

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
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5890  
26 March 2012

Lauren Danner  
[REDACTED]

RE: Claim Number: N10036-1657

Dear Ms. Danner:

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 N10036-1657 involving Deepwater Horizon. 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 N10036-1657.

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: (1) Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1657
Claimant	: Lauren Danner
Type of Claimant	: Individual (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$8,000.00

### ***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 30 January 2012, Lauren Danner, (referred to as “the Claimant”) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,000.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup> The Claimant works in the hospitality business in Tampa, Florida, both as a server and as a bartender.<sup>2</sup>

The Claimant indicates having presented a claim to the GCCF on 6 October 2011 and resubmitting on 1 December 2011.<sup>3</sup> The Claimant also indicates that her claim had been denied.<sup>4</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.
- (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

<sup>1</sup> Optional OSLTF Claim Form received on 30 January 2012.

<sup>2</sup> Claimant’s ‘To Whom It May Concern’ letter dated 17 January 2012.

<sup>3</sup> Optional OSLTF Claim Form received on 30 January 2012.

<sup>4</sup> Optional OSLTF Claim Form received on 30 January 2012.

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**

On 30 January 2012, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>5</sup> This loss is associated with the Claimant's lost income while working as a bartender at a combined luxury bowling and lounge establishment in Channel District of Tampa, Florida.<sup>6</sup> The Claimant indicated that she had submitted a claim the GCCF on 6 October 2011, resubmitted the claim on 1 December 2011, and has been denied.

The NPFC conducted an independent investigation of claim presentation and payments. The NPFC confirmed presentment of an Interim Payment (IP) Claim to the GCCF on 24 August 2011 in the amount of \$8,000.00.<sup>7</sup> The NPFC also confirmed that the GCCF applied Claimant ID No. 3540194 and Claim ID No. 9443282 to the claim, as well as that the GCCF had determined the Claimant had not established a loss of earnings for 2010.<sup>8</sup>

Based upon the information provided and independent verification by the NPFC, this claim can be adjudicated in the full amount of damages presented to the NPFC, \$8,000.00.

To support this claim the Claimant presented the following documentation:

- Optional OSLTF Claim Form received 30 January 2012.
- Claimant's 'To Whom It May Concern' letter dated 17 January 2012.
- Letter to the GCCF from Hatricks Tavern dated 17 October 2011.
- Letter 'To Whom It May Concern', undated, from Splitsville Luxury Lanes & Dinner Lounge.
- Two Google Maps printouts of 615 Channelside Drive, Tampa, FL, one annotated to indicate 'Splitsville', with the Tampa Convention Center and the Tampa Marriott Waterside circled, the other annotated to indicate 'Port of Tampa'.
- Google Maps printout of 107 South Franklin St., Tampa, FL, annotated to indicate 'Hatricks', with the Tampa Convention Center and the Tampa Marriott Waterside circled.

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<sup>5</sup> Optional OSLTF Claim Form received 30 January 2012.

<sup>6</sup> Claimant's 'To Whom It May Concern' letter dated 17 January 2012.

<sup>7</sup> GCCF – U.S. Coast Guard Report as of 16 February 2012.

<sup>8</sup> GCCF – U.S. Coast Guard Report as of 16 February 2012.

- Employee pay history for Lauren Danner at Client 3669 (Blue Water International, Inc.) for the period 1 January 2010 through 31 December 2010.
- Employee pay history for Lauren Danner at Client 5091 for the period 1 January 2011 through 31 December 2011.

### **NPFC Determination**

This 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 failed to prove that she experienced a loss in income, and (2) she failed to prove that any of her alleged loss was due to the Deepwater Horizon oil spill.

#### **(1) Failure to Prove Loss of Income**

The Claimant alleged that she experienced a loss of income in the amount of \$8,000.00 in 2010 due to the Deepwater Horizon oil spill.<sup>9</sup> The Claimant provided letters from the general managers at the two establishments where she worked in Tampa during 2010. Both letters indicated impacts of the spill on their businesses, which they say affected their employees.<sup>10</sup>

To show a loss of income, the Claimant provided pay histories for 2010 and 2011.<sup>11</sup> One of these pay histories covers pay dates from 10/29/2010 through 12/31/2010 and the other pay history covers pay dates from 1/7/2011 through 12/9/2011.<sup>12</sup> Together, these pay histories cover a little more than one year's time. The Claimant's letter of 17 January 2012 indicates, as of that date, she had been, "...an employee of Hatricks for over a year now". Considering that statement and that both employee pay history documents refer to the Claimant by the same employee number, it appears, but is not clear, that both pay histories are from Hatricks. The Claimant's letter of 17 January 2012 indicates that she had been employed by Splitsville Luxury Lanes and Dinner Lounge (Splitsville) from August 2009 to October 2010. This confirms that the employee pay histories provided by the Claimant do not include periods during which she worked at Splitsville and is, therefore, incomplete. For example, no pay records for the period August 2009 to October 2010 at Splitsville were provided. As a result, the Claimant has failed to prove any of loss of income in 2010.

#### **(2) Failure to Prove Causation**

The Claimant asserted that her loss in income was due to a reduction in business in 2010, caused by the Deepwater Horizon oil spill. The Claimant specifically mentioned the decrease in tourism in Tampa, as well as the close proximity of her places of work to the Tampa Convention Center and cruise ships at the Port of Tampa as the bases for connecting her loss to the Deepwater Horizon oil spill.<sup>13</sup>

Letters from the general managers at the two establishments where she worked in Tampa indicated that the oil spill had affected travel, tourism and conventions.<sup>14</sup> One indicated that cruise ships docking in Tampa had not been as full.<sup>15</sup>

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<sup>9</sup> Claimant's 'To Whom It May Concern' letter dated 17 January 2012.

<sup>10</sup> Letter 'To Whom It May Concern', undated, from Splitsville Luxury Lanes & Dinner Lounge and Letter to the GCCF from Hatricks Tavern dated 17 October 2011.

<sup>11</sup> Employee 41 pay history for Client 3669 (Blue Water International, Inc.) for pay dates 10/29/2010 through 31 December 2010 and Employee 41 pay history for Employee 41 at Client 5091 for pay dates 7 January 2011 through 7 December 2011.

<sup>12</sup> Employee 41 pay history for Client 3669 (Blue Water International, Inc.) for pay dates 10/29/2010 through 31 December 2010 and Employee 41 pay history for Employee 41 at Client 5091 for pay dates 7 January 2011 through 7 December 2011.

<sup>13</sup> Claimant's 'To Whom It May Concern' letter dated 17 January 2012

<sup>14</sup> Letter 'To Whom It May Concern', undated, from Splitsville Luxury Lanes & Dinner Lounge and Letter to the GCCF from Hatricks Tavern dated 17 October 2011.

Statistics provided by Tampa Bay & Company, an economic development and tourism non-profit group in Tampa, do not support the Claimant's assertion regarding diminished tourism in 2010. These statistics indicated that Tampa visitor spending in 2010 increased by 10.5% over visitor spending in 2009.<sup>16</sup> 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 metric that includes hotel visitors.<sup>17</sup> These statistics also indicate a 6.6% increase in cruise passengers at the Port of Tampa in 2010, compared to 2009, and a 6.7% increase in the total cruise ship sailings from Tampa in 2010.<sup>18</sup>

Lastly, the Claimant also associated her loss with a decline in convention business at the Tampa Convention Center.<sup>19</sup> The NPFC contacted the Tampa Convention Center. When asked 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.<sup>20</sup>

Based on the above, the Claimant has failed to prove that any of her alleged losses were due to the Deepwater Horizon oil spill.

This claim is denied for the following reasons: (1) Claimant has failed to demonstrate the alleged loss through financial documentation and (2) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a 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:

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<sup>15</sup> Letter 'To Whom It May Concern', undated, from Splitsville Luxury Lanes & Dinner Lounge.

<sup>16</sup> "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>

<sup>17</sup> "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>

<sup>18</sup> "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>

<sup>19</sup> Claimant's 'To Whom It May Concern' letter dated 17 January 2012

<sup>20</sup> Phone conversation between Robin at Tampa Bay Convention Center Sales & Marketing Department and NPFC Staff on 20 March 2012.