

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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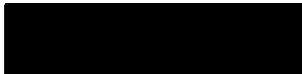
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19 August 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1150 0000 3212 4046

Jewel P. Chretien



RE: Claim Number: N10036-1281

Dear Ms. Chretien:

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 claim number N10036-1281 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-1281.

Mail reconsideration requests to:

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

Sincerely,



Claims Adjudication Division
National Pollution Funds Center
United States Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1281
Claimant	: Chretien, Jewel P.
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$29,636.74

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

On 28 July 2011, Jewel P. Chretien (Claimant) presented a loss of profits and impairment of earnings capacity claim the National Pollution Funds Center (NPFC) in the amount of \$29,636.74.¹

Claimant asserted that she purchased 2,224 shares of common stock in British Petroleum (BP) in late August of 2009 "in order to get superior dividend payments."² Claimant further alleged that "due to the oil spill BP stock dividend payments and [the] price of stock fell" and that her "stock had to be sold at a loss."³ Claimant sold her BP shares on 12 April 2010 (44 shares) and 04 June 2010 (2180 shares) at a combined loss of \$29,636.74.⁴

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 dated 28 July 2011 and received by the NPFC on 04 August 2011.

² Optional OSLTF Claim Form, dated 28 July 2011.

³ Optional OSLTF Claim Form, dated 28 July 2011 and Attachment 1.

⁴ Optional OSLTF Claim Form, dated 28 July 2011 and Attachment 1. The NPFC notes that Attachment 1 from the Claimant states that Claimant sold 44 shares of BP stock on 12 April 2010. However, Attachment 3 indicates that the shares were sold on 15 April 2010. The NPFC does not believe that the discrepancy is material to this determination.

- 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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed 23 July 2011 and received at NPFC on 04 August 2011;
- "Attachment 1" describing the nature of her claim;
- Denial letter from the GCCF of Claimant Interim Payment/Final Payment Claim dated 6 July 2011;
- "Attachment 2" Edward Jones investment statement for the period from 29 August 2009 to 25 September 2009;
- "Attachment 3" Edward Jones investment statement for the period from 27 March 2010 to 30 April 2010;
- "Attachment 4" Edward Jones investment statement for the period from 29 May 2010 to 29 June 2010.

Prior to presentment to the NPFC, Claimant presented a Final Payment Claim to the RP/GCCF and was assigned Claimant Identification Number 3522463. The Final Payment claim was denied in a letter dated 6 July 2011.⁵

⁵ GCCF denial letter Re: Claimant's Interim Payment/Final Payment Claim, dated 6 July 2011.

On 4 August 2011, the NPFC received this claim for \$29,636.74 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

NPFC Determination

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. § 136.233, a Claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant and conducted an independent investigation of the claim.

The Claimant asserted that she did not receive expected dividend payments from BP and was forced to sell all of her shares of stock at a loss as a result of the Deepwater Horizon incident.⁶ The Claimant has failed to show that BP's decision to lower anticipated dividend payments, or to cease payments of dividends entirely, is a compensable loss of profits or impairment of earnings capacity due to the injury, destruction, or loss of real property or personal property or natural resources as a result of the oil spill. In fact, the payment of stock dividends by BP is an independent business decision that is not compensable under OPA. The ultimate payment of dividends, even if previously announced or regularly scheduled, is within the sole discretion of the BP directors.⁷

Claimant's alleged loss due to her decision to sell her shares of BP stock is likewise not compensable under OPA. This claim is denied because the Claimant's alleged loss in the amount of \$29,636.74 is not compensable under OPA and (2) the Claimant's alleged loss is not 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 Review: *8/19/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ Optional OSLTF Claim Form, dated 28 July 2011 and Attachment 1. The NPFC notes that Claimant's first sale of stock in April of 2010 predates the oil spill.

⁷ According to BP's stated dividend policy "[t]he amount and timing of dividends may be changed at any time without notice." <http://www.bp.com/extendedsectiongenericarticle.do?categoryId=9033053&contentId=7060585>