

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 1570 0001 4802 8368

5890/DWHZ
22 December 2011

Adana Thomas
[REDACTED]

Re: Claim Number: N10036-1602

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 N10036-1602 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 N10036-1602.

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	N10036-1602
Claimant	Adana Thomas
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$5,000.00

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 07 December 2011, Adana Thomas, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$5,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant attempted to obtain employment with an Old Navy retail store in Pier Park in Panama City Beach, Florida.¹ The Claimant asserts that due to the Deepwater Horizon oil spill, Old Navy experienced decreased sales volume coupled with an uncertain business environment regarding the long-term impact of the oil spill.² As a result, the Claimant asserts Old Navy was unable to hire her.³ Without being hired by Old Navy, the Claimant asserts she suffered reduced income.⁴

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$5,000.00.

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).

¹ Letter from the Claimant dated 28 November 2011.

² Letter from the Claimant dated 28 November 2011.

³ Letter from the Claimant dated 28 November 2011.

⁴ Letter from the Claimant dated 28 November 2011.

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 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

The Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form dated 07 December 2011 and received 07 December 2011;
- Letter from the Claimant dated 28 November 2011;
- GCCF Interim Payment Claim Form;
- 2008 Form 1040 Federal Income Tax Return;

- 2009 Form 1040 Federal Income Tax Return;
- 2010 Form 1040 Federal Income Tax Return;
- GCCF Letter dated 28 October 2011.⁵

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP1) Claim with the GCCF for loss of profits and impairment of earnings capacity.⁶ The Claimant was assigned Claimant ID # 3220340 and Claim ID # 275127. The EAP1 was denied on 04 November 2010.⁷ Additionally, the Claimant filed an Emergency Advance Payment (EAP2) Claim with the GCCF for loss of subsistence use of natural resources.⁸ The Claimant was assigned Claim ID # 275181. The EAP2 Claim is currently in the review process and no determination has yet been made.⁹ Additionally, the Claimant filed an Emergency Advance Payment (EAP3) Claim with the GCCF for physical injury/death.¹⁰ The Claimant was assigned Claim ID # 275245. The EAP3 Claim was denied on 23 November 2010.¹¹ Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF.¹² The Claimant was assigned Claim ID # 9166545. The FRF was denied on 03 June 2011.¹³

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims regarding loss of profits and impairment of earnings capacity is the same as the subject matter of her claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill the Claimant was unable to be hired by Old Navy and as a result suffered reduced income. The NPFC deems that the Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1602 considers and addresses the earnings claimed in the claims presented to the responsible party regarding loss of profits and impairment of earnings capacity, specifically; GCCF Claim #'s 275127 (EAP1) and 9166545 (FRF).

Regarding GCCF claims filed by the Claimant regarding loss of subsistence use and damages due to physical injury/death, the NPFC has not received any claims from the Claimant regarding subsistence or physical injury/death damages. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1602 does not consider or address the claims presented to the responsible party involving loss of subsistence and physical injury/death damages, specifically; GCCF Claim #'s 275181 (EAP2) and 275245 (EAP3).

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.

⁵ The Claimant has marked over the printed date on the letter and written 29 November 2011 next to it.

⁶ GCCF Claimant Status page.

⁷ GCCF Denial Letter dated 04 November 2010.

⁸ GCCF Claimant Status page.

⁹ GCCF Claimant Status page.

¹⁰ GCCF Claimant Status page.

¹¹ GCCF Denial Letter dated 23 November 2010.

¹² GCCF Claimant Status page.

¹³ GCCF Denial Letter dated 03 June 2011.

The Claimant asserted that, due to the Deepwater Horizon oil spill, she was unable to be hired by Old Navy.¹⁴ The NPFC contacted Old Navy to verify the Claimant's assertions and connect her loss to the Deepwater Horizon oil spill. The NPFC was informed that the Deepwater Horizon oil spill had no impact on the Claimant's ability to obtain employment with Old Navy.¹⁵ Indeed, the NPFC was informed that the Claimant was hired around Thanksgiving 2010 and completed the store orientation process, but afterwards failed to show up for work and never again returned for work at Old Navy.¹⁶

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.

The Claimant's request for \$5,000.00 is denied because the evidence presented by the Claimant, vice the detailed information provided by the Claimant's former employer as outlined above, demonstrates that the Claimant has made a material misrepresentation of fact in the information she provided as the basis for her claim in order to obtain funds from the Federal Government under false pretenses.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/22/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁴ Letter from the Claimant dated 28 November 2011.

¹⁵ PHONECON between the NPFC and Old Navy dated 19 December 2011.

¹⁶ PHONECON between the NPFC and Old Navy dated 19 December 2011.