

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  
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Arlington, VA 20598-7100  
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5890/DWHZ  
13 November 2013

Zoe's Bakery, Inc.  
c/o Buras Law Firm, LLC  
ATTN: Mr. Daniel E. Buras, Jr.  
301 N. Columbia St.  
Covington, LA 70433

Re: Claim Number: N10036-2003

Dear Mr. Buras:

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 N10036-2003 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 N10036-2003.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-2003
Claimant	Zoe's Bakery, Inc.
Type of Claimant	Corporate
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$60,048.00

***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 23 October 2013, Mr. Daniel Buras, Jr. presented a claim on behalf of his client, Zoe's Bakery Inc. ("Claimant") to the Oil Spill Liability Trust Fund (OSLTF) seeking \$60,048.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was a bakery operating out of Covington, LA. The Claimant considered itself a tourism business, managing a high-end bakery that provided bakery items to New Orleans-area restaurants. It also operated a retail establishment in Covington, LA, and states that it is one of the largest wedding cake businesses on the Gulf Coast. It states that its business was affected by the oil spill.

***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.

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;

<sup>1</sup> Claim Submission for the US District Court for the Eastern District of Louisiana.

- (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**

The Claimant submitted the following documentation in support of this claim:

- Claim Submission for the US District Court for the Eastern District of Louisiana;
- Coastal Claims Group Service Invoice for Claimant;
- Coastal Claims Group Forensic Analysis and Report for Claimant;
- 2011 W-9 Request for TIN and Certification for Claimant;
- Internal 2011 Profit and Loss Statement for Claimant;
- Internal 2010 Profit and Loss Statement for Claimant;
- Internal 2009 Profit and Loss Statement for Claimant;
- Internal 2008 Profit and Loss Statement for Claimant;
- Internal 2007 Profit and Loss Statement for Claimant
- 2011 LDR Monthly Tax Installment Payments for Claimant;
- 2010 LDR Monthly Tax Installment Payments for Claimant;
- 2009 LDR Monthly Tax Installment Payments for Claimant;
- 2008 LDR Monthly Tax Installment Payments for Claimant;
- 2002-2012 LDR Monthly Tax Filing Payments for Claimant;
- Internal 2011 Statement of Revenues and Expenses for Claimant;

- Internal 2010 Statement of Revenues and Expenses for Claimant;
- Internal 2009 Statement of Revenues and Expenses for Claimant;
- Internal 2008 Statement of Revenues and Expenses for Claimant;
- 2011 Federal Form 7004 for Claimant;
- 2010 Federal Form 1120 Tax Return for Claimant;
- 2008 Federal Form 7004 for Claimant;
- 2010 LDR State Income Tax Return for Claimant;
- 2009 Federal Form 1120 Tax Return for Claimant;
- 2009 LDR State Income Tax Return for Claimant;
- 2008 Federal Form 1120 Tax Return for Claimant;
- 2008 LDR State Income Tax Return for Claimant;
- 2007 Federal Form 1120 Tax Return for Claimant;
- 2007 LDR State Income Tax Return for Claimant;
- Client Authorization Form between Buras Law Firm, LLC and Claimant.

On 25 October 2013, the Claimant presented this claim to the NPFC, seeking \$60,048.00 in loss of profits or impairment of earning capacity. Although the Claimant includes a copy of the signed Client Authorization Form with its claim, it does not provide documentation that it was first presented to the RP and that the RP denied payment on this claim. However, the NPFC will adjudicate the claim to the extent that presentment requirements have been satisfied. If any damages subject of this claim were not first presented to and denied by the RP, these damages are denied for improper presentment.<sup>2</sup>

Evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement).<sup>3</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 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 Class. 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 the NPFC to those rights.

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 he is a member of the economic damages class of the E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, even if the Claimant was not included in the Settlement Class, this claim is denied on its merits. In order to prove a claim for loss of profits or impairment of earning capacity damages, a

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<sup>2</sup> 33 C.F.R. § 136.103(c)(2).

<sup>3</sup> At the time of the spill, the Claimant was living within the economic settlement loss zones. Additionally, claimant provides documentation to show it was located in Economic Loss Zone D.

claimant must provide evidence sufficient to prove (1) that the claimant sustained a loss or reduction in income, and (2) that the loss was caused by damage to real or personal property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

The Claimant alleged that, as a result of the oil spill, all of its business endeavors were affected. The Claimant states it hired a third-party auditing firm to look at its financials from the previous years to determine what its alleged loss is. However, these factors in and of themselves are not necessarily a direct link to the oil spill, as there are many reasons why a business may or may not have made profits. The Claimant has not provided documentation to show how its profits from 2010 through 2012 were directly affected by the spill—no evidence of canceled sales/contracts that would show causation have been provided.

Additionally, it appears that the Claimant was already experiencing a decline in profits from 2007 through 2010, based on the tax returns provided:

2007: \$687,632.00  
2008: \$637,954.00  
2009: \$481,380.00  
2010: \$375,870.00

As stated above, since the Claimant has not provided documentation to show a connection between the spill and its already declining profits, it cannot be ascertained that the Claimant experienced a loss of profits and earning capacity as a result of the oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that it sustained a financial loss in the amount of \$60,048.00, or (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:  *NPTC Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments: