

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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5890/DWHZ  
23 January 2011

Happy Nails  
ATTN: [REDACTED]  
3800 Gulf Shores Pkwy #110  
Gulf Shores, AL 36542

Re: Claim Number: N10036-1574

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 N10036-1574 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 N10036-1574.

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	N10036-1574
Claimant	Happy Nails
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$153,448.00

### ***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 21 November 2011, Ms. Hiep Thi Tran, on behalf of Happy Nails (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$153,448.00 in loss of profits and impairment of earning capacity damages, allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant purchased and began operating a nail salon in Gulf Shores, Alabama in March of 2010,<sup>2</sup> after having worked at the salon as an employee in 2009.<sup>3</sup> The Claimant stated that as an employee, she earned a yearly income of \$25,600.00.<sup>4</sup> As an owner, the Claimant alleged that she has not been able to pay herself a salary, and has also been unable to pay the salaries of her employees.<sup>5</sup> The Claimant alleged that the loss of business income has been caused by various factors resulting from effects of the Deepwater Horizon oil spill.

The Claimant alleged to have lost a total of \$153,448.00, from July 2010 to November 2011.<sup>6</sup> Specifically, the Claimant asserted to have sustained the following losses: (1) \$49,600.00 in lost salary, (2) \$5,500.00 in owed rent, (3) 74,400.00 in outstanding business loans, and (4) \$23,948.00 in unpaid employee salaries.<sup>7</sup>

The Claimant alleged that these losses were caused by various factors resulting from the Deepwater Horizon oil spill, including decreases in tourism, as well as general economic effects of the oil spill on the Gulf Shores economy.<sup>8</sup>

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<sup>1</sup> Optional OSLTF Claim Form, dated 3 August 2011.

<sup>2</sup> Letter from Chris Tilley, Pelican Place, undated;

<sup>3</sup> Attachment A; Answer to question # 9.

<sup>4</sup> Attachment A; Answer to question # 9.

<sup>5</sup> Attachment A; Answer to question # 9.

<sup>6</sup> Optional OSLTF Claim Form, dated 21 November 2011.

<sup>7</sup> Attachment A; Answer to question # 9.

<sup>8</sup> Attachment B; Answer to question #10.

## ***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.
- (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, 11 November 2011;
- Happy Nails monthly profit and loss statement, 2011;

- Happy Nails monthly profit and loss statement, 2010;
- Bill of Sale, showing sale of Nails So Happy to the Claimant, 25 March 2010;
- Letter from Property Manager, Pelican Place, to the Claimant, undated;
- Business License, City of Gulf Shores, 2011;
- Alabama Board of Cosmetology certificate for nail salon, issued 12 September 2011;
- Regions Bank Statement, 25 March 2010 – 14 April 2010;
- Regions Bank Statement, 14 July 2011 – 15 August 2011;
- NorthAmerican Bancard, Happy Nails;
- Letter from Nghia Bui, regarding payments owed to him by the Claimant, 1 November 2011;
- Letter from Hoang Le, regarding payments owed by the Claimant, 21 October 2011;
- Letter from Nguyen Tran Hoang Vy, regarding payments owed by the Claimant, 25 October 2011;
- Attachment A: Answer to question # 9, explaining loss calculation;
- Attachment B: Answer to question # 10;
- Attachment C: Answer to question # 11;
- Hardship letter, undated;
- Letter from Hilda Fletcher, customer of Happy Nails, 9 November 2011;
- Letter from Theresa K Vester, customer of Happy Nails, 9 November 2011;
- Letter from Linda Hall, customer of Happy Nails, 9 November 2011;
- Letter from Val Santos, customer of Happy Nails, 9 November 2011;
- 2009 Schedule C (Form 1040), showing gross sales of \$34,925.00;
- 2009 Schedule SE (Form 1040);
- Letter from the IRS to the Claimant, regarding unpaid balance, 31 December 2009;
- 2010 Form 1096;
- 2010 Forms 1099-MISC, showing nonemployee compensation paid to various employees of Happy Nails;
- 2010 Form 1040, showing business income of \$3,508.00;
- 2010 Schedule C (Form 1040), showing gross sales of \$91,840.00;
- 2010 Schedule C-EZ (Form 1040);
- 2010 Schedule SE (Form 1040);
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Alabama Form 40;
- 2010 Form 1040-V;
- Item by item response to NPFC request for additional information, received on 18 January 2012;
- Monthly bank account statements, April 15, 2010 - December 13, 2011;
- Happy Nails, table of monthly income, 2010, 2011;
- Letter from customer, Brittany E McNamara;
- Photos of the nail salon;
- Records of rental payments.

Prior to presentment to the NPFC, the Claimant presented a First Quarter Interim Claim (ICQ12011) to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$110,084.00.<sup>9</sup> The Claimant was assigned Claimant ID 3347914 and the ICQ12011 was assigned claim # 9167443.<sup>10</sup> The Claimant also submitted a Third Quarter Interim Claim

<sup>9</sup> GCCF United States Coast Guard Repot, 11 January 2012.

<sup>10</sup> GCCF Claimant Status, accessed on 30 November 2011.

(ICQ32011) again seeking loss of profits damages in the amount of \$110,084.00.<sup>11</sup> The ICQ32011 was assigned claim # 9450399. All claims remains under review with the RP/GCCF as of the date of this determination.<sup>12</sup>

On 21 November 2011, the Claimant presented this claim to the NPFC, seeking loss of profits damages in the amount \$153,448.00. The NPFC may adjudicate this claim to the extent that it has first been presented to the RP/GCCF, and if no determination has been made on the claim within ninety days of presentment to the RP/GCCF.<sup>13</sup> Because the two interim claims previously submitted by the Claimant to the RP/GCCF, exceed the amount of damages now claimed against the OSLTF, and because the claims have been under review with the RP/GCCF for more than ninety days,<sup>14</sup> the NPFC may fully adjudicate this claim in the amount of \$153,448.00.<sup>15</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 loss of profits claim, a claimant must demonstrate (1) that the claimant sustained a loss or reduction in profits following the oil spill, and (2) that the loss or reduction in profits was caused by the discharge of oil caused by the Deepwater Horizon oil spill.

### 1. Failure to prove a loss or reduction in profits following the Deepwater Horizon oil spill.

The Claimant alleged that the oil spill drove tourists away from Gulf Shores, which caused harm to the gulf coast economy, thereby causing the Claimant's alleged loss of income in 2010 and 2011. In order for the Claimant to prove that the salon sustained an actual loss of income in the period claimed, the Claimant must provide evidence of the salon's (1) pre-spill income, and (2) post-spill income, which should prove that the Claimant's income actually decreased in the period following the oil spill as compared to the period prior to the oil spill.

Although the Claimant alleged that the nail salon was more profitable in 2009 than in 2010 or 2011, the Claimant has failed to provide evidence to support this assertion.<sup>16</sup> In a letter dated 15 December 2011, the NPFC requested that the Claimant provide evidence of business earnings prior to the oil spill, as well as contact information for the prior owner. The Claimant responded to the letter on 18 January 2012, stating that, "I took over [the nail salon] on March 25, 2010, so therefore, I don't have proof of income for [the nail salon] in 2008 or 2009."<sup>17</sup> Furthermore, the phone number provided by the Claimant for the prior owner had been disconnected.<sup>18</sup>

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<sup>11</sup> GCCF United States Coast Guard Report, 11 January 2012.

<sup>12</sup> GCCF United States Coast Guard Report, 11 January 2012.

<sup>13</sup> 33 C.F.R. §136.103(a).

<sup>14</sup> GCCF United State Coast Guard Report as of 11January 2012, indicates that the Claimant submitted claims on 5 January 2011, and 3 September 2011.

<sup>15</sup> 33 C.F.R. § 136.103(a).

<sup>16</sup> Response to NPFC request for additional information, received on 18 January 2012.

<sup>17</sup> Response to NPFC request for additional information, received on 18 January 2012.

<sup>18</sup> The NPFC attempted to call Nguyen Hoan at the number provided by the Claimant on 19 January 2012.

Because the Claimant has presented no evidence of pre-spill earnings, the Claimant has failed to prove that the salon actually experienced a loss or reduction in profits in the period following the oil spill, as compared to the period prior to the oil spill.

2. Failure to prove that the alleged loss was caused by oil discharged during the Deepwater Horizon oil spill.

The Claimant alleged that prior to the oil spill; the salon generated substantial business from tourist customers. Specifically, the Claimant stated, “around June 2009 is when it gets super busy . . . I stayed so busy because there was too much tourist customers.”<sup>19</sup> However, financial documentation provided by the Claimant indicates that the Claimant’s gross sales dropped significantly in 2011 as compared to 2010, in spite of substantial increases in tourism in that year.<sup>20</sup> The Claimant reported average gross sales of \$11,892.25 per month for the months of May to August 2010, while reporting average gross sales of only \$6,405.21 per month for the same months in 2011.<sup>21</sup> The Claimant’s 2011 drop in sales coincides with one of the busiest tourist seasons in Gulf Shores in recent years, as documented by the Alabama Gulf Coast Convention and Visitor’s Bureau.<sup>22</sup> Because financial documentation provided by the Claimant indicates that the Claimant’s income continued to decrease in 2011, in spite of increases in tourism, it appears that factors other than fluctuations in tourism caused the Claimant’s alleged loss of profits in 2010 and 2011.

In addition to the Claimant’s assertion that decreases in tourism resulted in the Claimant’s alleged loss of income, the Claimant alleged that business losses were caused by general economic effects of the oil spill on the Gulf Shores community. As stated by the Claimant,

Gulf Shores residents mainly depend on tourist business, but ever since the oil spill happened, many people’s income has decreased . . . nails [are] the first thing they stop getting done.<sup>23</sup>

In order to prove that the Claimant lost customers after the oil spill, the NPFC requested that the Claimant provide a calendar or other record of daily walk-ins and appointments for the periods leading up to and following the oil spill.<sup>24</sup> The Claimant was unable to respond to this request, stating that, “I do not need to keep records of customers, so I do not have those documents.”<sup>25</sup> Furthermore, the Claimant stated that “the old owner [who owned the business from 2009 until March 2010] didn’t keep any record of appointments/walk-ins.”<sup>26</sup> The Claimant has therefore not provided documentation that would demonstrate that the Claimant lost clients following the oil spill, nor has the Claimant provided evidence to show that any loss of clients was caused by effects of the oil spill.

This claim is therefore denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained financial loss in the amount of \$153,448.00, 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.

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<sup>19</sup> Response to NPFC request for additional information, received on 18 January 2012.

<sup>20</sup> Monthly profit and loss statements included in the Claimant’s original submission.

<sup>21</sup> Monthly profit and loss statements included in the Claimant’s original submission.

<sup>22</sup> Tourism statistics available at, [www.agccvb.org/stats](http://www.agccvb.org/stats), accessed on 20 January 2012.

<sup>23</sup> Response to NPFC request for additional information, received on 18 January 2012.

<sup>24</sup> NPFC request for additional information, 15 December 2011.

<sup>25</sup> Response to NPFC request for additional information, received on 18 January 2012.

<sup>26</sup> Response to NPFC request for additional information, received on 18 January 2012.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *1/23/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: