

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



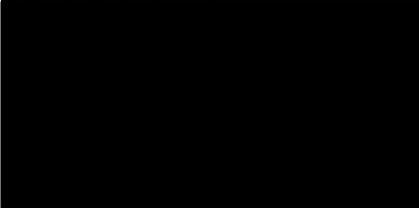
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
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 2446 1264

5890/DWHZ  
05 July 2012

Ms. Delora Lee Croteau



Re: Claim Number: N10036-1764

Dear Mr. Reynolds Esq.:

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 N10036-1764N10036-1764 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 N10036-1764.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

Sincerely,



Division  
National Pollution Funds Center  
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

cc: Delora Lee Croteau



Certified Mail:  
No. 7011 1570 0001 2446 1271

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1764
Claimant	Delora Lee Croteau
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,075.86

### ***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 12 April 2012, Mr. Robert Reynolds of Greenspoon Marder on behalf of Ms. Delora Lee Croteau (Claimant) presented a claim to the National Pollution Funds Center (NPFC) for loss of profits and impairment of earnings capacity damages in the amount of \$12,075.86 alleging resulting from the Deepwater Horizon oil spill.

The Claimant works for the St. Petersburg Yacht Club at their Pass-A-Grille as a bartender.<sup>1</sup> She began working for them in 2008 and is presently still employed.<sup>2</sup> The Claimant alleges that she was unable to obtain more hours due to the Deepwater Horizon oil spill's effects upon the business.<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.

<sup>1</sup> Claimant's letter of explanation dated 05 December 2011.

<sup>2</sup> Claimant's letter of explanation dated 05 December 2011.

<sup>3</sup> Claimant's letter of explanation dated 05 December 2011.

- (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 her claim, the Claimant submitted:

- Intro letter from Greenspoon Marder Attorneys at Law
- GCCF Full Review Final Payment Claim Form
- Lost Earnings/Income Worksheet dated 13 December 2011
- Copy of Florida drivers license
- Explanation letter from Claimant dated 05 December 2011
- St. Petersburg Yacht Club Inter-Office Memo dated 17 May 2011
- St. Petersburg Yacht Club letter of explanation dated 06 October 2011
- 2008 W-2 from St. Petersburg Yacht Club for \$2,793.81
- 2008 W-2 from HSN LP for \$10,122.77
- 2009 W-2 from Conkedie LLC for \$3,776.13
- 2009 W-2 from St. Petersburg Yacht Club for \$9,706.19
- 2010 W-2 from St. Petersburg Yacht Club for \$15,412.13
- Paystub dated 03 November 2011 from St. Petersburg Yacht Club (ytd \$17,614.97)
- GCCF denial letter on Interim Payment/Final Payment Claim dated 22 March 2012
- GCCF proposed settlement of BP Deepwater Horizon litigation letter dated 16 March 2012

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$12,075.86.

Prior to presenting her claim to the NPFC, the Claimant filed a Final Payment claim (FP1) with the GCCF on 17 November 2010 in the amount of \$2,000.00.<sup>4</sup> She was assigned Claimant ID #3403011 and claim #9067975. This claim was denied.<sup>5</sup> Additionally, the Claimant filed an Interim 4 claim (ICQ42011) with GCCF #9510737; it was filed on 11 October 2011 for \$6,000.00 and was denied.<sup>6</sup> The Claimant filed a Full Review Final claim (FRF1) with GCCF #9549582 on 21 December 2011 for \$12,075.86 and was denied.<sup>7</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that she lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's three denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1764 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 9067975 (FP1), 9510737 (ICQ42011), and 9549582 (FRF1).

### **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 or destruction or loss of real or personal property or 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. The NPFC considered all the documentation submitted by the Claimant.

In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate this claim.<sup>8</sup> The letter requested, among other things, financial documentation from her employer and her 2009 through 2011 tax returns for an accurate accounting of the Claimant's losses.<sup>9</sup> The letter was sent on 21 May 2012. On 29 May 2012, the Claimant's legal representation acknowledged receipt of the letter.<sup>10</sup> To date, no response has been received by the NPFC. The NPFC accordingly proceeded to evaluate the claim with the evidence the Claimant had originally submitted.

The Claimant alleges she lost \$12,075.86 due to reduced business and the inability to obtain more hours at the Pass-A-Grille in St. Petersburg Florida due to the Deepwater Horizon oil spill.<sup>11</sup> The Claimant's employer provided her with a letter addressing the loss of earnings for all employees serving customers due to reduced customers and the fear of oil.<sup>12</sup> However, while the

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<sup>4</sup> Report from the GCCF dated 21 May 2012.

<sup>5</sup> Report from the GCCF dated 21 May 2012.

<sup>6</sup> Report from the GCCF dated 21 May 2012.

<sup>7</sup> Report from the GCCF dated 21 May 2012.

<sup>8</sup> NPFC's request for additional information dated 21 May 2012.

<sup>9</sup> NPFC's request for additional information dated 21 May 2012 at documents requested 1 & 2.

<sup>10</sup> USPS tracking 7011 1570 0001 4803 7094.

<sup>11</sup> Claimant's letter of explanation dated 05 December 2011.

<sup>12</sup> Employer's letter dated 06 October 2011.

Claimant's employer appears to agree with the Claimant's contention that the oil spill caused hardship on the employees, the St. Petersburg Yacht Club has not provided any specific information or financial documents which would support the Claimant's contention.<sup>13</sup>

Based on the financial documentation provided by the Claimant<sup>14</sup> she earned \$2,793.81 in 2008, \$9,706.19 in 2009, \$15,412.13 in 2010, and \$17,614.97 for 2011 as of 03 November 2011 at the St. Petersburg Yacht Club.<sup>15</sup> The Claimant earned more money with every increasing year as an employee with the St. Petersburg Yacht Club and thus does not demonstrate a loss of earnings due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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: *7/5/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>13</sup> NPFC's request for additional information dated 21 May 2012 at documents requested 1.

<sup>14</sup> NPFC's request for additional information dated 21 May 2012 at documents requested 2 (NPFC requested Claimant's tax returns).

<sup>15</sup> 2008, 2009, and 2010 W-2s from St. Petersburg Yacht Club and paystub dated 03 November 2011 with ytd earnings from St. Petersburg Yacht Club.