U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

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 4802 5961

5890/DWHZ
19 October 2011

Doug & Robyn Scheuffele
[redacted]

Re: Claim Number: N10036-1304

Dear Mr. and Mrs. Scheuffele:

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 your claim number N10036-1304 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1304.

Mail reconsideration requests to:

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

Sincerely,
[redacted]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1304
Claimant	Doug & Robyn Scheuffele
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$6,720.33

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 15 August 2011, Doug & Robyn Scheuffele (collectively Claimant), presented a claim to the National Pollution Funds Center (NPFC) seeking $6,720.33 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant owns two residential rental properties in Pensacola, Florida.[1] The Claimant asserted that they lost rental income from both rental properties due to the Deepwater Horizon oil spill.[2] The Claimant explained that tourism in Pensacola plummeted due to the oil spill, which in turn affected the property rental industry because tenants either lost their income or moved away from Pensacola because of the reduction in tourism.[3]

The first rental property is located at 2 Calle Traviesa. The Claimant asserted that the tenant vacated the property on 30 September 2010 due to economic grounds.[4] The Claimant indicated that they were unable to find another renter for the property until 15 February 2011, when they secured a one year lease with a tenant for a reduced rental rate of $950.00 per month (a decrease of $50 per month from the amount paid by the tenant renting the property at the time of the Deepwater Horizon oil spill).[5]

The second property is located at 501 E. Burgess Road. The Claimant indicated that the tenant vacated the property on 31 December 2010.[6] The Claimant is unaware of the reason that tenant left the property.[7] The Claimant stated that the property was vacant until they negotiated a two

[1] Letter of claim explanation to the NPFC, dated 1 August 2011.
[2] Letter of claim explanation to the NPFC, dated 1 August 2011.
[3] Letter of claim explanation to the NPFC, dated 1 August 2011.
[4] Letter of claim explanation to the NPFC, dated 1 August 2011.
[5] Letter of claim explanation to the NPFC, dated 1 August 2011.
[6] Letter of claim explanation to the NPFC, dated 1 August 2011.
[7] Letter of claim explanation to the NPFC, dated 1 August 2011.

month lease for April and May of 2011. The Claimant indicated that they have been unable to find another renter since that time.[8]

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

(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.
(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 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 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;

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[8] Letter of claim explanation to the NPFC, dated 1 August 2011.

(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

The Claimant's Submission to the OSLTF

In support of the claim, the Claimant presented the following documentation to the NPFC:

- Letter of claim explanation to the NPFC, dated 1 August 2011;
- Denial letter on Interim Payment/Final Payment claim, dated 6 May 2011;
- Letter from Chuck Storm of Storm Realty, dated 11 July 2011;
- Summary of provided documentation for the property at 501 E. Burgess Road, # D-5;
- Month of December and year-end account statements from Storm Realty for the property at 501 E. Burgess Road, # D-5 for 2005 through 2010;
- 2010 Account Journal from Storm Realty for the property at 501 E. Burgess Road, # D-5;
- Monthly rental property statements from Storm Realty for the property at 501 E. Burgess Road, # D-5 for January through July of 2011;
- Property tax statement from Escambia County for the property at 501 E. Burgess Road, # D-5;
- Summary of provided documentation for the property at 2 Calle Traviesa;
- Letter from Emerald Coast Utilities Authority to Claimant indicating service termination by tenant, dated 4 October 2010;
- Various utility bills for the property at 2 Calle Traviesa;
- Month of December and year-end account statements from Storm Realty for the property at 2 Calle Traviesa for 2005 through 2010;
- 2010 Account Journal from Storm Realty for the property at 2 Calle Traviesa;
- Monthly rental property statements from Storm Realty for the property at 2 Calle Traviesa for February through July of 2011;
- Property tax statement from Escambia County for the property at 2 Calle Traviesa;
- Letter in response to the NPFC's request for additional information, dated 27 September 2011;
- 2008 Federal Income Tax Return, including Schedule E;
- 2009 Federal Income Tax Return, including Schedule E;
- 2010 Federal Income Tax Return, including Schedule E;
- Lease renewal of property at 2 Calle Traviesa on 2 September 2011;
- Letter from Storm Realty, dated 19 September 2011;
- Various Craigslist postings advertising the rental properties;
- Online listing for the properties at Automated Housing Referral Network;
- Email confirmation of listing for property at AmericanClassifieds.com;
- Copy of MLS listings for the properties; and
- Residential lease for the property at 501 E. Burgess, dated 25 September 2009.

Prior to presenting this claim to the NPFC, the Claimant filed an Interim 1 claim with the GCCF on 18 January 2011 in the amount of $4,000.00 for loss of profits and earnings (ICQ12011A) and

$4,000.00 for real or personal property damages (ICQ12011B).[9] The Claimant was assigned Claimant ID # 3488779 and Claim # 9225318. The Interim 1 claim was denied by the GCCF on 6 May 2011.[10]

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF loss of earnings claim is the same as the subject matter of the claim before the NPFC, i.e., the Claimant suffered a loss in rental earnings from two properties due a decrease in tourism caused by the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and the loss of earnings claim properly presented to the NPFC up to $4,000.00. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1304 considers and addresses the damages claimed in the loss of earnings claim presented to the responsible party, specifically; GCCF Claim # 9225318 (ICQ12011A).

NPFC Determination

The claim is denied. 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 or destruction or loss of real or personal property or 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 the claim.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented an Interim 1 claim for $4,000.00 to the GCCF for loss of profits and earnings. Claimant then presented a loss of profits and impairment of earnings capacity claim to the NPFC for $6,720.33. Any claimed amount of damages exceeding $4,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant failed to prove that it suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted a loss of rental earnings at two properties due to a decrease in tourism caused by the Deepwater Horizon oil spill.[11] The Claimant provided tax returns, rental statements, and letters from its rental management company supporting a decrease in rental earnings after the Deepwater Horizon oil spill. The Claimant, however, was unable to provide any evidence linking its alleged loss to the Deepwater Horizon oil spill.

In its initial submission to the NPFC, the Claimant indicated that the tenant at 2 Calle Traviesa vacated the property because of "economic grounds" and they were unsure why the tenant at 501 East Burgess Road vacated the property.[12] The Claimant's rental management company stated that one tenant lost employment in construction on the beach.[13] The NPFC requested on 26 August 2011, that the Claimant provide contact information for the former tenants so that the

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[9] Report from the GCCF, dated 21 September 2011.
[10] Denial letter on Interim Payment/Final Payment claim, dated 6 May 2011.
[11] Letter of claim explanation to the NPFC, dated 1 August 2011.
[12] Letter of claim explanation to the NPFC, dated 1 August 2011.
[13] Letter from Chuck Storm of Storm Realty, dated 11 July 2011.

NPFC could confirm the circumstances leading to both tenants breaking their leases.[14] In response, the Claimant provided a letter from its rental management company indicating that they did not have contact information for the former tenants.[15]

Consequently, the NPFC was unable to confirm that any specific loss experienced by the Claimant was due to the Deepwater Horizon oil spill as opposed to other factors such as a downturn in the economy or collapse of the housing market which potentially affected the tenants. Notably, the Claimant indicated that, prior to the Deepwater Horizon oil spill; they had already decreased the monthly rental rate for one tenant because of financial difficulties.[16]

Accordingly, this claim is denied because the Claimant failed to meet its burden to: (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a and (2) demonstrate 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: ***10/19/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[14] Letter from the NPFC to the Claimant, dated 26 August 2011.
[15] Letter from Storm Realty, dated 19 September 2011.
[16] Letter in response to the NPFC's request for additional information, dated 27 September 2011.