

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

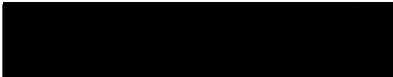


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 0470 0000 8895 1911

5890/DWHZ  
13 October 2011

Ms. DeShaun Crouch  


Re: Claim Number: N10036-1396

Dear Ms. Crouch:

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 N10036-1396 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

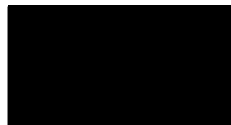
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1396.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1396
Claimant	Ms. Deshaun Crouch
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of 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 claims for certain individual and business claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 8 September 2011, Ms. DeShaun Crouch (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,000.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was employed at Torrid, a women's clothing store in Gretna, Louisiana.<sup>2</sup> The Claimant alleged that general economic effects of the oil spill, as well as a decrease in tourism in the New Orleans area, resulted in Torrid losing significant revenue, which lead to a reduction in the Claimant's working hours.<sup>3</sup>

The Claimant alleged that from May 2010 until the date this claim was submitted to the NPFC, the Claimant sustained a loss of income in the amount of \$5,000.00.<sup>4</sup> The Claimant is currently employed by Torrid.<sup>5</sup>

### ***APPLICABLE LAW***

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.

<sup>1</sup> Optional OSLTF Claim Form, dated 8 September 2011.

<sup>2</sup> Optional OSLTF Claim Form, dated 8 September 2011.

<sup>3</sup> Optional OSLTF Claim Form, dated 8 September 2011.

<sup>4</sup> Optional OSLTF Claim Form, dated 8 September 2011.

<sup>5</sup> Optional OSLTF Claim Form, dated 8 September 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 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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 8 September 2011;
- Handwritten letter from the Claimant to the NPFC, describing losses;
- Form W-2 Wage and Tax Statement, Hot Topic, 2010;
- Form W-2 Wage and Tax Statement, Wet Seal Retail, Inc. 2009;
- Response to Request for Additional Information, received 7 October 2011;
- 2008 Form 1040, showing wages of \$34,346.00;
- 2009 Form 1040A, showing wages of \$32,422.00;
- 2010 Form 1040A, showing wages of \$22,020.00;
- Earnings Statement, Wet Seal, 21 August 2009.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment claim (EAP) to the RP/GCCF, seeking loss of profits and impairment of earnings capacity. The Claimant was assigned ID 3203379 and EAP was assigned Claim # 259553. This claim was denied on 6 December 2010.<sup>6</sup>

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<sup>6</sup> GCCF Claimant Status, accessed on 12 October 2011.

The Claimant then presented a First Quarter Interim Claim (ICQ12011), two Third Quarter Interim Claims (ICQ32011A and (ICQ32011B), and a Fourth Quarter Interim Claim (ICQ42011) to the RP/GCCF, again seeking loss of profits and impairment of earnings capacity. ICQ12011 was assigned Claim # 9105199; ICQ32011A was assigned Claim # 9433276; ICQ42011B was assigned Claim # 9442509, and; ICQ42011 was assigned Claim # 9507921. All interims claims sought loss of profits and impairment of earnings capacity, and First and Third Quarter Interim Claims were denied by the RP/GCCF on 4/14/2011, 8/15/2011 and 8/26/2011.<sup>7</sup> The Claimant's ICQ42011 is currently pending before the RP/GCCF.<sup>8</sup>

On 8 September 2011, the Claimant presented this claim to the NPFC, seeking \$5,000.00 in loss of profits and impairment of earnings capacity, allegedly resulting from the Deepwater Horizon oil spill. The NPFC may properly adjudicate this claim in the amount of \$5,000.00, to the extent that these alleged damages have been previously presented to and denied by the RP/GCCF. Any damage amount now before the NPFC, which was not first presented to the RP/GCCF is denied.<sup>9</sup>

### **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 claim for loss of profits and impairment of earnings capacity, the Claimant must demonstrate (1) that she sustained a loss or reduction in earnings, and (2) that loss or reduction was due to the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill.

The claimant alleged that her hours at a Torrid were reduced due to a decrease in clothing sales, which was caused by economic effects of the oil spill in Gretna, Louisiana.<sup>10</sup> The Claimant further alleged that due to the oil spill, she did not receive an expected bonus of two hundred dollars per month.<sup>11</sup> In order to substantiate this claim, the NPFC requested that the Claimant provide documentation to demonstrate that Torrid actually incurred financial losses following the oil spill.<sup>12</sup> The Claimant failed to respond to this request.

Furthermore, the Claimant has failed to provide documentation to support her contention that her working hours and earnings were reduced in 2010, following the oil spill. The Claimant's submission indicates that the Claimant was employed by a different clothing store in 2008 and 2009 before commencing her employment with Torrid in 2010.<sup>13</sup> Therefore, the Claimant's 2008 and 2009 income is not indicative of what the Claimant may have earned in 2010 with Torrid.

In order to support the Claimant's allegation that her earnings at Torrid were reduced following the oil spill, the NPFC requested that the Claimant provide 2010 pay stubs to demonstrate that

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<sup>7</sup> GCCF Claimant Status, accessed on 20 September 2011.

<sup>8</sup> GCCF Claimant Status, accessed on 12 October 2011.

<sup>9</sup> 33 C.F.R. § 136.103(a).

<sup>10</sup> Optional OSLTF Claim Form, dated 8 September 2011.

<sup>11</sup> Response to Request for Additional Information, received on 7 October 2011.

<sup>12</sup> NPFC Request for Additional Information, dated 20 September 2011.

<sup>13</sup> W-2 Wage and Tax Statements, as well as Earnings Statements show that the Claimant was employed by Wet Seal in 2009.

she was earning a steady income in the months of 2010 prior to the oil spill, and that her income only began to decrease following the oil spill.<sup>14</sup> The Claimant failed to respond to this request.

The Claimant's submission to the NPFC fails to provide documentation to support the Claimant's contentions (1) that the clothing store where the Claimant was employed sustained an actual loss of revenue following the oil spill, or (2) that the Claimant's working hours and earnings were reduced following the oil spill.

Additionally, the Claimant has provided no evidence that would show that any losses she incurred were caused by the effects of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$5,000.00, and (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/13/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>14</sup> NPFC Request for Additional Information, dated 20 September 2011; *See also*, PHONECON: NPFC Staff and the Claimant, 26 September 2011.