

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: 1-800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8399

5890/DWHZ
11 January 2012

Jeff Robinett


Re: Claim Number: N10036-1340

Dear Mr. Robinett:

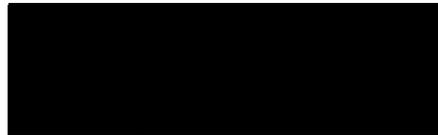
The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-1340 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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. If, however 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 N10036-1340.

Mail reconsideration requests to:

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



National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form
(2) Evidence Presented by the Claimant in Support of Claim N10036-1340

Enclosure (2)

**Evidence Presented by the Claimant in Support of
Claim N10036-1340**

- Optional OSLTF Claim Form, dated 25 August 2011;
- GCCF Notice of Determination on Emergency Advance Payment, payment date 01 October 2010;
- Printouts of several online articles written about the health effects of the Deepwater Horizon oil spill;
- 2010 Form 1040 U.S. Individual Income Tax Return, including Form W-2 from Seamar Divers International, LLC;
- Various invoices for diving equipment from Bay-Tech Industries, Inc. and Wendy McSwain;
- Photos of diving helmet;
- Maintenance and Inspection record from Bay-Tech Industries, Inc. dated 06 July 2010;
- Letter of claim explanation from the Claimant, undated;
- Paystubs for the Claimant from Seamar Divers International, LLC for the periods: 28 December 2009-20 January 2010, 23 January 2010-21 February 2010, 08 March 2010-14 November 2010, and 13 December 2010-26 December 2010;
- GCCF Claim Form, dated 02 September 2011;
- Copies of various Identification Cards and Certifications: Social Security Card, California Driver's License, TWIC Card, Association of Commercial Diving Educators, Master Scuba Diver, 16-Hour Personal Survivor Course and Survival Suit/Survival Craft Course, U.S. Passport, and Basic CPR and First Aid for Adults;
- Letter from the Claimant to "BP Oil Industries," dated 30 August 2010;
- Letter from Marcie Skinner of Seamar Divers International to "whom it may concern," dated 25 August 2010;
- 2008 Form W-2 from Deep Marine Technology Inc.;
- 2009 Form W-2 from Seamar Divers International, LLC;
- Dive records for the Claimant at Seamar Divers for 14 March 2010 – 03 June 2010;
- Letter from the Claimant to "British Petroleum," dated 08 November 2010;
- Correspondence with the Texas Workforce Commission, dated 15 June 2010, 22 June 2010, 29 June 2010, and 01 July 2010;
- Various bills from: Fort Bend Emergency Association, UT Physicians, Spring, Sallie Mae Servicing, Credit First N.A., Kingston Villas Apartments, and Green Mountain Energy;
- GCCF Supplement Request Form, dated 22 November 2011;
- GCCF Interim Payment Claim Form, dated 18 January 2011;
- Clinical Note from UT Physicians, dated 20 July 2010;
- Clinical Note from UT Physicians, dated 24 May 2010;
- Photographs of the Claimant's head;
- Various drawings of diving helmets;
- Birth Certificate from the County of San Diego;
- Various receipts from Play House Childcare;
- Resident Ledger from Kingston Villas from 2010 and 2011;
- CVS Pharmacy Prescription Label;
- Medication Reconciliation Physician Order Form and Discharge Instructions from Christus, St. Catherine Hospital;
- Invoices and documentation of procedures from UT Physicians for services rendered on 24 May 2010, 20 July 2010, 10 January 2011, 22 February 2011;
- Letter from Seamar Divers International to the GCCF, dated 28 June 2011;
- Letter from the Claimant to the GCCF (1), dated 22 August 2011;
- Letter from the Claimant to the GCCF (2), dated 22 August 2011;

- Letter from Seamar Divers International to the Claimant, dated 04 June 2010;
- Medical Leave of Absence form, dated 05 June 2010;
- Letter from the GCCF to the Claimant, dated 31 January 2011;
- GCCF Claim Form Generated Online; and
- Deficiency Letter on Interim Payment/Final Payment Claim, dated 27 April 2011.

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1340
Claimant	Jeff Robinett
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity, Real or Personal Property Damage
Amount Requested	\$50,200.00

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 29 August 2011, Jeff Robinett (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$42,000.00 in loss of profits and impairment of earnings capacity and \$8,200.00 in real or personal property damages that allegedly resulted from the Deepwater Horizon oil spill.

Regarding the Claimant's alleged loss of profits and impairment of earning capacity, at the time of the Deepwater Horizon oil spill, the Claimant was employed as a diver with Seamar Divers International (Seamar).¹ The Claimant asserted that he experienced a reduction in wages because the Deepwater Horizon oil spill shut down oil rig work in the Gulf of Mexico for months.² Alternately, the Claimant also alleged that, while on a dive with Seamar off the shores of Cocodrie, Louisiana, he was exposed to oil released from the Deepwater Horizon oil spill.³ Due to the oil exposure, the Claimant alleged that he has contracted numerous illnesses and that his doctor informed him that it wasn't safe for him to dive anymore.⁴

Regarding the Claimant's alleged real or personal property damages, in addition to the illnesses he contracted from his exposure to the oil from the Deepwater Horizon oil spill, the Claimant also alleged that his diving equipment was contaminated by the oil.⁵ Consequently, the Claimant had to purchase new equipment and tools to replace the oil damaged diving gear.⁶

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits

¹ Letter from Marcie Skinner of Seamar Divers International to "whom it may concern," dated 25 August 2010.

² Optional OSLTF Claim Form, dated 25 August 2011.

³ PHONECON between the Claimant and the NPFC on 06 September 2011.

⁴ PHONECON between the Claimant and the NPFC on 06 September 2011.

⁵ Optional OSLTF Claim Form, dated 25 August 2011.

⁶ Optional OSLTF Claim Form, dated 25 August 2011.

or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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, destruction or loss of real or personal property or of 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.

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

The Claimant's Submission to the OSLTF

In support of his claim, the Claimant presented all the documentation listed in Enclosure (2).

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of profits and impairment of earnings capacity on 02 September 2010 in the

amount of \$38,000.00.⁷ The Claimant was assigned Claimant ID # 1160658 and Claim # 49830. The Claimant received payment in the amount of \$38,000.00 on October 2010.⁸ Additionally, the Claimant filed five EAP Supplemental claims on 10 December 2010 and two EAP Supplemental claims on 15 December 2010 for \$10,666.67 in loss of earnings per claim: Claim #'s 4058370 (Supp1), 4058371 (Supp2), 4058372 (Supp3), 4058373 (Supp4), 4058376 (Supp5), 4065468 (Supp6), and 4065475 (Supp7).⁹ The GCCF denied all of the Claimant's EAP Supplemental claims. Lastly, the Claimant filed an Interim 1(ICQ12011) claim on 21 January 2011 for personal injury damages in the amount \$14,000.00, real or personal property damages in the amount of \$9,963.00, and loss of earnings in the amount of \$71,700.00. The Claimant was assigned Claim # 9235334. This claim is currently under Re-Review by the GCCF.

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims regarding loss of earnings and real or personal property damage is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill the Claimant lost wages as a diver and suffered damage to his diving equipment. The NPFC deems that the Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1340 considers and addresses the earnings claimed in the claims presented to the responsible party regarding loss of profits and impairment of earnings capacity and real or personal property damages, specifically; GCCF Claim #'s 4058370 (Supp1), 4058371 (Supp2), 4058372 (Supp3), 4058373 (Supp4), 4058376 (Supp5), 4065468 (Supp6), 4065475 (Supp7), and 9235334 (ICQ12011).¹⁰

NPFC Determination

This claim is denied. 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 NPFC considered all documentation presented by the Claimant.

The Claimant asserted that he experienced both a loss of wages at Seamar and physical damage to his diving gear due to the Deepwater Horizon oil spill. In his submission to the NPFC, the Claimant provided three letters allegedly written by Seamar employees in support of his claim. The NPFC contacted Seamar to verify the Claimant's assertions and the authenticity of the letters allegedly provided by Seamar. The NPFC was informed that at least two of the letters provided by the Claimant were fraudulent.¹¹ Notably, Seamar indicated that the author of two of the letters, "Olivia Cruz", had ceased to work at Seamar prior to the date both letters were written.¹² Furthermore, Seamar stated that there was certainly no oil in the water in any of the Claimant's dives near Cocodrie, Louisiana.¹³ Lastly, Seamar informed the NPFC that it could not verify any financial losses for the Claimant due to the Deepwater Horizon oil spill.¹⁴

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under

⁷ Report from the GCCF, dated 23 December 2011.

⁸ Notice of Determination for Emergency Advance Payment.

⁹ Report from the GCCF, dated 23 December 2011.

¹⁰ The Claimant received payment in the full amount of his claimed damages (\$38,000.00) on his initial EAP claim to the GCCF. Therefore, that claim is not being considered by the GCCF.

¹¹ PHONECON between the NPFC and Seamar on 18 October 2011.

¹² PHONECON between the NPFC and Seamar on 18 October 2011.

¹³ PHONECON between the NPFC and Seamar on 18 October 2011.

¹⁴ PHONECON between the NPFC and Seamar on 18 October 2011.

this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

The Claimant's request for \$50,200.00 is hereby denied because the evidence presented by the Claimant vice the detailed information provided by the Claimant's former employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order for the Claimant to try to obtain funds from the Federal Government under false pretenses.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *1/11/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: