

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

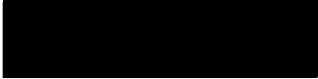


Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd., Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
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Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4666 9700

5890/DWHZ  
Claim # N10036-1352  
12 September 2011

Charlene Griffith  


Dear Ms. Griffith:

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 N10036-1352 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

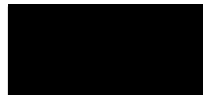
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1352.

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	N10036-1352
Claimant	Charlene Griffith
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$16,950.00

### ***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 30 August 2011, Charlene Griffith (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$16,950.00<sup>1</sup> for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owns a duplex unit in New Orleans. The Claimant alleged that she and her husband occupy one unit of the duplex while she rents out the other unit. After her last tenant moved out in July of 2009, the Claimant undertook certain renovations before placing the unit back on the market in April 2010.<sup>2</sup> The last tenant's rent was subsidized by the Housing Authority of New Orleans (HANO) Section 8 Housing Assistance.<sup>3</sup>

The Claimant placed ads to rent the unit and listed the unit with HANO and found a new tenant on 01 August 2011.<sup>4</sup> The Claimant stated that "[m]any workers sought out housing from me during and after the BP oil spill but expressed lack of income...due to the oil spill. This is the reason my unit went unrented."<sup>5</sup> The Claimant's only income in 2010 was her rental income.<sup>6</sup>

### ***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

<sup>1</sup> The Claimant's Optional OSLTF Claim Form provides for a sum certain of \$17,325.00. However, the Claimant revised the sum certain to \$16,950.00 on 31 August 2011. See letter from Claimant dated 31 August 2011 to NPFC changing sum certain to \$16,950.00

<sup>2</sup> Based on PHONECON between Claimant and NPFC Staff dated 01 September 2011

<sup>3</sup> Payments by HANO on property at 2023 Ursulines Avenue for 2009

<sup>4</sup> Based on PHONECON between Claimant and NPFC Staff dated 01 September 2011

<sup>5</sup> Attachment to OSLTC Claim Form explaining the claim Item 10

<sup>6</sup> Form 1040 US Individual Income Taxes Return 2010

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 undertake, 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:

- OSLTF Claim Form dated 25 August 2011
- Letter from Claimant dated 31 August 2011 to NPFC changing sum certain to \$16,950.00
- Attachment to OSLTF Claim Form explaining the claim Items 9, 10 and 11
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 12 August 2011
- GCCF Deficiency Denial on Interim Payment/Final Payment Claim 07 July 2011
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim 19 May 2011
- GCCF Letter concerning Interim and Final Claims 31 January 2011
- GCCF Denial Letter for Emergency Advance Payment 06 December 2011
- Copies of ads to rental the duplex unit
- Listing of Housing Authority of New Orleans (HANO) Properties

- Letter for Entergy listing billings at 2021 Ursulines Avenue for 2010 and 2011 dated 25 August 2011
- Graph from Entergy showing Electric Usage at 2023 Ursulines Avenue for 2011
- Listing of monthly Entergy payments from August 2010 through August 2011
- Rental history at 2023 Ursulines Avenue for 2008 and 2010
- Payments by HANO on property at 2023 Ursulines Avenue for 2009
- Family History Report on HUD Form for previous tenant
- Claimant Letter of 28 April 2011 to GCCF concerning the last tenant
- Claimant Letter of 12 July 2011 to GCCF concerning HANO payment history
- Form 1040 US Individual Income Taxes Return and Form 540 Louisiana Individual Income Tax Declaration for 2010

Claimant seeks lost earnings and wages in the amount of \$16,950.00.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF. The EAP claim was assigned Claimant ID #3266801 and claim #322711. The EAP claim was denied on 06 December 2010.<sup>7</sup> Additionally, Claimant filed Interim Payment claim for the first quarter of 2011 (ICQ12011) with the GCCF. The ICQ12011 claim was assigned claim #9223012. The ICQ12011 claim was denied on 12 August 2011.<sup>8</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the GCCF claims to be properly presented to the Responsible Party and to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1352 considers and addresses the loss of earnings in all claims presented to the Responsible Party, specifically: GCCF EAP claim #322711 and ICQ12011 #9223012.

### **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 or destruction or loss of real or personal property or 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.

The Claimant alleged a loss of rental income from May 2010 to July 2011, a period of 15 months.<sup>9</sup> The Claimant calculated her monthly rental loss based on the \$1,130.00 that the last tenant paid per month.<sup>10</sup> The total loss of rental income submitted by the Claimant to the NPFC is \$16,950.00.<sup>11</sup>

The Claimant asserted that her property had to compete with properties owned by the Housing Authority of North Orleans (HANO) under the Section 8 Building Assistance Program.<sup>12</sup> The Claimant stated these properties had recently been re-built by the Authority and made available<sup>13</sup>

<sup>7</sup> GCCF Denial Letter dated 06 December 2010

<sup>8</sup> GCCF Denial Letter dated 12 August 2011

<sup>9</sup> PHONECON with Claimant and the NPFC Claims Adjuster 01 September 2011

<sup>10</sup> Last tenant actually paid \$1,128.00 which rounds to \$1,130.00. See Claimant Letter of 28 April 2011 to GCCF concerning the last tenant.

<sup>11</sup> 15 months multiplied by a monthly rental rate of \$1,130.00 per months equals \$16,950.00

<sup>12</sup> PHONECON between Claimant and NPFC Staff dated 01 September 2011

<sup>13</sup> PHONECON between Claimant and NPFC Staff dated 01 September 2011

as renters preferred HANO properties.<sup>14</sup> The Claimant eventually rented the unit 01 August 2011 for less than what the last tenant paid.<sup>15</sup>

The Claimant stated that many potential renters inquired into renting her property “but simply could not pay.”<sup>16</sup> According to the Claimant, the earnings of prospective renters were reduced due to the spill or they were expecting money from the GCCF.<sup>17</sup> However, the Claimant has not provided any documentation to substantiate this assertion such as signed leases, cancellations or sufficient proof that factors other than the oil spill didn’t result in her inability to lease out her property. As such, the Claimant has not established by a preponderance of the evidence that her alleged loss of earnings was due to the oil spill.

This claim is denied because the Claimant failed to meet the burden to demonstrate 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: *Claims Adjudication Division*

Date of Supervisor’s Review: *12 September 2011*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

<sup>14</sup> PHONECON between Claimant and NPFC Staff dated 01 September 2011

<sup>15</sup> The Claimant rented the duplex unit for \$950.00 on 01 August 2011. See PHONECON between Claimant and NPFC Staff dated 01 September 2011

<sup>16</sup> Attachment to OSLTF claim form explaining the claim Item 10

<sup>17</sup> Attachment to OSLTF claim form explaining the claim Item 10