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 2000 0001 1246 6823

5890/DWHZ
30 July 2013

Castine Point, LLC
[redacted]

Re: Claim Number: N10036-1965

Dear Mr. Buras:

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 N10036-1965 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 N10036-1965.

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	N10036-1965
Claimant	Castine Pointe, LLC
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	$5,500,000.00

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 8 July 2013, Mr. Daniel Buras, on behalf of Castine Point, LLC, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $5,500,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.[1]

At the time of the oil spill, the Claimant was involved in negotiations to sell their 220 acre property in Long Beach, Mississippi. The sale was never finalized due to the purchaser's decision to exercise his option to forgo closing during a negotiated due diligence period. According to the contract, the sale was contingent on "financing, inspections, [and] survey to purchaser's satisfaction." The contract stipulated that "if for any reason, purchaser wishes to cancel this offer [during the due diligence period], they may do so." The contract further stated that

> [Buyer] is concearned about the recent events of the "BP New Horizon Oil Spill" [sic] If [Buyer] feels that market conditions are affected due to this event and value of subject property is hendered in any way, this contract can and will be cancled at purchaser's request during the due dillagence period. [*sic*]"[2]

The Claimant seeks to recover $5,500,000.00, which is the sales price of the property at the time of the oil spill.[3] The Claimant indicated that he has maintained ownership of the property which he has not yet been able to sell.[4]

APPLICABLE LAW

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[1] Claim cover letter, 16 April 2013.
[2] Transcribed directly from contract submitted in support of this claim.
[3] Contract for sale, partially signed on 13 May 2013.

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
(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:

- Claim Cover Letter/Complaint directed to U.S. District Court for the Eastern District of Louisiana, signed by Daniel E. Buras;
- Contract for the sale and purchase of real estate lots and land, signed by buyer on 13 May 2013;
- Dual Agency Confirmation, signed 13 May 2010;
- Castine Pointe, LLC, Account QuickReport, 2007, 2008, 2009, Jan – Aug. 2010;

– Email with attachment, Power of Attorney, 24 July 2013.[5]

The Claimant does not indicate whether or not this claim has been first presented to BP or an agent acting on its behalf. Before presenting a claim to the NPFC, a claimant must first present the claim to the Responsible Party or its agent. If the RP denies the claim or it is not settled by payment within ninety days of presentment, the claimant may then present the same claim to the NPFC.[6]

On 8 July 2013, the Claimant presented this claim to the NPFC, seeking $5,500,000.00 in loss of profits or impairment of earning capacity. The NPFC will adjudicate the claim to the extent presentment requirements have been satisfied. If any damages subject of this claim were not first presented to and denied by the RP, these damages are denied for improper presentment.[7]

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.

For the reasons explained below, this claim is not compensable under OPA.

1. <u>The claim is currently the subject of an action in court by the Claimant to recover the same damages as now before the NPFC</u>.

In accordance with OPA's implementing regulations, the NPFC may not make payment on a claim "during the pendency of an action by the person in court to recover costs which are the subject of the claim."[8] The Claimant has included a copy of a Complaint allegedly filed in the District Court for the Eastern District of Louisiana, in which the Claimant is attempting to recover the same damages as now before the NPFC. As such, the NPFC would be precluded from making a payment on this claim.

The remainder of this determination addresses the substantive reasons for denial.

This claim is based on a failed contract for the sale of a parcel of property in Long Beach, Mississippi. The Claimant alleged that the sale was progressing, but that the buyer backed out during a "60 day due dillagence [*sic*] period."[9] The contract specified that the buyer would have 60 days to inspect the properties, and "if for any reason purchaser wishes to cancel this offer in this time period, they may do so." The contract further stipulated,

> [buyer] is conceared about the recent events of the "BP New Horizon Oil Spill" if [buyer] feels that market conditions are affected due to this event and value of subject property is hendered in any way, this contract can and will be cancled at [buyer's] request during the due dillagence period. [*sic*].[10]

According to this claim submission, the buyer determined that he would not proceed with the contract during the due diligence period. The OSLTF is only available to compensated actual losses. A failed

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[5] The NPFC requested proof of Claimant's authority to present this claim via phonecall on 19 July 2013. The Claimant also indicated that he would provide other supporting documentation. The NPFC representative stated that the claim would be held for one week, until 26 July 2013, to allow the Claimant to present other unspecified evidence. However, as of the date of this determination, no additional evidence has been submitted.
[6] 33 C.F.R. § 136.103(a).
[7] 33 C.F.R. § 136.103(c)(2).
[8] 33 C.F.R. § 136.103(d).
[9] Contract for property sale, 13 May 2013.
[10] Contract for property sale, 13 May 2013; Transcribed from original. All errors contained therein.

property sale is a quantifiable actual loss only if the property was later sold at a price lower than an earlier contracted for sales price. The difference in sales prices would constitute the amount of the "loss." However, if a Claimant maintains ownership of the property at the time the claim has been presented, the loss on the sale is speculative, as the property might sell at a future time for an unknown amount. Because the Claimant in this instance has not sold the property, the Claimant has not experienced a quantifiable loss for the purposes of OPA.

Furthermore, even if the Claimant had later sold the property for a lesser amount, this loss would not be compensable under OPA without proof that the sale failed "as a consequence of injury to, destruction of, or loss of the property or natural resources."[11] The Claimant here has alleged that the buyer decided not to move forward with the sale due to concerns regarding "market conditions . . . due to [the Deepwater Horizon oil spill]."[12] This type of loss, resulting from the buyer's decision to not proceed with an agreement due to concerns regarding economic conditions in Long Beach Mississippi in 2010, is not a loss resulting from "damage to real or personal property or natural resources" caused by the discharge of oil. Therefore, even if the Claimant had sold the property at a loss, this would not be the type of loss that could be compensated through the OSLTF.

Based on the foregoing, this claim is denied because (1) the Claimant is currently seeking to recover these damages through litigation, (2) the Claimant has failed to provide evidence sufficient to prove that they sustained a financial loss in the amount $5,500,000.00, and (2) the Claimant has failed to prove 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.

Claim Supervisor: ***NPF***[redacted]***ication Division***

Date of Supervisor's Review: ***7/30/13***

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

Supervisor's Comments:

[11] 33 C.F.R. § 136.233(b).
[12] Contract for property sale, 13 May 2013.