

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: Richard.M.Cool@uscg.mil  
Fax: 202-493-6937

5890  
05 October 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 4827

Holland, Groves, Schneller & Stolze  
Attn: Gerard B. Schneller  
300 N. Tucker Blvd., Suite 801  
St. Louis, MO 63101

Re: Claim Number: N10036-1273

Dear Mr. Schneller:

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 N10036-1273 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 N10036-1273.

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: (1) Claim Summary / Determination Form

Copy to: Augusta Barth  
64 Silver Springs Drive  
Key Largo, FL 33037

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 4834

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1273
Claimant	: Augusta Barth
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$15,000.00

### ***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 claims for certain individual and business claims on behalf of BP.

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

On 14 June 2011, Mr. Gerard B. Schneller, on behalf of his client Augusta Barth, (collectively 'Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup> The Claimant is a homeowner who rents one or more rooms in her home in Key Largo, Florida, to vacationers/travelers.<sup>2</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 Section 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.

<sup>1</sup> Optional OSLTF Claim Form signed 23 May 2011 and received 14 June 2011.

<sup>2</sup> Optional OSLTF Claim Form signed 23 May 2011 and received 14 June 2011.

- (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.

With limited exceptions, 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.

## ***DETERMINATION OF LOSS***

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

The Claimant represents having filed claim with the responsible party on 22 November 2010, prior to presentment to the NPFC, but the Claimant did not indicate the amount of the claim to the responsible party.<sup>3</sup> Based on independent research by the NPFC, the Claimant presented an Emergency Advance Payment Claim with the RP/GCCF on 3 December 2010 in the amount of \$9,000.00 and, on 27 January 2011, the Claimant presented an Interim Payment Claim in the amount of \$15,000.00.<sup>4</sup> On 13 June 2011, the Claimant presented a Full Review Final Payment Claim in the amount of \$15,000.00 to the GCCF. GCCF Claimant ID Number 1180086 was assigned to all of these claims by the RP/GCCF and all have been denied.<sup>5</sup>

On 14 June 2011, the Claimant presented this claim to the Oil Spill Liability Trust Fund (OSLTF).<sup>6</sup> The claimed amount of \$15,000.00 is for loss of income because of a lack of vacationers/travelers at Key Largo, Florida.<sup>7</sup>

In support of this claim, the Claimant presented the following documentation:

- Optional OSLTF Claim Form dated 23 May 2011 and received on 14 June 2011.
- Letter dated 10 June 2010 from Holland, Groves, Schneller & Stolze submitting the claim.
- 2010 Form 1040 with Schedule M.
- 2009 Form 1040 with Schedule A, C and M.
- 2008 Form 1040 with Schedule A.
- 2008 Form 1NPR, Wisconsin income tax return (Nonresident & part-year resident).

<sup>3</sup> Optional OSLTF Claim Form signed 23 May 2011 and received 14 June 2011.

<sup>4</sup> GCCF – U.S. Coast Guard Report as of 21 September 2011.

<sup>5</sup> GCCF – U.S. Coast Guard Report as of 21 September 2011.

<sup>6</sup> Optional OSLTF Claim Form signed 23 May 2011 and received 14 June 2011.

<sup>7</sup> Optional OSLTF Claim Form signed 23 May 2011 and received 14 June 2011.

## **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 profits or impairment of earning capacity was due to injury or destruction or loss of real or personal property or 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 the claim.

The NPFC considered all documentation presented by the Claimant.

After an initial review, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The letter requested, among other things, financial documentation to support the Claimant's lost profits and earnings calculations, as well as an explanation of how the Deepwater Horizon oil spill caused the business losses. The Claimant was given 14 days to respond to the letter, dated 25 August 2011.

Regarding financial losses, the Claimant was asked to provide, among other things, documentation of previous rentals, previous rental dates and fees, copies of rental agreements/contracts, a copy of advertisements made with associated costs and any reduction to fees offered in 2010. The Claimant was also asked to explain how the amount claimed was determined and the period of time covered by the claim. Without adequate financial information, the NPFC cannot make a determination regarding the alleged loss of profits.

Regarding causation, the Claimant was asked to provide an explanation on how the Deepwater Horizon oil spill caused the Claimant's losses and when the Claimant had begun renting the house/room. The Claimant must provide sufficient proof that the alleged damages were caused the Deepwater Horizon oil spill and not other factors.

To date, the Claimant has not responded to the request for information dated 25 August 2011.

This claim is denied for the following reasons: (1) Claimant has failed to meet the evidentiary burden to provide all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim, (2) Claimant has failed to provide financial documentation that demonstrates a loss in the amount claimed, and (3) Claimant has failed to demonstrate that the 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.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/5/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: