

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2469

5890/DWHZ
16 April 2012

Joanna Mincarelli
c/o Melinda P. Tindell, esq.
P.O. Box 2685
Dunedin, FL 34697-2685

Re: Claim Number: N10036-1687

Dear Ms. Mincarelli:

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 N10036-1687 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 N10036-1687.

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
CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2452
cc: Joanna Mincarelli



CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1687
Claimant	Joanna Mincarelli
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$2,920.00

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 February 2012, Melinda Tindell, Esq., on behalf of Joanna Mincarelli, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$2,920.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

The Claimant owns and operates a gift shop in Dunedin, Florida. The Claimant alleged that “[t]he Spill caused tourists to cancel their plans to Florida so business sales decreased which caused my hours to increase even though my income declined.”²

The Claimant stated that she received a final payment from the GCCF compensating losses sustained by the business itself.³ However, the Claimant alleges that losses to her personal income have not been sufficiently compensated, and therefore seeks \$2,920.00 in loss of profits and impairment of earning capacity damages to compensate for alleged salary losses.

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.

¹ Optional OSLTF Claim Form, signed on 8 February 2012.

² Optional OSLTF Claim Form, signed on 8 February 2012.

³ PHONECON: NPFC Staff and the Claimant, 16 March 2012.

- (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, signed on 8 February 2012;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 11 January 2012;
- Letter from Jacobs Accounting & Computers, Inc., 10 November 2011;
- Document listing gross income/profit, 2008, 2009, 2010;
- GCCF Full Review Final Payment Claim Form, seeking loss of profits damages of \$2,920.00;
- 2010 Form 1040, showing business income of \$9,660.00;
- 2010 Schedule C-EZ (Form 1040);
- 2010 Schedule E (Form 1040);
- 2010 Schedule SE (Form 1040);
- 2010 Schedule EIC (Form 1040A or 1040);
- 2010 Form 8812;
- 2008 Form 1040, showing no business income, and total income of (-\$31,645.00);
- 2008 Schedule D (Form 1040);
- 2008 Schedule E (Form 1040);
- 2008 Form 1045;
- Three Year Tax Comparison Worksheet;

- 2009 Form 1040, showing business income of \$10,600.00;
- 2009 Schedule C-EZ (Form 1040);
- 2009 Schedule E (Form 1040);
- 2009 Schedule EIC (Form 1040A or 1040);
- 2009 Form 8812;
- 2009 Schedule L (Form 1040A or 1040);
- 2009 Schedule M (Form 1040A or 1040);

Prior to presentment of this claim to the NPFC, the Claimant presented an Interim Payment/Final Payment Claim to the RP/GCCF, seeking \$2,920.00 in loss of profits and impairment of earning capacity damages. The Claimant was assigned Claimant ID 1637312. This claim was denied by the RP/GCCF in a letter dated 11 January 2012.⁴

On 17 February 2012, the Claimant submitted this claim to the NPFC, seeking \$2,920.00 in loss of profits and impairment of earning capacity damages. OPA requires that a claimant first present a claim for costs or damages to the RP, prior to presentment to the NPFC.⁵ Should the RP fail to issue on a determination on the claim within ninety days, or should the RP issue a full or partial denial on a claim, the claimant may present the same claim to the NPFC.⁶

Because the claim now before the NPFC has first been presented to the RP/GCCF and has been denied, the NPFC may fully adjudicate this claim for lost profits and impairment of earning capacity damages in the amount of \$2,920.00.

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.

Prior to presentment of this claim to the NPFC, the claimant presented a claim to recover losses sustained by her business, allegedly caused by the Deepwater Horizon oil spill.⁷ On behalf of the business, the Claimant accepted a Quick Pay Final Payment.⁸ By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury. The Quick Pay final claim form signed by the Claimant specifically applies to,

all of a claimant's "affiliates," including a claimant's "spouse, heirs, beneficiaries, *agents*, estates, executors, administrators, personal representatives, subsidiaries, parents, affiliates, partners, limited partners, *members*, joint venturers, *shareholders*, et al. (emphasis added).⁹

⁴ GCCF Denial Letter on Interim Payment/Final Payment Claim, 11 January 2012.

⁵ 33 C.F.R. § 136.103(a).

⁶ 33 C.F.R. § 136.103(a).

⁷ PHONECON: NPFC Staff and the Claimant, 16 March 2012.

⁸ Quick Pay Final Claim Form and Release and Covenant Not to Sue (Business), signed on 26 December 2010.

⁹ Quick Pay Final Claim Form and Release and Covenant Not to Sue (Business), signed on 26 December 2010.

Because the Claimant is the owner of the business for which she accepted final payment, the Claimant released any rights to further recovery regarding injuries allegedly caused by the Deepwater Horizon oil spill, to the RP/GCCF. As stated in the release:

[r]eleased Parties means anyone who is or could be responsible or liable in any way for the Incident or any damages related thereto, whether a person, company or governmental entity, including . . . the federal Oil Spill Liability Trust Fund . . .

Any payment from the Oil Spill Liability Trust Fund (the Fund) 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 Fund. The subrogation of the Claimant's rights to BP is made clear in the release by the following language:

[t]his Release is not intended to prevent any of the Released Parties from exercising their respective rights of contribution, subrogation, or indemnity under the Oil Pollution Act of 1990 ("OPA") or any other law. As this Release is fully and completely resolving, together with all other Claims, Claimant's claim under OPA, BP is hereby subrogated to any and all rights that Claimant has arising from the Incident.

This claim is denied because the Claimant has signed a Quick Payment Final Claim Form and Release and Covenant Not to Sue on behalf of her business, thereby precluding additional payment from the Oil Spill Liability Trust Fund.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/16/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: