

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 3028

5890/DWHZ
Claim # N10036-1416
07 October 2011

Beauty Nails

[REDACTED]
1880 Rees Street, Suite 203-B
Breaux Bridge, LA 70517

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 N10036-1416 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 N10036-1416.

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	N10036-1416
Claimant	Beauty Nails. [REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$24,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 15 September 2011, Beauty Nails, owned by Huyen Thi Ly (the Claimant), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$24,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owns Beauty Nails located in a shopping center in Breaux Bridge, Louisiana.¹ The business, which opened on 07 May 2010, provides manicures and pedicures to locals and tourists.² The Claimant stated that most of her clients are women whose husbands work offshore.³ The Claimant stated that many clients could not afford pedicures and manicures because the oil spill “drastically changed” their families’ income and, as a result, she lost earnings.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

¹ Optional OSLTF Claim Form Undated

² Letter from the Claimant received 05 October 2011

³ Letter from the Claimant received 05 October 2011

⁴ Letter from the Claimant received 05 October 2011

to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form (undated)
- NPFC's Frequently Asked Questions for Individuals and Businesses
- Net Income Worksheets for 2010 and 2011 for Quarters 1 and 2
- Occupational License for 2010 City of Breaux Bridge, LA
- Louisiana Cosmetologist License for Claimant expires 10 October 2011

- Louisiana Cosmetologist License for Hiep Van Pham for Manager expires 31 January 2011
- Hand-written list of beauty shop expenses
- Lease at 1880 Reese Street, Suite 203 B, Breaux Bridge, Louisiana, effective 01 June 2010
- Letter from the Claimant received 05 October 2011 in response to NPFC's letter requesting added information
- Form 1040 US Individual Income Tax Return for 2010 with attachments

On 19 September 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 05 October 2011, the Claimant responded to the request.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF. The claim was assigned Claimant ID #3003536 and claim #39309. The EAP claim was denied on 07 December 2010.⁵ Additionally, Claimant filed an Interim Payment (ICQ22011) claim with the GCCF. The claim was assigned claim #9350680. The claim was denied on 17 August 2011.⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC has not been able to confirm the amount of either the EAP or ICQ22011 claims as of the date of this determination. The NPFC deems the GCCF claims to be properly presented to the Responsible Party and to the extent the amount of the claims presented to the Responsible Party are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1416 considers and addresses the loss of earnings up to the amount of \$24,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #39309 (EAP) and #9350680 (ICQ22011).

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.

Beauty Nails, the Claimant's business, began operations 07 May 2010.⁷ Because the Claimant's business started after the oil spill, there is no historical data to compare her

⁵ GCCF Denial Letter dated 07 December 2010

⁶ GCCF Denial Letter dated 17 August 2011

⁷ Letter from the Claimant received 05 October 2011

loss of earnings to. The Claimant's loss of earnings of \$24,000.00⁸ was based on a three-month period for which she achieved a net profit of \$4,573.25. The Claimant's net profit was calculated before deducting the expense of worker salaries.⁹ However, the Claimant provided no documentation to support her loss computation. As such, she has not met her burden of proof to establish her damages under OPA.

The Claimant stated that most of her clients' husbands worked offshore and that her clients could not afford pedicures and manicures because the oil spill "drastically changed" the family incomes.¹⁰ However, the Claimant provided no documentation to support this assertion. As such, the Claimant has not provided evidence that would support her allegation that her losses, if any, are the result of the oil spill.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, and (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ The Claimant's loss of earnings computation is as follows: \$4,573 net profit (for three month)/3 months = a monthly profit \$1,524. The Claimant then subtracted her monthly workers' salaries - (\$3,600) from her monthly profit to achieve a monthly loss of \$2,076 per month. (1,524-3,600 = \$2,076). The claimant then rounded her monthly loss of \$2,076 to \$2,000 and multiplied this figure by 12 months to obtain her sum certain. The foregoing figures are based on the letter from the Claimant received 05 October.

⁹ Letter from the Claimant received 05 October 2011

¹⁰ Letter from the Claimant received 05 October 2011