

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
27 April 2012

Mr. Donald Meyer



Re: Claim Number: N10036-1699

Dear Mr. Meyer:

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 N10036-1699 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 N10036-1699.

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	N10036-1699
Claimant	Donald Meyer
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$5,116.00

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 February 2012, Mr. Donald Meyer (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,116.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

The Claimant owns a rental condominium unit in Fort Walton Beach, Florida. The Claimant alleged to have sustained a loss of rental income in the summer months of 2010 as a result of the Deepwater Horizon oil spill. The Claimant stated that beaches on which the condominium complex sits were directly affected by oil pollution. Specifically, the Claimant stated, “occupancy collapsed in half during the spill . . . CNN was broadcasting oil spill horror stories from the beach with our unit in the background.”²

The Claimant seeks to recover rental income allegedly lost from June to September 2010 as a result of the oil spill, totaling \$5,116.00.³

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.

¹ Optional OSLTF Claim Form, signed on 20 February 2012.

² Letter from the Claimant to the GCCF, 27 January 2012.

³ Optional OSLTF Claim Form, signed on 20 February 2012.

- (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:

- Handwritten claim cover letter, 20 February 2012;
- Optional OSLTF Claim Form, signed on 20 February 2012;
- Letter from the Claimant to the GCCF requesting re-review of claim submission, 27 January 2012;
- Notice of Emergency Advance Payment Determination, Waterscape Condominium Owners Association, with attached copy of check for payment by the GCCF totaling \$51,200.00;
- Letter from the Claimant to the GCCF, 20 August 2011;
- Letter from the Claimant describing June to September 2010 losses;
- Chart showing 2008 through September 2010 average paying occupancy percentage by month;
- Booking records, 12/26/08 through 12/26/09;
- 2009 Schedule E, Form 1040;
- Booking records, 12/29/09 through 1/1/2011;
- 2010 Schedule E (Form 1040);
- Statutory Warranty Deed regarding Unit A626, Waterscape, signed on 11 January 2008;
- Letter from the Claimant to the GCCF, 24 May 2011;

- Letter from the Claimant to the GCCF, 3 March 2011;
- Letter from the GCCF to the Claimant, 31 January 2011;
- 2010 Form 1099-MISC, showing \$22,872.83;
- Year end owner summary for the year ending 2010, Resortquest;
- GCCF Claim Form, signed on 18 October 2010;
- Document from the Claimant noting both Real or Personal Property damage as well as Lost Earnings or Profits;
- Document describing real or personal property losses;
- MLS Listing with sales data for comparable properties;
- Document describing lost earnings or profits.

On October 25, 2010, the Claimant submitted two Final Payment claims to the RP/GCCF, seeking both loss of profits damages totaling \$5,116.00 as well as real or personal property damages totaling \$78,500.00.⁴ The Claimant was assigned Claimant ID 7194252 and the claims were collectively assigned claim # 9075727.⁵ The GCCF denied the Claimant's real or personal property claim, and found that the Claimant had not sustained a loss with regards to the Claimant's loss of profits claim.⁶

On 29 February 2012, the Claimant submitted this claim to the NPFC, seeking \$5,116.00 in loss of profits and impairment of earning capacity damages.⁷ OPA requires that a Claimant first present a claim for costs or damages to the RP prior to presentment to the NPFC.⁸ Should the RP deny full payment on the claim, or fail to issue a determination within 90 days of presentment by the Claimant, the NPFC may adjudicate and issue a determination on the claim.⁹ Because this claim for \$5,116.00 has first been presented to and denied by the RP/GCCF, the NPFC may properly adjudicate the entirety of this claim for \$5,116.00 in loss of profits damages.

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 sufficient 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.

Documentation initially provided by the Claimant is not sufficient to prove that the Claimant lost a particular amount of profit as a result of the Deepwater Horizon oil spill. In order to gather additional information in support of this claim, the NPFC contacted the Claimant via a letter dated 23 March 2012, requesting certain substantiating documentation.

⁴ GCCF United States Coast Guard Report, 17 April 2012.

⁵ GCCF United States Coast Guard Report, 17 April 2012.

⁶ GCCF United States Coast Guard Report, 17 April 2012.

⁷ Optional OSLTF Claim Form, signed on 20 February 2012.

⁸ 33 C.F.R. § 136.103(a).

⁹ 33 C.F.R. § 136.103(a).

The NPFC requested that the Claimant provide records of any and all cancelled reservations in the period following the spill. The NPFC requested that the Claimant also provide evidence to show that the cancellations were caused by the spill and not by other factors.

Furthermore, in order to prove that the Claimant's rental income in 2011 increased along with the corresponding tourism increases in Okaloosa and Fort Walton,¹⁰ the NPFC requested that the Claimant provide 2011 booking records similar to the records provided by the Claimant for 2009 and 2010. Because the Claimant did not own the unit in 2008, such records would also serve as evidence that 2010 bookings dropped as compared to bookings in same period of 2009 and 2011.

Furthermore, because OPA only allows for compensation for loss of profits and not loss of revenue,¹¹ the NPFC requested that the Claimant provide monthly profit and loss statements, showing the amount of profit actually generated on the rental unit.

On 4 April 2012, the Claimant responded to the NPFC via email, stating that he would not respond to the request for additional information.¹²

Documentation provided in the Claimant's original claim submission fails to prove that the Claimant sustained a certain amount of lost profits as a result of the Deepwater Horizon oil spill. Should the Claimant choose to pursue this claim on reconsideration, the Claimant must provide the documentation requested in the 23 March 2012 request for additional information.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss of profits in the amount of \$5,116.00, 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: *4/27/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁰ See e.g., WMBB NEWS, *Northwest Florida Tourism Experiences a Record Summer*, 16 September 2011, available at, <http://www.wmbb.com/story/15386358/northwest-florida-toursim-experiences-a-record-summer?clienttype=printable>, Accessed on 26 April 2012.

¹¹ 33 C.F.R. § 136.235.

¹² Email from the Claimant to the NPFC, Subject: Claim #N10036-1699.