

U.S. Department of
Homeland Security

**United States
Coast Guard**



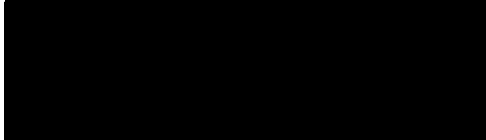
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2946

5890/DWHZ
Claim # N10036-1364
3 October 2011

Justice Plumbing, LLC



Dear Mr. Stahls:


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 N10036-1364 involving Deepwater Horizon. 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 N10036-1364.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100


Claims Rejection Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form
CC:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2557

Justice Plumbing, LLC


CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1364
Claimant	Justice Plumbing, LLC
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$22,750.00

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 02 September 2011, Justice Plumbing, Inc. (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$22,750.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a plumber licensed in Louisiana.¹ Two contractors, who sub-contracted work to the Claimant, provided a significant percentage of his work.² The Claimant installed plumbing for new homes and home renovations and also performed some plumbing service work.³ The Claimant stated that bids were cancelled, tourism declined, and people ceased buying homes due to the oil spill.⁴

The Claimant retained the legal services of Matthew C. Stahls, an attorney in New Orleans.⁵ To date, the Claimant has not commenced an action in court to recover his alleged losses.⁶

¹ State Plumbing Board of Louisiana License for 2010

² Letter from attorney, Matthew C. Stahls, dated 20 September 2011 in response to NPFC request for additional information. The contractors were Ironman Contractors LLC in New Orleans and New Limits Enterprise in Kenner, Louisiana.

³ Based on PHONECON between the owner of Ironman Contractors and the NPFC Claims Adjuster 22 September 2011

⁴ Letter from attorney, Matthew C. Stahls, dated 20 September 2011 in response to NPFC request for additional information

⁵ OSLTF Claim Form signed by Claimant and legal representative, Matthew C. Stahls, dated 26 August 2011

⁶ OSLTF Claim Form signed by Claimant and legal representative, Matthew C. Stahls, dated 26 August 2011

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 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 undertake, 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, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant and legal representative, Matthew C. Stahls, Esq., dated 26 August 2011
- Letter from Ironman Contractors LLC describing decreased business from the oil spill dated 04 November 2011
- Letter from New Limits Enterprise LLC describing difficulty in obtaining projects dated 01 November 2011
- New Limits Enterprise 1099 Detail listing payments to Claimant in 2010
- Claimant's City of New Orleans Occupational License for year ending 31 December 2010
- State Plumbing Board of Louisiana License for 2010
- Schedule Cs Profit or Loss Business for Justice Plumbing LLC for 2007, 2008, 2009 and 2010
- Capital One Bank statements for Justice Plumbing from March 2009 to December 2010
- Letter from attorney, Matthew C. Stahls, dated 20 September 2011 in response to NPFC request for additional information
- GCCF Denial Letter on Interim/Final Payment Claims dated 20 August 2011
- GCCF Claimant Status Page stating to contact attorney regarding status of claim

On 09 September 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 21 September 2011, the Claimant responded to the request.

Before presenting the claim to the NPFC, the Claimant filed an Interim Payment/Final Payment Claim with the GCCF. The claim was assigned Claimant ID #1177271. The claim was denied on 20 August 2011.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC has not been able to confirm the amount of the Interim Payment/Final Payment claim as of the date of this determination. The NPFC deems the GCCF claims to be properly presented to the Responsible Party and to the extent the amount of the claims presented to the RP are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1364 considers and addresses the loss of earnings up to the amount of \$22,750.00 for all claims presented to the Responsible Party.

⁷GCCF Denial Letter on Interim/Final Payment Claims dated 20 August 2011

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.

On 26 August 2011, the Claimant presented this claim to the NPFC, for loss of profits and impairment of earnings capacity in the amount of \$22,750.00. This NPFC determination shall address this claim to the extent that it has been presented to and denied by the RP/GCCF. Any amount of damages now presented to the NPFC, which were not first presented to the RP/GCCF are denied.

Because the Claimant's Schedule C Profit or Loss from Business indicated Gross Receipts of \$25,000.00 for both 2009 and 2010, it appears that the Claimant suffered no loss for the year during which the oil spill occurred.⁸ Furthermore, the loss of earnings presented by the Claimant appears to represent a gross revenue figure. Under OPA, any alleged loss of earnings must clearly reflect adjustments for any saved overhead or normal expenses not incurred as a result of the incident.⁹

The Claimant stated that his loss of earnings was due to the oil spill.¹⁰ In support of this contention, the Claimant provided a letter from Martin P. Irons of Ironman Contractors, LLC which stated in pertinent part that "[t]he BP oil spill in the Gulf has significantly decreased the number of jobs that we usually contract."¹¹ In an effort to more firmly establish the causation of the Claimant's losses, the NPFC staff contacted Ironman Contractors, LLC.¹² The owner of Ironman Contractors, LLC opined that his decline in business was related to the slowdown of the housing market.¹³ Although the owner maintained that his business had been affected by the publicity surrounding the oil spill, he could not say what portion of his losses, and by extension the Claimant's losses, were attributable to economic conditions as opposed to the spill.

The Claimant also provided a letter from Robin Kelly of New Limits Enterprise, LLC which stated that "[w]e have not been in the position to offer Justice Plumbing any sub-contracting opportunities since April, 2010 due to the gulf oil spill."¹⁴ Ms. Kelly stated

⁸ Schedule Cs Profit or Loss Business for Justice Plumbing LLC for 2009 and 2010

⁹ See Code of Federal Regulations (CFR) 33 Part 136.235(d) Compensation Allowable

¹⁰ OSLTF Claim Form signed by Claimant and legal representative, Matthew C. Stahls, dated 26 August 2011

¹¹ Letter from Ironman Contractors, LLC describing decreased business from the oil spill dated 04 November 2011

¹² Telephone conference between Martin P. Irons of Ironman Contractors, LLC and NPFC Staff dated 22 September 2011.

¹³ Telephone conference between Martin P. Irons of Ironman Contractors, LLC and NPFC Staff dated 22 September 2011.

¹⁴ Letter from New Limits Enterprise, LLC describing decreased business from the oil spill dated 01 November 2011

that she renovated houses damaged by Hurricane Katrina so that the owners could return home.¹⁵ Ms. Kelly further stated that after the oil spill, owners were concerned about the effect on home values and the local economy and many owners decided not to renovate and return to their homes.¹⁶

The NPFC staff asked Ms. Kelley for documentation to support the alleged cancellations, but she stated she could provide no documentation and that cancellations were based on telephone conversation with her clients.¹⁷ While the Claimant provided letters from his prior employers which stated that they lost business as a result of the spill, neither employer could provide information supporting their respective contentions. The Claimant has not provided other evidence of the causation of his damages. As such, the Claimant has not provided sufficient documentation as to the causation of his alleged damages, and has failed to meet his burden of proof under OPA.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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:  *Claims Adjudication Division*

Date of Supervisor's Review: *3 October 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁵Telephone conversion between Robin Kelley of New Limits Enterprises LLC and NPFC staff 28 September 2011

¹⁶ Telephone conversion between Robin Kelley of New Limits Enterprises LLC and NPFC staff 28 September 2011

¹⁷ Telephone conversion between Robin Kelley of New Limits Enterprises LLC and NPFC staff 30 September 2011