

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



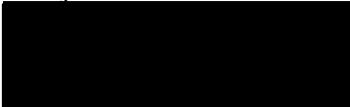
Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4803 9890

5890/DWHZ  
16 July 2012

Jody's Hair & Tan



Re: Claim Number: N10036-1841

Dear Ms. Wright:

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 N10036-1841 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 N10036-1841.

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	N10036-1841
Claimant	Jody's Hair & Tan
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$36,000.00

### ***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.

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 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

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

On 08 June 2012, Ms. Jody Pitts Wright (the Claimant), on behalf of Jody's Hair & Tan, submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$36,000 in loss of profits or impairment of earning capacity damages.<sup>1</sup>

The Claimant owns and operates Jody's Hair and Tan, a cosmetology business located in Youngstown, Florida.<sup>2</sup> The Claimant alleged that because of the Deepwater Horizon incident, her customers' incomes fell, causing them to cut back on securing her services and causing the Claimant to sustain a loss of income.<sup>3</sup>

The Claimant therefore seeks \$36,000.00 in loss of profits and impairment of earning capacity damages for economic losses sustained following the Deepwater Horizon oil spill.<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 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, signed 07 June 2012.

<sup>2</sup> Optional OSLTF Claim Form, signed 07 June 2012.

<sup>3</sup> Response to NPFC Request for Additional Information, dated 21 June 2012.

<sup>4</sup> Optional OSLTF Claim Form, signed 07 June 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**

For a list of the Claimant's submissions to the NPFC, see Enclosure 2.

Prior to submitting a claim to the NPFC, the Claimant sought compensation from the RP/GCCF, who assigned her Claimant ID # 3504980.<sup>5</sup> The Claimant has filed at least two interim payment

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<sup>5</sup> GCCF Deficiency Letter, dated 05 April 2011.

claims with the RP/GCCF, which were assigned claim numbers 9401424<sup>6</sup> and 9318531.<sup>7</sup> The RP/GCCF denied payment on both claims.<sup>8</sup>

On 08 June 2012, the Claimant presented this claim to the NPFC, seeking \$36,000.00 in loss of profits damages.<sup>9</sup> Based upon the Claimant's submissions, it appears that the subject matter for the RP/GCCF claim is identical to the claim now before the NPFC—i.e., that the Deepwater Horizon incident caused her customers' incomes to fall, resulting in them not securing the Claimant's services. The NPFC deems each of the Claimant's prior claims with the RP/GCCF to satisfy OPA presentation requirements.<sup>10</sup> Accordingly, this Claim Summary Determination addresses the damages sought in the Claimant's prior submissions to the RP/GCCF. Any damages sought by the Claimant that were not first presented to the RP/GCCF are denied for improper presentment.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP 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 income loss was due to the 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 economic damages class of the BP 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 BP Settlement, she should then submit evidence to indicate that she has either opted out or is excluded from the BP Settlement in her request for reconsideration of this claim.

Furthermore, this claim for loss of profits and impairment of earnings capacity damages would also be denied on its merits, as the Claimant has failed to establish that she has sustained a financial loss as a 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.

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<sup>6</sup> GCCF Deficiency Letter, dated 05 April 2011.

<sup>7</sup> GCCF Deficiency Denial Letter, dated 04 June 2011.

<sup>8</sup> GCCF Deficiency Denial Letter, dated 04 June 2011; GCCF Deficiency Denial Letter, dated 07 September 2011.

<sup>9</sup> Optional OSLTF Claim Form, signed 07 June 2012.

<sup>10</sup> 33 C.F.R. § 136.103(a).

The Claimant owns and operates Jody's Hair & Tan, a cosmetology business located in Youngstown, Florida. The Claimant alleged that the Deepwater Horizon incident caused her customers to suffer decreased earnings, requiring them to cut back on her services.<sup>11</sup>

In a letter dated 12 June 2012, the NPFC requested additional information from the Claimant.<sup>12</sup> The NPFC sought documentation establishing presentment to the RP/GCCF, the extent of her alleged financial loss, and contact information for customers who provided testimonials.<sup>13</sup> The Claimant partially responded to this request by providing tax documentation, correspondence with the RP/GCCF, and answers to some of the questions asked by the NPFC.<sup>14</sup>

### *1. Failure to Prove Extent of Financial Loss*

The Claimant alleged that a decrease in her customers' incomes resulted in her business incurring \$36,000.00 in lost profits.<sup>15</sup> The Claimant reached the \$36,000.00 figure by combining all of the denied interim claims first presented to the RP/GCCF, and adding to that "BP calculated [\$] 25,000 business claims."<sup>16</sup>

OPA limits compensation for loss of profits damages to "the actual net reduction or loss of earnings or profits *suffered*."<sup>17</sup> In other words, speculative, future, or prospective damages are not compensable under OPA; compensation is limited to those damages actually suffered as a result of the oil spill. As such, \$25,000 of this claim is denied as the Claimant has not established that she has actually incurred a financial loss in that amount.

The Claimant's financial documentation similarly fails to establish that she has suffered an actual financial loss totaling the remaining \$11,000. The Claimant's revenue invoices and tax documentation show that her business income fell significantly in 2009, and continued falling—though by a lesser amount—through 2010 and 2011.<sup>18</sup>

The Claimant's financial documentation does not clearly establish the amount of her alleged loss.<sup>19</sup> The NPFC requested full monthly profit and loss statements in its request for additional information,<sup>20</sup> but the Claimant failed to provide this requested documentation. Instead, the Claimant provided only two invoices from a single distributor, accounting for all purchases in 2010 and through 05 October 2011.<sup>21</sup> These invoices, however, do not indicate which of these purchases occurred before the Deepwater Horizon incident.

The Claimant has therefore failed to establish the extent of her financial loss. Accordingly, the remaining \$11,000 is denied for failure to establish a financial loss in the amount alleged.

### *2. Failure to Prove Deepwater Horizon Incident Caused Alleged Losses*

The Claimant has not met her burden to prove the required causal link between the Deepwater Horizon incident and any loss she may have incurred. As noted above, the Claimant's financial

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<sup>11</sup> Optional OSLTF Claim Form, signed 07 June 2012.

<sup>12</sup> NPFC Request for Additional Information, dated 12 June 2012.

<sup>13</sup> NPFC Request for Additional Information, dated 12 June 2012.

<sup>14</sup> Response to NPFC Request for Additional Information, dated 21 June 2012.

<sup>15</sup> Response to NPFC Request for Additional Information, dated 21 June 2012.

<sup>16</sup> Response to NPFC Request for Additional Information, dated 21 June 2012.

<sup>17</sup> 33 C.F.R. § 136.235 (emphasis added).

<sup>18</sup> Loss Calculation Summary; Monthly Revenue Invoices.

<sup>19</sup> Loss Calculation Summary; Monthly Revenue Invoices.

<sup>20</sup> NPFC Request for Additional Information, dated 12 June 2012.

<sup>21</sup> Armstrong McCall Customer Sales History.

documentation indicates that the Claimant's revenues had been declining for more than one year before the Deepwater Horizon incident.<sup>22</sup> The NPFC requested an explanation from the Claimant describing the cause of these earlier losses, and why the Deepwater Horizon incident—and not these same factors—caused the subsequent losses.<sup>23</sup> The Claimant's response to the NPFC's request for additional information did not address this point. She has therefore not provided sufficient documentation establishing either that the same factors initially causing the declining revenues had stopped by the time of the Deepwater Horizon incident, or that the Deepwater Horizon incident exacerbated these problems.

Accordingly, this claim of \$36,000 is denied in its entirety because the Claimant has not demonstrated (1) a financial loss in the amount alleged, 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. Furthermore, this claim is considered to have been settled by virtue of Claimant belonging to the economic damages class associated with the CSSP.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/16/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>22</sup> Loss Calculation Summary; Monthly Revenue Invoices.

<sup>23</sup> NPFC Request for Additional Information, dated 12 June 2012.

**ENCLOSURE 2**  
**Documents Submitted in Support of Claim**  
**Claim No. N10036-1841**

The following is a list of documents submitted by the Claimant to the NPFC in support of his claim:

- Optional OSLTF Claim Form, signed 07 June 2012;
- Three handwritten loss calculation summaries;
- Monthly revenue invoices for January 2008 through September 2011;
- Eight written testimonials from current and former customers;
- 16 business cards of current and former customers;
- Handwritten responses to NPFC Request for Additional Information, dated 21 June 2012;
- Copies of RP/GCCF correspondence;
- 2008 U.S. Individual Income Tax Return, including Schedules SE and C-EZ;
- 2009 U.S. Individual Income Tax Return, including Schedules SE and C-EZ;
- 2010 U.S. Individual Income Tax Return, including Schedules C and M;
- Armstrong McCall Customer Sales History for calendar years 2010 and 2011 through 05 October; and
- Excerpts from GCCF Interim Payment Claim Form, dated 09 March 2011.