

U.S. Department of
Homeland Security

United States
Coast Guard



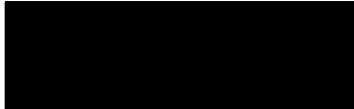
Director
National Pollution Funds Center
United States Coast Guard

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 2445 2781

5890/DWHZ
06 December 2012

Ms. Erika Lazaro



Re: Claim Number: N10036-1868

Dear Ms. Lazaro:

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 N10036-1868 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 N10036-1868.

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	N10036-1868
Claimant	Ms. Erika Lazaro
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$25,000.00

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 09 August 2012, Ms. Erika Lazaro (the Claimant) submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$25,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.¹

At the time of the Deepwater Horizon oil spill, the Claimant worked as a supervisor at Columbia Café in Tampa, Florida.² The Claimant alleges that the Deepwater Horizon incident caused the restaurant's business to slow, and as a result her employer cut her hours before finally laying her off in September 2010.³

As a result, the Claimant filed this claim seeking \$25,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.

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), § 2713, and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. One

¹ Emailed Optional OSLTF Claim Form, received 07 August 2012.

² Emailed Hardship Letter, received 08 August 2012.

³ Emailed Hardship Letter, received 08 August 2012.

type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits and impairment of earning capacity due to injury to or destruction of natural resources.

33 C.F.R. § 136.233 requires that a claimant seeking loss of profits and impairment of earning capacity damages 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 seeking loss of profits or impairment of earning capacity damages 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 this claim, the Claimant submitted the following documentation:

- Emailed Optional OSLTF Claim Form, received 07 August 2012;
- Emailed Hardship Letter, received 08 August 2012;
- 2008 Form W-2 from Columbia Restaurant of Clearwater, showing \$22,433 in wages;
- 2009 Form W-2 from Columbia Restaurant of Clearwater, showing \$27,354 in wages;
- 2009 Form W-2 from Columbia Restaurant of Clearwater, showing \$885 in wages;
- 2008 U.S. Individual Income Tax Return, including Forms 8880 and PMT;

- 2009 U.S. Individual Income Tax Return, including Form 8812 and Schedule EIC; and
- 2010 U.S. Individual Income Tax Return, including Form 8812 and Schedules EIC and M.

On 09 August 2012, the Claimant presented this claim to the NPFC, seeking \$25,000.00 in loss of profits and impairment of earning capacity damages.⁴ In her emailed Optional OSLTF Claim Form, the Claimant indicated that before presenting this claim to the NPFC, she first presented a claim to the RP/GCCF. 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 restaurant patronage, caused by the Deepwater Horizon incident, resulted in reduced wages for the Claimant before ultimately being laid off. Accordingly, this Claim Summary and Determination presumes that the Claimant's RP/GCCF 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.⁵

Additionally, 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.

1. Economic and Property Damages Class Action Settlement

The Claimant's documentation indicates that she 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. Under 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 those 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 opted out of, or is excluded from, the E&PD Settlement in a request for reconsideration of this claim.

2. Failure to Establish Financial Loss in Amount Alleged Resulted From Deepwater Horizon Incident

This claim is also denied on its merits, as the Claimant has failed to establish a financial loss in the amount alleged, and has failed to prove that her alleged financial loss resulted from the Deepwater Horizon incident. In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must provide documentation sufficiently proving (1) that

⁴ Optional OSLTF Claim Form, received 07 August 2012.

⁵ 33 C.F.R. § 136.103(a).

the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss. The Claimant has failed to establish these required showings.

The Claimant alleges that she has suffered a financial loss totaling \$25,000.00 due to reduced hours and earnings, thereafter being laid off in September 2010, and remaining unemployed since.⁶ Under OPA, recovery for loss of profits and impairment of earning capacity damages “is limited to the actual net reduction or loss of earnings or profits-suffered.”⁷ The Claimant’s documentation does not establish that she suffered a financial loss in the amount she alleged. Her documentation establishes that she earned \$16,043 in 2010,⁸ a \$12,196.00 decrease from her 2009 earnings.⁹ The Claimant has not provided documentation showing her 2011 income and has not provided evidence of any unemployment compensation she may have received in the time she has been unemployed. Any unemployment compensation received since her layoff would partially offset any lost wages while unemployed.

Additionally, the Claimant has failed to establish that the Deepwater Horizon incident was the cause of any alleged financial loss. The Claimant has not provided evidence establishing the Deepwater Horizon incident as the cause of her alleged financial loss aside from an allegation that it was the Deepwater Horizon incident that caused her employer to reduce available hours and ultimately lay her off.¹⁰ This allegation, without more, is insufficient to establish the required causal link between the Deepwater Horizon incident and his alleged financial loss.

CONCLUSION

This claim of \$25,000.00 is denied in its entirety, as the Claimant has not demonstrated (1) a financial loss in the amount alleged, 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. Finally, 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: *12/6/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

⁶ Emailed Hardship Letter, received 08 August 2012.

⁷ 33 C.F.R. § 136.235.

⁸ 2010 U.S. Individual Income Tax Return.

⁹ 2009 U.S. Individual Income Tax Return.

¹⁰ Emailed Hardship Letter, received 08 August 2012.