

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: 800-280-7118  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4666 9229

5890/DWHZ  
Claim # N10036-1315  
26 August 2011

Rickeshia Sharetta Davis  
[REDACTED], Esq.

Dear Ms. Proujan:

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 N10036-1315 involving Deepwater Horizon. 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 N10036-1315.

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

Copy: Rickeshia Sharetta Davis  
139 County Road 6911  
Shubuta, MS 39360  
Certified Letter Receipt 7011 1150 0000 4666 9182  
Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1315
Claimant	Rickeshia Sharetta Davis
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$65,000.00

### ***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 claims for certain individual and business claims on behalf of BP.

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

On 17 August 2011, Rickeshia Sharetta Davis (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$65,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked for Hepaco, Inc. as an oil spill cleanup responder. Hepaco is headquartered in Charlotte, North Carolina. The Claimant stated that she "was not employed the length of time promised, given the amount of work hours promised, paid the per diem promised, nor paid housing costs as promised."<sup>1</sup> The Claimant's loss included the costs of a hotel room for three weeks and the apartment she rented for seven months.<sup>2</sup> After she left Hepaco, the Claimant worked for a temporary employment company.<sup>3</sup>

The Claimant is represented before the NPFC by Amanda G. Proujan, Esq. of Nexsen Pruet, LLC in Charleston, South Carolina. The firm also represents the Claimant in Court: Eastern District of Louisiana, MDL-2179 (Oil Spill by the Oil Rig "Deepwater Horizon").

### ***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> OSLTC Claims Form signed by Nexsen Pruet, legal representative, dated 10 August 2011

<sup>2</sup> Claimant's letter explaining the claim 13 January 2011

<sup>3</sup> W-2 Wage and Tax Statement from Kelly Services, Inc.

- (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 undertake, 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, Claimant submitted the following documentation:

- OSLTC Claims Form signed by Nexsen Pruet, legal representative, dated 10 August 2011
- Letter to NPFC from Nexsen Pruet, legal representative, transmitting claim 10 August 2011
- Letter to GCCF from Douglas M. Schmidt, attorney, advising his association with Nexsen Pruet 11 March 2011
- Douglas M. Schmidt, Retainer Agreement 05 May 2010
- Bank of America wiring instructions 10 August 2011
- Claimant's letter explaining the claim 13 January 2011
- W-2 Wage and Tax Statement from Hepaco, Inc., Kelly Services, Inc. and DFAS for 2010
- Earnings Statements from Hepaco, Inc. for 02 July 2010 and 16 July 2010
- Form 1099-G Certain Government Payments for 2010 from Mississippi Department of Employment Security
- Form 1099-Misc from Document and Package Brokers, Inc for 2009 and 2010
- Form 1098-T Tuition from Hinds Community College for 2009
- W-2 Wage and Tax Statement from Youngstown Restaurant Associates, Inc. for 2008

- Value Place Gulfport, Gulfport, Mississippi, statement for June 2010
- Receipts from Hartford View Apartments, Gulfport, Mississippi, 29 June 2010 and 05 August 2010

Claimant seeks lost profits and impairment of earnings in the amount of \$65,000.00.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment Claim with the GCCF. The claim was assigned Claimant ID #3257041 and Claim #312960.<sup>4</sup> This claim was denied on 14 December 2010.<sup>5</sup> Additionally, Claimant filed a Final Payment Claim with the GCCF. The Final Payment Claim was assigned Claim #3257041.<sup>6</sup> Claim was denied on 30 April 2011.<sup>7</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that the Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of claims denied by GCCF to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1315 considers and addresses the earnings claimed in all of the claims presented to the responsible party, specifically; GCCF Emergency Advance Payment #312960 and Final Payment Claim #3257041.

#### **NPFC Determination**

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their loss of income was due to injury or destruction or loss of real or personal property or 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(c)(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.

The Claimant has not provided any evidence that she lost wages due to the Deepwater Horizon oil spill. For example, the Claimant has not provided any evidence of an employment agreement with her employer for the period of time and under the terms she asserted. The contractor's failure to pay the Claimant, whatever the reason, cannot be said to be the result of the oil spill. Rather, the oil spilled allowed the Claimant to *gain* employment in the first place. The Claimant's losses, if any, are the result of the independent actions of her employer.

<sup>4</sup> GCCF On-Line Claim Status provided by Nexsen Pruet

<sup>5</sup> GCCF Denial Letter dated 14 December 2010

<sup>6</sup> GCCF On-Line Claim Status provided by Nexsen Pruet

<sup>7</sup> GCCF Denial Letter dated 30 April 2011

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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: *Claims Adjudication Division*

Date of Supervisor's Review: *26 August 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

