

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 4802 5176

5890
25 October 2011

Jacqueline Robert



Re: Claim Number: N10036-1337

Dear Mrs. Robert:

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 claim number N10036-1337 involving Deepwater Horizon. 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 N10036-1337.

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

Enclosures: (1) Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1337
Claimant	: Jacqueline Robert
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$1,250.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 1 September 2011, Jacqueline Robert (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$250.00 in loss of profits and impairment of earnings capacity and \$1,000.00 in real or personal property damage resulting from the Deepwater Horizon oil spill.¹ The Claimant and her husband own a trailer and leased a site in 2010 at a trailer park/camp ground at Montegut, Louisiana,² where they would park their trailer, relax and fish on weekends.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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 U.S.C. § 2702(b)(2)(E) and the promulgating regulations under 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. Another type of damages available pursuant to 33 U.S.C. § 2702(b)(2)(B) and the promulgating regulations under 33 C.F.R. § 136.213 is a claim for real or personal property damages for injury to, or economic losses resulting from destruction of, real or personal property.

Under 33 C.F.R. § 136.103, all claims for removal costs or damages must be presented first to the responsible party or guarantor, with limited exceptions.

Under 33 C.F.R. § 136.233, a claimant must establish the following for a loss of profits or impairment of earning capacity claim:

¹ Optional OSLTF Claim Form signed 17 August 2011 and received 26 August 2011.

² Lease between Jackie & Curtis Robert and HighTide R.V. & Campers, LLC, dated 16 March 2010.

³ Claimant's undated To Whom It May Concern letter received 26 August 2011.

- (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.
- (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.

With limited exceptions, 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.

Regarding real or personal property claims, 33 C.F.R. §136.213 states:

- (a) A claim for injury to, or economic losses resulting from the destruction of real or personal property may be presented only by a claimant either owning or leasing the property.
- (b) Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under §136.233.

33 C.F.R. § 136.215 establishes additional proof requirements for a real or personal property claim:

- (a) In addition to the requirements of subparts A and B of this part, a claimant must establish—
 - (1) An ownership or leasehold interest in the property;
 - (2) That the property was injured or destroyed;
 - (3) The cost of repair or replacement; and
 - (4) The value of the property both before and after injury occurred.
- (b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish—
 - (1) That the property was not available for use and, if it had been, the value of that use;
 - (2) Whether or not substitute property was available and, if used, the costs thereof; and
 - (3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

Under 33 C.F.R. § 136.217, the amount of compensation allowable for a claim involving real or personal property damage is limited:

- (a) The amount of compensation allowable for damaged property is the lesser of—
 - (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
 - (2) The difference between value of the property before and after the damage; or
 - (3) The replacement value.
- (b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable.
- (c) Compensation for a claim for loss of profits or impairment of earning capacity under §136.213(b) is limited to that allowable under §136.235.

Under general requirements applicable to all claims, specifically 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

Prior to presentment to the NPFC, Claimant represents having filed a claim with BP/GCCF in July 2010 and that the claim was denied.⁴ Based on independent research by the NPFC, the Claimant presented a one-month Emergency Advance Payment (EAP) Claim to the GCCF on 1 December 2010 and a Final Payment Claim in the amount of \$1,000.00 on 30 December 2010 for lost wages/earnings. Claimant also presented an Interim Payment (IP) Claim on 4 January 2011. All of these claims were assigned Claimant ID Number 3384315 and have been denied.⁵

On 26 August 2011, the Claimant presented this claim to the Oil Spill Liability Trust Fund (OSLTF).⁶ The claimed amount includes \$250.00 for loss of profits and earning capacity due to loss of wages and \$1,000.00 for real or personal property damage from loss of use of the Claimant's second home.⁷

The Claimant stated that she and her husband keep their trailer at the Point Aux Chene Marina as a second home and go there almost every weekend.⁸ They rent trailer space for \$1,850.00 per

⁴ Optional OSLTF Claim Form signed 17 August 2011 and received 26 August 2011.

⁵ GCCF – U.S. Coast Guard Report as of 10-6-2011. Among other information, this report indicates that neither the EAP Claim nor the IP Claim had presented an amount of damages.

⁶ Optional OSLTF Claim Form signed 17 August 2011 and received 26 August 2011.

⁷ Optional OSLTF Claim Form signed 17 August 2011 and received 26 August 2011.

⁸ Claimant's undated To Whom It May Concern letter received 26 August 2011.

year.⁹ When the [Deepwater Horizon] oil spill happened, BP wanted to rent the whole marina and the owner asked the Claimant to move. The Claimant and her husband took 2 days off from work to move the trailer (3 blocks down the road to a trailer park), but BP workers still parked everywhere and left noisy generators running 24-7. The Claimant further asserted that there was no place to launch their boat for fishing and they could no longer go to [the campground and marina].¹⁰

The Claimant stated that BP was finished at the marina six months later and the Claimant was able to move back.¹¹

In support of this claim, the Claimant presented the following documentation:

1. Optional OSLTF Claim Form dated 17 August 2011, received 26 August 2011.
2. Claimant's undated 'To Whom It May Concern' letter received 26 August 2011.
3. Letter from Colette Pichon Battle, Esq., to Claimant dated 9 August 2011.
4. Receipt No. 251202 from High Tide RV & Camper for Claimant' for annual lease in the amount of \$1,850.00.
5. Front and back of check #2037 dated 18 February 2010 to High Tide R.V. & Campers, LLC. in the amount of \$1,800.00.
6. *Entergy Louisiana, LLC* Invoice # 260001950244 for service at 4124 Highway 665, Lot F, Montegut, LA 70377-2425.
7. Four unlabeled photographs, of the parking lot, connex box, and portable office trailer at trailer court/camp grounds.
8. Gulf Coast Claims Facility claim number ticket.
9. GCCF letter dtd 24 January 2011 on Receipt of Full Review Final Payment Claim.
10. GCCF letter dtd 24 January on receipt of Interim Payment Claim.
11. GCCF letter dtd 31 January on submission of documentation.
12. GCCF letter dtd 30 April 2011, Denial of Interim Payment/Final Payment Claim.
13. Unsigned Entergy letter dtd 5 October 2011 to Claimant on utility service at 4226 Highway 665, Lot 6B, from 10-07-2010 through the present.
14. Unsigned Entergy letter dtd 5 October 2011 to Claimant on utility service at 104 Hightide Court from 11-08-2009 through 07/12/2010.
15. Unsigned Entergy letter dtd 12 October 2011 to Claimant on utility service at 104 Hightide Court from 7/18/2007 through 11/06/2009.
16. Unsigned Entergy letter dtd 12 October 2011 to Claimant on utility service at 4124 Highway 665, Lot F, from 07/09/2010 through 10/7/2010.
17. HighTide R.V. & Campers, LLC, Lease Agreement dated 16 March 2010.
18. Receipt #165109 for Claimant' for annual lease at 104 HighTide Court, Lot #6C, in the amount of \$1,850.00.
19. Face of check #2139 dated 2-27-11, payable to HighTide RV & Campers, LLC in the amount of #1924.00.

NPFC Determination

⁹ Lease agreement between Jackie & Curtis Robert and HighTide R.V. & Campers, LLC dated 16 March 2010.

¹⁰ Claimant's undated To Whom It May Concern letter received 26 August 2011.

¹¹ Claimant's undated To Whom It May Concern letter received 26 August 2011.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA. Pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, the OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages.

The NPFC considered all documentation presented by the Claimant. Because the Claimant presented two types of damages, each is addressed separately below.

The NPFC notes that the Claimant did not present the same claim to the GCCF that was presented to the NPFC. Rather, \$1,000.00 was presented to the GCCF for loss of wages/earnings in an Interim Payment Claim. The EAP Claim and Final Claim did not include amounts for damages. Because a claim presented to the NPFC must have first been presented to the RP/GCCF, the NPFC denies the \$1,000.00 claimed for real or personal property damages because that claim had not been presented to the RP/GCCF.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, financial documentation to support the damages. The Claimant was given 14 days to respond to the letter, dated 27 September 2011. On 6 October 2011, the Claimant requested an extension that was granted until 25 October 2011.

On 17 October 2011, the Claimant responded in part to the information request, by providing a copy of the Claimant's 2010 lease, four letters from the GCCF, four letters from Entergy Louisiana, a receipt for the Claimant's 2009 lease payment, and a copy of the Claimant's 2011 lease payment check.

Under 33 U.S.C. § 2702 (b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of profits or impairment of earning capacity was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

The Claimant's narrative of moving from the camper site to another trailer park nearby is consistent with the NPFC's independent investigation. The NPFC confirmed with the RV park/campground/marina owner that he had asked everyone with leases to move so that he could rent the property to BP for removal activities.¹² The owner confirmed that he did not compensate those people who moved.¹³

The Claimant has not alleged that she was actually blocked from using her property, rather she stated that she did not return to the camp during the oil spill response because BP workers parked everywhere and left noisy generators running 24-7. There was no place to launch the boat for fishing. Claimant elected to not go there."¹⁴

The Claimant accepted the alternate site as replacement for the site that is the subject of her lease. The inconveniences endured by the Claimant and her husband, resulting in alleged additional

¹² NPFC Staff – B.Fanguy phone call on 27 Sept 2011.

¹³ NPFC Staff – B.Fanguy phone call on 27 Sept 2011.

¹⁴ Claimant's undated To Whom It May Concern letter received 26 August 2011.

expenses, resulted directly from the actions of a third party, the owner/manager of the camper site. The Claimant has not shown that her alleged increased expenses were due to injuries to natural resources caused by the oil spill or oil spill removal activities.

The claim for real or personal property damage is denied for the procedural issue of not having been first presented to the RP/GCCF. Additionally, the NPFC notes that this element of the claim is based in large part on the Claimant's loss of the ability to use and enjoy personal property. However, loss of use of a non-commercial property is not compensable under OPA¹⁵ and could not be paid even if the procedural issue did not exist.

This claim is DENIED because (1) the real or personal property damage claim has not been presented first to the RP/GCCF pursuant to 33 CFR 136.103(a), (2) loss of non-commercial use of a property is not compensable under OPA, and (3) the Claimant has not provided sufficient evidence to indicate that her property sustained physical damages due to removal activities or the oil spill.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/25/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁵ 33 C.F.R. § 136.217(b) states, "Compensation for loss of use of noncommercial property is not allowable".