

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: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6937

5890/DWHZ
03 November 2011

Pamela Zuber
[REDACTED]

RE: Claim Number: N10036-1440

Dear Ms. Zuber:

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 claim number N10036-1440 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. 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 N10036-1440.

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	N10036-1440
Claimant	Pamela Zuber
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,500.00

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 23 September 2011, Pamela Zuber (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$8,500.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant owns a condo in Panama City, Florida.¹ The Claimant asserted she rents out the condo in the winter months. Her husband uses it to entertain subcontractors in his business in the summer for fishing trips. She barter with her hairdresser for a \$1,000.00 stay in the fall months.² The Claimant's family uses the condo when it is not rented in the winter or not used for the purposes stated above.³ The Claimant alleges lost rental, subcontractor incentives, and barter income in the amount of \$8,500.00.⁴

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 Deed dated 10 July 1992.

² Letter explaining the claim dated 28 June 2011 addressed to the GCCF.

³ Letter explaining the claim dated 28 June 2011 addressed to the GCCF.

⁴ Optional OSLTF claim form dated 17 September 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

To support her claim, Claimant submitted:

- 1) Optional OSLTF claim form dated 17 September 2011;
- 2) Supplemental OSLTF claim form letter dated 18 September 2011;
- 3) GCCF denial letter for Interim payment/Final payment claim dated 08 July 2011;
- 4) Letter explaining the claim dated 28 June 2011 addressed to the GCCF;
- 5) Contract for sale and purchase of real property in Panama City Beach, Florida dated 15 June 1992;
- 6) Warranty deed for real property in Panama City Beach, Florida dated 10 July 1992.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$8,500.00.

On 26 September 2011, the NPFC sent a letter to the Claimant requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested.⁵ The USPS tracking site showed the letter

⁵ USPS 7011 1150 0000 4636 2656.

was attempted to be delivered 03 October 2011 in Panama City and a notice was left.⁶ On 12 October 2011, the Claimant telephoned the NPFC and requested a copy of the certified letter via email.⁷ The NPFC sent the email “read receipt requested” 12 October 2011.⁸ As of the date of this determination the Claimant has not responded to the request for additional information.

Prior to presenting her claim to the NPFC, the Claimant filed a Full Review Final claim (FRF) for Real/Personal Property with the GCCF on 28 June 2011 in the amount of \$8,500.00.⁹ She was assigned Claimant ID #3527837 and claim #9406240.¹⁰ This claim was denied on 08 July 2011.¹¹ Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the RP. Based upon the evidence provided by the Claimant, it appears that the NPFC claim designation is different than the one submitted to the GCCF.¹² However, based on the Claimant’s statements submitted to the NPFC it appears the subject matter for the GCCF claim for real or personal property is the same as the subject matter of her claim before the NPFC for lost profits and impairment of earnings capacity, i.e. that she lost rental income as a result of the Deepwater Horizon oil spill.¹³ The NPFC deems the Claimant’s denied GCCF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1440 considers and addresses the earnings claimed in her claim presented to the responsible party, specifically; GCCF Claim #9406240 FRF.

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 or destruction or loss of real or personal property or 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 the claim. The NPFC considered all the documentation submitted by the Claimant.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim.¹⁴ The letter requested, among other things, financial documentation for an accurate accounting of the Claimant’s losses, questions on how the oil spill caused the Claimant’s alleged loss, and if they mitigated the damages. The letter was sent on 26 September 2011.¹⁵ On 12 October 2011, the Claimant telephoned the NPFC and requested an emailed copy of the letter which was sent on 12 October 2011.¹⁶ To date no response has been received by the NPFC.

The NPFC accordingly proceeded to evaluate the claim with the evidence the Claimant had originally submitted. The evidence originally submitted to the NPFC is a deed for the property¹⁷

⁶ USPS 7011 1150 0000 4636 2656.

⁷ Telephone conversation between the Claimant and NPFC staff 12 October 2011.

⁸ Read receipt requested email from NPFC staff to the Claimant 12 October 2011.

⁹ Report from the GCCF dated 06 October 2011.

¹⁰ Report from the GCCF dated 06 October 2011.

¹¹ GCCF Denial Letter dated 08 July 2011.

¹² GCCF designated as real/personal property and NPFC designation of lost profits and impairment of earnings capacity.

¹³ The Claimant stated on her GCCF denial dated 08 July 2011 that the determination for real property loss makes no sense since her claim to the GCCF was for rental income.

¹⁴ USPS 7011 1150 0000 4636 2656.

¹⁵ NPFC certified letter requesting additional information.

¹⁶ Read receipt requested email from NPFC staff to the Claimant 12 October 2011.

¹⁷ Warranty deed for real property in Panama City Beach Florida dated 15 June 1992.

and the assertions of the Claimant¹⁸ which are insufficient to support the allegation that the Claimant lost \$8,500.00 in earnings as a result of the Deepwater Horizon oil spill. The Claimant has provided no documentation to substantiate her alleged loss of profits and impairment of earnings capacity or to show that her alleged loss of earnings was due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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: *11/3/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁸ Letter explaining the claim dated 28 June 2011 addressed to the GCCF, Optional OSLTF claim form dated 17 September 2011, and Supplemental OSLTF claim form letter dated 28 June 2011.