

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
Staff Symbol: (CA)
Phone: 800-280-7118
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7339

5890/DWHZ
6 June 2012

Susan Sprigg


Re: Claim Number: N10036-1714

Dear Ms. Sprigg:

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 N10036-1714 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 N10036-1714.

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
(2) Documents Submitted in Support of Claim

CC: Michael Burgess
18307 Cutlass Drive
Fort Meyers Beach, FL 33931

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7315

Claim Summary/Determination Form

Claim Number	N10036-1714
Claimant	Mr. Michael Burgess
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$18,666.00

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 14 March 2012, Ms. Susan Sprigg, on behalf of Mr. Michael Burgess (collectively the Claimant), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$18,666 in loss of profits and impairment of earnings capacity damages resulting from the Deepwater Horizon incident.¹

The Claimant owns rental properties in Destin, FL, including Bahia Ghia, 9700 Grand Sandestin Boulevard, Units # 4314/4316, the subject of this claim. The Claimant alleges that the Deepwater Horizon incident decreased tourism in the area, forcing him to reduce the properties' rental rates and causing the properties to remain vacant.²

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, adjoining shorelines, or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF 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. 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;
- (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

¹ Optional OSLTF Claim Form, signed 3 March 2012.

² Optional OSLTF Claim Form, signed 3 March 2012.

profits or earnings for the same or similar activities outside of the area affected by the incident also must be established; and

- (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 NPFC

To support this claim, Claimant presented the documentation listed in Enclosure (2).

Prior to presenting this claim to the NPFC, the Claimant presented a Second Quarter 2011 Interim Payment Claim (ICQ22011) on 29 April 2011 to the GCCF.³ The GCCF assigned Claimant ID # 3517320 to the Claimant, and assigned the ICQ22011 claim # 9372462.⁴ The GCCF denied payment on that claim.⁵

On 10 February 2012, the Claimant presented this claim to the NPFC, seeking \$18,666.00 in loss of profits and earning capacity damages.⁶ The NPFC may only adjudicate this claim to the extent that it was first presented to the GCCF.⁷ Because the Claimant has only sought \$9,575.00 from the GCCF when he presented ICQ22011, the NPFC may only review \$9,575.00 of this claim.⁸ Accordingly, \$9,091.00 of this claim is denied for improper presentment.

In a letter dated 04 May 2012, the NPFC requested additional information from the Claimant.⁹ The letter requested certain documentation, including proof of property ownership, certain tax forms, and occupancy rate calculations for the applicable and comparable periods.¹⁰ The letter also requested responses to a number of questions, including an explanation as to how the

³ GCCF Interim Payment Claim Form, dated 29 April 2012.

⁴ GCCF Denial Letter, dated 21 January 2012.

⁵ GCCF Denial Letter, dated 21 January 2012.

⁶ Optional OSLTF Claim Form, dated 03 March 2012.

⁷ 33 C.F.R. § 136.103(a).

⁸ 33 C.F.R. § 136.103(a).

⁹ Request for Additional Information, dated 4 May 2012.

¹⁰ Request for Additional Information, dated 4 May 2012.

Claimant calculated the losses, any time periods that the properties were unavailable due to repairs or renovations during the time frame of his claim, and a description of the Claimant's advertising efforts.¹¹ The Claimant did not respond to this request for additional information.

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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Here, in order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the alleged loss was due to the discharge of oil resulting from the Deepwater Horizon oil spill.

Non-compensable Damages:

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an ICQ22011 claim for \$9,575.00. The Claimant then presented a loss of profits and impairment of earnings capacity claim to the NPFC for \$18,666.00.¹² Any claimed amount of damages exceeding \$9,575.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and therefore, \$9,091.00 is denied.

Failure to Prove Damages or Causation:

The remainder of this claim is denied because the Claimant has failed to establish either an alleged loss or that his alleged loss is due to the Deepwater Horizon oil spill. In a letter dated 04 May 2012, NPFC asked the Claimant to provide supporting documentation and answers to questions to help prove the alleged loss.¹³ The Claimant did not respond to the request for additional information. Accordingly, the NPFC reviewed the claim based on the documentation submitted to the NPFC.

The Claimant's evidence does not establish how the Claimant calculated the alleged loss. According to the Claimant's GCCF Claim Form, it appears that he is claiming a loss resulting from a "reduction in rental rates and wks [*sic*] that sat open due to lack of business from bad press."¹⁴ This claim, however, is contradicted by the Claimant's tax returns which indicate that his 2010 revenue from the subject property actually increased from 2009.¹⁵ For example, the Claimant received \$13,998 in 2009¹⁶ and \$16,543 in 2010.¹⁷ Accordingly, the Claimant has failed to prove that he suffered the loss claimed.

¹¹ Request for Additional Information, dated 4 May 2012.

¹² Optional OSLTF Claim Form, signed 03 March 2012.

¹³ Additional Information Request, dated 03 April 2012.

¹⁴ GCCF Interim Payment Claim Form, dated 29 April 2011.

¹⁵ 2008 U.S. Individual Income Tax Return, Schedule E; 2009 U.S. Individual Income Tax Return, Schedule E; 2010 U.S. Individual Income Tax Return, Schedule E.

¹⁶ 2009 U.S. Individual Income Tax Return, Schedule E.

¹⁷ 2010 U.S. Individual Income Tax Return, Schedule E. The revenue numbers found in the Claimant's tax returns differ markedly from those in the Claimant's monthly profit and loss statements for 2008, 2009, and 2010. The revenues reported in the Claimant's tax returns are anywhere between \$15,000 and \$50,000 lower than those appearing in his profit and loss statements. Even though the numbers are different, however, their direction is

Additionally, the Claimant has failed to prove that his alleged loss was due to the Deepwater Horizon incident. For example, the Claimant has provided no evidence of any change in occupancy rates due to the oil spill, no proof of any cancellations, and no information about increased advertising efforts to demonstrate a causal link between the Deepwater Horizon incident and his alleged losses.

Accordingly, the Claimant's claim of \$18,666.00 is denied in its entirety. First, \$9,091.00 is denied for improper presentment to the NPFC. Second, the remaining \$9,575.00 is denied because the Claimant has failed to demonstrate (1) a financial 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 discharge of oil.

Claim Supervisor:  *lication Division*

Date of Supervisor's Review: 6/6/12

Supervisor's Action: *Denial approved*

Supervisor's Comments:

monotonic. In both the Claimant's tax returns and the monthly profit and loss statements, 2010 year-end revenues were higher, and year-end losses significantly lower than in 2009. Monthly Profit and Loss Statements for 2008, 2009, and 2010.

ENCLOSURE 2
Documents Submitted in Support Of Claim
Claim No. N10036-1714

The following is a list of documents submitted by the Claimant to the NPFC in support of his claim:

- Optional OSLTF Claim Form, signed 3 March 2012;
- Letter authorizing GCCF to release documents to the NPFC, dated 3 March 2012;
- GCCF Interim Payment Claim Form, dated 29 April 2011;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, dated 8 June 2011;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, dated 28 July 2011;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, dated 31 August 2011;
- GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim, dated 18 October 2011;
- GCCF Follow Up to Previous Denial Letter, dated 29 December 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 21 January 2012;
- Email from Susan Sprigg to GCCFinfo, dated 29 April 2011;
- Email from Susan Sprigg to GCCFinfo, dated 8 July 2011 with attachment;
- Email from Mike Burgess to GCCFinfo, dated 14 July 2011 with attachments;
- Cover letter from Mike Burgess to GCCF Escalation Department, dated 13 July 2011;
- Email from Susan Sprigg to GCCFinfo, dated 15 July 2011;
- Email from GCCFinfo to Susan Sprigg, dated 15 July 2011;
- Email from Gary Smith to Chip Sprigg, dated 18 July 2011;
- Email from Susan Sprigg to GCCFinfo, dated 4 August 2011;
- Email from GCCFinfo to Susan Sprigg, dated 16 August 2011;
- Email from Susan Sprigg to GCCFinfo, dated 16 August 2011;
- Email from Paul Gilcrease to GCCFinfo, dated 23 November 2010;
- Email from Chip Sprigg to GCCFinfo, dated 6 October 2011;
- Email from GCCFinfo to wwsprigg@insigbb.com, dated 7 October 2011;
- Email from GCCFinfo to ssprigg@aol.com, dated 11 October 2011;
- Email from GCCFinfo to ssprigg@aol.com, dated 12 October 2011;
- Email from GCCFinfo to Susan Sprigg, dated 14 October 2011;
- Email from Susan Sprigg to GCCFinfo, dated 11 October 2011;
- Email from Susan Sprigg to GCCFinfo, dated 12 October 2011;
- Email from Susan Sprigg to GCCFinfo, dated 13 October 2011;
- Email from Mike Burgess to GCCFinfo, dated 21 October 2011;
- Email from Chip Sprigg to GCCFinfo, dated 14 November 2011;
- Email from GCCFinfo to wwsprigg@insightbb.com, dated 15 November 2011;
- 2007 Form 1040, Schedule E for rental real estate property, including #4314/4316 Bahia Ghia;
- 2008 Form 1040, Schedule E for rental real estate property, including #4314/4316 Bahia Ghia;
- 2009 Form 1040, Schedule E for rental real estate property, including #4314/4316 Bahia Ghia;

- 2010 Form 1040, Schedule E for rental real estate property, including #4314/4316 Bahia Ghia;
- 2008 Form 1040, including Schedules A, B, D, & E; Forms 1116, 4797, and 5882, and applicable Statements and Worksheets;
- 2009 Form 1040, including Schedules A, B, D, & E; Forms 1116, 6251, 8606, and 8582, and applicable Statements and Worksheets;
- 2010 Form 1040, including Schedules D, E, & M; Forms 1116, 4797, and 8582, and applicable Statements and Worksheets; and
- Monthly Profit and Loss Statement for Michael Burgess property Bahia at Sandestin #4314/4316, covering years 2008, 2009 and 2010.