

U.S. Department  
of Homeland  
Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd., Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 1-800-280-7118  
E-mail: [REDACTED]  
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7010 0780 0001 7083 1652

[REDACTED]  
Pearl River, LA 70452

5890/DWHZ  
Claim # N10036-0066  
13 December 2010

Email: [REDACTED]

Re: Claim Number: N10036-0066

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits and earnings real or personal property damages you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary 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 N10036-0066.

Mail reconsideration requests to:

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

Sincerely,  
[REDACTED]  
[REDACTED]

U. S. Coast Guard  
Claims Manager

Attachment: (1) Claim Summary/Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Date	13 December 2010
Claim Number	N10036-0066
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$93,000.00

### ***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 from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 07 November 2010 [REDACTED] (Claimant), submitted a lost profits & earnings claim in the amount of \$93,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] is asserting that she was terminated from her paralegal position because of the Deepwater Horizon incident.

The Claimant worked at a law office in Slidell, Louisiana previous to the Deepwater Horizon incident.<sup>1</sup> She asserts that she was terminated because her employer, [REDACTED] LLC, anticipated that he would gain business from the Deepwater Horizon incident from people seeking legal representation. Her employer committed time, money and additional resources to prepare for the Deepwater Horizon incident related business that did not materialize. Claimant maintains that her employer was forced to release her due to a lack of financial resources.

### ***APPLICABLE LAW***

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

<sup>1</sup> Letter from Claimant to BP dated 07 November 2010.

by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated November 7, 2010, a copy of the denial letter from the Gulf Coast Claims Facility (GCCF) dated November 4, 2010, and miscellaneous supporting documents. The GCCF assigned claimant identification # [REDACTED] to [REDACTED] claim submission. On November 4, 2010, the GCCF issued a denial to [REDACTED] stating that she has not demonstrated a loss of profits or income as a direct result of the oil-spill.<sup>2</sup>

### **B. NPFC Determination**

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or

<sup>2</sup> See, GCCF denial letter dated November 4, 2010.

impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$93,000 is not 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. Claimant's alleged loss of profits is the result of her employer's business decision to terminate her employment.

Claim Supervisor:



Date of Review: 12/13/10

Supervisor's Comments: DENIAL APPROVED