

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



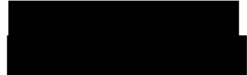
Director  
National Pollution Funds Center  
United States Coast Guard

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: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5763

5890/DWHZ  
15 December 2011

Ms. Ceola Brown



Re: Claim Number: N10036-1545

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 the claim number N10036-1545 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 N10036-1545.

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	N10036-1545
Claimant	Ms. Ceola Brown
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$10,000.00

### ***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 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 4 November 2011, Ms. Ceola Brown (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$10,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working at “Seafood City” in the Morial Convention Center in New Orleans, Louisiana.<sup>2</sup> The Claimant alleged that “after the spill, my hours decreased due to the lack of seafood.”<sup>3</sup>

The Claimant also included in her submission, a copy of a “Notice of Facility Closing,” noting the closure of the New Orleans Morial Convention Center and the layoff of all employees, including the Claimant, effective 14 July 2011.<sup>4</sup>

The Claimant seeks \$10,000.00 from the NPFC, for losses allegedly incurred due to effects of the Deepwater Horizon oil spill.<sup>5</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 § 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:

<sup>1</sup> Optional OSLTF Claim Form, dated 3 August 2011.

<sup>2</sup> Letter from the Claimant to the NPFC, 14 July 2011.

<sup>3</sup> Letter from the Claimant to the NPFC, 14 July 2011.

<sup>4</sup> Aramark, Notice of Facility Closing, 4 May 2011.

<sup>5</sup> Cover Letter, Additional Information response, 2 December 2011, noting sum certain of \$10,000.00.

- (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 this claim, the Claimant submitted the following documentation:

- Letter from the Claimant, noting sum certain of \$10,000.00, undated;
- Optional OSLTF Claim Form, 29 August 2011;
- Letter from Aramark, c/o New Orleans Morial Convention Center, noting loss of Aramark contract, dated 4 May 2011;
- Letter from Aramark, confirming the Claimant's employment, 20 June 2011;
- Letter from the Claimant, describing loss of hours at Seafood City, 14 July 2011;
- Letter from the Claimant to the GCCF, undated;
- 2010 W-2 Wage and Tax Statement, showing wages of \$16,998.85;
- Letter from Aramark, confirming the Claimant's employment, 27 October 2010;
- Pay Stub, 14 April 2010;
- Pay Stub, 17 February 2010;
- Pay Stub, 3 March 2010;
- Pay Stub, 17 March 2010;
- Pay Stub, 31 March 2010;
- Pay Stub, 8 June 2011;
- Pay Stub, 23 June 2010;

- Pay Stub, 2 February 2011;
- Pay Stub, 27 October 2010;
- Pay Stub, 29 September 2010;
- Pay Stub, 15 September 2010;
- Pay Stub, 22 December 2010;
- Pay Stub 8 December 2010.
- Cover Letter, Additional Information response, 2 December 2011, noting sum certain of \$10,000.00;
- Pay stub, 24 February 2011;
- Pay stub, 24 March 2011;
- Pay stub, 7 April 2011;
- Pay stub, 2 June 2011;
- Pay stub, 30 June 2011;
- Pay stub, 21 April 2011;
- Letter from Aramark confirming the Claimant's employment, 20 June 2011 (dup);
- Letter from the Claimant, describing loss of hours at Seafood City, 14 July 2011 (dup);
- Letter from the Claimant to the GCCF, undated (dup);
- 2010 W-2 Wage and Tax Statement, showing \$16,998.85 (dup);
- Letter from Aramark, confirming the Claimant's employment, 27 October 2011 (dup);
- Pay stub, 22 April 2010;
- Pay stub, 25 February 2010;
- Pay stub, 11 March 2010;
- Pay stub, 25 March 2010;
- Pay stub, 8 April 2010;
- Pay stub, 16 June 2011;
- Pay stub, 1 July 2010;
- Pay stub, 10 February 2011;
- Pay stub, 4 November 2010;
- Pay stub, 7 October 2010;
- Pay stub, 23 September 2010;
- Pay stub, 30 December 2010;
- Pay stub, 16 December 2010;
- GCCF Denial letter on Interim Payment/Final Payment claim, 16 August 2011;
- GCCF Denial Letter on Interim Payment/Final Payment claim, 22 April 2011;
- Letter from GCCF to the Claimant, requesting financial documentation, 31 January 2011;
- GCCF Denial Letter on Emergency Advance Payment claim, 2 November 2010;
- Aramark, Notice of Facility Closing, 4 May 2011;
- Optional OSLTF Claim Form, 29 August 2011.

On 22 September 2010, the Claimant presented an Emergency Advance Payment claim (EAP) to the RP/GCCF, seeking \$3,600.00 in loss of profits and wages damages.<sup>6</sup> The Claimant was assigned Claimant ID # 3029346 and the EAP was assigned Claim # 84247. This claim was denied by the RP/GCCF on 2 November 2010.<sup>7</sup>

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<sup>6</sup> GCCF United States Coast Guard Report, 6 December 2011.

<sup>7</sup> GCCF Denial Letter on Emergency Advance Payment Claim, 2 November 2010.

On 16 November 2010, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of 50,000.00.<sup>8</sup> The FRF was assigned claim number 9023078 and was denied by the RP/GCCF on 16 August 2011.<sup>9</sup>

On 8 August 2011, the Claimant presented a Third Quarter Interim payment claim (ICQ32011) seeking loss of profits and wages damages in the amount of \$10,000.00.<sup>10</sup> This ICQ32011 was assigned claim number 9432913 and was denied by the RP/GCCF on 22 April 2011.

On 4 November 2011, the Claimant presented this claim to the NPFC, seeking loss of profits damages in the amount of 10,000.00.<sup>11</sup> Because this claim has first been presented to and denied by the RP/GCCF, presentment requirements under OPA have been met, and the NPFC may adjudicate this claim in the full amount of \$10,000.00 as now presented to the NPFC.<sup>12</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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support this claim.

In order to prove this claim for loss of profits damages based on the Claimant's alleged reduction in hours, and eventual loss of her job at the Morial Convention Center, the Claimant must present evidence to demonstrate (1) that her earnings actually decreased following the Deepwater Horizon oil spill, and (2) that the decrease in her earnings was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In a letter dated 15 November 2011, the NPFC requested that the Claimant provide additional information to support her claim. The letter requested that the Claimant provide record of her earnings in 2008, 2009 and 2010, in order to allow the NPFC to determine whether or not the Claimant's earnings in the months of 2010 following the Deepwater Horizon oil spill, were in fact lower than her earnings in those months of the previous years.<sup>13</sup>

The Claimant responded to the request by providing copies of various pay stubs from 2010 and 2011, but failed to include requested financial documentation from previous years. Therefore, the NPFC does not have sufficient information to determine whether or not the Claimant's earnings in 2010 following the Deepwater Horizon oil spill actually decreased, as compared to her earnings in those months of previous years.

Furthermore, the Claimant has not provided evidence to demonstrate that the closing of the Morial Convention Center in New Orleans, or the alleged loss of business at Seafood City, were caused by the Deepwater Horizon oil spill.<sup>14</sup> The NPFC requested that the Claimant provide evidence to demonstrate that her employer lost revenue as a result of the Deepwater Horizon oil spill. The NPFC also requested that the Claimant provide contact information for the Claimant's former employer. The Claimant also failed to respond to these requests. Because the NPFC

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<sup>8</sup> GCCF United States Coast Guard Report, 6 December 2011.

<sup>9</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 16 August 2011.

<sup>10</sup> GCCF United States Coast Guard Report, 6 December 2011.

<sup>11</sup> Letter from the Claimant noting sum certain amount of \$10,000.00, undated.

<sup>12</sup> 33 C.F.R. § 136.103(a).

<sup>13</sup> NPFC Request for additional information, 15 November 2011.

<sup>14</sup> NPFC Request for additional information, 15 November 2011.

does not have any information regarding losses allegedly incurred by the Claimant's employer, the Claimant has not sufficiently demonstrated that any losses she may have sustained were caused by the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$10,000.00, 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.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/15/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: