

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 1150 0000 4636 2106

5890/DWHZ
21 September 2011

Mrs. Karyn Farris


Re: Claim Number: N10036-1378

Dear Mrs. Farris:

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 N10036-1378 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

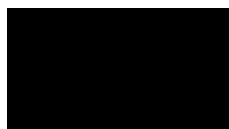
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1378.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1378
Claimant	Mrs. Karyn Farris
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$57,857.35

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 8 September 2011, Mrs. Karyn Farris (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$57,857.35 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant owns a home in Milton, Florida, which she was attempting to sell at the time of the oil spill.² The Claimant stated that in June 2010, a "buyer backed out of the sale due to oil making landfall."³ She further stated that "people were fearful oil would reach this body of water [Mulatto Bayou]."⁴

The Claimant seeks 57,857.35 from the OSLTF to cover the cost of home expenses, which the Claimant alleged that she would not have had to pay, had the potential buyers actually purchased the home.⁵

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 Section 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:

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

¹ Optional OSLTF Claim Form, dated 29 August 2011.

² Optional OSLTF Claim Form, dated 29 August 2011.

³ Optional OSLTF Claim Form, dated 29 August 2011.

⁴ Optional OSLTF Claim Form, dated 29 August 2011.

⁵ Optional OSLTF Claim Form, dated 29 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 undertake, 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 this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 29 August 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 4 August 2011, Claimant ID 1020782;
- Letter describing losses, 20 July 2011;
- Document titled, "Expenses from July 2010 to date;"
- Documentation of home expenses, Regions Bank Payee Histories;
- Letter from Re/Max Infinity to the Claimant, describing loss of home sale, 30 June 2010;
- Letter from Don Gay to the Claimant, noting loss of home sale, undated;
- GCCF Interim Payment Claim Form, Claimant ID 1020782, 20 July 2011;

Prior to presentment to the NPFC, the Claimant presented a Third Quarter Interim Payment claim (ICQ32011) to the RP/GCCF, seeking \$57,857.35 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. The Claimant was assigned ID 1020782 and ICQ32011 was assigned Claim # 9426252.⁶

⁶ GCCF Claimant Status, accessed on 16 Sept 2011.

This claim was denied on 4 August 2011. On 8 September 2011, the Claimant presented this claim to the NPFC, seeking \$57,857.35 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Because this is the same claim, seeking the same damage amount as first presented in ICQ32011, the NPFC may properly address the entirety of this claim as presented by the Claimant to the NPFC.

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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support this claim.

In order to prove a claim for loss of profits and impairment of earnings capacity, a claimant must demonstrate (1) that she suffered a loss or reduction in profits or earnings capacity, and (2) that the loss or reduction was due to the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill.

Having reviewed all the information and documentation provided by the Claimant, the NPFC has determined that the Claimant has failed to demonstrate that she suffered a loss that is compensable under OPA.

The Claimant's cost of maintaining personal property does not constitute a loss. The Claimant seeks compensation for expenses related to maintaining her home in Florida after a potential buyer decided not to purchase the home, allegedly due to effects of the Deepwater Horizon oil spill although the Claimant has failed to provide a cancelled contract due to the oil spill.⁷ However, the Claimant's cost of maintaining a property which the Claimant currently owns⁸ does not constitute a "loss" and the NPFC finds that the Claimant would have been responsible for servicing the mortgage and paying property-related expenses regardless of the oil-spill until the property was sold; therefore, these costs are not OPA compensable.

The potential buyer's decision not to purchase the home does not constitute an actual loss to the Claimant because the Claimant did not provide evidence to indicate that the Claimant had entered into a sales contract with the potential buyer that was subsequently cancelled as a result of the oil spill. Instead, the Claimant's submission indicated that the parties were still negotiating.⁹ The Claimant has not presented evidence to show that she had actually entered into a contract to sell the home; therefore the Claimant has not demonstrated that she suffered an actual loss when the sale was not realized.

Because the Claimant's income was not "reduced as a consequence of the injury to, destruction of, or loss of property or natural resources,"¹⁰ the Claimant has not demonstrated that she suffered a financial loss that would be compensable under OPA.

⁷ Letter Describing Losses, 20 July 2010.

⁸ See, www.zillow.com/homedetails/3150-Bernath-Dr-Milton-FL-32583/66212933_zpid/#?scid=hdp-site-map-bubble-address, accessed on 16 September 2011.

⁹ Letter from Remax agent states, "Over the next couple of days the prospects did due diligence, with you and the homeowner providing requested information and documents," indicating that the sale had not yet been realized when the potential buyers made the decision not to move forward.

¹⁰ 33 C.F.R. § 136.233(b).

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she suffered a loss in the amount of \$57,857.35, 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 Supervisor's Review: *9/20/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: