

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](mailto:arl-pf-npfcclaimsinfo@uscg.mil)  
Fax: 703-872-6113

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
Number: 7011 1570 0001 4803 8503

5890  
15 August 2012

Richard L. Clancy

RE: Claim Number: N10036-1862

Dear Mr. Clancy:

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 N10036-1862 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for further explanation.

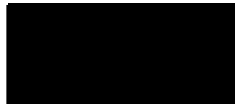
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1862.

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	: N10036-1862
Claimant	: Richard J. Clancy
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$13,000.00

### ***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.

On 8 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

### ***CLAIM AND CLAIMANT***

On 13 July 2012, Richard J. Clancy (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$13,000.00 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup> The Claimant is a waiter, employed before the oil spill at a restaurant in Tampa, Florida, and presently employed with another restaurant of the same chain, but in a different city.<sup>2</sup> The Claimant asserts that he lost income in 2010 and 2011 when the oil spill caused a lack of business at the Tampa restaurant where he worked and causing him to first lose hours, then his job, when that restaurant eventually closed<sup>3</sup> on June 2011.<sup>4</sup> The Claimant states that he was on unemployment for a period of about five months as he sought new employment.<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

<sup>1</sup> Claim Form information received 13 July 2012.

<sup>2</sup> Undated letter, 'To Whom It May Concern' responding to GCCF correspondence on missing information for Claim #3586644.

<sup>3</sup> Undated letter, 'To Whom It May Concern' regarding Claim #3586644 providing summary information on his losses.

<sup>4</sup> Claimant refers only to the restaurant's closure in 2011. Naplesnews.com dated 14 June 2011 reported Perkins & Marine Callender's Inc. had closed nine restaurants in Florida on Sunday [12 June 2011], including two in Tampa, as part of filing for Chapter 11 bankruptcy protection.

<sup>5</sup> Undated letter, 'To Whom It May Concern' regarding Claim #3586644 providing summary information on his losses.

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 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.

Pursuant to 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission to the OSLTF**

To support this claim, the Claimant presented the following documentation:

- Claim Form information received 13 July 2012.
- Undated letter, 'To Whom It May Concern' responding to GCCF correspondence on missing information for Claim #3586644.

- Undated letter, 'To Whom It May Concern' regarding Claim #3586644, providing summary information on his losses.
- GCCF Deficiency Letter dated 31 May 2012 on Interim Payment/Final Payment Claim.
- GCCF Letter dated 29 May 2012 on Proposed Settlement of BP Deepwater Horizon Litigation.
- Wage and Tax Statement Form W-2 for 2008 from Perkins & Marie Callenders, Inc.
- IRS Tax Return Transcript for Tax Period Ending 31 December 2008.
- Wage and Tax Statement Form W-2 for 2009 from Perkins & Marie Callenders, Inc.
- IRS Tax Return Transcript for Tax Period Ending 31 December 2009.
- Wage and Tax Statement Form W-2 for 2010 from Perkins & Marie Callenders, Inc.
- IRS Tax Return Transcript for Tax Period Ending 31 December 2010.
- Wage and Tax Statement Form W-2 for 2011 from Perkins & Marie Callenders, Inc.
- Wage and Tax Statement Form W-2 for 2011 from Northcott Company.
- IRS Tax Return Transcript for Tax Period Ending 31 December 2011.
- Earnings Statement dated 18 May 2012 from Northcott Company.
- Transaction Report on Richard Clancy from Uncle Bob's Self Storage, Tampa, FL, dated 18 May 2012.

On 13 July 2012, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$13,000.00 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.<sup>6</sup> The Claimant indicates that he submitted a Claim to the responsible party in May 2012.<sup>7</sup> The Claimant also indicates that his claim has not been denied by the responsible party, but stated, "GCCF [said] they were missing some information from [him] and there would not be time to process [the] claim before the June 4<sup>th</sup> deadline and referred [him] to [the NPFC]."<sup>8</sup>

The NPFC reviewed the information provided by the Claimant and confirmed presentment to the GCCF of a claim for lost earnings & profits and that the GCCF assigned Claimant Identification No. 3586644 to the Claimant.<sup>9</sup> Claim No. 9596722 was assigned to the claim. Based upon the information provided and verification by the NPFC, this claim for loss of profits and impairment of earning capacity is considered to have been constructively denied by the GCCF and can be adjudicated in the full amount of damages presented: \$13,000.00.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damage class action settlement (the E&PD settlement).

### **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.

As an initial matter, it appears that the Claimant is a member of the E&PD Settlement. This claim is therefore considered to have been settled, and the Claimant is therefore ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is

<sup>6</sup> Claim Form information received 13 July 2012.

<sup>7</sup> Claim Form information received 13 July 2012.

<sup>8</sup> Claim Form information received 13 July 2012.

<sup>9</sup> GCCF Deficiency Letter dated 29 May 2012 on Interim Payment/Final Payment Claim.

subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, this claim is also denied under OPA's loss of profits damage category, as the Claimant has failed to prove that he has sustained a financial loss as a result of the Deepwater Horizon oil spill.

#### Failure to Prove Loss of Earnings

The Claimant asserts a loss of income in 2010 and 2011 due to the Deepwater Horizon oil spill.<sup>10</sup> The Claimant provided documentation showing that he was employed by Perkins & Marie Callender, Inc. in 2008, 2009, 2010 and part of 2011.<sup>11</sup> The Claimant did not provide documentation showing the specific company restaurant where he worked. In addition, he did not provide a termination notice or other correspondence from his employer.<sup>12</sup> According to the Claimant, those who worked there simply showed up for work one day and found the doors were shut [locked].<sup>13</sup> The Claimant did not provide pay stub or other information showing that his hours and, therefore, pay had been cut back over a long period of time or that his employment ended at the same time that the restaurant was closed. Finally, the Claimant indicates that he received unemployment compensation for about five months. The Claimant did not provide a Form 1099 for that compensation, but \$3,964.00 in unemployment compensation is shown on the Claimant's 1011 tax returns.<sup>14</sup>

The Claimant's W-2 Forms for 2010 show a reduction in total income from Perkins & Marie Callender's when compared to the average amount earned in 2008 and 2009.<sup>15</sup> That 2010 reduction was \$4,389.00.

The Claimant determined loss for 2011 by first calculating total income in the amount of \$9,896.00,<sup>16</sup> although there are errors in that calculation. First, the amount seems to include income from the Venice restaurant twice. Second, the calculation should, but does not include

---

<sup>10</sup> Claim Form information received 13 July 2012.

<sup>11</sup> Wage and Tax Statement Form W-2s for 2008, 2009, 2010, and 2011 from Perkins & Marie Callenders, Inc

<sup>12</sup> In Phone conversation between Claimant and NPFC Staff on 20 July 2012, the Claimant indicated that his last manager at the restaurant had been Chris Sydejko, but he doesn't know where he is now.

<sup>13</sup> Phone conversation between Claimant and NPFC Staff on 20 July 2012.

<sup>14</sup> IRS Tax Return Transcript for Tax Period Ending 31 December 2011.

<sup>15</sup> The Claimant's 2008 W-2 from Perkins & Marie Callender was for \$17,212.71 and 2009's W-2 was for \$17,413.25. The Claimant averaged those W-2s and rounded off to \$17,313.00.

<sup>16</sup> Undated letter, 'To Whom It May Concern' regarding Claim #3586644, providing summary information on his losses.

the amount of unemployment compensation received in 2011.<sup>17</sup> The Claimant's total income for 2011 should, therefore, be higher.

The NPFC also notes that the Claimant has included \$2,425.57 in additional costs to his loss amount for 2011.<sup>18</sup> While the Claimant did provide documentation of the storage costs paid, beginning in July 2011,<sup>19</sup> the Claimant has not provided documentation on the other costs, which include a contractual fee for moving before the lease expired, a loss of deposit, a month's rent for breaking the lease and the costs of moving. Other than the storage costs, none of the costs have been verified by receipts. The lease that seems to be the basis for many of these costs has not been provided. Further, the relationship of these additional costs to the Claimant's stated relocation to another city for a new job has not been shown.

Based upon the discussion above, the evidence provided by the Claimant does not allow the NPFC to measure or verify the Claimant's losses in 2011. If the Claimant decides to request reconsideration of this claim, additional information, including documentation detailing the unemployment compensation received for the year as well as documentation to verify the additional claimed costs should be provided.

#### Failure to Prove Causation

The Claimant asserts that his alleged loss of income is due to the oil spill.<sup>20</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 by the Claimant. Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill.

According to the Claimant, he formerly worked at the corporate-owned Perkins Restaurant at the intersection of Waters and Anders, in Tampa, Florida.<sup>21</sup> The restaurant's business may have been affected, but the Claimant has not provided documentation showing the impact of the oil spill on the restaurant. It is necessary for the restaurant to have been affected by the oil spill in some measureable way to validate that the oil spill was its reason for the restaurant's closure and the Claimant's being terminated.

The Claimant states that he became unemployed in 2011, following months of reduced hours and pay.<sup>22</sup> The Claimant provided no documentation from his employer indicating that the oil spill affected the restaurant (therefore his work hours), that the restaurant closed as a result of the oil spill, and that claimant's employment was terminated when the restaurant closed. The NPFC cannot accept statements as proof of causation without supporting evidence of the impact of the oil spill on the restaurant. Evidence would normally include documentation of the restaurant's Sales Tax Reports to the State for 2009, 2010 & 2011 and profit & loss sheets for the restaurant showing when sales began to fall off when compared to 2009 financials, as well as confirmation of the causation by corporate managers.

The NPFC contacted the Claimant's corporate managers. Contrary to the Claimant's assertions, the corporate managers indicated that the restaurant where the Claimant worked closed for

---

<sup>17</sup> IRS Tax Return Transcript for Tax Period Ending 31 December 2011.

<sup>18</sup> Undated letter, 'To Whom It May Concern' regarding Claim #3586644, providing summary information on his losses.

<sup>19</sup> Transaction Report on Richard Clancy from Uncle Bob's Self Storage, Tampa, FL, dated 18 May 2012.

<sup>20</sup> Claim Form information received 13 July 2012.

<sup>21</sup> Phone conversation between Claimant and NPFC Staff on 20 July 2012.

<sup>22</sup> Undated letter, 'To Whom It May Concern' regarding Claim #3586644, providing summary information on his losses.

reasons other than the Deepwater Horizon oil spill. In fact, Perkins and Marie Callenders filed for bankruptcy on 13 June 2011,<sup>23</sup> closing 65 restaurants nationwide, including nine in Florida. According to that filing —

... the Debtor's operations and financial performance were severely and adversely affected due to excessive leverage and poor sales results. The poor economic climate has been a primary factor in the decline in restaurant sales, particularly in Florida and California, where there are large concentrations of Perkins and Marie Callender's restaurants, and where high foreclosure rates and depressed economies have prevailed. With overall unemployment rates at record high levels, discretionary income for many historically-loyal customers and other consumers has been severely constrained, directly correlating to depressed restaurant sales and reduced or eliminated customer traffic. Restaurant sales were also negatively impacted by a lack of restaurant remodeling expenditures due to the Debtors' internal constraints on deploying cash for capital expenditures. As better resourced competitors continued to build new locations and upgrade their existing facilities, many of the Debtors' restaurants became facially dated and stale, which also negatively impacted the ability of the Debtors to maintain customer traffic at the levels prevailing prior to the economic downturn.

In consideration of the corporate bankruptcy and statements made in that filing, as well as a lack of other information that verifies the cause of the Claimant's alleged loss to be the oil spill, the Claimant's loss of earnings has not been proven.

This claim is denied for the following reasons: (1) the Claimant is considered to have settled his claim by virtue of belonging to the economic damages class associated with the CSSP; (2) the Claimant has failed to adequately demonstrate his alleged loss through financial documentation; and (3) the Claimant has failed to demonstrate that his 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/15/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>23</sup> United States Bankruptcy Court for the District of Delaware, in re: Perkins & Marie Callender's Inc. et al., Debtors, Chapter 11, Case No. 11-11795 (KG).