U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4666 9342

5890/DWHZ
3 October 2011

Luis Rivera
[redacted]

Re: Claim Number: N10036-1317

Dear Mr. Rivera:

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 your claim number N10036-1317 involving the Deepwater Horizon oil spill. 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. If, however 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 N10036-1317.

Mail reconsideration requests to:

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

Sincerely,

[redacted]ivision
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1317
Claimant	Luis Rivera
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$8,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 18 August 2011, Luis Rivera (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking $8,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant works at Logan's Roadhouse restaurant in Gulfport, Mississippi.[1] The Claimant asserted that fewer tourists traveled to Gulfport due to the media attention regarding the Deepwater Horizon oil spill.[2] Further, the Claimant asserted that the reduced tourism caused a decrease in sales at Logan's Roadhouse, which ultimately led to a decrease in earnings for the Claimant.[3]

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.

[1] PHONECON with Logan's Roadhouse on 2 September 2011.
[2] Optional OSLTF Claim Form, dated 16 August 2011.
[3] Optional OSLTF Claim Form, dated 16 August 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 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 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

In support of his claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 16 August 2011;
- Paystubs from Logan's Roadhouse with the following deposit dates: 26 April 2010, 10 May 2010, 02 August 2010, 16 August 2010, and 15 August 2011;
- IRS Wage Income Transcript from 2008 - Form W-2 Wage and Tax Statement;
- Form W-2 Wage and Tax Statement from Copeland's for 2009; and
- Form W-2 Wage and Tax Statement from Logan's Roadhouse, Inc.

Prior to presenting this Claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF on 01 October 2010 in the amount of $4,800.00.[4] Claimant was assigned Claimant ID # 3072231 and Claim # 126780. The Claimant was paid $4,800.00 for this claim by the GCCF on 15 October 2010.[5] Additionally, Claimant filed a Full Review Final Payment (FRF) claim with the GCCF on 26 November 2010 in the amount of $50,400.00.[6] The Claimant was assigned Claim # 9039312. The FRF claim was denied by the GCCF on 1 July 2011.[7] Lastly, the Claimant filed a Quick Pay (QP) claim

[4] Report from the GCCF, dated 21 September 2011.
[5] GCCF Notice of Determination Emergency Advance Payment
[6] Report from the GCCF dated 21September 2011.
[7] Denial Letter on Interim Payment/Final Payment Claim, dated 1 July 2011.

with the GCCF on 10 August 2011.[8] He was assigned Claim # 9434265. The QP claim was denied by the GCCF on 12 August 2011.[9]

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., Claimant experienced reduced wages at Logan's due to the Deepwater Horizon oil spill. The NPFC deems Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1317 considers and addresses the damages claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 9039312 (FRF) and 9434265 (QP).[10]

NPFC Determination

The claim is denied. 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 documentation presented by the Claimant.

This claim is denied because the Claimant failed to prove that he suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that he experienced a loss of wages at Logan's Roadhouse to due to a decrease in tourism caused by the Deepwater Horizon oil spill.[11] The NPFC contacted Logan's Roadhouse to obtain verification of the Claimant's assertions and his alleged loss. Logan's Roadhouse informed the NPFC that the Claimant is a salaried employee and thus his wages do not fluctuate.[12] Logan's added that the Claimant does receive some bonus money, but that none of these earnings are guaranteed.[13] Regardless, Logan's could not confirm any connection between the Deepwater Horizon oil spill and a reduced bonus for the Claimant.[14]

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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: *N[redacted]dication Division*

Date of Supervisor's Review: ***10/2/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

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[8] Report from the GCCF dated 21September 2011.
[9] GCCF Denial Letter dated 12 August 2011.
[10] Claimant's EAP does not have proper presentment before the NPFC because Claimant was fully compensated by the GCCF for this claim; he was paid his full claimed amount of $4,800.00.
[11] Optional OSLTF Claim Form, dated 16 August 2011;
[12] PHONECON with Logan's Roadhouse on 2 September 2011.
[13] PHONECON with Logan's Roadhouse on 2 September 2011.
[14] PHONECON with Logan's Roadhouse on 2 September 2011.