

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
25 October 2011

Mainstreet Property Partners, LLC



Re: Claim Number: N10036-1385

Dear Mrs. Rafferty:

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 N10036-1385 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 N10036-1385.

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: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1385
Claimant	Mainstreet Property Partners, LLC
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$324,023.00

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 8 September 2011, Ms. Elizabeth Rafferty on behalf of Mainstreet Property Partners LLC (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$324,023.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant owns and operates several apartment communities in south Louisiana, including Mainstreet Property in Metairie. The Claimant alleged that the Deepwater Horizon oil spill caused the apartment community to sustain a loss of rental income. The Claimant specifically stated that following the oil spill there was a “reduced need for housing due to economic changes as a result of job losses and job transfers due to the moratorium.”²

The Claimant alleged that due specifically to low leasing activity and the cancellation/non-renewal of lease agreements; the Claimant sustained a loss of rental income in the amount of \$324,023.00.³

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 Section 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.

¹ Optional OSLTF Claim Form, dated 1 September 2011.

² Optional OSLTF Claim Form, dated 1 September 2011.

³ Document, “Detrimental Impact on Leasing Activity”; Document, “Detrimental Impact on Occupancy.”

- (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 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 following documentation:

- Optional OSLTF Claim Form, dated 1 September 2011;
- GCCF Full Review Final Payment Claim Form, Claimant ID 1185726, 15 Nov. 2010;
- Document, "Detrimental Impact on Leasing Activity;"
- Document, "Leasing Activity summary;"
- Document, "Detrimental Impact on Occupancy;"
- Map showing the location of Mainstreet Property Partners, LLC;
- Operating Statement, 1 January 2007 to 30 June 2007;
- Operating Statement, 1 July 2007 to 31 July 2007;
- Operating Statement, 1 August 2007 to 31 August 2007;
- Operating Statement, 1 June 2008 to 30 June 2008;
- Operating Statement, 1 July 2008 to 31 July 2008;
- Operating Statement, 1 August 2008 to 31 August 2008;
- Operating Statement, 1 June 2009 to 30 June 2009;
- Operating Statement, 1 July 2009 to 31 July 2009;
- Operating Statement, 1 August 2009 to 31 August 2009;
- Operating Statement, 1 June 2010 to 30 June 2010;
- Operating Statement, 1 July 2010 to 30 July 2010;

- Operating Statement, 1 August 2010 to 31 August 2010;
- Copy of Lease Agreement, 23 March 2010;
- Copy of Lease Agreement, 18 May 2010;
- Copy of Lease Agreement, 18 May 2010.

On 15 November 2010, the Claimant presented a Full Review Final claim (FRF) to the RP/GCCF, seeking \$324,023.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill. The Claimant was assigned ID 1185726 and FRF was assigned Claim # 9426221.⁴

This claim was denied on 5 August 2011. On 8 September 2011, the Claimant presented this claim to the NPFC, seeking \$324,023.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill. Because this is the same claim, seeking the same damage amount as first presented in FRF, the NPFC may properly address the entirety of this claim as presented by the Claimant to the NPFC.

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 and impairment of earnings capacity, a Claimant must demonstrate (1) that she sustained a loss or reduction in profits or earning capacity, and (2) that the loss or reduction was due to the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill.

Specifically, the Claimant alleged to have sustained two types of rental income losses as a result of the Deepwater Horizon oil spill: (1) losses in the amount of \$294,383.00 due to low leasing activity, and (2) \$29,640.00 in losses due to the cancellation or non-renewal of lease agreements.⁵

1. Low Leasing Activity

The Claimant alleged that fewer new leases were signed in the months following the oil spill as compared to those months in the previous year. However, the Claimant has not provided any indication that the occupancy rates only dropped following the oil spill, nor has she demonstrated that the alleged decrease in new leases was caused by the Deepwater Horizon oil spill.

In order to substantiate the Claimant's assertion that occupancy rates were actually lower following the oil spill, the NPFC requested that the Claimant provide a record of monthly occupancy in order to show that occupancy, and not just the number of newly signed leases, actually decreased following the Deepwater Horizon oil spill.⁶ To date, the Claimant has not responded to this request.

⁴ GCCF Claimant Status, accessed on 16 Sept 2011.

⁵ Document, Detrimental Impact on Occupancy.

⁶ NPFC Letter requesting additional information, 20 September 2011.

This component of the claim is therefore denied in the amount of \$294,383.00.

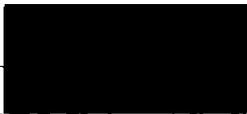
2. Cancelled or Non-Renewed Leases

Copies of cancelled lease agreements fail to demonstrate that the Claimant sustained a loss of rental income due to effects of the Deepwater Horizon oil spill. The Claimant provided evidence to show that two rental agreements were not renewed during the summer of 2010, and alleged that the failure of these tenants to renew their leases was caused by the effects of the Deepwater Horizon oil spill.⁷

In order to substantiate this claim, the NPFC requested that the Claimant provide contact information for tenants who failed to renew leases as a result of the Deepwater Horizon oil spill.⁸ To date, the Claimant has failed to respond to this request.

Furthermore, the Claimant has not provided evidence to show that the alleged lost tenants had previously agreed to renew their leases, or that they were under any sort of obligation to do so.

Having reviewed all information and documentation provided by the Claimant, this claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$324,023.00, 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/25/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ Document, Detrimental Impact on Occupancy.

⁸ NPFC letter requesting additional information, dated 20 September 2011.