

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: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7354

5890/DWHZ
Claim # N10036-1573
5 December 2011

Barbara Ann McGill
[REDACTED]

Dear Ms. McGill:

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 N10036-1573 involving Deepwater Horizon. 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 N10036-1573.

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	N10036-1573
Claimant	Barbara Ann McGill
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$2,500.00

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

CLAIM AND CLAIMANT

On 18 November 2011, Barbara Ann McGill (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$2,500.00 for loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

The Claimant worked during the summer seasons cleaning condo rentals for Parker Realty in Mexico Beach, Florida.¹ She cleaned units after the renters vacated and before the new renters arrived.² The Claimant stated she lost earnings because she did not work for Parker Realty for the 2010 and 2011 seasons because rentals were down due to the Deepwater Horizon oil spill.³ The last day the Claimant worked for Parker Realty was 13 July 2009.⁴

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.

¹ Letter from Parker Realty concerning Claimant’s employment dated 25 October 2010

² Based on telephone conversation between the Claimant and the NPFC Claims Adjuster 28 November 2011

³ Letter from Parker Realty concerning Claimant’s employment dated 17 November 2010 Letter from Parker Realty concerning Claimant’s employment dated 05 October 2011

⁴ Based on telephone conversation between Jamie Schwarz at Parker Realty and the NPFC Claims Adjuster 28 November 2011

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.
- (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 this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by 07 November 2011

- Letter from Parker Realty concerning Claimant's employment dated 25 October 2010
- Letter from Parker Realty concerning Claimant's employment dated 17 November 2010
- Letter from Parker Realty concerning Claimant's employment dated 05 October 2011
- Copies of Claimant's Florida Drivers License and Social Security Card
- IRS Form 4506-T Request for Transcript of Tax Return
- Form 1099 Misc Income from Parker Realty of Mexico Beach, Inc. for 2009
- Form 1040 US Individual Income Tax Return for 2009
- W-2 Wage and Tax Statement from King's Bay Construction for 2008
- W-2 Wage and Tax Statement from Jacalyn N. Kolk, PA for 2008
- Form 1040EZ Income Tax Return for 2008
- Form 1040 US Individual Income Tax Return for 2008
- Handwritten Profit and Loss Statement for Claimant for 2008, 2009 and 2010
- Handwritten Profit and Loss Statement for Claimant for January, February and March 2011
- Copy of GCCF Form 2000-I Interim Payment Claim Form dated 28 July 2011

On 22 November 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 28 November 2011, the Claimant responded to the request by telephone.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF. The claim was assigned Claimant ID #1173906 and claim #4009760.⁵ The EAP claim was denied on 22 December 2010.⁶ Additionally, Claimant filed an Interim Payment Claims (ICQ12011 and ICQ32011) with the GCCF. The claims were assigned claim #9141879 ICQ12011 and #9428954 ICQ32011.⁷ The two IC claims were denied on 04 June 2011 and 01 October 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC has not been able to confirm the amount of either the EAP or ICQ12011 and ICQ32011 claims as of the date of this determination. The NPFC deems the GCCF claims to be properly presented to the Responsible Party. To the extent the amount of the claims presented to the Responsible Party are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1573 considers and addresses the loss of earnings up to the amount of \$2,500.00 for all claims presented to the Responsible

⁵ GCCF On-Line Claim Status Report

⁶ GCCF Denial Letter dated 22 December 2011

⁷ GCCF On-Line Claim Status Report

⁸ GCCF Deficiency Denial Letters dated 04 June 2011 and 01 October 2011

Party, specifically: GCCF Claim #4009760 EAP, #9141879 ICQ12011 and #9428954 ICQ32011.

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 Claimant stated she lost earnings because she did not work for Parker Realty for the 2010 and 2011 seasons because rentals were down due to the Deepwater Horizon oil spill.⁹ Parker Realty stated that the last date of employment for the Claimant was 13 July 2009.¹⁰ When rentals declined, the person at Parker Realty who assigned cleaning stated that she did not use the Claimant because she used others regular employees who had worked for Parker longer than the Claimant.¹¹ However, while the Claimant's employer appears to agree with the Claimant's contention that the oil spill caused a reduction to the Claimant's work, Parker Realty has not provided any specific information which would support the Claimant's contention. Claimant has provided no other evidence as to the causation of her alleged loss. As such, the Claimant has not established by a preponderance of the evidence that her alleged loss of earnings was due to the oil spill as opposed to the employer utilizing other employees with more seniority as stated.

This claim is denied because the Claimant failed to meet the burden to demonstrate 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: *12/5/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁹ Letter from Parker Realty concerning Claimant's employment dated 17 November 2010
Letter from Parker Realty concerning Claimant's employment dated 05 October 2011

¹⁰ Phone conversation between Parker Realty and NPFC staff on 29 November 2011

¹¹ Based on telephone conversation between Jamie Schwarz at Parker Realty and the NPFC Claims Adjuster 28 November 2011