

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8887

5890/DWHZ
22 February 2012

Michael Steven Lane


Re: Claim Number: N10036-1656

Dear Mr. Lane:

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 N10036-1656 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 N10036-1656.

Mail reconsideration requests to:

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

Sincerely,

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number N10036-1656
Claimant Michael Steven Lane
Type of Claimant Private (US)
Type of Claim Real or Personal Property Damages
Amount Requested \$5,000,000.00

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 25 January 2012, Michael Steven Lane (the Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$5,000,000.00 in real or personal property damages that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant asserted that, on 3 May 2010, he submitted detailed plans to BP for the Top Hat Containment Dome.¹ He stated that BP used his idea and drawings “to slow down the oil spill until it could be capped.”² The Claimant alleges that he has proof that BP used his idea, but he was never compensated for the use of his drawings.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).

A claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property. 33 C.F.R. § 136.213. Further, under 33 C.F.R. § 136.215, a claimant must establish the following:

¹ Optional OSTLF Claim Form dated 18 January 2012.

² Optional OSTLF Claim Form dated 18 January 2012.

³ Optional OSTLF Claim Form dated 18 January 2012.

- (a) An ownership or leasehold interest in the property;
- (b) That the property was injured or destroyed;
- (c) The cost of repair or replacement; and
- (d) the value of the property both before and after injury occurred.

Additionally, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish:

- (a) That the property was not available for use and, if it had been, the value of that use;
- (b) Whether or not substitute property was available and, if used, the costs thereof; and
- (c) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

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 NPFCC all evidence, information, and documentation deemed necessary by the Director, NPFCC, to support the claim.

Under 33 C.F.R. § 136.217, the amount of compensation allowable for damaged property is the lesser of:

- (a) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
- (b) The difference between value of the property before and after the damage; or
- (c) The replacement value.

Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable.

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 his claim, the Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form dated 18 January 2012;
- Claimant's correspondence to Horizon Call Center submitting idea, including attached drawing, dated 03 May 2010;
- Claimant's correspondence to the GCCF, including attached witness list, dated 10 November 2010;
- Horizon Call Center e-mail to Claimant dated 02 May 2012, including attached Alternate Response Tool – Proposal Worksheet;
- Claimant's correspondence to White House dated 07 June 2010;
- GCCF determination letter dated 06 December 2010; and
- Correspondence from the White House to Claimant dated 16 June 2010.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment claim with the GCCF and was assigned Claimant ID #01152601.⁴ This claim was denied by the GCCF on 6 December 2010.⁵

NPFC Determination

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 does not allege an OPA compensable loss. The Oil Spill Liability Trust Fund (the Fund) is available to pay claims for uncompensated removal costs approved by the Federal On Scene Coordinator (FOSC) and consistent with the National Contingency Plan (NCP), and damage claims including: (1) damages for injury to, or economic losses resulting from the destruction of real or personal property recoverable by any person owning or leasing that property; (2) damages equal to

⁴ GCCF determination letter dated 06 December 2010.

⁵ GCCF determination letter dated 06 December 2010.

the loss of profits or impairment of earnings capacity due to the injury, destruction, or loss of real or personal property or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(1) and (2)(B) and (E).

Claimant asserted that he developed the Top Hat Containment Dome for the Deepwater Horizon oil spill. The Claimant alleges that he is owed “compensation” for his drawings which were used by BP.⁶

Claimant’s alleged loss of compensation is not an OPA compensable damage. Further, even if Claimant’s alleged damages were OPA-compensable, he has not provided detailed information on: the associated costs or expenses related to his designed cap, a computation or explanation of the earnings that he should have received, or any other financial documentation upon which he has based his sum certain. Furthermore, the Claimant has not provided documentation of a valid contract or evidence of use of his design with the responsible party, EPA, or any other interested parties involved with the Deepwater Horizon oil spill.

Accordingly, this claim is denied. As an initial matter, the claim is denied because it does not allege an OPA compensable loss; and second, because even if the claim was an OPA compensable loss, the Claimant’s documentation proves neither a financial loss nor that any alleged loss was the result of the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *2/22/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

⁶ Optional OSLTF Claim Form dated 18 January 2012.