

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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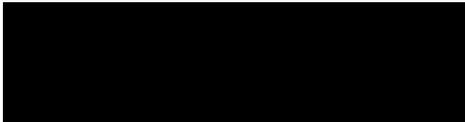
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1570 0001 4803 9180

5890/DWHZ

15 June 2012

Lawrence Tanner



Re: Claim Number: N10036-1778

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 N10036-1778 involving the Deepwater Horizon oil spill. 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 N10036-1778.

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

cc: Lawrence Tanner



By Certified Mail:
No. 7011 1570 0001 4803 9197

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1778
Claimant	Lawrence Tanner
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$247,569.20

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 23 April 2012, Arthur S. Barksdale IV, Esq., on behalf of Lawrence Tanner (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$247,569.20 in loss of profits and earnings capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant owned and operated Tandam Home Repairs, a home repair business in Gulf Breeze, Florida.² The Claimant makes no allegations about his loss, but included a letter that states that home sales in the area were down which resulted in a decrease in home repairs.³

In order to calculate his losses, the Claimant averaged his 2008 and 2009 earnings, and then subtracted 2010 and 2011 earnings from that number. The Claimant then determined an average monthly loss and multiplied that number by an 'industry effect multiplier' of 36 and added the total to the 2010 and 2011 losses to reach his requested sum certain of \$247,569.24.⁴

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 Law Firm Claim Cover Letter, signed 20 April 2012.

² Hardship Letter from the Claimant, signed 26 December 2010.

³ Support Letter from Eglin Realty, undated.

⁴ Lost Earnings/Income Worksheet, 7 October 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 this claim, the Claimant submitted the following documentation:

- Law Firm Claim Cover Letter, signed 20 April 2012;
- NPFC Authorization Agreement, signed 16 March 2012;
- GCCF Determination Letter on Final Payment Claim, 14 February 2012;
- Copy of GCCF Full Review Final Claim, signed 2 September 2011;
- Lost Earnings/Income Worksheet, 7 October 2011;
- Hardship Letter from the Claimant, signed 26 December 2010;
- Support Letter from Eglin Realty, undated;
- Copy of Santa Rosa County Occupational License;
- Copy of Santa Rosa county Business Tax Receipt;
- 2008 Individual Income Tax Return;
- 2009 Individual Income Tax Return;
- 2010 Individual Income Tax Return;
- Copy of GCCF Claim Signature Page, signed 2 September 2011;
- Company Bank Account Summaries for June 2010 through June 2011.

On 30 December 2010, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$3,432.⁵ The Claimant was assigned Claimant ID 1074541 and the FRF claim was assigned claim # 9108169.⁶ The RP/GCCF denied payment on this claim.

On 26 October 2011, the Claimant presented a second FRF claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$247,569.24.⁷ The Claimant retained Claimant ID 1074541 and the FRF claim was assigned claim # 9527843.⁸ The RP/GCCF denied payment on this claim.

On 10 January 2012, the Claimant presented a third FRF claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$247,569.24.⁹ The Claimant retained Claimant ID 1074541 and the FRF claim was assigned claim # 9527843.¹⁰ The RP/GCCF denied payment on this claim.

On 23 April 2012, the Claimant submitted this claim to the NPFC, seeking \$247,569.24 in loss of profits and impairment of earning capacity damages.¹¹ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.¹² Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$247,569.24.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. 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 this claim.

Here, in order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. This claim is denied because the Claimant has not provided sufficient documentation to prove either requirement.

In a letter dated 10 May 2012, the NPFC requested that the Claimant provide additional documentation to meet the requirements of the law listed above, including (1) profit and loss statements, (2) documentation of contracts cancelled due to the oil spill, and (3) documents to corroborate his 2011 earnings.¹³

The NPFC requested that the Claimant respond to the additional information request within 14 days of the date of the letter. As of the date of this determination, the Claimant has failed to respond. Information included in the Claimant's original submission is insufficient to prove that

⁵ Transition Program United States Coast Guard Report, 13 May 2012.

⁶ Transition Program United States Coast Guard Report, 13 May 2012.

⁷ Transition Program United States Coast Guard Report, 13 May 2012.

⁸ Transition Program United States Coast Guard Report, 13 May 2012.

⁹ Transition Program United States Coast Guard Report, 13 May 2012.

¹⁰ Transition Program United States Coast Guard Report, 13 May 2012.

¹¹ Law Firm Claim Cover Letter, signed 20 April 2012.

¹² 33 C.F.R. § 136.103(a).

¹³ NPFC Request for Additional Information, 10 May 2012.

the Claimant's place of business actually sustained losses due to the Deepwater Horizon oil spill. Documentation provided demonstrates a drop in revenue prior to 2010 and there is no evidence to link more recent losses to the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$247,569.24, and (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/15/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: