

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: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 3967

5890/DWHZ
26 July 2012

Ms. Beverly Ryan


Re: Claim Number: N10036-1823

Dear Ms. Ryan:

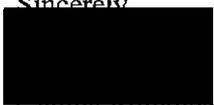
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1823 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-1823.

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	NI0036-1823
Claimant	Ms. Beverly Ryan
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$6,850.00

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 May 2012, Ms. Beverly Ryan (the Claimant), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$6,850.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill incident.¹

At the time of the Deepwater Horizon incident, the Claimant operated a "Girl Friday" (cleaning service) business in Largo, Florida.² The Claimant stated that due to the Deepwater Horizon incident, "[a]ll [of her] customers have relocated for employment." As a result, "[her] wages were affected and [her] personal girl Friday business has all depleted."³

The Claimant specifically asserted she has lost \$6,850.00 in business income, allegedly due to effects of the Deepwater Horizon incident.⁴

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. § 136. One

¹ Optional OSLTF Claim Form, signed 15 May 2012.

² Hardship Letter, dated 15 May 2012.

³ Hardship Letter, dated 15 May 2012.

⁴ Optional OSLTF Claim Form, signed 15 May 2012; Hardship Letter, dated 15 May 2012.

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), paying any claim or obligation by the OSLTF 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 OSLTF

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed 15 May 2012;
- Hardship Letter, dated 15 May 2012;
- Responses to NPFC Request for Additional Information;
- 2008 Form W-2 from VICORP Restaurants, Inc.;
- 2008 Form W-2 from Venus Restaurant, Inc.;
- 2010 Form W-2 from Bayside Canteen LLC;
- 2008 Form 1040, including Schedules A, C-EZ, SE, and EIC;

- 2009 Form 1040, including Schedule C;
- 2010 Form 1040, including Schedule A and Schedule C; and
- 2011 Form 1040, including two Forms 4852 and one Schedule C.

Prior to presenting this claim to the NPFC, the Claimant presented a Third Quarter Interim Claim (ICQ32011) to the GCCF. The RP/GCCF assigned Claimant ID # 3525201 to the Claimant, and assigned the ICQ32011 claim # 9414010.⁵ The RP/GCCF denied payment on the claim.⁶

On 23 May 2012, the Claimant presented this claim to the NPFC, seeking \$6,850.00 in loss of profits and impairment of earning capacity damages.⁷ Based upon the Claimant's submissions, it appears that the subject matter for the RP/GCCF claim is the same as the claim now before the NPFC—i.e., that the Claimant suffered reduced earnings as a result of the Deepwater Horizon incident. The NPFC deems the Claimant's prior claim with the RP/GCCF to satisfy OPA presentation requirements.⁸ The NPFC may therefore adjudicate this claim to the extent it has first been submitted to the RP/GCCF.⁹ Accordingly, this Claim Summary and Determination addresses the damages claimed in the Claimant's prior submission to the RP/GCCF. Any damages included in this claim that were not first presented to the RP/GCCF are denied for improper presentment.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

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 economic damages class of the BP settlement. This claim is therefore considered 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 rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that she is a member of the economic damages class of the BP Settlement, she should submit evidence to indicate that she has either opted out or is excluded from the BP Settlement in her request for reconsideration of this claim.

Furthermore, this claim for loss of profits and impairment of earning capacity damages is denied on its merits, as the Claimant has failed to establish that she has sustained a financial loss as a

⁵ GCCF Denial Letter, dated 20 July 2011.

⁶ GCCF Denial Letter, dated 20 July 2011.

⁷ Optional OSLTF Claim Form, signed 15 May 2012.

⁸ 33 C.F.R. § 136.103(a).

⁹ 33 C.F.R. § 136.103(a).

result of the Deepwater Horizon incident. In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

At the time of the Deepwater Horizon incident, the Claimant ran her own house cleaning/girl Friday business.¹⁰ The Claimant alleged that because of the Deepwater Horizon incident, the general economic climate in Largo, Florida deteriorated, causing her customers to “relocate[] for employment.”¹¹

In a letter dated 29 May 2012, the NPFC requested additional information from the Claimant to substantiate these claims.¹² The NPFC sought documentation establishing the source of the Claimant’s earnings, as well as any proof that the Claimant’s loss of earnings was actually caused by the Deepwater Horizon incident.¹³ The Claimant responded with the requested financial documentation and itemized answers to the questions asked.¹⁴

The Claimant alleges that because of the Deepwater Horizon incident, the general economic climate deteriorated, causing financial hardship to her customer base and ultimately causing the Claimant to sustain \$6,850.00 in lost profits damages.¹⁵ According to the Claimant, this amount reflects “part of [the Claimant’s] 2011 income if [her] clients did not stop using [her] services.”¹⁶

The Claimant presented certain limited financial information indicating that she may have experienced a financial loss subsequent to the Deepwater Horizon incident. She has failed, however, to establish that the loss was caused by the oil spill. The Claimant stated that at the time of the incident, she had four regular customers, all of whom appear to have relocated.¹⁷

According to the Claimant, at some point after the Deepwater Horizon incident, one of the customers “stopped services . . . due to [a] cut in [her] husband’s hours,” another “moved to New York,” and the last “left due to foreclosure.”¹⁸ The remaining client lost her job, and her whereabouts are unknown to the Claimant.¹⁹ The Claimant has not, however, provided documentation establishing a causal link between the oil spill and the relocation of her clients.²⁰ Further, research conducted by the NPFC regarding the City of Largo’s economic conditions does not indicate that the Deepwater Horizon oil spill had an appreciable negative impact over and above other prevailing economic conditions.²¹ These allegations, without more, are insufficient to establish that the Deepwater Horizon incident caused the Claimant’s financial loss.

¹⁰ The Claimant’s tax returns do not specifically identify the source of her claimed wages. 2008 U.S. Individual Income Tax Return; 2009 U.S. Individual Income Tax Return; 2010 U.S. Individual Income Tax Return; 2011 U.S. Individual Income Tax Return. The Claimant alleges, however, that the Deepwater Horizon incident caused a reduction in these wages. Hardship Letter, dated 15 May 2012.

¹¹ Hardship Letter, dated 15 May 2012.

¹² Request for Additional Information, dated 29 May 2012.

¹³ Request for Additional Information, dated 29 May 2012.

¹⁴ Response to NPFC Request for Additional Information.

¹⁵ Hardship Letter, dated 15 May 2012.

¹⁶ Response to NPFC Request for Additional Information.

¹⁷ Response to NPFC Request for Additional Information.

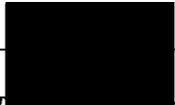
¹⁸ Response to NPFC Request for Additional Information.

¹⁹ Response to NPFC Request for Additional Information.

²⁰ Hardship Letter, dated 15 May 2012; Response to NPFC Request for Additional Information.

²¹ City of Largo Fiscal Year 2010 Comprehensive Annual Financial Report, page 23.

Accordingly, this claim for \$6,850.00 is denied in its entirety because the Claimant has not demonstrated that her alleged financial 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. Furthermore, this claim is considered to have been settled by virtue of Claimant belonging to the economic damages class associated with the CSSP, and is therefore not eligible for OSLTF compensation.

Claim Supervisor:  *NPTC Claims Adjudication Division*

Date of Supervisor's Review: *7/26/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: