

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
12/15/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6388

Maya Thomas


RE: Claim Number: N10036-1398

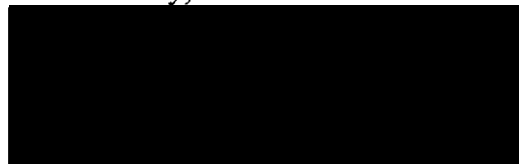
Dear Ms. Thomas:

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 claim number N10036-1398 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1398
Claimant	: Maya Thomas
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$48,125.00

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 13 September 2011, Maya Thomas (the Claimant), presented a claim to the National Pollution Funds Center (NPFC) seeking \$48,125.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill. On 28 September 2011, the Claimant amended her claimed damages to \$98,125.00.

The Claimant provides hair braiding services and also operated a business that certified other practitioners to provide hair braiding and hair wrapping services.¹ The Claimant asserted that her business depended on the tourism industry because she provided hair-braiding services on the beaches of Florida.² Further, the Claimant asserted that her business dwindled to nothing because tourists stopped coming to the area due to the Deepwater Horizon oil spill.³

Prior to presenting this claim to the NPFC, Claimant filed an Interim 3 (ICQ32011) claim with the GCCF. She was assigned Claimant ID # 3528727 and Claim # 9409844. The Claimant also filed a Full Review Final Payment (FRF) claim with the GCCF. She was assigned Claim # 9414769.⁴ The GCCF denied both of these claims⁵ and the Claimant received denial letters from the GCCF on 12 July 2011⁶ and 12 August 2011⁷.

REQUEST FOR RECONSIDERATION:

On December 9, 2011, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim.

¹Letter from the Claimant to the GCCF, dated 12 July 2011.

²Letter from the Claimant to the GCCF, dated 12 July 2011.

³Letter from the Claimant to the GCCF, dated 03 July 2011.

⁴GCCF Claimant Status Page, accessed 4 October 2011.

⁵GCCF Claimant Status Page, accessed 4 October 2011.

⁶Denial Letter on Interim Payment/Final Payment Claim, dated 12 July 2011.

⁷Denial Letter on Interim Payment/Final Payment Claim, dated 12 August 2011.

The NPFC denied the claim originally on October 5, 2011 because the Claimant failed to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that she lost earnings from her business because tourists no longer came to the St. Petersburg area due to the Deepwater Horizon oil spill. However, statistics provided by the St. Petersburg/Clearwater Area Convention & Visitors Bureau indicate that there were actually more visitors to the area in the months following the oil spill in 2010 compared to the corresponding months in 2009 (May-December).⁸

As well, those statistics indicated that visitors spent more money in the St. Petersburg area during the months following the oil spill compared to the corresponding months in 2009.⁹ This data conflicted with the Claimant's assertions that her business plummeted almost immediately following the Deepwater Horizon oil spill. In support of her contention that her business lost money, the Claimant provided a letter to the NPFC dated 15 July 2011 which indicated her alleged monthly income and losses for 2009 and 2010.¹⁰ The Claimant has not provided any information which would support her alleged income as set forth in this document. In fact her income tax records conflict with the alleged income.

Additionally, it is unclear whether the Claimant actually worked as a personal hair braider in 2010. In 2009, the Claimant's tax return included Schedule C's from both her hair braiding and her hair braiding certification school.¹¹ However, in 2010 the Claimant only filed a Schedule C from her hair braiding certification school.¹² Even then, the earnings that the Claimant asserted for January through April of 2010 were not reflected in the 2010 tax return. The Claimant presented gross earnings of \$27,500.00¹³ for January through April of 2010, but the Claimant's tax return indicated gross earnings of only \$7,478.00 for all of 2010.¹⁴

Lastly, the damages claimed by the Claimant included future costs to reestablish her business.¹⁵ However, under 33 CFR § 136.235, "the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*."¹⁶ Therefore, ancillary costs such as those to reestablish the Claimant's business are not compensable by the OSLTF because they are future costs that have not yet been incurred.

Accordingly, this claim was denied because the Claimant failed to meet her burden to demonstrate 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.

⁸ St. Petersburg/Clearwater Area – 2010 Annual Visitor Profile, accessed at: <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>

⁹ St. Petersburg/Clearwater Area – 2010 Annual Visitor Profile, accessed at: <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>

¹⁰ Letter from the Claimant to the GCCF with 2009 and 2010 monthly income, dated 15 July 2011. The NPFC notes that the Claimant did not indicate any earnings starting at the beginning of May and running through December of 2010.

¹¹ 2009 U.S. Individual Income Tax Return.

¹² 2010 U.S. Individual Income Tax Return.

¹³ Letter from the Claimant to the GCCF with 2009 and 2010 monthly income, dated 15 July 2011.

¹⁴ 2010 U.S. Individual Income Tax Return.

¹⁵ Letter from the Claimant amending sum certain, dated 28 September 2011.

¹⁶ Emphasis added.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on December 9, 2011. The Claimant provided a one-page letter that requested her claim be reconsidered. The Claimant provided no new information pertinent to her alleged losses in support of her request for reconsideration nor was her reconsideration request timely. The Claimant's request for reconsideration was received four days after the 60-day deadline mandated in the denial dated October 5, 2011.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The request for reconsideration was a one-page letter with no new information in support of her alleged loss. Further, the request for reconsideration was not timely received by December 5, 2011.

Based on the evidence presented to the NPFC, the Claimant provided no new evidence or information to support the request for reconsideration. More importantly, the NPFC advised the Claimant in her October 5, 2011 that her request for reconsideration had to be made within 60 days and the Claimant failed to meet the time requirement for presenting a valid reconsideration therefore she has again failed to demonstrate that she has suffered a loss 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.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: *12/15/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: