

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  
25 October 2011

Beach Rental Connection LLC  
ATTN: [REDACTED]  
361 Sailfish Drive  
Destin, FL 32541

Re: Claim Number: N10036-1510

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 N10036-1510 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 N10036-1510.

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	N10036-1510
Claimant	Beach Rental Connection, LLC
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$51,575.25

### ***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 10 October 2010, Mr. Michael W. Brown on behalf of Beach Rental Connection LLC (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$51,575.25 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant provided various repairs, maintenance and concierge services for beach rental homes along the northwest Florida coast.<sup>2</sup> The Claimant alleged that due to cancelled and decreased vacation bookings caused by the Deepwater Horizon oil spill, his services were not needed and he has earned no income from the date of the oil spill to present.<sup>3</sup> Specifically, the Claimant stated that, “[the Deepwater Horizon oil spill] caused a great number of reservation cancellations just as the 2010 vacation season had begun, as well as huge declines in future vacation bookings in the markets I rely on for business.”<sup>4</sup>

To calculate his losses, the Claimant projected a certain amount of business growth based on the growth experienced from 2008 to 2009. The Claimant earned a profit of \$464.00 in 2008 and profits of \$3,044.00 in 2009.<sup>5</sup> Based on the growth factor from 2008 to 2009, the Claimant projected that in 2010, his profit would have been equal to 6.5 times his profits in 2009, for a total 2010 profit of \$19,786.00.<sup>6</sup> Using the same formula, the Claimant projected profits of \$128,609.00 for 2011.<sup>7</sup>

Based on the above calculations, the Claimant alleged to have sustained \$51,575.25 in lost earnings during 2010 and in the first quarter of 2011.<sup>8</sup>

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

<sup>2</sup> Letter from the Claimant to the GCCF, dated 31 March 2011.

<sup>3</sup> Letter from the Claimant to the GCCF, dated 31 March 2011.

<sup>4</sup> Optional OSLTF Claim Form, dated 10 October 2011.

<sup>5</sup> Letter from the Claimant to the GCCF, dated 31 March 2011

<sup>6</sup> Letter from the Claimant to the GCCF, dated 31 March 2011.

<sup>7</sup> Letter from the Claimant to the GCCF, dated 31 March 2011.

<sup>8</sup> Letter from the Claimant to the GCCF, dated 31 March 2011.

## ***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:

- (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, dated 10 October 2011;
- Letter from the Claimant to the GCCF, 31 March 2011;
- Florida Department of State, Business Status Confirmation;

- 2008 Monthly Profit and Loss Statement;
- 2009 Monthly Profit and Loss Statement;
- 2010 Monthly Profit and Loss Statement;
- 2011 (January – March) Profit and Loss Statement;
- Service Invoices, 6/4/2008 – 5/4/2010.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to RP/GCCF seeking \$30,000.00 in loss of profits and impairment of earnings capacity.<sup>9</sup> The Claimant was assigned Claimant ID 1152512 and the EAP claim was assigned claim #3000459. This claim was paid in full on 4 October 2010.<sup>10</sup>

The Claimant also presented Second Quarter Interim Claim (ICQ22011) to the RP/GCCF, again seeking loss of profits and impairment of earnings capacity. This claim was assigned claim # 9346066 and the Claimant was offered a Final Payment of \$25,000.00 in a letter dated 28 July 2011.<sup>11</sup> To date, the Claimant has accepted the Final Payment offer, but has not executed the Release and Covenant Not to Sue in order to receive the final payment.<sup>12</sup>

On 10 October 2011, the Claimant presented this claim to the NPFC, seeking loss of profits and impairment of earnings capacity in the amount of \$51,575.25. The NPFC may properly adjudicate this claim to the extent that these damages have been first presented to the RP/GCCF.<sup>13</sup> Any damages now before the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentment.<sup>14</sup>

### **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.

This claim is denied because the Claimant has failed to demonstrate that he lost income as a result of the Deepwater Horizon oil spill.

Profit and loss statements provided by the Claimant fail to demonstrate that the Claimant had been earning a certain level of income prior to the oil spill, which the Claimant was unable to earn after the oil spill. Furthermore, the Claimant has not provided documentation to show that previously scheduled work with particular clients was cancelled as a result of the Deepwater Horizon oil spill. Rather, the Claimant's submission to the NPFC indicated that from 2008 – present, the Claimant did not have a consistent working schedule, but had performed various repair and maintenance jobs for four different clients.<sup>15</sup> In many months from 2008 to present, the Claimant appears to have performed no work at all.<sup>16</sup> The Claimant also indicated to the

<sup>9</sup> GCCF Claimant Status, accessed on 20 October 2011.

<sup>10</sup> GCCF Emergency Advance Payment Determination, 4 October 2010.

<sup>11</sup> GCCF Determination Letter and Release Package on Final Payment Claim, 28 July 2011.

<sup>12</sup> GCCF Claimant Status, accessed on 20 October 2011.

<sup>13</sup> 33 C.F.R. § 136.103(a).

<sup>14</sup> 33 C.F.R. § 136.103(a).

<sup>15</sup> Invoices provided by the Claimant indicate that the Claimant performed work for (1) Best Beach Getaways, (2) Beach Escapes Realty, (3) Southern Riviera Concierge, and (4) Silver Beach Towers.

<sup>16</sup> Profit and Loss Statements show that the Claimant earned income in 2 months of 2008 and in 7 months of 2009.

NPFC that he had no contracts or other agreements to perform work for any particular client, but was contacted to perform various jobs on a day-to-day basis.<sup>17</sup>

Furthermore, information available to the NPFC indicated that the Claimant has been compensated \$30,000.00 from the RP/GCCF.<sup>18</sup> According to the Claimant's profit and loss statements, the Claimant earned \$3,044.00 in his highest grossing year, indicating that the \$30,000.00 EAP payment by the RP/GCCF has fully compensated the Claimant for any business losses sustained in 2010 or 2011.

Based on the information available to the NPFC, the Claimant has not demonstrated that he sustained a loss of income that he otherwise would have earned had the oil spill not occurred.

This claim is denied because the Claimant has failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$51,575.25, 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. Furthermore, any losses incurred by the Claimant appear to have been fully compensated by the RP/GCCF by way of \$30,000.00 payment received which the Claimant failed to disclose at the time he filed his claim with the NPFC.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/25/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>17</sup> PHONECON: NPFC Staff and the Claimant, 19 October 2011.

<sup>18</sup> GCCF Claimant Status, accessed on 20 October 2011.