

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
Number: 7011 1570 0001 4803 8800

5890/DWHZ
26 October 2012

Mrs. Sandra L. North


Re: Claim Number: N10036-1875

Dear Mrs. North,

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 N10036-1875 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

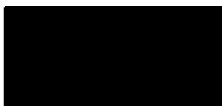
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1875.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1875
Claimant	Mrs. Sandra L. North
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$17,033.00

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 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 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 10 October 2012, Mrs. Sandra North ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$17,033.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a "real estate salesperson" in Panama City Beach, Florida.² The Claimant alleged that the oil spill and associated media coverage negatively affected the housing market in northwest Florida, causing the Claimant to sustain a loss of profits of approximately \$17,033.00. The Claimant reached this figure "by averaging the net profits from [her] Schedule C's from 2006, 2007 [and] 2008," noting that 2009 profits were not indicative of her losses as low sales in that year resulted from external economic factors affecting the housing market.³

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

¹ Optional OSLTF Claim Form, signed on 22 August 2012.

² Letter from the Claimant to the NPFC, 28 September 2012.

³ Letter from the Claimant to the NPFC, 28 September 2012, at 11.

water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. 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; and
- (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.

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 NPFC

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 25 August 2012;
- Letter from the Claimant to the NPFC, describing losses, 28 September 2012 (12 pgs).
- Article, *BP to pay TDC \$2.6 million*, 18 April 2011;
- Chart, Dollar Volume of Sold Listings, 2009, 2010, Bay County Association of Realtors;
- Article, *Oil rig tank washes up on PCB*, 12 June 2010;
- Article, *'It's our turn:' Tar balls was ashore*, 19 June 2010;
- Chart, Dollar Volume of Sold Listings, 2008, 2009, Bay County Association of Realtors;
- December 2008 Monthly Newsletter, Bay County Association of Realtors;
- December 2009 Monthly Newsletter, Bay County Association of Realtors;
- Article, *Southwest Airlines Announces Service From Northwest Florida's New International Airport, Near Panama City, Florida*, 21 October 2009;
- Article, *New Southwest Airlines Commercial Features Panama City Beach*, 15 April 2010;
- MLS Listing # 322527, Edgewater Tower II;
- Letter from David and Terry Fountain, regarding decision not to purchase property, 15 June 2011, with attached note from the Claimant;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 8 November 2011;
- GCCF Re-Review Determination Letter on Interim Payment/Final Payment Claim, 13 January 2012;
- 2006 Schedule C (Form 1040), showing net profit of \$17,449.00;
- 2007 Schedule C (Form 1040), showing net profit of \$18,762.00;
- 2008 Schedule C (Form 1040), showing net profit of \$14,888.00;
- 2009 Schedule C (Form 1040), showing net profit of -\$2,907.00;
- 2010 Schedule C (Form 1040), showing net profit of -\$3,863.00;
- Property Listing, Defuniak Springs, FL, listed 09/20/2008;
- Property Listing, Lynn Haven, FL, listed 06/26/2008;
- Property Listing, Panama City Beach, FL, listed 03/01/2007;
- Property Listing, Panama City, FL, listed 04/30/2008;
- Chart showing monthly income, 2007, 2008, 2009, 2010;
- Letter from Linda Melvin, Exit Realty, regarding the Claimant's independent contractor status, 10/25/2011;
- Screenshots, showing the Claimant's real estate license status;
- Proof of continuing education requirement completions, 2010;
- Documentation of payment of realtors' association dues;
- Referral Short Form Fax letter, 09/17/2010;
- Deal Close Report, 06/07/2011;
- Copy of real estate licenses;
- Real Estate Brokerage Management Diploma, 03/13/2012;
- Real Estate Investment and Finance Diploma, 09/04/2012;
- Copy of the Claimant's Florida Driver License;
- 2006 Form 1040, showing adjusted gross income of \$80,742.00;
- 2007 Form 1040, showing adjusted gross income of \$96,499.00;
- 2008 Form 1040, showing adjusted gross income of \$101,182.00;
- 2009 Form 1040, showing adjusted gross income of \$103,574.00;

- 2009 Form W-2s, showing earnings of \$20,036.50 and \$4,534.75;
- 2010 Form 1040, showing adjusted gross income of \$89,140.00;
- 2010 Form W-2, showing earnings of \$12,183.23;

On 10 October 2012, the Claimant presented this claim to the NPFC, seeking \$17,033.00 in loss of profits or impairment of earning capacity damages.⁴ The Claimant had previously presented an Interim Payment/Final Payment claim for loss of earnings damages to the responsible party through its representative, the GCCF. The Claimant was assigned GCCF claimant ID 1631738.⁵ The GCCF denied payment on this claim when it was first presented, and then again on re-review.⁶ Because this claim has been properly presented, to and then denied by an agent of the responsible party, the NPFC may properly adjudicate all damages presented in this claim.⁷

In a phone conversation with NPFC staff, the Claimant indicated that she has affirmatively opted out of the Deepwater Horizon oil spill economic and property damages class action settlement (the 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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

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

The Claimant alleged that the oil spill caused her to be unable to earn income as a real estate salesperson in and around Panama City Beach, Florida. The Claimant specified that her “primary claim against BP centers around loss of business revenue due to the depressed market conditions created by the oil spill and the media onslaught that ensued.”⁸

In terms of proving causation under OPA, it is not sufficient to merely prove that *any* effect of the oil spill and associated events somehow contributed to the claimant’s loss. Rather, a claimant must specifically prove that their financial loss was “due to the injury to, destruction of, or loss of real or personal property or natural resources,” resulting from the discharge of oil.⁹ As such, the Claimant in this instance would have to identify a particular sale that was lost or cancelled as a result of damage to real property or natural resources resulting from the Deepwater Horizon oil spill. However, there is no indication in this claim submission that a sale was cancelled due to physical effects of oil discharge on a particular property.

⁴ Optional OSLTF Claim Form, signed on 25 September 2012.

⁵ GCCF Determination Letter on Interim Payment/Final Payment Claim, 8 November 2011.

⁶ GCCF Determination Letter and Re-Review Determination Letter.

⁷ 33 C.F.R. § 136.103(a).

⁸ Letter from the Claimant to the NPFC, describing losses, 28 September 2012.

⁹ 33 C.F.R. § 136.231(a).

A letter from an interested buyer, with whom the Claimant had previously done business, indicates that the buyer was considering purchasing a condominium unit, but decided to “put any additional purchases on hold” to due to “the current¹⁰ rental market and loss in value of their existing property due to the oil spill.”¹¹ Although the buyer states that effects of the oil spill prompted his decision not to purchase, there is no indication that the unit which the buyer may have purchased was in any way affected by “injury to, destruction of or loss of property or resources” resulting from oil discharged during the Deepwater Horizon oil spill. Rather, the buyer points to market conditions and concerns regarding ability to generate rental revenue.

Furthermore, according to the buyer’s letter, this speculative sale was delayed, rather than cancelled. The NPFC cannot compensate a claim based on profits allegedly lost, which the claimant may earn at a later date. No other evidence has been presented to indicate that the claimant lost income from any particular sale that was either lost or cancelled.

Based on the foregoing, the Claimant has failed to provide evidence sufficient to prove (1) that she sustained a financial loss in the amount \$17,033.00, or (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 discharge of oil. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *10/26/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹⁰ As of 15 June 2011.

¹¹ Letter from David and Terry Fountain, 15 June 2011.