

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
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4666 9519

5890/DWHZ
Claim # N10036-1298
13 September 2011

Angela Thomas
[REDACTED]

Re: Claim Number: N10036-1298

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 your claim number N10036-1298 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 N10036-1298.

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	N10036-1298
Claimant	Angela Thomas
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,000.00

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 11 August 2011, Angela Thomas (the Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$8,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant works as an independent hair dresser in New Orleans, Louisiana.¹ The Claimant asserted that due to the Deepwater Horizon oil spill, she lost customers from her business.² Claimant asserted that the lost customers resulted in a loss of earnings.³

The Claimant did not provide an explanation for her calculation of her sum certain of \$8,000.00 for loss of profits and impairment of earnings capacity.

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 NPFC, 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

¹ PHONECON between NPFC and Claimant dated 15 August 2011.

² Optional OSLTF Claim Form received 11 August 2011.

³ Optional OSLTF Claim Form received 11 August 2011.

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).

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

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form received 11 August 2011;
- Hand-written monthly earnings statement for period: January 2008-December 2010;
- Incomplete 2009 Form 1040 Federal Tax Return;
- Incomplete 2010 Form 1040 Federal Tax Return.

Prior to presenting this Claim to the NPFC, the Claimant filed an Interim Payment Claim Quarter II 2011 (ICQ22011) with the GCCF on 29 April 2011 for \$13,000.00 in loss of profits and impairment of earnings capacity. The Claimant was assigned Claimant ID # 3037724 and Claim ID # 9373185. The ICQ22011 Claim was denied on 07 May 2011.⁴

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of the Claimant's claim before the NPFC, i.e., that Claimant's business suffered a reduction in customers and by extension the Claimant lost income due to the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1298 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim # 9373185 (ICQ22011).

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.

The Claimant failed to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. The sole documentation initially provided by the Claimant in support of her claim consisted of handwritten profit statements from 2008 through 2010. The NPFC contacted the Claimant to discuss her claim and requested that she provide financial documentation and anything additional that would evidence she suffered a loss due to the Deepwater Horizon oil spill.⁵ In response, the only thing provided by the Claimant was two partial tax returns that didn't even indicate the Claimant had earnings from being a hair dresser. Thus, the Claimant failed to prove that she even had a hair dressing business, much less that the business suffered a loss due to the Deepwater Horizon oil spill.

Furthermore, the hand-written profit statements do not indicate that the Claimant experienced a decrease in earnings even if their veracity is assumed. Rather than showing a loss, the Claimant's profit statements indicated that the Claimant's earnings increased after the Deepwater Horizon oil spill occurred. Prior to the oil spill in 2010, the Claimant had earnings of \$4,285.00 in January through April.⁶ This was almost identical to the Claimant's earnings for those months in 2009, \$4,225.00.⁷ Conversely, in the months after the spill, the Claimant had earnings of \$8,215.00 in May – December of 2010, which was significantly more than the \$5,965.00 earned during the same months in 2009.⁸ Thus the Claimant failed to prove her earnings declined after the Deepwater Horizon oil spill.

⁴ GCCF Denial Letter dated 07 May 2011.

⁵ PHONECON between the NPFC and the Claimant dated 15 August 2011.

⁶ Hand-written monthly earnings statement for period: January 2008-December 2010.

⁷ Hand-written monthly earnings statement for period: January 2008-December 2010.

⁸ Hand-written monthly earnings statement for period: January 2008-December 2010.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that there was an alleged 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 a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *9/13/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: