

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
Claim # N10036-1557
19 December 2011

Jazzy Hush Bed and Breakfast

[REDACTED]
805 Pleasant Hill Road #172
Lilburn, GA 30047

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 N10036-1557 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 N10036-1557.

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	N10036-1577
Claimant	Jazzy Hush Bed and Breakfast [REDACTED], owner
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$348,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 09 November 2011, Jazzy Hush Bed and Breakfast, presented by Gregory Guidy, owner (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$348,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant owned and operated the Jazzy Hush Bed & Breakfast in New Orleans, Louisiana, near the French Quarter.¹ The house was a one-story “shotgun” style house with 5 bedrooms, 3 baths and a dining room and kitchen. The Claimant did not reside in the house. The kitchen was commercially equipped and food was prepared there and catered to various clients in the area.²

The Claimant stated that due to the oil spill, his business declined. Most meals included seafood. The Claimant stated that after the oil spill it was almost impossible to keep seafood items on the menu. Also, the Claimant stated that people did not trust eating seafood. In November 2010, the Claimant closed Jazzy Hush Bed & Breakfast and relocated to Georgia.³

Currently the Claimant’s Final Payment Claim is in the review process at GCCF.⁴ GCCF has referred the claim to Guidepost Solutions for verification.⁵

¹ Letter to NPFC dated 25 November 2011 from the Claimant explaining the claim

² Telephone conversation between Mrs. Guidy and the NPFC Claims Adjuster 13 December 2010

³ Letter to NPFC dated 25 November 2011 from the Claimant explaining the claim

⁴ GCCF On-Line Claim Status

⁵ GCCF Letter to Claimant dated 19 August 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, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant 09 November 2011;
- GCCF Denial Letter for Emergency Payment dated 15 December 2010;
- GCCF letter of 19 August 2011 notifying the Claimant that further verification of facts;
- Gulf Coast Claims Facility Claim Form GCCF 2000-C;
- Form 1120 US Corporation Income Tax Returns for Jazzy Hush Bred & Breakfast for 2009 and 2010;
- Letter to the NPFC Claims Adjuster received 07 December 2011 in response to NPFC's request for additional information;
- Notice to Vacate. Eviction Notice effective 13 January 2011 for 1217 Elysian Fields Avenue, Gretna, Louisiana;
- Commercial Lease Agreement for 1217 Elysian Fields Avenue, Gretna, Louisiana, ending 28 August 2012;
- Letter to NPFC dated 25 November 2011 from the Claimant explaining the claim;
- Letter from Areka Davis, former employee, dated 10 November 2011 explaining employment;
- Letter from Gregory Guidy dated 10 November 2011 to NPFC giving his wife, Mattie Guidy, permission to discuss his claim with NPFC.

On 10 November 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 07 December 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 23 November 2010 in the amount of \$144,500.00.⁶ The claim was assigned Claimant ID #3446081 and claim #530609.⁷ The EAP claim was denied on 15 December 2010.⁸ Additionally, Claimant filed a Full Review Final (FRF) claim with the GCCF on 21 March 2011 in the amount of \$900,000.00.⁹ The claim was assigned claim #9236692.¹⁰ The FRF claim is in the review process and no determination has yet been issued.¹¹

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 N10036-1557

⁶ Report from the GCCF dated 05 December 2011

⁷ GCCF On-Line Claim Status

⁸ GCCF Denial Letter dated 15 December 2010

⁹ Report from the GCCF dated 05 December 2011

¹⁰ GCCF On-Line Claim Status

¹¹ GCCF On-Line Claim Status

considers and addresses the loss of earnings up to the amount of \$348,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #530609 EAP and #9236692 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 Claimant provided insufficient documentation to support the loss of earnings claimed. The amount of loss claimed was based on the difference between the Claimant's 2010 and 2011 tax returns.¹² It appears that the loss of earnings does not include expenses and saved overhead as a result of the revenues lost. Loss of earnings is defined as the lost revenues less expenses and overhead saved as a result of the lost revenues.¹³

The Claimant could not provide financial documentation showing business transactions. The Claimant stated that the computer where the transactions were stored had crashed and the accountant has been deployed overseas by the US Army. The Claimant stated that the business's earnings declined after the oil spill. However, the Claimant could not provide monthly financial statements that would show earnings before and after the oil spill. The Claimant stated that financial documents are in storage in Louisiana and he did not have ready access to them.¹⁴

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *19 December 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² Letter to NPFC dated 25 November 2011 from the Claimant explaining the claim

¹³ See NPFC Claimant's Guide on Loss of Profits and Impairment of Earnings

¹⁴ Telephone conversation between Mrs. Guidy and the NPFC Claims Adjuster 13 December 2010