

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1591
Claimant	: Michelle L Wood
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$50,000.00

### **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 01 December 2011, Michelle L. Wood, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) asserting \$50,000.00 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 was employed as a real estate agent and broker in the Biloxi, Mississippi region.<sup>1</sup> The Claimant asserts that due to the Deepwater Horizon oil spill, she suffered a reduction in income.<sup>2</sup>

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$50,000.00.

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>3</sup> The Claimant was assigned Claimant ID # 1155156 and Claim ID # 23724. The EAP Claim was denied on 23 October 2010.<sup>4</sup> Additionally, the Claimant filed a Full Review Final (FRF1) Claim with the GCCF.<sup>5</sup> The Claimant was assigned Claim ID # 9416901. Additionally, the Claimant filed a Full Review Final (FRF2) Claim with the GCCF.<sup>6</sup> The Claimant was assigned Claim ID # 9421113. The Claimant accepted a Quick Pay Payment on this claim on 11 July 2011.<sup>7</sup> Additionally, the Claimant executed a Release and Covenant Not to Sue on 11 July 2011.<sup>8</sup>

The NPFC denied the claim on December 15, 2011 on the grounds that the Claimant has accepted Final Payment from the RP/GCCF in the amount of \$25,000.00.<sup>9</sup> The Claimant has

<sup>1</sup> Optional OSLTF Claim Form dated 01 December 2011 and received 01 December 2011.

<sup>2</sup> Optional OSLTF Claim Form dated 01 December 2011 and received 01 December 2011.

<sup>3</sup> GCCF Claimant Status page.

<sup>4</sup> GCCF Denial Letter dated 23 October 2010.

<sup>5</sup> GCCF Claimant Status page.

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

<sup>7</sup> Signed GCCF Quick Payment Final Claim Form dated 11 July 2011.

<sup>8</sup> Signed GCCF Release and Covenant Not To Sue dated 11 July 2011.

<sup>9</sup> Signed GCCF Quick Payment Final Claim Form dated 11 July 2011.

executed a Release and Covenant Not To Sue in return for this Final Payment.<sup>10</sup> By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.<sup>11</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 ...whether present or future arising from or relating in any way to the [Deepwater Horizon oil spill].<sup>12</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>13</sup>

Therefore, the Claimant has waived rights to further recovery regarding the losses presented to the NPFC. Any payment from the OSLTF requires the acquisition of rights from the Claimant. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the OSLTF.

### **REQUEST FOR RECONSIDERATION:**

The Claimant requested reconsideration which was received by the NPFC on February 21, 2012 through a legal representative, Mr. Jay Jordan of Schwartz, Orgler & Jordan PLLC via regular mail. The request for reconsideration letter asked for an extension of time until June 15, 2012 to provide the NPFC with the necessary documentation. The Claimant provided no new information in support of her request for reconsideration at the time the reconsideration was requested.

### **NPFC Determination on Reconsideration**

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).

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<sup>10</sup> GCCF Release and Covenant Not to Sue, dated 11 July 2011.

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

<sup>12</sup> GCCF Release and Covenant Not to Sue, dated 11 July 2011.

<sup>13</sup> GCCF Release and Covenant Not to Sue, dated 11 July 2011.

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. Upon receipt of the request for extension associated with the Claimant's request for reconsideration, the NPFC sent an email transmission to the legal representative, Mr. Jay Jordan on February 21, 2012 advising that he has five (5) days to provide the NPFC with written authorization from the Claimant to represent pursuant to 33 CFR § 136.105(d)(1-3). The NPFC also advised Mr. Jordan that the request for extension to June 15, 2012 was denied but that the NPFC would allow a thirty day (30) day extension until March 22, 2012 at 4pm EST.

The NPFC received a confirmation read receipt from Mr. Jordan on February 22, 2012 at 8:20am indicating that he had received the NPFC's notification. To date, the NPFC has not heard from the Claimant or Mr. Jordan and as such, the original denial is upheld on reconsideration.

This claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *4/17/12*

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

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 2 [REDACTED]  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
4/17/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 6678

Michelle L Wood  
[REDACTED]

RE: Claim Number: N10036-1591

Dear Ms. Wood:

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 N10036-1591 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

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