

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5879

5890/DWHZ  
27 December 2011

Mrs. Sonia Espineira  
[REDACTED]

Re: Claim Number: N10036-1604

Dear Mrs. Espineira:

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 N10036-1604 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 N10036-1604.

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	N10036-1604
Claimant	Ms. Sonia Espineira
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$40,000.00

### ***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, Ms. Sonia Espinera, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$40,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is a co-owner of Deco Truss Company, Inc. (Deco), a roof truss and building material supplier in south Florida, operating in Miami and the Florida Keys.<sup>2</sup> The Claimant alleged that the Deepwater Horizon oil spill “caused [the] Florida Keys construction market to stop.”<sup>3</sup> The Claimant alleged that due to the loss of business, the Claimant “did not take pay/salary to help keep employees employed.”<sup>4</sup>

The Claimant stated that although Deco has been compensated by the GCCF for its corporate losses, the Claimant has not been compensated for \$40,000.00 in salary allegedly lost due to effects of the Deepwater Horizon oil spill, which she now seeks from the NPFC.<sup>5</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:

<sup>1</sup> Optional OSLTF Claim Form, signed 9 December 2011.

<sup>2</sup> Letter from the Claimant to the GCCF, dated 28 October 2011, indicating that the Claimant owns 50% of Deco Truss Company, Inc.

<sup>3</sup> Optional OSLTF Claim Form, signed 9 December 2011.

<sup>4</sup> Optional OSLTF Claim Form, signed 9 December 2011.

<sup>5</sup> Email from the Claimant to the NPFC 9 December 2011; Optional OSLTF Claim Form, signed 9 December 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 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 9 December 2011;
- Email from the Claimant to the NPFC, 9 December 2011;
- GCCF Determination Letter on Final Payment Claim, 13 October 2011;
- GCCF Final Payment Election Form, 13 October 2011;
- GCCF Re-Review Election Form, 13 October 2011;
- GCCF Interim Claim Submission Form, seeking lost earnings or profits in the amount of \$100,000.00;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, Claimant ID 3517361, 18 October 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, Claimant ID 3517361, 10 June 2011;
- Chart, showing the Claimant's monthly earnings from May – December 2008, 2009, 2010;
- Letter from the Claimant to the GCCF, describing losses, 28 October 2011;
- Deco Truss Company, Inc., Summary Report by Employee: Espineira, Sonia; Monthly reports, January 2008- July 2011;

- 2008 W-2 Wage and Tax Statement, showing wages of \$85,663.90;
- 2009 W-2 Wage and Tax Statement, showing wages of \$71,117.20;
- 2010 W-2 Wage and Tax Statement, showing wages of \$32,326.00;
- Chart showing the Claimant's pay history, 28 October 2011;
- Letter from the Claimant to the GCCF, requesting re-review of GCCF denial, 9 June 2011;
- GCCF Determination Letter on Final Payment Claim, Claimant ID 3488160, 13 October 2011;
- GCCF Final Payment Election Form, 13 October 2011;

#### Presentment of Business Claim to the GCCF

Prior to presentment of this Claim to the NPFC, the Claimant presented a Full Review Final (FRF) Claim to the GCCF for losses sustained by Deco. Deco, as a corporate claimant, was assigned Claimant ID # 3488160 and the FRF claim was assigned Claim # 9222565. The GCCF issued payment on this claim on 13 October 2011 in the amount of \$98,132.42.<sup>6</sup> The Claimant, acting in her capacity as co-owner of the business, executed a Release and Covenant Not to Sue in return for Final Payment on 19 October 2011.<sup>7</sup>

#### Presentment of Individual Claim to the GCCF and NPFC

Prior to presentment of this claim to the NPFC, the Claimant presented a Full Review Final (FRF) Claim to the RP/GCCF seeking loss of profits and impairment of earning capacity damages in the amount of \$100,000.00.<sup>8</sup> The Claimant was assigned Claimant ID # 3517361 and the FRF claim was assigned claim # 9372669.<sup>9</sup> This claim was denied by the RP/GCCF on 10 June 2011.<sup>10</sup>

On 9 December 2011, the Claimant presented this claim to the NPFC, seeking loss of profits damages in the amount of \$40,000.00.<sup>11</sup> Specifically, the Claimant seeks to recover her lost salary, which she alleges is separate and distinct from lost corporate income.<sup>12</sup>

Because this claim addresses the same losses as previously presented to the RP/GCCF, and because the claimed damage amount does not exceed the amount previously presented to the RP/GCCF, the NPFC may fully adjudicate this claim in the amount of \$40,000.00 as currently before the NPFC.<sup>13</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.

<sup>6</sup> GCCF Determination Letter dated 13 October 2011.

<sup>7</sup> GCCF Release and Covenant Not to Sue Letter signed on 19 October 2011.

<sup>8</sup> GCCF Claimant Status page, accessed on 22 December 2011.

<sup>9</sup> GCCF Claimant Status page, accessed on 22 December 2011.

<sup>10</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, Claimant ID 3517361, 10 June 2011.

<sup>11</sup> Optional OSLTF Claim Form, signed on 9 December 2011.

<sup>12</sup> Email from the Claimant to the NPFC, 9 December 2011.

<sup>13</sup> 33 C.F.R. § 136.103(a).

This claim is denied because the Claimant (1) has executed a Release and Covenant Not to Sue, barring any further recovery for injuries allegedly resulting from effects of the Deepwater Horizon oil spill, and (2) has failed to demonstrate that any losses the Claimant sustained were caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

#### 1. Release of rights to the RP/GCCF

The Claimant first submitted a claim to the RP/GCCF to recover losses allegedly sustained by Deco Truss Company, Inc. (Deco).<sup>14</sup> The Claimant, acting in her capacity as a co-owner of the business, executed a Release and Covenant Not to Sue in return for final payment in the amount of \$98,132.42.<sup>15</sup>

By signing this document, the Claimant released to the RP/GCCF, any rights to additional recovery regarding damages allegedly resulting from effects of the Deepwater Horizon oil spill.<sup>16</sup> The Release, signed by the Claimant on 19 October 2011, explicitly applies to “heirs, beneficiaries, agents, estates, executors, administrators, personal representatives, subsidiaries, parents, affiliates, partners limited partners, members, joint ventures, *shareholders*, predecessors, successors, assigns, insurers, and attorneys” (emphasis added).<sup>17</sup>

As a co-owner and officer of Deco, the Claimant is a shareholder, and has therefore released all rights regarding damages allegedly resulting from the Deepwater Horizon oil spill, to the RP/GCCF.

Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the Fund.

#### 2. Failure to prove loss of profits due to the Deepwater Horizon oil spill

In order to prove this claim for loss of profits damages under OPA, the Claimant would be required to furnish evidence sufficient to establish that (1) Deco sustained a certain amount of financial loss, (2) the loss resulted in the corporation being unable to continue to pay the Claimant’s salary, and (3) the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant stated that the “oil spill caused [the] Florida Keys construction market to stop.”<sup>18</sup> However, the Claimant has failed to provide any documentation to support this assertion or to indicate the extent of the financial loss allegedly sustained by Deco as a result of the oil spill.

Rather, as proof that the Deepwater Horizon oil spill caused Deco to sustain a financial loss, the Claimant provided evidence of payments made to Deco by the GCCF. The Claimant stated that a GCCF payment offer letter “proves Deco Truss Company Inc. was [a]ffected, because again, Deco Truss Company, Inc. did receive payment.”<sup>19</sup> However, proof of payment by the RP/GCCF does not prove that the Claimant’s business sustained a loss of profits that would be compensable under the Oil Pollution Act of 1990 (OPA).

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<sup>14</sup> Deco Truss Company, Inc., GCCF Claimant ID 3488162.

<sup>15</sup> GCCF Release and Covenant Not to Sue, signed on 19 October 2011.

<sup>16</sup> GCCF Release and Covenant Not to Sue, signed on 19 October 2011.

<sup>17</sup> GCCF Release and Covenant Not to Sue, signed on 19 October 2011.

<sup>18</sup> Optional OSLTF Claim Form, signed on 9 December 2011.

<sup>19</sup> Email from the Claimant to the NPFC, 9 December 2011.

Furthermore, because the Claimant has not provided evidence regarding losses allegedly sustained by Deco, the NPFC is unable to calculate the extent to which the Claimant's losses as an officer of the corporation may have been compensated by payments made by the RP/GCCF.

Based on the foregoing, this claim is denied because (1) the Claimant has signed a Release and Covenant not to Sue, releasing all rights regarding these alleged injuries to the RP/GCCF, and (2) the Claimant has failed to prove that any losses she may have sustained were caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/27/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: