

U.S. Department of
Homeland Security

United States
Coast Guard



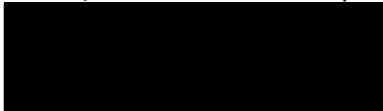
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL -- RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4234

5890
20 April 2012

Vance, Lotane & Bookhardt, P.A.



RE: Claim Number: N10036-1704

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 N10036-1704 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 N10036-1704.

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

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4241

Copy to: John Mack
306 Flannan Street
Pensacola, FL 32507

CLAIM SUMMARY / DETERMINATION FORM

Claim Number:	N10036-1704
Claimant:	John Mack
Type of Claimant:	Individual (US)
Type of Claim:	Loss of Profits and Earning Capacity
Amount Requested:	\$10,676.80

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 John Mack (collectively referred to as "the Claimant") presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$10,676.80 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ This alleged loss is associated with cut backs in hours and wages resulting from the oil spill while the Claimant was employed by a moving and storage company in Pensacola, Florida.² The Claimant stated—

Now that I am back to full time work there is no work to go to. I was and still am in the moving business industry and it was and still is greatly [a]ffected by the oil spill. Nobody really ha[s] been moving to this area due to the fact that oil is still washing ashore and will be for a long time to come.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:

¹ Letter from the Claimant's attorney to the NPFC signed 2 March 2012 and received on 5 March 2012.

² Signed, but undated letter from the Claimant to BP and the Claimant's 18 November 2011 letter, "To Whom It May Concern".

³ Signed, but undated letter from the Claimant to BP.

- (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.
- (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:

- Letter from the Claimant's attorney to the NPFC signed 2 March 2012 and received on 5 March 2012.
- NPFC Authorization Agreement dated 1 February 2012.
- GCCF Denial Letter on Interim Payment /Final Payment Claim, dated 11 January 2012.
- GCCF Full Review Final Payment Claim Form dated 6 September 2011.
- Deepwater Horizon Oil Spill Lost Earnings/Income Worksheet dated 19 December 2011.
- Social Security card issued 13 February 2009.
- Florida Identification Card issued to the Claimant.
- Signed, but undated letter from the Claimant to BP.
- Claimant letter dated 18 November 2011, "To Whom It May Concern".
- 2008 Form W-2 from BR Relocations, Inc.
- 2009 Form W-2 from BR Relocations, Inc.
- 2010 Form W-2 from BR Relocations, Inc.
- BR Relocations, Inc. pay record #7162 dated 10-21-2011.
- BR Relocations, Inc. pay record #7473 dated 12-30-2011.
- GCCF Claimant Authorization Form dated 6 September 2011.

- The UPS Store fax cover sheet to BP Settlement dated 16 January 2012.
- Undated and unsigned letter from Ronald Sellars to BP.
- Undated Change of Address page.
- Email from VLBClaims to NPFC (ARL-PF-NPFC Claims Info) dated 2 March 2012.

Prior to presentment of this claim to the NPFC, the Claimant submitted two claims to the GCCF and was issued GCCF Claimant Identification # 3499987.⁴ The NPFC verified that the Claimant was issued GCCF Claim # 9295079 for his Interim Payment Claim (IC Q1-2011) and GCCF Claim # 9551320 for his GCCF Final Claim (FRF).⁵ The NPFC also verified that the IC Q1-2011 Claim was presented on 3 March 2011, seeking damages of \$5,000.00, and that the FRF Claim was presented on 28 December 2011, seeking damages of \$10,676.80.⁶ Both the IC Q1-2011 claim and the FRF Claim have been denied.⁷

On 5 March 2012, the Claimant submitted this claim to the NPFC, seeking \$10,676.80 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 IC Q1 2011 and the 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.

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, his explanation letter to BP, his letter "To Whom It May Concern" dated 18 November 2011 and a letter from his supervisor at the moving & storage company. The first letter represented that the oil spill had greatly affected the moving business industry and there was no work. This letter also stated that word of the oil spill has reached [people], nobody is moving in or out of our city and that has killed [the Claimant's] profession.⁹ Another letter indicates that the Claimant's hours had been cut back and he had lost wages in 2010 and 2011 because of the oil spill.¹⁰ A third letter, allegedly from the Claimant's supervisor, attests to that both the business and the Claimant's income have lessened because of the oil spill. It further states that the Claimant's hours had been cut 1/2 in the winter and by 1/3 in summer and resulted in an estimated [\$]7,500 loss of income from Coastal Moving due to [the] oil spill.¹¹

⁴ GCCF Denial Letter on Interim Payment/Final Payment Claim dated 11 January 2012 and GCCF – U.S. Coast Guard Report as of 12 April 2012.

⁵ GCCF – U.S. Coast Guard Report as of 12 April 2012.

⁶ GCCF – U.S. Coast Guard Report as of 12 April 2012.

⁷ GCCF Denial Letter on Interim Payment/Final Payment Claim dated 11 January 2012.

⁸ Letter from the Claimant's attorney to the NPFC signed 2 March 2012 and received on 5 March 2012

⁹ Signed, but undated letter from the Claimant to BP.

¹⁰ Claimant letter dated 18 November 2011, "To Whom It May Concern".

¹¹ Undated and unsigned letter from Ronald Sellars to BP.

In the course of review of this claim, the NPFC found that Coastal Moving & Storage of Northwest Florida is a fictitious name under the laws of Florida for BR Relocations, Inc.¹² The NPFC contacted the manager at Coastal Moving & Storage of Northwest Florida to verify employment for both the Claimant and the supervisor who allegedly authored the unsigned letter that was provided with the claim.

The employer confirmed that both the Claimant and the supervisor were his employees. The employer also stated that he asked the supervisor if he had written the letter which stated the Claimant's hours at the company had been cut because of the oil spill. The employer stated that the supervisor did not write the letter. The employer also advised the NPFC that he asked the Claimant about the letter and the Claimant said that he had written the letter without the supervisor's approval. Finally, the employer stated that his company had not lost money because of the oil spill. If they had, he would have submitted a claim, but they did not.¹³

Based on the foregoing, the NPFC has concluded that this submission contains several misrepresentations of fact.

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 Claims Adjudication Division*

Date of Supervisor's Review: *4/20/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² State of Florida Fictitious Name Detail for Coastal Moving & Storage of Northwest Florida, accessed from www.sunbiz.org on 28 March 2012.

¹³ Phone conversation between "Jay" Bradshaw (owner and manager of Coastal Moving & Storage) and NPFC staff on 28 March 2012.