

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  
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Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 1-800-280-7118  
E-mail: arl-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4666 7898

5890/DWHZ  
26 August 2011

Thelma Lee Williams  
c/o Amanda G. Proujan, Esq.  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, South Carolina 29401

Re: Claim Number: N10036-1210

Dear Ms. Proujan:

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 N10036-1210 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 N10036-1210.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

  
Claims Adjudication Division  
National Pollution Funds Center  
U.S. Coast Guard

Copy: Thelma Lee Williams  
125 South Refinery Street  
Lafayette, LA USPS Certified Receipt: 7011 1150 0000 4666 9564  
Enclosure: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1210
Claimant	Thelma Lee Williams
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$35,000.00

### ***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 03 August 2011, Amanda G. Proujan, Esq., on behalf of Thelma Lee Williams (collectively Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$35,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant is employed by Hercules Offshore in Houston, TX.<sup>1</sup> Hercules Offshore provides contract drilling services for the offshore oil and gas exploration and production industry.<sup>2</sup> The Claimant asserted that due to the Deepwater Horizon oil spill, Hercules Offshore reduced her work hours which resulted in a loss of income.<sup>3</sup>

Claimant did not provide an explanation for her calculation of her sum certain of \$35,000.00.

### ***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).

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:

<sup>1</sup> Optional OSLTF Claim Form received 03 August 2011.

<sup>2</sup> <http://www.herculesoffshore.com> (last visited 18 August 2011).

<sup>3</sup> Optional OSLTF Claim Form received 03 August 2011.

- (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 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***

#### **Claimant's Submission to the OSLTF**

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

- Optional OSLTF Claim Form received 03 August 2011;
- Letter from Amanda G. Proujan, Esq. to the NPFC dated 27 July 2011;
- NPFC Optional OSLTF Claim Form Instructions;
- GCCF Denial Letter dated 16 July 2011;
- Letter from Douglas M. Schmidt, Esq. to the GCCF regarding association of Nexsen Pruet, LLC dated 11 March 2011;
- Retainer Agreement Oil Spill/Discharge between Claimant and Douglas M. Schmidt, Esq. dated 21 January 2011;
- Letter from Claimant to Douglas Schmidt, Esq. dated 5 February 2011;
- Print-outs from Hercules Offshore website at [http://www.herculesoffshore.com/about\\_overview.html](http://www.herculesoffshore.com/about_overview.html);
- Pay statements for dates: 13 March 2010, 27 March 2010, 10 April 2010, 24 April 2010, 17 July 2010, 20 August 2010, 27 August 2010;
- Pay stubs for dates: 07 January 2011 and 14 January 2011;
- 2010 W-2 from Hercules Offshore Services LLC;
- 2009 W-2 from Hercules Offshore Services LLC;
- Internal Revenue Service Wage and Income Transcript for tax period ending December 2009; and
- Internal Revenue Service Wage and Income Transcript for tax period ending December 2008.

Prior to presenting this Claim to the NPFC, the Claimant filed a Full Review Final (FRF) Payment Claim with the GCCF on 23 May 2011 in the amount of \$35,000.00.<sup>4</sup> She was assigned Claimant ID # 3507885 and Claim ID # 9332045. Claimant's FRF Claim was denied on 16 July 2011.<sup>5</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for Claimant's FRF claim with the GCCF is the same as the subject matter of her claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, Claimant's hours were reduced at Hercules Offshore which resulted in a loss of income. The NPFC deems that Claimant's FRF claim was properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1210 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim # 9332045 (FRF).

Claimant's Optional OSLTF Claim form indicates that the Claimant filed a claim in the multidistrict litigation now pending in the United States District Court for the Eastern District of Louisiana (MDL-2179 In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf Of Mexico, on April 20, 2010) against BP (the "MDL").<sup>6</sup> Although the NPFC may not approve and certify the payment of a claim during the pendency of an action by the person in court to recover costs which are the subject of the claim, the NPFC may adjudicate such a claim to determine whether it may be compensable.<sup>7</sup> Where appropriate, such a claim may be denied.

#### **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.

This claim is denied because the Claimant has not proven that she suffered a financial loss due to the Deepwater Horizon oil spill. Claimant failed to provide a connection between her purported loss and the Deepwater Horizon oil spill. In her submission to the NPFC, the Claimant stated that "[t]he BP Spill prompted a moratorium on drilling which was imposed after the spill. The Claimant works for Hercules Offshore, which is a provider of offshore contract drilling, liftboat, and inland barge services. Her hours/income decreased after the spill due to the moratorium."<sup>8</sup> Further, the Claimant provided print-outs from Hercules Offshore's website which confirms that the company is "a leading global provider of offshore contract drilling."<sup>9</sup> Accordingly, the Claimant has not established that her alleged loss was the result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

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<sup>4</sup> Report from the GCCF dated 22 August 2011.

<sup>5</sup> GCCF Denial Letter dated 16 July 2011.

<sup>6</sup> Optional OSLTF Claim form received 03 August 2011

<sup>7</sup> See 33 C.F.R. § 136.103 (d)

<sup>8</sup> Optional OSLTF Claim Form received 03 August 2011.1

<sup>9</sup> Print-outs from Hercules Offshore website at [http://www.herculesoffshore.com/about\\_overview.html](http://www.herculesoffshore.com/about_overview.html)

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

Date of Supervisor's Review: *8/26/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: 