

## **Auxiliary Claims Information**

The Coast Guard Policy, Analysis and table were prepared by Coast Guard Legal Services Command, Norfolk, VA. LSC Norfolk processes and adjudicates claims for reimbursement of damage to operational facilities when those claims exceed the limit that may be paid by the local CG command. The information was provided in response to the Auxiliary's request for clarification of the Coast Guard's reimbursement policies, applying federal law and Commandant's Instructions, including the Auxiliary Manual, the Auxiliary Operations Policy Manual, and the Coast Guard Claims Manual. The analysis and table does not establish new policy; it is offered as the Coast Guard's interpretation of existing policy. Each claim is fact-driven, so there may be claims that fall outside the scope of this table and may or may not be paid, given the specific circumstances of the claim. It is suggested that the claimant pay particular attention to note 2 referencing the "patrol cause" requirement for claims payment, because "patrol cause" colors nearly every Auxiliary claim analysis.

### **Coast Guard policy:**

The Coast Guard Claims and Litigation Manual, COMDTINST M5890.9, chapter 8 governs Auxiliary claims. Section 8.D.1 states that "[u]nless prohibited, a claim is payable if [a]t the time the damage or loss was sustained, the facility was assigned, by specific orders . . . to authorized Coast Guard duties and was operated within the scope and limitations of those orders." Section 8.E.5., however, states that a claim is not payable if it "[r]esults from the failure of the claimant to properly maintain the facility or equipment." Further, Section 8.E.6. prohibits us from paying a claim if it "[is] for the repair or replacement of a facility or equipment attributable to normal wear; [Discussion: to be compensable, the damage or loss must be due to some specific and identifiable cause in the patrol operations or evolution engaged in when the damage occurred. The mere fact that the Auxiliarist was under official orders at the time of the damage is not sufficient reason to pay the claim. If the damage or loss has no such identifiable "patrol" cause, it is presumed that it arose from normal wear, a defect in the facility or equipment, or failure to maintain the facility or equipment].

### **Analysis:**

i. Both statute and CG policy generally prohibit claims that flow from a mere engine or equipment failure of an Auxiliary facility, even where that facility is assigned to Coast Guard duty, and especially if the Auxiliarist caused the engine or equipment failure by failing to properly maintain his facility. First, the responsibility for such damage does not rest with the Coast Guard. See 14 U.S.C. 830. Second, absent additional information ( ie something specific that occurred while on patrol that caused or significantly contributed to engine failure), Legal Services Command would presume that an engine failure would be attributable to normal wear, which would prevent them from recommending that the Coast Guard pay out on the claim.

ii. This is, however, a rebuttable presumption. To attempt to rebut the presumption, the Auxiliarist could do things like provide evidence that the damage was not attributable to normal wear and tear. Such evidence could include maintenance records, signed statements from the

vessel's maintainer, manufacturer's information regarding the normal service life of the engine/equipment, proof that vessel/engine/equipment is new and therefore that its failure was unforeseeable, etc. If the Auxiliarist is not able to provide sufficient evidence to rebut the presumption, the analysis would be the same as it would be under Section 8.E.5 of COMDTINST M5890.9 and we would deny the claim. If the Auxiliarist provided evidence to attempt to rebut the presumption, we would weigh that evidence and analyze the factual basis underlying the claim during the adjudication process."

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## COAST GUARD AUXILIARY CLAIMS ADJUDICATION GUIDE

	DAMAGE TO THE FACILITY OR VESSEL	DAMAGE CAUSED BY THE FACILITY OR VESSEL
Auxiliarist-owned Auxiliary “Facility” <sup>1</sup>	CG-LSC-5 <b>COULD</b> settle a claim with an Auxiliary member for damage to the Auxiliary member’s personal property, including their vessel, <i>provided the damage occurred while the member was assigned to duty</i> <sup>2</sup> because “14 U.S.C. § 830 “authorizes the Coast Guard to pay <i>members</i> of the Auxiliary for specified damage to or loss of a facility.” <sup>3</sup> (emphasis added).	CG-LSC-5 <b>COULD</b> settle a claim with a third party for damage caused to the third party by the Auxiliary member provided the damage occurred while the member was assigned to duty. <sup>4</sup>
Auxiliary Unit-owned “Facilities.” <sup>5</sup>	CG-LSC-5 <b>WOULD NOT</b> settle a claim involving damage to an Auxiliary Unit-owned vessel, because these vessels are considered public vessels. <sup>6</sup> Repairs to an Auxiliary Unit-owned facility would come out of Auxiliary Operations funds in much the same way repairs to a CG RBM would come out of CG Operations funds. <sup>7</sup>	CG-LSC-5 <b>COULD</b> settle a claim asserted by a third party for damage or injury caused by an Auxiliary Unit-owned vessel, because like a CG RBM, an Auxiliary Unit-owned facility is a public vessel. <sup>8</sup>

<sup>1</sup> See Chapter 3.A.1 of USCG Auxiliary Manual, COMDTINST M16790.1G (noting that “A facility is a privately owned boat, yacht, personal watercraft, aircraft, fixed land, or land mobile radio station, at least 25 percent of which is owned by the Auxiliarist. Under certain conditions, the Director may grant a waiver for corporate or government owned facilities”).

<sup>2</sup> See Chapter 2.D.9.d of USCG Auxiliary Operations Policy Manual, COMDTINST M16798.3E; 14 U.S.C. § 830; **but see Chapter 8.E.5 of COMDTINST M5890.9 (prohibiting payment of a claim “for the repair or replacement of a facility or equipment attributable to normal wear; [Discussion: to be compensable, the damage or loss must be due to some specific and identifiable cause in the patrol operations or evolution engaged in when the damage occurred. The mere fact that the Auxiliarist was under official orders at the time of the damage is not sufficient reason to pay the claim. If the damage or loss has no such identifiable "patrol" cause, it is presumed that it arose from normal wear, a defect in the facility or equipment, or failure to maintain the facility or equipment”)**.

<sup>3</sup> See Chapter 8.A.1. of the Claims and Litigation Manual, COMDTINST M5890; 14 U.S.C. § 830.

<sup>4</sup> See Chapters D.11 and D.12 of USCG Auxiliary Operations Policy Manual, COMDTINST M16798.3E; 14 U.S.C. § 823a.

<sup>5</sup> See Chapter 1.B. of the USCG Auxiliary Operations Policy Manual, COMDTINST M16798.3E

<sup>6</sup> See Chapter 1.F.9 of the USCG Auxiliary Operations Policy Manual, COMDTINST M16798.3E (noting that “Auxiliary unit owned facilities will *at all* times be deemed to be assigned to authorized Coast Guard duty and be public vessels of the United States and vessels of the Coast Guard or government stations, as applicable”) (emphasis added); 14 U.S.C. §§ 826-827.

<sup>7</sup> **But see** Chapter 7.C.7 of USCG Auxiliary Manual, COMDTINST M16790.1G (noting that “Auxiliary unit-owned property is not normally covered . . . for property damage to the property itself due to funding and fiscal constraints”).

<sup>8</sup> See Chapter 1.F.9 of the USCG Auxiliary Operations Policy Manual, COMDTINST M16798.3E.

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<p>“Facility” owned by a corporation, including the Auxiliary Association, where the Director has accepted that facility for Coast Guard use.</p>	<p>CG-LSC-5 <b>WOULD NOT</b> settle a claim w/the corp. involving damage to a vessel owned by that corp., where the Director accepted that vessel for CG use.</p> <p>Sections 826 and 827 of Title 14 U.S. Code contemplate the CG’s use of corporate owned vessels. Chapter 1.B.3 of the Aux. Ops Manual authorizes the Director to accept corporate owned vessels after considering certain factors.</p> <p>Should the Director accept a corporate owned vessel, that vessel’s use would then be governed by 14 U.S.C. § 826 and 14 U.S.C. § 827—It would be a public vessel, <i>while assigned to duty with the CG.</i></p> <p>Should damage occur to a corporate-owned vessel, accepted by the Director, while the vessel was assigned to duty with the CG, we would thus apply the same analysis as an Auxiliary Unit-owned facility above, because such a vessel would be a public vessel.</p>	<p>CG-LSC-5 <b>COULD</b> settle a claim with a third party where the Auxiliary vessel, owned by a corporation, but accepted by the Director, caused damage to the third party, <i>while the Auxiliary vessel was assigned to duty with the CG.</i><sup>9</sup></p> <p>Section 821 (b) of Title 14 U.S. Code excludes Auxiliary corporations from coverage of non-contractual liability in certain contexts.<sup>10</sup> The Director, however, may accept a corporate owned vessel for CG service, in accordance with Chapter 1.B.3 of the USCG Auxiliary Operations Manual, COMDTINST M16788.3E<sup>11</sup> Such a vessel and its Auxiliarist operators,<sup>12</sup> would thus be protected, as appropriate, “[w]hile assigned to authorized Coast Guard duty.”<sup>13</sup></p>

<sup>9</sup> *But see* Chapter 1.B.3.a of USCG Auxiliary Operations Manual, COMDTINST M16788.3E (noting that “Auxiliarists must be aware the Department of Justice (DOJ) is not likely to provide representation to the corporate owner if someone sues the corporation because of Auxiliary related actions. However, DOJ has not refused to represent individual owners for privately owned facilities under similar circumstances”). CG-LSC-5 consulted with CG-0945 and both concur that this provision of COMDTINST M16788.3E is likely in error. CG-0945 is open to modifying language, as appropriate.

<sup>10</sup> *See* 14 U.S.C. § 821.

<sup>11</sup> *See* 14 U.S.C. §§ 826-827.

<sup>12</sup> *See* 14 U.S.C. § 823a.

<sup>13</sup> 14 U.S.C. § 827; *see* Chapter 5.J.2 of USCG Auxiliary Manual, COMDTINST M16790.1G (noting that “Auxiliarist may be exonerated from liability to injured parties or damage to property, but this action depends on the faces and circumstances surrounding the Auxiliarists involvement in the incident. Third party claims against Auxiliarists will be treated in the same manner as claims against other Coast Guard personnel in similar circumstances. The Department of Justice (DOJ) will make a final determination in certifying the Auxiliarist as an employee within the scope of their employment conducting authorized Coast Guard duties as a Federal employee in accordance with 14 U.S.C. § 823a(b). This determination will be based on the recommendation from the Office of Claims and Litigation (CG-0945)”).

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“Facility” owned by a corporation, including the Auxiliary Association, where the Director has not accepted that facility for Coast Guard use <b>OR</b> the damage occurs when the vessel is not assigned to authorized Coast Guard duty.	CG-LSC-5 <b>WOULD NOT</b> settle a claim to the corporation, because 14 U.S.C. § 830 makes appropriations available to pay claims of “members” of the Auxiliary, “when assigned to Coast Guard duty.” <sup>14</sup>	CG-LSC-5 <b>WOULD NOT</b> settle a claim with a damaged third party where the damage was caused by a corporate-owned Auxiliary vessel that had not been accepted by the Director <b>OR</b> was not assigned to authorized CG duty, because such a vessel would be operating outside the scope of “assign[ment] to authorized Coast Guard duty.” <sup>15</sup>
“Facility” owned by a corporation, including the Auxiliary Association, where the Director has accepted that facility for Coast Guard use and a Coast Guard Auxiliarist owns at least 25% of the vessel, individually.	CG-LSC-5 <b>COULD</b> settle a claim with the Auxiliarist for damage to the vessel, but would coordinate with CG-BSX to avoid duplicate payment of damages through AUX Operations funds. While not required to do so, CG-LSC-5 would also likely seek a release from the corporation that owned a share of the vessel, prior to settling the claim.	CG-LSC-5 <b>COULD</b> settle a claim with a third party where the Auxiliary vessel, owned in part by a corporation and in part by an individual Auxiliarist (≥ 25%), provided the Director had accepted the vessel into CG service <sup>16</sup> and the damage to the third party was caused by the vessel while the vessel was assigned to duty with the CG.
“Facility” owned by a corporation, including the Auxiliary Association, where the Director has accepted that facility for Coast Guard use, and an Auxiliarist or Auxiliarists own(s) 25% of the shares of the corporation that owns the vessel.	CG-LSC-5 <b>WOULD NOT</b> settle a claim with the Auxiliarist shareholders here, because the corporation, not the Auxiliarist(s), owns the vessel and 14 U.S.C. § 830 does not authorize the CG to pay a claim to a corporation in this context. If the Director had accepted the vessel into CG service, the corporation could pursue funding for repairs, as available, out of AUX Operations funds. <sup>17</sup>	CG-LSC-5 <b>COULD</b> settle a claim with a third party where the Auxiliary vessel, owned by a corporation where an Auxiliarist(s) owns a 25% stake of the corporation that owns the vessel, provided the Director had accepted the vessel into CG service <sup>18</sup> and the damage to the third party was caused by the vessel while the vessel was assigned to duty with the CG.

<sup>14</sup> 14 U.S.C. § 830.

<sup>15</sup> 14 U.S.C. § 827.

<sup>16</sup> See Chapter 1.B.3.b of USCG Auxiliary Operations Manual, COMDTINST M16788.3E.

<sup>17</sup> But see Chapter 7.C.7 of USCG Auxiliary Manual, COMDTINST M16790.1G (Noting that “Auxiliary unit-owned property is not normally covered . . . for property damage to the property itself due to funding and fiscal constraints”).

<sup>18</sup> See Chapter 1.B.3.b of USCG Auxiliary Operations Manual, COMDTINST M16788.3E.

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<p>“Facility” owned by a corporation, including the Auxiliary Association, where the Director has accepted that facility for Coast Guard use, and Auxiliarists comprise 25% of the membership of the corporation that owns the vessel.</p>	<p>CG-LSC-5 <b>WOULD NOT</b> settle a claim with the corporation, because mere membership of Auxiliarists in the corporation does not sufficiently establish an ownership interest in the vessel.<sup>19</sup> If the Director had accepted the vessel into CG service, the corporation could pursue funding for repairs, as available, out of AUX Operations funds.<sup>20</sup></p>	<p>CG-LSC-5 <b>COULD</b> settle a claim with a third party where the Auxiliary vessel, owned in part by a corporation whose membership is comprised of 25% Auxiliarists, provided the Director had accepted the vessel and the damage to the third party was caused while the vessel was assigned to duty with the CG.<sup>21</sup></p>

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<sup>19</sup> See 14 U.S.C. § 830.

<sup>20</sup> *But see* Chapter 7.C.7 of USCG Auxiliary Manual, COMDTINST M16790.1G (Noting that “Auxiliary unit-owned property is not normally covered . . . for property damage to the property itself due to funding and fiscal constraints”).

<sup>21</sup> See Chapter 1.B.3.b of USCG Auxiliary Operations Manual, COMDTINST M16788.3E.