

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2445 3016

5890/DWHZ
16 January 2013

Ms. Sandra Ellis
[REDACTED]

Re: Claim Number: N10036-1881

Dear Ms. Ellis,

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 N10036-1881 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 N10036-1881.

Mail reconsideration requests to:

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

Sincerely,
[REDACTED]

Information Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1881
Claimant	Sandra Ellis
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$130,000.00

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 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 2 January 2013, Ms. Sandra Ellis, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$130,00.00 in what the Claimant categorized as real or personal property damages.¹ The Claimant specified that her loss is not based on physical property damage, but rather, on alleged decreases in the values of the Claimant's properties. Because the Claimant has alleged to have sustained a financial loss, this claim is more appropriately categorized as a claim for loss of profits or impairment of earning capacity damages.

The Claimant owns two properties in Mobile, Alabama. She alleged that their values were negatively impacted by the effects of the Deepwater Horizon oil spill on the housing market in Mobile.² The Claimant has not indicated that she was attempting to sell the properties at any time prior to submission of this claim.

For the loss of value of the two properties, the Claimant seeks to recover \$130,000.00, which is the amount of value decrease which she attributes to the effects of the Deepwater Horizon oil spill.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 26 December 2012.

² See, Appraisal Reports.

³ Optional OSLTF Claim Form, signed on 26 December 2012.

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:

- Cover sheet, dated 21 December 2012;
- Letter to the Claimant from the Plaintiff Steering Committee, 13 December 2012;

- Letter from the NPFC to the Claimant, 14 June 2011;
- Optional OSLTF Claim Form, signed on 26 December 2012;
- Letter from the Claimant to the GCCF, 4 February 2011;
- Letter from the Claimant to "B.P. Oil Spill Service Center" 19 July 2010;
- Appraisal invoice, 20 July 2006;
- Appraisal Report of 1001 Church Street, Mobile, AL as of 18 July 2006;
- Letter from the Claimant to "B.P. Oil Spill Service Center" 19 July 2010;
- Complete Appraisal Summary Report, 950 Charleston Street, Mobile, AL.

Prior to presenting this claim to the NPFC, the Claimant attempted to recover these damages through B.P. and the GCCF. The Claimant alleged to have made presentment of this claim to B.P. on 19 June 2010 and to the GCCF on 29 August 2010.⁴ According to the Claimant, payment has been denied on each of these claims.

On 2 January 2013, the Claimant submitted this claim to the NPFC seeking \$130,000.00 in damages based on "diminished property value."⁵ Documentation included in this claim submission indicates that the claims now before the NPFC have been first presented to and denied by the RP or its agent. As such, this claim satisfies OPA presentment requirements.⁶

Furthermore, evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).⁷

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.

As an initial matter, it appears that the Claimant is a member of the E&PD 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 the NPFC to those rights.

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 he has either opted out or is excluded from the E&PD Settlement in her request for reconsideration of this claim.

Furthermore, this claim is also denied on its merits. In order to prove a claim based on diminution in property value, a claimant must provide evidence to prove that the value of the

⁴ Optional OSLTF Claim Form, signed on 26 December 2012.

⁵ Optional OSLTF Claim Form, signed on 26 December 2012.

⁶ 33 C.F.R. § 136.103(a).

⁷ Letter to the Claimant from the Plaintiff Steering Committee, 13 December 2012.

property decreased as a result of the oil spill, thereby causing the property to be sold at loss. If the property has not been sold and the claimant maintains possession of the property, then the claimant has not realized an actual financial loss and may not be compensated under OPA.

Here, the Claimant has failed to provide evidence to prove that the subject properties had been offered for sale at any time prior to, during or following the Deepwater Horizon oil spill. Furthermore, she has failed to prove that the values of the two properties were in any way affected by the oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that she sustained a financial loss in the amount \$130,000.00, 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: *NPTC Claims Adjudication Division*

Date of Supervisor's Review: *1/16/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: