

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



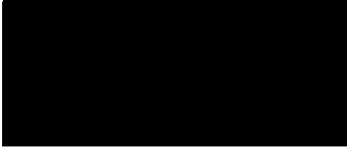
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5152

5890/DWHZ  
25 October 2011

Chenier Property Partners, LLC



Re: Claim Number: N10036-1380

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 N10036-1380 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

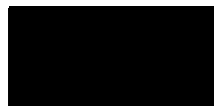
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1380.

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     | N10036-1380  |
| Claimant         | Chenier Property Partners, LLC                     |
| Type of Claimant | Corporate (US)                                     |
| Type of Claim    | Loss of Profits and Impairment of Earning Capacity |
| Amount Requested | \$655,595.00                                       |

### ***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 certain individual and business claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 7 September 2011, Ms. Elizabeth Rafferty, on behalf of Chenier Property Partners, LLC (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$655,595.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is the Regional Manager of several apartment communities in south Louisiana, including Chenier Property.<sup>2</sup> Chenier Property is a luxury apartment community located in Mandeville, Louisiana.<sup>3</sup> The Claimant alleged that the community lost income as a result of low leasing activity and cancelled lease agreements, allegedly "due to economic changes as a result of job losses and job transfers due to the moratorium."<sup>4</sup>

The Claimant has alleged that the apartment community lost \$655,595.00 in rental income due to effects of the Deepwater Horizon oil spill.<sup>5</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 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:

<sup>1</sup> Optional OSLTF Claim Form, dated 1 September 2011.

<sup>2</sup> PHONECON: NPFC Staff and the Claimant, 20 September 2011.

<sup>3</sup> See, <http://www.lachenier.com>, accessed on 20 October 2011.

<sup>4</sup> Optional OSLTF Claim Form, dated 1 September 2011.

<sup>5</sup> Documents, "Detrimental Impact on Leasing Activity, Schedule A; Detrimental Impact on Leasing Activity, Schedule B; Document, Leasing Activity Summary."

- (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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 1 September 2011;
- Copy of GCCF Full Review Final Payment Claim Form, ID 1185731;
- Document, "Detrimental Impact on Leasing Activity, Schedule A;"
- Document, "Detrimental Impact on Leasing Activity, Schedule B;"
- Document, "Leasing Activity Summary;"
- Map, showing location of the Claimant's apartment community;
- Cover Letter, "Schedule D, Cancelled Contracts;"
- Copies of Lease Agreements, Notices of Intent to Vacate.

On 15 November 2010, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and earning capacity damages in the amount of \$655,696.00.<sup>6</sup> The Claimant was assigned ID 1185731 and FRF was assigned claim # 9426226.<sup>7</sup> This claim was denied on 22 April 2011.<sup>8</sup>

<sup>6</sup> Full Review Final Claim Form, provided by the Claimant.

<sup>7</sup> GCCF Claimant Status, accessed on 16 Sept 2011.

<sup>8</sup> GCCF Claimant Status, accessed on 20 October 2011.

On 7 September 2011, the Claimant presented this claim to the NPFC, seeking \$655,595.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill. Because this is the same claim as presented to the GCCF in the Claimant's FRF claim, the NPFC may properly adjudicate the entirety of this claim, in the amount of \$655,595.00.

### **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 this 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 or reduction in profits or earning capacity, and (2) that the alleged loss or reduction was due to the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill.

The Claimant specifically alleged that she sustained two types of losses as a result of the Deepwater Horizon oil spill: (1) \$630,080.00 in losses due to low leasing activity, and (2) \$25,515.00 in losses due to cancellation or non-renewal of leases.<sup>9</sup>

#### **1. Low Leasing Activity**

The Claimant alleged that following the oil spill, fewer individuals signed leases due to "economic changes as a result of job losses and job transfers due to the moratorium."<sup>10</sup> However, the Claimant has failed to provide any documentation that would show that individuals did not rent apartments due to effects of the Deepwater Horizon oil spill.

In a letter dated 20 September 2010, the NPFC requested that the Claimant provide monthly occupancy records in order to demonstrate that occupancy at the apartment community actually decreased following the Deepwater Horizon oil spill.<sup>11</sup> The Claimant was given fourteen days to respond.<sup>12</sup> As of the date of this letter, the NPFC has not received a response.

This claim component is denied in the amount of \$630,080.00 because the Claimant has not presented evidence to demonstrate that fewer individuals signed leases after the oil spill, or that the alleged lack of new business was caused by effects of the Deepwater Horizon oil spill.

#### **2. Cancellation or Non-Renewal of Leases**

Copies of cancelled lease agreements provided in the Claimant's submission failed to demonstrate that the Claimant lost rental income as a result of the Deepwater Horizon oil spill. The Claimant included two copies of cancelled lease agreements in her submission to the NPFC. The first Notice of Intent to Vacate (Notice) lists a scheduled move out date of 28 August 2010, with an actual lease end date of 31 May 2011.<sup>13</sup> The Notice indicated that the tenant "owes lease

<sup>9</sup> Chenier Property Partners, LLC, Schedules A and B.

<sup>10</sup> Optional OSLTF Claim Form, dated 1 September 2011.

<sup>11</sup> NPFC letter requesting additional information, dated 20 September 2011.

<sup>12</sup> NPFC letter requesting additional information, dated 20 September 2011.

<sup>13</sup> Notice of Intent to Vacate, Apt 128, 28 August 2010.

term,”<sup>14</sup> and the Claimant has not provided any indication that the tenant did not pay the remainder of the lease term, nor has the Claimant indicated that the apartment remained empty throughout the remainder of the lease term or that the early departure by the tenant was due to the Deepwater Horizon oil spill. Therefore, it is not clear that the cancellation of this lease resulted in an actual financial loss to the Claimant.

The second Notice also failed to indicate that the Claimant sustained an actual loss. The Notice indicated that the tenant moved out of the apartment on 31 July 2010, which was the scheduled lease-end date.<sup>15</sup>

In an attempt to substantiate the Claimant’s assertion that tenants cancelled or failed to renew lease agreements due to the effects of the Deepwater Horizon oil spill, the NPFC requested that the Claimant provide contact information for each of these tenants.<sup>16</sup> As of the date of this letter, the Claimant has not responded to this request. The Claimant has therefore failed to provide evidence to prove that any leases were prematurely cancelled, resulting in an actual financial loss to the Claimant due to effects of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$655,595.00, 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: *10/25/11*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

<sup>14</sup> Notice of Intent to Vacate, Apt 128, 28 August 2010.

<sup>15</sup> Notice of Intent to Vacate, Apt. 125, 31 July 2010.

<sup>16</sup> NPFC letter requesting additional information, dated 20 September 2011.