

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](mailto:arl-pf-npfcclaimsinfo@uscg.mil)  
Fax: 703-872-6113

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2446 1066

5890/DWHZ  
06 June 2012

Arthur Barksdale IV, Esq.  


RE: Claim Number: N10036-1754

Dear Mr. Barksdale:

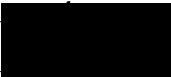
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-1754 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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. 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 N10036-1754.

Mail reconsideration requests to:

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

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2446 1073

✓ Mary McHarris  


Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1754
Claimant	Mary McHarris
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$11,907.53

### ***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, Mary McHarris (Claimant) via her legal representative, Mr. Barksdale presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$11,907.53 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant is employed by Sunshine Linen located in Shalimar Florida; she has been employed with them from May 1999 to present.<sup>1</sup> The Claimant alleges that she lost a percentage of earnings in 2010 due to the Deepwater Horizon oil spill; April 25%, May 30%, June 40%, July 40%, August 40%, September 40%, and October 40%.<sup>2</sup> The Claimant asserts that she lost hours as a result of the oil spill from April 2010 through October 2010.<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 § 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.

<sup>1</sup> GCCF claim form at Section II Claimant Information.

<sup>2</sup> Written letter from Claimant detailing monthly decline percentages undated.

<sup>3</sup> GCCF claim form at Section IV C Claims for Lost Earnings or Profits.

- (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 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 undertake, 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 her claim, the Claimant submitted:

- Vance, Lotane & Bookhardt, P.A. cover letter dated 10 April 2012.
- Representation letter signed by the Claimant dated 10 February 2012.
- Gulf Coast Claims Facility Full Review Final Payment Claim Form
- Lost Earnings/Income Worksheet dated 31 December 2011
- Letter from the Claimant stating loss of percentage of pay from April 2010 through October 2010
- Letter from employer at Sunshine Linens dated 17 October 2011
- 2010 Form 1040 US Individual Income Tax Return (first page)
- 2009 Form 1040A US Individual Income Tax Return (first page)
- 2008 Form 1040 US Individual Income Tax Return (first page)
- Transaction Journal for W-2 from Sunshine Linen for tax year 2011
- GCCF Denial Letter on Interim Payment/Final Payment claim dated 12 January 2012
- Mybpsettlement Form

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$11,907.53.

On 25 April 2012 the NPFC sent a letter to Claimant requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered 30 April 2012.<sup>4</sup>

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 16 November 2010 in the amount of \$20,000.00.<sup>5</sup> She was assigned Claimant ID #3401178 and claim #474027. This claim was denied.<sup>6</sup> Additionally, the Claimant filed an Interim 1 Claim (ICQ12011) with GCCF #9243158 on 24 January 2011 for \$12,000.00.<sup>7</sup> This claim was denied.<sup>8</sup> The Claimant filed a Full Review Final claim (FRF) with GCCF# 9553452 on 05 January 2012 for \$11,907.53.<sup>9</sup> This claim was denied.<sup>10</sup> Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that she lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's three denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1754 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 474027 (EAP), 9243158 (ICQ12011), and 9553452 (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.

Here, 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.

In connection with a review of this claim, the NPFC sent the Claimant a letter<sup>11</sup> requesting additional information in order to further evaluate his claim. The letter requested, among other things, an explanation of her sum certain and financial documentation submitted for an accurate accounting of Claimant's losses.<sup>12</sup> It was sent on 25 April 2012. On 30 April 2012, the Claimant acknowledged receipt of the certified letter.<sup>13</sup> To date, no response has been received by the NPFC. The NPFC accordingly proceeded to evaluate the claim with the minimal evidence the Claimant had originally submitted.

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<sup>4</sup> USPS tracking # 7011 1570 0001 2446 3329.

<sup>5</sup> Report from the GCCF dated 21 May 2012.

<sup>6</sup> Report from the GCCF dated 21 May 2012.

<sup>7</sup> Report from the GCCF dated 21 May 2012.

<sup>8</sup> Report from the GCCF dated 21 May 2012.

<sup>9</sup> Report from the GCCF dated 21 May 2012.

<sup>10</sup> Report from the GCCF dated 21 May 2012.

<sup>11</sup> USPS tracking # 7011 1570 0001 2446 3329.

<sup>12</sup> NPFC request for additional information at question 4.

<sup>13</sup> USPS tracking shows delivery in Cocoa, FL 30 April 2012 at 12:35pm and signed for.

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- Attach this card to the back of the mailpiece, or on the front if space permits.

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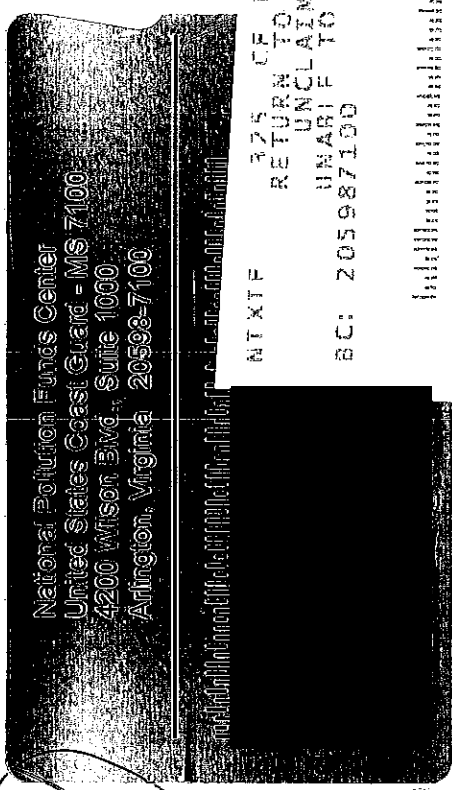
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☐ Insured Mail  
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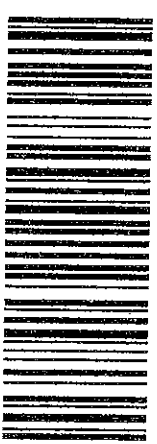
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