U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7010 0780 0001 8634 2401

5890/DWHZ
19 November 2013

Patrick J. Gros, CPA
c/o Buras Law Firm, LLC
ATTN: Mr. Daniel E. Buras, Jr.
301 N. Columbia St.
Covington, LA 70433

Re: Claim Number: N10036-2005

Dear Mr. Buras:

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 the claim number N10036-2005 involving the Deepwater Horizon oil spill. Please see the attached 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. 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 N10036-2005.

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

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-2005
Claimant	Patrick J. Gros, CPA
Type of Claimant	Corporate
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	$110,657.00

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 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 08 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 the 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 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 25 October 2013, Mr. Daniel Buras, Jr. presented a claim on behalf of his client, Patrick J. Gros, CPA ("Claimant") to the Oil Spill Liability Trust Fund (OSLTF) seeking $110,657.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.[1]

At the time of the oil spill, the Claimant was a professional accounting firm that's primary focus was on restaurant accounting in metropolitan New Orleans and south Louisiana. The Claimant states its business was highly dependent on tourism clientele and, as these companies believed themselves to be affected by the oil spill in the form of lost tourism, reduced services, and/or bankruptcies, the Claimant being their accountant, was adversely affected as well.

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;

[1] US District Court for the State of Louisiana Claim Submission Form.

(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

Claimant's Submission to the NPFC

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

- Claim Submission for the US District Court for the Eastern District of Louisiana;
- Signed Power of Attorney between Mr. Daniel E. Buras, Jr. and the Claimant;
- Internal Client Reconciliation Total Account Balance for Claimant, 2007-2011;
- Coastal Claims Group Service Invoice for Claimant, 17 September 2012;
- US District Court for the Eastern District of Louisiana Declaration of Claimant;
- Deepwater Horizon Economic and Property Settlement Registration submission;
- Buras Law Firm Deepwater Horizon Appeals Coordinator Cover Letter for Claimant, 9 June 2013;
- 2011 Federal Income Tax Return for Claimant;
- LA Corporate Income Tax Return for 2011;
- 2010 Federal Income Tax Return for Claimant;
- 2010 Federal W-9 Request for TIN and Certification for Claimant;
- 2011 Federal W-9 Request for TIN and Certification for Claimant;
- LA Corporate Income Tax Return for 2010;
- 2009 Federal Income Tax Return for Claimant;
- LA Corporate Income Tax Return for 2009;

- 2008 Federal Income Tax Return for Claimant;
- LA Corporate Income Tax Return for 2008;
- 2007 Federal Income Tax Return for Claimant;
- LA Corporate Income Tax Return for 2007;
- 2011 Internal Statement of Revenue and Expenses for Claimant;
- 2007 Internal Statement of Revenue and Expenses for Claimant;
- 2008 Internal Statement of Revenue and Expenses for Claimant;
- 2009 Internal Statement of Revenue and Expenses for Claimant;
- 2010 Internal Statement of Revenue and Expenses for Claimant;
- Various letters from clients attesting to the Claimants work at the time of the spill.

On 25 October 2013, the Claimant presented this claim to the NPFC, seeking $110,657.00 in loss of profits or impairment of earning capacity. Although the Claimant includes a copy of the signed Client Authorization Form and the Deepwater Horizon Economic and Property Settlement Registration with its claim, it does not provide documentation that it was first presented to the RP and that the RP denied payment on this claim. However, the NPFC will adjudicate the claim to the extent that presentment requirements have been satisfied. If any damages subject of this claim were not first presented to and denied by the RP, these damages are denied for improper presentment.[2]

Evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement).[3]

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.

As an initial matter, it appears that the Claimant is a member of the E&PD Settlement Class. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the claimant no longer has rights to the claim and therefore cannot subrogate the NPFC to those rights.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, even if the Claimant was not included in the Settlement Class, this claim is denied on its merits. In order to prove a claim for loss of profits or impairment of earning capacity damages, a claimant must provide evidence sufficient to prove (1) that the claimant sustained a loss or reduction in income, and (2) that the loss was caused by damage to real or personal property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

---

[2] 33 C.F.R. § 136.103(c)(2).

[3] At the time of the spill, the Claimant was living within the economic settlement loss zones. Additionally, claimant provides documentation to show it was located in Economic Loss Zone D.

The Claimant alleged that, as a result of the oil spill, its clients were affected and therefore, it was also affected. However, the mere fact that the Claimant worked as an accountant for clients who may or may not have been affected by the oil spill does not translate into it having suffered losses as a *direct* result of the oil spill. It is important to note that the Claimant's clientele made business decisions—whether each wanted to or not—to cancel or not renew contracts with the Claimant. Business decisions are not affects of the oil spill, they are conscious choices on whether to perform work and/or services or not perform work and/or services. Additionally, there are many economic and environmental factors why a company increases or decreases its earnings over any given period of time. Looking at the various services that the Claimant's clientele provided, in order for the Claimant to tie its losses to the oil spill, it would have to tie each and every one of its clients' losses to the oil spill. As it has not done so, it cannot be ascertained that the Claimant suffered losses due to the oil spill.

It should be noted that, based on the federal tax returns provided in the claim, the Claimant's earnings for the affected year, 2010, appear to be higher than the Claimant made the year preceding the oil spill. Below is an itemization of revenues by year:

2007: $1,073,761.00
2008: $1,118,241.00
2009: $1,050,058.00
2010: $1,059,022.00
2011: $1,381,187.00

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that it sustained a financial loss in the amount of $110,657.00, 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. Additionally, this claim is considered to have been settled by virtue of the C[redacted]e E&PD Settlement and is therefore, not eligible for OSLTF compensation.

Claim Supervisor: ***NPF*[redacted] *Division***

Date of Supervisor's Review: ***11/19/13***

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

Supervisor's Comments: