

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1633
Claimant	: William Edward Bush
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$257,300.00

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 9 January 2012, Mr. William Edward Bush, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$257,300.00 in damages based on the diminution of the Claimant's property value allegedly resulting from the Deepwater Horizon oil spill.¹ The Claimant indicated that his claim should be classified as either a claim for Real or Personal Property damage, or a claim for Loss of Profits and Impairment of Earning Capacity damage.²

The Claimant owns a property in Fairhope, Alabama, on Mobile Bay. The Claimant alleged that the oil spill caused his property value to decrease by \$257,300.00.³ In a letter from the Claimant to the GCCF, the Claimant stated, "[t]his property was for sale when the spill occurred. I have been deprived of my profit of \$300,000.00."⁴ Because the Claimant alleged to have sustained a loss of profits, and does not allege that his property was physically damaged by the discharge of oil resulting from the Deepwater Horizon oil spill, the NPFC has classified this claim as a claim for Loss of Profits and Impairment of Earning Capacity damages in the amount of \$257,300.00.

The Claimant provided appraisals of the property as of 15 April 2010 and March 2011, as evidence of the devaluation of his property, allegedly resulting from the Deepwater Horizon oil spill.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF for Real or Personal Property damage, based on the diminution in the Claimant's property value.⁵ The Claimant was assigned Claimant ID 1057321 and the EAP claim was assigned claim #3010340.⁶ This claim was denied by the RP/GCCF.

The Claimant then submitted a Full Review Final (FRF) claim to the RP/GCCF, seeking either Loss of Profits damages, or Real or Personal Property damage, based on diminution of the Claimant's property

¹ Optional OSLTF Claim Form, signed on 5 December 2011.

² Optional OSLTF Claim Form, signed on 5 December 2011.

³ Optional OSLTF Claim Form, signed on 3 January 2012.

⁴ Letter from the Claimant to the GCCF, dated 4 August 2011.

⁵ GCCF Claimant Status, accessed on 12 January 2012.

⁶ GCCF Claimant Status, accessed on 12 January 2012.

value.⁷ The FRF claim was assigned claim # 9376590 and was denied by the RP/GCCF.⁸ The GCCF denied the Claimant's request for an appeal of the claim determination.⁹

The NPFC denied the claim on January 17, 2012 on the basis that for Claimants seeking damages based on diminution in property value resulting from the Deepwater Horizon oil spill, a Claimant must provide evidence sufficient to prove (1) the pre-spill value of the property, (2) the post-spill value of the property (3) a sale that was lost or cancelled, and (4) that the lost or cancelled sale was caused by the Deepwater Horizon oil spill. Furthermore, in order to have sustained an actual financial loss, the Claimant must have sold the property and thereby realized a loss.¹⁰ A claim that alleges a financial loss based on diminution in property value is speculative and prospective if the property has not been sold.

Research conducted by the NPFC indicates that the home on the property was destroyed during Hurricane Katrina, and the Claimant had been attempting to sell the land since 2007.¹¹ The property was not listed in the Mobile and Baldwin County MLS Services,¹² but a sign posted on the property indicated that that it was for sale.¹³ However, the Claimant didn't provide evidence to show that any particular sale was either lost or cancelled due to effects of the Deepwater Horizon oil spill.

Additionally, the Claimant has failed to provide evidence sufficient to prove that the devaluation of the Claimant's property was caused by the Deepwater Horizon oil spill, as opposed to other market conditions.

Based on the foregoing, this claim was denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a financial loss in the amount of \$257,300.00, and (2) that the alleged loss was 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.

REQUEST FOR RECONSIDERATION:

The Claimant requested reconsideration which was initially received by the NPFC on March 2, 2012 whereby the Claimant faxed a copy of the NPFC denial letter January 17, 2012 with a typed notation on it that stated..."In accordance with above instructions, I hereby request in writing for reconsideration of this claim. This letter was not received until 2/24/2012 by the Post Office here. I feel under the circumstances, an extension of 90 days would be appropriate."

On March 9, 2012, the NPFC contacted the Claimant and informed him that in light of the late delivery of the initial Claim Summary / Determination Package, the NPFC will grant the Claimant an extension until April 16, 2012 to provide his arguments and supporting documentation for his request for reconsideration. On April 12, 2012, the NPFC received a one-page cover letter making his arguments. Following is a list of documentation received with the letter:

1. Pages 1-5 are copies of the NPFC's initial denial letter and Claim Summary / Determination Form with handwritten markings by the Claimant;
2. Page 6 is a copy identifying the NPFC contact on March 9, 2012 to the Claimant;
3. Page 7 is a fax coversheet from the Claimant to the NPFC transmitting item 2 above;

⁷ Letter from the Claimant to the GCCF re: Real Property/Lost Profits claim 13 November 2010.

⁸ GCCF Claimant Status, accessed on 12 January 2012.

⁹ GCCF Ineligible Appeal Letter, 7 December 2011.

¹⁰ 33 C.F.R. § 136.1 states that the OSLTF is available to pay claims for "certain uncompensated removal costs or uncompensated damages resulting from the discharge or substantial threat of discharge of oil"

¹¹ PHONECON: NPFC Staff and Realtor, 12 January 2012.

¹² The appraisal of the property, conducted on 4 March 2011 indicates that the property "has not been listed for sale in the previous 12 months per review of Mobile and Baldwin MLS Services."

¹³ Photo provided in the Claimant's submission indicates that the property was for sale by Mike Ford Realty Co.; The Claimant also provided a fax confirming that the property was technically available for sale at the time of the oil spill.

4. Pages 8-9 is a copy of the USPS Tracking that shows delivery of the NPFC's initial denial letter and Claim Summary / Determination form on February 28, 2012 at 10:08;
5. Page 10 is a copy of page 6 of the NPFC's Claimant's Guide;
6. Page 11 is a copy of the cover page to the NPFC's Claimant's Guide;
7. Page 12 is a copy of page 9 from the NPFC's Claimant's Guide;
8. Page 13 is a copy of a one-page letter dated September 2, 2010 to the Gulf Coast Claims Facility from the Claimant;
9. Page 14 is a copy of a webpage for statistics on Fairhope, AL home sales;
10. Page 15 is a copy of a home listing for a home adjacent to the Claimant's property;
11. Page 16 is a copy of a property sold that is located at 10525 County Road 1, Fairhope, AL;
12. Page 17 is a copy of the front of an envelope to the Claimant from the Gulf Coast Incident Management Team;
13. Page 18 is a copy of a letter from the Gulf Coast Incident Management Team dated November 14, 2011 which stated the team is entering the final stages of shoreline cleanup on the property owned by the Claimant that may have been affected by the BP Deepwater Horizon Spill of National Significance;
14. Page 19 is a copy of the Public Notice issued by the Gulf Coast Incident Management Team regarding shoreline cleanup.

REQUEST FOR RECONSIDERATION and CLAIMANT'S ARGUMENTS:

The Claimant made the following arguments on reconsideration in support of his request for reconsideration:

1. With respect to the Applicable Law section of the NPFC's Determination on page 2 regarding 33 CFR §136.233(a) – (d), the Claimant asserts that this does not apply to his claim because he states this applies to wages rather than profits;
2. Claimant asserts that based on a copy of the NPFC's Claimant's Guide from November 2009, he has provided information identified in the Guide;
3. Claimant asserts that one page three of the NPFC Claim Summary / Determination Form under the section entitled NPFC Determination, paragraph 2, items 1 & 2 indicate appraisals pre and post spill are needed which the Claimant contends to have been provided. The Claimant further states that item 3 of this paragraph which states the Claimant must provide a copy of a sale that was lost or cancelled is not a practical solution since there would have had to be a determination of the value of the property prior to the oil spill;
4. Claimant asserts that he made a written offer to the Gulf Coast Claims Facility (GCCF) via a letter dated September 2, 2010 to sell the property at auction for the current market value and have the difference between the auction amount and the comparative value before and after the spill paid by the GCCF;
5. Claimant asserts that the NPFC references diminution of property value if the property has not sold. The Claimant further states that the appraisal from March 22, 2011 for \$342,000.00 for his property is backed up by the sale of the property immediately adjacent to his property, which sold for \$275,000.00. The Claimant goes on to say the house on that property is 1,218 sq. ft. at \$80.00/sq. ft., is valued at \$97,440.00, and when subtracted from the sale price of \$275,000.00, he values the property itself at \$177,560.00. The Claimant then concludes that the economic decline for that property from March 2006 to March 2011 is \$30,000.00 and then states that his property declined \$250,300.00. The Claimant states that the astronomical decline in value of his property could not be attributed to the overall economic decline from 4/20/10 to 3/4/11;
6. The Claimant asserts that he received a letter from the USCG Federal On Scene Coordinator, CAPT S. Walker, dated November 14, 2011 which notifies him that the Incident Management Team is entering the final stages of shoreline cleanup on property that he owns which may have been affected by the Deepwater Horizon oil spill and as such the Claimant

- references this documentation to serve as evidence that the oil spill affected the value of his property;
7. In closing, the Claimant states his property was not listed in the MLS services in Baldwin or Mobile Counties because MLS rules state that a listing must have a price which precludes a listing that states "Make Me an Offer".

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration, including the documentation presented with the initial claim and the documentation submitted with the request for reconsideration. Claimant provided unsupported information about the value of an adjacent property that included a home and its alleged decline in value due to economic conditions as evidence that his undeveloped property could not have substantially declined in value solely due to economic conditions.

The Claimant asserts that 33 CFR § 136.233 (a)-(d) does not apply to his claim. The NPFC explained in its initial Claim Summary / Determination Form on page 1, paragraph 3, that" Because the Claimant alleged to have sustained a loss of profits, and does not allege that his property was physically damaged by the discharge of oil resulting from the Deepwater Horizon oil spill, the NPFC has classified this claim as a claim for Loss of Profits and Impairment of Earning Capacity damages". The Claimant's interpretation that this regulation applies only to wages is flawed. The regulation for Profits and Earning Capacity is clear at 33 CFR § 136.231(a). It specifically states..."A claim for *loss of profits* or impairment of earning capacity due to the injury to, destruction of, or loss of real or personal property or natural resources may be presented by a claimant sustaining the loss or impairment".

In this case, the Claimant is asserting that he has allegedly lost profits that he feels he is owed based on an appraisal dated April 15, 2010¹⁴ for his property in the amount of \$600,000.00 vice an updated appraisal of his property dated March 22, 2011 in the amount of \$342,700.00, even though the Claimant has not yet sold the property. Further, Claimant acknowledges that the property was damaged by Hurricane Katrina and he has been attempting to sell the property since 2007. Notwithstanding these facts the Claimant believes the reduction in his property value is due to the Deepwater Horizon oil spill incident.

Under 33 CFR § 136.235, "the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*." Therefore, when considering property value diminution, the concept could constitute an economic loss only if the Claimant had realized an actual financial loss by selling the subject property and the Claimant was able to prove the loss was due to the injury, destruction or loss of the real property or the natural resource as opposed to other economic factors. He has not sold the property and incurred an actual monetary loss.

Lastly, with respect to the letter the Claimant received from the Coast Guard dated November 14, 2011 informing him that shoreline cleanup on his property is in its final stages, the NPFC notes that the letter is not sufficient evidence to support his assertion that the oil spill affected the value of his property. The letter corroborates that response activity occurred on or around his property during the time of the Deepwater Horizon oil spill but does not establish that the alleged diminution in value is due to the oil spill.

¹⁴ It must be noted that the April 15, 2010 appraisal was conducted as a retrospective market value and dated March 4, 2011.

This claim is denied on reconsideration because the Claimant failed to (1) prove he experienced a loss in the amount claimed, and (2) 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: *Thomas Morrison*

Date of Supervisor's review: *4/25/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
4/25/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6685

William Edward Bush
[REDACTED]

RE: Claim Number: N10036-1633

Dear Mr. Bush:

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 N10036-1633 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination