

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  
05 January 2012

Accounting & Bookkeeping Services  
ATTN: [REDACTED]  
808 Cardinal Ave.  
Palm Harbor, FL 34683

Re: Claim Number: N10036-1611

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 the claim number N10036-1611 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 N10036-1611.

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: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1611
Claimant	Accounting and Bookkeeping Services
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$14,676.11

***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 16 December 2011, Ms. Karen J. Mills, on behalf of Accounting & Bookkeeping Services (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$14,676.11 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant owns and operates a small accounting business in Palm Harbor, Florida. The Claimant works primarily as a subcontractor, and secures 95% of her business from a single accounting firm.<sup>2</sup> The Claimant alleged that public perception of oil pollution in Pinellas County, Florida, resulted in a reduction in tourism, which caused certain clients of the accounting firm to sustain losses.<sup>3</sup> Following the Deepwater Horizon oil spill, the primary accountant renegotiated rates with certain clients and began to charge them at lower rates than previously agreed upon.<sup>4</sup> In a letter to the Claimant, the primary accountant wrote,

I must pay you a reduced rate on the following clients that have been directly affected by the B.P. Oil Spill due to a major reduction in tourism. These clients have not been able to pay me my normal rate; therefore, this loss will have to flow to you as well.<sup>5</sup>

Based on earnings in previous years, the Claimant calculated that her revenue should increase by 6.64% each year.<sup>6</sup> The Claimant used this estimated percentage increase to calculate projected sales for 2010 and 2011.<sup>7</sup>

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<sup>1</sup> Optional OSLTF Claim Form, signed on 7 December 2011..

<sup>2</sup> Hardship Letter Due to BP Oil Spill.

<sup>3</sup> Letter from the Claimant to the NPFC, 7 December 2011.

<sup>4</sup> Letter from Demetrios Moustopoulos to the Claimant, 1 July 2010; PHONECON: NPFC Staff and Mr. Moustopolous, 3 January 2012.

<sup>5</sup> Letter from Demetrios Moustopoulos to the Claimant, 1 July 2010.

<sup>6</sup> Document titled, "Analysis of 2009 to 2008 using the 6.64% increase to determine projected sales"

<sup>7</sup> Document titled, "Analysis of 2009 to 2008 using the 6.64% increase to determine projected sales"

## ***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 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:

See Enclosure.

Prior to presentment of this claim to the NPFC, the Claimant presented a Second Quarter Interim Payment Claim (ICQ22011) to the RP/GCCF seeking loss of profits and wages damages in the amount of \$9,953.71.<sup>8</sup> The Claimant was assigned Claimant ID # 3528353 and the ICQ22011 was assigned Claim # 9407872.<sup>9</sup> This claim was denied by the RP/GCCF on 12 July 2011.<sup>10</sup>

The Claimant then presented a Third Quarter Interim Payment Claim (ICQ32011) to the RP/GCCF, seeking to recover lost profits in the amount of \$4,722.50.<sup>11</sup> The ICQ32011 was assigned Claim # 9437839 and was denied by the RP/GCCF on 12 August 2011.<sup>12</sup>

On 16 December 2011, the Claimant presented this claim to the NPFC, seeking loss of profits damages in the amount of \$14,676.11.<sup>13</sup> According to the Claimant's submission to the NPFC, the losses presented in this claim are losses in revenue sustained from the time of the oil spill until 30 June 2011.<sup>14</sup> Because the Claimant has previously presented a claim for the same damages to the RP/GCCF, the NPFC may fully adjudicate this claim, in the amount of \$14,676.11.<sup>15</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.

As an initial matter, the NPFC notes that under OPA's Loss of Profits and Earning Capacity damage category, the OSLTF is available to pay damages for losses of *profits* resulting from the Deepwater Horizon oil spill, and not losses in revenue, as presented by the Claimant.<sup>16</sup> Therefore, the remainder of this determination addresses the Claimant's alleged losses insofar as they represent losses or reduction in profits. All other damages presented by the Claimant are initially denied.

The Claimant alleged that the oil spill negatively affected tourism in Pinellas County, which caused certain clients of the primary accountant to sustain losses. The Claimant alleged that as a subcontractor, these losses were passed on to her.

In order to establish that the Claimant sustained an OPA-compensable loss of profits in this case, the Claimant must provide evidence sufficient to demonstrate (1) that certain clients actually sustained quantifiable losses, (2) that these losses were caused by the oil discharged during the Deepwater Horizon oil spill, (3) that the losses sustained by certain clients rendered them unable to continue to pay the primary accountant, and (4) that the primary accountant was unable to continue to pay the Claimant at previously agreed upon rates. Further, evidence submitted in

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<sup>8</sup> GCCF Interim Claim Submission, 30 June 2011.

<sup>9</sup> GCCF Claimant Status, accessed on 29 December 2011.

<sup>10</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 12 July 2011.

<sup>11</sup> GCCF Interim Claim Submission, 30 September 2011.

<sup>12</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 12 August 2011.

<sup>13</sup> Optional OSLTF Claim Form, signed on 7 December 2011, indicates that the Claimant seeks \$9,953.61 plus \$4,722.50 from the NPFC.

<sup>14</sup> Optional OSLTF Claim Form, signed on 7 December 2011; GCCF Interim Claim Submission, 30 June 2011, indicate that the Claimant calculated loss of revenue rather than loss of profits.

<sup>15</sup> 33 C.F.R. § 136.103(a).

<sup>16</sup> 33 C.F.R. § 136.231.

support of item (4) above would have to indicate the employer's inability to pay, rather than his independent business decision not to pay, previously negotiated contractual rates with the Claimant for the accounting services she was hired to provide.

The Claimant has not provided evidence sufficient to demonstrate that particular clients sustained certain amounts of losses, or to show that the losses allegedly sustained by the clients resulted from the discharge of oil caused by the Deepwater Horizon oil spill. The Claimant has also not provided evidence sufficient to support the Claimant's assertion that tourism in Pinellas County was negatively impacted by the Deepwater Horizon oil spill. In fact, county statistics indicate that the oil spill did not cause a reduction in tourism in Pinellas County in 2010 or 2011.

The 2010 Annual Visitors Profile for Pinellas County indicates that the number of visitors to the county in May, June, July and August 2010, actually increased as compared to those months of 2009.<sup>17</sup> Likewise, the Visitors Profile indicates that expenditures in the spring and summer months of 2010, did not drop, but remained at 2009 levels.<sup>18</sup> These statistics are further supported by Pinellas County Bed Tax collections, which indicate year over year increases starting in July of 2010 and continuing through 2011.<sup>19</sup>

Documentation provided by the Claimant as well as independent research conducted by the NPFC, fails to indicate (1) that oil discharged during the Deepwater Horizon oil spill caused a reduction in tourism, or (2) that a reduction in tourism caused the Claimant to sustain a loss of profits.

This claim is therefore denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss of profits in the amount of \$14,676.11, 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: *1/5/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>17</sup> St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>, at 6. Accessed on 3 January 2012.

<sup>18</sup> St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, Available at, [www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf](http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf), at 7. Accessed on 3 January 2012.

<sup>19</sup> Pinellas County, CVB statistics, Bed Tax Information. Available at, [www.pinellascvb.com/cms/index.php?id=6](http://www.pinellascvb.com/cms/index.php?id=6). Accessed on 3 January 2012.

**The Claimant's Submission to the OSLTF  
Claim N10036-1611**

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

- Optional OSLTF Claim Form, signed on 7 December 2011;
- Letter from the Claimant to the NPFC describing prior dealings with the GCCF, 7 December 2011;
- TBN Weekly, *Oil Spill update, Pinellas County prepares to wait*, 14 June 2010;
- St. Petersburg Times, *Oil spill puts Florida's tourism industry on edge*, 30 April 2010;
- St. Petersburg Times, *\$1 million ad campaign will fight belief that oil spill affected Pinellas beaches*, 27 April 2011;
- Testimony to the House Subcommittee on Commerce, Trade, and Consumer Protection, "The BP Oil Spill and Gulf Coast Tourism: Assessing the Impact," 27 July 2010;
- Support Data for Testimony to the House Subcommittee on Commerce, Trade and Consumer Protection, "The BP Oil Spill and Gulf coast tourism: Assessing the Impact";
- GCCF Interim Claim Submission, filed on 30 July 2011, seeking \$9,953.71 in lost earnings;
- 2010 Monthly Revenue chart;
- 2009 Monthly Revenue chart;
- 2008 Monthly Revenue chart;
- "Revenue analysis-pre-spill period versus post-spill period from 2008 to 2010";
- "Revenue analysis-pre-spill period versus post-spill period from 2008 to 2010";
- Calculation of Loss of Income;
- Analysis of 2009 to 2008 using the 6.64% increase to determine projected sales;
- Copy of the Claimant's driver's license;
- Copy of the Claimant's social security card;
- Document showing location of the Claimant's office and proof of ownership;
- Map showing location of the Claimant's business in Palm Harbor, Florida;
- 2010 Form 1040, showing adjusted gross income of \$12,866.00;
- 2010 Schedule A (Form 1040);
- 2010 Schedule C (Form 1040) showing gross sales of \$43,200.00, and net profit of \$16,434.00;
- 2010 Schedule EIC (Form 1040A or 1040);
- 2010 Form 8812;
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Form 8829;
- 2010 Forms 1099-MISC (Moustopoulos and Company, Inc.; P & L Bookkeeping, Inc.);
- 2009 Form 1040, showing adjusted gross income of \$17,827.00;
- 2009 Schedule C (Form 1040), showing gross sales of \$45,749.00 and net profit of \$19,183.00;
- 2009 Schedule SE (Form 1040);
- 2009 Schedule EIC (Form 1040A or 1040);
- 2009 Form 8812;
- 2009 Form 8829;
- 2009 Schedule M (Form 1040A or 1040);
- 2009 Form 1099-MISC (Moustopoulos and Company, Inc.);
- 2008 Form 1040, showing adjusted gross income of \$15,835.00;

- 2008 Schedule C (Form 1040), showing gross sales of \$41,810.00 and profit of \$0.00. (Rep Tile, LLC);
- 2008 Schedule C (Form 1040), showing gross sales of \$42,900.00 and net profit of \$17,039.00;
- 2008 Schedule SE (Form 1040);
- 2008 Schedule EIC (Form 1040A or 1040);
- 2008 Form 8812;
- 2008 Form 8829;
- 2008 Form 1099-MISC (George G. Pappas; Moustopoulos & Company, Inc.);
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 12 July 2011, Claimant ID 3528353;
- Additional documentation for Claim ID 3528353, 12 July 2011;
- Letter from Demetrios Moustopoulos to the Claimant, re: reduced rates due to clients affected by B.P. Oil Spill, 1 July 2010;
- Letter from Demetrios Moustopoulos to the Claimant, re: reduced rates due to clients affected by B.P. Oil Spill, 1 July 2010;
- Chart titled “loss of earnings due to BP Oil Spill”;
- P and L Bookkeeping, Inc. invoices, Spongeorama’s Sponge Factory, LLC, 2010;
- P and L Bookkeeping, Inc. invoices, Spongeorama’s Cruise Lines, Inc., 2010;
- P and L Bookkeeping, Inc. invoices, Kitsos Land, LLC, 2010;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 12 August 2011;
- GCCF Interim Payment Claim Form, seeking lost earnings or profits of \$4,722.50, 30 September 2011.
- Letter from the Claimant to the GCCF, 12 August 2011;
- Attachment A, “Establishing Evidence of a Connection to the Spill”;
- Attachment C, “Financial Test”;
- Additional Documentation for Claim ID 3528353, 12 July 2011;
- Letter from Demetrios Moustopoulos to the Claimant, 1 July 2010;
- Letter from Demetrios Moustopoulos to the Claimant, 1 July 2010;
- Chart showing loss of earnings due to BP oil spill, May 1, 2010 to June 30, 2011;
- Invoice, P and L Bookkeeping, Inc., Forever Young Boutique and Accessories, Inc., 2011;
- Invoices, P and L Bookkeeping, Inc., Kitsos Land LLC, 2011;
- Invoices, P and L Bookkeeping, Inc., Spongeorama’s Cruise, Inc. 2011;
- Invoices, P and L bookkeeping, Inc., Spongeorama’s Sponge Factory, LLC, 2011;
- Attachment A: Explanation of Financial Performance Test;
- Revenue analysis-pre-spill period versus post-spill period from 2008 to 2010;
- Schedule C data and monthly revenues for the calendar year 2010;
- Schedule C Income and Monthly Revenues billed for the calendar year 2009;
- Schedule C Income and Monthly Revenues billed for the calendar year 2008;
- Hardship Letter due to BP Oil Spill;