

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  
Staff Symbol: (CA)  
Phone: 800-280-7118  
E-mail: [arl-pf-npfcclaimsinfo@uscg.mil](mailto:arl-pf-npfcclaimsinfo@uscg.mil)  
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4666 9212

5890/DWHZ  
Claim # N10036-1309  
23 August 2011

Thomas R. Kaye  


Dear Mr. Kaye:

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 N10036-1309 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 N10036-1309.

Mail reconsideration requests to:

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

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1309
Claimant	Thomas R. Kaye
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$9,626.00

***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 12 August 2011, Thomas R. Kaye (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$9,626.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is the Director of Food and Beverage for TPC Prestancia Golf Club (Prestancia) in Sarasota, Florida. Prestancia offers club memberships and caters to seasonal tourists.<sup>1</sup> Prestancia froze pay increases and reduced matching contributions to employee 401k plans.<sup>2</sup> The Claimant alleged Prestancia took these actions because “[t]he oil spill has made a negative impact on club membership, food and beverage sales.” The claim consists of a total 3% pay increase of \$6,026.00 and a total matching 401K contribution of \$3,600.00 for the years 2010, 2011 and 2012.<sup>3</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

<sup>1</sup> PHONECON between Claimant and NPFC Staff dated 18 August 2011

<sup>2</sup> Letter from Prestancia Human Resources explaining 401k contributions dated 20 July 2011 and Letter from Prestancia Human Resources explaining pay increases dated 14 July 2011

<sup>3</sup> Claimant’s letter to NPFC explaining the claim received 12 August 2011

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:

- Claimant's letter to NPFC explaining the claim received 12 August 2011
- Letter from Prestancia HR explaining 401k contributions dated 20 July 2011
- Letter from Prestancia Golf's HR explaining pay increases dated 14 July 2011
- Pay stubs from TPC at Prestancia for 29 May 2009 and 08 January 2010

- W-2s Wage and Tax Statements from Heritage Golf Prestancia LLC for the years 2008 and 2010

Claimant seeks lost earnings and wages in the amount of \$9,626.00.

Before presenting the subject claim to the NPFC, Claimant filed a Full Review Final (FRF) claim with the GCCF in the amount of \$9,626.00. The GCCF claim was assigned Claimant ID #3516172 and Claim #9400304.<sup>4</sup> The FRF claim was denied on 12 July 2011.<sup>5</sup> Additionally, Claimant filed a Re-Review of the FRF claim. The Re-Review of the FRF claim was denied on 27 July 2011.<sup>6</sup>

Based upon the evidence provided by Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of the claim before the NPFC, i.e., the Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the claim denied by GCCF to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1309 considers and addresses the earnings in the claim presented to the responsible party, specifically; GCCF Claim # 9400304 Full Review Final claim.

#### **NPFC Determination**

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their 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.

Claimant alleged that TPC Prestancia Golf Club froze pay raises and reduced matching 401k contributions due to declining revenues from the Deepwater Horizon oil spill.<sup>7</sup> The claim includes losses for 2010, 2011 and 2012. However, future losses of earning are not compensable under OPA because the alleged losses have not been realized and are speculative in nature. Therefore, the Claimant's losses for 401k contributions after the date of his claim submission to the NPFC are denied.

According to Prestancia's Human Resources representative, Prestancia lowered, but did not end, its 401k contributions due to the "challenging times the country is facing."<sup>8</sup> The Human Resources staff also stated that "Sarasota businesses and employees have definitely suffered because of the oil spill and the bad economy."<sup>9</sup> NPFC staff contacted the Human Resources representative at Prestancia to confirm her letters on 14 and 20 July 2011. The Human Resource representative stated that both the oil spill and generally

---

<sup>4</sup> GCCF Claim Status site

<sup>5</sup> GCCF Determination Letter on Final Payment Claim dated 12 July 2011

<sup>6</sup> GCCF Re-Review Determination Letter on Interim Payment/Final Payment Claim dated 27 July 2011

<sup>7</sup> Claimant's letter to NPFC explaining the claim received 12 August 2011

<sup>8</sup> Prestancia HR letter dated 20 July 2011

<sup>9</sup> Prestancia HR letter dated 14 July 2011

declining economic conditions affected Prestancia's revenue, but that it is impossible for Prestancia to say how much each factor contributed to the Prestancia's decision.<sup>10</sup> Accordingly, the Claimant has not provided sufficient information in order to meet his burden of proof under OPA as to the causation of his damages or the portion of his alleged damages proportionately attributable to the oil spill.

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:  *Division*

Date of Supervisor's Review: *23 August 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

---

<sup>10</sup> PHONECON between Prestancia HR/Administrative Assistant and NPFC Staff dated 18 August 2011