

U.S. Department of
Homeland Security

**United States
Coast Guard**



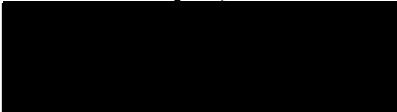
Director
National Pollution Funds Center
United States Coast Guard

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 2083

5890/DWHZ
21 September 2011

Crescent Property Partners, LLC



Re: Claim Number: N10036-1377

Dear Ms. Rafferty:

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 N10036-1377 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 N10036-1377.

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	N10036-1377
Claimant	Crescent Property Partners, LLC
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$58,831.00

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 1 September 2011, Ms. Elizabeth Rafferty, on behalf of Crescent Property Partners, LLC (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$58,831.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant operates an apartment complex in Lafayette, Louisiana, and alleged that she sustained a financial loss due to "reduced need for housing due to economic changes as a result of job losses and job transfers due to the moratorium."² The Claimant alleged that she sustained a loss in income in the amount of \$58,831.00.³

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

¹ Optional OSLTF Claim Form dated 1 September 2011.

² Optional OSLTF Claim Form, dated 1 September 2011.

³ Optional OSLTF Claim Form, dated 1 September 2011.

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 1 September 2011;
- GCCF Full Review Final Payment Claim Form, Claimant ID 1185729, dated 22 July 2011;
- GCCF Claim Form, dated 15 November 2010;
- Document titled, "Detrimental Impact on Leasing Activity;"
- Document titled, "Leasing Activity Summary;"
- Document titled, "Detrimental Impact on Occupancy;"
- Map showing the Claimant's location in Lafayette;
- Crescent City Partners, LLC Operating Statement, June 2010;
- Crescent City Partners, LLC Operating Statement, June 2009;
- Notice of Intent to Vacate, 31 October 2010;
- Notice of Intent to Vacation, 31 July 2010;
- Accompanying lease agreements.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment claim (EAP) to the RP/GCCF, claiming loss of profits and impairment of earnings capacity in the amount of \$58,831.00.⁴ The Claimant was assigned Claimant ID 1185729. This claim was denied by the RP/GCCF on 28 July 2011.⁵

⁴ GCCF Claim Form, dated 15 November 2010.

⁵ GCCF Claimant Status, accessed on 15 September 2011.

On 22 July 2011, the Claimant presented a Full Review Final Payment claim (FRF) to the RP/GCCF, again claiming loss of profits and impairment of earnings capacity in the amount of \$58,831.00.⁶ FRF was assigned Claim # 9426229 and was denied on 6 August 2011.⁷

On 7 September 2011, the Claimant presented this claim, seeking \$58,831.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Because this is the same claim previously presented to the RP/GCCF in EAP and FRF, the NPFC may properly adjudicate this claim as presented first to the RP/GCCF, in the amount of \$58,831.00.

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.

In order to prove a claim for loss of profits and impairment of earnings capacity, a claimant must demonstrate (1) that she sustained a loss of profits and (2) that the loss was a result of the discharge or substantial threat of discharge of oil.

In order to prove that she suffered a loss of profits, the Claimant has provided documentation to indicate that “leasing activity” was lower in June 2010 than it was in June 2009.⁸ However, the Claimant has not provided information to show either: (1) that pre-oil spill earnings for 2010 were equal to or greater than the same period in 2009 or; (2) that the Claimant suffered an actual drop in earnings in the months following the oil spill.

Furthermore, the Claimant has not demonstrated that any leases which were cancelled or not renewed constitute an actual loss to the Claimant. The Claimant specifically alleged that leases were cancelled when tenants lost their jobs due to the effects of the oil spill.⁹ The Claimant provided copies of two “Notices of Intent to Vacate,” which are marked “BP Oil Spill.” However, the first Notice stated that the tenant had been transferred to Canada and was “buying out of lease.”¹⁰ Therefore, the Claimant did not sustain a loss on the cancellation of this lease. The second Notice indicated that the tenant moved out of the apartment on the scheduled move-out date of 31 July 2010.¹¹ Because the lease term had ended, the departure of this tenant does not represent an actual loss to the Claimant.

The Claimant has therefore not provided sufficient documentation to demonstrate that she suffered an actual financial loss due to the cancellation of lease agreements as a direct result of the Deepwater Horizon incident, or due to lower “leasing activity” in the months following the oil spill, compared to those months in previous years.

Should the Claimant pursue this claim on reconsideration, the Claimant should submit complete income tax returns, showing the Claimant’s earnings in the years leading up to and following the

⁶ GCCF Full Review Final Claim Form, 22 July 2011.

⁷ GCCF Claimant Status, accessed on 15 September 2011.

⁸ Document titled, “Leasing Activity Summary.”

⁹ GCCF Claim Form, at 8.

¹⁰ Notice of Intent to Vacate, showing move out date of 31 October 2010.

¹¹ Notice of Intent to Vacate, showing move out date of 31 July 2010, and Apartment Lease Agreement, dated 14 January 2010.

oil spill, as well as monthly profit and loss statements showing that the Claimant's earnings were on track to match 2009 levels in the months of 2010 prior to the Deepwater Horizon oil spill.

Secondly, the Claimant has not demonstrated that any losses she suffered were caused by the Deepwater Horizon oil spill. The Claimant specifically stated that her losses were "due to economic changes as a result of job losses and job transfers due to [the] moratorium."¹² However, the Claimant has not demonstrated that her losses were the result of the discharge or substantial threat of discharge of oil. Furthermore, as noted above, the Claimant stated that leases were cancelled due to effects of the oil spill.¹³ However, she has not provided any documentation to support this assertion.

The NPFC reviewed all information and documentation provided by the Claimant.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she suffered a loss in the amount of \$58,831.00, 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: *9/20/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² Optional OSLTF Claim Form, 1 September 2011.

¹³ GCCF Claim Form, at 8.