

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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3/16/2011

VIA EMAIL: [REDACTED]@yahoo.com

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



Ft Lauderdale, FL 33335

RE: Claim Number: N10036-0019

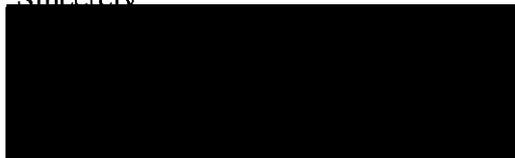
Dear [REDACTED]:

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 N10036-0019 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



[REDACTED] Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/13/2011
Claim Number	: N10036-0019
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$25,500.00

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 06 October 2010 and 05 November 2010, [REDACTED], dba [REDACTED] Services LLC (Claimant) submitted two Oil Spill Liability Trust Fund (OSLTF or the Fund) claim forms to the NPFC claiming lost profits and earnings in the amounts of (1) \$11,700 and (2) \$13,800.00, respectively. On 19 November 2010, the two claims were combined into one claim under NPFC Claim Number N10036-0019. The total claimed amount is \$25,500.00.¹

On 04 November 2010, GCCF denied Claimant (Claimant ID # [REDACTED]). In their email, GCCF stated that they had "paid your claim Emergency Advance Payments for losses for the period May-October 2010. You are not eligible for any additional emergency advance payments. You may submit a claim for Final Payment to the GCCF at any time."²

In his email of 04 November 2010 to the NPFC, the Claimant disputed that the GCCF denial included September and October 2010 and asked NPFC to accept the GCCF email of 04 November 2010 as "a denial LETTER from the GCCF for the months of September and October 2010."

The reported basis for this claim is lost income from 01 September 2010 to 30 October 2010 resulting from (1) beach closures which prevented him from engaging in his water sports rental business in the Louisiana region and (2) lost rents resulting from the need to move back to Fort Lauderdale, Florida (Fort Lauderdale) subsequent to the beach closures in Louisiana. The Claimant asserted that he typically rented his Fort Lauderdale home while operating the water sports business in the Louisiana region. The Claimant considers this to be income above that which he receives through the business activities in which he engages as [REDACTED]

¹ See, [REDACTED] Optional OSLTF Claim Forms dated 06 October 2010 and 05 November 2010.

² See, [REDACTED] email of 04 November 2010 to [REDACTED] NPFC Claims Adjuster.

LLC.³ Therefore the breakdown of the claim is \$13,800.00 lost income from water sports rental in Louisiana and \$11,700.00 for lost rental income for his home in Fort Lauderdale, FL.

REQUEST FOR RECONSIDERATION:

On or about December 21, 2010, the NPFC denied the claim on the grounds that Claimant had been compensated by GCCF in the amount of \$19,300 for its alleged loss of profits for the time period May 2010 – October 2010; therefore, it was fully compensated for that time period. NPFC, in that denial, stated that Claimant could request reconsideration for the months of September and October 2010. On January 9, 2011, the Claimant sent an email request for reconsideration to [REDACTED] and [REDACTED] stating he would like the NPFC to reconsider his claim for July, August and September 2010 and provided his July, August, and September 2009 bank statements and monthly expense reports for his water sport rental business component and 22 additional sales receipts for water sports equipment that he rented through his business from June 2009 through September 2009, which the NPFC did not possess when performing the initial adjudication of the claim. Based on the new information provided, the Claimant is requesting that the NPFC compensate him for his lost profits for July, August, and September 2010 based on the 2009 monthly expense reports which total \$22,918.00 in Net Profits since his business was not in operation during 2010 due to the oil spill. The NPFC denied the water sports business lost profits component stating that the NPFC had calculated the lost profits for July through September 2010 as being \$17,542.00 but the Claimant received compensation from the GCCF in the amount of \$19,300.00 therefore the NPFC considered the Claimant fully compensated, and still considers Claimant to be fully compensated, for the requested lost profits.

The Claimant also requested that the NPFC reconsider his vacation rental component whereby he originally requested \$11,700.00 for loss of rental income for September 7, 2010 through October 30, 2010. On reconsideration, the Claimant is asking for the NPFC to reimburse him for the four weeks the vacation rental was not rented from September 6, 2010 through October 1, 2010. The Claimant is requesting compensation for the first two weeks at a rate of \$900.00 per week and the last two weeks at a rate of \$1,400.00 per week for a total amount requested of \$3,600.00. The NPFC denied the vacation rental component in its original determination stating that the Claimant provided no evidence that the vacation rental was rented during September and October 2009 as a basis for any potential loss of profit in September and October of 2010 therefore there was no estimated loss of rental income for September and October 2010.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via email on January 9, 2011. As noted above to support his claim on reconsideration, the Claimant provided his July, August, and September 2010 bank statements and monthly expense reports for his water sports rental business component and 22 additional sales receipts for water sports equipment that he rented through his business from June 2009 through September 2009, which the NPFC did not possess when performing the initial adjudication of the claim.

NPFC Determination on Reconsideration

³ Phone conversation between [REDACTED] (NPFC Claims Adjuster) and Claimant of 07 December 2010.

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. The NPFC will first discuss the lost profits associated with the Claimant's inability to operate his water sports equipment business in Louisiana. Since the Claimant was unable to produce any revenues in 2010 for this business, the NPFC reviewed the Claimant's business income for this business during the same time period during 2009. In its original denial, the NPFC advised the Claimant that it reviewed the income for both May and June 2009 and calculated lost profits as \$9,509.00. This did not consider any other income earned by the Claimant in that time period that could have mitigated the lost profits.

When now considering the mitigation income (rental income) earned during this period, the NPFC calculated the Claimant's total sales as \$14,268.08 less saved expenses of \$4,759.17 and less vacation rental income during this period in the amount of \$7,419.00. Thus, the Claimant's revised lost profits for May and June 2010 are \$2,089.91 vice the original calculation. With respect to lost profits for the time period of July through September 2010, the NPFC calculated the lost profits based on income provided by the Claimant for July through September of 2009. Based on the original documentation provided for this period, the NPFC calculated lost profits as \$8,033.00, which also did not consider any other income earned by the Claimant in that time period that could have mitigated the lost profits. .

When considering the mitigation income (rental income) earned during this period, the NPFC calculated the Claimant's total sales as \$30,010.00 which includes the additional sales receipts provided on reconsideration, less saved expenses of \$5,657.52 and less vacation rental income during this period in the amount of \$6,116.50. The Claimant's revised lost profits for July through September 2010 are \$15,365.98 vice the original calculation which brings the Claimant's total lost profits from May through September 2010 to \$17,455.89. Since the Claimant received compensation from the GCCF in the amount of \$19,300.00, the NPFC again denies the lost profit component associated with the water sports rental business because the Claimant has been fully compensated by the GCCF for these lost profits.

Finally, with respect to the Claimant's request for \$3,600.00 in lost rental for his vacation home in Fort Lauderdale, FL for September 6, 2010 through October 1, 2010, the NPFC again denies this lost profits component. The Claimant purchased the vacation property in November 2009; therefore, the Claimant was unable to provide historical rental information for the months of September and October. Additionally, the Claimant has not provided evidence on his mitigation efforts with respect to the property being vacant. The Claimant did not provide any details on exactly what he did to advertise the rental of the property or identify whether he lowered the rental price during the time it was advertised (if it had been). Additionally, the Claimant did not provide a detailed explanation on whether he returned to his vacation home in September 2010 following the expiration of the last rental lease since he was not operating his water sports business in Louisiana during the 2010 season; therefore, it is also not clear to the NPFC whether that property was in fact available for rent and advertised to the public. The Claimant provided no information to support that the property would be easy to rent following Labor Day weekend when tourists are typically returning from vacation plans, etc. The NPFC has determined that the Claimant has failed to meet his burden to demonstrate that the property did not rent 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 and not some other factors.

This claim is denied upon reconsideration.

Claim Supervisor:



Date of Supervisor's review: *3/14/11*

Supervisor Action: *Denial on reconsideration approved*