

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

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US COAST GUARD  
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4666 6440

5890/DWHZ  
13 October 2011

Glenda Brown  
[REDACTED]

RE: Claim Number: N10036-1444

Dear Ms. Brown:

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 N10036-1444 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-1444.

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	N10036-1444
Claimant	Glenda Brown
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$34,500.00

### ***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 certain individual and business claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 23 September 2011, Glenda Brown (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$34,500.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant worked for a catering company and restaurant named Taste of New Orleans from January of 2009 through 12 April 2010.<sup>1</sup> The owner of the company moved Taste of New Orleans to San Antonio, Texas on 01 May 2010.<sup>2</sup> The Claimant stated that the owner moved because “the spill affected the seafood in the Louisiana.”<sup>3</sup> The owner of the company offered the employees a chance to move with her, but the Claimant asserted that she was unable to leave her family in New Orleans and had monetary issues that prevented her from moving at that time.<sup>4</sup>

### ***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 Section 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:

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<sup>1</sup> Letter from employer to GCCF undated.

<sup>2</sup> Second letter from employer to GCCF undated.

<sup>3</sup> Letter from the Claimant to GCCF undated.

<sup>4</sup> Letter from the Claimant to GCCF undated.

- (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.
- (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.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission to the OSLTF**

To support her claim, Claimant submitted:

- 1) Optional OSLTF claim form dated 21 September 2011
- 2) Letter from employer to GCCF undated
- 3) Second letter from employer to GCCF undated
- 4) Letter from the Claimant to GCCF undated
- 5) 2008 W-2 from Department of Homeland Security
- 6) 2010 W-2 from Department of Homeland Security
- 7) 2010 W-2 from Taste of New Orleans
- 8) Social Security Card with handwritten number name and GCCF # upon it
- 9) GCCF deficiency letter dated 03 May 2011
- 10) GCCF Emergency Advance payment of \$24,000.00 on 10 November 2010

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$34,500.00.

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) with the GCCF she was assigned Claimant ID #3126925 and claim #181836.<sup>5</sup> This claim was paid \$24,000.00 on 10 November 2010.<sup>6</sup> Additionally, Claimant filed an Interim claim (ICQ22011) with the GCCF and it was assigned claim #9371931.<sup>7</sup> This claim ICQ22011 at the time of this letter is still under review by the GCCF.<sup>8</sup> Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that she lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of the Claimant's GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1444 considers and addresses the earnings claimed in both of her claims presented to the responsible party, specifically; GCCF Claim #'s 181836 (EAP) and #9371931 (ICQ22011).

### **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 or destruction or loss of real or personal property or 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 the claim. The NPFC considered all the documentation submitted by the Claimant.

In conjunction with its review of the subject claim, the NPFC requested additional information from the Claimant via certified letter on 27 September 2011.<sup>9</sup> Among the items that the NPFC requested were the Claimant's tax returns for 2008 through 2010, W-2 statements for 2009 from Taste of New Orleans and the Department of Homeland Security (the Claimant's prior employers), and contact information for the owner of Taste of New Orleans. The NPFC received the Claimant's response to the certified letter on 10 October 2011; however the Claimant failed to provide any of the aforementioned documents. The NPFC is unable to calculate the Claimant's lost earnings without information such as the Claimant's 2009 earnings from Taste of New Orleans, evidence of the number of hours the Claimant worked during 2009 and 2010. Accordingly, the Claimant has not established her sum certain as presented to the NPFC by a preponderance of the evidence.

With respect to the causation of the Claimant's alleged damages, the NPFC requested a letter of explanation by the employer evidencing the loss of earnings after the oil spill.<sup>10</sup> The Claimant responded 10 October 2011 with the same employer letter that she originally submitted to the NPFC on 23 September 2011, which the letter stated that she was let go on 12 April 2010 (eight days prior to the oil spill). As discussed above, the NPFC requested contact information for the owner of Taste of New Orleans in order to verify the reason for the business's move to San Antonio, Texas, on 01 May 2010.<sup>11</sup> The Claimant failed to respond to the NPFC's question regarding contact information for her former employer. As such, the Claimant has not established by a preponderance of the evidence that her alleged loss of earnings was due to the oil spill.

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<sup>5</sup> GCCF online status report.

<sup>6</sup> GCCF Emergency Advance payment letter dated 10 November 2010.

<sup>7</sup> GCCF online status report.

<sup>8</sup> GCCF online status report.

<sup>9</sup> USPS tracking #7011 1150 0000 4636 2670.

<sup>10</sup> USPS tracking #7011 1150 0000 4636 2670 question1.

<sup>11</sup> Second letter from employer undated. The NPFC notes that the business moved exactly ten days after the oil spill occurred.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/13/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: