

U.S. Department of
Homeland Security

**United States
Coast Guard**



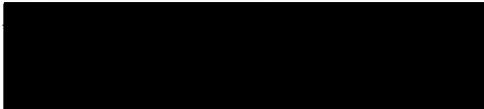
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 9630

5890/DWHZ
23 July 2012

Rapid Claims Recovery



Re: Claim Number: N10036-1815

Dear Mr. Jones:

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 N10036-1815 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 N10036-1815.

Mail reconsideration requests to:

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

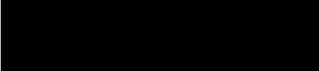
Sincerely,



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

Enclosure: Claim Summary/Determination Form

CC: Mr. Byron A. Thompson



By Certified Mail:
7011 1570 0001 4803 9623

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1815
Claimant	Mr. Byron A. Thompson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$50,000

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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 23 May 2012, Mr. Chris Jones, on behalf of Mr. Byron A. Thompson (the Claimant), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$50,000 in loss of profits and impairment of earning capacity damages.¹

At the time of the Deepwater Horizon incident, the Claimant served as a college recruiter for Everest University.² The Claimant alleges that the Deepwater Horizon incident "impaired the reputation of Florida schools."³ This impaired reputation resulted in a "declining rate of out of state students enrolled," which in turn caused the Claimant to lose his job.⁴ The Claimant was let go from his position in August of 2010, and seeks to recover income allegedly lost from September 2010 until the date of this claim submission.⁵

The Claimant filed this claim seeking \$50,000 in loss of profits and impairment of earning capacity damages as a result of the Deepwater Horizon incident.⁶

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

¹ Optional OSLTF Claim Form, signed 03 May 2012.

² Optional OSLTF Claim Form, signed 03 May 2012; 2010 Form W-2, Wage and Tax Statement.

³ Optional OSLTF Claim Form, signed 03 May 2012.

⁴ Optional OSLTF Claim Form, signed 03 May 2012.

⁵ Email from the Claimant, responding to request for additional information, 7 June 2012.

⁶ Optional OSLTF Claim Form, signed 03 May 2012.

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. § 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 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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the OSLTF under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form, signed 03 May 2012;
- Representation Agreement with Rapid Claims Recovery, signed 03 May 2012;
- Representation and Consent Affidavit, signed 03 May 2012;
- Affidavit of Mr. Thomas J. Williams Jr., signed 12 April 2012;
- Affidavit of Dwana Udom, dated 14 April 2012;
- E-mailed verbatim copy of Affidavit of Dwana Udom, undated;
- Invoice, Rapid Claims Recovery, dated 10 May 2012;

- Payroll Details for the Claimant for pay periods ending 27 December 2007 through 05 August 2010;
- 2008 Form W-2;
- 2009 Form W-2;
- 2010 Form W-2;
- 2010 Form 1099-G;
- 2011 Form 1099-G;
- Two e-mails responding to NPFC Request for Additional Information;
- Rapid Claims Recovery Calculation Sheet; and
- Rapid Claims Recovery Employment Verification Form.

Prior to presenting this claim to the NPFC, the Claimant presented a Second Quarter Interim Payment Claim (ICQ22011), a Fifth Quarter Interim Payment Claim (ICQ52012), and a Full Review Final Claim (FRF) to the GCCF. The GCCF assigned Claimant ID # 3528403 to the Claimant,⁷ and assigned the ICQ22011 claim # 9407996,⁸ the ICQ52012 claim # 9581160,⁹ and the FRF claim # 9584275.¹⁰ The GCCF denied payment on all claims.¹¹

On 23 May 2012, the Claimant presented this claim to the NPFC, seeking \$50,000 in loss of profits and earning capacity damages.¹² Based upon the Claimant's submissions, it appears that the subject matter for the previously submitted GCCF claim is identical to that now before the NPFC—i.e., that the Claimant suffered reduced earnings as a result of the Deepwater Horizon incident. The NPFC deems each of the Claimant's prior claims with the GCCF to satisfy OPA presentation requirements.¹³ Accordingly, this Claim Summary and Determination addresses the damages claimed in the Claimant's prior submission to the RP/GCCF. Any damages which may be included in this claim, which were not first presented to the RP/GCCF are denied for improper presentment.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

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.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

⁷ GCCF Denial Letter, dated 09 July 2011.

⁸ GCCF Denial Letter, dated 09 July 2011.

⁹ GCCF Denial Letter, dated 13 April 2012.

¹⁰ GCCF Denial Letter, dated 18 May 2012.

¹¹ GCCF Denial Letter, dated 09 July 2011; GCCF Denial Letter, dated 13 April 2012; GCCF Denial Letter, dated 18 May 2012.

¹² Optional OSLTF Claim Form, dated 03 May 2012.

¹³ 33 C.F.R. § 136.103(a).

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the BP Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

Furthermore, this claim for loss of profits and impairment of earning capacity damages is denied on its merits, as the Claimant has failed to establish that he has sustained a financial loss as a result of the Deepwater Horizon incident. In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

At the time of the Deepwater Horizon incident, the Claimant was a college recruiter for Everest University.¹⁴ The Claimant alleges that the Deepwater Horizon incident harmed the reputation of Florida schools, and as a result enrollment for out-of-state students fell.¹⁵ According to the Claimant, this drop in enrollment ultimately caused him to lose his job in August 2010.¹⁶

In a letter dated 29 May 2012, NPFC requested that the Claimant provide certain additional information to substantiate his claim.¹⁷ For example, the NPFC requested financial documentation and evidence verifying the Claimant's employment.¹⁸ The Claimant provided a limited response to this request, supplying only a loss calculation sheet, an incomplete employment verification form addressing very few of the points requested, and brief responses to most questions asked.

1. Financial Loss

The Claimant alleged that the loss of his job caused him to sustain \$50,000 in loss of profits and impairment of earnings capacity damages.¹⁹ The Claimant stated that "the [\$]50,000 loss was computed by Rapid Claims Recovery [the Claimant's representative]."²⁰ It is unclear how the Claimant's representative reached this figure.

Financial documentation included in this claim submission indicates that based on his 2009 income, the Claimant's wages decreased by \$16,043.23 in 2010 and \$28,602.00 in 2011.²¹ The reduction in income appears to be due almost entirely to the Claimant's loss of his position in August of 2010.

In his response to the NPFC's request for additional information, the Claimant stated that he has "tried to generate income from other entities of volunteering and Handy Man type work for now."²² In calculating loss of profits damages, OPA requires that the NPFC consider "all income from alternative employment or business undertaken."²³ However, other than records of unemployment income, the Claimant has not provided documentation establishing either the source or the amount of income earned following the loss of his position in August of 2010. The NPFC is therefore unable to determine the extent of the Claimant's alleged financial loss in the period following the Deepwater Horizon incident.

¹⁴ Employment Verification Form, dated 19 June 2012.

¹⁵ Optional OSLTF Claim Form, dated 03 May 2012.

¹⁶ Optional OSLTF Claim Form, dated 03 May 2012.

¹⁷ NPFC Request for Additional Information, dated 29 May 2012.

¹⁸ NPFC Request for Additional Information, dated 29 May 2012.

¹⁹ Optional OSLTF Claim Form, dated 03 May 2012.

²⁰ Response to NPFC Request for Additional Information, dated 07 June 2012.

²¹ 2009 Form W-2; 2010 Form W-2; Payroll Details for pay periods ending 08 January 2009 through 05 August 2010.

²² Response to NPFC Request for Additional Information, dated 07 June 2012.

²³ 33 C.F.R. § 136.235(b).

Based on the foregoing, the Claimant has not provided documentation sufficient to establish the extent of any financial loss he may have suffered, as he has not provided proof of all earnings following the oil spill. Accordingly, the Claimant has failed to provide documentation establishing that he has suffered a financial loss in the amount alleged.

2. *Failure to Prove Deepwater Horizon Incident Caused Alleged Losses*

The Claimant has also failed to provide documentation establishing that the Deepwater Horizon incident caused his alleged financial loss. The NPFC requested that the Claimant provide evidence indicating that his employer's business was indeed affected by the Deepwater Horizon incident.²⁴ The Claimant did not provide this information when responding to the NPFC's request.

The Claimant's submissions do not establish that he was terminated due to the Deepwater Horizon incident. As noted above, the NPFC requested that the Claimant provide an employment verification letter explaining, among other things, the reason for the Claimant's termination.²⁵ The Claimant provided an incomplete employment verification form, which fails to address the information requested by the NPFC—information such as how the Claimant's performance was measured, the scope of his responsibilities, and the reason for his termination.²⁶ As a result, the Claimant's documentation does not establish that the Deepwater Horizon incident, as opposed to some other reason, was the impetus for the Claimant's termination.

Accordingly, this claim of \$50,000 is denied in its entirety because the Claimant has not demonstrated (1) a financial loss in the amount alleged, 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. Furthermore, this claim is denied because it is considered to have been settled by virtue of Claimant belonging to the economic damages class associated with the CSSP, and is therefore not eligible for OSLTF compensation.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/23/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

²⁴ NPFC Request for Additional Information, dated 29 May 2012.

²⁵ NPFC Request for Additional Information, dated 29 May 2012.

²⁶ Employment Verification Form, dated 19 June 2012.