

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
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: 7011 0470 0000 8895 4820

5890/DWHZ
Claim # N10036-1578
19 January 2012

Set It Off Promotions

Attn: [REDACTED]
2317 North East Avenue
Panama City, Florida 32405

Re: Claim Number: N10036-1578

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 your claim number N10036-1578 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. If, however 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 N10036-1578.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1578
Claimant	Set It Off Promotions
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$25,000.00

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 22 November 2011, Carolyn Rodriguez, on behalf of Set It Off Promotions, (collectively, the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) that lacked a sum certain. On 23 November 2011, the Claimant submitted an amended Optional OSLTF Claim Form seeking \$25,000.00 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 operated a promotional event business in the Panama City, Florida region.¹ The Claimant asserts that due to the Deepwater Horizon oil spill, various musical and real estate events were cancelled that were to be promoted by her company.² As a result, the Claimant lacked any performances to promote and subsequently suffered reduced income.³

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$25,000.00.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

¹ Optional OSLTF Claim Form signed 14 November 2011 and received 22 November 2011, Letter from Shortee D. Land Development dated 17 November 2011, Letter from Sho No Mercy/K-Rich [undated].

² Optional OSLTF Claim Form signed 14 November 2011 and received 22 November 2011, Letter from Shortee D. Land Development dated 17 November 2011, Letter from Sho No Mercy/K-Rich [undated].

³ Optional OSLTF Claim Form signed 14 November 2011 and received 22 November 2011.

- (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 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 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

The Claimant's Submission to the OSLTF

In support of her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form signed 14 November 2011 and received 22 November 2011;
- Amended OSLTF Claim Form containing sum certain received 23 November 2011;
- GCCF Full Review Final Payment Claim Form dated 09 August 2011;
- Letter from Bay Bank & Trust Company dated 28 July 2011;
- 2010 Form 1099-MISC from Sho No Mercy Records [hand-written];
- 2010 Form 1099-MISC from Shortee D Land Develop [hand-written];
- Letter from the Internal Revenue Service dated 27 March 2009;
- Utility bill dated 28 September 2011;
- GCCF Change of Address Request dated 14 November 2011;
- Photocopy of the Claimant's Florida Driver's License [unreadable] along with handwritten letter;
- Letter from Robert Salim, Esquire, to the Claimant;
- Letter from Shortee D. Land Development dated 17 November 2011;
- Letter from Sho No Mercy/K-Rich [undated];
- Letter from the Claimant [undated].

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP1) Six Months Claim with the GCCF for loss of profits and impairment of earnings capacity on 11 October 2010 in the amount of \$22,512.00.⁴ The Claimant was assigned Claimant ID # 3142048 and Claim ID #

⁴ Report from the GCCF dated 11 January 2012.

196843. The EAP1 was denied on 14 December 2010.⁵ Additionally, the Claimant filed an Emergency Advance Payment (EAP2) Claim with the GCCF for loss of profits and impairment of earnings capacity on 25 January 2011 in the amount of \$22,512.00.⁶ The Claimant was assigned Claim ID # 4070016. The EAP2 was denied.⁷ Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF for loss of profits and impairment of earnings capacity on 24 October 2011 in the amount of \$25,041.00.⁸ The Claimant was assigned Claim ID # 9520602. The FRF was deemed deficient.⁹

Based upon the evidence provided by the Claimant, it appears that the subject matter for Claimant's GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, musical and real estate events that the Claimant was scheduled to promote were cancelled and as a result she suffered reduced income. The NPFC deems that Claimant's GCCF claims as properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1578 considers and addresses the claims presented to the responsible party; specifically, GCCF Claim ID #'s 196843 (EAP1), 4070016 (EAP2) and 9520602 (FRF).

NPFC Determination

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 documentation presented by the Claimant.

The Claim is denied because the Claimant fails to prove that the alleged loss in the amount of \$25,000.00 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.

The Claimant asserts that due to the Deepwater Horizon oil spill, musical events as well as real estate events that she was scheduled to promote were cancelled.¹⁰ As a result, the Claimant lacked events to utilize her promotional services and suffered reduced income as a result.¹¹ The Claimant, however, fails to provide a connection between the Deepwater Horizon oil spill and a purported loss of income due to a lack of available events to promote. The Claimant fails to provide any evidence that she had contracts to promote musical or real estate events and she is unable to substantiate her claim that the Deepwater Horizon oil spill resulted in the cancellation of the alleged contracts. In sum, the Claimant's submission to the NPFC consisted of various personal financial documents as well as letters discussing the Claimant's promotional work.¹²

Nevertheless, in an effort to verify the effect of the Deepwater Horizon oil spill on the Claimant's promotional business, the NPFC made a formal request for additional information.¹³ The NPFC requested the following items: full and complete tax returns from the Claimant's business for 2008-2010 including all W-2's and 1099's, bank statements for the Claimant's business from 2008-present, monthly profit and loss statements from the Claimant's business for 2008-present, Florida corporate registration for the business, monthly profit and loss statements for the business from 2008-present, sales ledger for the business from 2008-present including the name of the event/client/promotion, the nature of services provided to the client, the date the services were provided, the locations of the promotion, and the contact information for the client, contracts for all promotions/projects that were cancelled due to the Deepwater Horizon oil spill and contact information for those that cancelled contracts due to the Deepwater Horizon

⁵ GCCF Denial Letter dated 14 December 2010.

⁶ Report from the GCCF dated 11 January 2012.

⁷ Report from the GCCF dated 11 January 2012.

⁸ Report from the GCCF dated 11 January 2012.

⁹ Report from the GCCF dated 11 January 2012.

¹⁰ Optional OSLTF Claim Form signed 14 November 2011 and received 22 November 2011, Letter from Shortee D. Land Development dated 17 November 2011, Letter from Sho No Mercy/K-Rich [undated].

¹¹ Optional OSLTF Claim Form signed 14 November 2011 and received 22 November 2011, Letter from Shortee D. Land Development dated 17 November 2011, Letter from Sho No Mercy/K-Rich [undated].

¹² For a list of the Claimant's submitted documentation, see The Claimant's Submission to the OSLTF above.

¹³ NPFC Request for Additional Information dated 05 December 2011.

oil spill.¹⁴ As of the writing of this determination, no response has been received from the Claimant regarding the above listed items.

Furthermore, the NPFC contacted the musical artist that the Claimant asserted she was to do promotional work for, Sho No Mercy. The NPFC was informed that Sho No Mercy was to perform concerts at Frank Brown Park and Pier Park, both located in Panama City, Florida.¹⁵ These concerts were to be promoted by the Claimant.¹⁶ The NPFC contacted Frank Brown Park to verify this information. The NPFC was informed that Frank Brown Park never had a contract or business relationship with the Claimant regarding any musical performances in 2010 or 2011.¹⁷ Additionally, the NPFC contacted Pier Park to verify Sho No Mercy's assertions.

The NPFC was informed that Pier Park has never heard of the Claimant and has never done any business with her.¹⁸ The NPFC also contacted the Claimant's purported client regarding promotional activities for real estate events, Shortee D. Land Development (Shortee). Shortee failed to provide any specific information documenting real estate events cancelled due to the Deepwater Horizon oil spill.¹⁹ Further, although the Claimant provided a Form 1099-MISC from Sho No Mercy Records to the Claimant's business as verification of payment, a search for registered companies under those names in Florida yielded no results.²⁰ The Claimant also provided a Form 1099-MISC from Shortee to the Claimant, however, Shortee was not registered as a company in Florida until 12 October 2010, well after the Deepwater Horizon oil spill occurred.²¹ Accordingly, the Claimant fails to prove that either musical or real estate events were cancelled due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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 Review: *1/19/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁴ NPFC Request for Additional Information dated 05 December 2011.

¹⁵ PHONECON between the NPFC and Sho No Mercy dated 09 January 2012.

¹⁶ PHONECON between the NPFC and Sho No Mercy dated 09 January 2012.

¹⁷ PHONECON between the NPFC and Frank Brown Park dated 11 January 2012.

¹⁸ PHONECON between the NPFC and Pier Park dated 13 January 2012.

¹⁹ PHONECON between the NPFC and Shortee D. Land Development dated 12 January 2012.

²⁰ <http://www.sunbiz.org/index.html> (last accessed 17 January 2012).

²¹ http://sunbiz.org/scripts/cordet.exe?action=DETFIL&inq_doc_number=L10000106387&inq_came_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=N&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=SHORTEE&names_filing_type= (last accessed 17 January 2012).