

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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Arlington, VA 20598-7100
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5890
23 May 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7704

Lelia A. DeBouse



Re: Claim Number: N10036-1793

Dear Ms. DeBouse:

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 N10036-1793 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 N10036-1793.

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

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1793
Claimant	: Lelia Ann DeBouse
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Impairment of Earning Capacity
Amount Requested	: \$12,000.00

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 7 May 2012, Lelia Ann DeBouse (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$12,000.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was a casino worker at Harrah's New Orleans. The Claimant alleged to have sustained a loss of income of \$12,000.00 in 2010 due to a "lack of work due to the spill".²

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.
- (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.

¹ Optional OSLTF Claim Form, signed on 3 May 2012 and received on 7 May 2012.

² Claimant's undated letter Re: Claim # 3082298.

- (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:

- Optional OSLTF Claim Form, signed on 3 May 2012 and received on 7 May 2012.
- Claimant's undated letter Re: Claim # 3082298.
- Claimant's Louisiana Identification Card issued 10 April 2007.
- GCCF Determination Letter on Interim Payment/Final Payment Claim dated 25 July 2011 (page 3 of 5 largely blank).
- 2008 Form W-2 from Harrah's Operating Company Inc.
- 2009 Form W-2 from Harrah's Operating Company Inc.
- 2010 Form W-2 from Caesars Operating Company Inc.
- 2011 Form W-2 from Caesars Operating Company Inc.

The Claimant indicates that she presented a claim to the RP/GCCF on 29 October 2010.³ The Claimant was assigned Claimant Identification No. 3082298 and her claim was assigned Claim No. 9418446.⁴ The RP/GCCF did not deny the claim, but determined that the Claimant had not established lost earnings caused by the oil spill.⁵

On 7 May 2012, the Claimant submitted this claim to the NPFC, seeking \$12,000.00 in loss of profits and impairment of earning capacity damages.⁶ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.⁷ Because the Claimant has presented these damages first to the RP/GCCF, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$12,000.00.

³ Optional OSLTF Claim Form, signed on 3 May 2012 and received on 7 May 2012.

⁴ GCCF Determination Letter on Interim Payment/Final Payment Claim, dated 25 July 2011.

⁵ GCCF Determination Letter on Interim Payment/Final Payment Claim, dated 25 July 2011.

⁶ Optional OSLTF Claim Form, signed on 3 May 2012 and received on 7 May 2012.

⁷ 33 C.F.R. § 136.103(a).

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 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.

1. Failure to demonstrate an actual financial loss.

The Claimant alleged that she sustained a \$12,000.00 loss in earnings due to the ‘Gulf Coast Oil Spill’ in 2010.⁸

However, the Claimant’s W-2 Wage and Tax Forms indicate that in 2008, 2009, and 2010, the Claimant reported respective earnings of \$27,262.62, \$24,553.95, and \$26,303.24.⁹ Because the Claimant’s 2010 earnings increased by 7.1 % over 2009, the Claimant’s financial documentation fails to indicate that the Claimant sustained a loss or reduction in income over 2009.

2. Failure to prove loss due to Deepwater Horizon Oil Spill.

The Claimant asserts that her alleged loss of income in 2010 was caused by the oil spill.¹⁰

The NPFC notes that Louisiana Gaming Control Board data that is maintained by the Louisiana State Police includes the casino where the Claimant is employed.¹¹ That data indicates that both the annual number of admissions to the casino and the annual casino revenue were less in 2010 than 2009. However, the casino revenues during the 2nd half of 2010 were actually improved over the 2nd half of 2009.¹²

The annual number of visitors to Louisiana totaled 15.0 million in 2009¹³ and 14.9 million in 2010.¹⁴ By quarter from the same data, the 1st Quarter (January, February and March), had fewer visitors, while other quarters of 2010 had the same or higher numbers of visitors:

Number of Visitors to Louisiana (Millions)

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
2009	3.9M	4.0M	3.4M	3.7M	15.0M
2010	3.1M	4.0M	3.8M	4.0M	14.9M

⁸ Claimant’s undated letter Re: Claim # 3082298.

⁹ 2008, 2009, 2010 Form W-2 Wage and Tax Statements.

¹⁰ Claimant’s undated letter Re: Claim # 3082298.

¹¹ <http://lgcb.dps.louisiana.gov/revenue.reports.landbased.html>

¹² Harrah’s N.O. Casino revenues first half of 2010 compared to 2009 were -\$11,011,489 (down) and revenues for the second half of 2010 compared to 2009 were \$3,022,609 (up). This information was last accessed 18 May 2012 at <http://lgcb.dps.louisiana.gov/revenue.reports.landbased.html>,

¹³ Calendar Year 2009 Louisiana TravelsAmerica Visitor Profile Report, June 2010, accessed at <http://crt.louisiana.gov/tourism/research/Documents/2010-11/CY2009TravelsAmericaLouisianaReport.pdf>.

¹⁴ Calendar Year 2010 Louisiana TravelsAmerica Visitor Profile Report, December 2011, accessed at http://www.crt.state.la.us/tourism/research/Documents/2011-12/CY2010_TNS_Louisiana_Visitor_Profile_Report_Final.pdf.

Although the number of 2010 visitors to Louisiana decreased slightly as compared to 2009, the decrease took place in the 1st Quarter, before the oil spill.¹⁵

Based on the foregoing, the Claimant has failed to demonstrate that the oil spill adversely affected tourism in Louisiana generally, or caused a loss of casino revenue where the Claimant worked.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$12,000.00, 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: *5/23/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁵ Calendar Year 2009 Louisiana TravelsAmerica Visitor Profile Report, June 2010, accessed at <http://crt.louisiana.gov/tourism/research/Documents/2010-11/CY2009TravelsAmericaLouisianaReport.pdf> and Calendar Year 2010 Louisiana TravelsAmerica Visitor Profile Report, December 2011, accessed at http://www.crt.state.la.us/tourism/research/Documents/2011-12/CY2010_TNS_Louisiana_Visitor_Profile_Report_Final.pdf.