

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: 7012 2210 0001 7214 9548

5890/DWHZ  
10 June 2013

Ella M. LeBant  


Re: Claim Number: N10036-1943

Dear Ms. LeBant:

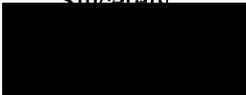
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1943 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-1943.

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	N10036-1943
Claimant	Ella LeBant
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$8,000.00

### ***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 28 April 2013, Ella LeBant, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant provided documentation indicating that she had been employed at a restaurant in Metairie, Louisiana from 21 February 2011 to 06 June 2011.<sup>2</sup> The Claimant alleged she was "laid off because lack of business due to oil spill."<sup>3</sup>

The Claimant has not provided evidence to indicate how she calculated her loss to reach the sum certain of \$8,000.00.

### ***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 on 24 May 2013.

<sup>2</sup> Louisiana Workforce Commission Separation Notice Form indicates that the Claimant was employed by Caffè Fresca in 2011.

<sup>3</sup> Optional OSLTF Claim Form, received on 24 May 2013.

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**

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, received on 24 May 2013;
- Louisiana Workforce Commission Separation Notice, 2011;
- Louisiana Workforce Commission Monetary Determination, 2012;
- Earnings Statement, Pay Period 5/29/2011 through 6/11/2011.

The Claimant alleged that this claim was first presented to the Responsible Party on 07 June 2012.<sup>4</sup> The Claimant stated that the Responsible Party denied the claim and that the Claimant has commenced an action in court to recover these damages.<sup>5</sup> The NPFC does not have the information necessary to verify this assertion.

On 24 May 2013, the Claimant submitted this claim to the NPFC asserting to have sustained \$8,000.00 in loss of profits or impairment of earning capacity damages. The NPFC will adjudicate this claim to the extent that presentment requirements have been satisfied. If any of the damages subject of this claim were not presented to and denied by the Responsible Party, these damages are denied for failing to meet presentment requirements.<sup>6</sup>

Furthermore, evidence in this claim submission indicates that the Claimant is likely a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).<sup>7</sup>

### **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 likely a member of the E&PD Settlement class. This claim would therefore be considered to have been settled, and the Claimant would be 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 the NPFC to those rights.

While this claim may not have been quantified or paid, it would be 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 her request for reconsideration of this claim.

Furthermore, this claim is also denied on its merits. In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction in income, and (2) that the financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant appears to have worked at a restaurant near New Orleans, Louisiana, from 21 February 2011 through 06 June 2011. However, the Claimant does not provide any indication as to how her employment may have been affected by the oil spill.

---

<sup>4</sup> Optional OSLTF Claim Form, received on 24 May 2013.

<sup>5</sup> Optional OSLTF Claim Form, received on 24 May 2013.

<sup>6</sup> 33 C.F.R. § 136.103(a).

<sup>7</sup> The Claimant lives in Metairie, Louisiana, where she was employed from 21 February 2011 through 06 June 2011. It appears as though the Claimant is in Economic and Property Damage Class zone C.  
<http://www.laed.uscourts.gov/OilSpill/5.pdf>

In support of this claim, the Claimant provided an earnings statement and unemployment documentation. However, the Claimant has not provided any proof that might indicate that the termination of her employment was somehow caused by harm to property or natural resources resulting from the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that she sustained a financial loss in the amount \$8,000.00, or (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: *6/10/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: