

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



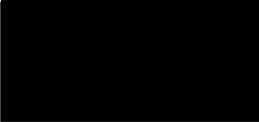
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4666 9816

5890/DWHZ  
1 September 2011

Change of Scenery, LLC



Re: Claim Number: N10036-1311

Dear Ms. Millet:

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 N10036-1311 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 N10036-1311.

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	N10036-1311
Claimant	Change of Scenery, LLC
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$200,000.00

### ***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 16 August 2011, Ms. Brenda Millet, on behalf of Change of Scenery, LLC (collectively, Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$200,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was an interior design company, offering home remodeling services in LaPlace, LA.<sup>2</sup> The Claimant alleged that due to the oil spill, the Claimant lost profits, and eventually went out of business in October 2010.<sup>3</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

<sup>1</sup> Optional OSLTF Claim Form dated 29 July 2011.

<sup>2</sup> Optional OSLTF Claim Form dated 29 July 2011.

<sup>3</sup> Letter from Claimant, dated 15 August 2011.

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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 29 July 2011;
- Fax Cover Sheet, dated 15 August 2011;
- Letter from Claimant, dated 15 August 2011;
- Handwritten document titled, "2010 Report of Finances";
- Letter from Claimant, noting denial of GCCF offer for \$25,000.00 settlement;
- Document titled, "Fact Sheet About U.S. Small Business Administration Economic Injury Disaster Loans;
- Hammer, David, *BP hastens payments for business's claims*, Times Picayune;
- 2010 Schedule C (Form 1040);
- 2010 Profit and Loss worksheet;
- Copy of Full Review Final Payment Claim Form, Claimant ID 1094236, seeking damages in the amount of \$200,000.00, 12 January 2011;
- Letter from Claimant to GCCF, 7 July 2011;
- Deficiency Letter on Interim Payment/Final Payment Claim, 25 June 2011;
- Letter from Claimant to GCCF, 2 August 2011;
- Determination Letter on Interim Payment/Final Payment Claim, 25 July 2011;
- Copy of Check, 17 February 2010;
- St. John the Baptist Parish Sales and Use Tax Return, January – October 2010;

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF. Claimant was assigned ID 1094236 and EAP was assigned claim number 10930.<sup>4</sup> The EAP claim was paid in the amount of \$15,000.00 on 22 July 2011.<sup>5</sup>

Claimant also presented a First Quarter Interim Payment Claim (ICQ12011) for lost profits and earnings in the amount of \$200,000.00 to the RP/GCCF, which was assigned Claimant ID 9241229.<sup>6</sup> Claimant was offered a \$25,000.00 final payment on 25 July 2010.<sup>7</sup> To date, Claimant has not accepted the offer.<sup>8</sup>

On 16 August 2011, Claimant presented this claim for \$200,000.00 in loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.<sup>9</sup> This NPFC determination addresses this claim for \$200,000.00 in loss of profits and impairment of earning capacity, as first presented to the GCCF in ICQ12011.

### **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, the Claimant must provide evidence to demonstrate (1) that she sustained a financial loss, and (2) that the financial loss was a result of the Deepwater Horizon oil spill.

The Claimant did not provide documentation to indicate business earnings prior to 2010. Therefore, the Claimant has not demonstrated that her earnings in May - October 2010 were lower than earnings in the same period of previous years. Furthermore, the Claimant has failed to provide evidence that would indicate that any business losses incurred were caused by the Deepwater Horizon oil spill and not by other factors.

In the Claimant's submission, she alleged,

at the time of the spill I was remodeling people's homes, boats and places of business with carpeting ceramic tiles, VCT tiles, wood flooring, blinds and storage sheds . . .<sup>10</sup>

Should the Claimant pursue this claim on reconsideration, the Claimant must present evidence, such as records of payment to the business, to show that she was in fact doing such work, and that work was either (1) cancelled, or (2) not scheduled at the same rates that it had previously been scheduled, due to effects of the oil spill. Furthermore, the Claimant should provide financial documentation, including income tax returns, to indicate that her business was generating a certain amount of profits in previous years, which it failed to generate after the oil spill.

<sup>4</sup> GCCF Claim Status page (accessed on 29 August 2011).

<sup>5</sup> GCCF Claim Status page (accessed on 29 August 2011).

<sup>6</sup> GCCF Claim Status page (accessed on 29 August 2011).

<sup>7</sup> GCCF Determination Letter, provided by Claimant.

<sup>8</sup> GCCF Claim Status page (accessed on 29 August 2011).

<sup>9</sup> Optional OSLTF Claim Form, 29 July 2011.

<sup>10</sup> GCCF Claim Form at 8.

This claim is denied because the Claimant has failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$200,000.00, 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* [REDACTED] *ation Division*

Date of Supervisor's Review: *9/1/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: