

U.S. Department of
Homeland Security

**United States
Coast Guard**



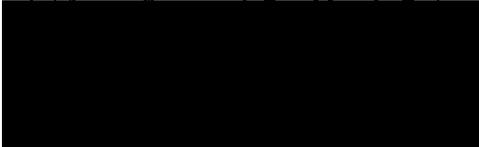
Director
National Pollution Funds Center
United States Coast Guard

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 1570 0001 4803 9029

5890/DWHZ
7 June 2012

Nerell Ducree



Re: Claim Number: N10036-1737

Dear Mr. Barksdale:

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 N10036-1737 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 N10036-1737.

Mail reconsideration requests to:

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



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CC: Nerell Ducree
2800 N 9th Ave, Apt 46B,
Pensacola, FL 32503

CERTIFIED MAIL RETURN RECEIPT REQ. #:
7011 1570 0001 4803 9036

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1737
Claimant	Nerell Ducree
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$59,573.53

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 29 March 2012, Arthur S. Barksdale IV, Esq., on behalf of Nerell Ducree, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$59,573.53 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant owned a catering company in Pensacola, Florida.² The Claimant alleged that the oil spill prevented her from obtaining many of the staples of her menu and ultimately lead her to close her business.³

In order to calculate her losses, the Claimant subtracted 2010 and 2011 earnings from 2008 to determine average monthly losses. She then multiplied that average by an 'industry effect multiplier' of 36 to reach a final requested sum certain of \$59,573.53.⁴

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 § 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 Claim Cover Letter from Firm, signed 27 March 2012.

² Hardship Letter from Claimant, signed 8 September 2011.

³ Hardship Letter from Claimant, signed 8 September 2011.

⁴ Lost Earnings/Income Worksheet, 14 October 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:

- Claim Cover Letter from Firm, signed 27 March 2012;
- NPFC Authorization Agreement, signed 7 March 2012;
- Emails from Law Firm Sending Claim Information, 28 March 2012;
- Gulf Coast Claims Facility Submitted Claim, signed 24 August 2011;
- Deficiency Denial Letter from the GCCF, 10 February 2012;
- Lost Earnings/Income Worksheet, 14 October 2011;
- Photocopy of Drivers License and Social Security Card;
- Hardship Letter from Claimant, 8 September 2011;
- Letter from Donna Gibson Supporting Claim, 23 October 2010;
- Letter from Rebecca Thomas Supporting Claim, 22 October 2010;
- 2008 Tax Return Transcript;
- 2009 Wage and Income Transcript, Form W-2 Wage and Tax Statement;
- 2010 Tax Return Transcript;
- Command Center 40-Hour Hazwoper Training Certificate, 23 June 2010;
- TDC Admin Solution LLC Pay Stubs for July 2010.

On 15 October 2010, the Claimant presented an Emergency Advanced Payment (EAP) claim to the RP/GCCF, seeking compensation for lost subsistence resources in the amount of \$3,000.⁵ The Claimant was assigned Claimant ID 3193027 and the EAP claim was assigned claim # 248437.⁶ The RP/GCCF denied payment on this claim.

On 29 November 2012, the Claimant submitted a second EAP claim to the RP/GCCF, seeking lost profits and wages damages in the amount of \$3,000.⁷ The Claimant retained Claimant ID 3193027 and the EAP claim was assigned claim # 4043582.⁸ The RP/GCCF denied payment on this claim.

On 20 October 2011, the Claimant submitted a Full Review Final (FRF) claim to the RP/GCCF, seeking lost profits and wages damages in the amount of \$59,573.53.⁹ The Claimant retained Claimant ID 3193027 and the FRF claim was assigned claim # 9525936.¹⁰ The RP/GCCF denied payment on this claim.

On 29 March 2012, the Claimant submitted this claim to the NPFC, seeking \$59,573.53 in loss of profits and impairment of earning capacity damages.¹¹ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.¹² Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$59,573.53. Further, because the subject matter of this claim appears to be substantially the same as Claimant's prior lost profits and wages claims with the GCCF, specifically GCCF claim #'s 4043582 and 9525936, this Claim Summary Determination considers and addresses both of these prior GCCF claims.

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.

Here, in order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. This claim is denied because the Claimant has not provided sufficient documentation to prove either requirement.

In a letter dated 25 April 2012, the NPFC requested that the Claimant provide additional documentation to meet the requirements of the law listed above, including (1) tax returns, (2) business records demonstrating lost clients, and (3) paystubs to corroborate alleged losses.¹³

⁵ Transition Program United States Coast Guard Report, 13 May 2012.

⁶ Transition Program United States Coast Guard Report, 13 May 2012.

⁷ Transition Program United States Coast Guard Report, 13 May 2012.

⁸ Transition Program United States Coast Guard Report, 13 May 2012.

⁹ Transition Program United States Coast Guard Report, 13 May 2012.

¹⁰ Transition Program United States Coast Guard Report, 13 May 2012.

¹¹ Claim Cover Letter from Firm, signed 27 March 2012.

¹² 33 C.F.R. § 136.103(a).

¹³ NPFC Request for Additional Information, 25 April 2012.

The NPFC requested that the Claimant respond to the additional information request within 14 days of the date of the letter. As of the date of this determination, the Claimant has failed to respond.

The NPFC has reviewed the merits of this claim based upon the evidence presented. The evidence presented in the Claimant's original submission, however, is insufficient to prove that the Claimant actually sustained business losses nor has the evidence presented demonstrate that her alleged losses are due to the Deepwater Horizon oil spill.

Accordingly, this claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$59,573.53, 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: *6/7/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: