

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2120

5890/DWHZ
21 September 2011

Ms. Kristen Foxx


Re: Claim Number: N10036-1382

Dear Ms. Foxx:

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 N10036-1382 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 N10036-1382.

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 | N10036-1382 |
| Claimant | Ms. Kristen Foxx |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earning Capacity |
| Amount Requested | \$20,000.00 |

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 8 September 2011, Ms. Kristen Foxx (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$20,000.00 in loss of profits and impairment of earnings capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a server at a restaurant in Gulfport, Mississippi.² The Claimant alleged that the oil spill caused her to lose income and forced her to seek alternate employment.³ The Claimant then found a position as a server in a casino in Gulfport, where she alleged that her wages are continuing to be affected by the Deepwater Horizon oil spill.⁴

The Claimant seeks \$20,000 as compensation for “total losses from the time of the spill to present and future.”⁵

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.

¹ Optional OSLTF Claim Form, dated 30 August 2011.

² Optional OSLTF Claim Form, dated 30 August 2011.

³ Letter from the Claimant to the NPFC, 30 August 2011.

⁴ Letter from the Claimant to the NPFC, 30 August 2011.

⁵ Letter from the Claimant to the NPFC, 30 August 2011.

- (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 this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 30 August 2011;
- Form W-2 Wage and Tax Statement 2010;
- Form W-2 Wage and Tax Statement 2009;
- Form W-2 Wage and Tax Statement 2008;
- Letter from the Claimant to the NPFC, describing losses, 30 August 2011;
- Direct deposit earnings statement, 9 August 2011;
- Direct deposit earnings statement, 23 August 2011;
- Copy of the Claimant's driver's license;
- Copy of the Claimant's lease contract.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits and impairment of earnings capacity. EAP was assigned Claim # 142058 and the Claimant was assigned ID 3086737. This claim was denied on 12 November 2010.⁶

⁶ GCCF Claimant Status, accessed on 19 September 2011.

The Claimant then filed two Full Review Final claims (FRF), which were assigned Claim #'s 9027907 and 9223407. These claims were consolidated for review, and the Claimant was offered Final payment in the amount of \$5,000.00 on 6 March 2011, which the Claimant accepted.⁷

The Claimant presented this claim to the NPFC on 8 September 2011, claiming loss of profits in the amount of \$20,000.00.⁸ The Claimant alleged that she was undercompensated by the RP/GCCF and seeks \$20,000.00 from the OSLTF.⁹ Because this claim concerns the same damages as presented to the RP/GCCF, this NPFC determination shall address this claim in the amount of \$20,000.00 insofar as that amount was previously presented to the RP/GCCF. Any amount now before the NPFC, which was not first presented to the RP/GCCF is hereby denied.¹⁰

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

Based on the information available to the NPFC, the Claimant has accepted a Final payment from the RP/GCCF in the amount of \$5,000.00.¹¹ The Claimant has executed a Release and Covenant Not to Sue in return for final payment.¹² By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.¹³ The Release executed by the Claimant specifically states...

By signing this document, you are forever waiving and releasing all claims that you may have against BP or any other party . . . in connection with the [Deepwater Horizon oil spill].¹⁴

The Claimant has therefore waived rights to further recovery regarding the losses presented to the NPFC. Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF in exchange for her payment, the Claimant cannot also recover from the Fund.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in her request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill.

Additionally, should the Claimant decide to pursue this claim on reconsideration, the Claimant should present documentation to show that her earnings actually *decreased*¹⁵ and that the

⁷ GCCF Claimant Status, accessed on 19 September 2011.

⁸ Optional OSLTF Claim Form, dated 30 August 2011.

⁹ Letter from the Claimant to the NPFC, 30 August 2011.

¹⁰ 33 C.F.R. §136.103(a).

¹¹ GCCF Claimant Status, accessed on 19 September 2011.

¹² GCCF Claimant Status, accessed on 19 September 2011.

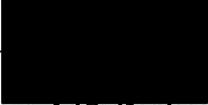
¹³ GCCF Release and Covenant Not to Sue.

¹⁴ GCCF Release and Covenant Not to Sue.

¹⁵ 33 C.F.R. 136.233(b) states that in order to prove a claim for loss of profits and impairment of earning capacity damages, the Claimant must demonstrate, "that the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources."

decrease was a result of the discharge or substantial threat of discharge of oil, caused by the Deepwater Horizon oil spill. Currently, the Claimant's submission before the NPFC does not contain evidence that would indicate that the Claimant's income ever decreased, or that the Claimant's earnings were somehow affected by the Deepwater Horizon oil spill.

This claim is denied because the Claimant has signed a Release and Covenant not to Sue, waiving all rights to further recovery regarding the Deepwater Horizon oil spill therefore the Claimant has received full and final payment, and because the Claimant has not met her burden to demonstrate (1) that she suffered a loss in the amount of \$20,000.00, 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *9/20/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:
