

ORIGINAL

FILED

MAY 19 2010

**U.S. COURT OF
FEDERAL CLAIMS**

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BEACH DP, LLC, a Colorado Limited Liability Company;
ROCKY MOUNTAIN FUEL, INC., a Colorado Company;
CHRISTOPHER FRYE, a resident of Colorado

10-301 C
*No. _____

v.

THE UNITED STATES

COMPLAINT AND JURY DEMAND

Plaintiffs Beach DP, LLC, Rocky Mountain Fuel, Inc. and Christopher Frye (together referred to as, "Plaintiffs"), by and through their undersigned attorneys, allege the following:

PARTIES & THE FDIC

1. Plaintiff Beach DP, LLC ("Beach DP") is a California limited liability company.
2. Plaintiff Rocky Mountain Fuel, Inc. ("RMF") is a Delaware corporation.
3. Plaintiff Christopher Frye is an individual and a resident of the State of Colorado.
4. Defendant United States, for the purposes of this civil action, acted through the Federal Deposit Insurance Corporation ("FDIC-R"), an independent agency of the United States, which received the assets of New Frontier Bank ("NFB") on April 10, 2009.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1346(a)(2) and 28 U.S.C. § 1491(a)(1).
6. Venue is proper in this Court under 28 U.S.C. § 1346(a)(2) and 28 U.S.C. § 1491(a)(1).
7. Plaintiffs have exhausted their administrative remedies.

FACTUAL ALLEGATIONS

8. NFB was a Colorado state banking corporation, which maintained its principal place of business at 2425 35th Avenue, Greeley, Colorado, 80634.

9. On April 10, 2009, the State of Colorado closed NFB and appointed the FDIC-R as receiver for NFB's assets.

10. As of April 10, 2009, Plaintiff Christopher Frye had a \$2,000,000 line of credit with NFB (loan number 123927-13), with \$54,870 in undrawn funds.

11. As of April 10, 2009, Plaintiff RMF had a \$4,553,000 loan with NFB (loan number 162180-03), with \$560,040 in undrawn funds.

12. As of April 10, 2009, Plaintiff RMF had another \$7,865,000 loan with NFB (loan number 162180-04), with \$986,884 in undrawn funds.

13. As of April 10, 2009, Plaintiff Beach DP had a \$1,560,500 loan with NFB (loan number 14758704), with \$150,204 in undrawn funds.

14. As of April 10, 2009, Plaintiff Beach DP had another \$200,142 loan with NFB (loan number 14758705), with \$158,891 in undrawn funds.

15. Prior to the maturity date of any of the foregoing loans (collectively referred to as the "Loans") and at a time when a total of \$1,910,889 remained undrawn on the Loans, the FDIC-R froze the Loans and issued notices of repudiation.

16. The FDIC-R's actions in freezing Plaintiff's Loans and repudiating the Loans constitute a breach of contract.

CLAIMS FOR RELIEF

**FIRST CLAIM
(BREACH OF CONTRACT)**

17. Plaintiffs incorporate by reference the forgoing paragraphs as if fully alleged herein.

18. Plaintiffs entered into contracts with NFB, in the form of the Loans, which contracts the FDIC-R assumed when it accepted the assets of NFB as receiver on April 10, 2009.

19. Plaintiff Frye executed personal guarantees relative to RMF's loans and DP Beach's loans.

20. Frye was a third party beneficiary to the Loans.

21. Pursuant to the Loans, the FDIC-R was obligated to loan the Plaintiffs certain funds as agreed to therein.

22. The FDIC-R failed and refused to perform its obligations under the Loans.

23. Rather, the FDIC-R froze and repudiated the Loans at a time when \$1,910,889 remained undrawn.

24. Up to that point, Plaintiffs had faithfully performed their obligations under the Loans.

25. Plaintiffs suffered damages in an amount to be proven at trial as a result of the FDIC-R's failure to perform its contractual obligations.

**SECOND CLAIM
(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)**

26. Plaintiffs incorporate by reference the forgoing paragraphs as if fully alleged herein.

27. Plaintiffs entered into contracts with NFB, in the form of the Loans, which contracts the FDIC-R assumed when it accepted the assets of NFB as receiver on April 10, 2009.

28. Plaintiff Frye executed personal guarantees relative to RMF's loans and DP Beach's loans.

29. Frye was a third party beneficiary to the Loans.

30. Pursuant to the Loans, the FDIC-R was obligated to loan the Plaintiffs certain funds as agreed to therein.

31. The FDIC-R breached the duty of good faith and fair dealing implied in the Loans by failing and refusing to loan the Plaintiffs the funds as agreed to in the Loans.

32. Plaintiffs suffered damages in an amount to be proven at trial as a result of the FDIC-R's breach of these contractual obligations.

THIRD CLAIM
(WRONGFUL REPUDIATION OF LOANS)

33. Plaintiffs incorporate by reference the forgoing paragraphs as if fully alleged herein.

34. As an alternative claim, under 12 U.S.C. § 1821(e)(3), the FDIC-R's repudiation of the Loans entitles Plaintiffs to their actual, direct, compensatory damages.

35. The FDIC-R's has failed and refused to compensate Plaintiffs their actual, direct, compensatory damages caused by its repudiation of the Loans.

36. Plaintiffs have suffered actual, direct, compensatory damages in an amount to be proven at trial as a result of the FDIC-R's repudiation of the Loans.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in this

matter in their favor and against the FDIC-R for Plaintiffs' damages caused by the FDIC-R's breach of contract and/or actual direct compensatory damages caused by the FDIC-R's repudiation of the Loans, which damages may equal or exceed the Loan amount, which is at present approximately \$16,300,000, and/or discharge Plaintiff's debt to the Defendants or the subsequent acquirer of the Loan, along with pre-judgment and post-judgment interest at the highest lawful rate, attorney and expert witness fees and costs, and such further relief as justice requires.

PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED this 18th day of May, 2010.

Respectfully submitted,

By: 

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