

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: 7012 2210 0001 7214 9883

5890/DWHZ
24 July 2013

Anna Vigliotti


Re: Claim Number: N10036-1955

Dear Ms. Vigliotti,

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 N10036-1955 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

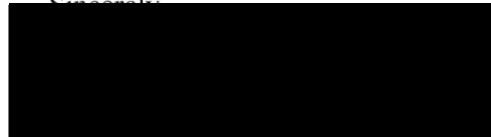
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1955.

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 | N10036-1955 |
| Claimant | Anna Vigliotti |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits or Impairment of Earning Capacity |
| Amount Requested | \$214,701.09 |

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 7 June 2013, Anna Vigliotti ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$214,701.09 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

This is a claim for "financial loss on personal property" allegedly caused by effects Deepwater Horizon oil spill.² In December of 2009, the Claimant alleged to have received an offer of \$655,000.00 on her property for sale in Nokomis, Florida in Sarasota County. The contract was never finalized due to the buyers' failure to secure a loan.³ The Claimant eventually sold the property for \$572,978.91 in June of 2013. From approximately May 2010 until October of 2011, the Claimant did not list the property for sale citing concerns that the oil spill had damaged the real estate market in Sarasota County.⁴

The Claimant seeks to recover \$82,821.09 in loss of earnings on the sale of her property, and \$131,880.00 in various carrying costs, which the Claimant alleged that she would not have incurred had the real estate market not been damaged by the oil spill.⁵

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 Claim cover letter, dated 3 June 2013.

² Claim cover letter, dated 3 June 2013.

³ Letter from the Claimant to B.P. Oil Spill Service Center, 29 June 2010.

⁴ See, Zillow.com, http://www.zillow.com/homedetails/300-Bayview-Pkwy-Nokomis-FL-34275/47539404_zpid/, accessed on 23 July 2013.

⁵ Claim cover letter, dated 3 June 2013.

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:

- Claim cover letter, dated 3 June 2010;
- Letter from the Claimant to "B.P. Oil Spill Service Center", 29 June 2010;

- HUD-1 Settlement Statement;
- Property listing information, zillow.com, bocaexecutiverealty.com;
- Article, *Charle Crist orders property appraisers to give redo to homeowners in oil region*, 21 July 2010;
- Article, *Crist orders 'interim' valuations of property affected by BP spill*, 21 July 2010;
- Article, *Governor Crist helps property owners affected by Gulf oil spill*, 26 July 2010;
- Article, *Crist's Executive Order Helps Property Owners; 35,000 Jobless Floridians Next in Line?* 21 July 2010.
- Article, *Crist Signs Order to Help Panhandle Property Owners*, 21 July 2010;
- Optional OSLTF Claim Form, signed on 5 November 2012;
- GCCF, Follow-Up to Previous Denial Letter, 12 October 2011;
- Letter from BP to the Claimant, 19 July 2010;
- Copy of property listing.

Prior to presenting this claim to the NPFC, the Claimant attempted to recover these alleged losses from the Responsible Party through the GCCF. The GCCF denied payment on the claim.⁶

On 7 June 2013, the Claimant submitted this claim to the NPFC, for \$214,701.09 in loss of profits and impairment of earning capacity damages. The NPFC does not have evidence to indicate that the same damage amount was first presented to and denied by the RP. However, the NPFC will adjudicate the claim to the extent that presentment requirements have been satisfied. Any amount now before the NPFC, which was not first presented to and denied by the RP, is denied for improper presentment.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.

In order to prove a claim for loss of profits or impairment of earning capacity damages based on the loss on a sale of real property, a claimant must provide evidence indicating (1) the pre-spill value of the property (2) the post-spill value of the property, and (3) that the decrease in value was caused by damage to real or personal property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

The Claimant uses a pre-oil spill offer on the property to establish the value prior to the spill, and then uses the sales price of the home in June of 2013 to establish the post-spill value. The Claimant identifies the difference in the offer made in December of 2009 and the sales price in June of 2013, as the decrease in value which can be attributed to the Deepwater Horizon oil spill. However, considering that the Claimant did not sell the property for more than three years following the oil spill, the eventual sales price does not provide an indication as to how the value of the home might have been affected by the oil spill.

Furthermore, publicly available records indicate that the Claimant had first listed the property for sale in April of 2007, and had consistently reduced the list price until the property finally sold in

⁶ GCCF Follow-Up To Previous Denial Letter, 12 October 2011.

⁷ Optional OSLTF Claim Form, signed on 16 June 2013.

June of 2013.⁸ Because the list price had been decreasing consistently for about three years prior to the oil spill, and because the property had not sold, it cannot be assumed that the property would have sold more quickly than it had, had the oil spill not occurred. Additionally, carrying costs such as insurance payments, tax liability and maintenance costs, associated with property owned and resided in by a claimant, do not constitute losses or reductions in profits, and are therefore not compensable costs under the Oil Pollution Act of 1990.

Finally, and most importantly, the NPFC may only compensate claims for financial losses caused by “injury to, destruction of, or loss of real or personal property or natural resources” resulting from the discharge or substantial threat of discharge of oil.⁹ Because the Claimant’s property is located in Sarasota County, in an area not affected by oil discharged into the Gulf of Mexico, the decrease in the Claimant’s property value could not have been caused by harm to property or natural resources resulting from the oil spill, and thus cannot form the basis for a loss that might be compensable under OPA.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that she sustained an uncompensated financial loss in the amount of \$214,701.09, 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 Claims Adjudication Division*

Date of Supervisor’s Review: *7/24/2013*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

⁸ See, Zillow.com, http://www.zillow.com/homedetails/300-Bayview-Pkwy-Nokomis-FL-34275/47539404_zpid/, accessed on 23 July 2013.

⁹ 33 C.F.R. § 136.231.