

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 4803 7803

5890  
15 June 2012

Greenspoon Marder, P.A.



RE: Claim Number: N10036-1744

Dear Mr. Reynolds:

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 N10036-1744 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for further explanation.

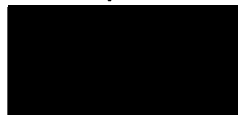
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1744.

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

cc. Dedra Ann Smith  
7134 Inniswold Drive  
Pensacola, FL 32526

By Certified Mail:  
No: 7011 1570 0001 4803 7810

## CLAIM SUMMARY / DETERMINATION FORM

|                  |  |
|------------------|--|
| Claim Number     | : N10036-1744                          |
| Claimant         | : Dedra Ann Smith                      |
| Type of Claimant | : Private (US)                         |
| Type of Claim    | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$225,556.09                         |

### ***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 5 April 2012, Robert A. Reynolds, Esquire, on behalf of Dedra Ann Smith (jointly referred to as "the Claimant") presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$225,556.09 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup> At the time of the oil spill, the Claimant was a business account executive in the cellular industry covering territory along the coast of North West Florida.<sup>2</sup>

The Claimant asserts that she lost income in 2010 and 2011 when, after the oil spill, "...sales dropped dramatically as virtually all of [her] potential and existing customers were impacted by the unfortunate disaster."<sup>3</sup> The Claimant also indicates that sales declined and, as a result, she was relieved of her sales position on 10 June 2010.<sup>4</sup> She lost her job, was forced to draw unemployment and withdraw funds from a retirement account.<sup>5</sup> The Claimant's unemployment lasted until 2 May 2011.<sup>6</sup> Additionally, the Claimant asserts additional losses due to an "industry effect multiplier."<sup>7</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

<sup>1</sup> Greenspoon Marder, PA, letter to the NPFC received 5 April 2012.

<sup>2</sup> Claimant's letter to BP Claims dated 3 December 2011.

<sup>3</sup> Claimant's letter to BP Claims dated 3 December 2011.

<sup>4</sup> Claimant's letter to BP Claims dated 3 December 2011 and Claimant's notarized statement dated 19 December 2011.

<sup>5</sup> Claimant's letter to BP Claims dated 3 December 2011.

<sup>6</sup> Claimant's notarized statement dated 19 December 2011.

<sup>7</sup> Lost Earnings/Income Worksheet for Dedra Smith dated 12 March 2011.

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 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 presented the following documentation:

- Greenspoon Marder letter to the NPFC, dated 3 April 2012 and received 5 April 2012.
- NPFC Authorization Agreement executed 15 March 2012 by Dedra Smith.
- Deepwater Horizon Lost Earnings/Income Worksheet dated 12 March 2012.
- GCCF Full Review Final Payment Claim Form dated 26 November 2011.
- Claimant's Florida Driver License, issued 03-27-2009.
- Claimant's letter to BP Claims, dated 3 December 2011, Subject: Loss of job due to oil spill.
- Claimant's letter to BP Claims, dated 28 December 2011 regarding lack of letter from former employer (Verizon).
- List of Claimant's territory - including South Baldwin, Escambia, Santa Rosa, Okaloosa, and Walton Counties.
- 2008 Form W-2 from Alltel Communications, LLC.
- 2008 Form 1040 w/o schedules or other attachments.

- 2009 Form W-2 from Alltel Communications, LLC.
- 2009 Form W-2 from Cellco Partnership.
- 2009 Form 1040 w/o schedules or other attachments.
- 2010 Form W-2 from Cellco Partnership.
- 2010 Form 1099-G from State of Florida Agency for Workforce Innovation.
- 2010 Form 1040 w/o schedules or other attachments.
- 2011 Form W-2 from Persohn/Hahn Associates, Inc.
- 2011 Form 1099-G from State of Florida Agency for Workforce Innovation.
- Claimant's notarized statement regarding unemployment dated 9 December 2011.
- Claimant's Client Authorization Form authorizing Greenspoon-Marder to represent her to the GCCF.
- GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 2 February 2012.
- FedEx shipping label dated 4 April 2012.

The Claimant indicates that she submitted a Claim to the GCCF on 21 November 2011.<sup>8</sup> The Claimant also indicates that responsible party has denied her claim.<sup>9</sup>

The NPFC conducted an independent investigation of claim presentation and payments. The NPFC confirmed presentment to the GCCF of three claims: an Emergency Advance Payment (EAP) Claim on 28 October 2010, an Interim Payment (IP) Claim on 28 January 2011, and a Full Review Final Payment (FRP) Claim on 27 January 2012. All three of these claims were assigned under Claimant Identification No. 3311282. Additionally, the EAP Claim was assigned GCCF Claim No. 368395, the IP Claim was assigned GCCF Claim No. 9261073, and the FRF Claim was assigned Claimant Identification No. 9561090.<sup>10</sup> The NPFC also reviewed the FRF Claim presented to the GCCF and confirmed that the claim amount of \$225,556.09 had been presented to the GCCF.<sup>11</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, \$225,556.09.

### **NPFC Determination**

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.

After an initial review of the claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses. The Claimant was given 14 days to respond to the letter, dated 11 May 2012.<sup>12</sup> To date, no response has been received.

The NPFC has considered all documentation and information presented by the Claimant.

<sup>8</sup> Claimant's GCCF Full Review Final Payment Claim Form dated 21 November 2011.

<sup>9</sup> Greenspoon Marder, PA, letter to the NPFC received 5 April 2012 and GCCF Denial Letter on Interim Payment/Final Payment Claim dated 2 February 2012.

<sup>10</sup> Transition Program – U.S. Coast Guard Report as of 1 May 2012.

<sup>11</sup> Claimant's GCCF Full Review Final Payment Claim Form dated 21 November 2011.

<sup>12</sup> NPFC letter dated 11 May 2012.

This claim is denied because the Claimant failed—to provide documentation and information requested by the NPFC, to prove the amount of the alleged loss, and to prove that the alleged loss was due to the Deepwater Horizon oil spill.

#### Failure to Prove Loss of Earnings

The Claimant asserts a loss of income in 2010 due to the Deepwater Horizon oil spill.<sup>13</sup> The Claimant asserts that she lost income in 2010 and 2011 when, after the oil spill, cellular business sales dropped dramatically as virtually all of her customers were impacted. As a result, she lost her job and was unemployed from 10 June 2010 until 2 May 2011.<sup>14</sup> The Claimant also asserts that she was forced to withdraw funds from a retirement account to meet her family's financial needs.<sup>15</sup> The Claimant provided 2008, 2009, & 2010 federal tax return information,<sup>16</sup> as well as 2008, 2009, 2010 and 2011 W-2 information,<sup>17</sup> driver's license, the GCCF denial letter of her FRF Claim, and correspondence from the Claimant's attorney forwarding the claim.

The Claimant has not provided sufficient financial documentation on which her alleged loss can reasonably be measured; therefore, the alleged loss is not proven. If the Claimant submits a request for Reconsideration to the NPFC, additional financial evidence should be provided to prove the loss. Additional evidence should include the Claimant's monthly income for 2009, 2010, & 2011 (including any unemployment received), complete copies of the federal tax returns submitted with all applicable W-2's, 1099's, schedules and forms, a copy of the termination notice from Verizon, records of the terms of the Claimant's compensation at Verizon (including any guaranteed amount and terms of commissions) and documentation of losses & loss dates that fall under the "industry effect multiplier".

#### Failure to Prove Causation

The Claimant asserts that her alleged loss of income is due to the oil spill.<sup>18</sup> The NPFC will not presume causation or lack thereof based upon business type or location. Causation is an element of every claim that must be proven the Claimant.

Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill. The Claimant has not provided documentation supporting that her departure from Verizon was due to the oil spill, that existing customers reduced their services due to the spill, or that potentially new clients did not add or move services due to the oil spill. The Claimant has not established, or provided an employer point of contact through whom the NPFC could verify, that her alleged losses were due to the Deepwater Horizon oil spill as opposed to a myriad of other economic factors.

The Claimant has not proven that the Deepwater Horizon oil spill was the cause of her alleged losses. If the Claimant submits a request for Reconsideration to the NPFC, evidence linking her

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<sup>13</sup> Greenspoon Marder, PA, letter to the NPFC received 5 April 2012 and Claimant's GCCF Full Review Final Payment Claim Form dated 21 November 2011.

<sup>14</sup> Claimant's letter to BP Claims dated 3 December 2011 and Claimant's notarized statement dated 19 December 2011.

<sup>15</sup> Claimant's letter to BP Claims dated 3 December 2011.

<sup>16</sup> 2008, 2009, and 2010 Form 1040s without schedules or supporting forms.

<sup>17</sup> 2008 W-2 Form from Alltel Communications, LLC; 2009 W-2 Forms from Alltel Communications, LLC and Cellco Partnership (a/k/a Verizon Wireless); 2010 Form W-2s from Cellco Partnership and the State of Florida Agency for Workforce Innovation; and 2011 W-2 Forms from the State of Florida Agency for Workforce Innovation and Persohn/Hahn Associates, Inc.

<sup>18</sup> Greenspoon Marder, PA, letter to the NPFC received 5 April 2012 and Claimant's GCCF Full Review Final Payment Claim Form dated 21 November 2011.

losses to the Deepwater Horizon oil spill, not other factors, must be submitted in order for her claim to be successful which would include specific client and sales data from Verizon.

This claim is denied for the following reasons: (1) the Claimant has failed to demonstrate her alleged loss through financial documentation and (2) the Claimant has failed to demonstrate that her 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 (i.e., the Deepwater Horizon oil spill).

Claim Supervisor:  *NPRC Claims Adjudication Division*

Date of Supervisor's Review: *6/15/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: