

U.S. Department of
Homeland Security

**United States
Coast Guard**



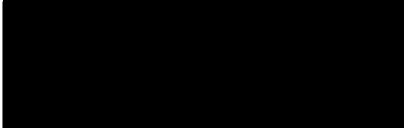
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
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arl-pf-npfcclaimsinfo@uscg.mil
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5312

5890/DWHZ
3 November 2011

The Courtyard Manor



Re: Claim Number: N10036-1349

Dear Ms. Washington:

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 N10036-1349 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

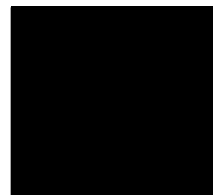
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1349.

Mail reconsideration requests to:

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

Sincerely,



ion Division
a Funds Center

U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1349
Claimant	The Courtyard Manor
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$217,994.78

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 August 2011, Ms. Tiffany Washington, on behalf of The Courtyard Manor (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$217,994.78 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant is the owner and operator of the Courtyard Manor, a special events hall in downtown Mobile, Alabama. The Claimant alleged that her business sustained losses due to the oil spill for a variety of reasons, including (1) high cost of seafood, (2) lack of hotel availability due to the presence of oil spill clean-up workers and (3) concerns regarding seafood consumption by event guests.²

The Claimant alleged that the Deepwater Horizon oil spill caused her company to sustain uncompensated losses in the amount of \$217,994.78.

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 Optional OSLTF Claim Form, dated 22 August 2011.

² Optional OSLTF Claim Form, dated 22 August 2011; See also, letter from the Claimant to the NPFC, 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 undertake, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, 22 August 2011;
- Document describing losses, undated;
- Letter from Claimant to the NPFC, undated;
- Invoice, Sysco, showing cost of seafood, 25 May 2010;
- Invoice, Sysco, showing cost of seafood, 11 February 2010;
- 2010 Form 1040;
- Schedule C (Form 1040);
- 2010 Form 4562;
- 2010 Form 2106-EZ;
- 2009 Form 1040;
- 2009 Schedule A (Form 1040);
- 2009 Schedule C (Form 1040);
- 2009 Form 2106-EZ;
- 2009 Schedule M (Form 1040A or 1040);
- 2009 Form 8879;
- The Courtyard Manor, Schedule of Revenues & Expenditures, 2010;
- The Courtyard Manor, Schedule of Revenues & Expenditures, 2009;

- Billing Statement/Invoices, 25 April 2011;
- Response to request for additional information, dated 25 September 2011.

On 16 October 2010, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF seeking loss of profits and wages damages in the amount of \$14,250.00.³ The Claimant was assigned Claimant ID 3194996 and the EAP claim was assigned Claim # 250442.⁴ The RP/GCCF issued payment on this claim on 19 November 2010 in the amount of \$14,300.00.⁵

On 31 January 2011, the Claimant presented a First Quarter Interim Claim (ICQ12011) to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$271,994.78.⁶ The ICQ12011 was assigned Claim # 9168520 and the RP/GCCF issued payment on this claim in the amount of \$23,801.02 on 2 May 2011.⁷ The RP/GCCF offered the Claimant final payment of \$38,101.02.⁸ As of the date of this letter, the Claimant has not accepted the final payment offer.⁹

On 30 August 2011, the Claimant presented this loss of profits and impairment of earnings capacity claim to the NPFC seeking \$217,994.78.¹⁰ Because this claim has been previously presented to the RP/GCCF in the Claimant's ICQ12011, the NPFC may properly adjudicate all damages now presented by the Claimant in the amount of \$217,994.78.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support this claim.

In order to prove a loss of profits claim, a claimant must demonstrate (1) that she sustained an identifiable loss of profits, and (2) that the loss was the result of the discharge or substantial threat of discharge of oil, caused by the Deepwater Horizon oil spill. Additionally it is noted that the OSLTF 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 resulting from an oil spill incident. (Emphasis added).

Furthermore, any damages sustained by the Claimant must have been actually incurred prior to presentment of this claim to the NPFC. This means that the NPFC primarily considers loss of profits stemming from verifiable cancellations of events as listed in the Claimant's submission to the NPFC. Prospective, speculative or otherwise unquantifiable losses, such as the Claimant's alleged "loss of marketing and exposure via word of mouth of guests" are not OPA compensable losses.¹¹

³ GCCF Emergency Advance Payment Determination, 19 November 2010.

⁴ GCCF Claimant Status, accessed on 26 Oct 2011.

⁵ GCCF Emergency Advance Payment Determination, 19 November 2010.

⁶ GCCF U.S. Coast Guard Report, 6 October 2011.

⁷ GCCF Re-Review Determination Letter on Interim Payment/Final Payment Claim, 2 May 2011.

⁸ GCCF Re-Review Determination Letter on Interim Payment/Final Payment Claim, 2 May 2011.

⁹ GCCF Claimant Status, accessed on 26 October 2011.

¹⁰ Optional OSLTF Claim Form, dated 22 August 2011.

¹¹ Letter from the Claimant to the U.S. Coast Guard, undated.

Information available to the NPFC indicates that the Claimant has been compensated a total of \$38,101.02 by the RP/GCCF.¹² Based on financial documentation and other evidence provided by the Claimant, the RP/GCCF has compensated the Claimant in excess of the amount of damages that the Claimant has sustained from May – December 2010, as calculated by the NPFC.

This claim is denied because the Claimant has been fully compensated by the RP/GCCF for any losses in profits resulting from the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/3/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² The Claimant's EAP claim was paid in the amount of \$14,300.00 on 19 November 2010. The Claimant's Full Review Final claim was paid in the amount of \$23,801.02 on 2 May 2011.