

U.S. Department of
Homeland Security

**United States
Coast Guard**

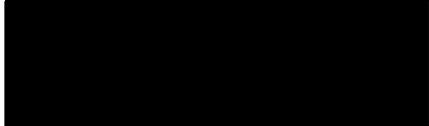


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4470

5890/DWHZ
27 April 2012

Ms. Debra Langford


Re: Claim Number: N10036-1771

Dear Ms. Langford:

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 N10036-1771 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 N10036-1771.

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
CC: Ms. Debra Langford


CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7011 1570 0001 2446 4487

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1771
Claimant	Debra Langford
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$10,648.52

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 23 April 2012, Arthur S. Barksdale IV, Esq., on behalf of Ms. Debra Langford, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$10,648.52 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

In her submission to the NPFC, the Claimant stated that she has been employed as a credit reporter at the Fort Walton Beach Credit/Collection Bureau for approximately twenty years.² The Claimant alleged that her monthly commission payments have decreased in 2010 and 2011 as a result of general economic effects of the Deepwater Horizon oil spill on the Fort Walton Beach community. In a letter describing her losses, the Claimant stated,

A large part of my income comes from commission, and when the surrounding areas suffered loss of jobs and wages, we are unable to collect on our accounts and therefore affecting monthly commission checks.³

Specifically, the Claimant alleged to have sustained losses of \$1,511.00 in 2010 and \$3,194.16 in 2011. The Claimant multiplied this alleged monthly loss of \$4,705.16 by 24, for an additional two-year loss of \$5,943.36. The Claimant added this amount to her actual losses for a total claimed loss amount of \$10,648.52.⁴

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 Section 2702(b) of OPA.

¹ Claim Cover Letter, 14 March 2012.

² "BP Employer Hardship Letter," 23 December 2012.

³ "BP Employer Hardship Letter," 23 December 2012.

⁴ Lost Income/Earning Worksheet.

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.
- (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, 20 April 2012;
- NPFC Authorization Agreement, signed on 30 March 2012;
- GCCF Full Review Final payment Claim Form;
- 2011 Form 1040A, showing adjusted gross income of \$25,826.00;
- Pay record, March 2012;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 19 March 2012;
- Deepwater Horizon Oil Spill Lost Earnings/Income Worksheet;
- Copy of the Claimant's driver's license;
- "BP Hardship Letter" 27 October 2011;

- “BP Employer Hardship Letter” 23 December 2011;
- 2008 Form 1040A, showing adjusted gross income of \$29,365.00;
- 2010 Form 1040A, showing adjusted gross income of \$28,108.00;
- Pay record, November 2011;
- GCCF Client Authorization, 20 October 2011;

Prior to presentment of this claim to the NPFC, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking \$10,648.52 in loss of profits and impairment of earning capacity damages.⁵ The Claimant was assigned Claimant ID 3162753 and the FRF claim was assigned claim # 9554917.⁶ The RP/GCCF denied payment on this claim.⁷

On 23 April 2012, the Claimant presented this claim to the NPFC, again seeking \$10,648.52 in loss of profits and impairment of earning capacity damages.⁸ The NPFC may adjudicate this claim to the extent that the RP has denied payment on this claim, or has failed to render a determination on the claim following 90 days of presentment by the Claimant.⁹ Because these damages have first been presented to and were denied by the RP/GCCF, the NPFC may fully adjudicate this claim for lost profits damages totaling \$10,648.52.

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.

In order to prove a claim for loss of profits and impairment of earning capacity 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.

Furthermore, prospective future damages are not compensable under OPA’s loss of profits damage category, which limits potentially available compensation to “the actual net reduction or loss of earnings or profits *suffered*” [emphasis added].¹⁰ Therefore, payment is initially denied on \$5,943.36 of this claim, which constitutes losses not allegedly incurred by the Claimant.¹¹

The remaining \$4,705.16 of this claim is also denied, as the Claimant has not provided evidence to prove that this alleged loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant alleged that she lost monthly commissions due to general economic effects of the oil spill on the Fort Walton Beach community. Specifically, the Claimant asserted that because “the surrounding areas suffered loss of jobs and wages, [the Claimant was] unable to collect on [her] accounts.”¹² However, the Claimant has failed to identify any business actually lost from a

⁵ GCCF Full Review Final Payment Claim Form, at pg. 7.

⁶ GCCF Denial Letter on Interim Payment/Final Payment Claim, 19 March 2012.

⁷ GCCF Denial Letter on Interim Payment/Final Payment Claim, 19 March 2012.

⁸ Claim Cover Letter, 20 April 2012.

⁹ 33 C.F.R. § 136.103(a).

¹⁰ 33 C.F.R. § 136.235.

¹¹ Lost Earning/Income Worksheet, showing sum certain of \$160,371.76

¹² “BP Hardship Letter” 27 October 2011.

particular account, and has also failed to provide evidence to indicate that any business that might have been lost, was lost as a result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$10,648.52, 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: *4/27/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: