

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
21 December 2011

Mr. Ernest Church
[REDACTED]

Re: Claim Number: N10036-1454

Dear Mr. Church:

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 N10036-1454 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 N10036-1454.

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	N10036-1454
Claimant	Mr. Ernest Church
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$3,705.00

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 29 September 2011, Mr. Ernest Church (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$3,705.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

The Claimant purchased a vacation rental property in Gulf Shores, Alabama in June of 2010, making it available to renters on 1 July 2010.² The Claimant's rental home is located in a beach cottage community, consisting of several similar rental units.³ The Claimant alleged that from July – December 2010, "vacationers either cancelled reservations or put off travel to [the] coast" allegedly as a result of effects of the Deepwater Horizon oil spill.⁴

Because the Claimant does not have a pre-oil spill record of rental income, the Claimant calculated losses incurred during from July to December 2010 based on the rental incomes of comparable beach cottages from July to December in 2008 and 2009.⁵ The Claimant also presented a calendar of 2011 bookings, showing that his unit has been consistently booked throughout 2011.

The Claimant seeks \$3,705.00 in loss of profits damages, which the Claimant alleged is the difference between the Claimant's rental income from July to December 2010 and the rental income of comparable beach cottages from July to December in 2008 and 2009.⁶

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 § 2702(b) of OPA.

¹ Optional OSLTF Claim Form, signed on 14 September 2011.

² Letter from the Claimant to the GCCF, 14 February 2011.

³ The Claimant owns and makes available for rent, Rookery Unit # 1502.

⁴ GCCF Interim Payment Claim Form, at 8.

⁵ Letter from the Claimant to the GCCF, 11 May 2011.

⁶ Loss Calculation Worksheet.

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 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, signed on 14 September 2011;
- Letter from the Claimant to the GCCF, 14 February 2011;
- GCCF Interim Payment Claim Form, signed 14 February 2011.
- Loss calculation worksheet;
- Record of 2010 bookings;
- Comparable Rental History, 2009;
- Comparable Rental History, 2008;
- Special Warranty Deed;
- Denial Letter on Interim Payment/Final Payment Claim, 6 May 2011;

- Letter from the Claimant to the GCCF, 11 May 2011;
- Copy of online listing of the Claimant's rental property, listed on 22 June 2010;
- IRS Tax Return Transcript, 2010;
- Comparable Rental Unit booking calendar, 2009;
- Comparable Rental Unit booking calendar, 2008;
- Comparable Rental Unit booking calendar, 2009;
- Comparable Rental Unit booking calendar, 2009;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 12 August 2011;
- Cover letter response to NPFC request for additional information, 15 October 2011;
- Rookery 1502 Rental History, 2010, 2011, including 2012 bookings;
- Profit and Loss Comparison, 1/1/2010 – 10/14/2011;
- Email from Effie Lyons, noting oil spill as the reason for vacation cancellation, 16 July 2010;
- Email from the Claimant to Effie Lyons, noting return and receipt of deposit for vacation rental, 7 July 2010;
- 2008, 2009 list of bookings for comparable rental unit;
- Names and phone numbers of owners of rental units in the Rookery with "same square footage and same floor plan" as the Claimant's rental unit;
- List of advertising methods used by Rookery owners to rent their units;
- List of rental rates by season;
- Gulf Shores Business License, 2010, 2011.

Prior to presentment to the NPFC, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF seeking loss of profits and wages damages in the amount of \$3,705.00.⁷ The Claimant was assigned Claimant ID # 3487116, and the ICQ12011 was assigned claim # 9293459.⁸

In a letter dated 12 December 2011, the GCCF issued payment on this claim in the amount of \$4,180.09.⁹ The GCCF also offered the Claimant final payment in the amount of \$25,000.00.¹⁰ As of the date of this determination, the Claimant has accepted the final payment offer, but has not executed the GCCF Release and Covenant Not to Sue in return for final payment.¹¹

On 29 September 2011, the Claimant presented this claim to the NPFC, seeking loss of profits damages in the amount of \$3,705.00.¹² This claim was properly presented to the NPFC, following an initial denial of this claim by the RP/GCCF.¹³

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.

⁷ GCCF Interim Payment Claim Form, signed 14 February 2011.

⁸ GCCF Claimant Status, accessed on 20 December 2011.

⁹ GCCF Determination Letter on Interim Payment/Final Payment Claim, 12 December 2011.

¹⁰ GCCF Determination Letter on Interim Payment/Final Payment Claim, 12 December 2011.

¹¹ GCCF Claimant Status, accessed on 20 December 2011.

¹² The Claimant's OSLTF Claim Form, specifically indicates that he is seeking loss of rental income, which the NPFC has classified as a claim for loss of profits damages. Signed by the Claimant, 14 September 2011.

¹³ GCCF Denial Letter on Interim Payment/Final Payment Claim, 12 August 2011

This claim is denied because payments made by the RP/GCCF have compensated the Claimant in excess of the amount that the Claimant sought from the Fund. On 29 September 2011, the Claimant presented this claim to the NPFC, seeking \$3,705.00.¹⁴ On 12 December 2011, the RP/GCCF issued payment on this claim in the amount of \$4,180.09.¹⁵

The OSLTF is available to pay for “*uncompensated* damages resulting from the discharge, or substantial threat of discharge, of oil” (emphasis added).¹⁶ Because these damages presented to the NPFC have been compensated in an amount in excess of the amount presented to, and calculated by the NPFC, the Claimant cannot recover from the Fund.

This claim is denied because the Claimant has been fully compensated for any losses which the Claimant may have sustained as a result of the discharge of oil resulting from the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *12/21/11*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹⁴ Optional OSLTF Claim Form, signed on 14 September 2011.

¹⁵ GCCF Determination Letter on Interim Payment/Final payment Claim, 12 December 2011.

¹⁶ 33 C.F.R. § 136.1