

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-2036
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$60,000.00

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 14 November 2014, [REDACTED] (d.b.a. Bob's Tiki Shop) ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$60,000.00 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 states he owned a business that made and distributed art and wood carvings to wholesalers in the Gulf. As a result of the spill, he states there was a decline in tourism, and thus he lost income because wholesalers were not buying his product and canceled orders already placed

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 OSLF Claim Form, 5 November 2014.

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 Form, signed 5 November 2014;
- Cover Letter submitted by Claimant, dated 4 November 2014;
- A copy of a voided check for Claimant;
- 2010 Florida Annual Resale Certificate for Claimant;

- City of Springfield, FL Business License Certificate for Claimant, 2014-2015;
- First data Credit Card machine Invoice for Claimant, 5 April 2010.

The Claimant states that this claim was first presented to the Responsible Party (RP) and that the RP denied payment on this claim.² On 5 September 2014, the Claimant presented this claim to the NPFC, seeking \$60,000.00 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.

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).³

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.

As an initial matter, the claim is denied primarily on the basis that it was not 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. See, 33 U.S.C. § 2712(h)(2).

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.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, even if the Claimant was not included in the Settlement Class and, this claim is denied on its merits. In order to prove a claim for loss of profits or impairment of earning capacity damages, a claimant must provide evidence sufficient to prove (1) that the claimant sustained a loss or reduction in income, and (2) that the loss was caused by damage to real or personal property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

² Optional OSLTF Claim Form, dated 5 November 2014.

³ At the time of the spill, the locations in which the Claimant was living within Economic Loss Settlement Zone C.

The Claimant alleged that the uncertainty in the Gulf after the spill caused a decline in tourism, and thus caused him to lose income because wholesalers were not buying his product and/or canceled orders already placed. These factors in and of themselves do not necessarily constitute a direct link to the oil spill. Even if it could be proven that there was negative public opinion of the Gulf and its surrounding areas, it still remains a business decision of the tourists to not frequent the stores with which the Claimant wholesaled.

The Claimant asserts that its clientele made business decisions to cancel, not renew, or not start orders/contracts with the Claimant which he attributes to the oil spill although evidence has not been provided to substantiate such an assertion. In order for the Claimant to tie his losses to the oil spill, he would have to tie each and every one of his clients' losses to the oil spill. Since the Claimant has not met his burden of fully supporting his claim with proper documentation, it cannot be ascertained that the Claimant suffered losses due to the oil spill. In this claim submission, the Claimant states that supporting documentation is readily available and on file with the BP Claims program, although it is the Claimant's burden to provide all documentation associated with his alleged loss, including but not limited to, complete income tax returns from 2009 to the present along with any other additional documentation that supports the Claimant's loss, directly to the NPFC, which is a separate, federal claims program administered by the United States Coast Guard and as such, this office is not privy to anything produced to another entity.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount of \$60,000.00, 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. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/1/14*

Supervisor's Action: *Denial approved*

Supervisor's Comments: