

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: 7010 1060 0001 7082 9123

5890/DWHZ  
23 January 2012

Mrs. Betty Harris  
[REDACTED]

Re: Claim Number: N10036-1637

Dear Mrs. Harris:

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 N10036-1637 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 N10036-1637.

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

Encl: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1637
Claimant	: Betty Harris
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning 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 29 December 2011, Mrs. Betty Harris (the Claimant) presented a lost profits & earnings claim in the amount of \$10,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was employed by the Hilton Garden Inn—Pensacola Airport hotel (HGI). The Claimant asserts that HGI instituted a raise freeze because of both an issue with its water system as well as the oil spill. The Claimant also asserts that, after the oil spill, a real estate agent told her that her home decreased in value in 2010. Further, the Claimant asserts that the oil spill caused her home sewage system to become faulty and it needed repairs. Finally, the Claimant asserts she had to stop pursuing the marketing of a patent she was awarded on March 14, 2000. She had been paying Millennium Marketing Group, Ltd. in monthly installments to advertise her patent on its website, but stopped her payments for the advertising of the patent because she could no longer afford it.<sup>1</sup>

### ***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 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

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<sup>1</sup> PHONECON between NPFC and the Claimant on 17 January 2012.

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 OSLTF Claim Form, dated 12/19/2011;
- Claim cover letter, dated 12/19/2011;
- Email dated 12/29/2011, which includes amended SUM CERTAIN;

- Copy of the State of Florida Driver's License for Mrs. Betty Harris;
- Copy of the Fixed-Rate Contract Loan Plan # F01-070999;
- Copy of the Escambia County Notice of Property Taxes for 2010;
- Copy of the First Judicial Circuit of Escambia County Motion to Dismiss, Case No. 2010 CA 001699;
- Copies of W2s for The School District of Escambia County for 2008, 2009 and 2010;
- Copies of W2s for Gulfside Supply Inc for 2008, 2009 and 2010;
- Copies of W2s for Mentor Management Inc for 2009 and 2010;
- Copy of the W2 for Hilton Garden Inn—Pensacola Airport for 2010;
- Copy of US Patent Number 6,035,680 for Betty A. Harris;
- Screenshot of Millennium Marketing Group, LTD, showcasing patent product page.

Prior to presenting this Claim to the NPFC, the Claimant filed a claim with the GCCF.<sup>2</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim regarding loss of earnings is the same as the subject matter of her claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced reduced earnings at HGI, reduced value of her home, repairs to her sewage system and lost earnings due to not pursuing her patent. The NPFC deems that the Claimant's GCCF claim was both properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1637 considers and addresses the earnings claimed to the extent that the damages were presented to the responsible party.

#### **NPFC Determination**

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 Claimant has alleged lost profits and earnings due to the Deepwater Horizon oil-spill. To the contrary, however, the evidence provided by the Claimant does not establish either that she has experienced a loss of income or that the alleged losses cited by the Claimant are due to the Deepwater Horizon oil spill.

#### Loss of Earnings at Hilton

The Claimant asserted that she lost earnings at HGI because she expected to receive a raise and, due to the Deepwater Horizon oil spill, HGI put a freeze on all salary raises.<sup>3</sup> The NPFC contacted HGI to confirm the Claimant's assertions and to establish a connection between her alleged loss and the Deepwater Horizon oil spill. The NPFC was informed by HGI that there was no freeze on salary raises and that she could not confirm any loss of wages specifically for the Claimant.<sup>4</sup> Consequently, the Claimant has failed to prove that she experienced a loss of earnings at HGI due to the Deepwater Horizon oil spill.

<sup>2</sup> See Email from GCCF to NPFC, dated 11 January 2012.

<sup>3</sup> PHONECON between the NPFC and the Claimant on 17 January 2012.

<sup>4</sup> PHONECON between the NPFC and the Hilton Garden Inn-Pensacola on 17 January 2012.

### Diminution of Property Value

Regarding her alleged loss due to the decrease in her home value, the Claimant's assertion about the valuation of her property by a real estate agent is not sufficient evidence to prove that her home has devalued as a result of the Deepwater Horizon oil spill. Further, even assuming that her home has lost value, the Claimant has not realized any loss because she still owns her home. Therefore, this portion of the claim is denied because the Claimant has not suffered an OPA compensable loss.<sup>5</sup>

### Repair of Sewage System

Regarding the Claimant's alleged loss resulting from the fact that her home sewage system needed repairs; the Claimant has provided no evidence to indicate the relationship between the required repairs and the Deepwater Horizon oil spill. To the contrary, Claimant informed the NPFC that her system required repairs because the tank lining had aged and become faulty, thus necessitating new drainage.<sup>6</sup> As such, this portion of the claim is denied because the Claimant has not established that the costs of the new sewage system were in any way related to the Deepwater Horizon oil spill.

### Loss of Earnings from Patent

Regarding the Claimant's claim that, due to the spill, she had to stop pursuing the marketing of a patent she was awarded on March 14, 2000. The Claimant has not shown how this business decision is a result of the oil spill. Further, considering that the patent was awarded in 2000, the Claimant has not proven that there was any reasonable expectation for earnings from the continued marketing of her patent.

This claim is denied because the Claimant has not provided sufficient evidence to establish either that she has suffered any of the alleged losses or that her alleged losses are due to the oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's review: *1/23/12*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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<sup>5</sup> PHONECON between NPFC and the Claimant on 17 January 2012.

<sup>6</sup> PHONECON between NPFC and the Claimant on 17 January 2012.