

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
Number: 7011 1150 0000 4666 9892

5890/DWHZ  
13 September 2011

Liquid Flame, LLC



Re: Claim Number: N10036-1362

Dear Mr. Jamison:

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 N10036-1362 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 N10036-1362.

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	N10036-1362
Claimant	Liquid Flame, LLC
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$130,985.15

### ***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 1 September 2011, Mr. Tremayne Jamison, on behalf of Liquid Flame, LLC (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$130,958.15 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant offers a variety of promotional services to clubs, bars and restaurants in and around Pensacola, Florida. The Claimant alleged that he lost revenue after the oil spill, when the companies he was working with lost funds and were no longer able to utilize his promotional services. The Claimant stated, "I'm not able to get anymore contracts due to a huge deflux in tourism."<sup>2</sup>

In order to calculate his sum certain amount of \$130,958.15, the Claimant subtracts his 2010 profits of \$65,482.35 from his 2009 profits of \$210,528.68, and adds losses from January – August 2011.<sup>3</sup> The Claimant alleged that he has earned no income from January – August 2011.<sup>4</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:

<sup>1</sup> Optional OSLTF Claim Form, dated 8 August 2011.

<sup>2</sup> Optional OSLTF Claim Form, dated 8 August 2011.

<sup>3</sup> Profit and Loss Standard, 1 January – 8 August 2011; See also, Letter from the Claimant to the NPFC 22 August 2011.

<sup>4</sup> Profit and Loss Standard, 1 January – 8 August 2011.

- (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 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, dated 8 August 2011;
- Profit and Loss Statement, 2010;
- Profit and Loss Statement, January- August 2011;
- Undated, unnamed photo of oil on a beach;
- Letter from Hooters, Pensacola, noting discontinuation of business with the Claimant, undated;
- Artist Engagement Contract, 13 January 2009;
- Event Engagement Contract, 23 December 2010;
- Event Engagement Contract, 30 March 2010;
- Letter from the Claimant to the NPFC, 22 August 2011;
- Letter from CPA, 3 August 2010;
- Liquid Flame 2009 Operating Income;
- Document showing deposits made to Chase Bank, Baton Rouge, LA, 2009;

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF, seeking \$10,000.00 in lost profits. The Claimant was assigned

ID 1067549 and EAP was assigned claim # 61516. This claim was paid in the amount of \$10,000.00 on 28 January 2011. The Claimant then presented a Final Payment Claim to the RP/GCCF, which was assigned claim number 9252180. On 31 January 2011, the Claimant accepted a Quick Pay payment regarding this claim, in the amount of \$25,000.00.<sup>5</sup>

### **NPFC Determination**

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his 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 his claim.

This claim is denied because the Claimant (1) signed a Release and Covenant Not to Sue in return for final payment, waiving all rights to further recovery regarding this injury, (2) has not sufficiently demonstrated that any financial losses he sustained were a result of the Deepwater Horizon oil spill, and (3) the Claimant has materially misrepresented elements of this claim.

#### **1. Release of Rights to the GCCF**

Based on the information available to the NPFC, the Claimant has been compensated by EAP and Final Payment in an amount totaling \$35,000.00.<sup>6</sup> The Claimant has executed a Release and Covenant Not to Sue in return for final payment.<sup>7</sup> By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.<sup>8</sup>

Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the Fund.

The GCCF Notice of Quick Payment Final Claim Determination, provided by the Claimant, indicates that all claims resulting from the Deepwater Horizon incident have been "fully and finally resolved."<sup>9</sup> The Claimant has therefore waived rights to further recovery regarding these losses.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in his request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill.

#### **2. No Showing of Effects of Deepwater Horizon Oil Spill**

The Claimant has not provided documentation sufficient to establish that any losses to his business were a result of the Deepwater Horizon oil spill. The Claimant explained that his business is based on securing contracts with bars, clubs and restaurants, in order to provide them with promotional services.<sup>10</sup> However, the Claimant has not provided any verifiable

<sup>5</sup> Notice of Quick Payment Final Claim Determination (for a Business Claimant) 31 January 2011.

<sup>6</sup> Notice of Quick Payment Final Claim Determination (for a Business Claimant) 31 January 2011; Emergency Advance Payment, dated 28 January 2011.

<sup>7</sup> Notice of Quick Payment Final Claim Determination (for a Business Claimant) 31 January 2011.

<sup>8</sup> Notice of Quick Payment Final Claim Determination (for a Business Claimant) 31 January 2011.

<sup>9</sup> Notice of Quick Payment Final Claim Determination (for a Business Claimant) 31 January 2011.

<sup>10</sup> PHONECON: NPFC Staff and the Claimant, 8 September 2011.

documentation that would show that any particular contracts were cancelled due to the Deepwater Horizon oil spill.<sup>11</sup> The contracts provided by the Claimant in his submission were for particular events that the Claimant was contracted to perform. However, none of these documents indicated that the Claimant would have an ongoing relationship with any particular company.<sup>12</sup> Therefore, the Claimant has not demonstrated that he lost any actual business as a result of the Deepwater Horizon oil spill.

### 3. Material Misrepresentation

The Claimant has misrepresented material elements of this claim. Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. § 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

As part of his submission to the NPFC, the Claimant presented a letter signed by a general manager of Hooters in Pensacola, Florida, which stated in part,

We are sorry, but Hooters of Pensacola Beach, FL wish to end our future obligations due to the overwhelming revenue los[s] we have encounter[ed] with the BP oil spill catastrophe.<sup>13</sup>

The NPFC contacted the Hooters location, seeking additional information regarding the business relationship between the Claimant and Hooters. A regional manager provided an email to the NPFC stating that Hooters had never done business with the Claimant, and that the manager who had written the letter in the Claimant's submission, had been terminated.<sup>14</sup> The Claimant has not provided any evidence that he had actually earned income from Hooters, or that the Claimant had been in any sort of business relationship with Hooters at all. Therefore, elements of this claim have been materially misrepresented, and this claim is denied.

The NPFC reviewed all information and documentation provided by Claimant. This claim is denied because the Claimant (1) has released his rights to further recover regarding these losses, by signing a Release and Covenant Not to Sue in return for Final payment from the GCCF, (2) has failed to show that any losses he has incurred were a result of the Deepwater Horizon oil spill, and (3) has materially misrepresented elements of this claim in order to try to receive compensation.

Claim Supervisor: *NPF [REDACTED] Division*

Date of Supervisor's Review: *9/13/11*

Supervisor's Action: *Denial approved*

<sup>11</sup> Email from Hooters to NPFC, 9 Sept 2011; PHONECON: Hooters and NPFC, 9 Sept 2011, Management of Hooters stated that the Claimant never had a business relationship with the company.

<sup>12</sup> The Claimant provides copies of contracts with VIP Lounge, Judge's Sports Grill and Capt'n Fun Beach Club, each for one-time events.

<sup>13</sup> Undated Letter from General Manager, Hooters to Claimant.

<sup>14</sup> Email from Hooters to NPFC, 9 September 2011.