

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
26 April 2012

Roland I. & Irene G. Walker


Re: Claim Number: N10036-1736

Dear Mr. & Mrs. Walker:

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 N10036-1736 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 N10036-1736.

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	N10036-1736
Claimant	Ronald J. & Irene G. Walker
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$40,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 28 March 2012 Roland J. & Irene G. Walker (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$40,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was a property owner with thirteen plots of land in Washington and Jefferson counties in Florida.² The Claimant alleged to have sustained losses as a result of decreased property value on every plot of land due to the oil spill.³

In order to calculate losses, the Claimant added the value decrease from each plot as provided by the counties' Notice of Proposed Property Value to reach a total of \$40,000.00.⁴

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.

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.

¹ Claim Cover Letter, signed 15 March 2012.

² Claim Cover Letter, signed 15 March 2012.

³ Claim Cover Letter, signed 15 March 2012.

⁴ Claim Cover Letter, signed 15 March 2012.

- (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, the Claimant submitted the following documentation:

- Claim Cover Letter, Signed 15 March 2012;
- Jackson County 2010 Notice of Proposed Property Taxes for Lot 4, Blk X, Unit 1;
- Jackson County 2010 Notice of Proposed Property Taxes for Lot 2, Blk 255, Unit 6;
- Jackson County 2010 Notice of Proposed Property Taxes for Lot 3, Blk 255, Unit 6;
- Jackson County 2010 Notice of Proposed Property Taxes for Lot 20, Blk 271, Unit 6;
- Jackson County 2010 Notice of Proposed Property Taxes for Lot 22, Blk 271, Unit 6;
- Jackson County 2010 Notice of Proposed Property Taxes for Lot 4, Blk 104, Unit 4;
- Jackson County 2010 Notice of Proposed Property Taxes for Lot 34, Blk 238, Unit 6;
- Jackson County 2010 Notice of Proposed Property Taxes for Lot 21, Blk 271, Unit 6;
- Washington County 2010 Notice of Proposed Property Taxes for Unit 6, Lot 16;
- Washington County 2010 Notice of Proposed Property Taxes for Unit 2, Lot 29;
- Washington County 2010 Notice of Proposed Property Taxes for Unit 1, Lot 2;
- Washington County 2010 Notice of Proposed Property Taxes for Unit 2, Lot 8;
- Washington County 2010 Notice of Proposed Property Taxes for Unit 2, Lot 8;
- Email from NPFC to the Claimant Outlining Claims Process, 12 March 2012;
- Letter from the Claimant Seeking Information on Filing NPFC Claim, 10 August 2012.

On 14 September 2011, the Claimant presented a Final Review (FR) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$22,000.00.⁵ The Claimant was assigned Claimant ID 3013787 and the FR claim was assigned claim # 9022037.⁶ The RP/GCCF denied payment on this claim.

On 14 September 2011, the Claimant presented a Real Property Damage (RPD) claim to the RP/GCCF, seeking property damage losses in the amount of \$22,000.00.⁷ The Claimant retained ID 3013787 and the claim retained ID # 9022037.⁸ The RP/GCCF denied payment on this claim.

⁵ GCCF United States Coast Guard Report, 17 April 2012.

⁶ GCCF United States Coast Guard Report, 17 April 2012.

⁷ GCCF United States Coast Guard Report, 17 April 2012.

⁸ GCCF United States Coast Guard Report, 17 April 2012.

On 28 March 2012, the Claimant submitted this claim to the NPFC, seeking \$40,000.00 in loss of profits from decreased land value.⁹ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.¹⁰ Because the Claimant has presented these damages first to the RP/GCCF in an amount greater than the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$40,000.00.

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 this claim.

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to 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.

1. Failure to demonstrate an actual financial loss.

An economic loss to real property is only realized under OPA if the property has been sold at a loss and if the Claimant has shown that this loss was due to the injury, destruction or loss of the real property or the natural resource as a result of the discharge or substantial threat of discharge of oil. The Claimant has not provided evidence to show that the property was sold at a loss. In fact, there is no documentation suggesting the Claimant has listed or attempted to sell his properties. Because the Claimant has not sold a property, any loss is both prospective and speculative. Prospective future damages are not compensable under OPA's loss of profits damage category, which limits potentially available compensation to "the actual net reduction or loss of earnings or profits *suffered*" [emphasis added].¹¹

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that they sustained a loss in the amount of \$40,000.00, 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: *4/26/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁹ Claim Cover Letter, signed 15 March 2012.

¹⁰ 33 C.F.R. § 136.103(a).

¹¹ 33 C.F.R. § 136.235