

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  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 2014

5890/DWHZ  
Claim# N10036-1270  
22 September 2011

Ryan Kelley  


RE: Claim Number: N10036-1270

Dear Mr. Kelley:

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 N10036-1270 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. 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 N10036-1270.

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	N10036-1270
Claimant	Ryan Kelley
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$11,000.00

### ***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 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 claims for certain individual and business claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 04 August 2011, Ryan Kelley (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$11,000.00 in lost profits and earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant worked as a cook for Cooter Brown's Tavern, Grill, and Oyster Bar in New Orleans, Louisiana at the time of the Deepwater Horizon oil spill.<sup>1</sup> The Claimant stated that as a result of the oil spill, he was laid off from his employment due to a decline in business patronage.<sup>2</sup>

### ***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.
- (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

<sup>1</sup> Telephone conversation between Claimant and NPFC staff 6:15pm 10 August 2011.

<sup>2</sup> Optional OSLTF claim form dated 06 July 2011.

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 his claim, the Claimant submitted:

- 1) Optional OSLTF claim form dated 06 July 2011
- 2) Statement for Unemployment Compensation Payments from Louisiana Workforce Commission
- 3) 2007 W-2 from Juan's Flying Burrito
- 4) 2009 W-2 from Juan's Flying Burrito LLC
- 5) Paystub from Juan's Flying Burrito dated 19 December 2008

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$11,000.00.

On 12 August 2011, the NPFC sent a letter to the Claimant requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered 15 August 2011.<sup>3</sup>

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 15 November 2010 in the amount of \$20,000.00.<sup>4</sup> He was assigned Claimant ID #3399951 and claim #472439. This claim was denied on 10 December 2010.<sup>5</sup>

<sup>3</sup> USPS tracking number 7011 1150 0000 4666 8284.

<sup>4</sup> Report from the GCCF dated 07 September 2011.

<sup>5</sup> GCCF Denial Letter dated 10 December 2010.

Additionally, the Claimant filed two Full Review Final claims with the GCCF, Full Review Final Claim 1 (FRF1) with GCCF #9060468 and Full Review Final Claim 2 (FRF2) with Claim #9395506; one was filed on 16 November 2010 for \$20,000.00 and the other was filed on 07 June 2011 for \$20,000.00. These claims were denied on 09 June 2011 and 09 September 2011.<sup>6</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that the Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of the Claimant's three denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1270 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 472439 (EAP), 9060468 (FRF1), and 9395506 (FRF2).

### **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 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. The NPFC considered all the documentation submitted by the Claimant.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate his claim. The letter requested, among other things, financial documentation for an accurate accounting of the Claimant's losses. Furthermore the letter asked for a letter from the Claimant's employer showing the termination was a result of the Deepwater Horizon oil spill. It was sent on 12 August 2011. On 15 August 2011, the Claimant acknowledged receipt of the letter.<sup>7</sup> To date no response has been received by the NPFC.

The NPFC accordingly proceeded to evaluate the claim with the limited evidence that the Claimant originally submitted. The evidence provided does not support the allegation that the Claimant lost \$11,000.00 in earnings and the loss was a result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his 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: *9/22/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>6</sup> GCCF Denial Letters dated 09 June 2011 and 09 September 2011.

<sup>7</sup> USPS tracking number 7011 1150 0000 4666 8284.