

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  
Number: 7011 1570 0001 4803 0002

5890/DWHZ  
05 March 2012

Janet Rhodus  
[REDACTED]

Re: Claim Number: N10036-1579

Dear Ms. Rhodus:

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 N10036-1579 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 N10036-1579.

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

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1579
Claimant	Janet Rhodus
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,000.00

### ***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 29 November 2011, Janet Rhodus, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$12,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was prepared to rent out her property to a tenant in Golden Meadow, Louisiana.<sup>1</sup> The Claimant asserts that due to the Deepwater Horizon oil spill, the prospective tenant was unable to rent the property.<sup>2</sup> As a result of losing the tenant, the Claimant asserts she suffered reduced income.<sup>3</sup>

The Claimant provided the following explanation regarding the calculation of her sum certain of \$12,000.00: the Claimant listed her losses in rental income as \$6,000.00 and added them to her losses from the unused option term contained in the lease of \$6,000.00 for a sum of \$12,000.00 in damages.<sup>4</sup> The Claimant adopted this number as her sum certain.<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).

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).

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<sup>1</sup> Optional OSLTF Claim Form dated 18 November 2011 and received 29 November 2011.

<sup>2</sup> Optional OSLTF Claim Form dated 18 November 2011 and received 29 November 2011.

<sup>3</sup> Optional OSLTF Claim Form dated 18 November 2011 and received 29 November 2011.

<sup>4</sup> Letter from the Claimant to the NPFC dated 21 November 2011 (1).

<sup>5</sup> Optional OSLTF Claim Form dated 18 November 2011 and received 29 November 2011.

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 her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form dated 18 November 2011 and received 29 November 2011;
- Letter from the Claimant to the NPFC dated 21 November 2011 (1);
- Letter from the Claimant to the NPFC dated 21 November 2011 (2);
- Exhibit 'A'-Photograph of property at 21112 Highway 1-Lot B, Golden Meadow, Louisiana 70357;
- Exhibit 'B'-2009/2010 Property tax documentation;
- Exhibit 'C'-Letter from the Claimant to the GCCF dated 13 October 2010;
- Letter from Louisiana Workforce Commission to the Claimant dated 12 January 2010;
- Exhibit 'D'-Document titled 'Standard Lease' between the Claimant and Anthony Buquoi dated 01 April 2010;
- Exhibit 'E'-Letter from the prospective tenant to the Claimant dated 01 May 2010;
- Exhibit 'F'-2009 Form 1040 Federal Income Tax Return;
- 2010 Form 1040 Federal Income Tax Return;
- Utility bill dated 02 June 2010;
- Utility bill dated 01 June 2010;
- Entergy Billing and Payment History for Billing Months in 2011 and 2010;
- Entergy Billing and Payment History for Billing Months in 2010 and 2009;

- Document titled 'Fixed Variable Annual Expenditures';
- Summary Appraisal Report dated 02 February 2007;
- Letter from Brett M. Broussard to Regions Financial Corporation dated 06 February 2007 with accompanying appraisal report;
- The Claimant's responses to the NPFC's Request for Additional Information, Questions 1-6;
- Contract between Sheldon Jack Herrelson and Allana Felarise Herrelson to the Claimant dated 10 February 2006;
- Home Equity Mortgage dated 16 February 2007.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP1) Claim with the GCCF for loss of profits and impairment of earnings capacity on 23 August 2010 in the amount of \$12,000.00.<sup>6</sup> The Claimant was assigned Claimant ID # 1147081 and Claim ID # 2915. The EAP1 Claim was denied on 23 November 2011.<sup>7</sup> Additionally, the Claimant filed an Emergency Advance Payment (EAP2) Claim with the GCCF for loss of subsistence use of natural resources on 23 August 2010 in the amount of \$6,000.00.<sup>8</sup> The Claimant was assigned Claim ID # 2926. The EAP2 Claim was denied on 20 October 2010.<sup>9</sup> Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF for loss of profits and impairment of earnings capacity on 01 March 2011 in the amount of \$12,000.00.<sup>10</sup> The Claimant was assigned Claim ID # 9240774. The FRF Claim was denied on 16 July 2011.<sup>11</sup> Additionally, the Claimant filed a Quick Payment Claim with the GCCF on 30 March 2011.<sup>12</sup> The Claimant was assigned Claim ID # 9338982. The Quick Payment Claim was denied on 20 April 2011.<sup>13</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims regarding loss of profits and impairment of earnings capacity 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 was unable to rent out her property and as a result the Claimant suffered reduced income. The NPFC deems the Claimant's GCCF claims regarding loss of profits and impairment of earnings capacity to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1579 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 2915 (EAP1), 9240774 (FRF) and 9338982 (Quick Payment Claim).

Regarding GCCF claims filed by the Claimant regarding loss of subsistence use, the NPFC has not received any claims from the Claimant regarding loss of subsistence use. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1579 does not consider or address the claim presented to the responsible party involving loss of subsistence, specifically; GCCF Claim # 2926 (EAP2).

### **NPFC Determination**

This 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 the Claimant failed to prove that the alleged loss in the amount of \$12,000.00 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.

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<sup>6</sup> Report from the GCCF dated 16 February 2012.

<sup>7</sup> GCCF Denial Letter dated 23 November 2010.

<sup>8</sup> Report from the GCCF dated 16 February 2012.

<sup>9</sup> GCCF Denial Letter dated 20 October 2010.

<sup>10</sup> Report from the GCCF dated 16 February 2012.

<sup>11</sup> GCCF denial Letter dated 16 July 2011.

<sup>12</sup> Report from the GCCF dated 16 February 2012.

<sup>13</sup> GCCF Denial Letter dated 20 April 2011.

The Claimant asserts that due to the Deepwater Horizon oil spill, she was unable to rent out her home in Golden Meadow, Louisiana and as a result suffered reduced income.<sup>14</sup> The Claimant, however, failed to provide a connection between the inability to rent her home and the Deepwater Horizon oil spill. The Claimant included in her submission to the NPFC financial information for both herself and the property, physical documentation of the property, ownership information for the property, and a letter from the prospective tenant to the Claimant regarding the cancellation of the lease.<sup>15</sup>

Although this letter states that that tenant cancelled his lease due to “the recent oil spill and the uncertainty of the longevity associated with its damages,” investigation by the NPFC revealed that the tenant’s reasons for abandoning the execution of the lease were not due to the Deepwater Horizon oil spill. To the contrary, in a phone conversation with the NPFC, the prospective tenant stated that he was renting the property as a residence while he developed property in Leeville in the summer of 2010.<sup>16</sup> He stated that approximately one month after the oil spill, the project was cancelled by the project manager.<sup>17</sup> After the project was cancelled, the tenant cancelled his lease with the Claimant.<sup>18</sup> The fact that the project was cancelled due to the oil spill as opposed to a myriad of other economic factors is not established by the Claimant’s evidence.

Furthermore, the NPFC contacted the National Oceanic and Atmospheric Administration (NOAA) to determine the project’s progress regarding the required permits for development of the land. NOAA informed the NPFC that development of this land would require extensive permitting and planning on the part of the project manager before any physical development could begin.<sup>19</sup> Further, the NPFC was informed that the project manager had not applied for the necessary permitting and was not close towards beginning development on the land.<sup>20</sup> This information indicates that the prospective tenant did not cancel his lease for use of the Claimant’s property due to the Deepwater Horizon oil spill, but because the project he had intended to work on had not progressed to the stage where his services were required.

Accordingly, this claim is denied because the Claimant failed to meet her 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: *3/5/12*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

<sup>14</sup> Optional OSLTF Claim Form dated 18 November 2011 and received 29 November 2011.

<sup>15</sup> See documentation listed in The Claimant’s Submission to the OSLTF, above.

<sup>16</sup> PHONECON between the NPFC and the prospective tenant dated 19 December 2011.

<sup>17</sup> PHONECON between the NPFC and the prospective tenant dated 19 December 2011.

<sup>18</sup> PHONECON between the NPFC and the prospective tenant dated 19 December 2011.

<sup>19</sup> Email between the NPFC and NOAA dated 10 January 2012.

<sup>20</sup> PHONECON between the NPFC and NOAA dated 09 January 2012; Email between the NPFC and NOAA dated 10 January 2012.