

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: arl-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

5890  
29 December 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5893

Encompass Insurance  
ATTN: [REDACTED] – Your Claim #Z8103759 B2  
3800 Electric Road, Suite 401  
Roanoke, VA 24018

RE: Claim Number: N10036-1600

Dear [REDACTED]

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 N10036-1600 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 N10036-1600.

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	: N10036-1600
Claimant	: Encompass Insurance
Type of Claimant	: Private (US)
Type of Claim	: Real or Personal Property
Amount Requested	: \$2,600.00

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

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

On 8 December 2010, Gayle Fagg, representing Encompass Insurance, (jointly referred to as “Claimant”) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$2,600.00 in loss of real or personal property damage resulting from the Deepwater Horizon oil spill.<sup>1</sup> The Claimant is an indemnity company that insured Curt Kuchta for certain tangible personal property, including a Brietling ‘Avenger’ watch.<sup>2</sup> The Claimant asserts that, by virtue of having paid Curt Kuchta for the full insured value of the watch, it holds subrogated rights to the loss, reported as occurring on 20 April 2010 in the fire and explosion of the Deepwater Horizon.<sup>3</sup>

The Claimant also asserts having presented a claim for this loss to the GCCF on 28 September 2010.<sup>4</sup> The Claimant indicates that the GCCF assigned Claimant ID Number 1038503 and that the claim has been denied.<sup>5</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. § 136.213 is a claim for injury to or economic losses resulting from destruction of real or personal property.

Under 33 C.F.R. § 136.215(a) a claimant must establish—

<sup>1</sup> Optional OSLTF Claim Form signed 29 November 2011 and received 8 December 2011.

<sup>2</sup> Encompass Insurance Optional Coverage: Scheduled Tangible Personal Property Endorsement to [Mr. Kuchta’s] insurance policy for 5354 Walkerwood Court, Manchester, MD, effective 20 May 2009, including the following jewelry: (1) Diamond Ring, (1) Mens Titanium Breitling “Avenger” Watch E13360, and (1) LDS 14 KT W/G Diamond Earrings w/Friction Post.

<sup>3</sup> Encompass Insurance bank draft for \$2,600.00 dated 10 May 2010.

<sup>4</sup> Optional OSLTF Claim Form signed 29 November 2011 and received 8 December 2011.

<sup>5</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim dated 29 April 2011.

- (1) An ownership or leasehold interest in the property;
- (2) That the property was injured or destroyed;
- (3) The cost of repair or replacement; and
- (4) The value of the property both before and after injury occurred.

Under 33 C.F.R. § 136.217(a), the amount of compensation for damaged property is the lesser of—

- (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
- (2) The difference between value of the property before and after the damage; or
- (3) The replacement value.

Under 33 C.F.R. § 136.107 on subrogated claims:

- (a) The claims of subrogor (e.g. insured) and subrogee (e.g. insurer) for removal costs and damages arising out of the same incident should be presented together and must be signed by all claimants.
- (b) A fully subrogated claim is payable only to the subrogee.
- (c) A subrogee must support a claim in the same manner as any other claimant.

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.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission to the OSLTF**

The Claimant asserts having presented a claim for this loss to the GCCF on 28 September 2010.<sup>6</sup> The Claimant indicates that the GCCF assigned Claimant ID Number 1038503 and that the claim has been denied.<sup>7</sup> The NPFC independently verified that submission and the GCCF's denial.<sup>8</sup>

The Claimant presented this claim to the Oil Spill Liability Trust Fund (OSLTF) on 8 December 2011 in the amount of \$2,600.00.<sup>9</sup>

To support this claim the Claimant presented the following documentation:

- Optional OSLTF Claim Form signed 29 November 2011 and received 8 December 2011.
- Encompass Insurance letter to the NPFC dated 29 November 2011.
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 29 April 2011. (page 1 only)
- Encompass Insurance bank draft dated 10 May 2010 in the amount of \$2,600.00, with signature on obverse.

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<sup>6</sup> Optional OSLTF Claim Form signed 29 November 2011 and received 8 December 2011.

<sup>7</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim dated 29 April 2011.

<sup>8</sup> GCCF – U.S. Coast Guard advice dated 14 December 2011.

<sup>9</sup> Optional OSLTF Claim Form signed 29 November 2011 and received 8 December 2011.

- Radcliffe Jewelers, Towson, MD, appraisal dated 14 July 2010 of One Gents Breitling automatic chronograph wristwatch, ‘Avenger Skyland’, number A1338012/C732.
- Encompass Insurance Optional Coverage: Scheduled Tangible Personal Property Endorsement to [Mr. Kuchta’s] insurance policy for 5354 Walkerwood Court, Manchester, MD, effective 20 May 2009.
- Kirby Ins. Agency/Westminster, MD, Memo dated 7/21/2010, regarding Men’s Titanium Breitling Avenger Watch, Serial #E1336009 being scheduled on [Curt Robert Kuchta’s] insurance policy.

The Claimant indicated, “[t]he vessel caught fire & blew up and Mr. Kuchta could not gather his personal effects[,] including this watch that was on policy.”<sup>10</sup> The Claimant provided evidence of an insurance policy schedule, listing Mr. Kuchta’s watch, among other things, as tangible personal property, effective 20 May 2009.<sup>11</sup>

The Claimant stated, “[After t]he vessel caught fire and blew up Mr. Kuchta could not gather his personal effects, including the watch that was on [his] policy”.<sup>12</sup> Further, the Claimant provided evidence of having paid the full insured value of the watch and having subrogated rights for the loss.<sup>13</sup>

### **NPFC Determination**

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. Pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, the OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages.

The NPFC has considered all documentation presented by the Claimant.

The NPFC independently confirmed that the insured, Mr. Kuchta, had been on the Deepwater Horizon at the time of its explosion and fire.<sup>14</sup>

The Claimant asserts that Mr. Kuchta’s property was lost, “[After t]he vessel caught fire and blew up Mr. Kuchta could not gather his personal effects, including the watch that was on [his] policy”. The Claimant paid Mr. Kuchta for the loss under the terms of a homeowner’s insurance policy, but did not provide a complete copy of that policy to the NPFC. The schedule of tangible personal property<sup>15</sup> and a copy of the bank draft payment<sup>16</sup> were provided. The Claimant provided no information on the cost of replacement.<sup>17</sup>

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<sup>10</sup> Optional OSLTF Claim Form signed 29 November 2011 and received 8 December 2011.

<sup>11</sup> Encompass Insurance Optional Coverage: Scheduled Tangible Personal Property Endorsement to [Mr. Kuchta’s] insurance policy for 5354 Walkerwood Court, Manchester, MD, effective 20 May 2009 and Kirby Ins. Agency/Westminster, MD, Memo dated 7/21/2010, regarding Men’s Titanium Breitling Avenger Watch, Serial #E1336009 being scheduled on [Curt Robert Kuchta’s] insurance policy.

<sup>12</sup> Optional OSLTF Claim Form signed 29 November 2011 and received 8 December 2011.

<sup>13</sup> Encompass Insurance bank draft dated 10 May 2010 in the amount of \$2,600.00, with signature on obverse.

<sup>14</sup> “Hearings: Rig master recounts explosion and abandoning ship”, NOLA.com, 27 May 2010, accessed 28 December 2011.

<sup>15</sup> Encompass Insurance Optional Coverage: Scheduled Tangible Personal Property Endorsement to [Mr. Kuchta’s] insurance policy for 5354 Walkerwood Court, Manchester, MD, effective 20 May 2009 and Kirby Ins. Agency/Westminster, MD, Memo dated 7/21/2010, regarding Men’s Titanium Breitling Avenger Watch, Serial #E1336009 being scheduled on [Curt Robert Kuchta’s] insurance policy.

The Claimant asserted but has not provided evidence to the NPFC that the watch had been on the Deepwater Horizon at the time of the incident, that the cause of the loss was due to the oil spill (not other causes or factors) or evidence of the replacement cost of the property.

Therefore, this claim is denied because (1) the Claimant has failed to demonstrate that the watch was damaged 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, and (2) the Claimant failed to demonstrate what the cost of replacement was.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/29/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>16</sup> Encompass Insurance bank draft dated 10 May 2010 in the amount of \$2,600.00, with signature on obverse.

<sup>17</sup> 33 C.F.R. 33 C.F.R. § 136.217(a)(3).