

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: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7187

5890/DWHZ  
08 November 2011

Jennifer Jones  


RE: Claim Number: N10036-1375

Dear Ms. Jones:

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 N10036-1375 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 N10036-1375.

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	N10036-1375
Claimant	Jennifer Jones
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$30,000.00

### ***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 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 08 September 2011, Jennifer Jones (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$30,000.00 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 worked for Associated Marine and Industrial Staffing as a payroll/customer service representative from 17 March 2009 through 30 August 2010.<sup>1</sup> The Claimant received a raise on 12 April 2010 to \$1,153.85 bi-weekly.<sup>2</sup> Her clients were Miller Seafood Refrigeration, Gulf Coast Storage, and Richway Cold Transportation and Cottonwood Debris.<sup>3</sup> Her clients were allegedly affected by the oil spill and lost the need for payroll business.<sup>4</sup> The Claimant was terminated 30 August 2010.<sup>5</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 Section 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> Letter of explanation from the Claimant dated 29 August 2011.

<sup>2</sup> Letter from employer dated 16 November 2010.

<sup>3</sup> Letter from employer dated 16 November 2010.

<sup>4</sup> Letter of explanation from the Claimant dated 29 August 2011.

<sup>5</sup> Letter from employer dated 16 November 2010.

- (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 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:

- 1) Optional OSLTF claim form undated
- 2) Letter of explanation from the Claimant dated 29 August 2011
- 3) Copy of social security card and Alabama drivers license
- 4) GCCF denial letter on Interim payment/Final payment claim
- 5) Letter explaining to GCCF the nature of her claim dated 16 November 2010
- 6) Letter from employer dated 16 November 2010
- 7) GCCF claim form 2000-C
- 8) Emails from the Claimant to the GCCF regarding further submissions
- 9) 2008 W-2 from Wal Mart Associates Inc.
- 10) 2009 Form 1040 US Individual Income Tax Return
- 11) Two 2009 W-2s from AMI Staffing Inc.
- 12) AMI staffing check stub dated 22 January 2010, 30 August 2010, 23 August 2010,
- 13) GCCF deficiency letter on Interim payment/Final payment dated 22 April 2011
- 14) Letter to GCCF giving address of employer AMI Staffing dated 22 April 2011
- 15) 2010 W-2 from AMI Staffing Inc.

- 16) Email to GCCF stating current rate of pay for 2010 dated 13 April 2011
- 17) 2010 Unemployment compensation from the State of Alabama

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$30,000.00.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 01 October 2010 in the amount of \$15,000.00.<sup>6</sup> She was assigned Claimant ID #3068399 and claim #122789. This claim was denied on 12 November 2010.<sup>7</sup> Additionally, the Claimant filed a Full Review Final claim (FRF) with the GCCF. The claim was assigned GCCF #9033448. The claim was filed on 11 November 2010 for \$50,000.00 and denied on 17 May 2011.<sup>8</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 her job and earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of the Claimant's two 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 N10036-1375 considers and addresses the earnings claimed on both of the claims presented to the responsible party, specifically; GCCF Claim #'s 122789 (EAP) and 9033448 (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.

The Claimant alleges damages in the amount of \$30,000.00 to the NPFC.<sup>9</sup> The Claimant provided her 2009 tax return. The NPFC requested her 2010 tax return via certified letter to do a comparison of wages.<sup>10</sup> However, as of the date of this determination, the Claimant has not responded to the request for the 2010 tax return. Based on the financial information provided, the Claimant made \$25,202.00 in 2009<sup>11</sup> and made approximately \$22,041.56 for 2010,<sup>12</sup> a difference of \$3,160.44.<sup>13</sup> A claim for \$30,000 is unsupported by the documentation provided. Accordingly, the Claimant has not established her sum certain as presented to the NPFC by a preponderance of the evidence.

Regarding the causation of the alleged loss, the human resources department of AMI staffing stated that the Claimant's payroll clients, Richway Cold Transportation, Miller Seafood Refrigeration, Gulf Coast Cold Storage, and Cottonwood Debris, were all negatively affected by the Deepwater Horizon oil spill.<sup>14</sup> The NPFC requested that the Claimant obtain letters of explanation from these aforementioned clients stating the cause of their declines in use of AMI

<sup>6</sup> Report from the GCCF dated 06 October 2011.

<sup>7</sup> GCCF Denial Letter dated 12 November 2010.

<sup>8</sup> GCCF Denial Letter dated 17 May 2011.

<sup>9</sup> Optional OSLTF claim form.

<sup>10</sup> USPS 7011 1150 0000 4636 1987.

<sup>11</sup> 2009 Tax Return line seven.

<sup>12</sup> 2010 W-2 from AMI staffing \$17,961.56 plus 2010 Unemployment from state of Alabama \$4,080.00 equals \$22,041.56 (approximately because the Claimant did not submit all accompanying W-2s for 2009 specifically Wal Mart).

<sup>13</sup> \$25,202.00 minus \$22,041.00 equals \$3,160.44.

<sup>14</sup> Letter from employer dated 16 November 2010.

Staffing payroll services.<sup>15</sup> The NPFC further requested contact information for the four clients allegedly affected by the oil spill if she was unable to get the four clients to write the requested letters.<sup>16</sup> As of the date of this determination, no letters or contact information has been provided. NPFC staff tried to locate the aforementioned businesses and was unable to locate the contact information independently.<sup>17</sup>

The Claimant's employer, AMI Staffing, appears to agree with the Claimant's contention that the oil spill caused a reduction to the Claimant's workload and resulted in AMI Staffing's termination of the Claimant.<sup>18</sup> However, neither AMI Staffing nor the four clients have provided any specific documentation which would support the Claimant's contention.<sup>19</sup> The Claimant has provided no other evidence as to the causation of her alleged loss. As such, the Claimant has not established by a preponderance of the evidence that her alleged loss of earnings was due to the oil spill.

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  *Investigation Division*

Date of Supervisor's Review: *11/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>15</sup> Question one USPS 7011 1150 0000 4636 1987.

<sup>16</sup> Questions five and six USPS 7011 1150 0000 4636 1987.

<sup>17</sup> NPFC individual research of the four clients of the Claimant.

<sup>18</sup> Letter from employer dated 16 November 2010.

<sup>19</sup> i.e. financial documentation showing a decline in payroll services due to the oil spill.