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
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Phone: 1-800-280-7118
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6043

5890/DWHZ
25 October 2011

Gleb Trushkin
[redacted]

Re: Claim Number: N10036-1350

Dear Mr. Trushkin:

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 N10036-1350 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 N10036-1350.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1350
Claimant	Gleb Trushkin
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$15,000.00

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 30 August 2011, Gleb Trushkin (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking $15,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant owned a wholesale business in Gulf Shores, Alabama, which sold clothing, swimwear, and accessories to retail stores along the Gulf Coast in Florida and Alabama.[1] The Claimant asserted that, due to the Deepwater Horizon oil spill, tourists stopped coming to the Gulf Coast, which reduced the customers patronizing the area retail businesses.[2] The Claimant further asserted that, due to the reduced business of his retail customers, he had to accept many returns on merchandise already ordered and he didn't receive any new orders after the Deepwater Horizon oil spill.[3] The Claimant stated that he ultimately had to shut down the business in June/July of 2010 due to the downturn in business from the Deepwater Horizon oil spill.[4]

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).

[1] Letter of claim explanation titled "Explanation Letter", dated 1 July 2011.
[2] Letter of claim explanation titled "Explanation Letter", dated 1 July 2011.
[3] Letter of claim explanation titled "Explanation Letter", dated 1 July 2011.
[4] Letter of claim explanation titled "Explanation Letter", dated 1 July 2011.

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.
(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

The Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form, dated 07 July 2007[sic];
- Letter of claim explanation titled "Explanation Letter", dated 1 July 2011;

- 2010 Form 1040 Federal Income Tax Return, including Schedule C;
- Personal bank statements for the period: 18 January 2010 through 10 June 2010;
- Invoice from the Claimant to T-Shirt Center, dated 12 March 2010;
- Invoice from the Claimant to Blonde John's Surf, dated 19 March 2010;
- Invoice from the Claimant to Happy Shak, dated 07 April 2010;
- Invoice from the Claimant to Bungalows, dated 09 April 2010; and
- Invoice from the Claimant to Souvenir City, dated 17 July 2010.

Prior to presenting this Claim to the NPFC, the Claimant filed an Interim 2 (ICQ22011) claim with the GCCF for loss of profits on 08 June 2011 in the amount of $25,000.00.[5] The Claimant was assigned Claimant ID # 3522370 and Claim # 9389443. The GCCF denied the Interim 2 claim on 15 June 2011.[6]

Based upon the evidence provided by the Claimant, it appears that the subject matter of the Claimant's GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that his clothing and accessories wholesale business declined and ultimately shut down due to the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1350 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim # 9389443 (ICQ22011).

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 his wholesaler's business suffered a loss in sales due to a decrease in tourism caused by the Deepwater Horizon oil spill. The Claimant, however, did not provide the NPFC sufficient evidence to support his claimed loss. The Claimant's initial submission to the NPFC consisted solely of his 2010 tax return, some bank statements from 2010, and a few sales invoices.

On 19 September 2011, the NPFC requested that the Claimant provide additional information to further evaluate his claim and help establish a connection between his alleged loss and the Deepwater Horizon oil spill. The NPFC requested, among other things, his tax return from 2009, monthly profit and loss statements, documentation supporting cancelled and/or unpaid invoices from 2010, contact information for customers who cancelled or refused payment on invoices, sales ledger from the business, and a valid business license. To date, no response has been received by the NPFC.

Without evidence of the cancelled and returned orders asserted by the Claimant and further documentation of the Claimant's business in general, the NPFC is unable to conclude that the

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[5] Report from the GCCF, dated 6 October 2010.

[6] Denial Letter on Interim Payment/Final Payment claim, dated 15 June 2011.

Deepwater Horizon oil spill was the cause of any alleged loss by the Claimant. Accordingly, the Claimant did not meet the evidentiary burden imposed by 33 C.F.R. § 136.105(a) and 136.105(e)(6) to prove his claim that he suffered a loss due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant has failed to demonstrate (1) that there was an alleged loss in the amount claimed, and (2) that his 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 Cl*** [redacted] ***ation Division***

Date of Supervisor's Review: ***10/25/11***

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

Supervisor's Comments: