

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
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

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5890/DWHZ
09 November 2011

PTC Beachworks, LLC.
[REDACTED]
702 Henna Place
Peachtree City, GA 30269

RE: Claim Number: N10036-1546

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 claim number N10036-1546 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. 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 N10036-1546.

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	N10036-1546
Claimant	PTC Beachworks, LLC.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$60,000.00

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 07 November 2011, PTC Beachworks, LLC, C/O Lonny Kramer (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$60,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant owns two units located in Santa Rosa Beach, Florida.¹ The Claimant alleges lost profits from reduced rental income due to the Deepwater Horizon oil spill.² The Claimant asserted that he received \$25,000.00 from the GCCF but was insufficiently compensated.³

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.

¹ Optional OSLTF claim form dated 27 October 2011.

² Optional OSLTF claim form dated 27 October 2011.

³ Optional OSLTF claim form dated 27 October 2011.

- (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 his claim, Claimant submitted:

- 1) Optional OSLTF claim form dated 27 October 2011
- 2) GCCF claim form 2000-C
- 3) History of rent and cancellations provided by Resort Quest
- 4) Rental Data by month prepared by Resort Quest
- 5) Listings for similar units in the area
- 6) Real property for sale in the community of similar units (comparing 2006 through 2007 and 2010)
- 7) Property Title
- 8) Settlement Statement dated 05 December 2003
- 9) Property Tax information
- 10) 2007 Schedule K-1 Partner's Share of Income, Deductions Credits, etc.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$60,000.00.

Prior to presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF; he was assigned Claimant ID #1126577 and claim #3014084.⁴

⁴ GCCF Online Status Report.

This claim was paid \$3,500.00 from the GCCF on 27 November 2010.⁵ Additionally, Claimant filed a Full Review Final (FRF) claim with the GCCF; he was assigned GCCF #9098868.⁶ The Claimant signed the release and covenant not to sue and was paid a Quick payment of \$25,000.00.⁷ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that rental income was diminished as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two compensated GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1546 considers and addresses the earnings claimed in both of the claims presented to the responsible party, specifically; GCCF Claim #'s 3014084 (EAP) and #9098868 (FRF).

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

This claim is denied because the Claimant has been fully compensated by the Responsible Party (RP). Based on information submitted by the Claimant and information available to the NPFC, the GCCF has compensated Claimant in the amount of \$28,500.00⁸, that amount includes a \$25,000.00 Quick Pay Payment for which the Claimant was required to execute a Release and Covenant Not to Sue.⁹ Because the Claimant has accepted the Quick Pay payment, and signed a Release and Covenant Not to Sue, the Claimant has released any and all rights to additional recovery regarding this injury to the RP/GCCF.¹⁰

Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the Fund.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in a request for reconsideration.¹¹ The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon incident.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/9/11*

Supervisor's Actions: *Denial approved*

⁵ GCCF EAP payment letter dated 27 November 2011.

⁶ GCCF Online Status Report.

⁷ GCCF Quick Payment letter dated 03 January 2011.

⁸ EAP payment \$3,500.00 plus FRF Quick payment \$25,000.00 equals \$28,500.00.

⁹ GCCF Quick Payment letter dated 03 January 2011.

¹⁰ Standard GCCF Notice of Quick Payment Final Claim Determination.

¹¹ 33 C.F.R. § 136.115.