

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 1150 0000 4666 9236

5890/DWHZ  
Claim # N10036-1301  
26 August 2011

Knight Appraisal Service LLC

Dear Mr. Knight:

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 N10036-1301 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 N10036-1301.

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	N10036-1301
Claimant	Knight Appraisal Service LLC Keith Knight, owner
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$36,409.00

### ***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 2010, Knight Appraisal Service LLC, by and through Keith Knight, its owner, (collectively Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$36,409.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a real estate appraiser of properties in Gulf Shores, Alabama. The properties he appraises include houses, condominiums and duplexes which are owner-occupied or investment properties.<sup>1</sup> The Claimant obtains his requests for appraisals on-line from an appraisal management company.<sup>2</sup> The Claimant stated that "Due to the Deepwater Horizon oil spill my Real Estate Appraisal Business has dramatically decreased."<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.

<sup>1</sup> Conversation between Jenna Knight, a witness and authorized representative designated by Claimant and NPFC Staff 16 August 2011

<sup>2</sup> Conversation between Jenna Knight, a witness and authorized representative designated by Claimant and NPFC Staff 23 August 2011. According to Claimant, the Home Valuation Code of Conduct (HVCC) does not allow mortgage lenders to contact appraisers directly for appraisals.

<sup>3</sup> Letter to GCCF from Claimant explaining the claim dated 23 May 2011

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 Claim Form dated 08 August 2011
- Letter to GCCF from Claimant explaining the claim dated 30 October 2010

- Letter to GCCF from Claimant explaining the claim dated 23 May 2011
- Schedule C Profit or Loss From Business for 2008, 2009 and 2010
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 30 June 2011
- Hand-written memo with copy of Alabama driver license authorizing wife to represent him dated 05 September 2010

Claimant seeks lost profits and impairment of earnings in the amount of \$36,409.00.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF. The Emergency Advance Payment Claim was assigned Claimant ID #3100025 and claim #154570. The EAP claim was denied on 29 October 2011.<sup>4</sup> Additionally, the Claimant filed a Full Review Final (FRF) claim with the GCCF. The FRF claim was assigned claim #9387731 and was denied on 30 June 2011.<sup>5</sup>

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., the 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. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1301 considers and addresses the loss of earnings in all claims presented to the Responsible Party, specifically: GCCF EAP claim #154570 and FRF claim #9387731.

### **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.

The Claimant provided the NPFC with the names of two of his major clients in order to corroborate his claim.<sup>6</sup> The NPFC contacted these clients but was unable to obtain information that would corroborate the subject claim.<sup>7</sup> Accordingly, the Claimant has not provided sufficient documentation to establish under OPA that his loss of earnings was caused by the Deepwater Horizon oil spill.

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<sup>4</sup> GCCF Denial Letter dated 29 October 2010

<sup>5</sup> GCCF Denial Letter dated 30 June 2011

<sup>6</sup> Conversation between the Claimant and NPFC Staff 23 August 2011

<sup>7</sup> PHONECON between NPFC staff and mortgage lenders at BB&T Bank and Pen Air on 24 August 2011

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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *26 August 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments: 