

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)
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7012 2210 0001 7215 0247

5890/DWHZ
21 May 2013

Charissa A. Stevenson
[REDACTED]

Re: Claim Number: N10036-1918

Dear Ms. Stevenson,

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 N10036-1918 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 N10036-1918.

Mail reconsideration requests to:

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

Sincerely,
[REDACTED]

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure (1): Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1918
Claimant	Charissa A. Stevenson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$8,000.00

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 26 April 2013, Charissa A. Stevenson ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$8,000.00 in real or personal property damages resulting from the Deepwater Horizon oil spill. The Claimant indicates, however, that her losses are based on a reduction in available working hours in her position as a hotel employee, and not due to damage to real or personal property caused by the Deepwater Horizon oil spill.¹ As such, this claim is properly categorized as a claim for loss of profits or impairment of earning capacity damages.

In describing her alleged losses, the Claimant stated that at the time of the oil spill, business at the hotel where she was employed "got really really slow" and "for at least six months [the Claimant] was out of work" because "nobody was checking in hotels" due to the Deepwater Horizon oil spill.² The Claimant seeks to recover \$8,000.00 in alleged lost earnings.

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.

¹ Optional OSLTF Claim Form dated 15 April 2013.

² 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

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

- Optional OSLTF Claim Form, posted 26 April 2013

On 26 April 2013, the Claimant submitted this claim to the NPFC seeking to recover \$8,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.³ The Claimant's submission states that the claim was not previously submitted to the Responsible Party via the Deepwater Horizon Claim Program.⁴

³ Optional OSLTF Claim Form dated 26 April 2013.

⁴ 33 C.F.R. § 136.103(a).

However, the Claimant also stated she “sign[ed] the forms BP sent [her] in the mail not to sue,” indicating the Claimant signed a Release and Covenant Not To Sue in exchange for final payment. Documentation provided by the Responsible Party indicates that the Claimant did previously present this claim to the Responsible Party through both the GCCF and the BP Claims Program. The Claimant received an Emergency Advance Payment (EAP) of \$3,400.00 and a Full and Final Payment of \$5,000.00 from the GCCF, for total payment of \$8,400.00.⁵ The Claimant then submitted the claim to the BP Claims Program, which denied any additional payments on the claim. Because the claim was previously presented to and denied by the BP Claims Program, presentment requirements under OPA have been satisfied.⁶

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.

This claim is not eligible for receiving compensation from the Oil Spill Liability Trust Fund for several reasons. First, the NPFC has confirmed that the Claimant has settled this claim in exchange for payments from the GCCF totaling at least \$8,400.00. 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.

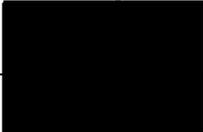
However, this claim is also denied on its merits. In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained an uncompensated loss or reduction in earnings, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. The Claimant has not provided any evidence to demonstrate that she actually lost earnings, nor has she proven that the oil spill somehow affected her employment.

Based on the foregoing, this claim is denied because (1) this claim has been settled in exchange for final payment from the Responsible Party, (2) the Claimant has failed to provide evidence sufficient to prove that she sustained a financial loss in the amount \$8,000.00, and (3) the Claimant has failed to provide evidence sufficient to prove that the alleged loss is due to the

⁵ Claim Status Report, BP Claims Program.

⁶ 33 C.F.R. § 136.103(c)(2).

injury, destruction, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.



Claim Supervisor: *NTPC Claims Adjudication Division*

Date of Supervisor's Review: *5/21/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: