U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center

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5890
September 23, 2013

CERTIFIED MAIL NUMBER: 7011 1570 0001 2445 2026

Galan Real Estate Company d/b/a Business Funding Group
ATTN: Raoul Galan , Jr
[redacted]

RE: N10036-1994

Dear Mr. Galan, Jr:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-1994 involving DEEPWATER HORIZON - N10036 oil spill.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

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 N10036-1994.

Mail reconsideration request to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard
Arlington, VA 20598-7100

[redacted]

NPFC CLAIMS ADJUDICATION DIVISION
U.S. Coast Guard

Enclosures: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

Claim Number:	N10036-1994
Claimant:	Galan Real Estate Company d/b/a Business Funding Group
Type of Claimant:	Corporate
Type of Claim:	Loss of Profits and Earnings
Claim Manager:	Donna Hellberg
Amount Requested:	$7,440,000.00

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.

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 11 September 2013, Mr. William Glennon, III, on behalf of Cypress Lake No.I, LLC, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for $7,440,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.[1]

The Claimant states that the business was in the planning process to purchase 12BCM/yr. of natural gas reserves from E.P.L. Oil & Gas, Inc. formerly Energy Partners LTD for fifty years at the time of the oil spill and as a result of the moratorium, the process was stopped resulting in the loss of commission/broker fees of oil prospects in the Gulf of Mexico.[2] Claimant also states that it had no saved operating costs due to the fact that the business was designed as a fee based transaction.[3] The Claimant seeks to recover $7,440,000.00 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.

[1] Optional OSLTF Claim Form signed on 6 September 2013.
[2] See page 11 of 20 of a BP Claim Form, Section IV, numbers 2-5.
[3] See page 11 of 20 of a BP Claim Form, Section IV, number 5.

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF 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. 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; and
(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 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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

The Claimant submitted the following documentation in support of this claim:

- OSLTF Claim Form dated 9/6/13;
- Attorney cover letter dated September 6, 2013; and
- Pages 11 – 13 of the BP Claim Form.

Prior to presenting this claim to the NPFC, the Claimant attempted to recover these damages from the Responsible Party through the BP Claims Program on or about April 18, 2013. According to the Claimant's submission, the documentation now provided to the NPFC was presented to BP. The Claimant was assigned BP claim number 1097293-01 which was subsequently denied. As such, because more than 90 days has passed since the presentment of this claim to the Responsible Party, OPA presentment requirements have been met and the NPFC may properly adjudicate this claim.[4]

Furthermore, it appears the Claimant is excluded from the Economic and Property Damage Class Action Settlement. (the E&PD Settlement).

NPFC Determination

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

In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained an uncompensated loss or reduction in income, and (2) that the financial loss was caused by damage to real property or natural resources caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In the Deepwater case, the Coast Guard undertook response actions in the Gulf of Mexico to clean up oil. The federal government did not issue a moratorium to clean up oil but to address regulatory issues and arguably to slow the business of offshore development.
Claimant argues that the moratorium was due to the incident; therefore, its damages are compensable from the Fund. However, Claimant is confusing the terms "incident" and "loss of profit damages." Damages must result from the incident (33 U.S.C. § 2702(a)) and loss of profits damages must be due to the injury to, destruction of, or loss of profit or natural resources. (33 U.S.C. § 2702(b)(2)(E)). Government actions to remove an oil discharge, such as closing a river for navigation, or actions to protect the public health and welfare from a discharge, such as closing an area to prevent commercial fishing or other oil related activities, may result in damages that are nevertheless clearly attributable to the discharge of oil and for which the responsible party is liable under OPA. In contrast claimant is arguing that the economic impacts of subsequent government decisions (such as the moratorium on drilling new

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[4] 33 C.F.R. § 136.103(c)(2).

wells) to regulate an industry to improve safety and prevent similar incidents should also be attributed to the discharge, the responsible party should be liable under OPA to pay for those impacts, and the Fund should pay if the Responsible Party does not pay.

Claimant offers no convincing argument that Congress intended the scope of liability and compensation to reach so broadly as to encompass new government regulation to prevent future incidents. Even if OPA could be read broadly to encompass such regulatory impacts, Claimant has not provided evidence establishing the particular injury, destruction or loss of property or natural resources that is fundamental to establish a loss of profits damage. Claimant merely argues a heightened regulatory atmosphere that slowed its business asset acquisition.

Additionally, the Claimant has clearly stated that it saved no operating expenses since the business was going to be a fee based transaction business had it acquired assets permitting it to make commissions or broker fees and as such, the Claimant has provided no financial documentation to support its alleged loss of $7,440,000.00 for a business venture that was merely in its development stages. The amount of compensation potentially available to any claimant seeking loss of profits damages is limited to the "actual net reduction or loss of earnings or profits suffered."[5] Speculative and/or future losses are therefore not compensable under OPA.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that it sustained an uncompensated financial loss in the amount of $7,440,000.00 or (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 discharge of oil.

[redacted]

Claim Supervisor: ***NP*** [redacted]

Date of Supervisor's review: ***9/23/13***

Supervisor Action: ***Denial approved***

[5] 33 C.F.R. § 136.235.