

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 2446 3183

5890/DWHZ
16 April 2012

Mr. Joseph Vincent
c/o Vance, Lotane & Bookhardt, PA
ATTN: Arthur Barksdale IV, Esq.
1980 Michigan Avenue
Cocoa, FL 32922

RE: Claim Number: N10036-1697

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 N10036-1697 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 N10036-1697.


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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3190

Joseph Vincent


Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1697
Claimant	Joseph Vincent
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$128,237.10

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 27 February 2012, Joseph Vincent (Claimant) presented a letter to the Oil Spill Liability Trust Fund (OSLTF) seeking \$128,237.10 for loss of profits and impairment of earnings capacity damages to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant worked for Risk Concepts Corp. for their parent company Administrative Leasing Concepts Inc. (RCC/ACC) from November 2005 through June 2010.¹ The Claimant sold insurance to businesses in Northwest Florida from Pensacola through Mary Esther Florida.² The Claimant cites the relocation and dissolution of businesses in the area due to the Deepwater Horizon oil spill as the cause of RCC/ACC shutting down their operation in the NW region of Florida.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.
- (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.

¹ Letter of explanation of claim from the Claimant dated 17 November 2010.

² Response to NPFC's request for information dated 15 March 2012 at question 1.

³ Response to NPFC's request for information dated 15 March 2012 at question 1.

- (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 the following documentation:

- Representation letter and authorization
- GCCF denial letter on Interim payment/Final payment claim
- Lost earnings calculation page totaling \$128,237.10
- Copy of Florida drivers license
- Letter explaining claim from the Claimant dated 17 November 2010
- Fax explaining termination of operations undated
- 2008 form 1040 U.S. Individual Income Tax Return
- 2009 form 1040 U.S. Individual Income Tax Return
- 2010 W-2 from Administrative Leasing Concepts for 22,552.85
- 2010 1099-MISC from RCC for \$7,130.50
- Paystub for 12 September 2011 through 25 September 2011 for \$872.18 from Fubar Remodeling
- Paystub fro 14 November 2011 through 27 November 2011 for \$750.00 from Garry Banks MD PA
- GCCF full review final payment claim form
- Claimant's response to NPFC's request for additional information dated 15 March 2012
- 2010 1099-MISC from Banga Investments II for \$601.00
- 2010 1099-MISC from Banga Investments II for \$2,100.00
- 2010 1099-MISC from state of Florida agency for workforce innovation special payments unit for \$6,875.00
- 2010 Form 1040 U.S. Individual Income Tax Return

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$128,237.10.

Prior to presenting his claim to the NPFC, the Claimant filed an Interim Payment /Final Payment Claim with the GCCF.⁴ He was assigned GCCF Claimant ID #3331449.⁵ This claim was denied on 10 January 2012.⁶ Based upon the evidence provided by the Claimant, it appears that the subject matter for his GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that the Claimant lost his job and earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant's denied

⁴ GCCF Denial Letter dated 10 January 2012.

⁵ GCCF Denial Letter dated 10 January 2012.

⁶ GCCF Denial Letter dated 10 January 2012.

GCCF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1697 considers and addresses the earnings claimed in GCCF Claim #3331449.

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 prove (1) that the Claimant sustained a financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant sold insurance to businesses in the western panhandle of Florida from November 2005 until June 2010 when the company closed their operations in that geographical area.⁷ According to the Claimant's 2009 taxes, he earned \$44,512.00 in wages and business income of \$4,762 for a total of \$49,274.00.⁸ According to the Claimant's 2010 taxes, he earned \$22,553.00 in wages, \$12,288.00 in business income, and \$6,875.00 in unemployment for a total of \$41,726.00.⁹ Thus, based upon the information provided, it appears that the Claimant may have had a decrease of earnings in 2010 when compared to 2009 in the amount of \$7,548.00.¹⁰

With regards to causation of the alleged damages, the Claimant stated that in 2007 RCC/ACC's business started declining due to "construction clients and [the] downturn of the housing market" so they switched their focus to insuring "restaurants, hotels, and resorts."¹¹ The Claimant further asserts that after the oil spill "we had significant decrease in payroll with current clients as well as a loss of a large portion of clients in addition to clients who began to stop making monthly payments on insurance which cancelled their contracts."¹² The NPFC requested proof of cancellations and the insurance contracts showing cancellation provisions,¹³ to verify the assertions of the Claimant.¹⁴

These questions and documents were not addressed nor provided in the Claimant's response dated 15 March 2012.¹⁵ Furthermore the NPFC requested a list of major clients who had been affected due to the oil spill¹⁶; the Claimant responded that he has a "signed privacy agreement with the agency that prohibit[s] me from giving out client lists."¹⁷ In addition, the NPFC requested that the Claimant obtain financial proof of an impact of the oil spill upon RCC/ACC,¹⁸ however the Claimant did not address nor provide the documentation requested.¹⁹ Without evidence of cancellations due to the oil spill, the contract vehicle being used, nor financial data of the company to assess the impact of the oil spill upon RCC/ACC the Claimant has not proven that the Deepwater Horizon oil spill, as opposed to other economic or market factors, impacted RCC/ACC and as a result affected him as an employee.

⁷ Letter of explanation from the Claimant dated 17 November 2010.

⁸ Claimant's 2009 form 1040 US Individual Income Tax Return.

⁹ Claimant's 2010 form 1040 US Individual Income Tax Return.

¹⁰ 2009 taxes \$49,274.00 minus \$41,726.00 equals \$7,548.00

¹¹ Letter of explanation from the Claimant dated 17 November 2010.

¹² Letter of explanation from the Claimant dated 17 November 2010.

¹³ NPFC request for additional information dated 28 February 2012 at documents request 5 and 6.

¹⁴ Letter of explanation from the Claimant dated 17 November 2010.

¹⁵ See Claimant's response dated 15 March 2012.

¹⁶ NPFC request for additional information dated 28 February 2012 at question 9.

¹⁷ See Claimant's response dated 15 March 2012.

¹⁸ NPFC request for additional information dated 28 February 2012 at documentation request 1.

¹⁹ See Claimant's response dated 15 March 2012.

The Claimant provided a fax dated 08 December 2010 and later changed to 15 March 2012²⁰ from Greg Sutton (Principal Agent with RCC) stating that “with the economy and recent disaster in the gulf, our revenues have fallen such that a business decision was made to terminate our operations.”²¹ As stated by a coworker of the Claimant, the economy was a significant contributing factor to the decline in revenues and the eventual termination of the panhandle division. As such, the Claimant has not established by a preponderance of the evidence that the alleged loss of earnings was due to the oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate 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: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *4/16/12*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

²⁰ Original submission had the fax dated 08 December 2010, then law firm/Claimant submitted same fax with the dated changed to 15 March 2012.

²¹ Fax from Greg Sutton to the Claimant dated 08 December 2010 and later 15 March 2012.