

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1525
Claimant	: Shorte Chicken & Fish Shack
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$13,000.00

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

### **CLAIM AND CLAIMANT:**

On 12 October 2011, Sandra M. Levy, on behalf of Shorte Chicken & Fish Shack (collectively, the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) lacking a sum certain. On 27 October 2011, the Claimant presented a sum certain asserting \$13,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant operated a catering business in the New Orleans, Louisiana region.<sup>1</sup> The Claimant asserts that due to the Deepwater Horizon oil spill, sales decreased, resulting in the Claimant losing her job.<sup>2</sup> As a result, the Claimant asserts she suffered reduced income.<sup>3</sup>

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$13,000.00.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF for loss of profits and impairment of earnings capacity.<sup>4</sup> The Claimant was assigned Claimant ID # 3140978 and Claim ID # 196350. The EAP Claim was denied on 14 December 2010.<sup>5</sup> Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF.<sup>6</sup> The Claimant was assigned Claim ID # 9280670. The GCCF presented the Claimant with an offer for Final Payment on the Claimant's FRF Claim on 29 June 2011 in

<sup>1</sup> GCCF Full Review Final Payment Claim Form dated 08 February 2011.

<sup>2</sup> GCCF Full Review Final Payment Claim Form dated 08 February 2011.

<sup>3</sup> GCCF Full Review Final Payment Claim Form dated 08 February 2011.

<sup>4</sup> GCCF Claimant Status page.

<sup>5</sup> GCCF Denial Letter dated 14 December 2010.

<sup>6</sup> GCCF Claimant Status page.

the amount of \$25,000.00.<sup>7</sup> The Claimant accepted the GCCF Final Payment on 01 July 2011.<sup>8</sup> Additionally, the Claimant executed a release and covenant not to sue.<sup>9</sup>

The NPFC denied the claim on November 4, 2011 on the grounds that the Claimant had been compensated by the GCCF and executed a release. By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.<sup>10</sup> The Release executed by the Claimant specifically states:

[i]n consideration of payment in the amount of \$25,000.00, Claimant hereby releases and forever discharges, and covenants not to sue BP Exploration & Production Inc. (“BP”) and the other Released Parties, [ . . . ] for any losses, damages, costs, expenses, injuries, claims, causes of actions, liabilities, or other relief that Claimant has or may have [ . . . ] arising from or relating in any way to the [Deepwater Horizon oil spill].<sup>11</sup>

Furthermore, language in the document states that:

Released Parties means anyone who is or could be responsible or liable in any way for the [Deepwater Horizon oil spill] or any damages related thereto, whether a person, company or governmental entity, including (but not limited to) BP, other potentially responsible or liable parties, including but not limited to the parties listed in Attachment A to this Release, the federal Oil Spill Liability Trust Fund and any state or local fund, and each of their respective Affiliates as defined above.<sup>12</sup>

Therefore, the Claimant has waived rights to any additional compensation regarding the losses presented to the NPFC. Any payment from the OSLTF requires the acquisition of rights from the RP. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant is not eligible for payment from the OSLTF for any losses associated with the Deepwater Horizon oil spill incident.

### **REQUEST FOR RECONSIDERATION:**

The Claimant requested reconsideration which was received by the NPFC on November 22, 2011 via facsimile. The Claimant only provided a one-page letter requesting reconsideration. The Claimant provided no new information in support of her request for reconsideration but rather an argument that she is requesting losses for 2011 and that her tax person wasn't timely therefore she was too late in submitting the request to the GCCF.

### **NPFC Determination on Reconsideration**

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<sup>7</sup> GCCF Determination Letter on Final Claim dated 29 June 2011.

<sup>8</sup> GCCF Claimant Status page.

<sup>9</sup> GCCF Release and Covenant Not to Sue dated 06 July 2011 and PHONECON between the NPFC and the Claimant dated 03 November 2011.

<sup>10</sup> GCCF Release and Covenant Not to Sue dated 06 July 2011.

<sup>11</sup> GCCF Release and Covenant Not to Sue dated 06 July 2011.

<sup>12</sup> GCCF Release and Covenant Not to Sue dated 06 July 2011.

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. While the Claimant requested reconsideration stating she seeks 2011 losses that she was too late in requesting from the GCCF, the Claimant accepted final payment from the RP/GCCF associated with any and all losses from that point forward therefore the Claimant is not eligible for compensation from the OSLTF since she executed a Release and Covenant Not to Sue in exchange for final payment.

This claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *11/28/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

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US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
11/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 6296

Shorte Chicken & Fish Shack  
ATTN: [REDACTED]  
5238 Westlake Drive  
New Orleans, LA 70126

RE: Claim Number: N10036-1525

Dear [REDACTED]

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 N10036-1525 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Per your request, the NPFC is attaching your original photographs that were provided.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

Thomas S. Morrison  
Chief, Claims Adjudication Division  
U.S. Coast Guard

ENCL: Claim Summary / Determination Form