

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
Staff Symbol: (CA)
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8900

5890/DWHZ
09 March 2012

PriMotion Visual Media LLC
Attn: [REDACTED]
1500 Lafayette Street, Suite 101
Gretna, LA 70053

Re: Claim Number: N10036-1619

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 your claim number N10036-1619 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 N10036-1619.

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	N10036-1619
Claimant	PriMotion Visual Media LLC
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$136,598.00

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 20 December 2011, Nicole Jefferson, on behalf of PriMotion Visual Media LLC (collectively, the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$136,598.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a graphics design, marketing, and print company located in Gretna, Louisiana.¹ The Claimant asserted that it had a contract in place, prior to the Deepwater Horizon oil spill, to provide services to Louisiana Rock Monsters (LRM).² However, the Claimant asserted that LRM cancelled its contract with the Claimant because of the financial strain LRM experienced due to the Deepwater Horizon oil spill. The Claimant stated that LRM relies on oyster production, which was negatively affected by the Deepwater Horizon oil spill.³ Furthermore, because of the lost earnings from the LRM contract, the Claimant was unable to fulfill the obligations of two other large contracts and experience further losses.⁴

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

¹ GCCF Interim Payment Claim Form.

² GCCF Interim Payment Claim Form.

³ Optional OSLTF Claim Form, dated 20 December 2011.

⁴ Optional OSLTF Claim Form, dated 20 December 2011.

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).

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 the claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 20 December 2011; and
- GCCF Interim Payment Claim Form.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF for loss of profits on 26 October 2010.⁵ The Claimant was assigned Claimant ID # 3289936 and Claim # 347104. This claim was denied by the GCCF on 15 December 2010.⁶ Additionally, the Claimant filed an Interim Payment Quarter II (ICQ22011) claim with the GCCF on 27 April 2011 in the amount of \$59,588.42 for loss of profits.⁷ The Claimant was assigned Claim #

⁵ Report from the GCCF, dated 21 February 2012.

⁶ Denial from the GCCF, dated 15 December 2010.

⁷ Report from the GCCF, dated 21 February 2012.

9370413. The Claimant received payment in the amount of \$1,000.00 on 23 September 2011.⁸ The Claimant also submitted two additional claims for loss of profits to the GCCF: a Full Review Final (FRF) claim for \$79,117.89 and a Interim Payment Quarter III (ICQ32011) claim for \$136,598.00.⁹ The Claimant accepted Final Payment from the GCCF in the amount of \$25,000.00 on 14 February 2012 and the GCCF has issued this Final Payment.¹⁰

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.

This claim is denied because (1) the Claimant accepted final payment from the RP/GCCF and, (2) the Claimant failed to prove she experienced a financial loss due to the Deepwater Horizon oil spill.

Final Payment

Based on the information available to the NPFC, the Claimant has accepted Final Payment from the RP/GCCF in the amount of \$25,000.00.¹¹ The Claimant has executed a Release and Covenant Not To Sue in return for this Final Payment.¹² By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.¹³ The Release executed by the Claimant specifically states:

[i]n consideration of payment in the amount of \$25,000.00, Claimant hereby releases and forever discharges, and covenants not to sue BP Exploration & Production Inc. (“BP”) and the other Released Parties, [. . .] for any losses, damages, costs, expenses, injuries, claims, causes of actions, liabilities, or other relief that Claimant has or may have [. . .] arising from or relating in any way to the [Deepwater Horizon oil spill].¹⁴

Furthermore, language in the document states that:

Released Parties means anyone who is or could be responsible or liable in any way for the [Deepwater Horizon oil spill] or any damages related thereto, whether a person, company or governmental entity, including (but not limited to) BP, other potentially responsible or liable parties, including but not limited to the parties listed in Attachment A to this Release, the federal Oil Spill Liability Trust Fund and any state or local fund, and each of their respective Affiliates as defined above.¹⁵

Therefore, the Claimant has waived rights to further recovery regarding the losses presented to the NPFC. Any payment from the OSLTF 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 OSLTF.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in her request for reconsideration. The

⁸ Determination Letter on Interim Payment/Final Payment Claim, dated 23 September 2011.

⁹ Report from the GCCF, dated 21 February 2012.

¹⁰ GCCF Claimant Status page, accessed 07 March 2012.

¹¹ GCCF Claimant Status page, accessed 07 March 2012.

¹² GCCF Release and Covenant Not to Sue, dated 15 February 2012.

¹³ GCCF Release and Covenant Not to Sue, dated 15 February 2012.

¹⁴ GCCF Release and Covenant Not to Sue, dated 15 February 2012.

¹⁵ GCCF Release and Covenant Not to Sue, dated 15 February 2012.

Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill.

Failure to Prove Loss

The only documentation submitted by the Claimant in support of the claim was an Optional OSLTF claim form and a GCCF Interim Payment Claim Form. On 20 December 2011, the NPFC sent the Claimant a letter requesting additional information to help substantiate her loss. The NPFC requested, among other things, federal tax returns from 2008-2010 and documentation of cancelled contracts. After a request from the Claimant, the NPFC resent this letter to the Claimant via email on 18 January 2012. To date, the NPFC has not received a response from the Claimant. Consequently, the Claimant failed to prove she experienced a financial loss as a result of the Deepwater Horizon oil spill.

This claim is denied because (1) the Claimant has accepted final payment from the RP/GCCF and is ineligible to recover from the OSTLF, and (2) the Claimant failed to prove she suffered a loss 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 Review: *3/9/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: