

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 9876

5890/DWHZ
16 July 2012

Daniel and Sonia Ladner


Re: Claim Number: N10036-1818

Dear Mr. and Mrs. Ladner:

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 N10036-1818 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 N10036-1818.

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	N10036-1818
Claimant	Daniel & Sonja Ladner
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$600,000.00

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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT

On 23 May 2012, Daniel and Sonja Ladner (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$600,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

The Claimant owns a property in Kiln, Mississippi, which they alleged sustained a decrease in value as a result of the Deepwater Horizon oil spill. In June of 2010, the Claimant pursued a second mortgage on their property in order to obtain equity to invest in their personal business.² As a result of the decrease in property value, the Claimant alleged that they were not approved for a second mortgage. The Claimant stated that because of the decrease in the value of their property, "[the bank] denied our money line request and we could not go forward with our project."³

The Claimant seeks to be reimbursed for \$200,000.00 in alleged revenue lost each year for three years, for a total loss of \$600,000.00.⁴

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 § 2702(b) of OPA.

¹ Optional OSLTF Claim Form, signed on 20 February 2012.

² Hardship Letter, 9 May 2012.

³ Hardship Letter, 9 May 2012.

⁴ Hardship Letter, 9 May 2012.

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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

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 9 May 2012;
- Warranty Deed, signed on 14 September 1995;
- Warranty Deed, signed on 17 November 2000;
- Hardship Letter, dated 9 May 2012;
- Property appraisal, as of 30 June 2010, showing property market value of \$285,000.00;

- Appraisers Certification, 23 January 2009;
- Property appraisal, 13 September 2009, showing property market value of \$455,000.00;
- Appraiser's certification, Dale Steven Ladner.

The Claimant stated that this claim was submitted to the GCCF in November of 2010. The Claimant was assigned Claimant ID 3358767 and alleged that the GCCF denied payment on this claim.⁵

On 23 May 2012, the Claimant submitted this claim to the NPFC, seeking \$600,000.00 in loss of profits or impairment of earning capacity damages.⁶ According to OPA, a claim must be presented to the RP/GCCF, prior to presentment to the NPFC. Should the RP/GCCF deny payment on the claim or fail to issue payment within 90 days of presentment, the Claimant may present the claim to the NPFC.⁷ Information available to the NPFC indicates that the GCCF has denied payment on this claim for diminution in the Claimant's property value. Therefore, the NPFC has determined that presentment requirements have been met to the extent that these damages do not exceed those previously presented to the GCCF.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

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.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the BP Settlement, he should then submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

Furthermore, this claim would be denied under OPA's loss of profits damage category, as the Claimant has failed to prove that they sustained a financial loss as a result of the Deepwater Horizon oil spill.

⁵ Hardship Letter, 9 May 2012.

⁶ Optional OSLTF Claim Form, signed on 9 May 2012.

⁷ 33 C.F.R. § 136.133(c)(2).

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

1. Failure to demonstrate an actual financial loss.

The Claimant has not sold or attempted to sell their home. Rather, they are claiming a loss based solely on depreciation in the value of their property, which the Claimant stated has resulted in their failure to be approved for a second mortgage.

The Claimant has presented no evidence that might indicate (1) that a decrease in property value actually resulted in their inability to secure a second mortgage, or (2) that any decrease in the Claimant's property value caused the Claimant to sustain a loss or reduction in income.

Because the Claimant has not attempted to sell their property, any depreciation in the Claimant's property value would not have resulted in an actual loss to the Claimant. Therefore, the loss alleged in this claim is both speculative and prospective. These uncertain damages are not compensable under OPA's loss of profits damage category, which limits potentially available compensation to "the actual net reduction or loss of earnings or profits *suffered*" [emphasis added].⁸ Further, any income that the Claimant's business would have derived in the future if Claimant was able to invest the income derived from the second mortgage on their home into their business is likewise speculative and prospective and not compensable under OPA.

2. Failure to prove loss due to Deepwater Horizon oil Spill.

The Claimant has also failed to provide any evidence in support of their claim that their property value indeed decreased as a result of the Deepwater Horizon oil spill. Even if the Claimant had sold this property at a loss, this claim would be denied as the Claimant has not established that the property value actually decreased by a certain amount as a result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$600,000.00, 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. Furthermore, this claim is denied because it is considered to have been settled by virtue of Claimant belonging to the economic damages class associated with the CSSP.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/16/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ 33 C.F.R. § 136.235.