

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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3/14/2012

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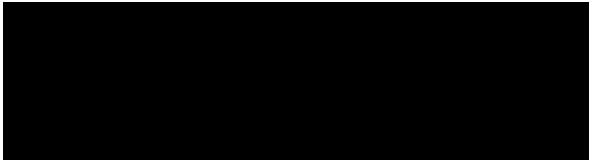
Luther Sutter  


RE: Claim Number: N10036-1276

Dear Mr. Sutter:

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 N10036-1276 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.

  
Chief, Claims Adjudication Division  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1276
Claimant	: Luther Sutter
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$4,000,000.00

### **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 22 April 2011, Mr. Luther Sutter, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$4,000,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant alleged that prior to the Deepwater Horizon oil spill, he had entered into a sales contract to sell two duplexes in Gulf Shores, Alabama for a total sales price of \$2,225,000.00. The original buyer was a real estate agent, who intended to market the duplexes as rental properties.

Following the Deepwater Horizon oil spill, the original buyer cancelled the agreement, noting that, "[s]ince the rental income has now substantially decreased, I will not close until the oil spill is cleaned up".<sup>2</sup>

The Claimant alleged that the losses of sales of the two properties have caused him to sustain the losses claimed.<sup>3</sup> The Claimant does not explain how he calculated this claimed amount.

The Claimant asserts having filed three claims with the GCCF, one claim for lost rents and others for losses incurred as a result of losing the sales of two properties in Gulf Shores, Alabama.<sup>4</sup> The NPFC confirmed that the Claimant was issued Claimant ID # 1146315 and that he presented two Emergency Advance Payment (EAP) Claims to the RP/GCCF on 23 August 2010 seeking real or personal property damages.<sup>5</sup> The GCCF issued the Claimant EAP Claim #'s 1905 and 2007 on the Claimant's Real Property EAP claims. The NPFC does not have

<sup>1</sup> Claim letter to NPFC dated 15 April 2011 and received 22 April 2011.

<sup>2</sup> Sworn Declaration by Ted Upshaw.

<sup>3</sup> Claim letter to NPFC dated 15 April 2011, received 22 April 2011, and Harrill & Sutter, PLLC letter dated 3 November 2011, received on 4 November 2011.

<sup>4</sup> Claim letter to NPFC dated 15 April 2011 and received 22 April 2011.

<sup>5</sup> GCCF U.S. Coast Guard Report, 6 October 2011.

information necessary to ascertain the amounts of these two claims. Both of these claims were denied by the RP/GCCF.<sup>6</sup>

The NPFC also confirmed that the Claimant presented a 6-Month Emergency Advance Payment (EAP6) Claim to the RP/GCCF on 24 August 2010, seeking loss of rental income in the amount of \$100,250.06.<sup>7</sup> This claim was paid by the RP/GCCF in the amount of \$100,300.00.<sup>8</sup>

On 22 April 2011, the Claimant presented this claim to the NPFC, seeking \$4,000,000.00 in damages, allegedly a result of the Deepwater Horizon oil spill.<sup>9</sup> The NPFC views the claim before it as addressing Claimant's two EAP claims, which were originally presented to the GCCF as Real or Personal Property Claims and subsequently denied. Discussions between Claimant and the NPFC have led the NPFC to identify the claim before it as being for lost profits and earning capacity damages. The basis for the GCCF and the NPFC claims are the same, however, in that the Claimant is claiming that he allegedly lost profits or earnings relating to the demise of certain real estate transactions. The NPFC views the Claimant's presentation to the GCCF as a misidentification of the claims' nature, but because the subject matter of the claims are identical and because the GCCF has reviewed and denied these claims on their merits despite their misidentification, the NPFC views the claim before it as being properly presented, at least with regards to the subject matter of the claim, to the GCCF. Therefore, this Claim Summary Determination addresses Claimant's GCCF Claim #'s 1905 and 2007.

The Claimant's submission to the NPFC indicates that the Claimant filed a claim in the multidistrict litigation now pending in the United States District Court for the Eastern District of Louisiana (MDL-2179 In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf Of Mexico, on April 20, 2010) against BP (the "MDL") on 20 April 2011.<sup>10</sup> Although under the statute the NPFC may not approve or certify a claim for payment during the pendency of an action by the person in court to recover costs which are the subject of the claim,<sup>11</sup> the NPFC may adjudicate such a claim to determine whether it may be compensable. Where appropriate, such a claim may be denied.

The claim was originally denied on January 12, 2012 because (1) the Claimant failed to make proper presentment to the Responsible Party regarding the amount of his claim and (2) the Claimant has failed to provide evidence to substantiate his alleged loss or that his alleged loss was the result of the Deepwater Horizon oil spill.

#### **REQUEST FOR RECONSIDERATION:**

On March 11, 2012, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. On this date, the Claimant's email request stated that a person who was involved in this case has left the firm and that they do not wish for the claim to be withdrawn but rather reconsidered. The Claimant provided no new information or arguments to support his claim on reconsideration. The Claimant's email of March 11, 2012 merely states in relevant part..."I request reconsideration because the claim was properly support and presented".

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<sup>6</sup> GCCF U.S. Coast Guard Report, 6 October 2011.

<sup>7</sup> GCCF U.S. Coast Guard Report, 6 October 2011.

<sup>8</sup> GCCF U.S. Coast Guard Report, 6 October 2011.

<sup>9</sup> Claim letter to NPFC dated 15 April 2011 and received 22 April 2011.

<sup>10</sup> Optional OSLTF Claim Form, 27 April 2011.

<sup>11</sup> 33 U.S.C. 2713(b)(2) and 33 CFR 136.103(d).

**NPFC Determination on Reconsideration**

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 and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon review of all of the Claimant's information, the Claimant did not produce any new information or arguments on reconsideration that would persuade the NPFC to change its original denial determination and such, the Claimant has again failed to demonstrate that he suffered a loss in the amount of \$4,000,000.00 or that his 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.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor:  **Thomas Morrison**

Date of Supervisor's review: *3/14/12*

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments: