

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890
19 June 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7013 3020 0000 7550 3657

Ms. Jody Russell


RE: Claim Number: N10036-2023

Dear Ms. Russell;

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 claim number N10036-2023 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-2023
Claimant	: Ms. Jody Russell
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$30,316.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 23 April 2014, Ms. Jody Russell (“the Claimant”), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$300,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.

At the time of the oil spill, the Claimant states she was a bartender at a restaurant. As a result, she states that she lost income due to lower tourism.

The NPFC denied the claim on 18 March 2014, on the basis that not only was she part of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement), the Claimant’s alleged loss was also not shown to be 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.

REQUEST FOR RECONSIDERATION:

On 11 June 2014, the Claimant sent a request for reconsideration via mail to the NPFC stating she would like the NPFC to reconsider her claim and provided additional documentation in support of her claim.

RECONSIDERATION CLAIM ANALYSIS:

The Claimant provided the following documentation on reconsideration:

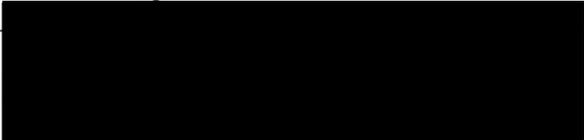
1. Email with attached reconsideration documents, dated 11 June 2014;
2. Individual Economic Loss Employer Sworn Written Statement for Claimant, dated 23 November 2013

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The Claimant requested reconsideration of her claim; however, this claim is denied because the Claimant remains part of the economic settlement class. Additionally, while the Claimant provided documentation from her employer that she lost her job and that the restaurant was affected as a direct result of the oil spill (based on its own third-party analysis and not the RP’s determination), she has not shown that the spill affected her income. Her employer writes on the Individual Economic Loss Employer Sworn Written Statement for Claimant form it submitted on her behalf to the Deepwater Horizon Claims program that she “voluntarily resigned employment.” Thus, she lost her employment willfully.

Based on the foregoing, the NPFC again denies the claim because the Claimant has failed to (1) show that she is not part of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement) and (2) demonstrate that the loss, if one had been established, was due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. This claim is denied upon reconsideration.

Claim Supervisor:	
Date of Supervisor’s review:	<i>6/19/14</i>
Supervisor Action:	<i>Denial on reconsideration approved</i>
Supervisor’s Comments:	