

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



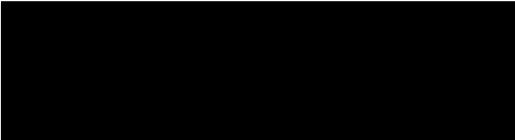
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
Number: 7011 1570 0001 4803 9913

5890/DWHZ  
16 July 2012

Ms. Rojas



Re: Claim Number: N10036-1816

Dear Mr. Jones:

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 N10036-1816 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 N10036-1816.

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: Jessica Rojas



By Certified Mail:  
No: 7011 1570 0001 4803 9906

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1816
Claimant	Jessica Rojas
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$50,000.00

### ***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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

### ***CLAIM AND CLAIMANT***

On 22 May 2012, Christopher Jones of Rapid Claims Recovery, on behalf of Jessica Rojas (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$50,000 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working as a server at the Hooters restaurant in Brandon, Florida.<sup>2</sup> The Claimant alleged that a drop in tourism as well as a decrease in the quality of seafood on offer resulted in lost hours and wages at the restaurant.<sup>3</sup>

It is unclear from the provided worksheet how the Claimant reached the requested sum certain of \$50,000.<sup>4</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 for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is

<sup>1</sup> Optional OSLTF Claim Form, signed 18 May 2012.

<sup>2</sup> Hardship Letter from the Claimant, dated 6 June 2012.

<sup>3</sup> Hardship Letter from the Claimant, dated 6 June 2012.

<sup>4</sup> Rapid Claims Recovery Worksheet.

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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission to the OSLTF**

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed 18 May 2012;
- Representation and Consent Affidavit, notarized 15 March 2012;
- Letter from Rapid Claims Recovery to the GCCF, dated 15 March 2012;
- Affidavit of Support from Frances Rios, notarized 19 April 2012;
- 2008 Wage and Income Transcript Form W-2;
- 2009 Wage and Income Transcript Form W-2;
- Copy of NPFC Request for Additional Information, dated 29 May 2012;
- Verification Employment During the Time of April 20, 2010;

- Copy of 2011 W-2 Wage and Tax Statement;
- 2011 Payroll Data;
- Copy of 2010 W-2 Wage and Tax Statement;
- 2010 Payroll Data;
- Copy of 2009 W-2 Wage and Tax Statement;
- 2009 Payroll Data;
- Rapid Claims Recovery Calculation Worksheet;
- GCCF Determination Letter on Final Payment Claim, dated 12 July 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 11 May 2012;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 21 April 2012;
- Hardship Letter from the Claimant, dated 6 June 2012;
- Historical Retail Sale Listing – Hooters.

Prior to 12 July 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of wages damages.<sup>5</sup> The Claimant was assigned Claimant ID 3521743 and the FRF claim was assigned claim #9387501.<sup>6</sup>

Prior to 21 April 2012, the Claimant presented a second claim to the RP/GCCF seeking loss of wages damages.<sup>7</sup> The Claimant retained Claimant ID 3521743 and the claim was assigned claim # 9581567.<sup>8</sup> The RP/GCCF denied payment on this claim.

Prior to 11 May 2012, the Claimant presented a third claim to the RP/GCCF seeking loss of wages damages.<sup>9</sup> The Claimant retained Claimant ID 3521743 and the claim was assigned claim # 9596191.<sup>10</sup> The RP/GCCF denied payment on this claim.

On 22 May 2012, the Claimant submitted this claim to the NPFC, seeking \$50,000 in loss of profits and impairment of earning capacity damages allegedly incurred as a result of the Deepwater Horizon oil spill.<sup>11</sup> OPA requires that all claims for costs or damages be presented first to the RP/GCCF, prior to their presentment to the NPFC.<sup>12</sup> Should the GCCF deny payment on the claim, or fail to issue a determination following 90 days of presentment, the claimant may present the claim to the NPFC.<sup>13</sup> Therefore, if any of the damages now presented in this claim to the NPFC, have not first been presented to the GCCF, these damages are denied for improper presentment. Otherwise, it appears that the subject matter of the Claimant's GCCF claims and the subject matter of her claim before the NPFC are the same, i.e., that she lost wages as a restaurant server as a result of the Deepwater Horizon oil spill. Accordingly, this claim summary determination considers and addresses each of the Claimant's prior GCCF claims, specifically claim #'s 9387501, 9581567, and 9596191.

Evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

<sup>5</sup> GCCF Determination Letter on Final Payment Claim, dated 12 July 2011.

<sup>6</sup> GCCF Determination Letter on Final Payment Claim, dated 12 July 2011.

<sup>7</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 21 April 2012.

<sup>8</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 21 April 2012.

<sup>9</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 11 May 2012.

<sup>10</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 11 May 2012.

<sup>11</sup> Optional OSLTF Claim Form, signed 18 May 2012.

<sup>12</sup> 33 C.F.R. § 136.103(a).

<sup>13</sup> 33 C.F.R. § 136.233(b).

## 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.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that she is a member of the economic damages class of the BP Settlement, she should then submit evidence to indicate that she has either opted out or is excluded from the BP Settlement in her request for reconsideration of this claim.

Furthermore, this claim would be denied under OPA's loss of profits damage category, as the Claimant has failed to prove that she has sustained a financial loss as a result of the Deepwater Horizon oil spill.

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.

The Claimant's provided W-2s demonstrate she made \$7,493.94 more in 2010 than she did in 2009.<sup>14</sup> Furthermore, the Claimant has provided no evidence, other than her own assertions, to indicate a causal link between the Deepwater Horizon oil spill and her alleged financial loss. Accordingly, this claim is denied because the Claimant failed to meet her burden to demonstrate either (1) that she sustained a loss in the amount of \$50,000 or (2) that her alleged loss is due to the injury to, destruction of, or loss of real or personal property or natural resources (i.e., the Deepwater Horizon oil spill) and (3) because the Claimant is considered to have settled her claim by virtue of belonging to the economic damages class associated with the CSSP.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/16/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>14</sup> Copy of 2010 W-2 Wage and Tax Statement; Copy of 2009 W-2 Wage and Tax Statement.