

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 4131

5890/DWHZ
1 August 2012

Florida BP Claims Inc.


Re: Claim Number: N10036-1830

Dear Mr. Byers:


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 N10036-1830 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 N10036-1830.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,


Claims Registration Division
National Pollution Funds Center

Enclosure: Claim Summary/Determination Form

cc: Suarez Realty Group


By Certified Mail:
No. 7011 1150 0000 4636 3974

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1830
Claimant	Suarez Realty Group
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$112,556.00

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 25 May 2012, Ms. Phyllis Suarez on behalf of Suarez Realty Group, Inc., (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$112,556.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

The Claimant is a realty group located in New Port Richey, Florida. The Claimant alleged that the "business has suffered and took a major loss soon after the oil spill."² The Claimant notes that the effects on her business stem from the fact that her office is located "five miles away from the Gulf of Mexico."³ Furthermore, the Claimant notes that many potential out-of-state buyers did not want to purchase property in the area due to extensive media coverage of the effects of the spill.⁴ In explaining the cause of her loss, the Claimant stated, "[t]he overall effect of the Oil Spill was the loss of business and the ability to recruit real estate agents to expand the business since many agents left the Real Estate Profession after the Oil Spill."⁵

The Claimant alleged that from 2009 to 2010, her earnings decreased by \$112,556.00 following, and as a result of the Deepwater Horizon oil spill.⁶

¹ Optional OSLTF Claim Form, signed on 11 May 2012.

² Letter explaining claim, 11 May 2012.

³ Letter explaining claim, 11 May 2012.

⁴ List of documents included in claim submission.

⁵ Letter explaining claim, 11 May 2012

⁶ Letter explaining claim, 11 May 2012.

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.

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 11 May 2012;
- Claim Cover Sheet, Florida BP Claims Incorporated;
- Hardship Letter;
- Letter explaining claim, 11 May 2012;
- Letter from Thomas KeHoe, CPA, 9 May 2012;
- Map showing office location;
- Spreadsheet depicting gross sales per month for 2008 – 2011;
- Record of sales, 2008 – 2011;
- Quarterly Statements of Revenue and Expenses, 2008 – December 2011;
- 2008 Form 1120S with schedules and attachments;
- 2008 Form 4562;
- 2009 Form 1120S with schedules and attachments;
- 2010 Form 1120S with schedules and attachments;
- 2010 Form 4797;
- Copy of the Claimant's photo ID (not visible);
- Articles of Incorporation, 19 May 2005;
- Business License, 9/12/2005;
- Response to request for additional information, including the following:
 - Tax Assessments and accompanying sales information, showing out of state home sales;
 - Summary showing 2 of 9 2010 sales to out of state purchasers;
 - Copy of the Claimant's driver's license;
 - Cover letter responding to additional information request, dated 14 June 2012;
 - Photographs under the heading, *BP Gulf Oil Spill Pictures: Destroyed Beaches and Habitats*;
 - Article, Oil Spill Legal News – Update No. 5, June 24, 2010, *The Gulf Oil Spill Impact on the Coastal Real Estate Market*;
 - Article, *Oil Spill Fears Already Affecting Florida Real Estate Values*, 23 August 2010;
 - Article, *Study: Home Sales affected by oil spill*, Tampa Bay Business Journal, 20 August 2010;
 - Article, *Oil Spill May Cost \$4.3 Billion in Property Values*, Bloomberg, 11 June 2010;
 - Article, *Gulf real estate sales suffer from BP oil spill aftermath*, USA Today, 19 August 2010;
 - Article, *The Gulf oil spill impact on the coastal real estate market*, 24 June 2010;
 - Article, *SPECIAL REPORT: BP Oil Spill Now Impact Real Estate Markets Beyond Gulf Coast Cities*, 20 August 2010;
 - Robinson, Richard Andrew, *The Gulf of Mexico oil disaster: A case study on the projected economic impact on tourism among the Gulf States of Louisiana, Mississippi, Alabama, and Florida*, University of Nevada, Las Vegas, 1 August 2010;
 - List of 2008 sales, showing 6 sales of 18 to out-of-state buyers.

Prior to presentment of this claim to the NPFC, the Claimant presented a “fifth quarter” Interim Claim to the RP/GCCF (ICQ52012), seeking loss of profits and wages damages.⁷ The Claimant was assigned Claimant ID 3580088 and the ICQ52012 was assigned claim # 9572253. The RP/GCCF denied payment on this claim.⁸

The Claimant then submitted a “sixth quarter” Interim Claim to the RP/GCCF (ICQ62012), again seeking loss of profits and wages damages. The ICQ62012 was assigned claim # 9599052 and was also denied.

On 25 May 2012, the Claimant submitted this claim to the NPFC, seeking \$112,556.00 in loss of profits and impairment of earning capacity damages.⁹ The NPFC may adjudicate this claim to the extent that this claim was first presented to and either denied by, or left undetermined by the GCCF, following ninety (90) days of initial presentment of the claim.¹⁰ If any damages now presented to the NPFC, were not first presented to the RP/GCCF, these damages are denied for improper presentment.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (E&PD 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 E&PD Settlement. This claim is therefore considered to have been settled, and the Claimant is therefore 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 she is a member of the economic damages class of the E&PD Settlement, she should submit evidence to indicate that she has either opted out or is excluded from the E&PD Settlement in her request for reconsideration of this claim.

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

⁷ GCCF Claimant Status, accessed on 25 May 2012.

⁸ GCCF Claimant Status, accessed on 25 May 2012.

⁹ Optional OSLTF Claim Form, signed on 11 May 2012.

¹⁰ 33 C.F.R. § 136.103(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.

The Claimant alleged to have sustained a loss of \$112,556.00 in 2010 as a result of the Deepwater Horizon oil spill.¹¹ In a letter dated 5 June 2012, the NPFC requested that the Claimant provide “record of any property sales that were either lost or cancelled as a result of the oil spill.”¹² The Claimant failed to provide such evidence, and responded that her losses were not caused by cancelled sales, but rather were due to “the general public both locally and out of state not wanting to purchase or sell any real estate after the BP Oil Spill occurred.”¹³ However, the Claimant has failed to provide evidence to show that in the period following the oil spill, sales, even though not cancelled, were unusually low as a result of the spill.

The Claimant’s sales records indicate that sales in 2010 prior to the oil spill were already significantly reduced as compared to sales in the same period of previous years. It does not appear that the Claimant’s rate of loss actually increased in the months following the spill. In 2008, from January to April, the Claimant reported gross sales of \$927,000.00. In the same period of 2009 and 2010, the Claimant’s gross sales decreased to \$898,880.00 and then to \$604,900.00.¹⁴ The Claimant has not provided evidence that might show that the factors that caused the Claimant’s earnings to drop prior to the spill had subsided, or to show that the effects of the oil spill caused sales to decrease at a faster rate than they were already decreasing.

Furthermore, the Claimant’s sales records indicate that 50% of the Claimant’s total sales transactions occurred from May to December of 2008; 62.5% occurred in same period of 2009; 66.67% occurred during this period of 2010, and 56.25% in 2011.¹⁵ Regarding the dollar amount for the Claimant’s sales throughout each year, the trend is similar. May to December sales for 2008 accounted for 50.3% of the dollar value of the Claimant’s yearly sales, as compared to 66.3%, 64.2% and 62.4% for this period of 2009, 2010 and 2011 respectively.¹⁶ Although the Claimant’s yearly earnings for 2010 are significantly lower than in prior years, they are consistently low throughout that year, rather than during the period following the oil spill.

The Claimant has also failed to provide evidence to prove that the oil spill, and not other factors affecting the housing market, caused a general downturn in the Tampa area housing market in 2010. In her initial submission, the Claimant alleged that

local buyers, sellers and rental market was highly impacted as seen through studies completed by real estate information companies.¹⁷

However, the Claimant did not provide the referenced real estate studies to indicate how the oil spill actually affected home sales in the area. Research conducted by the NPFC indicates that many factors were affecting the real estate market in 2010, but fails to indicate that the oil spill had an appreciable effect on home sales in the Tampa metropolitan area. A second quarter 2010 report by the U.S. Department of Housing and Urban Development (HUD) referred to the Tampa-St Petersburg-Clearwater, Florida housing market as “soft” due to “overbuilding from 2003 to

¹¹ Letter explaining loss, 11 May 2012.

¹² NPFC request for additional information, 5 June 2012.

¹³ Response to NPFC request for additional information, 20 June 2012.

¹⁴ Sales chart provided by the Claimant, 2008 – 2011.

¹⁵ 2008 – 2011 record of sales, showing date of sale, list price, sales price.

¹⁶ 2008 – 2011 record of sales, showing date of sale, list price, sales price.

¹⁷ Letter explaining loss, 11 May 2012.

2005, slower population and household growth, and declining employment levels.”¹⁸ From May 2010 to May 2011, during the period in which Claimant alleged to have lost income due to the oil spill, HUD noted that “the sales housing market conditions improved” as compared to the previous year.¹⁹ The market, however, was still described as “soft.” The HUD reports state that the housing market is a reflection of the generally weakened economy from May 2010 to May 2011, “continuing a trend that began in 2006.”²⁰ Although the market increased slightly throughout 2010 as compared to 2009, the Claimant’s income fails to reflect that increase. Because the oil spill does not appear to have had a noticeable impact on the Tampa area real estate market, it is unclear how the oil spill might have affected the Claimant’s business in particular.

The Claimant alleged that concerns regarding the oil spill dissuaded out-of-state buyers in particular from purchasing homes in and around Pasco County, Florida. Based on the addresses of homes sold by the Claimant, it seems that the Claimant’s market consists primarily of suburban real estate, rather than beachfront property. The Claimant has not provided evidence that might show that sales for non-beachfront property in and around New Port Richey, Florida, were actually affected by the Deepwater Horizon oil spill.

Additionally, the NPFC notes that tourism in the Tampa metropolitan area did not appear to decrease in the period following the oil spill. In Hillsborough County in 2010, for example, the total number of overnight visitors to the county increased slightly over 2009, while total visitor spending saw the same slight increase, from \$2.9 million dollars in 2009 to \$3.2 million in 2010.²¹

The same is true of neighboring Pinellas County. Pinellas County tourism statistics indicate that tourism in the summer and fall of 2010 did not decrease as compared to the previous year. The 2010 Annual Visitors Profile for Pinellas County indicates that the number of visitors to the county in May, June, July and August 2010, actually increased as compared to those months of 2009.²² Likewise, the Visitors Profile indicates that expenditures in the spring and summer months of 2010, did not drop, but remained at 2009 levels.²³ These statistics are further supported by Pinellas County Bed Tax collections, which indicate year over year increases starting in July of 2010 and continuing through 2011.²⁴ It appears then, that the oil spill did not dissuade tourists from visiting the Tampa area in any significant numbers. It seems that if the oil spill caused home purchasers to decide to forgo purchasing real estate near the Gulf, it also would have caused an appreciable decrease in tourism. However, tourism statistics fail to indicate that this is the case.

Without any direct evidence that might show that certain buyers cancelled contracts for sale as a result of the oil spill, the Claimant has not provided evidence sufficient to prove that any loss of income she might have sustained was caused by the discharge of oil resulting from the Deepwater Horizon oil spill and not due to overbuilding, a generally weakened economy, high unemployment rates, or other factors affecting the Tampa area housing market. Furthermore, it

¹⁸ Housing Market Profile, HUD Region IV, 2nd Quarter 2010.

¹⁹ Housing Market Profile, HUD Region IV, 2nd Quarter 2010.

²⁰ Housing Market Profile, HUD Region IV, 2nd Quarter 2011.

²¹ Tampa Bay & co. Analysis of the 2011 Hillsborough County Visitor Report.

²² St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>, at 6. Accessed on 3 January 2012.

²³ St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile, Available at, www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf, at 7. Accessed on 3 January 2012.

²⁴ Pinellas County, CVB statistics, Bed Tax Information. Available at, www.pinellascvb.com/cms/index.php?id=6. Accessed on 3 January 2012.

is unclear whether or not the Claimant will recoup any losses she incurred due to sales that may have been deferred and delayed, but not actually cancelled.

Accordingly, this claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss of profits of \$112,556.00, 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. Additionally, this claim is considered to have been settled by virtue of Claimant belonging to the economic damages class associated with the CSSP and is not eligible for compensation from this Fund.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/1/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: