

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
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 1158

5890/DWHZ
13 June 2012

Julia Jones
[REDACTED]

RE: Claim Number: N10036-1755

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 N10036-1755 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 N10036-1755.

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

Julia Jones
[REDACTED]

BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 1165

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1755
Claimant	Julia Jones
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$19,126.32

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, Julia Jones (Claimant) via her legal representative, presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$19,126.32 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 asserts she is a self employed house cleaner who services the Fort Walton Beach area and Okaloosa Island.¹ The Claimant states that they had to stop working in April of 2010 due to the Deepwater Horizon oil spill.² The Claimant alleges she suffered \$19,126.32 in financial damages.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 § 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 Letter to the GCCF from the Claimant undated, typed Claimant name and GCCF # signature.

² Letter to the GCCF from the Claimant undated typed Claimant name and GCCF # signature.

³ Letter to the NPFC dated 10 April 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 her claim, the Claimant submitted:

- Vance, Lotane & Bookhardt P.A. intro letter
- Signed representation letter
- Gulf Coast Claims Facility Full Review Final Payment Claim form
- Letter from the Claimant's mom dated 05 February 2012
- Losses from Condos due to the oil spill showing losses for 2008, 2009, and 2010.
- Revenue and Expenses handwritten worksheets for 2008 through 2011
- Deep Water Horizon oil spill 4/20/2010 lost earnings/income worksheet
- Copy of Florida drivers license
- Letter to the GCCF from the Claimant undated with SS# on the top
- Letter to the GCCF from the Claimant undated, Claimants name and GCCF # signature.
- Letter to the GCCF from the Claimant dated 18 July 2011
- 2008 Form 1040 U.S. Individual Income Tax Return first two pages signed 14 April 2011
- 2009 Form 1040 U.S. Individual Income Tax Return first two pages signed 14 April 2011
- 2010 Form 1040 U.S. Individual Income Tax Return first two pages signed 14 April 2011
- Bank Statements from FNBT Bank for 31 December 2009 through 31 December 2010

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$19,126.32.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 23 October 2010 in the amount of \$7,500.00.⁴ She was assigned Claimant ID #3268988 and claim #328556.⁵ This claim was denied.⁶ Additionally, the Claimant filed two Full Review Final claims with the GCCF, Full Review Final (FRF1) Claim 1 with GCCF #9350523 and Full Review Final Claim 2 with Claim #9550493; one was filed on 09 April 2011 for \$5,000.00 and the other was filed on 23 December 2011 for \$19,126.32.⁷ These claims were also denied.⁸

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 business 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 N10036-1755 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 328556 (EAP), 9350523(FRF1), and 9550493 (FRF2).

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.

In connection with the review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim.⁹ The letter requested, among other things, 1099s and/or W-2s, rental history/occupancy of properties she is claiming damages for, cancellations from those rentals, and contact information for clients at the time of the oil spill in April 2010.¹⁰ The Claimant responded to the NPFC's request for additional information on 07 May 2012 with only the submission of her 2010 bank statements.¹¹

NPFC staff contacted the representative for the Claimant on 14 May 2012 and asked if the Claimant was sending in the rest of the requested documentation. The representative stated that their client was not able to provide any further documentation and the NPFC should proceed

⁴ Report from the GCCF dated 21 May 2012.

⁵ Report from the GCCF dated 21 May 2012.

⁶ Report from the GCCF dated 21 May 2012.

⁷ Report from the GCCF dated 21 May 2012.

⁸ Report from the GCCF dated 21 May 2012.

⁹ NPFC's request for additional information dated 27 April 2012.

¹⁰ NPFC's request for additional information dated 27 April 2012 at documentation requestion #1, 2, and 4 and questions #1, 3 and 12.

¹¹ Bank statements for 2010 from FNBT Bank.

with their adjudication.¹² The NPFC accordingly proceeded to evaluate the claim with the evidence originally submitted.

The Claimant states that “in 2008, 2009, [and] 2010 we lost 5 condos from the Oil Spill.”¹³ She asserts that she lost over \$1,000.00 in 2008, over \$3,000.00 in 2009, and over \$1,000.00 in 2010.¹⁴ The Deepwater Horizon oil spill occurred on 20 April 2010 thus alleged losses prior to that date cannot be related to the Deepwater Horizon oil spill and are denied.

Furthermore, the Claimant states “I worked Jan – part of April 2010, I did not work after that due to [the] oil spill and clients cancelling their reservations, thus there was no need for my cleaning services.”¹⁵ However, this is contradicted by the Claimant’s submission of monthly income for 2010.¹⁶ The Claimant submitted earnings for May, June, July, August, September, and October of 2010, thus she did not stop working after “part of April 2010.”¹⁷ The submission of earnings clearly shows that the Claimant did not stop her work after part of April 2010 and/or the monthly earnings are false. NPFC staff contacted Mr. Barksdale Esq. on 08 June 2012 about the above mentioned facial discrepancies. Mr. Barksdale Esq. could not explain why the claim submission included 2008 and 2009 losses.¹⁸

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: *6/13/12*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

¹² NPFC phone call with Vance, Lotane & Bookhard, P.A. 14 May 2012.

¹³ Letter titled LOSSES from Condos Due to OIL SPILL undated.

¹⁴ Letter titled LOSSES from Condos Due to OIL SPILL undated.

¹⁵ Letter to the GCCF from the Claimant undated typed Claimant name and GCCF # signature.

¹⁶ Document titled 2010 Income by Month totaling \$2,205.00.

¹⁷ Document titled 2010 Income by Month totaling \$2,205.00.

¹⁸ Call log with Arthur Barksdale Esq. 08 June 2012.