

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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 4636 3080

5890/DWHZ
07 October 2011

Susan Ruona


Re: Claim Number: N10036-1347

Dear Ms. Ruona:

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 your claim number N10036-1347 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1347.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1347
Claimant	Susan Ruona
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$19,531.05

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 30 August 2011, Susan Ruona (the Claimant), presented a claim to the National Pollution Funds Center (NPFC) seeking \$19,531.05 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant worked as an Account Executive for Savoca Marketing Group, LLC located in Lafayette, Louisiana.¹ The Claimant's role was to sell advertising for TravelHost South Louisiana, which is a magazine placed in tourist venues to provide visitors with information on where to eat, tour, and spend money while on their trip through South Louisiana.² The Claimant asserted that she had commitments for advertising from restaurants, tourist commissions, visitor bureaus, plantations, and other tourist venues.³ However, the Claimant asserted that after the Deepwater Horizon oil spill, tourism declined in the South Louisiana area and her customers had to cut back on their advertising expenses.⁴ The Claimant asserted that she worked on a commission only basis and thus her earnings dropped dramatically from the lack of advertising sales caused by the Deepwater Horizon oil spill.⁵ The Claimant indicated that she went to work for Lee Inspection & Consulting Services on 1 September 2010 in order to avoid the tourism and advertising sectors.⁶

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

¹ Letter from the Claimant to the NPFC titled "Statement on how the spill caused a loss in income," undated.

² Letter from the Claimant to the NPFC titled "Statement on how the spill caused a loss in income," undated.

³ Letter from the Claimant to the NPFC titled "Statement on how the spill caused a loss in income," undated.

⁴ Letter from the Claimant to the NPFC titled "Statement on how the spill caused a loss in income," undated.

⁵ Letter from the Claimant to the NPFC titled "Statement on how the spill caused a loss in income," undated.

⁶ Letter from the Claimant to the NPFC titled "Statement on how the spill caused a loss in income," undated.

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 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 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

The Claimant's Submission to the OSLTF

In support of the claim, the Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 06 August 2011;
- Attachment to Optional OSLTF Claim Form with the Claimant's calculation of loss;
- Email from the Claimant to the NPFC, dated 29 August 2011;
- Letter from U.S. Senator David Vitter to Admiral Karl Schultz USCG, dated 23 August 2011;
- Privacy Release Form for U.S. Senator David Vitter, signed by the Claimant on 18 May 2011;
- Letter from U.S. Senator David Vitter to the Claimant, dated 4 May 2011;
- Letter from U.S. Representative Charles W. Boustany, Jr., dated 30 March 2011;

- Letter from the Claimant to the NPFC titled "Statement on how the spill caused a loss in income," undated;
- Chart of expenses for 10 April 2010 through 31 August 2010;
- 2010 Form W-2 from Lee Inspection & Consulting Servi[sic];
- 2008-2010 Form W-2's from Savoca Marketing Group LLC;
- 2007-2009 Form 1040 U.S. Individual Income Tax Return;
- 2008 Form 1099-MISC from The Acadiana Gazette;
- 2007-2008 Form W-2 from Acuity Specialty Products Inc;
- 2008 Form W-2 from The Acadiana Gazette;
- 2007 Form W-2 from Gannett River States Publishin[sic]; and
- 2007 Form W-2 from Citadel Broadcasting Company.

Prior to presenting this claim to the NPFC, Claimant filed an Emergency Advanced Payment (EAP) claim with the GCCF on 18 October 2010 in the amount of \$27,000.00.⁷ She was assigned Claimant ID # 3211196 and Claim # 274603. The EAP claim was denied by the GCCF on 4 December 2010.⁸ The Claimant also filed a Full Review Final Payment (FRF) claim with the GCCF on 19 January 2011 in the amount of \$20,000.00.⁹ She was assigned Claim # 9226832. The GCCF denied the FRF claim on 16 April 2011.¹⁰

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., the Claimant suffered a loss in commissions from selling advertising for TravelHost South Louisiana due to the Deepwater Horizon oil spill. The NPFC deems Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly; this Claim Summary Determination for NPFC Claim N10036-1347 considers and addresses the damages claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 274603 (EAP) and 9226832 (FRF).

NPFC Determination

The claim is denied. 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.

This claim is denied because the Claimant failed to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that she lost earnings because her customers cancelled advertising with the magazine due to a decrease in tourism caused by the Deepwater Horizon oil spill. However, in her submission to the NPFC, the Claimant did not provide any contracts or other documentation of advertising contracts or client lists.

The NPFC contacted the Claimant's former employer, Savoca Marketing, to verify the assertions made by the Claimant regarding her alleged loss. The NPFC was informed by Savoca Marketing that no contracts for advertising were cancelled for TravelHost South Louisiana due to the Deepwater Horizon oil spill.¹¹ Likewise, the NPFC was informed that the magazine was financially unaffected by the Deepwater Horizon oil spill, which is why Savoca Marketing never filed a claim themselves for damages related to the oil spill.¹² Furthermore, the NPFC was informed that the Claimant resigned in August of 2010 for

⁷ Report from the GCCF, dated 21 September 2011.

⁸ Denial letter from the GCCF, dated 4 December 2010.

⁹ Report from the GCCF, dated 21 September 2011.

¹⁰ Denial Letter on Interim Payment/Final Payment Claim, dated 16 April 2011.

¹¹ PHONECON with Savoca Marketing LLC on 13 September 2011.

¹² PHONECON with Savoca Marketing LLC on 13 September 2011.

personal reasons and that Savoca Marketing was unaware of any connection to the Deepwater Horizon oil spill.¹³

Accordingly, this claim is denied because the Claimant failed to meet her burden to demonstrate that there was an alleged loss in the amount claimed, 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: *10/7/11*



Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹³ PHONECON with Savoca Marketing LLC on 13 September 2011.