

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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Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 3212 3858

5890/DWHZ  
Claim # N10036-1278  
12 August 2011

M & T Enterprises Inc.  
ATTN: Troy Tolliver  
8735 Colapissa St.  
New Orleans, LA 70118

Re: Claim Number: N10036-1278

Dear Ms. Tolliver:

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 N10036-1278 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 N10036-1278.

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	: N10036-1278
Claimant	: M & T Enterprises, Inc.
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Impairment of Earning Capacity
Amount Requested	: \$15,596.00

### ***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 8 August 2011, Ms. Troy Tolliver, on behalf of M & T Enterprises 2, Inc. (collectively Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,596.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant runs a catering business from her home in New Orleans, primarily serving assisted living communities.<sup>2</sup> She served seafood dishes on Fridays, and alleged that the business suffered a substantial loss due to the high cost of seafood following the oil spill.<sup>3</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.
- (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.

<sup>1</sup> Optional OSLTF Claim Form dated 7 August 2011.

<sup>2</sup> PHONECON: Claimant and NPFC Staff, 11 August 2011.

<sup>3</sup> Optional OSLTF Claim Form dated 7 August 2011; See also, PHONECON: Claimant and NPFC Staff, 11 August 2011.

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 the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 7 August 2011;
- Copy of GCCF deficiency letter on Interim Payment/Final Payment Claim, Claimant ID 3154856, Claim Form ID 9200576;
- Letter from Claimant to GCCF, undated, responding to deficiency letter on Interim Payment/Final Payment Claim;
- Letter from Claimant to GCCF, dated 12 July 2011;
- Copy of Claimant's Louisiana ID card;
- Copy of Claimant's Louisiana Driver's License;
- Profit and Loss Statement, 30 August 2010 to 15 October 2010;
- 2010 Schedule SE (Form 1040);
- Copy of document entitled, "Acknowledgment of Limitations of Home Occupations", dated 24 March 2010, noting start of business on this date;
- 2010 Schedule C-EZ, Form 1040;
- Cover letter, dated 7 August 2011, noting inclusion of financial documentation;
- Louisiana Articles of Incorporation, dated 12 November 2008; and
- Domestic Business Corporation Initial Report, dated 15 November 2008;

Prior to presentation to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF for lost profits and earnings resulting from the Deepwater Horizon oil spill. The Claimant was assigned ID 3154856 and EAP was assigned claim # 209525. This claim was denied by the RP/GCCF on 16 December 2010 due to inability to verify the Claimant's social security information. The EAP was denied on substance on 22 December 2010.

The Claimant then presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF, which was assigned claim # 9200576. The Claimant includes a denial letter from the GCCF, denying this claim # 9200576.<sup>4</sup>

The Claimant has properly presented lost profits and earnings claims to the RP/GCCF, prior to presentation to the NPFC. Therefore, this NPFC determination shall address the Claimant's alleged loss of profits claim in the amount of \$15,596.00, as presented to the NPFC on 8 August 2011, to the extent that amount was previously presented to the RP/GCCF.

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<sup>4</sup> Copy of GCCF deficiency letter on Interim Payment/Final Payment Claim, Claimant ID 3154856, Claim Form ID 9200576.

**NPFC Determination**

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that the 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 the claim.

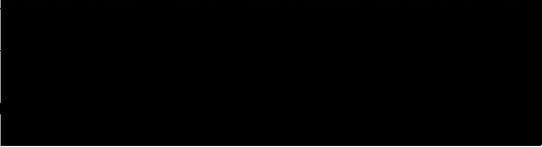
The NPFC has reviewed all information and documentation provided by the Claimant. The Claimant has not provided any evidence to show either (1) that she suffered a financial loss, or (2) that any loss she suffered was a result of the oil spill.

The Claimant's business was incorporated in 2008; however the Claimant has not provided any financial documentation to indicate her business earnings in either 2008 or 2009. Therefore, there is no way to determine how the Claimant's 2010 of earnings of \$5,007.00<sup>5</sup> compare to previous years.

In a phone conversation, the Claimant indicated that although her business was incorporated in 2008, she did not actually start catering until the end of March 2010.<sup>6</sup> She stated that soon thereafter, seafood prices shot up dramatically, which caused her to lose profits.<sup>7</sup> However, the Claimant does not provide any documentation to support the claim that seafood prices increased due to the oil spill, and does not provide any indication that her business actually relied on the availability of seafood. Furthermore, the Claimant has not indicated that she lost any particular catering jobs as a result of the oil spill.

Finally, the Claimant has not provided any documentation that would indicate how she calculated her losses to \$15,596.00.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that the business sustained a loss of \$15,596.00, (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, and (3) how she calculated her damages to arrive at her claimed amount of loss of profits/damages.

Claim Supervisor: *NPFC CL* 

Date of Supervisor's Review: *8/12/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>5</sup> Amount reported on claimants Schedule SE (Form 1040) 2010.

<sup>6</sup> PHONECON: Claimant and NPFC Staff, 11 August 2011.

<sup>7</sup> PHONECON: Claimant and NPFC Staff, 11 August 2011.