

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  
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Arlington, VA 20598-7100  
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Phone: 1-800-280-7118  
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7576

5890/DWHZ  
13 December 2011

P2023 Phoenix II Condominiums  
Attn: [REDACTED]  
526 Sussex Drive S.W.  
Huntsville, Alabama 35824

Re: Claim Number: N10036-1471

Dear [REDACTED]

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 your claim number N10036-1471 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1471.

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

Enclosures: (1) Claim Summary/Determination Form  
(2) Evidence Provided by the Claimant in Support of Claim N10036-1471

## CLAIM SUMMARY/DETERMINATION FORM

|                  |   |
|------------------|---|
| Claim Number     | N10036-1471   |
| Claimant         | P2023 Phoenix II Condominiums                       |
| Type of Claimant | Business  |
| Type of Claim    | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$3,012.51  |

### ***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 06 October 2011, David Syltie, on behalf of P2023 Phoenix II Condominiums (collectively, the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$3,012.51 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant<sup>1</sup> owns and rents a vacation condominium in Gulf Shores, Alabama.<sup>2</sup> The Claimant asserted that, due to the Deepwater Horizon oil spill, he experienced a combination of cancelled bookings in 2010, as well as reduced demand for rentals in 2010 and 2011.<sup>3</sup> The Claimant indicated that he has been fully compensated by the GCCF for all rental losses through the end of 2010, but has not been fully satisfied for his losses during the first quarter (January-March) of 2011.<sup>4</sup>

The Claimant calculated the difference between his net rental earnings in January-March of 2010 with his net rental earnings in January-March of 2011. He calculated a loss of \$1,101.97 in January of 2011, \$184.58 in February of 2011, and \$1,725.96 in March 2011; a total of \$3,012.51 in lost rental earnings.<sup>5</sup>

### ***APPLICABLE LAW***

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

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<sup>1</sup> David Syltie co-owns the condominium with Federico Vignaroli.

<sup>2</sup> Optional OSLTF Claim Form received 06 October 2011, Profit and Loss spreadsheet for the Claimant's property, The Claimant's response to the NPFC's Question #'s 1 and 4.

<sup>3</sup> Optional OSLTF Claim Form received 06 October 2011, The Claimant's response to the NPFC's Question #'s 1 and 4.

<sup>4</sup> Profit and Loss spreadsheet for the Claimant's property.

<sup>5</sup> Profit and Loss spreadsheet for the Claimant's property.

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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.

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***

#### **The Claimant's Submission to the OSLTF**

In support of his claim, the Claimant submitted all of the documentation listed in enclosure e (2).

Prior to presenting his claim to the NPFC, the Claimant filed a claim with BP on 16 July 2010.<sup>6</sup> BP issued payment on this claim in the amount of \$5,004.41.<sup>7</sup> Additionally, the Claimant filed an Emergency Advance Payment (EAP) one month claim with the GCCF for loss of profits and impairment of earnings capacity on 13 September 2010 in the amount of \$1,427.07.<sup>8</sup> The Claimant was assigned Claimant ID #

<sup>6</sup> Report from the GCCF dated 02 November 2011.

<sup>7</sup> Report from the GCCF dated 02 November 2011.

<sup>8</sup> Report from the GCCF dated 05 December 2011.

1045087 and Claim # 64360. The GCCF issued payment on the EAP claim on 26 April 2011 in the amount of \$1,500.00.<sup>9</sup> Additionally, the Claimant filed a Supplemental (SUP) claim with the GCCF for loss of profits and impairment of earnings capacity on 09 October 2010 in the amount of \$6,504.41.<sup>10</sup> The Claimant was assigned Claim # 3024234. The SUP was denied by the GCCF.<sup>11</sup> Next, the Claimant filed an Interim Payment I (ICQ12011) claim with the GCCF on 11 January 2011 in the amount of \$1,081.45.<sup>12</sup> The Claimant was assigned Claim # 9200566. The GCCF issued payment on the Interim I claim on 27 April 2011 in the amount of \$1,479.82.<sup>13</sup> Additionally, the Claimant filed an Interim Payment II (ICQ22011) with the GCCF on 15 April 2011 in the amount of \$3,012.51.<sup>14</sup> The Claimant was assigned Claim # 9357064. The GCCF issued payment on the Interim II claim in the amount of \$890.94 on 18 November 2011.<sup>15</sup> Additionally, the Claimant filed an Interim III (ICQ32011a) claim with the GCCF on 01 August 2011 in the amount of \$3,012.51.<sup>16</sup> The Claimant was assigned Claim # 9428707. Lastly, the Claimant filed a second Interim III (ICQ32011b) with the GCCF on 02 August 2011 in the amount of \$3,012.51.<sup>17</sup> The Claimant was assigned Claim # 9429800. Both of the Interim III claims are still under review with the GCCF.<sup>18</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced a combination of cancelled reservations as well as a reduction in potential reservations for the condominium property in Gulf Shores, Alabama. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1471 considers and addresses the earnings claimed in the Claimant's claims presented to the responsible party for which the Claimant was either denied, not fully satisfied, or have gone without action by the GCCF for over 90 days, specifically; GCCF Claim #'s 3024234 (SUP), 9357064 (ICQ22011), 9428707 (ICQ32011a) and 9429800 (ICQ32011b).

### **NPFC Determination**

The claim is denied. 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 NPFC considered all documentation presented by the Claimant.

This claim is denied because, (1) the Claimant failed to prove a loss due to the Deepwater Horizon oil spill, and (2) the Claimant has been fully satisfied by the RP for all potential losses.

#### **1. Failure to Prove Loss Due to Oil Spill**

During the Claimant's alleged loss period in 2011 from January through March, the Claimant noted one "snowbird" renter who had rented the condo from January 15 through March 1 during prior years, but refrained from renting the unit in 2011.<sup>19</sup> Even though the NPFC requested on 17 October 11 that the Claimant provide the NPFC with contact information for cancellations caused by the Deepwater Horizon

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<sup>9</sup> GCCF Notice of Determination, Emergency Advance Payment dated 26 April 2011.

<sup>10</sup> Report from the GCCF dated 02 November 2011.

<sup>11</sup> Report from the GCCF dated 02 November 2011.

<sup>12</sup> Report from the GCCF dated 02 November 2011.

<sup>13</sup> GCCF Determination Letter dated 27 April 2011.

<sup>14</sup> Report from the GCCF dated 02 November 2011.

<sup>15</sup> Determination Letter on Interim Payment/Final Payment Claim, dated 18 November 2011.

<sup>16</sup> Report from the GCCF dated 02 November 2011.

<sup>17</sup> Report from the GCCF dated 02 November 2011.

<sup>18</sup> Report from the GCCF dated 02 November 2011, GCCF Claimant Status page.

<sup>19</sup> The Claimant's response to the NPFC's Question # 1.

oil spill, the Claimant indicated it could not provide such information due to privacy issues.<sup>20</sup> This privacy policy was confirmed by the Claimant's rental management company.<sup>21</sup> However, any privacy issues invoked by the Claimant do not limit the evidentiary burden imposed upon the Claimant pursuant to 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, which dictate that it is the Claimant's burden to prove that his loss is due to the Deepwater Horizon oil spill. Consequently, without being able to confirm the reasons for any cancellations, the NPFC is unable to confirm that any specific loss is due to the Deepwater Horizon oil spill.

## 2. Fully Satisfied by the RP

The Claimant asserted a loss of rental earnings from January through March of 2011 due to the Deepwater Horizon oil spill. The Claimant noted that he had been fully compensated for the losses incurred during the months May through December of 2010.<sup>22</sup> However, the supporting documentation provided by the Claimant indicates that the Claimant has already been fully compensated for all potential losses allegedly due to the Deepwater Horizon oil spill. The GCCF has paid the Claimant \$8,875.17, which exceeds the potential losses for the Claimant as calculated by the NPFC.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) 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 and (2) that the Claimant has been fully compensated for all potential losses due to the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/13/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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<sup>20</sup> The Claimant's response to the NPFC's Question # 1.

<sup>21</sup> Letter from Brett-Robinson to the Claimant.

<sup>22</sup> Profit and Loss spreadsheet for the Claimant's property.

## **Enclosure (2)**

### **Evidence Presented by the Claimant in Support of Claim N10036-1471**

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form received 06 October 2011;
- Optional OSLTF Claim Form Instructions;
- GCCF Interim Payment Claim Form;
- Revenue Data for Property P2023 for month of January for years 2007-2011, dated 07 February 2011;
- Revenue Data for Property P2023 for month of February for years 2007-2011, dated 03 March 2011;
- Revenue Data for Property P2023 for month of March for years 2007-2011, dated 05 April 2011;
- Spreadsheet containing rental data for years 2009 and 2010 and January 2011-March 2011;
- Screen capture of GCCF Claimant Status page;
- 2008 Form 1040 Federal Tax Return for Federico Vignaroli;
- 2008 ING Direct Form 1099 for Federico Vignaroli;
- Note discussing missing 1099-MISC in the amount of \$4,000.00;
- 2009 Form 1040 Federal Tax Return for Federico Vignaroli;
- 2009 Form 1099-MISC from Brett-Robinson Gulf Corp for Federico Vignaroli;
- Brett-Robinson Gulf Corp Income/Expense Summary as of 31 December 2009 for Phoenix II #2023;
- 2009 Form 1099-MISC from Meads, LLC for Federico Vignaroli;
- 2009 ING Direct Form 1099 for Federico Vignaroli;
- 2010 Form 1040 Federal Tax Return for Federico Vignaroli;
- Brett-Robinson Gulf Corp Income/Expense Summary as of 31 December 2010 for Phoenix II #2023;
- 2010 Form 1099-MISC from INA Tax Benefits Reporting Inc. for David Syltie;
- 2010 Form 1099-MISC from Deepwater Horizon Oil Spill Trust for P2023 Phoenix II condominiums;
- 2010 Form 1099-MISC from Brett-Robinson Gulf Corp for David Syltie and Federico Vignaroli;
- ING Director Tax Information dated 13 February 2011;
- Italian income verification form;
- Document titled Gain/Loss with explanation regarding 2010 Stock Market 1099 Form;
- 2010 Form 1099-MISC from Meads, LLC to Federico Vignaroli;
- 2008 Form 1040 Federal Tax Return for David O. Syltie;
- Letter from the Claimant dated 14 April 2011;
- 2008 Form 1099-INT from Regions Bank to the Claimant;
- 2009 Form 1098 from U.S. Bank, NA;
- 2008 Form W-2 Wage and Tax Statement from Unitarian Universalist Church to Alice Syltie;
- 2008 Form 1099-R from the Northern Trust Company to the Claimant;
- 2009 Form W-2 Wage and Tax Statement from State Street Retiree Services for the Claimant;
- 2009 Form 1040 Federal Tax Return for the Claimant;
- 2009 Form W-2 Wage and Tax Statement from Unitarian Universalist Church to Alice Syltie;
- 2009 Form W-2 Wage and Tax Statement from State Street Retiree Services for the Claimant;
- 2009 Form W-2 Wage and Tax Statement from Brown Mechanical Contractors, Inc.;
- Check [unreadable]
- 2009 Form 1099-INT from Leon Vanderostyne to the Claimant;
- 2009 Form 1099-INT from Gerald Vanderostyne to the Claimant;
- 2009 Form 1099-INT from Gary Vanderostyne to the Claimant;
- 2009 Charles Schwab Form 1099 for the Claimant;
- 2009 Form 1099-R from the Northern Trust Company for the Claimant;
- 2009 Form 1099-R from the Northern Trust Company for the Claimant;

- Borrower's Statement for property Phoenix II for the Claimant and Federico Vignaroli;
- 2010 Form 1040 Federal Tax return for the Claimant;
- 2010 Form 1099-MISC from INA Tax Benefits Reporting Inc for the Claimant;
- 2010 Form 1099-MISC from Deepwater Horizon Oil Spill Trust for the Claimant;
- 2010 Form W-2 Wage and Tax Statement from Brown Mechanical Contractors, Inc. for the Claimant;
- 2010 Form W-2 Wage and Tax Statement from State Street Retiree Services for the Claimant;
- 2010 Form 1099-R from The Northern Trust Company for the Claimant;
- Document titled Depreciation and Amortization Report for the Claimant for Tax Year 2010;
- 2010 Form W-2 Wage and Tax Statement from Unitarian Universalist Church to Alice Syltie;
- 2010 Form 1099-R from Charles Schwab & Co. to the Claimant;
- 2010 Form 1099-R from the Northern Trust Company for the Claimant;
- 2010 Form 1099-MISC from Brett-Robinson Gulf Corp for the Claimant and Federico Vignaroli;
- 2010 Form 1099-INT from Leon Vanderostyne to the Claimant;
- Profit and Loss spreadsheet for the Claimant's property;
- Documents titled 'Revenue Data', containing revenue for years 2007-2011 broken down by month, for months: January-December;
- Emails from Ricky Johnson to the Claimant dated 01 November 2011;
- Advertisement from the Claimant regarding the property's money back guarantee;
- Letter from Brett-Robinson to the Claimant;
- Documents titled 'Revenue Data', containing revenue for years 2007-2010 and projected 2010, for months June and July;
- The Claimant's responses to the NPFC's Questions, #'s 1-4;
- Warranty Deed between Wanda Hall and the Claimant and Federico Vignaroli dated 28 August 2009;
- GCCF Interim Payment Claim Form; and
- GCCF Deficiency Letter dated 31 August 2011.