

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
25 January 2012

Ms. Candice Calvert
[REDACTED]

Re: Claim Number: N10036-1585

Dear Ms. Calvert

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 N10036-1585 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 N10036-1585.

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	N10036-1585
Claimant	Ms. Candice Calvert
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$28,000.00

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 30 November 2011, Ms. Candice Calvert (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$28,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a bartender at Howl at the Moon restaurant and piano bar in Tampa, Florida.² The Claimant alleged that her hours were cut following the Deepwater Horizon oil spill due to a lack of tourism resulting from public concern that the oil spill may have affected Tampa beaches. The Claimant's employer stated in a letter to the NPFC,

We experienced a decline in tourists, cancellations of reservations, and loss of revenue because of the fear of oil on our beaches.³

The Claimant alleged that the reduction in her hours and accompanying loss of tips caused her to sustain a \$9,000.00 loss of income in 2010 and a \$19,000.00 loss of income in 2011.⁴ The Claimant seeks \$28,000.00 from the NPFC in total losses alleged for 2010 and 2011.⁵

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

¹ Optional OSLTF Claim Form, signed on 29 November 2011.

² Optional OSLTF Claim Form, signed on 29 November 2011.

³ Letter from Manager, Howl at the Moon, to the NPFC, 28 November 2011.

⁴ Optional OSLTF Claim Form, signed on 29 November 2011.

⁵ Optional OSLTF Claim Form, signed on 29 November 2011.

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, signed on 29 November 2011;
- Letter from the claimant to the NPFC, describing losses, 28 November 2011;
- Letter from Manager, Howl at the Moon, to the NPFC, 28 November 2011;
- Copy of check to the Claimant, showing total year to date earnings of \$10,971.10, 10/19/11;
- IRS Account Transcript, 2009, showing adjusted gross income of \$31,078.00;
- 2010 Form 1040A, showing adjusted gross income of \$20,699.00;
- 2010 Form 8863;
- 2010 Schedule M (Form 1040A or 1040);
- Beal, Melvin, *Oil Spill: Florida tourism threatened by oil leak*, www.wtsp.com, 2 May 2010;
- Ferguson, Vickie, *Tampa Bay tourism and the BP oil spill*, www.examiner.com, undated;

- Cashill, Margaret, *BP oil spill has tourism industry braced*, Tampa Bay Business Journal, 24 May 2010;
- Harrington, Jeff, *Economic fallout from BP oil spill will haunt Florida for years, reports say*, St. Petersburg Times, 29 July 2010;
- Trigaux, Robert, *For Florida tourism, greatest task is fighting perception of oil spill blackening its shores*, www.tampabay.com, 7 May 2010.

Prior to presentment to the NPFC, the Claimant presented two Second Quarter Interim Claims (ICQ22011a & ICQ22011b) to the RP/GCCF, seeking loss of profits and earnings damages in the amounts of \$12,000.00 and \$20,000.00.⁶ The Claimant was assigned Claimant ID # 3517501 and ICQ22011a, ICQ22011b were assigned GCCF Claim #'s 9373404 and 9407893 respectively.⁷ These claims were denied by the RP/GCCF.

The Claimant then presented Third and Fourth Quarter Interim Claims (ICQ32011 and ICQ42011) to the RP/GCCF, seeking loss of profits and wages damages in the amounts of \$12,000.00 and \$10,000.00 respectively.⁸ The claims were assigned Claim #'s 9413057 and 9504931.⁹ The RP/GCCF denied payment on the ICQ32011, but issued payment of \$25,622.11 on ICQ42011 in addition to offering the Claimant a final payment of \$5,000.00.¹⁰ As of the date of this determination, the Claimant has not accepted the final payment offer.¹¹

On 30 November 2011, the Claimant presented this claim to the NPFC, seeking \$28,000.00 in loss of profits and impairment of earning capacity damages.¹² Because the Claimant has first presented this claim to the RP/GCCF, and because the damages presented to the RP/GCCF exceed the amount of damages now presented to the NPFC, the NPFC may fully adjudicate this claim in the amount of \$28,000.00 for damages allegedly stemming from effects of the Deepwater Horizon.¹³

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 discharge of oil caused by the Deepwater Horizon oil spill.

The Claimant alleged that the oil spill caused decreases in tourism in Tampa, which resulted in her loss of \$9,000.00 in earnings in 2010 and \$19,000.00 in 2011.¹⁴ On 10 December 2011, the NPFC sent the Claimant a letter via certified mail, requesting that the Claimant provide certain

⁶ GCCF United States Coast Guard Report, 11 January 2012.

⁷ GCCF Claimant Status, accessed on 21 November 2011.

⁸ GCCF United States Coast Guard Report, 11 January 2012.

⁹ GCCF United States Coast Guard Report, 11 January 2012.

¹⁰ GCCF Claimant Status, accessed on 23 January 2012.

¹¹ GCCF Claimant Status, accessed on 23 January 2012.

¹² Optional OSLTF Claim Form, signed on 29 November 2011.

¹³ 33 C.F.R. § 136.103(a).

¹⁴ Optional OSLTF Claim Form, signed on 29 November 2011.

additional information in support of this claim.¹⁵ Among other items, the NPFC requested that the Claimant provide copies of pay stubs to show that the Claimant's earnings remained steady through the first months of 2010, and only dropped in the period following the Deepwater Horizon oil spill.¹⁶ The Claimant was asked to provide the requested documentation within 14 days of the date of the NPFC request.¹⁷ As of the date of this determination, the Claimant has not responded to this request. Without pay stubs or other records to document the Claimant's earnings prior to the oil spill, the NPFC does not have information sufficient to prove that the Claimant's alleged loss of income began after the Deepwater Horizon oil spill.

A letter provided by the Claimant indicated that management at Howl at the Moon attributed a loss of business to the effects of the Deepwater Horizon oil spill on tourism in Tampa. The NPFC contacted Howl at the Moon, and was informed by a manager that the restaurant's primary loss of business was caused by a lack of cruise ship customers from cruises docked in Channelside.¹⁸ The NPFC requested that the Claimant provide documentation to indicate the extent and nature of the loss allegedly sustained by the restaurant, but the Claimant failed to respond to this request.¹⁹

Furthermore, research conducted by the NPFC indicates that the Tampa Port Authority reported an increase in total passengers arriving by cruise ship in 2010 over 2009: 793,900 in 2009, as compared to 845,900 in 2010.²⁰ Furthermore, although the total number of tourists visiting Tampa in 2010 decreased as compared to 2009, overall tourist spending actually increased in 2010.²¹

The Claimant has, therefore, failed to prove that her alleged losses resulted from a reduction in tourism, specifically tourism related to cruise ship traffic, affected either her or her employer Howl at the Moon. Accordingly, this claim is denied because the Claimant has failed to meet her burden to demonstrate (1) that she sustained an uncompensated loss in the amount of \$28,000.00, 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: *1/25/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁵ At the Claimant's request, the NPFC also emailed the Claimant a copy of this letter on 19

¹⁶ NPFC request for additional information, 10 December 2011.

¹⁷ NPFC request for additional information, 10 December 2011.

¹⁸ Letter from Manager, Howl at the Moon to the NPFC, 28 November 2011; PHONECONE: NPFC and Manager, Howl at the Moon, 28 November 2011.

¹⁹ NPFC request for additional information, 10 December 2011.

²⁰ Tampa Bay Convention and Visitors Bureau statistics available at, <http://www.visittampabay.com/includes/media/docs/2010-Research-Synopsis.pdf>, accessed on 23 January 2012.

²¹ Tampa Bay Convention and Visitors Bureau indicates that 15.05 million tourists visited Tampa in 2010, compared to 13.93 in 2009. However, overall spending increased from \$2.9 million in 2009 to \$3.2 million in 2010.