

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1895
Claimant	(b) (6) Salon
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$10,000.00

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 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 13 March 2013 Ms. (b) (6) on behalf of (b) (6) Salon, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$10,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant owns and operates a salon in Arabi, Louisiana. She alleged that the oil spill caused her clients to lose their jobs, which prevented them from continuing to patronize her salon.²

The Claimant alleged to have sustained losses of \$10,000.00 throughout 2010 and 2011 resulting from a decrease in business allegedly caused by the effects of the Deepwater Horizon oil spill.

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.

¹ Optional OSLTF Claim Form, signed on 5 March 2013.

² Optional OSLTF Claim Form, signed on 5 March 2013.

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 Claim Form, signed on 5 March 2013;
- IRS document showing EIN number, printed 2 August 2011;
- Monthly profit and loss statement, 2009;
- Monthly profit and loss statement, 2010;
- Monthly profit and loss statement, 2011;
- Letter from the BP Claims Program, assigning Claimant ID, 19 September 2012;
- 2009 Form 1040 showing business income of \$9,022.00;

- 2009 Schedule C (Form 1040) showing gross sales of \$15,360.00;
- 2009 Schedule SE (Form 1040);
- 2009 Schedule M (Form 1040A or 1040);
- 2009 Form 8812;
- 2010 Form 1040, showing business income of -\$1,006.00;
- 2010 Schedule C (Form 1040) showing gross sales of \$1,192.00;
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Form 8812;
- 2010 Schedule EIC (Form 1040A or 1040);
- 2011 Form 1040A showing wages of \$9,974.00 and unemployment income of \$12,466.00;
- 2011 Form 8812;
- 2011 Form 8863;
- Copy of the Claimant's Driver's license and social security card.

The Claimant presented a claim to the BP Claims Program prior to its presentment to the NPFC. The Claimant was assigned Claim No. 1000503-01 and was denied payment.³

On 13 March 2013 the Claimant submitted this claim to the NPFC, seeking to recover \$10,000.00 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill. The NPFC does not have information necessary to verify that the same claim for the same damages was first presented to the Responsible Party. However, the NPFC will adjudicate this claim to the extent that presentment requirements under OPA have been satisfied. Any amount of damages presented in this claim which were not first presented to the Responsible Party or its representative are denied.

Furthermore, evidence in this claim submission indicates that the Claimant has opted out of or is excluded from the Deepwater Horizon oil spill economic and property damages class action settlement (the 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.

In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction in income, and (2) that the Claimant's financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant alleged that the oil spill caused her clientele to sustain economic losses which prevented them from using her services as they previously had. In support of this claim, the Claimant provided copies of income tax returns as well as profit and loss statements for 2009, 2010 and 2011. However, this documentation fails to prove that the Claimant sustained a loss of

³ Letter from the BP Claims Program to the Claimant, 19 September 2012.

⁴ Letter from the BP Claims Program to the Claimant, 19 September 2012.

profits as a result of the oil spill. Rather, the Claimant's financial data indicates that she began to sustain significant losses beginning in January of 2010, prior to the start of the oil spill which began in late April 2010. In fact, according to the Claimant's records, the Claimant earned no income at all in the months of March and April and continuing through October.⁵ It does not appear then, that the oil spill could have been the impetus for the Claimant's losses, which began at least four months prior to the oil spill. Furthermore, the Claimant has not provided any evidence regarding her customer base or the nature of her business, which might indicate that her income could have been impacted by the Deepwater Horizon oil spill.

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 \$10,000.00, 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.

Claim Supervisor: *NP*

Date of Supervisor's Review:

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ 2010 Monthly Profit and Loss Statement.