

U.S. Department of  
Homeland Security

United States  
Coast Guard

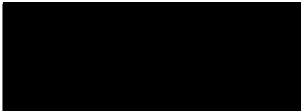


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2446 2483

5890/DWHZ  
16 March 2012

Galia 804 Partners  


Re: Claim Number: N10036-1705

Dear Mr. Cross:

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 N10036-1705 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 N10036-1705.

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  
(2) Evidence Presented in Support of NPFC Claim N10036-1705

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1658
Claimant	Galia 804 Partners
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$151,000.00

### ***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 24 February 2012, Mr. Dan Cross on behalf of Galia 804 Partners, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$151,000.00 in Real or Personal Property damages, which the Claimant has identified as a "loss of property value."<sup>1</sup>

In February of 2010, the Claimant listed a condominium unit for sale in Pensacola, Florida for \$430,000.00. The Claimant stated that,

due solely to the Spill, property values plummeted further, [and] we were forced to reduce the listing agreement price to \$250,000.00 and ultimately sold the condo property in 'short-sale' status for \$279,000.00 in February, 2011, a realized property value loss of \$151,000.00.<sup>2</sup>

Because this is a claim based on an alleged financial loss from a property sale, and not a claim alleging physical property damage as a result of the oil spill, the NPFC has reclassified this claim as a claim for loss of profits and impairment of earning capacity damages in the amount of \$151,000.00.

### ***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.

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.

<sup>1</sup> Optional OSLTF Claim Form, signed on 24 February 2012.

<sup>2</sup> Letter from the Claimant to the GCCF, 8 December 2011.

- (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 documentation listed in Enclosure (2).

On 10 November 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking Real or Personal Property damages in the amount of \$151,000.00.<sup>3</sup> The Claimant was assigned Claimant ID # 3565409 and the FRF claim was assigned claim # 9532472.<sup>4</sup> The RP/GCCF denied payment on this claim.

On 2 March 2012, the Claimant submitted this claim to the NPFC, seeking \$151,000.00 in loss of property value damages, which the Claimant categorized as "Real or Personal Property" damages.<sup>5</sup> As noted above, because the Claimant is alleging to have sustained a financial loss as a result of diminution in property value, the NPFC has reclassified this claim as a claim for loss of profits and impairment of earning capacity damages. Because the Claimant has previously presented this claim to the RP/GCCF, regarding the same damages as now before the NPFC, the NPFC may fully adjudicate this claim for all damages, totaling \$151,000.00.

### **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 based on diminution of property value, the Claimant must provide documentation sufficient to prove, among other things, that the value of the property before

<sup>3</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>4</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>5</sup> Optional OSLTF Claim Form, signed on 24 February 2012.

the spill was higher than what the property ultimately sold for after the spill. Additionally, a Claimant would have to prove that the property failed to sell as a result of the oil spill, usually indicated by a sales agreement which was specifically cancelled due to the spill.

Here, the Claimant has failed to prove that the pre-spill value of the property was less than what the property ultimately sold for. In establishing the pre-spill value of the property, the Claimant relies on the listing price of \$430,000.00 as indicated on the 4 February 2010 listing agreement. The property was eventually sold in February of 2011, for \$279,000.00. The Claimant asserts that the difference between the list price as of February of 2010 and the sales price of February of 2011 marks the loss of value of the property which is attributable to the effects of the Deepwater Horizon oil spill.

Elsewhere in the Claimant's submission, the Claimant provides evidence of listing and sales prices of comparable units in the Galia. Comparable list and sales prices indicate that the Claimant's \$430,000.00 list price in February 2010 does not represent the actual value of the Claimant's property immediately prior to the spill.

For example, in an email to the Claimant dated 1 September 2010, a realtor states that "the closest comps in that particular building, Galia, were units 201 & 307 which both sold for \$229,000.00 in April of 2010."<sup>6</sup> Furthermore, the Claimant includes listing and sales data for comparable units in the same complex, which indicate that the list price for similar units immediately prior to the spill was actually lower than the Claimant's eventual sales price. For example, units 905 and 903 were each listed at \$269,000.00 in March of 2010, which is \$10,000.00 less than the Claimant's eventual sales price.

Based on this comparable data, the Claimant has failed to prove that the original list price of the property is actually indicative of the pre-spill value of the home. Rather, comparable listings and sales data indicate that the eventual sales price may have been slightly higher than the actual pre-spill value of the property. Further, the Claimant has failed to prove that the property did not sell as a result of the Deepwater Horizon oil spill as opposed to a myriad of other economic factors affecting the Florida real estate market.

Accordingly, this claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$151,000.00, 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:  *NPPC Claims Adjudication Division*

Date of Supervisor's Review: *4/16/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>6</sup> Email from Carter Bondurant to the Claimant, 1 September 2010.

**Enclosure (2)**  
**Evidence Presented in Support of**  
**NPFC Claim N10036-1705**

- Optional OSLTF Claim Form, signed on 24 February 2012;
- GCCF Denial letter on Interim Payment/Final Payment Claim, 16 February 2012;
- Email from Claimant to GCCF, requesting Re-Review of claim, 8 December 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 November 2011;
- GCCF, Supporting Documentation For A Claim;
- Cover Sheet for GCCF Claim Submission, 10 November 2011;
- U.S Department of Housing and Urban Development, Settlement Statement;
- Special Warranty Deed, 12<sup>th</sup> July 2007;
- Exclusive Right of Sale Listing Agreement, 3 February 2010;
- Modification to listing Agreement, 1 September 2010;
- Email Re: Closing Documents, Galia Tower, 2 March 2011 with attached documents;
- Email from the Claimant to the GCCF, 11 November 2011;
- Email to the Claimant regarding MLS data sheets, 1 September 2010;
- Property specifications, MLS# 380179;
- Property specifications, MLS# 341533;
- Property specifications, MLS#363503;
- Record of comparable properties recently sold;
- Bar graph showing sold properties specifications;
- Summary graph/analysis;
- Map showing location of subject property;
- Email from the Claimant to the GCCF, noting decline in real estate values, Pensacola, FL, 11 November 2011;
- Email from the Claimant to the GCCF, 11 November 2011;
- Pointe South Real Estate Market Update, Perdido Key & Southwest Pensacola;
- Chart showing Perdido Key Overall Monthly trends (Jan-June 2010) and Perdido Key Waterfront YTD Monthly Trends (Jan-June 2010);
- Chart showing Perdido Key Overall Statistics (Jan-June 2010);
- Chart showing Southwest Pensacola Overall Statistics (Jan-June 2010), Southwest Pensacola Overall Monthly trends (Jan-June 2010);
- Les Christie, *Oil spill could drag down Gulf home prices by \$3 billion*, cnmnews.com, 2 August 2010;
- Pointe South Perdido Key, 2010 Market Stats (line graph);
- Pointe South Perdido Key selling prices 2010 (bar graph);
- Pointe South Southwest Pensacola Average Home Prices bar graph, Southwest Pensacola Transactions & DOM, Monthly Transactions, Avg \$/sqft;
- Email from the Claimant to the GCCF, 11 November 2011;
- Email to the GCCF regarding comparable sales, 10 November 2011;
- Print out of recently sold comparable properties;
- Chart showing list price and sale price of recently sold properties;
- Summary Graph/Analysis;
- Email from the Claimant to the GCCF, re 3 BR comps;
- Summary Graph Analysis re 3 BR comps;
- Map showing property location;

- Email to the GCCF re property value at year end 2009 and 2010, 11 November 2011;
- 2010 Notice of proposed property taxes.