

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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1/03/12

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1570 0001 4802 6425

Leonard Panaro  


RE: Claim Number: N10036-1399

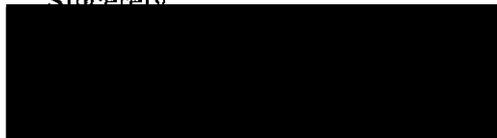
Dear Mr. Panaro:

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 N10036-1399 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



/ Thomas S. Morrison  
Chief, Claims Adjudication Division  
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1399
Claimant	: Leonard Panaro
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$325,000.00

### **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 13 September 2011, Leonard Panaro, on behalf of Business Systems – Media Promotions (collectively the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$325,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant operates a multi-faceted business based in Belle Chasse, LA that is involved in advertising, media, event coordination, and event promotion.<sup>1</sup> The Claimant asserted that, due to the Deepwater Horizon oil spill, clients were unable to secure advertising budgets or sponsor events because of financial uncertainty and loss.<sup>2</sup> Consequently, the Claimant experienced a loss of earnings because its advertising services were not needed and there were fewer events held from which the Claimant could earn revenue.<sup>3</sup>

Prior to presenting this claim to the NPFC, the Claimant filed a Full Review Final (FRF1) claim with the GCCF for loss of earnings on 12 March 2011 in the amount of \$500,000.00.<sup>4</sup> The Claimant was assigned Claimant ID # 3152001 and Claim # 9321436. The GCCF denied this claim on 22 April 2011.<sup>5</sup> The Claimant also filed a second Full Review Final (FRF2) claim with the GCCF for loss of earnings on 17 August 2011 in the amount of \$500,000.00.<sup>6</sup> The GCCF denied this claim on 23 August 2011.<sup>7</sup>

### **REQUEST FOR RECONSIDERATION:**

On December 22, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

<sup>1</sup> GCCF Full Review Final Claim Form.

<sup>2</sup> GCCF Full Review Final Claim Form.

<sup>3</sup> Optional OSLTF Claim Form, dated 29 August 2011.

<sup>4</sup> Report from the GCCF, dated 6 November 2011.

<sup>5</sup> Denial Letter on Interim Payment/Final Payment Claim, dated 22 April 2011.

<sup>6</sup> Report from the GCCF, dated 6 November 2011.

<sup>7</sup> Denial Letter on Interim Payment/Final Payment Claim, dated 23 August 2011.

The NPFC denied the claim originally on November 15, 2011 because the Claimant has failed to prove that the business suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant's initial submission to the NPFC consisted of tax documents and profit and loss statements from 2008 through 2011, as well as several letters from area businesses. Notably, most of the letters were from businesses that were patronized by the Claimant rather than businesses that purchased the Claimant's services.<sup>8</sup> The Claimant asserted that the business experienced a reduction in earnings due to the Deepwater Horizon oil spill because his clients did not need advertising services, nor were his clients putting on as many events which would require the Claimant's services. Claimant did not provide an explanation or calculation for the alleged \$325,000 loss of profits.

On 06 October 2011, the NPFC requested that the Claimant provide additional information to verify the alleged loss and to evidence that the alleged loss was due to the Deepwater Horizon oil spill. The NPFC requested that the Claimant provide, among other things, a sales ledger indicating clients' names and amounts billed, documentation of contracts that were cancelled due to the Deepwater Horizon oil spill, and a list of venues used by the Claimant. The NPFC also requested that the Claimant answer numerous questions clarifying the exact nature of the services provided by the business and how those services were affected by the Deepwater Horizon oil spill. To date, no response from the Claimant has been received by the NPFC.

The Claimant did not meet the evidentiary burden imposed by 33 C.F.R. §§ 136.105(a) and 136.105(e)(6) to prove that the alleged loss was due to the Deepwater Horizon oil spill. Accordingly, this claim was denied because the Claimant failed to demonstrate that (1) there was an alleged loss in the amount claimed, 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.

#### **RECONSIDERATION CLAIM ANALYSIS:**

The claimant requested reconsideration which was received by the NPFC on December 22, 2011. The Claimant provided three pages via facsimile. The first page consisted of one sentence stating "...[R]esubmission as requested of documentation of information to support appeal for case to remain open and reconsidered for process and resolution"; the second page is a one-page formal letter requesting the reconsideration, and the last page is a one-page letter that was crafted by the Claimant to be sent to his business associations soliciting his services.

#### **NPFC Determination on Reconsideration**

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or

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<sup>8</sup> Letter from Print-All, Inc. to the Claimant dated 08 June 2011; Letter from Peter's Costuming Designs to the Claimant; Emails from Sportzrus to the Claimant dated 18 July 2011 and 27 July 2011; Letter from DocuMart to the Claimant dated 08 June 2011; Letter from The Smile Salon, undated; Letter from Platinum Marketing Group to the Claimant.

legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The request for reconsideration provided no new information to demonstrate an alleged loss of \$325,000.00. In the NPFC's initial determination, the NPFC stated that the Claimant failed to produce requested documentation such as a sales ledger indicating the clients' names and any amounts billed, documentation of contracts that were cancelled due to the Deepwater Horizon oil spill, and a list of venues used by the Claimant. The NPFC also requested that the Claimant answer numerous questions clarifying the exact nature of the services provided by the business and how those services were affected by the Deepwater Horizon oil spill.

The Claimant did not produce any of the requested information or provide any answers to the questions asked; therefore, the Claimant has again failed to demonstrate that he has suffered a loss in the amount claimed or that the alleged loss was 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.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor: *Th*

Date of Supervisor's review: *1/03/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: