

U.S. Department of
Homeland Security

**United States
Coast Guard**



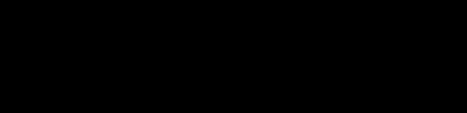
Director
National Pollution Funds Center
United States Coast Guard

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 4803 9067

5890/DWHZ
7 June 2012

Reginald Potter
c/o Vance, Lotane & Bookhardt, P.A.



Re: Claim Number: N10036-1741

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 N10036-1741 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 N10036-1741.

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: Reginald Potter
3543 Mobile Hwy
Pensacola, FL 32505

BY CERTIFIED MAIL RETURN RECEIPT REQ:
7011 1570 0001 4803 9050

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1741
Claimant	Reginald Potter
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$15,205.45

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 30 March 2012, Arthur S. Barksdale IV, Esq. on behalf of Reginald Potter (collectively the claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$15,205.45 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the spill, the Claimant was working for Gulf State Recycling in Pensacola, Florida.² The Claimant alleged that his employer lost numerous contracts as a result of the oil spill and he was eventually laid off due to the decreased activity.³

In order to calculate his losses, the Claimant subtracted his 2010 and 2011 income from 2009 to reach an average monthly loss. He then multiplied that number by an 'industry effect multiplier' to reach the requested sum certain of \$15,205.45.⁴

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.

¹ Law Firm Claim Cover Letter, signed 27 March 2012.

² Hardship Letter from the Claimant, undated.

³ Hardship Letter from the Claimant, undated.

⁴ Lost Earnings/Income Worksheet, 26 October 2011.

- (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 undertake, 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 27 March 2012;
- GCCF Denial Letter on interim Payment/Final Payment Claim, 23 December 2011;
- NPFC Authorization Agreement, 14 February 2012;
- GCCF Claim Signature Page, signed 1 September 2011;
- Hardship Letter from the Claimant, not dated;
- Copy of GCCF Claim, signed 1 September 2011;
- Lost Earnings/Income Worksheet, 26 October 2011;
- Copy of Drivers License;
- Second Hardship Letter from the Claimant, not dated;
- Letter from Employer Stating Claimant Had to be Let Go, 19 November 2010;
- 2009 Form W-2 Wage & Tax Statement;
- 2010 1040EZ Tax Return.

On 20 November 2010, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF seeking loss of profits and wages damages in the amount of \$5,000.⁵ The

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

Claimant was assigned Claimant ID 3424727 and the EAP claim was assigned claim # 503965.⁶ The RP/GCCF denied payment on this claim.

On 27 October 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 \$15,205.45.⁷ The Claimant retained Claimant ID 3424727 and the FRF claim was assigned claim # 9527377.⁸ The RP/GCCF denied payment on this claim.

On 30 March 2012, the Claimant submitted this claim to the NPFC seeking \$15,205.45 in loss of profits and impairment of earning capacity damages.⁹ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.¹⁰ 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 \$15,205.45. Accordingly, this claim considers and addresses both of the Claimant's GCCF claims, specifically GCCF Claim #'s 503965 and 9527377.

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.

Here, 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 26 April 2012, the NPFC requested that the Claimant provide additional documentation to meet the requirements of the law listed above, including (1) tax returns, (2) business records demonstrating losses at his place of business and (3) documents to corroborate 2011 earnings.¹¹

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's place of business actually sustained losses and has thus failed to provide documentation sufficient to prove that the Claimant lost his job and sustained a financial loss because of the Deepwater Horizon oil spill. The provided documentation actually shows an increase in the Claimant's earnings between 2009 and 2010.¹²

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$15,205.45, and (2) that the alleged loss is due to the injury,

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 Law Firm Claims Cover Letter, signed 27 March 2012.

¹⁰ 33 C.F.R. § 136.103(a).

¹¹ NPFC Request for Additional Information, 26 April 2012.

¹² 2009 Form W-2 Wage & Tax Statement and 2010 Form 1040EZ.

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: *6/7/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: