

U.S. Department of  
Homeland Security

**United States  
Coast Guard.**

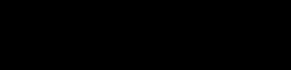


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4803 8442

5890/DWHZ  
06 August 2012

Ms. Laura McCullough  


Re: Claim Number: N10036-1842

Dear Ms. McCullough:

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 N10036-1842 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 N10036-1842.

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

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1842
Claimant	Ms. Laura McCullough
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$20,000.00

### ***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 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 02 May 2012, and the CSSP began processing claims on 04 June 2012.

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

On 08 June 2012, Ms. Laura McCullough (Claimant), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$20,000 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.<sup>1</sup>

The Claimant's submissions do not indicate her profession or employer, but allege that the Deepwater Horizon incident caused a drop in tourism in the Somerville, Alabama, area.<sup>2</sup> The Claimant alleges that the drop in tourism caused her employer's business to decline, and as a result, the employer terminated her job.<sup>3</sup>

As a result, the Claimant filed this claim seeking \$20,000 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.<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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136.

<sup>1</sup> Optional OSLTF Claim Form, received 08 June 2012.

<sup>2</sup> Optional OSLTF Claim Form, received 08 June 2012.

<sup>3</sup> Optional OSLTF Claim Form, received 08 June 2012.

<sup>4</sup> Optional OSLTF Claim Form, received 08 June 2012.

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; and
- (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 NPFC**

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

- Optional OSLTF Form, received 08 June 2012; and
- Authorization to retrieve RP/GCCF claim file.

On 08 June 2012, the Claimant presented this claim to the NPFC, seeking \$20,000 in loss of profits and impairment of earning capacity damages.<sup>5</sup> The Claimant stated that prior to

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<sup>5</sup> Optional OSLTF Claim Form, received 08 June 2012.

presenting this claim to the NPFC; she presented a claim to the RP/GCCF.<sup>6</sup> The NPFC will presume that the subject matter for the RP/GCCF claim is identical to the claim now before the NPFC—i.e., that a drop in tourism, caused by the Deepwater Horizon incident, resulted in the Claimant's employer terminating her employment. Accordingly, this Claim Summary Determination presumes that the Claimant's prior claim satisfies OPA presentation requirements and addresses only those damages sought in the Claimant's prior submission to the RP/GCCF. Any damages not first presented to the RP/GCCF are denied for improper presentment.<sup>7</sup>

On 25 June 2012, the Claimant authorized the NPFC to obtain the file associated with her RP/GCCF claim. As of 04 June 2012, the CSSP began processing claims, and as a result, the GCCF is no longer in operation. Attempts to retrieve documentation submitted in support of the Claimant's RP/GCCF claim have been unsuccessful to date. Ultimately, it is the Claimant's responsibility to provide all documentation in support of an OSLTF claim.<sup>8</sup> As efforts to obtain the Claimant's RP/GCCF claim file have been unsuccessful, the NPFC will adjudicate this claim on the evidence actually provided by the Claimant to the NPFC.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).

### **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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

As an initial matter, it appears that the Claimant is a member of the E&PD 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 E&PD Settlement, she should submit evidence to indicate that she has either opted out or is excluded from the E&PD Settlement in a request for reconsideration of this claim.

Furthermore, this claim for loss of profits and impairment of earning capacity damages is denied on its merits, as the Claimant has failed to establish either a financial loss or that her alleged loss is the result of the Deepwater Horizon incident. In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

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<sup>6</sup> Optional OSLTF Claim Form, received 08 June 2012.

<sup>7</sup> 33 C.F.R. § 136.103(a).

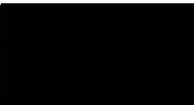
<sup>8</sup> 33 C.F.R. §§ 136.105(a), (e)(6).

The Claimant filed this claim seeking \$20,000 in loss of profits and impairment of earning capacity damages.<sup>9</sup> In a letter dated 12 June 2012, the NPFC requested that the Claimant provide supporting documentation and answers to questions in order to substantiate her alleged loss.<sup>10</sup> The Claimant responded only with an authorization to obtain the documentation associated with her RP/GCCF claim. As efforts to obtain that documentation have, to date, been unsuccessful, the NPFC will review the claim based on the documentation originally submitted to the NPFC.

The Claimant's submissions do not establish how she calculated the losses alleged. The Claimant's Optional OSLTF Claim Form states "lost job because of oil spill," but the Claimant has not provided the NPFC with documentation supporting this allegation. This allegation, without more, is insufficient to establish that the Claimant has suffered a financial loss in the amount alleged.

The Claimant has also failed to prove that the Deepwater Horizon incident caused her alleged financial loss. The Claimant has not provided evidence linking the Deepwater Horizon incident with her alleged losses except for an allegation on her Optional OSLTF Claim Form that the Deepwater Horizon incident caused a drop in tourism, and "therefore no business."<sup>11</sup> The Claimant has not, however, identified the nature of her employment or the source of her income at the time of the oil spill, and has not provided any documentation linking her alleged losses to the Deepwater Horizon incident.

Accordingly, the Claimant's request for \$20,000 is denied in its entirety because the Claimant has failed to demonstrate (1) a financial loss in the amount claimed, 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 discharge of oil. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/6/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>9</sup> Optional OSLTF Claim Form, received 08 June 2012.

<sup>10</sup> NPFC Request for Additional Information, dated 12 June 2012.

<sup>11</sup> Optional OSLTF Claim Form, received 08 June 2012.