

U.S. Department of
Homeland Security

United States
Coast Guard

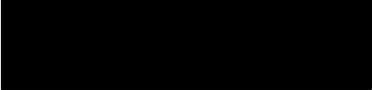


Director
National Pollution Funds Center
United States Coast Guard

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-pt-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 3929

5890/DWHZ
26 July 2012

Michelle Lourdes Diaz


Re: Claim Number: N10036-1852

Dear Ms. Diaz:

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 N10036-1852 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 N10036-1852.

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	N10036-1852
Claimant	Michelle Lourdes Diaz
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$10,000

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 12 June 2012, Michelle Lourdes Diaz (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$10,000 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the spill, the Claimant was working as a server at the Outback Steakhouse in Port Charlotte, Florida.² The Claimant alleged a decline in customers after the oil spill and as a result a drop in her earnings.³

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

¹ Optional OSLTF Claim Form, signed 11 June 2012.

² Hardship Letter from Claimant, signed 6 June 2012.

³ Hardship Letter from Claimant, signed 6 June 2012.

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 11 June 2012;
- Copy of W-2 Wage and Tax Statements from 2009 through 2011;
- Hardship Letter from Claimant, signed 6 June 2012;
- Article: “Florida Worries About Effect on Tourism” published 19 May 2012;
- Article: “Gulf Oil Spill anniversary: Hard-Hit Beaches Mostly Oil-Free” 19 April 2011;
- Article: “BP Oil Spill Hits Florida Beaches, Tourism Suffers” 7 June 2012;
- Article: “Oil Spill Poses Real Risks for Florida” 28 April 2010;
- Pictures of oil tainted water;
- Release and Covenant not to Sue, dated 7 September 2011;
- Determination Letter on Interim Payment/Final Payment Claim, dated 1 September 2011.

Prior to 1 September 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF. The Claimant was assigned claimant ID 3540135 and the claim was assigned claim # 9443148.⁴ The RP/GCCF offered a final payment of \$7,333.53, which the Claimant accepted.⁵

On 28 June 2012, the Claimant submitted this claim to the NPFC, seeking \$10,000 in loss of profits and impairment of earning capacity damages.⁶ The NPFC may adjudicate this claim to the extent that these damages have been first presented to the RP/GCCF.⁷ Any damages now before the NPFC, which were not first presented to the RP/GCCF are denied for improper presentment.

⁴ Determination Letter on Interim Payment/Final Payment Claim, dated 1 September 2011.

⁵ Release and Covenant Not to Sue, dated 7 September 2011.

⁶ Optional OSLTF Claim Form, signed 11 June 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.

Based on information presented by the Claimant and available to the NPFC, the RP/GCCF has compensated the Claimant a total of \$7,333.53.⁸ In doing so, the Claimant executed a Release and Covenant Not to Sue in return for final payment.⁹ By signing this document, the Claimant released any rights to recover against the RP or another party regarding this injury.

Any payment from the OSLTF requires the acquisition of rights from the responsible party. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover compensation from the OSLTF. The subrogation of the Claimant's rights to BP is made clear in the release by the following language:

"... As this Release is fully and completely resolving, together with all other Claims, Claimant's claim under OPA, BP is hereby subrogated to any and all rights that Claimant has arising from the Incident."

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in the request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant, regarding compensation for injuries related to the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has settled his claim with, and accepted a final payment from, the RP/GCCF, thereby releasing his rights to further recovery regarding these damages, allegedly arising from the Deepwater Horizon oil spill.



Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/26/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ Claimant Received a Final Payment of \$7,333.53.

⁹ Release and Covenant Not to Sue, dated 7 September 2011.