

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5695

5890/DWHZ  
6 December 2011

Ms. Nancy DiRienzo  
[REDACTED]

Re: Claim Number: N10036-1541

Dear Ms. DiRienzo:

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 N10036-1541 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 N10036-1541.

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	N10036-1541
Claimant	Ms. Nancy DiRienzo
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$5,000.00

### ***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 3 November 2011, Ms. Nancy DiRienzo (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,000.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working in Gulf Breeze, Florida, where she was engaged in selling “partnerships” to “Vacation Property Managers” in cities along the Gulf Coast of Alabama and the Florida panhandle.<sup>2</sup> The Claimant alleged that her income was derived largely from commissions based on the number of new partnerships she sold, and based on growth of pre-existing business.<sup>3</sup> The Claimant’s customer list consisted primarily of condominium and property management companies located in and around Orange Beach, Alabama. The Claimant alleged that because of a poor tourism season in the Florida panhandle and Alabama Gulf Coast during the summer of 2010, her clients booked fewer vacations, and sustained numerous cancellations.<sup>4</sup>

The Claimant alleged that due to low and cancelled vacation bookings resulting from the Deepwater Horizon oil spill, she sustained a loss of income in the amount of \$5,000.00, which she now seeks from the OSLTF.<sup>5</sup>

### ***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 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.

<sup>1</sup> Optional OSLTF Claim Form, received 3 November 2011.

<sup>2</sup> Letter from the Claimant to the GCCF, 8 December 2010.

<sup>3</sup> Letter from the Claimant to the GCCF, 8 December 2010.

<sup>4</sup> Letter from the Claimant to the GCCF, 8 December 2010.

<sup>5</sup> Letter from the Claimant to the GCCF, 8 December 2010.

- (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, received 3 Nov. 2011;
- Letter from the Claimant to the GCCF, 8 December 2010;
- Partial Resort Vacation Rentals Customer List;
- Fax Cover Sheet, 3 November 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim.

On 7 October 2010, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF seeking loss of profits and earnings damages \$2,000.00. The Claimant was assigned claimant ID 3113654 and the EAP claim was assigned claim #16852.<sup>6</sup> This claim was denied by the RP/GCCF.<sup>7</sup>

On 4 January 2011, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF seeking loss of profits and wages damages in the amount of \$15,000.00.<sup>8</sup> The ICQ12011 was assigned claim # 9146010 and was denied by the RP/GCCF.<sup>9</sup>

On 3 November 2011, the Claimant presented this claim to the NPFC, seeking lost profits damages in the amount of \$5,000.00.<sup>10</sup> Because this claim has first been presented to and denied by the RP/GCCF,

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<sup>6</sup> GCCF Claimant Status, accessed on 21 November 2011.

<sup>7</sup> GCCF United States Coast Guard Report, 21 November 2011.

<sup>8</sup> GCCF United States Coast Guard Report, 21 November 2011.

<sup>9</sup> GCCF United States Coast Guard Report, 21 November 2011.

<sup>10</sup> Optional OSLTF Claim Form, received on 3 November 2011.

presentment requirements under OPA have been met, and the NPFC may fully adjudicate this claim for lost profits in the amount of \$5,000.00.<sup>11</sup>

### **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.

This claim is denied because the Claimant failed to demonstrate that she sustained an actual financial loss as a result of the Deepwater Horizon oil spill.

The Claimant's submission to the NPFC contains no financial documentation or record of the Claimant's earnings. It also does not contain information sufficient to identify the specific nature of the Claimant's employment at the time of the oil spill. In a letter dated 4 November 2011, and received by the Claimant on 12 November 2011, the NPFC requested that the Claimant provide certain financial documentation, including copies of federal income tax returns, as well as information regarding the type of work the Claimant was engaged in at the time of the oil spill.<sup>12</sup> The NPFC requested that the Claimant provide the requested additional information within 14 days of the date of the letter. As of the date of this determination, the Claimant has not responded to the request.

Based on the information currently before the NPFC, the Claimant has failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$5,000.00, 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: *12/6/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>11</sup> 33 C.F.R. § 136.103(a).

<sup>12</sup> NPFC request for additional information, 4 November 2011; Certified Mail # 7011 1570 0001 4802 5350 delivered on 12 November 2011.