

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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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5954

5890/DWHZ
19 October 2011

Dan Voiculescu
[REDACTED]

Re: Claim Number: N10036-1455

Dear Mr. Voiculescu:

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 N10036-1455 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 N10036-1455.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number N10036-1455
Claimant Dan Voiculescu
Type of Claimant Private (US)
Type of Claim Loss of Profits and Impairment of Earnings Capacity
Amount Requested \$19,000.00

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 29 September 2011, Dan Voiculescu, (the Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$19,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant worked at Nouveau Flowers and Events in the Grayton Beach, Florida region.¹ Specifically, the Claimant was responsible for setting up and arranging decorations for beach weddings.² The Claimant asserted that due to the Deepwater Horizon oil spill, the demand for beach weddings collapsed, reducing the Claimant's hours and income.³

The Claimant did not provide an explanation regarding the calculation of his sum certain of \$19,000.00.

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 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.

¹ Letter from the Claimant dated 21 September 2011.

² Letter from the Claimant dated 21 September 2011.

³ Letter from the Claimant dated 21 September 2011.

- (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 received 29 September 2011;
- Letter from the Claimant dated 21 September 2011;
- Hand-written letter from the Claimant dated 01 September 2011;
- GCCF Interim Payment Claim Form;
- GCCF Deficiency Letter dated 25 March 2011;
- GCCF Denial Letter dated 26 July 2011;
- Document titled 'Events by Nouveau Flowers, Inc.';
- Letter from the Claimant dated 27 June 2011;
- Letter from Nouveau Flowers to the GCCF dated 29 December 2010;⁴
- Letter from Nouveau Flowers dated 26 April 2011;
- Letter from Spa98 dated 06 May 2011;
- Letter from the Claimant [undated];
- Document titled 'Calendar Year 2010';
- 2010 Form W-2 Wage and Tax Statement from South Beach Highrise Services;
- 2010 Form W-2 Wage and Tax Statement from Plan Performance Services LLC;
- 2010 Form 1099-R from Merrill Lynch as Custodian;
- 2010 Form 1099-MISC Miscellaneous Income from Events by Nouveau Flowers, Inc.;
- Incomplete 2010 Federal Tax Return;
- Hand-written letter from the Claimant [undated].

Prior to presenting this Claim to the NPFC, the Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011) with the GCCF for loss of profits and impairment of earnings capacity.⁵ The Claimant was

⁴ See discussion of the authenticity of this letter in NPFC Determination.

⁵ GCCF Claimant Status Page.

assigned Claimant ID # 1185070 and Claim ID # 9175662. The ICQ12011 was denied on 22 April 2011.⁶ Additionally, the Claimant filed an Interim Payment Claim Quarter III 2011 (ICQ32011) with the GCCF for loss of profits and impairment of earnings capacity.⁷ The Claimant was assigned Claim ID # 9420484. The ICQ32011 was denied on 26 July 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 the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant lost hours and by extension income at his job at Nouveau Flowers and Events. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1455 considers and addresses the earnings claimed in the claim up to \$19,000.00 presented to the responsible party, specifically; GCCF Claim #'s 9175662 (ICQ12011) and 9420484 (ICQ32011).

NPFC Determination

The claim is denied. 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.

The Claimant included in his submission to the NPFC a summary of his employment in 2010.⁹ This summary included information that the Claimant began working for Nouveau Flowers and Events in February 2010 but was reduced to part-time status due to the Deepwater Horizon oil spill.¹⁰ With his claim submission to the NPFC, the Claimant included a letter purportedly from his former employer Nouveau Flowers and Events and containing the signature of the company owner that states,

After the oil spill, my business dramatically decreased. We were booked all through the season. Once word got out of the possible devastation to the beaches, scenery and area, people were calling; one after another; canceling. There was nothing I could do to keep steady business during this time. As a result, I had to cut the hours of my employees. The oil spill impacted all of the companies around me but, mine was impacted the most because we are a company based on the beach.¹¹

The NPFC contacted Nouveau Flowers and Events for verification of both the Claimant's work history and the submitted letter. In a subsequent phone conversation, the NPFC was informed that instead of suffering reduced working hours due to the Deepwater Horizon oil spill, the Claimant quit his job at Nouveau Flowers and Events in order to take employment in the oil spill cleanup effort.¹² Further, the NPFC was informed that the Claimant never worked any reduced, weekend or part-time hours due to the oil spill.¹³ Moreover, the NPFC was informed that the letter the Claimant submitted with the signature of the company owner is not valid and was not created or signed by the owner of Nouveau Flowers and Events.¹⁴

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.

⁶ GCCF Denial Letter dated 22 April 2011.

⁷ GCCF Claimant Status Page.

⁸ GCCF Denial Letter dated 26 July 2011.

⁹ Letter from the Claimant [undated].

¹⁰ Letter from the Claimant [undated].

¹¹ Letter from Nouveau Flowers to the GCCF dated 29 December 2010.

¹² PHONECON between the NPFC and Nouveau Flowers and Events dated 18 October 2011.

¹³ PHONECON between the NPFC and Nouveau Flowers and Events dated 18 October 2011.

¹⁴ Fax from Nouveau Flowers and Events to the NPFC dated 18 October 2011.

Claimant's request for \$19,000.00 is hereby denied because the evidence presented by the Claimant regarding the detailed information provided by the former employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order to obtain funds from the Federal Government under false pretenses and as such, this claim is denied.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/19/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: