

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
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2069

5890/DWHZ
Claim# N10036-1414
26 September 2011

Ms. Lacy Johnson
[REDACTED]

RE: Claim Number: N10036-1414

Dear Ms. Johnson:

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 N10036-1414 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 N10036-1414.

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	N10036-1414
Claimant	Lacy Johnson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,571.00

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 September 2011, Lacy Johnson (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$8,571.00 in lost profits and earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant scheduled a beach wedding ceremony and reception on 04 September 2010 in Panama City, Florida. The Claimant contracted with Royal American Beach Getaways for rooms, beach rental, catering, and convention room.¹ The Claimant contracted with Sugar Beach Weddings for the Dream Kiss wedding package IV.² The Claimant cancelled the wedding around the end of July due to an “ocean filled with tar balls, oil contaminated wildlife, and dead seafood.”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 Royal American Beach Getaways Rooms and Catering Agreement dated 22 March 2010.

² Sugar Beach Weddings screenshot of package IV <http://www.sugarbeachweddings.com/pkg4.html>.

³ Hardship Letter titled Johnson Claimant # 1144867.

- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for-

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted:

- 1) Hardship Letter addressed to the National Pollution Funds Center;
- 2) Oil Spill Update article from <http://www.insidepanamacitybeachflorida.com/oil-spill/>;
- 3) Hardship Letter titled Johnson Claimant 1144867;
- 4) Florida Credit Union statements from 01 March 2010 to 31 May 2010;
- 5) 2008 W-2 from the Department of Veterans Affairs;
- 6) 2008 W-2 from Shands Teaching hosp & Clinics;
- 7) 2009 W-2 from Department of Veterans Affairs;
- 8) 2009 W-2 from Defense Finance & Actg Serv;
- 9) 2010 W-2 from Defense Finance & Actg Serv;
- 10) Various receipts for alleged expenses;
- 11) Liquidated Damages bill from Royal American Beach Getaways dated 27 July 2010;
- 12) Royal American Beach Getaways screenshot showing room reservations;
- 13) Royal American Beach Getaways Rooms and Catering Agreement dated 22 March 2010;
- 14) Sugar Beach Weddings confirmation email dated 26 February 2010;

- 15) Sugar Beach Weddings dream kiss package IV
<http://www.sugarbeachweddings.com/pkg4.html>;
- 16) House of Brides order confirmation dated 22 June 2010;
- 17) GCCF Denial Letter on Interim Payment/Final Payment Claim dated 25 August 2011.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$8,571.00.

Prior to presenting her claim to the NPFC, Claimant filed a Personal Property Emergency Advance Payment (EAP) with the GCCF.⁴ She was assigned Claimant ID #1144867 and claim #3010447. This claim was denied on 23 November 2011.⁵ Additionally, Claimant filed a Full Review Final (FRF) claim with GCCF #9015527. GCCF denied her claim on 24 August 2011.⁶ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that she lost money due to the cancellation of her wedding as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1414 considers and addresses the earnings claimed in both of the claims presented to the responsible party, specifically; GCCF Claim #'s 3010447 (EAP), and #9015527 (FRF).

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). As of the date of this determination the NPFC has not been able to verify the claimed amount to the RP/GCCF. Any claimed amount of damages that may exceed the GCCF amount was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and therefore is denied if applicable.

NPFC Determination

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

The Claimant's alleged loss was due to the exercise of contractual provisions resulting from arms-length agreements between the Claimant and Royal American Beach Getaways and Sugar Beach Weddings. The Rooms and Catering agreement between the Claimant and Royal American Beach Getaways stated that if the agreement is cancelled within 59 to 0 days out from the day of arrival then 100% is owed of total anticipated revenues due to Royal American.⁷ Claimant unilaterally cancelled the Rooms and Catering contract and assumed the liability of the liquidated damages clause.

The Claimant also entered into an arms-length agreement with Sugar Beach Weddings for Package IV.⁸ The terms of the agreement stated that Royal American will not refund money but will "reschedule your wedding within one year, under certain circumstances." In an attempt to verify the reason for the Claimant's cancellation, NPFC staff contacted Sugar Beach Weddings.

⁴ GCCF Claim Status <https://cert.gulfcoastclaimsfacility.com/icf/fs/status>.

⁵ GCCF Denial Letter dated 23 November 2011.

⁶ GCCF Denial Letter dated 24 August 2011.

⁷ Liquidated Damages bill from Royal American Beach Getaways dated 27 July 2010.

⁸ Sugar Beach Weddings confirmation email dated 26 February 2010.

The manager of Sugar Beach Weddings sent the NPFC various emails from the Claimant which stated “the reason for the cancellation was because of monetary issues within the household.”⁹ Sugar Beach Weddings staff went on to confirm that they completed five other weddings on the Panama City Beaches on 04 September 2010, and that there were no cleanup or response workers present and no oil on the beaches on the date of the Claimant’s scheduled wedding ceremony.¹⁰ Accordingly, it is clear to the NPFC that the Claimant unilaterally cancelled her wedding date. The NPFC is unaware if the Claimant was able to mitigate her self-induced losses by rescheduling her wedding package for another date. Regardless, the Claimant is bound by her decision and the terms of her contract, and she has not demonstrated that her losses, if any, are the result of the oil spill.

The Claimant also submitted receipts for decorations and her wedding dress which do not constitute losses but rather may be used by the Claimant at any such time as she chooses to reschedule her wedding.¹¹ As such, the Claimant has not established by a preponderance of the evidence that her alleged loss for such items was due to the oil spill.

The Claimant has also failed to provide a specific explanation as to how she arrived at her sum certain of \$8,571.00. The cost of her room rentals and her catering agreement were not provided to the NPFC. Likewise, the NPFC was not provided with a total cost for the Sugar Beach Weddings contract nor could the NPFC ascertain whether the Claimant may still receive the benefit of the agreement.¹² Accordingly, the Claimant has not established her sum certain presented to the NPFC by a preponderance of the evidence.

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

Claimant’s request for \$8,571.00 is hereby denied because (1) the evidence, as outlined above, clearly demonstrates a material misrepresentation of fact in order to falsely obtain funds from the Federal Government, (2) the Claimant has failed to demonstrate a loss in the amount claimed, and (3) the Claimant has not established that her loss, if any, is the result of the discharge, or substantial threat of discharge, of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *9/23/11*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

⁹ Email from Claimant to Sugar Beach Weddings dated 24 July 2010 at 11:46AM.

¹⁰ Phone conversation with Sugar Beach Wedding’s staff with NPFC staff on 22 September 2011.

¹¹ Various receipts for alleged expenses.

¹² The contract provided appears to allow the Claimant to reschedule her wedding up to one year from the originally anticipated date.