U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

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5890
2/16/2011

VIA MAIL AND EMAIL: [redacted]@comcast.net

[redacted]
Portland, OR 97223

RE: Claim Number: N10036-0023

Dear [redacted]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0023 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[redacted] Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/14/2011
Claim Number	: N10036-0023
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [redacted]
Amount Requested	: $114,749.00

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 from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT:

Claimant, [redacted] presented a claim in the amount of $79,205.00 to the National Pollution Funds Center (NPFC) on 28 September 2010, claiming a loss of profits and impairment of earning capacity resulting from the Deepwater Horizon incident. [redacted] amended his sum certain for this claim twice. On 05 October 2010 he amended the amount to $ 95,635 and on 10 November 2010 he amended the amount to $114,749.

[redacted] a Certified Public Accountant, entered into an Independent Contractors Agreement (ICA) with [redacted] Inc., of Houston, Texas, on 03 May 2010 to provide consulting work on a proposed acquisition project that was scheduled to be completed by early June 2010.[1] The initial term of [redacted] ICA was six months; this term was not a guarantee of work but an estimate. The ICA provided that the term could be extended for a one-month period; however, [redacted] asserts that it was "not unreasonable to expect an extension of the contract thru the end of the year, and perhaps beyond."[2] Under the terms of the ICA either party could terminate the contract with written notice.[3] The acquisition project was halted and [redacted] contract was terminated on June 3, 2010.

On or about December 13, 2010, the NPFC denied [redacted] claim on the grounds that his alleged loss of profits was due to [redacted] s decision to terminate the contract for business

[1] Exhibit A, Description of Services, attached to Independent Contractor Services Agreement with [redacted] Inc., effective 3 May 2010.

[2] See, Independent Contractor Services Agreement with [redacted] Inc., effective 3 May 2010. See paragraph 1. Terms; See, E-mail from [redacted] to [redacted] SUBJ: Claim Number N10036-0023, dated 27 October 2010.

[3] See, Independent Contractor Services Agreement with [redacted] Inc., effective 3 May 2010. See paragraph 1. Term and Section 5, Compensation.

reasons. Under the terms of the contract either party could cancel the contract in writing and the initial term of the contract was no guarantee of work or payment but only an estimate of the amount of time that would be required to complete the Services. Further, the NPFC noted that [redacted] stock prices were decreasing prior to the Deepwater Horizon incident.

[redacted] presented his claim for advance payment in the amount of $79,205.00 with the RP/GCCF on 06 July 2010, and was assigned Claim Number [redacted] He subsequently presented additional claims for advance payments to the GCCF in the amounts of $95,635 and $114,749. On 14 September 2010, the GCCF issued [redacted] a letter referring him to the Gulf Coast Restoration and Protection Foundation, stating that the GCCF does not handle claims seeking damages as a result of the moratorium on off-shore drilling. [redacted] submitted a request for reconsideration to the GCCF where his claim is currently under review.[4]

[redacted] mitigated the amount of his lost earnings with fees from other clients and Oregon unemployment compensation in the amount totaling $20, 551.00.[5]

On February 9, 2011, [redacted] requested reconsideration of the NPFC's December 13, 2010 denial based on the following information:

1. A statement dated January 13, 2011, by [redacted] that attested to the activity of the company's stock price on various dates during 2010, including time before and after the Deepwater Horizon incident;
2. A written analysis by [redacted] of [redacted] Consulting Group (undated), as an expert energy industry stock and investment analyst. The document provided [redacted]'s expert analysis on the volatility of [redacted] stock price before and after the incident. His analysis refers to disclosures made by [redacted] in the company's quarterly SEC 10-Q Filing for the period ending June 30, 2010 (copy of page 29 attached);
3. A [redacted] news article dated January 20, 2011, where [redacted] Chief Executive Officer (CEO) [redacted] mentions that two years ago, [redacted] was plotting to expand its fleet of rigs worldwide and now after the Deepwater Horizon incident, the article stated that the Houston-based company may sell itself after BP's well explosion in the Gulf of Mexico thrust the industry into regulatory limbo;
4. A [redacted] Financial news article dated November 30, 2010, discussed how the decline in Gulf of Mexico drilling is a daunting obstacle to profitability for [redacted]

Reconsideration Claim Analysis

The Claimant requested reconsideration via email on February 9, 2011[6]. To support his request for reconsideration, the Claimant provided the above referenced information to support his claim.

NPFC Determination on Reconsideration

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[4] See, E-mail from [redacted] to [redacted], SUBJ: FW: [redacted] ACK letter dated 01 October 2010.
[5] OSLTF Claim Form received at NPFC 10 NOV 10.
[6] See, E-mail from [redacted] to [redacted] SUBJ: REQUEST FOR RECONSIDERATION FOR REIMBURSEMENT OF NPFC CLAIM N10036-0023 (GCCF CLAIM NUMBER [redacted] - LOST EARNINGS, dated 09 February 2011.

In his request for reconsideration the Claimant continues to argue that his contract was terminated predominantly because of the Deepwater Horizon oil spill. He provided an analysis by [redacted] Consulting Group, an expert energy industry stock and investment analyst. The report included historical stock prices for [redacted] from 8 February 2010 (closing price $21.82) through 01 June 2010 (closing price $10.90). This reflects that [redacted] stock prices were in steady decline for more than two months before the Deepwater Horizon incident. There is no information in the submittals as to the cause of the decline prior to the incident. Thus, it is unclear what other influences were at play when the contract was terminated.

Other information in [redacted] enclosures reflects that other influences were at play after the incident. For instance, on page 29 of [redacted] quarterly SEC 10-Q Filing for the period ending June 30, 2010, it states in part in paragraph two…"As a result of this event, the government instituted additional regulatory oversight and control provisions with respect to offshore drilling. The effects of this well blowout, and the governmental and industry response to this event, have had and likely will continue to have a significant impact on the offshore drilling industry and our results of operations."

[redacted] also submitted a January 13, 2011, letter from [redacted], General Counsel, Chief Compliance Officer and Secretary of [redacted] This letter states that [redacted] Inc. provides shallow water drilling services in the Gulf of Mexico. Mr. [redacted] states that [redacted] contract was terminated because his "services were no longer necessary and the contract was terminated in advance of the contract expiration date of October 31, 2010." While [redacted] letter cites the decline in the stock price from the date of [redacted] first contract with [redacted] (March 16, 2010, closing price at $ 20.37) to his release on June 3, 2010 (closing price at $11.36), he does not specifically state that the termination was the result of the Deepwater incident.

The NPFC again denies the claim because the Claimant has not established that his alleged loss is due to injury, destruction or loss of property or natural resources and the resulting discharge or substantial threat of discharge of oil.

Claim Supervisor: [redacted]

Date of Supervisor's review: *2/16/11*

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments: