

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1695
Claimant	: Sidney Lynn Thompson
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$179,181.00

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 21 February 2010, Mr. Sidney Thompson (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$29,181.00 in loss of profits damages, as well as \$150,000.00 in real or personal property damage resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant owned three properties in Gulf Shores, Alabama, and alleges to have sustained losses related to each property, including (1) depreciation in property value, and (2) loss of rental income. The Claimant first alleges that the oil spill caused depreciation in the Claimant's property values on two properties: unit A203 in Beach Club, and unit 1408 in Admiral's Quarters.² The two properties were sold on 20 August 2010³ and 17 October 2011⁴ for a total of \$150,000.00 less than the pre-spill appraised values. The Claimant asserts that this reduction from appraised value to sales price is a loss attributable to the oil spill, which the Claimant categorized as real or personal property damage.⁵ The NPFC re-categorized this component of the claim as a claim for loss of profits and impairment of earning capacity damages in the amount of \$150,000.00.

The Claimant also alleged to have sustained lost rental income on three properties located in Gulf Shores: (1) Admirals Quarter, unit 1408, (2) Beach Club, unit A203, and (3) Beach Colony, unit E1B in the amount of \$29,181.00.

Prior to presentment of this claim to the NPFC, the Claimant initially presented a claim to BP and was compensated by BP in the amount of \$16,533.00.⁶

The Claimant subsequently presented claims to the GCCF for both himself, as an individual (GCCF Claimant ID 1133500), and for Thompson Enterprises LLC, that is owned/managed by Claimant and his wife, Paulette Thompson (GCCF Claimant ID 3054571). Thompson

¹ Optional OSLTF Claim Form signed on 9 February 2012.

² Claim Calculation document.

³ Settlement Statement, Admirals Quarters 1408,

⁴ Settlement Statement, Beach Club A203.

⁵ Optional OSLTF Claim Form, signed on 9 February 2012.

⁶ GCCF Determination Letter on Interim Payment/Final Payment Claim, 26 August 2011.

Enterprises LLC accepted interim and final payments from the GCCF totaling \$36,111.85.⁷ Furthermore, Claimant received payments as an individual from the GCCF totaling \$32,433.00. In total Claimant and the LLC were compensated at least \$68,544.85 by BP and the GCCF.⁸

The Claimant was offered full and final settlement in the amount of \$25,000.00, which the Claimant has not accepted as of the April 2, 2012, the date that the NPFC denied the initial claim. This finding was affirmed by the GCCF in a Re-Review Determination Letter dated 4 February 2012.⁹

REQUEST FOR RECONSIDERATION:

The Claimant requested reconsideration which was received by the NPFC on April 19, 2012, 2012 via regular mail. The Claimant provided a one-page letter requesting reconsideration. The Claimant provided no new information in support of the request for reconsideration but acknowledged that he and his wife executed a Release and Covenant Not to Sue for the \$25,000 final payment on June 17, 2011. He argued that the final payment and release was for Thompson Enterprises LLC and did not affect his or his spouse's right to further payment as individuals. He maintains that since claims of individuals were tracked by the GCCF under different ID numbers the claims and rights were distinct.

NPFC Determination on Reconsideration

The Oil Pollution Act of 1990 provides that the payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the Claimant or State to recover from the responsible party. 33 U.S.C. § 2712(f).

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.

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. On reconsideration, Claimant seeks to be reimbursed for \$179,181 in lost profits as an individual. He argues that he and his wife executed the Release and Covenant Not to Sue in the capacity as manager and co-manager of Thompson Enterprises LLC, not as individuals; therefore, he is entitled to reimbursement for his lost profits presented to the Fund.

This argument fails for two reasons. First, the Release signed by Claimant and his wife as manager and co-manager of Thompson Enterprises, LLC specifically applies to,

all of a claimant's "affiliates," including a claimant's "spouse, heirs, beneficiaries, agents, estates, executors, administrators, personal representatives, subsidiaries,

⁷ GCCF Release and Covenant Not To Sue (For Business Claimants), signed on 17 June 2011.

⁸ GCCF Determination Letter on Interim Payment/Final Payment Claim, 26 August 2011.

⁹ GCCF Claimant Status, accessed on 22 March 2012.

parents, affiliates, partners, limited partners, members, joint venturers, *shareholders*, et al. (emphasis added).¹⁰

Because the Claimant and his wife are the sole shareholders of Thompson Enterprises, by accepting final payment on behalf of the company, the Claimant released any rights to further recovery regarding injuries allegedly caused by the Deepwater Horizon oil spill, to the RP/GCCF. As stated in the release:

“[r]eleased Parties means anyone who is or could be responsible or liable in any way for the Incident or any damages related thereto, whether a person, company or governmental entity, including . . . the federal Oil Spill Liability Trust Fund”

Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the Fund. The subrogation of the Claimant’s rights to BP is made clear in the release by the following language:

“... As this Release is fully and completely resolving, together with all other Claims, Claimant’s claim under OPA, BP is hereby subrogated to any and all rights that Claimant has arising from the Incident.”

Second, Claimant’s argument that the rights of Thompson Enterprises are distinct from his rights as an individual is disingenuous. He sought and received reimbursement of certain of his alleged lost profits from GCCF as an individual and the same alleged lost profits as Thompson Enterprises. Also, a review of the administrative record reflects that while he and his wife owned two of the properties as individuals the financing for those properties was provided by Thompson Enterprises LLC. Therefore, the Claimant as an individual and the Claimant and his wife as manager and co-manager of Thompson Enterprises LLC are not distinguishable.

Based on the foregoing, this claim is denied upon reconsideration on the grounds that Claimant, when he and his wife executed the Release and Covenant Not to Sue in their capacities as manager and co-manager of Thompson enterprises LLC, released all their rights to BP/GCCF and have no rights that can be acquired by the Oil Spill Liability Trust Fund to recover from the responsible party.

Claim Supervisor: ***Thomas Morrison***

Date of Supervisor’s review: ***5/16/12***

Supervisor Action: ***Denial on reconsideration approved***

Supervisor’s Comments:

¹⁰ GCCF Release and Covenant Not To Sue (For Business Claimants), signed on 17 June 2011.

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: 800-280-7118
E-mail:
[REDACTED]@uscg.mil
Fax: 703-872-6113

5890
5/16/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 9822

Sidney Lynn Thompson
[REDACTED]

RE: Claim Number: N10036-1695

Dear Mr. Thompson:

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 N10036-1695 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.

Sincerely,

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form