would increase the total

claim amount from \$78,000.00 to \$108,000.00. Luke checked with his supervisor and said, "That should not be a problem if it is supported by documentation." Attorney for Plaintiff PMS requested that Luke send an email approving this amendment. Luke replied, "We are not allowed to receive calls from claimants or receive/send emails to claimants. If you have a question or need to follow-up, you must send an email to info@gccf-claims.com and I will try to call you within 48 hrs." Luke further informed attorney for Plaintiff PMS that "Final Payment claims would not be reviewed by GCCF until after November 23, 2010."

42. On October 26, 2010, Plaintiff PMS, by and through its attorney, filed an amended claim with Defendant Feinberg and Defendant GCCF. This additional interim partial payment ("Emergency Advance Payment") claim included the August, 2010 Profit & Loss Statement, the September, 2010 Profit & Loss Statement, and the 2009 U.S. Income Tax Return for Plaintiff PMS. The letter stated, "Given that Form GCCF 200-SC is not applicable in this situation, PMS, pursuant to 33 U.S.C. § 2705(a), does hereby file an additional interim partial payment ("Emergency Advance Payment") claim to increase the "Amount Claimed" of \$78,000.00 for an Emergency Advance Payment for six months to the "Amount Claimed" of \$108,000.00 for an Emergency Advance Payment for six months. Financial documents supporting this increase are enclosed." Plaintiff, through its attorney requested payment in the amount of \$98,000.00 plus accrued interest.

43. On October 27, 2010, November 2, 2010 and November 9, 2010, Plaintiff PMS, by and through its attorney, sent letters to Defendant Feinberg and Defendant GCCF requesting payment in the amount of \$98,000.00 plus accrued interest without further delay and requesting an explanation as to why the PMS claim has been placed in the perpetual review stage.

44. On November 13, 2010, Plaintiff PMS, by and through its attorney, submitted a Final Payment Claim, in the amount of \$900,000.00, to Defendant GCCF. In the submission cover letter, attorney for Plaintiff PMS states, "Unfortunately, I am unable to file a final payment claim for lost earnings or profits online via the GCCF website. When I enter the GCCF Claimant Identification Number and GCCF Password, I receive the following notice: "We cannot locate your information, please enter your Claimant Identification Number and password again. I attach the Claim Summary and Declaration (5 pages) for the final payment claim for lost earnings or profits by Pinellas Marine Salvage, Inc. I also enclose our Inventory of Documents Submitted in Support of Final payment claim (61 pages)." Pursuant to 33 U.S.C. § 2713(a), a copy of the Claim Summary and Declaration for the final payment claim for lost earnings or profits was also presented to the responsible party.

45. On November 17, 2010, Plaintiff PMS, by and through its attorney, sent a letter to Defendant Feinberg and Defendant GCCF explaining, "We were unable to file the standard GCCF Claim Form for final payment for lost earnings or profits online via the GCCF website. In lieu of the standard GCCF Claim Form, we filed a "Claim Summary and Declaration" for the final payment claim for lost earnings or profits on behalf of PMS. We also submitted sixty-one pages of documents in support of the PMS final payment claim. Pursuant to 33 U.S.C. § 2713(a), we also presented the Claim Summary and Declaration for the final payment claim for lost earnings or profits to the responsible party. The Claim Summary is the Optional OSLTF Claim Form CG NPFC-CA1 (APR 03). Accordingly, we believe GCCF will find this form to be acceptable. PMS will file the additional GCCF Claim Form (GCCF 2000-C) for final payment as soon as GCCF allows the company to do so."

46. On November 18, 2010, Plaintiff PMS, through its attorney, received a telephone call from a representative of Defendant GCCF who would only identify herself as Michelle. Michelle stated, "There is a 'technical problem' with filing Final Payment Claims online which should be resolved in a few days."

47. On November 18, 2010, during the same telephone conversation with Michelle, Michelle asked attorney for Plaintiff PMS "to explain how the oil spill caused a loss in profits for PMS." This request for very basic claim information was made by Defendant GCCF 138 days after BP had already approved the PMS claim for a six-month emergency advance payment of \$78,000.00.

48. On November 20, 2010, the GCCF Final Payment Claim Form was finally able to be signed and submitted online, on behalf of Plaintiff PMS, by Plaintiff John Mavrogiannis.

49. On November 30, 2010 at 0933 hrs., attorney for Plaintiff PMS sent an email to Defendant Feinberg and Defendant GCCF notifying them that "My client, Pinellas Marine Salvage, Inc. ("PMS"), has just informed me that it no longer has the luxury of waiting for you, GCCF or GCCF's Attorney Team to respond. Obviously, the fact that I, as legal counsel for PMS, am not permitted to contact GCCF directly by phone is nothing more than a delaying tactic on your part and GCCF's part. Please be advised that you and GCCF have until 1700 hrs. on December 2, 2010 to pay the PMS EAP claim."

50. On November 30, 2010 at 1712 hrs, a representative from GCCF who identified herself as Lorna Lightfoot calls attorney for Plaintiff PMS and asks, "Where should the check be sent?"

51. On December 1, 2010, Plaintiff PMS, through its attorney, received a telephone call from a representative of Defendant GCCF who would only identify himself as Aaron. Aaron stated, "A check in the amount of \$78,000.00 has been issued by GCCF to Pinellas Marine Salvage, Inc. Pinellas Marine Salvage, Inc. will receive the \$20,000.00 claim balance in the Final Payment Claim." Plaintiff PMS relied upon Defendant GCCF's promise to pay the \$20,000.00 claim balance in the Final Payment Claim and accepted Defendant GCCF's offer. Defendant GCCF paid this Emergency Advance Payment 152 days after BP had approved the claim. Defendant GCCF did not include accrued interest in this Emergency Advance Payment.

52. On December 1, 2010, during the same telephone conversation with Aaron, Aaron informed attorney for Plaintiff PMS, "We are not allowed to receive calls from claimants or receive/send emails to claimants. If you have a question or need to follow-up, you must send an email to info@gccf-claims.com and I will try to call you within 48 hrs."

53. On January 25, 2011, Plaintiff PMS, by and through its attorney, sent a letter to Defendant ~~Feinberg and Defendant GCCF~~, stating in part, "It is my understanding that BP is committed to paying all legitimate claims for damages resulting from the Deepwater Horizon incident. Given that BP/GCCF has already paid PMS, in the amount of \$88,000.00, for its six-month Emergency Advance Payment claim, BP/GCCF obviously believes that the PMS claim is legitimate. As of the date of this letter, 206 days have passed since Mr. John Mavrogiannis presented a claim for damages on behalf of PMS to BP and 66 days have passed since GCCF allowed PMS to file the GCCF Claim Form (GCCF 2000-C) for final payment online. Please forward a check representing payment of the PMS Final Payment claim to the above letterhead address, made payable to The Donovan Law Group, in the amount of \$900,000.00 plus accrued

interest without further delay."

54. On January 28, 2010 and January 31, 2010, Plaintiff PMS, by and through its attorney, sent emails to Defendant Feinberg and Defendant GCCF stating the number of days that have passed since Plaintiff PMS presented a claim for damages to BP and the number of days that have passed since GCCF allowed PMS to file the GCCF Claim Form (GCCF 2000-C) for final payment online. The letter states, "PMS still prefers to resolve this matter in an amicable manner. However, time is of the essence. The economic stress that PMS continues to experience as a result of the disruption of its business activity caused by the BP oil spill is significant. Delaying payment of the PMS Final Payment claim by placing the claim "under review" for an indefinite period of time is unacceptable. Please forward a check, representing payment of the PMS Final Payment claim, in the amount of \$900,000.00 plus accrued interest without further delay."

55. On January 31, 2011, Plaintiff PMS, through its attorney, received a telephone call from a representative of Defendant GCCF who would only identify herself as Michelle. Michelle explained, "Claims will be paid within 90 days after substantiation. Substantiation means "the claim has been received and reviewed by GCCF." When asked if this definition of substantiation allows a claim to be received and held "under review" indefinitely by GCCF, Michelle responded that, "The Pinellas Marine Salvage claim is being reviewed now. GCCF has not started the 90-day clock. But it *probably* won't take another full 90 days."

56. On January 31, 2011, Plaintiff PMS, through its attorney, received a letter, dated January 26, 2011, from Defendant Feinberg and Defendant GCCF stating in part, "The GCCF is currently developing a formula for calculations of future damages to be used in assessing Final