

CLAIM SUMMARY/DETERMINATION FORM

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|------------------|---|
| Claim Number     | N10036-2037                                       |
| Claimant         | [REDACTED]  |
| Type of Claimant | Private (US)                                      |
| Type of Claim    | Loss of Profits or Impairment of Earning Capacity |
| Amount Requested | \$42,028.62                                       |

***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 2 December 2014 [REDACTED] ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$42,028.62 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant states she worked for Airgas in inside sales. As a result of the spill, she states that the company saw a dramatic decrease in customers and sales, resulting in the Claimant losing wages/ bonuses.

***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.

<sup>1</sup> Optional OSLF Claim Form, signed 11/24/2014.

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 Claim Form, signed on 8 July 2013;
- Airgas Company profile and affected location;
- Map of Claimant's address located Economic Settlement Loss Zone C;
- News articles for Claimant;
- Copy of Claimant's License and Social Security Card;
- W9 for Claimant;

- Claim Explanation Letter written by Claimant, 20 May 2011;
- Letter from Airgas Branch Manager regarding Claimant, 20 May 2011;
- Skipped Loan Payment ledger for Claimant, 29 December 2010;
- Redacted Claimant Mortgage Loan Payment documents;
- Claimant Credit Union Statement, 30 November 2010;
- Federal Tax Returns for Claimant, 2008-2011;
- W2s for Claimant, 2009-2011;
- Paycheck Statements for Claimant.

The Claimant alleged that this claim was first presented to the Responsible Party and that the RP denied payment on this claim.<sup>2</sup> On 2 December 2014, the Claimant presented this claim to the NPFC, seeking \$42,028.62 in loss of profits or impairment of earning capacity. The NPFC will adjudicate the claim to the extent 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.<sup>3</sup>

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).<sup>4</sup>

### **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, the claim is denied primarily on the basis that it was not presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. See, 33 U.S.C. § 2712(h)(2).

Furthermore, 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 she is a member of the economic damages class of the E&PD Settlement, she should submit evidence to indicate that she has either opted out or is excluded from the E&PD Settlement in her request for reconsideration of this claim.

<sup>2</sup> Optional OSLTF Claim Form, signed on 11/24/2014.

<sup>3</sup> 33 C.F.R. § 136.103(c)(2).

<sup>4</sup> At the time of the spill, the Claimant was living within Economic Settlement Loss Zone C.

Additionally, even if the Claimant was not included in the Settlement Class, this claim is also 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 the uncertainty in the Gulf after the spill caused a decline in customers, and thus caused her to lose wages/ bonuses. However, these factors in and of themselves are not necessarily a direct link to the oil spill, as there are many reasons why a business may or may not do well. The Claimant has failed to provide evidence that any alleged loss to her or her employer were in fact directly caused by the Deepwater Horizon oil spill.

Finally, the Claimant provided Federal Tax returns, W2s and loan documents in order to substantiate her claim. However, upon review, it appears that the Claimant has not shown a loss actually occurred. First, the tax returns for the affected year (2010)(\$75,392.00) appear consistent with those of 2008 (\$74,246.00), 2009 (\$72,043.00) and 2011 (\$72,547.00). Also, her W2s for Airgas show her income increased in the affected year (2010)(\$38,360.66) from that of 2009 (\$35,282.28) and 2011 (\$32,405.04).

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that she sustained a financial loss in the amount of \$42,028.62, 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, and (3) the Claimant failed to present her claim to the NPFC within the statute of limitations for claiming losses associated with the oil spill. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/9/14*

Supervisor's Action: *Denial approved*

Supervisor's Comments: