

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
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5890/DWHZ
Claim # N10036-1282
12 August 2011

Samynthia W. Thomas


Re: Claim Number: N10036-1282

Dear Ms. Thomas:

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 N10036-1282 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 N10036-1282.

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	N10036-1282
Claimant	Samynthia Thomas
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$32,500.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 8 August 2011, Ms. Samynthia Thomas (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$32,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant worked as a physical education teacher at St. Mary's Academy in New Orleans, LA.² She alleged that her contract for the 2010-2011 school year was not renewed due to effects of the oil spill. Specifically, the Claimant alleged that "90% of the fishermen, foreman and longshoremen . . . had to take their children out of private school," resulting in the non-renewal of the Claimant's employment contract.³

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 Section 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:

- (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

¹ Optional OSLTF Claim Form dated 5 August 2011.

² Id.

³ Id.

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 the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 5 August 2011;
- 2010 Form W-2;
- Employment contract, St. Mary's Academy 10 July 2009;
- Letter from St. Mary's Academy, noting non-renewal of Claimant's employment contract, 26 August 2010;
- 2010 Form 1040;
- 2009 Form 1040;
- 2008 Form 1040; and
- Louisiana Workforce Commission, record of 2010 unemployment compensation.

Prior to presentation to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) to the RP/GCCF for lost profits and earnings. The Claimant was assigned Claimant ID 3162312 and EAP was assigned claim # 217120. This claim was denied on 9 November 2010.

The Claimant also presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF, which was assigned claim # 9120998, and was denied on 16 April 2011.

On 8 August 2011, the Claimant presented this claim for \$32,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. This NPFC determination will consolidate Claimant's EAP and ICQ12011, for lost profits and earnings, as previously presented to the GCCF, not to exceed \$32,500.00 as presented to the NPFC.

Earlier Claim to the OSLTF

On 17 June 2011, the Claimant presented a claim under the business name of Barbara's Academy of Dance & Music for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill to the NPFC (NPFC Claim # N10036-1005) for \$40,000.00. The Claimant asserted that her company, Barbara's Academy of Dance & Music, was affected because "[f]ishermen, Foreman, and Longshoremen parents cancelled student's contracts due to loss of wages." The NPFC denied the claim because the Claimant failed to demonstrate (1) the alleged loss of profits in the amount of \$40,000.00, or (2) that the alleged loss was due to the injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that her 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 her claim.

The NPFC reviewed all information and documentation provided by the Claimant. Documentation included a letter, allegedly written by a representative of the Claimant's employer, St. Mary's Academy in New Orleans, LA, and an employment contract, allegedly signed by Sister Jennie Jones, also of St. Mary's. Upon contacting St. Mary's Academy for verification, the NPFC was informed that neither document originated from St. Mary's, and that the signature on the contract was not theirs.

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

Claimant's request for \$32,500.00 is hereby denied because the evidence presented by the Claimant vice the detailed information provided by the employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact and as such, this claim is DENIED.

Claim Supervisor: *Clayton Arguccion Division*

Date of Supervisor's review: *8/12/11*

Supervisor Action: *Denial approved*

Supervisor's Comments: