

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



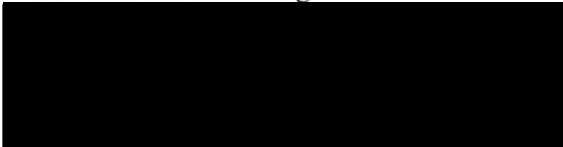
Director  
National Pollution Funds Center  
United States Coast Guard

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 8985

5890/DWHZ  
16 April 2013

Mr. Edward Thornburg



Re: Claim Number: N10036-1898

Dear Mr. Thornburg:

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 N10036-1898 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

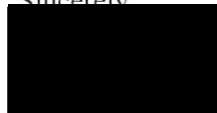
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1898.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

Sincerely,



ion Division  
National Pollution Funds Center  
U.S. Coast Guard

Enclosure: Claim Summary/Determination  
cc:



By Certified Mail:  
No. 7011 1570 0001 4803 8992

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1898
Claimant	Edward Thornburg
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$144,000.00

### ***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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

### ***CLAIM AND CLAIMANT***

On 5 February 2013, Ms. Jennifer Powers, on behalf of Mr. Edward Thornburg, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$144,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is a real estate investor, who "price[s] below market to insure fast turnaround."<sup>2</sup> On 10 April 2010, the Claimant listed a home for sale in Niceville, Florida with an initial asking price of \$499,000.00. Approximately every one to two weeks thereafter, the Claimant reduced the asking price until the home sold on 4 June 2010 for \$355,000.00. The Claimant explained that the home had to be sold quickly because "the subject property was purchased with financing by short term investors necessitating a short term holding of the property."<sup>3</sup>

According to the Claimant, "there were no buyers as a result of the spill," and "[h]ad the oil spill not occurred, this home would have sold for \$499,000.00."<sup>4</sup> The Claimant seeks to recover \$144,000.00, which is the difference between the original asking price and the final sales price.

### ***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 water, adjoining shorelines, or the exclusive economic zone of the United States, 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

<sup>1</sup> Document entitled "BP Oil Claim."

<sup>2</sup> Document entitled "BP Oil Claim."

<sup>3</sup> Claim cover letter, 20 July 2012.

<sup>4</sup> Document entitled, "BP Oil Claim."

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 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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission to the NPFC**

The Claimant submitted the following documentation in support of this claim:

- Claim Cover Letter, 23 December 2012;
- Representation authorization letter, 13 November 2012;
- Letter from the Claimant to the NPFC, Re: Claimant no. 3527990/Claim submitted under the Gulf Coast Claims Facility (“GCCF”) for Edward G. Thornburg (the “Claim”); APPEAL OF CLAIM, 20 July 2012;
- Letter outlining claim, entitled, “BP Oil Claim”;
- Exhibit A, Original GCCF Claim;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 12 July 2011;
- Chart documenting sales prices of comparable properties;
- Sales inventory report, 2009, 2010;
- Sales inventory chart, 2009, 2010;
- Sales inventory report, 2009 – 2011, Statistics for entire MSL from 1/1/2009 – 12/31/2010;
- Sales inventory chart, 2009 – 2011;
- Sales and inventory report, 2005 – 2011;

- List of exhibits documenting loss;
- Exhibit A, Analysis of 1325 Windrush Comparable to demonstrate \$144,000 loss;
- Exhibit B, HUD Settlement Statement;
- Warranty Deed, 4 June 2010;
- Exhibit C, property listing;
- Exhibit D, timeline of list price changes;
- Exhibit E, property listings pre-oil spill;
- Exhibit F, property listings post-oil spill.

Documentation included in this claim submission indicates that the Claimant presented this claim to the RP/GCCF, prior to its presentment to the NPFC.<sup>5</sup> The GCCF assigned the Claimant ID # 3527990 and denied payment on this claim.<sup>6</sup>

On 5 February 2013, the Claimant submitted this claim to the NPFC, seeking to recover \$144,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill. Because this appears to be the same claim, regarding the same damage amount as previously presented to and denied by the RP/GCCF, the NPFC deems OPA presentment requirements to have been satisfied.<sup>7</sup>

However, evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).<sup>8</sup>

#### **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.

As an initial matter, it appears that the Claimant is a member of the E&PD Settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the claimant no longer has rights to the claim and therefore cannot subrogate the NPFC to those rights.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the E&PD Settlement, he should submit evidence to indicate that he has either opted out or are excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, this claim is also denied on its merits. In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction in income, and (2) that the financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

Here, the Claimant alleged that the oil spill decreased consumer interest in a competitively priced property for sale in Niceville, Florida. As such, the Claimant continued to decrease the asking price of

<sup>5</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 12 July 2012.

<sup>6</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 12 July 2012.

<sup>7</sup> 33 C.F.R. § 136.103.

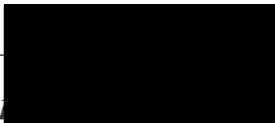
<sup>8</sup> The Claimant has not indicated that they have affirmatively opted out of the Economic and Property Damage Class Action Settlement. See also, <http://www.deepwaterhorizoneconomicsettlement.com/>, noting that Real Property Sales losses are included in the E&PD Settlement. Accessed on 16 April 2013.

the home, eventually selling it for approximately \$144,000.00 less than the original list price. The property was first listed for sale on 10 April 2010 and was sold on about 4 June 2010. The Claimant explained that because the home was purchased with a short-term loan and he was forced to sell it quickly.

According to OPA and associated regulations, a Claimant may only recover “the *actual* net reduction or loss of earnings or profits suffered.”<sup>9</sup> Speculative losses or anticipated future losses however, are not compensable. Here, the Claimant has not provided any evidence to prove that a particular sale failed to progress to closing as a result of the oil spill. Rather, the Claimant speculates that the home would have sold immediately upon listing and at the original list price, had the oil spill not occurred. However, the Claimant has presented no evidence to indicate that consumer interest in the home was at all affected by the Deepwater Horizon oil spill.

Rather, evidence in this claim submission indicates that the Claimant began reducing the sales price of the home very soon after it was listed and before the effects of the oil spill were generally known. A timeline provided by the Claimant indicates that the Claimant began reducing the sales price of the home as early as 21 April 2010 and then again on 28 April 2010. The Claimant continued to reduce the asking price every one to two weeks thereafter, until the home sold 7 June 2010.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount \$144,000.00, or (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. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.

Claim Supervisor: *NPA*  *n Division*

Date of Supervisor's Review: *4/16/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>9</sup> 33 C.F.R. § 136.235.