

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  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7545

5890/DWHZ  
14 November 2011

Keishia Perique



Re: Claim Number: N10036-1391

Dear Ms. Perique:

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 your claim number N10036-1391 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. If, however 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 N10036-1391.

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

Enclosures: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1391
Claimant	Keishia Perique
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,516.05

### ***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 09 September 2011, Keishia Perique (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$15,516.05 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant worked as a Sales Support Assistant for AT&T Advertising and Publishing (formerly L.M. Berry & Company) in Metairie, Louisiana.<sup>1</sup> The Claimant asserted that she was laid off from her job due to the Deepwater Horizon oil spill.<sup>2</sup> The Claimant explained that, because of the oil spill “businesses couldn’t advertise or cancelled advertising because of lack of business, income and/or ability to maintain/purchase advertisement.”<sup>3</sup>

### ***APPLICABLE LAW***

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the

<sup>1</sup> Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 24 August 2011; Employment/Salary Verification from AT&T, dated 25 June 2010.

<sup>2</sup> Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 24 August 2011.

<sup>3</sup> Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 24 August 2011.

responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 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 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***

#### **The Claimant's Submission to the OSLTF**

In support of her claim, the Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 24 August 2011;
- Written request for address change to GCCF with Fax cover sheet, dated 28 June 2011;
- Employment/Salary Verification from AT&T, dated 25 June 2010;
- Paystubs from AT&T for the periods 15 November 2009 through 28 November 2009 and 4 April 2010 through 17 April 2010;

- Unemployment benefit payments for the weeks ending 26 February 2011 through 19 March 2011 and 4 June 2011 through 18 June 2011;
- Two 2010 Form 1099-R from Fidelity Investments;
- Photocopy of Driver's License;
- First page of a residential lease at 3406 Shangri LA, Chalmette, LA 70043;
- 2009 Form W-2 from L.M. Berry and Company;
- 2008 Form W-2 from L.M. Berry and Company;
- 2010 Form W-2 from L.M. Berry and Company; and
- Denial Letter on Interim Payment/Final Payment Claim, dated 4 August 2011.

Prior to presenting this claim to the NPFC, the Claimant filed an Interim Quarter I (ICQ12011) claim with the GCCF for loss of earnings on 10 February 2011 in the amount of \$10,000.00.<sup>4</sup> The Claimant was assigned Claimant ID # 3495753 and Claim # 9285012. The GCCF denied the Interim Quarter 1 claim on 04 August 2011.<sup>5</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter of the Claimant's GCCF claim is the same as the subject matter of her claim before the NPFC, i.e., that she was laid off from AT&T because of reduced advertising sales caused by the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC up to \$10,000.00. Accordingly, this Claim Summary Determination for NPFC claim N10036-1391 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim # 9285012 (ICQ12011).

### **NPFC Determination**

The claim is denied. 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 documentation presented by the Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an Interim 1 claim to the GCCF in the amount of \$10,000.00. The Claimant then presented a loss of profits and impairment of earnings capacity claim for \$15,516.00 to the NPFC. Any claimed amount of damages exceeding \$10,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant failed to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that she was laid off from her job as a sales support assistant due to a reduction in advertising sales caused by the Deepwater Horizon oil spill. However, the Claimant did not provide any evidence to the NPFC supporting her alleged loss. The Claimant's initial submission to the NPFC included several paystubs and Form W-2's from AT&T/L.M. Berry, and unemployment benefits documentation.

<sup>4</sup> Report from the GCCF, dated 2 November 2011.

<sup>5</sup> Denial Letter on Interim Payment/Final Payment Claim, dated 4 August 2011.

On 13 September 2011, the NPFC spoke with the Claimant and requested that she provide additional information to connect her loss to the Deepwater Horizon oil spill; the Claimant indicated that she would fax over more information that day.<sup>6</sup> The NPFC never received additional information from the Claimant but, nonetheless, the NPFC made additional efforts to gain evidence by formally requesting additional information via a letter on 04 October 2011.

The NPFC requested that the Claimant provide, among other things, tax returns from 2008 through 2010, paystubs from 2008 through 2010, a letter from AT&T supporting her loss, and documentation of advertising sales that were lost due to the Deepwater Horizon oil spill. To date, no response from the Claimant has been received by the NPFC. Accordingly, the Claimant did not meet the evidentiary burden imposed by 33 C.F.R. § 136.105(a) and 136.105(e)(6) to provide evidence to prove her alleged loss was due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant has failed to (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a) for all amounts exceeding \$10,000.00, (2) demonstrate 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, and (3) to demonstrate a loss in the amount claimed.

  
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/14/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>6</sup> PHONECON between the NPFC and the Claimant on 13 September 2011.