

U.S. Department of
Homeland Security

**United States
Coast Guard**



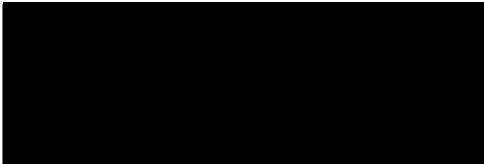
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3305

5890/DWHZ
25 April 2012

Francine Ishmael



Re: Claim Number: N10036-1751

Dear Mr. Barksdale IV Esq.:

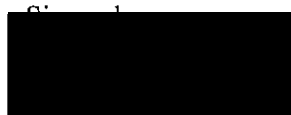
The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-1758 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-1758.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3299

Francine Ishmael



CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1751
Claimant	Francine Ishmael
Type of Claimant	Personal
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$172,251.60

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 11 April 2012, Arthur S. Barksdale IV, Esq., on behalf of Ms. Francine Ishmael (collectively, the Claimant), presented a claim to the National Pollution Funds Center (NPFC) seeking \$172,251.60 for loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.¹

The Claimant was Executive Director for Citizens Against Toxic Exposure, Inc., a non-profit environmental organization in Pensacola, FL.² The Claimant asserts that as a result of the Deepwater Horizon oil spill, the organization, which “had been funded for 9 plus years through lobbying efforts with the State Legislators from funds channeled through the Escambia County Health Department along with various Federal Grants”, was “no longer funded for the 2010-2011 State fiscal year.”³ As a result, the Claimant asserts that she received her last paycheck on 01 October 2010 and subsequently was not paid from 01 October 2010 to 15 August 2011 with the exception of funds provided from previously received grants.⁴

The Claimant is seeking \$172,251.60 based on her loss calculated for 2010 and 2011 in addition to the average monthly income loss from 2010 and 2011 forecasted for 60 months of future damages.⁵

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

¹ Letter from Arthur S. Barksdale IV, Esq. to NPFC dated 10 April 2012.

² Letter from Claimant.

³ Letter from Claimant.

⁴ Letter from Claimant.

⁵ Document titled “Deep Water Horizon Oil Spill 4/20/2010 Lost Earnings/Income Worksheet”.

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:

- Claim cover letter from Arthur S. Barksdale IV, Esq. dated 10 April 2012;
- Document titled "NPFC Authorization Agreement" signed by Claimant 30 March 2012 and received 11 April 2012
- Email from Claimant's attorney office to the NPFC dated 10 April 2012;
- GCCF Full Review Final Payment Claim Form signed 06 September 2011;
- Citizens Against Toxic Exposure fax cover sheet from Claimant to BP dated 31 March 2012;
- 2008 Form 1040 US Individual Income Tax Return
- 2009 Form 1040 US Individual Income Tax Return
- 2010 Form 1040 US Individual Income Tax Return
- 2011 Form 1040 US Individual Income Tax Return
- GCCF Denial Letter dated 22 March 2012;
- Lakeview Center Baptist Health Care fax cover sheet from Adult Case Management to BP dated 17 November 2011;
- Lakeview Center Baptist Health Care Claimant pay stub for 10/23/11-11/05/11;

- 2008 Form W-2 Wage and Tax Statement;
- Document titled "Deep Water horizon Oil Spill 4/20/2010 Lost Earnings/Income Worksheet" dated 02 December 2011;
- Copy of Claimant's driver license;
- Letter from Claimant undated;
- 2009 Form W-2 Wage and Tax Statement;
- 2010 Form W-2 Wage and Tax Statement;
- GCCF Client Authorization Form dated 06 September 2011.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$172,251.60.

Prior to presenting this Claim to the NPFC, the Claimant filed a Full Review Final (FRF) Claim with the GCCF as an individual for loss of profits and impairment of earnings capacity.⁶ The Claimant was assigned Claimant ID # 1638281 and Claim ID # 9547490. The FRF Claim was denied on 22 March 2012.⁷

Based upon the evidence provided by the Claimant, the NPFC deems the Claimant's GCCF claim filed as an individual to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1751 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim # 9547490 (FRF).

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 NPFC considered all the documentation submitted by the Claimant.

In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

Furthermore, prospective future damages are not compensable under OPA's loss of profits damage category, which limits potentially available compensation to "the actual net reduction or loss of earnings or profits *suffered*" [emphasis added].⁸ Therefore, payment is initially denied on \$130,824.03 of this claim, which constitutes losses not yet incurred by the Claimant.

Regarding the remaining \$41,427.61 in income which the Claimant alleged to have lost in 2010 and 2011, the Claimant has not provided evidence to support that this loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. The Claimant indicated state funds channeled through the Escambia County Health Department in conjunction with federal grants funded her non-profit organization.⁹ The Claimant also alleged that due to the oil spill and a resulting drop in tourism, there was a failure to fund the organization for the state fiscal year 2010-2011 due to a reduction in state budget and special project funding.¹⁰ The Claimant provided insufficient documentation to demonstrate that the reduction in state funding and federal grants was a result of the oil spill and subsequently caused the loss of income.

⁶ GCCF Denial Letter dated 22 March 2012.

⁷ GCCF Denial Letter dated 22 March 2012.

⁸ 33 C.F.R. § 136.235.

⁹ Letter from Claimant.

¹⁰ Letter from Claimant.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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: *4/25/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: