

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
1/25/2011

VIA MAIL and EMAIL: [REDACTED]@gmail.com

[REDACTED]
Mobile, AL 36603

RE: Claim Number: N10036-0155

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0155 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

[REDACTED]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/25/2011
Claim Number	: N10036-0155
Claimant	: [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$296,182.00

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 from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT:

On 30 November 2010, [REDACTED] (Claimant) presented a claim for lost profits and earnings in the amount of \$296,182.00. The Claimant asserted that his lost profits and earnings resulted from the Deepwater Horizon incident. The Claimant started a new business, [REDACTED], a recycling and container retrieval business in March 2010. The business was formed as a partnership between Claimant and [REDACTED] on 23 March 2010. Subsequently, Claimant entered into a contract with [REDACTED] Environmental whereby [REDACTED] would perform services to [REDACTED] Environmental. The Partnership agreement between the Claimant and [REDACTED] (business partner) was also terminated by Claimant on the same date, 29 June 2010. One week later, on 07 July 2010, the [REDACTED] Environmental contract was terminated by [REDACTED] Environmental.

Claimant asserted that his alleged loss of profits associated with for [REDACTED] was due to the Deepwater Horizon incident. The NPFC denied the claim on January 24, 2010, on the grounds that the Claimant had not established that the loss of profits resulted from the incident. Documentation submitted reflects that any loss of profits was due to Claimant terminating his partnership with [REDACTED] for breach of the partnership agreement. Further, evidence in the record reflects that [REDACTED] Environmental terminated its contract with [REDACTED] because Claimant failed to provide the services and personnel required under the contract. Part of the claim, in the amount of \$155,182, was denied because it represented a future potential loss of profits that could result from a growing business.

Reconsideration Claim Analysis

The claimant requested reconsideration via facsimile on January 24, 2011. To support his request for reconsideration, the claimant provided no new information although he did request to amend his sum certain from \$296,182.00 to \$141,000.00 removing the claim component associated with the prospective losses originally claimed and denied regarding his contractual issue with [REDACTED] Environmental.

The remaining claim component is associated with the Claimant's contractual agreement with one of his investment partners, [REDACTED] whereby he sold her 49% interest in his business venture on March 23, 2010. The agreement calls for payments to be made directly to [REDACTED] at a minimum of \$3,806.00 per week. [REDACTED] failed to meet her obligations under the partnership agreement which resulted in [REDACTED] issuing a Notice to Terminate Partnership dated June 29, 2010 for the following reasons: breach of contractual agreement, insufficient investment capital, and excessive loan denials.

NPFC Determination on Reconsideration

The NPFC again denies the claim because the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. The alleged loss was caused by a failed partnership agreement dated March 23, 2010 between the Claimant and [REDACTED]. Such a loss is not a damage that may be compensated from the OSLTF.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 1/25/11

Supervisor Action: *Denial on reconsideration approved*