

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: 7010 0780 0001 8634 2098

5890/DWHZ  
18 June 2013

Two Girls, Inc



Re: Claim Number: N10036-1946

Dear Mr. Cuevas:

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 N10036-1946 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 N10036-1946.

Mail reconsideration requests to:

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



Regulation Division  
National Pollution Funds Center  
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1946
Claimant	Two Girls, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$70,954.00

***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 23 April 2013, Mr. Jose Cuevas, as President of Two Girls, Inc. (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$70,954.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is the managing owner of the M/V EDRIK & JOANNA headquartered in Port Isabel, Texas. The Claimant appears to be alleging that the oil spill caused the company to sustain losses stemming from a limited ability to work in the Gulf of Mexico. The Claimant alleged that they have sustained oil spill related losses in the amount of \$70,954.00.<sup>2</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 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.

<sup>1</sup> Optional OSLTF Claim Form dated 15 April 2013.

<sup>2</sup> Optional OSLTF Claim Form dated 15 April 2013.

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 15 April 2013;
- Letter from Claimant to US Coast Guard Claims Adjudication dated 15 April 2013;
- Document titled "Basis for Claim" from Claimant;
- Certificate of Documentation for M/V EDRICK & JOANNA issued on 19 March 2013;

- Notice of Emergency Advance Payment Determination for check number 00100704;
- Notice of Final Payment Determination for check number 00461286;
- 2011 Two Girls, Inc, Federal Income Tax Returns, including Form 1120S;
- 2010 Two Girls, Inc, Federal Income Tax Returns, including Form 1120S;
- 2009 Two Girls, Inc, Federal Income Tax Returns, including Form 1120S;
- Letter from Claimant to US Coast Guard Claims Adjudication dated 23 May 2013;

Prior to presenting this claim to the NPFC, the Claimant recovered damages from the Responsible Party through the GCCF and BP Claims Program. The GCCF provided an Emergency Advance Payment of \$20,300.00 on 27 October 2010. On 26 October 2011, Claimant received and accepted a final claim payment of \$25,000.00 from the GCCF.<sup>3</sup>

On 23 April 2013, the Claimant presented this claim to NPFC.

### **NPFC Determination**

Claimant's submission indicates that the Claimant has settled this claim in exchange for payments from the GCCF totaling at least \$45,300.00. Standard releases provided by the GCCF state that a claimant who has signed a release may not also be compensated by the NPFC through the Oil Spill Liability Trust Fund (the Fund). Specifically, the release states,

[r]eleased Parties means anyone who is or could be responsible or liable in any way for the Incident or any damages related thereto, whether a person, company or governmental entity, including . . .the federal Oil Spill Liability Trust Fund . . .

Any payment from the Fund requires the acquisition of rights from the Responsible Party. Because these rights have been released by the Claimant to BP, the Claimant cannot also recover from the Fund. The standard language of the Release makes clear that BP has been subrogated to the Claimant's rights to recover losses related to the oil spill. It states in part,

[a]s this Release is fully and completely resolving, together with all other Claims, Claimant's claim under OPA, BP is hereby subrogated to any and all rights that Claimant has arising from the Incident.

Based on the foregoing, this claim is denied. This claim has been settled in exchange for final payment from the Responsible Party.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/18/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>3</sup> Notice of Emergency Advance Payment Determination; Notice of Final Payment Determination; Claimant's 2011 tax returns (noting \$25,000 "income" from final payment.