

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  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7835

5890/DWHZ  
Claim # N10036-1446  
08 December 2011

Chardis Thomas  
[REDACTED]

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 N10036-1446 involving Deepwater Horizon. 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 N10036-1446.

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	N10036-1446
Claimant	Chardis Thomas
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,400.00

### ***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 26 September 2011, Chardis Thomas (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,400.00 for loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

The Claimant has provided little documentation that explains her claim. Her federal income tax returns show her occupation is hair styling.<sup>1</sup> Her OSLTF Claim Form does not describe how the oil spill caused her loss of earnings.<sup>2</sup> A letter from the Claimant refers to her preparing and serving seafood.<sup>3</sup> However, there is no documentation showing earnings from preparing and serving food. The NPFC sent the Claimant a letter requesting further information about her claim. She did not respond to the letter.<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 waters or adjoining shorelines or the exclusive economic zone, as described in § 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.

<sup>1</sup> Federal Income Tax Returns for 2008, 2009 and 2010

<sup>2</sup> OSLTF Claim Form dated 16 September 2011 signed by the Claimant

<sup>3</sup> Letter from Claimant dated 08 August 2011 describing her claim

<sup>4</sup> NPFC letter to the Claimant dated 24 October 2011 requesting additional information

- (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 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 undertake, 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 this claim, Claimant submitted the following documentation:

- OSLTF Claim Form dated 16 September 2011 signed by the Claimant
- Alabama Conservation License, 7-days Resident Saltwater Fishing 10-17 April 2010
- Alabama Drivers License
- Letter from Claimant dated 08 August 2011 describing her claim
- Federal Income Tax Returns for 2008, 2009 and 2010

On 24 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 18 November 2011, the Claimant stated she had not received the letter and on the same date, NPFC faxed the Claimant a copy of the letter. As of the date of this determination, the Claimant has not responded to the letter requesting additional information.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF for \$9,000.00. The claim was assigned Claimant ID #3413181 and claim #489459.<sup>5</sup> The EAP claim was denied on 08 December 2010.<sup>6</sup> Additionally, Claimant filed an

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<sup>5</sup> GCCF On-Line Claim Status Report

<sup>6</sup> GCCF Denial Letter dated 08 December 2011

Interim Payment (ICQ32011) claim with the GCCF in the amount of 8,400.00. The claim was assigned claim #9489200.<sup>7</sup> The ICQ32011 claim was denied on 08 November 2011.<sup>8</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., the Claimant lost earnings as a result of the Deepwater Horizon oil spill. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1446 considers and addresses the loss of earnings up to the amount of \$8,400.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #489459 EAP and #9489200 ICQ32011.

### **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 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. 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 Claimant has insufficient documentation to support her alleged loss of earnings from the Deepwater Horizon oil spill or to show that her loss is due to oil spill. The Claimant stated that she did not receive the NPFC letter requesting additional information. NPFC then faxed the letter to the Claimant 18 November 2011.<sup>9</sup> On 30 November 2011, the NPFC Claims Adjuster extended the deadline on her response to the letter to 03 December 2011.<sup>10</sup> As of this date, the Claimant has not responded to the request for additional information.

This claim is denied because the Claimant failed to meet the 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: *Claims Adjudication Division*

Date of Supervisor's Review: *08 December 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>7</sup> GCCF On-Line Claim Status Report

<sup>8</sup> GCCF Denial Letter dated 08 November 2011

<sup>9</sup> Telephone conversation between the Claimant and the NPFC Claims Adjuster 18 November 2011

<sup>10</sup> Telephone conversation between the Claimant and the NPFC Claims Adjuster 30 November 2011