

U.S. Department of
Homeland Security

United States
Coast Guard

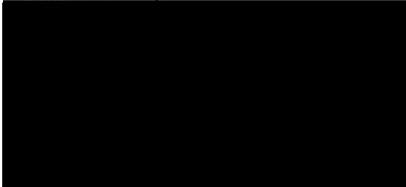


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 9098

5890/DWHZ
13 June 2012

Claire Kemp


Re: Claim Number: N10036-1758

Dear Mr. Reynolds:

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 N10036-1758 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 N10036-1758.

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

CC: Claire L. Kemp


Certified Mail: 7011 1570 0001 4803 9081

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1758
Claimant	Claire Kemp
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$89,752.32

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 12 April 2012, Robert A. Reynolds, Esquire, on behalf of Ms. Claire Kemp, (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$89,752.32 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as the Manager of the Swim & Play retail store in Treasure Island, Florida.² The Claimant alleged to have sustained a loss of income of \$4,792.00 in 2010 due to a decrease in tourism in the Clearwater/St. Petersburg area following the Deepwater Horizon oil spill.³ The Claimant states she was laid off by her employer as a result of the decrease in tourism and thus the decrease in business at the store she managed.⁴

In order to calculate her losses, the Claimant subtracted 2010 and 2011 earnings from 2008 and added the total. She then determined average monthly loss, multiplied it by an "industry effect multiplier" of 60 and added the result to the previously calculated losses to reach a claimed total of \$89,752.32.

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 § 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 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:

¹ Law Firm Claim Cover Letter, signed 4 April 2012.

² Hardship Letter from the Claimant, signed 24 September 2011.

³ Hardship Letter from the Claimant, signed 24 September 2011.

⁴ Hardship Letter from the Claimant, signed 24 September 2011.

- (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:

- Law Firm Claim Cover Letter, signed 4 April 2012;
- NPFC Authorization Agreement, signed 1 April 2012;
- Lost Earning/Income Worksheet, 28 December 2011;
- Photocopy of Drivers License and Social Security Card;
- Hardship Letter from the Claimant, signed 24 September 2011;
- Letter of Support from Employer, signed 29 September 2011;
- 2008 W-2 Wage & Tax Statement;
- 2009 W-2 Wage & Tax Statement;
- 2010 W-2 Wage & Tax Statement;
- Copy of GCCF Claim Signature Page, signed 16 November 2011;
- Copy of GCCF Full Review Final Claim, signed 16 November 2011;
- Denial Letter on Interim Payment/Final Payment Claim, 19 March 2012;
- Proposed Settlement Letter from GCCF, 16 March 2012.

On 9 March 2011, the Claimant presented an Interim Payment (IP) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$5,000.00.⁵ The Claimant was assigned Claimant ID 3504808 and the IP claim was assigned claim # 9317768.⁶ The RP/GCCF denied payment on this claim.

On 11 August 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$23,217.00.⁷ The Claimant retained Claimant ID 3504808 and the FRF claim was assigned claim # 9435626.⁸ The RP/GCCF denied payment on this claim.

On 7 October 2011, the Claimant presented a second IP claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$5,000.00⁹ The Claimant retained Claimant ID 3504808 and the IP claim was assigned claim # 9510459.¹⁰ The RP/GCCF denied payment on this claim.

On 6 January 2012, the Claimant presented a second FRF claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$89,752.32.¹¹ The Claimant retained Claimant ID 3504808 and the FRF claim was assigned claim # 9554245.¹² The RP/GCCF denied payment on this claim.

On 12 April 2012, the Claimant submitted this claim to the NPFC, seeking \$89,752.32 in loss of profits and impairment of earning capacity damages.¹³ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.¹⁴ Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$89,752.32.

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 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. This claim is denied because the Claimant has not provided sufficient documentation to prove either requirement.

In a letter dated 1 May 2012, the NPFC requested that the Claimant provide additional documentation to meet the requirements of the law listed above, including (1) paystubs or other

⁵ Transition Program United States Coast Guard Report, 13 May 2012.

⁶ Transition Program United States Coast Guard Report, 13 May 2012.

⁷ Transition Program United States Coast Guard Report, 13 May 2012.

⁸ Transition Program United States Coast Guard Report, 13 May 2012.

⁹ Transition Program United States Coast Guard Report, 13 May 2012.

¹⁰ Transition Program United States Coast Guard Report, 13 May 2012.

¹¹ Transition Program United States Coast Guard Report, 13 May 2012.

¹² Transition Program United States Coast Guard Report, 13 May 2012.

¹³ Law Firm Claim Cover Letter, signed 4 April 2012.

¹⁴ 33 C.F.R. § 136.103(a).

payroll verification to confirm loss of hours and income, and (2) business records demonstrating losses at her place of employment attributable to the oil spill.¹⁵

The NPFC requested that the Claimant respond to the additional information request within 14 days of the date of the letter. As of the date of this determination, the Claimant has failed to respond. Information included in the Claimant's original submission is insufficient to prove that the Claimant actually sustained a loss of income attributable to the oil spill. She has thus failed to provide documentation sufficient to prove that the Claimant sustained a financial loss, or to prove that the Claimant's alleged loss was caused by the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$89,752.32, 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 Application Division*

Date of Supervisor's Review: *6/13/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁵ NPFC Request for Additional Information, 25 April 2012.