

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

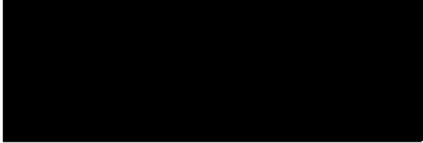


Director  
National Pollution Funds Center  
United States Coast Guard

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 7438

5890/DWHZ  
6 June 2012

Ms. Janet Martinez  


Re: Claim Number: N10036-1777

Dear Mr. Barksdale:

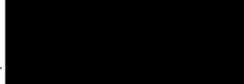
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1777 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-1777.

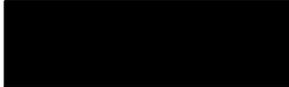
Mail reconsideration requests to:

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

Copy: Janet Martinez  


RETURN RECEIPT REQUESTED: 7011 1570 0001 4803 7421

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1777
Claimant	Ms. Janet Martinez
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$17,080.00

### ***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 23 April 2012, Mr. Arthur S. Barksdale IV, Esq., on behalf of Ms. Janet Martinez, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$17,080.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant alleged that as a result of the Deepwater Horizon oil spill, she sustained a reduction in salary and was eventually laid off from her position with Nature Coast Linen Service in Fort Myers, Florida.

A letter provided by the Claimant's former employer stated that,

Nature Coast Linen Services is an industrial Laundry that provides linen Service to Hotel, Resorts, Spas and Restaurants [in Fort Myers, Florida and surrounding communities]. . . We lost customers and business and therefore we had to reduce the hours to our employees which were affected as well.<sup>2</sup>

The Claimant alleged to have sustained losses of \$2,058.00 in 2010 and \$4,042.00 in 2011. The Claimant multiplied his alleged monthly loss of \$305.00 by 36, for a three year loss of \$10,980.00. The Claimant added this amount to his actual losses to come to a total claimed loss amount of \$17,080.00.<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 § 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

<sup>1</sup> Claim Cover Letter, 14 March 2012.

<sup>2</sup> Letter from the Claimant's employer, 20 April 2012.

<sup>3</sup> Lost Income/Earning Worksheet.

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:

- Email from Vance Lotane Representative, 23 April 2012;
- Claim cover letter, 20 April 2012;
- NPFC Authorization Agreement, signed on 14 February 2012;
- GCCF Full Review Final Payment Claim Form, Claimant ID 3343456;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 11 April 2012;
- Lost Earnings/Income Worksheet;
- Copy of the Claimant's driver's license;
- Hardship Letter, 14 February 2012;
- Letter from the Claimant's former employer, 19 January 2012;
- 2008 Form W-2 Wage and Tax Statement, showing earnings of \$14,967.68;
- 2008 Form 1040A;

- 2009 Form W-2 Wage and Tax Statement, showing earnings of \$14,804.58;
- 2009 Form 1040A;
- 2010 Form W-2 Wage and Tax Statement, showing earnings of \$12,909.67;
- 2010 Form 1040A;
- 2011 Form W-2 Wage and Tax Statement, showing earnings of \$10,926.12;
- 2011 Form 1040;
- GCCF Client Authorization Form, signed on 14 February 2012.

On 2 November 2010, the Claimant submitted an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$3,432.00.<sup>4</sup> The Claimant was assigned Claimant ID 3343456 and the EAP claim was assigned claim # 402643. The RP/GCCF denied payment on this claim.

On 23 December 2010, the Claimant submitted a Full Review Final (FRF) payment claim, seeking \$3,000.00 in loss of profits and wages damages. The FRF claim was assigned claim # 9130894 and was also denied by the RP/GCCF.<sup>5</sup>

On 27 March 2012, the Claimant submitted a second FRF claim to the RP/GCCF, this time seeking \$17,080.00 in loss of profits and wages damages. This FRF claim was assigned claim # 9584087 and was also denied payment by the RP/GCCF.<sup>6</sup>

On 23 April 2012, the Claimant presented this claim to the NPFC, again seeking \$17,080.00 in loss of profits and impairment of earning capacity damages.<sup>7</sup> 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.<sup>8</sup> 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 \$17,080.00.

### **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].<sup>9</sup> Therefore, payment is initially denied on \$10,980.00 of this claim, which constitutes losses not allegedly incurred by the Claimant.<sup>10</sup>

<sup>4</sup> Transition Program, United States Coast Guard Report, 13 May 2012.

<sup>5</sup> Transition Program, United States Coast Guard Report, 13 May 2012.

<sup>6</sup> Transition Program, United States Coast Guard Report, 13 May 2012.

<sup>7</sup> Claim Cover Letter, 14 March 2012.

<sup>8</sup> 33 C.F.R. § 136.103(a).

<sup>9</sup> 33 C.F.R. § 136.235.

<sup>10</sup> Lost Earning/Income Worksheet.

Regarding the remaining \$6,100.00 of this claim, the Claimant has not provided evidence to prove that any reduction in the Claimant's income in either 2010 or 2011 was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In a letter dated 2 May 2012, the NPFC requested that the Claimant submit certain additional information in support of this claim. Specifically, the NPFC requested that the Claimant provide, among other items, (1) a list of "hotels resorts, spas and restaurants" serviced by the Claimant during her employment with Nature Coast Linen Services, as well as (2) pay stubs for 2009, 2010 and 2011, in order to demonstrate exactly when the Claimant's income began to decrease.<sup>11</sup>

The NPFC requested that the Claimant provide requested documentation within fourteen (14) days of the date of the letter. As of the date of this determination, the Claimant has failed to respond.

Because documentation included in the Claimant's initial submission fails to prove that any loss the Claimant may have sustained was somehow caused by the Deepwater Horizon oil spill, this claim is denied. The Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$17,080.00 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: *6/6/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>11</sup> NPFC request for additional information, 2 May 2012.