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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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 2000 0001 1246 7257

5890/DWHZ
16 July 2014

Ms. Sheri Peters
[redacted]

Re: Claim Number: N10036-2028

Dear Ms. Peters:

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 N10036-2028 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 N10036-2028.

Mail reconsideration requests to:

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

Sincerely

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

Enclosure: Claim Summary/Determination
CC: [redacted]

By Certified Mail:
Number: 7010 0780 0001 8634 2234

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-2028
Claimant	Sheri Peters
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	$120,000.00

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 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 16 July 2014, Ms. Penny Slawkowski submitted a claim for her client, Ms. Sheri Peters (the "Claimant") to the Oil Spill Liability Trust Fund (OSLTF) seeking $120,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.

At the time of the spill, the Claimant states she was working for a debt management company, where the majority of her customers were located in the South, primarily in Texas, Louisiana and Mississippi. As the Claimant made her income by signing up new customers for her company's services, she states the oil spill hindered her ability to make income because people were not signing up for debt relief management. She attributes this decline to the clientele not having income and thus not being able sign up for services. As a result, she did not meet her quotas and lost her job.

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;
(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, 7 March 2014;
- Claim Cover Letter from legal counsel for Claimant, 7 March 2014;
- Claim Cover Letter written by Claimant;
- Deepwater Horizon Economic and Property Settlement Registration Form for Claimant;
- GCCF Claim Package for Claimant;
- Various CareOne Earning Statements for Claimant;
- BP Claims Program Package for Claimant;
- Various Federal Tax Returns for Claimant.

The Claimant alleged that this claim was first presented to the Responsible Party and that the RP denied payment on this claim.[1] On 14 March 2014, the Claimant presented this claim to the NPFC, seeking $120,000.00 in loss of profits or impairment of earning capacity. The NPFC will adjudicate the claim to the extent presentment requirements have been satisfied. If any damages

[1] Claimant Statement of Damages letter.

subject of this claim were not first presented to and denied by the RP, these damages are denied for improper presentment.[2]

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.

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, she lost income and, ultimately, her job because customers were not calling in from the Gulf region and using CareOne's debt consolidation/management services. However, simply because the Claimant worked in this capacity for clients who may or may not have been affected by the spill, does not equate to her having suffered losses as a *direct* result. The Claimant's possible clientele made business decisions—whether each wanted to or not—to not call and do business with the Claimant and CareOne. Business decisions are not affects of the oil spill, they are conscious decisions whether or not to perform work and/or services. Additionally, there are many economic and environmental factors why a company increases or decreases its earnings over any given period of time.

The Claimant states she traditionally had 90% of her customer base in the Gulf but does not provide documentation supporting this (she only provides hand-written/typed lists to show calls during the affected time period; therefore, offering no comparisons). Claimant also does not provide the number of clients lost or for what types of actual business her potential clientele were looking into forming with her/CareOne. In order for the Claimant to tie her losses to the oil spill, she would have to tie the loss of each and every one of her clients to the oil spill. (As a side, simply because clients were not contacting/contracting with the Claimant also does not mean they were suffering economic losses. Additionally, there were financial gains experienced during the oil spill that may or may not have affected the need for debt counseling/management services.) Based on the foregoing, the Claimant has failed to meet her burden to demonstrate any lost or reduced business or the ultimate loss of employment is directly related to the oil spill. Based on the information provided, without more, the NPFC cannot ascertain that the Claimant suffered losses due to the oil spill.

Finally, it should be noted that some of the Claimant's lost wages are speculative/prospective, and as such, are not actual *incurred* losses. Speculative losses are not payable under OPA; rather, only actual damages incurred and as such, are denied.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that she sustained a financial loss in the amount of $120,000.00, 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.

[2] 33 C.F.R. § 136.103(c)(2).

Claim Supervisor: ***NPFC [redacted]cation Division***

Date of Supervisor's Review: *7/16/14*

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

Supervisor's Comments: