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 2000 0001 1246 7103

5890/DWHZ
16 October 2013

Ms. Deborah Wolfe
[redacted]

Re: Claim Number: N10036-1997

Dear Ms. Wolfe,

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 N10036-1997 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 N10036-1997.

Mail reconsideration requests to:

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

Sincerely
[redacted]
ation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1997
Claimant	Deborah Wolfe
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	$10,344.64

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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 8 October 2013, Ms. Deborah Wolfe ("the Claimant"), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $10,344.64 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.[1]

At the time of the oil spill, the Claimant states she was working for Cougar Oil and was being paid a cents-per-gallon commission that also included a percentage of the year-end net profit of her branch location. Claimant states that she was discharged on March 30, 2012 from her employment with Cougar Oil. In addition to the commissions her employer chose not to pay her, she alleges that she was also not compensated for the lost BP branded fuel gallons that would have been included in her commissions earned had two BP dealers involving three stores not debranded/closed as a result of the oil spill. She has calculated her claim using her average sales volumes/commissions paid in previous years, and based it on the time period from the date of the explosion, 20 April 2010 until her termination on 30 March 2012.

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

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.

[1] Optional OSLF Claim Form, 21 September 2013.

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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the NPFC

The Claimant submitted the following documentation in support of this claim:

- Claim Cover Letter, 21 September 2013, signed by Claimant;
- Optional OSLTF Claim Form, 21 September 2013;
- Summary of Claimant Earned Commissions, 1995-2012 (Claimant Exhibit A-1);
- Recap of Oil Sales, 2006-2007 (Claimant Exhibit A-2);
- Recap of Oil Sales, 2007-2008 (Claimant Exhibit A-3);
- Recap of Oil Sales, 2008-2009 (Claimant Exhibit A-4);
- BP Branded Commission Sales for Claimant, 2006-2012 (Claimant Exhibit A-5);
- Recap of Oil Sales, 2009-2010 (Claimant Exhibit A-6);
- Recap of Oil Sales, 2010-2011 (Claimant Exhibit A-7);
- Recap of Oil Sales, 2011-2012 (Claimant Exhibit A-8);
- Internal Summary of Lost BP Dealer Sales (Claimant Exhibit A-9);
- Highlights of Internal Sales Summaries for MDM Express and PC Food Mart, 2009-2010 (Claimant Exhibit A-10);

- Highlights of Internal Sales Summaries for MDM Express and PC Food Mart, 2010-2011 (Claimant Exhibit A-11);
- Email Correspondence between Cougar Oil and Bebo's Express/Klyce Enterprises (Claimant Exhibit A-12);
- Internal Summary of BP Branded sales for Bebo's Express, Nation Food and Firblast Investments, 2009-2010 (Claimant Exhibit A-13);
- Internal Summary of BP Branded sales for Bebo's Express, Nation Food and Firblast Investments, 2010-2011 (Claimant Exhibit A-14
- Letter from Cougar Oil to Klyce Enterprises regarding payment obligations, dated 1 September 2010 (Claimant Exhibit A-15);
- Copies of Claimant W2s and Tax Return documents, 2007-2012 (Claimant Exhibit A-16);
- BP Claims Program Denial Letter, dated 18 February 2013;
- BP Claims Program Acknowledgement Letter, dated 16 July 2012;
- Claimant BP Claims Program package;
- Claimant E&PD Settlement Opt-Out Letter, 26 June 2012;
- GCCF Letter referring Claimant from BP Claims Center;
- GCCF Interim Payment Claim Form, 2 August 2010;
- Claimant Internal Summary of Commissions (Claimant Exhibit D);
- Employer Statement written by Claimant, dated 28 June 2012 (Claimant Exhibit A-17);
- Print-out of Deepwater Horizon Oil Spill facts/background.

Prior to submitting this claim to the NPFC, the Claimant attempted to recover loss of profits or impairment of earning capacity damages through both the GCCF and BP Claims Centers. BP/GCCF denied payment due to lack of documentation to support that the loss of income was due to the oil spill.[2]

Evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement).[3] The Claimant states she has opted out of the settlement.[4]

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, 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.

Upon review of the documentation presented by the Claimant, the NPFC has determined that the Claimant has not met her burden of proof to demonstrate that the oil spill caused her alleged loss of profits and earning capacity.

First, the Claimant has not provided an employment contract between her and her employer, Cougar Oil, to show that her commissions and amount paid per gallon sold were guaranteed and under what conditions those would be paid. The Claimant did not provide any evidence in support of why she did not get paid other commissions that were allegedly earned during the affected loss period she is claiming. The Claimant did submit a letter explaining why her employer would not verify her employment (she stated that the employer did not want any conflicts of interest with itself and its customer, BP). The NPFC did contact the employer to verify employment and sought to understand why the Claimant was terminated

[S] BP Denial Letter, 18 February, 2013.

[3] At the time of the spill, the Claimant was living within the economic settlement loss zones.

[4] Opt-Out Letter, dated 26 July 2012.

from employment, as well as what the terms of her employment and commissions were which would shed light on why she did not receive her commissions. The NPFC contacted the employer but was unsuccessful in speaking with anyone that would provide information to corroborate the Claimant's assertions.[5]

Additionally, even if the Claimant had been guaranteed a commission based on gallons of fuel sold/a percentage of year-end revenue per branch location, her alleged loss is based on speculation and not an actual 'net reduction' of loss suffered. It is important to note that there is no evidence to substantiate what the three gas stations' profits would have been had they not closed. Because there are potentially many economic factors that affected the Gulf, the NPFC cannot determine what the causal factor for decreased consumer sales were.

Furthermore, even if it could be shown that negative public opinion led patrons to buy fuel elsewhere, these stations deciding to close/brand with other fuel suppliers are business decisions and not a direct result of the oil spill. As stated previously, the NPFC attempted to contact Cougar Oil. It was the NPFC's intent to determine why these three stores lost BP contracts/closed and at what point in time the decisions were made to part with Cougar Oil/BP fuel. The NPFC was unable to speak with anyone that would provide information nor was the NPFC contacted after leaving contact information for someone to respond to.

Based on the foregoing, this claim is denied because the Claimant has failed to provide sufficient evidence to prove (1) that she sustained a financial loss in the amount of $10,344.64 as claimed, or (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 discharge of oil.

[redacted]

Claim Supervisor: ***N[redacted]ion Division***

Date of Supervisor's Review: ***10/16/13***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[5] Phone call between NPFC and Cougar Oil General Manager Jim Sims, placed 11 October 2013.