

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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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
19 March 2012

Mr. Karen Lynn Felix
[REDACTED]

Re: Claim Number: N10036-1666

Dear Ms. Felix:

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 N10036-1666 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 N10036-1666.

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	N10036-1666
Claimant	Karen Felix
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$50,000.00.

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 27 January 2012, Ms. Karen Lynn Felix, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$50,000.00 in real or personal property damages resulting from the Deepwater Horizon oil spill.¹

On 15 June 2009, the Claimant commissioned an appraisal of a property located in Elberta, Alabama. The property appraised for \$190,000.00 and was listed for sale at \$179,000.00 shortly thereafter.² The Claimant executed a sales contract in August of 2010, and sold the home for \$140,000.00.³ The Claimant alleged that the drop in value, from the appraised value of \$190,000.00 to the actual sales price of \$140,000.00 was due effects of the oil spill on the housing market in Elberta, Alabama.⁴

As more fully explained below, because the Claimant has not alleged that her property was physically damaged as a result of the oil spill, but rather that her income from the sale of the property was reduced as a result of this spill, this claim has been re-categorized as a claim for loss of profits damages in the amount of \$50,000.00.

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:

¹ Optional OSLTF Claim Form, signed on 12 January 2012.

² Letter from Mark Struthers, regarding drop in the Claimant's list price, 27 September 2010.

³ Remax Orange Beach, Sales Agreement.

⁴ Optional OSLTF Claim Form, signed on 12 January 2012.

- (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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed on 5 October 2011;
- Email from the Claimant to the GCCF, 27 January 2012;
- Letter from the Claimant to the GCCF, 26 October 2010;
- U.S. Department of Housing and Urban Development, Settlement Statement;
- Letter from Mark Struthers, regarding drop in the Claimant's list price, 27 September 2010;
- Copy of the Claimant's driver's license;
- ReMax of Orange Beach, sales agreement;
- Property Appraisal;
- Summary Appraisal Report;
- GCCF Claim Form for claim for \$50,000.00 in Real or Personal Property Damages;

On 7 October 2010, the Claimant presented a Final payment claim to the RP/GCCF, seeking Real or Personal Property damages in the amount of \$50,000.00.⁵ The Claimant was assigned

⁵ GCCF United States Coast Guard Report, 21 February 2012.

Claimant ID 3120954 and the Final claim was assigned GCCF claim # 9032666.⁶ The RP/GCCF denied payment on this claim.

On 27 January 2012, the Claimant submitted this claim to the NPFC, seeking \$50,000.00 in Real or Personal Property damages.⁷ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.⁸ Because the Claimant has presented these damages to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$50,000.00.

NPFC Determination

On 27 January 2012, the Claimant presented this claim to the NPFC for \$50,000.00 in real or personal property damages. Under 32 U.S.C. § 2712(b)(2)(B), a Claimant may recover damages for injury to, or economic loss resulting from the *destruction* (emphasis added) of real or personal property.

In this case, the Claimant has not alleged that her property has been physically damaged or destroyed by the oil spill. Rather, the Claimant alleged that the oil spill caused a depreciation in property value, causing the Claimant to sell the home at a lower price than she would have, had the oil spill not occurred. As the property itself was not damaged, this claim has been reclassified by the NPFC as a claim for \$50,000.00 in loss of profits and impairment of earning capacity damages, based on claimed diminution in property value.

Loss of Profits and Earning Capacity

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 based on diminution in property value after a property has been sold, a claimant must provide, at a minimum, evidence proving (1) the pre-spill value of the home (2) the post-spill value of the home, and (3) that the loss incurred at the time of the sale was caused by effects of the oil spill and not by other factors affecting the housing market, or affecting the sale of this property in particular.

This claim is denied because the Claimant has not provided documentation sufficient to prove that the Deepwater Horizon oil spill caused a quantifiable reduction in the sales price of the property in August of 2010.

In the course of review of this claim, the NPFC contacted the sales agent who coordinated the sale of this property. The agent indicated that since the home had been first listed for sale in August of 2009, it had not generated much interest due to its rural location.⁹ The agent was also unable to recall any interested buyers for this property in the period prior to the Deepwater Horizon oil spill, indicating that the Claimant's inability to sell the home at the original list price of \$179,900.00, was not due to the Deepwater Horizon oil spill, but rather due to a general lack

⁶ GCCF United States Coast Guard Report, 21 February 2012.

⁷ Optional OSLTF Claim Form, signed on 5 October 2011.

⁸ 33 C.F.R. § 136.103(a).

⁹ PHONECON: NPFC Staff and ReMax Agent, 9 March 2012.

of interest in the property at that particular price point for at least nine months prior to the oil spill.

Furthermore, the Claimant indicated that she eventually sold the property to her ex-husband, who according to the Claimant's sales agent, was the only buyer interested in purchasing the property either before or after the oil spill.¹⁰ In a phone conversation with the NPFC, the Claimant stated that her ex-husband had moved to a new residence, and chose to buy the Claimant's property and resell it, rather than continue to make payments to the Claimant as she continued to incur various carrying costs.¹¹ The Claimant indicated that her ex-husband had tried to negotiate a lower price, but stated that because the sales agreement was facilitated by a court, her ex-husband was restricted from purchasing the property below the eventual sales price of \$140,000.00.¹² Having considered these circumstances, the NPFC has determined that the Claimant has not proven that the Deepwater Horizon oil spill caused the Claimant to be unable to sell the home at the original list price of \$179,900.00, or at the 2009 appraised value of \$190,000.00.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$50,000.00, 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: *3/19/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁰ PHONECON: NPFC Staff and ReMax agent, 9 March 2012.

¹¹ PHONECON: NPFC Staff and the Claimant, 9 March 2012.

¹² PHONECON: NPFC Staff and the Claimant, 9 March 2012.