

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1469
Claimant	: Charles Metcalf
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$355,752.00

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 4 October 2011, Mr. Charles B. Metcalf, Jr. (the 'Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$355,752.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant owned a residence at Pensacola Beach, FL, that was for sale on the real estate market at the time of the oil spill incident and sold afterwards.² The claim is presented for the loss in profits on the property due to the oil spill.

The Claimant represents having filed a claim directly to BP³ and with the GCCF on 10 November 2010.⁴ Following the transfer of claims responsibility from BP to the GCCF, the GCCF issued the Claimant GCCF Claimant ID # 7223674 and Claim # 565590. GCCF Claim # 565590 was subsequently renumbered by GCCF as GCCF Claim # 9071601 for lost profits and earnings capacity in the amount of \$634,107.00.⁵ The NPFC has verified that his claim was presented to both BP and the GCCF.⁶ The amount of loss originally claimed to BP was \$634,107.00.⁷ Claimant later revised the amount claimed to the GCCF to \$355,752.10.⁸ Documentation provided by the Claimant indicates that his GCCF claim was denied.⁹

The NPFC denied the claim on January 26, 2012, on the basis that (1) the Claimant had not provided sufficient evidence to prove his alleged loss and (2) the Claimant had not provided sufficient evidence to prove that his alleged loss was the result of the Deepwater Horizon oil spill.

¹ Claim letter with sum certain demand dated 26 September 2011 and received 4 October 2011. Attached to the claim letter is page 2 of Optional OSLTF Claim Form dated 16 September 2011.

² Letter dated 15 September 2011 and attached Narrative.

³ Claimant's undated fax to BP Oil Spill Service Center, referring to BP Claim Number 554341.

⁴ Claimant letter to the GCCF dated 20 January 2011, referring to GCCF Claimant No. 7223674.

⁵ USCG/GCCF Status Report dated 11 January 2012.

⁶ USCG/GCCF Status Report dated 11 January 2012.

⁷ Claimant's undated fax to BP Oil Spill Service Center, referring to BP Claim Number 554341, page 3 of 9 showing Economic Damage calculations.

⁸ Claimant letter to the GCCF dated 23 June 2011.

⁹ Email from Sen. Rubio Staff on 30 June 2011 following consultation with the GCCF.

(1) The Claimant has Failed to Prove His Alleged Loss

After an initial review of the submission, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The letter requested, among other things, financial documentation to support the Claimant's lost profits and earnings calculations; in particular showing what portion of the alleged loss was due to general market conditions as opposed to the oil spill. The letter also requested evidence of how the Deepwater Horizon oil spill caused the losses.

On 18 October 2011, the Claimant responded, in part, to the additional information request letter. The Claimant provided an appraisal letter from a local real estate company,¹⁰ an MLS printout of Pensacola Beach detached residences that sold before the oil spill between 10/1/2008 and 1/19/2010,¹¹ and a Bloomberg article on the BP spill and Gulf Coast home values.¹²

Regarding the valuation of his losses, the Claimant calculated losses to the NPFC by subtracting the sale price of his house¹³ from the value before the oil spill.¹⁴ The Claimant's calculation indicates a pre-sale value of \$1,185,940. Additionally, the appraisal letter of 17 October 2011 indicates a professional opinion that the home value would have been \$1,050,000.00 to \$1,075,000.00, if not for the oil spill.

The NPFC does not believe that the 17 October 2011 letter provided by the Claimant represents a reliable estimate of the home's pre-spill value. Average home values for almost all of 2008 and 2009 were higher than values on 1 April 2010, thus the figures presented do not provide a realistic assessment of the home's pre-spill value. Further, based on publicly available real estate information,¹⁵ the NPFC believes that the real estate market in Pensacola Beach was not stable before the oil spill and that average prices continued to fall through the remainder of 2010 and most of 2011. Moreover, simply using comparative sales in 2008, 2009 or both is not appropriate without skilled adjustment by a professional, state licensed appraiser.

Even assuming that sufficient evidence is developed to establish the home's pre-spill value, simply providing evidence of the home's value before the spill for comparison with the actual sale value of the home in question would still be insufficient. For example, at a minimum, evidence would need to be provided to establish the home's value after the oil spill by providing home sales data for comparable homes (i.e., same size, amenities, and location as the home in question). For comparison homes, detailed information regarding sale price, sale timing and home characteristics, including property type, size, and location (both relative to amenities and in terms of town/county/other geographic designation) and absorption rate of these homes into the market is critical – comparable homes would have to be as similar as possible to the claimant's property. Also, if comparison homes are being used, the comparison homes selected should be those that actually have been sold, and not simply assessed.

¹⁰ Paradise Coastal Realty, Inc. letter of 17 October 2011.

¹¹ MLS printout "One Line Report" prepared by Ardythe Hass of Paradise Coastal Realty, Inc. on 17 October 2011.

¹² Bloomberg.com article by John Gittelshon on 2 August 2010 titled, "BP Spill May Cost Gulf Coast Homes \$45,000 Apiece in Value", printed 6 August 2010.

¹³ HUD-1 Closing Statement signed 18 January 2011 by Margaret E. Turner (buyer's manager), Charles B. Metcalf and Jeanette M. Metcalf (sellers), and Stephen R. Moorhead (attorney and settlement agent).

¹⁴ In Claimant's economic damage calculations presented to BP (undated) averaged the price per square foot of five houses of similar size and location in Pensacola Beach that sold in 2009. Claimant used that average and the size of his house to calculate a pre-spill value.

¹⁵ Zillow.com, 32561 Home Prices and Home Values, last accessed 24 January 2012.

(2) The Claimant has Failed to Prove that His Alleged Loss is the Result of the Deepwater Horizon Oil Spill.

Regarding causation, the Claimant must provide sufficient proof that the alleged damages were caused the Deepwater Horizon oil spill and not other factors. Although the Claimant has provided documentation that Kenneth Feinberg testified at 30 June 2010 Congress hearing that, “. . . [t]here’s no question that the property value has diminished as a result of the spill” That statement does not quantify as evidence showing what portion of the alleged loss was caused by a decline in market conditions as opposed to the oil spill. At one point, the Claimant indicated that 20-25% of the reduction in real estate prices could be attributed to the housing bubble burst, but he blames the oil spill on the remaining drop.¹⁶ At another, the Claimant indicated that he blamed one half of his loss on the decrease in real estate prices in general and the other half on the effect of the oil spill.¹⁷ The NPFC is not convinced that fifty to eighty percent of the decline in Pensacola Beach home values can be attributed to the Deepwater Horizon oil spill and the Claimant has not provided evidence sufficient to prove whether, or how much of, the diminution in his property’s value is the result of the Deepwater Horizon oil spill.

Accordingly, this claim was denied because (1) the Claimant has failed to provide adequate financial or other evidentiary documentation to support the Claimant’s lost profits and earnings and (2) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

REQUEST FOR RECONSIDERATION:

On March 1, 2012, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim after granting a 90 day extension for him to obtain the necessary additional information to support his claim. The NPFC granted the Claimant’s request for extension via a telephone conversation on March 2, 2012. The NPFC granted his extension to produce additional information in support of his request until the close of business on June 2, 2012.

RECONSIDERATION CLAIM ANALYSIS:

The Claimant requested reconsideration on March 1, 2012. The Claimant presented a one-page letter requesting a 90-day extension of time with which to produce additional information on reconsideration.

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. The NPFC considered all the documentation submitted by the Claimant.

¹⁶ Claimant letter to GCCF dated 10 November 2010.

¹⁷ Claimant letter to GCCF dated 20 January 2011.

The Claimant requested a 90 day extension of time to provide full documentation along with the factual and/or legal basis for his request for reconsideration. The Claimant had until close of business on June 2, 2012 to provide all information to the NPFC in support of his request. As of the date of this determination, the Claimant has failed to provide the necessary explanation and detailed support for his request for reconsideration therefore the NPFC again denies the claim because (1) the Claimant has failed to provide adequate financial or other evidentiary documentation to support the Claimant's lost profits and earnings and (2) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

This claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *6/18/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890
6/18/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7575

Charles Metcalf
[REDACTED]

RE: Claim Number: N10036-1469

Dear Mr. Metcalf:

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 N10036-1469 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.

Sincerely,

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form