

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
05 March 2012

Leeville Landing, LLC
Attn: [REDACTED]
24202 Highway 1
Golden Meadow, Louisiana 70357

Re: Claim Number: N10036-1617

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 your claim number N10036-1617 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 N10036-1617.

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: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1617
Claimant	Leeville Landing, LLC
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$99,000.00

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 19 December 2011, Terry Serigny, on behalf of Leeville Landing, LLC (collectively, the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$99,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant owns a section of land in Golden Meadow, Louisiana.¹ The Claimant asserts that he was preparing to develop the land as the first stage of a larger project in the summer of 2010.² The Claimant asserts that due to the Deepwater Horizon oil spill, he was forced to halt the plans for development.³ Although the Claimant eventually did list the land for sale after the oil spill, he was unable to find a buyer.⁴ As a result of not being able to sell the property, the Claimant asserts he suffered reduced income.⁵

The Claimant provided the following explanation regarding the calculation of his sum certain of \$99,000.00: the sum certain reflects the price the Claimant was seeking for the sale of his property.⁶

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).

¹ Letter from the Claimant to the NPFC [undated].

² Letter from the Claimant to the NPFC [undated]

³ Letter from the Claimant to the NPFC [undated].

⁴ Letter from the Claimant to the NPFC [undated].

⁵ Letter from the Claimant to the NPFC [undated].

⁶ Letter from the Claimant to the NPFC [undated]; Optional OSLTF Claim Form signed 15 December 2011 and received 19 December 2011.

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).

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

- Optional OSLTF Claim Form dated 15 December 2011 and received 19 December 2011;
- Letter from the Claimant to the NPFC [undated];
- Email from Patrick Williams to Anthony Buquoi dated 30 September 2008;
- Newspaper article titled 'Group spreads word about oil victims';
- Washington Post article titled 'Gulf oil spill could cause lasting damage to fish populations, study finds' dated 26 September [no year listed];
- Excerpt, pages 2-4, of an article regarding environmental impact of oil spills;

- Article titled 'Genomic and physiological footprint of the Deepwater Horizon oil spill on resident marsh fishes' dated 01 September 2011;
- Article from NOLA.com titled 'Real trouble could be ahead for gulf fish, wildlife, researcher warns' dated 03 October 2011;
- Photographs of land location with coordinates N29 16-765 and W90 13-705;
- Louisiana Realtors Real Estate Trends Report;
- Lafourche Parish Sheriff's Office 2009 Tax Statement;
- Listing and Marketing Agreement between the Claimant and Janet Rhodus dated 14 September 2010;
- Newspaper advertisement for the Claimant's property located in The Lafourche Gazette dated 12 December 2010;
- Email from Janet Rhodus to the NPFC dated 26 January 2012 with attached photographs of the Claimant's property;
- Email from Janet Rhodus to the NPFC dated 25 January 2012;
- The Claimant's response to the NPFC request for additional information dated 18 January 2012, questions #'s 1-16;
- State of Louisiana, Parish of Lafourche, Act of Cash Sale between Revocable Intervivos Trust of James P. Thomas and the Claimant, [unsigned and undated];
- Plot of the Claimant's property;
- Spreadsheet titled 'Leeville Landing Estimated Cost, Revised';
- Document titled, 'Leeville Landing, Projected Lot Sales';
- Listing and Marketing Agreement between the Claimant and Janet Rhodus dated 02 April 2010;
- Listing and Marketing Agreement between the Claimant and Janet Rhodus dated 14 September 2010;
- Research paper titled 'Comparative Toxicity of Two Oil Types and Two Dispersants on the Growth of a Seashore Grass, *Paspalum Vaginatatum* (Swartz)';
- Advertisement invoices from the Lafourche Gazette with dates 03 April-27 April [no year listed] and 02 February-07 February [no year listed];
- Advertisement invoice from the Lafourche Gazette with dates: 24 October-27 October [no year listed], 02 February-27 February [no year listed], 23 November 2010, and 02 March-30 March [no year listed];
- Letter from the Claimant to Janet Rhodus dated 01 June 2010;
- Document titled 'Online Marketing Activity' for Golden Meadow, Louisiana 70357 dated 14 December 2010;
- Document titled 'Current Listings' with expiring dates of 17 March 2011 and 15 September 2011;
- Document titled 'Golden Meadow Property' with traffic view from 08 February-08 March [no year listed];
- Document titled 'Online Marketing Activity' for Golden Meadow, Louisiana 70357 dated 09 December 2010.

Prior to presenting his claim to the NPFC, the Claimant filed a Full Review Final (FRF1) Claim with the GCCF for loss of profits and impairment of earnings capacity on 23 March 2011 in the amount of \$1,910,900.00.⁷ The Claimant was assigned Claimant ID # 3507914 and Claim ID # 9331268. The FRF1 Claim was denied on 06 May 2011.⁸ Additionally, the Claimant filed a Full Review Final (FRF2) Claim with the GCCF for loss of profits and impairment of earnings capacity on 02

⁷ Report from the GCCF dated 16 February 2012.

⁸ GCCF Denial Letter dated 06 May 2011.

November 2011 in the amount of \$99,000.00.⁹ The Claimant was assigned Claim ID # 9527597. The FRF2 Claim was denied on 07 December 2011.¹⁰

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant was unable to sell his property and as a result suffered reduced income. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1617 considers and addresses the earnings claimed in the Claimant's claim presented to the responsible party up to \$99,000.00, specifically; GCCF Claim's 9331268 (FRF1) and 9527597 (FRF2).

NPFC Determination

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.

The claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$99,000.00 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.

The Claimant asserts that due to the Deepwater Horizon oil spill, he was forced to stop the progress of a land development project in Golden Meadow, Louisiana.¹¹ Additionally, after the conclusion of the oil spill, the Claimant asserts he was unable to sell the property.¹² As a result of not being able to sell the property, the Claimant asserts he suffered reduced income.¹³ The Claimant, however, failed to prove a connection between the Deepwater Horizon oil spill and his inability to sell his property in Golden Meadow. The Claimant included in his submission to the NPFC information concerning the property itself as well as information on the marketing efforts to sell the property.¹⁴ Additionally, the Claimant provided documentation of communications with the National Oceanic and Atmospheric Administration (NOAA) in September 2008 concerning the development of the property.¹⁵ In order to determine the Claimant's progress in obtaining the necessary permitting for developing the property, the NPFC made a request for information, including, amongst other items, documentation regarding all actions taken to develop the property prior to the summer of 2010 with NOAA.¹⁶ The Claimant, however, failed to provide the NPFC with this information.

Nevertheless, the NPFC contacted 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.¹⁷ Further, the NPFC was informed that the project manager had not applied for the necessary permitting and was not, therefore, close to beginning development on

⁹ Report from the GCCF dated 16 February 2012.

¹⁰ GCCF Denial Letter dated 07 December 2011.

¹¹ Letter from the Claimant to the NPFC [undated].

¹² Letter from the Claimant to the NPFC [undated].

¹³ Letter from the Claimant to the NPFC [undated]; Optional OSLTF Claim Form signed 15 December 2011 and received 19 December 2011.

¹⁴ See documentation listed in The Claimant's Submission to the OSLTF, above.

¹⁵ Email from Patrick Williams to Anthony Buquoi dated 30 September 2008.

¹⁶ NPFC Request for Additional Information dated 10 January 2011. [The date was written in error and should have read 10 January 2012].

¹⁷ Email between the NPFC and NOAA dated 10 January 2012.

the land.¹⁸ Accordingly, the evidence presented by the Claimant does not prove that it was the Deepwater Horizon oil spill that prevented him from moving forward with the project as opposed to a myriad of other economic factor including the natural resource mitigation costs associated with the development.

With regards to the Claimant's inability to sell his property, the evidence provided does not show that his difficulties stem from the Deepwater Horizon oil spill as opposed to other economic factors affecting the real estate market.

Accordingly, this claim is denied because the Claimant failed to meet his 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: *NPFC Claims Adjudication Division*

Date of Review: *3/5/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁸ PHONECON between the NPFC and NOAA dated 09 January 2012; Email between the NPFC and NOAA dated 10 January 2012.