

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 7476

5890/DWHZ
17 April 2013

Majesty Title Services, LLC



Re: Claim Number: N10036-1899

Dear Ms. Powers:

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 N10036-1899 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 N10036-1899.

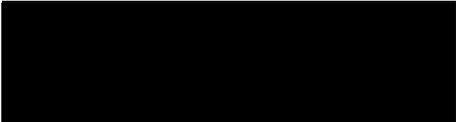
Mail reconsideration requests to:

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

Sincerely,



Operations Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination
cc: 

By Certified Mail:
No. 7011 1570 0001 4803 7483

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|---|
| Claim Number | N10036-1899 |
| Claimant | Majesty Title Services |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits or Impairment of Earning Capacity |
| Amount Requested | \$191,138.94 |

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 2 April 2013, Ms. Jennifer Powers, on behalf of Majesty Title Services, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$191,138.94 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant describes itself as a "Title and Settlement company based in Tampa that covers the entire state, with a focus on the west coast from the Panhandle to Lee County." The Claimant "represent[s] several asset management companies that sell homes that were in foreclosure."

The Claimant alleged that the oil spill caused a "loss of revenue in the statewide resale market" from about May through December of 2010. Using 2009 as a basis for comparison, the Claimant alleged that the oil spill caused the company to close on approximately 103 fewer sales than in the year prior to the oil spill. As such, the Claimant seeks to recover the revenue that would have been generated on those sales, totaling \$191,138.94.²

¹ Document entitled, "BP Oil Claim."

² Document entitled, "BP Oil Claim."

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.

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. Part 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 Fund 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 NPFC

The Claimant submitted the following documentation in support of this claim:

- Claim cover letter, 14 August 2012;
- Screenshot of GCCF Claim Information page;
- Email from the Claimant to the GCCF, 26 July 2011;
- BP Claim description;
- List of support documents/exhibits;
- Exhibit A: Closed Orders Report, pre-oil spill;
- Exhibit B: Closed Orders Report, post-oil spill;
- Exhibit C: 2009 orders pre-oil spill;
- GCCF Deficiency Letter, 2 July 2011;
- Response to Deficiency letter, 2 July 2011;
- Profit and Loss Statement, May 2010 – June 2011;
- Florida Department of Financial Services, business license;
- 2008 Form 1065, showing gross sales of \$1,225,570.00;
- 2008 supporting tax documentation;
- Profit and Loss Statement, January 2010 – April 2010;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 9 July 2011.

The Claimant first attempted to recover the losses that are the subject of this claim through the GCCF. The GCCF assigned the Claimant ID # 3527054 and denied payment on the claim in a letter dated 9 July 2011.

On 2 April 2013, the Claimant presented this claim to the NPFC, seeking to recover \$191,138.94 in loss of profits or impairment of earning capacity damages resulting from the effects of the Deepwater Horizon oil spill. Because this claim was first presented to and denied by the Responsible Party, the Claimant has satisfied OPA presentment requirements.³

However, evidence in this claim submission fails to indicate whether or not the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).⁴

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 may be a member of the E&PD Settlement Class. If so, this claim would be considered to have been settled, and the Claimant would be 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 the NPFC to those rights.

³ 33 C.F.R. § 136.103(a).

⁴ The Claimant has not provided evidence to indicate that they have opted out or are excluded from the E&PD Settlement Class.

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

Furthermore, this claim is also denied on its merits. In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction in income, and (2) that the financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

Here, the Claimant alleged that the oil spill caused a reduction in the number of home sales in Florida, resulting in a loss of revenue in 2010 in the amount of \$191,138.94.⁵ However, the Claimant has not provided evidence to prove that the reduction in their business actually caused the Claimant to sustain a financial loss. Rather, evidence in their claim submission indicates that the Claimant anticipated the loss and restructured the organization to prevent the business from losing profits in 2010. In a statement describing their alleged losses, the Claimant stated that they were forced to lay off three employees "to prepare for the loss of business" caused by the oil spill. Furthermore, the Claimant stated that "[h]ad we not laid off these people we would have lost money in 2010."⁶

According to 33 C.F.R. § 136.235,

the amount of compensation allowable 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 . . . (d) any saved overhead or normal expenses not incurred as a result of the incident.⁷

Therefore, if the Claimant was able to avoid losses in 2010 by reducing payroll expenditures, the Claimant would not have suffered a compensable loss under OPA's loss of profits or impairment of earning capacity damage category. Furthermore, the Claimant has not provided business financial documentation for 2009, 2010 or 2011 to indicate the extent to which the oil spill may have actually impacted business earnings. Therefore, the Claimant has failed to prove that they have sustained an uncompensated financial loss from May through December of 2010.

In addition to failing to prove an uncompensated financial loss, the Claimant failed to provide evidence to prove that the business was affected in some way by the discharge of oil resulting from the Deepwater Horizon oil spill. In order to demonstrate that the decrease in the Claimant's business was caused by the Deepwater Horizon oil spill, the Claimant provided evidence indicating that from 21 April through 31 December 2009, the Claimant closed 305 sales in the state of Florida. For the same period of 2010, the Claimant closed only 202 sales. However, the Claimant has not provided evidence to prove that the reduction in property sales was caused by oil spill or to prove that sales decreased in particular areas of Florida which were actually affected by oil pollution.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that they sustained a financial loss in the amount \$191,138.94 or (2) that the alleged loss is due to the injury, destruction, or loss of property or natural resources as a

⁵ Document entitled "BP Oil Claim."

⁶ Document entitled "BP Oil Claim."

⁷ 33 C.F.R. § 136.235(d).

result of a discharge or substantial threat of discharge of oil. Additionally, this claim may have been settled by virtue of the Claimant belonging to the E&PD Settlement class.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/17/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: