U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
31 January 2013

[redacted]t Services
[redacted]

Re: Claim Number: N10036-1887

[redacted],

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 N10036-1887 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 N10036-1887.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[redacted]ivision
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1887
Claimant	Entertainment Management Services, LLC
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	$244,937.00

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 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 08 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 the 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 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 23 January 2013, Ms. Joy Turner, on behalf of Entertainment Management Services, LLC, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $244,937.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.[1]

The Claimant is the owner and operator of a wedding and event planning company in Daphne, Alabama. The Claimant alleged that following the oil spill, "[t]he poor condition of the Gulf beaches prevented their use for beach weddings."[2] Furthermore, the Claimant alleged that the "reputation of soiled beaches also discouraged couples from considering the Gulf for a destination wedding for quite some time after the spill."[3] The Claimant received compensation from the Responsible Party in 2010 and 2011, and now seeks to recover losses allegedly sustained in 2012.

In order to calculate the extent of her loss, the Claimant took the average of her gross sales for 2006 through 2009 to reach an estimate of $305,712 in expected sales for 2012. No evidence was provided to indicate the Claimant's actual earnings in 2010 or 2011. The Claimant subtracted her actual 2012 sales of $60,775.00 from her expected sales for that year to reach her sum certain of $244,937.00.[4]

APPLICABLE LAW

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[1] Optional OSLTF Claim Form, signed on 16 January 2013.
[2] Optional OSLTF Claim Form, signed on 16 January 2013.
[3] Optional OSLTF Claim Form, signed on 16 January 2013.
[4] Loss of profits computation.

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. 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; and
(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.

Under 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 NPFC

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 15 January 2013;
- 2012 Profit and Loss Statement;
- Loss of Profits computation;
- 2006 Profit and Loss Statement;
- 2007 Profit and Loss Statement;
- 2008 Profit and Loss Statement;
- 2009 Profit and Loss Statement.

The Claimant previously submitted at least two claims to BP through the GCCF. In 2010, the Claimant alleged to have received a payment of $111,482.00.[5] In 2011, the Claimant accepted a final payment of $25,000.00, presumably in exchange for signing a Release and Covenant Not To Sue, as was standard practice for final payments made through the GCCF.[6]

On 23 January 2013, the Claimant submitted this claim to the NPFC seeking $244,937.00 in loss of profits or impairment of earning capacity damages.[7] The NPFC does not have information necessary to determine exactly what amount of damages was previously presented to and denied by the Responsible Party.[8] Therefore, any damages now before the NPFC, which have been compensated by, or have not been presented to the Responsible Party, are denied. The remainder of this determination shall address all damages previously presented to and denied by the Responsible Party in accordance with OPA presentment requirements.[9]

Furthermore, evidence in this claim submission indicates that because the Claimant has signed a Release and Covenant Not To Sue in exchange for final payment. As such, the NPFC will presume that the Claimant is excluded from the Economic and Property Damage Class Action Settlement (E&PD Settlement).

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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

For several reasons, this claim is not eligible for compensation from the Oil Spill Liability Trust Fund. As an initial matter, it appears that the Claimant has been compensated at least $136,482.00 by the Responsible Party, including a "final payment" by the GCCF. Presumably then, the Claimant signed a Release and Covenant Not To Sue in exchange for final payment. Standard releases provided by the GCCF state that a claimant who has signed a release may not also be compensated by the NPFC through the Oil Spill Liability Trust Fund (the Fund). Specifically, the release states,

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[5] Optional OSLTF Claim Form, signed on 16 January 2013.
[6] *See*, e.g., BP Claims Program, Frequently Asked Questions, available at, http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/gom_response/STAGING/local_assets/downloads_pdfs/BP_Claims_Program_FAQ_English.pdf, accessed on 30 January 2013.
[7] Sum Certain Statement, 16 January 2012.
[8] 33 C.F.R. § 136.103(a).
[9] 33 C.F.R. § 136.103(a).

> [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 Fund requires the acquisition of rights from the Responsible Party. Because these rights have been released by the Claimant to BP, the Claimant cannot also recover from the Fund. The standard language of the Release makes clear that BP has been subrogated to the Claimant's rights to recover losses related to the oil spill. It states in part,

> [a]s 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.

If the Claimant did not sign a release containing the language quoted above, and wishes to request reconsideration of this claim, the Claimant should provide proof that she has not released her rights to this claim and is therefore still eligible to pursue recovery through the NPFC.

However, this claim would also be denied on its merits. In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained an uncompensated loss or reduction in *profits*, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

Under OPA's loss of profits damage category, the amount of compensation available to a claimant is limited to "the actual net reduction or loss of earnings or profits suffered"[10] and must be reduced by payments previously made to the Claimant.

Here, the Claimant has failed to provide evidence sufficient to document the extent of her lost profits in any year following the oil spill. Therefore, the NPFC is unable to determine whether or not payments previously made to the Claimant have fully compensated her for any losses in *profits* she may have incurred in the period following the oil spill. In order to prove that she has not been fully compensated, the Claimant would have to provide evidence of actual income in 2010, 2011 and 2012, as well as documentation of saved costs and expenses during those years. Presumably, contract labor costs, which account for the majority of the Claimant's expenses from 2006 through 2009, would have been saved if anticipated events were either cancelled or not scheduled.

According to profit and loss statements included in this submission, the Claimant earned income after expenses of $6,106.39 in 2007, $28,758.62 in 2008, and $199.50 in 2009.[11] It seems then, that payments made by the Responsible Party, in the amount of $136,482.00, have likely compensated the Claimant for any loss in profits she may have experienced from the time of the oil spill through the date of this claim submission.

Furthermore, the Claimant has failed to provide any evidence that might prove that business losses sustained in 2012 were somehow caused by the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because (1) the Claimant has released her rights regarding this to the Responsible Party, (2) the Claimant has failed to provide evidence sufficient to prove that she sustained a financial loss in the amount $244,937.00, and (3) the Claimant has failed to provide evidence sufficient to prove that the alleged loss is due to the injury,

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[10] 33 C.F.R. § 136.235.

[11] Yearly Profit and Loss Statements, 2007, 2008, 2009.

destruction, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***1/31/13***

Supervisor's Action: ***Denial approved***

Supervisor's Comments: