

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 1570 0001 4802 6784

5890/DWHZ
25 October 2011

Rosina Carlton



RE: Claim Number: N10036-1508

Dear Ms. Carlton:

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 N10036-1508 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. 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 N10036-1508.

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	N10036-1508
Claimant	Rosina Carlton
Type of Claimant	Private (US)
Type of Claim	Natural Resources Damage
Amount Requested	\$1,644.44

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 17 October 2011, Rosina Carlton (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$1,644.44 for Natural Resource Damages to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant went on vacation to Cancun, Mexico for the week of 26 May 2010 through 31 May 2010.¹ While on vacation, the Claimant alleged that they were advised to stay out of the ocean due to the Deepwater Horizon oil spill.² The Claimant requested a full refund of her trip cost of \$1,644.64 to Cancun, Mexico.³ It is important to note that the Claimant categorized her claim as a Natural Resource Damage claim although after review of the submission, the NPFC has reclassified the claim as a lost profits and impairment of earnings capacity claim.

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:

¹ US Airways flight information dated 02 March 2010.

² Optional OSLTF claim form dated 12 October 2011.

³ Funjet vacation package from Two Worlds Travel via email dated 02 March 2010.

- (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

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted:

- 1) Optional OSLTF claim form dated 12 October 2011;
- 2) GCCF Appeal Form;
- 3) GCCF ineligible appeal letter dated 07 October 2011;
- 4) Funjet vacation package from Two Worlds Travel via email dated 02 March 2010;
- 5) US Airways flight information dated 02 March 2010.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$1,644.44.

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) for loss of Subsistence use of Natural Resources with the GCCF; she was assigned Claimant ID #1028769 and claim #3006025.⁴ This claim was denied on 20 November 2011.⁵ Additionally, Claimant filed two Full Review Final claims with the GCCF, Full Review Final

⁴ GCCF online claim status.

⁵ GCCF Denial Letter dated 20 November 2011.

Claim 1 (FRF1) with GCCF #9148960 and Full Review Final Claim 2 (FRF2) with Claim #9257693.⁶ These claims were denied on 29 April 2011.⁷ 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. The NPFC has not been able to confirm the amount of the Emergency Advance Payment nor the two Full Review Final Payment claims as of the date of this determination. The NPFC deems the three GCCF claims to be properly presented to the Responsible Party to the extent the amount of the claims presented to the Responsible Party are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1364 considers and addresses the loss of earnings up to the amount of \$1,644.44 for all claims presented to the Responsible Party.

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 or destruction or loss of real or personal property or 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. The NPFC considered all the documentation submitted by the Claimant.

In order to prove a claim for loss of profits and impairment of earnings capacity, a Claimant must demonstrate (1) that she suffered a loss or reduction in profits or earnings capacity and (2) that the loss was a result of the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill.

The Claimant seeks \$1,644.44 in lost profits and impairment of earnings capacity as a result of the Deepwater Horizon oil spill incident. The Claimant took a vacation to Mexico from May 26, 2010 through May 31, 2010. The Claimant asserted that the hotel advised her that she could not go into the ocean water therefore she requests full reimbursement of her vacation cost.

The NPFC has determined that the Claimant has failed to meet her burden to demonstrate she experienced a loss 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. The Claimant was in fact able to travel to Mexico for her intended vacation and has failed to demonstrate that the ocean where she vacationed was impacted by the Deepwater Horizon oil spill incident or that she was prevented from using the beach as alleged. Additionally, the cost of a vacation that was taken by the Claimant is not an OPA compensable damage.⁸

⁶ GCCF online claim status.

⁷ GCCF Denial Letter dated 29 April 2011.

⁸ 33 C.F.R. § 136.233(b) requires that the Claimant demonstrate “[t]hat 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.”

This claim is denied because 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/25/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: