

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 800-280-7118  
E-mail: arl-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
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5890/DWHZ  
10 February 2012

Mr. Vincent Marquis  
[REDACTED]

Re: Claim Number: N10036-1572

Dear Mr. Marquis:

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 N10036-1572 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 N10036-1572.

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	N10036-1572
Claimant	Vincent Marquis
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$12,000.00

### ***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 20 November 2011, Mr. Vincent Marquis (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$12,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working at the Wine Cellar Restaurant in Indian Rocks Beach, Florida as a waiter/caterer/manager.<sup>2</sup> According to his submission, the Claimant had been in this position for six (6) years.<sup>3</sup> The Claimant alleged that his working hours were reduced, and he was eventually let go in July of 2011 because “our restaurant depends on tourism and after the spill, the restaurant has been very slow.”<sup>4</sup> He goes on to state that he “tried to pick up more shifts, but there was no money to be made after the spill.”<sup>5</sup>

The Claimant alleged that the lack of business resulting from the oil spill caused him to sustain an uncompensated loss of \$12,000.00 in earnings, which the Claimant now seeks from the OSLTF.<sup>6</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 § 2702(b) of OPA.

The OSLTF which is administered by the NPFCA, 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, signed on 6 November 2011.

<sup>2</sup> Optional OSLTF Claim Form, signed on 6 November 2011.

<sup>3</sup> Optional OSLTF Claim Form, signed on 6 November 2011.

<sup>4</sup> Optional OSLTF Claim Form, signed on 6 November 2011.

<sup>5</sup> Optional OSLTF Claim Form, signed on 6 November 2011.

<sup>6</sup> Optional OSLTF Claim Form, signed on 6 November 2011.

- (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 on 20 November 2011;
- Response to NPFC request for additional information, received on 29 December 2011;
- Authorization from the Claimant for the NPFC to request GCCF submission, undated;
- Letter from the Claimant's employer, 29 December 2011;
- 2010 Form W2, showing earnings of \$22,912.39;
- 2009 Form W2, showing earnings of \$32,062.34;
- 2006 Form W2, showing earnings of \$33,454.35;
- Payroll stubs for the following dates and in the following amounts:
  1. 5/18/2011 – 5/31/2011 - \$477.42
  2. 5/4/2011 – 5/17/2011 - \$521.72
  3. 4/20/2011 – 5/3/2011 - \$546.26
  4. 3/23/2011 – 4/5/2011 - \$662.64
  5. 3/9/2011 – 3/22/2011 - \$588.87
  6. 2/23/2011 – 3/8/2011 - \$933.09
  7. 2/9/2011 – 2/22/2011 - \$822.54
  8. 1/26/2011 – 2/8/2011 - \$769.58
  9. 1/12/2011 – 1/25/2011 - \$576.76
  10. 12/29/2010 – 1/11/2011 - \$657.07
  11. 12/15/2010 – 12/28/2010 - \$591.43

12. 12/1/2010 – 12/14/2010 - \$815.85
13. 11/17/2010 – 11/30/2010 - \$521.29
14. 11/3/2010 – 11/16/2010 - \$893.91
15. 10/20/2010 – 11/2/2010 - \$448.15
16. 10/6/2010 – 10/19/2010 - \$694.44
17. 9/8/2010 – 9/21/2010 - \$579.79
18. 9/22/2010 – 10/5/2010 - \$724.88
19. 8/25/2010 – 9/7/2010 - \$715.60
20. 8/11/2010 – 8/24/2010 - \$564.69
21. 7/28/2010 – 8/10/2010 - \$319.06
22. 7/14/2010 – 7/27/2010 - \$470.30
23. 6/30/2010 – 7/13/2010 - \$515.95
24. 6/16/2010 – 6/29/2010 - \$498.94
25. 6/30/2010 – 7/13/2010 - \$515.95
26. 4/21/2010 – 5/4/2010 - \$930.98
27. 6/15/2011 – 6/28/2011 - \$402.73
28. 6/2/2010 – 6/15/2010 - \$670.05
29. 6/1/2011 – 6/14/2011 - \$439.78
30. 5/19/2010 – 6/1/2010 - \$720.17
31. 5/5/10 – 5/18/2010 - \$727.07
32. 3/10/2010 – 3/23/2010 - \$1,356.71
33. 3/24/2010 – 4/6/2010 - \$1183.82;

- 2009 Tax Return transcript, showing earnings of \$32,062.00;
- 2010 Tax Return transcript, showing earnings of \$22,912.00;
- Claimant's 2009 W2 indicating that he made \$32,062.34
- GCCF Interim Payment Claim Form, Claimant ID 1012676;
- Letter from the Claimant, noting request of IRS for tax documentation;
- A signed letter from Kai Sonnenschein, the General Manager of the Wine Cellar Restaurant, the Claimant's employer, confirming the Claimant's employment there and that he was laid off;
- A signed letter from Kai Sonnenschein, the General Manager of the Wine Cellar stating that the claimant has worked there since 2005. From 2005 until June of "of this year" he worked "5 – 6 days." "Since then his work has been cut in half and now works about 3 to 4 days a week";
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 9 June 2011;
- GCCF Re-Review Determination Letter on Final Payment Claim, 15 June 2011;
- GCCF Election Form For Determination Letter on Lost Earnings and Income Claim;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 20 July 2011;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 3 November 2011;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 21 November 2011;
- Copy of the Claimant's Social Security Card;
- Copy of the Claimant's driver's license.<sup>7</sup>

Prior to presentment to the NPFC, the claimant presented his claim to both the RP/BP and the RP/GCCF. BP initially issued payment on this claim in the amount of \$3,980.00<sup>8</sup>

<sup>7</sup> Evidence submitted to the GCCF and obtained by the NPFC with the Claimant's permission.

<sup>8</sup> GCCF Determination Letter on Interim Payment/Final Payment Claim, 3 November 2011.

The Claimant presented an Emergency Advance Payment (EAP) claim to the (RP/GCCF) seeking \$8,016.00 in loss of profits and earnings.<sup>9</sup> The Claimant was assigned Claimant ID # 1012676 and the EAP Claim # 11426.<sup>10</sup> This claim was paid in the amount of \$17,500.00.<sup>11</sup>

On 6 June 2011, the Claimant submitted a Second Quarter Interim Claim (ICQ22011) to the RP/GCCF, seeking \$20,000.00 in loss of profits and earnings.<sup>12</sup> The ICQ22011 was assigned GCCF Claim # 9394542 and was denied by the RP/GCCF.<sup>13</sup>

On 11 July 2011, the Claimant then submitted a Third Quarter Interim Claim (ICQ32011) to the RP/GCCF on or about 11 July 2011, seeking \$5,000.00 in loss of profits damages. The ICQ32011 was assigned GCCF Claim # 9407968, and was also denied.<sup>14</sup>

On 25 October 2011 the claimant submitted a Fourth Quarter Interim Claim (ICQ42011) seeking \$25,000.00 in loss of profits damages. The ICQ42011 was assigned GCCF Claim #9521354, and was paid in the amount of \$1,000.00.<sup>15</sup> The Claimant was offered final payment in the amount of \$5,000.00, which the Claimant has not accepted as of the date of this determination.<sup>16</sup> To date, the Claimant has received payments from the RP/GCCF totaling \$22,480.00.

On 20 November 2011, the Claimant submitted this claim to the NPFC, seeking \$12,000.00 in loss of profits and impairment of earning capacity damages.<sup>17</sup> Because the Claimant has previously submitted a claim to the RP/GCCF alleging the same damages as currently before the NPFC, in an amount less than or equal to the amount now presented in this claim, the NPFC may fully adjudicate this claim in the amount of \$12,000.00.<sup>18</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.

In order to prove a claim for loss of profits damages, a claimant must provide evidence sufficient to prove (1) that the claimant sustained an uncompensated financial loss, and (2) that the loss was caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

This claim is based on the Claimant's assertion that the Deepwater Horizon oil spill caused a decrease in tourism in Indian Rocks Beach, located in Pinellas County, Florida.<sup>19</sup> According to the Claimant's submission, the alleged decrease in tourism caused the Claimant's working hours to be

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<sup>9</sup> GCCF United States Coast Guard Report, 1 February 2012.

<sup>10</sup> GCCF United States Coast Guard Report, 1 February 2012

<sup>11</sup> GCCF United States Coast Guard Report, 1 February 2012

<sup>12</sup> GCCF United States Coast Guard Report, 1 February 2012

<sup>13</sup> GCCF United States Coast Guard Report, 1 February 2012

<sup>14</sup> GCCF United States Coast Guard Report, 1 February 2012.

<sup>15</sup> GCCF United States Coast Guard Report, 1 February 2012.

<sup>16</sup> GCCF Determination Letter on Interim Payment/Final Payment Claim, 3 November 2011.

<sup>17</sup> Optional OSLTF Claim Form, signed on 6 November 2011.

<sup>18</sup> 33 C.F.R. § 136.103(a).

<sup>19</sup> Optional OSLTF Claim Form, signed on 6 November 2011.

reduced, and eventually resulted in the Claimant's lay-off from his position at the Wine Cellar Restaurant in July of 2011.<sup>20</sup>

In a letter dated 6 December 2011, the NPFC requested that the Claimant provide documentation to support his assertion that the Deepwater Horizon oil spill impacted Indian Rocks Beach throughout 2011.<sup>21</sup> The Claimant has failed to provide documentation sufficient to comply with this request, stating only that, "heading into 2011, the restaurant had struggled and tourism [has] never come back to pre oil spill numbers."<sup>22</sup>

However, research conducted by the NPFC indicates that Pinellas County did not experience a reduction in tourism in either 2010 or 2011. The 2010 Annual Visitors Profile for Pinellas County indicates that the number of visitors in May, June, July and August 2010 actually increased as compared to those months of 2009.<sup>23</sup> Likewise, the Visitors Profile indicates that expenditures in the spring and summer months of 2010, did not drop, but remained at 2009 levels.<sup>24</sup> These statistics are further supported by Pinellas County Bed Tax collections, which indicate year over year increases starting in July of 2010 and continuing through 2011.<sup>25</sup>

Considering all documentation provided by the Claimant, as well as independent research conducted by the NPFC, the Claimant has failed to prove (1) that oil discharged during the Deepwater Horizon oil spill caused a reduction in tourism in Indian Rocks Beach, or (2) that a reduction in tourism caused the Claimant to sustain a loss of profits.

Furthermore, information available to the NPFC indicates that the Claimant has been compensated a total of \$22,480.00 for losses allegedly resulting from the Deepwater Horizon oil spill. Should the Claimant chose to pursue this claim on reconsideration, the Claimant must specifically indicate the time period for which he is claiming a loss, and must provide evidence sufficient to prove that payments previously made to the Claimant by BP and the GCCF, have not fully compensated the Claimant for any loss of income he alleged to have incurred as a result of the Deepwater Horizon oil spill.

This claim is therefore denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained an uncompensated financial loss in the amount of \$12,000.00, 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: *2/10/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>20</sup> Optional OSLTF Claim Form, signed on 6 November 2011.

<sup>21</sup> NPFC Request for additional information, 6 December 2011.

<sup>22</sup> Response to NPFC request for additional information, received on 29 December 2011.

<sup>23</sup> St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual Visitor Profile, <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>, @6. Accessed on 8 February 2012

<sup>24</sup> St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, Available at, [www.pinellascvb.com/statistics/Pinella2010AnnualReport.pdf](http://www.pinellascvb.com/statistics/Pinella2010AnnualReport.pdf), at 7. Accessed on 8 February 2012

<sup>25</sup> Pinellas County, CVB statistics, Bed Tax Information. Available at, [www.pinellascvb.com/cms/index.php?id=6](http://www.pinellascvb.com/cms/index.php?id=6).

