

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
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113
5890
5 June 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1570 0001 4803 7773

Vance, Lotane & Bookhardt, P.A.


RE: Claim Number: N10036-1732

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 the claim number N10036-1732 involving Deepwater Horizon. 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 N10036-1732.

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

Enclosure: Claim Summary / Determination Form

Jimmy C. Boswell
25 Anastasia Drive
Fort Walton Beach, FL 32547

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Receipt Number: 7011 1570 0001 4803 7780

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1732
Claimant	: Jimmy C. Boswell
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$174,555.10

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 26 March 2012, Arthur S. Barksdale IV, Esquire, on behalf of Jimmy C. Boswell (jointly referred to as 'the Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$174,555.10 for loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹ The Claimant is a mortgage broker and loan officer for a mortgage business in Fort Walton Beach, Florida.² The Claimant asserts that he lost income in 2010 by having a reduced volume of business, caused by the spill.³ Additionally, the Claimant asserts additional losses due to an "industry effect multiplier."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 § 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 Vance, Lotane & Bookhardt, PA, letter to the NPFC received 26 March 2012.

² Unsigned, undated letter, "To Whom It May Concern", from Jimmy C. Boswell describing his claim and Claimant's Florida Mortgage Broker License, expiring 8-31-2011.

³ Unsigned, undated letter, "To Whom It May Concern", from Jimmy C. Boswell describing his claim.

⁴ Lost Earnings/Income Worksheet for Jimmy Boswell dated 13 December 2011.

- (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 presented the following documentation:

- Claim letter received 26 March 2012.
- Copy of Claimant's authorization dated 20 March 2012 for Vance, Lotane & Bookhardt, PA, to act on his behalf concerning claim at the NPFC.
- Deepwater Horizon Lost Earnings/Income Worksheet for Jimmy Boswell dated 13 December 2011.
- Claimant's Florida Driver License, issued 10-16-2007.
- Claimant's Florida Mortgage Broker License, expiring 8-31-2011.
- Unsigned, undated letter, "To Whom It May Concern", from Jimmy C. Boswell describing his claim.
- 2008 Form 1040, with Schedules A, D, & E and Forms 6251, 2106, & 8582.
- 2009 Form 1040, with Schedules A, D, & M; Forms 2210, 6251, 2106, 5695, 8582, & Worksheets; and W-2 Summary.
- 2010 Form 1040, with Schedules A, D, & M; Forms 2210, 6251, 2106, 5695, 8582, Worksheets and Required Summary; and 1099-R & W-2 Summary.
- Pay Slip and null check from Security One Lending, dated 30 November 2011.
- Claimant's GCCF authorization to be represented by Vance, Lotane & Bookhardt, P.A.

- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 23 February 2012.
- Claimant's GCCF Full Review Final Payment Claim Form dated 8 October 2011.
- Emails (2) from VLBClaims on 26 March 2011.

On 26 March 2012, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$174,555.10 for loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.⁵ The Claimant is a mortgage broker and loan officer at a mortgage business in Fort Walton Beach, Florida. He asserts that he lost income in 2010 by having a reduced volume of business, caused by the spill.⁶ Additionally, the Claimant asserts additional losses due to an "industry effect multiplier".⁷

The Claimant indicates that he submitted a Claim to the GCCF on 8 October 2011.⁸ The Claimant also indicates that responsible party has denied his claim.⁹

The NPFC conducted an independent investigation of claim presentation and payments. The NPFC confirmed presentment to the GCCF of a Full Review Final Payment (FRP) Claim on 23 December 2011, assigned GCCF Claim No. 9550506 and Claimant Identification No. 1638678.¹⁰ The NPFC also reviewed the FRF Claim presented to the GCCF and confirmed that the claim amount of \$174,555.11 had been presented to the GCCF.¹¹ Based upon the information provided and independent verification by the NPFC, this claim can be adjudicated in the full amount of damages presented to the NPFC, \$174,555.10.

NPFC Determination

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.

After an initial review, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses. The Claimant was given 14 days to respond to the letter, dated 3 May 2012.¹² To date, no response has been received.

The NPFC has considered all documentation and information presented by the Claimant.

This claim is denied because the Claimant failed—to provide documentation and information requested by the NPFC, to prove the amount of the alleged loss, and to prove that the alleged loss was due to the Deepwater Horizon oil spill.

⁵ Vance, Lotane & Bookhardt, PA, letter to the NPFC received 26 March 2012.

⁶ Unsigned, undated letter, "To Whom It May Concern", from Jimmy C. Boswell describing his claim.

⁷ Lost Earnings/Income Worksheet for Jimmy Boswell dated 13 December 2011.

⁸ Vance, Lotane & Bookhardt, PA, letter to the NPFC received 26 March 2012 and Claimant's GCCF Full Review Final Payment Claim Form dated 8 October 2011.

⁹ Vance, Lotane & Bookhardt, PA, letter to the NPFC received 26 March 2012 and GCCF Denial Letter on Interim Payment/Final Payment Claim dated 23 February 2012.

¹⁰ Transition Program – U.S. Coast Guard Report as of 17 April 2012.

¹¹ GCCF Full Review Final Payment Claim Form dated 8 October 2011.

¹² NPFC letter dated 3 May 2012.

Failure to Prove Loss of Earnings

The Claimant asserts a loss of income in 2010 due to the Deepwater Horizon oil spill.¹³ The Claimant asserts that he lost income due to a downturn in mortgage business in 2010 due to the BP oil spill. The Claimant also asserts that the market for the mortgage business in the Northwest Florida area came to a halt when the oil spill made home owners' equity drop.¹⁴ The Claimant provided 2008, 2009, & 2010 federal tax returns, as well as 2009 & 2010 W-2 information,¹⁵ driver's license, 2011 mortgage broker license, pay information for 30 November 2011, and correspondence from the Claimant's attorney forwarding the claim.

The Claimant has not provided sufficient financial documentation on which his alleged loss can reasonably be measured; therefore, the alleged losses are not proven. Although the Claimant's documentation indicates that he is the broker for the business, he has submitted a claim as an individual employee of the company. If the Claimant submits a request for Reconsideration to the NPFC, additional financial evidence, such as pay information showing monthly income for 2008, 2009, 2010 & 2011, specific mortgages lost because of the oil spill, expenses saved during 2010 that otherwise would have been paid, as well as financial evidence of the effect of the oil spill on the business, must be submitted in order for his claim to be successful.

Failure to Prove Causation

The Claimant asserts that his alleged loss of income is due to the oil spill.¹⁶ The NPFC will not presume causation or lack thereof based upon business type or location. Causation is an element of every claim that must be proven the Claimant.

Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill. The Claimant has not provided documentation supporting that his company or its clients were adversely affect by the oil spill and that the clients did not move forward with mortgages because of the oil spill. Additionally, the Claimant has not established that his alleged losses were the result of the Deepwater Horizon oil spill as opposed to a myriad of other factors affecting his business such as the state of the economy, the housing market, the mortgage crisis, as well as, changes to both the federal and state regulatory environment affecting mortgage brokers.

The Claimant has not proven that the Deepwater Horizon oil spill was the cause of his alleged losses. If the Claimant submits a request for Reconsideration to the NPFC, evidence linking his loss and the loss of his company's business to the Deepwater Horizon oil spill must be submitted in order for his claim to be successful.

This claim is denied for the following reasons: (1) the Claimant has failed to demonstrate his alleged loss through financial documentation; and (2) the Claimant has failed to demonstrate that

¹³ Vance, Lotane & Bookhardt, PA, letter to the NPFC received 26 March 2012 and Claimant's GCCF Full Review Final Payment Claim Form dated 8 October 2011.

¹⁴ Unsigned, undated letter, "To Whom It May Concern", from Jimmy C. Boswell describing his claim.

¹⁵ 2008 Form 1040 with Schedules A, D, & E and Forms 6251, 2106, & 8582; 2009 Form 1040 with Schedules A, D, & M, Forms 2210, 6251, 2106, 5695, & 8582, Worksheets & W-2 Summary; and 2010 Form 1040 with Schedules A, D, & M, Forms 2210, 6251, 2106, 5695, & 8582, Worksheets & Required Summary, and 1099-R & W-2 Summary.

¹⁶ Vance, Lotane & Bookhardt, PA, letter to the NPFC received 26 March 2012; Unsigned, undated letter, "To Whom It May Concern", from Jimmy C. Boswell describing his claim; and GCCF Full Review Final Payment Claim Form dated 8 October 2011.

his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil (i.e., the Deepwater Horizon oil spill).

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/5/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: