

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-2043
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$1,960,338.22

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 02 August 2017, Mr. [REDACTED] ("the Claimant"), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$1,960,338.22 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 states he owned approximately thirty-three (33) acres of land in Port Richey, FL. The Claimant had plans to develop this land into condominiums and later selling them. As a result of the oil spill, the Claimant states that adverse publicity both locally and nationally prevented him from moving forward with his business and selling the residential lots. In December of 2010, the Claimant deeded the property back to the bank, as he determined that it was not financially advantageous to continue paying the property taxes, interest on the loan, and upkeep of the property.

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.

¹ Optional OSLF Claim Form, signed 7/24/2017.

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. §2712(h)(2), No claim may presented under this section for recovery of damages unless the claim is 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...

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. § 136.101(a)(1)(i), Except as provided under section 1012(h)(3) of the Act, the Fund will consider a claim only if presented in writing to the Director, NPFC, within the following time limits: (1)(i) The date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care.

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 7/27/2017;
- Exhibit A, *Statement of the Claim*, written by the Claimant;
- Statutory Warrant Deed for the claimed property, signed by the Claimant and dated 10/25/2004;
- Deed in Lieu of Foreclosure for the claimed property, signed by the Claimant and dated 12/28/2010;
- Integrity Realty Resources Land Appraisal for the claimed property, dated 6/29/2010;
- Sunsouth One Corp. (Claimant's profit corporation for the claimed property) record of corporation;
- Aerial photograph of the claimed property;
- Map and satellite images of the claimed property.

The Claimant alleged that this claim was first presented to the Responsible Party and that the RP has made no payment on this claim.² On August 2, 2017, the Claimant presented this claim to the NPFC, seeking \$1,960,338.22 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.³

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).⁴

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.

This claim is denied on the basis that it was not presented within three (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) and 33 C.F.R. § 136.101(a)(1)(i) that

² Optional OSLTF Claim Form, signed 7/24/2017.

³ 33 C.F.R. § 136.103(c)(2).


⁴ At the time of the spill, the Claimant was living within Economic Loss Zone D and the claimed property was within Economic Loss Zone C.

states in relevant part, “[E]xcept as provided under section 1012(h)(3) of the Act, the Fund will consider a claim only if presented in writing to the Director, NPFC, within the following time limits: (1)(i) The date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care.”

Additionally, 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.

Finally, it is important to note that the NPFC has not evaluated the individual merits of the claim submission due to the fact that the Claimant failed to meet the statutory time limitation in which to present his damages to the NPFC in accordance with 33 USC 2712 h)(2) and 33 C.F.R. §136.101(a)(1)(i).

Based on the foregoing, this claim is denied because (1) the Claimant failed to present his loss of profits and earnings claim within the statutory time period set forth within 33 USC 2712 h)(2) and 33 C.F.R. §136.101(a)(1)(i) and (2) this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement.

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Claim Supervisor: <i>NPFC Claims Adjudication Division</i>
Date of Supervisor’s Review: <i>8/3/17</i>
Supervisor’s Action: <i>Denial approved</i>
Supervisor’s Comments: