U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center

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5890
April 30, 2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7012 2210 0001 7215 0070

Conch Republic Woodworks Inc.
[redacted]

RE: Claim Number: N10036-1884

Dear Mr. Patterson:

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 N10036-1884 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

[redacted]
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1884
Claimant	: Conch Republic Woodworks, Inc.
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits or Impairment of Earning Capacity
Amount Requested	: $201,220.00

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.

On 8 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT:

On 17 January 2013, Mr. Barry Patterson, on behalf of Conch Republic Woodworks, Inc. (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $201,220.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the effects of the Deepwater Horizon oil spill.[1]

The Claimant owns and operates Conch Republic Woodworks in Key Largo, Florida, which the Claimant alleged was forced to close as a result of the oil spill. The Claimant alleged that their business slowed significantly following the oil spill, but does not provide an explanation as to how the oil spill actually affected the business. According to the Claimant's submission, "by June of 2010 new work had ceased coming in and we had finished the last of our big jobs."[2] The closure of the business was an on-going process, which began in the end of 2010 and was completed around November of 2011.[3]

[1] Optional OSLTF Claim Form, signed on 9 January 2013.
[2] Letter from the Claimant to Tobin Pious, 25 October 2012.
[3] Letter from the Claimant to Tobin Pious, 25 October 2012.

The Claimant alleged to have sustained an actual loss of $80,488.00, which is equal to the Claimant's gross sales for the year 2009.[4] The Claimant then multiplies this amount by 2.5 in order to reach their sum certain amount of $201,220.00.[5]

The NPFC originally denied the claim on 25 January 2013 because the Claimant (1) failed to prove that they sustained a financial loss in the amount of $201,220.00, and (2) failed to prove that their alleged loss is due to the injury, destruction or loss of property or natural resources as a result of the discharge or substantial threat of discharge of oil.

REQUEST FOR RECONSIDERATION:

In a letter dated 21 February 2013 and received on 5 March 2013, the Claimant requested a five (5) year extension of the statutorily mandated sixty (60) day reconsideration deadline.[6] The Claimant stated that the extension would allow them to "analyze the extent and meaning of [the claim summary determination]."[7] The NPFC responded, denying the request for a five-year extension, but granting the Claimant 30 days in addition to the statutorily-granted 60 days, to provide evidence to support their reconsideration request. The Claimant was to submit all supporting evidence to the NPFC no later than 25 April 2013, which was approximately 90 days from the date of the initial determination.[8] On 25 April 2013, the Claimant faxed the NPFC a second request for a five-year extension of the reconsideration deadline, stating that the NPFC's denial of the Claimants first request was "creating undue hardship."[9] However, the Claimant failed to specifically state why a second extension might be warranted, other than that the statutorily mandated deadlines are insufficient. The Claimant has not, for example, indicated that they have attempted to gather specific evidence in support of their request for reconsideration and that the gathering of this evidence requires more time than is provided for in the statute.

The NPFC notes that OPA requires that all claims for loss of profits damages be presented within three years of the date that the claimant's injury was discoverable, and also does not allow for the payment of future losses. As such, the Claimant's request for a five-year extension, which fails to state a basis for the request, is denied.

Furthermore, the Claimant has not provided any evidence to support their request for reconsideration or to refute any of the bases for the initial denial of the claim by the NPFC.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or

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[4] 2009 Form 1120S.
[5] Optional OSLTF Claim Form, signed on 9 January 2013.
[6] 33 C.F.R. § 136.115(d).
[7] Letter from the Claimant to the NPFC, 21 February 2013.
[8] In a letter to the NPFC dated 25 March 2013, the Claimant stated that they "understand that [they] have until 25 April 2013 to submit further documentation."
[9] Fax from the Claimant to the NPFC, 25 April 2013.

impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a ***de novo*** review of the entire claim submission upon reconsideration.

This review sought to determine whether or not the Claimant provided evidence on reconsideration sufficient to prove (1) that the Claimant sustained a financial loss in the amount alleged, and (2) that the Claimant's loss was due to the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

As previously stated, the Claimant has not provided any factual or legal evidence in support of their request for reconsideration. Therefore, the bases for the initial denial of this claim remain valid. As the NPFC concluded in the original determination, the Claimant has not provided evidence to prove that they sustained a certain amount of lost profits during the claimed loss period. Furthermore, contrary to the Claimant's assertions, the location of the Claimant's business in the Florida Keys, does not in and of itself, serve as proof that the business was affected by the Deepwater Horizon oil spill.

Based on the foregoing, this claim is again denied because (1) the Claimant has failed to prove that they sustained a financial loss in the amount of $201,220.00, and (2) the Claimant has failed to demonstrate that his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil (i.e., the Deepwater Horizon oil spill).

This claim is denied upon reconsideration.

Claim Supervisor: [redacted]

Date of Supervisor's review: ***4/30/13***

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments: