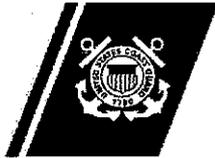


U.S. Department of  
Homeland Security

**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)  
Phone: 800-280-7118  
E-mail:  
ari-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 4865

5890/DWHZ  
12 October 2011

Ms. Dyane Balcom



Re: Claim Number: N10036-1472

Dear Ms. Balcom:

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 N10036-1472 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

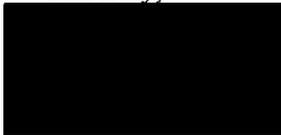
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1472.

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	N10036-1472
Claimant	Ms. Dyane Balcom
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$14,400.00

### ***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 October 6, 2011, Ms. Dyane Balcom (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$14,400.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant worked at the Emerald Grande resorts in Destin, Florida. The Claimant alleged that she sustained a loss of wages totaling \$5,000.00 due to lack of business following the Deepwater Horizon oil spill.<sup>2</sup> The Claimant did not provide information to explain the remaining balance of \$9,400.00 in total losses presented to the OSLTF. However, the Claimant did indicate receipt of an Emergency Advance Payment of \$9,400.00 from the Gulf Coast Claims Facility (GCCF).

### ***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.
- (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

<sup>1</sup> Optional OSLTF Claim Form, postmarked 27 September 2011.

<sup>2</sup> Optional OSLTF Claim Form, postmarked 27 September 2011.

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, posted 27 September 2011.

Prior to presentment to the NPFC, the Claimant allegedly presented an Emergency Advance Payment claim (EAP) to the RP/GCCF of an undetermined amount. The Claimant represents that she was assigned ID 1121594. The Claimant further alleges to have received an EAP payment of \$5,000.00, of which the NPFC has not been able to verify with the GCCF as of the date of this determination. The Claimant further alleges submitting a Full Review Final (FRF) claim for an undetermined amount which was denied without explanation. The NPFC has also been unable to verify the presentation of the FRF Claim to the GCCF to date.

On 06 October 2011, the NPFC received the Claimant's presentment of \$14,400.00, of which \$5,000.00 is for loss of profits and impairment of earnings capacity and it is unknown what the remaining amount of \$9,400.00 is actually for.<sup>3</sup> The NPFC may adjudicate this claim to the extent that this claim has been presented to and denied by the RP/GCCF. Any amounts claimed now before the NPFC which were not first presented to the RP/GCCF are denied for improper presentment.<sup>4</sup>

<sup>3</sup> Optional OSLTF Claim Form, postmarked 27 September 2011.

<sup>4</sup> 33 C.F.R. 133.103(a).

## 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 this claim.

Based on the information available to the NPFC, the Claimant has accepted an EAP from the RP/GCCF in the amount of \$5,000.00. However, based on the Claimant's representation, her request to the RP/GCCF for a FRF of an undetermined amount was denied. Following the denial of the FRF claim, the Claimant presented a claim to the NPFC for \$14,400.00, of which \$5,000.00 was presented for loss of profits and impairment of earnings capacity.

Loss of profits and earning capacity under OPA means damages equal to the loss of profits or impairment of earnings capacity due to the injury, destruction, or loss of real property, personal property, or natural resources. When presenting such a claim, the Claimant should, at a minimum, provide the following general information:

statement on how the spill caused a loss in income; affidavit from your employer on the impact on your work or income due to the spill and if the company will be filing a claim for lost profits; copies of pay stubs, receipts, etc., from before, during, and after the spill; personnel records from your employer before, during, and after the spill, showing employment; description of efforts to reduce your loss, including job search activities; copies of any job-hunting expenses (e.g., travel costs); signed copies of income tax returns and schedules for at least two years prior to spill; details of employment expenses not paid during period being claimed (e.g., commuting costs); copies of pay stubs, etc., from alternative employment during time of spill.<sup>5</sup>

In support of the claim, the Claimant asserted that she worked for the Emerald Grande for an indeterminate period of time and that she was terminated on May 29, 2010. However, the Claimant provided no evidence in support of her calculated losses of \$5,000.00 for lost profits and impairment of earnings capacity or her \$9,400.00 in unclassified losses sought. Furthermore, the Claimant has provided no evidence as to the causation of her alleged losses.

This claim is denied because the Claimant failed to meet her burden to prove (1) that she sustained a loss in the amount of \$14,400.00, 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: *10/12/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>5</sup> <http://www.uscg.mil/npfc/docs/PDFs/urg/Ch6/NPFCClaimantGuide.pdf>