

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)
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2021

5890/DWHZ
Claim# N10036-1324
21 September 2011

Greta Phillip


RE: Claim Number: N10036-1324

Dear Ms. Phillip:

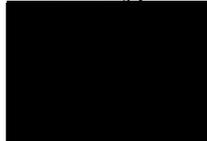
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-1324 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-1324.

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	N10036-1324
Claimant	Greta Phillip
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,000.00

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 22 August 2011, Greta Phillip (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$12,000.00 in lost profits and earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant works for AT&T Mobility Services¹ and alleged lost wages and commissions due to the Deepwater Horizon oil spill.² The Claimant stated that her hours were cut and that overall sales decreased.³

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:

- (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.

¹ Paystubs from AT&T Mobility Services.

² Hardship Letter dated 22 August 2011.

³ Hardship Letter dated 22 August 2011.

- (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 her claim, Claimant submitted:

- 1) Optional OSLTF claim form dated 22 August 2011
- 2) Paystubs from AT&T Mobility Services dated 17 June 2010, 30 July 2010, 13 August 2010, and 08 October 2010
- 3) Fidelity Loan dated 20 January 2011
- 4) GCCF notice of determination emergency advanced payment for \$2,300.00 dated 08 January 2011
- 5) GCCF notice of quick payment final claim determination (for an individual claimant) in the amount of \$5,000.00 dated 10 January 2011
- 6) Hardship letter dated 22 August 2011

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$12,000.00.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF; she was assigned Claimant ID #3139542.⁴ The EAP claim was paid in the amount of \$2,300.00 on 08 January 2011.⁵ Additionally, the GCCF paid a \$5,000.00 quick

⁴ GCCF notice of determination emergency advance payment for \$2,300.00 dated 08 January 2011.

⁵ GCCF notice of determination emergency advance payment for \$2,300.00 dated 08 January 2011.

payment to the Claimant in a letter titled "Notice of quick payment final claim determination (for an individual claimant)"⁶ and the Claimant executed a Release and Covenant Not to Sue.

The NPFC is unable to verify how many claims or the subject matter of the claims that were submitted to the responsible party, except for what was submitted to the NPFC by the Claimant.

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 or destruction or loss of real or personal property or 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 the claim. The NPFC considered all the documentation submitted by the Claimant.

Based on information submitted by the Claimant and information available to the NPFC, BP and the GCCF have paid a total of \$7,300.00 to the Claimant as compensation for her alleged losses. According to information from the GCCF, the Claimant executed a Release and Covenant Not to Sue in return for the Quick Payment.⁷ By signing this document, the Claimant has released the RP/GCCF, any rights to additional recovery regarding this injury. 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].

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 her request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding payments made related to the Deepwater Horizon oil spill.

This claim is denied because it appears from the record that the Claimant has fully settled her claim with BP/GCCF, and that BP and GCCF have compensated the Claimant in full, including a \$5,000 Quick Payment for which the GCCF reportedly required a full and final release of rights against any responsible party. The Claimant has not addressed these payments or otherwise provided any information to show the Claimant has any rights to recover any of the amount claimed here from a responsible party. The Fund will not pay what has already been compensated and any Fund payment is subject to acquiring rights to recover from the responsible party.

If the Claimant disagrees with this determination to deny the claim she may request reconsideration. If so, the Claimant must provide any and all documentation of any payments received from BP or GCCF, including any related agreements or releases signed by the Claimant. If the claimant disagrees that any payments have been received from BP or GCCF, or that any

⁶ GCCF notice of quick payment final claim determination (for an individual claimant) dated 10 January 2011.

⁷ GCCF notice of quick payment final claim determination (for an individual claimant) dated 10 January 2011.

payments received are for damages other than those included in this claim for \$12,000 to the NPFC, the Claimant should explain the circumstances fully. If the Claimant disagrees that she has signed any release of her claims against a responsible party, including any release in return for a Quick Payment, the Claimant should fully explain the circumstances in the request for reconsideration.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *9/20/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: