

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1562
Claimant	: RTI Transport, LLC
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$760,000.00

### **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 15 November 2011, Beverly Thomas, on behalf of RTI Transport, LLC (collectively, the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$760,000.00 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 was in the process of starting up a business as a freight broker for the transport of seafood.<sup>1</sup> The Claimant stated that there was an agreement in place with Motivatit Seafood, LLC (Motivatit) to provide 3-6 reefer trucks per week to haul seafood from Louisiana to California, and then have those trucks return goods from California back to Louisiana.<sup>2</sup> The Claimant planned to take a 20% brokers fee on each truck, both to California and on the return trip.<sup>3</sup> The Claimant asserted that, due to the Deepwater Horizon oil spill, the oyster beds used by Motivatit were damaged.<sup>4</sup> Consequently, the Claimant was unable to schedule any seafood trips to California and experienced a significant loss of revenue.<sup>5</sup>

The Claimant provided the following explanation regarding the calculation of her sum certain of \$760,000.00: the Claimant stated that the business was due to make weekly revenues of \$10,200.00 and the Claimant multiplied this figure by the number of weeks that her business would have been in operation since the beginning of the Deepwater Horizon oil spill.<sup>6</sup>

Prior to presenting this claim to the NPFC, the Claimant filed a claim with BP on 26 May 2010.<sup>7</sup> The Claimant did not receive payment from BP.<sup>8</sup> Additionally; the Claimant filed a six month

<sup>1</sup> Letter from the Claimant to BP dated 09 July 2010.

<sup>2</sup> Letter from the Claimant to BP dated 09 July 2010.

<sup>3</sup> Letter from the Claimant to BP dated 09 July 2010.

<sup>4</sup> Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 25 October 2011.

<sup>5</sup> Letter from the Claimant to BP dated 09 July 2010.

<sup>6</sup> GCCF Interim Payment Claim Form.

<sup>7</sup> Report from the GCCF dated 21 February 2012.

Emergency Advance Payment (EAP) claim with the GCCF for loss of profits on 23 August 2010 in the amount of \$878,400.00.<sup>9</sup> The Claimant was assigned Claimant ID # 1121217 and Claim # 9023. The claim was denied by the GCCF on 04 December 2010.<sup>10</sup> The Claimant also filed an Interim Payment Claim Quarter I (ICQ12011) with the GCCF for loss of profits on 02 February 2011 in the amount of \$438,600.00.<sup>11</sup> The Claimant was assigned Claim ID # 9269045. The ICQ12011 claim was denied on 20 August 2011.<sup>12</sup> The Claimant also filed an Interim Payment Claim Quarter IV 2011 (ICQ42011A) with the GCCF for loss of profits on 26 October 2011 in the amount of \$760,000.00.<sup>13</sup> The Claimant was assigned Claim ID # 9523120. The ICQ42011A was denied on 02 November 2011.<sup>14</sup> Lastly, the Claimant filed an Interim Payment Claim Quarter IV 2011 (ICQ42011B) with the GCCF for real or personal property damage on 26 October 2011.<sup>15</sup> The Claimant was assigned Claim ID # 9524324. The ICQ42011B was denied by the GCCF on 29 December 2011.<sup>16</sup>

### **REQUEST FOR RECONSIDERATION:**

On April 19, 2012, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim.

The NPFC denied the claim originally on March 5, 2012 on the basis that the Claimant failed to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that, due to the Deepwater Horizon oil spill, her business was not able to undertake the shipping of oysters from Louisiana to California on behalf of Motivait.<sup>17</sup> The Claimant's submission included an unsigned shipping agreement between Motivait and the Claimant.<sup>18</sup> In an effort to verify the Claimant's assertions, the NPFC contacted Motivait.

The NPFC was informed that although the Claimant had contacted Motivait regarding obtaining oysters for transport, the Claimant never entered into a contract or had engaged in the process of bidding for oyster transportation contracts.<sup>19</sup> Indeed, the NPFC was informed that the Claimant's business was listed in Motivait's computer system, but that this does not guarantee any business relationship with the company. Instead, it merely indicates that the Claimant has availed itself as eligible for bidding.<sup>20</sup> Additionally, any bid that the Claimant would have made would have been evaluated against bids submitted by other companies, with the lowest bid winning the contract for oyster transport.<sup>21</sup> Thus, the Claimant had no guaranteed contractual relationship with Motivait and could not depend on Motivait to provide oysters for the Claimant to haul to California regardless of the Deepwater Horizon oil spill.

Furthermore, the Claimant failed to prove that she had obtained the required broker authority to conduct interstate shipping as mandated by the Federal Motor Carrier Safety Administration

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<sup>8</sup> Report from the GCCF dated 21 February 2012.

<sup>9</sup> Report from the GCCF dated 21 February 2012..

<sup>10</sup> GCCF Denial Letter dated 04 December 2010.

<sup>11</sup> Report from the GCCF dated 21 February 2012..

<sup>12</sup> GCCF Denial Letter dated 20 August 2011.

<sup>13</sup> Report from the GCCF dated 21 February 2012.

<sup>14</sup> GCCF Denial letter dated 02 November 2011.

<sup>15</sup> Report from the GCCF dated 21 February 2012.

<sup>16</sup> GCCF Denial Letter, dated 29 December 2011.

<sup>17</sup> Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 25 October 2011.

<sup>18</sup> Contract Carrier Transportation Agreement [unsigned] dated 03 April 2010.

<sup>19</sup> PHONECON between the NPFC and Motivait dated 15 December 2011.

<sup>20</sup> PHONECON between the NPFC and Motivait dated 15 December 2011.

<sup>21</sup> PHONECON between the NPFC and Motivait dated 15 December 2011.

(FMCSA).<sup>22</sup> The NPFC contacted the FMCSA to inquire as to the necessary licensing needed by the Claimant to broker shipping for the interstate shipment of seafood. The FMCSA confirmed the necessity for the Claimant to obtain broker authority, as well as confirming that there is no record of the Claimant possessing this authority.<sup>23</sup> Thus, there is no evidence that the Claimant was authorized to conduct the business for which she is claiming damages.

This claim was denied because (1) the Claimant failed to meet her burden to demonstrate that there was a loss in the amount claimed, and (2) failed to meet her burden to demonstrate that the alleged loss was 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.

### **RECONSIDERATION CLAIM ANALYSIS:**

The Claimant requested reconsideration which was received by the NPFC on April 19, 2012. The Claimant provided a one-page letter that requested her claim be reconsidered for the following reasons:

1. The Claimant states the NPFC never spoke with the representative that had agreed to use her trucks to transport oysters for Motivati Seafood. Claimant asserts that Kevin Voison, VP for Motivati at the time, was who guaranteed to use her trucks despite there not being an executed contract. Claimant states Mr. Voison has agreed to speak with the NPFC should the NPFC call him for verification;
2. The Claimant asserts that she was told by Mr. Richard Gordon that he was called by the NPFC and was advised about the questions the NPFC asked of him. The Claimant also asserts in her reconsideration letter that Mr. Gordon stated the NPFC said he should apply for a loss since he went out of business for the same reason. The Claimant states the NPFC's denial determination did not mention that the NPFC spoke with Mr. Gordon; and
3. The Claimant asserts that as far as a bond goes with respect to her shipping business, as long as the bond was paid before trucks were running, there would be no problem. The Claimant also asserted that the Deepwater Horizon oil spill is what prevented her from getting the required bond because the job she was going to do vanished when the oyster industry was damaged.

### **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.

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<sup>22</sup> Form OP-1 as downloaded from <http://www.fmcsa.dot.gov/registration-licensing/print-forms/print-forms.htm> (last accessed 16 December 2011).

<sup>23</sup> PHONECON between the NPFC and the Federal Motor Carrier Safety Administration dated 29 November 2011.

The NPFC performed a complete review of the documentation presented by the Claimant. The request for reconsideration was a one-page letter with no new information other than the name of Kevin Voison who was the VP at Motivatit during the initial contract negotiations with the Claimant. The NPFC contacted Mr. Kevin Voison on May 2, 2012. Mr. Voison confirmed that Motivatit was in the middle of negotiations with the Claimant in consideration of her brokering trucks to transport oysters in 2010 when the Deepwater Horizon oil spill occurred. Mr. Voison stated he thought the negotiations would have gone through had the oil spill not occurred.

Mr. Voison stated that he believed that the negotiation was going to be for some new routes and some existing routes in California that Motivatit had set up. Mr. Voison stated that he had not had any business dealings with the Claimant previously and that the contract in question was never in fact signed therefore the sales staff would not have known anything about the negotiations that were going on at the time of the oil spill between the Claimant and Mr. Voison. He did confirm that since the Claimant was new, and if they had moved forward hiring her as a broker transporting oysters, she would have had to do a sample run to make sure she could in fact handle the business.

Mr. Voison stated that negotiations may have lasted another month or so if the oil spill had not occurred and business would have started soon after the contract completion. Mr. Voison stated that after the oil spill, they ended all new runs and limited the existing runs. He confirmed he is no longer with the company and does not have specifics associated with the pricing details, etc of the Claimant's contract and that the NPFC would need to obtain that information from the Claimant.

With respect to the Claimant's assertion that the NPFC did not mention in its original denial determination that it had spoken with Mr. Richard Gordon, the NPFC confirms that assertion to be correct. The NPFC did speak with Mr. Gordon on December 9, 2011 regarding his business relationship with the Claimant. Mr. Gordon informed the NPFC that he was originally going to provide the trucks and hauling to and from California for the Claimant had she secured the business deal with Motivatit. He stated he was going to provide two trucks, one of which he was going to drive himself and the other he was going to provide the driver for it.

Mr. Gordon stated he did not have a contract with the Claimant but did have a verbal agreement with her for their business arrangement had she been able to secure the route to California transporting oysters for Motivatit. Mr. Gordon stated he completed the insurance paperwork and other forms that would have been needed to haul seafood. Mr. Gordon stated that he was 'physically' in Louisiana at the time of the oil spill and was 'standing by' awaiting word on whether or not he would be haul oysters to California for the Claimant.

Mr. Gordon advised the NPFC that the arrangement between he and the Claimant would have been a lucrative one therefore he decided to wait and see what the affects of the oil spill were going to be but ultimately he had to abandon the arrangement because there were no oysters to haul. With respect to the alleged pricing for his arrangement with the Claimant, he stated they worked out pricing for the oysters and also agreed on the Claimant reimbursing him a fuel surcharge based on a national rate. With respect to return trips from California to Louisiana, Mr. Gordon stated that the Claimant was going to work on arrangements for him to haul produce from California to Houston and then carry empty cargo from Houston to Louisiana. Mr. Gordon closed by stating that in either case, the Claimant would receive a % of the haul profit from the return trip. He also stated that as far as he knew, the Claimant was registered with the proper regulatory authorities but that he did not inspect actual licenses.

Upon receipt of the information from Mr. Gordon, the NPFC was able to determine that negotiations had taken place between the Claimant and Mr. Gordon for the hauling of oysters had the Claimant been able to secure a California route with Motivatit although actual costs were

never established and as such, there was no evidence that the Claimant would have definitively secured any California routes until after a contract was executed and a sample route was completed to ensure the Claimant's ability to perform the runs for Motivait to their satisfaction.

Finally, the Claimant asserts that with respect to a bond requirement to transport oysters, she asserts that as long as the bond was paid prior to transport, there would not have been any problems. The NPFC has no comment on the validity of this statement made by the Claimant. The NPFC can only confirm that it spoke with the regulatory authority, the Federal Motor Carrier Safety Administration, who confirmed the Claimant would need to obtain broker authority and that as of November 29, 2011; no such request had been made by the Claimant for the transport of oysters.

In consideration of the arguments and information provided by the Claimant on reconsideration, the NPFC has determined that the Claimant has provided no new information that would persuade the NPFC to change its original denial determination. While the Claimant has established the fact that there had been negotiations between the Claimant and Motivait for the possible transport of oysters from Louisiana to California, that negotiation never came to fruition nor were there any guarantees since the Claimant never made a sample run to demonstrate to Motivait that it was capable to perform the runs as would have been expected. Based on the foregoing information, this claim is denied upon reconsideration because (1) the Claimant again failed to meet her burden to demonstrate that there was a loss in the amount claimed since she was a start up business with no price guarantees, and (2) the Claimant failed to meet her burden to demonstrate that the alleged loss was 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: *Thomas Morrison*

Date of Supervisor's review: *5/16/12*

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

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US COAST GUARD  
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5890  
5/16/2012

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
Number: 7011 1570 0001 4802 9839

RTI Transport, LLC  
ATTN: [REDACTED]  
PO Box 747  
Houma, LA 70361

RE: Claim Number: N10036-1562

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 N10036-1562 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