

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)

E-mail:
arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1000
21 July 2011

Re: Claim Number: N10036-1000

Dear [REDACTED]

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 N10036-1000 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 N10036-1000.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003916

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1000
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$15,000.00

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 16 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, who worked as a server in an upscale restaurant in Waverly, Alabama, alleged that he was laid off from his position when business at the restaurant declined significantly following the oil spill.²

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

¹ Optional OSLTF Claim Form dated 14 June 2011.

² Id

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, Claimant submitted the following documentation:

- Optional OSLTF claim form;
- 2009 Form 1040EZ, showing wages of \$12,409;
- 2010 Form 1040, showing wages of \$15,686.00;
- Document titled, "Tip Report 2010: [REDACTED] showing tips from 1 Jan 2010 to 23 May 2010;
- Letter from Claimant's employer, indicating that Claimant was let go due to a decrease in business as a result of the oil spill.

Prior to presentation to the NPFC, Claimant presented an Emergency Advance Payment (EAP) Claim for \$12,000.00 in lost wages and earnings to the RP/GCCF on 18 October 2010. Claimant was assigned Claimant ID [REDACTED] and EAP Claim [REDACTED]. Claimant then presented a Second Quarter Interim Claim [REDACTED] for \$20,000.00 in lost wages and earnings and was assigned Claim [REDACTED].

Claimant's EAP and [REDACTED] Claims were denied by the RP/GCCF on 9 November 2010 and 10 May 2011, respectively. Because these claims were properly presented to and denied by the RP/GCCF, and because the claims are based on the same subject matter, the NPFC has consolidated the claims for adjudication. This summary determination shall address both Claimant's EAP and ICQ2 Claims for lost profits and impairment of earning capacity in the amount of \$15,000.00 as presented to the NPFC on 16 June 2011.⁴

³ Optional OSLTF Claim Form dated 14 June 2011.

⁴ Id
09/14/11

NPFC Determination

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

The NPFC reviewed all information and documentation provided by the Claimant. In a letter dated 17 June 2011, the NPFC requested additional information necessary to support the Claimant's submission. The NPFC also contacted the Claimant by phone to notify him of the forthcoming request for additional information.⁵

Documentation requested by the NPFC included information regarding the Claimant's prior earnings in his position as a server, as well as information regarding the Claimant's place of business and its alleged loss.⁶ The Claimant failed to respond to this letter or to provide other evidence that would indicate that he suffered a financial loss as a result of the Deepwater Horizon oil spill.⁷

Based on the information currently available to the NPFC, the Claimant has failed to provide documentation to show that he has suffered a loss, and has also failed to demonstrate a causal link between his alleged loss and the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet its burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

Claim Supervisor 

Date of Supervisor's Review: 7/21/11

Supervisor's Action: **Denial approved**

Supervisor's Comments:

⁵ PHONECON: Claimant and NPFC Staff, 17 June 2011.

⁶ Letter from NPFC to Claimant, 17 June 2011.

⁷ Id

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1001
08 August 2011

Re: Claim Number: N10036-1001

Dear [REDACTED]

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 your claim number N10036-1001 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1001.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[REDACTED] Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1001
Claimant	[REDACTED]
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$146,350.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 20 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$146,350.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant is the co-owner and co-manager of three rental properties in Destin, FL with his wife [REDACTED]. Claimant rents one of the properties to residents via long-term leases, and two² as vacation properties to tourists during the rental season in Destin.³⁴ Additionally, the Claimant expected to manage six other rental properties during the tourism season in Destin, for which he would receive commissions for the rental earnings.⁵ Claimant asserted that as a result of the Deepwater Horizon oil spill, the tourism industry collapsed in Destin, creating a decrease in rents from all of the Claimant's owned properties, as well as taking away all expected earnings he was to receive from the six properties he planned to manage.⁶

Claimant calculated his sum certain by determining the expected income for each rental property in 2010 and then divided that number by two to account for his wife's share. He then added on the expected management fees.⁷ This final number totaled \$146,350.00.⁸

¹ Attachment to OSLTF Claim Form describing claim.

² These properties are distinct rentals but compose one physical house. One unit is a standalone apartment and the other is the remainder of the house.

³ PHONECON between NPFC and [REDACTED] dated 21 June 2011.

⁴ Claimant's wife, who co-owns and co-manages the rental properties, submitted an identical claim to the NPFC. Both claims included the exact same documentation as well as the exact same sum certain. Accordingly, the NPFC received signed authorization letters from both Claimant and his wife allowing the NPFC to share information between the claims. Thus, information gained from phone conversations with Claimant's wife were used in Claimant's determination.

⁵ Attachment to OSLTF Claim Form describing claim.

⁶ Attachment to OSLTF Claim Form describing claim.

⁷ Attachment to OSLTF Claim Form describing claim.

⁸ Attachment to OSLTF Claim Form describing claim.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of his claim, Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 6 June 2011;
- List of Attachments;
- Attachment to OSLTF Claim Form describing claim;
- Spreadsheet entitled 'Rents Received: Sibert- Last Year';
- Spreadsheet entitled 'Long Term Rental [REDACTED]';
- Spreadsheet entitled 'Rental Income: Sibert May 2010-December 2010'
- Spreadsheet entitled 'Rents Received: Sibert May 2010-December 2010';
- Regions Bank bank statement for the periods: 11 November 2010-15 December 2010, 17 December 2009-14 January 2010;
- Spreadsheet entitled 'Profit and Loss [REDACTED] 2006-2010;'
- Spreadsheet entitled '[REDACTED] A Destin Florida';
- Document entitled '[REDACTED] income-interim-last year: 2';
- Spreadsheet entitled 'Weekly Rental [REDACTED] 2008-09';
- Document entitled '[REDACTED]';
- Copies of Social Security Card and Birth Certificate;
- Document entitled '[REDACTED] Rentals 2010';
- 2010 Form 1040X Amended U.S. Individual Income Tax Return;
- 2009 Form 1040 amended Federal tax return; and
- 2009 Form 1040 original Federal Tax return;

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF on 12 November 2010 in the amount of \$70,000.00.⁹ He was assigned Claimant ID # [REDACTED] and Claim [REDACTED]. This claim was paid in the amount of \$37,800.00.¹⁰ Additionally, Claimant filed an Interim Payment Claim Quarter [REDACTED] with the GCCF on 12 February 2011 in the amount of \$51,050.00.¹¹ He was assigned Claim [REDACTED]. Claimant was paid \$8,217.03 on 06 June 2011.¹²

Based upon the evidence provided by the Claimant, it appears that the subject matter for the two GCCF claims is the same as the subject matter of Claimant's claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, Claimant lost income from not being able to rent out properties in the Destin, Florida region. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1001 considers and addresses the earnings claimed in the claims presented to the responsible party in the amount up to \$75,032.97, specifically; GCCF Claim # [REDACTED] (EAP) and [REDACTED].

NPFC Determination

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented an EAP in the amount of \$70,000.00 to the GCCF and an Interim Payment claim for \$51,050.00 to the GCCF. Claimant received partial payments for both claims totaling \$46,017.03. Claimant therefore has \$75,032.97 in uncompensated damages that were presented to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$146,350.00 to the NPFC. Any claimed amount of damages exceeding 75,032.97 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore DENIED.

The remainder of the claim is denied because the Claimant has failed to prove he suffered a loss due to the Deepwater Horizon oil spill. Under 33 C.F.R. § 136.105(a) and 136.105(e)(6), the Claimant bears the

⁹ Report from the GCCF dated 29 July 2011.

¹⁰ Notice of Determination Emergency Advance Payment

¹¹ Report from the GCCF dated 29 July 2011.

¹² Determination letter on Interim Payment/Final Payment claim, dated 06 July 2011.

burden of providing to the NPFC all evidence, information and documentation deemed necessary by the director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

LOSS OF RENTAL EARNINGS

Claimant co-owned and co-managed three different rental properties with his wife in Destin, FL. With regards to the property at 514 Vera Cruz Drive, Unit A, Claimant asserted that prior to the oil spill, this property was booked for twenty weeks and he anticipated another six to ten additional weeks of rentals to occur.¹³ As well, he expected a snowbird rental that would rent the house for four to six months after the main rental season.¹⁴ Claimant asserted that only one renter kept the original reservation and the property only received a few other short-term, discounted rentals.¹⁵ However, the Claimant did not provide any of the original reservations, documentation of cancelled reservations, contact information for cancelled renters, or documentation of rental deposits. Claimant also did not explain his expectation for at least \$57,600.00¹⁶ in rents when the unit only earned \$6,325.00¹⁷ in rents the prior year. Nor did the Claimant provide evidence supporting his expectation of an extended snowbird rental, especially when considering that there were no late season rentals from this unit in the year prior.¹⁸

Regarding the property at [REDACTED] Claimant asserted that after extensive work to fix up the unit, this vacation rental became available for rent in March of 2010.¹⁹ Claimant asserted that this unit also had numerous bookings and would have received additional bookings had it not been for the Deepwater Horizon oil spill. Again however, the Claimant did not provide any of the original reservations, documentation of cancelled reservations, contact information for cancelled renters, or documentation of rental deposits. Further, considering that this unit did not open until March of 2010, Claimant did not provide any basis to prove how many weeks this unit would rent.

Regarding the property at [REDACTED] Claimant asserted that tenants in both units of the duplex lost their jobs due to the Deepwater Horizon oil spill and moved out of Destin, thereby reducing the Claimant's rental earnings. Claimant failed to provide a connection between the tenants ending their lease on the property and the Deepwater Horizon oil spill. Claimant's wife admitted that this property was rented out via long-term leases and is not used as a vacation home rental.²⁰ Although the Claimant asserted that the former tenants were unable pay rent on the property because they lost their jobs due to the Deepwater Horizon oil spill, Claimant provided no documentation from any former tenant or their place of business to support this assertion. As well, the Claimant's wife admitted that the leases on the property were due to expire the month following the tenants being unable to pay rent, and both the Claimant and tenants decided to allow the lease to run to its termination date without a renewal or any action against tenants by the Claimant to recover the contractually owed rents.²¹ Thus, there were no potential accrued damages after the first month resulting from the tenants' failure to pay rent, as they merely exercised their right to decline renewing their respective leases.

In regards to all three rental properties, on 17 June 2011, the NPFC requested additional information from the Claimant to fully evaluate the claim and specifically to determine the effect of the Deepwater Horizon oil spill on the Claimant's rental properties. The NPFC requested that the Claimant provide complete income tax returns for 2008, 2009 and 2010, monthly profit and loss statements for 2008, 2009 and 2010,

¹³ Attachment to OSLTF Claim Form describing claim.

¹⁴ Attachment to OSLTF Claim Form describing claim.

¹⁵ Attachment to OSLTF Claim Form describing claim.

¹⁶ Attachment to OSLTF Claim Form describing claim.

¹⁷ Spreadsheet entitled [REDACTED] Destin Florida'

¹⁸ Spreadsheet entitled [REDACTED] Destin Florida'

¹⁹ Attachment to OSLTF Claim Form describing claim.

²⁰ PHONECON between NPFC and [REDACTED] dated 21 June 2011.

²¹ PHONECON between NPFC and [REDACTED] dated 21 June 2011.

all rental contracts for all of the Claimant's properties in 2008, 2009 and 2010, monthly rent roles on all of the Claimant's properties, contact information for those who cancelled bookings for all of the Claimant's properties in 2010, fixed and variable costs for all of the Claimant's properties in 2008, 2009 and 2010, contact numbers for customers who booked properties between May and December 2010, contact information for a 'snowbird' that purportedly rented one of the Claimant's properties, contact numbers for customers who truncated their stay at the Claimant's properties in 2010, information regarding advertised reduced rates and money back guarantees to entice renters in 2010 and information regarding expected annual rent for 2010 of \$25,200.00. To date no response regarding the above requests has been received by the NPFC.

EXPENSES

In addition to the lost rental earnings from the rentals units, Claimant asserted that he experienced extra expenses trying to rent out the units due to the Deepwater Horizon oil spill.²² Claimant, however, failed to provide a connection between these expenses and the Deepwater Horizon oil spill. Claimant's wife admitted that expenses concerning the clean-up of the [REDACTED] property would have occurred if the tenants moved out regardless of the timing of the Deepwater Horizon oil spill.²³ This echoes the wife's admission regarding the maintenance of the [REDACTED] property, admitting that listed expenses related to the costs to rehabilitate Unit B for its rental debut in March 2010 were not due to the oil spill, as the reconstruction on the property was not related to the oil spill.²⁴

LOSS IN MANAGEMENT FEES

Claimant asserted that in 2010 he planned on receiving management fees from six additional properties.²⁵ Claimant stated that 2010 would have been the first year that he ventured into management of other properties, but that they had hired two additional people to support this business.²⁶ Claimant did not provide any basis for the expectation of his earnings, nor provide any of the contracts with the property owners to substantiate the business relationships with the clients. Further, the Claimant admitted that the property owners opted for long-term rentals for the properties instead of doing the short-term vacation rentals, which demonstrated business decisions by the owners to make use of their properties in a different way than one which would benefit the Claimant.²⁷ Therefore, the Claimant failed to show that he suffered a loss in management fees due to the Deepwater Horizon oil spill.

²² Attachment to OSLTF Claim Form describing claim.

²³ PHONECON between NPFC and [REDACTED] dated 21 June 2011.

²⁴ PHONECON between NPFC and [REDACTED] dated 21 June 2011.

²⁵ Attachment to OSLTF Claim Form describing claim.

²⁶ Attachment to OSLTF Claim Form describing claim.

²⁷ Attachment to OSLTF Claim Form describing claim.

CONCLUSION

This claim is denied because the Claimant failed to (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), (2) demonstrate that there was an alleged loss in the amount claimed, and (3) demonstrate 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.



Claim Supervisor: *NPFC Claims Adjudication Division*

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-1002
19 July 2011

Dear [REDACTED]

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 N10036-1002 involving Deepwater Horizon. 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 N10036-1002.

Mail reconsideration requests to:

Director (ca)
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US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1002
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,656.00

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 15 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$10,656.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant stated that she began work at [REDACTED], as a shrimp processor on 08 June 2010.¹ Payroll records show that she was paid through 08 April 2011.² The Optional OSLTF Claim Form submitted by the Claimant provided little information concerning the subject claim beyond the Claimant's sum certain.

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:

¹ Claimant's statement to NPFC Staff dated 22 June 2011

² Payroll history from [REDACTED], from 14 January 2011 through 30 April 2011

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. OSLTF Claim Form signed by Claimant 16 June 2011
2. Copy of US Passport Card
3. Copy of Texas driver's license
4. Payroll history from [REDACTED] from 20 December 2009 through 31 December 2010
5. Payroll history from [REDACTED] from 14 January 2011 through 30 April 2011

On 20 June 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. The Claimant has not responded to the request. The letter was sent First-Class Certified Mail Return Receipt Requested. US Postal Tracking shows the letter was delivered to the Claimant in Brownsville, Texas, on 05 July 2011.³

Prior to presenting a claim to the NPFC, Claimant filed a Full Review Final claim with the GCCF on 14 April 2011, Full Review Final (FRF) Claim [REDACTED] for \$10,656.00. The claim was denied.⁴

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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 Claimant has failed to provide information which would reasonably allow the NPFC to favorably determine her claim. The Claimant's original submission provided very little information concerning the nature of her claim or alleged damages. Furthermore, the Claimant failed to respond to the NPFC's request for additional information.

This claim is denied because the Claimant has failed to meet her burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

Claim Supervisor: [REDACTED] *Communication Division*

Date of Supervisor's Review: *19 July 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ USPS Tracking Number [REDACTED]

⁴ Based on report from GCCF to NPFC for 15 July 2011

U.S. Department of
Homeland Security

United States
Coast Guard



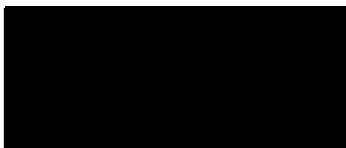
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

5890
6/22/2011

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-1003

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1003 involving Deepwater Horizon. 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 N10036-1003.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00003931

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1003
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$25,000.00

FACTS:

On or about April 20, 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 August 23, 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 June 16, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$25,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he was an employee of Gulf Painting but lost his job and income as a result of the spill. The Claimant provided a letter from [REDACTED] owner [REDACTED], stating that he had to terminate the Claimant due to the oil spill.

The Claimant did not provide a copy of his GCCF denial letter for his final claim but stated that he did present the claim and it was denied.¹

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

¹ Optional OSLTF Claim Form, dated June 13, 2011
09/14/11

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated June 13, 2011;
- Copy of EIN from Treasury Department;
- Letter from owner of [REDACTED] dated November 22, 2010;
- Letter from Claimant estimating damages;
- 2010 W-2;
- 2009 and 2010 Individual Income Tax Returns and Schedule C;

NPFC Determination

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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$25,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "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." The Claimant provided no paystubs to show his financial losses for the period he was out of work or comparable periods.

Should the Claimant choose to come back on reconsideration, he will need to provide financial data from his employer to assist in determining the nexus between the Claimant's income and the oil spill. Also, the Claimant must demonstrate that the alleged loss is not due to a general decline in market conditions. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$25,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.


Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *6/22/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



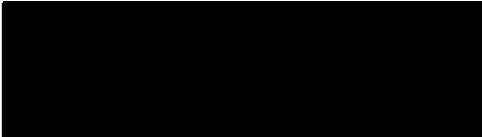
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/22/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-1005

Dear [REDACTED]

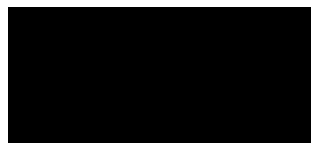
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1005 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-1005.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



U.S. Coast Guard

ds Center

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003935

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1005
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$40,000.00

FACTS:

On or about April 20, 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 August 23, 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 June 17, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim on behalf of her company, [REDACTED] in the amount of \$40,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that her company was affected because "Fishermen, Foreman, and Longshoremen parents cancelled student's contracts due to loss of wages."¹

The Claimant did not provide any correspondence for her claim with the GCCF but stated on the Optional OSLTF Claim Form that her claim was denied.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

¹ Optional OSLTF Claim Form dated June 16, 2011
09/14/11

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated June 16, 2011;
- 2008, 2009, and 2010 Individual Income Tax Returns;
- 2008, 2009, and 2010 Schedule C for [REDACTED]
- 2008, 2009, and 2010 monthly profit and loss statements

NPFC Determination

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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$40,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

Should the Claimant choose to come back on reconsideration, she will have to provide financial data proving that she lost \$40,000.00 in profits and earnings. The financial data that was provided does not support a loss of \$40,000.00, or that the company has ever made \$40,000.00.

Also, the Claimant must prove that the alleged loss is not due to a general decline in the economy. If the alleged loss is solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position. astly, the Claimant stated on the Optional OSLTF Claim Form that "parents cancelled dance students contracts"² but provided no copies of the cancelled contracts.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$40,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *Claims Ad[REDACTED] Division*

Date of Supervisor's review: *6/22/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1006
27 June 2011

Re: Claim Number: N10036-1006

Dear [REDACTED]

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 N10036-0895 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

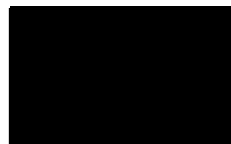
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0895.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



ion Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003939

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1006
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$1,269.42

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 17 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$1,296.42 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant began working for a construction company in June of 2010 and alleged that “the amount of income that [he] earned was . . . adversely affected” as a result of the oil spill.²

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.

¹ Optional OSLTF Claim Form dated 26 May 2011.

² *Id.*

- (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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Letter from Claimant to NPFC, describing losses, dated 6 June 2011;
- Print-out showing locations of [REDACTED];
- Print-out listing types of jobs performed by [REDACTED];
- Letter from Claimant to BP, dated 22 Dec 2010;
- Letter from GCCF to Claimant, denying emergency advance payment claim;
- Letter from GCCF to Claimant, regarding interim/final payment claim, 29 January 2011;
- Letter from GCCF to Claimant, noting deficiencies in claim, 19 March 2011;
- Letter from Claimant's employer noting 1 June 2010 date of hire, and locations of work, 24 March 2011;
- Letter from Claimant to GCCF, dated 30 March 2011;
- GCCF Denial Letter on Interim/Final Payment Claim, 30 April 2011;
- PR Check History Report, showing earnings from 5 June 2010 to 25 December 2010;
- Chart showing earnings from June – September 2010; and,
- [REDACTED]. *The Economic Impact to Northwest Florida of the Deepwater Horizon Oil Spill.*

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim as well as an Interim Payment/Final Payment Claim to the RP/GCCF and was assigned Claimant ID [REDACTED]. The Final Payment Claim was denied by the RP/GCCF on 30 April 2011.

On 17 June 2011, Claimant presented the subject claim to the NPFC for \$1,269.42 in lost earnings at his construction job, which he attributed to the Deepwater Horizon oil spill.

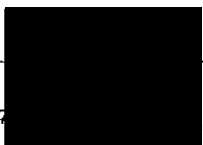
NPFC Determination

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

The NPFC reviewed all information and documentation provided by the Claimant. Claimant began working as a driver for a construction company. A human resources manager at the Claimant's place of employment confirmed that the Claimant began working with the company in the months following the oil spill.³ He provided no indication of earnings prior to June 2010 (pre-spill earnings). To establish a loss of profits and earnings claim, Claimants must demonstrate the amount of their profits and earnings *in comparable periods* and during the period when the claimed loss or impairment was suffered. 33 C.F.R. § 136.233(c).

Additionally, the Claimant provided a check history report from June through December 2010. The report indicated that the Claimant's pay and hours worked fluctuated during the period. Claimant separately highlights 11 weeks wherein he worked less than 40 hours.⁴ However, in only nine weeks did the Claimant work forty or more hours. Claimant, in short, has not established that he was guaranteed regular forty-hour work weeks.⁵ Furthermore, two of the weeks in which he worked forty or more hours, were weeks in June and July of 2010.⁶ Based on this information, the Claimant has not demonstrated that he lost working hours as a result of effects of the oil spill.

This claim is denied because Claimant (1) has not demonstrated the alleged loss in the amount of \$1,269.42, and (2) that this 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.

Claim Supervisor: NPFC  *Adjudication Division*

Date of Supervisor's Review: *6/27/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ PHONECON: Claimant and NPFC Staff, 23 June 2011.

⁴ Chart drafted by Claimant, showing losses from June to September 2010.

⁵ PR Check History Report.

⁶ *Id.*

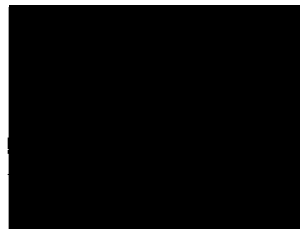
U.S. Department
of Homeland
Security

United States
Coast Guard



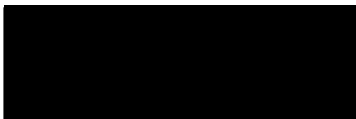
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-1009
29 June 2011

Re: Claim Number: N10036-1009

Dear [REDACTED]

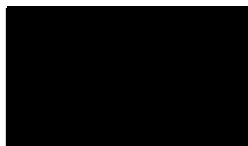
The National Pollution Funds Center ('NPFC') in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-1009 involving the Deepwater Horizon oil spill. Please see the enclosed Claim 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. If, however 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 N10036-1009.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003944

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1009
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$19,251.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 15 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking natural resources damages that allegedly resulted from the Deepwater Horizon oil spill. This OSLTF Claim Form lacked a sum certain determination. Subsequent to this submission, on 20 June 2011, Claimant presented an updated OSLTF Claim form claiming \$19,251.00 in damages from the Deepwater Horizon oil spill and the Claimant indicated an intention to switch her claim from natural resources to loss of profits and earnings capacity.¹

Claimant is employed in the food service industry in Garyville, LA, serving catered lunches.² Claimant asserted that, as a result of the Deepwater Horizon oil spill, her clients lost their jobs which in turn caused her business to fail.

Claimant did not provide a calculation for her sum certain of \$19,251.00.

Claimant submitted an Emergency Advance Payment to the under GCCF Claimant Identification [REDACTED]. This claim was denied by the GCCF on 14 December 2010.³ Additionally, Claimant filed an Interim Payment/Final Payment claim with the GCCF. This claim was denied by the GCCF on 28 May 2011.⁴

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a).

¹ Fax transmission from Claimant to NPFC dated 18 June 2011

² OSLTF Claim Form received 15 June 2011.

³ GCCF Denial Letter dated 14 December 2010.

⁴ GCCF Denial Letter dated 28 May 2011.

Damages include 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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of the claim, the Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form received 15 June 2011;
- OSLTF Claim Form received 20 June 2011;
- GCCF Denial Letter dated 28 May 2011;
- Letter from NPFC to Claimant dated 25 May 2011;
- 2009 1040 Federal tax return;
- 2010 1040 Federal tax return;
- Fax transmission from Claimant to NPFC dated 18 June 2011;
- Profit and loss statement for the time period 1 January 2009-31 December 2010.

NPFC Determination

The claim is denied. 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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$19,251.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

The Claimant has not proven she suffered a financial loss due to the Deepwater Horizon oil spill. Claimant's supporting documentation consists of her Federal income tax returns from 2009 and 2010, along with a profit and loss statement from 2009 and 2010. Claimant indicated that she did not start the business until 2009.⁵ The Claimant's financial documentation indicated that her earnings dropped from \$18,580⁶ in 2009 to \$12,045⁷ in 2010. However, the Claimant's profit and loss statement indicated the Claimant's gross profits from January-April had already dropped from \$6,750 in 2009 to \$3,994; a 41% decrease in earnings before the Deepwater Horizon oil spill ever occurred.

Furthermore, the Claimant provided no documentation to support a connection between her alleged loss and the Deepwater Horizon oil spill. Other than a reference to her clients losing their jobs, the Claimant did not provide any actual evidence linking the Deepwater Horizon oil to a decrease in her food service business.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$19,251.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

⁵ Fax transmission from Claimant to NPFC dated 18 June 2011

⁶ 2009 1040 Federal tax return

⁷ 2010 1040 Federal tax return

Claim Supervisor: C [REDACTED] *ion Division*

Date of Supervisor's review: *6/29/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



Fax: 202-435-0957

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim# N10036-1010
26 July 2011



RE: Claim Number: N10036-1010

Dear [REDACTED]

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 claim number N10036-1010 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

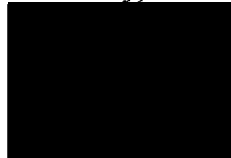
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1010.

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	N10036-1010
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$3,600.00

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 13 June 2011 [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form originally seeking \$6,500.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill. The Claimant also submitted a sum certain for Subsistence Use in the amount of \$500.00 and a sum certain for Natural Resources for \$500.00. On 20 June 2011, NPFC staff contacted the Claimant to clarify the nature of the claims.¹ The Claimant requested that her Subsistence and Natural Resources claims be withdrawn and asked the NPFC to adjudicate only her Lost Profits & Earnings Capacity claim.² In a subsequent conversation with NPFC staff, the Claimant requested that her sum certain for her Lost Profits & Earnings Capacity claim be reduced to 3,600.00.³

Claimant allegedly provided care for [REDACTED] an elderly woman, while [REDACTED] son, [REDACTED] worked in the lawn care service industry. After the oil spill, [REDACTED] stated he "had lack of customers" and could no longer pay the Claimant the \$7.50 an hour to watch his mother.⁴

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

¹ Telephone conversation recorded in CPS by NPFC staff with Claimant on 20 June 2011

² Id.

³ Telephone conversation between Claimant and NPFC staff dated 25 July 2011

⁴ Letter from [REDACTED] dated 14 November 2010

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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted:

- 1) OSLTF claim form dated 30 May 2011;
- 2) Letter from [REDACTED] dated 14 November 2010 ;
- 3) Prescription for [REDACTED];
- 4) Prescription for [REDACTED];
- 5) Prescription for [REDACTED];
- 6) AP News Article titled "Investigators, experts say deepwater well lacked safety culture";
- 7) AP News Article titled "Judge bars media from attending private offshore drilling conference".

Claimant seeks lost earnings and impairment of earnings capacity in the amount of \$3,600.00.

On 21 June 2011, the NPFC sent a letter to the Claimant requesting additional information in order to further evaluate the subject claim. The letter was sent Certified Mail Return Receipt Requested. The USPS tracking site confirms that the letter was delivered 02 July 2011.⁵ The Claimant did not respond to the request.

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment for lost wages/earnings (EAP) with the GCCF on 14 October 2010 in the amount of \$3,600.00.⁶ She was assigned Claimant ID [REDACTED] and claim [REDACTED]. This claim was denied on 08 December 2010.⁷ Additionally, Claimant filed a Full Review Final claim with the GCCF, Full Review Final (FRF) with GCCF [REDACTED] filed on 14 October 2010 for \$3,600.00. The claim was denied by the GCCF on 29 April 2011.⁸ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that she lost money due to her employer losing business in lawn care as result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1010 considers and addresses the earnings claimed in both of her claims presented to the responsible party, specifically; GCCF Claim #'s [REDACTED] and [REDACTED]. The NPFC notes that the Claimant also filed two subsistence claims with the GCCF. The first claim being an EAP claim assigned claim [REDACTED] dated 07 December 2010 and the second claim being FRF claim [REDACTED] dated 14 October 2010. Both subsistence claims were denied by the GCCF.⁹ The two subsistence claims were not presented to the NPFC and will not be adjudicated herein.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that her loss of income was due to injury or destruction or loss of real or personal property or 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 her claim. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the evidence originally presented by the Claimant does not establish that her alleged loss is due to the Deepwater Horizon incident. The NPFC attempted to contact the Claimant's employer to verify the authenticity of the employment letter submitted by the Claimant which cited the oil spill as the reason the employer released the Claimant from her services. The NPFC was unable to verify the contents of the letter.¹⁰ The NPFC then contacted the Claimant seeking additional assistance in order to contact her former employer. The Claimant stated "I've been trying to contact my employer for a month since I received NPFC's letter, I cannot contact him I do not know if he moved or what."¹¹ The NPFC staff asked the Claimant if she could provide documentation that indicated that she was employed or paid taxes

⁵ See USPS Track & Confirm document [REDACTED]

⁶ Report from the GCCF dated 15 July 2011

⁷ GCCF Denial Letter dated 08 December 2010

⁸ GCCF Denial Letter dated 29 April 2011

⁹ Report from the GCCF dated 15 July 2011

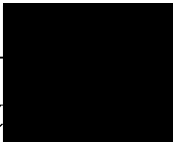
¹⁰ Employment letter dated 14 November 2010

¹¹ NPFC telephone conversation with Claimant 21 July 2011 in CPS

on her alleged earnings. Claimant stated that "I got paid in cash every two weeks and I did not report the income on my 2010 taxes."¹²

The NPFC sent a certified letter to the Claimant requesting additional information in order to further evaluate the claim. Claimant failed to respond to the request. The letter from the NPFC requested, among other items, financial statements from the Claimant showing she was employed i.e. paychecks, taxes, 1099 or W-2s and documentation verifying that her employer was impacted by the Deepwater Horizon oil spill. USPS tracking information clearly indicates that the certified letter was delivered to the Claimant.

This claim is denied because the Claimant has failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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.

Claim Supervisor: NPFC  *Adjudication Division*

Date of Supervisor's Review: 7/26/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim# N10036-1011
22 June 2011

RE: Claim Number: N10036-1011

Dear [REDACTED]

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 your claim, #N10036-1011, involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-1011.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
ation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003954

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1011
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,500.00

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 20 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil-spill.

The Claimant did not provide any information on his prior employment, information pertaining to the incident and that allegedly caused his damages, information on whether any losses were submitted to an insurer of the Claimant, a description of the nature and extent of his damages, a description of how the alleged incident caused his damages, a description of any actions taken by the Claimant to mitigate his losses, or information regarding any witnesses.¹

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.

¹ Optional OSLT Claim Form dated 27 May 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 support this claim, Claimant submitted the following documentation:

— Optional OSLTF Claim Form dated 27 May 2011.

Claimant seeks \$8,500.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

Claimant alleged that he filed a claim with the GCCF in March 2010, but that no action was taken by the GCCF.²

NPFC Determination

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 considered all of the documentation submitted by the Claimant.

The claim is denied because the Claimant's submission fails to meet the requirements of 33 C.F.R. § 136.231-235 to establish a claim for loss of profits or impairment of earnings capacity. For example, the Claimant has provided no information as to his prior or current employment, no evidence of his prior or current earnings, and no evidence which would indicate that his alleged losses are 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.

Accordingly, the Claimant's request for compensation in the amount of \$8,500.00 is denied.

Claim Supervisor: NPFC  *Adjudication Division*

Date of Supervisor's Review: *6/22/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

² The NPFC has not verified the Claimant's presentation of a claim to the GCCF as of a date even herewith.

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1013
11 July 2011

Re: Claim Number: N10036-1013

Dear [REDACTED]

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 your claim number N10036-1013 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1013.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
Claims Reproduction Division
National Pollution funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003957

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1013
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 20 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking \$10,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant has been employed as seasonal worker for over 10 years at Panama City Beach, FL.¹ Claimant asserts that she was hired in March and that as a result of the Deepwater Horizon oil spill, she lost wages in 2010.² Claimant did not provide an explanation regarding the calculation of her sum certain of \$10,000.00.

Prior to presenting this Claim to the NPFC, Claimant filed an Emergency Advance Payment ("EAP") claim with the GCCF on 19 October 2010 in the amount of \$10,000.00 for loss of profits and impairment of earnings capacity. Claimant was assigned Claimant ID [REDACTED] and Claim [REDACTED]. The EAP claim was denied on 6 December 2010.⁴ Additionally, on 4 January 2011, Claimant filed a Full Review Final Claim with the GCCF in the amount of \$5,000.00 for loss of profits and impairment of earnings capacity.⁵ This Full Review Final Claim was denied on 10 May 2011.⁶

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33

¹ Hand-written letter dated 10 November 2010 written by Claimant's husband [REDACTED]

² Id.

³ Report from the GCCF dated 23 June 2011.

⁴ GCCF Denial Letter dated 6 December 2010

⁵ Report from the GCCF dated 23 June 2011.

⁶ GCCF Denial Letter dated 10 May 2011.

C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of her claim, Claimant presented the following documentation to the NPFC:

- Attachment to OSLTF Claim Form received 20 June 2011;
- Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form received 14 June 2011;
- GCCF letter dated 2 June 2011;
- GCCF Claim Form;
- GCCF letter dated 29 January 2011;
- GCCF letter dated 23 October 2010;
- Undated letter from Latitude 29 [REDACTED];
- Photocopies of [REDACTED] business card and Claimant's Social Security card;
- Hand-written letter dated 10 November 2010 written by Claimant's husband [REDACTED];
- GCCF Full Review Final Payment Claim Form;

- 2009 W-2 Federal tax form from [REDACTED];
- 2009 Florida Agency for Workforce Innovation 1099-G tax form;
- Photocopy of Claimant's Florida Identification Card;
- [REDACTED] Employee Earnings Statement for the period 1 January 2008-31 December 2008;
- Pay stub from [REDACTED] of Bay County dated 3 June 2009-12 August 2009;
- Documents containing balance statement for Agency for Workforce Innovation Unemployment Compensation Program Benefit Payment Control Section dated 26 September 2009, 1 December 2009;
- 2010 Florida Agency for Workforce Innovation 1099-G tax form;
- Letters from Emergency Unemployment Compensation Monetary Determination dated 17 November 2009, 12 January 2010;
- Letters informing Claimant of unemployment compensation information dated 15 September 2009, 29 December 2009, 24 March 2010;
- Letters informing Claimant of Federal Additional Compensation Check dated 15 September 2009, 28 October 2009, 20 April 2010;
- GCCF Letter dated 6 December 2010;
- 2009 W-2 Federal tax form, unable to determine from photocopy where it was generated from;
- Hand-written letter from Claimant requesting reconsideration, undated;
- Hand-written letter from Claimant dated 1 February 2011;
- Hand-written request form Claimant to provide USCG with documentation from GCCF, undated;
- GCCF Denial Letter dated 10 May 2011;
- GCCF Letter dated 2 November 2010;
- Letter from [REDACTED] and [REDACTED] dated 18 May 2011;
- Hand-written letter from Claimant describing claim, undated.

NPFC Determination

The claim is denied. 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 considered all documentation presented by Claimant.


This claim is denied because Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. Claimant asserts that she was hired by [REDACTED] in March 2010, but due to the Deepwater Horizon oil spill she was unable to work.⁷ However, Claimant's submitted letter from [REDACTED] indicates Claimant was never hired in 2010.⁸ The letter from [REDACTED] states only that the Claimant sought employment at [REDACTED] that they did not have work for Claimant in March, and that they have had no work for Claimant since that time.⁹ Thus, Claimant has not provided a connection between her unemployment and the Deepwater Horizon oil spill.

⁷ Hand-written letter dated 10 November 2010 written by Claimant's husband [REDACTED]

⁸ Undated letter from Latitude 29 [REDACTED]

⁹ Id.

Because the Claimant has failed to demonstrate that his 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, this claim is denied.

Claim Supervisor: 

Date of Supervisor's Review: 11 Jul 11

Supervisor's Actions: Denial Approved.

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-1014
08 August 2011

Re: Claim Number: N10036-1014

Dear [REDACTED]

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 your claim number N10036-1014 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1014.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1014
Claimant	[REDACTED]
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$146,350.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 20 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$146,350.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant is the co-owner and co-manager of three rental properties in Destin, FL with her husband [REDACTED].¹ Claimant rents one of the properties to residents via long-term leases, and two² as vacation properties to tourists during the rental season in Destin.³ Additionally, Claimant expected to manage six other rental properties during the tourism season in Destin, for which she would receive commissions for the rental earnings.⁴ Claimant asserted that as a result of the Deepwater Horizon oil spill, the tourism industry collapsed in Destin, creating a decrease in rents from all of the Claimant's owned properties, as well as taking away all expected earnings she was to receive from the six properties she planned to manage.⁵

Claimant calculated her sum certain by determining the expected income for each rental property in 2010 and then divided that number by two to account for her husband's share (presented as NPFC Claim # N10036-1001). She then added on the expected management fees.⁶ This final number totaled \$146,350.00.⁷

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits

¹ Attachment to OSLTF Claim Form describing claim.

² These properties are distinct rentals but compose one physical house. One unit is a standalone apartment and the other is the remainder of the house.

³ PHONECON between NPFC and Claimant dated 21 June 2011.

⁴ Attachment to OSLTF Claim Form describing claim.

⁵ Attachment to OSLTF Claim Form describing claim.

⁶ Attachment to OSLTF Claim Form describing claim.

⁷ Attachment to OSLTF Claim Form describing claim.

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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of her claim, Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 13 June 2011;
- Attachment to OSLTF Claim Form describing claim;
- Spreadsheet entitled 'Rents Received: [REDACTED] January 2010-May 2010';
- Spreadsheet entitled 'Rents Received: [REDACTED] May 2010-December 2010';
- Spreadsheet entitled 'Profit and Loss [REDACTED] Destin Florida 2006-2010';
- Spreadsheet entitled 'Long Term Rental Duplex [REDACTED] Destin Florida';

- Spreadsheet entitled 'Weekly Rental [REDACTED] Destin Florida 2008-09';
- Document entitled '2010 [REDACTED] Rent Income-Last Year';
- Document entitled 'The [REDACTED] Rentals 2010';
- Document entitled '2010 [REDACTED] income-interim-last year: 2';
- Spreadsheet entitled '514 [REDACTED] A Destin Florida';
- Regions Bank bank statement for the periods: 1 November 2010-30 November 2010, 1 December 2010-31 December 2010;
- 2010 Form 1040X Amended U.S. Individual Income Tax Return ;
- 2009 Form 1040 amended Federal tax return form;
- Letter from [REDACTED] dated 10 October 2010;
- Documents entitled [REDACTED]

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF on 22 September 2010 in the amount of \$55,900.00.⁸ She was assigned Claimant ID # [REDACTED] and claim [REDACTED]. This claim was granted on 02 December 2010 in the amount of \$3,100.00.⁹ Additionally, Claimant filed an Interim Payment Claim Quarter I ([REDACTED]) with the GCCF on 23 February 2011 in the amount of \$165,297.00.¹⁰ She was assigned claim # [REDACTED]. The GCCF sent Claimant a Deficiency Letter regarding this claim on 16 July 2011.¹¹

Based upon the evidence provided by the Claimant, it appears that the subject matter for the two GCCF claims is the same as the subject matter of Claimant's claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, Claimant lost income from not being able to rent out properties in the Destin, Florida region. The NPFC deems Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1014 considers and addresses the earnings claimed in the claims presented to the responsible party in the amount up to \$146,350.00, specifically; GCCF Claim # [REDACTED] (EAP) and [REDACTED].

NPFC Determination

The claim is denied. 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 considered all documentation presented by the Claimant.

LOSS OF RENTAL EARNINGS

Claimant co-owned and co-managed three different rental properties with her husband in Destin, FL. With regards to the property at [REDACTED] the Claimant asserted that prior to the oil spill this property was booked for twenty weeks and she anticipated another six to ten additional weeks of rentals to occur.¹² As well, she expected a snowbird rental that would rent the house for four to six months after the main rental season.¹³ Claimant asserted that only one renter kept the original reservation and the property only received a few other short-term, discounted rentals.¹⁴ However, the Claimant did not provide any of the original reservations, documentation of cancelled reservations, contact information for cancelled renters, or documentation of rental deposits. Claimant also did not explain her expectation

⁸ Report from the GCCF dated 29 July 2011.

⁹ GCCF Notice of Determination 02 December 2010.

¹⁰ Report from the GCCF dated 29 July 2011.

¹¹ GCCF Deficiency Letter dated 16 July 2011.

¹² Attachment to OSLTF Claim Form describing claim.

¹³ Attachment to OSLTF Claim Form describing claim.

¹⁴ Attachment to OSLTF Claim Form describing claim.

for at least \$57,600.00¹⁵ in rents when the unit only earned \$6,325.00¹⁶ in rents the prior year. Nor did Claimant provide evidence supporting her expectation of an extended snowbird rental, especially when considering that there were no late season rentals from this unit in the year prior.¹⁷

Regarding the property at [REDACTED] Claimant asserted that after extensive work to fix up the unit, this vacation rental became available for rent in March of 2010.¹⁸ Claimant asserted that this unit also had numerous bookings and would have received additional bookings had it not been for the Deepwater Horizon oil spill. Again however, Claimant did not provide any of the original reservations, documentation of cancelled reservations, contact information for cancelled renters, or documentation of rental deposits. Further, considering that this unit did not open until March of 2010, Claimant did not provide any basis to prove how many weeks this unit would rent.

Regarding the property at [REDACTED] Claimant asserted that tenants in both units of the duplex lost their jobs due to the Deepwater Horizon oil spill and moved out of Destin, thereby reducing Claimant's rental earnings. Claimant failed to provide a connection between the tenants ending their lease on the property and the Deepwater Horizon oil spill. Claimant admitted that this property was rented out via long-term leases and is not used as a vacation home rental.¹⁹ Although Claimant asserted that the former tenants were unable pay rent on the property because they lost their jobs due to the Deepwater Horizon oil spill. Claimant provided no documentation from any former tenant or their place of business to support this assertion. As well, Claimant admitted that the leases on the property were due to expire the month following the tenants being unable to pay rent, and the both Claimant and tenants decided to allow the lease to run to its termination date without a renewal or any action against tenants by Claimant to recover the contractually owed rents.²⁰ Thus, there were no potential accrued damages after the first month resulting from the tenants' failure to paying rent, as they merely exercised their right to decline renewing their respective leases.

In regards to all three rental properties, on 17 June 2011, the NPFC requested additional information from Claimant²¹ to fully evaluate the claim and specifically to determine the effect of the Deepwater Horizon oil spill on Claimant's rental properties. The NPFC requested that Claimant provide income tax returns for 2008, 2009 and 2010, monthly profit and loss statements for 2008, 2009 and 2010, all rental contracts for all of Claimant's properties in 2008, 2009 and 2010, monthly rent roles on all of Claimant's properties, contact information for those who cancelled bookings for all of Claimant's properties in 2010, fixed and variable costs for all of Claimant's properties in 2008, 2009 and 2010, contact numbers for customers who booked properties between May and December 2010, contact information for a 'snowbird' that purportedly rented one of Claimant's properties, contact numbers for customers who truncated their stay at Claimant's properties in 2010, information regarding advertised reduced rates and money back guarantees to entice renters in 2010 and information regarding expected annual rent for 2010 of \$25,200.00. To date no response regarding the above requests has been received by the NPFC.

¹⁵ Attachment to OSLTF Claim Form describing claim.

¹⁶ Spreadsheet entitled [REDACTED] Destin Florida?

¹⁷ Spreadsheet entitled [REDACTED] Destin Florida?

¹⁸ Attachment to OSLTF Claim Form describing claim.

¹⁹ PHONECON between NPFC and Claimant dated 21 June 2011.

²⁰ PHONECON between NPFC and Claimant dated 21 June 2011.

²¹ Claimant's husband, who co-owns and co-manages the rental properties, submitted an identical claim to the NPFC. Both claims included the exact same documentation as well as the exact same sum certain. Accordingly, the NPFC received signed authorization letters from both Claimant and her husband allowing the NPFC to share information between the claims. Therefore, the additional information requested for [REDACTED] claim served as a request for Claimant as well.

EXPENSES

In addition to the lost rental earnings from the rentals units, Claimant asserted that she experienced extra expenses trying to rent out the units due to the Deepwater Horizon oil spill.²² Claimant, however, failed to provide a connection between these expenses and the Deepwater Horizon oil spill. Claimant admitted that expenses concerning the clean-up of the [REDACTED] property would have occurred if the tenants moved out regardless of the timing of the Deepwater Horizon oil spill.²³ This echoes the Claimant's admission regarding the maintenance of the [REDACTED] admitting that listed expenses related to the costs to rehabilitate [REDACTED] for its rental debut in March 2010 were not due to the oil spill, as the reconstruction on the property was not related to the oil spill.²⁴

LOSS IN MANAGEMENT FEES

Claimant asserted that in 2010 she planned on receiving management fees from six additional properties.²⁵ Claimant stated that 2010 would have been the first year that she ventured into management of other properties, but that they had hired two additional people to support this business.²⁶ Claimant did not provide any basis for the expectation of her earnings, nor provide any of the contracts with the property owners to substantiate the business relationships with the clients. Further, Claimant admitted that the property owners opted for long-term rentals for the properties instead of doing the short-term vacation rentals, which demonstrated business decisions by the owners to make use of their properties in a different way than one which would benefit the Claimant.²⁷ Therefore, Claimant failed to show that she suffered a loss in management fees due to the Deepwater Horizon oil spill.

CONCLUSION

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

[REDACTED]
Claim Supervisor: *NPFC Claims Adjudication Division*

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

²² Attachment to OSLTF Claim Form describing claim.

²³ PHONECON between NPFC and Claimant dated 21 June 2011.

²⁴ PHONECON between NPFC and Claimant dated 21 June 2011.

²⁵ Attachment to OSLTF Claim Form describing claim.

²⁶ PHONECON between NPFC and Claimant dated 21 June 2011.

²⁷ Attachment to OSLTF Claim Form describing claim.

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1015
28 July 2011

RE: Claim Number: N10036-1015

Dear [REDACTED]

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 N10036-1015 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

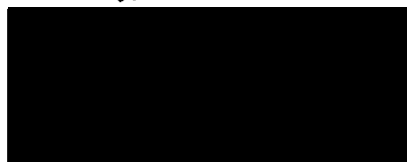
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1015.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003968

Claim Number	: N10036-1015
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$8,000.00

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 17 June 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$8,000.00 for loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil spill.¹

With respect to her losses, the Claimant asserted that she was employed prior to the oil spill, but that she “took a job” and “gave up clients” to “work as contractor for BP.”² The Claimant further asserted that she lost wages as her job as contractor was terminated in a shorter period of time that she was previously informed by her employer.³

The Claimant alleged that she filed a claim with the GCCF on 16 October 2010, but the claim was denied.⁴

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

¹ Optional OSLTF Claim Form, dated 17 June 2011.

² *Id.*

³ *Id.*

⁴ *Id.*

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 the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 17 June 2011;
- 2009 Form 1040A (2 pages);
- 2010 Form 1040 (2 pages);
- 2010 Alabama Individual Income Tax Return (2 pages);
- [REDACTED] Transportation ID badge;
- 2010 City of Mobile Operator's Certificate for [REDACTED];
- Employee Pay Stub from [REDACTED] dated 9/17/2010/;
- Alabama Driver License, issued 1/25/2008;
- Social Security Card for [REDACTED];
- Social Security Card for [REDACTED];
- [REDACTED] Payroll Transaction Detail, titled 'January through October 2010', printed 10/18/10 (17 pages);
- Manifest for Sunday – August 15, 2010;
- Manifest for Monday – August 16, 2010 (2 pages);
- Manifest for Tuesday – August 17, 2010;
- Manifest for Wednesday – August 18, 2010;
- Manifest for Thursday – August 19, 2010 (2 pages);
- Manifest for Friday – August 20, 2010;
- Manifest for Sunday – August 22, 2010;
- Manifest for Monday – August 23, 2010 (2 pages);
- Manifest for Tuesday – August 24, 2010 (2 pages);
- Manifest for Wednesday – August 25, 2010;
- Manifest for Thursday – August 26, 2010; and
- Manifest for Saturday – September 4, 2010.

Prior to presentment to the NPFC, the Claimant filed with the Responsible Party on 16 October 2010.⁵ The NPFC independently verified that the Claimant presented to the RP/GCCF an Emergency Advance Payment (EAP) Claim on 16 October 2010 in the amount of \$9,500.00, as well as a Final Claim on the same date for \$9,500.00. GCCF Claimant ID Number [REDACTED] was assigned and applied to both of these

⁵ Optional OSLTF Claim Form dated 17 June 2011.

claims.⁶ The EAP claim was denied on 2 November 2010⁷ and the Final Claim was denied on 15 April 2011.⁸

On 20 June 2011, the Claimant presented this claim in the amount of \$8,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.⁹

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 or destruction or loss of real or personal property or 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 Claimant has two bases for her alleged lost income. First, the Claimant alleges that she lost income in her position as a driver for [REDACTED] due to high gas prices, which the Claimant alleges were a result of the oil spill.¹⁰ Secondly, the Claimant alleges that when she took a job working as a contractor during the oil spill response, she was told she would work for much longer than she actually worked, thereby causing a loss of income.¹¹

However, neither loss is compensable under OPA. The Claimant has not presented any evidence to show that her wages were reduced due to high gas prices, or that high gas prices were a result of the oil spill. Secondly, the Claimant chose to work as part of the oil spill response, thereby earning income as a result of the oil spill. Although she earned less than she hoped to have earned in this position, failure to earn a certain amount in a contract position that resulted from the oil spill, does not constitute a loss.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$8,000.00, 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.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *7/28/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁶ GCCF -- US Coast Guard Report 23 June 2011.

⁷ GCCF letter dated 2 November 2010.

⁸ GCCF letter dated 15 April 2010.

⁹ Optional OSLTF Claim Form dated 17 June 2011.

¹⁰ PHONECON: Claimant and NPFC Staff, 27 July 2011.

¹¹ Optional OSLTF Claim Form, dated 17 June 2011.

U.S. Department of
Homeland Security

**United States
Coast Guard**



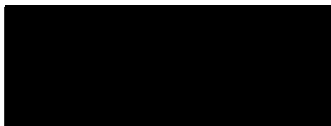
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 



5890/DWHZ
Claim # N10036-1016
23 June 2011

Re: Claim Number: N10036-1016

Dear 

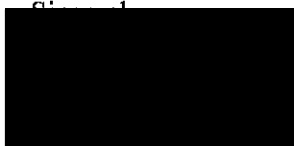
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-1016 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-1016.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003972

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1016
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$32,715.00

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 20 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$32,715.00 in damage to real or personal property.¹ Claimant, who was selling a home in Bay St. Louis, MS, alleged that the oil spill resulted in his inability to sell his home to a particular buyer, thus causing him to incur the costs of maintaining the home while it remained on the market for the following nine months.²

Review of the claim, indicated that the Claimant seeks to recover "economic loss"³ resulting from continuing to maintain the home while it remained on the market.⁴ Therefore, the NPFC has reclassified this claim as a claim for lost profits in the amount of \$32,715.00.

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

¹ Optional OSLTF Claim Form dated 14 June 2011.

² *Id.*

³ Letter from Claimant to NPFC at 1.

⁴ *Id.* at 3.

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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Document written by Claimant, titled "Claim Summary;"
- E-mail correspondence between interested buyer and Claimant's realtor, dated 30 April 2010;
- Cover letter, noting inclusion of "amended contract on [REDACTED] undated;
- Copy of amended contract for the sale and purchase of Claimant's property, signed by Seller only, indicating closing sales date and transfer of possession of property on 28 May 2010;
- Dual Agency Confirmation form, signed by Claimant and potential buyers, 26 April 2010;
- Home Inspection Addendum, signed by Claimant and potential buyers, 26 April 2010;
- Informational Statement for Mississippi Property Condition Disclosure Statement, signed by Seller, 26 April 2010;
- Property Condition Disclosure Statement, signed by Seller, 26 April 2010;
- Copy of invoice from Mississippi Power Company;
- Copy of invoice from [REDACTED];
- Copy of invoice from [REDACTED];
- Copy of check, dated 17 August 2009;
- Copy of utility bill for services on Claimant's property from 14 April 2010 to 14 May 2010;
- Copy of insurance bill for Claimant's property, payment due 25 June 2011; and,
- Copy of mortgage payment made by Claimant, 8 June 2010.

According to the Claimant, this claim was first submitted to the RP/GCCF in August of 2010, and was subsequently denied.⁵ However, the NPFC does not have sufficient information to verify this assertion.

NPFC Determination

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

⁵ *Supra* note 1.
09/14/11

In reviewing the information provided by the Claimant, the NPFC notes that the Claimant was in the process of negotiating the sale of his property.⁶ A copy of the sales contract, unsigned by the buyer, indicated that the sale was subject to various factors, including a price adjustment by the Claimant, and the buyer's acceptance of insurance quotes.⁷ Furthermore, e-mail communication between the potential buyer and the Claimant's realtor, as well as a conversation between the NPFC Staff and the Claimant's realtor, indicated that negotiations were in progress, and that no contract had been made, and no deposit had been exchanged.⁸

According to OPA, a Claimant would need to show that he lost profits on the sale of his home, due to damage to real property or natural resources, resulting from the discharge or substantial threat of discharge of oil. Because the Claimant was still negotiating the sale of his home, and had not finalized an agreement that ultimately was cancelled, he has not shown that he has suffered a loss as a result of the Deepwater Horizon oil spill.

Additionally, the Claimant is requesting compensation for costs associated with maintaining the mortgage including maintenance expenses which are not OPA-compensable damages. The Claimant purchased the property before the Deepwater Horizon incident and was bound by the terms of the mortgage note and responsible for all costs to maintain the home. Meeting the terms and conditions of that note along with maintenance costs are the sole responsibility of the Claimant as he is bound by those terms regardless of the oil spill or not.

This claim is denied since the Claimant has not demonstrated that he has suffered a loss of earnings from the sale of his home as a consequence of injury to, destruction of, or loss of property or natural resources as a result of the discharge or substantial threat of discharge of oil.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/23/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁶ Contract for sale of property, dated 26, April 2010, unsigned by buyer.

⁷ *Id.* at 5.

⁸ Email between potential buyer and Claimant's realtor, 30 April 2010; PHONECON: Claimant's realtor and NPFC Staff, 22 June 2011.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

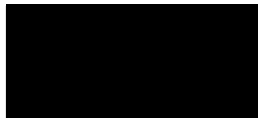
NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-1017
26 June 2011



RE: Claim Number: N10036-1017

Dear [REDACTED]

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 claim number N10036-1017 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-1017.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,
[REDACTED]

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00003976

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1017
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity and Subsistence Use
Amount Requested	\$1,141.00

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 16 June 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$348.50 in lost profits and earning capacity and \$792.50 for a loss of subsistence use to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill. His total loss for both claims is \$1,141.00.

Claimant is a fisherman who sold his catches to the "community".¹ Claimant alleged lost profits and earnings which he evidenced by showing receipts to the public. Claimant further alleged a loss in subsistence but has failed to provide evidence to support the allegation nor did the Claimant respond to NPFC's request for additional information dated 21 June 2011.

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.

Loss of Earning Capacity

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.

¹ See OSLTF claim form "Incident Information"
09/14/11

- (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.

Loss of Subsistence Use

The claims regulations (33 C.F.R. §§136.219-223) provide additional requirements for lost subsistence use claims. Specifically, each claim for loss of subsistence use of natural resources must:

- (a) Be for lost subsistence use and submitted by an eligible claimant;
- (b) Identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- (c) Describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- (d) Describe efforts to mitigate the subsistence use loss; and
- (e) Be based on the reasonable cost to replace the lost subsistence use of natural resources.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, the Claimant submitted the following documentation:

- OSLTF claim form undated;
- Sum-Certain explanation letter;
- GCCF Interim Claim Form – pages 2, 7;
- Handwritten letter explaining catch of fish;
- Reference Sheet;

- Receipts for sale of fish;
- 2008 Form 1099-R;
- Copy of Social Security Card, Mississippi Fishing License, Mississippi Drivers License;
- 2008 SSA-1099 Social Security Benefit Statement;
- 2009 SSA-1099 Social Security Benefit Statement; and
- 2010 SSA-1099 Social Security Benefit Statement.

Claimant seeks lost earnings and wages in the amount of \$348.50 and Subsistence Use of \$792.50 for a total loss of \$1,141.00.

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) for one month with the GCCF on 14 October 2010 in the amount of \$1,500.00.² He was assigned Claimant ID [REDACTED] and claim [REDACTED]. This claim was denied on 09 November 2010.³

Additionally, the Claimant filed two (2) Interim claims with the GCCF, First Quarter Interim Claim 2011 [REDACTED] with claim [REDACTED] and Second Quarter Interim Claim 2011 [REDACTED] with claim [REDACTED]; one was filed on 06 January 2011 for \$0.01 and the other was filed on 06 May 2011 for \$792.50. These claims were denied on 14 May 2011.⁴

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of the claim before the NPFC regarding profits and earning capacity, i.e., that the Claimant lost earnings by not being able to fish and sell his catch to the community as result of the Deepwater Horizon oil spill. The NPFC deems each of the Claimant's three (3) denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1017 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s [REDACTED] (EAP), [REDACTED] and [REDACTED].

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF.

NPFC Determination

This claim is denied. Under 33 CFR 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 CFR § 136.233, a Claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

² Report from the GCCF dated 15 July 2011

³ GCCF Denial Letter dated 09 November 2010

⁴ GCCF Denial Letter dated 14 May 2011

Loss of Subsistence Use

The Claimant failed to present a subsistence claim to the responsible party and thus cannot bring a claim before the NPFC with regards to subsistence. Further, the Claimant failed to provide any documentation or respond to the NPFC's letter requesting additional information dated 21 June 2011. The Claimant has not established that his alleged subsistence loss resulted from the Deepwater Horizon oil spill and his claim is denied.

Loss of Earning Capacity

The claim is denied because the evidence presented by the Claimant does not prove that his alleged loss of \$348.50 for lost profits and earnings capacity due to the Deepwater Horizon incident. NPFC sent a certified letter to the Claimant requesting additional information in order to further evaluate the claim. Among other documents and questions asked in the letter, the NPFC asked if the Claimant had a commercial fishing license for the State of Mississippi and for trip tickets from the State of Mississippi. The Claimant did not respond to the request. The USPS Tracking site showed the certified letter was delivered. Since the Claimant did not present sufficient evidence to prove that his alleged loss is due to the Deepwater Horizon incident, his claim is denied.

In summary, this claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$348.50, as claimed, (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, and (3) the Claimant failed to make proper presentment of his loss of subsistence use to the BP/GCCF prior to presenting his claim for \$7925.50 to the NPFC.

Claim Supervisor: *Cl [REDACTED] Division*

Date of Supervisor's review: *7/26/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



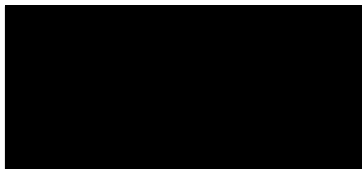
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/22/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-1018

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1018 involving Deepwater Horizon. 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 N10036-1018.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely



Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00003981

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1018
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$40,000.00

FACTS:

On or about April 20, 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 August 23, 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 June 20, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim on behalf of her company, [REDACTED] in the amount of \$40,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that her business operates as a physician billing service and she "lost business due to the fact that people lost their jobs and no tourism."¹

The Claimant provided a copy of her GCCF denial letter for the final claim. The claim was denied on April 29, 2011.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

¹ Optional OSLTF Claim Form, dated June 20, 2011
09/14/11

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated June 20, 2011;
- Letter from Claimant to GCCF, dated February 20, 2011;
- Handwritten profit and loss statements summarizing 2008 and 2010
- 2008, 2009, and 2010 IRS Schedule C;
- Copy of GCCF denial letter, dated April 29, 2011

NPFC Determination

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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$40,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

The Claimant failed to provide sufficient financial documentation and reasoning behind the sum certain of \$40,000.00. If the Claimant's income was reduced as a consequence of injury to,

destruction of, or loss of property or natural resources, the Claimant must be able to demonstrate the amount of that reduction.

Also, should the Claimant choose to come back on reconsideration, she will have to provide an itemized list of her clients to assist in determining the direct connection between the Claimant's income and the oil spill. Please understand that under OPA, if the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position. It is critical that the Claimant understand that showing a financial loss is not sufficient enough evidence to prove that the loss was solely due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$40,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *Claim [REDACTED] Division*

Date of Supervisor's review: *6/22/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

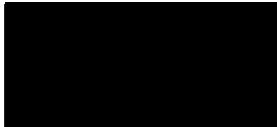
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
8/3/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-1022

Dear [REDACTED]

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 claim number N10036-1022 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

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,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1022
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$23,886.09

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 21 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking \$23,886.09 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant is a payroll clerk at [REDACTED] located in Belle Chasse, LA.¹ Specifically, Claimant works in the company's [REDACTED] division that does business repairing industrial equipment on offshore oil rigs in the Gulf of Mexico.² Claimant asserts that, as a result of the Deepwater Horizon oil spill, [REDACTED] lost business with oil rigs and related companies which led to Claimant's hours being cut.³

Claimant did not provide a calculation for his sum certain total of \$23,886.09.

Prior to presenting this Claim to the NPFC, Claimant filed an Emergency Advance Payment ('EAP') Claim with the GCCF on 26 October 2010 in the amount of \$20,000.00.⁴ Claimant was assigned Claimant ID [REDACTED] and Claim [REDACTED]. The EAP claim was denied on 7 December 2010.⁵ Additionally, Claimant filed an Interim Payment Claim with the GCCF on 10 January 2011 in the amount of \$23,000.00 and was assigned Claim [REDACTED]. The Interim Payment Claim was denied on 6 May 2011.⁷

¹ Optional OSLTF Claim Form.

² PHONECON between NPFC and [REDACTED] dated 23 June 2011.

³ Optional OSLTF Claim Form.

⁴ Report from the GCCF dated 23 June 2011.

⁵ GCCF Denial Letter dated 7 December 2010.

⁶ Report from the GCCF dated 23 June 2011.

⁷ GCCF Denial Letter dated 6 May 2011.

REQUEST FOR RECONSIDERATION:

On August 2, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on July 11, 2011 because under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented an EAP claim for \$20,000 and an Interim Payment claim for \$23,000 in lost profits and earnings to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$23,886.09 to the NPFC. Any claimed amount of damages exceeding \$23,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and was therefore denied.

The remainder of this claim was denied because the Claimant has not proven he suffered a financial loss due to the Deepwater Horizon oil spill. Claimant provided a spreadsheet of his 2009 and 2010 earnings which indicated his earnings were less in 2010 than 2009. The NPFC contacted the Claimant's employer to verify the reasons for the Claimant's reduction in earnings. The Claimant's employer provided a letter written to the GCCF on 26 January 2011 which stated that [REDACTED] works directly with oilfield companies and related companies and the business had been affected by the oil spill in the Gulf.⁸ When asked specifically about the reasons for the Claimant's reduction in hours, his employer verified the moratorium on drilling as the main cause for the Claimant's loss.⁹

The claim was then denied because the Claimant failed to (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), and to (2) demonstrate that his 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.

On reconsideration, the Claimant provided a one page letter to the NPFC, a copy of a letter to Senator Vitter asking for assistance in getting him paid for his alleged losses, a partial one page copy of the NPFC's initial denial determination, a copy of three pay stubs for periods ending 6/21/09, 9/20/09, and 12/27/09, and a duplicate copy of a spreadsheet the Claimant created which was part of his original claim submission to the NPFC. The Claimant argued on reconsideration (1) that the NPFC erroneously labeled his position with his employer as a payroll clerk when in fact he was a shop worker, (2) Claimant argues while he is not a fisherman, the BP oil spill negatively impacted his earnings, (3) Claimant argues that he provided BP with a copy of his check stubs and that he has the basic copies to determine his loss, i.e. copy of his 2nd quarter, 3rd quarter, and 4th quarter pay checks showing his gross earnings for those periods, and (4) the Claimant provided a duplicate copy of a spreadsheet he created which he asserts shows his sustained loss for the periods.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on August 2, 2011 via certified mail.¹⁰ The Claimant provided the information referenced above in support of his request for reconsideration.

⁸ Letter from [REDACTED] to Gulf Coast Claims Facility, dated 26 January 2011.

⁹ PHONECON between NPFC and [REDACTED] dated 23 June 2011.

¹⁰ Request for reconsideration letter and enclosures dated July 20, 2011.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a Claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The Claimant provided the information discussed above in support of his request for reconsideration.

The NPFC will address the Claimant's assertions as presented on reconsideration. First, the Claimant stated that the NPFC's initial denial determination identified his position with [REDACTED] as a payroll clerk when in fact he is a shop worker. The NPFC was in error when it stated the Claimant was a payroll clerk.

Secondly, the Claimant argues that while he is not a fisherman, the BP oil spill negatively impacted his earnings. Based on the information provided by the Claimant and based on a conversation the NPFC had with the Claimant's employer, [REDACTED] on June 23, 2011, the employer advised the NPFC that the moratorium on drilling was the main cause of the Claimant's loss of earnings because his employer works directly with oilfield companies and related companies that were impacted by the moratorium on drilling. Based on this information, the Claimant has not demonstrated that his alleged loss is a direct result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil but rather due to intervening causes, i.e. moratorium on drilling.

Thirdly, the Claimant argues that BP was provided a copy of his check stubs and that he has the basic copies to determine his loss, i.e. copy of his 2nd quarter, 3rd quarter, and 4th quarter pay checks showing his gross earnings for those periods. The NPFC does not dispute the fact that the Claimant may have provided such documents to BP although it is important to note that the NPFC claims process is a separate and distinct claims process from the claim process BP has in place for the Deepwater Horizon incident and as such, unless a Claimant provides the NPFC with the same information that has been provided to BP/GCCF, the NPFC does not automatically get a copy of what has been provided to another unaffiliated organization. Based on the foregoing, the Claimant never produced check copies to the NPFC with its initial claim submission therefore the NPFC did not have the opportunity to see the documentation until it was provided on reconsideration.

Lastly, the Claimant produced another copy of a spreadsheet he created which demonstrates allegedly his pay period earnings for 2009 and 2010 although it is important to note that the Claimant has only produced a total of three pay stubs over the span of this two year period.

Additionally, it is important to note that the Claimant's reported end of year 2010 earnings on his spreadsheet do not match the 2010 W-2 produced by the Claimant and his calculation of loss year to date for 2010 on his spreadsheet also does not match his amount requested of the NPFC in support of his alleged loss.

Finally, while the Claimant asserts by way of his spreadsheet that he made less in 2010 than in 2009, the Claimant has not demonstrated that the loss of income was 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 but rather based on the NPFC's conversation with the Claimant's employer, any alleged loss is the result of intervening causes, i.e. moratorium on drilling. Furthermore, pursuant to the governing claims regulations found at 33 CFR 136.233 (c) which states "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", the Claimant has not provided sufficient comparable financial documentation other than three pay stubs and a spreadsheet with figures not supported by the record.

Based on the foregoing, the NPFC denies the claim on reconsideration because (1) the Claimant has failed to demonstrate that he had an alleged loss of profits in the amount claimed and (2) the Claimant has failed to demonstrate a loss of profits 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.

This claim is denied upon reconsideration.

Claim Supervisor 

Date of Supervisor's review: *8/3/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim# N10036-1023
28 June 2011



RE: Claim Number: N10036-1023

Dear [REDACTED]

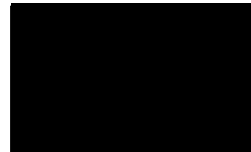
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-1023 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-1023.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003990

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1023
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

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.

PRESENTMENT TO THE RESPONSIBLE PARTY/GCCF

On 30 December 2010, Claimant received an Emergency Advance Payment from GCCF of \$1,500.00. The Claimant's GCCF Claimant Identification Number is [REDACTED] and Payment Claim Number is [REDACTED].

On 30 December 2010, the Claimant filed a Quick Payment final claim with the GCCF.

According to the GCCF, the Claimant received an additional \$5,000.00 payment from the GCCF and executed a Release and Covenant Not to Sue.¹

CLAIM AND CLAIMANT

On 21 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$10,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant has worked for [REDACTED] since as early as 2008. She continued to be employed by [REDACTED] in Pensacola, FL. Claimant alleged she has lost hours and earnings due to the Deepwater Horizon oil spill in the amount of \$10,000.00.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim

¹ GCCF Claims Status Update to the NPFC, dated 23 June 2011.
09/14/11

must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or the state to recover from the responsible party. 33 U.S.C. § 2712(f).

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following documentation:

- 1) OSLTF claim form dated 14 June 2011
- 2) [REDACTED] from [REDACTED]
- 3) Collection agency bill for [REDACTED]
- 4) Various bills from [REDACTED]
- 5) Bill from [REDACTED] My Vehicles
- 6) Bill from [REDACTED]
- 7) 2008 W-2 from [REDACTED]
- 8) 2009 W-2 from [REDACTED]
- 9) 2010 W-2 from [REDACTED]
- 10) Bank Statements from [REDACTED] for 30 April 2009 to 29 September 2010
- 11) Paystubs from [REDACTED] from 23 November 2009 to 12 November 2010
- 12) Ledger of bills

Claimant seeks lost earnings and wages in the amount of \$10,000.00

Claimant presented an Emergency Advance Payment claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 30 December 2010 the GCCF issued payment in the amount of \$1,500.00 on her claim.² Claimant further presented a Full Review Final Claim and was issued Claim [REDACTED] and Claim [REDACTED]. On 30 December 2010 GCCF issued a Quick Pay in the amount of \$5,000.00.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that her loss of income was due to injury or destruction or loss of real or personal property or 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 their claim. The NPFC considered all the documentation submitted by the Claimant.

Based on information presented by the Claimant and information available to the NPFC, the GCCF paid a total of \$6,500.00 to the Claimant as compensation for her claim. According to information from the GCCF, the Claimant executed a Release and Covenant Not to Sue in return for the \$5,000.00 Quick Payment.

² See GCCF Filing Report [REDACTED] or GCCF Claimant's Status Page/Report

This claim is denied because it appears from the record that the Claimant has fully settled her claims with BP/GCCF, and that BP and GCCF have compensated the Claimant, including a \$5,000.00 Quick Payment for which GCCF reportedly required a final and full release of rights against any Responsible Party.

The Claimant has not addressed these payments or otherwise provided any information to show the Claimant has any rights to recover any of the amount claimed here from a Responsible Party. The Fund will not pay what has already been compensated and any Fund payment is subject to acquiring all rights to recover from the Responsible Party.

If the Claimant disagrees with this determination to deny the claim based on being compensated and signing a release, she may request reconsideration. Should the Claimant decide to request reconsideration, the Claimant MUST provide any and all documentation of any payments received from BP or GCCF, including any related agreements or releases signed by the Claimant.

If the Claimant disagrees that any payments that have been received from BP or GCCF, or that any payments received are for damages other than those subject of his claim for \$10,000.00 to the NPFC, the Claimant must explain the circumstances in detail.

If the Claimant disagrees that she has signed any release associated with her claims against the Responsible Party, including any release in return for a Quick Payment, the Claimant must fully explain the circumstances in her request for reconsideration. Therefore, this claim is denied as the Claimant has been compensated.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/28/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-435-6997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1024
18 July 2011

[REDACTED]

Re: Claim Number: N10036-1024

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-1024 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-1024.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]

Division
National Pollution Funds Center
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : N10036-1024
Claimant : ██████████
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and 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 21 June 2011, ██████████ (Claimant) presented an optional Oil Spill Liability Trust (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$17,000 in loss of profits and earning capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that she was actively looking for work during the time of the spill and had very little response from potential employers.¹ The Claimant alleged that as a result of the Deepwater Horizon oil spill, she has not been able to find work.²

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).

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.

¹ OSLTF optional claim form dtd 31 May 2011.

² Id.
09/14/11

- (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:

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following documentation to the NPFC:

- Cover letter dtd June 8, 2011
- Letter to GCCF dtd 24 January 2011
- Denial Letter dtd 6 May 2011
- Letter to GCCF dtd 24 March 2011 and Full Review Final Claim form
- 2008 Tax Return
- 2008 W-2 -- [REDACTED]
- 2009 1040EZ Tax Document
- 2009 1099G Unemployment Benefits
- Job Search Log April 19, 2010 to January 17, 2011
- 2010 W-2 Making Impressions
- GCCF Full Review Final Payment Claim Form
- Job Search Log May 27, 2010 to June 13, 2011
- News Articles
- Letter from Medicaid
- 2010 W-2 Making Impressions
- Emergency Unemployment Extension dtd July 9, 2009
- Court Summary
- 2000 W-2 [REDACTED]
- 2001 W-2 [REDACTED]
- 2001 W-2 [REDACTED]
- SAKS Pay statement
- [REDACTED] Pay statement
- 2000 W-2 [REDACTED]
- 2000 W-2 [REDACTED]
- 2003 1099 [REDACTED]
- [REDACTED] Invoices

Claimant seeks \$17,000.00 in loss profits and earnings capacity allegedly resulting from the Deepwater Horizon spill.

Prior to presentment to the NPFC the Claimant submitted a Full Review Final Payment Claim to the RP/GCCF on 21 January 2011 in the amount of \$8,500.00, which was denied.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a Claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The documentation provided by the Claimant demonstrated that she did not experience a loss resulting from the Deepwater Horizon incident. The Claimant had been unemployed since 2009, prior to the spill. The documentation provided by the Claimant showed the Claimant had been receiving unemployment benefits since 2009. The Claimant alleged that she was laid off after one month of employment with [REDACTED]. During our investigation, the NPFC contacted [REDACTED] on 5 July 2011 and could not confirm the Claimant's assertion.

Allegedly, the Claimant conducted over 80 job searches. Of those, 1 search was conducted on or about 19 April 2010, prior to the spill. The documentation provided by the Claimant to support her job search efforts, did not include a resume or specific information pertaining to where the Claimant was seeking employment. Therefore, we were unable to confirm the job searches took place.

Furthermore, the NPFC confirmed with the GCCF that the Claimant has presented a claim for \$8,500.00 to the GCCF. It is unclear why the sum certain associated with the GCCF claim differs from the claimed amount to the NPFC. The NPFC cannot consider any amount in excess of \$8,500.00 for alleged loss of profits because the Claimant has not made proper presentment of such costs to the RP as required by the Oil Pollution Act of 1990 at 33 U.S.C. § 2713(a) and the claims regulations at 33 C.F.R. § 136.103(a), which state that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor. If the claim is not settled by payment by any person within 90 days the Claimant may present the claim to the NPFC.

The claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$17,000.00, as claimed, (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, and (3) that presentment requirements were met as stated in 33 C.F.R. § 136.103(a).

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's review: *7/18/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1026
24 June 2011

Re: Claim Number: N10036-1026

Dear [REDACTED]

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 N10036-01026 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 N10036-1026.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
Claim Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003998

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1026
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$8,000.00

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 21 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant began working for a shoe store in April of 2010 and with a construction company in March of 2010.² He lost the job with the shoe store in May of 2010 and the job with the construction company in July of 2010.³ He alleged that he lost these jobs as a result of the effects of the oil spill and particularly stated that the construction company lost contracts, which led to his layoff.⁴

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.

¹ Optional OSLTF Claim Form dated 21 June 2011.

² PHONECON: Claimant and NPFC Staff, 23 June 2011.

³ *Id.*

⁴ *Supra* note 1.

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 undertake, 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, Claimant submitted the following documentation:

- Optional OLSTF Claim Form;
- Electronic Filing Instructions for 2008 Federal Tax Return, showing adjusted gross income of \$6,966.00;
- 2010 W-2 Form, showing wages from [REDACTED] of \$384.38;
- 2010 Form 1099, showing wages from [REDACTED] of \$2,413.38;
- Copy of Claimant's Hazmat Services, Inc. certification;
- Copy of Claimant's Driver's license and armed forces ID card;
- Copy of Claimant's Social Security card;
- Copy of Payment to Claimant from [REDACTED] 12 Dec. 2010 to 26 Dec. 2010;
- Letter from Claimant's past employer to GCCF, dated 30 October 2010;
- Letter from Claimant's past employer, 14 Dec. 2010;
- Letter from Claimant to GCCF, describing losses;
- 2010 W-2 Form, showing wages of \$697.51 earned from [REDACTED];
- Form noting Claimant's membership in [REDACTED] 23 April 2010;
- Pay stubs, dated 17 Dec. 2010 and 23 Dec. 2010;
- Letter from Claimant to GCCF, dated 17 Jan. 2011; and,

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim to the RP/GCCF, which was denied on 15 November 2010.⁵ Claimant also submitted an Interim/Final Payment Claim to the RP/GCCF. According to Claimant, no action has been taken by the RP/GCCF since the presentment the claim.⁶

On 21 June 2011, Claimant presented the subject claim for \$8,000.00 in loss of profits and impairment of earnings capacity to the OSLTF.

NPFC Determination

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

⁵ GCCF denial letter, dated 15 November 2010.

⁶ Id.

the Claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support his claim.

The NPFC reviewed all information and documentation provided by the Claimant. According to a letter from the Claimant's employer, the Claimant worked for a construction company from March until June of 2010.⁷ In a phone conversation with NPFC staff, the employer indicated that the Claimant worked as an independent contractor and was hired once in 2009 and once in 2010 as work became available.⁸

According to the employer, from March to the end of June 2010, when the Claimant worked for the construction company, his pay did not decrease.⁹ Claimant has not provided official documentation of his 2010 income nor does he indicate what his 2009 earnings were with the company.¹⁰

Claimant further alleged that he lost a second job in May of 2010, when the shoe store he worked for closed its business.¹¹ Claimant began working in this position in April of 2010 and does not have a history of earnings for this particular position.¹² Additionally, the Claimant has provided nothing from the employer to validate the reason for his loss of employment therefore the NPFC is unable to determine whether or not the loss of said employment was a direct result of the oil spill.

This claim is denied because the Claimant has failed to demonstrate that he suffered a loss resulting from the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: NPFC Claims  Division

Date of Supervisor's Review: 6/24/11

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ Letter from Claimant's employer to GCCF, dated 14 Dec. 2010. No official documentation of earnings provided.

⁸ PHONECON: Claimant's former employer and NPFC Staff, 23 June 2011.

⁹ Employer indicates that Claimant earned three checks in the amounts of \$938.00, \$1,226.00 and \$973.00.

¹⁰ Id.

¹¹ Id.

¹² W-2 shows wages of \$384.38 earned in this position in 2010.

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1027
03 August 2011

Dear [REDACTED]

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 N10036-1027 involving Deepwater Horizon. 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 N10036-1027.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[REDACTED] Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004002

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1027
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$20,000.00

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 21 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$20,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a shrimp and crab fisherman out of Panama City, Florida. The Claimant alleged that the "oil spill closed down shrimping and crabbing. It is slow now. I am unable to make a living."¹ He provided a copy of his Florida Commercial Saltwater Products License² and proof that he owned a fishing boat. He stated that he sold the license and boat in 2010 because he needed the money.³ The Claimant has authorized a neighbor, [REDACTED] to "receive and give you information" on his claim.⁴

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.

¹ OSLTF Claim Form signed 15 June 2011

² Copy of Florida Commercial Saltwater Product License [REDACTED] expires 30 June

³ Based on telephone conversation between the Claimant [REDACTED] and the NPFC Claims Adjuster 29 July 2011

⁴ Letter to GCCF transmitting Trip Tickets 16 November 2010. See sentence on [REDACTED]

- (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 the claim, the Claimant submitted the following documentation:

- OSLTF Claim Form signed 15 June 2011;
- GCCF Deficiency Denial Letter Interim/Final Payment Claim 27 May 2011;
- Letter to GCCF explaining claim 25 October 2010;
- Copy of Florida Commercial Saltwater Product License [REDACTED] expires 30 June 2011;
- Claimant's Florida Driver License Class E;
- GCCF Claim Form 2000-C;
- Letter to GCCF transmitting Trip Tickets 16 November 2010;
- Notice of Case Action from Florida Department of Children and Families for Food Stamps 26 October 2010;
- GCCF Letter requesting missing documentation 16 November 2010;
- Claimant's 2008 and 2009 Wages worksheet;
- [REDACTED] for Florida for 2008 and 2009. Fisherman's copy; and
- Gas Receipts 2008 worksheet with copies of receipts.

On 22 June 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The letter was sent via Certified Mail Return Receipt Requested.⁵ The letter was delivered 02 July 2011 to Panama City, Florida, and was returned "Unclaimed" on

22 July 2011. The NPFC Claims Adjuster contacted the Claimant and obtained the Claimant's responses to the letter by phone.⁶

Prior to presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF. The EAP was assigned Claimant ID [REDACTED] and claim [REDACTED]. The claim was denied on 06 December 2010.⁷ Additionally, the Claimant filed a Full Review Final (FRF) claim with the GCCF, FRF Claim [REDACTED]. This claim was denied on 27 May 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that the loss of earnings is a result of the Deepwater Horizon oil spill. The NPFC deems each claim denied by GCCF to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1027 considers and addresses the earnings claimed in all of the claims presented to the responsible party, specifically GCCF Claim #'s [REDACTED].

NPFC Determination

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 considered all documentation presented by the Claimant.

The Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "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." The Claimant was unable to provide copies of his federal income tax returns for 2008, 2009 and 2010. Based on a discussion between the Claimant and the NPFC, the Claimant stated he did not file these returns. It should be noted that the Claimant did provide copies of his trip tickets for 2008 and 2009 but without income tax returns to corroborate that the Claimant has produced all trip tickets, the Claimant cannot show sufficient documentation to establish his loss of earnings as alleged. Based on the financial documentation provided by the Claimant, the NPFC is unable to determine the Claimant's income; subsequently the NPFC is unable to determine a loss of income.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount of \$20,000.00, 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.

Claim Supervisor: [REDACTED] *Claimant Division*

Date of Supervisor's Review: *03 August 2011*

Supervisor's Action: *Denial approved*

⁶ Based on telephone conversation between the Claimant, [REDACTED] and the NPFC Claims Adjuster 29 July 2011

⁷ GCCF Denial Letter dated 06 December 2010

⁸ GCCF Deficiency Denial Letter dated 27 May 2011

U.S. Department of
Homeland Security

**United States
Coast Guard**

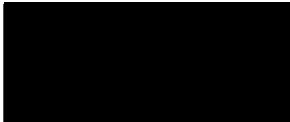


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [REDACTED]



RE: Claim Number: N10036-1028

Dear [REDACTED]

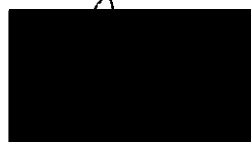
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1028 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-1028.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00004006

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1028
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$10,000.00

FACTS:

On or about April 20, 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 August 23, 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 June 22, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$10,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he was "laid off at [REDACTED] due to the oil spill."¹ The Claimant provided no explanation on the type of employment he held but based on paystubs provided, it appears he was a waiter.

The Claimant did not provide any correspondence pertaining to his GCCF claim but a quick search of the GCCF database shows the Claimant's Emergency Advance Payment (EAP) claim was denied on December 6, 2010. The Claimant has since filed a interim/final claim but based on GCCF methodology, they determined he had not suffered a financial loss.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

¹ Optional OSLTF Claim Form dated June 15, 2011
09/14/11

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated June 15, 2011;
- Various paystubs from April 14, 2010 through October 20, 2010;
- Copy of Louisiana Driver's License.

NPFC Determination

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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$10,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "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.” The only financial documentation provided was various paystubs through 2010.

Should the Claimant choose to come back on reconsideration, he will have to provide contact information and a letter from his previous employer stating why he was terminated. He will also need to provide financial data from his employer to assist in determining the nexus between the Claimant’s income and the oil spill. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$10,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor 

Date of Supervisor’s review: *6/27/11*

Supervisor Action: *Denial approved*

Supervisor’s Comments:

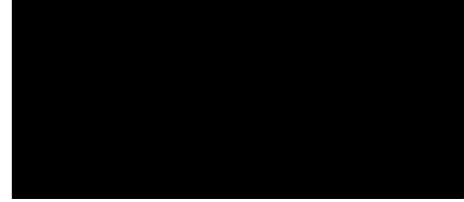
U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-1029
29 June 2011



RE: Claim Number: N10036-1029

Dear [REDACTED]

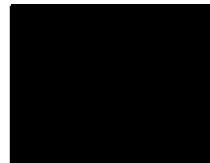
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-1029 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-1029.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



ication Division
National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1029
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$50,000.00

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 22 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$50,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works for [REDACTED] as a pipe fitter.¹ Claimant alleged he lost his job at the [REDACTED] for approximately six weeks due to the Deepwater Horizon oil spill.²

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.

¹ Letter from employer dated 26 April 2011.

² OSLTF claim form dated 17 June 2011.

- (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 his claim, Claimant submitted the following documentation:

- 1) OSLTF claim form dated 17 June 2011
- 2) ADP Pay Statements for 2010
- 3) 2008 Form W-2 Wage and Tax Statement
- 4) 2009 Form W-2 Wage and Tax Statement
- 5) 2010 W-2 from [REDACTED]
- 6) 2010 W-2 from [REDACTED]
- 7) GCCF Denial letter on Interim Payment/Final Payment Claim
- 8) Letter from [REDACTED] explaining date of hire
- 9) 2010 Form 1099-G Unemployment Compensation from Louisiana Workforce Commission Office of UI Administration

Claimant seeks lost earnings and wages in the amount of \$50,000.00.

Claimant presented an Interim/Final Payment claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 16 April 2011 the GCCF denied his claim.³

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 their claim. The NPFC considered all the documentation submitted by the Claimant.

³ GCCF denial letter Re: Claimant's Interim/Final Payment Claim, dated 16 April 2011.
09/14/11

The letter from the Claimant's employer indicated that the Claimant worked from 22 April to 03 June 2010 at [REDACTED] in Baton Rouge, Louisiana.⁴ Claimant alleged a loss of six weeks of work at this site due to the Deepwater Horizon oil spill.⁵ On 23 June 2011, the NPFC discussed the claimed loss with the HR Manager of [REDACTED] (Claimant's employer). The HR Manager stated that the Claimant's employment was never disrupted or impacted by the Deepwater Horizon oil spill, but the project he worked on was delayed a few weeks because of engineering problems and financial problems.⁶

This claim is denied because the Claimant failed to meet his burden to demonstrate that his alleged loss in the amount of \$50,000.00 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.

[REDACTED]
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/29/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁴ [REDACTED] employment letter dated 26 April 2011.

⁵ OSLTF claim form.

⁶ PHONECON with HR Manager on 23 June 2011.

09/14/11

FOIA2011-3380-00004013

U.S. Department of
Homeland Security

United States
Coast Guard



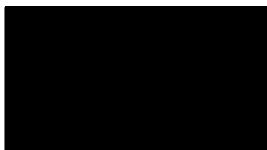
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-1030

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1030 involving Deepwater Horizon. 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 N10036-1030.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



National Pollution Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004014

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1030
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$5,000.00

FACTS:

On or about April 20, 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 August 23, 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 June 22, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$5,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he had a “loss of earnings during [his] employment in the hotel industry.”¹ He also stated that he was “unable to work full time as hired due to the slowness of the restaurant during the time of the oil spill.”²

The Claimant provided a copy of his GCCF denial letter for his final claim. The claim was denied on June 3, 2011.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

¹ Optional OSLTF Claim Form dated June 10, 2011

² Id

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated June 10, 2011;
- Copy of GCCF denial letter, dated June 3, 2011.

NPFC Determination

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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$5,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The Claimant provided no documentation to back up his claim.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "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.”

Should the Claimant choose to come back on reconsideration, he will have to tell us who his employer is/was, provide a termination letter and contact information, and provide financial data from his employer to assist in determining the nexus between the Claimant’s income and the oil spill. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$5,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *Claim [REDACTED] on Division*

Date of Supervisor’s review: *6/27/11*

Supervisor Action: *Denial approved*

Supervisor’s Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1031
27 July 2011

1702 So. Barbier Ave.
Thibodaux, LA 70301

Dear [REDACTED]

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 N10036-1031 involving Deepwater Horizon. 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 N10036-1031.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1031
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$25,000.00

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 22 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant operates [REDACTED] in Thibodaux, Louisiana. She stated she "lost children due to parents' loss of jobs due to the oil spill."¹ Since the Claimant did not respond to NFPC's letter requesting additional information, there are few details available about the claim.

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.

¹ OSLTF Claim Form signed 07 June 2011

(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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, the Claimant submitted the following documentation:

- OSLTF Claim Form signed 07 June 2011
- Profit and Loss Statements for [REDACTED] for 2008, 2009 and 2010

On 23 June 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. The letter was sent First-Class Certified Mail Return Receipt Requested. The Claimant did not respond to the request. The US Postal Service Tracking shows the letter was delivered 08 July 2011 to Thibodaux, Louisiana.²

Claimant is seeking lost earnings and wages in the amount of \$25,000.00.

² USPS Tracking Number [REDACTED]

NPFC tried to confirm that the claim was properly presented to GCCF. GCCF indicated that it had no claim for the Claimant named.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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.

NPFC sent a letter to the Claimant requesting additional information. The Claimant did not respond to the letter. The US Postal Systems Tracking shows the certified letter was delivered. Since the Claimant did not respond to the request for additional information, there is insufficient documentation to show the Claimant's alleged loss was caused by the oil spill.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount of \$25,000.00, (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) that the Claimant presented a claim first to BP/GCCF prior to his presentation of a claim to the NPFC pursuant to 33 C.F.R. § 136.103(a).


Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *7/27/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



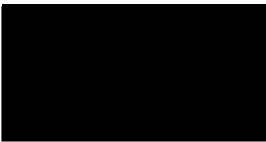
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-435-0307
5890
6/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-1032

Dear [REDACTED]

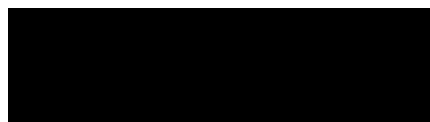
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1032 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-1032.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



National Pollution Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004022

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1032
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$5,000.00

FACTS:

On or about April 20, 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 August 23, 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 June 14, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$5,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he is a cook and due to the oil spill, no restaurants were hiring in the Gulf Shores/Orange Beach area. The Claimant stated that he applied for numerous other jobs, such as construction and landscaping to mitigate his loss but no one was hiring.

The Claimant provided a copy of his GCCF denial letter for his final claim. The claim was denied on May 6, 2011.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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 support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated June 14, 2011;
- Letter from Claimant to NPFC, dated June 14, 2011;
- 2009 and 2010 W-2;
- 2010 Tax Return Summary;
- 2009 1040-EZ
- Summary of Individual Income Tax Returns from 2004 to 2008;
- Copy of GCCF denial letter, dated May 6, 2011

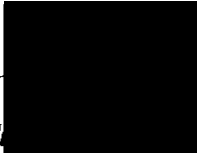
NPFC Determination

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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$5,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

The Claimant has failed to prove his loss was a direct result of the oil spill or that he suffered a financial loss of \$5,000.00. The Claimant simply stated that he applied at numerous jobs but none were hiring "due to the oil spill." The Claimant provided no proof of where he applied or why he was not hired.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$5,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:  *tion Division*

Date of Supervisor's review: *6/27/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-1033
27 June 2011

Re: Claim Number: N10036-1033

De [REDACTED]

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 claim number N10036-1033 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 N10036-1033.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004026

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1033
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$25,000.00

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 22 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill (oil spill).¹

Claimant worked as a commissioned sales associate with a large furniture retailer in New Orleans. He alleged that “[as a result of the oil spill] the entire area was impacted by lost earnings, lost jobs, as well as the uncertainty of financial security. Furniture sales tanked.”²

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.

¹ Optional OSLTF Claim Form dated 26 May 2011.

² Claimant GCCF claim application, page 7.

- (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, Claimant submitted the following documentation:

- Letter from Claimant, describing losses, dated 12 June 2011;
- Letter from Claimant, dated 28 April 2011;
- Letter from Claimant to GCCF, dated 11 March 2011;
- 2010 W-2 Earnings Summary, showing earnings of \$9,692.00;
- 2010 W-2 Earnings Summary, showing wages with [REDACTED] Louisiana, of \$32,721.78;
- 2009 W-2 Earnings Summary, showing wages with [REDACTED] Louisiana, of \$48,172.93;
- 2008 W-2 Earnings Summary, showing wages with [REDACTED] Louisiana, of \$42,230.95;
- Copy of GCCF claim information;
- Letter from Claimant, dated 17 January 2011, explaining calculation of losses;
- Copies of checks signed by Claimant, highlighting [REDACTED] payments.

Prior to presentment to the NPFC, Claimant submitted an Emergency Advance Payment Claim, as well as an Interim/Final Payment Claim to the RP/GCCF. Claimant's EAP was denied on 15 December 2010, and Final claim was denied on 14 April 2011.

On 22 June 2011, Claimant presented the subject claim for an alleged loss of profits and earnings in the amount of \$25,000.00 resulting from the oil spill.

NPFC Determination

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

The NPFC reviewed all information and documentation provided by the Claimant. Claimant worked in a commissioned sales position, and did not have a guaranteed income. He earned \$42,230.95 in 2008, \$48,172.93 in 2009 and from 1 January to 11 September 2010, he earned \$32,721.78.³ Claimant left his sales job in September of 2011 after being disappointed in the lack of growth of his income in that year.⁴ However, aside from the lack of growth, the Claimant does not indicate any losses in actual income.

This claim is therefore denied as the Claimant has failed to show that he suffered a loss 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.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/27/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ W-2 Statements provided by Claimant.

⁴ Letter from Claimant to GCCF, 17 January 2011.

U.S. Department of
Homeland Security

United States
Coast Guard



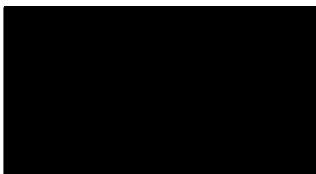
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-1035

Dear [REDACTED]

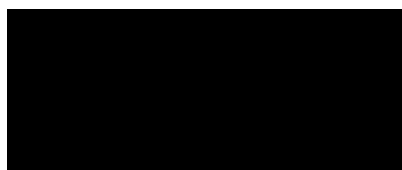
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1035 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-1035.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Encl: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00004030

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1035
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$4,000.00

FACTS:

On or about April 20, 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 August 23, 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 June 22, 2011 [REDACTED] Claimant) presented a lost profits & earnings capacity claim in the amount of \$4,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he is self-employed and does landscaping for a living but doesn't fish anymore because of the because of the oil in the water.

The Claimant requested a sum certain of \$2,000.00 for lost profits and earnings capacity, and a sum certain of \$2,000.00 for subsistence. Based on the little documentation provided by the Claimant, it appears that the entire sum certain of \$4,000.00 is for the lost profits & earnings capacity claim.

The Claimant did not provide any documentation for his claim with the GCCF but stated on the Optional OSLTF Claim form that he submitted a claim that was subsequently denied.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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 support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated June 6, 2011;
- 2010 Income Tax Returns

NPFC Determination

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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$4,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "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.” The Claimant provided his 2010 taxes but no other financial documentation for comparable periods.

If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$4,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *Claim [REDACTED] Division*

Date of Supervisor’s review: *6/27/11*

Supervisor Action: *Denial approved*

Supervisor’s Comments:

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

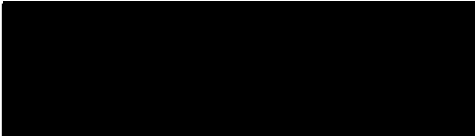


Fax: 202-435-0337

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1036
24 June 2011



Re: Claim Number: N10036-1036

Dear [REDACTED]

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 claim number N10036-01036 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 N10036-1036.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



Claim [REDACTED] cation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004034

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1036
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$4,800.00

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 22 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$4,800.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant alleged that he lost a potential employment opportunity when the pool service company that had offered him a part-time position, fell into financial difficulty as a result of the oil spill and rescinded its offer of employment.²

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.

¹ Optional OSLTF Claim Form dated 21 June 2011.

² Letter from Claimant's employer, dated 11 Oct. 2010.

- (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, Claimant submitted the following documentation:

- Optional OLSTF Claim Form;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 6 May 11;
- Form noting Claimant's membership in [REDACTED] 23 April 2010;
- Letter from Claimant's employer, describing Claimant's loss, 11 October 2011, and;
- Letter from Claimant to GCCF, undated.

Prior to presentment to the NPFC, Claimant presented an Interim Payment/Final Payment Claim to the RP/GCCF, which was denied on 6 May 2011.³

NPFC Determination

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

The NPFC reviewed all information and documentation provided by the Claimant. Claimant alleged that the pool services company that had offered him employment, starting in late June 2010, rescinded the offer when their business slowed following the oil spill.⁴ According to a letter provided by the Claimant, customers of the pool services company were financially affected by the oil spill and did not follow through with construction contracts, which led to

³ GCCF denial letter dated 6 May 2011.

⁴ Optional OSLTF Claim Form.

financial losses for the company and the inability to hire the Claimant.⁵ The Claimant, however, had not yet started a position with the company and had not entered into an employment contract. Therefore he has not demonstrated that he suffered an actual loss.

This claim is denied because the Claimant has failed to show that he suffered a loss resulting from injury to, destruction of or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Administration Division*

Date of Supervisor's Review: *6/23/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ Id.

U.S. Department of
Homeland Security

United States
Coast Guard



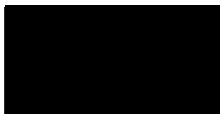
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

5890
7/5/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-1037

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1037 involving Deepwater Horizon. 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 N10036-1037.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Adjudication
National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00004038

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1037
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$19,359.00

FACTS:

On or about April 20, 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 August 23, 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 June 22, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$19,359.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that she was terminated from her job due to the incident causing a reduction in force.¹ The Claimant provided a letter signed by [REDACTED] Chief Judicial Administrator of the [REDACTED] stating that "as a result of the environmental disaster, your current position is no longer needed."²

The Claimant provided a copy of her GCCF denial letter for her interim/final claim. The claim was denied on May 28, 2011.³

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ Optional OSLTF Claim Form dated June 4, 2011

² Letter to Claimant from [REDACTED] Chief Judicial Administrator of the [REDACTED]

³ GCCF Denial Letter on Interim/Final Payment Claim dated May 28, 2011
09/14/11

Pursuant to the claims regulations, 33 C.F.R. § 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.

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 support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated June 4, 2011;
- Termination letter signed by [REDACTED] of the [REDACTED];
- Termination notice citing "Lack of Work," dated May 7, 2010;
- Copy of GCCF denial letter, dated May 28, 2011;
- 2008 and 2010 W-2;
- 2010 IRS Form 1099-G;
- Louisiana Workforce Commission Monetary Determination

NPFC Determination

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 considered all documentation presented by the Claimant.

After reviewing the documentation provided by the Claimant, the NPFC contacted [REDACTED] to ensure that the Claimant was terminated from her position with the [REDACTED] strictly due to the oil spill. After the telephone discussion, the NPFC provided a written request to the Court in order to confirm the authenticity of the letter of termination the Claimant submitted and the relationship of the Court to the oil spill. Two (2) days after the request sent, the NPFC received a response from [REDACTED] on behalf of [REDACTED], stating that the documentation provided by the Claimant was falsified. [REDACTED] stated in the letter that ... [REDACTED] did not write the letter that [REDACTED] submitted to you. It does resemble a letter [REDACTED] wrote on Court letterhead and the signature appears to be a copy of her signature, but the remainder of the letter was not written by [REDACTED].⁴ [REDACTED] also provided the actual copies of the official separation notice and the termination letter sent to the Claimant by [REDACTED]. It should be noted that both the separation notice and the termination letter provided by the Claimant appear to be altered when compared to the official copies provided by the Court.

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 or omits a material fact may be subject to a civil penalty for each claim.

Claimant's request for \$19,359.00 is hereby denied because the evidence presented in the claim by the Claimant vice the detailed information provided by the employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact and as such, this claim is DENIED.

Claim Supervisor [REDACTED]
Date of Supervisor's review: 7/5/11
Supervisor Action: <i>Denial approved</i>
Supervisor's Comments:

⁴ Letter to NPFC from [REDACTED] on behalf [REDACTED] dated June 30, 2011
09/14/11 FOIA2011-3380-00004041

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-1038
29 June 2011



RE: Claim Number: N10036-1038

Dear [REDACTED]

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 claim number N10036-1038 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

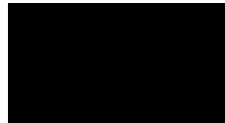
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1038.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004042

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1038
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$327,112.67

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 23 June 2011, [REDACTED] (Owner) on behalf of [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$327,112.67 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Owner started a new company in October 2009 (Claimant).¹ Claimant offered business consultation, government contract proposal writing, and an avenue for charitable donations. Claimant failed to obtain any clients to participate in these offered services.² Owner alleged that this business failure resulted from the Deepwater Horizon oil spill.

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

¹ Claimant Memorandum dated 28 January 2010.

² Claimant Memorandum dated 04 April 2011.

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 her claim, Owner on behalf of Claimant submitted the following documentation:

- 1) OSLTF claim form undated
- 2) Letter allegedly to IRS for name change
- 3) Outline of business plan and explanation of claim
- 4) GCCF deficiency letter dated 15 April 2011
- 5) GCCF denial letter dated 06 May 2011
- 6) List of marketable work areas
- 7) Printout of website pages
- 8) Listing of unsigned proposals non-awarded bids
- 9) Actual state of Florida requests for bids unfilled out

Claimant seeks lost earnings and wages in the amount of 327,112.67

Claimant presented an Interim Payment/Final Payment claim to the GCCF and was issued GCCF Claimant ID [REDACTED] On 06 May 2011 the GCCF denied her claim.³

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that her loss of income was due to injury or destruction or loss of real or personal property or 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,

³ GCCF denial letter dated 06 May 2011.
09/14/11

information, and documentation deemed necessary by the Director, NPFC, to support her claim. The NPFC considered all the documentation submitted by the Claimant.

Owner alleged loss of profits due to the Deepwater Horizon oil spill for her startup business (Claimant). However, there are no clients that finalized contracts and no bids that were awarded by the State of Florida to any clients. Only unsigned requests for proposals from the State of Florida were printed out to support the claim. In addition, the Owner has failed to show how the oil spill affected the Claimant's business. The evidence provided by the Owner indicated that the Claimant has never had one sale that was made or one bid awarded.

This claim is denied because the Owner failed to meet her burden to demonstrate (1) the alleged loss in the amount claimed, 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.

Claim Supervisor: *NPFC*  *ion Division*

Date of Supervisor's Review: *6/29/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890/DWHZ
Claim # N10036-1040
11 July 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [REDACTED]

[REDACTED]

Re: Claim Number: N10036-1040

Dear [REDACTED]

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 your claim number N10036-1040 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1040.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

[REDACTED]

Sincerely,

[REDACTED]

Claims Adjudication Division
National Pollution Funds Center

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1040
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$30,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 22 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking \$30,000.00 in lost profits and earnings that allegedly resulted from the Deepwater Horizon oil spill.

Claimant was employed at a [REDACTED] retail store in Metairie, LA.¹ Claimant asserted that as a result of the Deepwater Horizon oil spill, [REDACTED] lost sales because many of its customers were out of work and could not afford to shop. As a result, the Claimant lost wages and was ultimately laid-off because he couldn't meet his sales quotas.²

Prior to presenting his claim to the NPFC, Claimant filed a Final Claim with the GCCF on 29 November 2010 in the amount of \$18,000.00.³ Claimant was assigned Claimant ID # [REDACTED] and Claim # [REDACTED]. Claimant also filed an Interim Claim with the GCCF on 22 February 2011 in the amount of \$36,075.00.⁴ Both of these claims were denied on 15 April 2011.⁵

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

¹ Letter from Claimant dated 22 June 2011.

² *Id.*

³ Report from the GCCF dated 5 July 2011.

⁴ *Id.*

⁵ GCCF Denial Letter dated 15 April 2011.

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of his claim, Claimant presented the following documentation to the NPFC:

- OSLTF Claim Form received 22 June 2011;
- Internal Revenue Service Tax Return Receipt for the tax period ending 31 December 2008;
- 2009 1040 Federal tax return form;

- 2009 8863 Federal tax return form;
- 2009 Schedule M Federal tax return form;
- 2010 1040 Federal tax return form;
- 2010 5329 Federal tax return form;
- 2010 8863 Federal tax return form;
- 2010 Schedule M Federal tax return form;
- Letter from Claimant dated 22 June 2011;
- State of Louisiana Judgment dated 30 September 2010;
- Benefit History report from 17 April 2010-20 November 2010;
- Apartment Lease dated 13 April 2007.

NPFC Determination

The claim is denied. 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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. Claimant asserted that he was laid off from [REDACTED] due to the Deepwater Horizon oil spill. The NPFC contacted [REDACTED] to confirm the events as alleged by the Claimant. A Regional Manager from [REDACTED] informed the NPFC that it was company policy to not terminate employees because of the Deepwater Horizon oil spill.⁶ Thus, the Claimant's assertion of a layoff due to the Deepwater Horizon oil spill is unsupported.

Because the Claimant has failed demonstrate that his 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, this claim is denied.

[REDACTED]
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/11/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ PHONECON between NPFC and [REDACTED] dated 23 June 2011.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

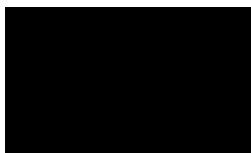
NPFC CA MS 7100
US COAST GUARD

[REDACTED]

Fax: 202-493-6937
5890
6/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-1043

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1043 involving Deepwater Horizon. 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 N10036-1043.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



National Pollution Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004050

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1043
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$10,000.00

FACTS:

On or about April 20, 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 August 23, 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 June 23, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$10,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that her hours were cut at [REDACTED] restaurant in D'Iberville, MS as a result of the oil spill. The Claimant asserted that she went from working 80 hours per week to 13-20 hours per week due to the lack of tourism brought on by the oil spill.

The Claimant provided no correspondence for her claim with the GCCF but a search of the GCCF database shows the Claimant's Emergency Advance Payment (EAP) was denied on January 21, 2011. The database also shows that the Claimant's interim/final claim is still under review.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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 support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, undated;
- Request for Employment Verification;
- Copy of her training schedule at Logan's;
- Faxed Letter from Claimant to GCCF, dated December 23, 2010;
- Various paystubs from [REDACTED] from June 2010 to October 2010;
- Paystub from [REDACTED]

NPFC Determination

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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$10,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "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." The Claimant provided paystubs but no other financial documentation in comparable periods.

Should the Claimant choose to come back on reconsideration, she will have to provide a letter from her employer confirming the reason for her hourly reduction, a contact name and number for that person, and financial data from her employer to assist in determining the nexus between the Claimant's income and the oil spill. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$10,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.


Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *6/27/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

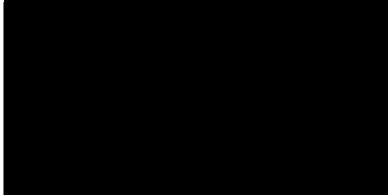
U.S. Department
of Homeland
Security



United States
Coast Guard

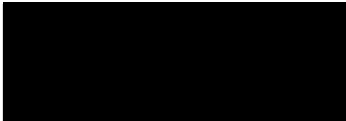
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-1044
14 July 2011

Re: Claim Number: N10036-1044

Dear [REDACTED]

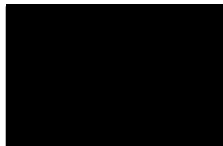
The National Pollution Funds Center ('NPFC') in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-1044 involving the Deepwater Horizon oil spill. Please see the enclosed Claim 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. If, however 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 N10036-1044.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



ation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1044
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 23 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$8,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant is employed at [REDACTED] in Panama City, Florida.¹ [REDACTED] provides hospital care and outpatient services to patients from a seven-county region in Northwest Florida.² Claimant asserts that as a result of the Deepwater Horizon oil spill, the tourism industry in the region collapsed, reducing the number of tourists that would require patient services from [REDACTED]. In addition, Claimant asserts that residents opted to put off elective surgeries because of decreased earnings due to the Deepwater Horizon oil spill.⁴ Claimant states that the reduction in patients lowered the demand for hospital workers, causing her hours and income to drop in 2010.⁵

Claimant did not provide an explanation regarding the calculation of her sum certain of \$8,000.00.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury,

¹ Letter from Claimant to the NPFC, dated 22 January 2011.
[REDACTED]

³ Id.

⁴ Id.

⁵ Id.

destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of her claim, Claimant presented the following documentation to the NPFC:

- OSLTF Claim Form received 23 June 2011;

- Letter from Claimant to NPFC dated 11 June 2011;
- Internet article from [REDACTED] posted 8 June 2011;
- GCCF Denial Letter dated 22 April 2011;
- GCCF Letter dated 29 January 2011;
- Letter from Claimant dated 22 January 2011;
- Internal Revenue Service Wage and Income Transcript for tax period ending December 2008;
- 2010 1040X Amended Federal tax return form;
- 2010 Federal Tax Return Recap.

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 18 October 2010 in the amount of \$8,500.⁶ She was assigned Claimant ID # [REDACTED] and Claim # [REDACTED]. This claim was denied on 12 November 2010.⁷ Additionally, Claimant filed two Full Review Final claims with the GCCF, Full Review Final (FRF) Claim 1 with GCCF # [REDACTED] and Full Review Final Claim 2 with Claim # [REDACTED]. One was filed on 18 October 2010 for \$8,500.00 and the other was filed on 27 January 2011 for \$5,000.00. These claims were denied on 22 April 2011.⁸ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that her hours and income were reduced due to a decrease in patient activity at [REDACTED] as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's three denied GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1044 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s [REDACTED].

NPFC Determination

This claim is denied. 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 considered all documentation presented by Claimant.

This claim is denied because the Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. Claimant asserts the tourism industry in the Panama City, Florida region collapsed due to the Deepwater Horizon oil spill, decreasing the number of admitted patients at [REDACTED]. As a result, Claimant asserts she suffered reduced hours and wages in 2010. The NPFC contacted [REDACTED] to confirm the events as alleged by Claimant. Claimant's employer informed the NPFC that it is Bay Medical Center's policy to not draw a connection between any reduction of employee hours in 2010 and the Deepwater Horizon oil spill.⁹ Thus, sufficient evidence does not exist to prove that Claimant suffered a loss due to the Deepwater Horizon oil spill.

⁶ Report from the GCCF dated 05 July 2011.

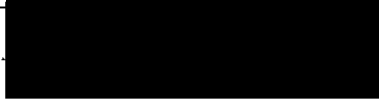
⁷ GCCF Denial Letter dated 12 November 2010.

⁸ GCCF Denial Letter dated 22 April 2011.

⁹ PHONECON between NPFC and [REDACTED] dated 06 July 2011.

Because the Claimant has failed demonstrate that her 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, this claim is denied.

Claim Supervisor:



Date of Supervisor's Review:

14 July 2011

Supervisor's Actions:

DENIAL Approved.

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim N10036-1045
28 June 2011

Claim Number N10036-1045

Dear [REDACTED]

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 claim number N10036-1045 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 N10036-1045.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[REDACTED] tion Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1045
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,300.00

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 23 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,300.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant indicated that he was hired on 7 June 2010 as a [REDACTED] for BP's [REDACTED]. He further indicated that he accepted the job because the projected work schedule included overtime hours. Claimant stated that because the "British Petroleum decision makers" were called away to assist the Deepwater Horizon response, the [REDACTED] project became delayed indefinitely.

Claimant indicated that he was absorbed into another project with no overtime. He alleged that he lost his overtime hours as a result of the Deepwater Horizon oil spill.²

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.

¹ Email to NPFC, dated 21 June 2011.

² The Claimant prepared a list showing that he lost five hours a week for weeks ended 02 July 2010 through 04 February 2011 for a total of 140 hours lost. At a rate of \$109.50 an hour that amounts to \$15,300.00 overtime pay lost.

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 undertake, 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, Claimant submitted the following documentation:

- OSLTF Claim Form signed 06 June 2011
- Email to NPFC dated 21 June 2011 explains claim

- List of overtime hours for weeks ended 02 June 2010 through 04 February 2011

Prior to presentment to the NPFC, Claimant presented an Interim Payment Claim to the RP/GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 15 December 2010 GCCF denied the claim. Claimant then presented a Final Claim. On 03 June 2011, the GCCF issued a Denial Letter.

On 23 June 2011, Claimant presented the subject claim for \$15,300.00 in lost overtime pay resulting, as Claimant alleges, from the Deepwater Horizon oil spill.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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.

Claimant asserted that he lost overtime hours because, as he describes it, the BP “decision makers” were called away to help with the Deepwater Horizon response and the project he was working on was delayed indefinitely. Based on this admission, the Claimant has not demonstrated that his alleged loss in the amount of \$15,300.00 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 nor has the Claimant provided evidence that there was a guarantee of overtime hours associated with the delayed project and the Claimant failed to provide comparable financial data in order to demonstrate he experienced a loss in the amount alleged.

This claim is accordingly denied [REDACTED]

Claim Supervisor: *NPFC [REDACTED] cation Division*

Date of Supervisor’s Review: *28 June 2011*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-1046
07 July 2011

Re: Claim Number: N10036-1046

Dear [REDACTED]

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 N10036-1046 involving Deepwater Horizon. 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 N10036-1046.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1046
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$4,800.00

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 23 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$4,800.00 for loss of personal property resulting from the Deepwater Horizon oil spill.

The Claimant had a boat for sale in April 2010 for \$6,000.00.¹ Claimant stated that he had a willing purchaser at the initial list price but that the prospective buyer backed out of the sale after the Deepwater Horizon oil. He finally managed to sell the boat for \$1,200.00.² The Claimant stated that his boat lost value of \$4,800.00 (\$6,000.00 initial asking price less \$1,200.00 sale price) due to the oil spill. Claimant has provided no documentation concerning the sale of the boat. Claimant alleged that he sent sale related documentation to GCCF but did not make copies of the information. He further alleged that the GCCF misplaced the documentation.³

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

¹ Hand-written letter from Claimant to NPFC Staff (undated)

² Id.

³ Optional OSLTF claim Form dated 15 June 2011

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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by the Claimant on 15 June 2011;
- Hand-written letter from Claimant to NPFC Staff (undated).

Claimant stated that in May 2010⁴ the Claimant presented a Claim to the GCCF and was issued GCCF Claimant ID [REDACTED].⁵ The Claimant further advised that the GCCF denied the claim.⁶ The NPFC has not independently verified presentment of this claim to the GCCF.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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 Claimant alleged that he lost \$4,800.00 on the sale of a boat due to the Deepwater Horizon oil spill. However, the Claimant has failed to provide any information which would sufficiently establish his alleged damages or that any alleged damages are due to damage to or destruction of the property due to oil.

Based on the foregoing, this claim is denied because the Claimant has failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

Claim Supervisor: [REDACTED] *Classification Division*

Date of Supervisor's Review: *07 July 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ OSLTF Claim Form signed by the Claimant on 15 June 2011

⁵ Hand-written letter from Claimant explaining the claim undated

⁶ OSLTF Claim Form signed by the Claimant on 15 June 2011

U.S. Department
of Homeland
Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1047
29 June 2011

[REDACTED]

Re: Claim Number: N10036-1047

Dear [REDACTED]

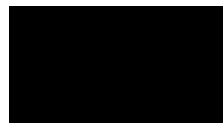
The National Pollution Funds Center ("NPFC") in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-1047 involving the Deepwater Horizon oil spill. Please see the enclosed Claim 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. If, however 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 N10036-1047.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form
(2) Evidence Provided by Claimant in Support of Claim N10036-1047

09/14/11

FOIA2011-3380-00004067

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1047
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$24,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 24 June 2011, [REDACTED] Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking \$24,000.00 in lost profits and earnings that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant was employed by [REDACTED] as a pipefitter on a production platform in the Gulf of Mexico.¹ Claimant asserted that he was laid-off two weeks after the Deepwater Horizon oil spill and the port where he traveled from, located in Venice, LA was closed due to the oil spill clean-up. Claimant stated that he was unemployed for nine weeks before finding another job.² Claimant did not provide a calculation for his sum certain of \$24,000.00.

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment claim with the GCCF under Claimant ID [REDACTED]. This claim was denied by the GCCF on 6 December 2010.³ Additionally, Claimant filed an Interim Payment claim, which was also denied on 22 April 2011.⁴

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

¹ Hand-written letter from Claimant dated 17 June 2011.

² *Id.*

³ GCCF Denial Letter dated 6 December 2010.

⁴ GCCF Denial Letter dated 22 April 2011.

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of his claim, Claimant submitted all of the documentation listed in enclosure (2).

NPFC Determination

The claim is denied. 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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$24,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

This claim is denied because the Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. Claimant asserted he was laid off by [REDACTED] due to the effects of the Deepwater Horizon oil spill, resulting in nine weeks of unemployment. On 27 June 2011, the NPFC contacted [REDACTED] to verify the reason for the Claimant's layoff. [REDACTED] indicated that the company did not lay off the Claimant, or any other employee, due to the Deepwater Horizon oil spill or the resulting moratorium.⁵

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$24,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *Claim [REDACTED] on Division*

Date of Supervisor's review: *6/29/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁵ PHONECON between NPFC and Bay Offshore dated 27 June 2011.

Enclosure (2)

Evidence Presented by Claimant in Support of Claim N10036-0880

- Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form received 24 June 2011;
- Hand-written letter from Claimant dated 17 June 2011;
- Spreadsheet containing Claimant's unemployment payments in 2010;
- Bank statements from Chase for the period 9 December 2009-8 February 2010, 9 April 2010-10 May 2010;
- GCCF Denial Letter dated 22 April 2011;
- GCCF Letter dated 31 January 2011;
- GCCF Letter dated 24 January 2011;
- GCCF Letter dated 6 December 2010;
- Undated letter from Claimant describing claim;
- Hand-written letter from Claimant describing claim;
- [REDACTED] Employee History Inquiry dated 23 December 2010;
- Bank statement from [REDACTED] checking listing deposits from 12 February-8 March (year is not listed);
- Termination Notice dated 18 May 2010;
- Pay stub from [REDACTED] LLC dated 25 March 2010-15 April 2010;
- Letter from [REDACTED] dated 22 December 2010 describing Claimant's work history at [REDACTED];
- [REDACTED] pay stub spreadsheet from 25 June 2010-20 August 2010;
- Pay stub from [REDACTED] dated 10 September 2010, 17 September 2010;
- Employment Separation Notice from Turner Industries dated 13 October 2010;
- Pay stubs from [REDACTED] dated 1 October 2010-15 October 2010, 3 December 2010, 10 December 2010;
- Pay stubs from [REDACTED] Inc. dated 24 October 2010-14 November 2010;
- 2008 1040 Federal tax return;
- 2008 Louisiana tax return form;
- 2008 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- 2009 1040 Federal tax return form;
- 2009 Louisiana tax return form;
- 2009 W-2 Federal tax form from [REDACTED];
- 2009 W-2 Federal tax form from [REDACTED];
- 2009 Louisiana Workforce Commission Office of UI Administration 1099-G form;
- 2010 Federal tax return;
- 2010 Louisiana tax return form;
- 2010 W-2 Federal tax form from [REDACTED];
- 2010 W-2 Federal tax form from [REDACTED];
- 2010 W-2 Federal tax form from [REDACTED];

- 2010 W-2 Federal tax form from [REDACTED]
- 2010 W-2 Federal tax form from [REDACTED]
- 2010 W-2 Federal tax form from [REDACTED]
- 2010 Louisiana Workforce Commission Office of UI Administration 1099-G form.

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

Fax: 202-493-6937
5890
7/19/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED] C

RE: Claim Number: N10036-1049

Dear [REDACTED]

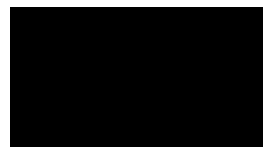
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-1049 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-1049.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004073

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	: N10036-1049
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$260,000.00

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 24 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$260,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant [REDACTED] is a home-improvement company based in Kenner, LA, and has, "an excellent reputation and a long list of happy and repeat customers."² The Claimant asserted that, "the oil spill has had a huge impact on [my] business."³

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

¹ Optional OSLTF Claim Form dated 12 July 2011.

² Letter from Claimant to NPFC dated 14 June 2011.

³ Id

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 the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 14 June 2011;
- Past due notices;
- Invoice from [REDACTED]
- Monthly Profit and Loss Statements from January 2008 through December 2010;
- 2007, 2008, 2009, and 2010 Individual Income Tax Returns including Schedule C,

Prior to presentation to the NPFC, Claimant presented a First Quarter Interim Claim [REDACTED] to the RP/GCCF, and was issued Claimant ID [REDACTED] and Claim [REDACTED]. The Claimant then presented a Second Quarter 2011 Interim ([REDACTED] Claim and was issued Claim # [REDACTED].

At that time a total of \$118,214.99 was offered by the GCCF as a Final Claim.

According to information from the GCCF, on 11 July 2011, the Claimant executed a Release and Covenant Not to Sue in return for the \$118,214.99 Final Claim offer payment.

On 24 June 2011, the Claimant presented this claim to the OSLTF seeking \$260,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Therefore the NPFC deems both of the Claimant's GCCF claims to be properly presented to both the RP and the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1049 considers and addresses the earnings claimed in both claims presented to the responsible party, specifically; GCCF Claim #'s [REDACTED] and [REDACTED].

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that her loss of income was due to injury or destruction or loss of real or personal property or 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 their claim. The NPFC considered all the documentation submitted by the Claimant.

Based on information presented by the Claimant and information available to the NPFC, the GCCF paid a total of \$118,214.99 to the Claimant as compensation for the claim. According to information from the GCCF, the Claimant executed a Release and Covenant Not to Sue in return for the \$118,214.99 Final Claim offer payment.

This claim is denied because it appears from the record that the Claimant has fully settled the claims with BP/GCCF, and that BP and GCCF have compensated the Claimant, including a \$118,214.99 payment for which GCCF reportedly required a final and full release of rights against any Responsible Party.

The Claimant has not addressed these payments or otherwise provided any information to show the Claimant has any rights to recover any of the amount claimed here from a Responsible Party. The Fund will not pay what has already been compensated and any Fund payment is subject to acquiring all rights to recover from the Responsible Party.

If the Claimant disagrees with this determination to deny the claim based on being compensated and signing a release, she may request reconsideration. Should the Claimant decide to request reconsideration, the Claimant **MUST** provide any and all documentation of any payments received from BP or GCCF, including any related agreements or releases signed by the Claimant.

If the Claimant disagrees that any payments that have been received from BP or GCCF, or that any payments received are for damages other than those subject of the claim for \$260,000.00 to the NPFC, the Claimant must explain the circumstances in detail.

If the Claimant disagrees that they has signed any release associated with her claims against the Responsible Party, including any release in return for a Final Claim payment, the Claimant must fully explain the circumstances in the request for reconsideration. Therefore, this claim is denied as the Claimant has been compensated.

Claim Supervisor:  *Claims Adjudication Division*

Date of Supervisor's review: *7/19/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard

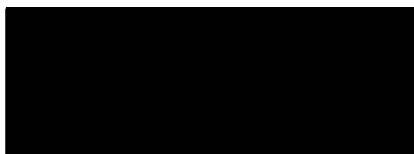


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]



RE: Claim Number: N10036-1050

Dear [REDACTED]

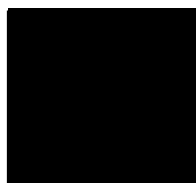
The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, N10036-1050. Please see the enclosed Claim Summary/Determination Form for further explanation.

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 N10036-1050.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



ation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004077

CLAIM SUMMARY / DETERMINATION FORM

Date	June 28, 2011
Claim Number	N10036-1050
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$23,230.00

FACTS:

On or about April 20, 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 August 23, 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 June 27, 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$23,230.00 for loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil-spill. The Claimant provided a letter dated June 10, 2011 allowing [REDACTED] dba [REDACTED] to act on his behalf.

With respect to his alleged losses, the Claimant asserted that he was promised one (1) year of work with [REDACTED] as an oil spill response worker. The Claimant attended the HAZWOPR training that BP required all new contractors complete. After completion, the Claimant asserted that he was never contacted to start work. Therefore, the Claimant lost his unemployment benefits and suffered a financial hardship. Additionally, the Claimant provided documentation showing that he had been collecting unemployment benefits since 2009.

The Claimant did not provide a GCCF denial letter for his claim but a search of the GCCF database shows that it was denied on June 6, 2011.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

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 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. § 136.235, 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 State, local, and Federal taxes.

DETERMINATION OF LOSS:

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- Authorization letter for legal representation, dated June 10, 2011;
- Gulf Coast Representation Evaluation Sheet, undated;
- GCCF Full Review Final Claim Form, undated;
- Copy of Driver's License and Social Security Card;
- 2008, 2009, and 2010 W-2;
- Office of Quality Performance Work History Assistant Tool;
- Florida Employment Referral;
- Letter from Claimant dated October 25, 2010;
- Copy of his BP contractor ID

Claimant seeks \$23,230.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

DETERMINATION:

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 considered all of the documentation submitted by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$23,230.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

Upon review of the facts of the claim as presented, the Claimant was on unemployment at the time of the Deepwater Horizon oil spill and receiving Florida State Unemployment Benefits. In the course of receiving unemployment benefits, the Claimant is required to actively pursue employment (the law required 5 job searches each week) therefore the Claimant was referred by the Agency for Workforce Innovation (part of the Unemployment Compensation Office) for the oil spill response position he ultimately accepted. The Claimant knowingly accepted an "on-call" position as an oil spill response worker contingent upon completing the required certified training.


Because the position was "on-call" and the Claimant received no written guarantee by the employer, the Claimant has not demonstrated that he has a loss of profits that resulted from the oil spill. Additionally, the Claimant has provided no evidentiary documentation that indicated his employment benefits were to be paid through November 2010 as alleged and were subsequently lost as a result of accepting an "on call" position therefore if the Claimant were to come back on reconsideration, he would need to provide all records from the Unemployment Compensation Office.

Additionally, with respect to the Claimant's assertion that he was unable to find work due to the lack of tourism brought on by the oil spill; the Claimant provided no information as to where he has applied and the results of each application that supports his allegation.

Should the Claimant decide to request reconsideration, he will need to provide documentary evidence from the Unemployment Office as to when his benefit period began and its scheduled end date in order to substantiate his assertion that he was scheduled to receive benefits until November 2010 and that he was unable to re-open his claim for unused benefits that may have existed. The Claimant will also need to provide the names, addresses and phone numbers for the jobs he states he applied for and was turned down due to the oil spill.

Finally, the Claimant's annual salary from 2008 to 2010 as reported by the Claimant is as follows: tax year 2010, the Claimant received \$4,920.00 in Unemployment Compensation; tax year 2009, the Claimant received \$10,173.00 in Unemployment Compensation; and in tax year 2008, the Claimant received \$1,278.00 from [REDACTED] 12,636.15 from [REDACTED] and \$3,585.17 from [REDACTED] bringing his total annual income to \$17,499.32. Based on the Claimant's income history, the information provided does not demonstrate how the Claimant could have experienced an alleged loss of profits in the amount of \$23,230.00 when he was unemployed for the two years preceding the oil spill.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$23,230.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:  *on Division*

Date of Supervisor's review: *6/28/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1052
29 June 2011

Re: Claim Number: N10036-1052

Dear [REDACTED]

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 N10036-1052 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 N10036-1052.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form
(2) Documentation Submitted By Claimant

09/14/11

FOIA2011-3380-00004082

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1052
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$37,740.00

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 24 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$37,740.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant worked as a deep water drilling supervisor for [REDACTED] Oil Company during the spring and summer of 2010.² He alleged that, "upon the Deepwater Horizon disaster, [REDACTED] shut down and [he] lost his drilling job."³ He seeks lost earnings for two fourteen-day periods when he was unable to work following the oil spill.

Prior to presentment to the NPFC, Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF, which was denied on 27 May 2011.

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.

¹ Optional OSLTF Claim Form dated 20 June 2011.

² Letter from Claimant to GCCF, 27 August 2010.

³ [REDACTED] note 1.

- (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 the claim, the Claimant submitted the following documentation:

- See enclosure (2)

On 24 June 2011, Claimant presented this claim for 37,740.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

The NPFC reviewed all information and documentation provided by the Claimant. According to the Claimant's submission, [REDACTED] Company cancelled a job the Claimant was scheduled to work following the oil spill, but "were gracious enough to pay [him] for the time [he] was to work." Claimant's alleged loss is from the period 7 July to 18 August, when the Claimant was not working because [REDACTED] "suspended operations."⁴

Should the Claimant choose to come back on reconsideration, he must provide documentation from [REDACTED] Oil Company stating why the contract was terminated. The Claimant must demonstrate that the loss was strictly due to the oil spill and not any intervening factors, such as the moratorium or the new offshore drilling permit process. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to show that the alleged loss in the amount of \$37,740.00.00 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.

Claim Supervisor: *Cl [REDACTED] ation Division*

Date of Supervisor's review: *6/29/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

Documentation Submitted By Claimant
(Enclosure 2)

- Optional OSLTF Claim Form;
- Letter from Claimant to GCCF, dated 20 June 2011;
- Letter from Claimant to GCCF, dated 21 February 2011, showing earnings while working for various consulting firms, including calculation of losses;
- Copy of Deficiency Denial Letter on Interim Payment/Final Payment Claim, 27 May 2011;
- Copy of Deficiency Letter on Interim Payment/Final Payment Claim, 1 March 2011;
- Copy of Letter from GCCF to Claimant, noting receipt of Full Review Final Payment Claim Form, 26 Jan 2011;
- Letter from GCCF to Claimant, 31 January 2011;
- Letter from Claimant to GCCF, calculating losses, 27 August 2010;
- Letter from GCCF to Claimant, noting receipt of submission;
- Letter from GCCF to Claimant, noting receipt of Final Payment Claim, 23 September 2010;
- Copy of GCCF Claim submission;
- 2010 Form 1040;
- 2010 Form 1040, Schedule A;
- 2010 Form 1040, Schedule B;
- 2010 Form 1040, Schedule C, showing business profit of \$144,533.00;
- 2010 Form 1040, Schedule D;
- 2010 Form 1040, Schedule E;
- 2010 Form 1040, Schedule SE;
- 2010 Form 8283;
- 2010 Form 8829;
- Copy of Bank Statement, 1/5/2010 to 12/13/2010;
- 2010 Form 199-MISC, showing compensation of \$100,996.61;
- Copy of payment to Claimant, 14 May 2010;
- Copy of payment to Claimant, 20 April 2010;
- Copy of payment to Claimant, 29 April 2010;
- Copy of payment to Claimant, 14 April 2010;
- Copy of payment to Claimant, 30 March 2010;
- Copy of payment to Claimant, 12 March 2010;
- Copy of payment to Claimant, 26 February 2010;
- Copy of payment to Claimant, 14 November 2010;
- Invoice from Claimant to ██████████ 3 May 2010;
- Daily Activity Report, 13 May 2010;
- Invoice from Claimant to ██████████ 26 April 2010;
- Memo from Noble Energy, 23 March 2010;
- Invoice from Claimant to ██████████ 7 April 2010;
- Daily Activity Report, 7 April 2010;
- Invoice from Claimant to ██████████ 31 March 2010;
- Daily Activity Report, 31 March 2010;
- Invoice from Claimant to ██████████ 31 March 2010;
- Daily Activity Report, 27 March 2010;
- Invoice from Claimant to ██████████ 8 March 2010;

- Daily Activity Report, 6 March 2010;
- Invoice from Claimant to [REDACTED] 26 February 2010;
- Daily Activity Report, 28 February 2010;
- Invoice from Claimant to [REDACTED] 14 January 2010;
- Daily Activity Report, 15 January 2010;
- Substitute Form 1099-MISC, showing compensation of \$112,273.15, 31 January 2011;
- Invoice from Claimant to [REDACTED] 5 December 2010;
- Invoice from Claimant to [REDACTED] 5 November 2010;
- Invoice from Claimant to [REDACTED] 31 October 2010;
- Invoice from Claimant to [REDACTED] 7 October 2010;
- Invoice from Claimant to [REDACTED] 5 September 2010, and;
- Invoice from Claimant to [REDACTED] 31 August 2010.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-1054
08 August 2011

Dear [REDACTED]

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 N10036-1054 involving Deepwater Horizon. 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 N10036-1054.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[REDACTED] tion Division
National Pollution Funds Center
U.S. Coast Guard

Copy to: [REDACTED]

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1054
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$67,011.00

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 24 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$67,011.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked for [REDACTED] in Panama City, Florida. He worked there from October 2009 to July 2010.¹ [REDACTED] laid the Claimant off as "part of a two shift lay off."² The Claimant then collected Florida unemployment compensation.³ The Claimant alleged that "The oil spill caused a loss of contracts and I lost my job."⁴ The Claimant returned to work for [REDACTED] later in 2010.

The Claimant engaged [REDACTED] with [REDACTED] in Panama City Beach, Florida, as his legal representative on 25 May 2011.⁵

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.

¹ Gulf Coast Representation Claims Application Form 31 April 2011

² To Whom It May Concern Letter from [REDACTED] Hr Manager at [REDACTED] 4 January 2011. Letter unsigned

³ Form 1099-G Florida Agency for Workforce Innovation for Unemployment Compensation for 2010

⁴ Gulf Coast Representation Claims Application Form 31 April 2011

⁵ Legal Representation Form signed by Claimant 25 May 2011

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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. Legal Representation Form signed by Claimant 25 May 2011;
2. Gulf Coast Representation Claims Application Form 31 April 2011;
3. Copy of Claimant's Florida Driver License;
4. Copy of Claimant's Social Security Card;

5. W-2 Wage and Tax [REDACTED] for 2010;
6. Form 1099-G Florida Agency for Workforce Innovation for Unemployment Compensation for 2010;
7. Pay Stubs from [REDACTED] from December 2009 to October 2010;
8. Form 1040A US Individual Income Tax Return for 2009;
9. W-2 Wage and Tax Statement from [REDACTED] for 2009;
10. W-2 Wage and Tax Statement from [REDACTED] for 2009;
11. Form 1040 US Individual Income Tax Return for 2008;
12. Form 1040X Amended US Individual Income Tax Return for 2007;
13. Handwritten notarized letter 29 July 2011 to NPFC from Claimant in response to NPFC letter requesting additional information;
14. To Whom It May Concern Letter from [REDACTED] Pipe Corporation 14 January 2011. Letter unsigned.

On 28 June 2011 NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim c/o [REDACTED] the Claimant's legal representative. NPFC sent the letter First Class Certified Mail Return Receipt Requested. [REDACTED] responded to the letter requesting additional information on 02 August 2011.

Claimant seeks lost earnings and wages in the amount of \$67,011.00.

Prior to presenting a claim to the NPFC, Claimant filed a Six-Month Emergency Advance Payment (EAP) with the GCCF for \$30,701.52 on 22 November 2010. The claim was assigned Claimant ID [REDACTED] and claim [REDACTED].⁶ This claim was denied on 07 December 2010.⁷ Additionally, Claimant filed a Full Review Final (FRF) with GCCF for \$67,011.00 on 03 May 2011 and was assigned claim [REDACTED]. This claim was denied on 12 May 2011.⁹

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that the Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of claims to GCCF to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1054 considers and addresses the earnings claimed in all of the claims presented to the responsible party, specifically; GCCF Claim [REDACTED] and [REDACTED].

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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

⁶ GCCF Claim Status site 28 July 2011

⁷ GCCF Denial Letter dated 07 December 2010

⁸ GCCF Claim Status site 28 July 2011

⁹ GCCF Denial Letter dated 12 May 2011

providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

The Claimant's NPFC claim submission included a letter from the HR Manager [REDACTED] [REDACTED] employed the Claimant at the time of the oil spill. The Manager stated that the Claimant was "part of a two shift layoff on July 2, 2010."¹⁰ The Manager does not refer to the oil spill. NPFC attempted to contact the Manager to corroborate the statement in the letter. The Manager did not respond.

NPFC spoke to an officer with [REDACTED]. The officer stated that [REDACTED] did not lay off any employees because of the Deepwater Horizon oil spill and that the oil spill had no effect on the business.

The method used to calculate the amount of the lost earnings included future lost earnings. Future lost earnings cannot be claimed under the Oil Pollution Act (OPA) and are therefore denied.

This claim is denied because (1) the Claimant failed to meet the burden to demonstrate that there was an alleged loss in the amount claimed, 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.

[REDACTED]
Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *08 August 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁰ To Whom It May Concern Letter from [REDACTED] Hr Manager at [REDACTED] 14
January 2011. Letter unsigned

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-1055
11 July 2011

RE: Claim Number: N10036-1055

Dear [REDACTED]

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 claim number N10036-1055 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-1055.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,
[REDACTED]

Claims Adjudication Division
National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004093

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1055
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$5,795.00

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 24 June 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$5,795.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant worked for [REDACTED] in Lynn Haven, Florida until 30 September 2009. Claimant collected unemployment from the state of Florida for 2010 in the amount of \$15,441.00.¹ The Claimant is still looking for work and she states that no one is hiring due to the oil spill.

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.

¹ See State of Florida 1099-G
09/14/11

- (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 her claim, Claimant submitted

- 1) Legal Representative form
- 2) Legal Representation submission form
- 3) Copy of Florida drivers license
- 4) Copy of Social Security Card
- 5) State of Florida unemployment form 1099-G
- 6) 2009 W-2 from [REDACTED]
- 7) 2008 W-2 from [REDACTED]
- 8) 2007 and 2008 IRS form 1040s

Claimant is claiming lost earnings and wages in the amount of \$5,795.00

Claimant presented an Emergency Advance Payment claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 07 December 2010 the GCCF denied his claim.²

² See GCCF Filing Report [REDACTED] or GCCF Claimant's Status Page/Report
09/14/11

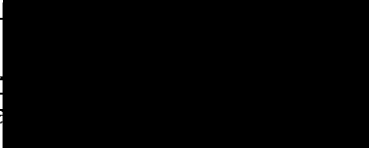

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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 their claim. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the Claimant has not shown that the alleged loss in the amount of \$5,795.00 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.

Claimant has been unemployed since September 2009. Claimant collected unemployment from the state of Florida in the amount of \$15,441.00 in 2010. The Claimant has not demonstrated that her unemployment was affected due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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.

Claim Supervisor:	 Na _____ ion
Date of Supervisor's Review:	7/11/2011
Supervisor's Actions:	
Supervisor's Comments:	

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1056
30 June 2011

Re: Claim Number: N10036-1056

Dear Mr. Sampy:

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 N10036-1056 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 N10036-1056.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004097

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1056
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$16,000.00

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 27 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$16,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, who worked offshore as a [REDACTED] alleged that due to the oil spill “and subsequent moratorium” permits for offshore work were not being issued and the Claimant lost significant hours and wages.²

Prior to presentment to the NPFC, Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF. This claim was denied on 16 April 2011.

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

¹ Optional OSLTF Claim Form dated 27 June 2011.

² Letter from Claimant to GCCF, undated.

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 the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Letter from Claimant to GCCF, describing losses, undated;
- 2008 W-2 Form;
- 2008 Form 1040A;
- 2009 W-2 Form;
- 2009 Form 1040A;
- 2010 W-2 Form;
- UPCS Check Register-Detail, 15 February 2011;
- Earnings Statements, United Production and Construction, Inc.;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 16 April 2011.

On 27 June 2011, Claimant presented this claim for \$16,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

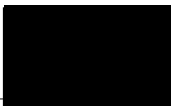
NPFC Determination

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

The NPFC reviewed all information and documentation provided by the Claimant. According to a letter written by the Claimant, drilling permitting restrictions resulted in the Claimant's loss of hours and wages. According to the Claimant, "there was a halt to permits being granted to our contracting companies . . . with the cancelling of these jobs, I was unable to work offshore."³

Should the Claimant choose to come back on reconsideration, he must provide documentation from his employer stating why he was terminated. The Claimant must demonstrate that the loss was strictly due to the oil spill and not any intervening factors, such as the moratorium or the new offshore drilling permit process. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to demonstrate the alleged loss of profits in the amount of \$16,000.00 is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.



Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *6/30/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

³³ Letter from Claimant to GCCF, undated.
09/14/11

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1057
27 July 2011

Re: Claim Number: N10036-1057

Dear [REDACTED]

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 your claim number N10036-1057 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1057.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[REDACTED]
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004101

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1057
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,500.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 27 June 2011 [REDACTED] (Claimant) presented a claim to the National Pollution Funds Center (NPFC) seeking \$15,500.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant worked at [REDACTED] in Panama City, FL.¹ The Claimant asserted that the Deepwater Horizon oil spill caused a loss of wages leading to her losing her job, home, and car.² Further, the Claimant stated that she had to relocate to find another job, which imposed other additional expenses as well.³

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ Pay stub from [REDACTED] for the period ending 05 April 2011, which included the handwritten notation: "Employment time [sic] of the oil spill."

² Optional OSLTF Claim Form, dated 28 May 2011.

³ Id.

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of the claim, the Claimant presented the following documentation:

- Optional OSLTF Claim Form, dated 28 May 2011;
- Denial letter from the GCCF for Interim Payment/Final Payment Claim, dated 30 April 2011;
- Letter from Claimant describing the damages suffered, dated 28 May 2011;
- Notice of returned check from City of Callaway, FL, dated 12 October 2010;
- Notice of returned payment from Gulf Power, dated 7 October 2010;
- [REDACTED] money transfer for \$40.00 from Claimant to [REDACTED] dated 19 April 2011;
- [REDACTED] money transfer for \$400.00 from Claimant to [REDACTED] dated 18 February 2011;

- Notice of transferred ownership of overdrawn [REDACTED] checking account, dated 17 November 2010;
- Illegible receipt;
- Western Union money transfer for \$50.00 from Claimant to [REDACTED] undated;
- Notice of overdrawn and closed deposit account, dated 27 July 2010;
- Employ Florida employment referral to [REDACTED] Sunspree, dated 25 August 2010;
- Claimant's handwritten employment history;
- Cash advance statements from [REDACTED] for \$300.00;
- 2008 Federal Tax Return transcript;
- Turbo Tax 2009 Federal Tax Return summary page;
- 2010 Form W-2 from [REDACTED];
- 2010 Form W-2 from [REDACTED];
- 2010 Form W-2 from [REDACTED];
- Pay stub from [REDACTED] for the period ending 08 March 2011;
- Pay stub from [REDACTED] for the period ending 05 April 2011, which included the handwritten notation: "Employment time [sic] of the oil spill";
- Various receipts from [REDACTED] and
- Mississippi Identification Card.

Prior to presenting this claim to the NPFC, the Claimant filed an Interim Payment Claim Quarter [REDACTED] with the GCCF on 01 April 2011 in the amount of \$16,500.00 for loss of earnings. The Claimant was assigned Claimant ID [REDACTED] and Claim [REDACTED].⁵ This claim was denied on 30 April 2011.⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter for the loss of earnings claim before the GCCF is the same as the subject matter of her loss of earnings claim before the NPFC, i.e., that Claimant is claiming lost wages due to the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1057 considers and addresses the earnings claimed in GCCF Claim [REDACTED] that was presented to the RP.

NPFC Determination

The claim is denied. 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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. The Claimant alleged that she lost wages due to the Deepwater Horizon oil spill⁷ and indicated that she worked at Backyard Burgers at the

⁴ Report from the GCCF dated 15 July 2011.

⁵ Id.

⁶ GCCF Denial Letter dated 30 April 2011.

⁷ Optional OSLTF Claim Form, dated 28 May 2011.

time the oil spill occurred.⁸ The NPFC contacted [REDACTED] to ascertain information regarding the details of the Claimant's employment. [REDACTED] informed the NPFC that the Claimant was not let go from [REDACTED] due to the Deepwater Horizon oil spill.⁹ In fact, not one single employee at the Panama City, FL location where the Claimant worked was let go due to the Deepwater Horizon oil spill.¹⁰ Thus, the Claimant fails to establish that the Deepwater Horizon oil spill was the cause of any loss of earnings experienced by the Claimant.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$15,500.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *Claim [REDACTED] Division*

Date of Supervisor's review: *7/26/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁸ Pay stub from [REDACTED] for the period ending 05 April 2011, which included the handwritten notation: "Employment time [sic] of the oil spill."

⁹ PHONECON between the NPFC and [REDACTED] on 18 July 2011.

¹⁰ PHONECON between the NPFC and [REDACTED] on 18 July 2011

U.S. Department of
Homeland Security

**United States
Coast Guard**



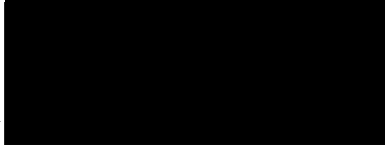
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

5890
6/29/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-1058

Dear [REDACTED]

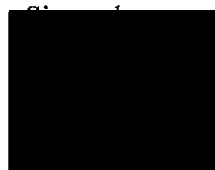
The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, N10036-1058. Please see the enclosed Claim Summary/Determination Form for further explanation.

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 N10036-1058.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



tion Division
on Funds Center

U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004106

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1058
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$61,315.00

FACTS:

On or about April 20, 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 August 23, 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 June 27, 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$61,315.00 for loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil-spill. The Claimant provided a letter dated June 18, 2011 allowing Ali Salman dba [REDACTED] to act on his behalf.

With respect to his alleged losses, the Claimant asserted that he was promised a job for 2-3 years with [REDACTED] as an oil spill response worker but it only lasted a few months. The Claimant provided his 2010 W-2 from [REDACTED] which shows income of \$5,458.50. After completion, the Claimant asserted that he was placed back on unemployment until he was hired part-time at [REDACTED]

The Claimant did not provide a GCCF denial letter for his claim but a search of the GCCF database shows that it was denied on June 8, 2011.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

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 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. § 136.235, 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 State, local, and Federal taxes.

DETERMINATION OF LOSS:

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- Authorization letter for legal representation, dated June 18, 2011;
- Gulf Coast Representation Evaluation Sheet, undated;
- GCCF Full Review Final Claim Form, undated;
- Copy of Driver's License and Social Security Card;
- 2008, 2009, and 2010 W-2;
- 2007, 2008, and 2009 Individual Income Tax Returns;
- Copy of his BP contractor ID

Claimant seeks \$61,315.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

DETERMINATION:

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 considered all of the documentation submitted by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$61,315.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

Additionally, with respect to the Claimant's assertion that he was unable to find work due to the lack of tourism brought on by the oil spill; the Claimant provided no information as to where he has applied and the results of each application that supports his allegation.

Furthermore, while the Claimant asserted he was promised 2 to 3 years of employment, the Claimant has not provided a written guarantee from the employer demonstrating such. Should the Claimant decide to request reconsideration, he will need to provide the names, addresses and phone numbers for the jobs he states he applied for and was turned down due to the oil spill.

Finally, the Claimant's annual salary from 2008 to 2010 as reported by the Claimant is as follows: tax year 2010, the Claimant received \$4,920.00 from three (3) different sources, one being unemployment compensation; tax year 2009, the Claimant received \$56,175.00 from two (2) separate sources, one being unemployment compensation; and in tax year 2008, the Claimant received \$44,414.00 from [REDACTED]. Based on the Claimant's income history, the information provided does not demonstrate how the Claimant could have experienced an alleged loss of profits in the amount of \$61,315.00 when he has not proven that he has made that much the two years preceding the oil spill.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$61,315.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

[REDACTED]
Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *6/29/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1059
29 June 2011

Re: Claim Number: N10036-1059

Dear [REDACTED]

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 claim number N10036-1059 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 N10036-1059.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004110

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1095
Claimant	[REDACTED]
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$17,700.00

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

On 24 June 2011, [REDACTED] on behalf of [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$17,700.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, owner of a massage parlor in Naples, FL, alleged that she lost profits and earnings due to a reduction in tourism following the Deepwater Horizon oil spill.² According to Claimant, tourists comprised much of her customer base.”³

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

¹ Optional OSLTF Claim Form dated 24 June 2011.

² *Id.*

³ *Id.*

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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Document titled, "Profit – Loss," in which Claimant calculates \$17,700 in losses;
- List of earnings in 2009 and 2010, showing revenue of \$40,000 in 2009 and \$42,000 in 2010;
- Copy of [REDACTED] advertisement;
- Document from the Florida Department of State, showing incorporation of company in 2001 and listing corporate status as "Active;"
- Document from Florida Department of Health, Division of Medical Quality Assurance;
- Receipt showing payment of business taxes;
- 2010 Schedule K-1 Form 1120S for shareholder [REDACTED];
- 2010 Form 1120S, showing ordinary business income of \$28,453;
- 2010 1120 S, Sub S Corporation Diagnostic Summary, showing gross receipts of \$43,000 in 2010 and \$9,565 in 2009;
- 2010 Depreciation Detail Listing;
- 2010 Federal Supporting Statements;
- 2010 Form 1120S showing gross sales of \$43,000;
- 2008 W-2 Forms;
- 2009 Form 1120S, showing gross sales of \$9,565;
- 2010 Form 1040, showing adjusted gross income of \$24,718;
- 2008 Form 1040, showing business income of \$7,000;
- 2008 Form 1120S, showing gross sales of \$63,515.00, and;

- 2008 Earned Income Credit Form.

Prior to presentment to the NPFC, Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF, which was denied on 16 June 2011.⁴

On 24 June 2011, Claimant presented this claim for \$17,700.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

The NPFC reviewed all information and documentation provided to support this claim. According to the Claimant's 1120S Forms, [REDACTED] grossed \$9,565 in 2009, before the oil spill, while grossing \$43,000 in 2010.⁵ Therefore, the Claimant has failed to demonstrate that her business suffered a financial loss.

Claimant also failed to demonstrate that her alleged loss in the amount of \$17,700.00 resulted from the Deepwater Horizon oil spill. Claimant merely alleged that tourists account for much of her clientele, and tourism in her area was down as a result of the oil spill.⁶

This claim is denied because (1) Claimant has failed to show that she suffered an actual loss, and (2) Claimant has failed to show that the alleged loss in the amount of \$17,700.00 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.

[REDACTED]

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/29/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ GCCF denial letter Re: Claimant's Interim/Final Payment Claim, dated 16 June 2011.

⁵ 2009, 2010 1120S Forms provided by Claimant.

⁶ OSLTF Claim Form.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1062
21 July 2011

Dear [REDACTED]

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 N10036-1062 involving Deepwater Horizon. 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 N10036-1062.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Si [REDACTED]

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1062
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$70,265.00

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 28 June 2011, [REDACTED] presented a claim to the Oil Spill Liability Trust Fund (OSLTF) on behalf of [REDACTED] (Claimant) for \$70,265.00 in loss of profits resulting from the Deepwater Horizon oil spill.

Claimant was a men's and women's clothing and accessories store located in Baton Rouge, Louisiana.¹ The store opened 01 March 2008. The Claimant stated that "...during the oil spill sales dropped off so drastically that, I had to close the store to prevent further and deeper loss." The store closed 30 November 2010. The Claimant stated that he had planned to remain open for another five years to make up for "lost revenue during the first years." The Claimant also stated, "On 27 November 2010, I donated my entire store inventory and fixtures to Good Will Industries."²

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

¹ Schedule C Profit and Loss from Business for 2010

² Claimant's letter to NPFC in response to NPFC's request for additional information 18 July 2011

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 undertake, 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, Claimant submitted the following documentation:

1. Claimant's letter to NPFC transmitting claim for lost profits 22 June 2011;
2. GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim 26 May 2011;
3. GCCF Deficiency Letter on Interim Payment/Final Payment Claim 09 April 2011;
4. Claimant's letter to GCCF in response to Deficiency Letter 27 April 2011;

5. Claimant's letter to GCCF summarizing the claim 04 March 2011;
6. [REDACTED] listing of Purchases by Vendor Summary for January through December 2008;
7. Monthly Sales and Use Tax Report for [REDACTED] to City of Baton Rouge, Louisiana, from March 2008 through November 2010;
8. Advertisements in The Advocate Newspaper to sell the business;
9. Merchant's Processing Application and Agreement for [REDACTED] with [REDACTED] Bank 05 March 2008;
10. ADT Business Contract for burglary system 15 March 2010;
11. Claimant's letter to NPFC in response to NPFC's request for additional information 18 July 2011;
12. Print out of Quick Books Systems for various revenues and expenses for 2008 through 2010;
13. W-2's Wage and Tax Statements for employee for 2008, 2009 and 2010;
14. Claimant's Form 1040 US Individual Income Tax Return for 2008, 2009 and 2010 with supporting schedules including Juelle's Fashions' Schedule C's.

On 29 June 2011, NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 19 July 2011, the Claimant responded to the request.

Claimant seeks lost earnings and wages in the amount of \$70,265.00.

Prior to presenting a claim to the NPFC, the Claimant filed a Final Payment Claim with the GCCF. The Final Payment Claim was assigned Claimant Number [REDACTED] and Claim ID Number [REDACTED].³ The Final Payment Claim was denied on 26 May 2011.⁴

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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.

[REDACTED] showed a Net Loss of \$92,229.00 for 2008⁵ and a Net Loss of \$39,335.00 for 2009.⁶ The Claimant showed no profits for 2008 and 2009, the two years preceding the Deepwater Horizon oil spill. Based on this trend, his alleged loss of profits after the oil spill does not appear to be reasonable or substantiated. The NPFC is unable to assume profitability in 2010 based upon the Claimant's past performance which demonstrated no profits.

³ GCCF Claim Status site

⁴ GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim 26 May 2011

⁵ Schedule C for [REDACTED] for 2008

⁶ Schedule C for [REDACTED] for 2009

The subject claim included lost profits for 2011 and 2012, inventory disposal, termination costs for the Claimant's credit card machine, [REDACTED] Security System expenses, and neon store sign costs.⁷ These alleged damages are for future expenses, which are speculative in nature and not compensable under the Oil Pollution Act (OPA).

The Claimant has not provided sufficient evidence to show how the oil spill caused the business to lose profits as opposed to other economic factors that have plagued the business since as far back as 2008. The store was located approximately 81 miles northwest of New Orleans.⁸ The NPFC sent a letter requesting additional information as to exactly how the oil spill caused the Claimant's loss of profits. The Claimant merely responded with the conclusory statement that "...the oil spill caused it to fail."⁹

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

Claim Supervisor: [REDACTED] *ation Division*

Date of Supervisor's Review: *7/21/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ Claimant's letter to GCCF summarizing the claim 04 March 2011

⁸ Source Mapquest

⁹ Claimant's letter to NPFC in response to NPFC's request for additional information 18 July 2011

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1063
28 July 2011

Re: Claim Number: N10036-1063

Dear [REDACTED]

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 your claim number N10036-1063 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1063.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004119

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	: N10036-1063
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Impairment of Earnings Capacity
Amount Requested	: \$85,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 28 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$85,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is based in New Orleans, LA as a subcontractor with [REDACTED]. He works in the well abandonment division, whose operations are focused on the environmental cleanup of collapsed wells from natural disasters and similar events in the Gulf of Mexico.² The Claimant asserts that as a result of the Deepwater Horizon oil spill, the charter vessels the Claimant utilizes for his well abandonment business were unavailable because the boats were all under the employment of BP performing oil spill cleanup. The Claimant asserts that, without the charter vessels, he was unable to conduct his well abandonment work and he lost earnings.³

Additionally, the Claimant asserts that he has continued to lose earnings continually through the first half of 2011, indicating that his earnings were down \$45,000.00 compared to this period in 2010.⁴ The Claimant stated that, because of the Deepwater Horizon oil spill, the way business is conducted in the Gulf of Mexico changed, specifically in the speed of obtaining permits and the ability to get projects approved.⁵

The Claimant did not provide a calculation for his sum certain of \$85,000.00.

¹ PHONECON between the NPFC and Claimant on 29 June 2011.

² Id.

³ Id.

⁴ Letter from Claimant to NPFC, dated 14 June 2011.

⁵ PHONECON between the NPFC and Claimant on 15 July 2011.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of the claim, the Claimant presented the following documentation:

- Optional Oil Spill Liability Trust Fund Claim Form received 28 June 2011;
- Letter from Claimant to NPFC dated 14 June 2011;
- GCCF Denial Letter dated 6 May 2011;
- GCCF Letter dated 22 October 2010;
- 2009 W-2 Federal tax form from [REDACTED]
- 2009 W-2 Federal tax form from [REDACTED]
- 2010 W-2 Federal tax form from [REDACTED]
- 2008 W-2 Federal tax form from [REDACTED]
- 2008 W-2 Federal tax form from [REDACTED] and
- Pay stubs from [REDACTED] for the period: 5 June 2009-13 June 2009, 14 August 2009, 4 December 2009-18 December 2009-30 July 2010, 12 October 2010, 30 December 2010-3 June 2011.

Prior to presenting his claim to the NPFC, the Claimant filed a Full Review Final (FRF) claim for loss of earnings with the GCCF in the amount of \$60,000.00.⁶ He was assigned Claimant ID [REDACTED] and Claim [REDACTED]. The claim was denied on 6 May 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for the loss of earnings claim before the GCCF is the same as the subject matter of his loss of earnings claim before the NPFC, i.e., that the Claimant is claiming a financial loss from his well abandonment work due to the Deepwater Horizon oil spill. The NPFC deems that the Claimant's FRF claim was properly presented to the RP and properly presented to the NPFC up to the amount of \$60,000.00. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1063 considers and addresses the earnings claimed in GCCF Claim [REDACTED] (FRF) for loss of earnings.

NPFC Determination

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented a Full Review Final claim for \$60,000.00 in lost profits and earnings to the GCCF. The Claimant then presented a loss of profits and impairment of earnings capacity claim for \$85,000.00 to the NPFC. Any claimed amount of damages exceeding \$60,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. The Claimant asserts that he was unable to conduct his well abandonment services because all the boats he normally uses

⁶ Report from the GCCF, dated 15 July 2011.

⁷ Id.

⁸ Denial Letter on Interim Payment/Final Payment Claim from the GCCF, dated 6 May 2011.

were occupied by the Deepwater Horizon oil spill clean-up efforts.⁹ The NPFC contacted the Claimant's contractor, [REDACTED] to further evaluate the Claimant's alleged loss. [REDACTED] confirmed that the vessels were hired away by BP to assist in the oil spill cleanup process and as a result were not available for well abandonment work.¹⁰ Further, [REDACTED] indicated that none of the charter vessels were signed to exclusive contracts for the well abandonment work.¹¹ Thus, the Claimant's asserted loss resulted from independent business decisions by the charter vessels to end their at-will employment with the Claimant and [REDACTED] in favor of working for BP instead.

The Claimant also asserted that he has continued to suffer economic losses through the first half of 2011.¹² When asked about the cause of his loss, the Claimant stated that the Deepwater Horizon oil spill fundamentally changed the way business is conducted in the Gulf of Mexico.¹³ He mentioned that the federal agency responsible for issuing permits in his field switched from the Minerals Management Service to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), which contributed to the delay in the issuance of permits experienced after the Deepwater Horizon oil spill.¹⁴ Alongside the permitting delays, the Claimant indicated that it has been more difficult to get projects approved.¹⁵

Again, the NPFC contacted the Claimant's contractor, [REDACTED] to inquire as to the reason for any financial losses experienced in their well abandonment. [REDACTED] again confirmed the information given by the Claimant; that the slowness in permitting was the main reason for the financial losses it has experienced.¹⁶ When asked if there were any other reasons for the losses in spring of 2011, [REDACTED] said that business was always highly dependent on weather and it would be hard for him to pinpoint any other reasons.¹⁷ The explanations offered by the Claimant and confirmed by [REDACTED] both indicate that the Claimant's losses are a not a direct result of the Deepwater Horizon oil spill, but occurred mainly due to an overhaul of the permitting process for well abandonment services.

This claim is denied because the Claimant failed to meet its burden to demonstrate that (1) all damages claimed to the NPFC were properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a), and (2) [REDACTED] production or loss of property or natural resources as a result of a discharge of oil.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 7/28/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁹ PHONECON between the NPFC and Claimant on 29 June 2011.

¹⁰ PHONECON between the NPFC and [REDACTED] on 05 July 2011.

¹¹ Id.

¹² PHONECON between the NPFC and Claimant on 15 July 2011.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ PHONECON between the NPFC and [REDACTED] on 15 July 2011.

¹⁷ Id.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-1064
15 August 2011

RE: Claim Number: N10036-1064

Dear [REDACTED]

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 claim number N10036-1064 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-1064.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1064
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$49,000.00

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 27 June 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$49,000.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant worked for [REDACTED] during 2008 and 2009. The Claimant collected unemployment from 29 November 2009 to 27 July 2010.¹ The Claimant stated that "no one was hiring offshore especially with the moratorium in place."²

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

¹ Unemployment documents from Louisiana Workforce Commission dated 03 December 2009, 26 April 2010, 25 May 2010, and 27 July 2010.

² OSLTF claim form page 2 of 2

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 his claim, Claimant submitted:

- 1) OSLTF claim form dated 01 June 2011
- 2) Email to NPFC detailing sum certain of \$49,000.00
- 3) Copy of [REDACTED]
- 4) Copy of [REDACTED]
- 5) 2008 W-2 from [REDACTED]
- 6) 2009 W-2 from [REDACTED]
- 7) Unemployment monetary determination letters from the Louisiana Workforce Commission
- 8) 2010 Form 1099-G from Louisiana Workforce Commission
- 9) Paystubs from [REDACTED]

Claimant seeks lost earnings and impairment of earnings capacity in the amount of \$49,000.00.

On 30 June 2011, the NPFC sent a letter to the Claimant requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed that a notice was left 29 July 2011 12:31pm in New Orleans, LA for the Claimant to pick up the letter. No further action was taken by the Claimant.

Prior to presenting her claim to the NPFC, the Claimant filed a Full Review Final Claim (FRF) with the GCCF on 08 June 2011 in the amount of \$32,519.08.³ She was assigned Claimant ID [REDACTED] and claim [REDACTED]. This claim was denied on 28 June 2011.⁴ Additionally, the Claimant filed a Quick Payment claim (QP) with the GCCF, with GCCF [REDACTED] for an undisclosed amount, the claim was denied on 19 May 2011.⁵ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that Claimant could not obtain employment as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1064 considers and addresses the earnings claimed in all of the two claims presented to the responsible party, specifically; GCCF Claim #'s [REDACTED] (FRF), and [REDACTED] (QP).

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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 their claim. The NPFC considered all the documentation submitted by the Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented a Full Review Final claim in the amount of \$32,519.08 for loss of profits and impairment of earnings capacity to the GCCF. The Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$49,000.00 to the NPFC. Any claimed amount of damages exceeding \$32,519.08 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the evidence presented by the Claimant does not prove that her alleged loss is due to the Deepwater Horizon incident. NPFC sent a certified letter to the Claimant requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The USPS Tracking site showed the certified letter was delivered and a notice was left. Furthermore, the Claimant submitted no evidence that she was employed in 2010 prior to the oil spill. Since the Claimant did not present sufficient evidence to prove that her alleged loss is due to the Deepwater Horizon incident, her claim is denied.

³ Report from the GCCF dated 29 July 2011

⁴ GCCF Denial Letter dated 28 June 2011

⁵ GCCF Denial Letter dated 19 May 2011

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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) the Claimant failed to properly present costs in excess of \$32,519.08 first to the RP/GCCF pursuant to 33 CFR 136.103(a).

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/15/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1065
11 July 2011

Re: Claim Number: N10036-1065

Dear [REDACTED]

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 N10036-1065 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 N10036-1065.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004129

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1079
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits & Earnings Capacity
Amount Requested	\$35,000.00

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 30 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$35,000.00 in damage to real or personal property resulting from the Deepwater Horizon oil spill.¹

Claimant alleged that his home in Grand Isle, LA was "effected by the spill" and that "[he] sold [the] property on 21 January 2011 for less than the appraised value."² This claim is for a loss based on alleged depreciation of real estate value opposed to physical injury or damage to real or personal property.³ Therefore, the NPFC has reclassified this claim as a claim for lost profits and earnings capacity.

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

¹ Optional OSLTF Claim Form dated 28 June 2011.

² Id.

³ Id.

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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 28 June 2011;
- State of Louisiana license to transact business for [REDACTED];
- Pictures (two) of oiled beach on Grand Isle dated 30 May 2010;
- GCCF Denial Letter dated 29 April 2011.
- Act of Cash Sale deed from [REDACTED] to [REDACTED] and [REDACTED] dated 21 January 2011;
- HUD-1 Settlement Statement dated 21 January 2011;
- [REDACTED] Summary Appraisal report of the Property Located at [REDACTED] [REDACTED] signed 8 June 2010 providing appraisal estimate as of 19 April 2010.

Prior to presentment to the NPFC, Claimant alleged that this claim was submitted to the RP/GCCF in November of 2010. The claim to the GCCF was denied on 29 April 2011.⁴

⁴ GCCF Denial Letter dated 29 April 2011.

NPFC Determination

On 30 June 2011, Claimant presented this claim for \$35,000.00 in damage to real or personal property. Under 32 U.S.C. § 2712(b)(2)(B), real or personal property, a Claimant may recover damages for injury to, or economic loss resulting from the destruction of, real or personal property, which shall be recoverable by a Claimant who owns or leases the property. In this case, the Claimant has not alleged that his property has been physically damaged by the oil spill. Rather, he claims a diminution in the property's value, asserting that the property has lost value and suffered decreased marketability. As the property itself was not damaged, the Claimant's alleged losses cannot be classified as real or personal property damage. Accordingly, as discussed *supra*, this claim has been reclassified by the NPFC as a claim for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that his 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 his claim. The NPFC reviewed all information and documentation provided by the Claimant.

An economic loss to real property is only realized under OPA if the property has been sold at a loss and if the Claimant has shown that this loss was due to the injury, destruction or loss of the real property or the natural resource as a result of the discharge or substantial threat of discharge of oil.

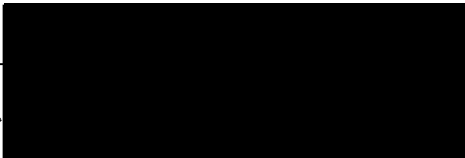
The Claimant obtained an appraisal from [REDACTED] signed 8 June 2010 providing appraisal estimate as of 19 April 2010 (the Appraisal). The appraised value of the subject property per the Appraisal was \$455,000.00 as of the day before the oil spill.⁵ The Appraisal further indicated that the subject property was not listed for sale in the 36 months preceding the spill. The Claimant alleged that the fact that the property ultimately sold for \$420,000.00 on 21 January 2011 is evidence of a loss of \$35,000.00 related to the spill.⁶ The mere fact that the subject property sold for less than the Claimant's prior appraised value does not satisfy the Claimant's burden of proof under OPA. Temporal succession does not necessarily prove a causal relation. For example, the Claimant has not provided any documentation that would show that any particular buyer cancelled any prior sales agreement because of the effects of the oil spill, or that his sale of the property for an amount below the 19 April 2010 appraised value is not the result of other factors such as generally declining market conditions.

This claim is denied because the Claimant has failed to show that the alleged loss in the amount of \$35,000.00 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.

⁵ Tarpon Appraisal Service Summary Appraisal report of the Property Located at [REDACTED] signed 8 June 2010 providing appraisal estimate as of 19 April 2010.

⁶ Optional OSLTF Claim form dated 28 June 2011

N 10036-1065

Claim Supervisor  on

Date of Supervisor's Review: 7/11/11

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1066
29 June 2011

Dear [REDACTED]

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 N10036-1066 involving Deepwater Horizon. 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 N10036-1066.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004134

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1066
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

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 28 June 2011 [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$10,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant asserted that she works as a cook for [REDACTED] in Mobile, Alabama.¹ The Claimant stated that her working hours were "reduced drastically" by her employer due to the oil spill. The Claimant also asserted that she applied to other jobs but had no success.

Claimant presented an Interim/Final Payment Claim to the GCCF and GCCF issued Claimant ID [REDACTED]. On 27 May 2011 GCCF sent the Claimant a Denial Letter on the Interim/Final Payment Claim.

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.

¹ OSLTF Claim Form received 28 June 2011

² GCCF Claim Status stie
09/14/11

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, the Claimant submitted the following documentation:

- OSLTF Claim Form received 28 June 2011;
- Form 1040 US Individual Income Tax Returns for 2008, 2009 and 2010;
- Letter from [REDACTED] dated 03 May 2011. No letterhead and signer not identified;
- Claimant letter dated 03 May 2011 explaining claim;
- Proof of claim submission to GCCF

NPFC Determination

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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$10,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

The Claimant stated that her working hours were “reduced drastically” by her employer, [REDACTED] Restaurant, due to the oil spill. Since this was an intervening business decision by her employer and may not be a consequence of the oil spill, the claim is denied. Also, the affidavit from [REDACTED] provided by the Claimant is neither on company letterhead nor does it have contact information therefore its validity is questionable.

Should the Claimant choose to come back on reconsideration, she will have to provide a point of contact at [REDACTED] and financial data from her employer to assist in determining the nexus between the Claimant’s income and the oil spill. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$10,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

[REDACTED]
Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor’s review: *6/29/11*

Supervisor Action: *Denial approved*

Supervisor’s Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1067
01 July 2011

Re: Claim Number: N10036-1067

Dear [REDACTED]

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 N10036-1067 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 N10036-1067.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]

U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004138

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1067
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$20,000.00

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 28 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$20,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, who started working for [REDACTED] in March of 2010, stated that "because ships were not allowed to come in to the area, the repair company lost business, which trickled down to the employees."² According to Claimant, the lack of work resulted in his termination.³

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

¹ Optional OSLTF Claim Form dated 28 June 2011.

² *Id.*

³ *Id.*

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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Fax Cover sheet, dated 28 June 2011, "Amended OSLTF Claim Form;"
- 2010 W-2 wage and tax statement, showing earnings from [REDACTED] of \$10,899.00;
- 2010 W-2 wage and tax statement, showing earnings from [REDACTED] of \$1,610.00;
- 2010 W-2 wage and tax statement, showing earnings from [REDACTED] of \$974.80;
- 2010 W-2 wage and tax statement, showing earnings from [REDACTED] of \$416.50;
- 2009 W-2 wage and tax statement, showing earnings from [REDACTED] of \$3,189.66;
- 2009 W-2 wage and tax statement, showing earnings from [REDACTED] of \$1,668.00;
- 2009 W-2 wage and tax statement, showing earnings from [REDACTED] of \$280.00;
- 2009 W-2 wage and tax statement, showing earnings from [REDACTED] of \$120.00;
- IRS Wage and Income Transcript, 2008;
- Copy of GCCF Denial Letter on Interim/Final Payment Claim, dated 21 April 2011;
- Letter from Claimant's supervisor, explaining Claimant's position and loss of income, undated;
- Letter from Claimant, describing losses, 6 May 2011;

- Copies of various ID cards;
- Pay stubs from [REDACTED] 3/29/2010 – 4/18/2010;
- Pay stubs from [REDACTED] 4/19/2010 - 4/29/2010;
- Pay stubs from [REDACTED] 5/10/2010 – 5/23/2010;
- Pay stubs from [REDACTED] 7/26/2010 - 8/15/2010;
- Pay stubs from [REDACTED] 8/26/2010 – 9/5/2010;
- Pay stubs from [REDACTED] 8/30/2010 – 9/19/2010, and;
- Pay stub from [REDACTED] 9/20/2010 – 9/26/2010;
- Pay stubs from [REDACTED] 10/11/2010 – 10/31/2010.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim as well as an Interim/Final Payment Claim to the RP/GCCF. Claimant's EAP was denied on 12 November 2010 and Final Payment Claim was denied on 20 April 2011.⁴

On 28 June 2011, Claimant presented this claim for \$20,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

The NPFC reviewed all information and documentation provided by the Claimant. Claimant's submission indicated that he began working for [REDACTED] in March 2010, shortly before the oil spill.⁵ Claimant has no history of prior earnings (*pre-spill earnings*) with [REDACTED]. Furthermore, 2009 and 2010 W-2 forms provided by the Claimant, indicated that he reported \$5,257.00 in earnings in 2009 compared to \$13,900.00 in 2010.⁶

This claim is therefore denied because the Claimant has failed to demonstrate that he has suffered a loss in profits, or that his alleged loss in the amount of \$20,000.00 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.

[REDACTED]
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/1/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ Optional OSLTF Claim Form dated 13 May 2011

⁵ Pay stubs provided by Claimant indicate that he was earning income from [REDACTED] through the end of October 2010.

⁶ 2009, 2010 W-2 Forms provided by Claimant.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

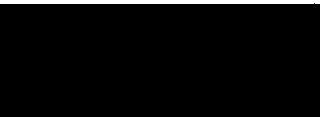
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1068
18 July 2011



Re: Claim Number: N10036-1068

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-1068 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary / Determination Form for further explanation.

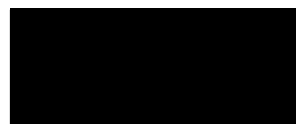
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1068.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



Division

U. S. Coast Guard

Enclosure: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00004142

CLAIM SUMMARY / DETERMINATION FORM

Date	: 18 July 2011
Claim Number	: N10036-1068
Claimant	: ██████████
Type of Claimant	: Private (US)
Type of Claim	: Real or Personal Property
Amount Requested	: \$68,338.00

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 27 June 2011, ██████████ (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$68,338.00 in real or personal property damage, in the form of lost property value, as a result of the Deepwater Horizon incident.

Claimant stated that as a result of the incident, her home suffered “diminished in value”.¹

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 that result from such incident. 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 U.S.C. § 2702(b)(2)(B) and the promulgating regulations under 33 C.F.R. § 136.213 is a claim for real or personal property damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

33 C.F.R. §136.213, Authorized claimants, states:

- (a) A claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.

¹ Optional OSLTF Claim Form dated 16 June 2011
09/14/11

- (b) Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under §136.233.

Additionally, 33 C.F.R. § 136.215, establishes additional proof requirements and states:

- (a) In addition to the requirements of subparts A and B of this part, a claimant must establish—
 - (1) An ownership or leasehold interest in the property;
 - (2) That the property was injured or destroyed;
 - (3) The cost of repair or replacement; and
 - (4) The value of the property both before and after injury occurred.
- (b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish—
 - (1) That the property was not available for use and, if it had been, the value of that use;
 - (2) Whether or not substitute property was available and, if used, the costs thereof; and
 - (3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

Under 33 C.F.R. § 136.217, the amount of compensation allowable for a claim involving real or personal property damage is limited to:

- (a) The amount of compensation allowable for damaged property is the lesser of—
 - (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
 - (2) The difference between value of the property before and after the damage; or
 - (3) The replacement value.
- (b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable.
- (c) Compensation for a claim for loss of profits or impairment of earning capacity under §136.213(b) is limited to that allowable under §136.235.

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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, Claimant presented to the NPFC an Optional OSLTF Claim Form dated 27 June 2011 and a 2010 Notice of Proposed Property Tax and Proposed or Adopted Non-Ad Valorem Assessments.

The sum certain of the claim is based on the difference between the 2009 assessed value price of \$303,248.00 and 2010 assessed value of \$234,910.00.

The Claimant asserts that she presented her claim to the RP/GCCF on 03 January 2011, but that the claim was denied.² The NPFC has been unable to verify presentation by the Claimant of the claim in the amount presented as of a date even herewith.

NPFC Determination

The claim is denied. Under 33 U.S.C. § 2702(b)(2)(B), real or personal property, a Claimant may recover damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property. In this case the Claimant has not alleged that her property has been physically damaged by the discharge of oil but is instead claiming a diminution in the property's value, which is a purely economic loss.

An economic loss to real property is only realized under OPA if the property has been sold at a loss and if the Claimant has shown that the loss was due to the injury, destruction or loss of the real property or the natural resource as a result of the discharge or substantial threat of discharge of oil. The Claimant has not provided evidence to show that the subject property was sold at a loss. Rather, the Claimant merely asserted a general diminution in value. However, the Claimant failed to provide, for example, any documentation that would indicate that any particular buyer cancelled a sales agreement because of the effects of the oil spill, any other pre-spill or post-spill appraisals, or evidence that would show that the lower assessed value of the property is the result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil as opposed to other factors such as generally declining market conditions. Because the Claimant has not sold the property, any loss is both prospective and speculative and is not compensable under OPA.

This claim is denied because the evidence presented by the Claimant does not demonstrate (1) the alleged loss in the amount of \$68,338.00, as claimed, or (2) that the alleged loss is due to injury or destruction or loss of real property or a natural resource as a result of a discharge or substantial threat of a discharge of oil

² Optional OSLTF Claim Form dated 16 June 2011
09/14/11

Claim Supervisor: NPP [REDACTED] *judication Division*

Date of Supervisor's Review: *7/18/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

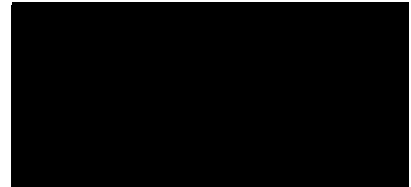
U.S. Department of
Homeland Security

**United States
Coast Guard**



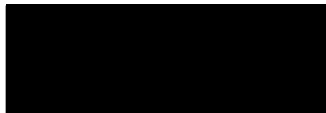
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-1069
08 July 2011



Dear [REDACTED]

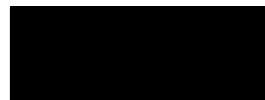
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1069 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-1069.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



ation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1069
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,000.00

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 29 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant provided five W-2's for various employers in the New Orleans, Louisiana, area for 2010.¹ The Claimant was working at [REDACTED] at the time of the Deepwater Horizon oil spill.² Claimant alleged that due to the oil spill, business slowed and her employers sent her home early, resulting in lost earnings from both jobs.³

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:

¹ See copies of W-2 Wage and Tax Statements provided by the Claimant for 2010

² OSLTF Claim Form signed by Claimant 27 May 2011

³ Id.

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant 27 May 2011
- Form 1040A US Individual Income Tax Return for 2010
- W-2 for 2010 from [REDACTED]
- To Whom It May Concern from [REDACTED]'s undated and signature unreadable stating hours reduced due to oil spill

Claimant presented an Emergency Advance Payment Claim to the GCCF and GCCF issued Claimant ID [REDACTED] and Claim [REDACTED]. The GCCF denied the Emergency

Advance Payment Claim. The Claimant presented a Final Payment Claim to the GCCF. On 16 April 2011 GCCF denied the Final Payment Claim.⁴

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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 Claimant provided W-2's for various employers in the New Orleans area for 2010 and no earnings documentation for prior years. The documentation provided by the Claimant is insufficient documentation to establish a loss of earnings under 33 C.F.R. § 136.233 (a). The Claimant did provide a handwritten letter⁵ which was purportedly provided to the Claimant by the Manager at the [REDACTED] where she worked on St. Charles Street in New Orleans. The letter stated that "due to the oil spill...she (the Claimant) was working 20 hours a week instead of 40 hours a week." The NPFC repeatedly contacted the [REDACTED] where the Claimant was employed but was unable to confirm the veracity of the statement in the letter.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *08 July 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ GCCF Claim Status site

⁵ To Whom It May Concern from [REDACTED]s undated and signature unreadable stating hours reduced due to oil spill

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim # N10036-1070
01 July 2011

Re: Claim Number: N10036-1070

Dear [REDACTED]

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 N10036-1070 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 N10036-1070.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00004151

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1070
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$7,428.00

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 24 June 2011, the [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$7,428.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant alleged that he lost his oil spill clean-up job after working for only one month, and then was unable to find work because “no one was hiring because of the oil spill.”²

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.

¹ Full Review Final Payment Claim, at 7.

² IV. Claim Evaluation.

- (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, Claimant submitted the following documentation:

- Document authorizing [REDACTED], Legal Representative;
- Document titled "Gulf Coast Representation Evaluation Sheet, showing annual earnings with [REDACTED] 2007 – 2010;
- Document titled "Calculation of Past Lost Earning;"
- Document titled "Claim Evaluation;"
- Description of Claimant's loss;
- Copy of GCCF Full Review Final Payment Claim Form;
- Document titled "Non-Attorney Representative Authorization Form;"
- Copy of Claimant's driver's license and social security card;
- 2010 W-2 wage and tax statements;
- Statement from Claimant, dated 13 May 2011, noting missing W-2 from oil spill clean-up work;
- Payroll account information from oil spill clean-up work;
- 2007, 2008, 2009 W-2 wage and tax statements;
- Certificate of Course Completion, 10 June 2010;
- Receipt for hotel stay, 21 June 2011, and;
- Letter from Claimant to GCCF 28 October 2010.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim as well as an Interim Payment/Final Payment Claim to the RP/GCCF. Claimant's EAP was denied on 2 November 2010, and Final Payment Claim was denied on 8 June 2011.

On 24 June 2011, Claimant presented this claim for \$7,428.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

The NPFC reviewed all information and documentation provided by the Claimant. The Claimant alleged that he was promised employment for “six months to a year” working with [REDACTED] a company engaged in oil spill clean-up.³ However, his employment with [REDACTED] lasted for only about one month, and Claimant alleged that he has since been unable to find alternate employment.⁴

Claimant’s losses appear to be as a result of his expectation that he would be employed with [REDACTED] for an extended period of time. However, Claimant has not provided documentation to show that he was guaranteed any length of employment, or that the oil spill resulted in his inability to find alternate employment.

Having fully reviewed the Claimant’s submission, this claim is denied as the Claimant has not demonstrated that his alleged loss in the amount of \$7,428.00 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.

[REDACTED]
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *7/1/11*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

³ Letter from Claimant to GCCF, 28 October 2010.

⁴ *Id.*

U.S. Department of
Homeland Security

United States
Coast Guard

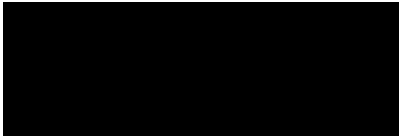


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
7/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [REDACTED]



RE: Claim Number: N10036-1073

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1073 involving Deepwater Horizon. 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 N10036-1073.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Signed [REDACTED]

National Pollution Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00004155

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1073
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$2,596.00

FACTS:

On or about April 20, 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 August 23, 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 June 30, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$2,596.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant provided a letter dated June 26, 2011 allowing Ali Salman dba Gulf Coast Representation LLC to act on her behalf.

The Claimant asserted that clientele at the Panama City, FL based dental office she worked at decreased as a result of the oil spill. This initially resulted in the Claimant's hours being reduced but later led to her being laid off in November 2010. The Claimant also stated that she was unable to find a job after she was laid off and began collecting unemployment benefits.

The Claimant did not provide a copy of her GCCF denial letter but a search of the GCCF database shows her interim/final claim was denied on May 12, 2011.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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 support the claim, the Claimant submitted the following documentation:

- Authorization letter for legal representation, dated June 18, 2011;
- Gulf Coast Representation Evaluation Sheet, undated;
- GCCF Full Review Final Claim Form, undated;
- Copy of Driver's License and Social Security Card;
- 2009 and 2010 W-2;
- Nineteen (19) paystubs from April 2010 through December 2010;
- 2010 IRS Form 1099-G;
- First page of 2008, 2009, and 2010 Individual Income Tax Returns;
- Letter from Claimant explaining claim;
- Letter from employer stating reason for termination;
- Letter from employer confirming date of termination.

NPFC Determination

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 considered all documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$2,596.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

Should the Claimant choose to come back on reconsideration, she will have to provide financial and customer data from her employer to assist in determining the nexus between the Claimant's income and the oil spill. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position. Additionally, the Claimant will need to provide documentation of all income received from unemployment compensation during the affected period.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$2,596.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.


Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *7/7/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0895
5 July 2011

Re: Claim Number: N10036-1074

Dear [REDACTED]

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 N10036-1074 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 N10036-1074.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004159

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1074
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$9,090.00

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 27 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$9,090.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, who was unemployed at the time of the oil spill, stated that he "was seeking employment as a security officer on the beach, but due to the oil spill, all the security jobs were placed on hold."²

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.

¹ GCCF Interim Payment Claim Form 5 May 2011.

- (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, Claimant submitted the following documentation:

- Email from Gulf Coast Representation on behalf of Claimant, 27 June 2011;
- Form designating Legal Representative, 21 June 2011;
- Gulf Coast Representation Evaluation Sheet;
- Calculation of Past Lost Earnings;
- Claim Evaluation;
- GCCF interim Payment Claim Form;
- Form entitled, "Non-Attorney Representation Authorization Form, 6 April 2011;
- Copy of Claimant's driver's license;
- Copy of Claimant's social security card;
- 2010 W-2 Forms;
- 2010 Form 1040;
- 2010 Schedule M, "Making Work Pay Credit;"
- 2010 Form 8879;
- Direct Deposit Information;
- 2009 Form 1040;
- 2010 Schedule A, Form 1040;
- 2009 Form 5329;
- 2009 Schedule M, "Making Work Pay and Government Retiree Credits;
- 2008 Schedule A, Form 1040;
- 2008 Form 1040X;
- 2008 Form 8879;
- 2008 Form 1040A;
- 2008 W-2 Forms, and;
- 2007 Form 1040.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) claim, as well as an Interim Payment/Final Payment Claim to the RP/GCCF. Claimant's EAP was denied on 13 December 2010, and Final Payment was denied on 14 June 2011.

On 27 June 2011, Claimant presented this claim for \$9,090.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

In reviewing the information provided by the Claimant, the NPFC notes that the Claimant was unemployed at the time of the oil spill, and had been collecting unemployment since 5 January 2010.³ Claimant has therefore not established that he has suffered a loss of profits or earnings as a result of the oil spill.

The NPFC reviewed all information and documentation provided by Claimant. This claim is denied because the Claimant has failed to show that he suffered a loss, or that the alleged loss in the amount of \$9,090.00 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.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/5/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1075
6 July 2011

Re: Claim Number: N10036-1075

Dear [REDACTED]

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 N10036-1075 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 N10036-1075.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004163

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1075
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$8,000.00

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 24 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, who worked for [REDACTED] alleged that "due to the oil spill [he was laid off] due to lack of work."²

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.

¹ Optional OSLTF Claim Form dated 24 June 2011.

² Id.

- (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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- 2010 W-2 Forms, showing wages of \$10,772.63;
- 2008 W-2 Form, showing wages of \$15,844.54;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 6 May 2011;
- 2009 IRS Tax Return Transcript;
- Payment Benefit History Form, 21 August 2010 – 4 October 2010;
- Payment Benefit History Form, 9 October 2010 – 6 December 2010;
- Payment Benefit History Form, 11 December 2010 – 7 February 2011;
- Payment Benefit History Form, 12 February 2011 – 21 February 2011;
- Payment Benefit History Form, 20 February 2011 – 18 April 2011;
- Payment Benefit History Form, 25 April 2011 – 20 June 2011.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim, as well as an Interim/Final Payment Claim to the RP/GCCF. Claimant's EAP was denied on 7 December 2010, and Final Payment was denied on 6 May 2011.

On 5 June 2011, Claimant presented this claim for \$8,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

In reviewing the information provided by the Claimant, the NPFC contacted a representative of the Claimant's former employer. The representative stated that the Claimant was let go from his position with the company for reasons unrelated to the oil spill.³

This claim is denied because the Claimant has failed to show that the alleged loss in the amount of \$8,000.00 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.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/6/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ PHONECON: Claimant's Employer and NPFC Staff, 5 July 2011.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-1076
08 July 2011

Dear [REDACTED]

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 N10036-1076 involving Deepwater Horizon. 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 N10036-1076.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[REDACTED]
Claims Rejection Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1076
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$32,977.00

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 24 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$32,977.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked for [REDACTED] at a Navy base in Panama City Beach, Florida.¹ The Claimant stated that due to the Deepwater Horizon oil spill, the work was moved from the Gulf to the Atlantic Ocean to avoid any damage to the vessels and equipment therefore he was laid off.²

The Claimant has engaged [REDACTED] as his Legal Representative. The Claimant has advised in writing that the Claimant is fully aware that [REDACTED] is not an attorney.³

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

[REDACTED] Claim Application Form

¹ Id.

³ Legal Representation for [REDACTED] dated 02 June 2011

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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Legal Representation for [REDACTED] dated 02 June 2011
- [REDACTED] Claim Application Form
- GCCF Form 2000-I Interim Payment Claim Form dated 22 March 2011
- Non-Attorney Representative Authorization Form dated 28 April 2011

- Copy of Florida drivers license
- Copy of Social Security Card
- W-2 Wage and Tax Statement for [REDACTED] for 2007, 2008 and 2010
- Form 1099-G for State of Florida Agency for Workforce Innovation for 2010
- Confidential Client Information for 2009 Income Tax Return
- To Whom It May Concern letter from Claimant about the claim dated 13 August 2010
- Notice of Lay-Off Letter from [REDACTED] Program Director to Claimant dated 19 July 2010

Claimant presented an Emergency Advance Payment Claim to the GCCF and GCCF issued Claimant ID [REDACTED] and Claim [REDACTED]. On 07 December 2010 the GCCF denied the claim. The Claimant presented an Interim Payment Claim to the GCCF. On 07 June 2011 the Interim Payment was denied.⁴

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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 Claimant stated that due to the Deepwater Horizon oil spill, [REDACTED] at a Navy base in Panama City Beach, Florida moved their work from the Gulf to the Atlantic Ocean to avoid any damage to vessels and equipment and he was laid off. The Claimant submitted a letter from the [REDACTED] Program Director which stated that the Claimant's position was terminated "due to the customer's decision to remove [the Claimant] from the ...Panama City Division." The effective date of the lay-off was 13 August 2010.⁵

The NPFC contacted a representative of the Claimant's former employer. The representative advised the NPFC that the Claimant was not laid off due to the oil spill or due to the underlying Navy project being moved from the Gulf to the Atlantic Ocean.

Accordingly, this claim is denied because the Claimant failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

⁴ Letter from the GCCF to Claimant denying claim to the RP.

⁵ Notice of Lay-Off Letter from [REDACTED] to Claimant dated 19 July 2010

- Copy of Florida drivers license
- Copy of Social Security Card
- W-2 Wage and Tax Statement for [REDACTED] for 2007, 2008 and 2010
- Form 1099-G for State of Florida Agency for Workforce Innovation for 2010
- Confidential Client Information for 2009 Income Tax Return
- To Whom It May Concern letter from Claimant about the claim dated 13 August 2010
- Notice of Lay-Off Letter from [REDACTED] Program Director to Claimant dated 19 July 2010

Claimant presented an Emergency Advance Payment Claim to the GCCF and GCCF issued Claimant ID [REDACTED] and Claim [REDACTED]. On 07 December 2010 the GCCF denied the claim. The Claimant presented an Interim Payment Claim to the GCCF. On 07 June 2011 the Interim Payment was denied.⁴

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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 Claimant stated that due to the Deepwater Horizon oil spill, [REDACTED] [REDACTED] at a Navy base in Panama City Beach, Florida moved their work from the Gulf to the Atlantic Ocean to avoid any damage to vessels and equipment and he was laid off. The Claimant submitted a letter from the [REDACTED] Program Director which stated that the Claimant's position was terminated "due to the customer's decision to remove [the Claimant] from the ... Panama City Division." The effective date of the lay-off was 13 August 2010.⁵

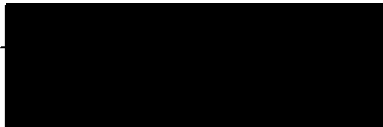
The NPFC contacted a representative of the Claimant's former employer. The representative advised the NPFC that the Claimant was not laid off due to the oil spill or due to the underlying Navy project being moved from the Gulf to the Atlantic Ocean.

Accordingly, this claim is denied because the Claimant failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

⁴ Letter from the GCCF to Claimant denying claim to the RP.

⁵ Notice of Lay-Off Letter from [REDACTED] Program Director to Claimant dated 19 July 2010

Claim Supervisor:



iston

Date of Supervisor's Review: *08 July 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1079
7 July 2011



Re: Claim Number: N10036-1079

Dear [REDACTED]

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 N10036-1079 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

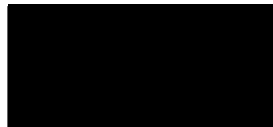
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1079.

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

09/14/11

FOIA2011-3380-00004173

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1079
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits & Earnings Capacity
Amount Requested	\$40,844.00

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 30 June 2011, the [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$40,844.00 in damage to real or personal property resulting from the Deepwater Horizon oil spill.¹

Since late 2009, the Claimant has been attempting to sell a home in Gulf Breeze, FL. He stated that he was about to enter “the prime house selling period when the spill occurred.”² The Claimant was unable to sell his home, and instead entered into a two-year lease with an option to purchase agreement on 22 June 2010. This claim is for a loss based on “reduced real estate value” and loss of potential sale as opposed to physical injury or damage to real or personal property.³ Therefore, the NPFC has reclassified this claim as a claim for lost profits and earnings capacity.

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.

¹ Optional OSLTF Claim Form dated 30 June 2011.

² Document titled, “U.S. Coast Guard OSLTF Claim Summary for Diminished Value & Related Costs”

³ *Supra* note 1.

- (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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Document titled, "U.S. Coast Guard OSLTF Claim Summary for Diminished Value & Related Costs;"
- Letter from property appraiser to Governor of Florida, 2 June 2010;
- Marketing Service Report, [REDACTED]
- Emails from Claimant to GCCF, 24 March 2011;
- List of comparable sales in the area, pre/post-spill;
- Copy of option to purchase agreement, 22 June 2010.

Prior to presentment to the NPFC, Claimant alleged that this claim was submitted to the RP/GCCF on 25 August 2010 and was denied. The NPFC does not have sufficient information to verify these assertions.⁴

⁴ Optional OSLTF Claim Form dated 13 May 2011

NPFC Determination

On 30 June 2011, Claimant presented this claim for \$40,844.00 in damage to real or personal property. Under 32 U.S.C. § 2712(b)(2)(B), real or personal property, a Claimant may recover damages for injury to, or economic loss resulting from the destruction of, real or personal property, which shall be recoverable by a Claimant who owns or leases the property. In this case, the Claimant has not alleged that his property has been physically damaged by the oil spill. Rather, he claims a diminution in the property's value, asserting that the property has lost value and suffered decreased marketability. As the property itself was not damaged, the Claimant's alleged losses cannot be classified as real or personal property damage. Accordingly, as discussed *supra*, this claim has been reclassified by the NPFC as a claim for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that his 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 his claim. The NPFC reviewed all information and documentation provided by the Claimant.

An economic loss to real property is only realized under OPA if the property has been sold at a loss and if the Claimant has shown that this loss was due to the injury, destruction or loss of the real property or the natural resource as a result of the discharge or substantial threat of discharge of oil. The Claimant has not provided evidence to show that the property was sold at a loss.⁵ Rather, the Claimant asserted that he lost the potential to sell his property. However, the Claimant does not provide documentation that would show that any particular buyer cancelled a sales agreement because of the effects of the oil spill, or that his difficulty in marketing the property is not the result of other factors such as generally declining market conditions. Because the Claimant has not sold the property, any loss is both prospective and speculative and is not compensable under OPA.

This claim is denied because the Claimant has failed to show that the alleged loss in the amount of \$48,844.00 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.

Claim Supervisor:  *Adjudication Division*

Date of Supervisor's Review: *7/7/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ Claimant entered into a two-year lease with option to purchase agreement, with a potential selling price of \$659,000.00

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

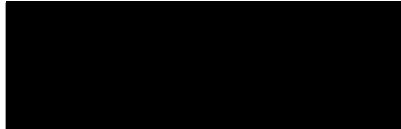
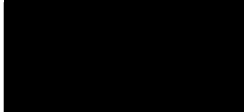
NPFC CA MS 7100
US COAST GUARD



Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-1080
22 July 2011

Re: Claim Number: N10036-1080

Dear [REDACTED]

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 your claim number N10036-1080 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1080.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



Education Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1080
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$9,969.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 01 July 2011 [REDACTED] (Claimant), presented a claim to the National Pollution Funds Center (NPFC) seeking \$9,969.00 in lost profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant was employed at [REDACTED] in Panama City, Florida.¹ Claimant asserted that as a result of the Deepwater Horizon oil spill, [REDACTED] lost revenue due to waterways being closed and contracts being put on hold.² According to the Claimant [REDACTED] loss of revenue led to a reduction of the Claimant's hours and ultimately resulted in him being laid-off in May of 2010.³ Additionally, the Claimant asserted that after being laid-off from [REDACTED] he obtained work at [REDACTED]. Claimant then asserted that he lost his job with [REDACTED] as well, after the company suffered reduced revenues due to the Deepwater Horizon oil spill.⁵

[REDACTED] provided a detailed formula describing how he calculated the Claimant's loss of \$9,969.00⁶

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days

¹ Gulf Coast Representation Evaluation Sheet.

² Id.

³ Id.

⁴ Id.

⁵ Id.

⁶ Gulf Coast Representation Evaluation Sheet, III. Calculation of Past Lost Earnings

after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of the claim, Agent presented the following documentation to the NPFC:

- Signed Legal Representative form authorizing [REDACTED] to act on behalf of Claimant dated 27 June 2011;
- Gulf Coast Representation Evaluation Sheet;
- GCCF Full Review Final Payment Claim Form;
- GCCF Non-Attorney Representative Authorization Form;
- Photocopies of Claimant's Florida Driver License and Social Security Card;
- 2010 1099-G Federal tax form from State of Florida Agency for Workforce Innovation;
- 2010 W-2 Federal tax form from [REDACTED];
- 2010 W-2 Federal tax form from [REDACTED];
- 2009 W-2 Federal tax form from [REDACTED];
- Photocopies of receipts from [REDACTED] dated 4 January 2011, 2 February 2011, 8 February 2011, 16 February 2011, 19 March 2011, 2 April 2011, 13 May 2011;
- Photocopies of receipt from [REDACTED] dated 9 May 2011;

- Photocopies of receipts from [REDACTED] dated 3 December 2010, 27 February 2011, 10 April 2011;
- Photocopy of receipt from [REDACTED] dated 2 March 2011;
- Photocopy of receipt from [REDACTED] dated 19 December 2010;
- Photocopies of receipts without listed location dated 5 May 2010 with amounts of \$71.32 and 148.04;
- Hand-written letter from Claimant to NPFC dated 13 May 2011;
- Hand-written letter from Claimant's witness [REDACTED] to NPFC dated 18 May 2011;
- GoogleMaps printout of [REDACTED] locations;
- Printout of [REDACTED] website.

Prior to presenting this claim to the NPFC, the Claimant filed a Full Review Final (FRF) claim with the GCCF on 09 June 2011 in the amount of \$9,969.00.⁷ Claimant was assigned Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied on 18 June 2011.⁸ Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claim is the same as the subject matter of the claim before the NPFC, i.e., that Claimant lost wages after being laid-off from two separate jobs due to the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1080 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim [REDACTED].

NPFC Determination

The claim is denied. 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 considered all documentation presented by the Claimant.

Claimant has not proven he suffered a financial loss due to the Deepwater Horizon oil spill. Regarding [REDACTED] Claimant asserted that he was laid-off due to the effects of the Deepwater Horizon oil spill and as a result lost income in 2010. The NPFC contacted [REDACTED] to verify this assertion. Claimant's former employer informed the NPFC that the Claimant voluntarily left Eastern Shipbuilding on 31 March 2010.⁹ Further, the Claimant's employer stated that the Claimant's hours were not reduced nor was the Claimant laid-off due to the Deepwater Horizon oil spill.¹⁰ Thus, the Deepwater Horizon oil spill had no connection to the Claimant's employment at [REDACTED].

Regarding the Claimant's employment at [REDACTED], the Claimant asserted that he was laid-off due to the effects of the Deepwater Horizon oil spill and as a result lost income in 2010. The NPFC contacted [REDACTED] to verify this assertion and asked [REDACTED] directly if the Claimant's layoff was connected to the Deepwater Horizon oil spill.¹¹ Claimant's former employer informed the NPFC that the Claimant was terminated from [REDACTED] due to a reduction in workforce.¹² [REDACTED] made no mention of the Deepwater Horizon oil spill as having an effect on the Claimant's layoff. Thus, the NPFC cannot confirm any causal connection between the Claimant's layoff and the Deepwater Horizon oil spill.

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

⁷ Report from the GCCF dated 15 July 2011.

⁸ GCCF Denial Letter dated 18 June 2011.

⁹ PHONECON between NPFC and [REDACTED] on 6 July 2011.

¹⁰ Id.

¹¹ Fax from NPFC to [REDACTED] dated 14 July 2011.

¹² Fax from [REDACTED] to NPFC, dated 21 July 2011.

support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

This claim is denied because the Claimant failed to meet its burden to demonstrate (1) that there was an alleged loss in the amount claimed, (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) the Claimant provided false information with respect to his employment with [REDACTED] which constitutes evidence of a material misrepresentation of fact.

Claim Supervisor: *NPF* [REDACTED]

Date of Supervisor's Review: *7/22/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



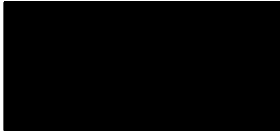
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
7/15/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-1082

Dear Ms. White:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1082 involving Deepwater Horizon. 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 N10036-1082.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD



Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004182

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1082
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$1,200.00

FACTS:

On or about April 20, 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 August 23, 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 July 1, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$1,200.00 to the National Pollution Funds Center (NPFC). The Claimant stated on her Optional OSLTF Claim Form that she suffered a financial loss "during the oil spill because the hotel lost wages for weeks."¹

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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

¹ Optional OSLTF Claim Form, dated June 15, 2011

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 support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, dated June 15, 2011;
- Letter from employer confirming employment, dated May 6, 2011;
- Twelve (12) paystubs from April 2010 to October 2010;
- [REDACTED] documents titled "Cashier Detail";
- [REDACTED] document titled "Daily Revenue Center Sales Detail";
- [REDACTED] documents titled "Daily Employee Detail"
- Copy of customer invoice;

The Claimant did not provide copies of the denial letter for her final claim with the GCCF but stated on the Optional OSLTF Claim Form that her claim was denied.²

NPFC Determination

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 considered all documentation presented by Claimant.

The NPFC contacted the hotel and spoke with [REDACTED] the Area Director of HR for the [REDACTED] stated that the Claimant was not authorized to

² Id

send any documentation on company letterhead. [REDACTED] also stated that if the Claimant's hours were reduced there is no proof that it was due to the oil spill.⁴

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$1,200.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor [REDACTED]

Date of Supervisor's review: *7/15/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

³ PHONECON between [REDACTED] and NPFC staff dated 6 July 2011

⁴ Id.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim # N10036-1083
10 August 2011

[REDACTED]
Dear [REDACTED]

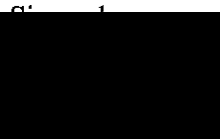
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1083 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-1083.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

Copy to: [REDACTED]
09/14/11

FOIA2011-3380-00004186

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1083
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$45,000.00

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 29 June 2010 [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$45,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. The Claimant authorized [REDACTED] to act on his behalf with regards to the claim submission.

The Claimant asserted that he leased his truck to [REDACTED] out of Harvey, Louisiana, to haul petroleum products and oil field equipment. Under the terms of the lease, the Claimant drove exclusively for [REDACTED]. The Claimant alleged that "after the Deepwater Horizon explosion, the need to transport oil related products and equipment slowed down causing [the] [C]laimant's truck to be used less and thus lose income. [REDACTED] would not let him out of the lease."¹

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.

¹ OSLTF Claim Form signed by Claimant and Legal Representative 10 June 2011

- (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 the claim, the Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant and Legal Representative, 10 June 2011;
- Letter from [REDACTED] legal representative, explaining the claim 01 June 2011;
- GCCF Claim Form 2000-I Interim Payment Claim 18 February 2011;
- Letter from [REDACTED] Independent Accountant setting forth Claimant's revenues for 2008, 2009 and 2010;
- Form 1099-Misc from [REDACTED] for 2008, 2009 and 2010;
- Letter from [REDACTED] explain the claim 15 June 2011;
- Listing of Claimant's checks received from [REDACTED] for 2009 and 2010; and
- Copies of [REDACTED] Lease Operator Settlements from April 2009 to June 2011.

On 06 July 2011 the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 08 August 2011, [REDACTED] the Claimant's legal representative, called NPFC and stated that the documentation we already have is all the documentation that we would get.²

² Based on telephone conversation between [REDACTED] and NPFC Claims Adjuster 08 August 2011.
09/14/11 FOIA2011-3380-0004188

Prior to presenting the claim to the NPFC, the Claimant filed two Interim Payment Claims with the GCCF on 03 March 2011 and 07 June 2011 in the amount of \$45,000.00.³ The claims were assigned Claimant ID [REDACTED] and claim numbers [REDACTED] and [REDACTED]. Both claims were denied.⁴

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that the Claimant lost earnings and wages because the Deepwater Horizon oil spill caused [REDACTED] to not need the use of the Claimant's vehicle. The NPFC deems each claim denied by GCCF to be properly presented to the responsible party and the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1083 considers and addresses the earnings claimed in all of the claims presented to the responsible party, specifically; GCCF Claim #'s [REDACTED]

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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.

On 06 July 2011, the NPFC sent the Claimant a letter requesting additional information to assist in the adjudication of the claim. The request included tax returns, the lease agreement between the Claimant and [REDACTED], and a breakdown of the loss computation. The Claimant's attorney responded that the documentation already submitted to NPFC would be all the documentation that the NPFC would get. Since the Claimant did not provide the additional information, he has not met his burden to demonstrate a loss of earnings and wages as a result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount of \$45,000.00, 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.

Claim Supervisor: [REDACTED] *Claims Adjudication Division*

Date of Supervisor's Review: *8/10/2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ Report from the GCCF dated 26 July 2011

⁴ Report from the GCCF dated 26 July 2011

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

Fax: 202-493-3937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1085
26 July 2011

Re: Claim Number: N10036-1085

Dear [REDACTED]

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 N10036-1085 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 N10036-1085.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Division
National Pollution Funds Center
U.S. Coast Guard

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1085
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$84,321.00

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 5 July 2011, [REDACTED] on behalf of [REDACTED] (collectively Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$84,321.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant owns and operates a boutique resort in Key West, Florida. She alleged that media "reports of oil in the water . . . caused guests to cancel their bookings because they would not be able to enjoy the activities in the Keys without pristine water."²

The Claimant seeks \$84,321.00 in compensation for cancelled bookings, low bookings, and increased advertising expenses.³

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.

¹ Optional OSLTF Claim Form dated 26 June 2011.

² Id.

³ Id. 09/14/11

- (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 the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, 26 June 2011;
- Letter from Claimant to NPFC, describing business loss and expenses, 26 June 2011;
- Denial of Emergency Advance Payment Claim, 29 November 2010;
- Photos of beachfront at [REDACTED];
- Map showing coastal location of [REDACTED];
- Interim Payment Claim Form;
- Profit and Loss Statement, 2007;
- Profit and Loss Statement, 2008;
- Profit and Loss Statement, 2009;
- Profit and Loss Statement, 2010;
- [REDACTED] "Occupancy/Revenue," 2007-2010;
- "Find Report" May – December 2010;
- Florida Department of State, Statement of Incorporation;
- Specific Sales and Use Tax Information;
- Sales and Use Tax Certificate of Registration;
- State of Florida Tax Returns, 2010, 2009, 2008;
- 2008 Form 1120S, including schedules and attachments;
- 2008 Form 4562;
- 2008 Form 7004;

- 2009 Form 1120S, including schedules and attachments;
- 2009 Form 4562;
- 2010 Form 1120S, including schedules and attachments;
- 2010 Form 4562;
- 2010 "Summary of Stock Ownership;"
- Rev. 1-2011, Form 7004;
- Copies of refunded deposits;
- Email from guest, cancelling reservation, 8 June 2010;
- Commission Invoices, 2010;
- [REDACTED] Invoices, 2010;
- Records of bookings/cancellations, 2010; and
- Advertising Invoices.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim, as well as a First Quarter Interim Payment ([REDACTED]) to the RP/GCCF for lost wages and earnings in the amounts of \$30,000.00 and \$107,037.00 respectively. The Claimant was assigned Claimant ID [REDACTED]. The Claimant's EAP was assigned Claim [REDACTED] and was denied on 29 November 2010. The Claimant's [REDACTED] was assigned Claim [REDACTED] and was paid \$32,865.30 on 9 July 2011.

Because the Claimant properly presented an EAP and [REDACTED] to the RP/GCCF and because both Claims concern the same subject matter, the NPFC has consolidated these claims for adjudication. This summary determination concerns the Claimant's EAP and [REDACTED] for lost profits and earnings damages in the amount of \$84,321.00, as presented to the NPFC on 5 July 2011.

NPFC Determination

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

Based on the information presented by the Claimant and available to the NPFC, the RP/GCCF has compensated the Claimant a total of \$32,865.30.⁴ The Claimant executed a Release and Covenant Not To Sue in return for final payment.⁵ By signing this document, the Claimant released any rights to recover against the RP or another party regarding this injury.

Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the responsible party. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover compensation from the Fund.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in her request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant, regarding compensation for injuries related to the Deepwater Horizon oil spill.

⁴ Claimant's [REDACTED] was paid in the amount of \$32,865.30 on 9 July 2011.
⁵ Claimant accepted payment on 19 June 2011.

Because the Claimant has accepted Final Payment and released rights regarding this injury to the RP/GCCF, this claim is denied as it has been fully compensated.

Claim Supervisor:  *Claims Adjudication Division*

Date of Supervisor's review: *7/26/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1086
18 July 2011

Dear [REDACTED]

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 N10036-1086 involving Deepwater Horizon. 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 N10036-1086.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1086
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$23,532.16

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 05 July 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$26,532.16 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a self-employed waitress and musical performer in various restaurants, venues and musical clubs in Destin, Florida.¹ The Claimant stated that her employment is seasonal and depends on tourism in the area. Due to the Deepwater Horizon oil spill, the Claimant stated that she was unable to find work. However, in May 2010 she secured a job with [REDACTED] in Destin but further stated that two months later the engagement was terminated due to the oil spill.

The Claimant asserted that she sought employment in various states. These states included Florida, Illinois, Tennessee, Georgia and Alabama.² In October 2010, she made a "demo package" at a music studio in Nashville, Tennessee.³ The demo package was submitted to various music businesses for possible employment.⁴

¹ GCCF Form 2000-I Interim Payment Claim Form dated 08 January 2011 with Attachment with answers to form questions. See Attachment, paragraphs C6 and C7.

² GCCF Form 2000-I Interim Payment Claim Form dated 08 January 2011 with Attachment with answers to form questions. See Attachment, paragraph C4.

³ Statement from [REDACTED] in Nashville, Tennessee, for rental of music studio in October 2010

⁴ GCCF Form 2000-I Interim Payment Claim Form dated 08 January 2011 with Attachment with answers to form questions. See Attachment, Demo Packages for work submitted on last page.

The claim of \$26,532.16 for lost earnings included job hunting expenses of \$11,032.16.⁵ The job hunting expenses included lodging, food, gas, storage locker, truck rental and the demo package. The remainder of the claim would then be for \$15,500.00, which the NPFC assumes to be for actual lost earnings.

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.

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;

⁵ GCCF Form 2000-I Interim Payment Claim Form dated 08 January 2011 with Attachment with answers to form questions. See Attachment, paragraph C5.

- (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, Claimant submitted the following documentation:

1. OSLTF Claim signed by the Claimant 24 June 2011
2. Letter prepared by the Claimant to NPFC dated 24 June 2011 explaining the claim
3. GCCF Determination Letter on Interim Payment/Final Payment Claim dated 14 April 2011. Includes \$5,000.00 Final Offer.
4. GCCF Form 2000-I Interim Payment Claim Form dated 08 January 2011 with Attachment with answers to form questions
5. GCCF Form 1012 Election Form for Determination Letter on Lost Earnings and Income Claim dated 14 May 2011. Final Payment Offer Expires 13 July 2011. Attorney Representation is [REDACTED] Chicago, Illinois
6. Claimant's bank statements from [REDACTED] Destin, Florida, from 20 June 2010 to 08 November 2010
7. Claimant's bank statements from [REDACTED] Tampa, Florida, from 27 September 2010
8. Payment Receipts to [REDACTED] Illinois, for storage locker August through October 2010
9. Rental Agreement with [REDACTED] dated 09 August 2010 for monthly rental of 10 x 15 storage locker for household goods.
10. Rental agreement for 26-foot truck from [REDACTED] in Libertyville, Illinois, from 31 July through 09 August 2010 and various moving receipts
11. Receipts from various hotels September 2010
12. Statement from [REDACTED] in Nashville, Tennessee, for rental of music studio in October 2010
13. Receipts from various restaurants and stores for groceries and supplies from June through October 2010

Claimant presented a claim to the GCCF and the GCCF issued the Claimant ID [REDACTED]. On 14 April 2011 GCCF issued a Determination Letter on an Interim Payment/Final Payment Claim. No Interim Payment was made and the Claimant received a \$5,000.00 Final Offer. The Claimant has refused the Final Offer.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property

or 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.

Within her letter to the NPFC dated 24 June 2011 explaining the claim, the Claimant stated that "I have a signed affidavit on file with the GCCF from the Manager [of The ██████████] stating that I lost my job as a result of the oil spill..." Claimant has not provided a copy of the affidavit to the NPFC as referenced in her letter. Regardless, the Claimant has provided no other information which would support that her lack of work as being the result of the discharge or substantial threat of discharge of oil. As such, the Claimant has failed to meet her burden of proof under 33 C.F.R. § 136.233 (b).

As to the Claimant's alleged losses, the GCCF Final Offers shows Pre-Spill Earnings of \$14,549.71 for 2008 and \$3,165.52 for 2009 and no earnings in 2010 before the oil spill.⁶ In an Attachment to the claim, the Claimant has calculated her average monthly income as \$1,234.71.⁷ The Claimant's basis for this average is unclear. No W-2's or Forms 1099 were provided by the Claimant. Even assuming the \$1,234.71 average monthly income alleged by the Claimant, her total loss for the 8 months from May through December 2010 equals only \$9,877.68 as opposed to the \$15,500.00 that it appears that the Claimant has alleged within her claim. As such, the Claimant has also failed to establish a loss in the amount claimed.

The GCCF Determination Letter on Interim Payment/Final Payment Claim dated 14 April 2011 indicated that the Claimant was paid \$5,784.00 by BP and \$17,500.00 in Emergency Payments by the GCCF for a total compensation by the responsible party to date of \$23,284.00.

The calculations within the Claimant's final offer from the GCCF indicated Pre-Spill Earnings of \$14,549.71 for 2008, \$3,165.52 for 2009 and no earnings in 2010 before the oil spill.⁸ In an Attachment to the claim, the Claimant has calculated her average monthly income as \$1,234.71, which, as discussed *supra*, for the 8 months from May through December 2010, equals only \$9,877.68. Even if the NPFC were to assume the Claimant's alleged monthly lost earnings totaled \$9,877.68, and if the NPFC were to also assume the reasonableness of her alleged job hunting expenses of \$11,032.16, the total loss suffered by the Claimant would only total \$20,909.84, a figure which is \$2,374.16 less than what the Claimant has already been compensated by the responsible party. Based on the information provided, it appears that the Claimant has been fully compensated by the responsible party.

⁶ GCCF Determination Letter on Interim Payment/Final Payment Claim dated 14 April 2011 Page 4.

⁷ GCCF Form 2000-I Interim Payment Claim Form dated 08 January 2011 with Attachment with answers to form questions. See Attachment, paragraph C3.

⁸ GCCF Determination Letter on Interim Payment/Final Payment Claim dated 14 April 2011 Page 4.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that there was a loss in the amount claimed (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) had the Claimant been able to substantiate losses in the amount claimed, the NPFC would have determined that the Claimant was fully compensated by the responsible party and denied on that basis.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *18 July 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1087
7 July 2011

Re: Claim Number: N10036-1087

Dear [REDACTED]

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 N10036-1087 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 N10036-1087.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004201

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1087
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$25,000.00

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 29 June 2011, the Mr. [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, who worked occasionally as a painter, and also as part of the oil spill clean-up, stated in his submission that he "got laid off from [his] job because no one was coming down on vacation to paint their house."²

Financial records provided by the Claimant indicated that his primary source of income in 2010 was from employment with a company engaged in oil spill clean-up efforts.³

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.

¹ Optional OSLTF Claim Form dated 1 June 2011.

² *Id.*

³ 2010 W-2 Forms [REDACTED]

- (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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- GCCF Denial Letter on Interim/Final Payment Claim, 6 May 2011;
- Documentation of unemployment compensation, 2009;
- 2009 Form 1099-MISC
- 2010 W-2 Forms, [REDACTED]
- Letter from Claimant's employer, 20 Oct. 2010;
- Invoices for construction work/home repair, 10 March 2010, 3 Jan 2010;
- Documentation of work with [REDACTED], 1 March 2010, 4 April 2010;
- Documentation of work with [REDACTED], 6 February 2010, 20 February 2010;
- Letter from Claimant describing loss of oil spill clean-up job;
- Letter from [REDACTED], 3 August 2010;
- Letter from Claimant, 29 October 2010;
- Letter from Claimant, 11 November 2010;
- Letter from Claimant, 11 November 2010;
- Copies of Pay Stubs, [REDACTED] July – September 2010;

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim (EAP) as well as an Interim Payment/Final Payment Claim to the RP/GCCF. Claimant's EAP was denied on 20 October 2010, and Final Payment Claim was denied on 6 May 2011.

On 29 June 2011, Claimant presented this claim for \$25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

The NPFC reviewed all information and documentation provided by the Claimant. Claimant's submission indicated his loss of profits resulted from the loss of two positions: (1) the loss of his position as part of the oil spill clean-up response, and (2) the loss of a position as a house painter.

However, according to W-2 forms provided by the [REDACTED] where the Claimant worked as part of the oil spill clean-up response team, was the Claimant's only documented employer in 2010.⁴ In a letter from the Claimant, he stated that his work with the company steadily decreased until he was eventually let go sooner than he expected.⁵

A loss in profits resulting from the loss of a job which the Claimant secured as a result of the oil spill, is not considered a loss resulting from damage caused by the discharge or substantial threat of discharge of oil.

Claimant also alleged that he lost his job as a painter due to effects of the oil spill.⁶ However, the Claimant did not provide financial documentation to show that he was actually employed as a painter. According to handwritten records provided by the Claimant, he worked four odd jobs for [REDACTED] in 2010, and provided no records of having worked for the company prior to 2010.⁷

This claim is denied because the Claimant has failed to show that he suffered an actual loss in profits, or that the alleged loss in the amount of \$25,000.00 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.

Claim Supervisor: *NPFC [REDACTED] cation Division*

Date of Supervisor's Review: *7/7/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ 2010 W-2 Forms

⁵ Letter from Claimant, undated.

⁶ Optional OSLTF Claim Form, 1 June 2011.

⁷ Claimant provides written documentation of four jobs worked in 2010 for [REDACTED]

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



Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]



5890/DWHZ
Claim # N10036-1088
26 July 2011

Re: Claim Number: N10036-1088

Dear [REDACTED]

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 N10036-1088 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

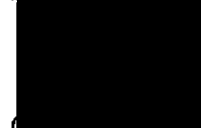
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1088.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



Claims Reconsideration Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

FOIA2011-3380-00004205

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1088
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$72,432.00

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 5 July 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$72,432.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant worked as the Director of Security for the [REDACTED] in Destin, FL, and alleged that his position was dissolved due to the economic effects of the oil spill.²

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.

¹ Optional OSLTF Claim Form dated 30 May 2011.
² Letter from Claimant, 8 January 2011.

- (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 the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, 30 May 2011;
- Letter from Claimant, 8 January 2011, explaining claim and losses;
- Letter from Claimant's former employer, 4 January 2011;
- 2008 W-2 Forms
- Employee Earnings Statements;
- Buyers Order/Bill of Sale, automobile purchase, 18 September 2010;
- Bank Statements;
- Sunpass Prepaid Toll Program, Detail Statement;
- GCCF, Interim Payment Claim Form;
- Pay Stubs; and
- 2009 Form 1099-MISC.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim on 30 August 2010 for \$21,000.00 in lost profits and wages. He was assigned Claimant ID [REDACTED] and Claim [REDACTED]. This claim was paid in the amount of \$21,000.00. The Claimant then presented a Final Payment Claim on 2 November 2010 for lost wages and personal property damage in the amount of \$42,000.00 and was assigned Claim [REDACTED]. On 11 January 2011, the Claimant presented a First Quarter Interim Payment Claim [REDACTED] to the RP/GCCF for lost wages and personal property damages in the amount of \$72,432.00. The Claimant accepted a Final Payment of \$23,427.20.60 on 19 June 2011.³

On 5 July 2011, the Claimant presented this claim for \$72,432.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Because the

Claimant has properly presented the EAP, Final and ICQ12011 Payment Claims to the RP/GCCF, and because all claims involve the same subject matter, the NPFC is now addressing a single consolidated claim, covering Claimant's EAP, Final and [REDACTED] Claims regarding lost profits and earnings in the amount of \$72,432.00 as presented to the NPFC on 5 July 2011.

NPFC Determination

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

Based on the information presented by the Claimant and available to the NPFC, the RP/GCCF has compensated the Claimant a total of \$43,213.60.⁴ The Claimant executed a Release and Covenant Not To Sue in return for final payment.⁵ By signing this document, the Claimant released any rights to recover against the RP or another party regarding this injury.

Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the responsible party. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover compensation from the Fund.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in the request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant, regarding compensation for injuries related to the Deepwater Horizon oil spill.

Because the Claimant has accepted Final Payment and released rights regarding this alleged loss to the RP/GCCF, this claim is denied as it has been fully compensated.

Claim Supervisor: *Claims [REDACTED] Division*

Date of Supervisor's review: *7/26/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁴ Claimant received an EAP in the amount of \$21,000, and a final payment of \$22,213.60.

⁵ Claimant accepted payment on 19 June 2011.

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1089
20 July 2011

Re: Claim Number: N10036-1089

Dear [REDACTED]

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 your claim number N10036-1089 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1089.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[REDACTED]
[REDACTED] Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00004209

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1089
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 05 July 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking \$15,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant is employed by [REDACTED] in Mobile, AL.¹ [REDACTED] originally provided hydraulic remanufacturing services for plants and manufacturing and then later expanded its resources and services to support offshore drilling, sub-sea construction, marine, and industrial projects.² Claimant asserted that, as a result of the Deepwater Horizon oil spill, [REDACTED] reduced his hours, causing him to lose income in 2010.³

Claimant did not provide a calculation for his sum certain in the amount of \$15,000.00.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ Undated letter from [REDACTED]
² [REDACTED]
³ OSLTF Claim Form.

Pursuant to the claims regulations, 33 C.F.R. § 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.

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 GCCF

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Month Claim with the GCCF on 22 October 2010 in the amount of \$15,000.00.⁴ He was assigned Claimant ID [REDACTED]. Claimant's EAP Claim was denied on 07 December 2010.⁵ Additionally, the Claimant filed an Interim Payment Quarter II claim on 13 June 2011 in the amount of \$15,000.00.⁶ He was assigned Claim [REDACTED]. Claimant's Interim Payment Quarter II claim was denied on 23 June 2011.⁷ Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's EAP claim and Interim Payment Quarter II claim is the same as the subject matter of his claim before the NPFC, i.e., that his income was reduced due a reduction in hours as a result of the Deepwater Horizon oil spill. The NPFC deems that both the Claimant's EAP claim and Interim Payment Quarter II claims to be properly presented to the RP and therefore properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1089 considers and addresses the earnings claimed in both of the claims presented to the responsible party, specifically; GCCF Claim [REDACTED].

⁴ Report from the GCCF dated 15 July 2011.

⁵ GCCF Denial Letter dated 07 December 2011.

⁶ Report from the GCCF dated 15 July 2011.

⁷ GCCF Denial Letter dated 23 June 2011.

Claimant's Submission to the OSLTF

In support of the claim, Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form received 05 July 2011;
- 2008 W-2 Federal tax form from [REDACTED];
- 2009 W-2 Federal tax form from [REDACTED];
- 2010 W-2 Federal tax form from [REDACTED];
- 2009 W-2 Federal tax form from [REDACTED];
- Undated letter from [REDACTED] "whom it may concern";
- Employ Detail Earnings spreadsheet dated 30 June 2011;
- GCCF Denial Letter dated 07 December 2010;
- GCCF Letter dated 21 October 2010;
- GCCF Denial Letter dated 23 June 2011;
- GCCF Letter dated 16 June 2011.

NPFC Determination

The claim is denied. 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 considered all documentation presented by the Claimant.

The claim is denied because the Claimant has not proven that he suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that he suffered reduced hours at [REDACTED] due to the effects of the Deepwater Horizon oil spill, causing a decrease in his 2010 income. The Claimant, however, failed to provide a connection between his alleged loss and the Deepwater Horizon oil spill. In his submission to the NPFC, the Claimant included a letter from [REDACTED] stating that, "[t]he moratorium that was imposed in the gulf has affected our work load there by [sic] decreasing [Claimant's] hours and subsequent income."⁸ The NPFC contacted [REDACTED] on 19 July 2011 to confirm the reason for the Claimant's loss of hours. [REDACTED] further stated in a conversation with NPFC staff that the Claimant's loss resulted from the oil moratorium, indicating that all permitting for drilling stopped, thereby causing their losses.⁹

Because the Claimant has failed demonstrate that his 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, this claim is denied.

Claim Supervisor: NPFC [REDACTED] Adjudication Division

Date of Supervisor's Review: 7/20/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁸ Undated letter from [REDACTED] to "whom it may concern"

⁹ PHONECON between the NPFC and [REDACTED], 29 July 2011.

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1090
26 July 2011

Re: Claim Number: N10036-1090

Dear [REDACTED]

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 your claim number N10036-1090 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1090.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[REDACTED] Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-0004213

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1090
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$5,670.41

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 01 July 2011, [REDACTED] Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$5,670.41 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is employed as an Area General Manager for [REDACTED] in the Naples, Florida region.¹ The Claimant asserted that due to the Deepwater Horizon oil spill, the tourism industry in Naples collapsed, causing a drastic reduction in the number of reservations for the hotels that the Claimant manages.² This decrease in the number of reservations at the Claimant's managed hotels resulted in a diminishment of the Claimant's commission for bookings in 2010.³

The Claimant did not provide a calculation for his sum certain of \$5,670.41. However, the Claimant did explain that the sum certain was based entirely on lost commission for bookings in 2010 and not a reduction in salary.⁴

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication

¹ PHONECON between NPFC and Claimant 13 July 2011.

² Id.

³ Id.

⁴ Id.

regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of the claim, the Claimant presented the following documentation:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form received 01 July 2011;
- Email from Acct-Payroll to Claimant dated 20 April 2011;
- Paycheck earnings report for pay period ending 06 February 2010;
- Pay stub from [REDACTED] dated 04 March 2011;
- GCCF Denial Letter dated 06 December 2010;
- GCCF Letter dated 29 January 2011;
- GCCF Denial Letter dated 15 April 2011; and
- Addresses of [REDACTED] locations.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment Claim (EAP) claim with the GCCF on 02 November 2010 in the amount of \$14,400.00.⁵ He was assigned Claimant Identification [REDACTED] and Claim Identification [REDACTED]. The Claimant's EAP claim was denied on 06 December 2010.⁶ Additionally, the Claimant filed a Full Review Final Claim (FRF) with the GCCF on 05 January 2011 in the amount of \$10,760.59.⁷ He was assigned Claim Identification [REDACTED]. The Claimant's FRF Claim was denied on 15 April 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the two GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that the tourism industry in Naples, Florida collapsed, leading to vacancies at the Claimant's managed hotels and reducing the Claimant's commission due to the Deepwater Horizon oil spill. The NPFC deems each of the Claimant's two denied GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1090 considers and addresses the earnings claimed in both claims presented to the responsible party, specifically, GCCF Claim [REDACTED] (FRF).

NPFC Determination

The claim is denied. 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 considered all documentation presented by the Claimant.

The Claimant has not proven that the alleged loss in the amount of \$5,670.41 is due to the injury, destruction, loss of property, or natural resources as a result of a discharge or substantial threat of a discharge of oil. Specifically, the Claimant's loss calculation included losses based on potential lost customer reservations. As per 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. The Claimant's submission for losses labeled as potential is entirely speculative in nature and not OPA compensable.

Furthermore, the Claimant asserted that the tourism industry in the Naples, Florida region collapsed due to the Deepwater Horizon oil spill, lowering the number of customer reservations at both [REDACTED] and [REDACTED]. The NPFC contacted [REDACTED] to confirm the events as alleged by the Claimant. The NPFC spoke with the regional supervisor for the Naples, Florida region.⁹ The Claimant's employer stated that the company possesses no proof that customers may have cancelled reservations due to the Deepwater Horizon oil spill and stated there would be no way to verify that reservations have decreased because of the oil spill.¹⁰ Additionally, the Claimant himself stated that he did not possess cancelled contracts nor reservations from customers declining to stay at [REDACTED] due to the Deepwater Horizon oil spill.¹¹ Accordingly, the Claimant lacks sufficient evidence to prove that he suffered a loss due to the Deepwater Horizon oil spill.

⁵ Report from the GCCF dated 15 July 2011.

⁶ GCCF Denial Letter dated 06 December 2011.

⁷ Report from the GCCF dated 15 July 2011.

⁸ GCCF Denial Letter dated 15 April 2011.

⁹ PHONECON between NPFC and [REDACTED] dated 14 July 2011.

¹⁰ Id.

¹¹ PHONECON between NPFC and Claimant 13 July 2011.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$5,670.41, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:  *Claims adjudication Division*

Date of Supervisor's review: *7/26/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

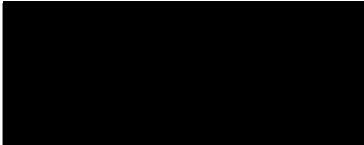
NPFC CA MS 7100

US COAST GUARD

Fax: 202-493-6937
5890/DWHZ
Claim # N10036-1091
15 July 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]



Re: Claim Number: N10036-1091

Dear [REDACTED]

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 your claim number N10036-1091 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1091.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



ation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1091
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$13,410.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 30 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking \$13,410.00 in lost profits and earnings that allegedly resulted from the Deepwater Horizon oil spill.

Claimant was a member of the [REDACTED] in a unit based in Panama City, FL at the time of the Deepwater Horizon oil spill.¹² Claimant asserts that he was activated by the [REDACTED] for three months³ in response to the Deepwater Horizon oil spill.⁴ Claimant states that he had two different civilian jobs⁵, thus he lost wages by only having one salary when he was activated for those three months by the [REDACTED].⁶

Claimant did not provide a calculation for his sum certain of \$13,410.00.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury,

¹Email from the [REDACTED] to NPFC, dated 08 July 2011.

²Claimant is still currently a member of the [REDACTED] but transferred to a different unit in Orlando, FL in November of 2010.

³ Claimant provided the NPFC with the purported Orders from the [REDACTED] that ostensibly called the Claimant to active duty in response to the Deepwater Horizon oil spill.

⁴ Optional OSLTF Claim Form, dated 30 June 2011.

⁵ Claimant provided letters which he purported to be from both of his employers. The first letter was purportedly written by [REDACTED] from the [REDACTED]. The second letter was purportedly written by [REDACTED] from [REDACTED] in Jacksonville, FL.

⁶ Optional OSLTF Claim Form, dated 30 June 2011.

destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of the claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 30 June 2011;

- Letter from [REDACTED] to "Whom It May Concern," dated 24 February 2011;
- Letter from [REDACTED] to "Whom It May Concern," dated 22 February 2010;
- Letter from [REDACTED] to "Whom It May Concern," dated 25 May 2011;
- 2010-2011 Business Tax Receipt;
- Pay stubs from [REDACTED] dated 04 September 2010-13 November 2010;
- 2010 W-2 Federal tax form from [REDACTED];
- 2010 W-2 Federal tax form from [REDACTED];
- 2009 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- Department of the [REDACTED]

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment ('EAP') claim with the GCCF. This claim was denied by the GCCF on 9 December 2010.⁷ Additionally Claimant filed a Final Claim with the GCCF. This claim was denied on 08 June 2011.⁸

NPFC Determination

Under 33 C.F.R. § 136.105(a) and 136.105(e)(6), 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 considered all documentation presented by Claimant.

When reviewing the documentation provided by the Claimant, the NPFC discovered that the address on the letterhead for [REDACTED] was in fact for a personal residence and not a commercial medical facility.⁹ The NPFC attempted to verify the veracity of the letter which was purportedly provided by [REDACTED]. As a result of its investigation, the NPFC believes that the subject letter was forged by the Claimant.

The NPFC also investigated the letter from Claimant's other civilian job at the [REDACTED]. As a result of its investigation, the NPFC believes that this letter was also forged by the Claimant.

The NPFC also contacted the [REDACTED] regarding the Activation Orders provided by the Claimant. The NPFC spoke with representatives of the [REDACTED] who informed the NPFC that the Claimant had not been activated for duty for the Deepwater Horizon oil spill response.¹⁰ Furthermore, the [REDACTED] concluded that the Activation Orders provided by the Claimant were "fraudulent".¹¹ The [REDACTED] noted errors including: "incorrect formatting, incorrect Letter Head, wrong [REDACTED] spelling errors

⁷ GCCF Denial Letter, dated 08 December 2010.

⁸ GCCF Denial Letter on Interim Payment/Final Payment claim, dated 08 June 2011.

¹⁰ PHONECON between the [REDACTED] and the NPFC on 08 July 2011.

¹¹ Email from the [REDACTED] to NPFC, dated 08 July 2011.

(ABORT vis [sic] ABOUT), and no signature block.”¹² Additionally, the [REDACTED] inspected the personnel rosters for the soldiers in the Claimant’s unit and confirmed that the Claimant was not on any type of order or duty status during the Deep Water Horizon.¹³

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 or omits a material fact may be subject to a civil penalty for each claim.

Claimant’s request for \$13,410.00 is hereby denied because the evidence presented in the claim by the Claimant vice the detailed information provided by Claimant’s employers and military personnel as outlined above clearly demonstrates evidence of a material misrepresentation of fact and as such, this claim is denied.

Claim Supervisor [REDACTED]
Date of Supervisor’s review: <i>7/15/11</i>
Supervisor Action: <i>Denial approved</i>
Supervisor’s Comments:

¹² Id.

¹³ Id.

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-1092
8 July 2011

Re: Claim Number: N10036-1092

Dear [REDACTED]

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 N10036-1092 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 N10036-1092.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

A black rectangular redaction box covering the signature of the official.

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1092
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$27,254.00

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 6 July 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$27,254.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, a commercial diver in the Gulf of Mexico, alleged that he “lost earnings due to lack of work after BP Spill.”²

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.

¹ Optional OSLTF Claim Form dated 27 June 2011.

² *Id.*

- (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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Letter from Claimant to NPFC describing losses, 27 June 2011;
- Denial Letter on Interim Payment/Final Payment Claim, 24 May 2011;
- 2009 W-2 Form;
- 2010 W-2 Form;
- Pay Chart, 26 June 2009 – 24 December 2009;
- Pay Chart, 8 January 2010 – 28 December 2010;
- Memo, [REDACTED] Announces Results For The Second Quarter of 2010;
- Document titled, "Results of Operations" showing statistics in 2009, 2010;
- Document titled, "Results of Operations by Reportable Segment;"
- Consolidated Balance Sheet.

Prior to presentation to the NPFC, Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF. This claim was denied on 24 May 2011.³

On 6 July 2011, Claimant presented this claim for \$27,254.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that his loss of income was due to injury, destruction or loss of real or personal property or of a natural resource

³ Optional OSLTF Claim Form dated 13 May 2011

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 his claim.

The NPFC reviewed all information and documentation provided by the Claimant. In a memorandum from [REDACTED] dated 4 August 2010, the company stated that they had been affected by several factors including, "downturn in the industry," the "low level of project activity worldwide", and "permitting delays and uncertainty in the market [which] have resulted in project delays and cancellations."⁴

Furthermore, the NPFC contacted a representative of [REDACTED], who stated that many factors contributed to 2010 being a below average year for the company, including deepwater drilling permitting restrictions.⁵

Having reviewed the Claimant's submission, this claim is denied because the Claimant has failed to show that the alleged loss in the amount of \$27,254.00 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 as opposed to other factors cited by the employer.

[REDACTED]

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/8/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ Memo from [REDACTED] Ltd, 4 August 2010.

⁵ PHONECON: Representative of [REDACTED] and Claimant, 7 July 2010.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-1093
31 August 2011

Dear [REDACTED]

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 N10036-1093 involving Deepwater Horizon. 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 N10036-1093.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

[REDACTED] ation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1093
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$35,000.00

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 30 June 2011, [REDACTED] (collectively Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$35,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant, who owns and operates a food truck, stated that she had equipped her truck to provide snow cones, plates, hot dogs and homemade chili in and around Lafitte, Louisiana. Claimant started her business in 2009. The Claimant asserted that her customers were crab and shrimp fishermen and the families of the fishermen.¹ Claimant stated that "I lost my profit and business in the area and lost the supplies I bought."²

The OSLTF Claim Form submitted by the Claimant seeks \$10,000.00 for alleged loss to real or personal property. According to the Claimant, the property consists of food inventory and supplies that the Claimant purchased for her business but was unable to sell due to the oil spill.³ NPFC has reclassified the loss of real and personal property as loss of profits and impairment of earnings capacity.

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.

¹ PHONECON between Claimant and NPFC Staff dated 30 August 2011

² OSLTF Claim Form signed Claimant (undated)

³ PHONECON between Claimant and NPFC Staff dated 30 August 2011

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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by the Claimant and undated
- 2010 Occupational License from [REDACTED]
- Occupational License Tax Renewal for 2011 for Jefferson Parish
- Account print-out for [REDACTED]
- Personal Property Report for 2011 from [REDACTED]
- [REDACTED] 2010 Original Property Tax Notice
- 2010 Assessed Value of Property owned in [REDACTED] of \$1,005
- Letter from Claimant explaining the claim undated
- [REDACTED] Units Renewal Notice for 01 July 2011 to 30 June 2012
- Letter from NPFC to Claimant dated 16 June 2011 requesting sum certain for claim
- Letter to Claimant from [REDACTED] dated 05 April 2011 notifying the Sales Tax and Occupational License account is closed

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment Claim for Lost Earnings with the GCCF. The claim was assigned Claimant ID [REDACTED] and claim [REDACTED]. Claimant also filed an Emergency Advance Payment for Real Property with the GCCF. The Real Property Claim was assigned claim [REDACTED]. The Lost Earnings and Real Property claims were denied on 07 December 2010.⁴

Additionally, Claimant filed Interim Payment and Full Review Final claims with the GCCF. The Interim was assigned claim [REDACTED] and the Full Review Final was assigned claim [REDACTED]. These claims were denied on 25 May 2011.⁵

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings and had real property damage as a result of the Deepwater Horizon oil spill. The NPFC deems the GCCF claims to be properly presented to the Responsible Party and to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1093 considers and addresses the loss of earnings in all claims presented to the Responsible Party, specifically: GCCF Claim [REDACTED] for Emergency Advance Payment for Real Property, [REDACTED] for Emergency Advance Payment for Lost Earnings, [REDACTED] for Interim Payment and [REDACTED] for Full Review Final Claim.

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 or destruction or loss of real or personal property or 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 Claimant did not provide any documentation to support her loss of earnings. The Claimant opened her food truck business in 2009. The Claimant alleged that she did not operate the truck in 2010 due to the oil spill.⁶ She filed no income tax returns for the business in 2009 and 2010 because, according to the Claimant, she did not earn an income that required her to file.⁷ In addition, the Bureau of Revenue and Taxation for Jefferson Parish closed her Sales Tax and Occupational License in 2011 because of “zero gross reported earnings for 2 years.”⁸

The Claimant stated that her customers were fishermen and their families and that due to the oil spill, the fishermen and their families could not afford to buy from her food truck.⁹ However, the Claimant has provided no documentation to support this assertion.

⁴ GCCF Denial Letter dated 07 December 2010

⁵ GCCF Denial Letter dated 25 May 2011

⁶ PHONECON between Claimant and NPFC Staff dated 30 August 2011

⁷ PHONECON between Claimant and NPFC Staff dated 30 August 2011

⁸ Letter to Claimant from [REDACTED] dated 05 April 2011 notifying the Sales Tax and Occupational License account is closed.

⁹ PHONECON between Claimant and NPFC Staff dated 30 August 2011

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

Claim Supervisor:  *Claims Administration Division*

Date of Supervisor's Review: *31 August 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

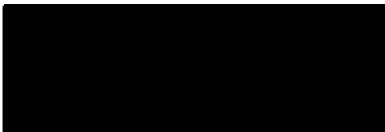
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
7/26/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-1094

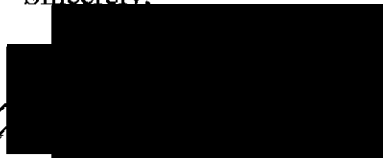
Dear [REDACTED]

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 claim number N10036-1094 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

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,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1094
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$14,000.00

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 06 July 2011, [REDACTED] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$14,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant advised that he performed landscaping services as a "landscape manager" at both the [REDACTED] and the [REDACTED] in Bay St. Louis, Mississippi.¹ The Claimant alleged that he "was laid off as a landscape manager due to extreme loss of business."²

Claimant presented an Emergency Payment Claim to the GCCF and was issued Claimant ID [REDACTED] and Claim [REDACTED]. On 09 December 2010 the GCCF denied the Emergency Payment Claim. The Claimant also presented an Interim Payment/Final Payment Claim to the GCCF, which was denied on 10 June 2011.³

REQUEST FOR RECONSIDERATION:

On July 19, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim as he disagreed with the NPFC's denial.

The NPFC denied the claim originally on July 15, 2011 because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$14,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

As part of the original claim submission, the Claimant provided a letter purportedly from the manager of the two hotels at which the Claimant purports to have worked as a landscape

¹ Optional OSLTF

² Id.

³ GCCF Denial Letter on Inter Payment/Final Payment Claim dated 10 June 2011

manager.⁴ In the letter from the manager, [REDACTED] stated that “[d]ue to loss of business at the hotels relating to the oil spill [w]e were not able to compensate him [the Claimant].”⁵

On 01 July 2011, the NPFC contacted the [REDACTED] in an attempt to verify the authenticity of the letter signed by [REDACTED]. At that time, the hotel stated that [REDACTED] has not been employed at the hotel for “about a year.”⁶ Furthermore, the NPFC made three (3) more attempts to reach current management at the hotel and never received a return call.⁷ The remainder of the submission failed to demonstrate that the Claimant suffered compensable damages or that any of the alleged damages that the Claimant may have suffered were 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.

On reconsideration, the Claimant provided a one page letter asserting essentially the same arguments originally presented with no new information in support of his request for reconsideration.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on July 19, 2011 via email. The Claimant provided no new documentation in support of his request for reconsideration.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a Claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The Claimant provided nothing new for the NPFC to consider on reconsideration other than his assertions regarding his alleged loss. The NPFC again attempted to contact both Hotels in order to speak with either the Owner or Manager at each hotel. The NPFC was again unsuccessful in reaching anyone in order to be able to confirm the validity of the letter purportedly written for the Claimant by a previous [REDACTED]

⁴ Unaddressed letter from [REDACTED], manager at [REDACTED], Waveland, Mississippi and [REDACTED] Bay St. Louis, Mississippi dated 01 June 2010

⁵ Id.

⁶ PHONCON with [REDACTED] on 01 July 2011

⁷ The NPFC attempted to verify the letter from [REDACTED] by contacting the Claimant's former employer on 6 July 2011, 9 July 2011, and 13 July 2011.

Because the Claimant has provided no new information in support of his request for reconsideration, the NPFC again denies the claim because (1) the Claimant has failed to demonstrate that he had an alleged loss of profits in the amount claimed and (2) the Claimant has failed to demonstrate a loss of profits 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.

This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: *7/26/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-1095
25 July 2011

Re: Claim Number: N10036-1095

Dear [REDACTED]

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 your claim number N10036-1095 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1095.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[REDACTED] Division
[REDACTED] Funds Center

U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1095
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$57,800.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 16 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC'). This OSLTF Claim Form was deficient for lack of a sum certain. On 06 July 2011, Claimant presented a complete OSLTF Claim Form to the NPFC seeking \$15,000.00 in lost profits and earnings that allegedly resulted from the Deepwater Horizon oil spill. On 12 July 2011, Claimant submitted an updated sum certain of \$57,800.00.¹

Claimant runs a dance studio near Slidell, Louisiana.² Claimant's clients consist of children for dance instruction, adults for ballroom dance instruction, and adults for fitness clubs.³ Claimant asserted that due to the Deepwater Horizon oil spill, residents in the Slidell region working in the restaurant and seafood industries lost income. As a result of residents' lost income, they were not able to afford the Claimant's dance lessons and cancelled lessons for both themselves and their children.⁴ Claimant asserted that the loss in dance instruction customers reduced her income in 2010.⁵

Claimant calculated her sum certain by adding the lost revenue from summer classes (approximately \$2,000.00), to the loss of annual registration fees (\$4,500.00), to the loss in monthly tuition (approximately \$30,000.00), to the loss in the annual recital fee (approximately \$8,000.00), to the loss in advertisements sold for the recital (\$10,000.00), to the loss in tickets sold for the recital (\$800.00), to the loss in vending machine sales, recital videos and other retail merchandise (approximately \$2,500.00) for a total cost of \$57,800.00 for 2010.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33

¹ Letter from Claimant dated 12 July 2011.

² Letter from Claimant dated 21 June 2011.

³ Id.

⁴ Id.

⁵ OSLTF Claim Form.

U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

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

In support of the claim, Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund Claim Form received 06 July 2011;
- Letter from Claimant dated 21 June 2011;
- Spreadsheet listing revenue, approximate loss and total amount of loss of \$57,800.00;
- Letter, undated, from [REDACTED];
- Email from [REDACTED] to Claimant dated 20 May 2011;
- Letter from [REDACTED] dated 17 May 2011;
- Letter, undated, from [REDACTED];
- Photocopy of [REDACTED];
- Letter from [REDACTED] dated 26 May 2011;
- Incomplete Optional Oil Spill Liability Trust Fund Claim form received 16 June 2011;
- Letter from Claimant dated 06 June 2011;
- Letter from Claimant dated 12 July 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF on 22 November 2010 in the amount of \$44,160.00.⁶ She was assigned Claimant

⁶ Report from the GCCF dated 15 July 2011.

Identification [REDACTED] and Claim Identification [REDACTED] Claimant's EAP Claim was denied on 09 December 2010.⁷ Additionally, Claimant filed an Interim Payment Claim Quarter I with the GCCF on 25 January 2011 [REDACTED] in the amount of \$6,000.00.⁸ She was assigned Claim Identification # [REDACTED] Claimant's [REDACTED] Claim was denied on 07 May 2011.⁹ Additionally, Claimant filed a Full Review Final (FRF) Claim with the GCCF on 25 January 2011 in the amount of \$44,160.00.¹⁰ Claimant's FRF claim was assigned Claim Identification [REDACTED] and was denied on 03 June 2011.¹¹

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the three GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that residents lost income due to the Deepwater Horizon oil spill and were not able to afford the Claimant's dance lessons and cancelled lessons for both themselves and their children. In turn this reduced the income of the Claimant's dance studio. The NPFC deems each of Claimant's three denied GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1095 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim [REDACTED] and [REDACTED] (FRF).

NPFC Determination

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented a Full Review Final Claim, in the amount of \$44,160.00 for loss of profits and impairment of earnings capacity to the GCCF. Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$57,800.00 to the NPFC. Any claimed amount of damages exceeding \$44,160.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant has not shown that the alleged loss in the amount of \$57,800.00 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. Specifically, the Claimant's loss calculation included losses labeled as "approximate". Under OPA, these amounts are not compensable because only actual net reductions or loss of earnings or profits are compensable. Future losses are likewise not compensable. Owner's submission for losses labeled as approximate is prospective in nature and not an OPA compensable damage.

Furthermore, Claimant cites the Deepwater Horizon oil spill as the cause of a reduction in the income of her potential clients by damaging the seafood and restaurant industries in the Slidell region. By extension, the Claimant cites the reduced income of her potential clients as reducing their patronage of her business. Correspondence between certain potential clients and the Claimant establishes that these particular clients decided to forgo the expense of dance instruction in light of reduced personal income.¹²

The Claimant has not sufficiently established that the oil spill was the cause of any particular reduction in income to any particular prospective client. Accordingly, the Claimant has not shown that her losses are due to the Deepwater Horizon oil spill as opposed to other factors such as cost-cutting decisions by clients to reduce personal expenses or generally declining market conditions.

⁷ GCCF Denial Letter dated 09 December 2010.

⁸ Report from the GCCF dated 15 July 2011.

⁹ GCCF Denial Letter dated 07 May 2011.

¹⁰ Report from the GCCF dated 15 July 2011.

¹¹ GCCF Denial Letter dated 03 June 2011.

¹² Letter, undated, from [REDACTED] email from [REDACTED] to Claimant dated 20 May 2011, letter from [REDACTED] dated 17 May 2011.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

Claim Supervisor [REDACTED] *Adjudication Division*

Date of Review: *7/25/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-1096
01 August 2011

Dear [REDACTED]

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 N10036-1096 involving Deepwater Horizon. 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 N10036-1096.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1096
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$16,530.00

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 01 July 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$16,530.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a real estate agent licensed in Florida. She sells newly built homes for [REDACTED] of Northwest Florida, Inc. in subdivisions in Escambia County. After the oil spill, the Claimant began selling homes in the northern part of Escambia further from the Gulf.¹ The Claimant alleged that "After April 2010, new home sales plummeted for the remainder of the year."²

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.

¹ Based on discussion between Claimant and NPFC Claims Adjuster 28 July 2011

² Letter to GCCF from Claimant explaining claim 17 February 2011

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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. Letter from Claimant transmitting claim documents to NPFC 22 June 2011;
2. Letter from Claimant setting forth attachments submitted with claim and the amount of the claim;
3. Florida Housing Statistics Report Form for July 2010 through December 2010;
4. Worksheet for 2010 [REDACTED] and [REDACTED];
5. PAR Market Snap shots copyright 2011;
6. Letter to GCCF from Claimant explaining claim 17 February 2011;

7. GCCF Claim Form 2000-I Interim Payment Claim Form 22 February 2011;
8. Form 1120S US Income Tax Return for an S Corporation 2009;
9. Form 1040 US Individual Income Tax Return for 2008, 2009 and 2010;
10. MSL Year to Date Close/Sold Profile Report 15 February 2011;
11. Various Residential Full Agent Reports for various properties;
12. Letter from Claimant transmitting additional information requested by NPFC 17 July 2011;
13. 2010 Sales Chart;
14. Listing of buyers for 2009 and 2010;
15. Pensacola-Ferry-Pass-Brent Area Local Market Report, First Quarter 2011.

On 07 July 2011, NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. On 27 July 2011, the Claimant responded to the request.

Claimant is seeking lost earnings and wages in the amount of \$16,530.00.

Prior to presenting a claim to the NPFC, Claimant filed an Interim Payment Claim with the GCCF on 26 February 2011 in the amount of \$16,530.00.³ The claim was assigned Claimant ID [REDACTED] and claim [REDACTED]. This claim was denied on 22 April 2011.⁴

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims the same as the subject matter of the claim before the NPFC, i.e., that earnings were lost as a result of the Deepwater Horizon oil spill. The NPFC deems the denied GCCF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1096 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim #'s [REDACTED] Interim Payment.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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 Claimant compared January through April for 2009 and 2010, in order to base her loss of commissions from new home sales.⁵ A three-month period is insufficient to base a loss of commissions after the oil spill in 2010. The documentation she provided does not support the 20% loss of commissions she alleges.⁶ The Claimant has not provided

³ Report from the GCCF dated 26 February 2011

⁴ GCCF Denial Letter dated 22 April 2011

⁵ Letter to GCCF from Claimant explaining claim 17 February 2011 Paragraph 2c

⁶ Letter from Claimant transmitting claim documents to NPFC 22 June 2011

sufficient documentation to show her loss of commissions was caused by the Deepwater Horizon oil spill. Other factors could have caused her loss such as the expiration of the new homebuyer tax credit that expired 30 June 2010.⁷

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

Claim Supervisor:


Claims Adjudication Division

Date of Supervisor's Review: *8/1/11*

Supervisor's Action:

Denial approved

Supervisor's Comments:

⁷ IRS News Release IR-2009-108 24 November 2009

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

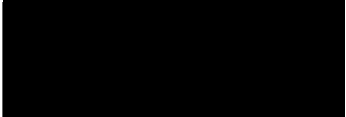
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
8/1/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-1098

Dear [REDACTED]

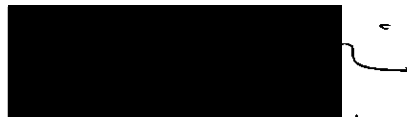
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1098 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-1098.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1098
Claimant	██████████
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$42,294.00

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 6 July 2011, ██████████ (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$42,294.00 in lost profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill¹.

The Claimant asserted that he sold a property he owned that was located on St. George Island in Florida. The Claimant seeks \$42,294.00 for diminution of value because the Claimant states that he sold the property on December 16, 2010 for less than what he asserted he could have sold it for had the Deepwater Horizon oil spill incident not occurred. The Claimant arrived at his sum certain based on the fact that he asserted that he listed the house for sale at a price of \$349,000.00 and ultimately sold it for \$318,000.00 therefore the Claimant states based on the evidence available, he believes that sale of the house was \$35,000.00 to \$50,000.00 less than what it could have sold for had the oil spill not occurred².

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.

¹ See OSLTF Claim Form dated June 24, 2011.
² See Claimant letter, page 2 (undated).

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation:

- 1) OSLTF claim form dated 24 June 2011;
- 2) Claimant letter explaining claim (undated);
- 3) Excerpt from the [REDACTED] newsletter, Fall 2010;
- 4) Sales and Inventory History [REDACTED] in 2010;
- 5) News article from DS News.com entitled "BP Oil Spill Devastating Coastal Housing Markets, and Spreading Beyond";
- 6) News article from Bloomberg Businessweek entitled "Oil Spill May Cost \$4.3 Billion in Property Values (Update 2)";
- 7) News article entitled "The BP Oil Spill Could Bring Down Home Value By 3 Billion";
- 8) Copy of Franklin County Tax Assessment for Claimant property for 2010; 2009 and 2008;
- 9) News article from Bloomberg entitled "BP Spill May Cost Gulf Coast Homes \$56,000 Apiece in Value";
- 10) Statement by Claimant about each of his witness's knowledge regarding his alleged

- 11) Copy of GCCF denial letter dated May 6, 2011;
- 12) Copy of Settlement Statement (HUD-1) for sale of subject property;
- 13) Copy of Warranty Deed on subject property;
- 14) Copy of Form 1099-S for sale of subject property.

Claimant is seeking lost profits associated with diminution of value in the amount of \$42,294.00.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP1) with the GCCF. He was assigned Claimant ID [REDACTED] and claim [REDACTED]. This claim was paid in the amount of \$6,300.00 for lost wages and earnings.³ Additionally, the Claimant filed a Full Review Final Claim (FRF) on April 19, 2011 with the GCCF in the amount of \$42,294.00 for real/personal property damage associated with his alleged diminution of value. This was assigned claim [REDACTED]. Based upon the evidence provided by the Claimant, it appears that the subject matter for his FRF claim with the GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that he has an alleged property diminution value loss from the sale of a home following the Deepwater Horizon oil spill. The NPFC deems the real/personal property claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1098 considers and addresses the alleged loss claimed in the real/personal property claim presented to the responsible party, specifically; GCCF Claim [REDACTED].

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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 their claim. The NPFC considered all the documentation submitted by the Claimant.

An economic loss to real property is only realized under OPA if the property has been sold at a loss and if the Claimant has shown that this loss was due to the injury, destruction or loss of the real property or the natural resource as a result of the discharge or substantial threat of discharge of oil. The Claimant has provided documentation to show that the sale price of the property in 2010 was \$318,000.00.⁴ It is important to note that the Claimant has only provided a copy of his 2008, 2009 and 2010 tax assessments for the subject property which is not sufficient to demonstrate the property's appraised value. The Claimant needs to produce a certified appraisal performed prior to the oil spill and an appraisal after the oil spill which would demonstrate what the property was certified to appraise at in support of his December 2010 sale.

While the Claimant asserted that he listed the property for \$349,000.00, the Claimant has not produced documentation to support the listing. Additionally, the Claimant did not produce a complete copy of the sales contract which would demonstrate what the contract offer was and if the price changed, why it changed if that was the case (i.e., offer price vice appraised value, offer price vice contingencies, etc). Furthermore, the Claimant has not provided any documentation to show that reduction in property value was a result of the oil spill as opposed to any other potential factors. The mere reduced selling price following the oil spill is not enough to actually

³ GCCF/USCG Report dated 7/29/11.

⁴ Documentation provided by Claimant indicates that property was sold for \$318,000.00 via a copy of a HUD-1 settlement statement.

link the Claimant's alleged loss as being 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.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his 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.

Claim Supervisor: *NRC Claims Adjudication Division*

Date of Supervisor's review: *8/1/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

**United States
Coast Guard**



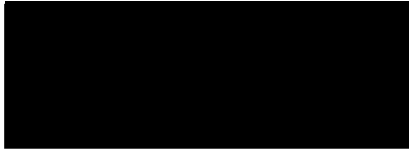
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number [REDACTED]



5890/DWHZ
Claim # N10036-1099
20 July 2011

Re: Claim Number: N10036-1099

Dear [REDACTED]

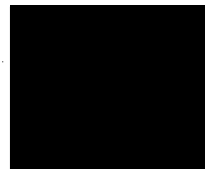
The National Pollution Funds Center ('NPFC') in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-1099 involving the Deepwater Horizon oil spill. Please see the enclosed Claim 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. If, however 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 N10036-1099.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Investigation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1099
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$40,722.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 06 July 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$40,722.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant was employed as a home builder with [REDACTED] in Madisonville, LA.¹ Claimant asserted that his employer closed the business due to the effects of the Deepwater Horizon oil spill, which resulted in a loss of income for the Claimant in 2010.²

Claimant did not provide a calculation for his sum certain of \$40,722.00.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 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.

¹ 'Exhibit B' letter from [REDACTED] dated 27 June 2011.

² Optional OSLTF Claim Form, dated 6 July 2011.

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

In support of his claim, Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund Claim Form, dated 6 July 2011;
- Document titled 'List of Recent Benefit Payments';
- Pay stub from [REDACTED] dated 01 March 2011;
- 2010 W-2 Federal tax form from [REDACTED];
- 2009 1040 Federal tax form;
- 2009 W-2 Federal tax form from [REDACTED];
- 2008 1040 Federal tax form;
- 2008 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- 'Exhibit D' GCCF Interim Payment Claim Form and GCCF Denial Letter dated 07 June 2011;
- 'Exhibit A' listing total loss of income through 30 June 2011;
- 'Exhibit B' letter from [REDACTED] dated 27 June 2011;
- 'Exhibit C' photographs of careerbuilder.com website, photograph of [REDACTED], photograph of a binder, photograph of a website (unreadable).

Prior to presenting this claim to the NPFC, the Claimant filed an Interim Payment Quarter II claim with the GCCF in the amount of \$30,677.74 on 02 June 2011.³ He was assigned Claimant ID [REDACTED] and

³ Report from the GCCF, dated 15 July 2011.

Claim [REDACTED] This Interim Payment claim was denied on 07 June 2011.⁵ Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim is the same as the subject matter of his before the NPFC, i.e., that he lost wages because his employer had to shut down due to the effects of the Deepwater Horizon oil spill. The NPFC deems the Claimant's Interim Payment Claim Quarter II to be properly presented to the RP and properly presented to the NPFC up to the amount of \$30,677.74. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1099 considers and addresses the earnings claimed in GCCF Claim [REDACTED] for all amounts up to \$30,677.74.

NPFC Determination

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented an Interim Payment Claim Quarter II claim, in the amount of \$30,677.74 for loss of profits and impairment of earnings capacity to the GCCF. Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$40,722.00 to the NPFC. Any claimed amount of damages exceeding \$30,677.74 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant has not proven that he suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant submitted a letter from his former employer which stated that, "As a result of the BP oil spill and the impact on workers and their incomes I find it necessary to close [REDACTED]. The NPFC contacted [REDACTED] to follow up on the assertions included within the letter.

Claimant's former employer stated that in 2010, the home construction market slowed down and the Deepwater Horizon oil spill may have been an additional factor contributing to the decline.⁶ However, he stated that the company did not possess any cancelled contracts for construction based on the Deepwater Horizon oil spill, nor could the company provide any specific documentation to support a connection between the slowdown in the housing construction industry and the oil spill.⁷ Overall, the Claimant's former employer could not provide specific information or a detailed explanation as to how the Deepwater Horizon oil spill affected [REDACTED]. Specifically, the Claimant's former employer could provide no connection between the Deepwater Horizon oil spill and the Claimant's lay-off from [REDACTED] in February 2011.⁹

⁴ Id.

⁵ GCCF Denial Letter, dated 7 June 2011.

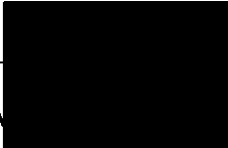
⁶ PHONECON between NPFC and [REDACTED] dated 07 July 2011.

⁷ Id.

⁸ Id.

⁹ Id.

Because the Claimant has failed to (1) properly present some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), and to (2) demonstrate that his 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, this claim is denied.

Claim Supervisor:  *lication Division*

Date of Supervisor's Review: *7/20/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: