

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

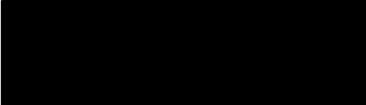


Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5411

5890  
15 November 2011

Celeste W. Zinimon-Bryant  


Re: Claim Number: N10036-1432

Dear Ms. Zinimon-Bryant:

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 N10036-1432 involving Deepwater Horizon. You presented this claim on behalf of Mr. Donald Holmes. Please see the attached Claim Summary/Determination Form for further explanation.

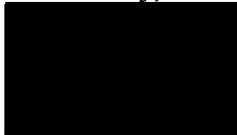
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1432.

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: (1) Claim Summary/Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1432
Claimant	: Celeste W. Zinimon-Bryant
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$1,000.00

### **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 21 September 2011, Ms. Celeste W. Zinimon-Bryant ("Claimant") presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$1,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup> Claimant is employed in the retail department of a casino in D'Iberville, Mississippi.<sup>2</sup> Claimant indicates that the oil spill had a direct effect on her wages, tips and benefits.<sup>3</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.
- (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.

<sup>1</sup> Optional OSLTF Claim Form received 21 September 2011.

<sup>2</sup> Employee Pay History from Imperial Palace of MS, LLC, dated 9 September 2011..

<sup>3</sup> Optional OSLTF Claim Form received 21 September 2011.

- (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**

The Claimant presented an EAP Claim to the RP/GCCF on 2 October 2010 for \$12,000.00, an IP Claim (IP Q12011) on 31 December 2010 for \$5,000.00, and an IP Claim (IP Q32011) on 8 August 2010 for \$500.00.<sup>4</sup> Claimant number 3083119 was assigned to each of these claims and they were denied on 15 November 2010, 2 June 2011 and 15 August 2011, respectively.<sup>5</sup>

On 21 September 2011, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$1,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>6</sup> To support the claim, the Claimant presented the following documentation:

- Optional OSLTF Claim Form received 21 September 2011.
- Undated letter from witness Tiffany Abston.
- Letter dated 27 August 2011 from witness Alice Wilkes.
- 9 September 2011 letter from Claimant.
- 2009 W-2 Form from Imperial Palace of MS, LLC.
- 2010 W-2 Form from Imperial Palace of MS, LLC.
- Undated page 4 of GCCF letter regarding Claimant #3083119, Filing ID #9111590.
- Undated page 5 of GCCF letter regarding Claimant #3083119, Filing ID #9432519.
- Employee Pay History for Celeste W. Zinimon-Bryant, 1/02/2010 through 6/27/2011, annotated.

Among other things, documentation presented by the Claimant verified employment at the Imperial Palace casino, showing that, after the oil spill, the Claimant worked fewer paid hours

<sup>4</sup> GCCF – U.S. Coast Guard Report as of 2 November 2011.

<sup>5</sup> GCCF Denial Letters dated 15 November 2011, 2 June 2011 and 15 August 2011.

<sup>6</sup> Optional OSLTF Claim Form received 21 September 2011.

than average during four pay periods in all of 2010 and six pay periods in the first six months of 2011.

The Claimant also presented documentation from two other workers in the same department of the casino who indicated they had lost hours following the oil spill.

### **NPFC Determination**

Under 33 U.S.C. § 2702 (b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his 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 documentation presented by the Claimant.

After an initial review of the claim, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, financial documentation to support lost profits and earnings, as well as an explanation of how the Deepwater Horizon oil spill caused the losses. The Claimant was given 14 days to respond to the letter, dated 12 October 2011. To date, the Claimant has not responded.

Regarding the valuation of the lost profits, the NPFC's specific request included complete tax returns for 2008, 2009 and 2010; paychecks or pay stubs for 2008, 2009, 2010 and 2011 to date; documents indicating work schedule and work availability before and after the oil spill; and a description of the compensation at the casino, including the basis for pay, how overtime is valued and whether any tips are distributed.

Regarding the cause of the claimed losses, the NPFC's specific requests were to provide documentation that would indicate the claimed losses were directly related to the Deepwater Horizon oil spill, specifically including how the oil spill caused direct effects on benefits for the casino job, when work schedules are posted, and identification of vacation days/hours taken during 2010. The NPFC also asked why oil spill impacts to the Claimant's hours (indicated as the 10-18-2010 pay<sup>7</sup>) first began more than six months after the oil spill occurrence and two months after the well was capped.

This claim is denied because the Claimant (1) has failed to meet the evidentiary burden to provide all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim; (2) has failed to demonstrate the alleged loss in the amount of \$1,000.00 through financial documentation; and (3) has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/15/11*

Supervisor's Action: *Denial approved*

<sup>7</sup> Employee Pay History for Celeste W. Zinimon-Bryant, 1/02/2010 through 6/27/2011, annotated.