

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7156

5890/DWHZ
Claim # N10036-1519
07 November 2011

Robert H. Keepin



Dear Mr. Keepin:

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 N10036-1519 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 N10036-1519.

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	N10036-1519
Claimant	Robert H. Keepin
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,375.00

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 20 October 2011, Robert H. Keepin (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$10,375.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. The claim includes \$375.00 for gasoline used by the Claimant “to find work.”

The Claimant works as a painter for Stokes Painting, Inc. (Stokes) in Cantonment, Florida.¹ He has worked for Stokes for at least six years.² Stokes paints the interiors and exteriors of new subdivision homes.³ The subdivisions are located from almost the Mississippi State Line to Crestview, Florida.⁴ The Claimant injured one of his wrists on the job in February 2008 and collected workers compensation.⁵ In December 2009 he underwent another surgery on his wrist and went back on workers compensation.⁶ In March 2010 the Claimant returned to work.⁷ The Claimant stated that, after the Deepwater Horizon oil spill, business declined and he had a loss of earnings.

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 § 2702(b) of OPA.

¹ Letter from Stokes Painting, Inc, Claimant’s employer, explaining employment dated 10 January 2011

² Letter from Stokes Painting, Inc, Claimant’s employer, explaining employment dated 10 January 2011

³ Telephone conversation between Claimant’s representative and NPFC Claims Adjuster 26 Octobe-02 November 2011

⁴ Map of the Gulf Coast with comment on subdivisions locations

⁵ Telephone conversation between Claimant’s representative and NPFC Claims Adjuster 26 Octobe-02 November 2011

⁶ Telephone conversation between Claimant’s representative and NPFC Claims Adjuster 26 Octobe-02 November 2011

⁷ Telephone conversation between Claimant’s representative and NPFC Claims Adjuster 26 Octobe-02 November 2011 and copies of checks from Guarantee Insurance Company, workers compensation insurer, for 2010

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 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 this claim, Claimant submitted the following documentation:

- Optional OSLTF Claims Form signed by Claimant
- Claimant's letter dated 11 October 2011 to NPFC explaining claim
- GCCF 2000-C GCCF Claim Form for Six-Month Emergency Advance
- GCCF Denial Letter for Emergency Advance dated 06 December 2010
- Letter from Stokes Painting, Inc, Claimant's employer, explaining employment dated 10 January 2011
- Map of the Gulf Coast with comment on subdivisions locations
- GCCF 2000-I GCCF Interim Claim Form
- GCCF Letter dated 24 January 2011 concerning Interim Payment claim

- GCCF Letter of 29 January 2011 explaining Interim or Final Claim submission
- Claimant's letter dated 03 February 2011 explaining claim
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 15 April 2011, 30 July 2011 and 05 August 2011
- Index of Contents of Package for Interim Claim filing
- Letter from Stokes Painting, Inc, Claimant's employer, explaining employment dated 18 November 2010
- Claimant's letter to GCCF dated 10 December 2010 authorizing GCCF to discuss the claim with his wife
- Claimant's letter dated 10 January 2011 concerning who he worked for
- W-2 from Total LC, Inc for 2006, 2007, 2008, 2009 and 2010
- W-2 from Employee Leasing Solutions for 2010
- Copies Claimant's pay stubs from Stokes Painting for 2010
- Copies of checks from Guarantee Insurance Company, workers compensation insurer, for 2010
- Form 1040 Income Tax Return for 2006, 2007, 2008, 2009 and 2010
- Employee Payroll History from Total Leasing, a payroll preparer, for 2008, 2009 and 2010

On 26 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 28 October 2011, the Claimant responded to the request.⁸

Based upon the GCCF documentation submitted by the Claimant, before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF in the amount of \$3,952.00. The claim was assigned Claimant ID #3339514 and claim #398392.⁹ The EAP claim was denied on 06 December 2010.¹⁰ Additionally, Claimant filed three Interim Payment claims (ICQ12011 for \$4,004.00) (ICQ32011 for \$10,000.00) and (ICQ32011 for an undetermined amount) with the GCCF. The claims were assigned claims #9226217, #9424776 and #9427644 respectively.¹¹ The three interim claims were denied on 15 April 2011, 30 July 2011 and 05 August 2011, respectively.¹²

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 deems the GCCF claims to be properly presented to the Responsible Party and to the NPFC, but only to the extent that the amount of the claims presented to the Responsible Party are equal to or greater than the sum certain amount presented to the NPFC, i.e. \$10,000.00. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1519 considers and addresses the loss of earnings up to the amount of \$10,000.00 for GCCF Claim #398392, #9226217, #9424776 and #9427644.

NPFC Determination

This claim is denied. 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. Claims for OPA damages must be presented first to the responsible party pursuant to 33 C.F.R. §

⁸ Telephone conversation between Claimant and NPFC Claims Adjuster 26 October 2011

⁹ GCCF On-Line Claim Status

¹⁰ GCCF Denial Letter dated 06 December 2010

¹¹ GCCF On-Line Claim Status

¹² GCCF Denial Letters dated 15 April 2011, 30 July 2011 and 05 August 2011

136.103(a). 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.

This claim is denied for three reasons. First, the claim is denied in the amount of \$375.00 because the evidence provided only establishes that he presented losses to the GCCF in the amount of \$10,000.00. Any amount presented to the NPFC that is greater than that presented to the RP is deemed not properly presented and is denied pursuant to 33 CFR 136.103(a).

Second, the evidence does not establish the causal relationship between the Deepwater Horizon oil spill and the Claimant's alleged losses. A claimant must prove that his alleged loss is due to the injury to, destruction of or loss of real or personal property or natural resources. Here, the Claimant's evidence does not establish that his loss is due to the Deepwater Horizon oil spill as opposed to a myriad of other factors, including an overall economic decline and a reduction in the housing market, including the market for newly built homes which were the Claimant's primary specialty. While the letter from his employer is helpful in understanding that the Claimant lost work, it does not establish either that Stokes Painting Company or the Claimant lost profits or earnings due to the oil spill.¹³

Third, assuming that the Claimant had established the causal connection between his job loss and the Deepwater Horizon incident, the documentation submitted by the Claimant does not support a loss of earnings in the amount of \$10,000.00.¹⁴

This claim is denied for the foregoing reasons.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/7/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹³ Letter from Stokes Painting, Inc, Claimant's employer, explaining employment dated 10 January 2011

¹⁴ OSLTF Claims Form signed by Claimant