

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1668
Claimant	: Loria Britt
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$10,000.00

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 06 February 2012, Loria Britt (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$10,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Prior to the Deepwater Horizon oil spill, the Claimant was a seasonal worker for Liz and Jane Clothes, located in Panama City Beach, Florida.¹ The Claimant asserted that she was laid off from her job as a result of the Deepwater Horizon oil spill.² The Claimant further stated that, while she had received Emergency and Final payments from the GCCF for her losses, she had not received payments for future damages.³

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF. The Claimant was assigned Claimant ID # 3095991 and Claim # 150630, and received payment in the amount of \$7,900.00.⁴ The Claimant also submitted two additional claims for loss of earnings to the GCCF: a Full Review Final (FRF) claim and an Interim Payment Quarter II (ICQ22011) claim.⁵ The Claimant accepted Final Payment from the GCCF in the amount of \$5,000.00 on 30 June 2011.⁶

The NPFC denied the claim on March 9, 2012 on the grounds that the Claimant has accepted Final Payment from the RP/GCCF in the amount of \$5,000.00.⁷ The Claimant has executed a Release and Covenant Not To Sue in return for this Final Payment.⁸ By signing this document,

¹ Letter from the Claimant's employer (Mike Bennett), dated 28 September 2011.

² Optional OSLTF Claim Form, dated 02 February 2012.

³ Optional OSLTF Claim Form, dated 02 February 2012.

⁴ Notice of Determination Emergency Advance Payment

⁵ GCCF Claimant Status page, accessed 08 March 2012.

⁶ GCCF Claimant Status page, accessed 08 March 2012.

⁷ GCCF Claimant Status page, accessed 08 March 2012; PHONECON between the NPFC and the Claimant on 06 March 2012.

⁸ GCCF Release and Covenant Not to Sue, dated 13 July 2011.

the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.⁹ The Release executed by the Claimant specifically states:

[i]n consideration of payment in the amount of \$5,000.00, 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].¹⁰

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.¹¹

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 March 29, 2012 via regular mail. The Claimant only provided a two-page letter requesting reconsideration. The Claimant provided no new information in support of her request for reconsideration but rather an argument that the final payment she received was not for future losses and therefore she feels she is still entitled to future damages the payment did not cover.

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).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. While the Claimant requested reconsideration stating she seeks future damages that she was not paid for by the GCCF despite the fact that she accepted final payment from the RP/GCCF

⁹ GCCF Release and Covenant Not to Sue, dated 13 July 2011.

¹⁰ GCCF Release and Covenant Not to Sue, dated 13 July 2011.

¹¹ GCCF Release and Covenant Not to Sue, dated 13 July 2011.

associated with any and all losses, whether present or future, from that point forward. The NPFC denies this claim on reconsideration because the Claimant is not eligible for compensation from the OSLTF since she executed a Release and Covenant Not to Sue in exchange for a final payment in the amount of \$5,000.

This claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

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

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: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
4/4/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6647

Loria Britt
[REDACTED]

RE: Claim Number: N10036-1668

Dear Ms. Britt:

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 N10036-1668 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