

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
11 October 2011

Celebration Church Assembly of God, Inc.
ATTN: [REDACTED]
117 Jonquil Avenue
Fort Walton Beach, Florida, 32548

Re: Claim Number: N10036-1470

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 N10036-1470 involving the Deepwater Horizon oil spill. 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 N10036-1470.

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	N10036-1470
Claimant	Celebration Church, Assembly of God, Inc.
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$51,623.00

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 5 October 2011, Ms. Cheryl Dalen, on behalf of Celebration Church, Assembly of God, Inc., (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$51,623.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is a church in Fort Walton Beach, Florida, in a region that the Claimant asserted is “primarily supported by the tourism industry.”² The Claimant explained that the oil spill caused its losses, and specifically stated that,

[a]s a direct result of the bad publicity that occurred after the oil spill, and the extraordinary decrease of tourists to our area, many individuals and businesses suffered losses in 2010 . . . our church ministry is solely dependent on the financial giving of these individual and area businesses. Due to the massive losses incurred by them, contributions to our ministry have decreased dramatically.³

The Claimant alleged that decreases in “tithes and offerings” resulted in losses of \$26,408 in the 4th quarter of 2010, and losses of \$25,215.00 in the 1st quarter of 2011, totaling losses of \$51,623.00.⁴

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

¹ Optional OSLTF Claim Form, dated 5 October 2011.

² Letter from the Claimant to the GCCF, dated 25 August 2011.

³ Letter from the Claimant to the GCCF, dated 25 August 2011.

⁴ GCCF Interim Payment Claim Forms, provided by the Claimant.

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.
- (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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 5 October 2011;
- Fax Cover Sheet, dated 5 October 2011;
- Letter from the Claimant to the NPFC, 25 September 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 31 August 2011;
- Letter from the Claimant to the GCCF, 25 August 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 20 July 2011;
- Letter from the Claimant to the GCCF, 19 April 2011;
- GCCF Interim Payment Claim Form, seeking \$25,215.00 in loss of profits wages, 19 April 2011;
- 2010 Monthly Profit and Loss Statement;
- 2011 Monthly Profit and Loss Statement, 2011;

- Letter from the Claimant to the GCCF, 25 April 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 April 2011;
- GCCF Letter Re: Receipt of Interim Payment Claim Form, 26 January 2011;
- GCCF Interim Payment Claim Form, undated;
- Letter From the Claimant, undated;
- Profit and Loss Statement, 2009, 2010;
- 2010 Monthly Profit and Loss Statement;
- Document acknowledging 501(c)(3) status, 13 January 2000;
- Florida Department of State, acknowledgement re: Articles of Incorporation;
- State of Florida, corporate certification;
- Consumer's Certificate of Exchange;
- Florida Department of State, Annual Report Online Filing

Prior to presentment to the NPFC, the Claimant submitted a First Quarter Interim Payment Claim (ICQ12011) and a Second Quarter Interim Payment Claim (ICQ22011) to the RP/GCCF. The Claimant was assigned Claimant ID 1188390, ICQ12011 was assigned Claim # 9244101 and ICQ22011 was assigned Claim # 9369031. The Claimant submitted both interim claims to the RP/GCCF, seeking loss of profits and wages damages in the amounts of \$26,408.15 for ICQ12011, and \$25,215.00 for ICQ22011.⁵

Both claims were denied by the RP/GCCF. On 5 October 2011, the Claimant presented this claim to the NPFC, seeking loss of profits and earnings capacity damages in the amount of \$51,623.00.⁶ This is the total amount presented by the Claimant in ICQ12011 and ICQ22011, both of which were denied by the RP/GCCF. Therefore, the NPFC may properly adjudicate the entirety of this claim, in the amount of \$51,623.00.

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, 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 this claim.

In order to prove a claim for loss of profits and impairment of earnings capacity, a claimant must demonstrate (1) that she sustained an actual loss or reduction income, and (2) that the loss or reduction in income was caused by the discharge or substantial threat of discharge of oil, caused the Deepwater Horizon oil spill.

The Claimant has not demonstrated that the reduction in charitable giving to the Church was actually caused by the Deepwater Horizon oil spill. The Claimant has indicated that the Celebration Church relies on donations from a regularly attending congregation, rather than from donations by tourists in certain peak seasons.⁷ The Claimant asserted that the community in which the Church is located is heavily reliant on the tourism industry; therefore any event that would have an effect on tourism is likely to affect charitable giving to the Church, due to economic hardships incurred by the Church's congregants.⁸ However, the Claimant has not

⁵ GCCF Interim Payment Claim Forms, provided by the Claimant.

⁶ Optional OSLTF Claim Form, dated 5 October 2011.

⁷ PHONECON: NPFC Staff and the Claimant, 6 Oct. 2011; *See also*, letter from the Claimant to the GCCF, dated 25 August 2011.

⁸ Letter from the Claimant to the GCCF, dated 25 August 2011.

provided documentation to demonstrate that regular donors were actually unable to continue to donate because of effects of the Deepwater Horizon oil spill.

This claim is denied because the Claimant has not met her burden to demonstrate (1) that she sustained a loss in the amount of \$51,623.00, 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: *10/11/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: