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
29 October 2013

Times Grill IV, LLC
[redacted]

Re: Claim Number: N10036-1998

Dear Mr. Buras:

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 N10036-1998 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 N10036-1998.

Mail reconsideration requests to:

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

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

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1998
Claimant	Times Grill IV, LLC
Type of Claimant	Corporate
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	$111,049.00

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 October 2013, Mr. Daniel Buras, Jr. presented a claim on behalf of his client, Times Grill IV ("Claimant") to the Oil Spill Liability Trust Fund (OSLTF) seeking $111,049.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.[1]

At the time of the oil spill, the Claimant was a full service restaurant operating in Baton Rouge, LA. As a result of the spill, the Claimant states that the restaurant and bar had a significant drop in customers and revenue. The Claimant also states that the oil spill decreased tourism and increased product costs.

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 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;

[1] Optional OSLF Claim Form, 14 August 2013.

(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:

- Claim Submission for the US District Court for the Eastern District of Louisiana;
- GCCF Client Authorization Form, 18 November 2011;
- Direct Filing Short Form;
- Coastal Claims Group Service Invoice, 27 August 2012;
- Coastal Claims Group Forensic Analysis and Report, 25 August 2012;
- Certificate from the Secretary of State, Louisiana, regarding Times Grill IV, 21 June 2012;
- State of Louisiana Articles of Organization and Initial Report, 1 November 2005;
- Louisiana Secretary of State Commercial Division Charters for Times Grill IV;
- LA DTR Report for Times Grill IV;
- Profit & Loss Report, 1 January 2007 – 31 December 2011;
- Internal Sales Audits for Times Grill IV.

On 23 October 2013, the Claimant presented this claim to the NPFC, seeking $111,049.00 in loss of profits or impairment of earning capacity. Although the Claimant includes a copy of the signed Client Authorization Form with its claim, it does not provide documentation that it was first presented to the RP and that the RP denied payment on this claim. However, the NPFC will adjudicate the claim to the extent that presentment requirements have been satisfied. If any damages subject of this claim were not first presented to and denied by the RP, these damages are denied for improper presentment.[2]

Evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement).[3]

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.

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

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, even if the Claimant was not included in the Settlement Class, this claim is denied on its merits. In order to prove a claim for loss of profits or impairment of earning capacity damages, a claimant must provide evidence sufficient to prove (1) that the claimant sustained a loss or reduction in income, and (2) that the loss was caused by damage to real or personal property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

The Claimant alleged that, as a result of the oil spill, it lost revenue, realized a decrease in tourism and saw increased product costs. The Claimant states it hired a third-party auditing firm to look at its financials from the previous years to determine what its alleged loss was. However, these factors in and of themselves are not necessarily a direct link to the oil spill. The Claimant has not provided sufficient evidence that might indicate what factors were causing the Claimant's revenue to decrease the year of the spill since the decrease in revenue was less the year of the oil spill than the year prior. It is important to note that the Claimant's overall revenue decreased every year beginning in 2008 based on the documentation provided. The Claimant's total reported revenue by year is as follows:

2008 - $1,654,203.00
2009 - $1,543,654.00
2010 - $1,500,962.00
2011 - $1,423,812.00

Additionally, the Claimant provided a summary of variable costs by year which are as follows:

[2] 33 C.F.R. § 136.103(c)(2).

[3] At the time of the spill, the Claimant was living within the economic settlement loss zones. Additionally, claimant provides documentation to show it was located in Economic Loss Zone C.

2008 - $888,980.00
2009 - $840,755.00
2010 - $837,609.00
2011 - $0.00

Based on the variable cost data provided, the Claimant's assertion that the oil spill caused increased product costs may be flawed. It would appear variable costs decreased annually beginning in 2008. It is important to note that the Claimant has not provided all the granular data to support the financial summary data therefore without that documentation, the NPFC is unable to determined what the cause for the reduction in revenue from 2008 – 2011 or the reduction in variable costs from 2008 – 2011 were a result of.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that it sustained a financial loss in the amount of $111,049.00, or (2) that the alleged loss is due to the injury, destruction, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement and is therefore, not eligible for OSLTF compensation.

Claim Supervisor: *NP*[redacted]*ation Division*

Date of Supervisor's Review: *10/29/13*

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

Supervisor's Comments: