

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
5/13/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 0470 0000 8895 6152

Barataria Production Services, LLC
Attn: Mr. James Wessel, Managing Member
228 St. Charles Ave
Suite 1330B
New Orleans, LA 70152-2063

RE: Claim Number: N07016-002

Dear Mr. Wessel:

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 claim number N07016-002 involving Expert Oil and Gas, L.L.C incident. Please see the enclosed 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 N07016-002.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

[REDACTED]
Dawn Unglesbee
Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date : 5/13/2011
Claim Number : N07016-002
Claimant : Barataria Production Services, LLC
Type of Claimant : Corporate (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : Dawn Unglesbee
Amount Requested : \$277,578.48

Facts:

On January 21, 2007, at approximately 0141, the UTV *Cathy M. Settoon* was pushing barge CTCO-2002 when its starboard bow rake allided with wellhead #184748 owned by Expert Oil & Gas L.L.C. (Expert) in the Bayou Perot in the vicinity of Mile Marker 20 of the Intracoastal Waterway (ICW). The allision resulted in a well blowout that released crude oil into Bayou Perot, a navigable waterway of the United States. On January 25, 2007, the damaged well was capped and no longer leaking. Cleanup was determined complete by the United States Coast Guard on April 12, 2007. After investigation, U. S. Coast Guard investigators officially declared Expert the responsible party on February 23, 2007.

Claim and Claimant:

On August 13, 2007, Claimant, Barataria Production Services, L.L.C. (BPS), presented a claim to the National Pollution Funds Center (NPFC) seeking damages in the amount of \$277,578.48 for lost profits and impairment of earning capacity.¹ BPS is the owner and operator for four wells and a production facility in the Bayou Perot Field, Jefferson Parish, LA. Claimant argues that the removal actions associated with the discharge prevented Claimant's produced oil from being transported from the facility and Claimant was forced to shut in its wells for a period of time, resulting in a loss of profits.

Claimant seeks reimbursement in the amount of \$38,663.19 for standby time for the tug and spud barge from January 21, 2007 through January 25, 2007, \$4472.00 for BPS crew and extended travel time, \$43,135.19 for standby time charged to BPS post work, and \$191,308.10 for lost profits.

On September 13, 2007, the NPFC sent a letter to Claimant and asked the Claimant to go through each section and provide specific documentation and delineate as to how exactly Claimant arrived at each amount.² The NPFC specifically requested the following:

1. A copy of Barataria's well lease for Well #2 located in Bayou Perot.
2. Contracts and Agreements for the tug, spud barge, and coiled tubing unit, including standby costs.
3. Sum Certain Reconciliation as the NPFC is uncertain how Claimant arrived to the requested amount.
4. Tug's Master Log

¹ Claim submission

² Letter dated September 13, 2007 to Claimant from the NPFC.

5. "Downhole" explanation. In Claimant's submission he briefly talks about "downhole" work that needed to be done to Well #2. NPFC asked that Claimant provide evidence that Well #2 was operating prior to the oil spill incident and asked whether or not the "downhole" work was performed during the time period the well was shut in.
6. Well Shut In, Resetting of Blanking Tool and Implications: In Claimant's submission he speaks of a well being shut in and states that it wasn't until April 7, 2007 when he was able to get wire line to the location to reset Claimant's Blanking tool and swab the well to production. The NPFC asked Claimant to explain this process and implications and asked if the well remained shut in until April due to the wireline not being available and when was it that Barataria (Claimant) was made aware of the delay due to the wireline.
7. Travel: NPFC asked Claimant to provide documentation to backup his claim of travel.
8. Well #2's Operating Expenses. The NPFC asked that the Claimant provide monthly/quarterly operating expenses for Well #2 for the 12-month period preceding the oil spill incident as well as any and all monthly operating expenses since the well was back in production following the oil spill cleanup.
9. Lost Income Due to Lack of Production Explanation: The NPFC requested that Claimant explain why there was no production for three complete months and whether or not the waterway cleared and opened to traffic during this three month period and if not to provide documentation of the dates of closure.

Claimant was also asked to provide information as to where his wells are situated in comparison to the Expert Oil platform and to confirm who their barge company is, in particular for well #2 and how frequently that occurs.

Claimant was given 60-days from the date of the request (September 13, 2007) to provide the NPFC with the requested information.

On October 15, 2007, the NPFC sent Claimant a follow-up to the request for additional information letter and reminded Claimant that its deadline to have the information to the NPFC was November 11, 2007.³ On November 10, 2007, Claimant sent a letter to the NPFC requesting an additional 45 days to prepare to the NPFC's inquiry.⁴ On November 15, 2008 the NPFC granted Claimant until close of business on January 14, 2008, to complete its response to the NPFC's request for additional information. In a letter dated January 15, 2008, the NPFC granted Claimant's request for an additional ten days to complete the request for additional information and reminded Claimant that the NPFC requires the proximity of the four Barataria platforms to the Expert Oil Platform and the frequency in which Barataria serviced these platforms via the ICW.⁵

On January 27, 2008, Claimant sent a letter to the NPFC that included POLREP Three and suggested that he was going "locally" to seek attention for his claim.⁶ On January 28, 2008, the NPFC sent a letter to the Claimant stating the NPFC received his January 27, 2008 letter and that NPFC needed confirmation that his letter is informing us of BPS's desire to withdraw its claim submission and will pursue the responsible party through other means.⁷

³ Letter dated October 15, 2007 to Claimant from NPFC.

⁴ Letter dated November 10, 2007 to the NPFC from Claimant.

⁵ Letter dated January 15, 2008 to Claimant from NPFC.

⁶ Letter dated January 27, 2008 from Claimant to NPFC.

⁷ Letter dated January 28, 2008 from NPFC to Claimant.

On February 7, 2008, the NPFC sent Claimant an email making the Claimant aware that the NPFC has agreed to hold Barataria's loss of profits claim in abeyance while Barataria pursues court action against other parties for damages incurred as a result of the Expert Oil Spill Incident. The NPFC instructed Claimant that he provide status updates every 4-months.⁸

On March 9, 2010, the NPFC sent Claimant a status update email and requested that Claimant respond with an explanation of its future intentions as the NPFC is holding the claim in abeyance due to the civil action that Claimant intended to pursue.⁹

On April 5, 2011, the NPFC sent Claimant a status update email and requested that Claimant respond with an update and explanation in support of the civil action that is pending on the subject claim. NPFC further noticed Claimant that if the NPFC does not receive sufficient documentation within 30 days it will proceed to adjudicate the claim without the requested documentation and this could result in a negative outcome.¹⁰

On April 28, 2011, Claimant sent the NPFC a letter stating that "Barataria Production Services, LLC has not filed suit vs. Expert nor Settoon the tug owner as of yet until we have reviewed their settlement – i.e., we have not initiated a civil action as of this date."¹¹

To date, Claimant submitted none of the documentation requested in the NPFC September 13, 2008, letter.

Applicable Law:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.

⁸ Email dated February 7, 2008 from NPFC to Claimant.

⁹ Email dated March 9, 2009 from the NPFC to Claimant.

¹⁰ Letter dated April 5, 2011 from the NPFC to Claimant.

¹¹ Letter dated April 28, 2011 from Claimant to the NPFC.

(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.

Claim Analysis:

The claimant presented a claim to the NPFC for reimbursement of lost profits or impairment of earning capacity. The NPFC requested that the Claimant submit substantial documentation to support its claim. The NPFC granted Claimant's request for additional time to submit the additional information. The NPFC held the claim in abeyance for 3 years. Claimant has not provided the necessary information to support its claim.

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury, destruction or loss of real or personal property or 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 the claim. The NPFC considered all of the documentation presented by the Claimant.

NPFC Determination:

The NPFC requested additional supporting documentation in order to evaluate the claim. Claimant has failed to provide requested information to support its claim. The claim is denied because (1) Claimant failed to demonstrate he has a loss of profits in the amount claimed, (2) Claimant failed to provide an accounting of how he arrived at the alleged loss amount, and (3) Claimant failed to demonstrate that he has a loss of profits due to the injury, destruction

or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

AMOUNT: \$0.00

Claim Supervisor: *Donna Hellberg*

Date of Supervisor's review: *5/13/11*

Supervisor Action: *Approval of denial*

Supervisor's Comments: