

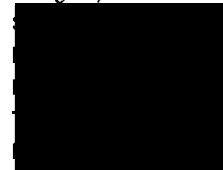
U.S. Department of
Homeland Security

United States
Coast Guard



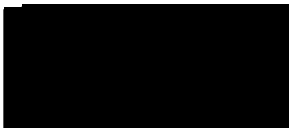
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0600
01 April 2011

Re: Claim Number: N10036-0600

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 CFR Part 136, denies payment on the claim number N10036-0600 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

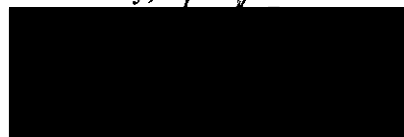
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0600.

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 Manager
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 31 March 2011 |
| Claim Number | N10036-0600 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$12,000.00 |

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 March 2011 [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$12,000.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant's 2010 W-2's indicated that she worked for two employers [REDACTED] and the [REDACTED] TX. Claimant asserted that as a result of the Deepwater Horizon oil spill, her hours were reduced and then she was laid off.¹ Claimant indicated that, as of 21 March 2011, she was looking for 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.

¹ OSLTF claim form.

- (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 her claim, the Claimant presented her OSLTF claim form, dated 21 March 2011, 2009-2010 Form 8879, 2010 W-2 Tax and Wage Statement for [REDACTED] and [REDACTED] TX, IRS documentation revealing a refund, 2008 Form 1040A and paystubs from [REDACTED]

Claimant previously presented an Emergency Advance Payment claim for lost earnings to the RP/GCCF. She received GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 24 November 2010, her claim was denied by the GCCF.⁴

Claimant thereafter filed this claim with the NPFC for \$12,000.00 in lost earnings allegedly resulting from the Deepwater Horizon oil spill.

NPFC Determination

The claim is denied. 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

³ GCCF Claimant status page.

⁴ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 24 November 2010.

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

In reviewing the claim, the NPFC spoke with the human resources representative for [REDACTED]. This conversation revealed that the Claimant had indeed worked for this company from 12 March 2008 until 21 June 2010. On the latter date, the Claimant was terminated, not laid off, due to reasons not disclosed to the NPFC, with reiteration from human resources that it was not due to the oil spill.⁵ A follow-up phone conversation from the Corporate Personnel Manager revealed that the Claimant was terminated for repeatedly sleeping while on her post, an activity which was photographed and well-documented which led to her immediate dismissal.⁶

The NPFC also spoke with several persons at the [REDACTED] TX, including the City of Richardson Police Department Sergeant who supervised the department within which the Claimant was employed. The sergeant revealed that the Claimant worked as a school crossing guard and did not lose her job due to the oil spill but rather as a result of abandoning her post without communicating her whereabouts to her employer for over a week. As a result, the Claimant was terminated from this position on 16 February 2011.⁷

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.

This claim is denied because the Claimant has made false statements in connection with this claim submission in order to obtain funds for an alleged loss of profits as a 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.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *4/2/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ Conversation between [REDACTED] HR and NPFC staff, 22 March 2011

⁶ Conversation between [REDACTED] Corporate Personnel Manager and NPFC staff, 24 March 2011

⁷ Conversation between [REDACTED] TX Police Department and NPFC staff, 22 March 2011

U.S. Department of
Homeland Security

**United States
Coast Guard**

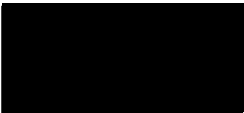


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
4/5/2011

VIA MAIL and EMAIL: [REDACTED]



RE: Claim Number: N10036-0601

Dear [REDACTED]

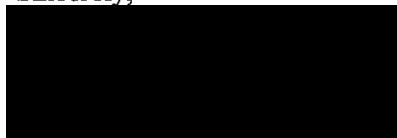
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 CFR Part 136, denies payment on the claim number N10036-0601 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-0601.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002360

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 4/5/2011 |
| Claim Number | : N10036-0601 |
| Claimant | [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| 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.

PRESENTMENT TO THE RESPONSIBLE PARTY/GCCF

On 10 February 2011, Claimant received an Emergency Advance Payment from GCCF of \$1,000.00. The Claimant's GCCF Claimant Identification Number is [REDACTED]

The Claimant filed a Quick Payment final claim with the GCCF and has accepted a \$5,000.00 final settlement from the GCCF and signed a release.

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 March 2011, the Claimant presented an Optional Oil Spill Liability Trust Fund (OSLTF or Fund) claim form to the National Pollution Funds Center (NPFC) seeking \$15,000.00 in lost profits & earnings resulting from the Deepwater Horizon oil-spill.²

Claimant asserted that he was an employee of [REDACTED] in New Orleans, LA. The Claimant asserted that he has lost income as a result of the Deepwater Horizon oil-spill incident.

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 See, Email from Claimant dated March 25, 2011 and copy of letter from GCCF to Claimant dated March 22, 2011.

² Claimant's OSLTF Claim Form submitted to NPFC on March 19, 2011.

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 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 his claim, Claimant submitted the following:

- OSLTF Claim form dated 19 March 2011;
- Copy of GCCF letter dated 2/10/11 showing GCCF EAP payment of \$1,000.00;
- Copy of W2s for 2009 and 2010 - [REDACTED] New Orleans;
- Copy of 2008 & 2009 Income Tax Returns;
- Pay stub from [REDACTED] for pay date 12/23/10;
- Copy of GCCF letter dated 3/22/11 showing Final Quick Pay Payment of \$5,000.00;
- Copy of miscellaneous earnings statements from 1/3/10 through 12/23/10;
- Copy of letter from employer, [REDACTED] dated 3/25/11;
- Email dated 3/25/11 to NPFC answering questions to the NPFC's official request for additional information letter dated 3/24/11.

Claimant seeks \$15,000.00 in lost profits allegedly as a result of 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. The NPFC considered all documentation presented by the Claimant.

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

This claim is denied because the Claimant has fully settled his claims with BP/GCCF, and that BP and GCCF have compensated the Claimant, including a \$5,000.00 Quick Payment for which GCCF required a final and full release of rights against any 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. Since the Claimant signed a Release

with the GCCF, he has given up all rights to pursue the Responsible Party and therefore the Claimant has no standing to receive payment from the OSLTF.

If the Claimant disagrees with this determination to deny the claim based on being compensated and signing a release, he may request reconsideration. Should the Claimant decide to request reconsideration, the Claimant MUST provide a copy of the final quick pay release 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 \$9,200.00 to the NPFC, the Claimant must explain the circumstances in detail.

Therefore, this claim is denied as the Claimant has been fully compensated.

Claim Supervisor 

Date of Supervisor's review: *4/5/11*

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

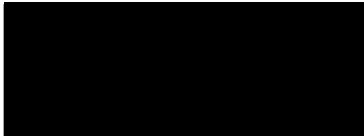
NPFC CA MS 7100
US COAST GUARD

1000
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0602
12 April 2011



RE: Claim Number: N10036-0602

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 N10036-0602 involving the Deepwater Horizon oil spill. Please refer to the 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 N10036-0602.

Mail reconsideration requests to:

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

Sincerely, [Signature]



U.S. Coast Guard
Claims Manager

Enclosures: Claim Summary/Determination Form
Claimant Documentation before the NPFC

09/14/11

FOIA2011-3380-00002364

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | : 4/12/2011 |
| Claim Number | : N10036-0602 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$22,800.00 |

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 March 2011, Claimant presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$22,800.00 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works for [REDACTED] as the Regional Controller for the [REDACTED] and [REDACTED] in Fort Meyers Beach, FL.¹ By virtue of this executive committee position, the Claimant appears to participate in [REDACTED] Executive Committee Bonus Program 2010. Claimant alleged that as a result of the Deepwater Horizon oil spill, the [REDACTED] did not meet projected performance metrics, which would have triggered his annual bonus under the Executive Committee Bonus Program 2010.

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 [REDACTED] is an established hotel management company which operates branded and independent first-class and upscale hotels, resorts, conference centers and condominium hotels throughout the United States.

- (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

Submission to the OSLTF

To support his claim, Claimant submitted the documentation listed in Enclosure two (2) to the NPFC.

On 19 November 2010, Claimant presented a Final Payment claim for \$22,800.00 in lost profits or earnings with the GCCF.² He was assigned GCCF Claimant ID [REDACTED] and [REDACTED]. On 23 February 2011, Claimant received a determination from the GCCF, concluding that he had not established a loss of earnings resulting from the Deepwater Horizon oil spill.³

Claimant then presented this claim for \$22,800.00 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.

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

² Claimant's Final Payment application form.

³ GCCF determination letter, dated 23 February 2011.

impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

This claim is denied because Claimant's loss is speculative. Claimant's entire claim hinges on [REDACTED] Executive Committee Bonus Program 2010, which presumably applies to the Claimant and outlines metrics for triggering an annual bonus distribution. Claimant alleged that but for the Deepwater Horizon oil spill, [REDACTED] where the Claimant is employed through [REDACTED] would have achieved sufficient numbers in the metrics outlined in the bonus plan to trigger the Claimant's alleged annual bonus.

Regardless of the merits of Claimant's argument, the bonus plan is discretionary and subject to unilateral modification. The plan's terms and conditions include the following:

[REDACTED] reserves the right at its sole discretion to change, rescind, amend, suspend, discontinue, and/or otherwise modify any section of or the entire Executive Committee Incentive Compensation Plan at any time without any advance notification."⁴ It also includes the following language: "The implementation of the Executive Committee bonus plan is not intended nor implied to be a guarantee of any distribution."⁵

Based on this language, even if the resort had achieved numbers sufficient to trigger the metrics in the annual bonus plan, [REDACTED] had no obligation to pay the Claimant the alleged annual bonus, and therefore the Claimant has failed to meet his burden to demonstrate (1) that he had a loss of profits and (2) that the incentive pay was a guarantee. This claim is accordingly denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *4/12/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁴ [REDACTED] Executive Bonus Program 2010.

⁵ Id.
09/14/11

Enclosure (2): Claimant Documentation before the NPFC

1. OSLTF claim form;
2. GCCF determination letter, dated 23 February 2011;
3. ██████████ Claim Documentation Fourth Quarter 2010 Interim Claim;
4. Claimant letter to the NPFC, dated 14 March 2011, disputing GCCF determination;
5. Claimant 2008, 2009 & 2010 1040 U.S. Individual Income Tax Return with supporting tax documentation;
6. Claimant letter to the GCCF, dated 07 March 2011, disputing calculation of loss;
7. Letter from Richard Longo of ██████████ clarifying Claimant's 2010 pay;
8. Claimant 2010 W-2;
9. Claimant GGCF Final Payment claim application;
10. Letter from ██████████, in support of Claimant's GCCF claim;
11. GCCF email to Claimant, dated 19 November 2010;
12. Incentive Plan Calculation;
13. Claimant earnings statement from Administaff for pay period 15-28 October 2010, 29 October through 11 November 2010;
14. Claimant 2009 W-2;
15. BMC Executive Committee Bonus Program 2010;
16. Claimant response to NPFC letter requesting additional information;
17. ██████████ Quarterly Guest Satisfaction Goals 2010;
18. ██████████ executive committee bonus worksheet;
19. ██████████ loss attributable to BP oil spill, update for fourth quarter 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
5890
5/11/2011

BY MAIL AND EMAIL

[REDACTED]

[REDACTED]

RE: Claim Number: N10036-0603

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 N10036-0603 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 N10036-0603.

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]

Claims Manager
U.S. Coast Guard

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

FOIA2011-3380-0002369

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : May 9, 2011 |
| Claim Number | : N10036-0603 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$3,073,557.10 |

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 March 23, 2011, [REDACTED] presented a claim to the National Pollution Fund Center (NPFC) on behalf of [REDACTED] (Claimant), on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$3,073,557.10 in lost profits and earning capacity resulting from the Deepwater Horizon incident. A signed letter from the Claimant dated March 22, 2011 was provided to authorize [REDACTED] to act on behalf of the Claimant.

Claimant asserted that [REDACTED] is a processor and distributor of Gulf Coast which caught brown/white shrimp and oysters. Due to the oil spill, [REDACTED] could not provide seafood products to restaurants, hotels, resorts, retail markets and individual customers.”

The Claimant provided a denial letter from their emergency advance payment claim with the GCCF dated December 21, 2011. The Claimant stated they have filed an interim claim with the GCCF and it is still under review.

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;
- (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 Optional OSLTF Claim Form dated 15 March 2011.
- Denial letter from GCCF for application of Emergency Advance Payment, dated 21 December 2010.
- Letter from Claimant to NPFC dated 23 March 2011.
- Letter from Claimant to GCCF dated 03 December 2010.
- Letter from Claimant to GCCF dated 09 December 2010.
- Claim Preparation fees invoiced by Gulf Coast Oil Spill Claims Assistance dated 14 February 2011.
- Summary of financials by month for 2009 and 2010.
- Lost profit calculation (claim) totaling \$3,073,557.19.
- Sales ledger for all customers from 2009 and 2010.
- Monthly Profit and Loss Statement from January 2009 through December 2010.
- Letter from the Citizen Potawatomi Community Development Corporation granting [REDACTED] a business loan in the amount of \$300,000 dated 08 December 2010
- Business plan for [REDACTED] prepared to loan solicitation. Business plan does not indicate when it was prepared.

- Bank Statements for [REDACTED] dba [REDACTED] from January 2009 through September 2010.
- Bank Statements for [REDACTED] from September 2010 through December 2010.
- 2009 1040 Individual Income Tax Return filing for [REDACTED]
- Certificate of Filing for [REDACTED] as a Limited Liability Company (LLC) [REDACTED] dated 15 September 2010.
- Letter from IRS to [REDACTED] with assignment of EIN #, dated 15 September 2010.
- Application for use of business name by Sole Proprietorship, dated 13 January 2009.
- Report from Southern Shrimp Alliance dated 10 June 2010.
- NOAA map of fishing closures as of 15 November 2010.
- Sales Invoices from [REDACTED] to Farm to [REDACTED] dated 18 January 2010, 25 January 2010, 25 February 2010, 24 March 2010 and 06 April 2010.
- Purchase Orders from Farm to [REDACTED] to [REDACTED] numbered 1079, 1086, 1113, 1118, 1119 and 1147 (March through June 2010).

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. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that their income was reduced as a result of the Deepwater Horizon incident.

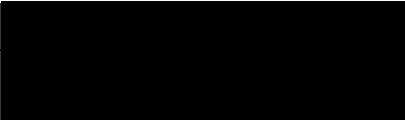
On April 8, 2011, the NPFC sent, via electronic mail to [REDACTED] a request for additional information to the Claimant in order to obtain necessary information to adjudicate the claim. The documentation requested consisted of the following:

1. If available, Income Tax Return Filings for 2010 including all attachments and schedules.
2. Provide a report from your accounting system to show the names of all suppliers and purchases from 2009 and 2010.
3. Provide a report indicating the total sales volume and selling price by customer from 2009 and 2010.
4. Contracts from both your suppliers and customers for the purchase and sale of seafood products.
5. If applicable, provide your rate schedules for pricing to your larger customers such as Farm to [REDACTED]
6. Invoices, purchase orders, receipts or other documents to support your purchase of seafood product during 2009 and 2010 indicating the source, type of product, quantity and price.
7. Provide any and all correspondence to support reduced orders or cancellations from customers as a result of the Deepwater Horizon incident.
8. Provide documentation to support any leads towards prospective customers.

The NPFC also requested the Claimant answer the following questions:

1. Describe in detail, your complete business operations and all processes starting from product acquisition to delivery to customers and fulfillment of orders.
2. Provide the following items regarding your business:
 - a. Identify all physical properties and addresses where your business operations are located. Please indicate how long each property has been in use by your business.
 - b. Describe your facilities including, where product is stored and the size of your facilities.
 - c. Your business plan indicates you had intended to acquire additional space for processing. Please explain if any additional properties were purchased or rented to facilitate this plan.
 - d. How many employees work for your company?
3. How do you physically receive your product from suppliers?
4. How do you deliver product to your customers?
 - a. Does your company deliver product directly to customers through its own vehicles?
5. Describe in detail, the ordering process between you and your customers.
6. Describe in detail, how you purchase your products.
 - a. Describe how you determine the type and quantity of product to purchase.
7. Identify all of your suppliers and their locations, including:
 - a. Your normal suppliers prior to the Deepwater Horizon incident.
 - b. Any other suppliers you used following the Deepwater Horizon incident, including suppliers of farm raised or imported products to supplement Gulf catches.
8. Your largest customer, [REDACTED] does not appear to have made any purchases during July, August and September 2010. Please explain.
9. Identify the type of seafood products that you purchase and sell.
10. You have indicated that you believe prices went up, causing a reduction in your profit margin. Did you at any point, increase your prices to compensate for higher product cost?
11. Describe if your claimed losses are associated with reduced profit margins, lack of product, lack of orders or any other factors.
12. Prior to the Deepwater Horizon incident, did you source farm raised or imported products?
 - a. Following the Deepwater Horizon incident, did you source farm raised or imported products? If so, explain the difference in pricing with the availability of alternative products.
13. You provided a letter from the Citizen Potawatomi Community Development Corporation granting [REDACTED] a business loan in the amount of \$300,000 dated 08 December 2010. Have you used the proceeds to expand your operations?
14. When did you prepare the business plan that was submitted with your claim? We assume it was prepared sometime during 2010 or thereafter as the plan makes references to 2009 economic data and states the business was started in 2009.
15. What was the basis for your forecasted revenue as represented in your business plan?
 - a. Your claim includes a claimed growth trend of 6,616.99% for 2010, or \$5,700,709 in revenue annually. The claimed revenue is significantly greater than the prior year as well as the forecasted revenue from your business plan. Please explain why you believe the projected revenue of \$5,700,709 is reasonable

The Claimant has not provided the additional documentation nor answered any of the questions to support the claim in order to demonstrate a loss of profits and earnings. Because of the Claimant's failure to respond to the NPFC's request for additional information, the claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *May 11, 2011*

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# N10036-0604
04 April 2011

[REDACTED]

C/O:

[REDACTED]

RE: Claim Number: N10036-0604

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 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on your claim, # N10036-0604. 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 N10036-0604.

Mail reconsideration requests to:

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

[REDACTED]

Marine Science Technician I
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00002375

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|------------------------------------|
| Date | 31 March 2011 |
| Claim Number | N10036-0604 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits & Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$112,428.00 |

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 23 March 2011, [REDACTED] (Claimant) through [REDACTED] presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$112,428.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is a construction contractor licensed in Walton County, FL.¹ Claimant's submission indicated that the Claimant was contracted by [REDACTED] to complete two build outs on the [REDACTED] in Santa Rosa Beach, FL.² Claimant alleged that as a result of the Deepwater Horizon oil spill, the tenants, for whom the build outs were planned, backed out of their lease agreements at the [REDACTED], which compelled [REDACTED] to cancel the Claimant's build out contracts.³

Claimant seeks lost profits from the cancelled build out contracts.

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 Walton County Contractor License dated 05 June 2009, expiration dated 31 August 2010.

² Letter from [REDACTED] to Claimant dated 02 June 2010.

³ Id.; Letter from Claimant on letterhead, 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 support this claim, Claimant through [REDACTED] presented the following documentation:

- OSLTF claim form, undated, signed by [REDACTED];
- Letter of Authorization for [REDACTED], dated 22 March 2011;
- Letter from Claimant on letterhead, undated;
- 2008 Form 1040 U. S. Individual Income Tax Return with Schedules;
- Letter, no letterhead and undated describing situation;
- Walton County Contractor License dated 05 June 2009, expiration dated 31 August 2010;
- GCCF denial letter, dated 06 December 2010;
- Florida driver's license, Class E, [REDACTED];
- Profit & Loss Statements, January through December 2008;
- Letter from [REDACTED] to Claimant, dated 02 June 2010;
- Walton County Certificate of Occupancy [REDACTED] dated 10 June 2010;
- Google map image of Claimant office;
- Claimant quote to [REDACTED] for \$320,400.00, dated 18 May 2010;
- 2009 Form 1040 U. S. Individual Income Tax Return with Schedules;
- Profit & Loss Statements, January through December 2009;
- Profit & Loss Statements, January through December 2010;
- Letter to [REDACTED] from [REDACTED] refusing new office location, dated 01 June 2010;
- Claimant quote to [REDACTED] for \$96,600.00, dated 20 April 2010; and
- Lease agreements from 2008.

Claimant previously presented an Emergency Advance Payment (EAP) claim for lost profits and earnings with the GCCF. Claimant received GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 06 December 2010, this claim was denied by the GCCF.⁴

Claimant thereafter presented this claim for \$112,428.00 in lost profits with the NPFC.

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.

Claimant's alleged \$112,428.00 in lost profits from two cancelled construction contracts. Claimant attributed this loss to the Deepwater Horizon oil spill because the tenants, for which the build outs were to serve, backed out on their lease agreement at the [REDACTED] as a result of "the lack of business and traffic in the aftermath of the gulf oil spill catastrophe."⁵ The tenants, as the Claimant's submission bears out, made a calculated business decision not to risk moving into the Landings Shopping Center with the planned renovations in light of an apparently unfavorable business climate in the area.⁶

In response to the tenant's business decision, [REDACTED] cancelled the Claimant's construction contracts for the two build outs at the [REDACTED].⁷

Based on the foregoing, this claim is denied because the alleged loss in the amount of \$112,428.00 is not 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 an intervening cause which is contract cancellation by the Claimant's client.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: 4/2/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁴ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 06 December 2010.

⁵ Letter from [REDACTED] to Claimant dated 02 June 2010.

⁶ [REDACTED] to Claimant states "I offered substantial rent decreases along with other concessions, but they [the tenants] maintain that with the disruption caused by the oil spill they could not make the numbers."

⁷ In an attempt to contact [REDACTED] to verify the cancellations, the NPFC reached [REDACTED] and [REDACTED] an organization affiliated with [REDACTED] in the management of the [REDACTED] at Santa Rosa Beach. [REDACTED] confirmed the tenants backing out of the lease agreements and indicated that this compelled the cancellation of Claimant's contracts because it seemed impractical to continue with the build outs given the circumstances. PHONECON between NPFC and [REDACTED] on 29 March 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
3/31/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0605

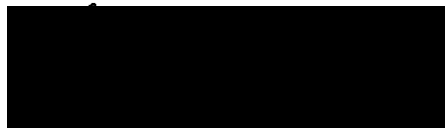
Dear [REDACTED]

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 N10036-0605 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 N10036-0605.

Mail reconsideration requests to:

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



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002379

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 3/31/2011 |
| Claim Number | : N10036-0605 |
| Claimant | [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | : \$7,000.00 |

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 23 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking damages in the amount of \$7,000.00.

On his optional claim form, Claimant failed to fill in blocks 9 (description of the nature and extent of damages claimed), 10 (description of how the incident caused the damage) and block 11 (description of actions taken by claimant/representative to avoid or minimize damages).

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.

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 procedures for particular claims is provided in 33 C.F.R. Subpart C, § 136.201 through § 136.241.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant submitted the following documentation:

- Signed OSLTF claim with no information in blocks 9, 10, or 11, dated March 20, 2011;
- A copy of 2009 & 2010 Income Tax returns.

Claimant seeks \$7,000.00 in lost profits and earnings capacity but has not described the basis for his claim.

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.

Here, Claimant has provided no evidentiary basis for the damages requested in his claim. Additionally, the documentation provided by Claimant bears no relationship whatsoever with what he has claimed. As a result, claimant has failed to prove that his alleged loss in the amount of \$7,000.00 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.

Further, Claimant has failed to fill in blocks 9, 10, and 11 of his optional OSLTF claim form. This claim is denied because (1) the Claimant has failed to meet his burden to explain his alleged loss and how he arrived at the loss amount claimed, (2) the Claimant has failed to provide proof of proper presentment of his claim to the RP, (3) the Claimant failed to demonstrate that any loss he may have is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor 

Date of Supervisor's review: *3/31/11*

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

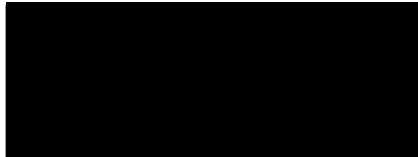
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
5/13/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0606

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 N10036-0606 involving the Deepwater Horizon incident. 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,



U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 5/12/2011 |
| Claim Number | : N10036-0606 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Corporate (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$110,193.00 |

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 March 2011, [REDACTED] (Owner/Agent), on behalf of [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$110,193.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is a small boutique-style real estate shop located on Marco Island, FL. Claimant's business consists primarily of home sales with occasional short-term vacation rentals. Claimant opened for business on 15 December 2008 and is located in a plaza close to three large beachfront hotels and next door to the movies, stores, and restaurants.¹ Agent indicated that the specific location of the shop was chosen to focus on the walk by traffic from the hotels and visitors who frequent the plaza.² Agent contended that as a result of the Deepwater Horizon oil spill, tourist traffic in the Claimant's area of business dropped off significantly, leading to decreased revenues and notably no sales for the period of 30 April to 05 August 2010.³

REQUEST FOR RECONSIDERATION:

On May 9, 2011, the Claimant faxed a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim. The NPFC denied the claim originally on May 2, 2011 because the Claimant has 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 its 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.

¹ Letter of claim explanation from Claimant to "whom it may concern," dated 16 March 2011

² Id.

³ Id.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via facsimile received by the NPFC on May 9, 2011. To support her request for reconsideration, the claimant provided an amended OSLTF Claim Form changing her sum certain from \$110,193.00 to \$103,571.12 which coincides with the amount of the claim she presented to the RP prior to submitting her claim to the NPFC and the Claimant also provided a letter dated May 7, 2011 presenting her argument on reconsideration that... "Luckily Oil from the spill did not reach the beachfront. However in light of the uncertainty of the long term effects of the spill on the immediate area it is my belief that visitors continued to come for the short term but were reluctant to invest for the long term...I believe the market for sales in part collapsed because of the spill depriving me of commissions I would have otherwise made."

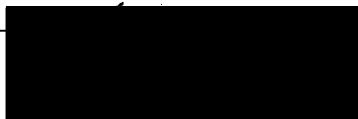
NPFC Determination on Reconsideration

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. 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 denies the request for reconsideration of the claim for \$103,571.12 on the basis that the Claimant provided no new documentation to support her assertion made that would demonstrate 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:



Date of Supervisor's review: *5/13/11*

Supervisor Action: *Denial on reconsideration 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
4200 Wilson Blvd. Suite 1000

5890
3/31/2011

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0607

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 N10036-0607 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 N10036-0607.

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 Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002385

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : March 29, 2011 |
| Claim Number | : N10036-0607 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$6,219.18 |

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 March 24, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$6,219.18 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted in the narrative provided that they had to cancel their wedding at the Santa [REDACTED] in Santa Rosa, Florida. The reasons provided by the Claimants were "because it was not safe to take 100 family members including babies to a beach resort that had oil and tar balls on it. The beach was in fact closed the week we would have had our wedding. We were supposed to get married on the beach but it was covered in oil due to the spill caused by BP."

The Claimant filed a claim with the GCCF and was given claim [REDACTED]. The Claimant provided a copy of their GCCF denial letter dated October 20, 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 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 Claimants submitted the following documentation:

- NPFC Optional OSLTF Claim Form dated March 23, 2011;
- Personal narrative dated March 23, 2011;
- Copies of Drivers License (illegible);
- Second personal narrative dated August 23, 2010;
- 2008 & 2009 W-2;
- Copy of reservation and payment owed for [REDACTED];
- Wedding photography agreement from [REDACTED];
- Copy of check sent to Livingston Photography;
- Invoice from [REDACTED];
- Copy of Chase Account Activity highlighting American Airline re-booking fees;
- Receipt for engraved photo frames;
- Copy of hours worked showing vacation taken and lost;
- Copy of contract between Claimants and [REDACTED];

- Copy of Amazon account highlighting payment made to [REDACTED]
- Copy of check returned to Claimant from [REDACTED]
- Copy of contract from [REDACTED] showing rental balances;
- Copies of checks to and from [REDACTED]
- Copy of GCCF denial letter dated October 20, 2010;

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.

On March 24, 2011 the NPFC contacted the [REDACTED] and spoke to [REDACTED] in an effort to determine if the beach was closed and/or covered in oil, as stated by the Claimants. [REDACTED] stated that the beach was never closed and that they never got anything more than a few small tar balls. [REDACTED] also stated that they stressed to the Claimants that the beach was not oiled and went as far as having the General Manager (GM) of the resort call them to let them know. [REDACTED] stated that the Claimant was convinced that there was oil regardless of what they told them.

As per 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. If any payment is made on the claim, the claimant may also be subject to an assessment of up to twice the amount claimed. These civil sanctions may be imposed under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, as implemented in 49 CFR part 31.

The claim is denied because the evidence provided by the Claimant, as described above, does not establish that the Claimants incurred a loss, or that the alleged loss (if one had occurred), 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.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *3/31/11*

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# N10036-0608
18 April 2011

RE: Claim Number: N10036-0608

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 N10036-0608 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 N10036-0608.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 15 April 2011 |
| Claim Number | N10036-0608 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| 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 24 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$10,000.00 to the National Pollution Funds Center (NPFC). The OSLTF claim form indicates \$10,000.00 in alleged lost profits and impairment of earnings capacity, \$2,500.00 in loss of subsistence use of natural resources, and \$2,500.00 in natural resource damage resulting from the Deepwater Horizon oil spill.

The Claimant indicated that he filed an Emergency Advance Payment (EAP) claim with the GCCF for \$15,000.00 in lost earnings and a Final Payment claim for \$20,000.00 in lost earnings. Based on this information, neither the subsistence loss nor the natural resource damage loss was properly presented to the RP pursuant to 33 C.F.R. § 136.103(a). Additionally, the Claimant provides no evidence to support his alleged subsistence loss and natural resource damage in his claim submission to the NPFC.

Claimant indicated that he works as a painter for [REDACTED] at [REDACTED]. He alleged that he lost overtime hours as a result of the Deepwater Horizon oil spill. He also alleged that he went from ten (10) hour shift to an eight (8) hour shift.² Claimant indicated that he tried to mitigate his lost earnings through plumbing on the side.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.

¹ Claimant handwritten answers to the NPFC's additional information request.

² *Id.*

³ *Id.*

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 his claim, Claimant submitted the following documentation to the NPFC:

- 1) OSLTF claim form, dated 11 March 2011;
- 2) Social Security Card and AL drivers license;
- 3) Two notices of deficiency on mortgage from [REDACTED];
- 4) 2007 W-2 Form from [REDACTED];
- 5) 2009 and 2010 W-2 Forms from [REDACTED];
- 6) 2008 U.S. Individual income Tax Return (first page only);
- 7) Paystubs for pay period ending 13 December 2009 through 25 July 2010;
- 8) Paystub for 28-31 March; and
- 9) Handwritten answers to additional information requested.

Claimant presented an Emergency Advance Payment claim to the GCCF for \$15,000.00 in lost earnings.⁴ He was assigned Claimant ID [REDACTED] and Claim [REDACTED]. On 27 October 2010, this claim was denied by the GCCF.⁵ Claimant then presented a Final Payment claim to the GCCF and received Claim [REDACTED]. On 09 March 2011, that claim was also denied by the GCCF.⁶

On 24 March 2011, the Claimant presented this claim for \$10,000.00 in lost profits and impairment of earnings capacity along with two other alleged components on the OSLTF claim form (\$2,500.00 in loss of subsistence use of natural resources, and \$2,500.00 in natural resource damage) resulting from the Deepwater Horizon oil spill. As noted, neither the loss of subsistence use of natural resources nor the natural resource damage claims were properly presented to the RP pursuant to 33 C.F.R. § 136.103(a). Accordingly, this determination addresses only the lost of profits and earnings capacity claim.

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.

Claimant alleged that he lost overtime hours and went from a ten (10) hour to an eight (8) hour shift as a result of the Deepwater Horizon oil spill. Claimant, however, provided no evidence establishing the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.⁷

The claim is denied because (1) the alleged financial loss in the amount of \$10,000.00 is not 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 (2) because the total amount requested of \$5,000.00 associated with the loss of subsistence use of natural resources and the natural resource damage claims were not properly presented to the RP pursuant to 33 C.F.R. § 136.103(a)), which states that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor.

Based on the forgoing information, this claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 4/16/11

Supervisor's Actions: *Denial approved*

⁴ PHONECON between Claimant and the NPFC dated 15 April 2011.

⁵ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 27 October 2010.

⁶ GCCF denial letter Re: Claimant's Final Payment claim dated 09 March 2011.

⁷ Claimant was asked to provide a letter from his employer explaining how Claimant's alleged loss resulted from the Deepwater Horizon oil spill. Claimant provided no such letter or any authoritative substitute to support his claim.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

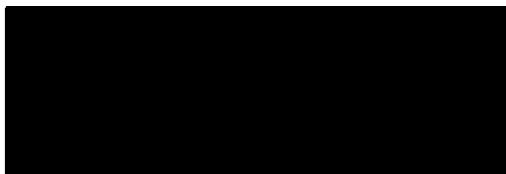
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
5/4/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0609

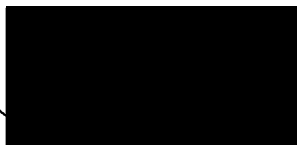
Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0609 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding the 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 N10036-0609.

Mail reconsideration requests to:

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



Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : May 4, 2011 |
| Claim Number | : N10036-0609 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$11,985.00 |

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 March 24, 2011, [REDACTED] presented a claim to the National Pollution Fund Center (NPFC) on behalf of [REDACTED] (Claimant), on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$11,985.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that her company [REDACTED] was affected by the oil spill because tenants occupying four of her rental properties stopped paying their rent because they were also directly affected by the oil spill.

The Claimant provided a denial letter from their final claim with the GCCF dated March 6, 2011. The Claimant stated that she filed an emergency advance payment claim with the GCCF but did not provide any documentation confirming such.

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;
- (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:

- Letter dated 15 March 2011 from Claimant stating the circumstances surrounding their claim.
- Copy of determination letter from the GCCF dated 06 March 2011 detailing final offer amount and instructions dated 06 March 2011.
- Letter dated 05 March 2011 from Claimant to the GCCF asking for a re-review of the original emergency claim submitted.
- Email dated 02 March 2011 from Claimant to GCCF asking for a re-review of the original emergency claim submitted.
- Letter dated 01 March 2011 from the GCCF notifying Claimant they cannot make a determination due to missing documentation.
- Letter dated 17 December 2010 from Claimant to the GCCF stating she is submitting the additional information and/or documentation requested that was not furnished on the initial claim for emergency funds.
- Pages 3 and 7 of Claimant's original GCCF claim.
- Business License issued by the State of Florida. Expiration date 30 September 2012
- Calculated losses as presented by Claimant for November and December 2010
- Copies of receipts for rents received for November and December 2010
- Letter from Claimant dated 22 October 2010 to the GCCF stating her claimed loss is due to the Deepwater Horizon Incident

- Letter dated 16 November 2010 from Claimant to the GCCF enclosing receipts showing income for January through April 2010.
- GCCF Claim Form dated 21 October 2010
- Calculated losses as presented by Claimant for May through October 2010
- Copies of receipts for rents received for January through April 2010

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. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that income was reduced as a result of the Deepwater Horizon incident.

On April 4, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

1. Please provide copies of all rental agreements for each property with tenants in 2008, 2009, and 2010
2. Please provide a list of rental rates charged for each property for 2008, 2009, and 2010.
3. Please provide a detailed listing and copies of receipts for any and all rental income received from May through October 2010.
4. For any tenants currently still in residence who are behind on rent, please have them prepare letters stating the reason they are behind on their rent is due to the Deepwater Horizon Incident.
5. Please provide tax returns for [REDACTED] for 2008, 2009, and if available, 2010. Please include all schedules and attachments used to prepare the tax return.
6. Please provide any and all copies of late notices sent to tenants behind on their rents.

The NPFC also requested the Claimant answer the following questions:

1. Do you charge a fee for late rental payments?
2. Have you received any rental income for the months of May through October 2010?
3. If you do not have formal rental agreements signed, what are the terms set forth to tenants? How often do they pay? Are the rents dropped off to one central location? Are they mailed in?
4. Do you perform any type of screening process for possible tenants?
5. For the tenants who left without paying amounts due - have they been reported to a credit agency?
6. What type of units are these? Are they condos? Houses? Apartments?
7. Are they in a building? Do you own the building?
8. What other types of transactions does [REDACTED] participate in?
9. Do you require tenants to pay a security deposit? If so, how much?
10. If you collect security deposits, did you keep in them when these tenants moved out?
11. Have you had any further contact with the tenants that left and owe rent?

12. Were you able to rent out those units to other individuals and recoup some of the lost rents?

The Claimant has not provided the additional documentation requested nor answered any of the questions in order to support the claim to demonstrate a loss of profits and earnings. Therefore, this claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits in the amount claimed and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *May 4, 2011*

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

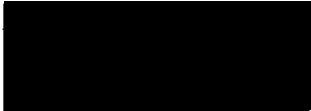
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0610
20 April 2011



RE: Claim Number: N10036-0610

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 N10036-0610 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

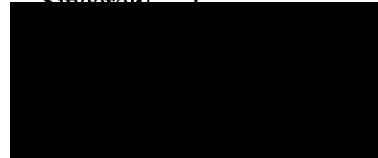
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0610.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002398

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 19 April 2011 |
| Claim Number | N10036-0610 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$56,000.00 |

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 25 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$56,000.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant worked as a sales manager for [REDACTED] in Gulfport, MS.¹ Claimant alleged that he earned \$1000 per week in salary plus commission.² Claimant commenced employment there in mid-May 2010, and continued working through mid-July 2010, at which time he voluntarily left [REDACTED] and relocated to Iowa.³ According to the Claimant, a large portion of [REDACTED]'s customers were truck drivers who wanted to experience Gulfport's tourist attractions while purchasing new vehicles. However as a result of the Deepwater Horizon oil spill, Claimant asserted that Gulfport's tourist industry faltered, in turn causing truck sales to fall "drastically low."⁴

Claimant calculated his loss by multiplying \$8,000 in monthly income (consisting of \$4,000 in salaried wages and \$4,000 in commissions) by 10 months for a total of \$80,000, then subtracting \$24,000 in payments previously received from the RP.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

¹ Letter from Claimant to "Whom It May Concern," dated 26 July 2010.

² [REDACTED] operates under the corporate umbrella of [REDACTED] and all of Claimant's wage and earning statements are issued under the latter name. Claimant EMAIL to the GCCF, dated 21 September 2010 (noting Claimant's weekly salary of \$1,000.00 plus alleged commissions).

³ Letter from Claimant to the NPFC in response to additional information request, dated 04 April 2011.

⁴ Letter from Claimant to "Whom It May Concern," dated 26 July 2010.

⁵ Letter from Claimant to the NPFC in response to additional information request, dated 04 April 2011.

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;
- (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, dated 16 March 2011;
- Letter from Claimant to BP explaining the nature of his employment and loss, dated 26 July 2010;
- Letter from GCCF to Claimant requesting additional information, dated 15 September 2010;
- Letter from GCCF to Claimant requesting additional information, 30 September 2010;
- Earning statement from [REDACTED] for period ending 11 July 2010;

- Copy of Iowa driver's license;
- Copy of Social Security card;
- Letter from GCCF to Claimant requesting additional information, dated 31 January 2011;
- Letter from Claimant to GCCF regarding lost bonus income from the oil spill, dated 19 October 2010;
- GCCF Supplemental Request Form, dated 19 October 2010;
- Various email correspondence between Claimant and GCCF;
- GCCF Claim Form, presented on 24 August 2011;
- Letter from Claimant to NPFC in response to additional information request, dated 04 April 2011;
- Handwritten "commission report" provided by Claimant;
- Letter from GCCF denying Claimant's supplemental claim request, dated 19 November 2010;
- W-2 from [REDACTED] for 2010; and
- Signed release by Claimant authorizing disclosure of employment information from UTG.

On 24 August 2010, Claimant filed a six-month Emergency Advance Payment claim for \$24,000.00 in lost earnings with the GCCF. He was assigned Claimant ID # [REDACTED] and Claim # [REDACTED]. On 23 September 2010, the GCCF issued full payment on that claim. Claimant then filed a Final Payment claim in October 2010 for \$120,000; that claim was assigned ID # [REDACTED] and has yet to be resolved as of the date of this determination.⁷

On 25 March 2011, Claimant presented this claim for \$56,000.00 in lost profits and impairment of earnings capacity with the NPFC.⁸

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.

This claim is denied because the Claimant has failed to meet his burden of demonstrating his alleged loss of \$56,000.00, as claimed, and the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

Claimant worked as the sales manager for [REDACTED] from 17 May to 08 July 2010.⁹ Claimant indicated that he voluntarily left this employment because of "slowed commissions."¹⁰ A review of Claimant's only provided earnings statement from Coast [REDACTED] indicated that by period ending 11 July 2010, the Claimant had earned \$8,000.00 year to date.¹¹ This year to date total is consistent with the Claimant's W-2 from [REDACTED] (showing \$8,000.00 in wages tips and other income for 2010).

⁶ GCCF Filing Report, dated 08 April 2011.

⁷ PHONECON between the NPFC and Claimant, dated 14 April 2011.

⁸ The NPFC notes that 90 days has elapsed since Claimant presented his Final Payment claim to the GCCF with no settlement by payment. Under 33 C.F.R. § 136.103(c)(2), Claimant may elect to present the claim to the OSLTF.

⁹ Letter from [REDACTED] verifying Claimant's employment with [REDACTED] dated 15 April 2011.

¹⁰ Letter from Claimant to the NPFC in response to additional information request, dated 04 April 2011.

¹¹ As noted, [REDACTED] operates under the corporate umbrella of [REDACTED]

During the Claimant's eight week stint with [REDACTED] he earned his weekly salary of \$1,000.00 for a total of \$8,000.00.¹² Additionally, the Claimant failed to provide any authoritative evidence that he was entitled to commissions during this time period.¹³ Claimant therefore has not demonstrated his alleged loss of \$56,000.00.

Any loss that the Claimant suffered as a result of his voluntary decision to leave [REDACTED] is not 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.

In light of the foregoing, this claim is denied.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: *4/20/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹² Claimant EMAIL to the GCCF dated 21 September 2010 (noting Claimant's weekly salary of \$1,000.00 plus alleged commissions).

¹³ Claimant provided a handwritten notation which he alleged was evidence of his entitlement to commissions. The notation was not on company letterhead or signed by an officer or agent of [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# N10036-00611
26 April 2011



RE: Claim Number: N10036-0611

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 N10036-0611 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

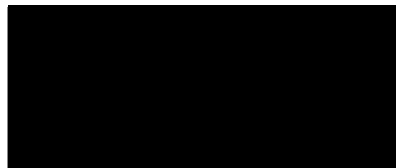
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0611.

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
Claims Manager

Enclosure: Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00002403

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | 12 April 2011 |
| Claim Number | N10036-0611 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$79,032.00 |

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 25 March 2011 [REDACTED] (Agent) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form on behalf of the [REDACTED] (Claimant) to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$79,032.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a non-profit organization in Willmette, Illinois, that raises funds to support leukemia research. Since 2003, the Claimant has received proceeds from the annual Kingfish Shootout Tournament held by [REDACTED] in Carrabelle, FL.¹ [REDACTED] planned on holding the 8th Annual Kingfish/Grouper Shootout Tournament from 7-8 August 2010.² The Claimant was the intended recipient of the proceeds from this event.³

On 14 June 2010, the event was cancelled because of uncertainties posed by the Deepwater Horizon oil spill and concerns that the tournament would not draw enough participants to meet the \$35,000.00 payout.⁴ As a result of the cancellation, the Claimant did not receive tournament proceeds and estimates its loss of profits at \$79,032.00.⁵

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

¹ Claim overview and timeline.

[REDACTED] notice of cancellation of Kingfish/Grouper Shootout Tournament, website accessed 22 June 2010.

³ Oyster Radio News article on Kingfish/Grouper Shootout cancellation.

⁴ PHONECON between the NPFC and [REDACTED] coordinator of the Annual Kingfish Shootout Tournament, on 07 April 2011; Email from [REDACTED] to Agent, indicating cancellation of Kingfish Shootout, dated 14 June 2010.

⁵ The Claimant asserts that proceeds from the cancelled event represented 4-6% of profits annually generated by the Claimant.

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;
- (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, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, dated 21 March 2011 and signed by Agent;
- Cover letter listing enclosures;
- Letter from Claimant to the NPFC, dated 21 March 2011;
- Specific claim requirements;
- Claim overview and timeline;
- Wikipedia entry for Deepwater Horizon oil spill;
- Claimant IRS EIN;

- Letter from IL Dept. of Rev., dated 04 April 2008;
- Email from [REDACTED] to Agent, indicating cancellation of Kingfish Shootout, dated 14 June 2010;
- Various emails from Agent to [REDACTED], regarding cancellation of Kingfish Shootout;
- [REDACTED] notice of cancellation of Kingfish/Grouper Shootout Tournament, website accessed 22 June 2010;
- Oyster Radio News article on Kingfish /Grouper Shootout cancellation;
- FL Dept. of Env. Pro. Emergency Final Order;
- GCCF letter from the GCCF Re: Denial of Claimant's Final Payment claim, dated 06 March 2011;
- GCCF letter notifying transfer of BP claims to GCCF, dated 23 August 2010;
- Claimant summary page for GCCF claim;
- Email to Agent confirming receipt of BP claim;
- Kingfish Shootout year-to-year profit spreadsheet;
- Transaction detail by account;
- Claimant P&L April 2008-June 2010;
- Form 990 from 2007-2009;
- Email from Agent to the NPFC, dated 04 April 2011;
- Claimant letter to the NPFC in response to AI request, dated 01 April 2011;
- Brochure for 6th Annual Kingfish shootout tournament;
- Letter from [REDACTED] to Claimant, dated 03 October 2008;
- Letter from [REDACTED] to Claimant, dated 21 October 2008;
- Webpage shot for 8th Annual Kingfish Shootout Tournament;
- Email from Agent on fishing closures, dated 06 April 2011; and
- Email from Agent providing contact information, dated 07 April 2011.

On 22 June 2010, the Claimant presented a loss of income claim for \$84,000.00, arising from the cancellation of the 8th Annual Kingfish Shootout Tournament, to the Responsible Party, BP.⁶ The Claimant received BP claim # [REDACTED]. The Claimant corresponded with BP on this claim until 23 August 2010 when the GCCF sent the Claimant letters informing the Claimant that the GCCF was assuming responsibility for claims and requesting the completion and return of enclosed GCCF claim forms.

On 31 August 2010, the Claimant received GCCF Claimant ID [REDACTED] and Claim # [REDACTED] for a Final Payment claim with the GCCF.⁷ On 06 March 2011, the GCCF denied this claim.⁸

On 25 March 2011, the Claimant presented this claim for \$79,032.00 in loss of profits and impairment of earnings, arising from the cancellation of the 8th Annual Kingfish Shootout Tournament, which the Claimant attributed to the Deepwater Horizon oil spill.

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

⁶ Claim overview and timeline; various emails from Agent to [REDACTED] regarding cancellation of Kingfish Shootout.

⁷ GCCF Filing Report, dated 18 April 2011.

⁸ GCCF letter from the GCCF Re: Denial of Claimant's Final Payment claim, dated 06 March 2011.

impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$79,032.00 is not 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.

The Claimant indicated that [REDACTED] was compelled to cancel the 8th Annual Kingfish/Grouper Shootout Tournament as a result of the Deepwater Horizon oil spill.⁹ The Claimant admitted that at the time of the event cancellation (14 June 2010), the Claimant was not aware of any official closure of fishing waters in Franklin County, where the event was scheduled to be held.¹⁰ The Claimant instead emphasized the complete “unknown” and growing anxiety along the Florida Coast as factors prompting the event cancellation.¹¹

To further understand the decision to cancel the event, the NPFC contacted [REDACTED] who coordinates the event for [REDACTED] family.¹² [REDACTED] indicated that the event starts three (3) miles out from Carrabelle, FL. She further indicated that at the time of the event cancellation, there was no oil on the beaches of Carrabelle though there were booms in place in waters near Carrabelle. [REDACTED] stated that the concern that the event would not draw enough participants to support the \$35,000.00 tournament payout played a major factor in the decision to cancel the event.¹³

By cancelling the event on 14 June 2010, [REDACTED] was able to avoid or reduce costs associated with preparing for the event and prevent potential participants from incurring their own costs associated with preparing for the event.¹⁴ [REDACTED] decision to cancel the event represents a reasoned business judgment therefore the alleged loss is not 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.

In light of the foregoing, this claim is DENIED.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: 4/26/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁹ Claim overview and timeline.

¹⁰ Email from Agent on fishing closures, dated 06 April 2011. [REDACTED] where the event is held, is located in Franklin County, FL.

¹¹ Id.

¹² PHONECON between the NPFC and [REDACTED] coordinator of the Annual Kingfish Shootout Tournament, on 07 April 2011. The [REDACTED] family hosts the Annual Kingfish Shootout Tournament at C-[REDACTED] in honor of [REDACTED] who succumbed to leukemia.

¹³ PHONECON between the NPFC and [REDACTED] coordinator of the Annual Kingfish Shootout Tournament, on 07 April 2011.

¹⁴ Email from Agent on fishing closures, dated 06 April 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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim# N10036-0613
26 April 2011

RE: Claim Number: N10036-0613

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 N10036-0613 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 N10036-0613.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002408

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 21 April 2011 |
| Claim Number | N10036-0613 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$18,000.00 |

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 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$18,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant indicated that she worked as a House Manager for a [REDACTED] employer), who owns properties in Panama Beach City, Florida.¹ The Claimant's duties reportedly included scheduling maintenance, delivering flowers, paying bills, cleaning, landscaping, and picking up mail. She performed these duties mainly during the tourist season, and she was reportedly compensated by the day and by services performed.

Although the Claimant worked from 2007 through May 2010, her employer never provided her with a W-2 or a 1099.² Claimant alleged that she was let go from her employment because the Deepwater Horizon oil spill deterred visitors from renting her employer's properties, resulting in reduced income for her employer and rendering her employer unable to afford her services.³

The Claimant seeks \$18,000.00 in lost earnings from her employment as a house manager.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.

¹ Letter from [REDACTED] dated 04 April 2011.

² The Claimant admits that she cannot provide this tax documentation. She also indicates that she is experiencing trouble retrieving tax returns from prior years from her ex-husband.

³ Additional information letter from Claimant, dated 04 April 2010. Later in 2010 the Claimant worked for [REDACTED] in Fort Walton Beach and Adecco in Panama City. The Claimant provides W-2's from these employers.

⁴ This sum certain appears to include collateral items such as expenses related to the Claimant's car, her son's 4-
09/4/11 and her job search. OSLTF claim form.

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 her claim, the Claimant submitted the following documents to the NPFC:

1. OSLTF claim form, signed 16 March 2011;
2. Print-out from answers.usa.gov on the Deepwater Horizon oil spill;
3. Denial Notice from the GCCF for an Emergency Advance Payment dated 14 December 2010;
4. Denial Notice from the GCGC for Physical Injury dated 12 November 2010;
5. Letter to the GCCF explaining Final Claim submission;
6. E-mail to the GCCF providing additional information dated 15 March 2011;
7. Form 1040A US Individual Income Tax Return for 2010.

On 29 March 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim. On 14 April 2011, the Claimant responded to the letter and provided the following:

1. Additional information letter from Claimant, dated 04 April 2010;
2. W-2's from [REDACTED] and [REDACTED];
3. GCCF denial letter on Claimant's Interim/Final Payment claim, dated 01 April 2011;
4. Two earnings statements from [REDACTED];
5. Letter from [REDACTED], dated 04 April 2011;
6. NPFC letter requesting additional information with Claimant annotations.

On 04 October 2010, the Claimant presented an Emergency Advance Payment claim for \$14,880.00 in lost earnings to the GCCF. She was assigned GCCF Claimant II [REDACTED] and Claim # [REDACTED]. On 14 December 2010, this claim was denied by the GCCF.⁵

On 01 January 2011, the Claimant filed a Final Payment Claim for \$18,300.00 in lost earnings with the GCCF. On 01 April 2011, this claim was denied by the GCCF.⁶

The Claimant seeks \$18,000.00 in lost earnings from the OSLTF.

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.

This claim is denied because the Claimant has failed to meet her burden under OPA and the associated regulations at 33 C.F.R Part 136 to demonstrate (1) that she has an alleged loss of \$18,000.00 and (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. There is no financial documentation to support the Claimant's alleged loss of earnings in the amount of \$18,000.00 and no empirical evidence of the impact of the Deepwater Horizon oil spill on the Claimant's employer's rental business.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *4/26/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ Denial Notice from the GCCF for an Emergency Advance Payment, dated 14 December 2010.

⁶ GCCF denial letter on Claimant's Interim/Final Payment claim dated 01 April 2011.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

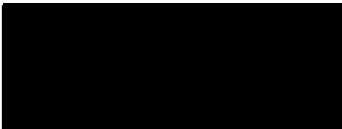
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000

Fax: 202-493-6937

5890
6/6/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0614

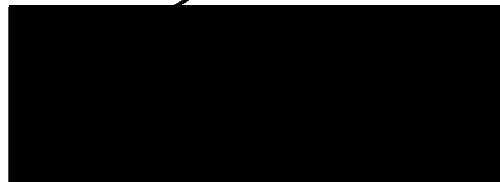
Dear [REDACTED]:

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 N10036-0614 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,



U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Claim Number | : N10036-0614 |
| Claimant | : ██████████ |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$16,220.00 |

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 25 March 2011, ██████████ (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$36,748.80 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant worked as a long haul driver for ██████████ Based out of Mobile, AL, the Claimant "deliver[ed] products to various stores thru (sic) out Mississippi, Alabama and Florida."¹ Claimant was laid-off from this position on 27 April 2010. The Claimant attributed his layoff to the Deepwater Horizon oil spill, which, he asserted, triggered "a major decrease in the delivery of products due to lack of sales."² Claimant indicated that he has remained unemployed for the past eleven months. He has not indicated how he calculated his alleged loss amount.

REQUEST FOR RECONSIDERATION:

On June 3, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The Claimant submitted a one page rebuttal letter in support of his reconsideration along with a complete copy of his original claim submission documents. Other than his argument on reconsideration, the Claimant did not provide any new supporting documentation.

The NPFC denied the claim originally on April 29, 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 and Final Payment claim for \$16,320.00 in lost wages and earnings to the GCCF. Claimant then presented this loss of profits and impairment of earnings capacity claim for \$36,748.80 to the NPFC. Any claimed amount of damages exceeding \$16,320.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and was therefore DENIED.

¹ OSLTF claim form.

² Letter from Claimant to the GCCF, dated 21 November 2010.

The remainder of the claim was DENIED because the Claimant's evidence did not 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 03 April 2011, the NPFC sent the Claimant a letter requesting additional information regarding his employment with UPS, and specifically, the circumstances surrounding his layoff.³ As of the date of the initial denial determination, the NPFC had not received the requested information.

The requested information was largely related to the Claimant's employment with [REDACTED]. Claimant had indicated that he had a lawsuit pending against [REDACTED] in U.S. District Court for the Southern District of Mississippi and his attorneys had advised him not to contact [REDACTED] during the pendency of the action.⁴

On 19 April 2011, the NPFC received a letter from an attorney stating that she represented the Claimant in his lawsuit against [REDACTED]. The Claimant's attorney conveyed that the pendency of the Claimant's suit necessitated that she correspond with [REDACTED] on his behalf, and that if NPFC would provide her with a copy of the Claimant's additional information request, she "would be pleased to convey any inquiries to [REDACTED] attorneys."⁵ In response, the NPFC requested that the Claimant's attorney submit a representation agreement for his OSLTF claim by 26 April 2010. The Claimant's attorney did not provide the requested documentation as of the date of the denial determination.

In light of the unresponsiveness, the NPFC proceeded to adjudicate the claim without the requested documentation. Because the Claimant's evidence did not demonstrate that his alleged loss is due to the injury, destruction, or loss of real property, personal property, or natural resources as a result of the Deepwater Horizon oil spill, this claim was DENIED.

On reconsideration, the Claimant presented a rebuttal letter dated June 3, 2011. The letter stated that the Claimant did not understand why he was denied because all of the information the NPFC requested was submitted. The Claimant did amend his sum certain on reconsideration based on the NPFC's initial denial of all costs in excess of \$16,220.00 since the Claimant had only ever presented a claim to the RP in that amount but had submitted a claim to the NPFC originally for \$36,748.80. The Claimant also clarified in his rebuttal letter that he is not a long haul driver but rather a city driver with no other amplifying information. The NPFC acknowledges the correction.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 3, 2011. To support his request for reconsideration, the claimant provided a letter making his reconsideration argument. No new information was provided by the Claimant although he did provide a duplicate copy of his original claim submission documents.

³ A copy NPFC's AI Request was also emailed to Claimant on 06 April 2011.

⁴ PHONECON between the NPFC and Claimant, dated 12 April 2011.

⁵ Letter from Claimant's alleged attorney to the NPFC, dated 19 April 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. After the NPFC performed another review of the claim submission, the NPFC has determined that the Claimant provided no new information on reconsideration to support the claim. The NPFC incorporates the original denial dated April 29, 2011 as part of this reconsideration determination.

On April 1, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

1. Letter or letters from your former employer confirming the reason(s) for the layoff. The documentation provided documents the effective date of layoff and states the reason to be part of a collective bargaining agreement. Is this correct? If not, please explain.
2. A detailed breakdown of lost income with detailed explanation(s) of all cancelled deliveries directly the result of the Deepwater Horizon Oil Spill.
3. If business was cancelled as a result of the Deepwater Horizon incident, please provide supporting documentation illustrating the loss of business.
4. Identify references with addresses and telephone numbers that we can contact to confirm your claim.
5. A copy of your employment contract with terms and conditions.

The NPFC again denies the claim because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits in the amount claimed and if one had occurred, (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

This claim is denied upon reconsideration.

Claim Supervisor: 

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

Supervisor Action: *Denial on reconsideration approved*

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

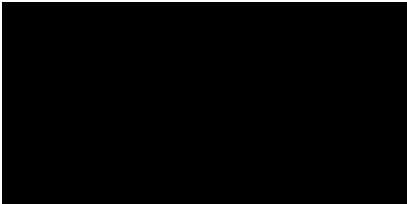
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0615
18 April 2011



RE: Claim Number: N10036-0615

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 N10036-0615 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

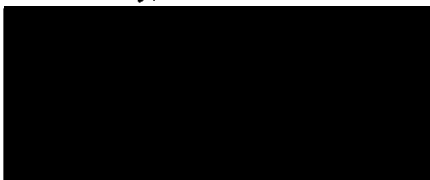
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0615.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-0002416

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 14 April 2011 |
| Claim Number | N10036-0615 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$25,957.80 |

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 March 2011, [REDACTED] (Owner) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form on behalf of the [REDACTED] (Claimant) to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$25,957.80 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Owner operates the [REDACTED] in Chokoloskee, Florida.² Owner indicated that the restaurant is a family business.³ She also indicated that in the past ten years, Chokoloskee has grown into a tourist town and that local fisherman work as fishing guides for the tourists.⁴ Owner asserted that these fishermen and tourists frequent her restaurant. Owner alleged that as a result of the Deepwater Horizon oil spill, tourism to the area declined and the restaurant lost business.⁵ Owner consequently closed the restaurant in mid-April through September 2010.⁶

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in 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

¹ Claimant originally alleged 75,240.00 in lost profits and earnings capacity on the OSLTF claim form; however, in discussion with the NPFC, Claimant amended the sum certain to \$25,957.80. PHONECON between Claimant and the NPFC on 14 April 2011.

² Chokoloskee is in southwest Florida on the Gulf Coast about eighty miles south of Ft. Myers, Florida.

³ PHONECON between the NPFC and Claimant on 14 April 2011.

⁴ Id.

⁵ Claimant letter to the GCCF, dated 11 March 2011.

⁶ FL Dept. of Revenue Monthly Sales Tax Receipt.

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, Owner on behalf of Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, signed 15 March 2011;
- GCCF denial letter, dated 04 December 2010, Re: Claimant's Emergency Advance Payment claim;
- Claimant letter to the GCCF, dated 11 March 2011;
- List of businesses and fishing guides compensated by the GCCF;
- News articles about the oil spill;
- Map of Chokoloskee;
- Handwritten computation of sum certain;
- Listings of daily receipts and customer counts for October 2009 through March 2010;
- Form 1120S US Income Tax Return for S-Corporation 2008, 2009 and 2010;
- Florida business license, dated 01 February 2011;

- Florida articles of incorporation dated 17 June 2004;
- Florida sales tax registration effective 29 August 2005;
- Florida Retailer's License for Alcohol;
- Monthly sales tax return for May through September 2010;
- Invoices from [REDACTED] dated 16 December 2009 and 16 December 2010; and
- Reservation sheets showing cancellations.

On 31 March 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 07 April 2011, the Claimant faxed her response and provided the following additional information:

- Claimant response to questions 1-4; and
- Claimant menu.

On 08 October 2010, Claimant presented a one-month Emergency Advance Payment claim for \$30,900.00 in lost profits with the GCCF.⁷ Claimant was assigned GCCF Claimant ID # [REDACTED] and Claim [REDACTED]. On 04 December 2010, this claim was denied by the GCCF.⁸

On 28 March 2011, Claimant presented this claim for \$75,240.00 in lost profits and impairment of earnings capacity with NPFC.⁹ On 14 April 2011, in discussions with the NPFC, the Claimant amended the requested sum certain to \$25,957.00.¹⁰

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 claim is denied because the alleged loss in the amount of \$25,957.00 is not 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.

Owner alleged that as a result of the Deepwater Horizon oil spill, tourism declined in Chokoloskee and her restaurant lost business, forcing her to close the business from mid-April through September. In discussions with the NPFC, the Owner admitted that she did not know of any oil in the waters of Chokoloskee.¹¹ She also admitted that she was not aware of any closures of these waters to fishing, and she wasn't aware of any oil spill response organizations in the area near Chokoloskee.¹² Owner indicated that she felt that the "threat" of oil moving into the area kept visitors away from Chokoloskee.¹³

Based on the foregoing, Claimant has failed to meet its burden to establish the correlation, if any, between its alleged loss and the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

⁷ GCCF Filing Report, dated 12 April 2011.

⁸ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 04 December 2010.


⁹ Id.

¹⁰ PHONECON between Claimant and the NPFC on 14 April 2011.

¹¹ Id.

¹² Id.

¹³ Id.

Claim Supervisor: 

Date of Supervisor's Review: *4/16/11*

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 # N10036-0616
23 May 2011

Re: Claim Number: N10036-0616

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 N10036-0616 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 N10036-0616.

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

FOIA2011-3380-00002421

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|---|
| Date | 19 May 2011 |
| Claim Number | N10036-0616 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$4,700.00 |

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 29 March 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$4,700.00 in loss profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that she lost her job of over six years as a private sitter because her boss, who worked as a fisherman, was unable to pay her as a result of the Deepwater Horizon oil spill.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

¹ OSLTF claim form.

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 her claim, the Claimant submitted her optional OSLTF claim form on 29 March 2011, a letter of explanation, and IRS tax information for the years 2008, 2009 and 2010.

On 4 January 2011, Claimant presented a Full Review Final Payment claim for \$10,800.00 in lost profits and earnings to the GCCF. She received GCCF Claimant ID [REDACTED] and Claim # [REDACTED]. On 9 March 2011, the Final Payment claim was denied by the GCCF.

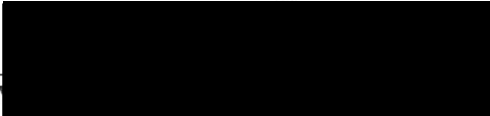
On 29 March 2011, Claimant presented this claim for \$4,700.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate her claim. The letter requested, among other things, financial documentation to support a record of payment from her employer and an explanation of how the Deepwater Horizon oil spill impacted her employer. The Claimant was given 14 days to respond to the letter, dated 3 May 2011. To date, the Claimant has not responded.

This claim is DENIED for the following reasons: (1) Claimant has failed to meet her evidentiary burden to provide all evidence, information, and documentation deemed necessary by the Director, NPFC, to support her claim pursuant to 33 C.F.R. § 136.105(e)(6); (2) Claimant has also failed to demonstrate her alleged loss in the amount of \$4,700.00 through financial documentation; and (3) Claimant has failed to demonstrate that her alleged loss is due to 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: *5/23/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



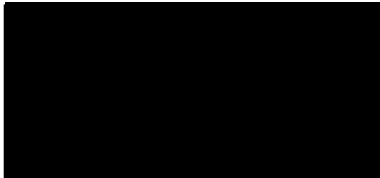
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim# N10036-0617
28 April 2011

RE: Claim Number: N10036-0617

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 N10036-0617 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

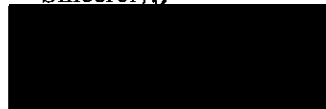
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0617.

Mail reconsideration requests to:

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

Sincerely, /



Marine Science Technician 1
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00002425

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | 26 April 2011 |
| Claim Number | N10036-0617 |
| Claimant | [REDACTED] |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$4,600.00 |

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 29 May 2011, [REDACTED] (Claimant)¹ presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$4,600.00 in loss of profits and impairment earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant performs "marine surveys at owner, or prospective owner request" in the Florida Keys.² Claimant stated that he performs marine surveys in accordance with 33 and 46 Code of Federal Regulations (C.F.R.), "the voluntary standards and recommended practices developed by the American Boat and [REDACTED] (ABYC) and the National Fire Protection Association (NFPA)."³ At the time of the incident, the Claimant was expecting an upswing in business as a result of the departure of a successful marine surveyor in the area. Claimant stated "the BP oil spill and the bad press that followed caused a downturn in visitors including transient boaters, which is [his] main source of customers."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

[REDACTED] owns and operates Claimant business, and he presented this claim and supporting documentation on behalf of Claimant.

² Additional information letter, dated 13 April 2011, from Claimant describing the nature of his business and alleged loss.

³ *Id.*

⁴ Claimant's OSLTF claim form, dated 29 March 2011, and Claimant's letter, dated 13 April 2011, in response to NPFC request for additional information.

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

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

1. NPFC OSLTF Claim form dated 29 March 2011 with cover letter dated 27 March 2011 attached;
2. Additional information letter dated 13 April 2011 from Claimant describing the nature of his business and alleged loss;
3. Cover letter accompanying OSLTF Claim Form, providing details about GCCF claim denial and a brief summary of prior yearly revenues dated 27 March 2011;
4. GCCF letters to Claimant (b) requesting additional information dated 29 January 2011 and 01 March 2011;
5. Federal Income Tax Return Schedule Cs for 2004, 2008, 2009, and 2010;
6. Copies of Driver's license, social security card, Transportation Worker Identification Card (TWIC), and Mariner Card MMC Ref Number (b) and serial number (b)

7. Copies of NAVTECH U.S Surveyors Association Marine Surveyor Course Completion Certificate dated November 12, 2001, Master Marine Surveyor Title 46 Fishing Vessel Qualified Examiner dated January 5, 2002, and The Association of Certified Marine Surveyors Certified Member recognition certificate #238 (member since October of 2006);
8. Copy of email message from Greater Marathon Chamber of Commerce CEO to Claimant dated 07 April 2011 with email link:
9. Monroe County Tourist Development Council June 2010 Report titled, "Floridian Travelers: Study of In-State Market Impacts from the BP/TransOcean Oil Spill."
10. Accounting reports titled "Survey" for calendar years 2008, 2009, and 2010.

The claimant provided the following lost income/profits summary to support his claim (dollar signs added by the NPFC) with the associated accounting documents:

| | <u>2008</u> | <u>2009</u> | <u>2010</u> |
|----------------------------|-------------|-------------|----------------------|
| Revenues from surveying | \$4,646 | \$7,017 | \$7,187 |
| Revenues from 4/15 to 7/31 | \$2,451 | \$3,285 | \$1,166 ⁵ |

On 18 January 2011, Claimant presented an Interim Payment claim for \$4,486.30 in lost wages and earnings to the GCCF. Claimant was assigned GCCF Claimant ID [REDACTED] and Claim # [REDACTED]. On 06 March 2011, Claimant's Interim Payment was denied by the GCCF.⁶

On 29 March 2011, Claimant presented this claim for \$4,600.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

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 for \$4,486.30 in lost wages and earnings to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$4,600.00 to the NPFC. Any claimed amount of damages exceeding \$4,486.30 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's evidence does not demonstrate that his alleged loss in the amount of \$4,486.30 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.

In reviewing this claim, the NPFC contacted the USCG Sector Command in Key West, Florida and the USCG Marine Safety Laboratory to verify if any Deepwater Horizon oil had been recovered in the Florida Keys. USCG Sector Command indicated that it was not aware of any oiling in the Florida Keys linked to the Deepwater Horizon oil spill.⁷

⁵ Accounting Spreadsheets titled "Survey" for each calendar year provided by Claimant.

⁶ GCCF Denial of Interim/Final Payment Claim Claimant ID [REDACTED] dated 06 March 2011.

⁷ Email correspondence from 4/20/2011 to 4/25/2011 between the NPFC, USCG Sector Key West, and USCG Marine Safety Laboratory regarding impact of Deepwater Horizon Oil Spill on Keys.

Additionally, the NPFC requested that the Claimant provide proof of cancelled business as a result of the incident. Claimant responded that he “has no proof of loss other than the absence of bookings.”⁸

The claim is denied because the Claimant has 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 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, and (3) demonstrate that his reduction in business 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.

Claim Supervisor 

Date of Supervisor’s Review: *4/28/11*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

⁸ Additional information letter, dated 13 April 2011, from Claimant describing the nature of his business and alleged loss
09/14/11

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 # N10036-0618
05 April 2011

Re: Claim Number: N10036-0618

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 N10036-0618 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 N10036-0618.

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 Manager
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002430

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 04 April 2011 |
| Claim Number | N10036-0618 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| 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 26 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$8,000.00 in real or personal property damage.¹

Claimant asserted that she owns rental property at [REDACTED] in Pensacola, FL.² Claimant further asserted that since 2008, she has rented the subject property to [REDACTED] (Tenant). Rental receipts provided by the Claimant indicated that the Tenant paid \$750.00, as monthly rent, in 2009.³ A rental agreement provided by the Claimant indicated that for 2010, the Tenant was obligated to pay \$750.00 in monthly rent.

Claimant alleged that as a result of the Deepwater Horizon oil spill, the Tenant lost income and the Claimant was forced to reduce the monthly rent to accommodate her.⁴ Claimant seeks lost rental income from the Tenant's inability to pay the agreed amount of monthly rent.

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 In light of Claimant's submission, as described herein, her election of real or personal property damage is interpreted as a claim for lost profits through reduced monthly rental payments.

² Claimant's tax records indicate that she owns a mobile home at this address. Claimant uses this same address as her mailing address for corresponding with the NPFC.

³ Many of these receipts are illegible. Additionally, the NPFC notes that two legible receipts [REDACTED] indicate that Tenant paid Claimant \$750.00 twice for the same period (November through December 2009). Furthermore, there does not appear to be a logical sequence in the numbering of Claimant's receipts from year to year: for example, receipts from 2009 include [REDACTED] yet receipts a year later from 2010 bear an earlier number sequence [REDACTED].

⁴ Handwritten letter from Claimant explaining her claim, dated 21 March 2011 (letter indicates that Tenant was able to find a job working for BP, but she lost this job).

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 support her claim, Claimant provided the following documentation:

- Optional OSLTF Claim Form, received 29 March 2011
- GCCF denial letter Re: Claimant's interim/final payment claim, dated 09 March 2011
- Handwritten letter from Claimant explaining her claim, dated 21 March 2011
- Various handwritten receipts (some illegible) demonstrating rental payments
- 2009 Form 1040 Schedule E
- DMV Certificate of Title issued 01 February 2006
- Warranty deed & maintenance disclosure
- Copies of lease agreements between Claimant and tenant
- Typed letter explaining sum certain claimed to the GCCF, dated 20 December 2010
- GCCF Interim Payment receipt form, dated 24 January 2011

- 2010 Form 1040 Schedule E
- GCCF Claim Form
- Handwritten letter further explaining claim status, dated 07 March 2011

On 30 December 2010, Claimant presented an Interim Payment claim to the RP/GCCF in the amount of \$4,000.00.⁵ She was assigned Claimant ID [REDACTED] and Claim [REDACTED]. On 09 March 2011, her claim was denied by the GCCF.⁷

Claimant then filed a claim for \$8,000.00 in lost profits and earnings with the NPFC.

NPFC Determination

The claim is denied. 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 his claim.

Claimant asserted that the Tenant lost income as a result of the Deepwater Horizon oil spill, thereby resulting in reduced rental income to the Claimant. The Claimant provided no evidence to support her assertion that the Tenant lost income as a result of the Deepwater Horizon oil spill.

Additionally, the Claimant's evidence is inconsistent. Although the Claimant submitted receipts from 2010 that purportedly indicate that she received less than \$750.00 in monthly rent, her 2010 1040 Schedule E shows that she earned \$4,500.00 in rents received, which amounts to a \$1,500.00 increase from 2009.

This claim is denied because (1) the Claimant's evidence does not demonstrate her alleged loss of \$8,000.00, or the correlation, if any, between this alleged loss and the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil and (2) the Claimant has either made false statements in conjunction with this claim submission or failed to properly report income as identified in the Income Tax Return provided vice what her claim submission alleged.

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.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: 4/5/11

Supervisor's Action: *Denial approved*

⁵ Claimant's GCCF application for interim/final payment claim.

⁶ Claimant's GCCF status page.

⁷ GCCF denial letter Re: Claimant's Interim/final payment claim dated 09 March 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
[REDACTED] 000

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0620
18 April 2011



Re: Claim Number: N10036-0620

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 N10036-0620 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 N10036-0620.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 15 April 2011 |
| Claim Number | N10036-0620 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$52,624.00 |

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 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC). The OSLTF claim form alleged \$52,624.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant worked as Director of Food and Beverage for [REDACTED] located in Pensacola Beach, FL. Claimant indicated that he was laid off from his job on 13 September 2010 due to decreased reservations and revenues resulting from the Deepwater Horizon oil spill.¹ Claimant provided a letter from his former employer that specified Claimant's commission bonuses would be reduced because of the Deepwater Horizon oil spill.² Claimant alleged lost earnings resulting from his lay off and the commission bonuses that were not realized.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

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 Letter of claim explanation and loss calculation to GCCF regarding Claimant's interim claim, dated 20 December 2010.

² Letter from Director of HR at [REDACTED] (Managing company of [REDACTED]) to Claimant, undated.

- 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 his claim, Claimant submitted the following documentation:

- OSLTF claim form, dated 28 March 2011;
- Letter of claim explanation and loss calculation to regarding Claimant's interim claim to the GCCF, dated 20 December 2010;
- GCCF Interim Payment Claim Form, dated 23 March 2011;
- Letter from Director of HR at [REDACTED] Managing company of [REDACTED] to Claimant, undated;
- Letter from Simple HR to Claimant affirming Claimant's employment at [REDACTED] from May 2009 to September 2010;
- Paystubs from [REDACTED] for 28 December 2009 through 19 September 2010;
- Profit and Loss Statement indicating Claimant's bonus, undated;
- 2008 Form W-2 from [REDACTED];
- Form 1140 U.S. Individual Income Tax Return for the years 2008 and 2009;
- 2010 Form W-2 from [REDACTED];
- Internet article from Politics Daily titled "Pensacola Beach Receives 'Most Oil So Far' Overnight," posted 23 June 2010;

- Email from [REDACTED] to Claimant regarding a job interview, dated 20 September 2010; and
- Listing of job search prepared by Claimant.

On 30 September 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim of \$97,000.00 with the GCCF for lost profits and earnings.³ He was assigned GCCF Claimant II [REDACTED] and Claimant [REDACTED]. Claimant was paid \$16,000 by the GCCF on 01 October 2010.⁴ Claimant filed an interim claim on 04 January 2011 for both loss of subsistence and lost profits and earnings and was assigned Claimant [REDACTED]. The loss of profits and earnings part of the claim was for \$57,375.00 and the loss of subsistence part was for \$143.00; this claim is currently under review. Lastly, the Claimant filed a Full Review Final claim on 04 March 2011 for \$770,312.89, which is currently under review as well.⁵

On 29 March 2011, Claimant presented this claim for \$52,624.00 in lost profits and impairment of earnings capacity to the NPFC.

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. The NPFC considered all of the documentation submitted by Claimant.

In the course of reviewing this claim, the NPFC contacted [REDACTED] (Director of HR Administration) at [REDACTED] the company managing the [REDACTED] [REDACTED] where the Claimant worked, in order to verify the authenticity of the letter provided by the Claimant.⁶ [REDACTED] confirmed that she wrote the letter that specified Claimant's commission bonuses would be reduced because of the Deepwater Horizon oil spill. However, [REDACTED] added that despite the contents of that letter, the Claimant was let go from his position at [REDACTED] to offenses that were unconnected to the Deepwater Horizon oil spill.⁷

Based on the foregoing, this claim is denied because the alleged loss of \$52,624.00 is not 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.

| |
|---|
| <p>[REDACTED]</p> <p>Claim Supervisor [REDACTED]</p> <p>Date of Supervisor's Review: <i>4/16/11</i></p> <p>Supervisor's Actions: <i>Denial approved</i></p> <p>Supervisor's Comments:</p> |
|---|

³ GCCF Filing Report, dated 12 April 2011.

⁴ GCCF Record of Payment, date of payment on 01 October 2010.

⁵ GCCF Filing Report, dated 12 April 2011.

⁶ Letter from Director of HR at [REDACTED] (Managing company of [REDACTED]) to Claimant, undated.

⁷ PHONECON between NPFC Representative and Carrie Douglas on 07 April 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
4200 Wilson Blvd. Suite 1000

[REDACTED]
Fax: 202-493-6937
5890
4/5/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]
[REDACTED]

RE: Claim Number: N10036-0621

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0621 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding the 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 N10036-0621.

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 Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : April 5, 2011 |
| Claim Number | : N10036-0621 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$9,000.00 |

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 March 30, 2011 [REDACTED] Claimant) presented a lost profits & earnings claim in the amount of \$9,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant provided no explanation for the basis of his claim but review of his GCCF submission shows that he is claiming lost wages due to his hours being cut at [REDACTED] as a result of the oil spill. The Claimant stated that [REDACTED] manufactures steel drums for the containment of oil products.

The Claimant filed an Emergency Advance Payment (EAP), Interim, and Final claim with the GCCF and was given claimant id [REDACTED]. The Claimant's EAP claim was denied on November 24, 2010 and his Interim/Final Payment Claim was denied on March 9, 2011. The Claimant provided the NPFC with an authorization to GCCF allowing them to release all documentation associated with his 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 support the claim, the Claimants submitted the following documentation:

- NPFC Optional OSLTF Claim Form dated March 25, 2011;
- Copies of Drivers License
- Greif Employee Earnings Record;
- 2010 W-2;
- [REDACTED] Production Run Sheet;
- [REDACTED] Timecards for Claimant;
- Copy of paystubs from October 3, 2010 through December 11, 2010
- Copy of GCCF Claim Form
- Copy of GCCF denial letter dated November 24, 2010;
- Copy of GCCF Denial of Interim/Final Payment Claim dated March 9, 2011

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.

On April 5, 2011 the NPFC contacted [REDACTED] and spoke to [REDACTED] in an effort to determine if the Claimant's hours were reduced as a result of the oil spill, as stated by the Claimant. [REDACTED] stated that he cannot directly point to the oil spill as the reason for the reduction in hours, as there may have been other intervening factors involved. [REDACTED] stated that the economy may have played a part.

As per 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. If any payment is made on the claim, the claimant may also be subject to an assessment of up to twice the amount claimed. These civil sanctions may be imposed under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, as implemented in 49 C.F.R. § 31.

The claim is denied because the evidence provided by the Claimant, as described above, does not establish that the Claimant incurred a loss of profits or that the alleged loss (if one had occurred) 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.

Claim Supervisor [REDACTED]

Date of Supervisor's review: 4/5/11

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

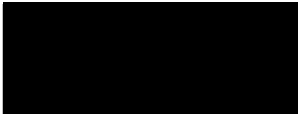
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim# N10036-0622
04 April 2011



RE: Claim Number: N10036-0622

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 90) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim, # N10036-0622 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

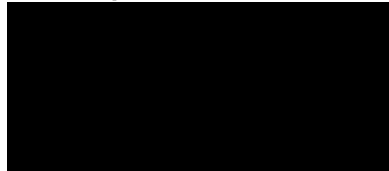
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0622.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|------------------------------------|
| Date | 31 March 2011 |
| Claim Number | N10036-0622 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits & Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$7,654.00 |

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 March 2011, [REDACTED] (Claimant) presented a claim for \$7,654.00 in lost profits and earnings capacity to the National Pollution Funds Center (NPFC). Claimant asserted that she had worked at the [REDACTED] in Santa Rosa Beach, FL. She indicated that in February 2010, in an attempt to pick up more hours, she moved to the [REDACTED] in Watercolor, FL, which she described as "the highest tourist store we have on the beach."

Claimant alleged that as a result of the Deepwater Horizon oil spill, she lost hours and overtime at the [REDACTED] in Watercolor, FL during the peak tourist season. Claimant calculated her total loss in hours and overtime to be \$7,654.00.

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

- OSLTF claim form, dated 23 March 2011;
- Claimant letter to the NPFC, dated 16 March 2011, explaining loss;
- Letter from the NPFC to Claimant, dated 10 December 2010;
- Claimant letter to the GCCF, dated 22 November 2010;
- Documentation required for lost profits/earnings capacity claims;
- GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 09 November 2010;
- Claimant's 2009 & 2010 1040 Individual Income Tax Return;
- Claimant's GCCF claimant status page;
- Claimant's 2009 & 2010 W-2 Wage and Tax Statement; and
- Claimant's 2009-2010 Pay Stubs from [REDACTED].

Claimant previously presented Emergency Advance Payment (EAP) claim for lost earnings or profits with the GCCF.² She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 09 November 2010, this claim was denied by the GCCF.³

Claimant thereafter filed this claim for \$7,654.00 in lost earnings with the NPFC.

² GCCF Claimant status page.

³ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 09 November 2010. 5010-3380-00002444

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.

This claim is denied because the Claimant's evidence does not demonstrate that her alleged loss of \$7,654.00 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.

A review of the Claimant's [REDACTED] pay stubs does not indicate a decrease in hours or wages following the Deepwater Horizon oil spill. Through the end of April 2010, the Claimant grossed \$3,402.38 in earnings.⁴ At this pre-spill rate, the Claimant would have grossed \$10,207.14 through December 2010.⁵ The Claimant's actual gross earnings through December 2010 exceed this projection by \$144.71 (YTD 2010 \$10,351.85).⁶ The Claimant's post-spill earnings rate exceeds her pre-spill earnings rate, projected for the year, and support the Claimant's allegation that she lost earnings as a result of the Deepwater Horizon oil spill.

Additionally, the NPFC contacted management for [REDACTED] in Watercolor, FL to verify the Claimant's alleged loss of hours and overtime.⁷ Although management indicated that some store employees lost wages, management could not confirm that the Claimant lost hours or wages.

Based on the foregoing, this claim is denied.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: 4/2/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁴ Claimant [REDACTED] pay stub for pay period 24-30 April 2010.

⁵ $\$3402.38 \times 3 = \$10,207.14$.

⁶ Claimant [REDACTED] pay stub for pay period 11-17 December 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



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0623
26 April 2011

Re: Claim Number: N10036-0623

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 N10036-0623 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary / Determination Form for further explanation.

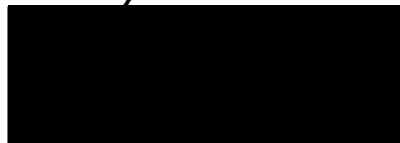
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0623.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

FOIA2011-3380-00002446

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 04/25/2011 |
| Claim Number | : N10036-0623 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$53,506.50 |

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 March 2011, [REDACTED] (Claimant) of Navarre, through its owner [REDACTED] (Owner) presented a claim to the National Pollution Funds Center (NPFC) for \$35,595.00 in loss of profits and impairment of earnings capacity as a result of the Deepwater Horizon oil spill.¹ On 19 April 2011, Claimant revised the sum certain to \$53,506.50, reflecting additional alleged losses through March 2011.²

Claimant is an appraising business serving primarily the coastal housing market in Santa Rosa County, Florida, seven miles from the Gulf of Mexico. Claimant is licensed under the laws of the State of Florida. Properties for which the Claimant normally provides appraisals are in Santa Rosa County, Florida.

Owner has been in the appraisal business for eight years and started her own appraisal business (Claimant) in April of 2007. Claimant asserted that "due to the spill...[real estate] deals were viewed as bad investments...the loan would never even make it to ordering of the appraisal, which in turn had a direct impact on my business."³ Claimant alleged that the Deepwater Horizon oil spill impacted her business as a real estate appraiser, and as a result of this impact, her business income could not cover her expenses⁴ and she had to close her business.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 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 sum certain reflects estimated alleged losses from May through December 2010 plus a \$500.00 early cancellation fee from AT&T.

² Claimant's additional information letter, dated 16 April 2011.

³ Claimant's letter to the NPFC, dated 20 March 2011.

⁴ Id.

⁵ Claimant's additional information letter, dated 16 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 the claim, Claimant submitted the following documentation to the NPFC:

- Cover Letter written by claimant;
- Claimant's letter to the NPFC, dated 20 March 2011;
- (4) Copies of GCCF correspondence, denied claim;
- Corporate Tax Returns for 2008 and 2009;
- (6) Statement of Deepwater Horizon Incident Impact written by claimant;
- News articles on Florida Real Estate sales, the Real Estate Fund and the impact of the Deepwater Horizon Incident;
- Map of Navarre, FL;
- Copy of State Certification as a residential real estate appraiser;
- AT&T statement, dated 14 Mar 2011;
- Sales by Customer Monthly Summaries for April 2007 to March 2010;
- Sales by Customer Summary January 2011;
- Sales by Customer Year Summary January 2011 to April 2011;
- Sales by Customer Year Summary January 2010 to December 2010;
- Sales by Customer Year Summary January 2007 to December 2007;
- Sales by Customer Year Summary January 2008 to December 2008;
- Sales by Customer Year Summary January 2009 to December 2009;
- Corporate Tax Returns for 2007 and 2010;
- Balance Sheets for the entire year 2007, 2008, 2009, 2010, 2011;
- Profit and Loss Statements for 2007, 2008, 2009, 2010, 2011;
- Unpaid Invoice Riggs Reverse Appraisal;

- Letter referenced in claim cover letter from a local vacation property management company regarding local effects of the spill;
- Copy of New Appraisal request from April 2010 to December 2010;
- Claimant's additional information letter, dated 16 April 2011.

On 27 August 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim for \$19,900.00 in lost earnings to the GCCF. Claimant was issued GCCF Claimant ID [REDACTED] and Claim # [REDACTED]. On 20 October 2010, this claim was denied by the GCCF.⁶ On 17 January 2011, Claimant filed a Final Payment claim for \$36,670.00 in lost earnings with the GCCF. Claimant was issued Claim # [REDACTED]. On 6 March 2011, this claim was denied by the GCCF.⁷

On 30 March 2011, Claimant presented this claim for \$53,506.50 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. As noted, this sum certain reflects Claimant's alleged losses through March 2011 and includes a \$500.00 early cancellation fee from AT&T.

NPFC Determination

This claim is denied. Pursuant to 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party. Claimant presented a Final Payment claim to the GCCF for \$36,670.00. Claimant's claim before the NPFC is for \$53,506.50 in loss of profits and impairment of earnings capacity. Any amount of alleged loss exceeding \$36,670.00 is not properly before the NPFC pursuant to 33 C.F.R. § 136.103(a) and is therefore denied for lack of proper presentment to the RP first.

The remainder of Claimant's alleged loss is denied for lack of causation. Although the Claimant indicated that she had 35 appraisal cancellations in 2010, the Claimant admits that she cannot say that these cancellations resulted from the Deepwater Horizon oil spill because "[c]ancellations are not unusual, and I am not usually given a reason when an order is cancelled."⁸ Although the Claimant may have suffered a loss, the Claimant's evidence does not demonstrate 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.

In light of the foregoing, this claim is DENIED.

Claim Supervisor [REDACTED]

Date of Review: 4/26/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ GCCF denial letter Re: Claimant's Emergency Advance Payment claim dated 20 December 2010.

⁷ GCCF denial letter Re: Claimant's Interim/Final Payment claim dated 6 March 2011.

⁸ Claimant's additional information letter, dated 16 April 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

BY MAIL AND EMAIL

5890
5/3/2011

Re: Claim Number N10036-0624

Dear [REDACTED]

I have received an email from your authorized representative, [REDACTED] requesting to withdraw your claim with the National Pollution Funds Center. At this time, your claim file has been withdrawn.

If you decide to submit a claim in the future regarding your alleged loss, all information already provided will have to be resubmitted, along with the additional information we requested.

If you have any questions about the request or would like to discuss the matter, you may write me at the above address, contact me by phone at 800-280-7118, or email me at [REDACTED]

Sincerely, [REDACTED]

[REDACTED]
Claims Manager

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
4/26/2011

By MAIL AND EMAIL

RE: Claim Number: N10036-0626

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 N10036-0626 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 N10036-0626.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form
09/14/11

FOIA2011-3380-0002451

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : April 25, 2011 |
| Claim Number | : N10036-0626 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$75,627.49 |

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 March 31, 2011 [REDACTED] on behalf of [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$75,627.49 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated there was a loss of income from her cosmetology business due to limitations from her work schedule and cancelled appointments due to the oil spill.

Based on information provided by the Claimant, the NPFC understands that the Claimant's business became licensed to practice in the state of Florida in February of 2009. The Claimant stated that "2009 was the ramp up year for 2010." The Claimant also provided documentation showing that she is currently and has been employed with [REDACTED] at the [REDACTED] as the Director of Sales since February 2008.

The Claimant filed an emergency advance payment (EAP) claim and final claim with the GCCF and was given claimant id [REDACTED]. The Claimant's EAP claim was found compensable by the GCCF and was paid \$12,200.00. The final claim was reviewed by the GCCF and offered the Claimant \$5,000.00.

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).

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:

1. NPFC Optional OSLTF Claim Form 29 March 2011;
2. Letter from Claimant to NPFC dated 29 March 2011;
3. State of Florida Board of Cosmetology license, renewed on 15 October 2010 and expiring 15 October 2012;
4. Various pages from 2009 Form 1040 Income Tax Return filing;
5. Profit and Loss Statement from 01 January 2010 through 01 March 2011;
6. General ledger entries from 01 January 2010 through 29 March 2011;
7. Summary of "Combined Losses" as claimed;
8. Various email correspondence regarding wedding cancellations;
9. Handwritten appointment calendar for appointments in 2010;
10. Sublease agreement with [REDACTED] dba [REDACTED]

11. W-2's for all employment in 2008, 2009, and 2010;
12. Paycheck stubs;
13. 2010 1099s for [REDACTED];
14. Copy of Cosmetology license;
15. 2010 Bonus Program guidelines for hotel position (please note the final paragraph where it states that the Bonus Plan is not a contract or agreement).

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. Under 33 C.F.R. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. Claimant not has provided documentation to substantiate a loss profits or that a loss of profits was sustained as a direct result of the Deepwater Horizon incident.

Claimant asserted that she sustained a reduction in income generated from her cosmetology business due to limitations from her work schedule and cancelled appointments. During 2010, the Claimant was employed full-time for [REDACTED] as the Director of Sales. The Claimant stated that it was her intention to work full-time at the hotel during the day and would spend evenings and weekends on her cosmetology business. Following the Deepwater Horizon incident, the Claimant asserted that she was required to work more hours at the hotel, limiting the amount of time she was able to devote to her cosmetology business. Changes to the Claimant's work schedule are considered employment issues between the Claimant and the employer, and not a direct result of the Deepwater Horizon incident.

Also, the Claimant has not provided sufficient evidence to support the actual cancellation of appointments or the likelihood of receiving a certain amount of clients as asserted. The Claimant submitted a list of estimated clients that she expected to receive from a 3rd party referral. However, there are no documents to verify any actual appointments or agreements supporting the number of clients that the Claimant was expecting to service. The actual data provided for the months preceding the Deepwater Horizon incident are not indicative of the volume of clients that the Claimant is basing her claim on.

In addition, the Claimant has not provided documentary evidence to support what the normal level of income would have been. The Claimant stated that her work profile during 2010 would have been similar to 2009, where in both years she would have worked full-time at the hotel and spent evenings and weekends on her cosmetology business. For 2009, Claimant provided an excerpt from her 2009 Schedule C reporting income of \$942. In comparison, the Claimant's income from the cosmetology business during 2010 was \$5,068. Based on this data, there is insufficient information to calculate a loss of income.

In addition to the cosmetology business, the Claimant asserted that she earned reduced bonuses from her employment with [REDACTED]. The Claimant's total income as reported on her form W-2's were \$43,176 and \$51,317 for 2009 and 2010, respectively. Of those amounts, the Claimant received a bonus of \$3,889 during 2009 and \$6,138 during 2010. Based on the documents provided, there is insufficient evidence to calculate a reduction in bonuses. The Claimant's bonus agreement states that bonuses from the current year may be paid in the following year. The Claimant has not provided any earnings statements from 2011. The bonus program also describes certain parameters that must be met for consideration of a bonus, part of which includes the performance of the hotel. The claim submission does not include financial data from the hotel to substantiate whether the Claimant would have qualified for a higher bonus.

The bonus agreement also provides that payments of bonuses are at the sole discretion of the company and therefore not a guarantee.

Based on all information provided by the Claimant, the claim is denied. The Claimant has not provided documentation to substantiate a loss profits in the amount claimed nor has the Claimant proven that the alleged loss was due to the injury, destruction or loss of real property, personal property, or natural resources.

Claim Supervisor: 

Date of Supervisor's review: *4/26/11*

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 # N10036-0627
09 May 2011

Re: Claim Number: N10036-0627

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 N10036-0627 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 N10036-0627.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
Marine Science Technician 1
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002456

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 4 May 2011 |
| Claim Number | N10036-0627 |
| Claimant | Claimant |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$16,080.00 |

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 31 March 2011, [REDACTED] Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$16,080.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works at [REDACTED] a full-service seafood market located in [REDACTED] TX. Claimant is paid in cash and works the register and also performs other duties around the store as needed.¹ Claimant indicated that she suffered reduced wages and ultimately was laid off in June of 2010 due to the Deepwater Horizon oil spill. After losing her job, the Claimant began attending college full-time and unsuccessfully searched for other employment.² Claimant indicated that she was hired back at [REDACTED] on 19 March 2011, but she works Saturdays only.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 § 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 PHONECON between NPFC Representative and [REDACTED] on 07 April 2011

² Letter of claim explanation from Claimant to "whom it May Concern," dated 31 March 2011

³ Optional OSLTF claim form, dated 30 March 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 her claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, dated 30 March 2011;
- Letter of claim explanation from Claimant to "Whom it May Concern," dated 31 March 2011;
- Payment Letter from the GCCF, dated 29 September 2010;
- Form 1040 U.S. Individual Income Tax Return for the years 2008, 2009, and 2010; including a Schedule C for the years 2009 and 2010.
- Letter from Claimant's employer to "whom it may concern," dated 13 June 2010;
- Letter of hardship from Claimant titled "draft," undated
- Letter signed by both Claimant and her employer to "whom it may concern" regarding her 2010 earnings, undated;

On 15 July 2010, Claimant presented a claim to the responsible party, BP. On 23 August 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim of \$18,000.00 in lost profits and earnings to the GCCF.⁴ She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. Claimant was paid \$18,000.00 by the GCCF on 27 September 2010.⁵

⁴ GCCF Filing Report, dated 04 May 2011.

⁵ GCCF Notice of Determination EAP, dated 27 September 2010.

On 01 November 2010, Claimant presented a Final Payment claim for \$144,639.00 in lost profits and earnings to the GCCF. Although the Final Payment claim remains under review,⁶ 90 days has elapsed since it was presented to the RP without settlement. Under 33 C.F.R §136.103(c)(2), Claimant may elect to present their claim to the OSLTF.

On 31 March 2011, Claimant presented this claim for \$16,080.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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. The NPFC considered all of the documentation submitted by Claimant.

The claim is DENIED because the alleged loss in the amount of \$16,080.00 is not 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 provided a letter from her employer at [REDACTED] Seafood in support of her claim. This letter, signed by [REDACTED] owner of [REDACTED], indicated that the Claimant “was let go as a direct result of a slowed market due to the Deepwater Horizon oil spill.”⁷ The NPFC contacted [REDACTED] on 07 April 2011 to confirm the letter. [REDACTED] confirmed writing a letter on Claimant’s behalf several months prior to the call; however, he couldn’t remember exactly what he wrote.⁸ Further, [REDACTED] indicated that, while he believed the company was impacted by the Deepwater Horizon oil spill, he believed it was also affected by the previously struggling economy. Additionally, [REDACTED] indicated that the Claimant’s position was of a seasonal nature, which indicated that the Claimant’s employment was not intended to be full-time work.

Because the evidence presented by the Claimant does not demonstrate the Claimant’s alleged loss of \$16,080.00 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, this claim is DENIED.

Claim Supervisor: [REDACTED]

Date of Supervisor’s Review: *5/9/11*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

⁶ GCCF Filing Report, dated 04 May 2011.

⁷ Letter from Claimant’s employer to “whom it may concern,” dated 13 June 2010

⁸ PHONECON between NPFC Representative and [REDACTED] on 07 April 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 # N10036-0628
4 May 2011



Re: Claim Number: N10036-0628

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 N10036-0628 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

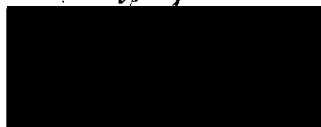
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0628.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002460

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 2 May 2011 |
| Claim Number | N10036-0628 |
| Claimant | Claimant |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$194,000.00 |

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 31 March 2011, [REDACTED] (Owner/Agent), on behalf of Custom Concepts (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$194,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is a company based in Satsuma, AL that rents golf carts and electric vehicles to residents, golf courses, and campgrounds in Gulf Shores, AL. Even though there is a significant distance between Satsuma and Gulf Shores, the owner indicated that he and his employees transport the carts to their customers.¹ Owner asserts that the company's 2010 earnings decreased by more than half from 2009 because 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 § 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 PHONECON between Claimant and NPFC Representative on 5 April 2011.

² Letter of claim explanation, 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 the claim, Owner/Agent on behalf of the Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, dated 31 March 2011;
- GCCF claim form;
- Hardship letter from Claimant, originally dated 23 March 2011; amended with handwriting on 28 March 2011 and 29 March 2011;
- Letter of claim explanation, undated;
- Four Form 1099-MISC's from 2010; one is illegible and one is from the GCCF;
- 2009 Form 1040, page one and Schedule C;
- 2008 Form 1040, page one and Schedule C;

On 4 October 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim of \$62,881.00 for lost profits and earnings to the GCCF.³ Claimant was assigned GCCF Claimant II [REDACTED] and Claimant [REDACTED]. Claimant was paid \$62,900.00 by the GCCF on 13 October 2010.⁴

³ Report from the GCCF, dated 25 April 2011

⁴ GCCF Notice of Determination for Emergency Advance Payment

On 4 October 2010, Claimant also presented a Full Review Final Payment claim of \$62,881.00 for lost profits and earnings to the GCCF.⁵ This Final claim was determined to be deficient on 26 April 2011.⁶

On 31 March 2011, Claimant presented this claim for \$194,000.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

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 Final claim for \$62,881.00 in lost wages/earnings to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$194,000.00 to the NPFC. Any claimed amount of damages exceeding \$62,881.00 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's evidence does not demonstrate (1) the alleged loss in the amount of \$62,881.00 or (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.

Owner/Agent submitted partial tax returns from 2008 and 2009, as well as several 1099-MISC forms from 2010 to support the claim. On 13 April 2011, the NPFC requested additional information from the Claimant to further evaluate the claim. The NPFC requested, among other things, a detailed explanation of the Claimant's business, more comprehensive financial documentation, and information regarding the Claimant's customers and how the Claimant's business was impacted by the Deepwater Horizon oil spill. To date, no response has been received by the NPFC.

Because the Claimant has 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 the alleged loss, 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, this claim is DENIED.

Claim Supervisor 

Date of Supervisor's Review: *5/4/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ GCCF Notice of Determination Re: Claimant's EAP claim dated 13 October 2010.

⁶ Deficiency letter from the GCCF, dated 26 April 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 # N10036-0629
11 May 2011

Re: Claim Number: N10036-0629

D [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 N10036-0629 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 N10036-0629.

Mail reconsideration requests to:

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

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002464

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------|
| Date | 10 May 2011 |
| Claim Number | N10036-0629 |
| Claimant | [REDACTED] |
| Type of Claimant | [REDACTED] |
| Type of Claim | [REDACTED] |
| Claim Manager | [REDACTED] |
| Amount Requested | \$350,000.00 |

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 March 2011 [REDACTED] (Owner/Agent), on behalf of [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$350,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is a company based in Navarre, FL that provides carpet cleaning, vacation rental cleaning, and final/rough cleaning on new construction from Pensacola Beach to Destin, FL.¹ The Owner indicated that “the current status of our company is virtually at a standstill, and has been that way since the BP oil spill.”² Owner explained that there was a domino effect from the Deepwater Horizon oil spill on his business: tourism was down, so property owners did not want to spend money to get their properties cleaned.³

Owner based his alleged loss of \$350,000.00 on the amount of money it would take to relocate the business and start over, which was projected out over three years. Owner asserted that he must relocate because he suffers from Hepatitis C and his body cannot handle the toxins associated with the oil.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 § 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 Letter from Claimant to NPFC Representative, undated.

² *Id.*

³ *Id.*; Letter from Claimant to “whom it may concern,” dated 19 March 2011.

⁴ *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 the OSLTF

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

- OSLTF claim form, dated 25 March 2011;
- Letter from ██████████ to "Whom it May Concern," dated 25 March 2011;
- Letter from ██████████ to "Whom it May Concern," dated 25 March 2011;
- Letter from Claimant to "Whom it May Concern," dated 19 March 2011;
- Printed internet article titled "NASA Data Strengthens Reports of Toxic Rain on the Gulf Coast From BP Spill."
- Printed internet article titled "Gulf spill sickness wrecking lives."
- Printed internet article titled "Gulf Coast fighting for recompense."
- Letter from Claimant to NPFC Representative, undated;
- Customer List;
- Monthly earnings statements from January of 2008 through December of 2010;
- Florida business licenses, from 1 October 2007 through 30 September 2011;
- Form 7004, Application for Filing Extension for 2010;
- Form 1040X, Amended Tax Return for 2008;
- Form 1040X, Amended Tax Return for 2009;
- Form 1120, United States Corporate Tax Return for 2009.

On 23 September 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim for \$55,000.00 in lost profits and earnings to the GCCF.⁵ Claimant was assigned GCCF Claimant ID # ██████████ and Claim ██████████. Claimant was paid \$55,000.00 by the GCCF. On 23 September 2010, Claimant also presented a Final Payment claim (Claim ██████████) to the GCCF for \$55,000.00 in lost

⁵ Report from the GCCF, dated 4 May 2011.
09/14/11

profits and earnings.⁶ On 28 February 2011, Claimant was offered \$25,000.00.00 in compensation for this claim.⁷ Claimant indicated that he has not accepted this offer.⁸

On 31 March 2011, Claimant presented this claim for \$350,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 EAP and Final Payment claims each for \$55,000 in lost profits and earnings to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$350,000.00 to the NPFC. Any claimed amount of damages exceeding \$55,000.00 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, based on a review of the documentation provided and the Owner's admissions, the NPFC concluded that the Claimant has already been fully compensated by the responsible party (RP) for all potential losses sustained.

A large portion of Claimant's asserted damages encompass the cost to relocate the business over the next three years.⁹ However, under 33 CFR § 136.235, "the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*."¹⁰ Therefore, the Claimant cannot be compensated for any prospective damages that might accrue in the future, such as the cost of relocating the business over the next three years.

The remainder of Claimant's asserted business losses were limited to the time from the commencement of the Deepwater Horizon oil spill to the date of presentment to the NPFC, 31 March 2011. The supporting documentation provided by the Claimant indicates that the Claimant has already been fully compensated for the time period specified above. The GCCF paid Claimant \$55,000.00, which exceeds the potential losses for the Claimant as calculated by the NPFC. Notably, although the Claimant's earnings statements show a decrease subsequent to the Deepwater Horizon oil spill, a long term review of the Claimant's finances indicated that the Claimant's yearly profits had been steadily declining long before the Deepwater Horizon oil spill occurred.

Because the Claimant has 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 Claimant has suffered an uncompensated 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, this claim is DENIED.

Claim Supervisor: 

Date of Supervisor's Review: 5/11/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ *Id.*

⁷ Determination on Final Payment, dated 28 February 2011.

⁸ Letter from Claimant to "whom it may concern," dated 19 March 2011.

⁹ Letter from Claimant to NPFC Representative, undated.

¹⁰ Emphasis added.

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
5/18/2011

SENT VIA MAIL AND EMAIL

[REDACTED]

[REDACTED]

RE: Claim Number: N10036-0630

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 N10036-0630 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 N10036-0630.

Mail reconsideration requests to:

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

[REDACTED]

U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002468

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : May 18, 2011 |
| Claim Number | : N10036-0630 |
| Claimant | [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$691,793.89 |

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 April 1, 2011, the National Pollution Funds Center (NPFC) received a claim from [REDACTED] via their authorized agent, [REDACTED] of Gulf Coast Claims Resolution, Claim Consultant for [REDACTED] (Claimant), owner of [REDACTED] for lost profits and earnings in the amount of \$691,793.89. The Claimant provided an Authorization dated March 30, 2011, authorizing [REDACTED] to act on their behalf for the submission of the claim.

Based on the information provided by the Claimant, the NPFC understands that the Claimant is the owner of [REDACTED]. The Claimant asserted that [REDACTED] is a “well-known supplier of ‘live bait’, general fishing equipment, and beach toys for the beach goers”¹ in Galveston, Texas. The Claimant stated that “due to the BP oil spill disaster, many regular clients and tourists simply avoided fishing in the waters off of Galveston, Texas, for which they would have purchased ‘live’ bait from Smitty's Bait House.”

Based on information provided by the Claimant and a review of the GCCF database, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF on November 19, 2010 for \$68,711.07 and was issued claimant ID [REDACTED]. The claim was subsequently denied. An interim claim was later submitted to the GCCF on April 1, 2011 for \$691,793.89 and is currently ‘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).

¹ Explanation letter dated March 30, 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 support the claim, the Claimant submitted the following documentation:

- NPFC Optional OSLTF Claim Form dated 14 March 2011;
- Letter from [REDACTED] of Gulf Coast Claims Resolution to NPFC, dated 30 March 2011;
- Invoice for services from Gulf Coast Claims Resolution;
- Letter from [REDACTED] authorizing the NPFC to contact [REDACTED];
- GCCF Claim Form;

- Emergency Advance Payment Denial letter from GCCF dated 09 December 2010;
- Claim computation totaling \$687,293.89;
- “Financial Summaries” – 2006 through 2010;
- “Summary by Species” Reports from May 2009 through December 2010;
- Income tax returns for 2007, 2008, 2009, and 2010;
- Monthly Profit and Loss statements for the periods of 2007-2010.

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. Under 33 C.F.R. § 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 Claimant [REDACTED] provided various financial documents to substantiate their earnings and claimed losses. Based on those financial documents, it does not appear that the Claimant has sustained a loss of profits. Sales data provided for [REDACTED] indicated a decline in sales trends in the 6 months prior to the Deepwater Horizon incident. On a monthly basis, sales figures declined to levels equivalent to the same month of the prior year.

In statements provided by the Claimant, it indicated that they were impacted by Hurricane Ike during September 2008 and the months thereafter. Following Hurricane Ike, they reopened to full operations before their competitors, during November 2008. [REDACTED] stated that many of their competitors chose not to rebuild following Hurricane Ike or reopened at a later time. As such, they were able to increase sales and capture increased market share towards the end of 2008 and into the beginning of 2009. Annual sales from 2007 through 2010 are as follows:

| Annual Sales | | | |
|--------------|-----------|-----------|-----------|
| 2007 | 2008 | 2009 | 2010 |
| \$520,571 | \$521,975 | \$976,422 | \$773,173 |

Although sales increased following their recovery from Hurricane Ike, it is evident from the sales data shown below, that monthly sales were declining to levels comparable to the prior year. As shown below, sales from the months of May 2009 through October 2009 were considerably higher than the same period of the prior year. However, when reviewing the months of November 2009 through April 2010, monthly sales appear consistent with those of the prior year.

| Month | Monthly Sales | | Monthly Trend | Cumulative Reverse Trend |
|-----------|---------------|-----------|---------------|--------------------------|
| | 2008/2009 | 2009/2010 | | |
| May | \$67,901 | \$137,799 | 102.94% | 58.06% |
| June | \$57,719 | \$125,791 | 117.94% | 52.38% |
| July | \$65,238 | \$121,236 | 85.84% | 44.47% |
| August | \$51,468 | \$112,512 | 118.61% | 37.94% |
| September | \$13,927 | \$96,970 | 596.27% | 26.46% |
| October | \$43,005 | \$77,072 | 79.22% | 3.64% |

| | | | | |
|----------|----------|----------|---------|---------|
| November | \$85,068 | \$88,426 | 3.95% | -7.02% |
| December | \$29,320 | \$26,212 | -10.60% | -11.27% |
| January | \$25,806 | \$20,018 | -22.43% | -11.37% |
| February | \$25,288 | \$15,966 | -36.86% | -9.64% |
| March | \$69,308 | \$59,906 | -13.57% | -4.69% |
| April | \$70,002 | \$72,864 | 4.09% | 4.09% |

In the 12 months prior to the Deepwater Horizon incident, there have been both positive growth trends early in the period and declining growth trends leading up to the date of the incident. As the trends of the business appear to show both an increase as well as a pattern of returning to sales consistent with the prior year, it is reasonable to consider a 2-year average when projecting monthly sales for 2010. Below is the monthly average from the prior two years compared to the actual sales from May through December 2010.

| Month | 2008/ 2009 | 2009/ 2010 | Average | Actual 2010 Sales |
|--------------|---------------|---------------|------------------|----------------------|
| May | \$67,901 | \$137,799 | \$102,850 | \$105,158 |
| June | \$57,719 | \$125,791 | \$91,755 | \$84,946 |
| July | \$65,238 | \$121,236 | \$93,237 | \$86,490 |
| August | \$51,468 | \$112,512 | \$81,990 | \$79,449 |
| September | \$13,927 | \$96,970 | \$55,449 | \$72,387 |
| October | \$43,005 | \$77,072 | \$60,039 | \$88,142 |
| November | \$85,068 | \$88,426 | \$86,747 | \$55,144 |
| December | \$29,320 | \$26,212 | \$27,766 | \$32,703 |
| TOTAL | | | \$599,832 | \$604,419 |

When projecting sales based on the average of the past two years, it shows that sales from May 2010 through December 2010 are consistent, if not slightly higher, than those averages. Therefore, it does not appear that Claimant has sustained a financial loss.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$691,793.89, 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.

Claim Supervisor: 

Date of Supervisor's review: 5/18/11

Supervisor Action: *Denial approved*

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

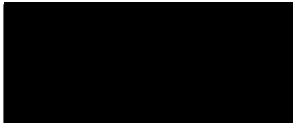
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0631
12 May 2011



RE: Claim Number: N10036-0631

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 N10036-0631 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

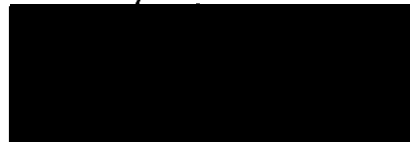
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0631.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | 11 May 2011 |
| Claim Number | N10036-0631 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$12,890.15 |

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 25 May 2010, Claimant filed a claim with the responsible party, BP, and was compensated \$1,949.85. On 02 September 2010, the Claimant filed a six-month Emergency Advance Payment claim with the GCCF and was compensated \$7,600.00. On 21 April 2011, the Claimant filed an Interim claim with GCCF and was offered a Quick Pay Final Payment of \$5,000.00.

According to the GCCF and confirmed with the Claimant, the Claimant has received and executed a Release and Covenant Not to Sue by accepting the Quick Pay Final Payment under GCCF Claimant ID [REDACTED] and Claim # [REDACTED].

CLAIM AND CLAIMANT

On 1 April 2011, Claimant presented an optional Oil Spill Liability Trust Fund (OSLTF or Fund) claim form to the National Pollution Funds Center (NPFC) seeking \$12,890.15 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil-spill.²

Claimant asserted she was a cook and was laid off as a result of the Deepwater Horizon oil spill.³ Claimant stated that she worked temporarily from 15 December 2010 to 25 February 2011 and is on the job hunt.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,

¹ PHONECON between Claimant and NPFC on 03 May 2011.

² Claimant's OSLTF Claim Form submitted to NPFC on 01 April 2011.

³ OSLTF claim form.

⁴ 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 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 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 his claim, Claimant submitted the following documentation:

- OSLTF claim form, dated 25 March 2011;
- Hardship Letter and explanation of loss;
- 2010 W-2 from [REDACTED] of Pensacola;
- 2010 W-2 from [REDACTED];
- 2010 Misc 1099 from [REDACTED] (BP payment);
- 2010 Misc 1099 from Deepwater Horizon Oil Spill Trust c/o Gulf Coast Claims Facility;
- 2009 W-2 from [REDACTED];
- 2008 W-2 from [REDACTED];
- 2008 W-2 from [REDACTED];
- 2008 W-2 from [REDACTED];
- Various Expenses and Loans;

Claimant seeks \$12,890.15 in lost profits and earnings allegedly as a result of 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. The NPFC considered all documentation presented by the Claimant.

Based on the information presented by the Claimant and information available to the NPFC, the BP/GCCF paid a total of \$14,549.85 (\$1,949.85+\$7,600.00+\$5,000.00) 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 Quick Payment.

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 \$12,890.15 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: 

Date of Supervisor's Review: *5/12/11*

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

BY MAIL AND EMAIL

5890
5/11/2011

RE: Claim Number: N10036-0632

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 N10036-0632 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 N10036-0632.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager
U.S. Coast Guard

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

FOIA2011-3380-00002477

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : May 11, 2011 |
| Claim Number | : N10036-0632 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$1,181,723.62 |

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 April 1, 2011, [REDACTED] presented a claim to the National Pollution Fund Center (NPFC) on behalf of [REDACTED] (Claimant), on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$1,181,723.62 in lost profits and earning capacity resulting from the Deepwater Horizon incident. A signed letter from the Claimant dated March 30, 2011 was provided to authorize [REDACTED] to act on behalf of the Claimant.

Claimant asserted that [REDACTED] is a direct processor and supplier of Gulf Coast Wild Caught brown/white shrimp, fish, and oysters to retailers, restaurants, hotels, grocers, markets, resellers and consumers. The Claimant stated that, "demands from clients have been high; however, due to limited or unavailability, in addition to increased prices of 145-225% than previous years, we have made little or no profit to cover normal operating expenses."

The Claimant provided a denial letter for their emergency advance payment claim with the GCCF dated December 16, 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 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 Optional OSLTF Claim Form dated 30 March 2011;
- Letter from [REDACTED] of [REDACTED] to GCCF, dated 23 November 2010;
- GCCF Claim Form;
- Emergency Advance Payment denial letter from GCCF dated 16 December 2010;
- Billing invoice from Gulf Coast Claims Resolution of \$8,250;
- Page 1 of U.S. Corporate Income Tax Return filing from 2008 and 2009;
- Monthly Profit and Loss statements from January 2008 through December 2010. A statement was provided for January 2007 through December 2007, however; the figures presented are identical to the statement provided for 2008. It is assumed that the document title is incorrect and we have a duplicate copy of the 2008 statement;
- "Sales by Customer Detail" report for [REDACTED] from 08 May through 23 November 2010. Report show sales solely to [REDACTED] and the transaction dates are limited the period 20 August through 19 September 2010;
- Letter from [REDACTED] to [REDACTED] dated 29 October 2010, stating that they have gone elsewhere to purchase shrimp products;
- "Financial Summaries" for 2007, 2008, 2009 and 2010;

- “Lost Profit Calculation” totaling \$1,189,973.62.

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. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that their income was reduced as a result of the Deepwater Horizon incident.

On April 12, 2011, the NPFC sent, via electronic mail to [REDACTED] request for additional information to the Claimant in order to obtain necessary information to adjudicate the claim. The documentation requested consisted of the following:

1. Complete Income Tax Return Filings for the business from 2008 and 2009 including all attachments and schedules. Please note only Page 1 from the Corporate Income Tax Return was provided.
 - a. If the 2010 Income Tax Return is available, please provide a copy.
2. Detailed Sales Ledger from 2009 and 2010, showing customer name and product type.
3. Detailed listing of purchases from 2009 and 2010 including the following:
 - a. Source of product
 - b. Name of supplier
 - c. Date of purchases
 - d. Product type
 - e. Quantity and price.
4. If products are purchased or sold through contracts, provide copies of all contracts from 2009 and 2010.
5. Provide documentation to support the following:
 - a. Cancellation of orders, reductions in purchases or shipments from customers.
 - b. Notifications or correspondence from suppliers indicating a shortage in product.

The NPFC also requested the Claimant answer the following questions:

1. Describe in detail, the nature of your business including the following:
 - a. Type of products you sell.
 - b. Typical customers of your business (i.e. wholesales, commercial, retail, etc...).
 - c. Your sources for product.
 - d. Size of your business, including a description of the physical location as well as the number of employees working for you.
2. Describe any significant changes to your business from 2007 through 2010.
3. Your claim includes a projected growth trend of 43%.. Please explain what factors were in place to facilitate such a growth trend in your sales.
4. From October 2009 through April 2010, monthly sales are lower than the same month of the prior year. Please identify any factors leading to declining sales.
5. Please explain the “Uncategorized Income” of \$411,913.77 shown on your Profit and Loss Statement for February 2009.

6. Your claim suggests that although customer demand was high, supply was lacking and product prices increased. Describe in detail, what actions your business took to mitigate the claimed increase in prices and shortage of supply.
7. Your claim includes multiple types of economic losses. Please describe each item as shown on the "Lost Profits Calculation":
 - a. Lost profits due to non-standard sale. Please explain this and the relevance of your sales to [REDACTED]
 - b. Cost increases of 145% to 225%. Please provide documentation to support this assertion as your Profit and Loss statement does not reflect an increased cost of sales comparable to these amounts.
 - c. Lost contract with [REDACTED] Please provide the referenced contract.
 - d. Lost contract with [REDACTED] Please provide the referenced contract.

The Claimant has not provided the additional documentation nor answered any of the questions to support the claim in order to demonstrate a loss of profits and earnings. Because of the Claimant's failure to respond to the NPFC's request for additional information, the claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits in the amount claimed and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor [REDACTED]

Date of Supervisor's review: *May 11, 2011*

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

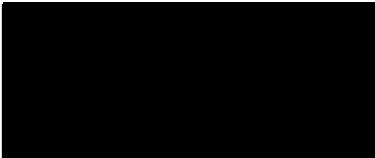
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0633
28 April 2011



RE: Claim Number: N10036-0633

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 N10036-0633 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

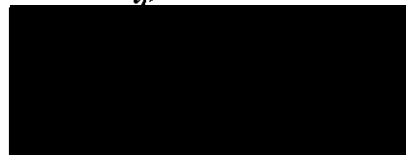
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0633.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002482

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | 26 April 2011 |
| Claim Number | N10036-0633 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$9,500.00 |

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 33 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$9,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant owns and operates an amusement ride business. Claimant provides his equipment and services at local festivals, events and private parties in the areas of Destin and Ft. Walton, FL. Claimant alleged that as a result of the Deepwater Horizon oil spill, he had lots of cancelations and fewer people paid for his equipment and services at festivals, events and private parties.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.

¹ Additional information response from the Claimant.

- (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 to the NPFC:

- 1) Optional OSLTF claim form dated 25 March 2011;
- 2) GCCF denial letter for an emergency advance payment dated 01 December 2010;
- 3) Letter from Claimant explaining that tourism was down in Walton County, FL;
- 4) U.S. Individual Income Tax Return form 1040 for 2008, 2009, and 2010;
- 5) Additional information response from the Claimant.

On 12 November 2010, Claimant presented a six-month Emergency Advance Payment claim for \$9,500.00 in lost wages/earning to the GCCF. He was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 01 December 2010, this claim was denied by the GCCF.²

On 04 April 2011, Claimant presented this claim for \$9,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

² GCCF denial letter for an emergency advance payment dated 01 December 2010.

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 claim is denied because the Claimant's evidence does not demonstrate that his alleged loss in the amount of \$9,500.00 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.

In reviewing this claim, the NPFC requested that the Claimant provide documentation that his alleged losses resulted from the Deepwater Horizon oil spill. The Claimant indicated that he is "a seasonal business that is booked in advance," but when the NPFC requested evidence of cancelled contracts, the Claimant indicated that he had none.³ Claimant maintains that a downturn in the Gulf Coast economy resulted in less entertainment spending.

Claimant also failed to adequately respond to the NPFC's letter requesting additional information. In response to the letter, the Claimant provided a three paragraph email.⁴ No supporting documentation was produced to corroborate the Claimant's alleged loss or the correlation between this alleged loss and the Deepwater Horizon oil spill.

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: 

Date of Supervisor's Review: *4/28/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³ Letter from Claimant explaining that tourism was down in Walton County, FL; PHONECON between the NPFC and Claimant on 26 April 2011.

⁴ Additional information response from the Claimant, emailed 19 April 2011.

U.S. Department of
Homeland Security

United States
Coast Guard



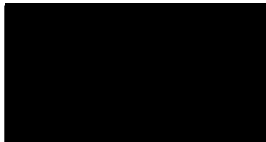
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
4/5/2011

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0634

Dear [REDACTED]

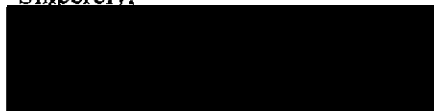
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 CFR Part 136, denies payment on the claim number N10036-0634 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-0634.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form
09/14/11

FOIA2011-3380-00002486

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 4/5/2011 |
| Claim Number | : N10036-0634 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| 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 April 1, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$5,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant only provided page one of the two page OSLTF claim form. Claimant provided no explanations, assertions, arguments, etc. associated with the \$5,000.00 she requested on her claim form.

The Claimant has not provided adequate supporting documentation for the claim besides her 2010 Form 1040EZ demonstrating income in the amount of \$750.00 and her correlating 2010 W2. The Claimant also has not explained how she derived at her alleged loss.

The Claimant stated that she filed a claim with the GCCF on September 1, 2010 and was subsequently denied. The Claimant has not provided a copy of her denial letter.

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 her claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim form, undated.

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. The NPFC considered all documentation presented by the Claimant.

Upon review of the Claimant's submission, the NPFC had determined that the Claimant has failed to meet her burden to demonstrate she has a loss of profits and earnings that resulted from

the injury, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

The Claimant has not provided comparable financial information as required nor has the Claimant provided an explanation of how she derived her alleged loss amount claimed. Should the Claimant decide to request reconsideration of this determination, all comparable financial information will need to be provided, including but not limited to bank statements, W2s, three years of income tax filings, documentation associated with any and all unemployment compensation applied or received over the past three years, and a copy of the Claimant's pay stubs for employment. Until such time as the Claimant can demonstrate a loss of profits, this claim is denied.

Claim Supervisor:



Date of Supervisor's review: *4/5/11*

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

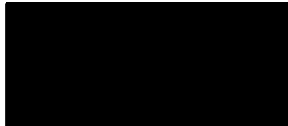
NPFC CA MS 7100
US COAST GUARD



Fax: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0635
2 May 2011



RE: Claim Number: N10036-0635

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 N10036-0635 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

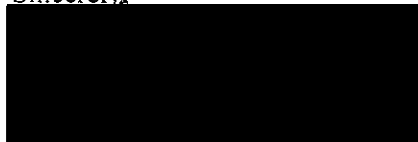
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0635.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 28 April 2011 |
| Claim Number | N10036-0635 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$40,000.00 |

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 30 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$40,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Since 2000, the Claimant has worked as a residential mortgage originator for [REDACTED]. Her operational territory runs along the Gulf Coast, from Baldwin County, Alabama to Walton County, Florida.¹ Claimant indicated that she is compensated on a draw/commission basis whereby she earns commission on closed real estate transactions after she validates her monthly draw, i.e., generates earnings in excess of her monthly base threshold.² Claimant stated that all of her business is generated by referrals from professionals in the real estate industry, with the majority of referrals coming from realtors and builders.³

Claimant asserted that beginning in May 2010, "there was little or no activity for real estate because of the [Deepwater Horizon oil] spill," and that given her profession's reliance on the vitality of the real estate industry, this drought caused her total earnings for 2010 to decrease in comparison to her average earnings over the previous three years.⁴ She has not, however, indicated precisely how she calculated her claimed damages in the amount of \$40,000.00.

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.

¹ Letter from Claimant to NPFC in response to additional information request, dated 22 April 2011.

² *Id.*

³ *Id.*

⁴ *Id.* (listing average yearly earnings for 2007-2009 as \$101,200.00). Claimant's 2010 gross earnings were \$63,637.42 as indicated by her 2010 W-2 from [REDACTED]

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

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

- OSLTF claim form signed by Claimant and dated 30 March 2011;
- Handwritten statement describing Claimant's alleged loss, undated;
- 31 December 2009 earnings statement from [REDACTED] showing end of year earnings of \$113,521.51 (with \$83,910.06 from commissions);
- Earning statements from [REDACTED] for 09 January 2010 to 31 December 2010 showing end of year earnings of \$75,635.64 (with \$32,947.23 from commissions) on December 31, 2010;
- Earning statements from [REDACTED] for 08 January 2011 to 05 March 2011 showing no 2011 commission earnings to date;
- W-2's from [REDACTED] for 2009 to 2010;

- Federal income tax return for 2009;
- State of Florida driver's license;
- Letter from Claimant to NPFC in response to request for additional information, dated 22 April 2011.

On 05 November 2010, Claimant submitted a six-month Emergency Advance Payment (EAP) claim for \$24,000.00 in lost wages/earnings to the GCCF. She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED].⁵ On 01 December 2010, the EAP claim was denied by the GCCF.⁶ Then on 28 January 2011, Claimant presented an Interim Payment claim (Claim # [REDACTED]) for \$40,000.00 in lost wages/earnings to the GCCF.⁷ On 09 March 2011, the Interim Payment claim was denied by the GCCF.⁸

On 01 April 2011, Claimant presented this claim for \$40,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

Although the financial documentation provided by the Claimant demonstrates a decrease in net wages from 2009 to 2010, the Claimant has not provided additional documentation requested for a comprehensive comparison of the Claimant's income during the claimed loss period and years prior to 2009 as required by 33 C.F.R. § 136.233(c).

Additionally, the Claimant has not provided any evidence demonstrating that specific mortgage applications were withdrawn, withheld or denied due to the damage or destruction of natural resources or property as a result of the Deepwater Horizon oil spill, and therefore has also failed to satisfy the evidentiary requirements of 33 C.F.R. § 136.233(b).

On 05 April 2011, the NPFC sent a letter to the Claimant requesting the above referenced information, along with additional information necessary to further evaluate the claim. The Claimant responded via email on 20 April 2011 and requested an extension of time to provide this information. The NPFC granted this extension. On 26 April 2011, the Claimant responded with a one page summary that encompassed less than half of the requested information, and contained no new financial documentation. The Claimant did not explain her inability to provide the requested information in its entirety.

Because Claimant has failed to demonstrate (1) the amount of her profits or earnings in comparable periods besides 2009 and (2) that her alleged loss is due to not 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.

⁵ GCCF Filing Report, dated 18 April 2011.

⁶ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 01 December 2010.

⁷ GCCF Filing Report, dated 18 April 2011.

⁸ GCCF denial letter Re: Claimant's Interim Payment claim, dated 09 March 2011.

Claim Supervisor



Date of Supervisor's Review: *5/1/11*

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 # N10036-0638
29 April 2011

Re: Claim Number: N10036-0638

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 N10036-0638 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 N10036-0638.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-0002495

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 4/27/2011 |
| Claim Number | : N10036-0638 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$48,970.04 |

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 04 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$48,970.04 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill

Claimant asserted that he "was working in FL on a dredging crew when [the Deepwater Horizon oil] spill . . . hit the FL coast [resulting in] dredge ops shut down."¹ Claimant alleged that as a result of the Deepwater Horizon oil spill, he lost his job and went on unemployment.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 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's OSLTF Claim form submitted to the NPFC on 4 April 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 his claim, Claimant submitted the following documentation to the NPFC:

- OSLTF Optional Claim Form dated 4 April 11.
- Copy of 1099-G.
- Copy of Unemployment Insurance History dated 31 August 2010 to 26 October 2010.
- Copy of Bank Statement January 2010 to March 2010; May 2010 to September 2010; November 2010 to December 2010.
- Copy of Payroll History Report dated January 2008 to September 2009.
- 2008 and 2009 U.S. Federal Tax Return.
- 2010 W-2 Wage and Tax Statement.
- Copy of Rent Account Ledger dated 22 December 2010.

On April 5, 2011, the NPFC sent the Claimant a letter requesting additional information. On April 26, 2011, the Claimant responded by providing the following additional information:

- Copy of Bank Statement February 2010 to March 2010; May 2010 to September 2010; November 2010 to December 2010,
- Copy of Unemployment statements for May, June, October, November and December, and;
- A written statement providing employer contact information.

On 19 October 2010, Claimant filed a six-month Emergency Advance Payment claim for \$53,082.00 in lost wages/earnings with the GCCF. He was assigned GCCF Claimant ID # [REDACTED] and Claim [REDACTED]. On 20 December 2010, this claim was denied by the GCCF.⁴

³ GCCF Filing Report, dated 18 April 2011.

⁴ GCCF denial letter Re: Claimant's Emergency Advance Payment claim dated 20 December 2010.

On 16 January 2011, Claimant filed an Interim Payment claim for \$14,691.12 in lost wages/earnings with the GCCF.⁵ He was assigned Claim [REDACTED]. On 22 April 2011, this claim was denied by the GCCF.⁶

On 04 April 2011, Claimant presented this claim for \$48,970.04 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 claim is DENIED because the Claimant's evidence does not demonstrate (1) his alleged loss in the amount of \$48,970.04, as claimed, or (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.

Claimant alleged that as a result of the Deepwater Horizon oil spill, he lost his job as a dredge hand and went on unemployment to mitigate his damages. Although the Claimant estimated his lost earnings at \$48,970.04, he provided no explanation for how he calculated this sum certain. Claimant's tax documentation indicates that he earned \$49,680.00 in 2008, \$22,072.00 in 2009 and a total of \$15,019.00 in 2010.⁷ From 30 May 2010 through 28 May 2011, Claimant was entitled to a maximum unemployment benefit amount of \$4,836.00. It is unclear from this documentation how the Claimant arrived at his loss figure of \$48,970.04.

Additionally, the NPFC attempted to contact the Claimant's former employers to verify the impact of the Deepwater Horizon oil spill on his loss of employment. The NPFC left messages with [REDACTED] of Houston, TX and [REDACTED] of Salt Lake City, Utah. Neither employer has been responsive to the NPFC's request for assistance.

Because the Claimant has failed to demonstrate (1) his alleged loss in the amount of \$48,970.04, as claimed, and (2) the correlation, if any, between this alleged loss and 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 [REDACTED]

Date of Review: 4/29/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ GCCF Filing Report, dated 18 April 2011.

⁶ GCCF denial letter Re: Claimant's Interim Payment claim, dated 22 April 2011.

⁷ Claimant's 2010 total represents earnings from three different employers.

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 # N10036-0639
27 April 2011

Re: Claim Number: N10036-0639

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0639 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 N10036-0639.

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 Manager
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002499

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 20 April 2011 |
| Claim Number | N10036-0639 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| 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 04 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$15,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant reportedly worked for [REDACTED] in Panama City Beach, FL. Claimant alleged that as a result of the Deepwater Horizon oil spill, he lost his job.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

¹ Fax cover sheet to the NPFC.

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 his claim, Claimant presented an Optional OSLTF Claim Form, signed 31 March 2011, ten check stubs for the period 22 February 2010 through 02 May 2010, and 2010 W-2 from [REDACTED]

Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF.² He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 08 December 2010, this claim was denied by the GCCF.³ Claimant thereafter filed a Full Review Final Claim with the GCCF for \$15,000.00 (Claim [REDACTED]). This claim remains pending before the GCCF.

On 04 April 2011, Claimant presented this claim for \$15,000.00 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 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 his claim.

In reviewing this claim, the NPFC contacted the human resources representative for [REDACTED] located in Panama City, FL (Claimant's reported employer). The HR representative

² Claimant indicates that he cannot remember the amount of his EAP claim. PHONECON between the NPFC and Claimant on 26 April 2011.

³ GCCF denial letter Re: Claimant's Emergency Advance Payment claim dated 08 December 2010.

confirmed that the Claimant had worked for [REDACTED] from 04 March through 21 May 2010. The HR representative also indicated that [REDACTED] is a seasonal business with seasonal increases and decreases in employment. The HR representative stated that the Claimant was taken off the schedule temporarily, but advised to return for work during the summer seasonal increase. The HR representative declared that “[u]nder no circumstances was [Claimant] laid off due to the oil spill.”⁴

This claim is denied because the alleged loss in the amount of \$15,000.00 is not 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: *4/27/11*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

⁴ Email from [REDACTED] Human Resources/Accountant to the NPFC dated 15 April 2011.
09/14/11

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

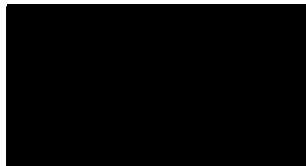
NPFC CA MS 7100
US COAST GUARD



5690
5/13/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0640

Dear [REDACTED]

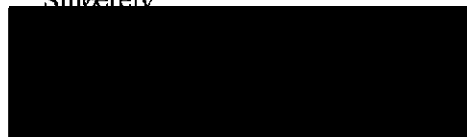
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0640 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination 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 N10036-0640.

Mail reconsideration requests to:

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

Sincerely



Lead Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-0002503

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 5/13/2011 |
| Claim Number | : N10036-0640 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$60,000.00 |

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 4 April 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$60,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant alleged on his OSLTF Claim Form that he was a certified disaster relief worker and a former student. The Claimant further asserted that he lost his job and college funding.

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;
- (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, Claimant submitted the following documentation:

1. OSLTF Claim Form, undated;
2. One page copy from [REDACTED], undated that indicates Claimant to get a tax refund of \$899.00;
3. Copy of a letter from [REDACTED] to the Claimant (undated) inviting Claimant to apply for summer work;
4. Copy of one pay stub from [REDACTED] for pay period 7/17/10;
5. Copy of W-2 from [REDACTED] (P2S) for 2010;
6. Copy of a letter from [REDACTED] High School dated 9/8/10 stating Claimant was enrolled in High School in Prattville, AL on 1/29/07 and entered [REDACTED] School in Panama City, FL on 8/24/09;
7. Copy of GCCF denial letter dated 10/13/10;
8. Copy of GCCF denial letter dated 11/09/10;
9. Copy of GCCF deficiency letter dated 1/29/11.

It is important to note that the NPFC contacted the GCCF after receiving an authorization email from the Claimant to obtain a full copy of the Claimant's file. The GCCF provided the following documentation in support of the claim:

1. Copy of a handwritten letter from Claimant to BP dated 10/6/10;
2. Copy of one pay stub from [REDACTED] for pay period 6/19/10;
3. Copy of GCCF online claim submission dated 10/6/10;
4. Copy of 24 HR. HAZWOPER TRAINING certificate dated 6/26/10;
5. Illegible copy of Social Security card and other ID;
6. Copy of email dated 11/9/10 to GCCF giving change of address;
7. Copy of Final Claim submission dated 11/5/10 to GGCF;
8. Copy of Interim Claim submission dated 1/28/11 to GCCF;
9. Copy of Income Tax Form 1040 for 2010 showing annual income of \$4,770.00.

On 05 October 2010, Claimant presented a six-month Emergency Advance Payment claim for \$8,000.00 in lost profits and earnings to the GCCF. Claimant was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied by the GCCF.¹ On 4 November 2010, Claimant presented a Full Review Final Payment claim (Claim [REDACTED]) for \$30,000.00 in lost profits and earnings to the GCCF. This claim was denied by the GCCF. On January 28, 2011, Claimant presented a Interim Payment claim (Claim [REDACTED]) for \$60,600.00 in lost profits and earnings to the GCCF. This claim was denied by the GCCF.

On 4 April 2011, Claimant presented this claim for \$60,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 earnings capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is DENIED because the Claimant's evidence does not demonstrate that the alleged loss in the amount of \$60,000.00 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 nor has the Claimant provided a clear description of how he arrived at the amount requested.

Although the Claimant alleged \$60,000.00 in loss of profits as a result of the Deepwater Horizon oil spill, the Claimant has failed to demonstrate the correlation between this alleged loss and the oil spill. The Claimant stated that he lost his job(s) due to the oil spill. The Claimant has provided no evidence to substantiate this assertion.

Furthermore, the Claimant is unable to provide comparable financial documentation prior to 2010 since the Claimant was a High School. Should the Claimant decide to come back in for reconsideration, the Claimant will need to provide a name and contact phone number for [REDACTED] so that the NPFC can confirm the reason for the Claimant's employment ending, as well as the Claimant will need to demonstrate how he has an alleged loss of \$60,000.00.

Because (1) the Claimant failed to demonstrate that the alleged loss of \$60,000.00 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 and (2) failed to prove a loss in the amount claimed of \$60,000.00 by way of comparable financial documentation, this claim is DENIED.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 5/13/11

Supervisor Action: *Denial approved*

¹GCCF Denial Letter 09 November 2010 for Claimant's Emergency Advance Payment claim.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

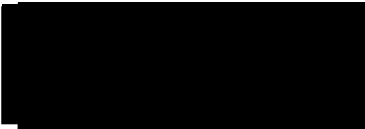
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000

Fax: 202-493-6937

5890
5/12/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0641

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 N10036-0641 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

| | |
|------------------|--|
| Date | : 5/12/2011 |
| Claim Number | : N10036-0641 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$29,400.03 |

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 April 2011 [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$29,400.03 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant was employed by [REDACTED], as an independent contractor for the first month of her employment and then converted to full time employee status at the company office in Madisonville, LA. She worked as an Executive Assistant, effective 08 February 2010.² On 14 July 2010, [REDACTED], provided written notification of the closure of the Madisonville Office effective 31 August 2010, due the office's relocation to Houston, Texas, and confirmation that the Claimant's last day of employment was to be 31 July 2010.³

On 23 August 2010, the Claimant presented a six-month Emergency Advance Payment claim for \$18,000.00 in lost earnings to the GCCF.⁴ She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 23 October 2010, this claim was denied by the GCCF.

On 15 November 2010, the Claimant presented a Final Payment claim to the GCCF (Claim # [REDACTED]). On 01 April 2011, this claim was denied by the GCCF.⁵

¹ Claimant's OSLTF claim form, submitted to the NPFC on 04 April 2011. This loss is broken down into \$28,500.03 for salary and \$900.00 for cell phone.

² [REDACTED] letter offering employment; undated.

³ [REDACTED] letter to Claimant of 14 July 2010.

⁴ GCCF Filing Report, dated 19 April 2011.

⁵ GCCF denial letter Re: Claimant's Final Payment claim, dated 01 April 2011.

REQUEST FOR RECONSIDERATION:

On May 9, 2011, the Claimant faxed a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim. The NPFC denied the claim originally on April 21, 2011 because (1) the Claimant has not proven that the alleged losses 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 as a result of the Deepwater Horizon oil spill and (2) the Claimant has only presented claims to the RP in the total amount of \$18,000.00 therefore the Claimant has not made proper presentment of all costs subject of the claim to the Responsible Party (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.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via facsimile received by the NPFC on May 9, 2011. To support her request for reconsideration, the claimant provided a letter of explanation dated May 8, 2011, original claim form, Check Six information (employer), original job offer letter dated February 4, 2010, termination letter dated July 14, 2010, email from employer dated March 4, 2010 confirming Claimant converting to full time status employee, and all pay stubs from employment with Check Six.

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. 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.

Based on the Claimant's statement on reconsideration regarding her disagreement with the NPFC identifying her as an independent contractor, the NPFC has determined that she started as an independent contractor and in March 2010 was converted to a full time status employee.

With respect to the Claimant's further explanation regarding the office closing, she stated..."My termination on July 31, 2011 was solely because the office was officially closing due to the Oil Spill that ultimately resulted in the moratorium."⁶ Based on all the evidence presented by the Claimant and obtained by the NPFC, it is clear that ██████████ closed the Madisonville, LA office due to business dropping in the Gulf of Mexico as quoted by General Counsel.

Additionally, the NPFC denied all costs presented to the NPFC in excess of \$18,000.00 as not having been properly presented to the RP. The NPFC cannot consider any amount in excess of \$18,000.00 for alleged loss of profits because the Claimant has not made proper presentment of the claim to the Responsible Party (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

⁶ See page 3 of the Claimant's May 8, 2011 reconsideration letter

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 Claimant has not addressed this issue at all on reconsideration.

The claim in the amount of \$29,400.03 is denied upon reconsideration. The claim is denied because (1) the Claimant has not properly presented all costs to the RP and (2) the Claimant has failed to meet the burden to show that the alleged loss 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 as opposed to the employer closing down the business with no alternative employment options for the Claimant.

Claim Supervisor:

Date of Supervisor's review: *5/12/11*

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

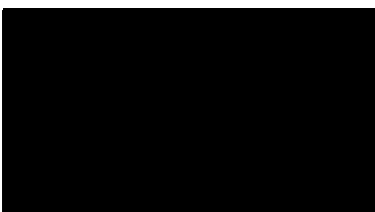
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0644
16 May 2011



Claim Number: N10036-0644

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 N10036-0644 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 N10036-0644.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
Marine Science Technician 1
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form
09/14/11

FOIA2011-3380-0002511

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 12 May 2011 |
| Claim Number | N10036-0644 |
| Claimant | Claimant |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$4,000.00 |

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 5 April 2011, [REDACTED] (Agent), on behalf of [REDACTED] (Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) for \$4,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is a partnership in Mobile, AL that owns a water-front property in Gulf Shores, AL.¹ All of the partners are family members who primarily use the property as a vacation house. However, the property is occasionally rented out to friends and business acquaintances.² In 2008, the property was rented for a total of six days to two different parties.³ In 2009, it was rented to one party for six days.⁴ Agent asserted that a nine day rental for \$4,000.00 in May of 2010 was cancelled due to the Deepwater Horizon oil spill.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 § 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 Form 1065 U.S. Federal Partnership Income Return for the years 2008 and 2009.

² Letter of claim explanation from Claimant to BP Oil Claims Service Center, dated 20 August 2011 [sic].

³ Rental calendar from April – May of 2008.

⁴ Rental calendar from May of 2009.

⁵ Rental calendar from May of 2010; Optional OSLTF claim form, dated 24 March 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 the claim, Claimant submitted the following documentation:

- Optional OSLTF claim form, dated 24 March 2011;
- List of Document or Attachments;
- Letter of claim explanation from Claimant to BP Oil Claims Service Center, dated 20 August 2011 [sic];
- Form 1065 U.S. Federal Partnership Income Return for the years 2008 and 2009;
- Rental calendar from April – May of 2008, May of 2009, and May of 2010;
- Income Statement for [REDACTED] from 2009;
- Email between Claimant and her accountant, dated 18 August 2010;
- Letter from the GCCF to Claimant indicating transfer of her claim from BP Claims Center to GCCF, dated 31 August 2010;
- GCCF Claim Form, dated 5 October 2010
- Letter from the GCCF to Claimant indicating receipt of claim, dated 14 October 2010;
- Letter from the GCCF asking whether Claimant intended to file a Final Payment or Emergency Advance Payment claim, dated 14 October 2010;
- Letter from Claimant indicating intention to file a Final Payment claim, dated 18 October 2010;
- Fax confirmation of Claimant's 18 October 2010 correspondence to the GCCF;

- Letter from the GCCF to Claimant indicating receipt of Final Payment claim form, dated 26 January 2011;
- Letter from the GCCF to Claimant requesting additional documentation, dated 31 January 2011;
- Letter from Claimant to the GCCF regarding the request for additional information, dated 6 February 2011;
- GCCF denial letter regarding Claimant's Final Payment claim, dated 6 March 2011;
- Copy of Claimant's Alabama driver's license;
- Oil spill timeline regarding oiling;
- Four pictures of property and pier.

On 13 October 2010, Claimant presented a Final Payment claim of \$4,000.00 in lost profits and earnings to the GCCF.⁶ Claimant was assigned GCCF Claimant ID [REDACTED] and Claim # [REDACTED]. Claimant was denied by the GCCF on 6 March 2011.⁷

On 5 April 2011, Claimant presented this claim for \$4,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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. The NPFC considered all of the documentation submitted by Claimant.

To support the claim, the Agent provided tax returns from 2008 and 2009, a rental calendar, and an income statement from 2009. On 13 April 2011, the NPFC requested additional information from the Claimant to help further evaluate the claim. The NPFC asked for information that would substantiate the Claimant's rentals from 2008 through 2010, documentation such as reservations, rental checks, and contact information for the Claimant's renters. Further, the NPFC requested that the Claimant provide the cancellation of the 2010 reservation, which accounts for the full amount of claimed damages. To date, no response has been received by the NPFC.

Because the Claimant has failed to (1) demonstrate the alleged loss of \$4,000.00, and (2) demonstrate 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, this claim is DENIED.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *5/16/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ Report from the GCCF, dated 25 April 2011.

⁷ GCCF denial letter Re: Claimant's Final Payment claim dated 6 March 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
4/13/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

VIA EMAIL: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0645

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 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on claim # N10036-0645. 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 N10036-0645.

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 Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form
09/14/11

FOIA2011-3380-0002515

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 4/13/2011 |
| Claim Number | : N10036-0645 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$77,029.00 |

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 April 4, 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Funds Center (NPFC) for reimbursement for lost profits and earnings in the amount of \$65,029.00 and real or personal property damage in the amount of \$12,000.00 for a combined total amount of \$77,029.00.

In a handwritten letter by the Claimant to BP & Kenneth Feinberg dated October 6, 2010, the Claimant asserted that she obtained a position with [REDACTED] as a hazwoper worker for the Deepwater Horizon oil spill incident. She alleged that she hasn't received some of her overtime pay. Additionally, the Claimant stated that prior to working for [REDACTED] she worked for [REDACTED] and third shift security at the [REDACTED]. The Claimant did not go into detail on when her employment ended with any of the various employers listed or why the employment ended.

The Claimant's letter goes on to say that she sustained a head injury during her work on the oil spill that resulted in her losing wages at three of the employers listed. Finally, the Claimant alleged that after working on the Deepwater Horizon incident, her daycare for two of her children was cut off due the income BP stated she made. The Claimant stated that because she had no day care for her children due to the oil spill that she also had no employment for five months. The Claimant also stated that [REDACTED] dropped both her and her son for their employment although no reason was cited for the termination in employment.

It is important to note that the Claimant has not provided an explanation as to how her claimed loss of profits was calculated nor has she provided an explanation as to how she calculated a \$12,000.00 real or personal property damage.

The Claimant provided correspondence pertaining to her claim with the GCCF. The GCCF assigned Claimant Identification number [REDACTED] to her claim and claim number [REDACTED]. Based on documentation provided by the Claimant, it appears that GCCF made an Emergency Advance Payment (EAP) to the Claimant on October 21, 2010 in the amount of \$1,000.00. It

appears based on a copy of a Quick Payment Final Claim Form, that the GCCF has offered the Claimant a final payment of \$5,000.00 that the Claimant has not accepted.

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 her claim, the Claimant submitted the following documentation:

- NPFC Optional OSLTF Claim Form, undated;
- Copy of a GCCF Notice of Determination for EAP payment in the amount of \$1,000.00;
- Copy of letter from GCCF to Claimant dated January 29, 2011;
- Copy of handwritten letter from Claimant to BP & Kenneth Feinberg, dated October 6, 2010;
- A copy of three 2010 W2's from [REDACTED]
- Copy of Deficiency letter from GCCF to Claimant dated March 19, 2011;
- Copy of a Quick Payment Final Claim to Claimant for \$5,000.00;
- Incomplete copy of Claimant's 2010 Form 1040 Income Tax Return;
- Copy of a letter from [REDACTED] to Claimant dated May 3, 2010 welcoming Claimant as a sales rep;
- Pay history from [REDACTED] showing two pay dates of June 3, 2010 and June 9, 2010;
- One pay stub from [REDACTED] dated January 1, 2010;
- One direct deposit notification from [REDACTED] dated March 22, 2010;
- One pay stub from [REDACTED] dated July 23, 2010;
- Copy of two job referrals to Claimant from Florida Employment Field Office dated August 31, 2010.

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 Claimant has not provided appropriate comparable financial documentation in support of her alleged financial loss such as three years of complete income tax returns, complete payment history for any and all unemployment received over the past three years, bank statements, documentation from all employers indicating reason for departure from any employment over the past three years, or itemization of how the Claimant arrived at her calculation of alleged losses. Additionally, the Claimant has failed to provide any documentation or rationale for the real or personal property damage she is seeking in the amount of \$12,000.00. Since the Claimant has not provided adequate supporting documentation for her claim submission nor has she provided the rationale for how she calculated her alleged loss of profits and real property damage, this claim is denied. The Claimant has failed to meet her burden of establishing a loss of profits and earnings and real or personal property damage 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: *4/13/11*

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



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim # N10036-0646
21 April 2011



Re: Claim Number: N10036-0646

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at C.F.R. Part 136, denies payment on the claim number N10036-0646 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for further explanation.

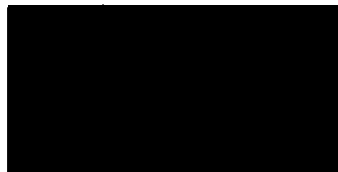
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0646.

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
Claims Manager

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | : 04/21/2011 |
| Claim Number | : N10036-0646 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | : [REDACTED] |
| 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) for the discharge. BP accepted the designation, 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 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$8,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he provided lawn maintenance in Destin, Florida. The claimant alleged that as a result of the Deepwater Horizon oil spill, he lost contracts and had to close his business, Flowers Cleanup Service, due to the spill.¹

PRESENTMENT TO RESPONSIBLE PARTY/GCCF

On 8 January 2011, Claimant received an Emergency Advance Payment from the GCCF of \$1,200.00. The Claimant's GCCF Claimant Identification Number is [REDACTED] and the Payment Claim Number is [REDACTED].

The claimant then filed a Quick Payment final claim with the GCCF.

According to the GCCF and confirmed with the Claimant³, the Claimant received an additional \$25,000 payment from the GCCF and executed a Release and Covenant Not to Sue.

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 upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for removal costs and damages. 33 U.S.C. §2702 (a).

¹ Id.

² GCCF Filing Report, dated 19 April 2011.

³ BIONECON between the Claimant and the NPFC on 21 April 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 Oil Spill Liability Trust (OSLTF) which administered 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, 33 CFR § 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).

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 his claim, the Claimant submitted the following documentation to the NPFC:

- OSLTF claim Form dated April 6, 2011

On April 7, 2011, the NPFC sent the Claimant a letter requesting additional information. On April 9, 2011, the claimant responded by providing the following additional information:

- Copy of [REDACTED] Business License;
- Copy of Drivers License;
- Copy of Social Security card;
- Bank statements from January 2011 to April 2011;
- Job Search Form;
- Copy of 2009 Tax filing;
- (3) pay stubs from the [REDACTED] and [REDACTED] dtd January 2011 to March 2011
- Pay statement dtd February 2010 to December 2010; and
- Letter dtd February 11, 2011 from GCCF denying his request for another Quick Payment.

On April 19, 2011, the claimant provided the following additional information:

- Letter dtd April 14, 2011 from [REDACTED]
- Earnings statement dtd December 31, 2010 to April 8, 2011.
- Copy of 2010 Tax filing; and
- Handwritten earnings dtd January 2009 to May 2009 and January 2010 to May 2010.

Claimant seeks \$8,000.00 in lost profits allegedly as a result of the Deepwater Horizon oil spill. Claimant does not address the \$26,200.00 in compensation reportedly provided by GCCF.

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.

Based on information presented by the Claimant and information available to the NPFC, the GCCF paid a total of \$26,200.00 to the Claimant as compensation for his claim(s). According to information from the GCCF, the Claimant executed a Release and Covenant Not to Sue in return for the Quick Final Payment.

This claim is denied because it appears from the record that the Claimant has fully settled his claims with BP/GCCF, and that BP and GCCF have fully compensated the Claimant. The final payment issued by the GCCF included a \$25,000.00 Final Quick Payment for which the GCCF reportedly required a full and final release of rights against the Responsible Party.

The Claimant has not addressed these payments or otherwise provided any information to show that the Claimant has any right 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 fully compensated and signing a release, he 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 \$8,000.00 to the NPFC, the Claimant must explain the circumstances in detail.

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

Claim Supervisor 

Date of Supervisor's review: 4/21/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

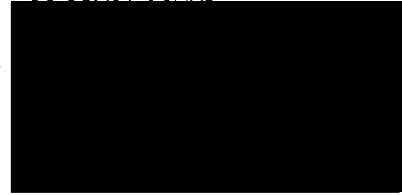
U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

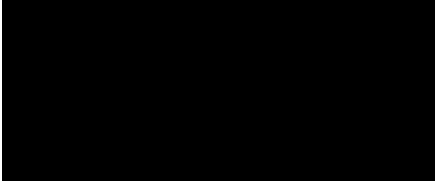


CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

DWHZ/5890

28 June 2011



RE: Claim Number: N10036-0647

De [REDACTED]

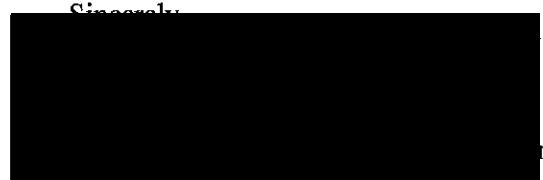
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0647 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-0647.

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

Enclosure: (1) Claim Summary/Determination Form
(2) List of Documentation Provided by Claimant, N10036-0647

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Claim Number | : N10036-0647 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$27,000.00 |

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 5 April 2011, [REDACTED] (Claimant), a seafood restaurant in Tuscaloosa, AL,¹ presented a loss of profits and earnings claim the National Pollution Funds Center (NPFC) in the amount of \$27,000.00 for damages resulting from the Deepwater Horizon oil spill.²

Claimant is a seafood restaurant that began in Northport, AL, in 1993 and gradually expanded to a 300-seat site located in Tuscaloosa, AL.³ Claimant asserted that decreased sales forced the owner to close the restaurant at the end of August 2010.⁴ Decreased sales in the summer of 2010 are said to have been the result of increased prices due to shortages and the public's reluctance to purchase and consume seafood, both due the oil spill. Both of those factors resulted in sharply decreased revenue, which ultimately forced [REDACTED] to close.⁵

In support of the public's reluctance to purchase and consume seafood following the oil spill, the Claimant provided ten notarized affidavits from former customers of the restaurant. The Claimant calculated his damages by averaging monthly income over the 12 months prior 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 § 2702(b) of OPA.

¹ Restaurant located in Tuscaloosa, AL, closed on 27 August 2010 and business address of record in Northport, AL, now used for correspondence.

² Optional OSLTF Claim Form dated under cover letter dated 1 April 2011, received at NPFC on 5 April 2011.

³ [REDACTED] phone conversation 24 June 2011.

⁴ Claimant letter of 25 May 2011 addressed previous decline in sales: "[REDACTED] did experience a decrease in sales prior to the BP oil spill, beginning around September 2009. Reasons for this decline include both a downward trend we experienced each fall and an overall sluggish economy. We did experience a slight increase in sales in April and May 2010 over preceding months due to crawfish season."

⁵ Claimant's letter of explanation dated 1 April 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, the Claimant provided the documentation listed in Enclosure (2).

Claimant indicated having presented the claim to the responsible party on 22 September 2010.⁶ On 6 March 2011, the GCCF denied the claim.⁷

Claimant seeks \$27,000.00 from the OSLTF, the amount of which represents the Claimant's alleged damages from the closure of its restaurant business resulting from the effects of the oil spill.

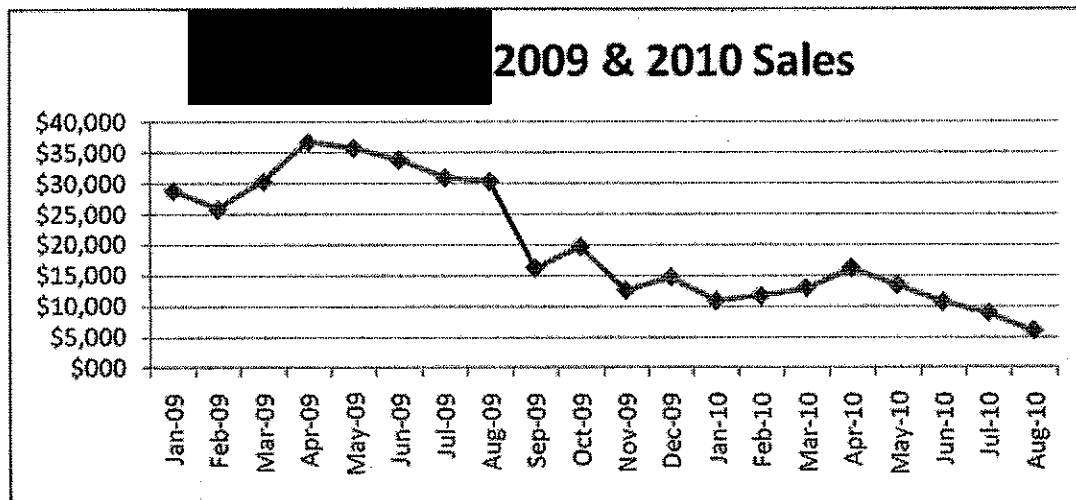
⁶ Optional OSLTF Claim Form dated under cover letter dated 1 April 2011, received at NPFC on 5 April 2011.

⁷ GCCF denial letter, dated 6 March 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. Under 33 C.F.R. § 136.233, a Claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant and conducted an independent investigation of the claim.

Claimant provided records of monthly sales and sales taxes reported to Alabama, federal tax returns, and invoices from seafood providers. Claimant indicated that the restaurant experienced declining sales, beginning in September 2009, as well as subsequent to the Deepwater Horizon oil spill. There was a rise in monthly sales during the crawfish season, March and April of 2010; however, sales again fell after crawfish season, which coincided with the Deepwater Horizon oil spill.




In addition to financial records, the Claimant provided a number of notarized statements by former customers, indicating that they had stopped eating seafood because of health concerns over seafood safety following the oil spill. The Claimant did not provide evidence of actual loss of profits during the same time periods.

After reviewing the claim, the NPFC sent the Claimant a letter dated 15 April 2011 requesting additional information. Following receipt of additional information from the Claimant, the NPFC sent the Claimant a supplemental request for additional information, dated 2 June 2011. The second letter requested, among other things, additional financial documentation to support a loss of profits and an explanation of how the Deepwater Horizon oil spill caused the business losses. The Claimant was given 14 days to respond to the second letter. Claimant responded with a number of notarized affidavits from former customers and with supplier invoices from 2008, 2009 and 2010; however, to date, the Claimant has not responded with financial information on loss of profits.

Regardless of whether a linkage existed between customer concerns over seafood safety during the months immediately following the oil spill and a coinciding reduction in the Claimant's sales, the Claimant has failed to demonstrate a loss of profits associated with its claim by means of financial documentation.

In light of the foregoing, this claim is DENIED for the following reasons: (1) Claimant has failed to meet the evidentiary burden to provide all evidence, information, and documentation

deemed necessary by the Director, NPFC, to support its claim, pursuant to 33 C.F.R. § 136.105(e)(6) and (2) Claimant has also failed to demonstrate its alleged loss in the amount of \$27,000.00 through appropriate financial documentation.

Claim Supervisor:  *NI*

Date of Review: *6/28/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

Claimant provided the following documents in support of his claim:

- Optional OSLTF Claim Form, dated 4 April 2011.
- Letter of Explanation dated 1 April 2011.
- Fax cover sheet from [REDACTED] dated 5 April 2011.
- [REDACTED] Tax Returns (Partnership) 2007, 2008, 2009 and 2010, with supporting forms, schedules and statements.
- Three year Sales Comparison from May 2007 to August 2010.
- Alabama Department of Revenue Monthly Sales Tax Filing Confirmations, July to December 2007.
- Alabama Department of Revenue Monthly Sales Tax Filing Confirmations, January to December 2008.
- Alabama Department of Revenue Monthly Sales Tax Filing Confirmations, January to December 2009.
- Alabama Department of Revenue Monthly Sales Tax Filing Confirmations, January to August 2010.
- Alabama Department of Revenue Business Tax Account Confirmation, Submitted on 9/20/2010 documenting 08/27/2010 Business Closure.
- Your letter 25 May 2011, presented by [REDACTED] email the same date, forwarding additional documentation and addressing additional questions.
- [REDACTED] Seafood Purchase Summary (Oysters by gallon/Shrimp by pound), January – August 2010.
- Two invoices from [REDACTED] dated 4-30-2010 and 4-16-2010.
- Two invoices from [REDACTED] dated 6-9-2010 and 4-7-2010.
- Two invoices from [REDACTED] dated 5-31-2010 and 4-9-2010.
- One invoice from [REDACTED] – Atlanta, dated 1-5-2010.
- [REDACTED] Articles of Organization in the State of Alabama.
- Email from [REDACTED] dated 1 June 2010.
- Ten affidavits from former [REDACTED] customers relating to concern over seafood safety following the BP oil spill and their resulting actions.
- Seafood invoices from [REDACTED] Atlanta from 2008, 2009 and 2010.

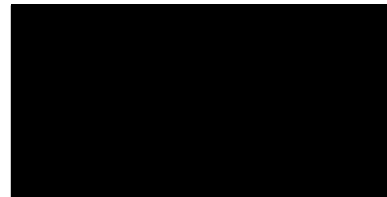
U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim # N10036-0648
26 April 2011



Re: Claim Number: N10036-0648

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 N10036-0648 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

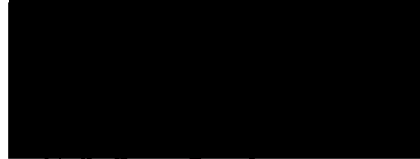
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0648.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 08 April 2011 |
| Claim Number | N10036-0648 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$14,125.10 |

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 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$14,125.10 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked in the facility maintenance department of the Florida's Gulfarium. His employment there started on 03 September 2008 and ended on 18 May 2010. The Claimant alleged that he was laid off as a result of the Deepwater Horizon oil spill.

PRESENTMENT TO THE RESPONSIBLE PARTY/GCCF

On 04 December 2010, the Claimant filed a Final Payment claim with the GCCF. The Claimant's Identification Number is [REDACTED] and Claim Number is [REDACTED].

According to the GCCF and confirmed with the Claimant¹, the Claimant received a \$29,066.72 Final Payment from the GCCF and executed a Release and Covenant Not to Sue.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

¹ GCCF Determination Letter Re: Final Payment claim, dated 14 April 2011; PHONECON between the NPFC and the Claimant on 21 April 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 his claim, the Claimant provided the following documentation to the NPFC:

- OSLTF claim form dated 06 April 2011;
- Handwritten, signed cover letter 'To whom it concerns' dated 06 April 2011;
- Claimant's 2010 W-2 Form for income a [REDACTED]

- Claimant's Employee Pay Stub for pay Period 05/05/2010 – 05/18/2010;
- Claimant's Employee Pay Stub for pay Period 04/21/2010 – 05/04/2010;
- Claimant's Employee Pay Stub for pay Period 10/11/2008 – 10/24/2008;
- Employment confirmation letter from [REDACTED] Facility Management Director at Florida's Gulfarium, dated 23 March 2011.

The Claimant seeks an alleged loss in earnings of \$14,125.10 resulting from the Deepwater Horizon oil spill. The Claimant does not address the \$29,066.72 in compensation reportedly provided by 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 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. The NPFC considered all documentation presented by the Claimant.

Based on information presented by the Claimant and information available to the NPFC, the GCCF paid a total of \$29,066.72 to the Claimant as compensation for his claim. According to information from the GCCF, Claimant executed a Release and Covenant Not to Sue in return for the Final Payment.

This claim is denied because it appears from the record that the Claimant has fully settled his claims with BP/GCCF, and that BP and the GCCF have compensated the Claimant, including a \$29,066.72 Final Payment for which the GCCF reportedly required a full and final release of rights against any Responsible Party.

The Claimant has not addressed this payment or otherwise provided any information to show that 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, he 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 \$14,125.10 to the NPFC, the Claimant must explain the circumstances in detail.

If the Claimant disagrees that he has signed any release associated with his claims against the Responsible Party, including any release in return for a Final Payment, the Claimant must fully

explain the circumstances in his request for reconsideration. Therefore, this claim is denied as the Claimant has been compensated.

Claim Supervisor 

Date of Supervisor's Review: *4/26/11*

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

5/26/2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

RE: Claim Number: N10036-0649

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 N10036-0649 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 N10036-0649.

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: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002535

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Claim Number | : N10036-0649 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$108,000.00 |

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 April 06, 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC), on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$108,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that he was affected by the oil spill because he is a commercial fisherman and was unable to fish from April 2010 through March 2011 due to closures by [REDACTED]

On the Claimant's OSLTF claim form, the Claimant indicated that he filed a claim with the Responsible Party (RP) in June 2010 and that the claim was denied. The NPFC confirmed with the GCCF that the Claimant filed an Emergency Advance Payment claim (EAP) on November 08, 2010 in the amount of \$108,000. The Claimant was assigned GCCF Claimant ID [REDACTED]. The GCCF indicated that the Claimant was paid \$3,500.00. The GCCF also confirmed that the Claimant filed a Interim claim on January 4, 2011 for lost profits in the amount of \$108,000.00. The GCCF has confirmed the Claimant was paid \$9,565.60. The GCCF also confirmed that a Quick Pay Final Payment offer has been made to the Claimant on or about March 6, 2011 in the amount of \$25,000.00 which as of the date of this determination, has not been accepted. Based on the foregoing information, the RP has paid the Claimant a total of \$13,065.60 to date.

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;
- (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 March 27, 2011;
- Misc. pre-GCCF payment request documents;
- Misc. advertisements by Claimant;
- Copy of Boat / Vessel License or Registration;
- Misc. letters and emails;
- Copy of Claimant's driver's license;
- Copy of fishing licenses;
- Copy of pre-GCCF documents;
- Misc. correspondence – letters from Claimant;
- Real Property Ownership documents;
- License – Business – Occupational;
- 2009 Federal Income Tax Return Form 1040, Schedule C;
- GCCF Deficiency Letter;
- Claimant's response to GCCF Deficiency Letter;
- Financial – Sales receipts – journals;

- GCCF Denial Letter;
- Misc correspondence;
- 2008 Individual Income Tax Return Form 1040.

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. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that income was reduced as a result of the Deepwater Horizon incident.

On April 21, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

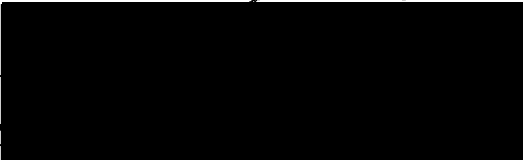
1. If available, Income Tax Return Filings for 2010 including all attachments, Schedule C's, W-2's and form 1099's.
2. Provide copies of all pay checks, pay stubs or earnings statements for payments to deckhands.
3. Provide boat registration, licensing and title documents.
4. Settlement Sheets providing a detailed breakdown of owner's share of proceeds, compensation to boat captain, payments to deckhands and payment of expenses.
5. Trip Ticket Landing Data from State Authority to list all trip tickets from 2008 through the present period.
6. If the above is not available, provide the actual Trip Tickets/ Catch Records/ Dealer Receipt Forms for the same period.
7. Provide sales records from 2009 and 2010 indicating the type of product, quantity, price and customer names.
8. If applicable, provide licensing for commercial seafood dealer/ processor activities.

Please Answer the Following Questions:

1. How was your business/ fishing activity impacted by the Deepwater Horizon incident?
2. Describe the type of fishing activity you are involved with (i.e. fish, crabs, oysters, shrimp, etc...)
3. Describe your method of fishing for each type of seafood product caught. (i.e. fishing nets, fishing with long lines, oyster dredging, traps, etc...)
4. For crabbing, identify the number of traps own and the number of traps used during 2010.
5. Identify the areas where you normally fish.
 - a. Include any alternative areas you have considered if your normal areas have been closed.
 - b. If applicable, identify any closures that affected your fishing operations.
6. Provide the names of all deckhands.
7. Describe who you typically sell seafood products to.
8. Identify if you fished at any time during 2010. If you did not fish prior to the Deepwater Horizon incident during 2010, please explain why.

9. Have other individuals related to your fishing operations filed claims with BP/ GCCF? If so, identify the status of their claims and if they have been considered for payment.
10. Identify all expenses associated with your fishing activities.
11. If your fishing activity includes a wholesale/ dealer business, identify the following:
 - a. Type of products sold/ delivered
 - b. Your main customers base
 - c. Identify if your business activity provides distribution and delivery
 - d. Identify what assets are owned to facilitate your wholesale business.
12. Describe your employment history starting from 2008 through the current period.
13. Have you been unemployed for any period of time from 2008 through the current period? If so identify the specific dates you were unemployed provide the amount of unemployment benefits received.
14. Describe your current employment/ work status.
15. Identify if you have participated in the Vessel of Opportunity program for response to the Deepwater Horizon incident. If yes, please provide all related documents including payments.
16. Explain how the claimed lost profits of \$108,000 were estimated.
17. Please explain in the detail the relevance of the Community Development plan documents that you provided with your claim.
18. You provided various daily handwritten tickets. Please explain what these represent.
19. You provided various letters from references and customers. Some of those letters state that they purchased seafood from you during 2010. However, this seems to contradict your letter stating that you did not catch any seafood during 2010. Please explain the discrepancy.

The Claimant has not provided the additional documentation nor answered any of the questions to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *5/26/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

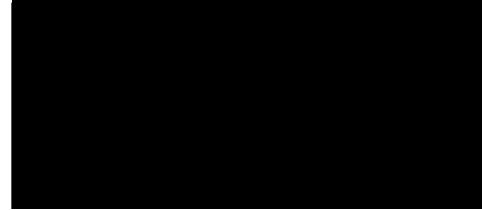
U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim# N10036-0650
27 April 2011



RE: Claim Number: N10036-0650

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 N10036-0650 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 N10036-0650.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | 25 April 2011 |
| Claim Number | N10036-0650 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$10,175.00 |

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 07 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$10,175.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant indicated that since 2005, she has operated an appraisal business in Gulf and Eastern Bay Counties, FL.¹ She further indicated that she appraised properties for sales, pre-foreclosures, and foreclosures.² Claimant alleged that demand for these services plummeted as a result of the Deepwater Horizon oil spill, which led to her loss of income and the closure of her 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.

¹ OSLTF claim form additional information items.

² *Id.*

³ *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 the OSLTF

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

- 1) OSLTF claim form, dated 21 December 2010;
- 2) OSLTF claim form additional information items;
- 3) GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 20 October 2010;
- 4) Gulf Appraisal Log Book for 2009 and 2010;
- 5) U.S. Individual Income Tax Return form 1040 for 2007, 2008, 2009; and
- 6) Gulf Appraisal Income Statements for 2007, 2008, 2009, and 2010.

On 27 September 2010, Claimant presented a six-month Emergency Advance Payment for \$6,800.00 in lost wages and earnings to the GCCF.⁴ Claimant was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 20 October 2010, the claim was denied by the GCCF.⁶

On 07 April 2011, Claimant presented this claim for \$10,175.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

⁴ GCCF Filing Report, dated 18 April 2011.

⁵ *Id.*

⁶ GCCF denial letter Re: Claimant's Emergency Advance Payment claim dated 20 October 2010.

NPFC Determination

This claim is denied. Pursuant to 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party. On 27 September 2010, Claimant presented a six-month Emergency Advance Payment for \$6,800.00 in lost wages and earnings to the GCCF.⁷ Claimant's claim before the NPFC is for \$10,175.00 in loss of profits and impairment of earnings capacity. Any amount of alleged loss exceeding \$6,800.00 is not properly before the NPFC pursuant to 33 C.F.R. § 136.103(a) and is therefore denied for lack of proper presentment to the RP first.

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 claim is denied because the alleged loss in the amount of \$10,175.00 is not 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 noted, the Claimant indicated that she appraises properties for sale, pre-foreclosure, and foreclosure. With respect to these services, the Claimant asserted the following: "Very shortly after the Deepwater Horizon Oil Spill was reported, property sales that were already waning all but dried up. Foreclosures also plummeted due to banks and financial institutions postponing all foreclosures in the affected Deepwater Horizon Oil Spill areas for 3 or more months."

There is no evidence in the Claimant's submission that declining sales in the wake of the Deepwater Horizon oil spill are attributable to the oil spill and not other on-going economic factors. Additionally, the Claimant's alleged loss, stemming from bank-instituted postponements on foreclosures, is not 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 (1) the Claimant has failed to 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 and (2) the amount requested in excess of \$6,800.00 has not been properly presented to the RP as required by the governing regulations located at 33 C.F.R. § 136.103(a).

Claim Supervisor 

Date of Supervisor's Review: 4/27/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁷ GCCF Filing Report, dated 18 April 2011.

U.S. Department
of Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center
Natural Resource Damage (NRD)
Claims Division

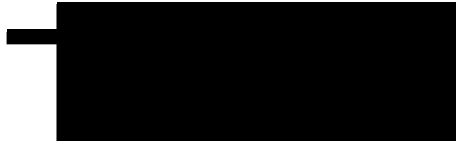
U.S. Coast Guard Stop 7100



16480

24 May 2011

CERTIFIED MAIL Number: [REDACTED]



RE: Claim Number: N10036- 0651

Dear [REDACTED]

The National Pollution Funds Center (NPFC) has reviewed your claim for lost subsistence use of natural resources resulting from the Deepwater Horizon oil spill. We have determined that you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. § 2701 *et seq.*) and OPA claims regulations (33 C.F.R. Part 136). Accordingly, the NPFC denies payment of your claim. The basis of this determination follows.

Background

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result, oil was discharged and the federal government and Gulf coast states closed certain waters to commercial and recreational fishing. 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 individual and business claims on behalf of BP.

Facts

On 20 April 2011, the GCCF denied your claim for lost subsistence use of natural resources in the amount of \$20,000. On 7 April 2011, the NPFC received your claim for lost use of natural resources following the Deepwater Horizon spill. You describe the nature of the loss and extent of damages claimed to include a reduced amount of seafood in your diet due to fear of consuming seafood after the spill.

Applicable Law

OPA provides that the Oil Spill Liability Trust Fund (OSLTF) is available to pay claims for damages resulting from oil pollution incidents (33 U.S.C. § 2712(a)(4)). Damages include loss of subsistence use of natural resources (33 U.S.C. § 2702(b)(2)(C)) (i.e., resources relied upon for food). The regulations at 33 C.F.R. Part 136 include general claim requirements and requirements specific to lost subsistence use claims.

General Claim Requirements

Claims, including those for lost subsistence use of natural resources, must be: (a) in writing for a sum certain (33 C.F.R. §136.105(b)), (b) submitted to the NPFC within three years after the date on which the injury and its connection with the incident were reasonably discoverable (33 C.F.R. §136.101(a)), and (c) presented first to the RP or guarantor and that claim is denied or not settled after 90 days before submission to the NPFC for payment (except as noted in 33 C.F.R. §136.103(a)). Your claim meets the general claim requirements.

Subsistence Use Loss Claim Requirements

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:

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.

NPFC has provided more detail about these claim requirements at:
http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

Claim Submission and Documentation

The claim that you submitted to the NPFC on 7 April 2011, included the following supporting documents: information regarding your diabetes medication and other medical tests; information about your claim to the GCCF; your Louisiana mobility impaired

identification card; your Louisiana Department of Wildlife and Fisheries residential fishing license purchased on 1 November 2010, valid for 2010-2011; proof of your social security income; two blog articles about the Deepwater Horizon spill; and numerous receipts for food and prescription medication.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. 2701 et seq.) and OPA claims regulations (33 C.F.R. Part 136). Your claim is denied because you have not documented:

- 1) how and where you traditionally obtained the resources you claim to have used for subsistence purposes;
- 2) the type and amount of natural resources you are claiming to have lost (beyond a general statement of "fish and oysters") based on a demonstrated pattern of past use;
- 3) the period of your claimed loss; or
- 4) how you determined your claimed loss of \$20,000 (i.e., the actual costs incurred to replace your claimed loss).

Request for Reconsideration

Under OPA, you may ask the NPFC to reconsider this determination. Reconsideration requests must be received by the NPFC in writing within 60 days of the date of this letter, and will be based upon the additional factual or legal information that you provide with your request. A claim may be reconsidered only once, and written disposition of a reconsideration request constitutes final agency action. If the NPFC fails to issue a written decision within 90 days after receipt of a request for reconsideration, this determination, at the option of the claimant, shall be deemed final agency action.

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-0651) to:

Chief (Cn)
National Pollution Funds Center
U.S. Coast Guard, Stop 7100
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you have any questions about reconsideration, please feel free to contact me at the above address or by phone at [REDACTED]

Sincerely,

[REDACTED]

ion

National Pollution Funds Center
U.S. Coast Guard

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

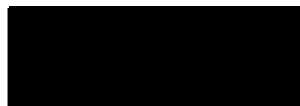
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
5/16/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0652

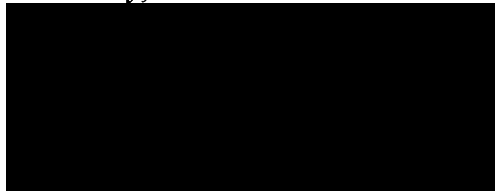
Dear [REDACTED]

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 N10036-0652 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,



U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 5/13/2011 |
| Claim Number | : N10036-0652 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$1,200.00 |

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 April 7, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$4,800.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that she lost her part time employment as a result of the Deepwater Horizon incident.

The Claimant did not provide correspondence or documentation pertaining to her claim with the GCCF, but stated her claim was denied.

REQUEST FOR RECONSIDERATION:

On May 3, 2011, the Claimant faxed a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim. The NPFC denied the claim originally on April 13, 2011 because the Claimant has not provided any supporting documentation for her claim submission other than an OSLTF Claim Form nor has she provided the rationale for how she calculated her alleged loss of profits therefore, this claim is denied because the Claimant has failed to meet her burden of establishing a loss of profits and earnings 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.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via facsimile received by the NPFC on May 3, 2011. To support her request for reconsideration, the claimant provided an amended OSLTF Claim Form stating she miscalculated her alleged loss and changed the sum certain from \$4,800.00 to \$1,200.00, a letter dated May 4, 2011 stating supporting documentation submitted, a copy of her original determination package, a copy of her W-2 for [REDACTED] for 2010 in the amount of \$33,038.58, a copy of a typed letter from [REDACTED] signed by the Claimant's mother, [REDACTED] a copy of proof of employment for the Claimant's full time employer, [REDACTED] a copy of the Claimant's 2007-2010 joint

Income Tax Returns, a copy of her GCCF Denial letter dated March 9, 2011, and a copy of the Claimant's W-2 for [REDACTED] for a total earned income of \$80.00.

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. 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. It is important to note that the Claimant amended her sum certain from \$4,800.00 to \$1,200.00 on reconsideration stating a miscalculation. While the Claimant did not provide a description on how she arrived at her alleged loss amount, her claim submission did state that she lost her part time job with [REDACTED] in Metairie, LA.

The Claimant provided a written statement from her part time employer, [REDACTED] that stated that the Claimant worked 20 hours per week at \$10.00 per hour and after the spill she was reduced to 5 hours per week at \$10.00 per hour until the location closed sometime in July 2010 due to not enough money to make payroll. Her mother, [REDACTED] signed the employer letter.

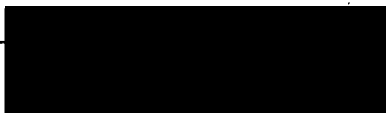
Upon further review of the 2010 W-2 the Claimant provided that she received from [REDACTED] her total annual income for 2010 is listed as \$80.00 which is in direct conflict with the employer letter that she provided in her claim that is the basis for her alleged loss of profits claimed.

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.

The NPFC again denies the claim because the Claimant has provided false statements in connection with her claim submission to the NPFC in order to obtain funds for an alleged loss of profits as a 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.

This claim is denied upon reconsideration.

Claim Supervisor:



Date of Supervisor's review: *5/16/11*

Supervisor Action: *Denial on reconsideration*

Supervisor's Comments:

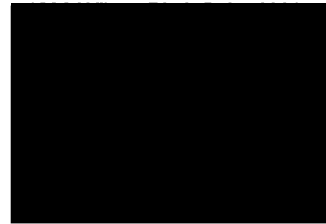
U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

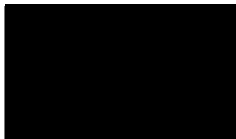
NPFC CA MS 7100
US COAST GUARD



5890
5/17/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0653

De: [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 N10036-0653 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

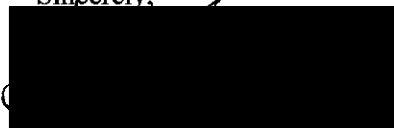
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0653.

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

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-0002552

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : May 17, 2011 |
| Claim Number | : N10036-0653 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$11,413.34 |

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 April 7, 2011, M [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC), on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$11,413.34 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that she was affected by the oil spill because she was unable to deliver seafood for [REDACTED]. The Claimant stated that she "worked for [REDACTED] for 6+ years (full time). My main job was driving their private truck to and along the Gulf Coast picking up and buying seafood."¹

The Claimant provided a denial letter for her emergency advance payment claim with the GCCF dated December 4, 2010. Based on the records, the Claimant was compensated \$956.92 by BP.

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 Letter from Claimant dated March 29, 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 support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, dated 28 March 2011
- Letter dated 29 March 2011 from Claimant to NPFC stating the process her claim has gone through and the circumstances surrounding her claim.
- Letter dated 12 June 2010 from Claimant's employer stating her shift was cut 2 weeks prior and will be cut further 21 June 2010. Also states her wage rate.
- Letter dated 17 July 2010 from Claimant's employer stating Claimant was laid off due to the Deepwater Horizon Incident.
- Copy of 2008 W-2
- Copy of 2009 W-2
- Copy of 2010 W-2
- Calculation of estimated loss as prepared by Claimant, dated 29 March 2011.
- Copy of Claimant's driver's license
- Letter dated 04 December 2010 from GCCF notifying Claimant they have been denied for emergency advance payment.

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. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that income was reduced as a result of the Deepwater Horizon incident.

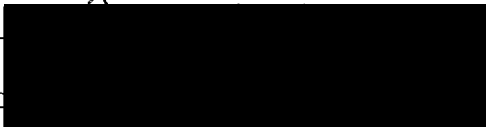
On April 18, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

1. Income Tax Return Filings for 2007, 2008 and 2009 including all attachments, Schedule C's and form 1099's.
2. Provide copies of pay stubs, pay checks and earnings statements for all employment held during 2009 and 2010.
 - a. If the above is not available, provide copies of bank statements to support your earnings. Specifically identify on the bank statements, any deposits that are related to your employment.
3. If you were employed in a job where you receive commissions, provide detailed commissions reports from 2008 through the current period.
4. Has your employer filed a claim associated with the Deepwater Horizon incident? If so, provide your employer's underlying documentation to support their reduction in business.
5. If you have received unemployment benefits from 2009 through the present, provide copies of payments received and statements of benefits.

The NPFC also requested the Claimant answer the following questions:

1. Describe your employment history from 2008 through the current period.
 - a. Include a description of dates worked, your position held and job duties.
2. Identify any specific periods of time that you were unemployed from 2008 through the current period.
3. If you have received unemployment benefits during 2009 and 2010 identify the periods of time when you received benefits and the amounts received.
4. Describe your primary form of employment and trade skills.
5. If you are claiming a reduction in hours, describe your work schedule prior to and after the Deepwater Horizon incident.
6. Has your employer or former employer filed a claim related to the Deepwater Horizon incident? If so, describe the outcome of your employer's claim.
7. What was your last day of employment with [REDACTED]
8. Did you receive any severance from your employer? If so, what was included in the severance package?

The Claimant has not provided the additional documentation nor answered any of the questions to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor 

Date of Supervisor's review: *May 17, 2011*

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
Natural Resource Damage (NRD)
Claims Division

U.S. Coast Guard Stop 7100



16480

24 May 2011

CERTIFIED MAIL Number: [REDACTED]



RE: Claim Number: N10036- 0654

Dear [REDACTED]

The National Pollution Funds Center (NPFC) has reviewed your claim for lost subsistence use of natural resources resulting from the Deepwater Horizon oil spill. We have determined that you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. § 2701 *et seq.*) and OPA claims regulations (33 C.F.R. Part 136). Accordingly, the NPFC denies payment of your claim. The basis of this determination follows.

Background

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result, oil was discharged and the federal government and Gulf coast states closed certain waters to commercial and recreational fishing. 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 individual and business claims on behalf of BP.

Facts

On 16 November 2010, you filed a claim in the amount of \$1,900 for lost subsistence use of natural resources with GCCF, which was denied. On 5 April 2011, you presented a claim for \$1,700 to the NPFC for lost use of natural resources as subsistence food following the Deepwater Horizon spill.

Applicable Law

OPA provides that the Oil Spill Liability Trust Fund (OSLTF) is available to pay claims for damages resulting from oil pollution incidents (33 U.S.C. § 2712(a)(4)). Damages include loss of subsistence use of natural resources (33 U.S.C. § 2702(b)(2)(C)) (i.e., resources relied upon for food). The regulations at 33 C.F.R. Part 136 include general claim requirements and requirements specific to lost subsistence use claims.

General Claim Requirements

Claims, including those for lost subsistence use of natural resources, must be: (a) in writing for a sum certain (33 C.F.R. §136.105(b)), (b) submitted to the NPFC within three years after the date on which the injury and its connection with the incident were reasonably discoverable (33 C.F.R. §136.101(a)), and (c) presented first to the RP or guarantor and that claim is denied or not settled after 90 days before submission to the NPFC for payment (except as noted in 33 C.F.R. §136.103(a)). Your claim meets the general claim requirements.

Subsistence Use Loss Claim Requirements

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:

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.

Also, see http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

Claim Submission and Documentation

The claim that you submitted to the NPFC on 5 April 2011, included a letter with the following supporting documents: a letter from your grandparents [REDACTED] and your fiancé, [REDACTED] attesting that you fish and eat your catch;

two receipts for groceries; and copies of three pieces of identification, your state of Florida identification card, your driver license, and your social security card.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. 2701 et seq.) and OPA claims regulations (33 C.F.R. Part 136). Your claim is denied because you have not documented:

- 1) the type and amount of natural resource for which compensation is being claimed (i.e., what you typically catch and use for subsistence food). You provide the recreational fish limits established by the state, but provide no evidence of your past catches and frequency of use for subsistence.
- 2) how and to what extent your subsistence use was affected by injury to or loss of specific natural resources. You state that you fish from the Okaloosa Island Fishing Pier, yet the website (<http://www.okaloosaislandpier.com/>) includes a fishing report for each day since the spill occurred indicating that the pier never closed due to the spill.
- 3) the dollar amount of lost subsistence use claimed. The NPFC cannot determine how you determined a \$1,700 loss or the actual costs incurred to replace the fish that you would have caught and eaten if the spill had not occurred (i.e., insufficient receipts or statements were provided to support damages incurred in the amount claimed).
- 4) Also, natural resource damages (NRD) under OPA are public use losses as described in the implementing regulations at 33 C.F.R. Part 136.207-136.211, and may only be submitted by the appropriate federal, state, or tribal natural resource trustees. You are not an eligible claimant under OPA to submit a claim for NRD.

Request for Reconsideration

Under OPA, you may ask the NPFC to reconsider this determination. Reconsideration requests must be received by the NPFC in writing within 60 days of the date of this letter, and will be based upon the additional factual or legal information that you provide with your request. A claim may be reconsidered only once, and written disposition of a reconsideration request constitutes final agency action. If the NPFC fails to issue a written decision within 90 days after receipt of a request for reconsideration, this determination, at the option of the claimant, shall be deemed final agency action.

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-0654) to:

Chief (Cn)
National Pollution Funds Center
U.S. Coast Guard, Stop 7100
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you have any questions about reconsideration, please feel free to contact me at the above address or by phone at [REDACTED]

Sincerely

[REDACTED]

~~Environmental Response and Damage Claims~~ Division
National Pollution Funds Center
U.S. Coast Guard

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

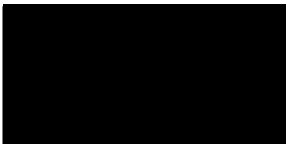
NPFC CA - MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
18 April 2011



Re: Claim Number: N10036-0655

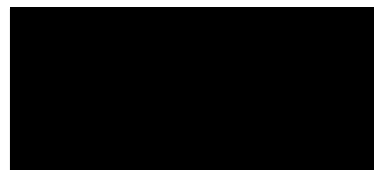
Dear [REDACTED]

The National Pollution Funds Center (NPFC) is in receipt of your email, dated 15 April 2011, requesting the withdrawal of your claim. The NPFC has withdrawn your claim.

Please note that should you decide to submit a claim in the future regarding your alleged loss, you will have to resubmit all information you provided.

If you have any questions about this letter, you may write me at the above address, or contact me by phone or email.

Sincerely,



U. S. Coast Guard
Claims Manager

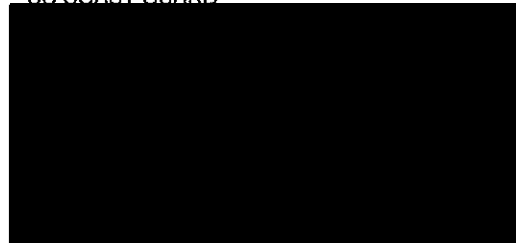
U.S. Department of
Homeland Security

**United States
Coast Guard**



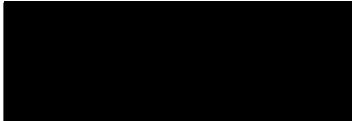
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

DWHZ/5890
28 April 2011



RE: Claim Number: N10036-0656

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 N10036-0656 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 N10036-0656.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 28 April 2011 |
| Claim Number | N10036-0656 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (OS) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$9,194.99 |

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 08 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$9,194.99 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant is employed by [REDACTED] as an advertising sales representative of [REDACTED] Mid-Atlantic Region. Claimant asserted that many of her existing clients would not renew ads and she had a difficult time selling to new advertisers for the Yellow Book and on the internet. Her clientele is the tourist, sales and service industries in Okaloosa and Walton Counties, Florida. She indicated that she lost 40 accounts because her clients "were scared."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 § 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 Claimant's Optional OSLTF Claim Form Submitted to NPFC on 8 April 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.

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 provided the following documentation to the NPFC:

- NPFC optional OSLTF Claim Form dated 08 April 2011.
- W-2 forms for 2009 and 2010 from [REDACTED] and Distribution.
- [REDACTED] – Mid Atlantic 'Sales Record Report' for claimant, commission year 2010.

On 04 January 2011, Claimant presented a Full Review Final Claim for \$199,785.00 in lost wages/earnings to the GCCF.³ She was assigned GCCF Claimant ID [REDACTED] and Claim # [REDACTED]. On 09 March 2011, this claim was denied by the GCCF.⁴

On 08 April 2011, Claimant presented this claim for \$9,194.99 in loss of profits and impairment of earnings of capacity resulting from the Deepwater Horizon oil spill.

³ GCCF Filing Report, dated 18 April 2011.

⁴ GCCF denial letter Re: Claimant's Final Payment claim, dated 09 March 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. Under 33 C.F.R. § 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 Claimant provided a W2 for 2009 and 2010 that showed the Claimant's annual earned income was down in 2010 from 2009 by \$6,554.95, the Claimant has failed to demonstrate that the reduction in her annual earnings 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. Additionally, the Claimant provided an a Sales Earning Report that shows the number of accounts she had in 2009 vice 2010, that documentation does not indicate who the clients were, where they were located or why they chose not to renew service therefore the mere reduction in accounts has not been directly linked to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Furthermore, the Claimant has failed to articulate how she arrived at her alleged lost profits and earnings calculation.

In light of the foregoing, this claim is DENIED.

Claim Supervisor: 

Date of Review: *4/28/11*

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: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED] ve

5890/DWHZ
Claim # N10036-0657
26 May 2011

Re: Claim Number: N10036-0657

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 N10036-0657 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 N10036-0657.

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

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Claim Number | N10036-0657 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Amount Requested | \$36,000.00 |

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 8 April 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$36,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant worked for [REDACTED] as a construction worker in Bayou Vista, Louisiana.¹ Claimant stated [REDACTED] had a contract to construct living quarters, a new helicopter port, and a crane onboard a BP oil platform known as [REDACTED]. The Claimant asserted that due to the Deepwater Horizon oil spill, [REDACTED] halted the construction project.³ The Claimant stated he was laid-off due to the cessation of the construction project.⁴

Claimant calculated his sum certain by estimating his lost income subsequent to being laid-off.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 Attachment to OSLTF Claim Form dated 8 April 2011.

² Id.

³ Id.

⁴ Id.

⁵ OSLTF claim form.

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 NPFC:

- Optional Oil Spill Liability Trust Fund Claim Form, dated 8 April 2011;
- Attachment to Optional OSLTF Claim Form describing claim;

- Photocopies of: [REDACTED] identification badge, GM License To Go Offshore, Transportation Worker Identification Card [REDACTED] Training Card;
- [REDACTED] Paystubs: 4 July 2010-18 July 2010;
- 2010 version of W-2;
- Answers to NPFC's Requests for Additional Information;
- Fax from Claimant to GCCF explaining his claim;
- GCCF Claim Form;
- Documents originally submitted to GCCF in support of GCCF claim;
- Check history report from 01 January 2010 through 18 November 2010;
- Communication from [REDACTED] stating their business involves construction and not drilling;
- GCCF letter requesting additional information dated 29 January 2011;
- Gulf Coast Community Credit Union Account History from 1 March 2010 through 31 August 2010;
- GCCF denial letter dated 1 April 2011; and
- GCCF denial letter dated 12 November 2011.

Prior to presenting this Claim, on 22 October 2010, Claimant presented an Emergency Advance Payment (EAP) claim for \$9,000.00 in lost profits and earnings to the GCCF. He was assigned Claimant ID Number [REDACTED] and Claim Number [REDACTED]. The EAP claim was denied on 12 October 2010.⁶ Additionally, on 4 January 2011, Claimant presented a Final Payment Claim for \$27,000.00 in lost profits and earnings to the GCCF. He was assigned Claim Number [REDACTED]. The Final Payment Claim was denied on 1 April 2011.⁷

On 8 April 2011, Claimant presented the subject claim for \$36,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

Claimant alleged that he was laid off from employment with [REDACTED] as a result of the Deepwater Horizon oil spill. Claimant provided contact information for multiple colleagues at [REDACTED] to verify his assertion. After contacting the Human Resources Department at [REDACTED] the NPFC was informed that the Claimant is still employed with [REDACTED]. Furthermore, the [REDACTED] Human Resources Department informed the NPFC that the Horn Mountain project was unaffected by the Deepwater Horizon oil spill and suffered no significant delays in the construction project.⁹ Specifically addressing the Claimant's work situation with

⁶ GCCF Denial Letter dated 12 October 2010.

⁷ GCCF Denial Letter dated 1 April 2011.

⁸ PHONECON between [REDACTED] Services Human Resources Department and NPFC dated 26 April 2011.

⁹ Id.

██████████ the ██████████ Human Resources Department informed the NPFC that ██████████ employees working on the Horn Mountain project experienced no fluctuation in the available work.¹⁰

In light of the foregoing, the claim is denied because (1) the Claimant has not proven that he lost his job¹¹ and therefore lost income 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 (2) the Claimant failed to demonstrate proper presentment of costs to the RP in excess of \$27,000.00 pursuant to 33 C.F.R. § 136.103(a), which states that all claims for removal costs or damages must be presented first to the responsible party.

Claim Supervisor: ██████████ *Denial*

Date of Review: *5/26/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁰ Id.

¹¹ The NPFC makes no determination regarding the current status of Claimant's employment with ██████████

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: 202-495-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim# N10036-0658
25 May 2011

RE: Claim Number: N10036-0658

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 N10036-0658 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 N10036-0658.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 24 May 2011 |
| Claim Number | N10036-0658 |
| 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 11 April 2011, [REDACTED] (Claimant) presented a claim to 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.

Claimant works for [REDACTED] out of Lafayette, Louisiana. [REDACTED] is an offshore material handling company servicing various vessel companies throughout the Gulf of Mexico. The Claimant provided a letter from [REDACTED] which states "[a]lthough still currently employed with [REDACTED], the majority [of our personnel] are not assigned on a job due to the downturn in the activity throughout the Gulf Coast Region."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.

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) Optional OSLTF claim form dated 20 December 2010
- 2) Employment letter from [REDACTED]
- 3) Five paystubs from [REDACTED] all undated
- 4) 2007 U.S. Individual Income Tax Return form 1040A
- 5) 2008 U.S. Individual Income Tax Return form 1040
- 6) [REDACTED] annual tuition statement
- 7) H&R Block 2009 Tax Return Summary

On 13 April 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate his claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered 26 April 2011.

Prior to presentment to the NPFC, on 26 August 2010, the Claimant presented an Emergency Advance Payment (EAP) claim for \$17,640.00 in lost profits and earnings to the RP/GCCF. He was issued GCCF Claimant II [REDACTED] and Claim [REDACTED]. On 23 October 2010 the GCCF denied his claim.²

On 26 August 2010, Claimant also presented a Final Payment claim for \$19,000.00 in lost profits and earnings to the GCCF. He was assigned Claim [REDACTED]. On 9 March 2011, the GCCF denied his Final Payment claim.³

² GCCF denial letter Re: Claimant's EAP claim, dated 23 October 2010.

³ GCCF denial letter Re: Claimant's Final Payment claim, dated 9 March 2011.

Claimant seeks \$8,000.00 in lost earnings, allegedly resulting from the Deepwater Horizon oil spill, from the OLSTF.

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 Claimant's employer indicated that the majority of its personnel, though currently employed, were not assigned jobs "due to the downturn in activity throughout the Gulf Coast Region."⁴ A myriad of factors could have resulted in this downturn in Gulf activity, including permitting issues, new safety and business compliance regulations, and the general economic downturn.

Furthermore, the NPFC sent the Claimant a letter requesting additional information to better assess the financial loss and correlation to the oil spill. The Claimant has failed to respond to the request for additional information at the time this determination was written.

This claim is denied because the Claimant has failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount \$8,000.00, 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: [REDACTED] *Division*

Date of Supervisor's Review: *5/25/11*

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
10 May 2011



Re: Claim Number: N10036-0659

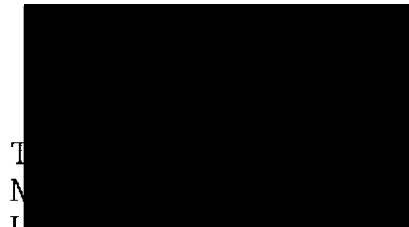
Dear [REDACTED]

We received your email, dated 10 May 2011, that states your wish to withdraw your claim. The NPFC has withdrawn your claim.

If you decide to resubmit a claim in the future regarding your alleged loss, you will have to resubmit all information already provided.

If you have any questions about the request or would like to discuss the matter, you may write me at the above address or contact me by phone or email.

Sincerely,



T
N
U. S. Coast Guard
Claims Manager

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
5/9/2011

BY MAIL AND EMAIL

[REDACTED]

[REDACTED]

RE: Claim Number: N10036-0660

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0660 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding the 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 N10036-0660.

Mail reconsideration requests to:

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

[REDACTED]

Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002576

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : May 5, 2011 |
| Claim Number | : N10036-0660 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$21,400.00 |

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 April 11, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$21,400.00 to the National Pollution Funds Center (NPFC) for reimbursement.

As stated by the Claimant, she has been working for a seafood distributor since September 23, 2009. The Claimant stated that she was laid off because "we didn't have enough profit to pay payroll. We were a seafood distributor and we relied heavily on bait/chum sales to the fishermen that would fish in the Gulf of Mexico."

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:

- NPFC Optional (OSLTF) Claim Form, dated 11 April 2011
- Form W-2 Wage and Tax Statement, 2009 and 2008
- Loss of Income Claim worksheet, prepared by Claimant
- Letter of Hardship from claimant
- Letter of recommendation from [REDACTED] signed by [REDACTED]
- Correspondence from claimant dated 18 March 2011
- Gulf Coast Claims Facility Determination Letter dated 06 March 2011
- Employee payroll records, pay periods ended 05 January 2011 through 01 June 2011
- Unemployment claim records, Florida Unemployment Compensation Program.
- Photocopies of Florida state driver's license and social security card
- 2007, 2008, and 2010 Income Tax Returns

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.

In the Claimant's submission to the NPFC, she stated that she has lost \$39,600.00 from May 28, 2010 through March 31, 2011, as a result of the oil spill. Based on documentation submitted, the NPFC has confirmed that the Claimant has received \$11,419.00 in unemployment benefits from the state of Florida during the loss period being claimed which must also be taken into consideration as alternate income when calculating a total loss of profits for damages in the same period for which she received those benefits.

Upon further investigation of the Claimant's submission and payments made by the RP, the Claimant provided an itemized breakdown of her total alleged losses, and on that document, the Claimant listed receipt of only one payment of \$7,300.00 from the RP. That fact is important because the Claimant's signed OSLTF claim requested amount that is derived from the Claimant's itemized calculation of losses less unemployment and one payment made by the RP. The NPFC has confirmed with the RP that BP had paid her \$3,960.00 PRIOR to her receipt of the \$7,300.00 payment from the GCCF making the total of her payments received at the time of her submission to be \$11,260.00 and in direct conflict with the claim submission itemized loss document presented to the NPFC.

Furthermore, while the Claimant's submission was received by the NPFC on April 11, 2011, the GCCF made another interim electronic payment to the Claimant on April 15, 2011 in the amount of \$16,030.08. As of the date of this determination, the Claimant has not notified the NPFC of receipt of that payment bringing her total received to date to \$27,290.08.

Based on false information being presented, failure of the Claimant to notify the NPFC of additional payments since her submission to the NPFC and pursuant to 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.

Based on the foregoing, this claim is DENIED.

Claim Supervisor 

Date of Supervisor's review: *5/9/11*

Supervisor Action: *Denial approved*

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 # N10036-0662

29 April 2011

Re: Claim Number: N10036-0662

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 N10036-0662 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

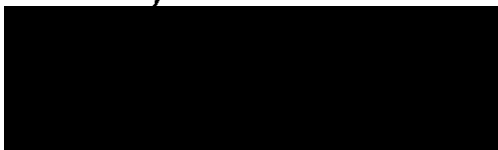
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0671.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 28 April 2011 |
| Claim Number | N10036-0662 |
| Claimant | Claimant |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$5,000.00 |

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 12 April 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC) for \$5,000.00 in loss of profits and impairment of earnings capacity, allegedly resulting from the Deepwater Horizon oil spill.

Claimant worked as a busboy at [REDACTED] MS.¹ The Claimant started his employment at [REDACTED] in June 2010 and worked for three pay periods until the restaurant closed on 15 July 2010.² Claimant asserted that the restaurant closed and he lost his job "due to the increase in the price of seafood, and the decrease in business, because of food consumption concerns attributable to the oil spill."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 § 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 [REDACTED] is a chain of restaurants located throughout the Gulf Coast.

² PHONECON between President of [REDACTED] and NPFC Representative on 12 April 2011

³ Letter of claim explanation form Claimant, 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 to the NPFC:

- Email from Claimant to NPFC Representative requesting a claim with the NPFC, including a sum certain, dated 08 April 2011;
- Letter of claim explanation from Claimant, undated;
- Letter from [REDACTED] to BP OIL Claims, undated;
- Copies of Claimant's Driver's License and Social Security Card;
- Paystubs from [REDACTED] the legible stubs has a periods ending in the 11th and 25th of July 2010;
- Email between Claimant and potential employer indicating a job application, dated 29 October 2010;
- 2008 Form W-2 from the State of Mississippi;
- 2010 Form W-2 from [REDACTED];
- 2008 State of Mississippi Income Tax Return;
- 2008 Form 1040 United States Income Tax Return; and
- 2009 Form W-2 from [REDACTED]

On 24 August 2010, the Claimant filed a six-month Emergency Advance Payment (EAP) claim of \$5,350.00 with the GCCF for lost profits and earnings.⁴ He was assigned GCCF Claimant ID

⁴ GCCF Filing Report, dated 25 April 2011
09/14/11

[REDACTED] and Claim # [REDACTED] This claim was denied by the GCCF on 04 December 2010.⁵ Claimant also has Interim and Final claims that are currently under review.⁶

On 12 April 2011, Claimant presented this claim for \$5,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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. The NPFC considered all of the documentation presented by the Claimant.

The claim is denied because the evidence presented by the Claimant does not demonstrate that the Claimant's alleged loss of \$5,000.00 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.

Claimant provided a letter from his employer supporting his assertion that the restaurant closed and he lost his job as a result of the Deepwater Horizon oil spill.⁷ The NPFC contacted the President of [REDACTED], [REDACTED] to verify the authenticity of the letter.⁸ [REDACTED] confirmed that he wrote the letter for all employees of the Hattiesburg, MS restaurant. He also clarified that the restaurant was underperforming prior to the Deepwater Horizon oil spill and that the oil spill merely contributed to its closure.

Additionally, the Claimant only worked for three pay periods at [REDACTED] from June through 15 July 2010. Claimant accordingly cannot demonstrate the amount of his earnings in comparable periods and during the period when the claimed loss or impairment was suffered through financial documentation as required by 33 C.F.R. § 136.233.

Because the Claimant has failed to demonstrate (1) the amount of his earnings in comparable periods and during the period when the claimed loss or impairment was suffered through financial documentation and (2) that his alleged loss of \$5,000.00 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, this claim is DENIED.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: *4/29/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ Denial letter from the GCCF, dated 04 December 2010

⁶ GCCF Filing Report, dated 25 April 2011

⁷ Letter from [REDACTED] to BP OIL Claims, undated.

⁸ PHONECON between President of [REDACTED] and NPFC Representative on 12 April 2011.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

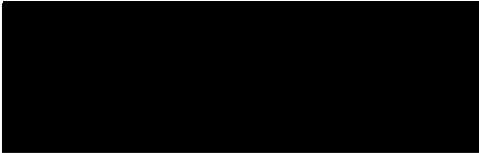
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0663
15 June 2011



Claim Number # N10036-0663

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 N10036-0663 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 N10036-0663.

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

FOIA2011-3380-00002584

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Claim Number | N10036-0663 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Amount Requested | \$5,339.80 |

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 12 April 2011, [REDACTED] Testamentary Trust (Claimant) through [REDACTED] (Trustee) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,339.80 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owns Unit [REDACTED] at the [REDACTED] condominium in Orange Beach, Alabama (AL). The Claimant rents the unit to tourists through [REDACTED] in Gulf Shores, AL.¹ The Claimant alleged that as a result of the Deepwater Horizon oil spill, its rental income declined from cancellations and vacant periods.² The Claimant provided an analysis of the Rental Income for 2007, 2008, 2009 and 2010.³

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.

¹Letter to NPFC dated 24 March 2011 explaining the claim.

²OSLTF claim form.

³Reservation Report for Arrivals 01/01/10 to 10/01/11 for Unit # [REDACTED] at the [REDACTED] Orange Beach, AL, prepared by [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, Claimant submitted the following documentation:

1. OSLTF Claim Form signed by the Trustee on 29 March 2011
2. Letter to NPFC dated 24 March 2011 explaining the claim
3. Reservation Report for Arrivals 01/01/10 to 10/01/11 for [REDACTED] Orange Beach, Alabama, prepared by [REDACTED]
4. Worksheet analysis of the Rental Income May to December, 2007, 2008, 2009 and 2010
5. [REDACTED] Rental Statements for May 2007 through December 2010
6. GCCF Letter of Denial of Interim Payment/Final Payment Claim dated 06 March 2011
7. IRS Form W-9 Request for Taxpayer Identification Number and Certification dated 24 March 2011
8. Copies of articles from [REDACTED] Birmingham Alabama News, Gulf Shores Orange Beach
9. E-Mail from [REDACTED] CPA dated 26 April 2011 stating Summer Rental included in Tax Returns
10. Form 1041 US Income Tax Return for Estates and Trusts for 2008, 2009 and 2010.

On 13 April 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 13 May 2011, the Claimant responded to the letter.

Prior to presentment to the NPFC, the Claimant presented an Interim Claim Payment claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim # [REDACTED]. The interim claim

presented to the GCCF was for \$4,547.55. On 06 March 2011 the GCCF denied the claim.⁴ GCCF further reviewed the claim and on 13 June 2011, made an Interim Payment of \$5,362.63 to the Claimant. GCCF also made a Final Payment Offer of \$25,000.00, which the Claimant has not accepted.⁵

The Claimant seeks \$5,339.80 in loss of rental income from the OSLTF. The NPFC cannot consider any amount in excess of \$4,547.55 for alleged loss of profits because the Claimant has not made proper presentment of costs in excess of that amount 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.

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 claim is denied because (1) presentment requirements were not met pursuant to 33 U.S.C. § 2713(a) and the claims regulations at 33 C.F.R. § 136.103(a) for any amount in excess of \$4,547.55 and (2) because the Claimant was fully compensated for its alleged loss as the Responsible Party (RP) has paid the Claimant \$5,362.63 to date.

Claim Supervisor:  n

Date of Supervisor's Review: *15 June 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴GCCF Letter of Denial of Interim Payment/Final Payment Claim dated 06 March 2011.

⁵PHONECON with Trustee on 14 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 # N10036-0664
14 April 2011

Re: Claim Number: N10036-0664

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 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on claim # N10036-0664. 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 N10036-0664.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 04/13/2011 |
| Claim Number | : N10036-0664 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$80,000.00 |

FACTS:

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 12 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$80,000 in loss of profits and earning capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he lost financial support in the ministry.¹ The claimant alleged that as a result of the Deepwater Horizon oil spill, he has not been able to receive pay for his family expenses.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).

¹ OSLTF optional claim form dated 12 April 2011.

² Id.

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

DETERMINATION OF LOSS:

Claimant's Submission to the OSLTF

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

- OSLTF claim Form dated April 12, 2011

Claimant seeks \$80,000 in loss profits and earnings capacity allegedly resulting from the Deepwater Horizon spill.


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 Claimant only presented an OSLTF claim form that stated he has lost financial support in the ministry and has not been able to receive pay for his family expenses. Additionally, the Claimant stated on his claim form that he has not communicated with the Responsible Party, BP and he has not presented his claim to the RP first.

The Claimant has not provided any supporting documentation for his claim submission nor has he provided the rationale for how he calculated his alleged loss of profits in the amount of \$80,000.00. Additionally, the Claimant has failed to make proper presentment of his claim first to the RP as required by § 136.103 it states..." (a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party or guarantor of the source designated under §136.305".

Based on the foregoing, this claim is denied because (1) the Claimant has failed to meet his burden of establishing a loss of profits and earnings 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, (2) the Claimant has failed to meet his burden in proving he has an alleged loss in the amount of \$80,000.00 by way of comparable financial documentation, and (3) the Claimant has failed to properly present his claim first to the RP as required by regulation.

Claim Supervisor 

Date of Supervisor's review: *4/14/11*

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 # N10036-0665
14 April 2011

Re: Claim Number: N10036-0665

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 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on claim # N10036-0664. 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 N10036-0664.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED SIGNATURE]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 04/13/2011 |
| Claim Number | : N10036-0665 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| 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 12 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$45,000 in loss of profits and earning capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that she lost a substantial amount of income due to a decrease in financial support in the ministry.¹ The claimant alleged that as a result of the Deepwater Horizon oil spill, he has not been able to receive pay for his family expenses.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).

¹ OSLTF optional claim form dated 31 March 2011.

² Id.

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

DETERMINATION OF LOSS:

Claimant's Submission to the OSLTF

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

- OSLTF claim Form dated March 31, 2011

Claimant seeks \$45,000 in loss profits and earnings capacity allegedly resulting from the Deepwater Horizon spill.

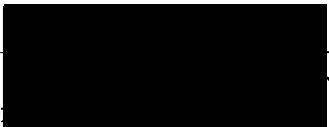
NPFC Determination

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 Claimant only presented an OSLTF claim form that stated she has lost a substantial amount of income due to a decrease in financial support of the ministry and has not been able to receive pay for her services although she never articulated exactly what the nature of her services are/were. Additionally, the Claimant stated on her claim form that she has not communicated with the Responsible Party, BP and she has not presented her claim to the RP first.

The Claimant has not provided any supporting documentation for her claim submission nor has she provided the rationale for how she calculated her alleged loss of profits in the amount of \$45,000.00. Additionally, the Claimant has failed to make proper presentment of her claim first to the RP as required by § 136.103 it states..." (a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party or guarantor of the source designated under §136.305".

Based on the foregoing, this claim is denied because (1) the Claimant has failed to meet her burden of establishing a loss of profits and earnings 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, (2) the Claimant has failed to meet her burden in proving she has an alleged loss in the amount of \$45,000.00 by way of comparable financial documentation, and (3) the Claimant has failed to properly present her claim first to the RP as required by regulation.

Claim Supervisor 

Date of Supervisor's review: *4/14/11*

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

5890
5/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0666

Dear [REDACTED]

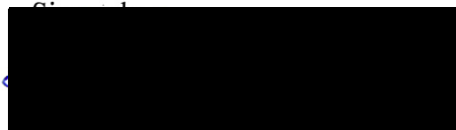
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0666 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-0666.

Mail reconsideration requests to:

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



Enclosure: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002596

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : May 18, 2011 |
| Claim Number | : N10036-0666 |
| Claimant | [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | : \$54,000.00 |

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 April 12, 2011, the National Pollution Funds Center (NPFC) received a claim from [REDACTED] via their owner [REDACTED] for lost profits and earnings in the amount of \$54,000.00.

The Claimant purchased [REDACTED] in 2010, prior to the oil spill. The Claimant asserted that the Deepwater Horizon incident caused the fishing business in Key West, Florida to decline rapidly. The majority of the businesses clientele, as alleged by the Claimant, comes from "tourists walking up and booking directly."¹

The claim consists of "past revenue which changed after the Gulf Coast oil disaster."²

Based on information provided by the Claimant and a review of the GCCF database, the Claimants filed an Emergency Advance Payment (EAP) claim with the GCCF on November 16, 2010 for \$43,000.00 and was given claimant [REDACTED]. The claim was subsequently denied. An interim claim was later submitted to the GCCF on January 4, 2011 for \$54,000.00. The interim claim is currently listed as 'deficient'.

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 Explanation letter from Claimant dated December 28, 2010

² Claimant's response to NPFC questions received May 5, 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 support the claim, the Claimant submitted the following documents:

- NPFC Optional (OSLTF) Claim Form, dated 05 April 2011
- U.S. Return of Partnership Income, Form 1065, 2008 and 2009
- U.S. Personal Income Tax Return, Form 1040, 2008 and 2009
- Profit & Loss Statements for the months of May 2010 through December 2010.
- Correspondence from claimant dated 28 December 2010
- Sport fishing advertisement
- National vessel documentation, issued 09 November 2010

- City of Key West, Florida, Business Tax Receipt, dated 09 November 2010
- Monroe County Business Tax Receipts, dated 08 November 2010
- Illegible copy of 2009 Schedule C for [REDACTED], previous owner of [REDACTED] Charters.

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 Claimant has not provided financial information; including expenses, profits, or earnings in comparable periods to the period when the claimed loss was suffered since this business was purchased in 2010 and the previous owner would not release previous records.

The Claimant did provide Profit & Loss statements from May 2010 through October 2010 which provided what the actual sales were for the business. The Claimant stated in their response letter to the NPFC's questions that the loss was determined from "tax returns provided by the seller of the business and the boat [REDACTED] which were presented to me before purchasing the boat and business."

The Claimant has not demonstrated that the alleged loss of profits and earnings was due to the injury, the destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Additionally, the Claimant has failed to meet their burden in demonstrating a loss of profits. Furthermore, the financial documentation provided does not have the appropriate detail in order for the NPFC to understand how the Claimant arrived at the projected sales figures used to calculate their claimed loss. As such, the claim for lost profits or earnings capacity is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 5/18/11

Supervisor Action: *Denial approved*

U.S. Department of
Homeland Security

United States
Coast Guard

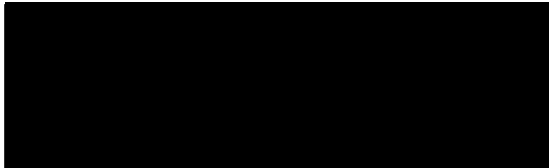


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim# N10036-0667
23 Aug 2011



RE: Claim Number: N10036-0667

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, #N10036-0667. Please see the enclosed Claim Summary/Determination Form for further explanation.

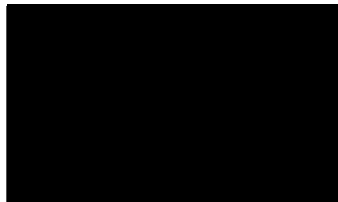
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0667.

Mail reconsideration requests to:

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

Sincerely,



United States Coast Guard
Claims Manager

Enclosure: (1) Claim Summary/Determination Form
(2) Documentation Provided by Claimant, N10036-0667

09/14/11

FOIA2011-3380-0002600

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|----------------------------|
| Claim Number | N10036-0667 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Government Public Services |
| Amount Requested | \$73,791.00 |

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; however, BP retained responsibility for accepting and adjudicating State and other government claims.

CLAIM AND CLAIMANT

On 5 April 2011, the [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking lost government revenues in the amount of \$43,379.00 and government public services costs in the amount of \$30,412.00, for a total amount claimed of \$73,791.00 in costs that allegedly resulted from the Deepwater Horizon oil-spill. The NPFC separated the claim into a claim for lost government revenues (N10036-0642) and a claim for government public services (N10036-0667). This claim will address only the Claimant's request for compensation for its alleged increased government public services expenses in the amount of \$30,412 (N10036-0667).

Claimant alleged that "[i]n order to lessen the impact of the oil spill the county performed mitigation advertising at a cost of approximately \$30,412.00."¹ According to Claimant the advertising dollars were spent "to advertise that its beaches, shores, and waters had not been impacted by the oil spill."²

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. Damages include damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State. 33 U.S.C. § 2702(b)(2)(F).

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.

¹ Id.

² Id.

Public Services

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. The claims adjudication regulations define a claim for public services, found at 33 C.F.R. §136.237, to mean a claim for net costs of “providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil. . .” Public services damages are recoverable by a State, or a political subdivision of a State incurring the costs. 33 C.F.R. § 136.237.

Under 33 C.F.R. § 136.239 a claimant must, in addition to the requirements of subparts A and B of part 136, establish the following:

- (a) The nature of the specific public services provided and the need for those services;
- (b) That the services occurred during or after removal activities;
- (c) That the services were provided as a result of a discharge of oil and would not have otherwise have been provided; and
- (d) The net costs for the services and the methods used to compute those costs.

Under 33 C.F.R. § 136.241, the amount of compensation allowable for a claim involving government public services costs is limited to the actual net cost of the increased or additional service provided by the State or political subdivision.

Under 33 U.S.C. § 2713 (b)(2) “no claim of a person against the OSLTF may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.”

DETERMINATION OF LOSS:

Claimant's Submission

Prior to presentment to the NPFC, Claimant submitted claims to BP on 31 July 2010 and 19 October 2010.³ According to Claimant, BP denied the Claimant's claim for public services costs and has failed to respond to its claim for lost government revenues within the 90 day period prescribed by OPA.⁴ However, a listing of State of Florida government claims paid as of August 1, 2011, reflects that the [REDACTED] was paid \$21,160 for increased public services costs.⁵

On 05 April 2011, Claimant presented its claim in the total amount of \$73,791.00, which, as noted above, the NPFC separated into two claims. This claim specifically seeks alleged increased government public services costs in the amount of \$30,412.00 allegedly resulting from the Deepwater Horizon oil spill.⁶

Counsel for Claimant advised the NPFC on 11 April 2011 that the Claimant has filed a claim in the multidistrict litigation now pending in the United States District Court for the Eastern District of Louisiana (MDL-2179) In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf Of

³ Optional OSLTF Claim form dated 25 March 2011

⁴ Id.

⁵ This equals the \$21,160 costs for ePromotions included on Claimant's \$30,412 claim for public services.

⁶ Id.

Mexico, on April 20, 2010) against BP (the "MDL").⁷ Although under the statute the NPFC may not approve and certify the payment of a claim during the pendency of an action by the person in court to recover costs which are the subject of the claim, the NPFC may adjudicate such a claim to determine whether it may be compensable. Where appropriate, such a claim may be denied.

To support this claim, Claimant submitted documentation which is listed in Enclosure (2).

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.

Public Services

Claimant has asserted that it incurred increased public services costs as a result of the oil spill. Claimant has provided evidence that it commenced "oil spill" advertising as early as April 2010, in order to persuade tourists that its beaches were unfouled.⁸ Claimant asserts that it expended \$30,412.00 in "mitigation advertising" in order to "lessen the impact of the oil spill."⁹

33 C.F.R. §136.237 allows claims for net costs of "providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil..." For example, a manager of a coastal town might provide emergency traffic control during or after removal activities in the vicinity of an oil spill for safety reasons. However, marketing to advertise that its beaches are not oiled in an effort to increase tourist businesses is not a public service under OPA.

Further, OPA provides that damages for public services are net costs of providing increased or additional services that would not have otherwise been incurred as a result of the spill. Claimant's annual expenditures for advertising were \$415,272.00 in 2007, \$450,000.00 in 2008, \$316,765.00 in 2009, and 350,000.00 as of 18 October 2010.¹⁰ The actual annual expenditure as of 18 October 2010 was only \$2,500.00 below the amount budgeted by Claimant for the year. Claimant has not established that it has incurred *increased* marketing costs as a result of the spill. Rather, it appears that Claimant, which expends significant sums on advertising annually, merely changed the content of its ongoing marketing efforts to address the oil spill.

This claim is denied because the Claimant failed to meet its burden to demonstrate (1) that its public services claim for increased costs resulting from "mitigation advertising" is compensable under OPA and (2) that even if these advertising costs would be compensable that the Claimant incurred increased costs, but only changed the content of its ongoing marketing efforts to address the oil spill.

⁷ PHONECON between [REDACTED] and [REDACTED] dated 11 April 2011.

⁸ See Invoice from [REDACTED] for "Oil Spill Marketing" dated 28 April 2010

⁹ Optional OSLTE Claim form dated 25 March 2011

¹⁰ See [REDACTED] For Selected Funds and Departments As of 10/19/2010 and [REDACTED]

[REDACTED] For Selected Funds and Departments As of 10/18/2010

Finally, as noted in a State of Florida Government Claims Paid document, it appears that BP compensated the [REDACTED] \$21,160.00 for increased public services costs. Thus, even if this claim was OPA compensable, only \$9,252.00 would have been reviewed and adjudicated by the NPFC.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: *8/23/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

Enclosure (2)

Documentation Provided by Claimant N10036-0667

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 25 March 2011;
- [REDACTED] BP Deepwater Horizon Oil Spill Lost Revenue Net Loss of Tourist Bed Tax Revenue (Exhibit 1);
- [REDACTED] BP Deepwater Horizon Oil Spill Lost Revenue Net Loss of Tourist Bed Tax Revenue (County Sum);
- [REDACTED] BP Deepwater Horizon Oil Spill Lost Revenue Net Loss of Tourist Bed Tax Revenue (2009 v. 2010);
- Statement of Tourist Tax 1997 through August 2010;
- 3% Tourist Development Tax revenues for [REDACTED] for the periods from 1997-98 through 2009-10;
- [REDACTED] Expenditures For Selected Funds and Departments As of 10/19/2010;
- [REDACTED] Expenditures For Selected Funds and Departments As of 10/18/2010;
- [REDACTED] Board of County Commissioners BP Deepwater Horizon Oil Spill Mitigation Advertising 31 July 2010 for months from April through July 2010 totaling \$30,412.04 including two costs for ePromotions totally \$21,160 (Exhibit 2);
- [REDACTED] BP Deepwater Horizon Oil Spill Mitigation Advertising 31 July 2010 for months from April through July 2010 totaling \$30,412.04 (duplicate);
- Invoice from [REDACTED] for "Oil Spill Marketing" dated 28 April 2010;
- Invoice from [REDACTED] for "Oil Spill Marketing" dated 15 May 2010;
- [REDACTED] BP Deepwater Horizon Oil Spill Mitigation Advertising 31 July 2010 for months from April through July 2010 totaling \$9,252.04;
- [REDACTED] Cash Expense Record BP Deepwater Horizon Oil Spill dated 31 July 2010 in the amount of \$9,252.04;
- [REDACTED] Orlando Invoice dated 23 July 2010 in the amount of \$150.00;
- Memorandum from [REDACTED] (Public Relations Manager) re: request for reimbursement of expenses for lunch with travel writer and blogger [REDACTED] in the amount of \$18.46;
- Memorandum from [REDACTED] (Public Relations Manager) re: request for reimbursement of expenses for dinner with travel video blogger [REDACTED] in the amount of \$26.08;
- Food and Lodging Expenditure report dated 25 August 2010;
- [REDACTED] Expense for [REDACTED] for expenses in the amount of \$8,977.50 from April through October 2010 (actual charges from April through July);
- [REDACTED] Expense for [REDACTED] in the amount of \$270.00 for expenses on 26 April and 29 April 2010;
- [REDACTED] Expense for [REDACTED] in the amount of \$1,822.50 for May 2010;
- [REDACTED] Expense for [REDACTED] in the amount of \$5,130.00 for June 2010;

- [REDACTED] Expense for [REDACTED] in the amount of \$1,755.00 for June 2010;
- E-mail from [REDACTED] to [REDACTED] dated 13 August 2010 re: Hourly Marketing Rates.

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 # N10036-0668
01 June 2011

Re: Claim Number: N10036-0668

De [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0668 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

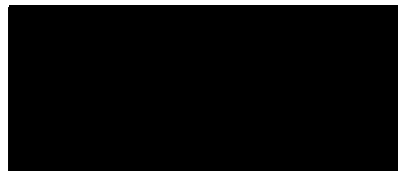
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0668.

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(s): (1) Claim Summary/Determination Form
(2) Summary of Documentation Provided

09/14/11

FOIA2011-3380-00002607

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|---|
| Claim Number | N10036-0668 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$115,000.00 |

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 12 April 2011, [REDACTED] on behalf of [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$115,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant was reportedly founded in December 2009. The Claimant allegedly creates fishing-related television documentaries. The Claimant purportedly had a video production contract with Capture Video to film a 13 show television series about a 21-foot research vessel in the Gulf of Mexico from 15 April through 15 June 2010. The Claimant indicated that the research was to be done from Terrebonne Bay to Mobile Bay along the State and Federal water line.¹ Claimant alleged that as a result of the Deepwater Horizon oil spill, “we were kicked off the water” and could not complete the project.²

Claimant calculated its sum certain as \$100,000.00 in lost contractual income and costs associated with repossession of the company vessel and the eviction from the company office.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

¹ Specific coordinates provided by Claimant include “Approx 91.20.20w-86.20w and 27.N-30N.” Letter addressing [REDACTED] scope of work, undated.

² *Id.*

³ Response letter for additional information request, fax date 28 April 2011.

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 Documentation

To support this claim, the Claimant presented the documentation listed in Enclosure (2).

Claimant reportedly received \$12,000.00 from BP. On 24 August 2010, the Claimant presented an Emergency Advance Payment (EAP) claim for \$36,000.00 in lost profits and earnings to the RP/GCCF. Claimant received GCCF Claimant II [REDACTED] and Claim [REDACTED]. On 14 December 2010, the EAP claim was denied by the GCCF.

On 4 January 2011, the Claimant presented a Full Review Final Payment claim for \$107,332.99 in lost profits and earnings to the GCCF.

On 12 April 2011, the Claimant presented the subject claim for \$115,000.00 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 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 his claim.

The NPFC reviewed all information and documentation provided by Claimant. Although the Claimant alleged that it was prevented from conducting business in certain waters as a result of the Deepwater Horizon oil spill, it failed to present evidence of official closures of these waters in order to corroborate the allegation.

Additionally, the NPFC found many inconsistencies in the Claimant's evidence. For example, the Claimant presented a BP Expense Report, which included equipment and supplies allegedly rented from [REDACTED] for the video production project. The Claimant's bank statement showed charges for this equipment from an [REDACTED] in Bozeman, Montana (ABC). The NPFC contacted [REDACTED] in Bozeman, MT and learned that it rents and retails heavy equipment only, not electronic and

digital equipment as asserted in the Claimant's rental list.⁴ The Claimant has ignored the NPFC's request for additional information on the respective locations and contacts for specific purchases.⁵

Moreover, the Claimant presented a video production contract between it and [REDACTED]. Although the contract showed a Washington State phone number for [REDACTED] it displayed a logo that matched a company by the same name—[REDACTED]—in Reston, Virginia. The NPFC contacted [REDACTED] at the WA state number and requested an original copy of the subject production contract with the Claimant. The Claimant was apprised of this request. To date, neither the Claimant nor [REDACTED] has responded to the NPFC's request. Additionally, the Claimant has ignored the NPFC's inquiries into the relationship between [REDACTED] with the WA state number and [REDACTED] in Reston, VA.⁶

Lastly, the NPFC could not independently verify the alleged address for the Claimant's [REDACTED] MT office or the address for the landlord who reportedly evicted the Claimant.⁷ Additionally, the NPFC could not independently verify the authenticity of the Claimant's eviction notice with the [REDACTED].

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.

Because the Claimant has failed to demonstrate its alleged loss of \$115,000.00, as claimed, or that the 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, this claim is denied.

Claim Supervisor [REDACTED] Division

Date of Supervisor's Review: 6/1/11

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ PHONECON; [REDACTED] Bozeman, MT and the NPFC, 22 April 2011.

⁵ PHONECON; Claimant and the NPFC, several occasions.

⁶ PHONECON; [REDACTED] (Seattle, Washington location) and the NPFC, 28 April 2011; PHONECON; [REDACTED] (Reston, Virginia location) and the NPFC, 26 April 2011.

⁷ PHONECON; [REDACTED] MT residents and the NPFC, 21 April 2011 and 27 May 2011.

⁸ PHONECON; [REDACTED] MT County Clerk's Office and the NPFC, 05 May 2011.

Enclosure (2)

Summary of Documentation Provided

- NPEC *Optional OSLTE Claim Form*, dated 12 April 2011, received 12 April 2011
- [REDACTED] letter, *To whom it may concern*, detailing research study contract
- [REDACTED] letter, *Statement* detailing losses and hardships, dated 21 January 2011
- Eviction Notice for [REDACTED] dated 03 October 2010
- [REDACTED] Video Production Contract, signed/dated 04 February 2010
- [REDACTED] Cancellation Notice, signed/dated 01 August 2010
- [REDACTED] *BP Expense Report*
- [REDACTED] *Bank Statement*, Reproduced Bank Statement Report
- [REDACTED] Internal Revenue Service EIN Notification, dated 11 December 2009
- Handwritten 2010 Form 1040 Schedule C, received 20 April 2011
- Two (DVD) demonstrating Pan-Angling Pan-Hunting videography

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# N10036-0669
23 May 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 claim number N10036-0669 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 N10036-0669.

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

| | |
|------------------|--------------------------------------|
| Date | 20 May 2011 |
| Claim Number | N10036-0669 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Amount Requested | \$63,287.00 |

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 12 April 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,000.00 in removal costs and \$48,287.00 in real or personal property damage for a total loss of \$63,287.00 resulting from the Deepwater Horizon oil spill.

Claimant indicated that he leased seven vans to [REDACTED] to transport oil cleanup personnel to and from job sites along Grand Isle, LA to Pensacola, Florida. Claimant was reportedly paid a weekly-rate per vehicle for a lease period from 16 June to 7 November 2010.¹ Each vehicle was reportedly assigned to a foreman. Claimant alleged that during the lease period, oil cleanup personnel negligently operated the vehicles by failing to properly check oil and water levels, tire inflation, and leaving contaminated items within the interior of the vehicles.

One vehicle was reportedly abandoned in Venice, LA. Claimant paid for the upkeep of the vehicles and was forced to take the vehicles to the salvage yard after neighbors complained of the condition of the vehicles while they were parked at the Claimant's residence.

Claimant indicated that his understanding was that the vehicles were going to be used to transport personnel only, and not contaminated materials.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 NPFCA, 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. § 136.213 is a claim for injury to, or economic losses resulting from the destruction of, real or personal property. Such a claim may be presented only by a claimant either owning or leasing the property.

¹ Letter from [REDACTED] Claimant email to the NPFCA, dated 18 May 2011.

² Letter from Claimant explaining loss, undated.

Under 33 C.F.R. § 136.215(a), a claimant must establish the following:

- (a) An ownership or leasehold interest in the property;
- (b) That the property was injured or destroyed;
- (c) The cost of repair or replacement; and
- (d) The value of the property both before and after injury occurred.

Under § 136.217(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.

Under 33 C.F.R. § 136.203 to prove a removal costs claim, a claimant must establish—

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC [Federal On-Scene Coordinator designated under the National Contingency Plan (NCP) or the person's authorized representative] to be consistent with the NCP or were directed by the FOSC.

Under 33 C.F.R. § 136.205, the amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the NCP or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, Claimant submitted the following documentation:

1. OSTLF Claim Form unsigned;
2. Typewritten letter from Claimant to NPFC submitted with claim explaining his alleged loss;
3. Letter from [REDACTED] from [REDACTED] listing Claimant's vehicles used;
4. Listing of Claimant's vehicles registered for sales taxes with Bay County, Florida;
5. Copies of various invoices to clean and repair Claimant's vehicles and pictures of the damage

On 20 April 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The Claimant responded to the request by e-mail on 18 May 2011.

On 22 November 2010, Claimant presented Emergency Advance Payment claims for \$58,000.00 in removal and cleanup costs, \$20,000.00 in lost profits and earnings, and another \$20,000.00 in lost profits and earnings. All these claims have been denied by the GCCF.³

³ GCCF denial letter Re: Claimant's EAP claim, dated 13 December 2010.
09/14/11

On 12 April 2011, Claimant presented this claim for \$15,000.00 in removal costs and \$48,287.00 in real or personal property damage for a total loss of \$63,287.00 resulting from the Deepwater Horizon oil spill.

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 earnings capacity. The NPFC considered all the documentation submitted by the Claimant.

Claimant seeks \$15,000.00 in removal costs and \$48,287.00 in real or personal property damage resulting from the negligent use and operation of his vehicles by oil spill cleanup personnel.

To establish a removal cost claim, a claimant must meet the requirements of 33 C.F.R. § 136.203 enumerated in the preceding applicable law section. Claimant has not demonstrated how his alleged loss satisfies those requirements. The evidence presented indicates that the Claimant merely leased his vehicles to a third-party contractor, who assisted with oil spill response cleanup. Additionally, the Claimant was compensated by this third-party for the use of his vehicles. Claimant himself indicated that the sole purpose of the lease was to transport personnel; it was not to engage in cleanup operations. Accordingly, the Claimant's alleged loss of \$15,000.00 in removal costs is denied.

Claimant's remaining \$48,287.00 alleged loss in real or personal property damage, as noted, arises from the negligent use and operation of his leased vehicles to a third party contractor. Claimant has not demonstrated that the damage to his property resulted from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone. 33 U.S.C. § 2702(a) & 2702(b).

In light of the foregoing, this claim for \$63,287.00 is denied.


Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *5/23/11*

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: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim# N10036-0670
16 May 2011

RE: Claim Number: N10036-0670

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 N10036-0670 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 N10036-0670.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002616

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | 14 May 2011 |
| Claim Number | N10036-0670 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$2,089.29 |

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 14 April 2011, [REDACTED] on behalf of [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$2,089.29 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. [REDACTED] asserted that he has been treasurer for the Claimant for over ten years.¹

Claimant is an association of condominium owners who collectively own 30 units located at [REDACTED] Panama City Beach, FL. Claimant employs an onsite individual who rents these units out as would a hotel.² Rents collected are then distributed among the aforementioned parties, with 25% going to the onsite employee, 10% to the Claimant, and the balance to the individual property owners.

Claimant asserted that its 10% percent cut of revenues for the months of May through September 2010 declined by \$2,089.29 due to the Deepwater Oil spill. Claimant calculated the damages by averaging its revenue cut for the same period over the past three years, then subtracting the 2010 revenue cut from this past average.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

¹ Letter from treasurer explaining Claimant's business model, undated.

² Claimant's business summary.

³ Claimant's lost revenue calculations.

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

In support of its claim, Claimant presented an OSLTF claim form, a summary of its business model, oil spill damages calculations, a denial letter from GCCF (dated 06 March 2011), and a copy of its Florida Business License.

On 23 November 2010, Claimant presented Emergency Advance Payment (EAP) and Final Payment claims each for \$4,335.00 in lost profits and earnings to the GCCF. Claimant was assigned GCCF Claimant II [REDACTED] and Claims [REDACTED] and [REDACTED], respectively. Claim [REDACTED] was denied by the GCCF.

On 03 January 2011, Claimant presented an Interim Payment claim [REDACTED] for \$3,754.33 in lost profits and earnings to the GCCF. On 6 March 2011, claim [REDACTED] was denied by the GCCF.⁴

⁴ GCCF denial letter Re: Claimant's Interim Payment claim, dated 6 March 2011.

On 14 April 2011, Claimant presented this claim for \$2,089.29 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

This claim is DENIED because the Claimant failed to meet the burden to respond to the NPFC's request for additional information and to demonstrate an alleged loss of \$2,089.29, as claimed, and the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

On 14 April 2011, the NPFC sent the Claimant a letter requesting additional information on his claim. The letter requested, among other things, financial documentation to verify the Claimant's alleged loss and other evidence corroborating the impact of the Deepwater Horizon oil spill on the Claimant's business. On 27 April 2011, the Claimant requested additional time to respond to the letter and was granted an extension through 13 May 2011.⁵ As of the date of this determination, the NPFC has not received any information from the Claimant.

The NPFC proceeded to evaluate the claim with the evidence previously provided. The evidence presented does not demonstrate the Claimant's alleged loss of \$2,089.29, as claimed or 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.

This claim is accordingly DENIED.

Claim Supervisor: 

Date of Supervisor's Review: *5/16/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ PHONECON between the NPFC and Claimant on 27 April 2011.
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 # N10036-0671

15 April 2011

Re: Claim Number: N10036-0671

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 N10036-0671 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 N10036-0671.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 14 April 2011 |
| Claim Number | N10036-0671 |
| Claimant | Claimant |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$3,355.52 |

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 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC). The OSLTF claim form alleged \$3,355.52 in loss of profits and impairment of earnings capacity.

Claimant worked as a part-time cashier at a [REDACTED] in Gulfport, MS.¹ Claimant asserted that she had to resign from her job and relocate because she experienced a reduction in work hours resulting from 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 § 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 Letter from [REDACTED] (HR Rep) to "whom it may concern," dated 01 April 2011.

² OSLTF claim form, dated 05 April 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 the OSLTF

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

- OSLTF claim form, dated 05 April 2011;
- Letter from [REDACTED] to "whom it may concern," dated 01 April 2011;
- Denial letter from the GCCF for her Interim Payment/Final Payment claim, dated 01 April 2011;
- Denial letter from the GCCF for her Supplemental Emergency Advance Payment claim, dated 09 December 2010;
- Denial letter from the GCCF for her Emergency Advance Payment claim, dated 15 November 2010; and
- Letter of reminder from the GCCF to submit financial documentation for Interim Payment claim or Final Payment claim, dated 29 January 2011.

Claimant filed multiple claims with the GCCF. She was assigned GCCF Claimant ID # [REDACTED]. Her Emergency Advance Payment (EAP) claim (Claim [REDACTED]) for lost profits and earnings was denied by the GCCF on 15 November 2010.⁴ Her Supplemental EAP claim was denied by the GCCF on 09 December 2010.⁵ Lastly, Claimant was denied on her Interim claim and/or Full Review Final claim on 01 April 2011.⁶

³ Denial letter from GCCF, dated 15 November 2010

⁴ *Id.*

⁵ Denial letter from GCCF, dated 09 December 2010

⁶ Denial letter from GCCF, dated 01 April 2011.

Claimant then filed this claim for \$3,355.52 in lost profits and impairment of earnings capacity with the NPFC.

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. The NPFC considered all of the documentation submitted by Claimant.

Claimant provided a letter from an HR Representative at [REDACTED] with the submission of her claim. This letter indicated that Claimant worked from 01 May 2010 to 23 July 2010, but made no reference to the Deepwater Horizon oil spill.⁷ The NPFC contacted the HR Department to obtain clarification regarding Claimant's departure from [REDACTED]. The HR Representative indicated that the Deepwater Horizon oil spill had no impact on Claimant's hours and if Claimant resigned from her job due to a reduction in hours, it was a personal decision.⁸

The claim is denied because the evidence presented by Claimant does not demonstrate that Claimant's alleged loss of \$3,355.52 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: 4/15/11 |
| Supervisor's Actions: <i>Denial approved</i> |
| Supervisor's Comments: |

⁷ Letter from [REDACTED] (HR Rep) to "whom it may concern," dated 1 April 2011

⁸ PHONECON between NPFC Representative and [REDACTED] HR Representative on 13 April 2011

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

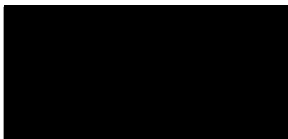
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0672
04 May 2011



Claim Number: N10036-0672

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 N10036-0672 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

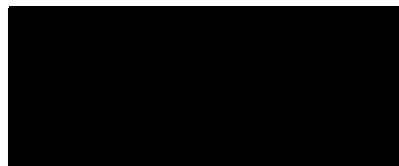
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0672.

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
Claims Manager

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

09/14/11

FOIA2011-3380-00002624

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------|
| Date | 02 May 2011 |
| Claim Number | N10036-0672 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Real Property Loss |
| Claim Manager | [REDACTED] |
| Amount Requested | \$205,000.00 |

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 13 April 2011 [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$205,000.00 in real or personal property damage resulting from the Deepwater Horizon oil spill.

Claimant owns condo unit #309 at the [REDACTED] on Destin West Beach and [REDACTED] in Okaloosa County, Florida. Okaloosa County assessed the value of the property for Ad Valorem Tax in 2009 at \$430,000.00.¹ The County assessed the value in 2010 at \$301,000.00.² Claimant alleged that the decrease in assessed value of the property of \$129,000.00 (\$430,000 - \$301,000) resulted from the Deepwater Horizon oil spill.

Claimant also owns unit #301 at the [REDACTED] on Destin West Beach and [REDACTED] in Okaloosa County, Florida. Claimant sold this property on 27 September 2010 for \$168,000.00.³ Okaloosa County assessed the value of the property for Ad Valorem Tax in 2009 at \$244,000.00.⁴ Claimant alleged that this difference of \$76,000.00 (\$244,000.00 - \$168,000.00) represents a loss on the sale resulting from the Deepwater Horizon oil spill.

Claimant alleged a total real property loss of \$205,000.00 (\$129,000 + \$76,000) from his two condos.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.

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 Okaloosa County Notice Ad Valorem Tax of \$5,790.61 for 2009.

² Okaloosa County Notice Ad Valorem Tax of \$4,219.72 for 2010.

³ HUD Settlement Statement settlement 27 September 2010.

⁴ Okaloosa County Notice Ad Valorem Tax of \$3,308.64 for 2009.

⁵ OSLTF Form signed by the Claimant 11 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 the claim, Claimant submitted the documents listed in Enclosure (2) to the NPFC.

On 03 November 2010, Claimant presented a Final Payment claim for \$76,000.00 in real property damage to the GCCF. Claimant was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 05 April 2011, the GCCF made the Claimant a Final Payment Offer of \$25,000.00, which to date the Claimant has not accepted.⁶

On 13 April 2011, Claimant presented this claim for \$205,000.00 in real or personal property damage to the NPFC.

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.

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 Final Payment claim for \$76,000.00 in real property damage to the GCCF. Claimant then presented a real property damage claim of \$205,000.00 to the NPFC. Any claimed amount of damages exceeding \$76,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore DENIED.

⁶ Claimant protests that the Final Payment Offer does not address the subject of this claim (loss of value from sale of unit #301 and loss of value of unit # 309). Claimant indicates that the \$25,000.00 offer just reflects his loss of rental profits claim for his condos. The two claims for loss of rents and loss of property value appear to have been consolidated before the GCCF.

The remainder of this claim is DENIED because Claimant's evidence does not demonstrate (1) that his alleged loss in the amount of \$76,000.00 resulted from the destruction of real or personal property, or (2) 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 conceded that his properties did not suffer any physical damage from the Deepwater Horizon oil spill.⁷

Although the Claimant's documentation supports a reduction in value for his two condos (one sold, the other retained), he has provided no evidence demonstrating that the reduction in value of his properties resulted from the Deepwater Horizon oil spill. In fact, a letter from the Okaloosa County Property Appraiser, which the Claimant provided, indicated the difficulty of relying on property appraisals as a measure of Deepwater Horizon oil spill's impact on property values. The letter states in part "[t]he general consensus among professionals who have examined this issue [the impact of the oil spill on property values] is that there is no reliable appraisal methodology that can accurately discern the amount of loss attributable solely to the Deepwater Horizon oil spill. . . ."⁸

This claim is denied because the Claimant has 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 his alleged loss resulted from the destruction of real or personal property, (3) and 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: *5/4/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁷ PHONECON between the NPFC and Claimant on 20 April 2011.

⁸ Letter for Okaloosa County Property Appraiser dated 23 December 2010 to Property Owner concerning request for interim property assessment.

Enclosure (2): Documentation Submitted by Claimant

1. OSLTF Form signed by Claimant 11 April 2011
2. Letter to NPFC from Claimant concerning Real Estate Property Loss
3. E-mail from Claimant dated 12 April 2011 to Notices and Offers at GCCF re Response and Inquiry
4. GCCF Determination Letter on Interim Payment/Final Payment Claim dated 05 April 2011
5. GCCF Letter on Receipt of Final Payment Claim Form dated 26 January 2011
6. GCCF Full Review Final Payment Claim Form – Page 6 and 7
7. GCCF Notice of Determination Emergency Advance Payment dated 20 September 2010 for \$20,100.00
8. E-mail from GCCF to Claimant dated 28 December 2010 re Claim [REDACTED]
9. GCCF Form 2000-C for Claim [REDACTED] dated 24 October 2010
10. Okaloosa County Notice of Ad Valorem Tax for #301 at [REDACTED] for \$3,308.64
11. Okaloosa County Property Appraiser for Unit 301 [REDACTED] for \$169,000
12. Listing Agreement with [REDACTED] for Unit 301 at [REDACTED] starting 26 April 2010
13. HUD Settlement Statement for Unit 301 at [REDACTED] settlement date 27 September 2010
14. Warranty Deed for Unit 301 at [REDACTED] made 27 September 2010
15. Memo by Claimant concerning consolidation of claims
16. GCCF Final Claim application signed by Claimant 02 February 2011
17. Form 1099 for 2010 from GCCF for \$20,100.
18. Okaloosa County Notice of Ad Valorem Tax for Unit 309 at [REDACTED] for 2010 for \$4,219.72
19. Okaloosa County Notice of Ad Valorem Tax for Unit 309 at [REDACTED] for 2009 for \$5,790.61
20. State of Florida Executive Order Number 10-169 dated 21 July 2010 on Deepwater Horizon Oil Spill
21. Letter for Okaloosa County Property Appraiser dated 23 December 2010 to Property Owner concerning request for interim property assessment
22. GCCF Letter on receipt of Interim/Final Claim application dated 31 January 2011

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

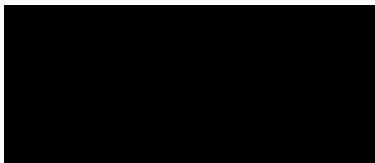
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
5/26/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0673

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 N10036-0673 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

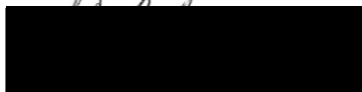
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0814.

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

FOIA2011-3380-00002629

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Claim Number | : N10036-0673 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$8,500.00 |

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 April 13, 2011 [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC), on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$8,500.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that he was affected by the oil spill because he was laid off by his employer, [REDACTED] due to the lack of business and lack of tourists for banquets. The Claimant was a dishwasher/cook for the [REDACTED]. Claimant further asserted that he has been looking for work and he keeps in touch with his previous employer in the event he can get rehired.

On the Claimant's OSLTF claim form, the Claimant indicated that he filed a claim with the Responsible Party (RP) on January 4, 2011 and that the claim was denied. The NPFC confirmed with the GCCF that the Claimant filed a Final payment claim on November 11, 2010 in the amount of \$18,500.00. The Claimant was assigned GCCF Claimant II [REDACTED]. The GCCF indicated that the claim is presently still under review. The GCCF also confirmed that the Claimant filed a Supplemental claim on November 11, 2010 for lost profits in the amount of \$8,500.00. The GCCF has confirmed the claim has been denied. On April 25, 2011, the Claimant also filed a Final Review claim for lost profits in the amount of \$8,900.00 which is currently still under review.

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;
- (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 April 1, 2011;
- Letter dated December 30, 2010 from the Claimant's employer confirming loss of employment;
- 2009 W-2 from [REDACTED];
- Itemized pay history from [REDACTED] from January 16, 2009 through April 2, 2010.

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. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that income was reduced as a result of the Deepwater Horizon incident.

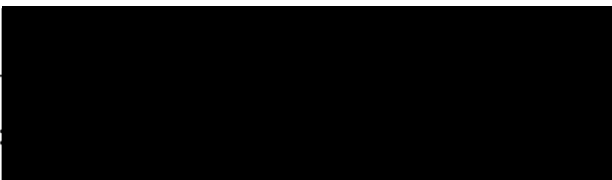
On April 20, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

1. Income Tax Return Filings for 2007, 2008 and 2009 and 2010 (if available) including all attachments, Schedule C's and form 1099's.
2. If you were employed in a job where you receive commissions, provide detailed commissions reports from 2008 through the current period.
3. If your claim is based on being terminated from existing employment, provide written confirmation from your former employer, including your termination notice, verifying that your employment was terminated due to direct impacts of the Deepwater Horizon incident to your employer's business.
4. Has your employer filed a claim associated with the Deepwater Horizon incident? If so, provide your employer's underlying documentation to support their reduction in business.
5. If you have received unemployment benefits from 2009 through the present, provide copies of payments received and statements of benefits.

The NPFC also requested the Claimant answer the following questions:

1. Describe your employment history from 2008 through the current period.
 - a. Include a description of dates worked, your position held and job duties.
2. Identify your position, job title and responsibilities for your employment position that you believe was impacted by the Deepwater Horizon incident.
3. Identify any specific periods of time that you were unemployed from 2008 through the current period.
4. If you have received unemployment benefits during 2009 and 2010 identify the periods of time when you received benefits and the amounts received.
5. Describe your primary form of employment and trade skills.
6. Has your employer or former employer filed a claim related to the Deepwater Horizon incident? If so, describe the outcome of your employer's claim.
7. Describe how you computed your claimed lost earnings.
8. What is the date you were laid off?
9. Did you receive any type of severance package? If so, what was included in the severance package?
10. Please describe your work schedule both before and after the Deepwater Horizon Incident.
11. Did you work a set amount of hours every week?
12. What determined the amount of hours you worked?

The Claimant has not provided the additional documentation nor answered any of the questions to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *5/26/11*

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 # N10036-0675
26 May 2011

Re: Claim Number: N10036-0675

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 N10036-0675 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 N10036-0675.

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

Enclosures: (1) Claim Summary/Determination Form
(2) Evidence Provided by Claimant in Support of N10036-0675

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 26 May 2011 |
| Claim Number | N10036-0675 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Amount Requested | \$21,530.86 |

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 14 April 2011, [REDACTED] Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$21,530.86 in lost profits and earnings that allegedly resulted from the Deepwater Horizon oil spill.

Claimant was employed as a salesman for [REDACTED] in Key West, FL. He sold water adventures, such as Dolphin Adventures, Snorkeling trips to the Reef, Parasailing flights, and Fishing Charters.¹ Claimant's role was to "bark" at tourists who walked by the Fury booths that are located alongside the main drag in Key West.² Claimant asserted that because of the Deepwater Horizon oil spill, "cancellations and the decrease of tourism in Key West was well over 50%."³

Claimant indicated that he was working additional shifts to break even because his sales were so low.⁴ He voluntarily left work at [REDACTED] on 29 October 2010 after giving the company six weeks notice. He began working at [REDACTED] in late November; however he asserted he was laid off there in mid-January because of a lack of tourism.⁵

Claimant calculated his initial loss from April through September of 2010 (\$10,765.43) with guidance from the GCCF and subtracting his actual earnings from his average monthly earnings prior to oil entering the Florida loop current.⁶ It is unclear how he calculated the loss from

¹ Letter from Claimant to "whom it may concern" at the GCCF, dated 20 December 2010

² Letter of claim explanation from Claimant to NPFC Representative, dated 26 April 2011

³ Id.

⁴ Id.

⁵ Id.

⁶ Cash Flow Statement from 2010

October through December of 2010 in the amount of \$5,382.72.⁷ At the time Claimant brought his claim to the GCCF, the Claimant estimated his losses for 1 January 2011 through 31 March 2011 in the amount of 5,382.78.⁸

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;

⁷ Letter from Claimant to "whom it may concern" at the GCCF, dated 20 December 2010

⁸ Id.

- (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 the documentation listed in Enclosure (2).

Claimant seeks a total of \$21,530.86 in loss of earnings allegedly resulting from the Deepwater Horizon oil spill.

On 1 October 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim of \$7,176.95 with the GCCF for lost profits and earnings.⁹ Claimant was assigned GCCF Claimant ID [REDACTED] and Claim # [REDACTED]. This claim was denied by the GCCF on 6 December 2010.¹⁰ Claimant additionally filed an Interim claim with the GCCF on 4 January 2011 in the amount of \$21,530.86.¹¹ This claim is still currently under review with the GCCF. The Claimant submitted his claim to the NPFC on 14 April 2011. In his letter to the GCCF of 20 December 2010, Claimant requested a total of \$21,530.86 for the time period from April 1, 2010 through to March 31, 2011. Since his EAP claim was denied by the GCCF and over ninety days has elapsed since he presented his interim claim to the GCCF, the NPFC will adjudicate both of his GCCF claims, now properly before us, in the amount claimed of \$21,530.86.

NPFC Determination

This claim is denied because the Claimant has not proven that 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 burden of providing to the NPFC all evidence, information and documentation deemed necessary by the director, NPFC, to support the claim. The NPFC reviewed all evidence presented by the claimant.

Claimant's assertion that tourism decreased by 50% in Key West was supported by a letter from his employer at [REDACTED] who indicated that there was a "tremendous decrease in sales because of lack of tourism." However, statistics provided by the [REDACTED] dispute this assertion.¹² Monroe County, of which Key West is the county seat, reported Tourism & Recreation taxable sales that showed a year over year increase from 2009 to 2010. There was actually a year over year increase in sales for every month in 2010 after the Deepwater Horizon oil spill, except for September 2010, which showed a slight decrease in sales. These numbers are further bolstered by [REDACTED] collections, which also showed an increase for every month after the oil spill in 2010 compared to 2009, other than a slight decrease in September 2010. Although there appears to be a significant decrease in the number

⁹ Report from the GCCF, dated 20 May 2011

¹⁰ Denial letter from the GCCF, dated 6 December 2010

¹¹ Report from the GCCF, dated 20 May 2011

¹² [REDACTED]

of passengers arriving in Key West from cruise ships after the Deepwater Horizon oil spill, there is an equally significant increase in the number of passengers arriving in Key West by plane. For passengers arriving by ferry, there was a marginal decrease in 2010 from 2009; however a similar percentage decrease had occurred during the months of 2010 prior to the Deepwater Horizon oil spill.

Solely based on the Claimant's 2009 and 2010 federal tax returns, it appears that the Claimant might have experienced a decrease in earnings in 2010 compared to 2009, although these earnings indicated several differences in how the Claimant earned money in 2010 compared to 2009. First, the Claimant's 2010 Schedule C shows significantly less expenses in 2010 compared to 2009, so the Claimant's net profits were markedly higher in 2010. Additionally, the Claimant had several different sources of income in Key West in 2009 [REDACTED] Adventures, Old Town Tours, [REDACTED]³, versus only [REDACTED] Adventures in 2010. Claimant asserted that all these are all subsidiary companies of [REDACTED] however a conversation with the payroll department at [REDACTED] disputed this notion.¹⁴ Further, with such assorted sources of income in 2009 and 2010, these earnings are not fully instructive without sales records from previous years. The Claimant provided monthly sales records from 2010 and the NPFC requested in a letter sent to the Claimant on 18 April 2011 that the Claimant provide sales records from 2008 and 2009. The Claimant indicated that he had no such records from previous years because the companies operated on a cash basis and the IRS did not require [REDACTED] to keep records of sales until 2010.¹⁵

The NPFC also requested on 18 April 2011 that the Claimant provide documentation showing specific cancellations of sales or lost business that occurred due to the Deepwater Horizon oil spill. Claimant responded that he never had access to any orders that were cancelled due to the Deepwater Horizon oil spill and provided nothing further.¹⁶ Further, the Claimant then chose voluntarily leave his job at [REDACTED] to go to Marco Island, FL where he had no job in place and did not work for at least a month.¹⁷

In light of the foregoing, this claim is denied because the evidence presented by the Claimant does not demonstrate that the Claimant has 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 [REDACTED]

Date of Supervisor's Review: *5/26/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹³ See 1099's

¹⁴ PHONECON between NPFC Representative and [REDACTED] Representative on 12 May 2011

¹⁵ PHONECON with Claimant on 24 May 2011

¹⁶ Letter of claim explanation from Claimant to NPFC Representative, dated 26 April 2011

¹⁷ Id.

Enclosure 2

Evidence Provided by Claimant in Support of N10036-0675

- Optional OSLTF claim form, ostensibly signed 8 October 2010;
- Appendix of initial submission, including a hand-written summary of 2010 earnings;
- Letter from Claimant to "whom it may concern" at the NPFC, dated 7 December 2010;
- Letter from Director of Operations at [REDACTED] to "Whom It May Concern," dated 18 October 2010;
- Letter from Claimant to "whom it may concern" at the GCCF, dated 20 December 2010;
- Cash Flow Statement from 2010;
- Paystubs from [REDACTED] for 29 November 2010 through 19 December 2010;
- Commission Reports for Claimant from [REDACTED] for 1 January 2010 through 31 October 2010, printed on 13 December 2010;
- Direct Deposit information;
- Copies of Driver's License and Social Security Card;
- Screenshot of Claimant's GCCF Status, printed 14 December 2010;
- Denial letter from the GCCF, dated 6 December 2010;
- Letter from the GCCF regarding Claimant's Interim of Final Payment claim, dated 29 January 2011;
- Letter from the GCCF indicating receipt of Claimant's Interim Payment claim form; dated 24 January 2011;
- 2010 1099-MISC from [REDACTED];
- 2010 1099-MISC from [REDACTED];
- 2009 Federal Tax Return, including a Schedule C;
- 2008 1099-MISC from [REDACTED];
- 2008 1099-MISC from [REDACTED];
- 2009 1099-MISC from [REDACTED] with claim explanation, dated 6 May 2011;
- 2009 1099-MISC from [REDACTED] Inc.;
- 2009 1099-MISC from [REDACTED];
- 2009 1099-B from [REDACTED];
- 2008 Federal Tax Return, including a Schedule C-EZ;
- Donation receipt from [REDACTED];
- 2007 Federal Tax Return;
- Emails from Claimant to GCCF, dated 17 November 2010, 27 November 2010, 1 December 2010, and 7 December 2010;
- Email chain between Claimant and GCCF, from 9 October 2010 through 29 October 2010;
- Letter of claim explanation from Claimant to NPFC Representative, dated 26 April 2011;
- 2010 Federal Tax Return, including a Schedule C; and
- Various online news articles regarding the Deepwater Horizon oil

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center



CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim # N10036-0676
26 May 2011



Re: Claim Number: N10036-0676

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 N10036-0676 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 N10036-0676.

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: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|---|
| Date | 26 May 2011 |
| Claim Number | N10036-0676 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$18,000.00 |

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 14 April 2011, [REDACTED] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$18,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant left his home in Iowa by bus on 18 April 2010 to work on a shrimp and lobster boat in and out of Venice, Louisiana.¹ A Captain of a boat had offered the Claimant a job as a deckhand via telephone. The Claimant had no written offer. He also had no previous experience working on a shrimp boat. The Claimant was told to start work on 24 April 2010. When the Claimant arrived, he was told there was no work due to the Deepwater Horizon oil spill. The Claimant stated he sought other work but could find none.

The Claimant attempted to contact the Captain to obtain a letter from him that would explain the Claimant's situation. The Claimant stated he contacted the Captain's daughter who did not know where the Captain was or when he would return. The Claimant stated since he could not start work as a deck hand due to the Deepwater Horizon oil spill, he experienced a loss of earnings due to 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

¹ Based on a discussion between the Claim and NPFC Claims Adjuster 27 April 2011

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;
- (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:

- Hand-written letter to NPFC from Claimant explaining the claim
- Form 1040EZ US Income Tax Return for Single Filers for 2010
- Forms W-2 Wage and Tax Statement for 2010 from [REDACTED]
- GCCF Application for Final Payment Claim, date undetermined
- US Postal Form 3811 Domestic Return Receipt (green card) signed by Claimant on 26 April 2011

On 21 April 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. NPFC received the US Postal Form 3811 Domestic Return Receipt which indicated that the Claimant signed for the letter on 26 April 2011.

The NPFC Claims Adjuster telephoned the Claimant's home telephone number on 23, 24 and 25 May 2011 and received busy signals. On 23 May 2011, the Claims Adjuster sent the Claimant an e-mail to the Claimant's e-mail address on the OSLTF Claim Form. The Claimant did not respond to the e-mail.

On 28 September 2010 the Claimant presented an Emergency Advance Payment (EAP) Claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 18 May 2010 the GCCF paid the Claimant an EAP for \$4,500.00.

On 28 September 2010, the Claimant filed a Final Payment Claim for \$6,800.00. On 19 April 2011 the Claimant received a Deficiency Letter from GCCF for the Final Payment Claim. The GCCF Claim Status site shows GCCF has issued a Quick Pay Payment on this claim. Since the NPFC Claims Adjuster was unable to contact the Claimant, the Quick Pay could not be confirmed.

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 his claim.

On 21 April 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. NPFC received the US Postal Domestic Return Receipt card that showed the Claimant signed for the letter. The NPFC Claims Adjuster attempted to contact the Claimant by telephone and e-mail. The Adjuster was unable to make contact.

This claim is denied because the evidence provided does not demonstrate the alleged loss, in the amount of \$18,000.00, 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.

If the Claimant wishes to request reconsideration of this determination, he will be required to provide a copy of his GCCF Quick Pay release at that time as well as all of the information that the NPFC has officially requested.

Claim Supervisor: 

Date of Supervisor's Review: *26 May 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

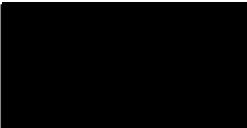
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0677
16 May 2011



RE: Claim Number: N10036-0677

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 N10036-0677 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 N10036-0677.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 14 May 2011 |
| Claim Number | N10036-0677 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$27,138.80 |

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 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$27,138.80 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant worked as an office manager for a car dealership in Mariana, Florida known as [REDACTED]. On 05 May 2010, [REDACTED] released the Claimant from her employment in favor of a "less expensive, less experienced office manager."¹ Claimant attributed her termination to the Deepwater Horizon oil spill by stating that "[b]usiness really came to a complete halt when the oil spill happened."²

On 19 July 2010, the Claimant acquired employment with [REDACTED] in Panama City, Florida, [REDACTED], where she continues to work. She alleged that as a result of a scarcity of jobs in her region (which she also attributed to the Deepwater Horizon oil spill), she was forced to take a position with [REDACTED], where she reportedly earns half of what her previous earnings yielded while employed at [REDACTED]. Claimant calculated her damages by taking the difference in her weekly pay from [REDACTED] and Rahal (\$521.90⁴) and multiplying by 52 weeks for a total of \$27,138.80.

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 Explanatory Letter from Claimant, undated.

² *Id.*

³ Explanatory Letter from Claimant, undated.

⁴ GCCF Final Payment Claim Form, p. 6.

- (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 submitted the following documentation to the NPFC:

1. OSLTF claim form received on 15 April 2011;
2. GCCF Claim Submission Form signed by Claimant and dated 29 November 2010;
3. Unidentifiable payment history report generated on 29 November 2010;
4. W-2 from ██████████ for 2002;
5. W-2's from ██████████ for 2003 and 2004;
6. W-2 from ██████████ Dodge Chrysler Jeep;
7. W-2's from ██████████ Chevrolet-Buick for 2004, 2005, 2009;
8. W-2 from ██████████ for 2010;
9. W-2 from ██████████ for 2010;
10. W-2 from ██████████ for 2010;
11. W-2 from ██████████ for 2010;
12. 1099-R ██████████ for 2010;
13. Paystub from ██████████ for the pay periods ending 27 October 2010, 10 November 2010 and 26 November 2010;
14. Screen shots from online job search portal;
15. Letter from Claimant explaining the nature of her loss, undated;
16. Letter from ██████████ explaining the circumstances under which he hired Claimant, dated 29 November 2010;
17. Federal income tax return (form 1040) for 2010.

On 9 November 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim for \$9,000.00 in lost profits and earnings to the GCCF. She was assigned GCCF Claimant ID ██████████ and

Claim [REDACTED] On 24 November 2010, claim [REDACTED] was denied by the GCCF.⁶ On 4 January 2011, Claimant presented a Final Payment claim for \$40,708.20 in lost profits and earnings [REDACTED] to the GCCF. On 16 April 2011, claim [REDACTED] was denied by the GCCF.⁷

On 15 April 2011, Claimant presented this claim to the NPFC for \$27,138.80 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

This claim is DENIED because the Claimant has not met her burden to respond to the NPFC's request for additional information, and to demonstrate her alleged loss in the amount of \$27,138.80, as claimed, and the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

On 26 April 2011, the NPFC mailed the Claimant a letter requesting additional information regarding the nature of her former employment and alleged loss. The same was also emailed to her on 29 April 2011. The letter stipulated that if the NPFC did not receive a response within 14 days of the letter's date, the claim would proceed to adjudication with the evidence at hand. As of the date this determination, the Claimant remains unresponsive to the NPFC's request.

The NPFC proceeded to adjudicate the claim with the evidence Claimant originally submitted. This evidence, without more, does not demonstrate (1) Claimant's alleged loss of \$27,138.80, as claimed, 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.

This claim is accordingly DENIED.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *5/16/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ GCCF Filing Report dated 04 May 2011.

⁶ GCCF denial letter Re: Claimant's EAP claim, dated 24 November 2010.

⁷ GCCF denial letter Re: Claimant's Final Payment claim, dated 16 April 2011.

U.S. Department of
Homeland Security

**United States
Coast Guard**



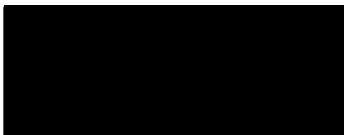
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0679
09 May 2011



RE: Claim Number: N10036-0679

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 N10036-0679 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

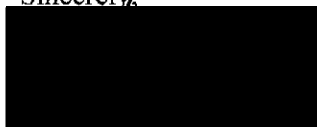
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0679.

Mail reconsideration requests to:

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

Sincerely,



Marine Science Technician 1
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | 05 May 2011 |
| Claim Number | N10036-0679 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$30,150.00 |

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 18 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$30,150.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

On 30 June through 30 September 2010, Claimant reportedly worked for [REDACTED] as an executive administrator for the company's Deepwater Horizon spill response and cleanup in Mobile, Alabama.¹ Claimant stated that she lost her job with [REDACTED] because BP cancelled its spill response contract with [REDACTED].

Claimant further stated that she averaged \$1005.00 per week, including overtime, over the course of her employment with [REDACTED].³ Her claimed damage amount equals that average weekly wage multiplied by 30 (the number of weeks the Claimant has remained unemployed from the date of her termination to the date she presented her claim).⁴ Claimant alleged that she lost these earnings as a result of 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.

¹ Claimant's narrative description of damages.

² Id.

³ Id.

⁴ Id.

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

In support of her claim, Claimant presented a memo describing the nature of her employment with [REDACTED] and subsequent financial loss, along with six (6) pay statements which the Claimant stated are from [REDACTED] but does not bear any identifying corporate information.⁵

On 19 October 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim for \$363,170.90 in lost profits and earnings to the GCCF.⁶ She was assigned Claimant ID [REDACTED] and Claim [REDACTED]. On 07 December 2010, the EAP claim was denied by the GCCF.⁷ On 06 January 2011, Claimant presented an Interim Payment claim for \$1,091,575.00 in lost profits and earnings (Claim [REDACTED]) to the GCCF. On 06 March 2011, the Interim Payment claim was denied by the GCCF.⁸

⁵ Claimant's submission also includes documentation relevant to Claimant's business, which is the subject of a second claim before the NPFC, Claim Number # N10036-0681.

⁶ GCCF Filing Report dated 25 April 2011.

⁷ GCCF Denial Letter Re: Claimant's Emergency Advance Payment claim, dated 07 December 2010.

⁸ GCCF Filing Report dated 25 April 2011.

On 18 April 2011, Claimant presented this claim for \$30,150.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.⁹

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 claim is DENIED because the alleged loss in the amount of \$30,150.00 is not 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 alleged that she lost \$30,150.00 in earnings from he [REDACTED] with a layoff date of 10 September 2010 through 15 April 2011, as a result of the Deepwater Horizon oil spill. The Claimant did not begin her employment with [REDACTED] until after the Deepwater Horizon oil spill on 30 June 2010. Were it not for the Deepwater Horizon oil spill, the Claimant would not have had the opportunity for employment with [REDACTED] managing the oil spill cleanup for BP. Furthermore, the Claimant provided no evidence that she was guaranteed employment with [REDACTED] through 15 April 2011.

Additionally, the Claimant has failed to provide comparable financial documentation as required pursuant to the governing claims regulations in order to demonstrate a loss as alleged. Of particular note, under 33 C.F.R. § 136.233 a claimant must establish the following:

- (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.

This claim is denied because (1) the Claimant has failed to meet the burden to provide comparable financial documentation to substantiate the amount of the loss claimed, (2) the Claimant has failed to demonstrate the her alleged loss, if one occurred, 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 has failed to demonstrate that she had a guarantee from [REDACTED] for employment during the period she claimed she is owed due to them letting her go.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: *5/9/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁹ This claim was originally presented with Claimant's business loss claim for \$1,076,500.00 and subsequently the two were separated into two claims, #N10036-0679 (individual loss) & #N10036-0681 (business loss).

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 # N10036-0680
23 May 2011

Re: Claim Number: N10036-0680

Dear [REDACTED]

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, U.S.C. 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 N10036-0680 involving 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 N10036-0680.

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: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002653

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 19 May 2011 |
| Claim Number | N10036-0680 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning 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 15 April 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$35,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill.¹

Claimant asserted that she operated a food service business called [REDACTED]. As a result of financial difficulties, the Claimant moved the business to her home, where she sold dinner plates on Friday's and catered primarily on the weekends. Claimant alleged that as a result of the Deepwater Horizon oil spill, she lost business because seafood was difficult to obtain and customers no longer wanted to buy the seafood that she prepared for sale.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

¹ OSLTF claim form.

² Claimant handwritten letter of explanation, dated 9 October 2010.

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 this claim, the Claimant submitted her optional OSLTF claim form on 15 April 2011. Claimant also submitted her handwritten letter of explanation, dated 9 October 2010; Claimant handwritten letter to whom it may concern regarding GCCF claim submission; business menu; letter from 6th Baptist Church; and IRS tax information for 2009. On 19 April 2011, Claimant submitted the following additional information to the NPFC: GCCF denial letter, dated 7 December 2010; handwritten letter, dated 19 April 2011; and email correspondence to the GCCF.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) claim for \$35,000.00 in lost profits and earnings to the RP/GCCF on 07 November 2010. She was assigned GCCF Claimant Identification [REDACTED] and Claim [REDACTED]. On 7 December 2010, Claimant's EAP claim was denied by the GCCF.³

On 15 April 2011, Claimant presented this claim for \$35,000.00 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 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 the claim.

³ GCCF denial letter Re: Claimant's EAP claim, dated 7 December 2010.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate her claim. The letter requested, among other things, monthly profit and loss statements to establish the Claimant's financial history and sales receipts and invoices demonstrating the purchase of seafood from the Gulf of Mexico. The letter also requested applicable licenses and permits to operate a restaurant in LA. Claimant was given 14 days to respond to the letter, dated 3 May 2011. To date, the Claimant has not responded.

This claim is DENIED for the following reasons: (1) Claimant has failed to meet her evidentiary burden to provide all evidence, information, and documentation deemed necessary by the Director, NPFC, to support her claim pursuant to 33 C.F.R. § 136.105(e)(6); (2) Claimant has also failed to demonstrate her alleged loss in the amount of \$35,000.00 through financial documentation; and (3) Claimant has failed to demonstrate that her alleged loss is due to 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: *5/23/11*

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: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0681
05 May 2011

RE: Claim Number: N10036-0681

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 N10036-0681 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 N10036-0681.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002657

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 03 May 2011 |
| Claim Number | N10036-0681 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | \$1,076,500.00 |

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 18 April 2011, [REDACTED] dba [REDACTED] presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) for \$1,076,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant owns and operates [REDACTED] which she brands as “a tourism, special events and marketing company”² that “produces revenue generating entertainment productions for the Gulf Coast Regions (sic).”³ Claimant commenced operations in September 2009 with the immediate objective of staging the inaugural “Gulf Beach [REDACTED] Festival” (Festival) on the beaches of Gulf Shores and Orange Beach, Alabama, which was scheduled to run from 14 to 16 May 2011. Claimant described the festival as a “cultural exchange” between Alabama and Southwest Louisiana that would specifically focus on Creole music and food.⁴

Prior to founding [REDACTED], the Claimant worked as Director of the [REDACTED] in Daphne, Alabama from 1996 to 2009. In that role, the Claimant organized a number of special events, including the “Gulf Coast [REDACTED] Festival,” which also focused on Louisiana’s Creole culture. Claimant asserted that in late 2009, budgetary constraints threatened to cancel [REDACTED]’s event for 2010. Claimant ended her employment with the City of Daphne around this time and began preparations to found her own festival, citing her experience planning past festivals for Daphne and her desire to grow the event.⁵

To that end, the Claimant asserted that she contracted with The [REDACTED], a hotel and convention center in Orange Beach, AL, and also [REDACTED], a bar and music hall on the beach of Gulf

¹ Claimant originally submitted for \$1,106,650.00 in total losses, which includes \$30,150.00 in an unrelated loss of employment claim. That claim was separated into N10036-0679.

² Claimant’s Narrative Description of Damages.

³ [REDACTED]’ Business Plan for 2009-2010.

⁴ Claimant’s Narrative Description of Damages.

⁵ PHONECON with Claimant on 20 April 2011.

Shores, AL to provide a venue for the Festival.⁶ She also reportedly contracted with a number of nationally known zydeco musicians to provide live entertainment.⁷

Claimant alleged that the Deepwater Horizon oil spill forced her to cancel the Festival. On 26 April 2010, Claimant reportedly dispatched a letter “to all” announcing the cancellation. Claimant’s alleged damages encompass lost revenue from the festival, plus 36 weeks of time and professional event planning.⁸ Claimant calculated her revenue and expenses as follows:⁹

| | |
|--|-----------------------|
| Revenue | |
| Ticket Sales (\$20.00 per day x (15,000 attendees per day x 3 days)) | \$900,000 |
| Memorabilia Sales | \$176,500 |
| Vendor/Sponsor Income | \$0 |
| Total Projected Revenue | \$1,076,500 |
| LESS Projected Operational Costs | (\$208,794.24) |
| Projected Net Profits | \$867,705.76 |

Although the Claimant subtracted projected operational expenses on her business plan, her sum certain reflects only projected gross revenue from the Festival.

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.

⁶ Letter from Claimant to the NPFC in response to additional information request, dated 27 April 2011.

⁷ Claimant has provided three “performance contracts” purporting to bind the signatories to provide services at the Gulf Beach Festival. Each contract is not signed in execution or notarized, but bears the signature of each performer acknowledging cancellation of the event.

⁸ Claimant’s Narrative Description of Damages.

⁹ Productions Business Plan for 2009-2010.

- (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

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

- OSLTF Claim Form;
- Claimant letter to the NPFC entitled "urgent request," dated 04 April 2011;
- Narrative description of alleged loss;
- Parson's pay statements;
- Letter from Claimant to "all" announcing cancellation of the 2010 Festival, dated 26 April 2010;
- Sample advertising for Festival;
- Sample performance contracts for Festival;
- 2009-2010 Financial Statement;
- 2009-2010 Business Plan;
- Alabama Articles of Organization;
- Screen captures of Claimant's website;
- Alabama Gulf Coast Convention and Visitor's Bureau Meeting Agenda for 27 October 2009;
- Email correspondence between Claimant and prospective Festival attendees;
- Various T-Mobile bills;
- Federal income tax returns for 2007 through 2010 with accompanying schedules and W-2s;
- Price quote from Showtime Events for reservation of ballroom facilities at [REDACTED];
- Letter from Claimant to NPFC describing the oil spill's effect on the value of her personal property, undated;
- Various news articles detailing the environmental and economic impact of the oil spill;
- Letter from Claimant to NPFC responding to request for additional information, dated 27 April 2011;

- Various new articles detailing Daphne, Alabama's political response to Hurricane Katrina.

On 19 October 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim for \$363,170.90 in lost profits and earnings to the GCCF.¹⁰ She was assigned Claimant ID # [REDACTED] and Claim # [REDACTED]. On 07 December 2010, the EAP claim was denied by the GCCF.¹¹ On 06 January 2011, Claimant presented an Interim Payment claim for \$1,091,575.00 in lost profits and earnings (Claim # [REDACTED]) to the GCCF. On 06 March 2011, the Interim Payment claim was denied by the GCCF.¹²

On 18 April 2011, Claimant presented this claim for \$1,076,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

Claimant has not provided sufficient information to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. The entirety of the Claimant's asserted damages stems from the loss of revenue that would have been received from the [REDACTED]

[REDACTED] On 26 April 2010, Claimant decided to cancel the event in light of the "possible danger of being exposed to the oil" and the likelihood of an environmental response on the beaches of Gulf Shores and Orange Beach, AL, where the Claimant intended to hold the festival.¹³ Claimant has not, however, proven that she took the necessary preparatory steps or incurred any expenses to successfully stage the Festival as of the date of cancellation.

During the course of investigating the claim, the NPFC contacted an official from the City of Gulf Shores' Department of Parks and Recreation, who stated that the magnitude of the Claimant's festival (approximately 15,000 festival attendees per day, as stated in the Claimant's 2009-2010 business plan) would necessitate that she be granted an assembly permit from the Gulf Shores' city council prior to holding the event. There was no record that the Claimant had received, or even applied for such a permit in anticipation of the attendance she has calculated her projected loss on. The official also noted that another regionally popular music festival had been held in Gulf Shores from 14 to 16 May 2010, and that given the popularity and large crowds that this competing festival regularly attracted, the city council would not have approved a permit for another music festival during that same time frame.¹⁴ Hence, the Claimant's assertion that she would have secured the necessary city permits in the month between the oil spill and the Festival start date appears unrealistic.¹⁵

¹⁰ GCCF Filing Report dated 25 April 2011.

¹¹ GCCF Denial Letter Re: Claimant's Emergency Advance Payment claim, dated 07 December 2010.

¹² GCCF Filing Report dated 25 April 2011.

¹³ Claimant's Narrative Description of Damages.

¹⁴ This other regionally popular music festival applied for an assembly permit, which the Gulf Shores City Council approved by Resolution No. 4729-09 at the regular council meeting on 14 December 2009.

¹⁵ In a letter dated 21 April 2011, the NPFC requested that Claimant provide assembly permits or comparable licenses from the city of Gulf Shores allowing the Festival to run 14-16 May 2010. By letter dated 27 April 2010, Claimant responded: "Necessary permits would have been requested prior to the festival."

The NPFC also contacted representatives from The Hangout and Showtime Events (which previously handled event booking for the conference center at The Wharf) in order to determine if the Claimant had taken steps to secure those venues as claimed. Each company representative independently stated that although the Claimant had contacted them with the idea of utilizing their venue for the Festival, negotiations to secure their respective venues had never progressed beyond initial inquiries. The Claimant has not provided any evidence to the contrary.¹⁶

Additionally, the [REDACTED] representative stated that the Claimant formerly worked with providing the following Client Notes, which were made contemporaneously from their dealings:

Client went to the City of OB [Orange Beach] to try and get money from city to fund event. Per client, city didn't pass that in budget, so she can't hold event. . . . She didn't have the money to fund the event in the end.

The preponderance of the evidence received by the NPFC to date indicates that the Claimant's Festival never progressed beyond the initial planning stages. As such, any losses asserted by the Claimant are speculative and not compensable under OPA pursuant to the governing claim regulations at 33 C.F.R. Part 136.

For the foregoing reasons, this claim is DENIED.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *5/5/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁶ In the narrative description of loss that Claimant provided with her original submission, Claimant listed the preparations undertaken to launch the Festival, including "securing the event venue" and "receiv[ing] the contract for the venue." The NPFC requested a copy of this contract from the Claimant. In response, Claimant provided a price quote from Show Time, but did not provide any document evincing a contractual right to the venue for the claimed time period.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

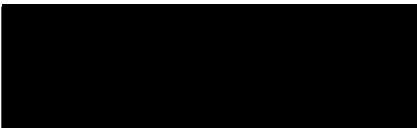
NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim# N10036-0682
18 May 2011



RE: Claim Number: N10036-0682

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 N10036-0682 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 N10036-0682.

Mail reconsideration requests to:

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

Sincerely,
[REDACTED]

Director

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 16 May 2011 |
| Claim Number | N10036-0682 |
| 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 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 18 April 2011, A [REDACTED] Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$5,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works as an Office Manager for [REDACTED] of Northwest Florida, Inc. (Employer), which specializes in cabinet and fireplace construction and remodeling for condominiums throughout the cities of Destin and Ft. Walton Beach.¹

Claimant asserted that due to a lack of business caused by the Deepwater Horizon oil spill, the Employer eliminated group health insurance for its employees on October 2010.² Additionally, Claimant asserted that she expected to receive a \$2.00 per hour increase for the summer months of 2010, which the Employer withheld due to the spill.³ Finally, the Claimant stated that she previously received a 2% commission on all fireplaces sales, and that as of 01 June 2010, the Employer suspended this commission to remain solvent.⁴

Claimant calculated her damages by first multiplying \$2.00 (the amount of Claimant's anticipated raise) times 40 hours for a weekly loss of \$80.00, multiplied by 42 weeks, for a total of \$3,360.00 in damages from her lost raise, plus \$1,259.07 in lost commissions on twenty six fireplace sales that occurred between 08 June 2010 and 05 April 2011 for a total of \$4,619.07.⁵ The balance of the Claimant's requested sum, \$380.93, apparently encompasses expenses incurred due to her loss of health insurance.⁶

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable

¹ Letter from Claimant to the NPFC in response to request for additional information, received 03 May 2011.

² Letter from Claimant to the NPFC, received on 20 April 2011;

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

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;
- (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 the following documentation:

- OSLTF claim form;
- GCCF Final Payment Claim Form;
- W-2s from [REDACTED] of Northwest Florida for 2008, 2009 and 2010;
- Paystub from [REDACTED] of Northwest Florida for the period ending 16 December 2010;
- W-2s for [REDACTED];
- Federal income tax returns for 2009 and 2010;

- Letter from Claimant to the GCCF explaining financial loss;
- Letter from Vice President of [REDACTED] attesting to Claimant's employment and financial loss, dated 31 January 2011;
- United Healthcare Benefits Summary showing no coverage as of 31 January 2011;
- Letter from Claimant to the NPFC providing narrative description of loss and loss calculations, undated;
- Letter from Claimant to the NPFC in response to request for additional information, undated.

On 04 January 2011, Claimant presented a Final Payment claim for \$5,000.00 in lost profits and earnings to the GCCF. She was assigned GCCF Claimant ID Number [REDACTED] and Claim Number [REDACTED]. That claim was subsequently denied on 15 April 2011.⁷

On 18 April 2011, Claimant presented this claim for \$5,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

Claimant's asserted damages that encompass three individual components: (1) loss of medical insurance, (2) loss of commissions, and (3) the loss of an expected \$2.00 per hour raise. Each component is addressed individually below.

The loss of medical insurance is non-compensable under OPA and the associated claims regulations at 33 C.F.R. Part 136. Under OPA and 33 C.F.R. Part 136, private OSLTF claimants may submit claims for loss of subsistence use of natural resources, real or property damage, removal costs, or loss of profits or impairment of earnings capacity. The loss of medical insurance is not provided for, and the Claimant has not addressed how the loss is properly covered under her election of loss of profits and impairment of earnings capacity.⁸ This component of Claimant's alleged loss is therefore DENIED.

The loss of Claimant's fireplace commission is also DENIED because the Claimant has failed to demonstrate 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. Claimant's employer provided a letter expressing the necessity of cutting commissions in order to remain solvent after the Deepwater Horizon oil spill. Beyond this, the Claimant has not provided evidence corroborating that the oil spill, as opposed to other economic or business factors, compelled the Employer to withhold her fireplace commission. This component of Claimant's alleged loss is therefore DENIED.


Lastly, the loss of the Claimant's \$2.00 raise is speculative and therefore DENIED. The Claimant indicated that she expected the raise during the summer months of 2010, which her employer had promised. Claimant provided no documentation entitling her to this anticipated raise. Additionally, the Claimant's pay history indicated that her hourly wage fluctuated

⁷ GCCF denial letter Re: Claimant's Final Payment claim, dated 15 April 2011.

⁸ OSLTF claim form.

significantly with changing market conditions.⁹ Without evidence to the contrary, the Claimant's alleged loss hinges on the mere expectancy of a raise, which is speculative in nature with no written guarantee.

In light of the foregoing, this claim is DENIED.

Claim Supervisor:  *ication*

Date of Supervisor's Review: *5/18/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁹ Letter from Claimant to the NPFC, received 20 April 2011 ("When the economy started to slow down I was put on part time, then on 4-24-09 I was brought back as full time, and dropped down in wages from \$16 per hour to \$14.50 per hour. On 11-27-09 I was brought back up to \$15, and then on 6-18-10 I was put back up to my normal \$16 per hour.").

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

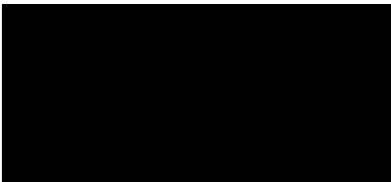
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
8/22/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0683

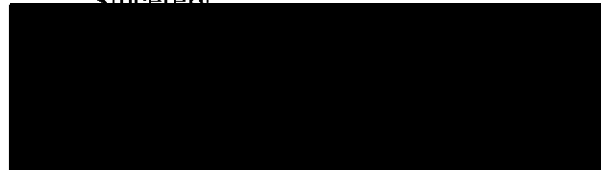
Dear [REDACTED]

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 N10036-0683 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 | : N10036-0683 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$888,468.42 |

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 18 April 2011 [REDACTED] (Claimant) through [REDACTED] Vice President (VP) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$888,468.42 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

[REDACTED] characterized the Claimant as “a direct wholesale supplier of Crab and domestic seafood to major buyers . . . that sell crab around the country.”¹ [REDACTED] alleged that as a result of the Deepwater Horizon oil spill, the Claimant’s customers no longer placed orders for Gulf seafood, and the Claimant could not get seafood from Gulf fishermen as they took on clean up jobs.

As a result of product shortage from local fishermen, the Claimant purchased seafood from second and third suppliers often at a premium.² Because the Claimant’s customers expressed hesitation over buying this product, the Claimant offered deep discounts to entice sales and in spite of this, “a lot of live product died before it could be resold.”³ These factors increased the Claimant’s Cost of Goods Sold (COGS) to 114.11% post-spill and reduced its Gross Profit Margin (GPM) to <14.11%> post-spill.⁴ Prior to the spill, the Claimant’s COGS was 88.61% and GPM was 11.39%.

Claimant retained [REDACTED] CPA and Certified Fraud Examiner from Coral Springs, Florida to measure the alleged loss. [REDACTED] fees are included in the sum certain.

Prior to presentment to the NPFC, on 26 October 2010, the Claimant presented an Emergency Advance Payment (EAP) claim for \$651,840.22 in lost profits and earnings to the RP/GCCF.

¹ Memo from Claimant on Effect of Oil Spill on Revenue and Income dated 12 January 2011

² Letter from [REDACTED] CPA to [REDACTED] explaining his calculation of lost profits dated 06 January 2011.

³ Id.

⁴ Id.

Claimant was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 13 November 2010, the GCCF compensated the Claimant on its EAP claim in the amount of \$272,700.00.⁵

On 16 January 2011, the Claimant presented an Interim Payment Claim [REDACTED] for \$888,468.62 in lost profits and earnings to the GCCF. The Interim is currently under review by GCCF.

REQUEST FOR RECONSIDERATION:

On June 24, 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 May 25, 2011 because the Claimant relied on a lost profits calculation prepared by its retained accountant, [REDACTED]. This calculation is based on percentages of actual sales and the cost of sales from April through December 2010 (post-spill). The Cost of Goods Sold (COGS) % for this period is recorded as 114.11% with a Gross Profit Margin of <14.11%>.⁶

As noted, these percentages resulted from several factors, including the Claimant's decision to purchase seafood from second and third suppliers at a premium, the deep discounts offered to entice sales, and the loss of fresh product before it could be sold.⁷ These factors compounded the Claimant's alleged loss.

From April through December 2009, the Claimant's COGS was 88.61% with a GPM of 11.39%.⁸ These percentages reflect a representative year for the Claimant and, if applied to 2010 revenues, demonstrate the profit that the Claimant would have earned but for the oil spill. As noted, the Claimant received \$272,700.00 in compensation from the GGCF. The NPFC determined that this payment fully compensated the Claimant for its alleged loss of profit from April through December 2010.

Because the NPFC has determined that the Claimant has been compensated in excess of its alleged loss, the claim was denied.

RECONSIDERATION REQUEST:

The claimant requested reconsideration, which was received by the NPFC on June 24, 2011 via email.⁹ In a July 7, 2011, letter to the Claimant the NPFC requested extensive information and documentation to support the request for reconsideration. The NPFC requested that the information be submitted within 30 days of the date of the July 7, 2011, letter. On June 24, 2011, the Claimant provided a one page email to the NPFC that stated they wanted to see the NPFC's underlying forensic accounting before they could produce anything further in support of its request for reconsideration. The Claimant provided no new information on reconsideration by the August 7, 2011 deadline.

⁵GCCF Notice of Determination for Six-Month Emergency Advance payment \$272,700.00 dated 13 November 2010

⁶Schedule 2 Analysis of Lost Profit through December 31, 2010

⁷Letter from [REDACTED] CPA to [REDACTED] explaining his calculation of lost profits dated 06 January 2011.

⁸Schedule 2 Analysis of Lost Profit through December 31, 2010

⁹Request for reconsideration email dated June 24, 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. As noted above on July 7, 2011, the NPFC requested additional information from the Claimant in support of their request for reconsideration. The NPFC gave thirty days for the Claimant to present the requested information or request an extension of time in writing along with a justification should more time be needed. The NPFC sent the request for additional information via email and certified mail. The NPFC checked the status of the certified mail and confirmed that the letter was picked up on 11 July 2011 at 12:21 PM to Larose, La 70373. To date, the NPFC has received no response from the Claimant.

The NPFC's July 7, 2011 letter requested the following information:

1. Please provide a complete copy of [REDACTED] 2010 Income Tax Return as soon as it is available;
2. Please provide a copy of any and all contracts, agreements, etc. that [REDACTED] had with ANY fishermen, wholesalers, distributors, suppliers or vendors during 2009 and 2010;
3. Provide a copy of each invoice for all sales or delivery of product made for each seafood product type in both 2009 and 2010. If the invoicing does not indicate the customer, amount of product, identification of the product, price per pound, shipping location, etc. you will need to also produce the underlying documentation associated with each sale that would provide those details. If you can extrapolate the detailed information into a spreadsheet by invoice, we will use that in order to eliminate a large production of documents for you;
4. Provide a copy of any all invoices pertaining to product purchased in both 2009 and 2010. The data must include when product was purchased, what was purchased, in what quantity, price for each unit of measure, who the seller was, where the product was received from and how was it shipped if applicable;
5. You provided a Louisiana Trip Ticket Summary sheet for 2009 and 2010 broken down by month, quantity, and overall monthly sales amount. Please provide a more detailed spreadsheet which demonstrates who each customer was, the date of the transaction, quantity of product purchased, identification of product, and pricing for the product (see item #7 below). Provided you can create a detailed spreadsheet of information with the pertinent details, you do not have to produce actual copies of each and every trip ticket;
6. It appears when looking at the data from 2007 through 2009 via the business income tax returns, that the Cost of Goods sold decreased in 2008 from 2007 by approximately 8%;

and decreased again in 2009 from 2008 by approximately 9%, therefore it appears that the Cost of Goods sold had been on the decline prior to the oil spill. Additionally, the Gross Sales decreased in 2008 from 2007 by approximately 8.7% and again decreased in 2009 from 2008 by approximately 8.9%, therefore it appears Gross Sales were also on the decline prior to the oil spill. Finally, Gross Profit increased in 2008 from 2007 by approximately 26% or so but then gross profit declined drastically in 2009 from 2008 by over 50%. Based on the decline in business as identified on the business income tax returns, the NPFC would like to see the data behind the figures provided on the tax returns from 2008 – 2010 in order to understand why a decline occurred prior to the oil spill and what affect the oil spill actually had on the business in 2010 considering the existing decline preceding the oil spill;

7. Pursuant to LA law, Wholesale/Retail Seafood Dealers, Retail Seafood Dealers, Fresh Products Licensees, Restaurants and Retail Grocers:

Shall keep and maintain in the English language:

1. Records of the quantity and species of "fish"/seafood (fresh, frozen, processed or unprocessed) acquired;
2. The date the "fish"/seafood was acquired and the full name and license number of the commercial fisher-man, wholesale/retail dealer or the out of state seller from whom the "fish"/seafood was acquired;
3. Records of the quantity and species of "fish"/seafood sold and the name and license number of the person to whom the "fish"/seafood was sold.

When sold to the consumer, the records shall indicate the quantity, species and date, and shall state the "fish"/seafood was sold to the consumer. Records shall be maintained for three years and shall be available and open to inspection by the Department of Wildlife and Fisheries. Purchases made from fisherman for whom a permit is required shall document the commercial fisherman's permit number on the records. When creel limits apply to commercial species, records shall also indicate the number by head count of such species.

Wholesale/retail seafood dealers purchasing from commercial fishermen and fresh products licensees are required to document such transactions on LDWF issued trip tickets.

Based on the foregoing requirements under LA law, please provide all the detailed information requested above for 2009 and 2010 which should support the financial records provided in your claim to date.

Based on the above information this claim is denied on reconsideration because the Claimant has failed to provide the NPFC with all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the request for reconsideration. Thus, the original denial stands on the grounds that the Claimant has been fully compensated by the RP/GCCF in the amount of \$272,700.00.

Claim Supervisor

Date of Supervisor's review: *8/22/11*

Supervisor Action: *Denial on reconsideration approved*

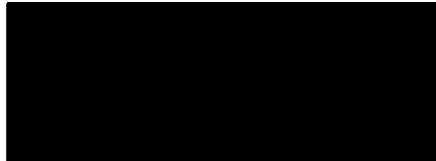
U.S. Department of
Homeland Security

**United States
Coast Guard**



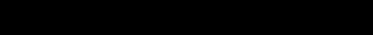
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number 

5890/DWHZ
Claim# N10036-0683
25 May 2011



Claim Number N10036-0683

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 N10036-0683 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

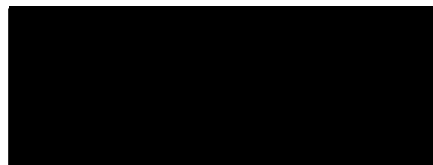
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0683.

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

FOIA2011-3380-00002674

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--------------------------------------|
| Date | 20 May 2011 |
| Claim Number | N10036-0683 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Earning Capacity |
| Amount Requested | \$888,468.42 |

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 18 April 2011 [REDACTED] (Claimant) through [REDACTED] Vice President (VP) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$888,468.42 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

VP characterized the Claimant as “a direct wholesale supplier of Crab and domestic seafood to major buyers . . . that sell crab around the country.”¹ VP alleged that as a result of the Deepwater Horizon oil spill, the Claimant’s customers no longer placed orders for Gulf seafood, and the Claimant could not get seafood from Gulf fishermen as they took on clean up jobs.

As a result of product shortage from local fishermen, the Claimant purchased seafood from second and third suppliers often at a premium.² Because the Claimant’s customers expressed hesitation over buying this product, the Claimant offered deep discounts to entice sales and in spite of this, “a lot of live product died before it could be resold.”³ These factors increased the Claimant’s Cost of Goods Sold (COGS) to 114.11% post-spill and reduced its Gross Profit Margin (GPM) to <14.11%> post-spill.⁴ Prior to the spill, the Claimant’s COGS was 88.61% and GPM was 11.39%.

Claimant retained [REDACTED] CPA and Certified Fraud Examiner from Coral Springs, Florida to measure the alleged loss. [REDACTED] fees are included in the 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.

¹ Memo from Claimant on Effect of Oil Spill on Revenue and Income dated 12 January 2011

² Letter from [REDACTED] CPA to [REDACTED] explaining his calculation of lost profits dated 06 January 2011.

³ *Id.*

⁴ *Id.*

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 the claim, Claimant submitted the following documents:

1. OSLTF Claims Form signed by Claimant 18 April 2011
2. Letter to GCCF from Claimant explaining the claim dated 13 January 2011
3. Worksheet showing Calculation of Past Lost Profits
4. Letter from [REDACTED] CPA to [REDACTED] explaining his calculation of lost profits dated 06 January 2011
5. Schedule 1 Accountant's Bill
6. Schedule 2 Analysis of Lost Profit through December 31, 2010
7. Schedule 3 Analysis of Operating Results
8. Comparative Profit and Loss Statements for April through December 2009 and 2010
9. Invoice for services for [REDACTED] CPA dated 06 January 2011

10. Memo from Claimant on Effect of Oil Spill on Revenue and Income dated 12 January 2011
11. Minutes of the Special Meeting of Directors to create Crisis Management Department dated 22 September 2010
12. Form 1120 US Corporation Income Tax Return for 2007, 2008 and 2009
13. GCCF Notice of Determination for Six-Month Emergency Advance payment \$272,700.00 dated 13 November 2010
14. Letter to GCCF from Claimant requesting how Emergency Advance was determined, undated
15. Worksheet of Trip Tickets summarized by month for 2009 and 2010
16. Letter to NPFC from Claimant in response to NPFC letter requesting additional information dated 17 May 2011
17. Letter to NPFC from [REDACTED] CPA in response to NPFC letter requesting additional information dated 16 May 2011
18. GCCF Form 2000-I Application of Interim Claim dated 13 January 2011

On 20 April 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 16 May 2011, the Claimant responded to the request by e-mail.

Prior to presentment to the NPFC, on 26 October 2010, the Claimant presented an Emergency Advance Payment (EAP) claim for \$651,840.22 in lost profits and earnings to the RP/GCCF. Claimant was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 13 November 2010, the GCCF compensated the Claimant on its EAP claim in the amount of \$272,700.00.⁵

On 16 January 2011, the Claimant presented an Interim Payment Claim [REDACTED] for \$888,468.62 in lost profits and earnings to the GCCF. The Interim is currently under review by GCCF.

Claimant seeks \$888,468.62 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 earnings capacity. The NPFC considered all the documentation submitted by the Claimant.

Claimant's alleged a loss in profits of \$888,468.62 resulting from the Deepwater Horizon oil spill. To support this loss figure, the Claimant relied on a lost profits calculation prepared by its retained accountant, [REDACTED]. This calculation is based on percentages of actual sales and the cost of sales from April through December 2010 (post-spill). The Cost of Goods Sold % for this period is recorded as 114.11% with a Gross Profit Margin of <14.11%>.⁶

As noted, these percentages resulted from several factors, including the Claimant's decision to purchase seafood from second and third suppliers at a premium, the deep discounts offered to

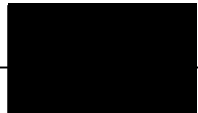
⁵GCCF Notice of Determination for Six-Month Emergency Advance payment \$272,700.00 dated 13 November 2010

⁶Schedule 2 Analysis of Lost Profit through December 31, 2010

entice sales, and the loss of fresh product before it could be sold.⁷ These factors compounded the Claimant's alleged loss.

From April through December 2009, the Claimant's COGS was 88.61% with a GPM of 11.39%.⁸ These percentages reflect a representative year for the Claimant and, if applied to 2010 revenues, demonstrate the profit that the Claimant would have earned but for the oil spill. As noted, the Claimant received \$272,700.00 in compensation from the GGCF. This payment fully compensates the Claimant for its alleged loss of profit from April through December 2010 as determined by the NPFC.

Because the NPFC has determined that the Claimant has been compensated in excess of its alleged loss, this claim is denied.



Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/25/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁷Letter from [redacted] to [redacted] explaining his calculation of lost profits dated 06 January 2011.

⁸Schedule 2 Analysis of Lost Profit through December 31, 2010

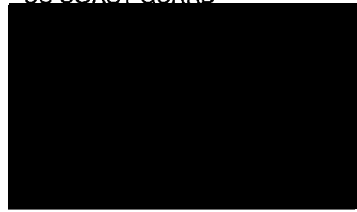
U.S. Department of
Homeland Security

United States
Coast Guard



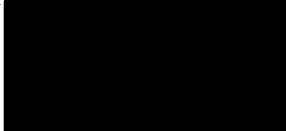
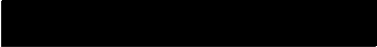
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



Fax: 202-493-6937

BY MAIL AND EMAIL



5890
5/9/2011

Re: Claim Number N10036-0684

Dear [Redacted]

As per your email on May 9, 2011, you have requested to withdraw your claim with the National Pollution Funds Center. At this time, your claim file has been withdrawn.

If you decide to submit a claim in the future regarding your alleged loss, all information already provided will have to be resubmitted, along with the additional information we requested.

If you have any questions about the request or would like to discuss the matter, you may write me at the above address, contact me by phone at 800-280-7118 or email me at [Redacted]



Sincerely, [Signature]



Claims Manager

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 # N10036-0685
20 April 2011

Re: Claim Number: N10036-0685

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 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on claim # N10036-0685. 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 N10036-0685

Mail reconsideration requests to:

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

Sincerely,

[REDACTED SIGNATURE]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 04/19/2011 |
| Claim Number | : N10036-0685 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$27,000.00 |

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 15 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$27,000 in loss of profits and earning capacity resulting from the Deepwater Horizon oil spill.

It is important to note that the Claimant's OSLTF claim form had no explanations regarding how he arrived at his requested amount or what exactly he was claiming for. On April 19, 2011, the Claimant called in to check the status of his claim. During that conversation, [REDACTED] asked the Claimant for supporting documentation for his claim. The Claimant advised that he had no documentation as he only dealt in cash. The Claimant asserted that he buys and sells shrimp and crab at the docks and also holds shrimp boils and sells plates of food.

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.
- (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 his claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim Form dated April 7, 2011

Claimant seeks \$27,000 in loss profits and earnings capacity allegedly resulting from the Deepwater Horizon spill.

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 Claimant only presented an OSLTF claim form. The form was incomplete and the claimant failed to submit supporting documentation. The Claimant did not provide information on the extent of damages and a description of how the incident caused the damage. The Claimant did not provide any supporting documentation, such as copies of written communication from the RP, copies of financial information, a statement on how the spill caused a loss of income and the rationale for how he calculated his alleged loss of profits in the amount of \$27,000.00.

Based on the foregoing, this claim is denied because (1) the Claimant has failed to meet his burden of establishing a loss of profits and earnings 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 (2) the Claimant has failed to meet his burden in proving he has an alleged loss in the amount of \$27,000.00 by way of comparable financial documentation.

Claim Supervisor 

Date of Supervisor's review: 4/20/11

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 # N10036-0686
18 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 N10036-0686 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 N10036-0686.

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 | N10036-0686 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$129,031.87 |

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 18 April 2011, [REDACTED] Vice President (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$129,031.87 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a direct wholesale supplier of crabs and crawfish products with facilities located in Abbeville, Louisiana.¹ The Claimant was incorporated in Louisiana in February 2010.² The Claimant purchased fish products from fish wholesalers and fishermen who fished the waters in the Barataria, Terrebonne, Vermilion-Teche River and Sabine Basins.³

Claimant alleged that, after the Deepwater Horizon oil spill, it could not obtain product from its fishermen. Claimant also alleged that the fishing waters were closed and that fishermen were working on the oil spill clean-up efforts. In addition, the Claimant stated customers did not want to buy fish from Louisiana.⁴ The Claimant ceased operations 15 June 2010.⁵

¹Letter by Claimant explaining Effect of Oil Spill on Revenue and Income dated 12 January 2011

²State of Louisiana Articles of Incorporation for [REDACTED] dated 24 February 2010

³Letter to NPFC from [REDACTED] CPA/CFP, CFE dated 18 May 2011. See Item 7.

⁴Letter by Claimant explaining Effect of Oil Spill on Revenue and Income dated 12 January 2011

⁵E-mail from [REDACTED] to NPFC of 25 May 2011 in response to NPFC request for additional information. See [REDACTED] e-mail of 25 May included, Item 6.

The Claimant hired [REDACTED] in September 2010 as a Vice President to address its loss from the oil spill.⁶ The Claimant also hired forensic accountant, [REDACTED] a CPA/CFE, CFE from Coral Springs, Florida, to assist in determining its alleged loss.⁷

The Claimant is affiliated with a company called [REDACTED] in Larosa, Louisiana. [REDACTED] was incorporated in 2003. The companies are owned by the same principals. [REDACTED] is also a wholesale supplier of crabs and crawfish products. The Claimant sources his fish from different fisherman than [REDACTED]. The Claimant's customer base differs from that of [REDACTED].

In 2010 the Claimant and [REDACTED] maintained their books on the same system in order to "simplify" their bookkeeping. The Claimant was shown within the books as a separate profit center.⁹ LABC's financial data was used to determine the Claimant's lost profits.¹⁰ LABC also filed a claim with NPFC. The LABC's NPFC Claim Number is N10036-0683 which has also been denied.

The Claimant based its lost sales on the month of June 2010. The Claimant determined that its lost sales for June 2010 are 64.60%¹¹ of [REDACTED] crab and crawfish sales for June 2009. The Claimant used this ratio to forecast its lost sales for the remaining months in 2010.

The Claimant prepared a schedule of [REDACTED] crabs and crawfish Cost of Goods Sold (COGS) for 2009 which showed a COGS ratio of 81.02%.¹² The Claimant used this ratio to forecast its COGS for the remaining months in 2010. The actual COGS ratio for June through December was 102.78%.¹³

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.

⁶Minutes & Resolution of Special Meeting of Directions hiring [REDACTED] and Vice President dated 22 September 2010

⁷Letter to NPFC from Claimant submitting claim to NPFC dated 17 April 2011

⁸E-mail from Claimant of 02 June 2011 in response to NPFC's e-mail of 24 May 2011 letter of requesting additional

⁹E-mail from Claimant of 02 June 2011 in response to NPFC's e-mail of 24 May 2011 letter of requesting additional

¹⁰ E-mail from Claimant of 02 June 2011. See Item 2: The owner of the company felt it would simplify the book keeping if the two companies' transactions were maintained on the same set of books.

¹¹Schedule 3 Sales and Cost of Sales Analysis prepared by [REDACTED] CPA/CFE, CFE

¹²Schedule 3 Sales and Cost of Sales Analysis prepared by [REDACTED] CPA/CFE, CFE

¹³Schedule 4 Analysis of Operating Results through December 31, 2010 prepared by [REDACTED] CPA/CFE, CFE

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 by Claimant 17 April 2011;
- Letter to NPFC from Claimant submitting claim to NPFC dated 17 April 2011;

- Table of Contents for the claim submitted;
- Letter to GCCF from Claimant submitting claim to NPFC dated 13 January 2011;
- GCCF 20001-I Interim Payment Claim Form dated 11 January 2011;
- Letter to GCCF from [REDACTED] CPA/CFF, CFE explaining the claim dated 04 January 2011;
- Schedule 1 Lost Profit through December 31, 2010 and Forensic Accounting Service Bill prepared by [REDACTED] CPA/CFF, CFE;
- Schedule 2 Analysis of Lost Profit through December 31, 2010 prepared by [REDACTED] CPA/CFF, CFE;
- Schedule 3 Sales and Cost of Sales Analysis prepared by [REDACTED] CPA/CFF, CFE;
- Schedule 4 Analysis of Operating Results through December 31, 2010 prepared by [REDACTED] CPA/CFF, CFE;
- Monthly Profit & Loss Statements from January 2009 through December 2010;
- Letter by Claimant explaining Effect of Oil Spill on Revenue and Income dated 12 January 2011;
- Minutes & Resolution of Special Meeting of Directions hiring [REDACTED] and Vice President dated 22 September 2010;
- State of Louisiana Articles of Incorporation for [REDACTED] dated 24 February 2010;
- Resume of [REDACTED] CPA/CFF, CFE;
- Letter to NPFC from Claimant dated 19 May 2011 transmitting responses to NPFC letter requesting additional information;
- Letter to NPFC from [REDACTED] CPA/CFF, CFE dated 18 May 2011 transmitting responses to NPFC letter requesting additional information;
- Listing of [REDACTED] customers;
- Invoice for accounting services from [REDACTED] CPA/CFF, CFE for \$14,250.00 dated 18 May 2011;
- Application from State of Louisiana requesting trip ticket data;
- Transaction Detail by Account for June 2010 for [REDACTED]
- E-mail from [REDACTED] to NPFC of 24 May 2011 in response to NPFC request for additional information.

On 19 April 2011, the NPFC sent the Claimant a letter in which the NPFC requested additional information in order to further evaluate the claim. On 23 May 2011, the Claimant responded to the request.

Claimant presented a Six-Month Emergency Advance Payment (EAP) Claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. The GCCF subsequently denied Claimant's EAP claim. The Claimant filed an Interim Payment Claim [REDACTED] and was assigned Claim [REDACTED]. The GCCF issued a Deficiency Denial of the [REDACTED] claim on 07 June 2011.¹⁴

¹⁴GCCF Letter dated 07 June 2011

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 the 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 N10036-0686 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 the alleged 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 its claim.

Because the Claimant went into business in February 2010¹⁵ and began full operations in May 2010,¹⁶ it could provide little history of its operations at the time of the oil spill. The Claimant based its lost revenues on the first half of June 2010¹⁷ alone, after which time it ceased operations. Furthermore, the Claimant based its lost revenues for the remainder of 2010 on the revenues of its sister company [REDACTED].⁸ The NPFC denied LABC's claim on 25 May 2010.¹⁹ The Claimant has failed to sufficiently establish its loss of earnings as the amount claimed is based on too brief of a history and too speculative an assumption (i.e. that the Claimant, as a new startup, would be able to achieve sales comparable to its established sister company) for the NPFC to determine any loss with the certainty required by OPA. Additionally, for the same reason, the NPFC is unable to draw any causal relation between the oil spill and the Claimant's alleged losses.

¹⁵ State of Louisiana Articles of Incorporation for [REDACTED] dated 24 February 2010

¹⁶ E-mail from [REDACTED] to NPFC of 24 May 2011 in response to NPFC request for additional information

¹⁷ Schedule 3 Sales and Cost of Sales Analysis prepared by [REDACTED] CPA/CFF, CFE

¹⁸ Schedule 3 Sales and Cost of Sales Analysis prepared by [REDACTED] CPA/CFF, CFE

¹⁹ NPFC Letter to [REDACTED] 25 May 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: *CL [REDACTED] ation Division*

Date of Supervisor's Review: *18 August 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

5890
5/5/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

RE: Claim Number: N10036-0687

De [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0687 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding the 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 N10036-0687.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-0002691

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : May 5, 2011 |
| Claim Number | : N10036-0687 |
| Claimant | [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | [REDACTED] |
| Amount Requested | : \$47,000.00 |

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 April 18, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$47,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that she lost wages from her job as a server at the [REDACTED] in downtown New Orleans. The Claimant asserted in her handwritten submission that, "eventually in September I was terminated because of low production. Servers were arguing over tables so they let me go."

The Claimant's overall sum certain of \$47,000.00 is identified by the Claimant as \$35,000.00 in loss profits and earnings capacity, \$700.00 in public services, and \$10,000.00 in real or personal property. When the NPFC contacted the Claimant to ask about the types of damages she claimed (public services and real or personal property) she stated the \$700.00 was for gas money to move from Louisiana to Colorado and the \$10,000.00 was for her furniture that she had to sell.

The Claimant did not provide correspondence or documentation pertaining to her claim with the GCCF, but stated that she was compensated \$10,700.00 during the emergency advance payment claim process.

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 her claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, undated;
- Letter dated 29 March 2011 from the NPFC to Claimant describing the claim process;
- Impact Letter dated 12 April 2011 written by Claimant;
- Print out from GCCF website indicating lost profits has been paid, the real property claim has a final payment claim, and the loss of subsistence use of natural resources claim has been denied;
- 2008 and 2009 W-2s;
- 2010 1099 from Deepwater Horizon indicating a payment made of \$10,700.00
- Copy of earnings statement for the following pay period ending:
 - 06 August 2010

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.

Upon receipt of the claim, the NPFC spoke with the Claimant regarding the \$700.00 she requested for public services and the \$10,000.00 she requested for real or personal property. The Claimant stated that because of conditions in the Gulf, she chose to take the money GCCF paid her and move to Colorado. As a result of her decision to move, the Claimant stated she wanted \$700.00 to cover the gas expense of moving to Colorado and because she couldn't take her furnishings with her and subsequently sold them, she wanted \$10,000.00 for the replacement of those personal effects. These costs are denied as they are not OPA compensable damages.

With respect to the alleged loss of profits, the Claimant has failed to provide sufficient comparable financial information pursuant to the claims regulations found at 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.

Additionally, the Claimant has failed to provide documentation to demonstrate that any alleged loss, if one had occurred, was due to the injury, destruction or loss of real property, personal property, or natural resources as a result of a discharge or substantial threat of a discharge of oil. Based on the record and the Claimant's own admission, she was terminated for arguing with other servers over tables at the [REDACTED] therefore the Claimant would need to provide a written statement from her prior employer should she decide to request reconsideration.

Based on the documents and information presented this claim is denied because (1) the Claimant has not established that a loss of profits or earnings capacity occurred due to the injury, destruction or loss of real property, personal property, or natural resources. Therefore, the claim is denied.

Claim Supervisor: [REDACTED] J

Date of Supervisor's review: 5/5/11

Supervisor Action: *Denial approved*

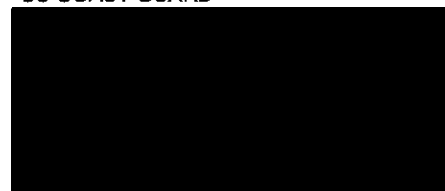
U.S. Department of
Homeland Security

**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# N10036-0688
01 June 2011



RE: Claim Number: N10036-0688

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 N10036-0688 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 N10036-00688.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|---|
| Claim Number | N10036-0688 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$66,000.00 |

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 18 April 2011, [REDACTED] dba [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$66,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant operated a daycare service for children in Gulfport, Mississippi.¹ She stated that as a result of the Deepwater Horizon oil spill, parents lost their employment and pulled their children from the Claimant's daycare. Claimant indicated that these parents worked for Northrup Grumman, on shrimp boats and at oyster houses.

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

¹Letter from Claimant to GFFC explaining her claim dated 14 December 2010.

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:

- Copies of Claimant's Social Security Card and Mississippi Drivers License;
- Log of baby-sitting hours by child from 2008 through 2009;
- Letters from parent of children baby-sat;
- Letter from Claimant to GFFC explaining her claim dated 14 December 2010;
- Letter from Claimant to GFFC explaining her claim dated 21 October 2010;
- Schedule C Profit or Loss from Business for 2009 for Child Day Care Business;
- Federal Tax Return Recap for 2008;
- GCCF Letter of Denial for Emergency Advance Payment dated 24 November 2010;
- GCCF Deficiency Letter for Interim Payment/Final Payment Claim; and
- GCCF Letter to Claim acknowledging receipt of Interim Payment/Final Payment Claim dated 29 January 2011.

Prior to presentation to the NPFC, Claimant presented an Emergency Advance Payment (EAP) Claim for \$14,500.00 in lost profits and earnings to the RP/GCCF. She was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 24 November 2010, the GCCF denied the claim.

On 4 January 2011, Claimant presented an Interim Payment Claim to the RP/GCCF and was issued Claim [REDACTED]. On 27 May 2011, the GCCF paid the Claimant \$13,428.92 in compensation on the Interim Payment Claim. The GCCF also offered Claimant a Final Payment Offer of \$25,000.00.²

² GCCF determination letter on Interim/Final Payment claim dated 27 May 2011.

On 12 April 2011, Claimant presented the subject claim to the NPFC for \$66,000.00 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 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.

On 22 April 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim. The letter requested, among other things, the contact information of the parents who allegedly pulled their children from the Claimant's daycare as a result of the Deepwater Horizon oil spill and explanations for financial discrepancies in the Claimant's submission. To date, the Claimant has not responded to the request.

The NPFC proceeded to evaluate the claim with the evidence the Claimant originally submitted. The evidence does not demonstrate the Claimant's alleged loss of \$66,000.00, or 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. Additionally, the Claimant has not provided evidence that she presented her \$66,000.00 claim for lost profits and earnings to the RP pursuant to 33 C.F.R. § 136.103(a), which requires that all claims for removal costs or damages be presented first to the RP.

For the foregoing reasons, this claim is denied.

Claim Supervisor:  Division

Date of Supervisor's Review: 6/1/11

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: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim# N10036-0689
26 April 2011

RE: Claim Number: N10036-0689

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 N10036-0689 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 N10036-0689.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
US COAST GUARD
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002699

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | 25 April 2011 |
| Claim Number | N10036-0689 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | [REDACTED] |
| 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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 18 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$20,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant had worked for a temporary labor staffing firm known as Command Center.¹ At the time of the oil spill, Claimant was assigned to a flooring project for the [REDACTED] in Biloxi, Mississippi.² Claimant stated that the oil spill caused "production" at the casino to drop, apparently causing the Claimant's work to be cancelled or postponed.³ Claimant also stated that he was last employed on 16 September 2010, and that although he has held a TWIC card since October 2009, he has been unable to find to find work either offshore or inland.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:

¹ PHONECON between the NPFC and Claimant, dated 25 April 2011.

² *Id.*

³ *Id.*

⁴ *Id.* and written statement from Claimant dated 01 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

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

- NPFC OSLTF claim form signed by Claimant and dated 01 April 2011;
- Claimant's payroll history with Command Center from 15 March 2011 to 16 September 2011;
- Handwritten statement describing financial hardship, dated April 01, 2011;
- Tax return transcripts for 2008 and 2009;
- Affidavit to remove tenant (Claimant) filed in Harrison County court;
- Summons to tenant (Claimant) from Harrison County court.

Prior to submitting a claim to NPFC, Claimant presented an Emergency Advance Payment claim to the GCCF. He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 29 October 2010, this claim was denied by the GCCF. Claimant indicates that sometime in November 2010, he presented a Final Payment claim (Claim [REDACTED]) to the GCCF for \$20,000.00 in lost earnings resulting from the Deepwater Horizon oil spill.⁵ This claim remains pending before the GCCF.

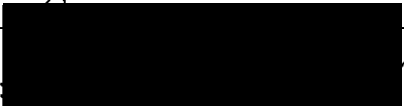
⁵ ~~OPTIONAL~~ CON between the NPFC and Claimant, dated 25 April 2011.

On 18 April 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.⁶

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. The NPFC considered all the documentation submitted by the Claimant.

This claim is denied because (1) the evidence presented by the Claimant does not demonstrate that the Claimant experienced a financial loss, (2) the Claimant's documentation failed to support the amount of any alleged loss and, (3) the Claimant failed to make the connection between the alleged loss and 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: *4/26/11*

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

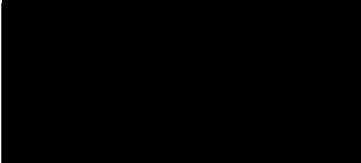
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0690
6 June 2011



Re: Claim Number: N10036-0690

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 N10036-0690 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 N10036-0690.

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

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|---|
| Claim Number | N10036-0690 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$39,682.76 |

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 18 April 2011, [REDACTED] (Owner), on behalf of [REDACTED] (Claimant), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$39,682.76 in loss of profits and impairment of earnings capacity.

Claimant is a licensed mortgage brokerage business that brokers mortgages on residential and commercial properties in the panhandle of Florida.¹ Owner indicated that he specializes in financing second homes and investment properties in a market that is heavily dependent on tourism. Owner asserted that after several tough years in 2008 and 2009, things seemed to be improving until “the threat of the BP OIL SPILL hit and drove the tourists away.”² Further, “without tourists here no one was purchasing homes” and “many that were under contract before the oil spill withdrew due to the uncertainty of the effects of the oil spill.”³

Owner calculated damages by adding up the Claimant’s gross earnings from 2008 and 2009 and then dividing by 24 to get an average monthly earnings amount.⁴ He then added up the difference between this 2008/2009 average and his actual earnings for each month of his claimed period of loss from May of 2010 through March of 2011. To this difference, the Claimant also added a specific loss of \$14,625.00.⁵

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 § 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 Letter of claim explanation from Claimant, dated 15 April 2011.

² *Id.*

³ *Id.*

⁴ Sales ledger from January 2010 through March 2011, with damages calculations.

⁵ *Id.*

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 the claim, Claimant submitted the following documentation:

- Optional OSLTF form, 15 April 2011;
- Letter of claim explanation from Claimant, dated 15 April 2011;
- Letter from [REDACTED] to "whom it may concern," undated;
- Form 1120S Corporate Income Tax Return for the years 2006 through 2010;
- Florida Mortgage Broker License, expiration date of 31 August 2011;
- Florida Articles of Incorporation, filed 25 March 2003;
- Denial letter from the GCCF, dated 6 March 2011;
- Sales ledger from January 2010 through March 2011, with damages calculations;
- Claimant answers to NPFC's request for additional information, dated 18 May 2011;
- Monthly commission statements from January of 2008 through April of 2011;
- Summary of closing statements and commissions from January of 2008 through April of 2011;
- HUD Settlement Statements from 2008 and 2009;

- Bank deposit slips with notations indicating fees collected;
- Ledger of consulting fees;
- Mortgage Brokers Agreements from 2010 and 2011;
- Ledger of loans in process at time of Deepwater Horizon oil spill;
- Email from Owner to Dror Levy, dated 18 May 2011; and
- Mortgage application documents for Chaim Hershkowitz.

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF. On 27 October 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$23,901.98 in lost profits and earnings with the GCCF.⁶ Claimant was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied by the GCCF on 16 November 2010.⁷ Claimant additionally filed an Interim claim with the GCCF on 14 January 2011 in the amount of \$27,341.00.⁸ That claim was denied by the GCCF on 6 March 2011.⁹

On 18 April 2011, Claimant presented the subject claim for \$39,682.76 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 claim for \$23,901.98 and an Interim claim for \$27,341.00 in lost profits and earnings to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$39,683.00 to the NPFC. Any claimed amount of damages exceeding \$27,341.00 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's evidence does not demonstrate that its 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.

Owner based his calculated damages on an earnings statement provided in his initial submission that indicated gross receipts from 2010 and 2011.¹⁰ However, these gross receipts were not consistent with the monthly commission statements and 2010 tax return that Owner later submitted in response to the NPFC's request for additional information. Claimant's commission statements indicated that prior to the Deepwater Horizon oil spill, the Claimant had earnings of only \$400.00 from December of 2009 through April of 2010.¹¹ This is in contrast to the earnings statement originally provided by the Claimant indicating over \$11,000.00 in gross receipts from January through April of 2010.¹² Alternately, the Claimant's 2010 tax return indicated gross receipts of only \$4,325.00 for the entire year.¹³

Additionally, the Claimant provided documentation indicating that there were three loans in process at the time of the Deepwater Horizon oil spill.¹⁴ Owner asserted that these loans were cancelled due to the Deepwater Horizon oil spill. There were signed documents for two of the

⁶ Report from the GCCF, dated 20 May 2011.

⁷ GCCF Determination letter, dated 16 November 2010.

⁸ Report from the GCCF, dated 20 May 2011.

⁹ GCCF Interim Payment Determination Letter, dated 6 March 2011.

¹⁰ Sales ledger from January 2010 through March 2011, with damages calculations.

¹¹ Monthly commission statements.

¹² Sales ledger from January 2010 through March 2011, with damages calculations.

¹³ 2010 Form 1120S Corporate Income Tax Return.

¹⁴ Ledger of loans in process at time of Deepwater Horizon oil spill.

loans; however, they were a fee agreement¹⁵ and an origination agreement.¹⁶ These are both preliminary documents in the mortgage procurement process that only evidence a relationship between mortgage broker and client. They in no way evidence the actual fruition of a completed loan with a lender, much less the cancellation of a loan due to the Deepwater Horizon oil spill.

Owner stated that the third contract was with a longtime business partner where no signed contract was needed.¹⁷ He did provide an email communication indicating that a loan was in process.¹⁸ As well, the client provided a letter that explained the reasons for not following through with the loan. Notably, this letter indicated that the Deepwater Horizon oil spill occurred as they were gathering the information and documents to complete the loan.¹⁹ Client stated that his business suffered significant damage due to the oil spill and after careful consideration due to the uncertainty of the oil spill he withdrew the loan.²⁰ This letter again evidenced that there was no completed loan at issue and that the client made a business decision to forego buying the additional property.

Because the Claimant has 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 it has suffered an uncompensated 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, this claim is denied.

Claim Supervisor: [REDACTED]

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁵ Florida Mortgage Brokerage Agreement with [REDACTED]

¹⁶ Loan Origination Agreement with [REDACTED]

¹⁷ Ledger of loans in process at time of Deepwater Horizon oil spill.

¹⁸ Email from Owner to [REDACTED] dated 18 May 2011.

¹⁹ Letter from [REDACTED] to "whom it may concern," undated.

²⁰ Id.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

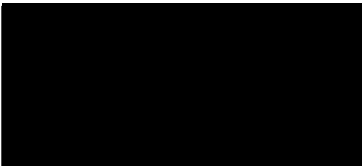
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0690
6 June 2011



Re: Claim Number: N10036-0690

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 N10036-0690 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 N10036-0690.

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

FOIA2011-3380-00002708

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|---|
| Claim Number | N10036-0690 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$39,682.76 |

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 18 April 2011, [REDACTED] (Owner), on behalf of [REDACTED] (Claimant), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$39,682.76 in loss of profits and impairment of earnings capacity.

Claimant is a licensed mortgage brokerage business that brokers mortgages on residential and commercial properties in the panhandle of Florida.¹ Owner indicated that he specializes in financing second homes and investment properties in a market that is heavily dependent on tourism. Owner asserted that after several tough years in 2008 and 2009, things seemed to be improving until “the threat of the BP OIL SPILL hit and drove the tourists away.”² Further, “without tourists here no one was purchasing homes” and “many that were under contract before the oil spill withdrew due to the uncertainty of the effects of the oil spill.”³

Owner calculated damages by adding up the Claimant’s gross earnings from 2008 and 2009 and then dividing by 24 to get an average monthly earnings amount.⁴ He then added up the difference between this 2008/2009 average and his actual earnings for each month of his claimed period of loss from May of 2010 through March of 2011. To this difference, the Claimant also added a specific loss of \$14,625.00.⁵

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 § 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 Letter of claim explanation from Claimant, dated 15 April 2011.

² *Id.*

³ *Id.*

⁴ Sales ledger from January 2010 through March 2011, with damages calculations.

⁵ *Id.*

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 the claim, Claimant submitted the following documentation:

- Optional OSLTF form, 15 April 2011;
- Letter of claim explanation from Claimant, dated 15 April 2011;
- Letter from Chaim Hershkowitz to "whom it may concern," undated;
- Form 1120S Corporate Income Tax Return for the years 2006 through 2010;
- Florida Mortgage Broker License, expiration date of 31 August 2011;
- Florida Articles of Incorporation, filed 25 March 2003;
- Denial letter from the GCCF, dated 6 March 2011;
- Sales ledger from January 2010 through March 2011, with damages calculations;
- Claimant answers to NPFC's request for additional information, dated 18 May 2011;
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- Bank deposit slips with notations indicating fees collected;
- Ledger of consulting fees;
- Mortgage Brokers Agreements from 2010 and 2011;
- Ledger of loans in process at time of Deepwater Horizon oil spill;
- Email from Owner to Dror Levy, dated 18 May 2011; and
- Mortgage application documents for Chaim Hershkowitz.

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF. On 27 October 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$23,901.98 in lost profits and earnings with the GCCF.⁶ Claimant was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied by the GCCF on 16 November 2010.⁷ Claimant additionally filed an Interim claim with the GCCF on 14 January 2011 in the amount of \$27,341.00.⁸ That claim was denied by the GCCF on 6 March 2011.⁹

On 18 April 2011, Claimant presented the subject claim for \$39,682.76 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 claim for \$23,901.98 and an Interim claim for \$27,341.00 in lost profits and earnings to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$39,683.00 to the NPFC. Any claimed amount of damages exceeding \$27,341.00 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's evidence does not demonstrate that its 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.

Owner based his calculated damages on an earnings statement provided in his initial submission that indicated gross receipts from 2010 and 2011.¹⁰ However, these gross receipts were not consistent with the monthly commission statements and 2010 tax return that Owner later submitted in response to the NPFC's request for additional information. Claimant's commission statements indicated that prior to the Deepwater Horizon oil spill, the Claimant had earnings of only \$400.00 from December of 2009 through April of 2010.¹¹ This is in contrast to the earnings statement originally provided by the Claimant indicating over \$11,000.00 in gross receipts from January through April of 2010.¹² Alternately, the Claimant's 2010 tax return indicated gross receipts of only \$4,325.00 for the entire year.¹³

Additionally, the Claimant provided documentation indicating that there were three loans in process at the time of the Deepwater Horizon oil spill.¹⁴ Owner asserted that these loans were cancelled due to the Deepwater Horizon oil spill. There were signed documents for two of the

⁶ Report from the GCCF, dated 20 May 2011.

⁷ GCCF Determination letter, dated 16 November 2010.

⁸ Report from the GCCF, dated 20 May 2011.

⁹ GCCF Interim Payment Determination Letter, dated 6 March 2011.

¹⁰ Sales ledger from January 2010 through March 2011, with damages calculations.

¹¹ Monthly commission statements.

¹² Sales ledger from January 2010 through March 2011, with damages calculations.


¹³ 2010 Form 1120S Corporate Income Tax Return.

¹⁴ Ledger of loans in process at time of Deepwater Horizon oil spill.

loans; however, they were a fee agreement¹⁵ and an origination agreement.¹⁶ These are both preliminary documents in the mortgage procurement process that only evidence a relationship between mortgage broker and client. They in no way evidence the actual fruition of a completed loan with a lender, much less the cancellation of a loan due to the Deepwater Horizon oil spill.

Owner stated that the third contract was with a longtime business partner where no signed contract was needed.¹⁷ He did provide an email communication indicating that a loan was in process.¹⁸ As well, the client provided a letter that explained the reasons for not following through with the loan. Notably, this letter indicated that the Deepwater Horizon oil spill occurred as they were gathering the information and documents to complete the loan.¹⁹ Client stated that his business suffered significant damage due to the oil spill and after careful consideration due to the uncertainty of the oil spill he withdrew the loan.²⁰ This letter again evidenced that there was no completed loan at issue and that the client made a business decision to forego buying the additional property.

Because the Claimant has 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 it has suffered an uncompensated 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, this claim is denied.

Claim Supervisor: 

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁵ Florida Mortgage Brokerage Agreement with Dustin Crawley.

¹⁶ Loan Origination Agreement with James Parsons.

¹⁷ Ledger of loans in process at time of Deepwater Horizon oil spill.

¹⁸ Email from Owner to Dror Levy, dated 18 May 2011.

¹⁹ Letter from Chaim Hershkowitz to "whom it may concern," undated.

²⁰ *Id.*

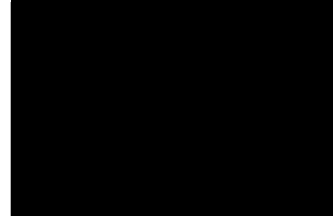
U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

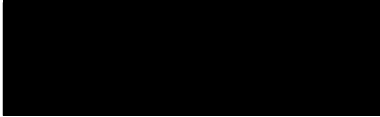
NPFC CA MS 7100
US COAST GUARD



5890
4/20/2011

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0691

Dear [REDACTED]

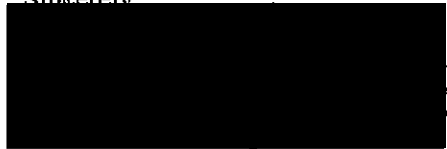
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on claim # N10036-0691. Please see the enclosed Claim Summary/Determination Form for further explanation.

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 N10036-0691.

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

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 4/20/2011 |
| Claim Number | : N10036-0691 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$10,000,000.00 |

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 14 April 2011, [REDACTED] (Claimant), presented an Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$10,000,000.00 for design use he alleged was used to stop the oil in the Deepwater Horizon oil spill. [REDACTED] contacted BP and the Unified Command in order to offer assistance in stopping the oil leak by presenting his concept of a "Needle Valve" that he asserted he designed to stop the flow of oil at the source. The Claimant is requesting compensation for his design in the amount of \$10,000,000.00 that he states was ultimately used in stopping the oil leak.

APPLICABLE LAW:

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

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 136.235, 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 his claim, the Claimant submitted the NPFC OSLTF Claim Form dated April 14, 2011; a copy of 20 historic emails to various parties associated with his design submission as well as email traffic with the GCCF. The GCCF assigned claim identification [REDACTED] to Mr. [REDACTED]'s claim submission.

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 claim is denied because the alleged loss in the amount of \$10,000,000.00 is not 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. The Claimant's alleged loss is a request for compensation of his design idea called the [REDACTED] which he provided as a 'Plan B' concept to stop the oil-spill leak, and not the result of the Deepwater Horizon incident. Such efforts to provide ideas, designs, and concepts for stopping the oil-spill leak are not damages that may be compensated from the OSLTF.

Claim Supervisor [REDACTED]

Date of Supervisor's review: *4/20/11*

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# N10036-0692
29 April 2011

RE: Claim Number: N10036-0692

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 N10036-0692 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

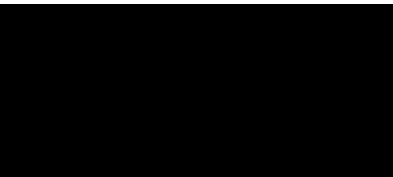
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0692.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002716

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---|
| Date | 26 April 2011 |
| Claim Number | N10036-0692 |
| Claimant | [REDACTED] |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Claim Manager | [REDACTED] |
| 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 19 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$15,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works for [REDACTED] in New Orleans. She stated that as a result the Deepwater Horizon oil spill, her hours of work were reduced and she lost earnings.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

¹ OSLTF claim form.
09/14/11

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, Claimant submitted the following documentation to the NPFC:

1. OSLTF claim form, dated 18 April 2011
2. Earnings statements from [REDACTED] New Orleans
3. Copy of Claimant's LA Driver's License
4. Copy of Claimant's [REDACTED] ID with annotations
5. Form 1040A US Individual Income Tax Return for 2010

On 22 September 2010, Claimant presented a six-month Emergency Advance Payment claim for \$1,500.00 in lost wages/earnings to the GCCF. She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 12 November 2010, the GCCF denied the claim.² On 12 November 2010, Claimant presented a Full Review Final claim [REDACTED] for \$25,000.00 in lost wages/earnings to the GCCF. Then on 10 January 2011, Claimant presented an Interim Payment claim (Claim [REDACTED]) for \$15,000.00 in lost wages/earnings to the GCCF. These claims remain under review.

On 19 April 2011, Claimant presented a \$15,000.00 claim for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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

² GCCF denial letter: Re: Claimant's Emergency Advance Payment claim, dated 12 November 2010.

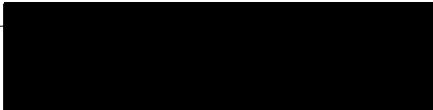
impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

This claim is denied because the Claimant has failed to demonstrate that her income was reduced as a consequence of the injury to, destruction of, or loss of property or natural resources, and the amount of that reduction. Claimant provided no evidence linking her alleged loss of \$15,000.00 in earnings to the Deepwater Horizon oil spill.

Additionally, the Claimant failed to explain how she calculated her alleged loss of \$15,000.00. Claimant provided her 1040A from 2010 and various earnings statements from 2010, but no financial documentation for prior years was provided for comparison. Claimant therefore has failed to demonstrate her loss as claimed.

In light of the foregoing, this claim is DENIED.

Claim Supervisor:



for

Date of Supervisor's Review: *4/29/11*

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

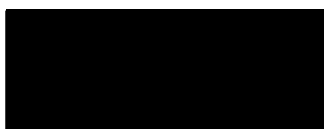
NPFC-CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
6/29/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0693

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 N10036-0693 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,

A black rectangular redaction covering the signature of the sender.

U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Claim Number | : N10036-0693 |
| Claimant | [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$16,247.98 |

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 19 April 2011 ([REDACTED] Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$16,247.98 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is a wheat farmer from Hermleigh, TX. He indicated that after harvesting his 2010 wheat crop, he trucked his bushels of wheat to grain elevators for sale. He alleged that as a result of the Deepwater Horizon oil spill, he encountered difficulty selling his crop and was forced to haul his crop to Lubbock, TX for sale reportedly at \$1.40 per bushel below market price. Claimant estimated that he incurred \$.60 cost per bushel from the 100 mile trek to Lubbock. Claimant was able to sell 8123.998 bushels of wheat. His sum certain represents his loss from the reduced price per bushel plus the extra cost for hauling his crop to Lubbock.¹

REQUEST FOR RECONSIDERATION:

On May 16, 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 May 2, 2011 because the NPFC contacted U.S. Department of Agriculture, Texas State Farm Service Agency Office, Program Analysis Division. The NPFC confirmed that this office covered the Claimant's location and that the office offered disaster relief loan programs for farms. The office indicated that the nearest truck delivery locations to the Claimant were the Amarillo Feed Lot and the Port of Houston export point. According to the office, neither location was impacted by the Deepwater Horizon oil spill. The office further confirmed that it has an entire division working the commodity sheets that the Claimant provided with his submission to the OSLTF and there was no awareness of any connection between the commodity prices for wheat and the Deepwater Horizon oil spill.²

¹ Claimant's handwritten letter to the NPFC, dated 24 March 2011.

² PHONECON between the NPFC and [REDACTED] of the U.S. Department of Agriculture Farm Service Agency, [REDACTED] College Station, TX 77540, on 20 April 2011.

On reconsideration, the Claimant only provided a two page handwritten letter. The Claimant provided no new documentation in support of his request for reconsideration other than an argument that the U.S. Department of Agriculture was wrong when it said the spill had no connection to the price of wheat. The Claimant further asserted on reconsideration that he desired for the NPFC to contact the Texas Wheat Producers Board and he provided the name of Kody Bessant as his point of contact.

On 29 June 2010, Claimant presented a claim to the responsible party, BP. On 17 September 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim for \$16,247.98 in lost wages/earnings to the GCCF. He was assigned GCCF Claimant II [REDACTED] and Claim # [REDACTED]. By letter dated 02 November 2010, the GCCF denied this claim.³ On 04 January 2011, Claimant then presented a Full Review Final Payment claim (Claim # [REDACTED]) for the same amount and loss type to the GCCF. By letter 06 March 2011, the GCCF denied this claim.⁴

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on May 26, 2011. To support the request for reconsideration the Claimant submitted a handwritten letter that asserted the U.S. Department of Agriculture was wrong when it said the spill had no connection to the price of wheat. The Claimant further asserted on reconsideration that he desired for the NPFC to contact the Texas Wheat Producers Board and he provided the name of [REDACTED] as his point of contact. Other than the name of [REDACTED] at the Texas Wheat Producers Board, no other information has been presented to the NPFC.

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. On June 13, 2011, the NPFC contacted [REDACTED] and the Vice President, [REDACTED] of the [REDACTED] via email requesting information on the effect of the oil spill on wheat prices as well as delays associated with elevators for storage of wheat crops.

On June 27, 2011, the NPFC was able to speak with [REDACTED] of the Texas Wheat Producers Board who advised that although the Claimant has spoken with him several times previously, the Texas Wheat Producers Board is unable to confirm that the Deepwater Horizon incident had any impact on the wheat farming industry. [REDACTED] admitted to significant issues regarding the

³ GCCF denial letter Re: Claimant's EAP claim dated 02 November 2010.

⁴ GCCF denial letter Re: Claimant's Final Payment claim dated 06 March 2011.

European market, the value of the American dollar, and the demand for wheat which is what actually resulted in grain elevators being full to capacity and farmers being placed in positions to sell their wheat at significantly reduced prices.

██████████ further confirmed that any impacts from the Deepwater Horizon incident, if present, would have been minimal in comparison to the myriad of economic and market concerns facing the overall wheat industry. ██████████ forwarded some documentation from Texas A & M University which corroborated the impact of the euro on the market.

Based on the foregoing information, the NPFC again denies the claim because (1) the Claimant has failed to demonstrate that his alleged loss of profits claimed is due to the destruction or injury to real or personal 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: *6/29/11*

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

5890/DWHZ
07 June 2011

Re: Claim Number: N10036-0694

Dear [REDACTED]

The National Pollution Funds Center (NPFC) is in receipt of your email, dated 06 June 2011, requesting the withdrawal of your claim. The NPFC has withdrawn your claim, N10036-0694.

Please note that should you decide to submit a claim in the future regarding your alleged loss, you will have to resubmit all information you provided.

If you have any questions about this letter, you may write the NPFC at the above address, or contact us by phone or email.

Sincerely,

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

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: 202-455-0957

5890
5/26/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0695

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 N10036-0695 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 N10036-0695.

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

FOIA2011-3380-00002725

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Claim Number | : N10036-0695 |
| Claimant | [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$130,500.00 |

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 April 19, 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC), on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$130,500.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that he has been a boat Captain in Louisiana until the oil spill occurred and then he was laid off. He asserted that he made \$20.00 an hour based on 12 hour days. As a result of being laid off, he returned to his home town in Destin, FL where he was promised a job for good money. Claimant asserted that he was only able to work about two weeks due to the effects of the oil spill. Claimant stated that 2/3 of last year's salary was made by payments received from BP.

The Claimant indicated that he filed a claim with the Responsible Party (RP) and received approximately 2/3 of his salary for 2010. The NPFC confirmed with the GCCF that the Claimant filed an Emergency Advance Payment claim (EAP) in the amount of \$26,316.0. The Claimant was assigned GCCF Claimant ID [REDACTED]. The GCCF indicated that the Claimant was paid \$14,876.00 from BP and \$26,400.00 from the GCCF. The GCCF also confirmed that the Claimant filed a Full Review claim on January 4, 2011 for lost profits in the amount of \$133,500.00. The GCCF has that the claim was deemed deficient. Based on the foregoing information, the RP has paid the Claimant a total of \$41,276.00 to date.

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;
- (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, undated;
- Copy of his Diploma for Operator of Uninspected Passenger Vessels dated March 28, 2008;
- A statement from [REDACTED] Owner of [REDACTED] and [REDACTED] in Destin, FL dated June 16, 2010;
- Copy of 2009 Income Tax Return Form 1040EZ showing annual wages of \$52,624.00;
- Copy of IRS Tax Return Transcript for 2008 showing no annual earnings.

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. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that income was reduced as a result of the Deepwater Horizon incident.


On April 27, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

1. U.S. Income Tax Return Filings for 2007, 2008 and 2010 including all attachments, schedules, forms or statements.
2. All W-2 Wage and Tax Statement for 2007, 2008, 2009 and 2010.
3. Provide copies of all pay stubs, pay checks, direct deposit advices, or earnings statements for all payroll periods during 2009 and 2010.
 - a. If earnings statements are not available, please provide copies of monthly bank statements indicating which deposits related to payroll.
4. If your claim is based on termination of employment, provide written confirmation from your employer describing in detail, the reason(s) for termination, as well as the termination or separation notice.
5. If you are claiming any amount of lost profits from the fishing business you operated in 2009, please provide the following for that business.
 - a. Monthly income statements from January 2008 to December 2010
 - b. Monthly bank statements for the business from January 2008 to December 2010
 - c. State sales tax returns for all reported periods from January 2008 to December 2010
 - d. Describe the type of fishing activity you are involved with (i.e., fish, crabs, oysters, shrimp, etc.)
 - e. Describe your method of fishing for each type of seafood product caught. (i.e., fishing nets, fishing with long lines, oyster dredging, etc.)
 - f. Identify the areas where you normally fish. Include any alternative areas you have considered if your normal areas have been closed.
 - g. If applicable, identify any closures that affected your fishing operations.
 - h. If a deckhand or boat captain, provide copies of all pay checks, pay stubs or earnings statements received for employment during 2008 through the current period, in addition to the paystubs already provided.
 - i. If a boat captain, provide registration, licensing and title documents from vessel operated/ employed on.
 - j. Settlement Sheets providing a detailed breakdown of owner's share of proceeds, compensation to boat captain, payments to deckhands and payment of expenses.
 - k. Trip Ticket Landing Data from State Authority to listing all trip tickets from 2007 through the present period.
 - l. If the above is not available, provide the actual Trip Tickets/ Catch Records/ Dealer Receipt Forms for the same period.
6. If you have received unemployment benefits from 2009 through the present, provide copies of payments received and statements of benefits.

Please Answer the Following Questions:

1. Your claim correspondence indicates you moved from Louisiana to Florida sometime after the Deepwater Horizon Incident in 2010. Please provide a listing, including dates of residence, for all locations where you resided from 2007 to present.
2. Your 2009 tax return shows two sources of income, W-2 wages totaling \$52,624 and a fishing business (Schedule "C") loss of (\$2,492). Please explain which form of employment or income your claim is based on.
3. Describe your employment history from 2007 through the current period.
 - a. Include a description of job locations, dates worked, positions held and job duties.
4. Identify your position, job title and responsibilities for your employment position that you believe was impacted by the Deepwater Horizon incident.
5. Describe your primary form of employment and trade skills for the past 5 years.
6. Has your employer or former employer filed a claim related to the Deepwater Horizon incident? If so, describe the outcome of your employer's claim.
7. Describe how you computed your claimed lost earnings.

The Claimant has not provided the additional documentation nor answered any of the questions to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: *NPF* 

Date of Supervisor's review: *5/26/11*

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
31 May 2011

Re: Claim Number: N10036-0697

Dear [REDACTED]

The National Pollution Funds Center (NPFC) is in receipt of your email, dated 27 May 2011, requesting the withdrawal of your claim. The NPFC has withdrawn your claim.

Please note that should you decide to submit a claim in the future regarding your alleged loss, you will have to resubmit all information you provided.

If you have any questions about this letter, you may write the NPFC at the above address, or contact us by phone or email.

Sincerely,

[REDACTED]

U. S. Coast Guard

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

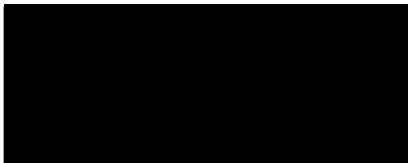
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
6/6/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0698

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 N10036-0698 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,



Thomas E. Robinson
Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Claim Number | : N10036-0698 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$1,068,000.00 |

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 19 April 2011, [REDACTED] on behalf of [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$1,068,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a recording label business which reportedly offers a variety of services including artist signings, CD recording, production, distribution, and advertising.¹ The Claimant asserted that due to the oil spill, “no one wanted to come and live on dirty oil smelling beach area and the oil had washed ashore which was an awful sight.”² The Claimant also alleged that “due to the nasty oil spill on the beaches they [potential clients] have decided to pull out of a potential artist contract.”³

Claimant indicated that it calculated its sum certain “based on the average of revenue from P&L statement from 2010 times 36 projected months given by GCCF.”⁴

REQUEST FOR RECONSIDERATION:

On June 3, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The Claimant only submitted a one page rebuttal letter in support of his reconsideration.

The NPFC denied the claim originally on June 1, 2011 on the basis of fraud. Additionally, the Claimant did not provide any of the required information.

On reconsideration, the Claimant only presented a handwritten rebuttal letter dated June 3, 2011. The letter stated that the Claimant does not agree with the NPFC’s denial determination. The Claimant argued that it was said in his denial that potential artists gave conflicting stories to the matter at hand. The Claimant further stated that he spoke with the artists and their information is

¹ Website information retrieved by the NPFC.

² Optional OSLTF Claim Form dated 19 April 2011.

³ Typed letter from Claimant explaining his situation, dated 25 June 2010.

⁴ Returned additional information, dated 07 May 2011.

just what was said in their letters. Additionally, the Claimant argued that his denial said there was not enough documentation to support his claim but factual documentation was submitted. In closing, the Claimant stated he disagreed with the NPFC and wanted his claim reconsidered. It is important to note that the Claimant provided nothing more than an argument to support his reconsideration

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 3, 2011. To support his request for reconsideration, the claimant provided a letter making his reconsideration argument. No new information was provided by the Claimant.

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 incorporates the original denial which was dated June 1, 2011 as part of this determination on reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. After the NPFC performed another review of the claim submission, the NPFC has determined that the Claimant the Claimant provided no new information associated with the required comparable financial data as previously requested by the NPFC (i.e., Profit and Loss statements, bank statements, transaction receipts or evidence of the alleged contractual agreements with [REDACTED]).

The burden is on the Claimant in accordance with 33 C.F.R. § 136.235 (a-d) to provide the necessary financial information including a calculation of saved expenses in support of any loss claimed. The Claimant asserted in the initial claim submission that he could not provide Profit & Loss statements for 2008 and 2009 because of an alleged “change in personnel”.

The NPFC again denies the claim because (1) the Claimant has failed to demonstrate that his alleged loss of profits 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, (2) the Claimant failed to demonstrate a loss of profits in the amount alleged, (3) the Claimant has failed to support the alleged amount of his loss claimed due to conflicting statements made by [REDACTED] to the NPFC vice what the statements asserted, and (4) the Claimant has made arguments on why he could not produce appropriate comparable financials although without such documentation, the Claimant has failed to demonstrate a loss in the amount claimed.

This claim is denied upon reconsideration.

Claim Supervisor



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

Supervisor Action: *Denial on reconsideration 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
5/26/2011

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Number [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0699

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 N10036-0699 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 N10036-0699.

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

FOIA2011-3380-00002735

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Claim Number | : N10036-0699 |
| Claimant | : [REDACTED] |
| Type of Claimant | : Private (US) |
| Type of Claim | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$15,000.00 |

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 April 20, 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC), on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$15,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that she was affected by the oil spill because she lost wages and days while employed by [REDACTED]. Claimant provided no explanation as to how the spill affected her income or how she arrived at the amount requested.

On the Claimant's OSLTF claim form, the Claimant indicated that she filed a claim with the Responsible Party (RP) September 20, 2010 and that the claim was denied. The NPFC confirmed with the GCCF that the Claimant filed an Emergency Advance Payment claim (EAP) on September, 2010 in the amount of \$15,000.00. The Claimant was assigned GCCF Claimant ID [REDACTED]. The GCCF indicated that the claim was denied. The GCCF also confirmed that the Claimant filed a Final claim on November 23, 2010 for lost profits in the amount of \$15,000.00. The GCCF has confirmed the claim is still under review.

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;
- (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 April 20, 2011;
- Copy of her LA driver's license;
- Copies of pay stubs from [REDACTED] for the period of April 2010 through December 2010.

NPFC Determination

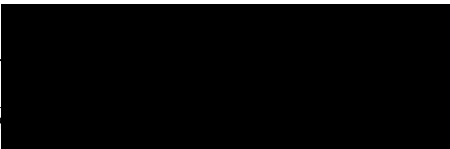
Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that her loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 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 the claim. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated lost wages and days as a result of the Deepwater Horizon incident.

On April 28, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

- a) Detailed explanation of the claim and how you arrived at your sum certain of \$15,000.00
- b) Detailed explanation on how and why the oil spill caused a reduction in your work hours
- c) Signed letter from Harrah's stating that your reduction in hours was due to the oil spill.
Please provide a name and contact number for Harrah's human resource department that we may contact
- d) Proof of profits or earnings in comparable periods when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents
- e) Working contact phone number

The Claimant has not provided the additional documentation to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *5/26/11*

Supervisor Action: *Denial approved*

Supervisor's Comments: