

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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5890
14 May 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4784

Vance, Lotane & Bookhardt, P.A.



RE: Claim Number: N10036-1742

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 N10036-1742 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 N10036-1742.

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

Copy to: Reginald Foster
4765 Mobile Highway
Pensacola, FL 32506

USPS Mail Receipt No. 7011 1570 0001 2446 4791

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1742
Claimant	: Reginald Foster
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$43,704.84

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, Esquire, on behalf of Reginald Foster (jointly referred to as "the Claimant"), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$43,704.84 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ Claimant asserts that "due to the negative economic impact stemming from this accident throughout the communities surrounding the Gulf of Mexico, it is our position that GCCF has wrongly calculated the offer for our client's claim."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 Section 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 dated 22 February 2012 from the Claimant's attorney to the NPFC.

² Letter dated 22 February 2012 from the Claimant's attorney to the NPFC.

- (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

On 30 March 2012, Arthur S. Barksdale IV, Esquire, on behalf of Reginald Foster (jointly referred to as "the Claimant"), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$43,704.84 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The NPFC confirmed the Claimant's presentment of an Emergency Action Payment Claim (EAP) and two Full Review Final Payment (FRF) Claims to the GCCF. Claimant was issued GCCF Claimant ID # 3145267. The EAP Claim was submitted on 11 October 2010 in the amount of \$13,000.00 and assigned Claim Number 200041. Both FRF Claims were submitted on 10 October 2011 for the same amount \$43,704.84 and Claim Numbers 9523325 and 9569465 were assigned. The EAP Claim and FRF Claim Number 9569465 have been denied and FRF Claim Number 9523325 was issued a Final Payment offer that expired.³

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, \$43,704.84. Further, because the subject matter of the EAP Claim and both FRF Claims before the GCCF and this claim appear to be based upon the same subject matter, i.e. that the Claimant lost profits/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.

To support this claim the Claimant presented the following documentation:

- Letter dated 22 February 2012 from the Claimant's attorney to the NPFC.
- Alabama Non-Driver Identification Card, issued 18 October 2007.
- 2011 Form W-2 from Coastal Steel Erectors, LLC.
- NPFC Authorization Agreement signed 23 March 2012.
- Letter on GCCF letterhead dated 16 March 2012 from Transition Coordinator; subject 'Proposed Settlement of BP Deepwater Horizon Litigation.'
- VLBClaims email to NPFC dated 30 March 2012.
- VLBClaims email to NPFC dated 21 February 2012.

³ GCCF – U.S. Coast Guard Report as of 17 April 2012.

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.

The Claimant provided a submittal letter, an identification card, a 2011 W-2, a letter from the Transition Coordinator, and two emails to the NPFC.

This claim is denied because the Claimant failed to prove he experienced a loss in income and he failed to prove that his alleged loss was due to the Deepwater Horizon oil spill.

Failure to Loss of Income

No evidence or documentation of income prior to the Deepwater Horizon oil spill in 2010 or in previous years has been provided, no evidence of income in 2010 after the oil spill has been provided, and only evidence of \$766.54 in income for 2011 has been provided. No proof or calculations that total the amount claimed have been provided.

The Claimant has failed to prove any of his alleged losses.

Failure to Prove Causation by the Oil Spill

The Claimant has provided no evidence that would indicate the damages alleged were caused by the Deepwater Horizon oil spill. 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 by the Claimant. Here, the Claimant has asserted a loss of income/profits, but has failed to provide any documentation or other justification that the oil spill was the cause of the alleged loss.

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 the alleged loss of income/profits to the Deepwater Horizon oil spill must be submitted in order for his claim to be successful.

Based on the above, the Claimant has failed to prove that any of his alleged losses were due to the Deepwater Horizon oil spill.

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