

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5107

5890/DWHZ  
20 October 2011

Mr. Joseph C. Britz Jr.  
[REDACTED]

Re: Claim Number: N10036-1498

Dear Mr. Britz:

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 N10036-1498 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 N10036-1498.

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  
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1498
Claimant	Mr. Joseph C. Britz, Jr.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$18,000.00

### ***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 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 certain individual and business claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 12 October 2011, Mr. Joseph C. Britz, Jr. (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$18,000.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working as a full-time server at La Playa Beach and Golf Resort in Naples, Florida.<sup>2</sup> The Claimant alleged that because of the Deepwater Horizon oil spill, guests cancelled reservations at the resort, and those who stayed were hesitant to order seafood at the resort's restaurant where the Claimant worked as a server.<sup>3</sup> The Claimant alleged that this resulted in a decrease in tips, and a general reduction in his earnings.<sup>4</sup>

The Claimant has been compensated a total of \$18,228.64 by the RP/GCCF, and seeks an additional \$18,000.00 in loss of earnings, to cover "past, present and unforeseen future damages."<sup>5</sup>

### ***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 Section 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:

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<sup>1</sup> Optional OSLTF Claim Form, dated 19 September 2011.

<sup>2</sup> Letter from the Claimant to the NPFC describing losses, undated.

<sup>3</sup> Letter from the Claimant to the NPFC describing losses, undated.

<sup>4</sup> Letter from the Claimant to the NPFC describing losses, undated.

<sup>5</sup> Letter from the Claimant to the NPFC describing losses, undated.

- (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.
- (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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 1 October 2011;
- Instructions, Optional OSLTF Claim Form;
- Letter from the Claimant to the NPFC, describing losses;
- Letter indicating the Claimant's 2008/2009 employment;
- Map showing location of the Claimant's place of employment;
- Map showing location of the Claimant's place of employment;
- Article describing possible effects of the Deepwater Horizon oil spill;
- 2010 Form W-2 Wage and Tax Statement, showing wages of \$36,490.97;
- Letter from La Playa Beach & Golf Resort, certifying validity of pay stubs;
- Earnings Statement/copies of pay checks, January 15, 2010 – December 31, 2010.

Prior to presentment to the NPFC, the Claimant presented two Third Quarter Interim Payment Claims (ICQ32011s) to the RP/GCCF, seeking lost profits and impairment of earnings. The Claimant was assigned Claimant ID 7253878 and the ICQ32011s were assigned claim #

9409666, and # 9419005. The Claimant received an interim payment from the GCCF in the amount of \$5,682.14, in a determination letter dated 7 July 2011.<sup>6</sup>

The Claimant then filed a Full Review Final (FRF) payment claim, which was assigned Claim # 9132427. Upon Re-Review, the RP/GCCF issued final payment on this claim in the amount of \$12,546.50 in a letter dated 1 September 2011.<sup>7</sup> The Claimant has indicated that he has accepted this final payment, and has been compensated a total of \$18,228.64 by the RP/GCCF regarding his alleged losses.<sup>8</sup>

On 12 October 2011, the Claimant presented this claim to the NPFC, seeking an additional \$18,000.00 in loss of profits and impairment of earnings capacity allegedly resulting from the effects of the Deepwater Horizon oil spill.<sup>9</sup> The Claimant has previously presented losses associated with this particular injury, i.e., alleged lost earnings in his position as a server at La Playa Beach and Golf Resort, but alleged that he has not been fully compensated by the RP/GCCF.<sup>10</sup>

The NPFC may properly adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF. The Claimant stated that he initially submitted his claim to the RP/GCCF seeking damages in the amount of about \$50,000.00.<sup>11</sup> Therefore, the NPFC may consider the entirety of this claim in the amount of \$18,000.00, as now before the NPFC.

### **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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support this claim.

As an initial matter, only actual losses incurred, and not future losses, are compensable under OPA. 33 C.F.R. § 136.235 specifically states that “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* (emphasis added).” Therefore, any damages presented in this claim, which represent losses not yet incurred by the Claimant, are denied. The remainder of this determination addresses losses incurred from the date of the oil spill, to the date that this claim was presented to the NPFC, on 12 October 2011.

The remainder of this claim is denied because the Claimant has waived any rights to further recovery regarding losses allegedly sustained as a result of the Deepwater Horizon oil spill, in return for final payment from the RP/GCCF.

Information available to the NPFC indicates that the Claimant has received a Third Quarter Interim Payment, as well as Final Payment from the RP/GCCF for total payment of \$18,228.64.<sup>12</sup> The RP/GCCF requires that a Claimant execute a Release and Covenant Not to

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<sup>6</sup> GCCF Claimant Status, accessed on 19 October 2011.

<sup>7</sup> GCCF Re-Review Determination Letter on Final Payment Claim, 1 September 2011.

<sup>8</sup> Optional OSLTF Claim Form, dated 1 October 2011.

<sup>9</sup> Optional OSLTF Claim Form, dated 1 October 2011.

<sup>10</sup> Optional OSLTF Claim Form, dated 1 October 2011.

<sup>11</sup> PHONECON: NPFC Staff and the Claimant, 19 October 2011.

<sup>12</sup> Optional OSLTF Claim Form, dated 1 October 2011.

Sue in return for Final Payment.<sup>13</sup> Because the Claimant has accepted Final Payment, and signed a Release and Covenant Not to Sue, the Claimant has released any rights to additional recovery regarding this injury to the RP/GCCF.<sup>14</sup> The Release executed by the Claimant specifically states,

By signing this document, you are forever waiving and releasing all claims that you may have against BP or any other party . . . in connection with the [Deepwater Horizon oil spill].<sup>15</sup>

The Claimant has therefore waived rights to further recovery regarding the losses presented to the NPFC. Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the Fund.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in his request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill.

This claim is denied because the Claimant has settled his claim with, and accepted a final payment from, the RP/GCCF, thereby releasing his rights to further recovery regarding these damages, allegedly arising from the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/20/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>13</sup> The Claimant stated the he could not provide a copy of the Notice of Quick Payment Determination.

<sup>14</sup> Standard GCCF Notice of Quick Payment Final Claim Determination.

<sup>15</sup> GCCF Release and Covenant Not to Sue.