

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 1570 0001 4803 9715

5890/DWHZ
25 June 2012

Ansley & West P.A.


Re: Claim Number: N10036-1746

Dear Ms. West:

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 N10036-1746 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 N10036-1746.

Mail reconsideration requests to:

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


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

Enclosure: Claim Summary/Determination Form

cc: Crawford Properties, Inc


By Certified Mail:
No: 7011 1570 0001 4803 9586

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1746
Claimant	Crawford Properties, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$110,668.38

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 10 April 2012, Christina D. West, Esq. on behalf of Crawford Properties Inc., (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$110,668.38 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant leased commercial rental space in Destin, Florida.² The Claimant alleged that the oil spill caused two of the building's tenants to go out of business and default on their leases, resulting in a substantial loss of revenue.³ The Claimant further alleged that they have been largely unable to re-let the property (save one unit beginning February 2012) and have incurred losses into 2012.⁴

In order to calculate losses, the Claimant added the lost rent from both units for the period of July 2010 through December 2012, with variations in rent and re-letting accounted for, reaching the requested sum certain of \$110,668.38.⁵

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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 Optional OSLTF Claim Form, signed 6 April 2012.

² Law Firm Letter with Damages Calculations, 22 March 2012.

³ Law Firm Letter with Damages Calculations, 22 March 2012.

⁴ Law Firm Letter with Damages Calculations, 22 March 2012.

⁵ Law Firm Letter with Damages Calculations, 22 March 2012.

- (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 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

Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed 6 April 2012;
- Authorization for Representation, signed 6 April 2012;
- Law Firm Letter with Damages Calculations, 22 March 2012;
- Unsigned Copy of Option OSLTF Claim Form, undated;
- Hardship Letter from the Claimant, 6 November 2010 (two copies);
- Lost Revenue Sheet from CPA, 8 March 2011;
- Copy of GCCF Interim Payment Claim, signed 14 March 2011;
- Independent Accountant's Report, 8 March 2011;
- 2010 Income Tax Return;
- Support Letter from Lessee, 3 November 2010;
- Copy of Lease Agreement with Open Mortgage LLC;
- Copy of Lease Agreement with Lowery & Watson CPA;
- Special Power of Attorney, signed 9 March 2011
- Additional Information Law Firm Letter, dated 23 May 2012;
- 2008 S Corporation Income Tax Return;
- Second Copy 2008 S Corporation Income Tax Return;
- 2009 S Corporation Income Tax Return;

On 9 October 2010, the Claimant presented an Emergency Payment (EP) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$9,297.00.⁶ The Claimant was assigned Claimant ID 1115095 and the EP claim was assigned claim #186269.⁷ The RP/GCCF denied payment on this claim.

On 16 March 2011, the Claimant presented an Interim Payment (IP) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$22,490.00.⁸ The Claimant retained Claimant ID 1115095 and the IP claim was assigned claim # 9325373.⁹ The RP/GCCF denied payment on this claim.

On 10 April 2012, the Claimant submitted this claim to the NPFC, seeking \$110,668.38 in loss of profits and impairment of earning capacity damages.¹⁰ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.¹¹ Because the Claimant has presented damages to the NPFC which exceed the amount of damages previously presented to the RP/GCCF, this claim is initially denied in that amount for improper presentment. The amounts claimed in the Claimant's IP and EP claims total \$31,787.00, as compared to the \$110,668.38 presented to the NPFC. Therefore, \$78,881.38 of the damages presented in this claim are initially denied. The remainder of this determination shall address this claim for \$31,787.00 in damages, as properly first presented to the RP/GCCF.

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

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The financial documentation provided by the Claimant fails to support the Claimant's assertion that the Deepwater Horizon oil spill caused a loss of income in 2010. In 2009, the year prior to the oil spill, the Claimant's rental income declined by \$181,072, a drop of approximately 36% from 2008.¹² The decline continued in 2010 with a decrease of \$44,212 in rental income, however at an arrested rate of approximately 14% in spite of the Claimant's assertion that the two units were in default as of July and September, respectively.¹³ Trends do not support the assertion that the oil spill resulted in substantial losses that would not have otherwise occurred.

⁶ GCCF United States Coast Guard Report, 1 May 2012.

⁷ GCCF United States Coast Guard Report, 1 May 2012.

⁸ GCCF United States Coast Guard Report, 1 May 2012.

⁹ GCCF United States Coast Guard Report, 1 May 2012.

¹⁰ Optional OSLTF Claim Form, signed 6 April 2012.

¹¹ 33 C.F.R. § 136.103(a).

¹² 2008 S Corporation Income Tax Return; 2009 S Corporation Income Tax Return.

¹³ 2009 S Corporation Income Tax Return; 2010 S Corporation Income Tax Return; Hardship Letter from the Claimant, 6 November 2010.

The Claimant asserts that they believe they were denied by the GCCF because Crawford Properties was able to lease two additional units after the Deepwater Horizon oil incident, which caused them to maintain approximately the same amount of revenue.¹⁴ While the GCCF's analysis of any claim is wholly irrelevant to the NPFC, what does matter to the NPFC is obtaining the full financial picture of the Claimant's scenario in order to understand whether they have experienced a financial loss.

In the NPFC's request for additional information, the Claimant was asked to provide "documentation of all rental income received in 2008, 2009, and 2010."¹⁵ While the Claimant has provided full tax returns for 2008 through 2010, the level of detail provided in the returns does not provide the granular level of financial detail that would allow a fact finder to ascertain how the Claimant experienced or was able to offset their alleged financial loss. If the Claimant submits a request for Reconsideration, they must provide all rent receipts or profit and loss statements to evidence how income was received or lost by the business as a result of the oil spill.

Furthermore, the NPFC requested additional documentation, which included the financial and business records of the defaulting tenants in order to affirm they were affected by the oil spill. The Claimant was unable to provide this information, and the existing documentation in the submission is insufficient to create a causal link between the oil spill and the tenants' resulting default. For example, the NPFC would require proof that the mortgage broker defaulted on her lease due to the Deepwater Horizon oil spill specifically as opposed to a myriad of other factors affecting the mortgage broker industry as a whole such as the state of the economy, the collapse of the Florida real estate market, and the national mortgage crisis and consequent tightening of the regulatory environment affecting lending institutions. Based on the foregoing, the Claimant has failed to demonstrate that the oil spill resulted in the alleged loss of rental income.

The Claimant also noted in their response to the NPFC that they have reached a settlement agreement with one of the defaulting tenants in the amount of \$30,912.¹⁶ If the NPFC were to pay the claim as presented and the Claimant collects from their former tenant, this would amount to a windfall of double compensation to the Claimant. If the Claimant returns on Reconsideration, he should disclose whether the agreed upon settlement has been paid.

This claim is denied because the Claimant failed to meet his burden to demonstrate 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 a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/25/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁴ Claimant letter to the NPFC dtd 22 March 2012.

¹⁵ NPFC Request for Additional Information dtd 09 May 2012.

¹⁶ Additional Information Law Firm Letter, dated 23 May 2012.