

U.S. Department of
Homeland Security

**United States
Coast Guard**

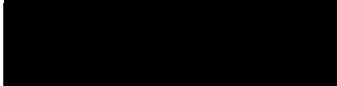


Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4666 9571

5890/DWHZ
1 September 2011

Joy Ann Zuppardo


Re: Claim Number: N10036-1205

Dear Ms. Zuppardo:


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 your claim number N10036-1205 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1205.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|---|
| Claim Number | N10036-1205 |
| Claimant | Joy Ann Zuppardo |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$8,000.00 |

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.

CLAIM AND CLAIMANT

On 03 August 2011, Joy Ann Zuppardo (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$8,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant owns a home in Bay St. Louis, Mississippi which she rents out rooms to patrons of the nearby casino as well as other area tourists.¹ Claimant asserted that due to the Deepwater Horizon oil spill, the tourism and casino industries in the Bay St. Louis region collapsed, reducing the rental demand for the Claimant's rooms.² As a result of this drop in rental demand, the Claimant was not able to rent out as many of her rooms as she had previously and subsequently suffered a reduction in income.³

Claimant did not provide an explanation for the calculation of her sum certain of \$8,000.00.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include 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. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.

¹ Letter from Claimant to GCCF dated 29 December 2010.

² PHONECON between NPFC and Claimant dated 05 August 2011.

³ PHONECON between NPFC and Claimant dated 05 August 2011.

- (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

In support of her claim, Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form received 03 August 2011;
- Letter from Claimant to GCCF dated 29 December 2010;
- Warranty Deed between Darren E. Zuppardo and Lisa Marie Zuppardo to Joy Claimant dated 13 December 2005;
- 2010 1040EZ Federal Tax Return;
- 2009 1040EZ Federal Tax Return;
- 2008 1040EZ Federal Tax Return;
- Rental receipts for dates:
 - o January 2010: 1, 2, 5, 6, 7, 11, 12, 14, 16, 18, 19, 20, 21, 22, 23, 25, 27, 28;
 - o February 2010: 1, 4, 6, 8, 9, 10, 14, 15, 18, 20, 22, 24, 25, 27;
 - o March 2010: 3, 4, 6, 7, 10, 12, 13, 17, 19, 21, 24, 25, 26, 29, 30;
 - o April 2010: 3, 4, 5, 6, 9, 11, 13, 14, 16, 17, 18, 20, 23, 25, 26, 27;
 - o May 2010: 1, 15, 30;
 - o June 2010: 22, 28;
 - o July 2010: 22, 25;
 - o August 2010: 27, 31;
 - o September 2010: 29, 30;
 - o October 2010: 2, 16, 17, 29;
 - o November 2010: 2, 16.

Prior to presenting this Claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF on 22 November 2010 in the amount of \$6,000.00.⁴ Claimant was assigned Claimant Identification # 3435872 and Claim Identification # 517749. Claimant's EAP Claim was denied on 14

⁴ Report from the GCCF dated 22 August 2011.

December 2010.⁵ Additionally, Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011) with the GCCF on 15 March 2011 in the amount of \$8,000.00.⁶ Claimant was assigned Claim Identification # 9324169. Claimant's ICQ12011 Claim was denied on 22 April 2011.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims are the same as the subject matter of her claim before the NPFC, i.e., due to the Deepwater Horizon oil spill the tourism and casino industries in Bay St. Louis, Mississippi collapsed, reducing the demand for Claimant's rental units at her home. As a result of the reduced demand, Claimant suffered a loss of income. The NPFC deems Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1205 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 517749 (EAP) and 9324169 (ICQ12011).

NPFC Determination

The claim is denied because the alleged loss in the amount of \$8,000.00 is not 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. Specifically, Claimant's loss calculation included losses labeled as "approximate".⁸ These amounts are not compensable as, under OPA, only actual net reductions or loss of earnings or profits are compensable while prospective future losses are not. Claimant's submission for "approximate" losses is entirely prospective in nature and therefore denied.

Furthermore, Claimant asserted that the Deepwater Horizon oil spill was the cause of a reduction in the tourism and casino industries in the Bay St. Louis region. By extension, Claimant asserted that the alleged reduction of tourism and casino patrons reduced the demand for her rental units. Claimant, however, failed to provide any evidence from any potential customers of reservations made prior to the Deepwater Horizon oil spill. Claimant also failed to provide evidence of any particular cancellation from any particular customer for rooms at the Claimant's home. Accordingly, Claimant has not shown that her losses are due to the Deepwater Horizon oil spill as opposed to other factors such as cost-cutting decisions by potential renters to reduce personal expenses or generally declining market conditions.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *9/1/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ GCCF Denial Letter dated 14 December 2010.

⁶ Report from the GCCF dated 22 August 2011.

⁷ GCCF Denial Letter dated 22 April 2011.

⁸ Optional OSLTF Claim Form received 03 August 2011.