

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
3 October 2011

American Credit Card Services, Inc.
ATTN: Mr. Chris Pierce
3279 Burnt Pine Lane
Miramar Beach, FL 32550

Re: Claim Number: N10036-1297

Dear Mr. Pierce:

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 N10036-1297 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 N10036-1297.

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	N10036-1297
Claimant	American Credit Card Services, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$119,802.00

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.

CLAIM AND CLAIMANT

On 9 August 2011, Mr. Chris Pierce, on behalf of American Credit Card Services, Inc. (collectively, the Claimant) presented this claim to the NPFC for \$119,802.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant is a credit card processing service provider located in Destin, Florida, who alleged to have sustained a "loss of income as a direct effect of the oil spill," which "caused cancellations and lack of tourists in the area."²

The Claimant further alleged that "revenues for the current year are down approximately 20% as compared to the prior year amounts."³ The Claimant seeks \$119,802.00 in income allegedly lost in the fourth quarter of 2010 and the first quarter of 2011.⁴

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.

¹ Optional OSLTF Claim Form, dated 10 August 2011.

² Optional OSLTF Claim Form, dated 10 August 2011.

³ Hardship Letter from The Claimant to the NPFC, 26 May 2011.

⁴ Optional OSLTF Claim Form, dated 10 August 2011.

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form, 10 August 2011;
- Claim Summary, 26 May 2011;
- Map showing cities where the Claimant conducts business
- Document titled, "Oil Spill Permeates the Gulf Coast's Most Productive Environments," World Resources Institute;
- American Credit Card Merchant Services Inc. Profit & Loss, 2010;
- American Credit Card Merchant Services Inc. Profit & Loss, 2009;
- American Credit Card Merchant Services Inc. Profit & Loss, 2008;
- 2010 Corporate Tax Returns, including Schedules and Attachments;
- 2009 Corporate Tax Returns, including Schedules and Attachments;
- 2008 Corporate Tax Returns, including Schedules and Attachments;
- 2007 Corporate Tax Returns, including Schedules and Attachments;
- List of customers;
- Profit and Loss Statements.

On 6 January 2011, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF for loss of profits and earnings in the amount of \$110,000.00.⁵ The Claimant was assigned Claimant ID 3482022 and ICQ12011 was assigned Claim # 9170711. This claim was denied on 22 April 2011.⁶

On 7 April 2011, the Claimant submitted a Second Quarter Interim Payment Claim (ICQ22011) for loss of profits and earnings. ICQ22011 was assigned Claim #9348851 and was denied on 20 July 2011.

On 9 August 2011, the Claimant submitted this claim to the NPFC, for loss of profits and earnings in the amount of \$119,802.00.⁷ The NPFC may only adjudicate a claim which has been first presented to the RP/GCCF.⁸ Therefore, the NPFC may adjudicate this claim, in the amount of \$119,802.00, as long as this damage amount was presented first to the RP/GCCF in ICQ12011 and ICQ22011. Any damage amounts now before the NPFC which were not first presented to the RP/GCCF are denied.

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

In order to prove a claim for loss of profits and impairment of earnings capacity, a Claimant must demonstrate (1) that he sustained an actual loss or reduction in profits or earnings capacity, and (2) that the loss sustained by the Claimant was caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

In order to prove that he sustained a financial loss, the Claimant provided monthly profit and loss statements for 2008, 2009 and 2010, as well as a profit and loss statements for January – June of 2011. When examining the Claimant's monthly profit and loss statements for 2009 and 2010, the NPFC notes that the Claimant's monthly income was down an average of 22.17% in the months of January – April for 2010 as compared to those months in 2009. Alternately, during the four months following the oil spill, when tourism in the Florida panhandle would have been most affected, the Claimant's income was down an average of 19.7%. Because the Claimant's income was decreasing at a slightly higher rate in the months leading up to the oil spill, as compared to the months following the oil spill, the Claimant has not demonstrated that the oil spill affected the Claimant's income. In other words, the Claimant has not provided evidence to demonstrate that although his income was decreasing in the period leading up to the spill, this trend would have changed were it not for the oil spill.

Likewise, the Claimant has not provided sufficient documentation to indicate that the losses he alleged were caused by the Deepwater Horizon oil spill. In the Claimant's original submission to the NPFC, he provided a list of customers generating yearly income. This list included restaurants, construction companies, rental and equipment companies, and various other small businesses. However, the Claimant has not provided an indication of how much income was

⁵ GCCF Coast Guard Report, 22 September 2011.

⁶ GCCF Claimant Status, accessed on 29 September 2011.

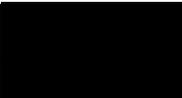
⁷ Optional OSLTF Claim Form dated 10 August 2011.

⁸ 33 C.F.R. 136.103(a).

generated from these particular clients, nor has he presented evidence to show which clients were affected by the Deepwater Horizon oil spill.

In a letter dated 18 August 2011, the NPFC requested that the Claimant provide specific documentation to show how his sales were affected by the oil spill, such as evidence of what percentage of the Claimant's business was generated from specific customers, in order to ascertain whether or not the Claimant's lost income resulted from customers who were actually affected by the Deepwater Horizon oil spill. The Claimant replied to the NPFC's request for additional information, but did not respond to these particular questions.⁹ Based on the information currently before the NPFC, the Claimant has not provided sufficient documentation to show that he lost profits due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of 119,802.00, and (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 a discharge of oil.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/2/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁹ The Claimant provided a response to a request for additional information by providing monthly profit and loss statements for 2008, 2009 and 2010, as well as profit and loss statements for January – June 2011.