

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 2304

5890/DWHZ  
3 October 2011

Nikole Thompson  


Re: Claim Number: N10036-1343

Dear Ms. Thompson:

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 your claim number N10036-1343 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. If, however 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 N10036-1343.

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

Enclosures: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1343
Claimant	Nikole Thompson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings 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 29 August 2011, Nikole Thompson (the Claimant), presented a claim to the National Pollution Funds Center (NPF) seeking \$10,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a waitress<sup>1</sup> at a Hooters Restaurant in North Port, Florida.<sup>2</sup> The Claimant asserted that the cost of seafood prices rose due to the Deepwater Horizon oil spill, which caused a lot of the restaurant's regular customers to stop coming in.<sup>3</sup> Additionally, the Claimant asserted that the "snowbirds" who travel down to North Port refrained from coming down in 2010 due to the Deepwater Horizon oil spill as well. The Claimant asserted that she suffered a reduced income in 2010 as result of the reduced patronage from both residents and snowbirds.<sup>4</sup>

### ***APPLICABLE LAW***

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPF, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

<sup>1</sup> Hand-written letter from the Claimant asserting a claim to the NPF received 29 August 2011

<sup>2</sup> 2010 W-2 Wage and Tax Statement from Hooters of Port Charlotte, Inc.

<sup>3</sup> Hand-written letter from the Claimant asserting a claim to the NPF received 29 August 2011.

<sup>4</sup> Hand-written letter from the Claimant asserting a claim to the NPF received 29 August 2011.

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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 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***

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

In support of the claim, the Claimant presented the following documentation to the NPFC:

- Hand-written letter from the Claimant asserting a claim to the NPFC, received 29 August 2011;
- 2008 Form W-2 Wage and Tax Statement from Hooters of Port Charlotte, Inc.;
- 2009 Form W-2 Wage and Tax Statement from Hooters of Port Charlotte, Inc.; and
- 2010 form W-2 Wage and Tax Statement from Hooters of Port Charlotte, Inc.

Prior to presenting this Claim to the NPFC, the Claimant filed a Full Review Final (FRF) Claim with the GCCF.<sup>5</sup> The Claimant was assigned Claimant ID # 3526243 and Claim ID # 9401607. The GCCF sent the Claimant a Final Payment Offer in the amount of \$12,827.34 on 30 June 2011.<sup>6</sup> Additionally, the

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<sup>5</sup> GCCF Claimant Status page.

<sup>6</sup> GCCF Final Payment Letter dated 30 June 2011.

GCCF sent the Claimant a Release and Covenant Not to Sue Letter on 07 July 2011.<sup>7</sup> Claimant received payment of \$12,827.34 for this claim.<sup>8</sup>

### **NPFC Determination**

The claim is denied. 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 documentation presented by the Claimant.

Based on the information available to the NPFC, the Claimant has accepted a Final Payment from the RP/GCCF in the amount of \$12,827.34 and executed a Release and Covenant Not to Sue in return for this Final Payment.<sup>9</sup> By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.<sup>10</sup> The Release executed by the Claimant specifically states:

[i]n consideration of payment in the amount of \$12,827.34, Claimant hereby releases and forever discharges, and covenants not to sue BP Exploration & Production Inc. ("BP") and the other Released Parties, [ . . . ] for any losses, damages, costs, expenses, injuries, claims, causes of actions, liabilities, or other relief that Claimant has or may have [ . . . ] arising from or relating in any way to the [Deepwater Horizon oil spill].<sup>11</sup>

Furthermore, language in the document states that:

Released Parties means anyone who is or could be responsible or liable in any way for the [Deepwater Horizon oil spill] or any damages related thereto, whether a person, company or governmental entity, including (but not limited to) BP, other potentially responsible or liable parties, including but not limited to the parties listed in Attachment A to this Release, the federal Oil Spill Liability Trust Fund and any state or local fund, and each of their respective Affiliates as defined above.<sup>12</sup>

Therefore, the Claimant has waived rights to further recovery regarding the losses presented to the NPFC. Any payment from the OSLTF requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the OSLTF.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in her request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill.

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<sup>7</sup> GCCF Release and Covenant Not to Sue Letter dated 07 July 2011.

<sup>8</sup> Report from the GCCF dated 21 September 2001 and PHONECON between the NPFC and the Claimant dated 12 September 2011.

<sup>9</sup> PHONECON between the NPFC and the Claimant dated 12 September 2011.

<sup>10</sup> GCCF Release and Covenant Not to Sue Letter dated 07 July 2011.

<sup>11</sup> GCCF Release and Covenant Not to Sue Letter dated 07 July 2011.

<sup>12</sup> GCCF Release and Covenant Not to Sue Letter dated 07 July 2011.

This claim is denied because the Claimant has accepted a Quick Pay Final Payment from the RP/GCCF, waiving any rights to further recovery regarding losses stemming from the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/2/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: