

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
23 May 2012

Mr. Tyrus T. Thomas
[REDACTED]

Re: Claim Number: N10036-1683

Dear Mr. 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 N10036-1804 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 N10036-1683.

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	N10036-1683
Claimant	Mr. Tyrus T. Thomas
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$12,000

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 10 February 2012, Mr. Tyrus T. Thomas (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$12,000 in loss of profits and earning capacity resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was a longshoreman for Pacorini Global Services, where he had been employed since 2005.² According to a letter sent by Pacorini on the Claimant's behalf, Pacorini's corporate office in Houston, TX, issued an order to cease all operations on 22 April 2010.³ One week later, Pacorini extended this order indefinitely.⁴ Pacorini rescinded the order on 01 August 2010.⁵

The Claimant alleges that he was unable to work during the cease order, and, as a result, lost \$12,000 in wages.⁶ The Claimant did, however, receive \$594 in unemployment compensation during this time.⁷

In a letter dated 03 April 2012, NPFC requested additional information from the Claimant.⁸ NPFC asked the Claimant to provide the following documents:

- Employment letter stating the Claimant's actual earnings and how much he should have earned during the period in question (22 April 2010 through 01 August 2010);
- Signed copies of U.S. Individual Income Tax Returns for 2009 and 2011, including all schedules;
- All Forms 1099 for 2009 and 2010;
- W-2s for 2009 and 2010 from all employers; and

¹ Optional OSLTF Claim Form, signed on 26 January 2012.

² Employer Verification Letter, dated 15 October 2010.

³ Cease Order Verification Letter, dated 7 November 2011.

⁴ Cease Order Verification Letter, dated 7 November 2011.

⁵ Cease Order Verification Letter, dated 7 November 2011.

⁶ Optional OSLTF Claim Form, signed on 26 January 2012.

⁷ Response to Additional Information Request, signed 10 April 2012; 2010 Form 1040, U.S. Individual Income Tax Return.

⁸ Additional Information Request, dated 03 April 2012.

- Any paystubs from April 2010 through August 2010, or alternatively, bank statements showing deposits of earned money.⁹

The Claimant responded with a letter of his own, dated 10 April 2012.¹⁰

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 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. 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 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; and
- (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.

⁹ Additional Information Request, dated 03 April 2012.

¹⁰ Response to Additional Information Request, signed 10 April 2012.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed on 26 January 2012;
- Page one of GCCF Follow-Up to Previous Denial Letter, dated 12 October 2011;
- Employment Verification Letter from Pacorini Global Services, dated 15 October 2010;
- Letter from Pacorini Global Services describing the Claimant's inability to fulfill his offshore employment work as a result of the oil spill;
- 2010 Form 1040, U.S. Individual Income Tax Return;
- Photo Identification, which includes a copy of the Claimant's driver's license, as well as a number of employer and workplace identification cards; and
- Letter responding to NPFC's request for additional information, dated 10 April 2012.

Prior to presenting this claim to the NPFC, the Claimant presented an Emergency Advance Payment Claim (EAP), a Second Quarter Interim Payment Claim (ICQ22011), and a Full Review Final Claim (FRF) to the GCCF.¹¹ The Claimant submitted the EAP on 14 October 2010, the ICQ22011 on 26 May 2011, and the FRF on 25 October 2011. The GCCF assigned Claimant ID # 3181262 to the Claimant, and assigned the EAP claim # 236631, the ICQ22011 claim # 9389710, and the FRF claim # 9389806.¹² The GCCF denied payment on the EAP and ICQ22011 claims, and appears to have not taken action on the FRF claim since receiving it.¹³

On 10 February 2012, the Claimant presented this claim to the NPFC, seeking \$12,000 in loss of profits and earning capacity damages.¹⁴ Because the Claimant first presented this claim to the GCCF, who denied the claim or has not acted upon the claim within 90 days, the NPFC may adjudicate this claim.

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, 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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss. Furthermore, for claims alleging loss of profits and earning capacity damages, "compensation is limited to the actual net reduction or loss of earnings or profits suffered."¹⁵

Any damages that the Claimant has submitted to account for future losses or speculative damages are denied.

¹¹ GCCF Claimant Status, accessed on 21 May 2012.

¹² GCCF Claimant Status, accessed on 21 May 2012.

¹³ GCCF Claimant Status, accessed on 21 May 2012.

¹⁴ Optional OSLTF Claim Form, signed on 26 January 2012.

¹⁵ 33 C.F.R. § 136.235.

The Claimant is seeking \$12,000 in loss of profits and earning capacity damages.¹⁶ The Claimant calculated these losses by averaging the earnings through the relevant portion of the year—22 April 2010 through 01 August 2010.¹⁷

The Claimant alleged that he received \$594 in unemployment compensation during the time he was unable to work as a longshoreman.¹⁸ Because “compensation is limited to the actual *net* reduction or loss of earnings or profits suffered,”¹⁹ \$594 of the claim is denied as “income from alternative employment of business undertaken.”²⁰

Claimant alleges that he lost \$12,000 in earnings because of Pacorini’s cease order.²¹ As NPFC has denied \$594 of this claim, the following analysis applies only to the remaining \$11,406 in claimed losses.

In a letter dated 03 April 2012, NPFC asked the Claimant to provide supporting documentation to help prove his alleged loss, including a letter from his employer quantifying how much the Claimant actually earned and should have earned during the cease order, prior and subsequent year tax returns (including schedules), Form 1099 for 2009 and 2010, W-2s for all employers for 2009 and 2010, and any paystubs (or, alternatively, bank statements showing deposits from earned income) from the relevant time period.²²

The Claimant failed to provide any of the requested documents. When addressing the employment letter request, the Claimant directed the NPFC to the employment letter sent with his original submission package.²³ That letter did not address the requested information—i.e., how much the Claimant actually earned and should have earned during 22 April 2010 and 01 August 2010.²⁴

The Claimant alleged that he had already sent in signed copies of his 2009 and 2011 tax returns, but stated that he would include copies with the response to NPFC’s additional information request as well.²⁵ The Claimant did neither. The Claimant submitted only his 2010 Form 1040 with his original submission, but did not include the associated Schedule C, which would outline where \$22,789 in business income came from.²⁶

The Claimant also did not provide his Form 1099 for 2009 and 2010, claiming that they were “non applicable.”²⁷ Similarly, the Claimant did not provide W-2s for 2009 and 2010, saying that they need to be reissued.²⁸ The Claimant did not indicate whether he had taken any action to have those W-2s reissued.²⁹ Finally, the Claimant says that he does not have the pay stubs from April 2010 through August 2010, and did not address the alternative request for bank statements.³⁰

¹⁶ GCCF Claimant Status, accessed on 21 May 2012.

¹⁷ Response to Additional Information Request, signed 10 April 2012.

¹⁸ Response to Additional Information Request, signed 10 April 2012.

¹⁹ 33 C.F.R. § 136.235.

²⁰ 33 C.F.R. § 136.235.

²¹ Optional OSLTF Claim Form, signed on 26 January 2012.

²² Additional Information Request, dated 03 April 2012.

²³ Response to Additional Information Request, signed 10 April 2012.

²⁴ Cease Order Verification Letter, dated 7 November 2011.

²⁵ Response to Additional Information Request, signed 10 April 2012.

²⁶ 2010 Form 1040, U.S. Individual Income Tax Return, page 1.

²⁷ Response to Additional Information Request, signed 10 April 2012.

²⁸ Response to Additional Information Request, signed 10 April 2012.

²⁹ Response to Additional Information Request, signed 10 April 2012.

³⁰ Response to Additional Information Request, signed 10 April 2012.

On the information that the Claimant provided, it is impossible to determine whether or not the Claimant sustained a financial loss. Despite NPFC efforts to obtain relevant information, the Claimant has not provided any sort of income history to compare to his 2010 earnings. Without that information, NPFC cannot determine if the Claimant has suffered a financial loss in the first place.

The Claimant's submissions show only that he made \$27,484 in wages, \$22,789 in business income, and \$594 in unemployment compensation. Without W-2s, NPFC cannot determine the source of the wages, and without a Schedule C, the NPFC cannot determine the source of the business income. NPFC similarly cannot determine to what extent, if any, this business income may have offset any wages the Claimant might not have received due to Pacorini ceasing operations.

Because the Claimant has failed to prove a financial loss in the first instance, he has also failed to prove that the Deepwater Horizon oil spill caused a loss. As such, the Claimant has failed to meet his burden on either required showing.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$11,406, 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.

Accordingly, the Claimant's claim of \$12,000 is denied in its entirety.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/23/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: