

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
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail:
arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1060 0001 7082 8287

5890/DWHZ
26 August 2011

Dominyon Enterprises
ATTN: Joseph Hudson, Esq.
Cc: Ms. Jessica Bennett
1600-24th Ave
P.O. Box 908
Gulfport, MS 39506

Re: Claim Number: N10036-1283

Dear Mr. Hudson:

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 N10036-1283 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 N10036-1283.

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	N10036-0895
Claimant	Dominion Enterprises
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$150,000.00

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 8 August 2011, Ms. Jessica Bennett, on behalf of Dominion Enterprises (collectively "Claimant") presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$150,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant owns and operates a "consulting firm for contractors, developers and investors who want to build and sell affordable homes."² The Claimant alleged to have lost two business opportunities when construction projects failed to move forward as a result of the Deepwater Horizon oil spill.³

The Claimant's submission to the NPFC indicated that the Claimant had two employment agreements in place: one with Boone Homes, LLC and one with Hammerhead Construction, Inc. These agreements stipulated that the Claimant would be paid for consulting services as home construction projects moved forward and individual home sales were finalized. However, when buyers for the projects were not secured, the Claimant was not paid. The Claimant stated in her submission, "With buyers in the purchase pipeline, construction would have proceeded and my anticipated income per house would have been paid."⁴

Claimant alleged that because of the oil spill, buyers were hesitant to purchase homes in Gulfport, thereby causing the Claimant losses in the amount of \$150,000.00.⁵

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.

¹ Optional OSLTF Claim Form dated 6 August 2011.

² Letter from Claimant to GCCF, 16 May 2011.

³ Letter from Claimant to GCCF, 16 May 2011.

⁴ Letter from Claimant to GCCF, at 2, 16 May 2011.

⁵ Optional OSLTF Claim Form dated 6 August 2011.

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.
- (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 this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 6 August 2011;
- Emails between Claimant and the NPFC, 5 August 2011;
- Email from Daniel Wray to Claimant, 27, 28 June 2011;
- Fax Cover Sheet, 16 May 2011;
- Letter to GCCF, requesting reconsideration of claim, Claimant ID 3103474, 16 May 2011.
- Denial Letter on Interim Payment/Final Payment Claim, 22 April 2011;
- 2009 Form 1040, showing adjusted gross income of \$12,739.00;
- 2009 Schedule C (Form 1040), showing net profit of \$13,708.00;

- 2009 Form 4562;
- 2009 Schedule SE (From 1040);
- Letter from Connie Boone, noting loss of income, undated;
- Letter from Connie Boone, noting temporary lay-off of Claimant, 9 June 2010;
- Record of payments from Boone Homes, LLC to Jessica Bennett, 16 January 2010 to 1 June 2010;
- Copy of Joint Venture Agreement, Dominyon Enterprises and Hammerhead Inc. 21 April 2010, executed 21 April 2010;
- 2010 Form 1040, showing adjusted gross income of -9,401.00;
- 2010 Schedule C (Form 1040), showing net profit of -9,401.00.
- Response to request for additional information, received 23 August 2011.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment Claim for \$31,000.00 in loss of profits and earnings capacity, and was assigned Claimant ID 3103474.⁶ According to Claimant, this claim was denied in October 2010.⁷ Claimant then submitted a First Quarter Interim Payment Claim (ICQ12011) for lost Profits and Lost Earnings Capacity in the amount of \$150,000.00, which was denied on 22 April 2011.⁸ To date, the NPFC has been unable to independently verify the Claimant's presentment to the RP/GCCF.

On 8 August, 2011, the Claimant presented this claim to the NPFC for \$150,000.00 in loss of profits and impairment of earnings capacity. The Claimant stated that the claim before the NPFC is the same claim submitted to the RP/GCCF in ICQ12011.⁹ Therefore, this NPFC determination addresses Claimant's EAP and ICQ12011 to the extent that this claim for damages has previously been presented to the RP/GCCF. Any damages claimed now before the NPFC, which were not previously presented to the RP/GCCF are denied.

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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

In order to prove a claim for loss of profits and impairment of earnings capacity, the Claimant must demonstrate (1) that she sustained a financial loss, and (2) that the loss was the result of the Deepwater Horizon oil spill.

Claimant is a "consulting firm for contractors, developers and investors who want to build and sell affordable homes."¹⁰ The Claimant's loss is based on the cancellation of two construction projects in Gulfport Mississippi, for which she was scheduled to work as a consultant.

⁶ PHONECON: Claimant and NPFC Staff, 23 August 2011.

⁷ PHONECON: Claimant and NPFC Staff, 23 August 2011.

⁸ PHONECON: Claimant and NPFC Staff, 23 August 2011.

⁹ PHONECON: Claimant and NPFC Staff, 23 August 2011.

¹⁰ Letter from Claimant to GCCF, at 2, 16 May 2011.

1. Boone Homes, LLC.

Claimant alleged that she was contracted to work with Boone Homes, LLC in 2010, and lost income due to the cancellation of construction projects between potential home buyers and Boone Homes. The Claimant specifically stated that she “lost \$37,750.00 because these construction opportunities in 2010 did not go forward.”¹¹

In a letter dated 15 August 2011, the NPFC requested that the Claimant provide documentation of cancelled home sales, or any other documentation to show that the oil spill resulted in the cancellation of contracts between Boone Homes and potential buyers. In her response to the NPFC, the Claimant did not provide such information.¹² Therefore, the Claimant has not provided sufficient documentation to indicate that any loss of income she sustained as a consultant of Boone Homes was due to effects of the Deepwater Horizon oil spill.

2. Hammerhead Constructions, Inc.

Claimant also alleged a loss of \$112,500.00 due to the cancellation of a contract for employment with Hammerhead Construction, Inc.¹³ As a consultant for Hammerhead Construction; the Claimant was primarily responsible for finding buyers for a new construction project in Gulfport, Mississippi, involving the construction of ten new homes.¹⁴ The Claimant stated that she was paid \$7,500.00, as a start-up payment and was contracted to receive an additional \$112,500.00 by completion of the contract.¹⁵ The Claimant’s submission to the NPFC stated that the “project with Hammerhead Construction, Inc. did not go forward to completion “because of the uncertainty produced with all parties, especially my identified and prospective homebuyers as a result of the BP Oil Spill of April 20, 2011.”¹⁶

In a letter dated 15 August 2011, the NPFC requested that the Claimant provide records of cancelled home sales, as well as contact information for the developer who ultimately decided to put the project on hold when he could not generate sufficient buyer interest.¹⁷

Claimant responded by providing copies of unsigned construction agreements, and emails from prospective buyers regarding specifications of the to-be-built homes. However, the Claimant has not provided any indication that buyers ever signed purchase agreements, or that the identified prospective buyers chose not to sign agreements due to effects of the oil spill.¹⁸ The NPFC contacted three identified prospective buyers via email to inquire as to their reasons for not moving forward with home purchases, but has received no response.¹⁹

¹¹ Letter from Claimant to GCCF at 2, 16 May 2011.

¹² Response to request for additional information, 23 August 2011.

¹³ Letter from Claimant to GCCF at 2, 16 May 2011.

¹⁴ PHONECON: NPFC Staff and Hammerhead Construction, Inc., 15 Aug. 2011.

¹⁵ Letter from Claimant to GCCF at 2, 16 May 2011.

¹⁶ Letter from Claimant to GCCF at 2, 16 May 2011.

¹⁷ PHONECON: NPFC Staff and Hammerhead Construction, Inc, 15 Aug 2011.

¹⁸ Response to request for additional information, 23 August 2011.

¹⁹ Three emails dated 23 August 2011.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$150,000.00, and (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 a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/26/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: 