

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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5890/DWHZ
11 January 2012

Fleur de Lis Home and Living, LLC
ATTN: [REDACTED]
311 Wincester Circle
Mandeville, LA 70448

Re: Claim Number: N10036-1625

Dear [REDACTED]:

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 N10036-1625 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 N10036-1625.

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: Claim Summary/Determination Form
Claimant's Submission to the OSLTF

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1625
Claimant	Fluer de Lis Home and Living.
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$247,402.05

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 27 December, 2011, Mr. Scott Scariano, on behalf of Fleur de Lis Home and Living, LLC (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$247,402.05 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.¹

In 2008, the Claimant began printing and distributing a free magazine in St. Tammany Parish.² According to the Claimant, “[t]he magazine was comprised of advertisers interested in promoting their small businesses through an inexpensive venue in this complementary magazine distributed in the local area.”³

The Claimant alleged that following the Deepwater Horizon oil spill, several advertisers discontinued running ads in the magazine, and several advertisers “broke contracts without notice.”⁴ The Claimant attributed the reduction in advertising sales to general economic effects of the oil spill on the St. Tammany Parish community.⁵ The Claimant specifically stated,

We feel as though all of our customers in the St. Tammany Parish area are dependent on oil industry income as well as seafood industry income which have been directly affected by the [oil spill]. The faltering economy due to the oil spill has caused long time customers of ours to go out of business, stop paying their invoices and discontinue advertisement.⁶

The Claimant discontinued printing the magazine in July of 2010.⁷ The Claimant seeks a total of \$247,402.05 in various damages from the NPFC. The Claimant seeks to recover initial start-up

¹ Optional OSLTF Claim Form, signed on 21 December 2011.

² Letter from the Claimant to the GCCF, describing losses, undated.

³ Letter from the Claimant to the GCCF, describing losses, undated.

⁴ Letter from the Claimant to the GCCF, describing losses, undated.

⁵ The Claimant stated, “The main reason that caused us to discontinue printing our magazine is that the economic impact from the oil spill is far reaching.” Letter from the Claimant to the GCCF, describing losses, undated.

⁶ Letter from the Claimant to the GCCF, describing losses, undated.

⁷ The Claimant lists “date of loss” as 7/30/2010 in a letter from the Claimant to the GCCF, describing request for \$170,000.00 as final settlement. Monthly sales charts also indicate that no sales were made after June of 2010.

costs for the magazine, loss of personal income, loss of business income, future start-up costs in order to begin reprinting the magazine, and future income loss.⁸

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 § 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.
- (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

See Enclosure.

⁸ Letter from the Claimant to the GCCF, describing request for \$170,000.00 as final settlement.

Prior to presentment to the NPFC, the Claimant presented two Fourth Quarter Interim Payment Claims (ICQ42011a and ICQ42011b) to the RP/GCCF. The Claimant was assigned Claimant ID 1165110, ICQ42011a was assigned claim # 9507588, and ICQ42011b was assigned claim # 9536818.⁹ ICQ42011a was paid in the amount of \$7,984.51 on 27 October 2011.¹⁰

As of the date of this determination, ICQ42011b remains under review with the RP/GCCF.¹¹

The Claimant also submitted two Full Review Final claims (FRFa and FRFb) to the RP/GCCF, which were assigned claim #s 9027479 and 9133533 respectively.¹² The GCCF issued a determination letter on these claims, offering the Claimant final payment of \$25,000.00.¹³ The GCCF denied the Claimant's request for re-review of the determined payment amount in a letter dated 14 December 2012.¹⁴

On 27 December 2011, the Claimant submitted this claim to the NPFC, seeking loss of profits and earning capacity damages in the amount of \$247,402.05.¹⁵ The Claimant's submission to the NPFC indicates that the Claimant previously submitted a claim to the RP/GCCF, requesting the same amount in damages regarding the same losses as now presented to the NPFC.¹⁶ Because this claim has first been presented to the RP/GCCF, claim presentment requirements under OPA have been satisfied and the NPFC may fully adjudicate this claim in the amount of \$247,402.05.¹⁷

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 damages under OPA, a Claimant must provide evidence to demonstrate (1) that the Claimant sustained an actual loss or reduction in profits or earning capacity, and (2) that the loss or reduction was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The portion of this claim regarding losses in profits based on loss of advertising sales is denied because the Claimant has failed to prove that any loss of advertising sales was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

Documentation provided by the Claimant, including a list of transactions by client, for 2008 – 2010, indicates that advertising sales were declining in the period leading up to the oil spill, and

⁹ GCCF Claimant Status, accessed on 5 January 2012.

¹⁰ GCCF Determination Letter on Interim Payment/Final Payment Claim, 27 October 2011.

¹¹ GCCF Claimant Status, accessed on 5 January 2012.

¹² GCCF Claimant Status, accessed on 5 January 2012.

¹³ GCCF Determination Letter on Interim Payment/Final Payment Claim, 27 October 2011.

¹⁴ GCCF Denial of Re-Review Request for Determination Letter on Interim Payment/Final Payment Claim, 14 December 2011.

¹⁵ Optional OSLTF Claim Form, signed on 21 December 2011.

¹⁶ Letter from the Claimant to the RP/GCCF, dated 1 March 2011, requesting payment in the amount of \$247,402.05.

¹⁷ 33 C.F.R. § 136.103(a).

continued to decline until the Claimant stopped printing the magazine in July 2010.¹⁸ Based on the Claimant's Transaction List by Client, the Claimant conducted \$11,235.00 in sales from January – April 2009.¹⁹ For the same period of 2010, prior to the oil spill, the Claimant's sales decreased 54.5%, with the Claimant conducting \$5,110.21 in sales.²⁰

Documentation provided by the Claimant indicates that sales had been decreasing significantly at the end of 2009 and in 2010 prior to the oil spill.²¹ The Claimant has not provided evidence to prove that the particular decrease in sales, from May – July 2010, was caused by the Deepwater Horizon oil spill and not by other factors, which were affecting sales prior to the oil spill. Furthermore, for this reason, other losses that have been presented by the Claimant, such as his initial start-up costs, are likewise denied.

The Claimant alleged that general economic effects of the Deepwater Horizon oil spill on the St. Tammany Parish community caused clients to stop advertising their services in his magazine.²² A client list provided by the Claimant indicates that the Claimant sold advertising space primarily to small construction businesses.²³ However, the Claimant has not provided any evidence that might demonstrate (1) that individual businesses who bought advertising space actually sustained losses, (2) that the losses allegedly sustained by these businesses were caused by the discharge of oil into the Gulf of Mexico, or (3) that the losses caused the businesses to be unable to continue advertising their services.

Furthermore, the Claimant has not provided contracts or other evidence to show that income from certain advertisers was guaranteed for any particular amount of time or to verify that the contracts were, in fact, cancelled. In addition to proving that the advertisers sustained losses due to the discharge of oil caused by the Deepwater Horizon oil spill, such information would be helpful in order for the Claimant to prove that cancellation of advertising agreements caused the Claimant to sustain a quantifiable loss of profits that the Claimant would have otherwise received.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$247,402.05, 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: *1/11/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁸ The Claimant's profit and loss statements indicate that no sales were made following 1 June 2010.

¹⁹ Fleur de Lis Home & Living, LLC, Transaction List by Client, January 1, 2008 – December 25, 2010.

²⁰ Fleur de Lis Home & Living, LLC, Transaction List by Client, January 1, 2008 – December 25, 2010.

²¹ Fleur de Lis Home & Living, LLC, Transaction List by Client, January 1, 2008 – December 25, 2010.

²² Letter from the Claimant to the GCCF, describing losses, undated.

²³ E.g., Handyman Connection; Home Audio & Video Designs, LLC; Lawns-R-Us; Yard of Dreams.

Claimant's Submission to the OSLTF
Claim N10036-1625

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed 21 December 2011;
- Letter from the Claimant to the GCCF, describing request for \$170,000.00 as final settlement;
- Letter from the Claimant to the GCCF, regarding losses and requesting payment of \$247,402.05;
- Letter from the Claimant to the GCCF, describing losses; undated.
- Letter from the Claimant to the GCCF, 25 June 2011;
- Letter from the Claimant to the GCCF, 18 November 2011, rejecting Final Payment offer;
- Letter from the Claimant to the GCCF, 21 July 2011, rejecting Final Payment offer;
- 2008 Form 1040, showing wages of \$64,189 and business income of \$15,100.00;
- 2009 Schedules A&B (Form 1040);
- 2008 Schedule C (Form 1040), (Fleur de Lis) showing net profit of \$6,593.00;
- 2008 Schedule C (Form 1040), (insurance adjustor) showing net profit of \$8,507.00;
- 2008 Schedule D (Form 1040);
- 2008 Qualified Dividends and Capital Gain Tax Worksheet;
- 2008 Schedule E (Form 1040);
- 2008 Schedule SE (Form 1040);
- 2008 Form 8863;
- 2008 Form 2106;
- 2008 Form 4868;
- 2009 Form 1040, showing wages of \$119,714.00 and business income of \$12,483.00;
- 2009 Schedule B (Form 1040A or 1040);
- 2009 Schedule C (Form 1040), (Fleur de Lis) showing net profit of \$11,963.00;
- 2009 Schedule C (Form 1040), (insurance adjustor) showing net profit of \$520.00;
- 2009 Schedule D (Form 1040);
- 2009 Schedule E (Form 1040);
- 2009 Schedule SE (Form 1040);
- 2009 Schedule L (Form 1040A or 1040);
- 2009 Schedule M (Form 1040A or 1040);
- 2010 Form 8879;
- 2010 Form 1040, showing total wages of \$130,287.00 and business income of \$3,128.00;
- 2010 Schedule A (Form 1040);
- 2010 Schedule B (Form 1040A or 1040);
- 2010 Schedule C (Form 1040), (Fleur de Lis) showing net profit of \$1,262.00;
- 2010 Schedule C (Form 1040), (insurance adjustor) showing net profit of \$1,866.00;
- 2010 Schedule D (Form 1040);
- 2010 Schedule SE (Form 1040);
- 2010 Form 4952;
- 2010 Form 2106;
- 2010 Schedule M (Form 1040A or 1040);
- Fleur de Lis Home & Living, LLC Sales by Client Summary, July – October 2011;
- Fleur de Lis Home & Living, LLC Transaction List by Client, July – October 2011;

- Fleur de Lis Home & Living, LLC, Sales by Client Summary, January 1 – July 21, 2011;
- Fleur de Lis Home & Living, LLC, Transaction List by Client, January 1 – July 21, 2011;
- Fleur de Lis Home & Living, LLC, Transaction List by Client, January 1, 2008 – December 25, 2010;
- Articles of Organization and Initial Report of Fleur De Lis Home & Living, LLC, 1 November 2007;
- Articles of Organization;
- Limited Liability Company Initial Report;
- Substitute 1099-B form;
- Fleur de Lis Home & Living, LLC Profit & Loss, January – December 2009;
- Fleur de Lis Home & Living, LLC Profit & Loss, January – December 2008;
- Fleur de Lis Home & Living, LLC Profit & Loss, January – December 2010;
- Fleur de Lis Home & Living, LLC Profit & Loss, January – May 2010;
- Fleur de Lis Home & Living, LLC Profit & Loss, January – July 21, 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, January 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, February 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, March 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, April 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, May 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, June 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, July 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, July – October 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, July 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, August 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, September 2011;
- Fleur de Lis Home & Living, LLC Profit & Loss, October 2011;
- Spreadsheet showing monthly sales by clients;
- Emails from the Claimant to the NPFC, regarding claims submission;