

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 2000 0001 1246 6786

5890/DWHZ  
28 May 2013

Karen Linden Boscamp  


Re: Claim Number: N10036-1929

Dear Ms. Boscamp:

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 N10036-1929 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 N10036-1929.

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	N10036-1929
Claimant	Karen Linden Boscamp
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$210,000.00

### ***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 8 May 2013, Karen Linden Boscamp, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$210,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant, who resides in Glenview, Illinois, owns a home in Key West, Florida which she makes available for rent. The Claimant purchased the home in 2004 and alleged to have rented it throughout 2006 and 2007. In 2008, the Claimant did not collect rent while the home was utilized by a family member. In 2009, the house was damaged by a fire and was not rented. The Claimant asserts that the home became available to rent at some time in April of 2010, for the first time since 2007.<sup>2</sup>

The Claimant provided copies of two signed rental agreements, each dated 1 April 2010, for rental terms beginning on 1 May 2010. The Claimant asserts that each tenant cancelled their contract sometime before 1 May 2010 "because of the oil spill and the effect on tourism as they were tourism workers."<sup>3</sup>

The Claimant seeks to recover \$60,000.00 in lost rental income in 2010 and 2011, as well as an additional \$150,000.00 to be compensated for "huge liens for non-payment of some mortgage payments" for a total claimed amount of \$210,000.00.<sup>4</sup>

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<sup>1</sup> Cover Letter, 1 May 2013

<sup>2</sup> Cover Letter

<sup>3</sup> Cover Letter at 2.

<sup>4</sup> Cover Letter at 2.

## ***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 NPFCL, all evidence, information, and documentation deemed necessary by the Director, NPFCL, 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 Letter, 1 May 2013;
- BP Claim Determination Notification, 8 May 2013;
- Warranty Deed;
- 2009/2010 Monroe County Business Tax Receipt;
- 2010/2011 Monroe County Business Tax Receipt;
- Business Economic Loss Property Owner-Manger Sworn Written Statement;
- Power of Attorney;
- Business Economic Loss Form, signed on 22 December 2012;
- Residential Room Lease Agreement, dated 1 April 2010;
- Residential Room Lease Agreement, 1 April 2010;

Prior to presenting this claim to the NPFC, the Claimant attempted to recover these losses from the Responsible Party through the BP Claims Program. BP denied payment on this claim in a letter dated 15 April 2013.

On 8 May 2013, the Claimant presented this claim to the NPFC, seeking \$210,000.00 in loss of profits of impairment of earning capacity damages. Because this claim was first presented to and then denied by the Responsible Party, presentment requirements under OPA have been satisfied.<sup>5</sup>

Evidence in this claim submission indicates that the Claimant has likely opted out of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).<sup>6</sup>

## **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 specifically due to *damage to real or personal property or natural resources caused by the discharge of oil* resulting from the Deepwater Horizon oil spill.

The Claimant alleged that potential tenants, both of which signed rental agreements on 1 April 2010, cancelled these agreements sometime before 1 May 2010 as a result of the oil spill, which began on about April 20, 2010. The property then remained vacant for the entirety of 2011, and was not rented until January of 2012.

The Claimant has not provided any evidence to prove that the property was routinely generating income prior to the oil spill. In fact, the Claimant indicated that the property had not been rented

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<sup>5</sup> 33 C.F.R. § 136.103(a).

<sup>6</sup> Claim cover letter, 8 May 2013.

since 2007 and had only become available for rent again in April of 2010. It is unclear then, that the Claimant should have expected to have rented the property consistently from April 2010 through December 2011.

The Claimant asserts that two rental agreements were cancelled because of concerns by her potential tenants regarding the possible effects of the oil spill on tourism in the Florida Keys. Both tenants, she asserts, were traveling to Key West to work in positions which relied on tourism.

However, this type of loss is not compensable under OPA, which provides compensation only for losses that were specifically due to damage to real property or natural resources caused by the Deepwater Horizon oil spill. This claim is based on the cancellation of rental agreements, allegedly prompted by speculation regarding the effects of the oil spill on tourism in the Florida Keys, and is not based on damage to either property or natural resources.

Furthermore, the NPFC notes that data collected by the U.S. Census Bureau indicates that tourism in Key West and Monroe County did not decrease in 2010 or 2011. Rather, it appears as though lodging occupancy percentages in 2010 were higher than they had been for any year since 2004 before again increasing in 2011.<sup>7</sup>

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 \$210,000.00, 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.

Claim Supervisor: NPFC  *ication Division*

Date of Supervisor's Review: *05/28/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>7</sup> Lodging occupancy percentages for Key West, 2004 – 2011: 78.8%, 76.2%, 73.5%, 75.3%, 74.2%, 76.9%, 78.1%, 82.5%; The same trend applies for Monroe County on the whole. Available at <http://www.keywestchamber.org/PDF/demographics.pdf>. Accessed on 24 May 2013.