

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2446 3817

5890/DWHZ  
06 June 2012

Rose Etta Pass  
[REDACTED]

Re: Claim Number: N10036-1694

Dear Ms. Pass:

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 N10036-1694 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 N10036-1694.

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	N10036-1694
Claimant	Rose Etta Pass
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

### ***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 24 February 2012, Rose Etta Pass (the Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$10,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant provides child care services out of her home in Gulfport, Mississippi.<sup>1</sup> Most of the Claimant's clients worked for casinos and restaurants.<sup>2</sup> The Claimant asserted that, due to the Deepwater Horizon oil spill, her clients lost earnings at their jobs and were no longer able to afford the Claimant's child care services.<sup>3</sup>

### ***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).

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<sup>1</sup> Optional OSLTF Claim Form, 7 February 2012.

<sup>2</sup> Optional OSLTF Claim Form, 7 February 2012.

<sup>3</sup> Optional OSLTF Claim Form, 7 February 2012.

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, dated 07 February 2012;
- Lost Wages Statement to the NPFC, undated;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 24 January 2012;
- GCCF Determination Letter/Release Package on Final Payment Claim, 10 May 2011;
- Letter of claim explanation from the Claimant, 6 September 2011;
- Letter from Claimant to "whom it may concern," 3 March 2012;
- Letter from Claimant Client Lakeshia Patton, 27 February 2012;
- Letter from Claimant Client Angela Fisher, 1 March 2012;
- 2008 Form 1040A U.S. Individual Income Tax Return;
- 2009 Form 1040A U.S. Individual Income Tax Return;
- 2010 Form 1040A U.S. Individual Income Tax Return;

- 2011 Form 1040A U.S. Individual Income Tax Return; and
- GCCF Client Authorization Form, signed by the Claimant on 02 September 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings in the amount of \$4,800.00 on 13 October 2010.<sup>4</sup> The Claimant was assigned Claimant ID # 3165056 and Claim # 220295. The Claimant also filed a Full Review Final Claim (FRF) claim with the GCCF for loss of earnings in the amount of \$4,925.00 on 25 November 2010; and was assigned Claim # 9037587.<sup>5</sup> Both of these claims were denied by the GCCF.<sup>6</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims 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 experienced lost earnings as a child care provider. The NPFC deems that the Claimant's GCCF claims were properly presented to the responsible party and properly presented to the NPFC up to \$4,925.00. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1694 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 220295 (EAP) and 9037587 (FRF).

### **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.

This claim is denied because (1) some of the damages were not properly presented to the responsible party, and (2) the Claimant failed to prove the alleged loss was due to the Deepwater Horizon oil spill.

### **Non-Compensable Damages**

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 EAP claim for \$4,800.00 and a Full Review Final claim for \$4,925.00.<sup>7</sup> The Claimant then presented a loss of profits and impairment of earnings capacity claim to the NPFC for \$10,000.00. Any claimed amount of damages exceeding \$4,925.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

### **Failure to Prove Causation**

In her submission to the NPFC, the Claimant asserted that clients cancelled their child care services with the Claimant due to the Deepwater Horizon oil spill.<sup>8</sup> The Claimant's initial submission consisted solely of a few handwritten letters. One letter was from Angela Fisher, who stated that she stopped using the Claimant's services because of a decrease in her earnings at the Beau Rivage

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<sup>4</sup> Report from the Transition Program, dated 01 May 2012.

<sup>5</sup> Report from the Transition Program, dated 01 May 2012.

<sup>6</sup> Report from the Transition Program, dated 01 May 2012.

<sup>7</sup> Report from the Transition Program, dated 01 May 2012.

<sup>8</sup> Lost Wages Statement to the NPFC, undated.

Casino.<sup>9</sup> The Claimant also provided a letter from Lakeisha Patton, who stated that she has continued to use the Claimant's child care services, but contended that the Claimant used to have more clients prior to the Deepwater Horizon oil spill.<sup>10</sup> On 13 April 2012, the NPFC requested additional information from the Claimant to further substantiate her claim and help provide a connection between her alleged loss and the Deepwater Horizon oil spill. The NPFC requested that the Claimant provide, among other things, federal tax returns from 2008-2011, sales records from the business from 2008 through 2011, payroll records from the Beau Rivage for Angela Fisher, and letters of support with contact information for all clients who cancelled their services with the Claimant due to the Deepwater Horizon oil spill.<sup>11</sup>

The Claimant provided some of the requested information to the NPFC on 15 May 2012. However, the Claimant did not furnish the NPFC with any additional letters from clients who cancelled their services; nor did the Claimant provide contact information for any clients other than the two previously mentioned (Angela Fisher and Lakeisha Patton). Given that Lakeisha Patton continues to use the Claimant's child care services,<sup>12</sup> Angela Fisher is the only client who allegedly cancelled their child care services for whom the Claimant provided information. As stated above, Ms. Fisher wrote that she cancelled her services with the Claimant because she lost earnings at the Beau Rivage Casino due to the Deepwater Horizon oil spill.<sup>13</sup> The NPFC contacted the Beau Rivage on 12 April 2012 to verify Ms. Fisher's assertions. The Beau Rivage stated that they would not confirm the employment of any employee, nor would they make any comment regarding the effect of the Deepwater Horizon oil spill on the earnings of its employees.<sup>14</sup> Alternately, the Beau Rivage indicated that if individual employees wanted to pursue claims regarding the Deepwater Horizon oil spill, it was the employee's burden to obtain their pay records. Accordingly, as stated above, the NPFC requested that the Claimant provide Angela Fisher's pay records from the Beau Rivage.<sup>15</sup> However, the Claimant failed to provide this documentation as well. Based on all the above, the Claimant failed to demonstrate that she experienced any specific loss of earnings as a result of the Deepwater Horizon oil spill.

The Claimant's request for \$10,000.00 is hereby denied because the Claimant (1) failed to present some of the claimed damages to the responsible party and (2) 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 Review: *6/6/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>9</sup> Letter from Claimant's alleged client, Angela Fisher, dated 01 March 2012.

<sup>10</sup> Letter from Claimant's alleged client, Lakeshia Patton, dated 27 February 2012.

<sup>11</sup> NPFC Request for Additional Information, dated 13 April 2012.

<sup>12</sup> Letter from Claimant's alleged client, Lakeshia Patton, dated 27 February 2012.

<sup>13</sup> Letter from Claimant's alleged client, Angela Fisher, dated 01 March 2012.

<sup>14</sup> PHONECON between the NPFC and the Beau Rivage 12 April 2012.

<sup>15</sup> PHONECON between the NPFC and the Beau Rivage 12 April 2012.