

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
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

5890/DWHZ
11 June 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7711

Vincent G. Bubolo



Re: Claim Number: N10036-1711

Dear Mr. Bubolo:

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 N10036-1711 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 N10036-1711.

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

CLAIM SUMMARY DETERMINATION

Claim Number	N10036-1711
Claimant	Mr. Vincent G. Bubolo
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$7,645.17

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 9 March 2012, Mr. Vincent G. Bubolo (the Claimant), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$7,645.17 in loss of profits and earnings capacity damages resulting from the Deepwater Horizon incident.¹

The Claimant owns a rental property in Panama City Beach, Florida, at The Summit, 8743 Thomas Drive, FL, Unit 1232, the subject of this claim.² The Claimant alleges that he experienced a financial loss due to the Deepwater Horizon incident when (1) renters either cancelled their reservations or simply didn't make them at his unit and (2) he was forced to discount the property's rental rate to induce renters.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, 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;

¹ Optional OSLTF Claim Form received on 9 March 2012.

² Based on information included in the Claimant's GCCF Interim Payment Claim dated 29 June 2011 and confirmed by accessing Bay County Florida property records for Parcel Number 30326-370-000, the co-owner of this property is Cynthia L. Dubdal.

³ Optional OSLTF Claim Form received on 9 March 2012.

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the NPFC

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

Prior to presenting this claim to the NPFC, the Claimant presented an Interim Payment Claim to the GCCF on 29 June 2011 and another to the GCCF on 17 October 2011.⁴ The Claimant also indicates that the GCCF denied his 29 June 2011 claim⁵ and that he had not heard about his 17 October 2011 claim.⁶

The NPFC conducted an independent investigation of claim presentation and payments. The NPFC confirmed presentment to the GCCF of an Interim Payment Claim on 1 July 2011 (IC Q32011) and an Interim Payment Claim on 29 October 2011 (IC Q62011). The GCCF assigned Claimant ID # 1627869 to the both of these claims and both claims were in the amount of \$7,645.47. The GCCF assigned Claim # 9411174 to IC Q32011 and Claim # 9595681 to IC Q62011. This investigation also confirmed that the GCCF denied payment on IC Q32011 and is still reviewing IC Q62011.⁷

⁴ Optional OSLTF Claim form received on 9 March 2012, Claimant's GCCF Interim Payment Claim Form dated 29 June 2011, and Claimant's GCCF Interim Payment Claim Form dated 17 October 2011.

⁵ GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim dated 25 August 2011.

⁶ Phone call between Claimant and NPFC Staff on 17 April 2012.

⁷ Transition Program – U.S. Coast Guard Report as of 1 May 2012.

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that the Claimant lost income due to decreased vacation rentals and from his need to reduce the rental price of his unit to induce renters. The NPFC deems that both of the Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1711 considers and addresses the damages claimed to the responsible party; specifically, GCCF Claim #'s 9411174 and 9595681 in the amount of \$7,645.47.

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.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to evaluate the claim further. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses. The Claimant was given 14 days to respond to the letter, dated 17 April 2012.⁸ Additional documentation was received on 17 April 2012 and 1 May 2012. Further, an extension of time until 14 May 2012 was granted to provide documentation that would supplement earlier submissions.⁹

The NPFC has considered all documentation and information presented by the Claimant.

This claim is denied because the Claimant has failed to prove that his alleged loss was due to the Deepwater Horizon oil spill.

Failure to Prove Causation

The evidence presented does not prove by a preponderance of the evidence that the Claimant's alleged losses are due to the oil spill.

For example, no evidence of cancellations for the Claimant's property due to the oil spill has been provided. Although the Claimant asserted that part of his loss is from cancellations due to the oil spill, the Claimant's rental manager stated that, upon reviewing records for rentals of the Claimant's property, there had been only two cancellations during the Claimant's entire contract. One cancellation was for 15–17 April 2010 and the other was for 1-31 January 2011. Neither of the cancellations were caused by the oil spill.¹⁰ Available records of calls to the rental manager between 3 May 2010 and 11 August 2010 were provided and they reflect concerns and some cancelled reservations related to the oil spill, but none of these comments or cancellations was for reservations on the Claimant's property.¹¹

Further, regarding the discounted rates, the evidence presented does not prove that discounts for customers who paid less than the seasonal rental rate were the result of the Deepwater Horizon oil spill. Here, the Claimant asserts that part of his loss is due to rental rates that were discounted

⁸ NPFC letter dated 17 April 2012.

⁹ NPFC letter dated 3 May 2012.

¹⁰ Phone conversation with Two Chairs on the Beach rental manager on 1 June 2012.

¹¹ Two Chairs on the Beach call logs from 3 May 2010 and 11 August 2010 provided by the rental manager/owner.

because of the oil spill. The NPFC requested that the rental manager provide any emails from renters of the Claimant's property that might express concerns over the oil spill, request the oil spill cancellation policy, or request/confirm discounts due to the oil spill. The rental manager indicated that she had lost all of the emails from 2010 renters due to an email server problem.

She would be willing to provide them if she had them, but could not. Absent emails, NPFC asked if she could provide contact information on renters known to have rented at reduced rates, so that the NPFC could confirm if the oil spill was responsible for their reduced rates in 2010. As a business matter, the rental manager declined to provide contact information on those renters.¹² Accordingly, the Claimant has not provided verifiable documentation supporting that the oil spill was the cause of cancellations, vacancies or discounts that he asserts were the cause of his alleged loss.

Loss of Earnings

The Claimant asserts \$7,645.17 in loss of profits and impairment of earnings capacity damages. The NPFC notes that the Claimant's gross rental income increased year over year between 2009 and 2010 but that his net income did not increase. If the Claimant returns on reconsideration, the NPFC will expect the Claimant to explain whether his lost profits calculations take into consideration the over \$3,000.00 increase the Claimant experienced in association dues and any other costs, such as property insurance, that may have impacted the Claimant's profit margin.

Accordingly, this claim is denied because the Claimant has failed to demonstrate that his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/11/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² In phone conversation on 1 June 2010, the rental manager indicated that she no longer has a business relationship with the Claimant and she elected not to release contact information on her renters.

ENCLOSURE 2
Documentation Presented by the Claimant
Claim No. N10036-1711

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

- Optional OSLTF Claim Form received 9 March 2012.
- GCCF Interim Payment Claim Form dated 29 June 2011.
- GCCF Interim Payment Claim Form dated 17 October 2011.
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim dated 9 July 2011.
- GCCF Deficiency Denial Letter on Interim payment/Final Payment Claim, dated 25 August 2011, with handwritten notes.
- GCCF Follow-up on Previous Denial Letter dated 12 October 2011.
- Claimant letter to GCCF dated 17 October 2011, "Re: Deficiency Denial Letter on Interim Payment", signed by Cynthia Dybdal and Vincent Bubolo.
- USPS Priority Mail label addressed to the GCCF dated 29 June 2011.
- USPS Priority Mail label addressed to the GCCF dated 27 October 2011.
- U.S. Postal Service Certified Mail Receipt for letter sent to the GCCF on 27 October 2011.
- PS Form 3811 (Return Receipt) bearing stamp, "Received 31 October 2011 by the Garden City Group, Inc."
- State of Florida Corporation certification for "Two Chairs on the Beach, Inc.", dated 12 November 2008 and authorizing them to do business in Florida, with all fees paid through 31 December 2008.
- 2010 Florida Annual Resale Certificate for Sales Tax issued to Two Chairs on the Beach, expiring 31 December 2010.
- Specific Sales and Use Tax Information for Dealers in the County of BAY (Florida), for Business Partner Number 2958577, Certificate Number 13-8014995190-0, expiring on 31 December 2010.
- Panama City Condo Vacations' Letter to Claim Adjusters, 'To Whom It May Concern', dated 24 June 2010.
- Tina Jennings' email to the Claimant, Loss of Revenue 4/24 – 5/15, dated 16 May 2010.
- Tina Jennings' email to the Claimant, BP Claim Info for week of May 5/15 - 22, dated 23 May 2010.
- Tina Jennings' email to the Claimant dated 31 May 2010.
- Tina Jennings' email to the Claimant, Weekly Summit 1232 Update, dated 6 June 2010.
- Tina Jennings' email to the Claimant, Beach Update 6/5 – 12/10, dated 11 June 2010.
- Tina Jennings' email to the Claimant, Unit 1232 Update 6/12 – 6/19, dated 20 June 2010.
- Tina Jennings' email to the Claimant, Letter to Adjuster, dated 24 June 2010.
- Panama City Condo Vacations letter 'To Whom It May Concern' dated 24 June 2010.
- Tina Jennings' email to the Claimant, BP Claim 6/19 – 26/10, dated 28 June 2010.
- Tina Jennings' email to the Claimant, BP Losses 6/26 – 7/10/10 Unit 1232, dated 10 July 2010.
- Tina Jennings' email to the Claimant, BP Losses 7/10 – 7/17 Summit Unit 1232, dated 18 July 2010.
- Tina Jennings' email to the Claimant, Unit 1232: BP Claim July 17 - 31, dated 11 August 2010.

- Tina Jennings' email to the Claimant, August Rental Info for Unit 1232 at The Summit, dated 11 August 2010.
- Tina Jennings' email to the Claimant, New Claims Process and Other Stuff, dated 4 September 2010.
- Tina Jennings' email to the Claimant dated 5 September 2010.
- Email from Tina Jennings to 92seminole@gmail.com dated 18 October 201X with attachment.
- Tina Jennings' email, BP Claim, dated 31 October 2010, 8:18 PM.
- Tina Jennings' email, September Rental Info for Unit 1232 at The Summit, dated 31 October 2010, 10:06 PM.
- Tina Jennings' email to Cindy Dybdal, dated 17 October 2011 and forwarding 2010 documents.
- Email 23 May 2012 from Tina Jennings to NPFC Staff with Summit 1232 rental seasons and rates for 2010 and 2011.
- Email 24 May 2012 from Tina Jennings to NPFC Staff responding to ten specific questions from NPFC Staff about bookings and rates.
- Claimant's email to NPFC Staff dated 1 June 2012 with attachments.
- Claimant's email to NPFC Staff dated 1 June 2012 indicating his inability to locate the contract with Two Chairs on the Beach.
- Property Ledger Entries Report for 1232 The Summit dated 11 January 2010.
- Panama City Condo Vacations' Property Ledger Entries Report dated 2/11/2010 for 1232 Summit.
- Panama City Condo Vacations check #8396 dated 15 March 2010, with payment details.
- Property Ledger Entries Report for 1232 Summit from Panama City Condo Vacations, dated 15 March 2010.
- Property Ledger Entries Report for 1232 Summit from Panama City Condo Vacations, dated 14 April 2010.
- Property Ledger Entries Report for 1232 Summit from Panama City Condo Vacations, dated 5 May 2010.
- Property Ledger Entries Report for 1232 Summit from Panama City Condo Vacations, dated 4 June 2010.
- Property Ledger Entries Report for 1232 Summit from Panama City Condo Vacations, dated 11 July 2010.
- Panama City Condo Vacations payment advice dated 8 August 2010, with payment details.
- Property Ledger Entries Report for 1232 Summit from Panama City Condo Vacations, dated 11 September 2010.
- Property Ledger Entries Report for 1232 Summit from Panama City Condo Vacations, dated 3 October 2010.
- Property Ledger Entries Report for 1232 Summit from Panama City Condo Vacations, dated 4 November 2010.
- Property Ledger Entries Report for 1232 Summit from Panama City Condo Vacations, dated 12 December 2010.
- Property Ledger Entries Report for 1232 Summit from Panama City Condo Vacations, dated 5 January 2011.
- Panama City Condo Vacations check #8396 dated 15 March 2010, with payment details.
- Payment advice to Vince Bubolo dated 8 August 2010 with Check Details from 7/06/2010 through 8/01/2010.
- 2008 Form 1040 Schedule E for Residential Rental 8743 Thomas Drive #1232, Panama City, FL, 32408.

- 2008 Form 4562, Depreciation and Amortization, for Schedule E vacation home.
- 2008 Form 1099-Misc from Summit Rental Agency, Inc.
- 2009 Form 1040 Schedule E for Residential Rental 8743 Thomas Drive #1232, Panama City, FL, 32408
- 2009 Form 1099-Misc from Summit Rental Agency.
- 2009 Form 1099-Misc from Summit Enterprises, Inc.
- 2009 Form 1099-Misc. from Two Chairs on the Beach, Inc.
- 2010 Form 1040 Schedule E for Residential Rental 8743 Thomas Drive #1232, Panama City, FL, 32408.
- 2010 Form 4562, Depreciation and Amortization, for rental property 8743 Thomas [Drive, Unit 1232, Panama City FL].
- 2010 Form 1099-Misc. from Two Chairs on the Beach, Inc.
- 2011 Form 1099-Misc from Two Chairs on the Beach, Inc.
- 2011 Form 8897 e-file Signature Authorization.
- 2011 Form 1040 with Schedules A, C, & E, Forms 8582 & 4562, Federal Statements.
- 2011 Georgia Form GA-8453, Georgia Individual Income Tax Declaration for Electronic Filing.
- 2011 Georgia Form 500 with Schedules 1 and 2, Form 4562 (Georgia), and Georgia Statements.