

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: [REDACTED]
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5890

12/10/2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7010-0780-0001-8633-9197

[REDACTED]
Miramar Beach, FL 32550

RE: Claim Number: N10036-0108

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary 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 N10036-0108.

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 Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date 12/10/2010
Claim Number N10036-0108
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$32,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

Claimant presented a claim of \$32,000 to the NPFC for Lost Earnings. Claimant owns shares of BP stock and states that she relies on the dividend payments distributed by BP to pay for her living expenses. During 2010, BP declared one cash dividend distribution on 02 February 2010 and paid the dividends on 8 March 2010. BP suspended further dividend distributions following the Deepwater Horizon explosion and fire and subsequent oil discharge.

Claimant presented an initial claim to the GCCF and was issued the Claim Number # [REDACTED]. That claim was denied by the GCCF on 20 October 2010.

APPLICABLE LAW

Damages that may be paid from the OSLTF are those that are described by the Oil Pollution Act of 1990 (OPA) and that result from a discharge or substantial threat of discharge of oil into or upon the navigable waters, adjoining shorelines or the exclusive economic zone. 33 U.S.C. § 2702. The NPFC may pay a claim for OPA damages from the Oil Spill Liability Trust Fund (OSLTF) if the claim has been presented first to the responsible party and that claim is denied or not settled after 90 days. 33 U.S.C. § 2713.

OPA damages that may be paid include "damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant" 33 U.S.C. § 2702(b)(2)(E).

Pursuant to the implementing OSLTF claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated 10 November 2010 and a printout from the GCCF online-filing process regarding claim status as of 10 November 2010, which indicates that her claim was denied because the type of claim is not eligible for payments from GCCF. She also included a letter to BP Claims dated 13 July 2010 that describes her use of dividends from BP stock as a source of income. She provided her 2008 and 2009 Income Tax Return Form 1040 showing dividend income reported as \$36,510 and \$35,927 for 2008 and 2009, respectively. The Tax Return provided did not include a Schedule B or 1099-DIV's to identify the source of the stated dividend payments.

The Claimant's son states, on her behalf, that in 2008 and 2009, she received dividend payments from BP stock holdings averaging \$8,000 per calendar quarter, or \$32,000 per year. According to the Claimant's son, the "...oil spill has caused BP to stop paying dividends.

NPFC Determination

The claim is denied because the alleged lost income is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. The alleged loss is due to business decisions made by BP in respect to stock dividends to be distributed to investors. Such investment impacts are not damages that may be compensated from the OSLTF.

Claim Supervisor: 

Date of Supervisor's Review: 12/10/10

Supervisor's Comments: DENIAL APPROVED