

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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5890  
08/30/2013

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
Number: 7011 2000 0001 1246 6861

Patton Boggs  


RE: Greater LaFourche Port Commission

RE: Claim Number: N10036-1923

Dear Mr. Bangert:

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 N10036-1923 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

cc:  


By Certified Mail:  
No. 7011 2000 0001 1246 6854

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1923
Claimant	: Greater LaFourche Port Commission
Type of Claimant	: Government (US)
Type of Claim	: Loss of Government Revenues
Amount Requested	: \$1,046,290.22

### **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:**

The Claimant, Greater LaFourche Port Commission, represented by Philip Bangert, is a political subdivision of the State of Louisiana engaged in promoting the development of port facilities in Port Fourchon. The Claimant's primary service market is "domestic deepwater oil and gas exploration, drilling, and production in the Gulf of Mexico."<sup>1</sup> The Claimant explains that its "primary source of income is rent paid by its tenants who lease Claimant's raw land and Claimant-constructed improvements."<sup>2</sup> Following the oil spill, the Claimant voluntarily reduced the rental rates of its tenants to encourage the "survival of the oilfield support industry in the aftermath of the spill."<sup>3</sup>

Claimant asserts that it reduced its tenants' rental rates by 30% from 1 July 2010 through June 2011. Claimant seeks to recover that 30% in uncollected revenue, taking into account certain saved expenses, for a total claim of \$1,046,290.22.

The NPFC originally denied the claim on 16 May 2013 because (1) the Claimant failed to prove that its 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 discharge of oil and (2) the Claimant did not demonstrate that it suffered a net loss of revenue.

### **REQUEST FOR RECONSIDERATION:**

On 17 July 2013, the NPFC received the Claimant's request for reconsideration. The Claimant provided an eight-page letter arguing that claims for damages resulting from the federal moratorium on deepwater drilling implemented after the oil spill, are compensable under OPA. The Claimant also provided a summary revenue chart to illustrate the extent of its net loss of revenue.

<sup>1</sup> GLPC Homepage, at <http://www.portfourchon.com/overview.cfm>. Accessed on 21 May 2013.

<sup>2</sup> Claim cover letter, 8 November 2012.

<sup>3</sup> Claim cover letter, 8 November 2012.

### NPFC Determination on Reconsideration

Upon receipt of the Claimant's request for reconsideration, the NPFC performed a *de novo* review of the entire claim submission. The original denial dated 16 May, 2013 is incorporated by reference. In its request for reconsideration Claimant provided (1) a summary revenue sheet reflecting its monthly revenues for the claimed period and the year prior to the claimed loss period; (2) a confirmation that it voluntarily reduced its rental rates due to the moratorium, and (3) further arguments that "but for" the incident the moratorium would not have been imposed and therefore the impacts of the moratorium should be compensable from the OSLTF.

As noted above, the claim was initially denied on the grounds that Claimant did not provide evidence that its alleged loss is due to the injury, destruction or loss of property or natural resources or demonstrated a net loss in the amount claimed. Its arguments on reconsideration are identical to its arguments in its initial claim. Each will be discussed below.

Claimant's alleged losses are not a damage resulting from the incident and are not due to injury to, destruction of, or loss of real or person property or natural resources.

The Claimant confirmed that the decision to voluntarily reduce rental rates was prompted by the federal moratorium on deepwater drilling and the effects of the moratorium on their tenants.<sup>4</sup> The Claimant argues that "but for" the Deepwater Horizon incident the moratorium would not have been implemented; thus losses resulting from the moratorium are compensable under OPA. Claimant relies on 33 U.S.C. § 2702(a), which provides that a responsible party is liable for removal costs and certain damages resulting from an incident, and that its loss of net revenue is an OPA damage (33 U.S.C. § 2702(b)(2)(D)); therefore, it is entitled to reimbursement of its alleged net loss from the Oil Spill Liability Trust Fund (OSLTF or the Fund).

Claimant confuses the term "incident" and "loss of revenue damages." "Damages" must result from the incident (33 U.S.C. § 2702(a)) and "revenues damages" must be due to the **injury to, destruction of, or loss of real property, personal property or natural resources** (33 U.S.C. § 2702(b)(2)(D)). (Emphasis added.) Claimant, in contrast, argues that the economic impacts of subsequent government decisions (such as a moratorium on drilling new wells) to regulate an industry to improve safety and prevent similar incidents should be attributed to the discharge, that the responsible party should be liable under OPA to pay for those impacts, and that the Fund should pay if the responsible party does not. Claimant offers no convincing argument that Congress intended the scope of OPA liability and compensation to reach so broadly as to encompass impacts of new government regulation to prevent future incidents. Even if OPA could be read broadly to encompass such regulatory impacts, Claimant has not provided evidence establishing the particular injury, destruction or loss of property or natural resources that is fundamental to establish a loss of net revenues damage. Claimant merely argues a heightened regulatory atmosphere that slowed the business of offshore development, which is arguably what the Government intended.

In support of its position Claimant attempts to analogize that the federal or state closures of commercial fishing areas due to the Deepwater Horizon incident are intervening governmental actions yet commercial fishermen were compensated for their loss of profits. This analogy fails because government actions to prevent commercial fishing protected public health and welfare from effects of the oil spill. The deepwater drilling moratorium on the other hand, was not

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<sup>4</sup> The moratorium was imposed on May 30, 2010, re-imposed on July 12, 2010, and rescinded on October 12, 2010.

imposed to protect the public from effects of the oil spill. Rather, the moratorium was imposed in order to assess the safety of deepwater drilling and to prevent other oil spills from occurring in the future.<sup>5</sup>

Claimant attempts to buttress its argument that damages resulting from the moratorium are OPA damages by quoting two Obama administration statements that BP is liable for moratorium damages.<sup>6</sup> Such general statements of responsibility are simply not persuasive evidence that we should accept Claimant's "but for" theory of compensation.

Claimant acknowledges that it voluntarily reduced its rental rates for tenants, which was a business decision that resulted in the loss of revenue, rather than the moratorium. Claimant also states that this reduction mitigated its losses; however, Claimant has not explained what losses, other than a reduction in tenant rentals, it incurred.

Claimant has not provided evidence of a net loss of revenues.

In its request for reconsideration Claimant provided a summary sheet listing its monthly revenues for its claimed loss period (July 2010 through June 2011) and provided the monthly revenues for a comparable period (July 2009 through July 2010).<sup>7</sup> Based on this summary, the revenue reduction is \$1,576,800; however, its claimed loss is \$1,046,290.22. This leaves a delta of \$530,510. Claimant stated that its sum certain (\$1,046,290.22) took into consideration saved expenses; however, Claimant has not explained whether this delta is saved expenses nor has it itemized those expenses.

Further, Claimant asserts that it suffered a loss of its lease revenues from July 1, 2010 through June 30, 2011. This assertion conflicts with Lease Abstract Reports<sup>8</sup> submitted by Claimant with its initial claim because the individual reports for each lease reflect that the monthly leases were only reduced from July 1, 2010 through December 31, 2011 or early January 2011, depending on the term of each lease. Rental rates returned to their regular lease rates in January 2011; thus, it is unclear if Claimant's asserted loss of lease revenues is accurate.

Further, OPA provides that governments may present claims to the Fund for a *net* loss of revenue. The Claims Regulations require that a Claimant must provide, in part, the "total assessment or revenue collected for comparable revenue periods and the net loss of revenue. 33CFR 136.227(c) and (d).

Claimant asserts that its net loss of revenue was the total amount of the 30% reduction in lease revenues for all of its leases but it did not provide data reflecting its total assessment or revenues

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<sup>5</sup> Claimant argues that the moratorium was also imposed because at the time of the Decision Memorandum the Maconda well had not yet been killed and that failure "may have an effect on the availability of spill containment and response capabilities for potential use in response to other incidents." See Decision Memorandum at page three. Nevertheless reading the Decision Memorandum as a whole the purpose of the moratorium was to assess drilling safety and prevent future incidents. The moratorium was imposed pursuant to the Department's authority under 30 CFR 250.172, authorizing the suspension of operations (SOO) or suspension of production (SOP) "when activities pose a threat of serious, irreparable, or immediate harm or damage ... or when necessary for the installation of safety or environmental protection equipment." The threat includes a threat to life, property, any mineral deposit, or the marine, coastal, or human environment. 30 CFR 250.172(b)-(c).

<sup>6</sup> Then-Secretary of the Department of the Interior Ken Salazar testimony before the Senate Energy and Natural Resource Committee and White House Secretary Robert Gibbs' follow up statement to the Salazar testimony on June 9, 2010.

<sup>7</sup> Claimant provided no documentation or information to support this summary sheet.

<sup>8</sup> The Lease Abstract Reports included the lease information for each lessee, including the terms of the lease, the basic monthly rent, escalation percentages and any decrease or increase in monthly rent during the lease term.

for the claimed period and comparable periods. A review of Claimant's 2007, 2008 and 2009<sup>9</sup> financial reports reflects that Claimant sometimes receives revenue from sources in addition to its lease revenues, i.e., ad valorem taxes, non-capital grants, state revenue sharing and interest. Thus, without the reports for 2010 or 2011 it is unknown if Claimant received revenue other than lease rents that might have offset all or some of the claimed lease revenue losses.

In summary, Claimant failed to provide support documentation for the revenues listed on the summary sheet, failed to reconcile the conflicting lease reduction periods in the administrative record and failed to provide total revenues or assessment for the claimed loss periods. Thus, even if claimant's "but for" theory of recovery was persuasive, and the NPFC finds it is not persuasive under these circumstances, Claimant has not established a net loss of revenue.

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

Claim Supervisor: 

Date of Supervisor's review: *8/30/13*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

<sup>9</sup> No reports were submitted for 2010 or 2011.