

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
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7552

5890/DWHZ
14 November 2010

Rest At Sea



Re: Claim Number: N10036-1373

Dear Ms. Vorkapic:

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 N10036-1373 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 N10036-1373.

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 | N10036-1373 |
| Claimant | Rest At Sea |
| Type of Claimant | Business |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$12,000.00 |

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 07 September 2011, Joy Vorkapic, on behalf of Rest At Sea (collectively, the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$12,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant operates a business providing burial at sea services in the Gulf of Mexico.¹ Specifically, the Claimant's business spreads the ashes of the deceased in the Florida Keys region of the Gulf of Mexico.² The Claimant asserts that due to the Deepwater Horizon oil spill, her clients cancelled their burial at sea services because of fear of oil in the Gulf waters near the Florida Keys.³ Additionally, the Claimant provides sea charter services, including trips for diving and snorkeling that can be bundled into the burial at sea event.⁴ The Claimant asserts that due to the Deepwater Horizon oil spill, clients cancelled these charter services and the related activities as well.⁵ As a result of the cancellations, the Claimant asserts she suffered reduced income.⁶

The Claimant described a calculation of a loss of revenue for the months of June-December 2010 as totaling \$21,000.00.⁷ The Claimant, however, presented a sum certain to the NPFC of \$12,000.00.⁸ Accordingly, the NPFC will base its determination on the Claimant's submitted sum certain of \$12,000.00 in the evaluation of the Claimant's submission.

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

¹ Letter from the Claimant to the NPFC describing claim.

² Letter from the Claimant to the NPFC describing claim.

³ Letter from the Claimant to the NPFC describing claim.

⁴ Letter from the Claimant to the NPFC describing claim.

⁵ Letter from the Claimant to the NPFC describing claim.

⁶ Letter from the Claimant to the NPFC describing claim.

⁷ Letter from the Claimant to the NPFC describing claim.

⁸ Optional OSLTF Claim Form received 07 September 2011.

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).

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 her claim, the Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 07 September 2011;
- Letter from the Claimant to the NPFC describing claim;
- Photocopies of the Claimant's United States of America Merchant Mariner Credential and Transportation Worker Identification Credential;
- Article from Mail Online titled 'Florida Keys and Cuba wildlife under threat as currents widen impact of BP oil slick' dated 20 May 2010;

- Article titled 'Lee burial-at-sea businessman urges BP to create reefs to renew Gulf life' dated 03 July 2010;
- Document titled 'Rest at Sea Expenses for business' for months: Jun 2009, October 2009, August 2009, April 2010;
- Application for Registration of Fictitious Name, State of Florida, filed 15 June 2009;
- Document titled 'Rest at Sea Profit and Loss Statement 2011' for period January 2011-August 2011;
- Letter from the Claimant to Mr. and Mrs. Harthow dated 20 May 2010;
- Letter from Mr. and Mrs. Harthow to the Claimant dated 10 June 2010;
- Letter from the Claimant to Mr. Frost dated 02 June 2010;
- Letter from Robert Frost to the Claimant dated 16 June 2010;
- Letter from the Claimant to Mr. Lovejoy dated 30 August 2010;
- Letter from Lance Lovejoy to the Claimant dated 09 September 2010;
- Letter from the Claimant to Mrs. Bowmar dated 28 July 2010;
- Letter from the Claimant to Mrs. Bowmar dated 10 January 2011;
- Letter from the Claimant to Mr. Sanor dated 21 September 2010;
- Letter from the Claimant to Mr. Sanor dated 02 February 2011;
- Letter from the Claimant to Mr. Wilkenson dated 17 February 2011;
- Statement dated February 2011 receipt number 689001
- Letter from the Claimant to Mr. and Mrs. Hicks dated 23 March 2011;
- Statement dated March 2011 receipt number 689004;
- Statement dated March 2011 receipt number 689005;
- Statement dated May 2011 receipt number 689002;
- Statement dated June 2011 receipt number 689006;
- Statement dated July [year unreadable] receipt number 689007;
- Statement dated July 2011 receipt number 689008;
- Statement dated July 2011 receipt number 689009;
- Statement dated August 2011 receipt number 689010;
- Statement dated August 2011 receipt number 689011;
- Statement dated August 2011 receipt number 689012;
- Statement dated August 2011 receipt number 689013;
- Sales receipts for dates: 03 January 2011, 05 February 2011, 05 March 2011, 05 April 2011, 05 May 2011, 03 June 2011, 07 July 2011, 05 August 2011;
- Bank statements dated: 07 February 2011-05 August 2011;
- Document describing services provided by Rest at Sea;
- Document listing selected prayers for services;
- Document stating instructions for sending ashes with United States Postal Service;
- Document titled 'Rest at Sea Charter Captain Services'.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Months Claim for loss of profits and impairment of earnings capacity on 03 October 2010 in the amount of \$9,000.00.⁹ The Claimant was assigned Claimant ID # 3088083 and Claim ID # 142504. The EAP Claim was denied on 02 November 2010.¹⁰ Additionally, the Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011) on 11 March 2011 in the amount of \$21,000.00.¹¹ The Claimant was assigned Claim ID # 9319860. The ICQ12011 was denied on 02 August 2011.¹²

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced cancellations for her burial at sea services and sea captain charter services

⁹ Report from the GCCF dated 02 November 2011.

¹⁰ GCCF Denial Letter dated 02 November 2010.

¹¹ Report from the GCCF dated 02 November 2011.

¹² GCCF Denial Letter dated 02 August 2011.

and as a result the Claimant suffered reduced income. The NPFC deems the Claimant's denied GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1373 considers and addresses the earnings claimed in the Claimant's claim presented to the responsible party up to \$12,000.00, specifically; GCCF Claim #'s 142504 (EAP) and 9319860 (ICQ12011).

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.

The claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$12,000.00 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.

The Claimant asserts that due to the Deepwater Horizon oil spill, she experienced cancellations for both her burial at sea services as well as her sea captain charter services, causing the Claimant to suffer reduced income.¹³ The Claimant, however, fails to prove that she suffered a loss due to the Deepwater Horizon oil spill. Although the Claimant provided correspondence from potential clients discussing burial services and sea charter services, none of these letters provided any contact information for the potential clients.¹⁴ Accordingly, the NPFC was unable to verify whether or not the services were eventually cancelled due to the Deepwater Horizon oil spill

Nevertheless, in an effort to determine the effect of the Deepwater Horizon oil spill on the Claimant's business, the NPFC requested additional information from the Claimant on 29 September 2011.¹⁵ The NPFC requested: full and complete profit and loss statements for the Claimant's business for 2010 and 2011, full and complete tax returns for the Claimant's business for 2010, bank statements from the Claimant's business from 2010, proof of ownership of all vehicles utilized for the business, a sales ledger of all trips and business conducted including dates of trips, amounts paid and services provided, all trip receipts for the Claimant's business for 2010 and 2011 including trips for burials at sea and charter services, documentation of any trip cancellations that occurred due to the Deepwater Horizon oil spill complete with contact information for those that cancelled trips, a list of all employees that worked for the company in 2010 and 2011, documentation of the lease for the Claimant's office, checks and other evidence of payments for the Claimant's business in 2010 and 2011 and copies of death certificates or other materials received from customers regarding those buried at sea in 2010 and 2011.¹⁶ The Claimant received the NPFC's Request for Additional Information on 03 October 2011.¹⁷ To date, however, no response has been received by the NPFC regarding any of the above requested items. Accordingly, the Claimant has not shown that her purported losses are due to the Deepwater Horizon oil spill.

¹³ Letter from the Claimant to the NPFC describing claim.

¹⁴ Letter from the Claimant to Mr. and Mrs. Harthow dated 20 May 2010, Letter from Mr. and Mrs. Harthow to the Claimant dated 10 June 2010, Letter from the Claimant to Mr. Frost dated 02 June 2010, Letter from Robert Frost to the Claimant dated 16 June 2010, Letter from the Claimant to Mr. Lovejoy dated 30 August 2010, Letter from Lance Lovejoy to the Claimant dated 09 September 2010, Letter from the Claimant to Mrs. Bowmar dated 28 July 2010, Letter from the Claimant to Mrs. Bowmar dated 10 January 2011, Letter from the Claimant to Mr. Sanor dated 21 September 2010, Letter from the Claimant to Mr. Sanor dated 02 February 2011, Letter from the Claimant to Mr. Wilkenson dated 17 February 2011, Letter from the Claimant to Mr. and Mrs. Hicks dated 23 March 2011.

¹⁵ NPFC request for Additional Information dated 29 September 2011, Certified Mail Receipt # 7011 1150 0000 4636 2762.

¹⁶ NPFC Request for Additional Information dated 29 September 2011.

¹⁷ USPS.com Track & Confirm webpage confirming receipt 03 October 2011 at 12:40 pm (last accessed 09 November 2011).

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) 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 Claim [REDACTED] Division*

Date of Review: *11/14/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: