

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

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5890  
August 26, 2014

CERTIFIED MAIL NUMBER:  
Number: 7012 2210 0001 7215 0988

Susan Mobley



RE: N10036-2030

Dear Mr. Antalan:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number N10036-2030 involving DEEPWATER HORIZON - N10036 spill.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

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 N10036-2030.

Mail reconsideration request to:

Director  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Boulevard  
Arlington, VA 20598-7100

Sincerely,



DONNA HELLBERG  
Claims Manager  
U.S. Coast Guard

Enclosures: Claim Summary / Determination

Copy to: Susan Mobley



CERTIFIED NUMBER: 7012 2210 0001 7215 0971

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	N10036-2030
<b>Claimant:</b>	Susan Mobley
<b>Type of Claimant:</b>	Individual
<b>Type of Claim:</b>	Loss of Profits and Earnings
<b>Claim Manager:</b>	Donna Hellberg
<b>Amount Requested:</b>	\$300,000.00

### *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 19 August 2011, Mr. Michael Antalan of Antalan & Associates, LLC, on behalf of Ms. Susan Mobley ("the Claimant"), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$200,000.00 in loss of profits or impairment of earning capacity damages and \$100,000.00 in loss of subsistence use damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant states she was working for C-Logistics who was contracted with Murphy Oil at the time of the oil spill. Claimant states that she worked as a dock coordinator managing logistics of offshore equipment, supplies and servicemen at the time of the incident. She states that, because of the oil spill, her employer relocated many employees, including herself, to several temporary positions supporting BP in the spill remediation and that she was later laid off due to lack of oil field service work because the moratorium was placed on drilling in the Gulf of Mexico. The Claimant states that she received unemployment compensation for six (6) months. Claimant further stated that she finally was able to find employment with GIS in July 2011 and her letter states the total amount of income lost due to the BP spill was \$30,000.00.

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<sup>1</sup> Optional OSLF Claim Form, 15 July 2013.

The Claimant is seeking to recover \$300,000.00 in total compensation although an itemized accounting of how the alleged loss has been calculated has not been provided.

### ***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. 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, 15 July 2013;
- Cover Letter from Attorney for Claimant, 13 January 2013;
- Hardship letter by Claimant dated 9 January 2013;
- DWH EP&D Claim Form dated 10 May 2013;
- DWH EP&D Denial Notice dated 3 July 2013.

The Claimant alleged that this claim was first presented to the Responsible Party and that the RP denied payment on this claim.<sup>2</sup> On 19 August 2014, the Claimant, through its Counsel of Record, presented this claim to the NPFC, seeking \$200,000.00 in loss of profits or impairment of earning capacity and \$100,000.00 in loss of subsistence use damages. The NPFC will adjudicate the claim to the extent presentment requirements have been satisfied. If any damages subject of this claim were not first presented to and denied by the RP, these damages are denied for improper presentment.<sup>3</sup>

Evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement).<sup>4</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.

The Claimant alleged that she was laid off and was forced to file for unemployment compensation benefits as a result of the being laid off following the Deepwater Horizon oil spill.<sup>5</sup> However, the Claimant has not presented evidence to indicate whether or not her termination was due to the oil incident or other factors. Rather, the Claimant's losses appear to have been caused by changes in drilling and permitting regulations implemented after the oil spill. These losses therefore, which were not caused by "damage to real or personal property or natural

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<sup>2</sup> Optional OSLTF Claim Form, 15 July 2013.

<sup>3</sup> 33 C.F.R. § 136.103(c)(2).

<sup>4</sup> At the time of the spill, the Claimant was living within the economic settlement loss zones.

<sup>5</sup> Personal Statement, 9 January 2013.

resources” resulting from “the discharge or substantial threat of discharge of oil” are not losses that can be compensated by the OSLTF.

Additionally, the Claimant based the claim amount on totals that could not be ascertained. Claimant does not show how she derived a total alleged loss of \$300,000.00 and for how long a period she was affected by the spill. Finally, 33 USC 2712(h)(2) provides that “no claim may be presented under this section for recovery of damages unless the claim is presented within three years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care...” The statute of limitations in OPA is strictly applied, and there is no provision which allows for its waiver and as such, this claim is also denied on that basis.

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 of \$300,000.00, (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 but rather a result of the moratorium, and (3) she failed to file her claim within the statute of limitations for damage claims, 33 USC 2712(h)(2).

Claim Supervisor: *NPFC*  *Adjudication Division*

Date of Supervisor's Review: *8/26/14*

Supervisor's Action: *Denial approved*

Supervisor's Comments: