

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: 7010 0780 0001 8634 2319

5890/DWHZ

30 August 2013

Ms. Jeanette Taylor



Re: Claim Number: N10036-1977

Dear Ms. Taylor,

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 N10036-1977 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 N10036-1977.

Mail reconsideration requests to:

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



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

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1977
Claimant	Jeanette Taylor
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$2,274.37

***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 8 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 14 August 2013, Ms. Jeanette Taylor ("the Claimant"), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$2,274.37 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the spill, the Claimant wished to vacation with her family in Dauphine Island, which is located off the coast of Alabama where Mobile Bay meets the Gulf of Mexico. Though aware of the on-going oil spill and subsequent incident response, she decided to book her vacation as she was told by the realtor and the news that "the oil was not at Dauphin Island yet and it didn't look like it would be there for awhile." When she went to book, "the house that [they] stay in every year was rented out to contractors that were there to perform oil spill clean up when the oil did come," resulting in her decision to book a more expensive house for the week. The day following the family's arrival, the beach became oiled and was closed, which meant no swimming, walking, or beachcombing. Furthermore, the protective berm that was being built in anticipation of the oil coming ashore, ruined the Claimant's view of the waves washing ashore. The Claimant also argues that the noise and presence of the trucks from 7:00 AM until 7:00 PM made the area around the house noisy and dangerous.

As a result of the spill ruining her vacation, the Claimant states that she lost money due to: swim gear that the children were unable to use (and would grow out of it by the next year); pool passes purchased so that the children could swim during the week; fuel used to get to and from the vacation rental; groceries purchased for the vacation week; and the more expensive house costs, all of which would not be reimbursed by the realty that rented it to her.

In total, the Claimant estimated to have lost \$2,274.37 in payments made and costs arising from a ruined vacation as a result of the oil spill.

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

## ***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:

- Optional OSLTF Claim Form, signed on 2 August 2013;
- Claimant Cover Letter, 2 August 2013;
- BP Claims Program Cover Letter, 15 March 2013;
- BP Claims Program Letter, 25 June 2013;

- BP Claims Program Letter, 26 October 2012;
- GCCF Email from Claimant, 2 September 2010;
- GCCF Response Email, 3 September 2010;
- GCCF Claim Description List for Claimant;
- USCG NPFC Claimant Inquiry Response Letter, 18 July 2013
- BP Claims Program Denial Letter for Claimant, 15 July 2013;
- BP Claims Letter to Claimant, 5 April 2013;
- BP Claims Center Contact Notes for Claimant;
- Deepwater Horizon Claims Center Incompleteness Denial Notice, 11 February 2013;
- GCCF Claim Submission, 31 December 2010;
- Personal Audit of Claim made by Claimant;
- Boardwalk Realty Rental Confirmation Letter;
- Boardwalk Realty Refund Reply Letter to Claimant, 19 October 2010;
- AL Dept. of Health Pollution Release, 1 June 2010;
- Flamingo Fae Pool Access receipts; 8 June 2010;
- Miscellaneous third-party receipts for food, gas and personal items

Prior to presenting this claim to the NPFC, the Claimant submitted multiple claims to the RP through the GCCF and BP Claims Program. Both programs denied payment due to the Claimant not demonstrating her alleged loss was a result of the oil spill.<sup>2</sup>

On 14 August 2013, the Claimant presented this claim to the NPFC, seeking to recover \$2,274.37 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.

#### **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 E&PD Settlement Class. 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 the NPFC to those rights.

Furthermore, even if the Claimant was not included in the Settlement, this claim is also denied on its merits. In order to prove a claim for loss of profits or impairment of earning capacity damages, a claimant must provide evidence sufficient to prove (1) that the claimant sustained a loss or reduction in income, and (2) that the loss was caused by damage to real or personal property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

The alleged loss is due to personal decisions made by the Claimant to (1) rent a house in Dauphin Island that was not only different than the house she normally rents, but more expensive and non-refundable; (2) purchase swim shoes and gear for family members that was allegedly not used during the vacation or at any point afterwards; (3) groceries for the vacation term for twelve people; (4) gas for transporting to and

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<sup>2</sup>BP Claims Denial Letter, dated 15 July 2013, and DHCC Denial Notice, dated 11 February 2013

from the vacation in two automobiles; and (5) swim passes for the Isle Dauphine Country Club.<sup>3</sup> Such a loss as the one claimed in this case, is not a damage that may be compensated from the OSLTF.

Under 33 U.S.C. § 2702(b)(1-2), the only types of claims payable under OPA are oil removal and /or damage claims. Furthermore, "Damages" as explained under 33 U.S.C. § 2702(b)(2) are defined as: natural resources; real or personal property; subsistence use; revenues; profits and earning capacity; and public services. Therefore, in accordance with OPA's implementing regulations, the NPFC may not make payment on a claim resulting from a personal decision to knowingly plan and execute a family vacation located in the affected geographical region of an on-going response to a spill of national significance. The Claimant has elected to submit her claim to the NPFC as a loss of profits and earning capacity claim, however, the costs claimed here are not covered under "Profits and Earning Capacity" as defined under OPA in 33 U.S.C. § 2702(b)(2)(E):

Damages equal to the loss of profits or impairment of earning capacity due to the *injury, destruction, or loss of real property, personal property, or natural resources*, which shall be recoverable by any claimant.

Therefore, the claim as presented is not compensable under OPA

Based on the foregoing, this claim is denied because (1) the Claimant has failed to demonstrate that her alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil (i.e., the Deepwater Horizon oil spill), or (2) this claim is considered to have been settled by virtue of belonging to the E&PD Settlement and is therefore not OPA compensable.



Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/30/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>3</sup> It should be noted that, according to receipts, reservations and invoicing provided with the claim, these purchases were made as the oil spill was still spilling into the Gulf of Mexico.