

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-2042
Claimant	: Ms. [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$30,316.00

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 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 17 March 2016, Ms. [REDACTED] (“the Claimant”), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$329,345.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.

At the time of the oil spill, the Claimant states her livelihood was based on the industry in the Gulf of Mexico region. She further asserts that as a result of the spill, her business suffered an economic slowdown.

The NPFC denied the claim on 23 March 2016, on the basis that not only was she part of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement) but that the Claimant’s alleged loss was also not shown to be 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.

REQUEST FOR RECONSIDERATION:

On 12 April 2016, the Claimant sent a request for reconsideration via mail to the NPFC stating she would like the NPFC to reconsider her claim and provided additional documentation in support of her claim.

The Claimant provided the following documentation on reconsideration:

1. Email with attached reconsideration documents, dated 12 April 2016;
2. Direct Filing Short Form for claimant; and
3. W2s for the Claimant, 2007-2011.

RECONSIDERATION CLAIM ANALYSIS:

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 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).

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.

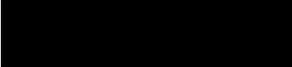
Furthermore, even if the Claimant was not included in the Settlement Class, this claim is denied on its merits. In order to prove a claim for loss of profits or impairment of earning capacity damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction 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.

While the Claimant provided W2s from her employer, she has not shown that the spill affected her income. It should be noted that it appears that the Claimant did not work at Helix Energy Solutions Group for all of 2011, due to circumstances independent of the oil spill. Therefore, the difference in the Claimant's 2011 income and the previous years do not appear to be connected to the oil spill (to include the claim for projected losses based on this difference), but rather from the decisions made on the part of the Claimant and/or her employer.

Based on the foregoing, the NPFC again denies the claim because the Claimant has failed to (1) show that she is not part of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement), (2) demonstrate that the loss, if one had been established, was due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil, and (3) this claim 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). This claim is denied upon reconsideration.



Claim Supervisor: 

Date of Supervisor's review: 4/25/16

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: