

U.S. Department of
Homeland Security

United States
Coast Guard

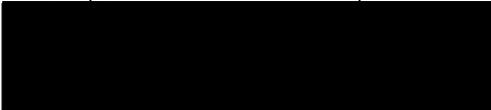


Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
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5890
14 May 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4838

Vance, Lotane & Bookhardt, P.A.



RE: Claim Number: N10036-1707

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 N10036-1707 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 N10036-1707.

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

Copy to: Crystal Cooley
20190 Erin Pond Road E.
Seminole, AL 36574

CERTIFIED MAIL–RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4845

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1707
Claimant	: Crystal Cooley
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$66,739.00

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 IV, Esq., on behalf of Crystal Cooley ('jointly referred to as the 'Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$66,739.00 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant is an associate manager of a life insurance company who asserts lost earnings because of the oil spill.² The Claimant's stated losses fall into three loss areas: existing customer losses, losses of new customers and losses of services to businesses. The Claimant asserts that existing customers let their policies lapse because of a lack of funds from hours being cut or because they lost their jobs resulting in charge backs to the Claimant. The Claimant also asserts that the lack of funds likewise reduced the influx of new customers. Finally, in another area of sales, the sale of business protection planning also fell off because so many businesses failed.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.

¹ Letter dated 5 March 2012 from the Claimant's attorney to the NPFC.

² Claimant's Full Review Final/Review Payment Claim Form dated 31 August 2011.

³ Claimant's Full Review Final/Review Payment Claim Form dated 31 August 2011 and Claimant letter dated 31 August 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 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 her claim, the Claimant presented the documentation in Enclosure (2).

On 5 March 2012, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$66,739.00 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.⁴ The Claimant indicated that she submitted a claim the GCCF and that the claim was denied.⁵

The NPFC confirmed presentment to the GCCF of three claims: (1) an Emergency Action Payment (EAP) Claim on 31 August 2010 in the amount of \$45,000.00; (2) a Full Review Final Payment (FRP) Claim on 10 October 2011 in the amount of \$66,739.00; and (3) an FRF Claim on 10 January 2012 in the amount of \$66,739.00. The NPFC also confirmed that the GCCF applied Claimant ID No. 3004620 to all three claims, Claim No. 942678 to the EAP Claim, and Claim Nos. 9523410 and 9554943 to the first and second FRF Claims, respectively. Finally, the NPFC confirmed that the GCCF had denied all three claims.⁶

⁴ Letter dated 5 March 2012 from the Claimant's attorney to the NPFC.

⁵ Claimant's Full Review Final/Review Payment Claim Form dated 31 August 2011 and GCCF Denial Letter on Interim Payment/Final Payment Claim dated 18 January 2012.

⁶ Transition Program – U.S. Coast Guard Report as of 1 May 2012.

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, \$66,739.00. Further, because the claim before the NPFC and the Claimant's claims before the GCCF 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 for loss of income in the amount of \$66,739.00.

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. The NPFC considered all documentation presented by the Claimant.

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

Following an initial review of the claim, the NPFC sent the Claimant a letter requesting additional information 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 27 March 2012.⁷ An extension was granted for the Claimant to respond by 4 May 2012.⁸ To date, no response has been received.

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

Failure to Prove Loss of Earnings

The Claimant asserted that her loss in income was due to a reduction in 2010 business in three areas, all caused by the Deepwater Horizon oil spill. The Claimant provided 2008, 2009 and 2010 federal tax returns⁹ that include the Claimant's 2009 and 2010 W-2 Forms from the insurance company. These documents indicate reduced income in 2010 when compared to 2009.¹⁰ The Claimant also provided a copy of her 2010 Alabama income tax return and supporting letter from her employer which states that the company's life insurance sales were drastically affected by the gulf oil spill. The employer stated that existing clients were dropping policies that they had put in place many years before and that his office sustained half of the expected [new] sales in 2010 and not much better in 2011.¹¹ While these statements support the Claimant's general assertions that business was down, the Claimant has not provided the specific financial documentation that could be used to verify her employer's assertions.

⁷ NPFC letter dated 27 March 2012.

⁸ Phone conversation between Claimant's attorney and NPFC Staff on 20 May 2012.

⁹ The Forms 1040 are joint returns with the Claimant's husband.

¹⁰ 2009 Form W-2 from the American General Life and Accident Company (AGLA) and 2010 Form W-2 from AGLA.

¹¹ Letter from General Manager of American General Life and Accident Insurance Company, 'To Whom It May Concern Regarding Oil Spill', dated 27 December 2011.

Failure to Prove Causation

The NPFC requested that the Claimant provide evidence or documentation that would indicate that damages claimed were caused by the Deepwater Horizon oil spill.¹² 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.

Here, the Claimant asserted that her loss in income was due to a reduction in 2010 business in three areas caused by the Deepwater Horizon oil spill. The Claimant asserts that existing customers let their policies lapse because of a lack of funds from hours being cut or because they lost their jobs, resulting in charge backs to the Claimant. The Claimant also asserts that the lack of funds (cuts in hours and losses of jobs) likewise reduced the influx of new customers. Despite her assertions, the Claimant provided no specific documentation to support her theory that existing customers cancelled policies because of the oil spill or that the alleged lack of new customers was a result of the oil spill.

Finally, in another area of sales, the Claimant asserts that the sale of business protection planning also fell off because so many businesses failed.¹³ The Claimant has not provided documentation showing that part of her existing clients cancelled policies, such as statements from customers who cancelled policies due to the oil spill or contact information for those customers, or that potential new clients failed to materialize due to the oil spill, not other causes. The Claimant has not provided documentation that proves the Deepwater Horizon oil spill was the cause of the losses asserted.

Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill. If the Claimant submits a request for Reconsideration to the NPFC, evidence linking her loss and the loss of her employer to the Deepwater Horizon oil spill must be submitted.

This claim is denied for the following reasons: (1) Claimant has failed to meet the evidentiary burden to provide all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim; (2) Claimant has failed to demonstrate the alleged loss through adequate financial documentation; and (3) Claimant has failed to demonstrate that her 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.

Claim Supervisor: *NPFC Claims Adjudication Division* 

Date of Supervisor's Review: *5/14/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² NPFC letter dated 27 March 2012.

¹³ Claimant's Full Review Final/Review Payment Claim Form dated 31 August 2011.

Enclosure (2)
Documentation Provided by the Claimant
N10036-1707

- Unsigned Vance, Lotane & Bookhardt, P.A. letter dated 2 March 2012 and received 5 March 2012.
- Copy of Claimant's authorization dated 7 February 2012 for Vance, Lotane & Bookhardt, PA, to act on his behalf concerning claim at the NPFC.
- GCCF Full Review/Final Payment Claim Form dated 31 August 2011.
- Deepwater Horizon Oil Spill Worksheet for Lost Earnings/Income, dated 2 October 2011.
- Claimant's Florida Driver License, Class E, dated 15 November 2008.
- Claimant's Letter to the GCCF dated 31 August 2011.
- 2008 Form W-2 from U.S. Postal Service.
- 2008 Form W-2 from American General Life and Accident Insurance Company.
- 2008 Federal Income Tax Form 1040, with Schedules B & E and Form 6251, Form 2106, and Schedule M.
- 2009 Form W-2 from American General Life and Accident Insurance Company.
- 2009 Federal Income Tax Form 1040, with Schedules A & E and Form 6251, Form 2106, and Schedule M.
- 2010 Form W-2 from American General Life and Accident Insurance Company.
- 2010 Federal Income Tax Form 1040, with Schedules A, B, & E and Form 6251, Form 2106, Form 5695 and Schedule M.
- Claimant's 2010 Alabama Form 40, with Schedules A, B, D, and E.
- Claimants' Attorney authorization form for Troy R. Lotane to represent claimant before the GCCF.
- American General Life and Accident Insurance Company fax cover sheet dated 7 February 2012.
- Letter from General Manager of American General Life and Accident Insurance Company, 'To Whom It May Concern Regarding Oil Spill', dated 27 December 2011.
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 18 January 2012.
- VLBClaims email to NPFC dated 2 March 2012.