

U.S. Department of
Homeland Security

**United States
Coast Guard**



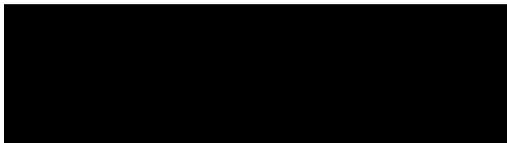
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2551

5890/DWHZ
18 April 2012

Mr. Keith Scott



Re: Claim Number: N10036-1716

Dear Mr. Scott:

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 N10036-1716 involving the Deepwater Horizon oil spill. 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 N10036-1716.

Mail reconsideration requests to:

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

Signature



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

Enclosure: Claim Summary/Determination Form
CC: Keith Scott
6351 Beauclair Drive
Pensacola, FL 32504

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7011 1570 0001 2446 2568

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1716
Claimant	Keith Scott
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$160,371.70

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 14 March 2012, Arthur S. Barksdale IV, Esq., on behalf of Mr. Keith Scott, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$160,371.70 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working for a cable company in Pensacola, Florida.² The Claimant alleged, however, that he intended to return to his career as a deckhand and engineer, but was unable to find employment as a result of the oil spill. The Claimant specifically stated that, “[o]nce I tried to get back to work in the oil fields as a crew boat engineer, there were no jobs available during the whole year of 2010. I still cannot find a job in my field at this time.”³

The Claimant alleged to have sustained losses of \$17,163.00 in 2010 and \$34,277.00 in 2011. The Claimant multiplied his alleged monthly loss of \$3,025.88 by 36, for a three year loss of \$108,931.76. The Claimant added this amount to his actual losses to come to a total claimed loss amount of \$160,371.76.⁴

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. § 136.231 is

¹ Claim Cover Letter, 14 March 2012.

² GCCF Full Review Final Payment Claim Form, pg. 2.

³ Letter from the Claimant to the GCCF describing losses, undated.

⁴ Lost Income/Earning Worksheet.

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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed on 12 January 2012;
- Claim cover letter, 14 March 2012;
- NPFC Authorization Agreement, signed on 1 March 2012;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 9 December 2011;
- Letter from the Claimant describing losses, undated;
- GCCF Full Review Final Payment Claim Form;
- Lost Earning/Income Worksheet, showing sum certain of \$160,371.76;
- Copy of the Claimant's TWIC card;
- Letter from the Claimant describing losses, undated;
- 2008 Form 1040, showing wages of \$34,277.00;
- 2009 Form 1040, showing wages of \$8,237.00;
- 2010 Form 1040, showing wages of \$17,114.00;

- GCCF Client Authorization Form.

On 26 October 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages of \$160,371.70.⁵ The Claimant was assigned Claimant ID 1636437 and the FRF claim was assigned claim # 9527020. The RP/GCCF denied payment on this claim.

On 14 March 2012, the Claimant presented this claim to the NPFC, again seeking \$160,371.70 in loss of profits and impairment of earning capacity damages.⁶ The NPFC may adjudicate this claim to the extent that the RP has denied payment on this claim, or has failed to render a determination on the claim following 90 days of presentment by the Claimant.⁷ Because these damages have first been presented to and were denied by the RP/GCCF, the NPFC may fully adjudicate this claim for lost profits damages totaling \$160,371.70.

NPFC Determination

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 this claim.

In order to prove a claim for loss of profits and impairment of earnings capacity damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

Furthermore, prospective future damages are not compensable under OPA's loss of profits damage category, which limits potentially available compensation to "the actual net reduction or loss of earnings or profits *suffered*" [emphasis added].⁸ Therefore, payment is denied on \$108,931.76 of this claim, which constitutes losses not incurred by the Claimant.⁹

Regarding the remaining \$51,440.00 in income which the Claimant alleged to have lost in 2010 and 2011, the Claimant has not provided evidence to prove that this loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. At the time of the oil spill, the Claimant worked for Hitachi Cable in Pensacola, Florida, where the Claimant worked until 1 November 2010.¹⁰ The Claimant has not alleged that the loss of this position was due to effects of the oil spill, but rather, that the oil spill caused the Claimant to be unable to secure work as a "crew boat engineer" sometime after his employment with Hitachi Cable.¹¹ The Claimant's inability to secure employment which he did not actually have at the time of the oil spill is not a loss that was caused by the Deepwater Horizon oil spill, and is therefore not a compensable loss under OPA.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$160,371.70, and (2) that the alleged loss is due to the injury,

⁵ GCCF United States Coast Guard Report, 12 April 2012.

⁶ Claim Cover Letter, 14 March 2012.

⁷ 33 C.F.R. § 136.103(a).

⁸ 33 C.F.R. § 136.235.

⁹ Lost Earning/Income Worksheet, showing sum certain of \$160,371.76

¹⁰ GCCF Full Review Final Payment Claim Form, pg. 2.

¹¹ Letter from the Claimant to the GCCF describing losses, undated.

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: *4/18/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: