

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: 7011 1570 0001 4802 5190

5890/DWHZ  
28 October 2011

Ms. Oksana Troeschler  


Re: Claim Number: N10036-1395

Dear Ms. Troeschler:

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 N10036-1395 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 N10036-1395.

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 Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1395
Claimant	Ms. Oksana Troescher
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$30,000.00

### ***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 12 September 2011, Ms. Oksana Troescher (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$30,000.00 in loss of profits and impairment of earnings capacity damages, allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was employed by a staffing service and was working as a “freelance fragrance associate” at Saks Fifth Avenue in New Orleans, Louisiana.<sup>2</sup> The Claimant alleged that her “work hours and wages were reduced” as a result of the oil spill.<sup>3</sup> The Claimant further alleged that “due to the oil spill, [the Claimant] did not receive an anticipated pay raise . . . because of the decrease in shopping activity at the tourist related retail outlet in which [the Claimant] worked in downtown New Orleans.”<sup>4</sup>

The Claimant alleged that due to the reduction of her working hours, wages and the loss of her anticipated pay raise, she sustained a loss of income in the amount of \$30,000.00, which she now seeks from the NPFC.

### ***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:

<sup>1</sup> Optional OSLTF Claim Form, dated 3 August 2011.

<sup>2</sup> Letter from Saks Fifth Avenue to the NPFC, dated 21 October 2010.

<sup>3</sup> Optional OSLTF Claim Form, dated 30 August 2010.

<sup>4</sup> Letter from the Claimant to the GCCF, dated 1 March 2011.

- (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 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 this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 30 August 2011;
- Fax Cover Sheet, undated;
- Louisiana Workforce Commission, Monetary Determination, 24 January 2011;
- Letter from the Claimant to the NPFC, noting inability to furnish letter from employer, 5 September 2011;
- Letter from the Claimant to the GCCF, re: Change in payment request, 1 March 2011;
- Letter verifying employment of the Claimant with Saks, New Orleans;
- Form W-2 Wage and Tax Statement 2009;
- 2008 Form 1040;
- 2009 Form 1040;
- Form W-2 Wage and Tax Statement 2008;
- 2010 Form 1040;

Prior to presentment to the NPFC, the Claimant presented a Full Review Final claim to the RP/GCCF, seeking loss of profits and impairment of earnings capacity damages. The Claimant was assigned ID 3314786 and FRF was assigned Claim # 9051572. The Claimant amended her

sum certain amount, claiming a total of \$30,000.00 in loss of profits and impairment of earnings capacity, in a letter dated 1 March 2011.<sup>5</sup>

FRF was denied by the RP/GCCF on 7 May 2011.<sup>6</sup> On 12 September 2011, the Claimant presented this claim to the NPFC, seeking \$30,000.00 in loss of profits and impairment of earnings capacity damages. Based on the information available to the NPFC, this is the same claim, alleging the same amount of damages, as presented by the Claimant to the RP/GCCF in FRF. Therefore, the NPFC may properly adjudicate the entirety of this claim alleging \$30,000.00 in loss of profits and impairment of earnings capacity, as currently before the NPFC.

The Claimant's Optional OSLTF Claim form indicated that the Claimant filed a claim in the multidistrict litigation now pending in the United States District Court for the Eastern District of Louisiana (MDL-2179 In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf Of Mexico, on April 20, 2010) against BP (the "MDL") on 20 April 2011.<sup>7</sup> Although under the statute the NPFC may not approve and certify the payment of a claim during the pendency of an action by the person in court to recover costs which are the subject of the claim, the NPFC may adjudicate such a claim to determine whether it may be compensable. Where appropriate, such a claim may be denied.

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

In order to prove a loss of profits and impairment of earnings capacity claim, a claimant must demonstrate (1) that she sustained a loss or reduction in profits or wages and (2) that the loss was a result of the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill.

The Claimant's W-2 forms for 2009 and 2010 indicated that the Claimant earned a significantly higher income from the same employer in 2010 as compared to 2009.<sup>8</sup> The Claimant has not provided any documentation or other evidence that would demonstrate that the Claimant sustained a financial loss in 2010, during the months following the Deepwater Horizon oil spill.

The Claimant alleged that she did not receive an anticipated pay raise "because of the decrease in shopping activity at the tourist related retail outlet in which [the Claimant] worked in downtown New Orleans."<sup>9</sup> However, the Claimant has not provided any evidence to substantiate this assertion or to show that sales at the Saks Fifth Avenue location where she worked were affected by the Deepwater Horizon oil spill. Rather, a representative of Saks Fifth Avenue stated that the New Orleans store "did not experience a noticeable drop in business during the Spring season 2010" and further stated that in "April 2010 and in May 2010 [the store] posted double digit increases in business from the previous year."<sup>10</sup>

<sup>5</sup> Letter from the Claimant to the GCCF, dated 1 March 2011.

<sup>6</sup> GCCF Claimant Status, accessed on 21 September 2011.

<sup>7</sup> Optional OSLTF Claim Form, 27 April 2011.

<sup>8</sup> 2010 W-2 form shows wages of \$11,018.00; 2009 W-2 Forms show wages of \$5,828.41.

<sup>9</sup> Letter from the Claimant to the GCCF, dated 1 March 2011.

<sup>10</sup> Letter from Saks Fifth Avenue to the NPFC, dated 21 October 2011.

Based on the forgoing, this claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she suffered a loss in the amount of \$30,000.00, 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 Claims Adjudication Division*

Date of Supervisor's Review: *10/28/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: