

U.S. Department of
Homeland Security

**United States
Coast Guard**



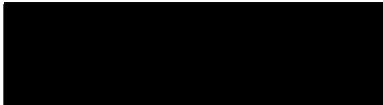
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 2210 0001 7214 9593

5890/DWHZ
25 June 2013

Coastal Auto Detailing



Re: Claim Number: N10036-1956

Dear Ms. Newberry,

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 N10036-1956 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 N10036-1956.

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(1): Claim Summary/Determination
(2): List of evidence submitted in support of claim

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1956
Claimant	Coastal Auto Detailing
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$7,000,000.00

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 10 June 2013, Ms. Karen Newberry, on behalf of Coastal Auto Detailing, Inc., (collectively "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$7,000,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

In April of 2010, the Claimant opened a retail location for an auto-detailing business in Panama City Beach, Florida. The Claimant had been operating the business out of her home from January of 2008 until early 2010.

The Claimant alleged that decreases in tourism as well as the general economic conditions in the Panama City Beach area in 2010 prevented the business from experiencing anticipated growth after the opening of the retail location. The Claimant alleged that due to effects of the oil spill, the business was unable to become profitable and was eventually forced to close in April of 2011.

The Claimant seeks to recover \$7,000,000.00 in earnings allegedly lost as a result of the failure of the business.

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

¹ Optional OSLTF Claim Form, signed on 6 June 2010.

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. 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:
See, Enclosure (2).

The Claimant alleged that this claim was first presented to the Responsible Party through the GCCF and then the Deepwater Horizon Claims Center.² According to the Claimant's tax returns, the Claimant received payments of at least \$63,852.00 from the "Deepwater Horizon Oil Spill Trust."³

The Claimant submitted this claim to the NPFC on 10 June 2013.⁴ Documentation included in this claim submission indicates that the Claimant attempted to recover these alleged damages through the GCCF and then the Court Supervised Settlement Program.

Evidence in this claim submission indicates that the Claimant was denied payment as a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).⁵

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.

As an initial matter, it appears that the Claimant is a member of the E&PD Settlement Class. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the claimant no longer has rights to the claim and therefore cannot subrogate the NPFC to those rights.

If the Claimant disagrees that she is a member of the economic damages class of the E&PD Settlement, she should submit evidence to indicate that she either opted out or was excluded from the E&PD Settlement in her request for reconsideration of this claim.

Furthermore, this claim would also be denied on its merits. 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 caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant indicates that her auto detailing business failed as a result of the Deepwater Horizon oil spill. However, financial documentation provided in support of this claim indicates that the business had not generated profits prior to the oil spill. For example, in her business projections, the Claimant estimated that she would have conducted \$70,200.00 in gross sales during the business' first month in operation. The Claimant projected that sales would rise each month over the next two years, so that the Claimant would have conducted \$555,902.00 in sales during the business' twenty-fourth month.⁶

² Optional OSLTF Claim Form, signed on 6 June 2013.

³ 2011 Schedule C (Form 1040).

⁴ Optional OSLTF Claim Form, signed on 6 June 2013.

⁵ Denial Notice, Deepwater Horizon Settlement..

⁶ Forecast of Profit (Loss).

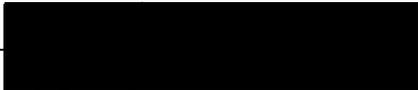
However, in April and May of 2010, which were the business' first months in operation, the Claimant reported revenue of only \$11,318.79 and \$12,087.51 respectively.⁷ The Claimant's earnings in April and most of May could not have been impacted by decreases in tourism in Panama City Beach, which did not begin until approximately June of 2010.⁸

Statistics regarding tourism development tax collections for Panama City Beach indicate that in April and May of 2010, collections increased 9.7% and 7.7% as compared to those months of 2009. Collections then dropped 3.2% in June of 2010 as compared to June 2009.⁹ Because the Claimant's reported revenues were far lower than projected revenues in April and May of 2010, in spite of what appear to be no effects of the oil spill on tourism in those months, it does not seem as though the business' failure to earn profits was caused by a poor tourism season in Panama City Beach in the year following the oil spill.

Additionally, in April and May of 2010, the Claimant reported expenses which far exceeded projections, leading the Claimant to earn net income in those months of only \$700.09 and \$227.47. This is significantly lower than the Claimant's projected first two months of net income of \$34,180.00 and \$61,580.00.¹⁰

As such, the evidence provided by the Claimant fails to indicate that the Claimant's business, which reported income far below projections in April and May of 2010, failed as a result of damage to property or natural resources caused by the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that she sustained a financial loss in the amount \$7,000,000.00, 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. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.


Claim Supervisor: *NPTC Claims Adjudication Division*

Date of Supervisor's Review: *6/25/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ Monthly Profit and Loss Statements.

⁸ Panama City Beach – Historical Tourist Development Tax Collections. Report available at, <http://www.visitpanamacitybeach.org/files/PCB%20Historical%20Tourist%20Development%20Tax%20Collections.pdf>. Accessed on 24 June 2013.

⁹ Panama City Beach – Historical Tourist Development Tax Collections. Report available at, <http://www.visitpanamacitybeach.org/files/PCB%20Historical%20Tourist%20Development%20Tax%20Collections.pdf>. Accessed on 24 June 2013.

¹⁰ Monthly Profit and Loss Statements.

Enclosure (2)
Evidence Presented in Support of
NPFC Claim # N10036-1956

- Optional OSLTF Claim Form, signed on 6 June 2013;
- Monthly Income Statements, July 2009 – December 31, 2010;
- 2008 Form 1040;
- 2008 Schedule C Form 1040, showing gross sales of \$133,449.00;
- 2008 Schedule SE (Form 1040);
- 2009 Form 1040;
- 2009 Schedule C (Form 1040), showing gross sales of \$261,805.00;
- 2009 Form 4562;
- 2009 Schedule SE (Form 1040);
- 2009 Schedule M (Form 1040A or 1040);
- 2010 Form 1040;
- 2010 Schedule A (Form 1040);
- 2010 Schedule C (Form 1040, showing gross sales of \$224,546.00);
- 2010 Form 4562;
- 2011 Form 1040;
- 2011 Schedule C (Form 1040), showing gross sales of \$47,476.00;
- Monthly Account Statements, January 2009 - December 2010;
- Claim Cover Letter;
- Profit Forecast;
- Letter from Billy Cumiskey, Toyota, undated;
- Letter from J.R. Ezzell, Bill Byrd Kia, undated;
- Letter from J.R. Ezzell, Bill Byrd Kia, 21 July 2009;
- Letter of Recommendation by Randy Kennedy, 3 December 2012;
- Bay County Builder Services Division, 1-29-10;
- Notice of Commencement;
- Leasing listing, 512 West 23rd St.;
- Letter from the Claimant to Claims Administrator, Deepwater Horizon Claims Center, undated;
- Email regarding hose shipment, 5 April 2010;
- Account statements, 2011;
- Documentation of closure of banking account;
- 2004 Business Occupation Tax License;
- 2003 Business Occupation Tax License;
- Failed Business Economic Loss, Sworn Statement;
- Notice of payment to the Claimant, 27 July 2010;
- Letter from Robert Yusko regarding business loan, 29 December 2012;
- Start-up Business Economic Loss Sworn Statement;
- Promissory Note;
- Letter written by the Claimant regarding loan by Robert Yusko, 7 December 2012;
- Copy of checks for payment to the Claimant by Robert Yusko;
- Letter from the Claimant regarding loan repayments, 7 December 2012;
- Letter from Suntrust Bank regarding bankruptcy inquiry, 7 January 2013;
- Advertising Space Commitment;
- Letter from Bill Owens to Karen Newberry Re: Rowland Publishing Inc., vs. Karen Newberry, 15 November 2012;

- Letter from John Pucin to Karen Newberry regarding debt collection, 14 February 2011;
- Letter from Suntrust Collections Department, 4 February 2011;
- Letter from Suntrust Collections Department, 24 March 2011;
- Letter regarding unpaid Charged-Off Account, 13 February 2011;
- Invoice, Magic Broadcasting, 31 January 2011;
- Letter regarding closed account, 18 January 2011;
- 6th Invoice, High School Graphics, Inc., 15 July 2010;
- Lamar advertising, Statement of Account for charges incurred December 2009, January 2010;
- Invoice, Bowden Plumbing and Electrical, 4 February 2011;
- Proposals and Research, including invoices and orders for signage and other items;
- Denial Notice, Deepwater Horizon Claims Center, Claimant ID 100018281, 23 May 2013;
- Photographs of business.