

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7012 2210 0001 7215 0131

5890/DWHZ  
1 May 2013

Janet Boyd Huber  
[REDACTED]

Re: Claim Number: N10036-1911

Dear Janet Huber,

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 N10036-1911 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 N10036-1911.

Mail reconsideration requests to:

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

Sincerely,  
[REDACTED]

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

Enclosure: Claim Summary/Determination

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1911
Claimant	Janet Huber
Type of Claimant	Private (US)
Type of Claim	Real or Personal Property/Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$83,400.00

### ***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 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 25 April 2013, Janet Huber, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$83,400.00 in losses based on diminution in property value.<sup>1</sup>

The Claimant owns a condominium unit in Perdido Key, Florida. The Claimant alleged that the oil spill caused the value of the property to decrease from \$560,000.00 to \$476,000.00. The Claimant reasoned that because she was offered \$560,000.00 for the property in November of 2009, and the home appraised for \$476,000.00 in July of 2012, the oil spill caused the value of the property to decrease by \$83,400.00. The Claimant stated that "th[e] devaluation is directly attributable to damage from the BP oil spill, because there have been no other events between Jan 2010 and today which could have affected the value so seriously."<sup>2</sup>

In attempting to recover these alleged losses, the Claimant "joined the class action lawsuit led by the Plaintiff's Steering Committee in October of 2011" and "was forced to settle with the GCCF for \$23,500.00."<sup>3</sup> The Claimant now seeks to recover \$83,400.00, which is the entirety of her claimed loss amount.

### ***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

<sup>1</sup> Optional OSLTF Claim Form, signed on 19 April 2013.

<sup>2</sup> Claim cover letter, 19 April 2013.

<sup>3</sup> Claim cover letter, 19 April 2013.

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.

In order to prove a claim for Real or Personal Property damage under OPA, 33 C.F.R. § 136.215 requires that a claimant provide evidence to prove, in part:

- (1) An ownership or leasehold interest in the property;
- (2) That the property was injured or destroyed;
- (3) The cost of repair or replacement; and
- (4) The value of the property both before and after injury occurred.
  - (b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish –
- (5) That the property was not available for use and, if it had been, the value of that use;
- (6) Whether or not substitute property was available and, if used, the costs thereof; and
- (7) That the economic loss claimed was incurred as a result of the injury to or destruction of the property.

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:

- Optional OSLTF Claim Form, signed on 19 April 2013;
- Claim cover letter including damage calculation, 19 April 2013;
- Letter from BP, Claim Determination Notification, Claim #: 1002592-01, 30 March 2013;
- Letter to the Claimant from Friedman Leak, 20 October 2011;
- Sales contract showing purchase price of \$560,000.00, dated 7 November 2009, unsigned;
- Property appraisal, 18 July 2012;
- Appraiser certification;
- Copy of warranty deed, 2 February 2005;
- Copies of photographs of beach, labeled 6 December 2011;

The Claimant previously presented this claim to the GCCF, who denied payment on the claim.<sup>4</sup> The Claimant then joined the class action lawsuit as a member of the Economic and Property Damage class, and settled the claim for \$23,500.00. Thereafter, the Claimant submitted the claim to the BP Claims program, which denied the claim on the basis that it had been previously settled through litigation.<sup>5</sup>

Because this claim has been presented to and denied by the Responsible Party, this claim meets OPA presentment requirements.<sup>6</sup>

#### **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.

1. This claim has been settled and is not eligible for compensation under OPA.

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. Because the Claimant is a member of the E&PD Settlement

<sup>4</sup> Letter from Friedman leak to the Claimant, 20 October 2011.

<sup>5</sup> Letter from the BP Claims Program to the Claimant, 30 March 2013.

<sup>6</sup> 33 C.F.R. § 136.103(c)(2).

class, this claim has been settled, and the Claimant is ineligible to recover funds from the OSLTF.

2. Failure to prove financial loss caused by the oil spill.

Furthermore, this claim is also denied on its merits. In order to prove a claim based on the loss of value a property, a claimant must provide evidence to prove (1) that the property was sold at a loss, and (2) that the decrease in property value was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. In the alternative, the Claimant could prove that a particular sales contract was cancelled due to the oil spill, and that the Claimant later sold the property at a price lower than what was previously contracted for.

The Claimant here has not sold the property, and has therefore not realized a financial loss. Furthermore, evidence presented by the Claimant is insufficient to prove that any reduction in the value of the property was caused by the oil spill. The difference between a sales offer in November of 2009 and an appraisal in July 2012 is not, without more, evidence that the value of the property decreased by a certain amount, nor is it sufficient to prove that any decrease in value was caused by the oil spill.

Based on the foregoing, this claim is denied because (1) it has been settled and is therefore not eligible for compensation from the OSLTF, (2) the Claimant has failed to prove that she sustained a financial loss in the amount \$83,400.00, and (2) the Claimant failed to prove 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 discharge of oil.

  
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/1/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: