

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 4802 8658

5890/DWHZ  
7 February 2012

Ms. Erviola Naci  
[REDACTED]

Re: Claim Number: N10036-1653

Dear Ms. Naci:

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 N10036-1653 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 N10036-1653.

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	N10036-1653
Claimant	Ms. Erviola Naci
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$78,000.00

### ***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 25 January 2012, Ms. Erviola Naci, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$78,000.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working as a nail technician at the “Hair and Body Inspiration” salon in Naples, Florida.<sup>2</sup> The Claimant alleged that “[r]ight after the oil spill, [the Claimant’s] clientele diminished drastically, until the salon closed for good in May 2010.”<sup>3</sup> Although the Claimant found a part-time position from November to December 2010, the Claimant was otherwise unemployed until March 2011.<sup>4</sup>

The Claimant seeks \$78,000.00 in alleged lost earnings, as well as anticipated future losses, incurred from May 2010 until April 2013.<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:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.

<sup>1</sup> Optional OSLTF Claim Form, signed on 16 January 2012.

<sup>2</sup> Document titled, “Explanation Letter”

<sup>3</sup> Document titled, “Explanation Letter”

<sup>4</sup> Document titled, “Explanation Letter”

<sup>5</sup> Document titled, “Explanation Letter”

- (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 undertake, 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 on 16 January 2012;
- Claim cover letter, dated 15 January 2012;
- Document titled, "Explanation Letter," undated;
- Chart titled, "Detail on Financial Calculation For Lost Profits, May 2010 – April 2013";
- Board Certification for Erviola Naci, 23 September 2010;
- Letter from the Claimant, noting inclusion of financial documentation, 9 December 2011;
- Chart showing loss calculations;
- Letter from the Claimant to the GCCF, 12 October 2011;
- Letter from the Claimant to the GCCF, 6 July 2011;
- Letter from the Claimant to the GCCF, 22 May 2011;
- Letter from the Claimant to the GCCF, 1 March 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 24 December 2011;
- GCCF Follow-up to Previous Denial Letter, 12 October 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 24 September 2011;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 13 May 2011;

- Letter from the GCCF to the Claimant, noting receipt of interim payment claim, 24 January 2011;
- Letter from the GCCF to the Claimant, requesting that the Claimant provide additional information, 29 January 2011;
- 2010 Schedule C (Form 1040);
- 2010 Form 1040;
- Copies of checks from Hair & Body Inspirations to the Claimant;
- List of the Claimant's clients, showing 195 clients "not coming back."

Prior to presentment of this claim to the NPFC, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF seeking loss of profits and wages damages.<sup>6</sup> The Claimant was assigned Claimant ID 3479547 and the ICQ12011 was assigned Claim # 9118254.<sup>7</sup> The ICQ12011 was denied by the RP/GCCF on 23 September 2011.<sup>8</sup>

The Claimant then filed a Full Review Final (FRF) claim with the RP/GCCF, again seeking loss of profits and impairment of earnings damages.<sup>9</sup> The FRF claim was assigned Claim # 9525147 and was denied on 23 December 2011.<sup>10</sup>

On 25 January 2012, the Claimant presented this claim to the NPFC, seeking \$78,000.00 in loss of profits and impairment of earning capacity damages.<sup>11</sup> The NPFC may adjudicate this claim to the extent that the damages now presented to the NPFC were first presented to the RP/GCCF, in the Claimant's ICQ12011 and FRF claims.<sup>12</sup> Any damages now presented to the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentment.<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.

In order to prove a claim for loss of profits damages, a claimant must provide evidence to demonstrate (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.

The Claimant alleged that she sustained a loss of income due to the closure of the salon where the Claimant was employed at the time of the oil spill. The Claimant alleged that the majority of her clients chose not to return to the salon due to effects of the Deepwater Horizon oil spill.<sup>14</sup> As noted by the claimant, the salon closed shortly after the spill, on 15 May 2010.<sup>15</sup>

<sup>6</sup> GCCF Claimant Status, accessed on 30 January 2012.

<sup>7</sup> GCCF Claimant Status, accessed on 30 January 2012.

<sup>8</sup> GCCF Claimant Status, accessed on 30 January 2012.

<sup>9</sup> GCCF Claimant Status, accessed on 30 January 2012.

<sup>10</sup> GCCF Claimant Status, accessed on 30 January 2012.

<sup>11</sup> Optional OSLTF Claim Form, signed on 16 January 2012.

<sup>12</sup> 33 C.F.R. § 136.103(a).

<sup>13</sup> 33 C.F.R. § 136.103(a).

<sup>14</sup> Document titled "Explanation Letter."

<sup>15</sup> List of the Claimant's clients, showing 195 clients "not coming back."

In the course of the initial review of this claim, the NPFC contacted the former owner of the salon, seeking additional information regarding the reason for the closure of the business. The owner stated that the salon was closed because the lease expired and the owner chose not to renew the lease.<sup>16</sup> The salon did not close due to effects of the Deepwater Horizon oil spill, as asserted by the Claimant.<sup>17</sup>

Furthermore, records of payments made to the Claimant fail to support the Claimant's assertion that "clientele diminished drastically, until the salon closed for good in May 2010."<sup>18</sup> Records of payments made to the Claimant indicate that the Claimant's income remained steady and did not decrease between the time of the oil spill and the time of the closure of the salon.<sup>19</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 \$78,000.00, 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: *2/7/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>16</sup> PHONECON: NPFC Staff and former owner, Hair and Body Inspiration, 30 January 2012.

<sup>17</sup> PHONECON: NPFC Staff and former owner, Hair and Body Inspiration, 30 January 2012.

<sup>18</sup> Document titled, "Explanation Letter."

<sup>19</sup> Copies of payments made to the Claimant, included in original submission to the NPFC.