U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 2000 0001 1246 7226

5890/DWHZ
19 March 2014

Mr. Lawrence Manierre
[redacted]

Re: Claim Number: N10036-2017

Dear Mr. Manierre:

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 N10036-2017 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 N10036-2017.

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

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-2017
Claimant	Lawrence Manierre
Type of Claimant	Corporate
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	$2,716,581.00

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 14 February 2014, Mr. Lawrence Manierre ("Claimant") presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $2,716,581.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.

At the time of the oil spill, the Claimant worked as a professional in a wealth management firm as a financial consultant. He states that he had been recruited by Merrill Lynch as a result of his history and performance from 2000-2002 (his focus was in working with the ultra-wealthy designing programs and money management of their funds for generations) with his previous employer, AIM Distributors, to repeat these programs and benefits for it. His new position was set for a 2-year development period, from 2008-2009, with 2010 to be the production year. The Claimant states that he was on-schedule with building the prospective clientele base in 2010, and at a critical point in commitments. However, when the oil spill occurred, he states he lost all these prospective clients, as everything was put on hold and confidence and trust were in the Gulf (namely the Naples, FL area, which was his area of concentration), thus losing prospective income and incurring irreparable damage to his career.

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

Claimant's Submission to the NPFC

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

- Optional OSLTF Form, signed 10 February 2014;
- Cover Letter written by Claimant, 10 February 2014;
- Internal Summary of Income from Claimant;
- Internal Spreadsheet of Base, Benchmark and Expected Income for Claimant;
- Federal Tax Returns for Claimant, 2000-2012 (includes W2s);
- 2013 Merrill Lynch for Claimant;
- Letter of Authorization for Ms. Jeanne Jackson from Claimant;
- Resume Cover Letter for Claimant;
- Resume for Claimant;
- Phone Log Records between Claimant and Deepwater Horizon Claims Center;
- DWH Claims Center Index of Documentation for Claimant;
- Copy of Gulfshore Business magazine article, tilted: "BP Spillover: How the Disaster Still Spawns Victims as Much as Profiteers."

On 14 February 2014, the Claimant presented this claim to the NPFC, seeking $2,716,581.00 in loss of profits or impairment of earning capacity. Although the Claimant includes copies Deepwater Horizon Economic and Property Settlement correspondence, along with a claim number, with its claim, he does not provide documentation that the claim total in its entirety was first presented to the RP and that the RP denied payment on this claim. Additionally, the Claimant states he received $222,709.21 in October 2011 for economic damages incurred from April 2010 through May 2011, and $11,476.82 for economic damages incurred in June 2011, but does not provide documentation of this. 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.[1]

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).[2]

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.

The Claimant alleged that, as a result of the oil spill, his potential clients with whom he was working to manage their wealth and investments lost their confidence and trust in the Gulf (namely Naples, FL), and therefore, he was affected. According to the Claimant in his cover letter, the spill purportedly caused this client base to choose not to invest their time, money and trust in the area as they waited to see if or when the community, residences, gulf beach resorts and lifestyles would or even could be restored. Because of this, he states, his ordinary and expected income ability was abruptly halted, interfered with and severely damaged. However, simply because the Claimant worked as a consultant for clients who may or may not have been affected by the spill does not translate to having suffered losses as a *direct* result. The

[1] 33 C.F.R. § 136.103(c)(2).
[2] At the time of the spill, the Claimant was living within Economic Loss Zone C.

Claimant's clientele made business decisions—whether each did or didn't want to cancel contracts with the Claimant. Business decisions are not affects of the oil spill, they are conscious choices whether or not to have work performed and/or services rendered. Additionally, there are many economic and environmental factors why a company increases or decreases its earnings over any given period of time. The Claimant states he spent two years prior to the spill developing a strong client base, but does not provide documentation supporting this assertion. He also does not provide the number of clients he lost or for what types of investments his potential clientele were looking into forming with him/Merrill Lynch. In order for the Claimant to tie his losses to the oil spill, he would have to tie the loss of each and every one of his clients to the oil spill. Because the Claimant has failed to meet his burden in demonstrating his alleged loss, it cannot be ascertained that the Claimant suffered losses due to the oil spill.

It is important to note that the Claimant uses his performance from 2000-2002 as the basis for his claimed losses. This method of calculation is erroneous, because it does not take into consideration the span of time and fluxuation of his income (as is reflected in his spreadsheet), changes in the economy over the period of a decade and, most importantly, his decision to move corporations and begin from what appears to be from scratch, with a new and unknown client base. As stated above, the Claimant has not provided documentation specifically tying his claimed losses to the spill.

It should be noted that it appears that some or all of the Claimant's losses are speculative/projected income lost as a result of the spill. Speculative losses are not payable under OPA; rather, only actual damages incurred. Therefore, the Claimant would need to provide documentation of contracts/clients lost, and for what amounts, time periods of alleged losses and contact information for each lost client to prove his damages.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount of $2,716,581.00, 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 Claimant belonging to the E&PD Settlement and is therefore, not eligible for OSLTF compensation.

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***3/19/14***

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

Supervisor's Comments: