

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 1325

5890/DWHZ
16 July 2012

Rhonda Andersen


Re: Claim Number: N10036-1824

Dear Florida BP Claims Inc.:

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 N10036-1824 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 N10036-1824.

Mail reconsideration requests to:

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


Signature

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

Enclosure: Claim Summary/Determination Form

cc: Rhonda Andersen


By Certified Mail:
No. 7011 1570 0001 2446 1240

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1824
Claimant	Snappy Processing & Consulting
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$32,653.00

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.

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 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 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT

On 29 May 2012, Rhonda Andersen (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$32,653.00 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 owns an S Corporation named Snappy Processing and Consulting located in St. Petersburg, Florida.¹ She works as a mortgage processor in conjunction with realtors and mortgage brokers and has done so since she started in 2004.² The Claimant alleges that she lost earnings due to a decline in sales from realtors that referred buyers to her as a result of the Deepwater Horizon oil spill.³

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 § 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:

¹ Claimant's letter dated 02 February 2012.

² Claimant's letter dated 02 February 2012.

³ Claimant's hardship letter dated 07 May 2012 and three 3rd party letters dated 07, 08, and 08 May 2012.

- (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

To support her claim, the Claimant submitted:

- Optional OSLTF claim form dated 07 May 2012
- Florida BP claims cover letter undated
- GCCF denial letter on Interim Payment/Final Payment claim dated 12 April 2012
- Claimant's hardship letter dated 07 May 2012
- Claimant's letter dated 02 February 2012
- 2008 Form 1120S U.S. Income Tax Return for an S Corporation
- 2009 Form 1120S U.S. Income Tax Return for an S Corporation
- 2010 Form 1120S U.S. Income Tax Return for an S Corporation
- Monthly gross sales data for 2008 through 2011
- Letter from Wagner Realty dated 08 May 2012
- Letter from Frank T Hurley Associates Inc Realtors dated 08 May 2012
- Letter from Emil Sulieman from Re/Max Action First dated 07 May 2012
- Article titled "BP oil spill's effects need watching dated 17 February 2012
- Article titled "Oil from Deepwater Horizon spill still causing damage in gulf 2 years later, scientists find" dated 14 April 2012
- Florida Dept of State Division of Corporations Annual Reports filed 2009, 2010, and 2011
- Copy of FL drivers license

- Florida Office of Financial Regulation License: Expiration 31 December 2011
- Map and location of Claimant's business address
- Claimant's response to NPFC's request for additional information dated 11 June 2012
- 2010 W-2 from Yesner & Boss PL for \$28,660.24
- 2010 W-2 from AIM Mortgage Corp for \$6,904.22
- 2010 1099-MISC from Team National Inc for \$1,530.29
- 2010 1099-MISC from Gulf Coast Realty Seminole LLC for \$6,809.60
- 2010 1099-MISC from Downtown Partners Inc for \$11,400.00
- 2010 W-2 from FBC Mortgage LLC for \$4,188.61
- 2010 Form 1040 U.S. Individual Income Tax Return

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$32,653.00.

Prior to presenting his claim to the NPFC, the Claimant filed an Interim Payment claim (ICQ52012) with the GCCF and was assigned Claimant ID #3576535 and claim #9563226.⁴ This claim was denied on 12 April 2012.⁵ Additionally, the Claimant filed an Interim Payment claim (ICQ62012) and was assigned GCCF claim ID #9600527.⁶ This claim was denied.⁷

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 his claim before the NPFC, i.e., that he lost earnings as a result of the Deepwater Horizon oil spill. Presentment requirements are therefore satisfied to the extent that the damage amount now before the NPFC does not exceed that presented to the GCCF. Any damages now presented to the NPFC, which were not first presented to the GCCF, are denied for improper presentment. Accordingly, this Claim Summary determination for NPFC Claim N10036-1824 considers and addresses the earnings claimed in both claims presented to the responsible party, specifically; GCCF Claim #'s 9563226 (ICQ52012) and 9600527 (ICQ62012).

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 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.

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.

⁴ Report from the GCCF's online status page.

⁵ GCCF denial letter on Interim payment/Final payment claim dated 12 April 2012.

⁶ Report from the GCCF's online status page.

⁷ Report from the GCCF's online status page.

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 she is a member of the economic damages class of the BP Settlement, then she should submit evidence to indicate that she has either opted out or is excluded from the BP Settlement in her request for reconsideration of this claim.

Furthermore, this claim would be denied under OPA's loss of profits damage category, as the Claimant has failed to prove that she has sustained a financial loss as a result of the Deepwater Horizon oil spill.

In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant operates Snappy Processing and Consulting, an S Corporation⁸ specializing in mortgages and processing of mortgages located in St. Petersburg Florida.⁹ The Claimant states she "had a dozen mortgage brokers also sending me their loans to process" and the company "I was hanging my license with went out of business after the spill in May 2010."¹⁰

The Claimant states "the recession that we endured in Florida (as you can see took a 50% drop in my income in 2009) was terrible enough but the Oil Spill was the straw that broke all of our backs and decreases my income an additional 75% from 2009."¹¹ According to the Claimant's Form 1120S tax returns, Snappy Processing & Consulting Company's net income decreased by 86% year over year from \$30,853.00 in 2008 to \$4,422.00 in 2009.¹² In 2010 the Claimant reported her earnings as a schedule C business on her form 1040 U.S. Individual tax return.¹³ In 2010 she claimed \$8,340.00 in revenues and the same amount in cost of goods sold thus recording \$0.00 in net income.¹⁴

The Claimant also lists \$8,340.00 on line 39 of her Schedule C under "other costs," however she did not provide statement 2 which details the costs.¹⁵ The Claimant submitted three 1099s from 2010, two of which total \$8,339.89 combined¹⁶ but did not report¹⁷ her 1099 from Downtown Partners in the amount of \$11,400.00 on her 2010 form 1040.¹⁸ The Claimant does report a nonpassive loss from Schedule K-1 for Snappy Processing and Consulting in the amount of \$13,178.00, however no Schedule K-1 for 2010 was provided.¹⁹ Based on the documentation provided, it is unclear that the Claimant earned less net income in 2010 than her reported 2009 net income of \$4,422.00.²⁰

While the Claimant has provided full tax returns for 2008 through 2010, the level of detail provided in the returns does not provide the granular level of financial detail that would allow a fact finder to ascertain how the Claimant experienced or was able to offset their alleged financial loss.

⁸ 2008 & 2009 Forms 1120 S.

⁹ Claimant's letter of explanation dated 07 May 2012.

¹⁰ Claimant's letter of explanation dated 07 May 2012.

¹¹ Claimant's letter of explanation dated 07 May 2012.

¹² 2008 & 2009 Forms 1120 S.

¹³ 2010 Form 1040 U.S. Individual Income Tax Return.

¹⁴ 2010 Form 1040 U.S. Individual Income Tax Return Schedule C.

¹⁵ 2010 Form 1040 U.S. Individual Income Tax Return Schedule C and statement 2 not provided.

¹⁶ 2010 1099 from Team national Inc. for \$1,530.29 plus 2010 1099 from Gulf Coast Realty Seminole for \$6,809.60 equals \$8,339.89.

¹⁷ The Claimants form 1040 for 2010 has wages of \$39,753.00 which are accounted for by three W-2s from Yesner & Boss for \$28,660.24 plus ATM Mortgage Corp for \$6,904.22 plus FBC Mortgage for \$4,188.61 totaling \$39,753.05.

¹⁸ 2010 1099 from Downtown Partners for \$11,400.00.

¹⁹ Form 1040 U.S. Individual Income Tax Return for 2010 Schedule E.

²⁰ 2009 Form 1120S.

Accordingly, the Claimant has not established her sum certain as presented to the NPFC by a preponderance of the evidence.

The Claimant alleges that the Deepwater Horizon oil spill made her mortgage brokers lose sales which would have been passed onto her, thus resulting in lost earnings after the oil spill.²¹ The Claimant correctly shows that her claim is dependent upon other people's lost sales. The Claimant provided three letters from mortgage brokers stating they had people back out of deals due to the oil spill.²² The NPFC requested that the Claimant provide cancelled contracts, explain where the earnest money went, and asked whether she performed her duties prior to the sale to see if people met financing contingencies or after the offer was placed, however none of these were provided.²³

Since the claim is dependent upon other people providing work for the Claimant, each of those people would have to produce their lost contracts which would have been passed on to Snappy Processing & Consulting, explain where the earnest money went, and be found compensable under the Oil Pollution Act to add credibility to her claim. For example, the NPFC would require proof that the mortgage brokers stopped doing business with Snappy Processing & Consulting due to the Deepwater Horizon oil spill specifically as opposed to a myriad of other factors affecting the mortgage broker/real estate industry as a whole such as the state of the economy, the collapse of the Florida real estate market, and the national mortgage crisis and consequent tightening of the regulatory environment affecting lending institutions. Based on the foregoing, the Claimant has failed to demonstrate that the oil spill resulted in her alleged loss of income.

This claim is therefore denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$32,653.00 (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, and (3) because the Claimant is considered to have settled her claim by virtue of belonging to the economic damages class associated with the CSSP.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/16/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

²¹ Claimant's letter of explanation dated 07 May 2012.

²² Letters from Lynda Melnick, Joan Walker, and Emil Sulieman.

²³ NPFC's request for additional information dated 30 May 2012 at question 9.