

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)
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Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6074

5890/DWHZ
03 November 2011

Mardi Gras Decorators, LLC
Anthony Tulli
1727 McNamara Street
Mandeville, Louisiana 70448

Re: Claim Number: N10036-1426

Dear Mr. Tulli:

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 N10036-1426 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 N10036-1426.

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

Copy: Tate Elsenohn
[REDACTED]

USPS Certified Receipt: 7011 1570 0001 4802 6081

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1426
Claimant	Mardi Gras Decorators, LLC
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$130,000.00

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 19 September 2011, Anthony Tulli, on behalf of Mardi Gras Decorators, LLC (collectively the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$130,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a business in New Orleans, Louisiana that specializes in float building and decorating for carnivals and parades.¹ The Claimant asserted that, due to the Deepwater Horizon oil spill, carnival krewe members lost earnings and thus were unable to fund and host carnivals and parades.² This decrease in carnivals and parades resulted in a reduced demand for the Claimant's float building and decorating services.³

The Claimant provided the following explanation regarding the calculation of his sum certain: the Claimant subtracted his 2010 revenue (\$440,977.00) from his 2009 revenue (\$573,700.00) for a difference of \$132,723.00.⁴

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, 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

¹ http://www.mardigrasdecorators.com/about_us_main.html.

² Optional OSLTF Claim Form, dated 08 September 2011.

³ Optional OSLTF Claim Form, dated 08 September 2011.

⁴ Document titled 'Mardi Gras Decorators, LLC BP Trend Analysis'.

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 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 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

The Claimant's Submission to the OSLTF

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

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 8 September 2011;
- Document titled 'Mardi Gras Decorators, LLC BP Trend Analysis';
- Letter dated 28 June 2011 with Anthony Tulli Tax Consultant letterhead;
- GCCF Denial Letter dated 03 August 2011;
- 2008 Form 1120S Federal Income Tax Return for an S Corporation;
- 2009 Form 1120S Federal Income Tax Return for an S Corporation;
- 2010 Form 1120S Federal Income Tax Return for an S Corporation;
- Spreadsheet titled 'Mardi Gras Decorators, LLC Comparative Income Statements for period: January 2008-December 2010.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings on 13 October 2010 in the amount of \$95,085.85.⁵ The Claimant was assigned Claimant ID # 3163444 and Claim # 218520. The EAP Claim was denied by the GCCF on 03 December 2010.⁶ Additionally, the Claimant filed a Full Review Final Payment (FRF) claim with the GCCF for loss of earnings on 06 December 2010 in the amount of \$96,000.00.⁷ The Claimant was assigned Claim # 9040167. This claim was denied by the GCCF on 03 August 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the demand for the Claimant's Mardi Gras parade floats and decorations decreased resulting in a loss of income. The NPFC deems the Claimant's denied GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1426 considers and addresses the lost earnings claimed in the Claimant's submission presented to the responsible party up to \$96,000.00⁹, specifically; GCCF Claim #'s 218520 (EAP) and 9040167 (FRF).

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 the 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). The Claimant presented an EAP Six Month Claim in the amount of \$95,085.85 to the GCCF.¹⁰ The Claimant then presented a FRF Claim in the amount of \$96,000.00 to the GCCF.¹¹ The Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$130,000.00 to the NPFC.¹² Any claimed amount of damages exceeding \$96,000.00 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 the Claimant failed to prove it suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant's submitted financial documentation indicated that the business was in the midst of a dramatic decrease in revenue prior to the Deepwater Horizon oil spill. The Claimant's earnings decreased from \$1,006,761.00¹³ in 2008 to \$572,909.00¹⁴ in 2009. This downward trend in earnings continued into 2010. In January through April of 2009, the Claimant had cumulative earnings of \$232,848.00, compared to cumulative earnings of \$145,499.00 for the same period in 2010.¹⁵ Consequently, the Claimant failed to isolate the Deepwater Horizon oil spill as the reason for any reduction in earnings experienced by the business.

Furthermore, the Claimant failed to provide any documentation evidencing a reduction in business due to the Deepwater Horizon oil spill. Even though the Claimant stated that there were carnival and parade cancellations, the Claimant did not provide the NPFC with information of any specific contracts or events

⁵ Report from the GCCF dated 06 October 2011.

⁶ GCCF Denial Letter dated 03 December 2010.

⁷ Report from the GCCF dated 06 October 2011.

⁸ GCCF Denial Letter dated 03 August 2011.

⁹ See discussion in NPFC Determination regarding the presentment of damages to the NPFC.

¹⁰ Report from the GCCF dated 06 October 2011.

¹¹ Report from the GCCF dated 06 October 2011.

¹² Optional OSLTF Claim Form received 19 September 2011.

¹³ 2008 Form 1120S Federal Income Tax Return for an S Corporation.

¹⁴ 2009 Form 1120S Federal Income Tax Return for an S Corporation.

¹⁵ Document titled 'Mardi Gras Decorators, LLC BP Trend Analysis'

that were cancelled due to the Deepwater Horizon oil spill. Consequently, the Claimant failed to prove that the Deepwater Horizon oil spill was the cause of any specific loss allegedly incurred by the Claimant.

This claim is denied because the Claimant failed to meet his 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: *NPFC Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments: