

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890

1/4/2011

VIA MAIL and EMAIL: [REDACTED]@gmail.com

[REDACTED]
Parsippany, NJ 07054

RE: Claim Number: N10036-0342

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0342 involving the Deepwater Horizon incident. Compensation is denied because your claimed loss is not caused by the oil-pollution incident.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[REDACTED]
Claims Adjudication Division
U.S. Coast Guard

ENCL: Determination Form

CLAIM SUMMARY / DETERMINATION ON RECONSIDERATION FORM

Date	: 1/4/2011
Claim Number	: N10036-0342
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$1,700.00

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:

Claimant presented a claim of \$1,700.00 to the NPFC for lost earnings. [REDACTED] is claiming cancellation fees associated with vacation travel that was scheduled for 17 people to travel from New York to Orlando, FL, and return travel from Ft. Myers, FL to New York. [REDACTED] who resides in Parsippany, NJ, had flight reservations to Florida on 3 August 2010 and returning to New York on 10 August 2010. The claim documentation provided shows flight reservations made between 9 April 2010 and 17 April 2010. Subsequent to the Deepwater Horizon incident, [REDACTED] decided to cancel his reservations due to the impacts of the incident to the Florida area. The terms of the flight arrangements (as provided by the Claimant) state that for JetBlue Nonrefundable Fares, changes or cancellations may be made prior to scheduled departure for a fee of \$100.00 per person plus any applicable difference in airfare¹. [REDACTED] did not provide the date in which he cancelled the reservations although Claimant states that a fee of \$100.00 per reservation was charged to cancel flight reservations for 17 people.

APPLICABLE LAW:

Damages that may be paid from the OSLTF are those that are described by the Oil Pollution Act of 1990 (OPA) and that result from a discharge or substantial threat of discharge of oil into or upon the navigable waters, adjoining shorelines or the exclusive economic zone. 33 USC 2702. The NPFC may pay a claim for OPA damages from the Oil Spill Liability Trust Fund (OSLTF) if the claim has been presented first to the responsible party and that claim is denied or not settled after 90 days. 33 USC 2713.

OPA damages that may be paid include "damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant" 33 USC 2702(b)(2)(E).

¹ See, JetBlue 'Changing or Canceling your Reservation' as provided by Claimant.

Pursuant to the implementing OSLTF claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.

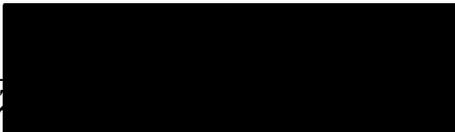
DETERMINATION OF LOSS:

To support his claim, the Claimant submitted an electronic copy of an undated NPFC OSLTF Claim Form, a copy of JetBlue's cancellation policy for non-refundable flight reservations, copies of roundtrip flight itineraries and e-ticket receipts, credit card statement(s), and a copy of the claimant's driver's license. There is no documentation showing the cancellations or payment of cancellation charges totaling \$1700.00. Additionally, the Claimant's submission to the NPFC states that a claim was made to the GCCF and was denied although the Claimant has not provided a copy of the denial letter or any other correspondence with the GCCF.

The NPFC initially denied this claim on December 28, 2010. The claimant requested reconsideration via email on December 29, 2010. To support his request the claimant provided internet links to news articles, and argues that he had no choice but to cancel the flight reservations and incur the cancellation fees.

NPFC Determination

The NPFC once again must deny the claim. The claim is denied because the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. The alleged loss, if any, was caused by personal decisions made by the Claimant to (1) purchase non-refundable round trip airfares and (2) to cancel the scheduled travel to Florida with return travel from Ft. Myers. Such a loss is not a damage that may be compensated from the OSLTF.

Claim Supervisor:	
Date of Supervisor's review:	1/5/11
Supervisor Action:	DECL. APPROVED
Supervisor's Comments:	