

U.S. Department of
Homeland Security

**United States
Coast Guard**

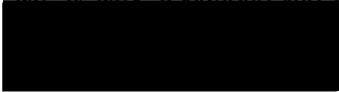


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2441

5890/DWHZ
22 September 2011

Mr. & Mrs. Raymond and Julie Runyon


Re: Claim Number: N10036-1305

Dear Mr. and Mrs. Runyon:

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 N10036-1305 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

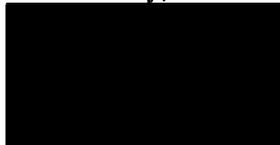
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1305.

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 Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1305
Claimant	Raymond and Julie Runyon
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$609.78

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 15 August 2011, Mr. and Mrs. Raymond and Julie Runyon (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$609.78 in real or personal property damages resulting from the Deepwater Horizon oil spill.¹

The Claimant cancelled a beach rental and fishing guide in Santa Rosa, Florida, and seeks a refund from the OSLTF in the amount of \$609.78 to compensate for the deposit made on the fishing guide reservation.² The Claimant's deposit on the beach rental was fully refunded.³ The Claimant alleged that "due to the oil spill and concerns concerning the disbursement and the health risk, it caused us to cancel a beach rental and fishing guide."⁴

Under OPA, a claim for damage to real or personal property requires that the Claimant demonstrate an ownership or leasehold interest in property, and provide proof that the property was actually damaged due to the discharge of oil.⁵ Because this claim is a claim to recover costs, this claim has been reclassified under OPA's loss of profits and impairment of earnings capacity category.⁶

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 C.F.R. § 136.231 is

¹ Optional OSLTF Claim Form, dated 3 August 2011.

² Optional OSLTF Claim Form, dated 3 August 2011.

³ Copy of check, refunding payment to the Claimant, 11 July 2010

⁴ Optional OSLTF Claim Form, dated 3 August 2011.

⁵ 33 C.F.R. 136.215

⁶ 33 C.F.R. 136.235

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 3 August 2011;
- Letter from the Claimant to the NPFC, dated 3 August 2011;
- Fax Cover Sheet from the Claimant's attorney to "BP Claims" noting inclusion of copy of rental contract, 24 June 2010;
- Copy of rental agreement, 9 November 2009;
- Letter from BP to the Claimant, 19 July 2010;
- Response to BP Request for Additional Information, 20 August 2010;
- Copies of checks for payments rendered for rental property, fishing excursion;
- Copy of check to the Claimant, returning rental deposit in the amount of \$3,163.00.
- Copy of account activity, 9 May 2010;
- Letter from the GCCF to the Claimant, 23 August 2010;

- Copy of Denial Letter on Interim Payment/Final Payment Claim, 22 June 2011, Claimant ID 1108243.

On 26 April 2011, the Claimant presented a Full Review Final claim (FRF) to the RP/GCCF, seeking \$609.78 in real or personal property damages. The Claimant was assigned ID 1108243 and FRF was assigned Claim # 9315875. This claim was denied by the RP/GCCF on 22 June 2011.⁷

On 15 August 2011, the Claimant presented this claim to the NPFC, seeking \$609.78 in real or personal property damages. This is the same claim, alleging the same amount of damages as presented to the RP/GCCF in FRF. Therefore, the NPFC may adjudicate the entirety of this claim, in the amount of \$609.78, as presented to the NPFC on 15 August 2011.

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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support this claim.

In order to prove a claim for loss of profits and impairment of earnings capacity, a Claimant must demonstrate (1) that they suffered a loss or reduction in profits or earnings capacity and (2) that the loss was a result of the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill.

The Claimant seeks to recover a \$609.78 deposit after cancelling a reservation for a fishing guide in Santa Rosa Beach, Florida, during the week of 17 July 2010.⁸ However, the loss of a deposit is not a *loss or reduction in income* and is not compensable under OPA.⁹

Additionally, the Claimant has not provided evidence to show that the fishing guide was cancelled due to the discharge of oil resulting from the Deepwater Horizon oil spill. Rather, the Claimant's submission indicates that the Claimant decided to cancel the fishing guide due to "fear of disbursement and the health hazards relating to the same."¹⁰ Because the Claimant decided to cancel the fishing guide, the Claimant has not demonstrated that any loss they may have suffered was actually caused by the Deepwater Horizon oil spill.

⁷ GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 June 2011.

⁸ Letter from the Claimant to the NPFC, 3 August 2011.

⁹ 33 C.F.R. § 136.233(b) requires that the Claimant demonstrate "[t]hat 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."

¹⁰ Letter from the Claimant to the NPFC, 3 August 2011.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that they suffered a loss in the amount of \$609.78, and (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 a discharge of oil.

Claim Supervisor: **NPFC [REDACTED] Division**

Date of Supervisor's Review: **9/22/11**

Supervisor's Action: **Denial approved**

Supervisor's Comments: