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
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail:
arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

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5890/DWHZ
Claim # N10036-1313
23 August 2011

Mr. Aaron T. Brown
[redacted]

Re: Claim Number: N10036-1313

Dear Mr. Brown:

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 N10036-1313 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 N10036-1313.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1313
Claimant	Mr. Aaron T. Brown
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$5,000.00

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. 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 7 August 2011, Mr. Aaron T. Brown (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $5,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant, who works at a company in Morgan City, Louisiana which rents offshore rigging equipment and supplies, alleged that he lost wages as a result of the oil spill."[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] Optional OSLTF Claim Form dated 26 July 2011.

[2] Id

(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 undertake, 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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, 26 July 2011;
- Records of payments made to Claimant 2008-2011;
- 2010 State Form 1099G;
- 2010 W-2 Forms, Stephanie M. Brown, showing payments made by Beall's Inc.;
- 2009 W02 Forms, Stephanie M. Brown, showing payments made by Beall's Inc.;
- 2010 W-2 Forms, Aaron T. Brown, showing payments made by Morgan City Rentals, $39,234.17;
- 2009 W-2 Forms, Aaron T. Brown, showing payments made by Morgan City Rentals, $42,253.03;
- 2008 W-2 Forms, Aaron T. Brown, showing payments made by Morgan City Rentals, $41,537.89;
- 2008 Form 1040, showing wages of $41,538.00;
- 2008 Form 8812;
- 2008 Form 8863;
- 2008 Form 8800;
- Tax Documentation, State of Louisiana, 2008;
- 2009 Form 1040A, showing wages of $48,013.00;
- 2009 Form 2441;
- 2009 Form 8812;
- 2009 Form 8863;
- 2009 Form 8880;
- 2009 Schedule M (Form 1040A or 1040);
- 2010 Form 1040, showing wages of $47,435.00;
- 2010 Form 8880;

- 2010 Schedule M (Form 1040A or 1040);

Prior to presentment to the NPFC, the Claimant presented a Second Quarter Interim Claim (ICQ22011) for lost profits and earnings to the RP/GCCF. The Claimant was assigned ID # 3519479, and ICQ12011 was assigned claim # 9380401. This claim was denied on 20 May 2011.

On 7 August 2011, the Claimant presented this claim for loss of profits and earnings capacity to the NPFC. This determination shall address this claim for loss of profits and earnings capacity in the amount of $5,000.00 to the extent that this claim covers the same subject matter and damage amount claimed to the RP/GCCF in ICQ22011.[3] To the extent that the Claimant may have presented his ICQ22011 claim to the GCCF for an amount less than the $5,000.00 sought here, any portion of the alleged loss before the NPFC not previously presented to the GCCF is denied.

NPFC Determination

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 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 his claim.

In order to prove a claim for loss of profits and earning capacity, the Claimant must demonstrate (1) that he sustained a financial loss, and (2) that the loss was a result of the Deepwater Horizon oil spill.

Claimant provided pay stubs which show that the Claimant's pay did not decrease after the oil spill. Furthermore, upon contacting the Claimant's place of employment, the NPFC was informed that the business was not affected by the oil spill, and that the Claimant did not lose wages because of the oil spill.[4]

This claim is denied because Claimant failed to demonstrate that he sustained any financial loss as a result of the disch[redacted]tial threat of discharge of oil.

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***8/23/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[3] To date the NPFC has been unable to confirm the amount of the ICQ12011claim to the GCCF.
[4] PHONECON: NPFC Staff and representative of Morgan City Rentals, 18 Aug 2011.