

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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Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7842

5890/DWHZ  
Claim # N10036-1516  
06 December 2011

Charlene Hilliard  
[REDACTED]

Dear Ms. Hilliard:

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 N10036-1516 involving Deepwater Horizon. 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 N10036-1516.

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	N10036-1516
Claimant	Charlene Hilliard
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,215.65

### ***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 20 October 2011, Charlene Hilliard (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,215.65 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is an Independent Beauty Consultant for Mary Kay in Pass Christian, Mississippi.<sup>1</sup> The Claimant states she lost clientele due to the Deepwater Horizon oil spill.<sup>2</sup>

### ***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 § 2702(b) of OPA.

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.

<sup>1</sup> Mary Kay Independent Beauty Consultant Agreement 03 February 2007

<sup>2</sup> OSLTF Claim Form signed by Claimant dated 04 October 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 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, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant dated 04 October 2011
- Letter from Claimant dated 04 October 2011 explaining the claim
- Letter from Mary Kay client, Sherrell Green
- Letter from Mary Kay client, Jeffrey Hilliard
- Mary Kay Independent Beauty Consultant Agreement 03 February 2007
- Monthly Profit and Loss Statements by client name for 2007 to 2011

On 24 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The letter was sent First-Class Certified Mail Return Receipt Requested. The US Postal Service Tracking shows the

letter was delivered 29 October 2011.<sup>3</sup> As of this date, the Claimant has not responded to the request.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 13 November 2010 for \$2,000.00. The claim was assigned Claimant ID #3390460. The EAP claim was denied.<sup>4</sup> Additionally, the Claimant filed an Interim Payment (ICQ22011) claim with the GCCF on 03 April 2011. The claim was assigned claim #9343660. The ICQ22011 claim was denied.<sup>5</sup> Additionally, the Claimant filed a Full Review Final Payment (FRF) claim with the GCCF on 17 August 2011. The FRF claim was assigned number #9439215. The FRF claim was denied.<sup>6</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the 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 N10036-1516 considers and addresses the loss of earnings up to the amount of \$8,215.65 for all claims presented to the Responsible Party, specifically: GCCF Claim #3390460 EAP, #9343660 IC and #9439215 FP.

### **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 Claimant has provided insufficient documentation to support her alleged loss of earnings or to show that her loss was due to the Deepwater Horizon oil spill. On 24 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim. The letter was sent First-Class Certified Mail Return Receipt Requested and the US Postal Tracking shows the letter was delivered 29 October 2011.<sup>7</sup> As of this date, the Claimant has not responded to the letter requesting additional information.

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<sup>3</sup> USPS Tracking Receipt #7011 1570 0001 4802 6838

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

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

<sup>6</sup> Report from GCCF dated 21 November 2011

<sup>7</sup> USPS Tracking Receipt #7011 1570 0001 4802 6838

This claim is denied because the Claimant failed to meet the 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: *Claims Adjudication Division*

Date of Supervisor's Review: *06 December 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments: