U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 8725

5890/DWHZ
17 October 2012

Universal Catamaran
[redacted]

Re: Claim Number: N10036-1799

Dear Mr. Gemino:

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 the claim number N10036-1799 involving the Deepwater Horizon oil spill. Please see the attached 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 N10036-1799.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

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

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1799
Claimant	Universal Catamaran Corp.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity/Real Property
Amount Requested	$350,000.00

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 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 certain individual and business claims on behalf of BP.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 9 May 2012, Mr. Arnold Gemino, on behalf of Universal Catamaran Corp. (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $350,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.[1]

On 9 November 2005, the Claimant purchased a 65' glass-bottom vessel, which he intended to refit and sell. The Claimant alleged that he received an inquiry from an interested buyer sometime after 18 September 2009. Negotiations proceeded with the goal of finalizing the sale in June of 2010, for the selling price of $425,000.00.[2] The interested buyer indicated that he had intended "to operate the vessel in the Gulf Coast area of Pensacola, Florida, providing both public tours and party cruises."[3] Following the oil spill, the buyer decided not to move forward with the purchase, citing "the broad impact of the spill in the Gulf and the immediate negative impact the spill had on the tour industry."[4]

[1] Optional OSLTF Claim Form, signed on 13 May 2012.
[2] "Exhibit A" Pre-Owned Vessel Sales Contract, dated 9 April 2010.
[3] Letter from buyer, explaining cancellation, 14 January 2011.
[4] Letter from buyer, explaining cancellation, 14 January 2011.

The Claimant eventually sold the vessel on 30 September 2011, for a price of $75,000.00.[5] The Claimant seeks to recover the additional $350,000.00 which he alleged that he would have earned had the oil spill not prompted the first buyer to back out of the sale.

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. 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;
(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; and
(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

[5] Letter from the Claimant, explaining losses.

(e) State, local, and Federal taxes.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the NPFC

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 7 May 2012;
- Fax Cover Sheet, 8 May 2012;
- Claim Cover Sheet, 8 May 2012, noting sale of vessel on 30 September 2011;
- "Cocoa Reef" Condition and Valuation Survey 1985;
- Report of Marine Survey of the vessel, "Cocoa Reef" 9 January 2008, estimating fair market value of $450,000.00;
- Letter from the Claimant to the GCCF RE: ownership of vessel, undated;
- Letter from the Claimant to the GCCF, 7 February 2012;
- Bill of Sale, 9 November 2005;
- Bill of Sale, 20 August 2010;
- Care, Custody and Control Agreement, 10 February 2008;
- Letter from the Claimant to Mr. Steel Reeder, 18 September 2009;
- Customs Power of Attorney, Designation as Export Forwarding Agent and Acknowledgement of Terms and Conditions, 21 September 2009;
- Exhibit A, Pre-Owned Vessel Sales Contract, signed by buyer on 11 April 2010;
- Letter from Robert Van Horn to the Claimant regarding cancellation of sale of vessel, 14 January 2011;
- Certificate of Vessel Documentation;
- Bill of Sale, 30 September 2011;
- Letter from Seacoast National Bank to the Claimant, 7 April 2012;
- Letter from the Claimant to the NPFC, in response to NPFC request for additional information, 9 July 2012;
- Cocoa Reef Condition and Valuation Survey, 1985;
- Business plan/projected revenue and expenses, provided by Capt. Robert Van Horn.
- Emailed response to additional questions, received on 25 September 2012.

On 9 May 2012, the Claimant presented this claim to the NPFC, seeking $350,000.00 in loss of profits or impairment of earning capacity damages.[6] Prior to submitting this claim to the NPFC, the Claimant presented several claims to BP, the GCCF and later, to the CSSP under Claimant ID 1139323. The claim numbers and payment amounts are summarized in the following chart.[7]

[6] Hardship Letter, dated 28 June 2012.

[7] Deepwater Horizon- United States Coast Guard Report, as of 8/16/2012.

Claim type	Date Filed	Period	Claim #	Requested	Paid
	6/21/2010	BP			
Real Property	9/3/2010	Final	9021861	$425,000.00	$0.00
Real Property	1/17/2011	ICQ12011	9176948	$425,000.00	$0.00
Real Property	10/3/2011	ICQ42011	9505839	$425,000.00	$0.00
Real Property	12/26/2011	ICQ42011	9550157	$350,000.00	$0.00
Econ. Loss	8/15/2012	DWH	55118	$-	$0.00

All claims before the NPFC must have been first presented to the Responsible Party or its representative. Should the RP fail to issue payment on a claim, or should the claim be pending for a period longer than 90 days, the claimant may then present the same claim, for the same damages, to the NPFC.[8] Evidence available to the NPFC indicates that the Claimant has properly presented claims to the GCCF and CSSP, over and above his claimed damage amount of $350,000.00. Therefore, OPA presentment requirements have been met and the NPFC may properly adjudicate this claim for loss of profits and impairment of earning capacity damages in the amount of $350,000.00.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).

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, destruction or loss of real or personal property or of 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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

As an initial matter, it appears that the Claimant is a member of the E&PD Settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the claimant no longer has rights to the claim and therefore cannot subrogate the NPFC to those rights.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, this claim for loss of profits damages is also denied on its merits, as the Claimant has failed to prove that his alleged loss was caused by the Deepwater Horizon oil spill. In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to

[8] 33 C.F.R. § 136.103(c)(2).

prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant provides evidence indicating that the interested buyer decided not to move ahead with a vessel purchase as a result of concerns regarding the Deepwater Horizon oil spill. However, evidence in the claim submission indicates that the sale had not yet been finalized. As such, the Claimant's alleged loss is speculative, and non-recoverable. A copy of a "pre owned vessel sales contract" indicates that certain steps were to be taken prior to the completion of the sale. On or before 9 May 2010, the buyer was to make a deposit of $42,500.00, which was to be refundable pending the outcome of a marine survey. The buyer would make the additional $382,500.00 payment "upon completion of satisfactory marine survey and acceptance of the vessel, on or before June 4 [2010]."[9] The Claimant has not provided evidence to prove that the initial deposit was ever made or that the buyer had ever secured financing to purchase the vessel. Rather, evidence indicates negotiations were ongoing at the time of the oil spill.

Furthermore, the Claimant has not provided evidence to prove that his difficulty selling the vessel after May of 2010, was caused by the Deepwater Horizon oil spill. When questioned as to why the vessel's sales price decreased dramatically, to $75,000.00 in September of 2011, the Claimant cites "a poor sales market, no bank credit and the attitude of buyers in general."[10] It does not seem then, that the Claimant's alleged loss due to his inability to sell the vessel at a previously expected sales price was actually "due to the injury to, destruction of, or loss of real or personal property or natural resources"[11] resulting from the Deepwater Horizon oil spill.

Based on the foregoing, the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount $350,000.00, or (2) that the alleged loss is due to the injury, destruction, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.

Claim Supervisor: ***NPFC*** [redacted]

Date of Supervisor's Revie[redacted]

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[9] "Exhibit A" Pre-Owned Vessel Sales Contract, 9 April 2010.
[10] Response to NPFC request for additional information.
[11] 33 C.F.R. 136.233(b).