

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

CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7538

5890/DWHZ  
09 November 2011

Sinath Sylvester  
[REDACTED]

Re: Claim Number: N10036-1428

Dear Ms. Sinath:

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 your claim number N10036-1428 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1428.

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

Enclosures: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1428
Claimant	Sinath Sylvester
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$5,000.00

### ***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 20 September 2011, Sinath Sylvester (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$5,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a waitress at a Hooters Restaurant in Sarasota County, Florida.<sup>1</sup> The Claimant asserted that, due to the Deepwater Horizon oil spill, she experienced a reduction in earnings because she was forced to work part-time.<sup>2</sup> The Claimant stated that the price of seafood increased and customers were unwilling to pay these increased prices.<sup>3</sup>

### ***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 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.

<sup>1</sup> Letter of claim explanation from the Claimant, dated 22 August 2011.

<sup>2</sup> Letter of claim explanation from the Claimant, dated 22 August 2011.

<sup>3</sup> Letter of claim explanation from the Claimant, dated 22 August 2011.

- (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 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 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***

#### **The Claimant's Submission to the OSLTF**

In support of her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 26 August 2011;
- Letter of claim explanation from the Claimant, dated 22 August 2011;
- 2010 Form W-2 Wage and Tax Statement from Hooters of Port Charlotte Inc.;
- 2009 Form W-2 Wage and Tax Statement from Integrity Employee Leasing; and
- 2008 Form W-2 Wage and Tax Statement from Integrity Employee Leasing.

Prior to presenting this Claim to the NPFC, the Claimant filed an Interim Quarter III (ICQ32011) claim with the GCCF for loss of earnings on 02 July 2011 in the amount of \$10,000.00.<sup>4</sup> The Claimant was assigned Claimant ID # 3528678 and Claim # 9409757. The Claimant also filed a Full Review Final (FRF) claim with the GCCF for loss of earnings on 07 September 2011 in the amount of \$4,000.00.<sup>5</sup> The Claimant was assigned Claim # 9441593. The Claimant accepted Final Payment from the GCCF on 19 July 2011 in the amount of \$5,000.00.<sup>6</sup>

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<sup>4</sup> Report from the GCCF, dated 02 November 2011.

<sup>5</sup> Report from the GCCF, dated 02 November 2011.

<sup>6</sup> Report from the GCCF, dated 02 November 2011; GCCF Claimant Status Page.

## **NPFC Determination**

The claim is denied. 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. The NPFC considered all documentation presented by the Claimant.

This claim is denied because, (1) the Claimant has accepted Final payment, waiving any rights she may have to recover damages from the OSLTF regarding this incident, (2) the Claimant has not established she experienced a financial loss, and (3) the Claimant has not established that any alleged losses she experienced were due to the Deepwater Horizon oil spill.

### **1. Release of Rights to the GCCF**

Information available to the NPFC indicates that the Claimant accepted Final payment in the amount of \$5,000.00 from the GCCF.<sup>7</sup> The RP/GCCF requires that a Claimant execute a Release and Covenant Not to Sue in return for a Final payment. Because the Claimant has accepted Final payment, and signed a Release and Covenant Not to Sue, the Claimant has released any and all rights to additional recovery regarding this injury to the RP/GCCF.<sup>8</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, the Claimant cannot also recover from the Fund.

If the Claimant believes that 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.<sup>9</sup> The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon incident.

### **2. No Evidence of Financial Loss**

In support of her claim, the Claimant's only submitted financial documentation consisted of Form W-2's from 2008, 2009, and 2010. This documentation indicated that the Claimant had earnings of \$6,139.50<sup>10</sup> in 2008, \$792.00<sup>11</sup> in 2009, and \$5,381.31<sup>12</sup> in 2010. Considering that in 2010, the Claimant earned over five times more than she earned in 2009, the NPFC is unable to conclude that the Claimant experienced a financial loss based on the documentation provided by the Claimant.

On 06 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to verify and document the Claimant's financial loss. The NPFC requested, among other things, full and complete tax returns from 2008-2010, paystubs from Hooter's for 2010 and 2011, and bank statements from 2008 -2011. To date, the NPFC has not received a response from the Claimant. Consequently, the Claimant failed to prove she suffered a financial loss.

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<sup>7</sup> Report from the GCCF, dated 02 November 2011; the Claimant's GCCF status page.

<sup>8</sup> Standard GCCF Notice of Quick Payment Final Claim Determination.

<sup>9</sup> 33 C.F.R. § 136.115.

<sup>10</sup> 2008 Form W-2 Wage and Tax Statement from Integrity Employee Leasing

<sup>11</sup> 2009 Form W-2 Wage and Tax Statement from Integrity Employee Leasing

<sup>12</sup> 2010 Form W-2 Wage and Tax Statement from Hooters of Port Charlotte Inc.;

### 3. No Evidence of Deepwater Horizon Oil Spill Causation

The Claimant asserted that she experienced a loss of earnings at Hooter's because she was forced to work part-time due to the increased seafood prices caused by the Deepwater Horizon oil spill.<sup>13</sup> However, the Claimant's submission to the NPFC did not include any evidence that she worked reduced hours at Hooters due to the Deepwater Horizon oil spill and increased seafood prices.

On 06 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to verify and document the effect of the Deepwater Horizon oil spill on the Claimant's employment. The NPFC requested, among other things, paystubs from Hooters for 2010-2011, bank statements, and a letter from Hooter's verifying she experienced reduced wages to the Deepwater Horizon oil spill. To date the NPFC has not received a response from the Claimant. Consequently, the NPFC is unable to confirm that the Deepwater Horizon oil spill had any effect on the Claimant's earnings at Hooters.

This claim is denied because (1) the Claimant accepted Final payment from the GCCF, releasing her rights regarding losses related to the Deepwater Horizon oil spill to the RP/GCCF, (2) the Claimant failed to meet her burden to demonstrate that there was an alleged loss in the amount claimed, and (3) the Claimant failed to meet her burden to demonstrate 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: *11/9/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>13</sup> Letter of claim explanation from the Claimant, dated 22 August 2011.