

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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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
Claim # N10036-1507
8 December 2011

Alma Street Rentals
[REDACTED]
7016 Alma Street
Houma, LA 70364

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 the claim number N10036-1507 involving Deepwater Horizon. 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 N10036-1507.

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	N10036-1507
Claimant	Alma Street Rentals. [REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$45,442.00

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 17 October 2011, Alma Street Rentals, owned by Joseph Blum, Jr. (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$45,442.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

The Claimant owns and operates Alma Street Rentals in Houma, Louisiana.¹ The rentals are three buildings used by businesses in an Industrial Park.² The renters include a plumbing company owned and operated by the Claimant. The Claimant stated that some renters do business with the offshore oil industry in the Gulf.³ The Claimant stated that he had a loss of earnings due to the oil spill because he had renters vacate, he reduced rents to keep renters and he had difficulty getting new renters.⁴

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.

¹ Letter to NPFC from the Claimant dated 04 October 2011 supplemental analysis of the claim

² Based on telephone conversation between the Claimant and the NPFC Claims Adjuster 18 November 2011

³ Letter to NPFC from the Claimant dated 04 October 2011 supplemental analysis of the claim

⁴ Letter to NPFC from the Claimant dated 04 October 2011 supplemental analysis of the claim and telephone conversation between the Claimant and the NPFC Claims Adjuster 18 November 2011

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, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant

- Letter to NPFC from the Claimant dated 04 October 2011 supplemental analysis of the claim
- Worksheets showing rental property income from January 2009 to September 2011
- Letter to NPFC from the Claimant dated 25 October 2011 in response to NPFC letter requesting additional information
- Letters from renters identifying the rent, the amount of monthly rent and the time period of the lease
- Copy of Joe Blum's Rental Agreement for 7106 Alma Street effective 01 January 2002
- Form 1040 US Individual Income Tax Return for 2007, 2009, and 2010 with supporting schedules
- W-2 Wage and Tax Statement from Joe Blum Jr. Plumbing Service, Inc. for 2010

On 20 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 15 November 2011, the Claimant responded to the request.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 03 November 2011 in the amount of \$25,000.00.⁵ The claim was assigned Claimant ID #3347527 and claim #407363.⁶ The EAP claim was denied on 18 November 2010.⁷ Additionally, Claimant filed an Interim Payment (ICQ32011) claim with the GCCF on 23 August 2011 in the amount of \$40,900.00.⁸ The claim was assigned claim #9441980.⁹ The IC claim was denied on 26 August 2011.¹⁰

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the GCCF claims to be properly presented to the Responsible Party. To the extent the amount of the claims presented to the Responsible Party are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1507 considers and addresses the loss of earnings up to the amount of \$45,442.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #407363 EAP and #9441980 ICQ32011.

⁵ Report from the GCCF dated 21 November 2011

⁶ GCCF On-Line Claim Status Report

⁷ Report from the GCCF dated 18 November 2010

⁸ Report from the GCCF dated 21 November 2011

⁹ GCCF On-Line Claim Status Report

¹⁰ GCCF Denial Letter dated 26 August 2011.

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 or destruction or loss of real or personal property or 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.

This claim is denied because the Claimant failed to prove it suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that its business tenants were unable to pay rent because of losses caused by the Deepwater Horizon oil spill. However, the Claimant stated in its submission to the NPFC that most of the tenants were involved in “small oilfield related industries” and were affected, at least in part, by the “government’s regulations of suspending oilfield production and requiring a more vigorous permitting process.”¹¹

In an effort to gain further information regarding the Claimant’s assertions and connect its alleged loss to the Deepwater Horizon oil spill, the NPFC sent the Claimant a letter on 20 October 2011 requesting additional information. Among other things, the NPFC requested that the Claimant provide the NPFC with letters from both former and current tenants.¹² Regarding former tenants, the NPFC requested that the Claimant provide letters from the former tenants stating that they could not pay their rent, as well as a description of how the Deepwater Horizon oil spill affected their business and ability to pay rent. Regarding current tenants, the NPFC requested that the Claimant provide letters from tenants stating that their rents were reduced or deferred due to the Deepwater Horizon oil spill, as well as a description of how the Deepwater Horizon oil spill affected their business and ability to pay rent.

The NPFC received a response from the Claimant on 15 November 2011. Regarding the NPFC’s request for letters from former tenants, the Claimant responded that the former owners left owing the Claimant money and the businesses are no longer in operation; thus he was unable to contact the tenants and provide the requested letters.¹³ The Claimant did provide letters from current tenants; however, each letter specified only the space rented, the amount of rent and period of time of the lease.¹⁴ There was no mention in any of the letters of any loss or damages caused by the Deepwater Horizon oil spill. Consequently, the Claimant failed to provide evidence that any individual tenant, either former or current, was unable to pay rent to the Claimant due to the Deepwater Horizon oil spill.

¹¹ Letter to NPFC from the Claimant dated 04 October 2011 supplemental analysis of the claim.

¹² Letter requesting additional information from the NPFC to the Claimant, dated 20 October 2011.

¹³ Letter to NPFC from the Claimant dated 25 October 2011 in response to NPFC letter requesting additional information.

¹⁴ The renters were the Claimant at 7016 Alma Street, Ben Bridges at 7016C Alma Street, Cliff Malbrough at 102 Hollywood Court, Keith Crochet at 104 Hollywood Court, Clint and John Authement at 7018C Alma Street and Jerrie Fitzgerald at 7016D Alma Street.

Nonetheless, the NPFC continued its efforts to confirm the Claimant's alleged loss. The NPFC attempted to contact the following renters to corroborate that the oil spill caused them to vacate or have their rents reduced: Marine Industrial Coating that provided paint products to the oil industry and vacated July 2010,¹⁵ Falcon Flushing that chemically cleans pipe lines on oil rigs and boats and is a current renter,¹⁶ Rusty Gervais in construction who vacated in June 2010,¹⁷ and Robinson LLC in construction and who vacated July 2010.¹⁸ The NPFC was unable to make contact or corroborate the alleged causation of any of the tenants.

Therefore, the Claimant failed to prove that any specific loss experienced was a result of the Deepwater Horizon oil spill as opposed to other economic factors affecting the businesses. Especially considering that the businesses of the Claimant's tenants appear to have been affected by delays in permitting and the moratorium on drilling, which are intervening causes and thus not a consequence of the oil spill. Accordingly, the evidence provided does not prove by a preponderance of the evidence that the alleged loss is due to the Deepwater Horizon oil spill.

This claim is denied because (1) the Claimant failed to demonstrate a loss in the amount claimed, and (2) the Claimant failed to meet his burden to demonstrate 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: *12/8/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁵ NPFC Claims Adjuster left voice messages were left on answering machine on 22 and 23 November 2011 and were not returned.

¹⁶ NPFC Claims Adjuster left voice messages were left on answering machine on 22 and 23 November 2011 and were not returned. On 28 November 2011 the Claimant stated he would have this renter call the NPFC Claims Adjuster and the renter did not.

¹⁷ The Claimant stated that this renter has left the Houma area.

¹⁸ The NPFC Claim Adjuster called and got a message that the phone number was out of service