

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: [REDACTED]  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
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5890/DWHZ  
26 September 2011

Ms. Yanicko Johnson  
[REDACTED]

Re: Claim Number: N10036-1412

Dear Ms. Johnson:

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 N10036-1412 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 N10036-1412.

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	N10036-1412
Claimant	Ms. Yanicko Johnson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

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

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

On 14 September 2011, Ms. Yanicko Johnson (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$10,000.00 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 was working at Logan's Roadhouse in Gulfport, Mississippi.<sup>2</sup> The Claimant alleged that she sustained a loss of wages totaling \$10,000.00 due to lack of business, following the Deepwater Horizon oil spill.<sup>3</sup>

### ***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 returns, financial statements, and similar documents. In addition, comparative figures for

<sup>1</sup> Optional OSLTF Claim Form, dated 3 August 2011.

<sup>2</sup>PHONECON: NPFC Staff and the Claimant, 22 September 11.

<sup>3</sup> PHONECON: NPFC Staff and the Claimant, 22 September 11.

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, dated 16 August 2011;
- Check Stubs, 1 January 2010 to 31 December 2010;

Prior to presentation to the NPFC, the Claimant presented an Emergency Advance Payment claim (EAP) to the RP/GCCF, seeking \$10,000.00 in loss of profits and impairment of earnings capacity.<sup>4</sup> The Claimant was assigned ID 1059028 and EAP was assigned Claim # 97080. This claim was paid in the amount of \$10,000.00 on 23 December 2010.<sup>5</sup>

The Claimant then presented a Quick Pay Claim, and a Full Review Final claim (FRF) to the RP/GCCF. The Quick Pay claim was assigned Claim # 9005079 and FRF claim was assigned 9011606. The RP/GCCF issued a payment on the Quick Pay claim in the amount of \$5,000.00.<sup>6</sup> The Claimant alleged to have submitted the FRF claim to the RP/GCCF, seeking \$8,000.00 loss of profits damages.<sup>7</sup> The FRF claim was denied.

On 14 September 2011, the Claimant presented this claim to the NPFC, seeking \$10,000.00 in loss of profits and impairment of earnings capacity.<sup>8</sup> This NPFC determination addresses this claim in the amount of \$10,000.00 to the extent that that amount was previously presented in the

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<sup>4</sup> GCCF Claimant Status, accessed on 22 September 2011.

<sup>5</sup> Emergency Advance Payment Determination, 23 December 2010.

<sup>6</sup> PHONECON: NPFC Staff and the Claimant, 22 September 2011.

<sup>7</sup> PHONECON: NPFC Staff and the Claimant, 22 September 2011.

<sup>8</sup> Optional OSLTF Claim Form, dated 16 August 2011.

Claimant's Quick Pay and FRF claims. Any amounts claimed now before the NPFC which were not first presented to the RP/GCCF are denied for improper presentment.<sup>9</sup>

### **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 a Quick Pay final payment from the RP/GCCF in the amount of \$5,000.00, in addition to the Claimant's EAP payment in the amount of \$10,000.00.<sup>10</sup> In order to accept a Quick Pay, a claimant generally must execute a Release and Covenant Not to Sue in return for the final payment.<sup>11</sup> By signing this document, a claimant has released to the RP/GCCF any rights to additional recovery regarding losses arising from the Deepwater Horizon oil spill.<sup>12</sup>

Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF when the Claimant accepted the Quick Pay final payment, the Claimant cannot also recover from the Fund.

If the Claimant believes that the payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in her request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill as well as a duplicate copy of what she presented to the GCCF in order to prove the costs she was paid are not the same.

Additionally, the Claimant has failed to provide documentation to substantiate that she has sustained a financial loss as a result of the oil spill. The Claimant's submission included only copies of check stubs from 24 January 2010 to 12 December 2010. The Claimant has not provided evidence to show that her income decreased in the period following the oil spill, or to show that any alleged decreases in income were caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

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<sup>9</sup> 33 C.F.R. 133.103(a).

<sup>10</sup> GCCF Claimant Status, accessed on 22 September 2011; PHONECON: Claimant and NPFC Staff, 22 September 2011.

<sup>11</sup> GCCF Claimant Status, accessed on 19 September 2011.

<sup>12</sup> GCCF Release and Covenant Not to Sue.

This claim is denied because the Claimant has accepted a Quick Pay Final Payment from the RP/GCCF, waiving any rights to further recovery regarding losses stemming from the Deepwater Horizon oil spill, and because the Claimant has failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$10,000.00, 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: *9/23/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: