

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 4759

5890/DWHZ
28 October 2011

Charlotte E. Sims
[REDACTED]

Re: Claim Number: N10036-1460

Dear Ms. Sims:

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 N10036-1460 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 N10036-1460.

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 N10036-1460
Claimant Charlotte E. Sims
Type of Claimant Private (US)
Type of Claim Loss of Profits and Impairment of Earnings Capacity
Amount Requested \$4,320.00

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 29 September 2011, Charlotte E. Sims, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) that lacked a sum certain. On 30 September 2011, the Claimant submitted a sum certain of \$4,320.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was employed at Treasure Bay Casino and Hotel in Biloxi, Mississippi.¹ The Claimant asserted that due to the oil spill, she suffered a reduction in her income compensation structure, from salaried to hourly, as well as a reduction in the number of tips she collected from casino patrons.² As a result of both her reduction in compensation and tips received, the Claimant asserted she lost income in 2010.³

The Claimant did not provide an explanation regarding her sum certain of \$4,320.00.

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).

¹ Optional OSLTF Claim form received 29 September 2011.

² Letter from the Claimant discussing the change in her income compensation structure, Optional OSLTF Claim form received 29 September 2011.

³ Optional OSLTF Claim form received 29 September 2011.

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 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 received 29 September 2011;
- Fax transmission from the Claimant listing a sum certain of \$4,320.00 received 30 September 2011;
- Optional OSLTF Claim Form instructions;
- Employment Verification Form from Treasure Bay Casino and Hotel dated 18 November 2010;
- Letter from the Claimant regarding the change in her compensation structure;
- Personnel Action Notice dated 04 January 2011;
- 2008 Form 1040 Federal Tax Return;
- 2009 Form 8879 IRS e-file Signature Authorization;
- 2009 Federal Return Recap;
- 2008 Child Tax Credit Worksheet;
- 2008 Schedule A Contribution Limitation Worksheet;
- 2009 Form 1040-ES Payment Vouchers (4).

Prior to presenting this Claim to the NPFC, the Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011) with the GCCF.⁴ The Claimant was assigned Claimant ID # 1183815 and Claim ID # 9145194. The GCCF presented the Claimant with an offer for Final Payment on the Claimant's ICQ12011 Claim on 01 July 2011 in the amount of \$5,000.00.⁵ The Claimant accepted the GCCF Final Payment in the amount of \$5,000.00.⁶ Additionally, the Claimant executed a release and covenant not to sue.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant's compensation structure was reduced from salary to hourly as well as suffering a reduction in tips at the Treasure Bay Casino and Hotel. The NPFC deems the Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1460 considers and addresses the earnings claimed in the claim up to \$4,320.00 presented to the responsible party, specifically; GCCF Claim # 9145194 (ICQ12011).

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.

Based on the information available to the NPFC, the Claimant has accepted a Final Payment from the RP/GCCF in the amount of \$5,000.00.⁸ The Claimant has executed a Release and Covenant Not to Sue in return for this Final Payment.⁹ By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.¹⁰ The Release executed by the Claimant specifically states:

[i]n consideration of payment in the amount of \$5,000.00 Claimant hereby releases and forever discharges, and covenants not to sue BP Exploration & Production Inc. ("BP") and the other Released Parties, [. . .] for any losses, damages, costs, expenses, injuries, claims, causes of actions, liabilities, or other relief that Claimant has or may have [. . .] arising from or relating in any way to the [Deepwater Horizon oil spill].¹¹

Furthermore, language in the document states that:

Released Parties means anyone who is or could be responsible or liable in any way for the [Deepwater Horizon oil spill] or any damages related thereto, whether a person, company or governmental entity, including (but not limited to) BP, other potentially responsible or liable parties, including but not limited to the parties listed in Attachment A to this Release, the federal Oil Spill Liability Trust Fund and any state or local fund, and each of their respective Affiliates as defined above.¹²

⁴ GCCF Claimant Status Page.

⁵ GCCF Determination Letter dated 01 July 2011.

⁶ GCCF Final Payment Offer dated 05 July 2011, PHONECON between the NPFC and the Claimant dated 06 October 2011.

⁷ GCCF Release and Covenant Not To Sue Letter dated 12 July 2011, PHONECON between the NPFC and the Claimant dated 06 October 2011.

⁸ PHONECON between the NPFC and the Claimant dated 06 October 2011.

⁹ PHONECON between the NPFC and the Claimant dated 06 October 2011.

¹⁰ GCCF Release and Covenant Not to Sue Letter dated 12 July 2011.

¹¹ GCCF Release and Covenant Not to Sue Letter dated 12 July 2011.

¹² GCCF Release and Covenant Not to Sue Letter dated 12 July 2011.

Therefore, the Claimant has waived rights to further recovery regarding the losses presented to the NPFC. Any payment from the OSLTF 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 OSLTF.

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. 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.

The Claimant asserted that due to the Deepwater Horizon oil spill, her compensation structure at Treasure Bay Casino and Hotel was reduced from a salaried position to an hourly position.¹³ Additionally, the Claimant asserted that the oil spill reduced the number of tips she received from patrons at Treasure Bay.¹⁴ The Claimant, however, failed to prove a connection between the Deepwater Horizon oil spill and her purported loss in income from Treasure Bay Casino and Hotel.

In an effort to verify the Claimant's submission, the NPFC contacted the Claimant's employer, Treasure Bay Casino and Hotel. In a subsequent phone conversation with Treasure Bay, the NPFC was informed that Treasure Bay was not affected by the Deepwater Horizon oil spill.¹⁵ Specifically, Treasure Bay informed the NPFC that the Claimant's change from salary to hourly compensation occurred on 31 January 2011 and, "had nothing to do with the oil spill."¹⁶ Furthermore, Treasure Bay stated that the Claimant does not possess a tip declaration on file with Treasure Bay and thus is not an employee eligible to accept tips from patrons to the casino.¹⁷ Therefore, the Claimant failed to prove she suffered a loss in either compensation from Treasure Bay or tips received from patrons of Treasure Bay due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant has accepted final payment from the RP/GCCF and is ineligible to recover from the OSTLF. Additionally the Claimant failed to meet her 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: <i>NPFC Claims Adjudication Division</i>
Date of Review: <i>10/28/11</i>
Supervisor's Actions: <i>Denial approved</i>
Supervisor's Comments:

¹³ Letter from the Claimant discussing the change in her income compensation structure, Optional OSLTF Claim form received 29 September 2011.

¹⁴ Optional OSLTF Claim form received 29 September 2011.

¹⁵ PHONECON between the NPFC and Treasure Bay Casino and Hotel dated 06 October 2011.

¹⁶ PHONECON between the NPFC and Treasure Bay Casino and Hotel dated 06 October 2011.

¹⁷ PHONECON between the NPFC and Treasure Bay Casino and Hotel dated 06 October 2011.