

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5084

5890/DWHZ
19 October 2011

Mrs. Michelle Abrams
[REDACTED]

Re: Claim Number: N10036-1488

Dear Mrs. Abrams:

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 N10036-1488 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 N10036-1488.

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	N10036-1488
Claimant	Mrs. Michelle Abrams
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$1,625.00

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 12 October 2011, Mrs. Michelle Abrams (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking loss of profits and impairment of earnings capacity in the amount of \$1,625.00 allegedly resulting from the Deepwater Horizon oil spill incident.¹

From January 2009 to present, the Claimant has been employed by the Portofino Master Association, in Pensacola Beach, Florida as an "HOA Controller," responsible for "manag[ing] the financial functions for all 6 homeowners associations on property and to collect association dues from homeowners as well as amenity fees from guests who visit the property while on vacation."² The Claimant was eligible to participate in an incentive program, in which she would receive a bonus equal to 25% of her salary, if certain retail sales goals were met, and if the Claimant received a satisfactory review.³

The Claimant alleged that due to low occupancy at the Portofino Resorts caused by the oil spill, the retail sales goals were not met, and the Claimant received only a pro-rated share of her bonus.⁴ The Claimant was paid a bonus of \$14,625.00, but would have been paid \$16,250.00 had the sales goals been met.⁵ The Claimant seeks \$1,625.00, which is the remainder of her bonus, which she alleged that she would have earned, had occupancy numbers at the Portofino resort not been affected by the Deepwater Horizon oil spill.⁶

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.

¹ Optional OSLTF Claim Form, dated 5 October 2011.

² Letter from the Claimant RE: Unpaid Claim Relating to BP Oil Spill, dated 5 October 2011.

³ Portofino Island, Incentive Program.

⁴ Letter from the Claimant to the NPFC, 5 October 2011.

⁵ GCCF Interim Claim Form, § IV.C.

⁶ Optional OSLTF Claim Form, dated 5 October 2011.

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 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 5 October 2011 and received 12 October 2011.
- Claim cover letter dated 5 October 2011.
- Claimant – GCCF email of 6 July 2011.
- Premier Island Management Group undated letter to Claimant.
- Claimant pay stub dated 31 December 2010.
- Claimant pay stub dated 27 December 2009.
- Signed incentive program statement for HOA Incentive, dated 1/10/2010.
- Signed incentive program statement for Retail Incentive, dated 1/10/2010.
- Unsigned incentive program description goals for 2010.

- GCCF Deficiency Letter on Interim Payment/Final Payment Claim dated 13 July 2011.
- Claimant's letter 22 July 2011 responding to deficiency letter.
- Florida Driver License Class E.
- Employee Earnings Report, 2/13/09 – 12/31/09.
- Employee Earnings Report, 1/15/10 – 12/31/10.
- Employee Earnings Report, 1/14/11 – 7/15/11.
- 2010 Form 1040, showing adjusted gross income of \$131,618.00.
- 2010 Form 2441.
- 2010 Schedule M (Form 1040A or 1040).
- 2010 Tax payments Worksheet.
- 2010 Form 1040, Line 33.
- 2010 Federal Carryover Worksheet.
- 2009 Form 9465.
- 2009 Tax Return Transcript, showing wages of \$106,343.00.
- 2008 Form 4868.
- 2008 Form 1040, showing adjusted gross income of \$80,482.00.
- 2008 Form 2210.
- 2008 Schedule B (Form 1040).
- 2008 Schedule C (Form 1040), showing business loss of \$5,166.00.
- 2008 Form 2441.
- 2008 Form 8829.
- 2008 Form 8879.
- 2008 Form 1040-V.
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 8 August 2011.
- GCCF Re-Review Determination Letter on Interim Payment/Final Payment Claim, 12 August 2011.
- Letter from the Claimant to the GCCF, requesting return of documentation, 16 August 2011.
- GCCF Interim Claim Form, Claimant ID 3529156, seeking lost earnings or profits of \$1,625.00, 6 July 2011.

Prior to presentation to the NPFC, the Claimant presented a Third Quarter Interim Payment Claim (ICQ32011) to the RP/GCCF, seeking loss of profits and earning capacity damages in the amount of \$1,625.00.⁷ The Claimant was assigned ID 3529156, and the ICQ32011 claim was assigned Claim # 9411159. The RP/GCCF issued a Re-Review Determination Letter regarding this claim on 12 August 2011, finding that the Claimant failed to demonstrate that she lost any actual income as a result of the Deepwater Horizon oil spill.⁸

On 12 October 2011, the Claimant presented this claim to the NPFC, seeking loss of profits and earning capacity damages in the amount of \$1,625.00.⁹ The NPFC may properly adjudicate the entirety of this claim, as no payment has yet been made on this claim by the RP/GCCF.

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)

⁷ GCCF Interim Claim Form, 6 July 2011.

⁸ GCCF Re-Review Determination Letter on Interim Payment/Final Payment Claim, 12 August 2011.

⁹ Optional OSLTF Claim Form, dated 5 October 2011.

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.

This claim is denied because the Claimant has failed to demonstrate that she sustained an actual financial loss as a result of the Deepwater Horizon oil spill. This claim is based on the Claimant receiving a smaller bonus than she otherwise would have received had the Claimant reached a certain sales goal. However, there was no guarantee that the Claimant would have met this goal, were it not for the oil spill. Furthermore, there is no guarantee that even if occupancy numbers had been higher, that occupants would have made purchases necessary for the Claimant to have reached her sales goal and earned the entirety of her bonus.

In order to prove a claim for loss of profits and impairment of earnings capacity, a Claimant must demonstrate that her “income was reduced as a consequence of [the oil spill].”¹⁰ Because payment of the bonus was contingent upon the Claimant reaching a certain sales goal as well as on a “satisfactory annual review of service,”¹¹ the Claimant’s bonus payment was not guaranteed income. Therefore, the Claimant has not demonstrated that her income was lost or reduced due to her receiving only \$14,625.00 of her expected \$16,250.00 bonus.¹²

This claim is denied because the Claimant has not met her burden to demonstrate that (1) she sustained an actual loss of income in the amount of \$1,625.00, 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: *10/19/11*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹⁰ 33 C.F.R § 136.233(b).

¹¹ Unsigned Incentive Program description goals for 2010.

¹² GCCF Interim Claim Form, § IV.C.