

U.S. Department of
Homeland Security

**United States
Coast Guard**



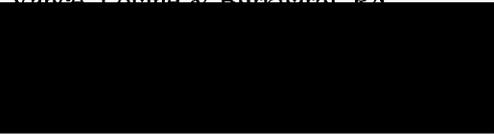
Director
United States Coast Guard
National Pollution Funds Center

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: 703-872-6113

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 1110

5890/DWHZ
07 June 2012

Vence Letano & Burkhardt, PA



RE: Claim Number: N10036-1750

Dear Mr. Barksdale:

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 claim number N10036-1750 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

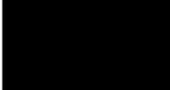
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1750.

Mail reconsideration requests to:

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

Sincerely,



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

Ernest Kurpuis



CERTIFIED MAIL - RETURN RECEIPT REQ:
Number: 7011 1570 0001 2446 1127

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1750
Claimant	Earnest Kurpuis
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$54,191.32

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 10 April 2012, Ernest Kurpuis (Claimant) presented a claim letter¹ seeking \$54,191.32 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant is a self employed "handyman" operating around the Pensacola Florida area d/b/a Gregg's Handyman Service.² The Claimant states that "subsequent to the oil spill, business declined and has not picked back up to how it was prior to the spill."³

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:

- (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.

¹ Cover letter from on Vance Lotane & Bookhardt P.A. Attorneys at Law letterhead.

² GCCF Full Review Final Payment claim form at page 2 Claimant information.

³ GCCF Full Review Final Payment claim form at page 7 questions for individual claimants seeking lost earnings or profits.

- (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 his claim, the Claimant submitted:

- Vance, Lotane, & Brookhardt, P.A intro letter dated 10 April 2012
- GCCF Full Review Final Payment Claim Form
- Deep Water Horizon Oil Spill Lost Earnings/Income Worksheet dated 30 December 2011
- Copy of Florida drivers license for claimant
- Claimant's letter of explanation
- 2008 Form 1040 U.S. Individual Income Tax Return
- 2009 Form 1040 U.S. Individual Income Tax Return
- 2010 Form 1040 U.S. Individual Income Tax Return
- Gregg's Handyman Service Invoices dated 09 January 2011, 13 February 2011, 27 February 2011, 01 May 2011, 15 May 2011, 05 June 2011, 03 August 2011, 13 September 2011, 18 November 2011,
- 2011 Form 1040 U.S. Individual Income Tax Return
- 2011 W-2 from South East Employee Leasing

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$54,191.32.

Prior to presenting his claim to the NPFC, the Claimant filed an Interim 1 claim (ICQ12011) with the GCCF on 01 January 2011 in the amount of \$27,740.01.⁴ He was assigned Claimant ID # 3478870 and claim # 9114707.⁵ This claim was denied.⁶ Additionally, the Claimant filed a Full Review Final claim (FRF) with the GCCF on 05 January 2012 for \$54,191.32.⁷ The FRF claim was issued GCCF claim # 9553476 and was subsequently denied.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that he had a reduction in earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1750 considers and addresses the earnings claimed in both of the claims presented to the responsible party, specifically; GCCF Claim #'s 9114707 (ICQ12011) and 9553476 (FRF).

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 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 NPFC considered all the documentation submitted by the Claimant.

In order to prove a claim for loss of profits and impairment of earning 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.

The Claimant is a sole proprietor handyman, d/b/a Gregg's Handyman Service in Pensacola Florida.⁹ The Claimant alleges he lost business due to the Deepwater Horizon oil spill for the years 2010 and 2011.¹⁰

According to the Claimants schedule Cs contained in his income tax returns, he made a net income in the amount of \$2,039.00 for 2008, \$7,133.00 for 2009, \$3,941.00 for 2010, and \$4,572.00 for 2011.¹¹ In light of the highest net income being \$7,133.00 in 2009, the alleged damage amount of \$54,191.32 is overstated for the loss period of 2010 and 2011. The Claimant states that "in order to make up for the loss of income I applied for many positions, I was finally offered a position as a mechanic at Meineke Car Care Center."¹²

The Claimant goes on to state that "while I was employed at Meineke I was offered a position at Hometown Construction ... I agreed to begin work there at the first of the year 2011."¹³ This evidences that the Claimant was working for Meneike prior to the "first of the year 2011" and thus mitigated some of the alleged damage in 2010. The NPFC does not know in what amount

⁴ Report from the GCCF dated 21 May 2012.

⁵ Report from the GCCF dated 21 May 2012.

⁶ Report from the GCCF dated 21 May 2012.

⁷ Report from the GCCF dated 21 May 2012.

⁸ Report from the GCCF dated 21 May 2012.

⁹ GCCF Full Review Final Payment claim form at page 2 Claimant information.

¹⁰ Deepwater Horizon oil spill 4/20/2010 lost earnings/income worksheet.

¹¹ 2008 through 2011 Form 1040 U.S. Individual Income Tax Returns.

¹² Response to NPFC's request for additional information letter undated.

¹³

due to the fact that the Claimant failed to submit his 2010 W-2 for Meineke. Furthermore the Claimant earned \$15,035.26 in 2011 for his work with Hometown Construction.¹⁴ \$15,035.26 is more than twice as much as his highest yearly earnings for Gregg's Handyman Services which totals \$7,133.00 in 2009.¹⁵ Thus, since the Claimant is asserting losses for 2010 and 2011 for Gregg's Handyman Services, the evidence presented indicates that he more than mitigated his prior year's losses with earnings in 2011 from Hometown Construction.¹⁶ Accordingly, the Claimant has not established that he has incurred damages in the amount of \$54,191.32 by a preponderance of the evidence.

Regarding the causal connection between the Deepwater Horizon oil spill and the Claimant's alleged loss; the Claimant has not provided evidence sufficient to prove that his alleged loss was the result of the Deepwater Horizon oil spill.

Accordingly, this claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his 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: *NPTC Claims Adjudication Division*

Date of Supervisor's Review: *6/7/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁴ Hometown Construction d/b/a South East Employee Leasing 2011 W-2.

¹⁵ 2009 Schedule C.

¹⁶ \$15,035.26 > (2x \$7,133.00). Further, mitigation of net income in 2010 of \$3,941.00 and 2011 of \$4,572.00 would have to be considered.