

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4803 8374

5890/DWHZ  
09 August 2012

Catering by Nikkii  


Re: Claim Number: N10036-1740

Dear Ms. Bradford:

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 N10036-1740 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 N10036-1740.

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: (1) Claim Summary/Determination Form  
(2) Documents Submitted in Support of Claim

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1740
Claimant	Ms. Nikkii Bradford
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$50,000.00

### ***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 28 March 2012, Ms. Nikkii Bradford (the Claimant) submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) on behalf of her catering business, Catering by Nikkii, seeking \$50,000.00 in loss of profits and impairment of earning capacity damages.<sup>1</sup>

At the time of the Deepwater Horizon incident, the Claimant owned and operated Catering by Nikkii, a New Orleans, Louisiana, catering company specializing in soul food.<sup>2</sup> The Claimant alleged that, because of the Deepwater Horizon incident, her clients "have been a little skeptical of dealing with seafood."<sup>3</sup> This alleged fear of seafood has resulted in cancelled events, and required the Claimant to decrease prices and increase her advertising efforts.<sup>4</sup>

As a result, the Claimant filed this claim seeking \$50,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.<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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

<sup>1</sup> Optional OSLTF Claim Form, received 28 March 2012.

<sup>2</sup> Hardship Letter, undated.

<sup>3</sup> Hardship Letter, undated.

<sup>4</sup> Hardship Letter, undated.

<sup>5</sup> Optional OSLTF Claim Form, received 28 March 2012.

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**

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, received 28 March 2012;
- Hardship Letter, undated; and
- Menu and planning pages for 28 catering events.

Prior to presenting this claim to the NPFC, the Claimant presented two claims to the RP/GCCF. The Claimant submitted the first claim, an Emergency Advance Payment (EAP) claim seeking \$32,000.00 in lost wages and earnings, on 06 October 2010. The Claimant subsequently submitted a Full Review Final (FRF) claim on 06 March 2012, seeking \$50,000.00 in lost wages and earnings. The RP/GCCF assigned Claimant ID # 3105710 to the Claimant and assigned the EAP claim #

160460 and the FRF claim # 9574990. The RP/GCCF denied payment on the EAP claim,<sup>6</sup> at the time of presentment to the NPFC, the ICQ62012 claim was pending with the RP/GCCF.

On 28 March 2012, the Claimant presented this claim to the NPFC, seeking \$50,000.00 in loss of profits and impairment of earning capacity damages.<sup>7</sup> Based upon the Claimant's submissions, it appears that the subject matter for the RP/GCCF claim is the same as the claim now before the NPFC—i.e., that a fear associated with Gulf of Mexico seafood, caused by the Deepwater Horizon incident, resulted in the Claimant suffering reduced business revenues. The NPFC deems each of the Claimant's prior claims with the RP/GCCF to satisfy OPA presentation requirements.<sup>8</sup> Accordingly, this Claim Summary and Determination addresses the damages sought in all of the Claimant's prior submissions to the RP/GCCF.

On 16 April 2012, the Claimant authorized the NPFC to obtain the file associated with her RP/GCCF claim. As of 04 June 2012, the CSSP began processing claims, and as a result, the GCCF is no longer in operation. To date, attempts to retrieve documentation submitted in support of the Claimant's RP/GCCF claim have been unsuccessful. Ultimately, it is the Claimant's responsibility to provide all documentation in support of an OSLTF claim.<sup>9</sup> As efforts to obtain the Claimant's RP/GCCF claim file have been unsuccessful, the NPFC will adjudicate this claim on the evidence actually provided by the Claimant to the NPFC.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).

#### **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.

As an initial matter, it appears that the Claimant is a member of the E&PD Settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that she is a member of the economic damages class of the E&PD Settlement, she should submit evidence to indicate that she has either opted out or is excluded from the E&PD Settlement in a request for reconsideration of this claim.

Furthermore, this claim for loss of profits and impairment of earning capacity damages is denied on its merits, as the Claimant has failed to establish either a financial loss or that her alleged loss is the

<sup>6</sup> GCCF Denial Letter, dated 14 December 2010.

<sup>7</sup> Optional OSLTF Claim Form, received 28 March 2012.

<sup>8</sup> 33 C.F.R. § 136.103(a). At the time of presentment to the NPFC, the RP/GCCF had adjudicated only the \$32,000-EAP claim. Since presentment, though, more than 90 days has passed since presenting the \$50,000-FRF claim to the RP/GCCF. As such, the NPFC deems these two claims as satisfying OPA presentation requirements. As such, the NPFC may adjudicate all \$50,000.00 in claimed loss of profits and impairment of earning capacity damages.

<sup>9</sup> 33 C.F.R. §§ 136.105(a), (e)(6).

result of the Deepwater Horizon incident. In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

The Claimant filed this claim seeking \$50,000.00 in loss of profits and impairment of earning capacity damages.<sup>10</sup> In a letter dated 29 May 2012, the NPFC requested that the Claimant provide supporting documentation and answers to questions in order to substantiate her alleged loss.<sup>11</sup> The Claimant responded only with an authorization to obtain the documentation associated with her RP/GCCF claim. As efforts to obtain that documentation have, to date, been unsuccessful, the NPFC will review the claim based on the documentation that the Claimant has submitted to the NPFC.

The Claimant has failed to provide financial documentation sufficient to prove that she sustained a financial loss in the period following the oil spill. The Claimant filed this claim seeking \$50,000.00 in loss of profits and impairment of earning capacity damages.<sup>12</sup> The Claimant has not indicated how she reached this figure.

The Claimant has provided a number of partially legible catering menus for events scheduled to occur both before and after the Deepwater Horizon incident. The Claimant alleges that a portion of these events (those scheduled for after the Deepwater Horizon incident) were cancelled due to the oil spill.<sup>13</sup> She has not, however, provided any financial documentation (or any other independently verifiable documentation) showing that she received payment for these events or refunded any money for events she alleged were cancelled. These assertions, without more, are insufficient to establish that the Claimant has indeed suffered a financial loss.

The Claimant has also failed to prove that the Deepwater Horizon incident caused her alleged financial loss. The Claimant has not provided evidence linking the Deepwater Horizon incident with her alleged losses except for an allegation that the Deepwater Horizon incident caused a fear of seafood, thereby reducing her customers' willingness to engage her services.<sup>14</sup> The Claimant has not, however, provided any documentation substantiating her allegation.

Accordingly, the Claimant's claim of \$50,000.00 is denied in its entirety because the Claimant has failed to demonstrate (1) a financial loss in the amount claimed, 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 discharge of oil. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/9/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>10</sup> Optional OSLTF Claim Form, received 28 March 2012.

<sup>11</sup> NPFC Request for Additional Information, dated 29 May 2012.

<sup>12</sup> Optional OSLTF Claim Form, received 28 March 2012.

<sup>13</sup> Hardship Letter, undated.

<sup>14</sup> Optional OSLTF Claim Form, received 28 March 2012.