

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)
Phone: 1-800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8955

5890/DWHZ
26 March 2012

Tiffany Davies
[REDACTED]

Re: Claim Number: N10036-1639

Dear Mrs. Davies:

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 N10036-1639 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 N10036-1639.

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	N10036-1639
Claimant	Tiffany L. Davies
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$23,000.00

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 12 January 2012, Tiffany L. Davies (the Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$23,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is an events coordinator for the following food and entertainment establishments: Splitsville, Stump's Supper Club, Howl at the Moon, and Tinatapas in the Channelside Bay Plaza in Tampa, Florida.¹ The Claimant asserted that these companies experienced reduced business due to the Deepwater Horizon oil spill.² The Claimant specifically mentioned the proximity of the companies she serves to the Tampa Convention Center, major hotels, and The Port of Tampa (where cruise ships dock).³ Because of the alleged decrease in business in 2010, the Claimant asserted that her annual salary was reduced by \$18,000.00 in 2011.⁴ As well, the Claimant asserts that her commissions were reduced by \$5,000.00 in 2010 as a result of the Deepwater Horizon oil spill.⁵

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 Letter from the Claimant to "Whom It May Concern," dated 15 August 2011.

² Optional OSTLF Claim Form, dated 11 January 2012.

³ Letter from the Claimant to "Whom It May Concern," dated 26 October 2011.

⁴ Letter from the Claimant to "Whom It May Concern," dated 26 October 2011.

⁵ Letter from the Claimant to "Whom It May Concern," dated 26 October 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 her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 11 January 2012;
- GCCF determination letter pages 4, 6, 7, 9 (of 10), dated 18 November 2011;
- GCCF determination letter page 4 of "Coworkers Information," undated;
- Letter from the Claimant to "Whom It May Concern," dated 26 October 2011;
- Letter from the Claimant's employer (Millennium Management Group) to "Whom It May Concern," dated 26 October 2011;
- Calculation of the Claimant's commission loss;
- 2008, 2009, 2010, and 2011 Online Statement of the Claimant's earnings from RNHM, LLC;
- 2010 Online quarterly commission statements from RNHM, LLC, dated 13 January 2010, 05 May 2010, 28 July 2010, and 20 October 2010;

- 2011 Online quarterly commission statements from RNHM, LLC, dated 12 January 2011, 04 May 2011, 27 July 2011, and 19 October 2011;
- 2009 Spreadsheet entitled “Channelside Sales Commission”;
- 2010 Spreadsheet entitled “Channelside Sales Commission”;
- Paystubs from RNHM, LLC, dated 16 May 2010, 12 January 2011, 10 August 2011, 24 August 2011, ;
- Form 1040, Joint U.S. Individual Income Tax Return from 2008, 2009, and 2010;
- Letter from the Claimant to the GCCF, dated 21 November 2011, including GCCF Re-Review Election Form;
- Screenshot of the Claimant’s payroll records from 2010;
- Screenshot of the Claimant’s payroll records from 2011;
- Copy of the Claimant’s 2011 payroll schedule;
- Paystubs from RNHM, LLC for the period 27 December 2010 through 11 December 2011;
- Letter from the Claimant to “Whom It May Concern,” dated 15 August 2011;
- Letter from the Claimant’s employer (Millennium Management Group) to “Whom It May Concern”, dated 15 August 2011;
- Copy of Claimant’s Florida Driver’s License;
- Copy of map of the geographic location of the Claimant’s employer;
- Letter from the Claimant to “Whom It May Concern,” dated 19 December 2011; and
- 2011 Form W-2 from Pro. Employer Resources Inc.

Prior to presenting this claim to the NPFC, the Claimant filed a Full Review Final Payment (FRF) claim with the GCCF for loss of earnings in the amount of \$23,000.00 on 11 August 2011.⁶ The Claimant was assigned Claimant ID # 3537239 and Claim # 9435555. This claim was denied by the GCCF on 18 November 2011.⁷ The Claimant also filed three additional claims: a Full Review Final (FRF2) claim on 17 August 2011 under Claim # 9439024, an Interim III (ICQ32011) claim on 03 September 2011 for \$23,000.00 under Claim # 9435498, and an Interim IV (ICQ42011) claim on 26 December 2011 for \$23,000.00 under Claim # 9546615.⁸ These three claims are still under review with the GCCF.⁹

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant’s GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced reduced commissions and salary as an event coordinator in Tampa, Florida. The NPFC deems that the Claimant’s GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1639 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically, GCCF Claim #’s 9435555 (FRF1), 9439024 (FRF2), 9435498 (ICQ32011), and 9546615 (ICQ42011).

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.

⁶ Report from the GCCF dated 12 February 2012

⁷ Determination Letter on Interim Payment/Final Payment, dated 18 November 2011.

⁸ Report from the GCCF dated 12 February 2012

⁹ Report from the GCCF dated 12 February 2012

This claim is denied because (1) the Claimant failed to prove she experienced a loss in commissions, and (2) she failed to prove that any of her alleged losses were due to the Deepwater Horizon oil spill.

Failure to Prove Loss of Commissions

The Claimant alleged that she experienced a loss of commissions in the amount of \$5,000.00 in 2010 due to the Deepwater Horizon oil spill.¹⁰ The Claimant notes that her commissions in 2010 (\$4,750.17) were \$2,683.93 less than her commissions in 2011 (\$7,434.10).¹¹ However, the Claimant's first quarterly commission check in 2010 (prior to the occurrence of the Deepwater Horizon oil spill) was for \$1,614.77,¹² compared to the Claimant's first quarterly commission check of \$2,830.94 in 2011.¹³ Accordingly, there is no indication that the Claimant's commissions in 2011 are an appropriate comparison for her commissions in 2010. Furthermore, the Claimant earned commissions of \$3,859.95¹⁴ in 2008 and \$3,201.25¹⁵ in 2009. Thus the Claimant earned appreciably more in commissions in 2010 than she had in prior years.

The NPFC notes that the Claimant's quarterly commissions did decrease in 2010 during the period after the Deepwater Horizon spill; dropping from \$1,614.77,¹⁶ prior to the Deepwater Horizon oil spill, to \$1,087.59,¹⁷ \$910.70,¹⁸ and \$1,137.11¹⁹ for his next three quarterly checks in 2010. However, looking at the Claimant's 2011 commission checks, the amounts followed a similar trend. She earned \$2,830.04²⁰ in her first commission check of 2011, and then the next three checks dropped significantly to \$1,685.64²¹, 1,392.03,²² and \$1,210.95.²³ Consequently, from the data provided, there appears to be a seasonality factor that affects the amounts of the Claimant's commissions and undercuts the Claimant's assertion that she experienced a reduction in commissions due to the Deepwater Horizon oil spill.

Failure to Prove Causation

The Claimant asserted that she lost commissions in 2010, and had her salary cut by \$18,000.00 in 2011, due to a reduction in business in 2010 caused by the Deepwater Horizon oil spill. The Claimant specifically mentioned the general decrease in tourism in Tampa, as well as, the close proximity of her businesses to the Tampa Convention Center, major hotels, and The Port of Tampa as the basis for the connection of her loss to the Deepwater Horizon oil spill.²⁴ However, statistics provided by Tampa Bay & Company, an economic development and tourism non-profit group in Tampa do not support the Claimant's assertions regarding diminished tourism in 2010. These statistics indicate that visitor spending increased by 10.5% in 2010 over 2009.²⁵ Further, even though there was an overall decrease of 7.4% in the total number of visitors, there was a 4.4% increase in overnight visitors, which is the

¹⁰ Letter from the Claimant to "Whom It May Concern," dated 26 October 2011.

¹¹ Calculation of the Claimant's commission loss.

¹² Online quarterly commission statements from RNHM, LLC, dated 13 January 2010.

¹³ Online quarterly commission statements from RNHM, LLC, dated 12 January 2011.

¹⁴ 2008 Online Statement of the Claimant's earnings from RNHM, LLC.

¹⁵ 2009 Online Statement of the Claimant's earnings from RNHM, LLC.

¹⁶ Online quarterly commission statements from RNHM, LLC, dated 13 January 2010.

¹⁷ Online quarterly commission statements from RNHM, LLC, dated 05 May 2010.

¹⁸ Online quarterly commission statements from RNHM, LLC, dated 28 July 2010.

¹⁹ Online quarterly commission statements from RNHM, LLC, dated 20 October 2010.

²⁰ Online quarterly commission statements from RNHM, LLC, dated 12 January 2011.

²¹ Online quarterly commission statements from RNHM, LLC, dated 04 May 2011,

²² Online quarterly commission statements from RNHM, LLC, dated 27 July 2011

²³ Online quarterly commission statements from RNHM, LLC, dated 19 October 2011

²⁴ Letter from the Claimant to "Whom It May Concern," dated 26 October 2011.

²⁵ "Analysis of the 2010 Hillsborough County Visitor Key Findings," retrieved on 20 March 2012 from:

<http://www.visitampabay.com/includes/media/docs/2010-Research-Synopsis.pdf>

demographic that includes hotel visitors.²⁶ Lastly, these statistics indicated that there was a 6.6% increase in cruise passengers at the Port of Tampa in 2010.²⁷

The Claimant most closely associates her loss with a decline in convention business at the Tampa Convention Center. The Claimant indicated that some conventions were cancelled and others chose not to do site tours of Tampa for future conventions due to the Deepwater Horizon oil spill.²⁸ However, the Tampa Convention Center did not confirm the assertions of the Claimant. When asked by the NPFC to describe the effect of the Deepwater Horizon oil spill on the Tampa Convention Center, the NPFC was informed that the convention center had not lost any business as a result of the Deepwater Horizon oil spill.²⁹ Based on all the above referenced, the Claimant failed to prove that any of her alleged losses were due to the Deepwater Horizon oil spill.

This claim is denied because (1) the Claimant failed to meet her burden to demonstrate that there was a loss in the amount claimed and (2) failed to meet her burden to demonstrate 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: *3/26/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

²⁶ "Analysis of the 2010 Hillsborough County Visitor Key Findings," retrieved on 20 March 2012 from: <http://www.visittampabay.com/includes/media/docs/2010-Research-Synopsis.pdf>

²⁷ "Analysis of the 2010 Hillsborough County Visitor Key Findings," retrieved on 20 March 2012 from: <http://www.visittampabay.com/includes/media/docs/2010-Research-Synopsis.pdf>

²⁸ Optional OSTLF Claim Form, dated 11 January 2012.

²⁹ PHONECON between the NPFC and Tampa Convention Center on 14 February 2012.