

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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05/16/2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7012 2210 0001 7215 0230

Snowbird Guest House

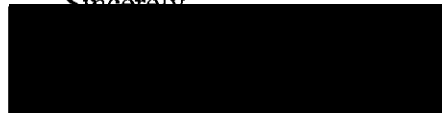

RE: Claim Number: N10036-1901

Dear Mr. MacCartee:

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 claim number N10036-1901 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,



Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1901
Claimant	: Snowbird Guesthouse Bed and Breakfast
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits or Impairment of Earning Capacity
Amount Requested	: \$485,000.00

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.

On 8 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 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 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT:

On 3 April 2013, Mr. Webster MacCartee on behalf of the Snowbird Guesthouse Bed & Breakfast, (collectively "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking to recover \$485,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is the owner and operator of the Snowbird Guesthouse Bed & Breakfast in Daphne, Alabama. The Claimant alleged that the oil spill caused a decrease in guest counts and also prevented the Claimant from operating a dinner cruise in and around Mobile Bay. Furthermore, the Claimant alleged that the vessel he planned to use for the dinner cruises was damaged by the oil spill while docked in Mobile Bay. Specifically, the Claimant stated that he "encountered direct physical damage to the boat as well as prolonged financial damage to [his] business."²

The Claimant acknowledged to have been compensated for losses incurred from May to December of 2010, and now seeks to recover \$485,000.00 in losses allegedly incurred from January 1, 2011 through March 31, 2013.

The NPFC originally denied the claim on 12 April 2013 because the Claimant did not provide evidence sufficient to prove (1) that he sustained a financial loss in the amount \$485,000.00, or (2) that the alleged loss was due to the injury, destruction, or loss of property or natural resources

¹ Optional OSLTF Claim Form, received on 3 April 2013.

² Claim narrative, 27 March 2013.

as a result of a discharge or substantial threat of discharge of oil. Additionally, this claim was considered to have been settled by virtue of the Claimant accepting a Final Payment from the Responsible Party, and was therefore not eligible for compensation from the OSLTF.

REQUEST FOR RECONSIDERATION:

On 23 April 2013, the NPFC received the Claimant's request for reconsideration of this claim. In support of this request, the Claimant provided a letter requesting assistance in gathering documentation necessary to prove this claim. The Claimant also specifically requested reimbursement of claim assessment costs in the amount of \$11,257.50 which he states he believes was overlooked the first time.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. Under 33 CFR § 136.115(d), The NPFC, upon written request of the claimant, will reconsider any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim.

Upon receipt of the Claimant's request for reconsideration, the NPFC performed a *de novo* review of the entire claim submission.

The NPFC notes that the Claimant indicated that he has signed a Release in return for Final Payment from the Responsible Party. As such, the NPFC is precluded from making any payments on this claim whether or not the Claimant could have demonstrated a loss, as the Claimant no longer maintains the rights to pursue this claim.

Additionally and for informational purposes only, a Claimant may present, as part of a claim submission, "reasonable costs incurred by the Claimant in assessing damages claimed,"³ although these costs are not compensable when a Claimant fails to prove the underlying damage claim.

Therefore, because the Claimant has failed to prove that they sustained a loss of profits as a result of the Deepwater Horizon oil spill, and because the claim has been settled by virtue of the Claimant signing a release in exchange for final payment, the Claimant may not recover the assessment costs.

Based on the foregoing, this claim is again denied because the Claimant may not recover losses from the NPFC since the Claimant signed a Release and Covenant not to sue in exchange for Final Payment from the Responsible Party.

This claim is denied upon reconsideration.

³ 33 C.F.R. § 136.105(d)(8).

Claim Supervisor

Date of Supervisor's review: *05/16/13*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: