

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 2446 2698

5890/DWHZ  
8 March 2012

Ms. Susan Leff  
[REDACTED]

Re: Claim Number: N10036-1644

Dear Ms. Leff:

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 N10036-1644 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 N10036-1644.

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	N10036-1644
Claimant	Susan Leff
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$20,000.00

### ***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 17 January 2012, Ms. Susan Leff, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$20,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working as a commissioned salesperson for a cable company in Largo, Florida.<sup>2</sup> The Claimant stated that her income relies “over 60% of our customer sales from repeat seasonal customers and tourists coming to our area requesting and needing TV, Internet and phone.”<sup>3</sup>

The Claimant alleged that “[a]fter the oil spill, we had new and return customers actually call and cancel and state we will not be needing service since we are canceling our trip due to [the] oil spill this year.”<sup>4</sup>

According to the Claimant’s submission, the alleged loss of tourism-related business resulted in the Claimant incurring loss of income of \$20,000.00 in 2010.<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.

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<sup>1</sup> Optional OSLTF Claim Form, received on 17 January 2012.

<sup>2</sup> Letter from the Claimant, describing losses, 11 December 2011.

<sup>3</sup> Letter from the Claimant, describing losses, 11 December 2011.

<sup>4</sup> Letter from the Claimant, describing losses, 11 December 2011.

<sup>5</sup> PHONECON: NPFC Staff and the Claimant, 24 January 2012.

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:

- Optional OSLTF Claim Form, received on 17 January 2012;
- 2009 Form W-2, showing yearly earnings of \$81,082.53;
- 2010 Form W-2, showing yearly earnings of \$66,654.92;
- Letter from the Claimant, describing losses, 11 December 2011.

On 11 November 2011 the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$16,000.00.<sup>6</sup> The Claimant was assigned Claimant ID # 3381909 and the EAP claim was assigned claim # 449483. The RP/GCCF denied payment on this claim.

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<sup>6</sup> GCCF United States Coast Guard Report, 21 February 2012.

On 1 November 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$20,000.00.<sup>7</sup> The FRF was assigned claim # 9526243 and was also denied.<sup>8</sup>

On 17 January 2012, the Claimant submitted this claim to the NPFC, seeking \$20,000.00 in loss of profits and impairment of earning capacity damages.<sup>9</sup> The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.<sup>10</sup> Because the Claimant has presented these damages first to the RP/GCCF in an amount that exceeds the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$20,000.00.

### **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.

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In a phone conversation with the NPFC, the Claimant indicated that she is a commissioned sales person for a cable company in Largo, Florida.<sup>11</sup> The Claimant alleged that a decrease in tourism in 2010 following the Deepwater Horizon oil spill caused the Claimant to sustain a \$20,000.00 reduction in income.<sup>12</sup>

In a letter dated 27 January 2012, the NPFC requested that the Claimant provide certain additional documentation in support of this claim. Among other items, the NPFC requested that the Claimant provide pay stubs that would show when the Claimant's income began to decrease, as well as evidence of cancelled contracts to show that customers indeed chose not to renew their contracts for services in 2010.<sup>13</sup> As of the date of this determination, the Claimant has failed to respond.

Furthermore, the Claimant's assertion that tourism in Largo, Florida, was affected by the Deepwater Horizon oil spill in 2010 is unsupported by Pinellas County tourism statistics. 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>14</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>15</sup> These statistics are further

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<sup>7</sup> GCCF United States Coast Guard Report, 21 February 2012.

<sup>8</sup> GCCF United States Coast Guard Report, 21 February 2012.

<sup>9</sup> Optional OSLTF Claim Form, received on 17 January 2012.

<sup>10</sup> 33 C.F.R. § 136.103(a).

<sup>11</sup> PHONECON: NPFC Staff and the Claimant, 24 January 2012.

<sup>12</sup> PHONECON: NPFC Staff and the Claimant, 24 January 2012.

<sup>13</sup> NPFC Request for additional information, 27 January 2012.

<sup>14</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>15</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.

supported by Pinellas County Bed Tax collections, which indicate year over year increases starting in July of 2010 and continuing through 2011.<sup>16</sup>

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$20,000.00, 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: *3/8/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>16</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.