

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 1570 0001 4802 8351

5890/DWHZ
05 January 2012

Monique Renee Wyche
[REDACTED]

Re: Claim Number: N10036-1601

Dear Ms. Wyche:

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 N10036-1601 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 N10036-1601.

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	N10036-1601
Claimant	Monique Renee Wyche
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$50,000.00

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 08 December 2011, Monique Renee Wyche, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$50,000.00 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 employed in the entertainment industry by Sammy's Gentlemen's Club (Sammy's) at two locations-Fort Walton Beach, Florida and Mobile, Alabama.¹ The Claimant asserts that due to the Deepwater Horizon oil spill, the tourism industries in Fort Walton Beach and Mobile collapsed.² The collapse of the tourism industries resulted in suppressed patronage at Sammy's in both Fort Walton Beach and Mobile.³ As a result of the reduced patronage, the Claimant asserts she suffered reduced income.⁴

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$50,000.00.

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).

¹ Letter from the Claimant to the GCCF dated 14 April 2011.

² Optional OSLTF Claim Form signed 02 December 2011 and received 08 December 2011.

³ Optional OSLTF Claim Form signed 02 December 2011 and received 08 December 2011.

⁴ Optional OSLTF Claim Form signed 02 December 2011 and received 08 December 2011.

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:

- (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 Oil Spill Liability Trust Fund (OSLTF) Claim Form dated 02 December 2011 and received 08 December 2011;
- Letter from the Claimant;
- Letter from the Claimant authorizing Renee Bridges to act on her behalf;
- News article titled 'Feds blame BP, other companies for 2010 Gulf spill' dated 14 September 2011;
- GCCF Deficiency Letter dated 30 November 2011;
- GCCF Re-Review Election Form dated 14 September 2011;
- Letter from the Claimant's Authorized Representative dated 14 September 2011;
- Document listing the monthly income and actual receipts for the Claimant for the years 2009 and 2010;
- 2009 Form 1099-MISC from Gold, Inc.;
- 2009 Form 1099-MISC from Pias, Inc.;
- Pias, Inc. Transaction History Report for period 06 January 2010-24 June 2010;
- Gold, Inc. Transaction History Report for period 30 June 2009-22 December 2009;
- GCCF Determination Letter dated 24 August 2011;

- Letter from Gold, Inc. dated 05 August 2011;⁵
- GCCF Re-Review Determination Letter dated 25 July 2011;
- GCCF Determination Letter dated 20 July 2011;
- GCCF Deficiency Letter dated 12 July 2011;
- Letter from the Claimant dated 06 January 2011;
- Letter from the Claimant to the GCCF dated 14 April 2011.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Month Claim with the GCCF for loss of profits and impairment of earnings capacity on 04 October 2010 in the amount of \$12,390.00.⁶ The Claimant was assigned Claimant ID # 3095542 and Claim ID # 150148. The EAP Claim was denied on 07 December 2010.⁷ Additionally, the Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011) with the GCCF for loss of profits and impairment of earnings capacity on 04 January 2011 in the amount of \$50,000.00.⁸ The Claimant was assigned Claim ID # 9142431. As of the writing of this determination, the GCCF has determined that the Claimant did not establish a loss and a determination letter has been mailed to the Claimant regarding that decision.⁹

Additionally, the Claimant filed an Interim Payment Claim Quarter III 2011 (ICQ32011) with the GCCF for loss of profits and impairment of earnings capacity on 09 August 2011 in the amount of \$50,000.00.¹⁰ The Claimant was assigned Claim ID # 9434169. The ICQ32011 is in the re-review process and no determination has yet been issued upon it.¹¹ Additionally, the Claimant filed an Interim Payment Claim Quarter III 2011 (ICQ32011) with the GCCF for loss of profits and impairment of earnings capacity on 11 August 2011 in the amount of \$50,000.00.¹² The Claimant was assigned Claim ID # 9435230. The ICQ32011 is in the re-review process and no determination has yet been issued upon it.¹³

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, Sammy's experienced a reduction in patronage that resulted in the Claimant suffering reduced income. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1601 considers and addresses the earnings claimed in the claim presented to the responsible party; specifically GCCF Claim #'s 150148 (EAP), 9142431 (ICQ12011), 9433169 (ICQ32011) and 9435230 (ICQ32011).

NPFC Determination

The claim is denied. 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 Claimant's submission to the NPFC included a letter from the Claimant's employer, Sammy's, which listed the Claimant's earnings for April 2009-August 2009.¹⁴ It also contained information regarding the Claimant's income from April 2010-August 2010.¹⁵ The NPFC contacted Sammy's to confirm the information submitted in the letter. The NPFC was informed that the letter submitted to the NPFC is not

⁵ Regarding the authenticity of the letter, see discussion NPFC Determination below.

⁶ Report from the GCCF dated 23 December 2011.

⁷ GCCF Denial Letter dated 07 December 2010.

⁸ Report from the GCCF dated 23 December 2011.

⁹ Report from the GCCF dated 23 December 2011.

¹⁰ Report from the GCCF dated 23 December 2011.

¹¹ GCCF Claimant Status page.

¹² Report from the GCCF dated 23 December 2011.

¹³ GCCF Claimant Status page.

¹⁴ Letter from Gold, Inc. dated 05 August 2011.

¹⁵ Letter from Gold, Inc. dated 05 August 2011.

authentic.¹⁶ The NPFC was informed that although Sammy's did provide a letter to the Claimant regarding the effect of the Deepwater Horizon oil spill on Sammy's business, the letter that the Claimant presented to the NPFC was altered to include information regarding the Claimant's nightly income.¹⁷ Indeed, Sammy's provided the NPFC with the authentic letter provided to the Claimant.¹⁸ This letter does not include a discussion of the Claimant's nightly earnings or cash receipts at all.¹⁹

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

The Claimant's request for \$50,000.00 is hereby denied because the evidence presented by the Claimant vice the detailed information provided by the Claimant's employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order for the Claimant to try to obtain funds from the Federal Government under false pretenses.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *1/5/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁶ PHONECON between the NPFC and Sammy's dated 03 January 2012 and Email from Sammy's to the NPFC dated 04 January 2012.

¹⁷ PHONECON between the NPFC and Sammy's dated 03 January 2012 and Email from Sammy's to the NPFC dated 04 January 2012.

¹⁸ Letter from Sammy's dated 27 July 2011.

¹⁹ Letter from Sammy's dated 27 July 2011.