

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1503
Claimant	: Iliana Martinez
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$8,100.00

### ***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 October 2011, Iliana Martinez (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$8,100.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant only presented an optional OSLTF claim form with sparse information and no documentation. The Claimant stated that she lost hours and lost her employment for some time but does not specify the company, work done, or time periods.<sup>1</sup>

Prior to presenting her claim to the NPFC, the Claimant filed a Full Review Final (FRF1) with the GCCF on 12 May 2011 in the amount of \$17,760.00.<sup>2</sup> She was assigned Claimant ID #3519877 and claim #9381736. This claim was denied.<sup>3</sup> Additionally, the Claimant filed another Full Review Final claim (FRF2) with the GCCF with Claim #3519877 on 05 August 2011 in the amount of \$17,600.00.<sup>4</sup> The GCCF denied the FRF2 claim.<sup>5</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 her claim before the NPFC, i.e., that she lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems both of the Claimant's two denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim #N10036-1503 considers and addresses the earnings claimed in both of the claims presented to the responsible party, specifically; GCCF Claim #'s 9381736 (FRF1) and 3519877 (FRF2).

The NPFC denied the claim on November 28, 2011, on the basis that the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim. The letter requested, among other things, financial documentation for an accurate accounting of the Claimant's losses, name of the business, and type of work she performs. It was sent on 19 October 2011. On 24 October 2011, the Claimant acknowledged receipt of the letter.<sup>6</sup> No response was received by the NPFC at the time the initial determination was made.

<sup>1</sup> Optional OSLTF claim form dated 19 September 2011.

<sup>2</sup> Report from the GCCF dated 21 November 2011.

<sup>3</sup> Report from the GCCF dated 21 November 2011

<sup>4</sup> Report from the GCCF dated 21 November 2011

<sup>5</sup> Report from the GCCF dated 21 November 2011

<sup>6</sup> USPS tracking #7011 1570 0001 4802 6722.

The Claimant's only submission to the NPFC was the optional OSLTF claim form dated 19 September 2011. The Claimant provided no documentation to substantiate her alleged loss of profits and impairment of earnings capacity or to show that her alleged loss of earnings was due to the Deepwater Horizon oil spill.

This claim was denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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.

***REQUEST FOR RECONSIDERATION:***

The Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim. The Claimant provided a one-page handwritten letter along with a copy of a letter dated July 20, 2011 from her current employer, Texas Pack, Inc. and a copy of the Claimant's payroll history with Texas Pack, Inc. from January 2008 through April 2011.

***RECONSIDERATION CLAIM ANALYSIS:***

The claimant requested reconsideration via regular mail which was received at the CRDS mail facility on February 2, 2012.

**NPFC Determination on Reconsideration**

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The NPFC's initial denial determination was dated November 28, 2011. The Claimant had until the close of business on January 28, 2012 to provide all information to the NPFC in support of her request for reconsideration pursuant to 33 CFR §136.115(d) which states in relevant part... "The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier".

Despite the fact that the Claimant did not request reconsideration in a timely fashion, the NPFC reviewed the payroll records presented by the Claimant and has determined that based on the documentation provided, the Claimant made \$7,463.64 in 2008, \$8,525.97 in 2009 and \$13,549.84 in 2010. As such, the Claimant made more in 2010 than she made in the two years preceding the oil spill and as such, the Claimant has failed to demonstrate that she experienced a loss as alleged.

The Claimant's reconsideration request and associated documentation was not received within the 60 day time period as permitted by regulation nor has the Claimant demonstrated she incurred a loss as alleged and as such, this claim is denied upon reconsideration.

Claim Supervisor: ***Thomas Morrison***

Date of Supervisor's review: ***2/13/12***

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments:

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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5890  
2/13/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 6562

Iliana Martinez  
[REDACTED]

RE: Claim Number: N10036-1503

Dear Ms. Martinez:

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 claim number N10036-1503 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

Thomas S. Morrison  
Chief, Claims Adjudication Division  
U.S. Coast Guard

ENCL: Claim Summary / Determination Form