

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

5890
23 April 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4289

Regina Wilson
[REDACTED]

RE: Claim Number: N10036-1685

Dear Ms. Wilson:

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 N10036-1685 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 N10036-1685.

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: (1) Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number:	N10036-1685
Claimant:	Regina Wilson
Type of Claimant:	Individual (US)
Type of Claim:	Loss of Profits and Earning Capacity
Amount Requested:	\$29,510.00

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 17 February 2012, Regina Wilson, (referred to as “the Claimant”) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$29,510.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant owns a beauty salon that opened in 2010 and claims that, after starting well, business dropped off tremendously because of the oil spill.²

The Claimant indicates having presented a claim to the GCCF and provided her Claimant ID Number (3363601). The Claimant also indicates that her claim has been denied.³

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.

¹ Optional OSLTF Claim Form signed on 9 February 2012/received on 17 February 2012.

² Optional OSLTF Claim Form signed on 9 February 2012/received on 17 February 2012 and Claimant’s phone conversation with NPFC Staff on 23 March 2012.

³ Optional OSLTF Claim Form signed on 9 February 2012/received on 17 February 2012.

- (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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form signed on 9 February 2012/received on 17 February 2012.
- 2007 IRS Tax Account Transcript for Form 1050EZ, with payroll summary from Softscript, Inc.
- 2008 IRS Tax Account Transcript for Form 1050EZ 2009 with payroll summary from Softscript, Inc.
- 2009 Form 1040EZ, unsigned, with Form W-2 from Softscript, Inc.
- 2010 Form 1040, unsigned, with Schedules C-EZ, M & SE, and Form W-2 from Softscript, Inc.
- Azelea City Credit Union, Member Account History for dates 1 February 2010 through 31 December 2010.
- Four undated photographs identified as pictures of the Claimant's salon.
- City of Mobile Business License for 2010: Issued 2-4-2010, Expires 12-31-2010.
- City of Mobile Business License for 2011: Issued 2-3-2011, Expires 12-31-2011.
- Claimant's explanation of banking statement, plans for expansion of business and calculation of loss amounts.
- Summary of 2010 bank deposits from February through December 2010.
- Undated and unsigned letter from Lisa Woods.
- Avalon Salon Deals, November 1 - December 31, 2011. (One brochure and two sheets).
- Order for radio advertisement, dated 24 January 2011.

- <http://www.lawyersandsettlements.com/blog/bp-oil-spill-fallout-whos-affected-03578.html>, accessed 6 February 2012.
- http://blog.al.com/live/2012/01/south_mobile_students_still_su.html, accessed 6 February 2012.
- “Our View: The impact of the Deepwater Horizon oil spill, one of the nation’s worst environmental disasters, isn’t fully understood , but will be felt for years to come”, http://blog.al.com/birmingham-news-commentary/2011/04/our_view_the_impact_of_the_de..., accessed 6 February 2012.
- “Deepwater Horizon oil spill”, from Wikipedia, http://en.wikipedia.org/wiki/Deepwater_Horizon_oil_spill, accessed 6 February 2012.
- “Perception becomes reality”, http://blog.al.com/birmingham-news-commentary/2011/04/our_view_the-impact-of_the_de..., accessed 6 February 2012.

Prior to presentment of this claim to the NPFC, the Claimant presented five lost wages/earnings claims to the GCCF, all under Claimant ID # 3363601. The NPFC conducted independent investigation of claim presentations and payments. The table below shows relevant information on those claims:⁴

<u>Date Presented to GCCF</u>	<u>Claim No.</u>	<u>Claim Type</u>	<u>Amount Claimed</u>	<u>GCCF Status</u>
11-14-2010	9048924	Final	\$72,000.00	Withdrawn
12-23-2010	9246713	Full Review/Final	\$60,000.00	Denied
1-20-2011	9230276	Full Review/Final	\$60,000.00	Denied
4-5-2011	9245711	Quick Pay	- - -	Denied
3-27-2012	9583519	Full Review/Final	\$58,000.00	Denied

On 17 February 2012, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$29,510.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.⁵ The NPFC may adjudicate this claim to the extent that these damages have first been presented to and either denied by, or unsatisfactorily determined by the RP/GCCF.

Based upon the information provided and independent verification by the NPFC, this claim can be adjudicated in the full amount of damages presented to the NPFC, \$29,510.00. Further, because the subject matter of the Claimant’s claims before the GCCF and this claim appear to be based upon the same subject matter, i.e. that the Claimant lost income as a result of the Deepwater Horizon oil spill, the NPFC deems this Claim Summary Determination as being outcome determinative for the Claimant’s 2010 business losses.

NPFC Determination

The claim is denied.

This loss is associated with the Claimant’s alleged loss of profits from her home-based hair salon business in Mobile, Alabama. The Claimant indicated having presented a claim to the GCCF and provided her Claimant ID Number (336360). The Claimant also indicates that her claim has been denied by the RP/GCCF.⁶

⁴ Optional OSLTF Claim Form signed on 9 February 2012/received on 17 February 2012 and GCCF–U.S. Coast Guard Report as of 14 April 2012.

⁵ Optional OSLTF Claim Form signed on 9 February 2012/received on 17 February 2012.

⁶ Optional OSLTF Claim Form signed on 9 February 2012/received on 17 February 2012.

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.

In support of this claim, the Claimant included IRS tax transcripts for 2007 and 2008 Federal taxes (Forms 1040EX), handwritten and unsigned copies of 2009 (Form 1040EX) and 2010 (Form 1040) Federal taxes, checking account history for 2010, an explanation of how the Claimant calculated her losses, and a number of internet articles discussing the spill and its impacts.

In the course of reviewing this claim, the NPFC contacted the Claimant to discuss her claim. The NPFC found that the Claimant had not signed and turned in her 2009, 2010 and 2011 Federal or state tax returns. She indicated that she did not have the money to pay them. The NPFC asked where her salon is located and where she got the furnishings. The Claimant responded that an addition had been made behind her house for the shop in 2009 and that she had bought the furnishings at a used furniture store; however, she had no records of the addition or of the furniture purchases. Additionally, the Claimant co-mingled her business records with her personal checking. She did not keep a record of expenses or the cost of goods sold/used in the business. She could not calculate a net loss in profit, only the difference between what she expected to earn as income and what she deposited as cash into her checking account. She expected to make three times what she had made in February 2010 and hoped to add a manicurist. The Claimant also asserted that she lost business because people lost their jobs due to the oil spill. The NPFC asked what clients had lost their jobs and the Claimant replied that she had not ever asked anyone about that.⁷

The Claimant failed to prove her losses with financial records. Further, the Claimant has failed to provide witnesses or documentation of impacts her business that would show the Deepwater Horizon oil spill was the cause of her alleged losses.

(1) Failure to Prove Loss of Income

To show a loss of income, the Claimant calculated lost profits by multiplying actual income for February 2010, as totaled in her checking account, by a factor of three and extending that to the end of 2010.⁸ The Claimant also added a loss of revenue for a manicurist who was never hired.⁹ From this calculated amount, the Claimant subtracted her actual 2010 income. These calculations are speculative amounts, not proven incomes, and do not account for any adjustments due to business expenses or the cost of goods sold/used in the business or further adjustments for saved expenses. Additionally, the basis for the Claimant's revenue, expenses and costs of goods sold are 2010 tax returns that have not been filed.¹⁰

The Claimant has failed to prove a verifiable loss of profits in 2010.

⁷ Claimant's phone conversation with NPFC Staff on 23 March 2012.

⁸ Claimant's explanation of banking statement, plans for expansion of business and calculation of loss amounts.

⁹ Claimant's explanation of banking statement, plans for expansion of business and calculation of loss amounts.

¹⁰ 2010 Form 1040, unsigned, with Schedules C-EZ, M & SE, and Form W-2 from Softscript, Inc and Claimant's phone conversation with NPFC Staff on 23 March 2012.

(2) Failure to Prove Causation

The Claimant had a startup business, yet asserted that her alleged loss in income was due to a reduction in clients who lost their jobs due to the Deepwater Horizon oil spill.¹¹ The Claimant has not provided documentation or client contacts who could verify that assertion.

Based on the above, the Claimant has failed to prove that any of her alleged losses were due to the Deepwater Horizon oil spill.

This claim is denied for the following reasons: (1) Claimant has failed to demonstrate the alleged loss through financial documentation and (2) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/23/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹¹ Optional OSLTF Claim Form signed on 9 February 2012/received on 17 February 2012 and Claimant's phone conversation with NPFC Staff on 23 March 2012.