

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



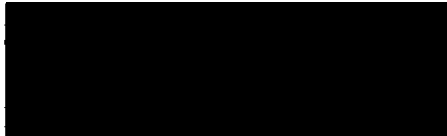
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 800-280-7118  
E-mail: arl-pf-npfcclaimsinfo@uscg.mil  
Fax: 703-872-6113

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
Number: 7011 1570 0001 2446 4876

5890/DWHZ  
14 May 2012

Barbara Pitts



Re: Claim Number: N10036-1757

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 N10036-1757 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 N10036-1757.

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: Barbara Pitts



By USPS Certified Mail #: 7011 1570 0001 2446 4883

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1757
Claimant	Barbara Pitts
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$132,008.17

### ***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 12 April 2012 Robert A. Reynolds, Esquire, on behalf of Barbara Pitts, (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$132,008.17 in loss of profits and earning capacity damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working as a sales representative with Western and Southern Life Insurance.<sup>2</sup> The Claimant alleged to have sustained a loss of business in 2010 due to numerous clients cancelling or allowing policies to lapse as a result of the oil spill impacting occupations and businesses.<sup>3</sup>

In order to calculate losses, the Claimant subtracted 2011 and 2010 income from 2009 to determine an average monthly loss of \$1,670.99.<sup>4</sup> The Claimant then multiplied that number by an "industry effect multiplier" of 60 to reach the total amount claimed of \$132,008.17.<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> Law Firm Claim Cover Letter, signed 4 April 2012.

<sup>2</sup> Hardship Letter from Claimant, signed 1 December 2011.

<sup>3</sup> Hardship Letter from Claimant, signed 1 December 2011.

<sup>4</sup> Lost Earnings/Income Worksheet, 18 December 2011.

<sup>5</sup> Lost Earnings/Income Worksheet, 18 December 2011.

- (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:

- Law Firm Claim Cover Letter, signed 4 April 2012;
- NPFC Authorization Agreement, signed 3 April 2012;
- Copy of GCCF Full Review Final Claim, signed 4 November 2011;
- Lost Earnings/Income Worksheet, 18 December 2011;
- Photocopy of Insurance License and Drivers License;
- Hardship Letter from the Claimant, signed 1 December 2011;
- Letter of Support from Claimant's Employer, 1 December 2011;
- 2009 W-2 and Earnings Summary;
- 2008 Wage and Tax Statement;
- 2010 W-2 and Earnings Summary;
- 2011 Earnings Statement;
- Copy of GCCF Claim Signature Page, signed 14 November 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 March 2012
- Letter from the GCCF Regarding Pending Claims, 16 March 2012.

On 18 April 2011, Claimant presented an Interim 2 (ICQ22011) for lost profits and wages to the RP/GCCF seeking \$20,000.00 in damages.<sup>6</sup> Claimant was issued GCCF Claimant ID # 3513796 and GCCF ICQ22011 Claim # 9360203.<sup>7</sup> On 21 December 2011, Claimant presented a Full Review Final (FRF) claim to the GCCF, seeking loss of profits and wages damages in the amount of \$132,008.17.<sup>8</sup> Claimant's GCCF ID # remained 3513796 and the FRF claim was assigned GCCF claim # 9549568.<sup>9</sup> The RP/GCCF denied payment on this claim.<sup>10</sup>

On 12 April 2012, the Claimant submitted this claim to the NPFC, seeking \$132,008.17 in loss of profits and impairment of earning capacity damages.<sup>11</sup> The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.<sup>12</sup> Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address both of the Claimant's previous GCCF claims (Claim #'s 9360203 and 9549568) in the amount of \$132,008.17.

### **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 or reduction in income, and (2) that the alleged loss was the result of a discharge of oil from the Deepwater Horizon oil spill. This claim is denied because the Claimant has not provided documentation sufficient to prove either.

For example, regarding the Claimant's proof of loss, while the Claimant has provided W-2's for 2008, 2009, and 2010, that documentation by itself is insufficient to establish an economic loss without some type of corroborating documentation such as signed tax returns for the same years. With respect to causation, the only evidence linking the Claimant's alleged loss to the oil spill are a letter written by the Claimant and a letter allegedly from her employer.

The NPFC contacted the Claimant's employer and was informed that such a letter would be in an inappropriate and unauthorized use of the company letter head.<sup>13</sup> Further, the letter's author or other company employee who could verify the letter's contents and authenticity were not available to comment.<sup>14</sup>

Additionally, to prove that her alleged loss was the result of the oil spill, the NPFC would require evidence beyond either the Claimant's or her Supervisor's assertions. For example, if the The

---

<sup>6</sup> USCG/TP Status Report dated 01 May 2012.

<sup>7</sup> USCG/TP Status Report dated 01 May 2012.

<sup>8</sup> USCG/TP Status Report dated 01 May 2012 and Copy of GCCF Full Review Final Claim, signed 14 November 2011.

<sup>9</sup> USCG/TP Status Report dated 01 May 2012 and GCCF Denial Letter on Interim/Final Payment Claim, 22 March 2012.

<sup>10</sup> USCG/TP Status Report dated 01 May 2012 and GCCF Denial Letter on Interim/Final Payment Claim, 22 March 2012.

<sup>11</sup> Law Firm Claim Cover Letter, signed 4 April 2012.

<sup>12</sup> 33 C.F.R. § 136.103(a).

<sup>13</sup> PHONECON: NPFC and Claimant's Employer's Corporate Office, 11 May 2012.

<sup>14</sup> PHONECON: NPFC and Claimant's Employer's Corporate Office, 11 May 2012.

Claimant indicated that her claimed damages to the NPFC included damages for a period of up to 60 months from the date of the Deepwater Horizon oil spill.<sup>15</sup> However, under 33 CFR § 136.235, “the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*.”<sup>16</sup> Therefore, the Claimant cannot be compensated for any prospective damages that might accrue in the future. Consequently, to the extent the losses claimed by the Claimant are for future losses, those damages are non-compensable under OPA and are therefore denied.

Should the Claimant choose to request reconsideration, she must provide evidence of contracts cancelled or not entered into because of the oil spill, evidence that her customers were in industries affected by the oil spill, or other evidence that specifically links her loss to the Deepwater Horizon incident. Contact information for all customers will also need to be provided.

Accordingly, this claim is denied because the Claimant has failed to prove (1) that she suffered a loss in the amount alleged, (2) that her alleged loss was due to the injury to, destruction of, or loss of real or personal property or natural resources, i.e. the Deepwater Horizon oil spill, and (3) the Claimant requested prospective loss amounts which are not compensable under OPA.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *5/14/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

<sup>15</sup>Lost Earnings/Income Worksheet, 18 December 2011.

<sup>16</sup> Emphasis added.