

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 1570 0001 4803 7490

5890/DWHZ
17 April 2013

Ms. Melinda Maugans


Re: Claim Number: N10036-1900

Dear Ms. Maugans,

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 N10036-1900 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 N10036-1900.

Mail reconsideration requests to:

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



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1900
Claimant	Melinda Maugans
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$16,732.00

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 April 2013, Ms. Melinda Maugans, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$16,732.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is a self employed real estate consultant, operating primarily in Sanibel, Florida. At the time of the oil spill, the Claimant was working under exclusive contract with a particular client. After the oil spill, the Claimant alleged that this client was unable to provide her with the hours she had routinely worked prior to the oil spill and therefore rescinded the exclusivity clause of her contract, allowing her to attempt to supplement her income with other work. The Claimant stated, however, that "other real estate agents were having the same problems" and that she was unable to make up for the loss of income from her primary client.²

The Claimant alleged that her client's loss of business and her subsequent inability to find other work was caused by the Deepwater Horizon oil spill. In describing the nature of her losses, the Claimant stated that her client lost business because the oil spill caused a decrease in home sales in Sanibel, Florida. Specifically, the Claimant stated that potential buyers "were concerned with the spill reaching Sanibel and Captiva Island [and did not] make offers or contracts on homes."³

The Claimant calculated her losses by determining the difference between her total income in 2010 and 2009. The Claimant then added \$5,000.00 to her actual losses of \$11,732.00 due to

¹ Optional OSLTF Claim Form, signed on 22 March 2013.

² Claim description.

³ Claim description.

“stress, time spent and inconvenience due to BP’s mishandling of [the] claim” to reach a sum certain of \$16,732.00.⁴

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 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.

⁴ Email from the Claimant to the BP Claims Program, 12 December 2012.

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 22 March 2013;
- Claim cover letter, 22 March 2013;
- Letter describing claim;
- BP Claims Program – Claim Form for Individuals and Businesses;
- Email exchanges regarding opt-out from E&PD Settlement Class;
- Email from the Claimant to the BP Claims Program re: Claim Status;
- Email from the Claimant to the BP Claims Program re additional information request, 12 December 2012;
- Letter from the BP Claims Program to Claimant, 5 December 2012;
- 2007 Form 1040A;
- 2008 Form 1040;
- 2009 Form 1040;
- 2009 Schedule C, Form 1040;
- 2010 Form 1040;
- 2010 Schedule C, Form 1040;
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Form 8829;
- 2008 Form W-2 Wage and Tax Statement;
- Time Sheets, 1/5/2009 – 1/30/2010;
- 2010 Form 1099-MISC;
- 2010 Form 1099-MISC;
- 2010 Form W-2 Wage and Tax Statement;
- Time Sheets, 1/25/2010 – 2/22/2010.

The Claimant alleged to have presented this claim to BP sometime in August of 2012. As of the date of this determination, BP has failed to render a decision on the claim, which is currently still being processed by the BP claims program.⁵

On 2 April 2013, the Claimant presented this claim to the NPFC, seeking recovery of \$16,732.00 in loss of profits or impairment of earning capacity damages.⁶ Documentation included in this claim submission indicates that these are the same damages as previously presented to BP.⁷ As such, because BP has failed to make a determination on the claim within 90 days of the Claimant's presentment, the Claimant has satisfied OPA presentment requirements and the NPFC may properly adjudicate this claim.

⁵ Claim cover letter, 22 March 2013.

⁶ Optional OSLTF Claim Form, signed on 22 March 2013.

⁷ BP Claim Form.

Furthermore, evidence in this claim submission indicates that the Claimant has opted out of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).⁸


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 damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction in income, and (2) that the financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant is a self-employed real estate consultant, whose primary client reduced her regular working hours due to a decrease in home sales, allegedly resulting from the effects of the Deepwater Horizon oil spill in and around Sanibel, Florida. The Claimant alleged that “when the oil spill happened, the already shaky real estate market came to a halt.”⁹ As proof that the oil spill caused the Claimant’s losses, the Claimant provided tax documentation to indicate that she earned less in 2010 than in 2009. However, the Claimant has not provided any evidence to indicate that the reduction in her income was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. The NPFC is unable to assume that the Claimant’s loss of earnings was caused by the oil spill, particularly considering that the Claimant was working in an area of Florida which was not physically affected by oil discharged during the Deepwater Horizon 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 \$16,732.00, 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.

Claim Supervisor: NPFC Q 

Date of Supervisor’s Review: 4/17/13

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

⁸ Claim cover letter, 22 March 2013; See also, email exchanges between the Claimant and BP, 12 August 2012; the Claimant has not provided the NPFC with a copy of the opt-out form.

⁹ Claim description.