

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd., Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 1-800-280-7118  
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 8436

5890/DWHZ  
25 January 2012

Lossie F. Williams  
[REDACTED]

Re: Claim Number: N10036-1589

Dear Ms. Williams:

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 your claim number N10036-1589 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. If, however 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 N10036-1589.

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

Enclosures: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1589
Claimant	Lossie F. Williams
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$6,565.00

### ***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 01 December 2011, Lossie F. Williams, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$6,565.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant asserts that due to the Deepwater Horizon oil spill, wildlife in the Moss Point, Mississippi region migrated to her home in order to take shelter from the effects of the spill.<sup>1</sup> The Claimant asserts that an opossum fleeing the effects of the oil spill perished in her attic.<sup>2</sup> The Claimant asserts she had to pay for the removal of the opossum as well as the odor the animal left in her home.<sup>3</sup> The Claimant has asserted she must be reimbursed for those costs.<sup>4</sup>

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$6,565.00.

### ***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).

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<sup>1</sup> PHONECON between the NPFC and the Claimant dated 21 December 2011.

<sup>2</sup> PHONECON between the NPFC and the Claimant dated 21 December 2011.

<sup>3</sup> PHONECON between the NPFC and the Claimant dated 21 December 2011.

<sup>4</sup> PHONECON between the NPFC and the Claimant dated 21 December 2011.

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:

- (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***

### **The Claimant's Submission to the OSLTF**

In support of her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form received 01 December 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed a Claim with BP on 01 July 2010.<sup>5</sup> The BP Claim was denied.<sup>6</sup> Additionally, the Claimant filed an Emergency Advance Payment (EAP) Six Months Claim with the GCCF for physical injury/death damages on 06 October 2010 in the amount of \$0.00.<sup>7</sup> The Claimant was assigned Claimant ID # 1143101 and Claim ID # 3022721. The EAP Claim was denied on 20 October 2010.<sup>8</sup> Additionally, the Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011) with the GCCF for real or personal property damages on 01 February 2011 in the amount of \$1,000.00.<sup>9</sup> The Claimant was assigned Claim ID # 9267198. The ICQ12011 was denied on 30 April 2011.<sup>10</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim for real or personal property damage is the same as the subject matter of her claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill the Claimant had to remove a dead opossum from her property. The NPFC deems that the Claimant's GCCF claims were properly presented<sup>11</sup> to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1589 considers and addresses the earnings claimed in the claims presented to the responsible party up to \$1,000.00,<sup>12</sup> specifically; GCCF Claim # 9267198 (ICQ12011).

Regarding the GCCF claim filed by the Claimant regarding physical injury/death damages, the NPFC has not received any claims from the Claimant regarding such damages. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1589 does not consider or address the claims presented to the responsible party involving physical injury damages, specifically; GCCF Claim # 3022721 (EAP).

### **NPFC Determination**

The claim is denied. 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 documentation presented by the Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an ICQ12011 for real or personal property damages to the GCCF on 01 February 2010 in the amount of \$1,000.00.<sup>13</sup> The Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$6,565.00 to the

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<sup>5</sup> Report from the GCCF dated 14 December 2011.

<sup>6</sup> Report from the GCCF dated 14 December 2011.

<sup>7</sup> Report from the GCCF dated 14 December 2011.

<sup>8</sup> GCCF Denial Letter dated 20 October 2011.

<sup>9</sup> Report from the GCCF dated 14 December 2011.

<sup>10</sup> GCCF Denial Letter dated 30 April 2011.

<sup>11</sup> The Claimant initially presented a claim for \$1,000.00 for real or personal property damages to the RP/GCCF. Considering that the real or personal property damages claimed by the Claimant are for lost profits stemming from the costs of the dead opossum on her property and the Claimant only presented real or personal property damages to the GCCF, the NPFC reclassified the real or personal property damages to loss of profits and impairment of earning capacity.

<sup>12</sup> See discussion below in NPFC Determination regarding the amount of damages claimed to the NPFC.

<sup>13</sup> Report from the GCCF dated 14 December 2011.

NPFC.<sup>14</sup> Any claimed amount of damages exceeding \$1,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$6,565.00 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.

The Claimant's submission to the NPFC was limited to an Optional OSLTF Claim Form containing a narrative of how the Claimant was forced to remove a dead opossum from her residence.<sup>15</sup> The NPFC contacted the Claimant to obtain additional information regarding the event. When asked to draw a connection between the Deepwater Horizon oil spill and the dead opossum, the Claimant's response was limited to guessing that wildlife fled the area around the Gulf of Mexico and took refuge in her home.<sup>16</sup> The Claimant was unable to elaborate further on how the presence of the opossum in her home had any connection to the Deepwater Horizon oil spill.<sup>17</sup> Accordingly, the Claimant failed to prove any connection between the Deepwater Horizon oil spill and the removal of an opossum from her residence. Accordingly, the Claimant's alleged loss was not a direct result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied because Claimant failed to meet her burden to demonstrate 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: *1/25/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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<sup>14</sup> Optional OSTLF Claim Form received 01 December 2011.

<sup>15</sup> See The Claimant's Submission to the OSLTF above for a list of documentation provided by the Claimant in support of her claim.

<sup>16</sup> PHONECON between the NPFC and the Claimant dated 21 December 2011.

<sup>17</sup> PHONECON between the NPFC and the Claimant dated 21 December 2011.