

U.S. Department of  
Homeland Security

United States  
Coast Guard



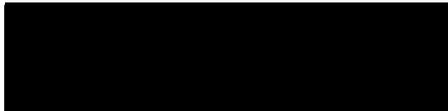
Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 800-280-7118  
E-mail:  
Donna.M.Hellberg@uscg.mil  
Fax: 703-872-6113

5890  
11/13/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2445 1715

Perrone & Young



RE: Claim Number: N10036-1807

Dear Mr. Perrone:

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 N10036-1807 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: Determination Form

Copy to: John S. Bruck



CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number # 7011 1570 0001 2445 1722

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1807
Claimant	: John S. Bruck
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$64,000.00

### **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 16 May 2012, Gregory S. Perrone, attorney for John S. Bruck, (jointly referred to as 'the Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$64,000.00 for loss of profits and impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup> The Claimant, located in Brentwood, Tennessee, is an individual who purchased an investment property in Santa Rosa Beach, Florida.<sup>2</sup> Santa Rosa Beach is an unincorporated community in Walton County, Florida.<sup>3</sup> The Claimant states that the market value of the property was affected entirely due to the oil spill. Further, he asserts a loss of income from the sale of the property, which took place on 20 October 2010.<sup>4</sup>

The Claimant indicates that he submitted a Claim to the responsible party on 22 March 2011.<sup>5</sup> The Claimant also indicates that responsible party denied his claim.<sup>6</sup>

<sup>1</sup> Optional OSLTF Claim Form signed 11 April 2012 and received 16 May 2012. On 23 May 2012, the NPFC received an email from the Claimant requesting that the claim type on his original submission be changed from real/personal property damages to loss of profits/earnings; that change was made by NPFC Staff.

<sup>2</sup> Attachment A to Optional OSLTF Claim Form, a summary of loss.

<sup>3</sup> [http://en.wikipedia.org/wiki/Santa\\_Rosa\\_Beach,\\_Florida](http://en.wikipedia.org/wiki/Santa_Rosa_Beach,_Florida).

<sup>4</sup> Optional OSLTF Claim Form signed 11 April 2012 and received 16 May 2012 and Unsigned HUD-1 Settlement Statement for property at 4248 County Highway 30-A, Santa Rosa Beach, FL, prepared for 20 October 2010.

<sup>5</sup> Optional OSLTF Claim Form signed 11 April 2012/received 16 May 2012 and GCCF Full Review Final Payment Claim Form, signed 22 March 2011.

<sup>6</sup> Optional OSLTF Claim Form signed 11 April 2012/received 16 May 2012 and GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 30 April 2011.

The NPFC conducted an independent investigation of claim presentation and payments. The NPFC confirmed the Claimant's presentment to the GCCF of a Full Review/Final Payment (FRF) Claim on 22 November 2011.<sup>7</sup> The Claimant was assigned Claimant Identification No. 1619168 and the claim was assigned GCCF Claim No. 9333105.<sup>8</sup> The NPFC reviewed the FRF Claim and confirmed that the amount of \$64,000.00 had been presented to the GCCF.<sup>9</sup> Based upon the information provided and independent verification by the NPFC, this claim can be adjudicated in the full amount of \$64,000.00.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill economic and property damages class action settlement (E&PD Settlement).

The NPFC denied the claim on August 6, 2012 because 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 therefore ineligible to recover funds from the OSLTF. 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. 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 rights to the NPFC.

The denial noted that 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 is excluded from the E&PD Settlement in his request for reconsideration of this claim.

The claim was also denied on the grounds that Claimant failed to prove that his alleged loss was due to the Deepwater Horizon oil spill and that he failed to establish the amount of the alleged loss. Specifically, the NPFC determined that the Claimant did not establish the pre-OPA spill market value of the property by a state-licensed appraiser or the value of the property after the oil spill.

#### **REQUEST FOR RECONSIDERATION:**

On October 3, 2012, the Claimant sent a request for reconsideration via FedEx to the NPFC stating he would like the NPFC to reconsider his claim. The Claimant stated in his request for reconsideration that he is requesting reconsideration for the following reasons:

1. Claimant denies he is a member of the Economic Damages Class of the E&PD Settlement;
2. Claimant asserts he has provided sufficient proof that he has sustained a financial loss as a result of the Deepwater Horizon oil spill and also asserts that the existing comparable data he provided for properties located within the same geographical region unequivocally incurred a minimum of 12.5% reduction in value as a direct result in consequence of the Deepwater Horizon oil spill;

<sup>7</sup> GCCF Full Review Final Payment Claim Form, signed 22 March 2011.

<sup>8</sup> GCCF Claimant Status accessed on 23 May 2012.

<sup>9</sup> GCCF Full Review Final Payment Claim Form, signed 22 March 2011.

3. Claimant asserts all pertinent information he provided to the NPFC in support of his claim was ample and sufficient to prove and demonstrate his actual and pecuniary loss and damages as a direct result in consequence of the Deepwater Horizon oil spill;
4. Claimant asserts that the uncontroverted and unquestionable empirical market data provided in and of itself amply demonstrates that not only the Claimant but other similar property owners endeavoring to sell investor properties in that region, suffered and incurred minimum economical loss and damages equal to and in most cases greater than 12.5% of pre-spill values;
5. Finally, the Claimant reiterates that the documentation provided and identified as Enclosure (2) to the initial NPFC Denial Determination, amply and adequately documents, proves, and otherwise evidences the Claimant's actual and pecuniary loss of \$64,000.00 as a direct and undeniable result of the Deepwater Horizon oil spill. Claimant states that the facts demonstrate that the property was listed for sale prior to the oil spill at a price established by the knowledge, experience, and expertise of local real estate professionals with comparative real time market data superior to what some local appraisers typically use.

The Claimant further asserts that it is imperative in order to adequately evaluate the claim to examine the quantitative analysis of the average days on the market and the quantitative and empirical sales data as cumulatively analyzed from and during the period just prior to the oil spill through and continuing until post capping of the oil spill.

#### **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. 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. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon review of all of the Claimant's information, the Claimant has failed to provide any new information on reconsideration. The Claimant made several assertions in his request for reconsideration but provided no additional legal or factual support. The NPFC will address the Claimant's arguments presented on reconsideration.

The Claimant denies he is a member of the Economic Damages Class of the E&PD Settlement. In an email to the NPFC dated August 14, 2012, the Claimant states that he has not replied to any "class action settlement" solicitation and thus believes he is not a member of the class. In the determination to deny the claim the NPFC noted that if Claimant disagreed that he was a member of the Economic Damages Class he was to provide evidence. Claimant has not provided such evidence. Based on the Claimant's failure to provide evidence that he is not a member of the E&PD class or that he has opted out of the class, the NPFC continues to deny the claim on this basis. The Claimant asserts, without additional documentation or proof, that the information provided in his claim submission to the NPFC is sufficient to prove he has sustained a financial loss resulting from the Deepwater Horizon oil spill and that the existing comparable sales data for properties located within the same geographical region unequivocally demonstrates a minimum of 12.5% reduction in value to his investment property as a direct result of the

Deepwater Horizon oil spill. He also, asserts without additional documentation or proof that the information he provided is sufficient to prove and demonstrate his loss was a direct result and consequence of the Deepwater Horizon oil spill.

The Claimant asserts that the uncontroverted and unquestionable empirical market data provided in his original submittal is sufficient to prove the Claimant and other property owners suffered a loss. The Claimant fails to provide more detailed information regarding the market data he claims is sufficient to prove his claim. He asserts that a market analysis was done; however, it was not provided to the NPFC. The Claimant has failed on reconsideration to provide additional detailed information that would enable the NPFC to determine the validity of the statements made throughout this claim submission;

Based on the foregoing, the Claimant has again failed to demonstrate a loss in the amount claimed, (2) Claimant has failed to demonstrate that the 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, and (3) the Claimant has failed demonstrate that he is not a member of the economic damages class associated with the CSSP.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor: *Th*

Date of Supervisor's review: *11/13/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: