

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4666 9823

5890/DWHZ
1 September 2011

Mr. Richard Edwards


Re: Claim Number: N10036-1331

Dear Mr. Edwards:

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 N10036-1331 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

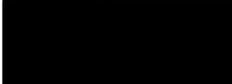
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1331.

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 | N10036-1331 |
| Claimant | Mr. Richard Edwards |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earning Capacity |
| Amount Requested | \$7,200.00 |

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 25 August 2011, Mr. Richard Edwards (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$7,200.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant owns rental property in Gulfport, MS, and alleged that he was unable to secure a tenant for the months of May through October 2010, due to effects of the oil spill.² The Claimant arrived at his sum certain of \$7,200.00 by multiplying his requested rental rate (\$1,200.00/month) by six months, which is the number of months that the home was vacant. (May – October 2010).

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 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

¹ Optional OSLTF Claim Form dated 8 August 2011.

² Optional OSLTF Claim Form dated 8 August 2011.

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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 8 August 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 7 July 2011, Claimant ID 7274627;
- GCCF Ineligible Appeal Letter, 30 July 2011;
- Emails between Claimant and Alfonso Property management, 30 November 2010, 12 July 2011;
- GCCF Appeal Form, undated;
- 2010 Federal Tax Return Summary;
- 2010 Form 1040;
- 2010 Schedule A (Form 1040);
- 2010 Schedule E (Form 1040);
- 2010 Form 8917;
- 2010 Form 4562;
- 2010 Form 8582;
- 2010 Form 8283;
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Form 3903;
- 2010 Mississippi Tax Return Summary;
- Amended Mississippi Individual Income Tax Return 2010, with schedules and attachments;
- Federal/State Adjustment Summary 2010;
- 2010 Schedule E (Form 1040);

- 2010 Louisiana Individual Income Tax Declaration for Electronic Filing;
- 2009 Federal Tax Return Summary;
- 2009 Form 1040;
- 2009 Form 1040;
- 2009 Schedule A (Form 1040);
- 2009 Schedule E (Form 1040);
- 2009 Form 8863;
- 2009 Form 4562;
- 2009 Form 8582;
- 2009 Form 5695;
- 2009 Form 8917;
- 2009 Schedule M (Form 1040A or 1040);
- MetaBank Refund Processing Agreement;
- Louisiana Individual Income Tax Return 2009, with schedules and attachments;
- Mississippi Individual Income Tax Return 2009, with schedules and attachments;
- 2009 Federal/State Adjustment Summary;
- 2008 Form 1040;
- 2008 Schedule A (Form 1040);
- 2008 Schedule E (Form 1040);
- 2008 Form 8582;
- 2008 Form 8283 (Rev 12-2006+);
- Louisiana Individual Income Tax Return 2008, with schedules and attachments, and;
- Mississippi Individual Income Tax Return 2008, with schedules and attachments.

Prior to presentment to the NPFC, Claimant presented a First Quarter Interim Payment Claim (ICQ12011) for \$7,200.00 in lost rental income to the RP/GCCF. Claimant was assigned Claimant ID 7274627 and ICQ12011 was assigned claim number 9291243. This claim was denied on 7 July 2011.³ Claimant also submitted a Full Review Final (FRF) Claim to the RP/GCCF, which was assigned claim number 9261303 and was also denied.⁴

On 25 August 2011, Claimant presented this claim for \$7,200.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Because this claim (1) claims the same amount in damages, and (2) addresses the same loss as presented to the RP/GCCF in ICQ12011, this NPFC determination shall address this claim in the amount of \$7,200.00 in loss of profits and impairment of earnings capacity.

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 the claim.

During the NPFC's review of this claim, the NPFC contacted the Claimant to learn of the status of the home prior to the oil spill.⁵ The Claimant informed the NPFC that he lived in the home

³ Denial Letter on Interim Payment/Final Payment Claim, 7 July 2011.

⁴ GCCF Claim Status Page, (Accessed on 29 August 2011).

⁵ PHONECON: Claimant and NPFC Staff, 29 August 2011.

until April 2010, when he moved from Gulfport, Mississippi to Louisiana.⁶ The Claimant first made the home available for rent in May 2010.⁷ The Claimant had not rented the home prior to the oil spill, and therefore did not lose a tenant as a result of the oil spill.⁸

In his submission to the NPFC, the Claimant alleged that he sustained a loss in profits when his rental property was left vacant from May – October 2010.⁹ The Claimant stated that his inability to find a tenant was a result of the oil spill.¹⁰ However, the Claimant has not presented any evidence that might indicate that the oil spill caused him to lose potential tenants. According to the Claimant's tax returns, the Claimant made \$2,000.00 in repairs on the property in 2010.¹¹ In a phone conversation, the Claimant stated that the air conditioning system needed repairs at the time the Claimant was attempting to rent the home.¹² Furthermore, the Claimant noted that the broken air conditioning unit may have been a factor leading to his difficulty securing a tenant.¹³

Additionally, the Claimant informed the NPFC that he had been trying to sell his home during the period that it was available for rent.¹⁴ However, the Claimant's submission does not clearly indicate when the home was actually available for rent, and when it was listed for sale.

The NPFC reviewed all information and documentation provided by the Claimant. This claim is denied because Claimant failed to meet his burden to demonstrate (1) that he sustained a loss of profits in the amount of \$7,200.00, 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 Claims Adjudication Division*

Date of Supervisor's Review: *9/1/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁶ PHONECON: Claimant and NPFC Staff, 29 August 2011.

⁷ PHONECON: Claimant and NPFC Staff, 29 August 2011.

⁸ PHONECON: Claimant and NPFC Staff, 29 August 2011.

⁹ Optional OSLTF Claim Form, 8 August 2011.

¹⁰ Optional OSLTF Claim Form, 8 August 2011.

¹¹ 2010 Schedule E (Form 1040).

¹² PHONECON: Claimant and NPFC Staff, 31 August 2011.

¹³ PHONECON: Claimant and NPFC Staff, 31 August 2011.

¹⁴ PHONECON: Claimant and NPFC Staff, 31 August 2011.