

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
07 February 2012

Mr. Amos J. Cormier, Jr.



Re: Claim Number: N10036-1641

Dear Mr. Cormier:

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 N10036-1641 involving the Deepwater Horizon oil spill. 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 N10036-1641.

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	N10036-1641
Claimant	Amos J. Cormier, Jr.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$100,800.00

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 January 2012, Mr. Amos J. Cormier, Jr. (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$100,800.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant owns several rental properties in Louisiana's Plaquemines Parish, and alleged that he was unable to secure tenants for any of the properties due to effects of the Deepwater Horizon oil spill.² The Claimant asserted that two distinct effects of the oil spill caused him to lose \$100,800.00 in rental income. First, the Claimant alleged that he was unable to lease the properties to oil spill response personnel, whose accommodations were provided by BP.³ Specifically, the Claimant stated, "BP put up lodging in Venice, La . . . for thousands of workers, which took away our opportunity to rent our property."⁴

Secondly, the Claimant alleged that environmental impact of the oil spill on the surrounding community made his properties less desirable for potential renters, thereby harming his ability to successfully market the properties.⁵ The Claimant stated that "contamination of lands due to pollution from burning oil and use of chemical dispersants caused people to stay away from adversely affected areas."⁶

The Claimant seeks one year of rental income for each of the properties he alleged to have been unable to lease as a result of the Deepwater Horizon oil spill, totaling \$100,800.00.⁷

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 § 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.

¹ Optional OSLTF Claim Form, dated 3 August 2011.

² PHONECON: NPFC Staff and the Claimant, 25 January 2012.

³ GCCF Claim Submission provided by the Claimant, confirmed in PHONECON: NPFC Staff and the Claimant, 25 January 2012.

⁴ GCCF Claim Submission, provided by the Claimant.

⁵ PHONECON: NPFC Staff and the Claimant, 25 January 2012.

⁶ Optional OSLTF Claim Form, received on 10 January 2012.

⁷ GCCF Claim Submission, provided by the Claimant.

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, the Claimant submitted the following documentation:

- Fax from the Claimant to the NPFC, noting sum certain of \$100,800.00;
- Optional OSLTF Claim Form, signed on 10 January 2012;
- Letter from the Claimant noting loss of records in Hurricane Katrina, 31 May 2011;
- Copy of the Claimant's driver's license;
- Executive Order, State of Emergency, "Extension of State of Emergency- Deepwater Horizon oil spill" Plaquemines Parish, LA, 14 July 2011;
- Tax Notice, Parcel Number: 1130250, tax year 2010;
- Tax Notice, Parcel Number: 1607452, tax year 2010;
- Tax Notice, Parcel Number: 1130100, tax year 2010;
- Tax Notice, Parcel Number: 1130150, tax year 2010;
- Tax Notice, Parcel Number: 2623464, tax year 2010;
- Tax Notice, Parcel Number: 1130050, tax year 2010;
- Tax Notice, Parcel Number: 1217600, tax year 2010;
- Tax Notice, Parcel Number: 1130300, tax year 2010;
- Tax Notice, Parcel Number: 1130250, tax year 2008;
- Tax Notice, Parcel Number: 1130150, tax year 2008;
- Tax Notice, Parcel Number: 1130100, tax year 2008;
- Tax Notice, Parcel Number: 1130050, tax year 2008;
- Tax Notice, Parcel Number: 1130300, tax year 2008;
- Tax Notice, Parcel Number: 1130250, tax year 2009;

- Tax Notice, Parcel Number: 1607452, tax year 2009;
- Tax Notice, Parcel Number: 1130050, tax year 2009;
- Tax Notice, Parcel Number: 1130150, tax year 2009;
- Tax Notice, Parcel Number: 1130300, tax year 2009;
- Tax Notice, Parcel Number: 1130100, tax year 2009;
- GCCF Claim Submission, seeking loss of profits damages totaling \$100,800.00, Claimant ID 1009589;

Prior to presentment to the NPFC, the Claimant presented nine Emergency Advance Payment claims (EAP1, EAP2, EAP3, etc.) to the RP/GCCF. The subject matter and claim number assigned by the GCCF to each claim are as follows:

- EAP1: claim # 4032435, seeking Real Property damages;
- EAP2: claim # 4032458, seeking Lost Earnings or Profits damages;
- EAP3: claim # 4032472, seeking Loss of Subsistence Use of Natural Resources Damages;
- EAP4: claim # 4032482, seeking Physical Injury/Death damages;
- EAP5: claim # 4032643, seeking Real Property damages;
- EAP6: claim # 4032646, seeking Real Property damages;
- EAP7: claim # 4032655, seeking Real Property damages;
- EAP8: claim # 4032683, seeking Real Property damages;
- EAP9: claim # 4032684, seeking Real Property damages.

The Claimant was assigned Claimant ID 1009589. All EAP claims were denied by the RP/GCCF.⁸

The Claimant then filed a Full Review Final (FRF) claim with the RP/GCCF. The FRF claim was assigned claim # 9402570 and was also denied.⁹

On 19 January 2012, the Claimant presented this claim to the NPFC, seeking \$100,800.00 in loss of profits and impairment of earning capacity damages.¹⁰ The NPFC may adjudicate this claim to the extent that these damages were first presented to the RP/GCCF.¹¹ The NPFC views this claim summary determination as addressing all claims previously submitted by the Claimant to the GCCF that share a common subject matter as that presented to the NPFC, i.e., that the Claimant owns several rental properties in Louisiana's Plaquemines Parish, and that he was unable to secure tenants for any of the properties due to effects of the Deepwater Horizon oil spill. Any damages now presented to the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentment.¹²

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, 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 this claim.

In order to prove a claim for loss of profits damages, a claimant must provide documentation to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant alleged that the Deepwater Horizon oil spill caused him to be unable to find tenants to rent several properties located in Plaquemines Parish. Specifically, the Claimant alleged that because BP

⁸ GCCF Claimant Status, access on 26 January 2012.

⁹ GCCF Claimant Status, accessed on 26 January 2012.

¹⁰ Optional OSLTF Claim Form, signed on 10 January 2012.

¹¹ 33 C.F.R. § 136.103(a).

¹² 33 C.F.R. § 136.103(a).

built a facility to house response workers, the Claimant lost the opportunity to lease his property to any of the thousands of response personnel in the area following the oil spill.¹³

However, OPA's loss of profits damage category limits available compensation to "the actual net reduction or loss of earnings or profits suffered"¹⁴ as a result of harm caused by the oil spill. Here, the Claimant's alleged missed opportunity to profit from the oil spill response does not represent a financial loss caused by the oil spill, and therefore, is not potentially compensable under OPA.¹⁵

The Claimant also alleged that environmental effects of the oil spill on the surrounding community "caused people to stay away from adversely affected areas," thereby impeding his ability to secure tenants.¹⁶ However, because the Claimant was not generating rental income from any of his properties at the time of the oil spill, he has not demonstrated that he sustained a reduction in income following the oil spill.¹⁷ According to the Claimant, all of the rental properties at issue in this claim have been vacant since 2005.¹⁸ Furthermore, the Claimant stated that no leases were cancelled, and no tenants chose to vacate any of the properties as a result of the oil spill.¹⁹

Based on the foregoing, this claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$100,800.00, 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 Supervisor's Review: *2/7/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹³ PHONECON: NPFC Staff and the Claimant, 25 January 2012.

¹⁴ 33 C.F.R. § 136.235.

¹⁵ 33 C.F.R. § 136.233(b) requires that the Claimant provide evidence to prove that "the claimant's income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction."

¹⁶ PHONECON: NPFC Staff and the Claimant, 25 January 2012.

¹⁷ 33 C.F.R. § 136.233(b).

¹⁸ PHONECON: NPFC Staff and the Claimant, 25 January 2012.

¹⁹ PHONECON: NPFC Staff and the Claimant, 25 January 2012.