

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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5890/DWHZ  
22 November 2011

Advances Accounting Services  
ATTN: [REDACTED]  
327 31<sup>st</sup> St.  
Gulfport, MS 39507

Re: Claim Number: N10036-1552

Dear [REDACTED]:

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 N10036-1552 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 N10036-1552.

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	N10036-1552
Claimant	Advanced Accounting Services
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$30,570.00

### ***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 8 November 2011, Ms. Lynda Gage, on behalf of Advanced Accounting Services (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$30,570.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is an accountant in Gulfport, Mississippi, who does contract work for various companies along the Gulf Coast. The Claimant alleged that she lost various contracts due to general economic effects of the Deepwater Horizon oil spill. The Claimant stated, "I am in a fishing community. I was affected. I do their books and review what their office staff does."<sup>2</sup>

The Claimant alleged to have lost earnings in the amount of \$30,570.00 due to the loss of contracts following the Deepwater Horizon oil spill.<sup>3</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 Section 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.
- (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.

<sup>1</sup> Optional OSLTF Claim Form, dated 8 November 2011.

<sup>2</sup> Letter from the Claimant to the GCCF, 17 October 2011.

<sup>3</sup> Optional OSLTF Claim Form, dated 8 November 2011.

- (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, 8 November 2011;
- List of gross earnings and expenses, 2009, 2010, 2011;
- Emails between the Claimant and NPFC Staff, 8 November 2011;
- Letter from the Claimant to the NPFC, 17 October 2011;
- GCCF Follow-Up to Previous Denial Letter, 12 October 2011;
- Letter from the Claimant to the NPFC, 17 October 2011;
- GCCF Denial Letter on Interim Payment/Final Payment claim, 15 September 2011;
- Table of Contents;
- Letter from the Claimant to the GCCF, 3 August 2011;
- 2009 Form 1040;
- 2009 Schedule C (Form 1040);
- 2009 Schedule B (Form 1040A or 1040);
- 2009 Form 5329;
- 2009 Schedule L (Form 1040A or 1040);
- 2009 Form 4562;
- 2009 Pensions and Annuities Summary Attach;
- 2009 Mississippi Resident Individual Income Tax Return;
- 2009 Mississippi Schedule A, Schedule B;
- 2009 Form 4562;
- 2009 Mississippi 7 Year Assets Place;
- 2010 Form 1040;
- 2010 Schedule C (Form 1040);
- 2010 Schedule E (Form 1040);
- 2010 Schedule SE (Form 1040);
- 2010 Form 4797;
- 2010 Form 4562;
- 2010 Schedule M (Form 1040A or 1040);
- Form 4797 Attachment- Part 1;
- Mississippi Resident Individual Income Tax Return, 2010;
- Mississippi Itemized Deductions Form, 2010;

- Mississippi Other Income and Supplemental Income Form, 2010;
- Advanced Accounting & Tax Services Profit and Loss Statement, 2009;
- Advanced Accounting & Tax Services Profit and Loss Statement, 2010;
- Advanced Accounting & Tax Services Balance Sheet as of 31 December 2010;
- Advanced Accounting & Tax Services monthly Profit and Loss Statement, 2009;
- Advanced Accounting & Tax Services monthly Profit and Loss Statement, 2010;
- Accounting Service: Client List;
- Tax Service: Clients;
- Letter from Sandy Kay Durrett, regarding prior employment by the Claimant, 6 June 2011;
- Letter from Melisa Gage, Infinity Health Center;
- Letter from Diane Franz, Absolute Rehab Services;
- Letter from Lebatard Denmark Jones, regarding termination of Claimant's employment;
- Copy of the Claimant's Home Business license, 2011;
- Business insurance policy;
- AT&T Monthly Statement, showing payment due 23 June 2010;
- Security System Ownership Certificate;
- Drell System LLC Invoice;
- Business bank account statement, 30 June 2010;
- Copies of checks;
- 2010 Form W-2 Wage and Tax Statement, showing payment from LeBatard Denmark Jones Arch.
- 2010 Form W-2 Wage and Tax Statement, showing payment from Absolute Rehab Services.

Prior to presentment to the NPFC, the Claimant submitted an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits damages. The Claimant was assigned ID 3426148 and the EAP claim was assigned Claim # 96675.<sup>4</sup> This claim was denied by the RP/GCCF.

The Claimant then presented a First Quarter Interim Claim (IC12011) and a Full Review Final (FRF) claim to the RP/GCCF, again seeking loss of profits and impairment of earning capacity damages. The ICQ12011 was assigned claim # 9168308 and the FRF claim was assigned claim # 9259015.<sup>5</sup> These claims were initially denied, and are currently marked as "under re-review" by the RP/GCCF.<sup>6</sup>

On 8 November 2011, the Claimant presented this claim to the NPFC, seeking \$30,570.00 in loss of profits and impairment of earning capacity damages. The NPFC may adjudicate this claim to the extent that these damages were first presented to the RP/GCCF.<sup>7</sup> Any damages now before the NPFC, which were not first presented to the RP/GCCF in the Claimant's EAP claim, ICQ12011 and FRF claim, are denied for improper presentment.

### **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) 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.

In order to prove a claim for loss of profits damages, a claimant must demonstrate (1) that she sustained an actual loss or reduction in income, and (2) that the loss or reduction was due to the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill.

<sup>4</sup> GCCF Claimant Status, accessed on 18 November 2011.

<sup>5</sup> GCCF Claimant Status, accessed on 18 November 2011.

<sup>6</sup> GCCF Claimant Status, accessed on 18 November 2011.

<sup>7</sup> 33 C.F.R. 136.103(a).

This claim is denied because the Claimant has failed to provide documentation to prove that her loss of profits was actually caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant works as an accountant in Gulfport, Mississippi. The Claimant alleged that economic effects of the oil spill on the Gulfport community resulted in her loss of certain business contracts. The Claimant alleged to have lost contracts for accounting work with a physical therapy clinic,<sup>8</sup> a retail wellness center,<sup>9</sup> and with an architecture firm.<sup>10</sup> However, the Claimant has not provided evidence to show that any of these companies were directly affected by the discharge or substantial threat of discharge in oil, and not by other economic factors.

Furthermore, a letter provided by the architecture firm, regarding the Claimant's lay-off, states that the Claimant was laid off due to "lack of work and [the] poor economy."<sup>11</sup>

Should the Claimant decide to pursue this claim on reconsideration, the Claimant should provide documentation regarding actual losses sustained by the companies, as well as information as to how these losses were caused by the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate that any losses she sustained were 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: *11/22/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>8</sup> Absolute Rehab Services.

<sup>9</sup> Infinity & Beyond.

<sup>10</sup> Lebatard, Denmark Jones, LTD.

<sup>11</sup> Fax from Lebatard Jones to the Claimant, 4 January 2011.