

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7012 2210 0001 7214 9623

5890/DWHZ
28 June 2013

~~Asbestos, Within Kreis & Overholtz~~



Re: Claim Number: N10036-1935

Dear Ms. Honniball:

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 N10036-1935 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 N10036-1935.

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
cc: 

By Certified Mail:
No. 7012 2210 0001 7214 9630

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1935
Claimant	Penelope Honniball
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$20,000.00

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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 14 May 2013, Holly Barrett, on behalf of Penelope Honniball, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$20,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

From 19 January 2008 until 2 July 2011, the Claimant was employed as a poker dealer at the Seminole Hard Rock Casino in Tampa, Florida.² The Claimant alleged that her earnings were reduced after the oil spill, thereby causing her to leave her position in July of 2011.

The Claimant has not indicated specifically how she calculated her sum certain to arrive at her claimed loss amount of \$20,000.00. However, this amount appears to represent the extent of the income loss the Claimant alleged to have sustained as a result of the Deepwater Horizon oil spill.

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF 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.

¹ Optional OSLTF Claim Form, signed on 13 May 2013.

² BP Claim Form.

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 profits or earnings for the same or similar activities outside of the area affected by the incident also must be established; and
- (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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the NPFC

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 13 May 2013;
- Fax Cover Sheet, 14 May 2013;
- 2008 Form 1040, showing earnings of \$20,286.00;
- 2008 Form 8812;
- 2009 Form 1040, showing earnings of \$20,715.00;
- 2009 Schedule EIC (Form 1040A or 1040);
- 2009 Form 8812;

- 2009 Schedule M (Form 1040A or 1040);
- 2010 Form 1040, showing earnings of \$16,462.00;
- 2010 Schedule EIC (Form 1040A or 1040);
- 2010 Form 8812;
- 2011 Form 1040, showing earnings of \$6,111.00;
- Cover letter from James D. Barger on behalf of Penelope Honniball;
- Pay records, 2008 – 2011;
- 2008, 2009 Forms W2 wage and tax statements;
- BP Claim Form.

The Claimant alleged that this claim was first presented to the Responsible Party on 9 April 2013.³ The Claimant provided a copy of a previously submitted BP Claim Form, indicating that the Claimant had attempted to recover \$1,144.00 from the RP for the alleged losses that are the subject of this claim.⁴ The Claimant alleged that the RP denied payment on this claim.⁵

On 14 May 2013, the Claimant submitted this claim to the NPFC seeking \$20,000.00. Evidence in this claim submission indicates that the Claimant has only presented \$1,144.00 of these losses first to the RP. According to OPA presentment requirements, all claims for costs or damages must be first presented to the RP and then either denied or left pending for a period of greater than 90 days.⁶ Because it appears as though only \$1,144.00 in damages were actually claimed against the RP, the NPFC may only properly consider this amount. As a result, the remainder of this claim, in the amount of \$18,856.00 is initially denied for improper presentment.

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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction in income, and (2) that the financial loss was caused by damage to real property or natural resources resulting from the discharge of oil caused by the Deepwater Horizon oil spill.

The Claimant alleged that prior to the oil spill; she was earning approximately \$11/hour as a poker dealer in Tampa, but that following the oil spill, her earnings decreased to approximately \$9/hour. The Claimant alleged that the oil spill reduced traffic through the casino, thereby causing her to earn fewer tips from fewer patrons. The Claimant has not provided any evidence, however, to indicate that fewer people visited the casino, or that tourism in and around Tampa, Florida decreased in 2010 as a result of the Deepwater Horizon oil spill.

Rather, the NPFC notes that county statistics indicate that tourism in the Tampa metropolitan area did not appear to decrease in the period following the oil spill. For example, in Hillsborough County in 2010, the total number of overnight visitors increased slightly over 2009,

³ Optional OSLTF Claim Form, signed on 8 April 2013.

⁴ BP Claim Form, at 10.

⁵ Optional OSLTF Claim Form, signed on 13 May 2013.

⁶ 33 C.F.R. 136.103(c)(2).

while total visitor spending saw the same slight increase, from \$2.9 million dollars in 2009 to \$3.2 million in 2010.⁷

The same is true of neighboring Pinellas County. Pinellas County tourism statistics indicate that tourism in the summer and fall of 2010 did not decrease as compared to the previous year. The 2010 Annual Visitors Profile for Pinellas County indicates that the number of visitors to the county in May, June, July and August 2010, actually increased as compared to those months of 2009.⁸ Likewise, the Visitors Profile indicates that expenditures in the spring and summer months of 2010, did not drop, but remained at 2009 levels.⁹ These statistics are further supported by Pinellas County Bed Tax collections, which indicate year over year increases starting in July of 2010 and continuing through 2011.¹⁰ It appears then, that oil spill did not dissuade tourists from visiting the Tampa area in any significant numbers. It is unclear then, how the Claimant's reduction in earnings could have been caused by effects of the Deepwater Horizon oil spill.

This claim is therefore denied because the Claimant has failed to provide evidence sufficient to prove (1) that she sustained a financial loss in the amount \$20,000.00, or (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 discharge of oil.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/1/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ Tampa Bay & co. Analysis of the 2011 Hillsborough County Visitor Report.

⁸ St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>, at 6. Accessed on 3 January 2012.

⁹ St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, Available at, www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf, at 7. Accessed on 3 January 2012.

¹⁰ Pinellas County, CVB statistics, Bed Tax Information. Available at, www.pinellascvb.com/cms/index.php?id=6. Accessed on 3 January 2012.