

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7644

5890/DWHZ
5 December 2011

Inez Campo Victoriana
[REDACTED]

Re: Claim Number: N10036-1459

Dear Ms. Victoriana:

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 N10036-1459 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 N10036-1459.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number N10036-1459
Claimant Inez Campo Victoriana
Type of Claimant Private (US)
Type of Claim Loss of Profits and Impairment of Earnings Capacity
Amount Requested \$10,000.00

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 30 September 2011, Inez Campo Victoriana, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$10,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant owns a parcel of marsh land in Point a la Hache, Louisiana that she rents out for duck hunting activities.¹ Specifically, the Claimant has leased the property for duck hunting season to a specific patron since 2007.² The Claimant asserts that due to the Deepwater Horizon oil spill, the reoccurring patron declined to renew the lease for the property in 2010.³ Further, the Claimant asserts that the patron stated he would no longer be interested in leasing the property at any time in the future.⁴ As a result of both the non-renewed lease and the lack of future interest in leasing the property, the Claimant asserts she suffered reduced income.⁵

The Claimant provided the following explanation regarding the calculation of her sum certain of \$10,000.00: the Claimant stated that she recently raised the rent on the lease to \$2,000.00 and multiplied that by five, representing her projected loss period for a product of \$10,000.00.⁶ The Claimant then adopted this number as her sum certain.⁷

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

¹ Optional OSLTF Claim Form received 30 September 2011, Letter from the Claimant discussing her claim, Deed of Sale between Adam Nunez and Joseph B. Campo dated 12 July 1946.

² Letter from the Claimant discussing her claim.

³ Letter from the Claimant discussing her claim.

⁴ Letter from the Claimant discussing her claim.

⁵ Letter from the Claimant discussing her claim.

⁶ Letter from the Claimant to the NPFC responding to the NPFC's Request for Additional Information, dated 15 November 2011.

⁷ Optional OSLTF Claim Form received 30 September 2011.

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.
- (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 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 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

The Claimant's Submission to the OSLTF

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

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form received 30 September 2011;
- Letter from the Claimant to the NPFC dated 18 September 2011;
- Paragraph titled 'Property Description';
- Hand-written letter from Jerry W. Reprell to the Claimant dated 01 June 2010;
- GCCF Denial Letter dated 24 January 2011;
- GCCF Letter dated 31 January 2011;
- Hand-written letter from Jerry W. Reprell dated 10 February 2011;
- GCCF Denial Letter dated 30 April 2011;
- Letter from the Claimant to the GCCF dated 03 May 2011;
- Letter from the Claimant discussing her claim;
- GCCF Denial Letter dated 13 September 2011;
- Letter from the Claimant to the NPFC responding to the NPFC's Request for Additional Information, dated 15 November 2011;
- Lease between the Claimant and Terry Ripoll dated 04 September 2009;
- Lease between the Claimant and Terry Ripoll dated 27 August 2008;
- Lease between the Claimant and Terry Ripoll dated 17 August 2007;
- Letter from Terry Ripoll to the Claimant dated 01 June 2010;
- Receipts from Terry Ripoll to the Claimant for dates 18 August 2007, 27 August 2008, 04 September 2009;
- Deed of Sale between Adam Nunez and Joseph B. Campo dated 12 July 1946.

Prior to presenting this Claim to the NPFC, the Claimant filed a Full Review Final (FRF1) Claim with the GCCF for loss of profits and impairment of earnings capacity on 16 January 2011.⁸ The FRF1 Claim lacked a sum certain.⁹ The Claimant was assigned Claimant ID # 3475619 and Claim ID # 9220016 (FRF1, loss profits). The FRF1 Claim was denied.¹⁰ Additionally, the Claimant filed a Full Review Final (FRF2) Claim with the GCCF for Real or Personal Property Damage on 16 January 2011.¹¹ The FRF2 Claim lacked a sum certain.¹² The Claimant was assigned Claim ID # 9220016 (FRF2, Real Property). The FRF2 Claim was denied.¹³ Additionally, the Claimant filed a Full Review Final (FRF3) Claim with the GCCF.¹⁴ The FRF3 Claim lacked a sum certain.¹⁵ The Claimant was assigned Claim ID # 9260410. The FRF3 Claim was denied.¹⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant was unable to rent out her property for duck hunting and as a result she suffered reduced income. The NPFC deems the 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 N10036-1459 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim #'s 9220016 (FRF1, loss profits), 9220016 (FRF2, Real Property), 9260410 (FRF3).

⁸ Report from the GCCF dated 02 November 2011.

⁹ Report from the GCCF dated 02 November 2011.

¹⁰ Report from the GCCF dated 02 November 2011.

¹¹ Report from the GCCF dated 02 November 2011.

¹² Report from the GCCF dated 02 November 2011.

¹³ Report from the GCCF dated 02 November 2011.

¹⁴ Report from the GCCF dated 02 November 2011.

¹⁵ Report from the GCCF dated 02 November 2011.

¹⁶ Report from the GCCF dated 02 November 2011.

NPFC Determination

The claim is denied. 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 documentation presented by the Claimant.

The claim is denied because the Claimant fails to prove that the alleged loss in the amount of \$10,000.00 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.

The Claimant asserts that due to the Deepwater Horizon oil spill, a patron who had leased her marsh property for duck hunting purposes since 2007 declined to renew the lease for 2010.¹⁷ Further, the Claimant asserts that this patron would no longer rent the property in the future due to the oil spill.¹⁸ As a result of the non-renewal of the lease in 2010 as well as the lack of interest in leasing the property in the future, the Claimant asserts she suffered lost income.¹⁹

Regarding the effect of the Deepwater Horizon oil spill on the patron's decision to not renew the lease in 2010, the Claimant fails to show she suffered a loss due to the oil spill and fails to provide a connection between her purported loss of income and the oil spill. The Claimant's original submission to the NPFC was limited to letters from the Claimant describing her claim as well as a purported letter from the patron stating his intention to not renew the lease on the Claimant's property in 2010.

In an effort to determine the effect of the Deepwater Horizon oil spill on the Claimant's property, the NPFC made a request for additional information to the Claimant on 20 October 2011.²⁰ The NPFC requested that the Claimant provide the following documentation to support her claim: complete Federal Income Tax Returns from 2008-2010, bank statements for her business from 2008-2011, the deed for the Claimant's property, all leases and rentals signed for the use of the property from 2008-2011 including the date the reservation was taken and the dates of the rental usage, the amount of rents charged and documentation evidencing the reservations and rents received, a list of all customers who cancelled, modified or rescinded leases for the property in 2010 and 2011 including rental dates cancelled, contact information for renter(s) who cancelled and documentation substantiating the cancellations such as emails letters or returned deposits.²¹

Although the NPFC received a response from the Claimant, the NPFC was not provided with any of the Claimant's Federal Tax Returns, bank statements, or the contact information for any renters that cancelled leases for the Claimant's property in 2010 or 2011. Accordingly, without evidence of the requested financial documentation of bank statements and Federal Tax Returns, the Claimant fails to prove she suffered a financial loss due to the Deepwater Horizon oil spill at all. Additionally, the Claimant fails to provide contact information to allow the NPFC to verify that the patron who cancelled the lease of the marsh property did so due to the Deepwater

¹⁷ Optional OSLTF Claim Form received 30 September 2011, Letter from the Claimant discussing her claim, Deed of Sale between Adam Nunez and Joseph B. Campo dated 12 July 1946.

¹⁸ Letter from the Claimant discussing her claim.

¹⁹ Optional OSLTF Claim Form received 30 September 2011.

²⁰ NPFC Request for Additional Information dated 20 October 2011.

²¹ NPFC Request for Additional Information dated 20 October 2011.

Horizon oil spill. Thus, the Claimant fails to prove that the patron declined to renew the lease of the Claimant's marsh property due to the Deepwater Horizon oil spill.

Regarding the effect of the Deepwater Horizon oil spill on the patron's lack of interest in leasing the property in the future, the Claimant asserts damages that are not compensable under OPA. Under 33 C.F.R. § 136.235, "the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*."²² Therefore, the Claimant cannot be compensated for any prospective damages that might accrue in the future, such as a lack of demand for leasing the Claimant's marsh property over the next five years.

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: *12/5/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

²² Emphasis added.