

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1431
Claimant	: Gonzo Island LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$250,000.00

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 16 September 2011, Ms. Sammie Mays, on behalf of Gonzo Island, LLC (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$250,000.00 in loss of profits and impairment of earnings capacity damages resulting from the Deepwater Horizon oil spill.¹

The Claimant alleged that the Florida Keys Key Lime Festival, which was anticipated to be an annual Key West event, was scheduled take place for the first time in November 2010.² The Claimant alleged that “The BP oil spill caused the sponsors to withdraw and the visitors to cancel attendance for the November 2010 event, and caused the cancellation of the 2011 event as well.”³

The Claimant alleged to have lost profits that the Key Lime Festival would have generated from parking fees, apparel sales, food and alcohol sales, and vender/artist tent rentals, totaling losses in the amount of \$125,000.00 for each year of the festival, 2010 and 2011, for a total claimed loss of \$250,000.00.⁴

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking \$50,000.00 in loss of earnings or profits damages.⁵ The Claimant was assigned Claimant ID 3016007 and the EAP claim was assigned claim # 385196.⁶ The EAP claim was denied on 7 December 2010.⁷

On 6 January 2011, the Claimant filed a Full Review Final (FRF) claim with the RP/GCCF, seeking loss of earnings or profits damages in the amount of \$125,000.00.⁸ The FRF claim was assigned claim # 9128660.⁹ This claim was denied on 28 October 2011.¹⁰

On 16 September 2011, the Claimant presented this claim to the NPFC, seeking loss of profits damages in the amount of \$250,000.00.¹¹ However, the Claimant only presented damages totaling \$175,000.00 to the

¹ Optional OSLTF Claim Form, dated 16 September 2011.

² Letter from the Claimant to the GCCF, undated.

³ Optional OSLTF Claim Form, dated 16 September 2011.

⁴ Optional OSLTF Claim Form, dated 16 September 2011.

⁵ GCCF U.S. Coast Guard Report, 6 October 2011.

⁶ GCCF Claimant Status, accessed on 25 October 2011.

⁷ GCCF Denial Letter on Emergency Advance Payment Claim, 7 December 2010.

⁸ GCCF U.S. Coast Guard Report, 6 October 2011.

⁹ GCCF Claimant Status, accessed on 25 October 2011.

¹⁰ GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 28 October 2011.

RP/GCCF.¹² OPA requires that all claims for damages or removal costs be first presented to the RP/GCCF before presentment to the NPFC.¹³ Because \$75,000.00 of the alleged damages now before the NPFC have not first been presented to and denied by the RP/GCCF, the NPFC may not adjudicate these particular damages, and this claim is initially denied in the amount of \$75,000.00 for failure to make proper presentment of costs in the amount of \$250,000.00. Thus, the NPFC adjudicated the claim for lost profits in the amount of \$175,000, the sum certain presented to the RP/GCCF.

According to the Claimant's submission to the NPFC, the Key Lime Festival did not take place because of several factors, including: (1) lack of tourists in the Florida Keys after the oil spill, (2) the withdrawal of a sponsorship offer by the event's primary sponsor, and (3) site owner's lack of interest in proceeding with the event. The Claimant alleged that all of these factors were a result of the Deepwater Horizon oil spill. Each shall be discussed more fully below.

1. Effects of the Oil Spill on Tourism in the Florida Keys.

The Claimant alleged to have cancelled the Key Lime Festival in 2010 because of the negative impacts of the oil spill on tourism in the Florida Keys. Specifically, the Claimant stated that she "could not expect visitors and tourists to be available in significant enough numbers during the time of our Festival . . . to make the event financially viable."¹⁴ The alleged effects on tourism were a primary factor in the Claimant deciding to cancel the event on or around 1 October 2010.¹⁵

2. Withdrawal of Sponsorship Offer by McCormick Distilling Company

A second primary factor in the Claimant's decision to cancel the 2010 Key Lime Festival was the withdrawal of McCormick Distilling Company's (McCormick) sponsorship offer, which the Claimant alleged to have been prompted by effects of the oil spill. A letter provided by the Claimant from McCormick stated that, "due to the effect of the BP oil spill on the tourist traffic in the Florida Keys, regretfully we must postpone our sponsorship commitment indefinitely."¹⁶

3. Withdrawal of Hosting Offer by Site Owners

The Claimant alleged that a third factor resulting in the cancellation of the Key Lime Festival was the reluctance of Robbie's Marina, the host site, to proceed with the event in light of "so many cancellations of vacations, hotel reservations and travel plans by tourists and travelers who were concerned that the waters would be oily and dirty."¹⁷

The Claimant alleged that the agreement with the host site was a verbal agreement, and that "dates for the three day event were discussed initially with Robbie's Marina and finally agreed upon verbally early in the process."¹⁸

NPFC Analysis of the Claim:

In order to analyze the Claimant's claim, the NPFC looked at statistics provided by the Key West Chamber of Commerce. The statistics disputed the Claimant's assertion that the oil spill negatively impacted tourism in the Florida Keys.¹⁹ Monroe County, of which Key West is the county seat, reported

¹¹ Optional OSLTF Claim Form dated 16 September 2011.

¹² EAP claim # 385196 for \$50,000.00; FRF claim # 9128660 for \$125,000.00.

¹³ 33 C.F.R. § 136.103(a).

¹⁴ Email from the Claimant to the NPFC, dated 28 October 2011.

¹⁵ Email from the Claimant to the NPFC, dated 28 October 2011.

¹⁶ Letter from William H.L. Sullivan, McCormick Distilling Company, 6 August 2010.

¹⁷ Letter from the Claimant to the GCCF, undated.

¹⁸ Email from the Claimant to the NPFC, dated 27 October 2011.

¹⁹ Statistics available at, www.keywestchamber.org/PDF/trends.PDF, accessed on, 31 October 2011.

Tourism & Recreation taxable sales that showed a year over year increase from 2009 to 2010. In fact, tourism and recreation taxable sales increased for every month in 2010 after the Deepwater Horizon oil spill, with the exception of September, which showed just a slight decrease. These numbers are further bolstered by Key West Bed Tax collections, which also showed an increase for every month after the oil spill in 2010 compared to 2009, other than a slight decrease in September. Although there appears to be a significant decrease in the number of passengers arriving in Key West from cruise ships after the Deepwater Horizon oil spill, there is an equally significant increase in the number of passengers arriving to Key West by plane. For passengers arriving by ferry, there was a marginal decrease in 2010 from 2009; however a similar percentage decrease had occurred during the months of 2010 prior to the Deepwater Horizon oil spill.

Therefore, Claimant's assertion that the Deepwater Horizon oil spill caused a decrease in tourism in the Florida Keys is not substantiated by statistics.

Claimant also asserts that McCormick canceled its sponsorship because of the effects of the Deepwater Horizon oil spill. The NPFC contacted the McCormick representative, who stated that based on his understanding, the festival was to be geared more toward a local crowd, and that the cancellation was not due to an expectation of low tourism in November of 2010.²⁰ The verbal statement conflicts with the statement in the letter contained in the Claimant's submission, written by the same McCormick representative.²¹ The representative also noted that no money had been given to the Claimant in preparation for the Festival, and no actual agreement between the parties had materialized. At no point in the planning of the festival was McCormick ever under an obligation to give financial support to the event. Thus, Claimant has not demonstrated that the withdrawal of a sponsorship offer by McCormick was caused by effects of the Deepwater Horizon oil spill and has also failed to demonstrate that the Claimant and McCormick had actually entered into a sponsorship agreement.

The NPFC contacted Robbie's Marina to confirm that the verbal agreement in fact existed. After discussions with the owners of the Marina, a representative of the Marina stated that although they had entertained initial discussion regarding the Key Lime Festival, they had not agreed to host the event, and no particular dates had been reserved or otherwise set aside for the purposes of hosting the Festival.²²

Furthermore, the NPFC contacted the City of Islamorada Planning and Development Services Department in order to ascertain whether or not the Claimant had secured the appropriate permits to host the Key Lime Festival in November of 2010. A representative of the City of Islamorada Planning and Development Services Department had no record of the Claimant having secured a Temporary Use Permit, which would have been required to host an event like the Key Lime Festival.²³ According to the Planning and Development Services Department, such permits are generally filed at least one to two months in advance of the event. The Claimant alleged that the festival was scheduled for November 12-14 of 2010. However, as of 1 October 2010, when the Claimant alleged to have finally cancelled the festival, no permit had been issued.²⁴

Finally, Claimant submitted no record of expenses actually incurred in preparation for the festival. In a letter dated 20 October 2010, the NPFC requested that the Claimant provide documentation, such as bank statements, invoices and receipts, to show that the Claimant actually incurred certain expenses in preparation to host the Key Lime Festival.²⁵ The Claimant was unable to respond to this request, stating that "individual expense records were not maintained other than the expense for the trademark registration for the Key Lime Festival."²⁶

²⁰ PHONECON: NPFC Staff and William H.L. Sullivan, McCormick Distilling Company, 19 October 2011.

²¹ Letter from William H.L. Sullivan, McCormick Distilling Company, 6 August 2010.

²² PHONECON: NPFC Staff and Robbie's Marina of Islamorada, 20 October 2011.

²³ PHONECON: NPFC Staff and City of Islamorada Planning and Development Services Department, 31 October 2011.

²⁴ Email from the Claimant to the NPFC, dated 28 October 2011.

²⁵ NPFC Additional Information Request, dated 20 October 2011.

²⁶ Email from the Claimant to the NPFC, dated 27 October 2011.

Based on the foregoing, this claim was denied because the Claimant had not met her burden to prove (1) that she sustained an actual financial loss, or (2) that the loss the Claimant alleged to have incurred was caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

REQUEST FOR RECONSIDERATION and CLAIMANT'S ARGUMENTS:

On January 5, 2012, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider this claim. The request was sent via email and consisted of a two page letter from Ms. Mays. On January 4, 2012, the NPFC received a package from the Claimant which consisted of a copy of the NPFC's October 20, 2011 request for additional information letter, a duplicate of the Claimant's OSLTF Claim Form dated September 16, 2011, a copy of an email dated October 28, 2011 from the Claimant to the NPFC with continued responses to the NPFC's request for additional information letter, a one page document entitled "Projected Income for the 2010 Florida Keys Key Lime Arts and Entertainment Festival", a copy of a brochure entitled "Oil Spill in the Gulf of Mexico" by Traveler Research Center, a copy of 28-pages of statistical data from "Visit Florida Gulf Oil Spill Research Report" dated June 18, 2010, and 24-pages of a study entitled "Study of In-State Market Impacts from the BP/Transocean Oil Spill" dated June 2010.

The Claimant made the following arguments on reconsideration in support of her request for reconsideration:

- 1) The Claimant's reconsideration letter states that her initial claim to the GCCF was for \$50,000 in 'emergency' funding and her subsequent claim was based on actual estimated 2010 event in the amount of \$125,000. The Claimant further stated that her claim to the NPFC was based on two years of actual estimated income from the Key Lime Festival;
- 2) The Claimant asserts that the NPFC's use of the Key West Chamber of Commerce tourism statistics is incorrect because the event was planned for Islamorada, FL which is 77 miles from Key West. The Claimant also states that the attached information will clearly indicate a decrease in tourism caused by the perception that the oil spill would affect Islamorada, FL;
- 3) The Claimant argues that the NPFC's statement in its initial denial determination that "no sponsorship relationship existed between McCormick and the Key Lime Festival" is just plain ridiculous. The Claimant states that the letter from Mr. Sullivan established that fact as did his communication with the NPFC as referenced in the NPFC's determination;
- 4) Claimant argues that the statement made by Mr. Sullivan that the event was geared for a local crowd is preposterous and that they all planned for a tourist crowd since there are not enough locals to support an event of this nature. The Claimant argues that the NPFC misinterpreted what Mr. Sullivan said and she is sure Mr. Sullivan would speak to the NPFC again about our misinterpretations. In closing about the sponsor, the Claimant asserted that the withdrawal of the primary sponsor, McCormick, is directly related to the oil spill and its effects whether real or perceived;
- 5) The Claimant asserts that there have been numerous management changes at Robbie's Marina since 2010 and that the person they initially planned the event with and whom they verbally reserved the event date was no longer employed or associated with Robbie's Marina at the time we made our verification calls. The Claimant stated that there were witnesses to the date and location and she invites the NPFC to verify as the NPFC sees fit.
- 6) With respect to the permitting issue(s) and the fact that there was no permit issued or requested at the time the event was cancelled, the Claimant asserts that they planned to purchase the appropriate permits after the financial support of their sponsors had been satisfactorily established. The Claimant stated that sufficient time remained to purchase

the event permit in question had the only possessed the financial ability to do so. The Claimant stated that the hosting site owner was/is the Mayor of Islamorada and they were assured by him that permitting was not and would not be an issue.

NPFC DETERMINATION on RECONSIDERATION

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration, including the documentation presented by the Claimant with its initial claim and the documentation submitted on reconsideration. The NPFC will first address each of the six issues raised by the Claimant.

1. By the Claimant's own admission on reconsideration, she filed two claims with the GCCF: one for \$50,000 and one for \$125,000. The total sum certain of these claims totals \$175,000 despite the fact that the Claimant requested \$250,000 from the NPFC. Claimant provided no additional information evidencing that she properly presented the entire \$250,000 claim to the RP/GCCF. Thus, all amounts in excess of the \$175,000 presented to the RP/GCCF are denied on reconsideration.
2. The Claimant asserts that the NPFC erred when it analyzed tourism statistics from the Key West Chamber of Commerce to determine that Key West tourism was not impacted by the oil spill. The NPFC acknowledges that reviewing Key West tourism information does not establish that the Deepwater Horizon oil spill did not impact Islamorada. However, information submitted by the Claimant²⁷ does establish that Islamorada, Florida, which is 77 miles north of Key West and part of the Florida Keys, was not severely impacted by the oil spill. For instance, while about 37% of leisure tourists were less likely to visit the Gulf Coast of Florida after the spill and approximately 27% were less likely to visit Florida's west coast, less than two in ten were less likely to visit the Florida Keys.²⁸
3. Further, a second report²⁹ submitted by the Claimant on reconsideration includes statistics on various districts of Florida, including the Islamorada area. The report noted that water-based activities were more likely to be impacted by the oil spill than land-based activities.³⁰ In this case the Key Lime Festival was envisioned as a land-based activity. The Four Penny Revenue Report notes that revenue for the Islamorada area for October 2010 through September 2011 was substantially higher than each of the comparable months in 2009. The increase from 2009 to 2010 was 42.1%; therefore, statistics substantiate that the Deepwater Horizon oil spill did not impact tourism in the Islamorada area.
4. The Claimant asserts that the NPFC's statement in its initial denial determination that "no sponsorship relationship existed between McCormick and the Key Lime Festival" is flawed. The Claimant asserts that the letter from Mr. Sullivan and his communications with the NPFC established a sponsorship relationship. The NPFC disagrees with the Claimant based on its phone conversation with Mr. Sullivan during the initial adjudication of this claim. The information provided by the Claimant conflicts with the NPFC information obtained via a telephone

²⁷ Visit Florida: Gulf Oil Spill Research Report, dated June 18, 2010.

²⁸ Id., at page 20.

²⁹ "Study of In-State market Impacts from the BP/Transocean Oil Spill, dated June 2010.

³⁰ Id.

conversation. The Claimant has provided no new written documentation from Mr. Sullivan to change the statements he made to the NPFC.

5. The Claimant also argues that the statement made by Mr. Sullivan to the NPFC that the event was geared for a local crowd is preposterous and that they all planned for a tourist crowd. However, Mr. Sullivan did not explicitly state that the event was geared for a local crowd or that he was concerned about low tourism numbers; he stated that there was a general concern that people just wouldn't come. Further, he stated that he had worked with Ms. Mays on some promotional events but they were smaller liquor tasting events. The more convincing evidence in the administrative record is that Mr. Sullivan withdrew his sponsorship for business reasons rather than the Deepwater Horizon oil spill.

The Claimant continues to argue on reconsideration that she had a verbal agreement with Robbie's Marina to host the Key Lime Festival. She argues that the person with whom she had the agreement is no longer there. In the telephone conversation between the NPFC and a manager at Robbie's Marina, the manager noted that they had entertained the idea and spoke to Ms. Mays but no date had been set. The manager spoke to the owner of the marina and several employees who confirmed that there was no festival date scheduled.³¹ Claimant provided no new information to indicate a change in what the Marina told the NPFC.

6. The Claimant acknowledges that no permit was issued or requested at the time the event was cancelled although she asserts that she planned to purchase the appropriate permits after the sponsor's financial support was established. The Claimant stated that sufficient time remained to purchase the event permit in question had they only possessed the financial ability to do so. The Claimant stated that the hosting site owner was/is the Mayor of Islamorada and they were assured by him that permitting was not and would not be an issue.

The NPFC has determined that since no permits were applied for as late as October 31, 2010, less than two weeks prior to the proposed event. The Claimant provided no information about the permitting process in Islamorada or the time frame needed to apply for and receive a permit.

Thus, the Claimant provided no new information on reconsideration to cure the defects addressed in the original denial dated November 2, 2011. She provided no receipts or data about expenses incurred or other information requested in the October 20, 2011 letter from the NPFC.

Finally, the NPFC denies this claim on separate grounds. During the reconsideration process, the NPFC was notified that the Claimant, Sammie Mays Teaford, and her husband, Harry Hileman Teaford, executed a Release and Covenant Not to Sue in a claim presented to the RP/GCCF by Harry Hileman Teaford and subsequently paid by the RP/GCCF in the amount of \$29,208.43. (GCCF Claim No. 3000770). The Release and Covenant Not to Sue was executed on November 11, 2011. The terms of the release provide that in consideration of the payment of \$29,208.43 the Claimant, (Harry Hileman Teaford), on behalf of his spouse, heirs, beneficiaries, release and forever discharge and covenant not to sue BP and other Released Parties to all claims, whether now or arising in the future, arising out of or in any way relating to the Incident. Sammie Mays executed the Release and Covenant Not to Sue jointly with her husband on all claims of both parties, including his claim for lost profits and her claim for lost profits for Gonzo Island, LLC.³²

Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot recover from the Fund.

Based on the above information, this claim is denied upon reconsideration.

³¹ PHONECON: NPFC Staff and Robbie's Marina of Islamorada, 20 October 2011.

³² Copy of Executed Release and Covenant Not to Sue dated November 12, 2011.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *1/19/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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

5890
1/19/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6517

Gonzo Island LLC
ATTN [REDACTED]
186 Sunset Drive
Islamorada, FL 33036

RE: Claim Number: N10036-1431

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 claim number N10036-1431 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form