

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: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7469

5890/DWHZ
11 June 2012

Ms. Sandy Leigh Madar


Re: Claim Number: N10036-1833

Dear Ms. Madar:

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 N10036-1833 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

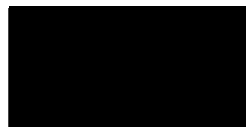
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1833.

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: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1833
Claimant	Ms. Sandy Leigh Madar
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$22,000.00

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 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 31 May 2012, Ms. Sandy Leigh Madar (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$22,000 in loss of profits or impairment of earning capacity damages as a result of the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a contractor for an environmental consulting firm, where she served as a Marine Mammal Observer (MMO) in the Gulf of Mexico.² The Claimant explained that as an MMO, she “goes out onto oil seismic boats during explorative missions to find oil and under the Endangered Species Protection Act, [as] required for the boat to operate in whale populated areas.”³

The Claimant stated that she typically worked five week rotations, earning \$200.00 per day.⁴ During the periods when she was not working, she sought “possible work on Vertical Seismic Jobs ((VSP) on different oil rigs watching for whales).”⁵

The Claimant alleged that the Deepwater Horizon oil spill caused her to lose employment opportunities, specifically stating that the oil spill “caused work in the Gulf of Mexico to effectively halt for a prolonged period of time, causing [the Claimant] to miss out on three work rotations, and lose \$22,000.00.”⁶

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, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

¹ Optional OSLTF Claim Form, received on 31 May 2012.

² GCCF Hardship Letter, dated 04 January 2012.

³ GCCF Hardship Letter, dated 04 January 2012.

⁴ GCCF Hardship Letter, dated 04 January 2012.

⁵ GCCF Hardship Letter, dated 04 January 2012.

⁶ Optional OSLTF Claim Form, received on 31 May 2012.

The OSLTF 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. 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;
- (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; and
- (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 NPFC

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, undated, received 31 May 2012;
- Email submitting claim documents, dated 30 May 2012;
- Southeastern College fax cover sheet, dated 29 May 2012;
- GCCF Interim Payment Claim Form, dated 05 January 2011;
- Hardship Letter, addressed to GCCF, dated 04 January 2011;
- Letter from RPS confirming the Claimant's employment, dated 04 January 2011;
- Email, RPSGeoCet Offshore FLASH Update, dated 4 August 2010;
- Biweekly RPS GeoCet invoices, covering periods 15 January 2010 through 30 July 2010;
- GCCF Denial Letter, dated 23 March 2012;

- Tax Return Transcript for tax period ending 31 December 2010, dated 12 March 2012;
- 2010 Forms 1099 from Cambrian Consultants America, Inc., and NIA International, Inc.; and
- 2010 Forms W-2 from Jax or Better, LLC, and Express, LLC.

Prior to presenting this claim to the NPFC, the Claimant presented an Emergency Advance Payment claim (EAP), a First Quarter Interim Payment claim (ICQ12011), and a Third Quarter Interim Payment claim (ICQ32011) to the RP/GCCF.⁷ The GCCF assigned Claimant ID 1165037 to the Claimant, assigned the EAP claim # 3010123, the ICQ12011 claim # 9167199, and the ICQ32011 claim # 9499110.⁸ The RP/GCCF denied payment on these claims.⁹

On 31 May 2012, the Claimant presented this claim to the NPFC, seeking \$22,000 in loss of profits and impairment of earning capacity damages.¹⁰ Documentation included in this claim submission indicates that the Claimant has previously submitted a claim to the GCCF seeking \$22,200.00 in lost profits damages, and regarding the same alleged losses now presented to the NPFC.¹¹ Because the Claimant first presented these damages to the RP/GCCF, who denied the claim, the Claimant has met OPA claim presentment requirements, and the NPFC may fully adjudicate this claim for \$22,000.00 in loss of profits damages.¹²

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 the 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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

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

At the time of the Deepwater Horizon incident, the Claimant was working as a MMO on exploratory vessels using seismic technology in their search for untapped oil deposits.¹³ The Claimant alleged that she missed three guaranteed rotations—rotations that would have occurred in August, October, and December 2010—because of the Deepwater Horizon incident.¹⁴

The Claimant is seeking \$22,000 in loss of profits damages.¹⁵ The Claimant calculated her damages by taking her daily rate and multiplying that by 37 (five weeks of work plus two paid

⁷ GCCF Denial Letter, dated 25 October 2010; GCCF Denial Letter, dated 15 April 2012; GCCF Denial Letter, dated 03 September 2012.

⁸ GCCF Denial Letter, dated 25 October 2010; GCCF Denial Letter, dated 15 April 2012; GCCF Denial Letter, dated 03 September 2012.

⁹ GCCF Denial Letter, dated 25 October 2010; GCCF Denial Letter, dated 15 April 2012; GCCF Denial Letter, dated 03 September 2012.

¹⁰ Optional OSLTF Claim Form, received on 31 May 2012.

¹¹ GCCF Interim Payment Claim Form – Page 7.

¹² 33 C.F.R. § 136.103(a).

¹³ GCCF Hardship Letter, dated 04 January 2011.

¹⁴ GCCF Hardship Letter, dated 04 January 2011.

¹⁵ Optional OSLTF Claim Form, received on 31 May 2012.

travel days) to come up with her per-rotation pay of \$7,400.¹⁶ She then multiplied that by the three missed rotations, and rounded the number down to \$22,000.¹⁷

1. Failures to prove a financial loss.

The Claimant has failed to provide financial documentation sufficient to prove that the Claimant indeed sustained a financial loss in 2010.

In order to prove a financial loss under OPA, a claimant must provide documentation to show that “the claimant’s income was reduced.”¹⁸ A claimant proves this by establishing “the claimant’s profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered.”¹⁹ Although the Claimant provides a record of 2010 earnings, the Claimant has failed to provide earning records from comparable periods. The Claimant has also failed to provide documentation to prove that any work she was scheduled to perform was in fact cancelled in the period following the oil spill.

Without comparable financial documentation, or proof that the Claimant lost identifiable work following the oil spill, the Claimant has failed to provide documentation sufficient to prove that she sustained an actual financial loss under OPA.

2. Failure to prove a loss as a result of the oil spill.

Even if the Claimant had provided evidence to demonstrate that she suffered a financial loss, the NPFC would deny this claim, as the Claimant has failed to prove that the Deepwater Horizon incident caused her alleged losses. This is because the deepwater drilling moratorium is considered an intervening cause which may break the causal chain linking a Claimant’s alleged loss to the Deepwater Horizon oil spill in situations where the Claimant’s loss appears to be moratorium related.

Here, based upon the evidence presented, it appears that any losses that the Claimant incurred were not caused by the discharge of oil resulting from the Deepwater Horizon oil spill, but rather, as indicated by the Claimant’s employer, were “a result of the deepwater drilling moratorium.”²⁰

For example, a letter provided by the Claimant’s employer included in this claim submission states that “work stopped in its entirety at the end of July [2010] for [the Claimant], as a direct result of the deepwater drilling moratorium, as it stoped [sic] our clients from operating.”²¹ The employer continues, “RPS currently has no additional work for [the Claimant] as a result of the GOM [Gulf of Mexico] deepwater moratorium nor do we know when work can be found since it is not clear when drilling will resume in the GOM.”²² Additionally, a notification email from the Claimant’s employer to a large group of contractors, states that “[t]he 6 month drilling moratorium has essentially halted all deep water well operations and support services including our own.”²³

¹⁶ GCCF Interim Payment Claim Form page 7, dated 05 January 2011.

¹⁷ GCCF Interim Payment Claim Form page 7, dated 05 January 2011.

¹⁸ 33 C.F.R. § 136.233(c).

¹⁹ 33 C.F.R. § 136.233(c).

²⁰ Employer Letter, dated 04 January 2011.

²¹ Employer Letter, dated 04 January 2011.

²² Employer Letter, dated 04 January 2011.

²³ Email, RPS GeoCet Offshore FLASH Update, dated 04 August 2010.

Accordingly, this claim for \$22,000 in loss of profits damages is denied because the Claimant has failed to meet her burden to establish (1) that she sustained a loss in the amount claimed, and (2) 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:  *NPRC Claims Adjudication Division*

Date of Supervisor's Review: *6/11/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: