

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5855

5890/DWHZ  
21 December 2011

Mr. Clement J. DeCristafaro



Re: Claim Number: N10036-1603

Dear Mr. DeCristafaro:

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 N10036-1603 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 N10036-1603.

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  
Document Submission List

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1603
Claimant	Mr. Clement J. DeCristofaro
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$5,000.00

### ***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 9 December 2011, Mr. Clement J. DeCristofaro (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,000.00 in loss of profits and earning capacity damages that allegedly resulted from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant works as a hair stylist in a salon “less than a mile from the shoreline of the Gulf of Mexico” in Naples, Florida.<sup>2</sup> The Claimant alleged that he “started seeing a loss of income within the following week of the oil spill.”<sup>3</sup> According to the Claimant, a general decrease in tourism in Naples resulted in fewer visitors to the hair salon, causing the Claimant to sustain a \$5,000.00 loss of earnings.<sup>4</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 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

<sup>1</sup> Optional OSLTF Claim Form, signed 29 November 2011.

<sup>2</sup> Letter from the Claimant, signed 20 November 2011.

<sup>3</sup> Letter from the Claimant, signed 20 November 2011.

<sup>4</sup> Optional OSLTF Claim Form,

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**

See enclosure

Prior to presentation to the NPFC, the Claimant presented a Third Quarter Interim Claim (ICQ32011) to the RP/GCCF, seeking loss of profits and wages damages.<sup>5</sup> The Claimant was assigned Claimant ID # 3541542 and the ICQ32011 was assigned claim # 9446169.<sup>6</sup> This claim was denied by the RP/GCCF on 9 September 2011.<sup>7</sup>

On 9 December 2011, the Claimant presented this claim to the NPFC, seeking \$5,000.00 in loss of profits and earning capacity damages.<sup>8</sup> The NPFC may adjudicate this claim to the extent that the damages now before the NPFC were first presented to the RP/GCCF. Any damages now presented to the NPFC, which exceed the amount of damages presented to the RP/GCCF, are denied for improper presentation.<sup>9</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.

This claim is denied because the Claimant failed to demonstrate that he sustained an actual financial loss, or that his alleged loss was caused by the discharge of oil, resulting from the Deepwater Horizon oil spill.

The Claimant alleged that a decrease in tourism in Naples, Florida caused a decrease in patronage at the hair salon where the Claimant is employed, resulting in the Claimant's alleged loss of \$5,000.00.<sup>10</sup> To support the loss, the Claimant presented a line graph depicting changes in the Claimant's weekly income in 2010, as well as pay stubs, which show that the Claimant's income fluctuated significantly throughout 2010, but was generally higher from January – April 2010 as compared to April – December 2010.

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<sup>5</sup> GCCF Claimant Status, accessed on 20 December 2011.

<sup>6</sup> GCCF Claimant Status, accessed on 19 December 2011.

<sup>7</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 9 September 2011.

<sup>8</sup> Optional OSLTF Claim Form, signed 29 November 2011.

<sup>9</sup> 33 C.F.R. § 136.103(a).

<sup>10</sup> Optional OSLTF Claim Form, signed 29 November 2011.

The NPFC contacted the Claimant's employer, who confirmed the Claimant's assertions that business at the hair salon is dependent on tourism and is highly seasonal.<sup>11</sup> The employer identified the busy season as occurring from January – April.<sup>12</sup> The Claimant has not provided evidence to show that the Claimant's lower earnings from April – December 2010 were caused by the oil spill, and were not simply a reflection of the seasonality of the business. Furthermore, the Claimant's income significantly fluctuates throughout the year, making it unclear whether or not the Claimant actually sustained a loss of income in 2010.

Additionally, documentation provided by the Claimant is insufficient to establish that any loss the Claimant may have incurred was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. The Claimant provided a letter from his employer, stating that the business sustained losses due to effects of the oil spill.<sup>13</sup> The Claimant also provided two news articles, citing concern regarding effects of the oil spill on Gulf Coast tourism.<sup>14</sup>

However, the Claimant does not provide evidence of actual losses incurred by the hair salon where the Claimant is employed, and fails to identify any particular business that was lost due to lack of tourism. In a follow-up conversation regarding the employee letter described above, the employer stated that they have not submitted a business claim to the RP.<sup>15</sup> Further, the Claimant has not provided documentation to show that tourism in Naples, as opposed to the Gulf Coast generally, was actually affected by the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$5,000.00, 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: *12/21/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>11</sup> PHONECON: NPFC Staff and manager, Hair Creations, Inc., 19 December 2011.

<sup>12</sup> PHONECON: NPFC Staff and manager, Hair Creations, Inc., 19 December 2011.

<sup>13</sup> Letter from Hair Creations, Inc., 13 September 2011.

<sup>14</sup> Skipp, Catherine, *Florida Worries About Effect on Tourism*, New York Times, 19 May 2010; [www.news-press.com](http://www.news-press.com), *Gulf oil spill influences Southwest Florida tourism*, undated.

<sup>15</sup> PHONECON: NPFC Staff and manager, Hair Creations, Inc., 19 December 2011.

**N10036-1603**  
**Claimant's submission to the OSLTF**

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed 29 November 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 9 September 2011;
- Letter from Hair Creations, Inc., 13 September 2011;
- Letter from the Claimant, describing losses, 20 November 2011;
- 2009 Form 1040, showing wages of \$50,456.00;
- 2009 Form W-2 Wage and Tax Statements;
- 2010 Form 1040, showing wages of \$34,697.00;
- 2010 Form W-2 Wage and Tax Statements;
- Line graph depicting pay fluctuations over 49 weeks;
- Pay Stub, 01/09/2010;
- Pay Stub, 01/19/2010;
- Pay Stub, 01/26/2010;
- Pay Stub, 02/02/2010;
- Pay Stub, 02/09/2010;
- Pay Stub, 02/16/2010;
- Pay Stub, 02/23/2010;
- Pay Stub, 03/02/2010;
- Pay Stub, 03/09/2010;
- Pay Stub, 03/16/2010;
- Pay Stub, 03/23/2010;
- Pay Stub, 03/30/2010;
- Pay Stub, 04/06/2010;
- Pay Stub, 04/13/2010;
- Pay Stub, 04/13/2010;
- Pay Stub, 04/20/2010;
- Pay Stub, 05/04/2010;
- Pay Stub, 05/08/2010;
- Pay Stub, 05/15/2010;
- Pay Stub, 05/22/2010;
- Pay Stub, 05/26/2010;
- Pay Stub, 06/08/2010;
- Pay Stub, 06/15/2010;
- Pay Stub, 06/22/2010;
- Pay Stub, 06/29/2010;
- Pay Stub, 07/13/2010;
- Pay Stub, 07/20/2010;
- Pay Stub, 07/27/2010;
- Pay Stub, 08/03/2010;
- Pay Stub, 08/10/2010;
- Pay Stub, 08/17/2010;
- Pay Stub, 08/24/2010;
- Pay Stub, 08/31/2010;

- Pay Stub, 09/07/2010;
- Pay Stub, 09/14/2010;
- Pay Stub, 09/21/2010;
- Pay Stub, 10/05/2010;
- Pay Stub, 10/12/2010;
- Pay Stub, 10/19/2010;
- Pay Stub, 10/26/2010;
- Pay Stub, 11/02/2010;
- Pay Stub, 11/09/2010;
- Pay Stub, 11/16/2010;
- Pay Stub, 11/23/2010;
- Pay Stub, 11/30/2010;
- Pay Stub, 12/07/2010;
- Pay Stub, 12/14/2010;
- Pay Stub, 12/21/2010;
- Pay Stub, 12/28/2010;
- Map of Hair Creations 1-River Chase;
- Skipp, Catherine, *Florida Worries About Effect on Tourism*, New York Times, 19 May 2010;
- [www.news-press.com](http://www.news-press.com), *Gulf oil spill influences Southwest Florida tourism*, undated;