

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  
Number: 7011 1150 0000 4636 2472

5890/DWHZ  
26 September 2011

Ms. Cathelyn Davis



Re: Claim Number: N10036-1397

Dear Ms. Davis:

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 N10036-1397 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 N10036-1397.

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	N10036-1397
Claimant	Ms. Cathelyn Davis
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$17,000.00

### ***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 claims for certain individual and business claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 12 September 2011, Ms. Cathelyn Davis (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$17,000.00 in loss of profits and impairment of earnings capacity, allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working at New Orleans Finest Daiquiri Shop.<sup>2</sup> The Claimant alleged that the business is highly dependent on tourism, which was negatively affected by the Deepwater Horizon oils spill.<sup>3</sup> The Claimant alleged that the Daiquiri Shop “closed down for three months due to lack of business because of the oil spill,” and that when it reopened, business remained slow, causing the Claimant “tremendous lost wages.”<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 Section 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.

<sup>1</sup> Optional OSLTF Claim Form, dated 12 September 2011.

<sup>2</sup> Letter from the Claimant to the NPFC, undated.

<sup>3</sup> PHONECON: NPFC Staff and the Claimant, 22 September 2011.

<sup>4</sup> Letter from the Claimant to the NPFC, undated.

- (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, dated 12 September 2011;
- 2010 Form 1099-MISC, showing nonemployee compensation of \$8,000.00;
- Letter from Jerry Tobias, noting the Claimant's employment at the Daiquiri Shop, undated;
- Letter from the Claimant, describing losses, undated;
- Letter From "Jerry," noting the Claimant's loss of income, undated;
- Copies of unsigned, unlabeled pay stubs;

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment claim (EAP) to the RP/GCCF. This claim was paid in the amount of \$1,000.00 on 6 December 2010.<sup>5</sup>

The Claimant then presented a First Quarter Interim Payment Claim (ICQ12011) seeking loss of profits and impairment of earnings capacity. This claim was assigned Claim # 9332493, and was denied on 7 September 2011.<sup>6</sup>

On 12 September 2011, the Claimant presented this claim to the NPFC, seeking \$17,000.00 in loss of profits and impairment of earnings capacity damages. This determination shall address

<sup>5</sup> Notice of Determination, Emergency Advance Payment, 6 December 2010.

<sup>6</sup> GCCF Claim Status, accessed on 22 September 2011.

this claim to the extent that these alleged damages were first presented to the RP/GCCF. Any amount of the claimed \$17,000.00 now before the NPFC, which was not previously presented to the RP/GCCF is denied for improper presentment.<sup>7</sup>

### **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 and impairment of earnings capacity, the Claimant must demonstrate (1) the she suffered an actual financial loss, and (2) that the loss was caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant alleged that her place of employment was closed from “17 May 2010 to the middle of August 2010”<sup>8</sup> due to “lack of business because of the oil spill.”<sup>9</sup> The NPFC contacted the Claimant’s former place of employment and was informed that the store was in fact closed during that time, but that the closure was due to “internal issues” and not due to the oil spill.<sup>10</sup> The NPFC was also informed that the employer letter included in the Claimant’s submission was not written by anyone at the Daiquiri Shop, and did not contain accurate information with regards to the Claimant’s alleged earnings.<sup>11</sup>

Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. § 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

This claim is denied because the Claimant (1) has materially misrepresented substantial elements of this claim in order to falsely obtain funds from the Federal Government, and (2) has failed to meet her burden to demonstrate that she sustained a financial loss in the amount claimed and that the loss due to the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *9/23/11*



Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

<sup>7</sup> 33 C.F.R. 136.103(a).

<sup>8</sup> Letter from “Jerry,” undated.

<sup>9</sup> Letter from the Claimant, undated.

<sup>10</sup> PHONECON: NPFC Staff and The Daiquiri Shop, 22 September 2011.

<sup>11</sup> PHONECON: NPFC Staff and The Daiquiri Shop, 22 September 2011.