

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 4957

5890/DWHZ
07 October 2011

Chanell Thomas


RE: Claim Number: N10036-1356

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 claim number N10036-1356 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. 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 N10036-1356.

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	N10036-1356
Claimant	Chanell Thomas
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$22,000.00

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 31 August 2011, Chanell Thomas (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$22,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant alleged she lost hours and her job because of the negative effects of the Deepwater Horizon oil spill on the seafood industry.¹

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 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.
- (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

¹ Optional OSLTF claim form numbers nine and ten. The Claimant did not indicate the nature of her employment.

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

To support her claim, Claimant submitted:

- 1) Optional OSLTF claim form dated 23 August 2011.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$22,000.00.

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 12 October 2010 in the amount of \$8,000.00.² She was assigned Claimant ID #3152150 and claim #207159, this claim was paid by the GCCF in the amount of \$7,000.00.³ Additionally, Claimant filed a Quick Pay claim with the GCCF and was assigned GCCF #9104875 which the GCCF paid.⁴ The Claimant signed a release and covenant not to sue to obtain the \$5,000.00 Quick Pay from GCCF. Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that she had impairment of earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two paid GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1356 considers and addresses the earnings claimed in both of the claims presented to the responsible party, specifically; GCCF Claim #'s 207159 (EAP) and 9104875 Quick Pay.

² Report from the GCCF dated 21 September 2011.

³ Report from the GCCF dated 21 September 2011.

⁴ Report from the GCCF dated 21 September 2011.

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 NPFC considered all the documentation submitted by the Claimant.

Based on information presented by the Claimant and information available to the NPFC, the GCCF paid a total of \$12,000.00 to the Claimant as compensation for her claim.⁵ According to information from the GCCF, the Claimant executed a Release and Covenant Not to Sue in return for the Quick Payment.

This claim is denied because it appears from the record that the Claimant has fully settled her claims with BP/GCCF, and that BP and GCCF have compensated the Claimant, including a \$5,000.00 Quick Payment for which GCCF reportedly required a final and full release of rights against any Responsible Party.

The Claimant has not addressed these payments or otherwise provided any information to show the Claimant has any rights to recover any of the amount claimed here from a Responsible Party. The Fund will not pay what has already been compensated and any Fund payment is subject to acquiring all rights to recover from the Responsible Party.

If the Claimant disagrees with this determination to deny the claim based on being compensated and signing a release, she may request reconsideration. Should the Claimant decide to request reconsideration, the Claimant MUST provide any and all documentation of any payments received from BP or GCCF, including any related agreements or releases signed by the Claimant.

If the Claimant disagrees that any payments that have been received from BP or GCCF, or that any payments received are for damages other than those subject of her claim for \$22,000.00 to the NPFC, the Claimant must explain the circumstances in detail.

If the Claimant disagrees that she has signed any release associated with her claims against the Responsible Party, including any release in return for a Quick Payment, the Claimant must fully explain the circumstances in her request for reconsideration. Therefore, this claim is denied as the Claimant has been compensated.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/7/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ Report from the GCCF dated 21 September 2011.