

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7460

5890/DWHZ
28 November 2011

Country Cruise and Travel
C/O [REDACTED]
1732 Front Street
Slidell, LA 70458

RE: Claim Number: N10036-1495

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 N10036-1495 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. 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 N10036-1495.

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	N10036-1495
Claimant	Country Cruise and Travel
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$210,225.00

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 12 October 2011, Country Cruise and Travel (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$210,225.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant is a cruise and travel company located in Slidell, Louisiana.¹ The company alleges that the oil spill affected the amount of revenue the company annually collects due to the fact that “people were afraid to take cruises and beach vacations” and that there were “many cancellations”² received by the Claimant.

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 § 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 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.

¹ Optional OSLTF claim form dated 30 September 2011.

² Optional OSLTF claim form dated 30 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 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 her claim, the Claimant submitted:

- Optional OSLTF claim form dated 30 September 2011.
- Country Cruise and Travel ticket package sales for 2010 and 2011.
- GCCF appeal form 2000-AF

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$210,225.00.

On 18 October 2011, the NPFC sent a letter to the Claimant requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered 01 November 2011.³

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 05 September 2010 in the amount of \$20,000.00.⁴ She was assigned Claimant ID #1018720 and claim #3003003.⁵ This claim was denied on 02 November 2010.⁶

³ USPS tracking #7011 1570 0001 4802 6708.

⁴ Report from the GCCF dated 21 November 2011.

⁵ Report from the GCCF dated 21 November 2011.

⁶ GCCF Denial Letter dated 02 November 2010.

Additionally, the Claimant filed a Full Review Final claim (FRF) with the GCCF and she was assigned GCCF #9138183 and an Interim claim (ICQ42011) with claim #9534890. The FRF was filed on 04 January 2011 for \$5,000.00 and the ICQ42011 was filed on 15 November 2011 for \$241,012.00.⁷ These two claims are both currently under review by the GCCF.⁸ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that the company lost profits as a result of the Deepwater Horizon oil spill. The NPFC deems the EAP and FRF claims totaling \$25,000.00 to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1495 considers and addresses the earnings claimed in two of the three claims presented to the responsible party, specifically; GCCF Claim #'s 3003003 (EAP) and 9138183 (FRF) in the amount of \$25,000.00.⁹

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. The NPFC considered all the documentation submitted by the Claimant.

The ICQ42011 claim was presented to the responsible party (RP) on 15 November 2011.¹⁰ Under 33 C.F.R. §136.103(a) all claims for removal costs or damages must be presented first to the RP. Under §136.103(c), a claim may be presented to the OSLTF if it has been denied or not settled by payment within ninety days after presentment to the RP.

Here, ICQ42011 has not met the requirements under §136.103(a). The EAP and FRF claims that were properly presented to the RP are for the amount of \$25,000.00.¹¹ The Claimant presented a claim to the OSLTF for \$210,225.00.¹² Any claimed amount of damages exceeding \$25,000.00, an amount totaling \$185,225.00, are prematurely before the NPFC and are denied.¹³ The Claimant may submit another claim to the NPFC relating to ICQ42011 once she meets the regulatory requirements outlined above. To the extent that the subject matter of ICQ42011 is the same or similar to her other GCCF claims, the NPFC will take this determination into consideration when reviewing future claims submitted by the Claimant.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim. The letter requested, among other things, financial documentation for an accurate accounting of the Claimant's losses, how the oil spill affected the company in 2011 but not in 2010 after the oil spill, and documentation of the alleged cancellations the Claimant mentioned in the optional OSLTF claim form dated 30 September 2011. It was sent on 18 October 2011.¹⁴ On 01 November 2011 the letter was

⁷ Report from the GCCF dated 21 November 2011.

⁸ Report from the GCCF dated 21 November 2011.

⁹ Report from the GCCF dated 21 November 2011.

¹⁰ Report from the GCCF dated 21 November 2011.

¹¹ Report from the GCCF dated 21 November 2011.

¹² Optional OSLTF claim form dated 30 September 2011.

¹³ \$210,225.00 minus \$25,000.00 equals \$185,225.00.

¹⁴ USPS tracking #7011 1570 0001 4802 6708.

delivered to the Claimant's address of record.¹⁵ To date no response has been received by the NPFC.

The NPFC has evaluated the claim based upon the limited evidence the Claimant originally submitted. The only evidence submitted on behalf of the Claimant's alleged loss is a handwritten document with one whole number representing each month for 2010 and 2011.¹⁶ The dollar amounts for the 2011 months are subtracted from the dollar amounts for the corresponding 2010 months to calculate the alleged loss of \$210,225.00.¹⁷ The NPFC requested monthly profit and loss statements, business tax returns, and other documentation relating to contract cancellations to support the alleged loss.¹⁸ As of the date of this determination, the Claimant has not responded to the NPFC's requested documentation. Accordingly, the Claimant has not established that she has either experienced a financial loss or that the alleged loss is due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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: *11/28/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁵ USPS tracking #7011 1570 0001 4802 6708.

¹⁶ Country Cruise and Travel ticket and package sales for 2010 and 2011.

¹⁷ Country Cruise and Travel ticket and package sales for 2010 and 2011.

¹⁸ USPS tracking #7011 1570 0001 4802 6708.