

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 9234

5890/DWHZ
6 August 2012

Ms. Mary Hill


Re: Claim Number: N10036-1817

Dear Ms. Hill:

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 N10036-1817 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 N10036-1817.

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 (1): Claim Summary/Determination Form
(2): Evidence Submitted in Support of NPFC Claim # N10036-1817

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1817
Claimant	Mrs. Mary Hill
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$130,122.00

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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT

On 22 May 2012, Mrs. Mary Hill (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$130,122.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

The Claimant is an officer of Sunrise Erectors, Inc., a construction company with operations based out of Pensacola, Florida.² The Claimant noted that the majority of its business is conducted "south of interstate #10 in Escambia County."³ The Claimant stated that following the oil spill, "builders in response to the panic reduced construction . . . [t]he short fall of contracts resulted in a shortage of work for steel erectors."⁴

Due to losses incurred by the corporation, the officers of the corporation "were required to take a reduction in salary to prevent closure of the business."⁵ The Claimant seeks to recover salary allegedly lost from May 1, 2010 through December 31, 2011, totaling \$130,122.00.⁶

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.

¹ Optional OSLTF Claim Form, signed on 20 February 2012.

² Response to NPFC request for additional information, 13 June 2012.

³ Response to NPFC request for additional information, 13 June 2012.

⁴ Response to NPFC request for additional information, 13 June 2012.

⁵ Response to NPFC request for additional information, 13 June 2012.

⁶ Optional OSLTF Claim Form, signed on 14 May 2012.

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 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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the following documentation:
See Enclosure (2), Evidence Presented in Support of NPFC Claim # N10036-1817.

Prior to presentment of this claim to the NPFC, the Claimant submitted a Second Quarter Interim Payment claim (ICQ22011) to the RP/GCCF, seeking loss of wages and earnings damages.⁷ The GCCF assigned the Claimant ID # 1621816 and assigned the ICQ22011 claim # 9354718.

In a reconciliation re-review letter dated 19 April 2012, the GCCF issued the Claimant payment of \$1,664.99 and offered a \$5,000.00 final payment.⁸ The Claimant did not accept the final payment offer.

On 22 May 2012, the Claimant submitted this claim to the NPFC, seeking \$130,122.00 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.⁹ According to OPA, all claims for costs or damages must be presented to the RP prior to their presentment to the NPFC. Should the RP deny the claim, or fail to issue payment following 90 days of presentment, the Claimant may then present the claim to the NPFC.¹⁰ Documentation included in this claim submission indicates that the Claimant first presented a claim to the GCCF, seeking recovery for lost wages. The NPFC therefore may properly adjudicate this claim to the extent that the damages now presented to the NPFC do not exceed the amount of damages previously presented to the GCCF. Any damages now presented to the NPFC which were not first presented to the GCCF, are denied for improper presentment.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill economic and property damages class action settlement (E&PD Settlement).

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.

As an initial matter, it appears that the Claimant is a member of Deepwater Horizon oil spill economic and property damages class action settlement (E&PD Settlement). This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that she is a member of the economic damages class of the E&PD Settlement, she should submit evidence to indicate that she has either opted out or is excluded from the E&PD Settlement in her request for reconsideration of this claim.

Furthermore, this claim is denied under OPA's loss of profits damage category as the Claimant has failed to establish that she has sustained a financial loss as a result of the Deepwater Horizon oil spill. In order to prove a claim for loss of profits damages, a claimant must provide

⁷ GCCF Claimant Status, accessed on 23 May 2012.

⁸ GCCF Reconciliation Re-Review Letter, 19 April 2012.

⁹ Optional OSLTF Claim Form, signed on 14 May 2012.

¹⁰ 33 C.F.R. § 136.103(c)(2).

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. Here, in order to establish a causal link between the Claimants's alleged loss and the oil spill, the Claimant would have to prove that the oil spill caused the corporate losses which necessitated the reduction in her income.

The Claimant alleged that she was forced to reduce her personal salary for a period lasting from May 1, 2010 through at least December 31, 2011. Although the Claimant has been compensated for losses incurred by her business,¹¹ she now seeks to recover her lost personal income.¹²

Prior to the oil spill, the Claimant reported earnings between \$6,400.00 and \$8,000.00 per month. Beginning in May 2010, the Claimant's income dropped to \$4,404.00 and continued to decrease for the following five months. From November 2010 to May 2011, the Claimant was not paid a salary.¹³

The Claimant uses the average of her 2008, 2009 and 2010 pre-spill income as a basis from which to calculate her loss.¹⁴ The source of the alleged loss and of the Claimant's income in those years is not clear from the evidence presented. Although this claim is for losses incurred in the Claimant's capacity as an officer of a construction company, following a review of the Claimant's payroll and W-2 information, it appears that the Claimant's loss calculations may include losses other than those that are the subject of this claim.¹⁵ Accordingly, the Claimant has not established her alleged loss.

Further, in explaining the Claimant's necessity to reduce her personal salary in response to corporate losses, the Claimant stated, that the "reduction in officer payroll resulted in an equal reduction in losses to the corporation."¹⁶ However, financial documentation provided by the Claimant indicates that the Claimant's corporate losses do not necessarily correspond with reductions in her personal salary. For example, in 2008, the Claimant reported gross sales of \$906,798.00 and a salary of \$84,800.00.¹⁷ In 2009, the Claimant reported a salary decrease of only 1.89%, in spite of the Claimant's gross sales decreasing by 38.83%.¹⁸ From 2009 to 2010 the Claimant's salary decreased by 52.67% in spite of gross sales for the Claimant's business decreasing by only 20.83%. It seems then, that losses to the Claimant's salary do not necessarily reflect corporate losses. Because financial documentation indicates that the Claimant's payment of her salary does not correspond closely with the Claimant's corporate earnings, it does not appear that the effects of the oil spill actually necessitated that the Claimant reduce her salary by the amount claimed.

¹¹ On behalf of Sunrise Erectors, Inc., the GCCF compensated the Claimant a total of \$47,017.90.

¹² In a letter dated 31 May 2012, the NPFC requested that the Claimant provide a copy of the Release and Covenant Not To Sue, signed by the Claimant on behalf of her business. However, the Claimant did not provide the requested Release, providing only the GCCF determination on payment of a claim filed on behalf of Sunrise Erectors, Inc. The Claimant, having signed a Release on behalf of a corporation which she owns, may have waived her rights to further recovery from the OSLTF. The NPFC cannot make this determination, having not been provided with a copy of the Release signed by the Claimant.

¹³ Earning History, Sunrise Erectors, Inc.

¹⁴ Document, *Facts of Claim*, undated.

¹⁵ These losses appear to have resulted from Claimant's loss of income in her position as an insurance agent, for which the Claimant has not included evidence to indicate how these losses might have been caused by the Deepwater Horizon oil spill.

¹⁶ Document entitled, "Facts of Claim" undated.

¹⁷ 2008 Form 1120S; Earning History, Sunrise Erectors.

¹⁸ 2009 Form 1120S; Earning History, Sunrise Erectors.

In order to prove that her personal losses were a result of the oil spill, the Claimant would have to prove that the Deepwater Horizon oil spill caused the corporate losses which lead to the Claimant's personal losses. The Claimant failed to provide evidence to meet this burden. Rather, it appears that the Claimant's corporate earnings decreased prior to the oil spill and that the rate of loss did not increase in the period following the oil spill. The Claimant alleged that following May 2010, construction work became unavailable as a result of the oil spill. However, profit and loss statements provided by the Claimant indicate that corporate income remained steady from May – November of that year, and that her loss stemmed largely from the fact her December sales dropped from \$145,110.56 in 2009 to \$5,142.20 in 2010.¹⁹ The Claimant has not provided evidence that might indicate why the Claimant's sales were unusually low during this month.

In a letter dated 31 May 2012, the NPFC requested that the Claimant provide certain evidence to substantiate her claim. Among other things, the NPFC requested that the Claimant provide evidence of contracts that were cancelled or jobs that were lost as a result of the oil spill.²⁰ The Claimant failed to provide evidence to respond to this request, stating only that the corporation "contracts with general contractors at large with no specific regular contractor."²¹ Without evidence indicating that any specific jobs were cancelled as a result of the oil spill, it is unclear that the Claimant's corporation actually sustained an oil spill related loss- particularly considering that corporate earnings decreased significantly in 2009 prior to the oil spill. Furthermore, the Claimant has not provided evidence to prove that her corporate losses necessitated the reductions in her salary.

Based on the foregoing, this claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$130,122.00, 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. Furthermore, this claim is considered to have been settled by virtue of Claimant belonging to the economic damages class associated with the CSSP.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/6/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁹ 2009, 2010 Monthly Profit and Loss Statements.

²⁰ NPFC request for additional information, 31 May 2012.

²¹ Response to NPFC request for additional information, 13 June 2012.

Enclosure (2)
Evidence Presented in Support of
NPFC Claim # N10036-1817

- Optional OSLTF Claim Form, signed on 22 May 2012;
- List of documents submitted in support of this claim;
- Claim Cover Letter, 9 May 2012;
- GCCF Reconciliation Re-Review letter, 19 April 2012;
- GCCF Form 1012;
- Document titled, "Facts of Claim";
- Sizemore & Company LLC, letter to the Claimant regarding analysis of GCCF findings, 8 May 2012, including supporting documentation as follows:
 - Charts of actual/expected income;
 - Payroll Wages, Corrected Evaluation of Claim;
 - Earning History, Mary Hill Insurance Agent, Aflac Insurance;
 - Corrected Evaluation of Claim, Insurance Agency;
- Cover Sheet, 2008 Tax Return;
 - 2008 Form 1040;
 - 2008 Schedule A (Form 1040);
 - 2008 Schedule B (Form 1040);
 - 2008 Schedule C (Form 1040);
 - 2008 Schedule D (Form 1040);
 - 2008 Schedule D-1 (Form 1040);
 - 2008 Schedule E (Form 1040);
 - 2008 Schedule SE (Form 1040);
 - 2008 Form 6251;
 - 2008 Form 8889;
 - 2008 Form 8801;
 - 2008 Form W-2 Wage and Tax Statement;
- Cover Sheet, 2009 Tax Return;
 - 2009 Form 1040;
 - 2009 Schedule A (Form 1040);
 - 2009 Schedule C (Form 1040);
 - 2009 Schedule E (Form 1040);
 - 2009 Schedule SE (Form 1040);
 - 2009 Form 6251;
 - 2009 Form 8889;
 - 2009 Form 8801;
 - 2009 Form W-2;
- Cover Sheet, 2010 Tax Return;
 - 2010 Form 1040;
 - 2010 Schedule A (Form 1040);
 - 2010 Schedule B (Form 1040A or 1040);
 - 2010 Schedule C (Form 1040);
 - 2010 Schedule D (Form 1040);
 - 2010 Schedule E (Form 1040);
 - 2010 Schedule SE (Form 1040);
 - 2010 Form W-2 Wage and Tax Statement;
- Cover Sheet, 2011 Payroll Documents;

- 2011 Form W-2 Wage and Tax Statement;
- Cover Sheet, 1/1 to 6/30, 2011;
 - Employee Detail for Sunrise Erectors, Inc., 1/1/2011 – 6/30/2011;
- Cover Sheet, 7/1 to 12-31, 2011;
 - Employee Detail for Sunrise Erectors, Inc., 7/1/2011 – 12/31/2011;
 - 2011 Form W-2 Wage and Tax Statement;
- Cover Sheet, 2011, 1099's;
 - 2011 Form 1099-MISC Income Worksheet;
 - 2011 Schedule C (Form 1040);
- Cover Sheet, Jan – Dec 2008, Payroll Documents;
 - 2008 Form W-2 Wage and Tax Statement;
 - Employee Detail for Sunrise Erectors Inc., 1/1/2008 – 12/31/2008;
- Cover Sheet, Jan – Dec 2009, Payroll Documents;
 - 2009 Form W-2 Wage and Tax Statement;
 - Employee Detail for Sunrise Erectors Inc., 1/1/2009 – 12/31/2009;
- Cover Sheet, 2010 Payroll Documents, Jan – April Payroll Documents;
 - Employee Detail for Sunrise Erectors Inc., 1/1/2010 – 4/30/2010;
- Cover Sheet, May – Dec 2010 Payroll Documents;
 - Employee Detail for Sunrise Erectors Inc., 5/1/2010 – 12/31/2010;
 - 2010 Form W-2 Wage and Tax Statement;
- Response to NPFC request for additional information, June 13, 2012, including the following:
 - 2008 Form 1120, showing gross sales of \$906,798.00;
 - 2009 Form 1120, showing gross sales of \$554,692.00;
 - 2010 Form 1120, showing gross sales of \$439,189.00;
 - 2011 Payroll Report;
 - 2010 Payroll Report;
 - 2009 Payroll Report;
 - 2008 Payroll Report;
 - GCCF Determination Letter on Interim Payment/Final payment Claim, 4 February 2012, showing interim payment of \$22,017.90 and final payment of \$25,000.00;
 - GCCF Form 1216;
 - GCCF Final Payment Election Form;
 - Monthly Profit and Loss Statements, 2008 – 2011;