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: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 9488

5890/DWHZ
25 March 2013

Judy Miller
[redacted]

Re: Claim Number: N10036-1896

Dear Ms. Miller,

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 the claim number N10036-1896 involving the Deepwater Horizon oil spill. Please see the attached 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 N10036-1896.

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 Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1896
Claimant	Judy Miller
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	$299,500.00

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 20 March 2013 Ms. Judy Miller ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $299,500.00 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 was employed as an Oil Spill Response Contingency Planner in Anchorage, Alaska.[2] According to the Claimant's submission, the Claimant's employer Claimant lost business following the oil spill due to "regulatory uncertainty for leaseholders in Arctic OCS leases" which caused the Claimant's employer to "slow their exploration."[3] As a result, the Claimant lost her position due to a "lack of reimburseable (billable) work for [the Claimant's] position."[4]

The Claimant seeks to recover the total amount of income lost from June 2010 through the first quarter of 2013, including health insurance premiums at a rate of $1,500.00 per month.[5]

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

[1] Email from the Claimant to NPFC Staff, 20 March 2013.
[2] Offer Letter, 24 September 2009.
[3] Letter from the Claimant to the NPFC, 14 March 2013.
[4] Employment Status Report, 9 June 2010.
[5] Email from the Claimant to the NPFC Staff, 20 March 2013.

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.

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:

- Emails between the Claimant and the NPFC, 15 - 20 March 2013;
- Letter from the Claimant to the NPFC, 14 March 2013;

- Copy of document showing wages of $65,656.96;
- Letter from the Alaska Department of Labor and Workforce Development, 26 January 2011;
- 2011 Form 1099-MISC;
- 2011 Form 1099-G;
- 2012 From 1099-MISC;
- 2012 Form 1099-G;
- 2012 Form W-2;
- Email from Paul Ramer to the Claimant, 30 September 2009;
- Copy of offer letter 24 September 2009;
- ASRC Employment Status Report, 9 June 2010;

The Claimant alleged to have first presented this claim to both the BP Claims Program and the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement) in the U.S. District Court for the Eastern District of Louisiana.[6] The Claimant stated that both claims were denied.[7]

The NPFC does not have the information necessary to verify that the same claim for the same damage amount was first presented to and denied by the Responsible Party or its agent. If any damages subject of this claim were not included in the claim to the Responsible Party, these particular damages are denied for failure to meet presentment requirements.[8] The remainder of this determination shall address any and all damages now before the NPFC which were first presented to and denied by the Responsible Party.

Furthermore, evidence in this claim submission indicates that the Claimant is likely excluded from the (the E&PD Settlement).[9]

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. In terms of proving causation, it is not sufficient to merely prove that *any* effect of the oil spill and associated events somehow contributed to the claimant's loss. Rather, a claimant must specifically prove that their financial loss was "due to the injury to, destruction of, or loss of real or personal property or natural resources," resulting from the discharge of oil from the Deepwater Horizon oil drilling rig.[10]

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[6] Letter from the Claimant to the NPFC, 14 March 2013.
[7] Letter from the Claimant to the NPFC, 14 March 2013.
[8] 33 C.F.R. § 136.103(a).
[9] The Claimant's geographic location and the nature of her losses likely exclude her from inclusion in the Settlement class.
[10] 33 C.F.R. § 136.231(a).

Here, the Claimant alleged that her position as an Oil Spill Response Contingency Planner with a company in Anchorage, Alaska was eliminated as a result of her company's decision to reduce exploration efforts following the Deepwater Horizon oil spill. Specifically, the Claimant alleged that the Deepwater Horizon oil spill lead to "regulatory uncertainty for leaseholders in Arctic OCS leases" causing the Claimant's employer to "slow their exploration."[11] This type of loss is not compensable under OPA's loss of profits or impairment of earning capacity damage category, which specifically limits available compensation to individuals who have sustained economic losses as a result of harm to real or personal property caused by an oil spill. As such, this claim is not compensable under OPA and is denied.

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 $299,500.00, 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: ***NPFC Claims Adjudication Division***

Date of Supervis[redacted]

Supervisor's Ac[redacted]

Supervisor's Comments:

[11] Letter from the Claimant to the NPFC 14 March 2013.