

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
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)

Phone: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937

5890

12/13/2010

RE: Claim Number: N10036-0082

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR 136, denies payment on claim number N10036-0082 involving Deepwater Horizon. Compensation is denied for the reasons stated in the enclosed Claim Summary / Determination Form. Please see the attached summary for the details and rationale associated with this denial.

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 N08075-001.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

Attachment

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CLAIM SUMMARY / DETERMINATION FORM

Date	10 December 2010
Claim Number	N10036-0082
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$2,295.39

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:

Claimant presented a claim of \$2,295.39 to the NPFC for lost earnings. [REDACTED] is claiming a lost deposit that was placed on a vacation rental located in Destin, Florida near Miramar Beach. [REDACTED] who resides in Carbondale, Illinois, had a reservation to rent a vacation property from 24 July 2010 through 31 July 2010. A deposit equal to the full rental amount was placed on or about 15 April 2010.¹ Subsequent to the Deepwater Horizon incident, [REDACTED] decided to cancel her reservations due to uncertainties about the impacts of the incident to the Destin, Florida area. The terms of the rental agreement state that refunds will only be provided if reservations are cancelled within 7 days of the execution of the rental agreement². [REDACTED] did not provide the date in which she cancelled the reservation, but was not able to receive a refund of her deposit due to the terms of the rental agreement.

APPLICABLE LAW:

Damages that may be paid from the OSLTF are those that are described by the Oil Pollution Act of 1990 (OPA) and that result from a discharge or substantial threat of discharge of oil into or upon the navigable waters, adjoining shorelines or the exclusive economic zone. 33 USC 2702. The NPFC may pay a claim for OPA damages from the Oil Spill Liability Trust Fund (OSLTF) if the claim has been presented first to the responsible party and that claim is denied or not settled after 90 days. 33 USC 2713.

OPA damages that may be paid include "damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant" 33 USC 2702(b)(2)(E).

¹ See, undated Oil Spill Cancellation Notice provided by the Claimant.

² See, [REDACTED] rental policy obtained from [http://www.\[REDACTED\].com/destin-rental-policies](http://www.[REDACTED].com/destin-rental-policies).

Pursuant to the implementing OSLTF claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.

DETERMINATION OF LOSS:

Claimant's Submission

To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated November 2, 2010, a copy of the denial letter from the Gulf Coast Claims Facility (GCCF) dated October 20, 2010, a copy of cancellation letter from [REDACTED] and a copy of the claimant's drivers license. The GCCF assigned claimant identification # [REDACTED] to [REDACTED]'s claim submission. On October 20, 2010, the GCCF issued a denial to [REDACTED] stating that a claim for lost deposits due to cancellation of vacation plans is not compensable by the GCCF.³

NPFC Determination

The claim is denied because the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. The alleged loss is due to personal decisions made by the Claimant. Such a loss as the one claimed in this case, is not a damage that may be compensated from the OSLTF.

Claim Supervisor:	[REDACTED]
Date of Review:	12/13/10
Supervisor's Comments:	DENIAL APPROVED

³ See, GCCF denial letter dated October 20, 2010.