

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
30 April 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Certified Mail Number: 7011 1570 0001 2446 4463

Vance, Lotane & Bookhardt, P.A.



RE: Claim Number: N10036-1703

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 N10036-1703 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for further explanation.

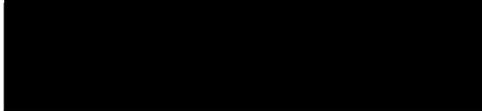
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1703.

Mail reconsideration requests to:

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

Sincerely



National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary / Determination Form
(2) Documentation Provided by the Claimant

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Certified Mail Number: 7011 1570 0001 2446 4456

George D. Gordon
1744 Wren Way
Niceville, FL 32578

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1703
Claimant	: Master Builders of Destin, Inc.
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$3,336,462.00

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 5 March 2012, Arthur S. Barksdale, Esq., on behalf of George D. Gordon and Master Builders of Destin, Inc. (collectively referred to as "the Claimant") presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$3,336,462.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ This alleged loss is associated with the Claimant's loss of two contracts, cancelled after the oil spill.²

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 from the Claimant's attorney to the NPFC received on 5 March 2012.

² Claimant's GCCF Full Review Final Payment Claim Form signed by George Gordon on 3 October 2011, Claimant's letter to GCCF dated 16 January 2011.

- (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 a large amount of documentation, which is listed in Enclosure (2).

Prior to presentment of this claim to the NPFC, the Claimant submitted three claims to the GCCF, an Emergency Advance Payment (EAP) Claim and two Full Review Final Payment (FRF) Claims.³ GCCF Claimant Identification # 3290498 applied to each.⁴ In addition, the NPFC verified that the Claimant was issued GCCF Claim # 346608 for his 26 October 2010 EAP Claim, GCCF Claim # 9161697 for his 9 February 2011 FRF Claim, and GCCF Claim # 9553471 for his 5 January 2012 FRF Claim.⁵ The NPFC also verified that the 26 October 2010 EAP Claim sought damages of \$176,478.00, that the 9 February 2011 FRF Claim sought unspecified damages and that the 5 January 2012 FRF Claim sought damages of \$3,336,461.80.⁶ All of these claims have been denied.⁷

On 5 March 2012, the Claimant submitted this claim to the NPFC, seeking \$3,336,462.00 in loss of profits and impairment of earning capacity damages.⁸ The NPFC may adjudicate this claim in the full amount of damages presented to the NPFC. Further, because the subject matter of both the EAP and FRF Claims before the GCCF and this claim appear to be based upon the same subject matter, i.e. that the Claimant lost income as a result of the Deepwater Horizon oil spill, the NPFC deems this Claim Summary Determination as being outcome determinative for the Claimant's GCCF claims.

³ GCCF Denial Letter on Interim Payment/Final Payment Claim dated 10 February 2012 and GCCF – U.S. Coast Guard Report as of 17 April 2012.

⁴ GCCF – U.S. Coast Guard Report as of 17 April 2012.

⁵ GCCF – U.S. Coast Guard Report as of 17 April 2012.

⁶ GCCF – U.S. Coast Guard Report as of 17 April 2012.

⁷ GCCF – U.S. Coast Guard Report as of 17 April 2012.

⁸ Letter from the Claimant's attorney to the NPFC received on 5 March 2012.

NPFC Determination

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 Section 2702(b) of OPA. 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 has considered all documentation presented by the Claimant.

In support of this claim, the Claimant included, among other things, IRS Tax Return Transcripts for 2008, 2009, and 2010; his last FRF Claim; photo ID; three letters of explanation; complete tax returns for 2008, 2009, and 2010; monthly Profit & Loss Statements for 2008, 2009, and 2010; an annual Profit & Loss statement for 2011 and Profit & Loss Detail for 2011; a copy of the Claimant's complaint against one of his prime contractors; the GCCF's 10 February 2012 FRF Claim Denial Letter; project summaries & payment/credit details for 2008 to 2010 projects; and additional explanations.

In the course of reviewing this claim, the NPFC found that Master Builders of Destin, Inc. had been incorporated under the laws of Florida as a Domestic Profit Corporation, but is presently inactive, having filed for administrative dissolution on 23 September 2011.⁹

The Claimant asserted to the GCCF that his lack of income in early 2010 was because he was not paid in full on a contract that was completed in February 2010.¹⁰ The Claimant makes no assertion that the contract for which he did not receive payment was associated with the oil spill and provided a copy of his complaint against the General Contractor for that project.¹¹

The Claimant does assert that his losses caused by the oil spill stem from the loss of two contracts that were cancelled after the oil spill.¹² The Claimant names the General Contractor (GC) as Golden Giant, Inc. of Kenton, Ohio, as the GC for both contracts.¹³

The NPFC contacted Golden Giant, Inc. to verify that they had a verbal contract or agreement to use the Claimant on the marina projects in Corpus Christi, TX, and Fort Meyers, FL, and that those contracts were cancelled because of the oil spill. Both the Sales Executive and the Marina Project Manager addressed the NPFC questions. They stated that they did not have a contract, written or verbal, with Master Builders of Destin, Inc. for any work on marinas for Corpus Christi or Fort Meyers. Golden Giant did use the Claimant for one job in Destin 10 years or more ago, but not since. The Claimant may have been called for a price to install. But neither the Corpus Christi nor the Fort Meyers project was awarded in 2010 and Golden Giant is still working to get them.¹⁴

When the Claimant was asked to provide the name of his point of contact at Golden Giant Inc., the Claimant's response was "Richard".¹⁵ The NPFC asked Golden Giant if they have or

⁹ State of Florida Detail by Entity Name for Master Builders of Destin, Inc., accessed from www.sunbiz.org on 27 April 2012.

¹⁰ Claimant's letter, Claim # 3290498, to Gus [GCCF] dated 6 December 2011.

¹¹ Complaint Re: Case No 10 CA 5258, Circuit Court in and For Okaloosa County, Florida.

¹² Claimant's GCCF Full Review Final Payment Claim Form signed on 3 October 2011 and Claimant's letter to GCCF dated 16 January 2011.

¹³ Claimant's letter to GCCF dated 16 January 2011.

¹⁴ Phone conversation on 26 March 2012 with NPFC Staff, R. Lohrber (Golden Giant) and R. Roseberough (Golden Giant).

¹⁵ NPFC letter of 27 March 2012 requesting additional information and Claimant's answers to Coast Guard letter dated 27 March 2012.

previously had a "Richard" in sales, marketing or estimating, or working with marinas, and was told there has been no one with that first name employed at Golden Giant in the last 10 years, except a person who worked in drafting for a while 5 years ago. He would have had nothing to do with contracting issues.¹⁶

Based on the foregoing, the NPFC has concluded that this submission contains several misrepresentations of fact to support allegations contained in this claim.

Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. §§ 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

This claim is denied because the Claimant has materially misrepresented substantial elements of this claim in an attempt to falsely obtain funds from the Federal Government.

Claim Supervisor: NPFC 

Date of Supervisor's Review: 4/30/12

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁶ Phone conversation on 27 April 2012 between R. Lohrber (Golden Giant) and NPFC Staff.

1. Unsigned Vance, Lotane & Bookhardt, P.A. letter dated 2 March 2012 and received 5 March 2012.
2. NPFC Authorization Agreement for Master Builders of Destin, Inc. naming Vance, Lotane & Bookhardt, P.A. to act on its behalf concerning its claim to the NPFC.
3. IRS Tax Return Transcript, 1120S, for tax year 2008.
4. IRS Tax Return Transcript, 1120S, for tax year 2009.
5. IRS Tax Return Transcript, 1120S, for tax year 2010.
6. GCCF Full Review/Final Payment Claim Form (14 pages) dated 3 October 2010.
7. Deepwater Horizon Oil Spill Lost Earnings/Income Worksheet dated 31 December 2011.
8. Florida Driver License, Class E, dated 26 December 2007.
9. Claimant letter to the GCCF dated 21 October 2011.
10. Claimant's 2008 Tax Form 1120S, U.S. Income Tax Return for an S Corporation, with Statements 1 through 9, Schedule K-1, Schedule K-1 Non-deductible Expenses, and Two-Year Comparison.
11. Monthly Profit & Loss statements for January through December 2008, pages 1 and 3 only (July - December 2008 missing).
12. Claimant's 2009 Tax Form 1120S, U.S. Income Tax Return for an S Corporation, with Statements 1 through 9, Schedule K-1 (Shareholder 1), Schedule K-1 Non-deductible Expenses, and Two-Year Comparison.
13. Monthly Profit & Loss statements for January through December 2009, page 1 only (July - Dec. 2009 and 2009 Total missing).
14. Claimant's 2010 Tax Form 1120S, U.S. Income Tax Return for an S Corporation, with Statements 1 through 10, Schedule K-1 (Shareholder 1), Schedule K-1 Non-deductible Expenses, Two-Year Comparison.
15. Monthly Profit & Loss statements for January through December 2010, pages 1, 2 & 3.
16. Profit & Loss Detail for January through December 2011, page 1.
17. Annual Profit & Loss Statement, January through December 2011, page 1, annotated with note that business closed on 7/1/2011.
18. Claimant's letter to GCCF, Re: Claim 3290498, dated 6 December 2011.
19. Complaint Re: Case No 10 CA 5258, Circuit Court in and For Okaloosa County, Florida.
20. Claimant's letter to GCCF dated 16 January 2011, Re: Jobs for 2009/2010.
21. Claimant's undated letter to GCCF Re: Claim 3290498.
22. Signature page of GCCF Client Authorization Form assigning Vance, Lotane & Bookhardt as claimant's attorneys for GCCF claim(s), dated 3 October 2011.
23. GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 10 February 2012.
24. VLB Claims email to NPFC dated 2 March 2012.
25. VLB Claims email to NPFC dated 13 April 2012 with attachments.
26. Claimant's answers to Coast Guard letter dated 27 March 2012.
27. Lost Earnings/Income Worksheet dated 31 December 2012.
28. Project summary: 2901 Maintenance Hanger, Ohopaki General Contracting.
29. Payments and Credits statement for 2901 Maintenance Hanger.
30. Project summary: 2805 Hilton Aurora - Okaloosa Island, Ozean Marine Development, LLC.
31. Project summary: 2804 Launch Pad, Ozean Marine Development, LLC.
32. Payments and Credits statement for 2804 Launch Pad.
33. Project summary: 2803 Side Bldg/Rest./Bridge, Ozean Marine Development, LLC.
34. Payments and Credits statement for 2803 Side Bldg/Rest./Bridge.
35. Project summary: 2802 Steel Erection, Ozean Marine Development, LLC.

36. Payments and Credits statement for 2802 Steel Erection.
37. Project summary: 2801 Steel Erection, Ozean Marine Development, LLC.
38. Payments and Credits statement for 2801 Footers.
39. 2009 Profit & Loss Statement, Monthly.
40. 2008 Profit & Loss Statement, Monthly.