

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1642
Claimant	: MarCar Properties, LLC
Type of Claimant	: Private (US)
Type of Claim	: Real or Personal Property
Amount Requested	: \$27,070.00

### **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 20 January 2012, Marion L. Ladd, on behalf of Marcar Properties, LLC (collectively, the Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$4,550.00 in loss of profits and impairment of earnings capacity and \$22,520.00 in real personal property damages (a total of \$27,070.00 in claimed damages) that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant owns a house located at 4461 Myers Road, in Eight Mile, Alabama.<sup>1</sup> The Claimant originally sold the property on 25 February 2010 to Monica Lewis for \$79,000.00.<sup>2</sup> Ms. Lewis signed a Vendor's Lien Deed for the sale of the property that contractually obligated her to make 24 consecutive monthly installment payments of \$550.00 (at zero interest), with a balloon payment for the remaining balance of the contract price at the end of those 24 months.<sup>3</sup> The Claimant received the first two monthly installment payments (March and April of 2010) but failed to receive any further payments. The Claimant alleged that Ms. Lewis was unable to continue making the monthly house payments because her employment at the Alabama State Docks was reduced due to the Deepwater Horizon oil spill.<sup>4</sup> The Claimant later foreclosed on the property due to Ms. Lewis's failure to continue making house payments. Ms. Lewis continued to live in the house without making payments until the Claimant received a foreclosure order on 27 October 2010.<sup>5</sup>

Specifically regarding the Claimant's damages for loss of profits and impairment of earning capacity, the Claimant asserted damages from loss of monthly lease payments due from Ms. Lewis, as well as the cost of real estate taxes and homeowner's insurance that Ms. Lewis would

<sup>1</sup> Form 1040, Schedule E, Supplemental Income and Loss for 2010.

<sup>2</sup> Vendor's Lien Deed for the real property located at Lot 78, Second Unit, Curtwood Lake.

<sup>3</sup> Vendor's Lien Deed for the real property located at Lot 78, Second Unit, Curtwood Lake.

<sup>4</sup> Letter from the Claimant to the GCCF, dated 21 March 2011.

<sup>5</sup> PHONECON between the NPFC and the Claimant on 23 February 2012.

have paid.<sup>6</sup> The Claimant also asserts damages from lawyer fees for the cost of the foreclosure and other contractual fees associated with the real estate transaction.<sup>7</sup>

Regarding the Claimant's asserted losses for real or personal property damages, the Claimant asserts that the value of the property has decreased from the original sale price of \$79,000.00 down to an approximate value of \$63,000.00.<sup>8</sup>

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings on 28 August 2010 in the amount of \$3,195.00.<sup>9</sup> He was assigned Claimant ID # 3002162 and Claim # 37122. This claim was denied by the GCCF on 12 November 2010.<sup>10</sup> Additionally, the Claimant filed a Full Review Final (FRF) claim with the GCCF on 03 December 2010 for real property damages in the amount of \$3,745.00.<sup>11</sup> He was assigned Claim # 9022295; this claim was denied by the GCCF.<sup>12</sup> Lastly, the Claimant filed an Interim III (ICQ32011) claim with the GCCF for loss of earnings on 30 September 2011 in the amount of \$4,550.00.<sup>13</sup> He was assigned Claim # 9504668; this claim was denied by the GCCF on 23 December 2011.<sup>14</sup>

The NPFC denied this claim originally on April 13, 2012 because (1) the Claimant failed to present some of the damages claimed to the responsible party (GCCF), (2) the Claimant failed to prove he experienced a loss in the amount claimed, and (2) the Claimant failed to prove that his alleged damages occurred as a result of the Deepwater Horizon oil spill.

## 1. Real or Personal Property Damages

### A. *Failure to Present Damages*

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented a full review final claim to the GCCF for \$3,745.00 in real property damages to the GCCF. The Claimant then presented a claim for real or personal property damages in the amount of \$22,520.00 to the NPFC. Any claimed amount of damages exceeding \$3,745.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

### B. *Failure to Prove Damages*

Under 33 CFR § 136.1, the OSLTF is available to pay costs for certain uncompensated damages, including damage to real or personal property "resulting from the discharge, or substantial threat of discharge of oil." Here, the Claimant asserted that the Deepwater Horizon reduced the value of his property. This is not the "injury, destruction or loss of real property, personal property or natural resource" contemplated by the statute and regulations. In this case his property was not injured, destroyed or lost due to the oil spill nor was his property injured, destroyed or lost due to damage to the natural resource and, therefore, this portion of the claim is denied.

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<sup>6</sup> Letter from the Claimant to the GCCF, dated 21 March 2011.

<sup>7</sup> Letter from the Claimant to the GCCF, dated 21 March 2011.

<sup>8</sup> Optional OSLTF Claim Form, dated 12 January 2012.

<sup>9</sup> Report from the GCCF dated 09 April 2012.

<sup>10</sup> Denial Letter from the GCCF, dated 12 November 2010.

<sup>11</sup> Report from the GCCF dated 09 April 2012.

<sup>12</sup> Report from the GCCF dated 09 April 2012.

<sup>13</sup> Report from the GCCF dated 09 April 2012.

<sup>14</sup> Denial Letter on Interim Payment/Final Payment, dated 23 December 2011.

## 2. Loss of Profits or Impairment of Earning Capacity

### A. *Failure to Prove Diminution of Property Value*

Although the Claimant presented a claim for real or personal property damages to both the Responsible Party (GCCF) and the NPFC for the decrease in value of his property, the Claimant is claiming a loss from diminution of property value, which under OPA is classified as a claim for loss of profits and impairment of earnings capacity. However, even if the Claimant had proper presentment and the NPFC analyzed this claim as a loss of profits and impairment of earning capacity, it would still be denied for failure to prove that the Claimant experienced a financial loss due to the Deepwater Horizon oil spill.

Under 33 CFR § 136.235, “the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*.” Therefore, when considering property value diminution, the concept could constitute an economic loss only if the Claimant had realized an actual financial loss by selling the subject property and that loss was due to the injury, destruction or loss of the real property or the natural resource. Additionally, when considering property value diminution, the value should equal only the reduction in market value as a direct result of the damage to the natural resource. Consideration should also be given to any increase in property prices since the end of the oil-spill. These would reduce the Claimant’s asserted loss once the loss is actually realized. Here, the Claimant fails on three counts. First, as explained below, it is not apparent based upon the evidence presented, that Ms. Lewis was unable to make her payments as a result of the Deepwater Horizon oil spill. Second, this property is located inland, a significant distance from the Gulf of Mexico, and the Claimant has not offered evidence to prove that the alleged diminution in value was the result of the oil spill as opposed to a myriad of other economic factors.<sup>15</sup> Third, the Claimant has not actually sold his property and thereby incurred a loss.

With respect to amounts claimed associated with real estate taxes and homeowner’s insurance asserted by the Claimant, the Claimant would have been responsible for paying property-related expenses regardless of the oil-spill until the property was re-sold; therefore, these costs are not OPA compensable.

### B. *Failure to Prove Rent Damages*

While the Claimant described the real estate transaction with Monica Lewis as a “lease with an option to buy,”<sup>16</sup> the NPFC finds this to be an incorrect characterization of the contract. The deed of sale provided by the Claimant indicates that title and ownership of the property transferred immediately from the Claimant to Ms. Lewis.<sup>17</sup> Consequently, there was no lease period or option to buy as indicated by the Claimant; there was simply a vendor’s lien interest that Claimant continued to hold on the property until Ms. Lewis completed all house payments prescribed by the deed. The payments made to the Claimant in March and April of 2010 were, in effect, mortgage payments instead of rent payments.

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<sup>15</sup> Google Maps location of 4461 Myers Road, Eight Mile, AL; accessed on 11 April 2012 at: [http://maps.google.com/maps?hl=en&gbv=2&q=4461+Myers+Road,+Eight+Mile,+Alabama&um=1&ie=UTF-8&hq=&hnear=0x889a5372bd53ce3d:0x289be4dbe28a598c,4461+Myers+Rd,+Eight+Mile,+AL+36613&gl=us&ei=nWZ0T7TeKvOO0QGI3\\_yBAw&sa=X&oi=geocode\\_result&ct=title&resnum=1&ved=0CBAQ8gEwAA](http://maps.google.com/maps?hl=en&gbv=2&q=4461+Myers+Road,+Eight+Mile,+Alabama&um=1&ie=UTF-8&hq=&hnear=0x889a5372bd53ce3d:0x289be4dbe28a598c,4461+Myers+Rd,+Eight+Mile,+AL+36613&gl=us&ei=nWZ0T7TeKvOO0QGI3_yBAw&sa=X&oi=geocode_result&ct=title&resnum=1&ved=0CBAQ8gEwAA)

<sup>16</sup> Optional OSLTF Claim Form, dated 12 January 2012.

<sup>17</sup> Vendor’s Lien Deed for the real property located at Lot 78, Second Unit, Curtwood Lake Estates, in Mobile, Alabama, signed by the Claimant on 24 February 2010.

When Ms. Lewis stopped making house payments, the Claimant foreclosed on the property.<sup>18</sup> As such, the Claimant did not actually suffer a loss of earnings, because the Claimant recovered full title and ownership of the house after the foreclosure. The payments that Ms. Lewis failed to make were for equity of the house, not for rent of the house. Thus, when the Claimant reclaimed full ownership interest of the house in the foreclosure, the Claimant was made whole regarding Ms. Lewis's debt and there was no actual loss of earnings.

### *C. Failure to Prove Causation*

The Claimant asserted that his losses occurred because the Ms. Lewis was unable to continue making monthly payments for the property after her employment at the Alabama State Docks was affected by the Deepwater Horizon oil spill.<sup>19</sup> The NPFC contacted the Alabama Port Authority on 24 February 2012 to confirm the information given, but was informed that no one by the name of Monica Lewis was or had been employed by them.<sup>20</sup> The NPFC contacted the Claimant and asked where he had gotten the information about Ms. Lewis's employment and he said that it had come from his real estate agent, Janie Lanier.<sup>21</sup>

Thereafter, the NPFC contacted Ms. Lanier who informed that NPFC that Ms. Lewis works for Ingalls Shipyard.<sup>22</sup> The NPFC then contacted Ingalls Shipyard to confirm the effect of the Deepwater Horizon oil spill on Ms. Lewis's hours. Ingalls stated that they would not comment on any personnel issues regarding their employees, including any reasons for termination or reduced work hours.<sup>23</sup> Alternately, the NPFC notes that "Huntington Ingalls Industries (HII) designs, builds and maintains nuclear and non-nuclear ships for the U.S. Navy and Coast Guard and provides after-market services for military ships around the globe."<sup>24</sup> The Claimant has not presented evidence to show how the Deepwater Horizon oil spill would have affected the production and servicing of military ships.

Furthermore, when asked about the sale of the house to Ms. Lewis, the Claimant indicated that he was skeptical that Ms. Lewis had sufficient finances to afford paying for house in the first place.<sup>25</sup> As well, Ms. Lanier stated that the type of real estate contract at issue, a Vendor's Lien Deed, was for risky buyers who had poor credit and would otherwise be unable to purchase a house.<sup>26</sup> Lastly, it must be noted that Ms. Lewis had already shown an inability to make full payments on the mortgage prior to the Deepwater Horizon oil spill. Her monthly payments were for \$550 per month to the Claimant,<sup>27</sup> yet he only received \$950.00 (out of \$1100.00 owed) for the first two months.<sup>28</sup> Considering all the above mentioned issues the Claimant failed to prove the he experienced a loss due to the Deepwater Horizon oil spill.

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<sup>18</sup> Foreclosure Deed for the real property located at Lot 78, Second Unit, Curtwood Lake Estates, in Mobile, Alabama, effective 26 October 2010.

<sup>19</sup> Letter from the Claimant to the GCCF, dated 21 March 2011.

<sup>20</sup> PHONECON between the NPFC and Alabama State Port Authority on 24 February 2012.

<sup>21</sup> PHONECON between the NPFC and the Claimant on 23 February 2012.

<sup>22</sup> PHONECON between the NPFC and Janie Lanier on 25 February 2012.

<sup>23</sup> PHONECON between the NPFC and Ingalls Shipyard on 24 February 2012.

<sup>24</sup> <http://www.huntingtoningalls.com/>, accessed on 11 April 2012.

<sup>25</sup> PHONECON between the NPFC and the Claimant on 23 February 2012.

<sup>26</sup> PHONECON between the NPFC and Janie Lanier on 25 February 2012.

<sup>27</sup> Vendor's Lien Deed for the real property located at Lot 78, Second Unit, Curtwood Lake Estates, in Mobile, Alabama, signed by the Claimant on 24 February 2010.

<sup>28</sup> Letter from the Claimant to the GCCF, dated 21 March 2011.

This claim was denied because the Claimant failed to (1) present all damages to the responsible party, (2) prove he experienced a loss in the amount claimed, and (2) demonstrate 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.

On May 30, 2012, Mr. Ladd requested reconsideration of the NPFC's April 13, 2012 denial. The Claimant provided a two-page letter, a copy of a letter from him to Mr. Feinberg dated March 21, 2011 which was already provided in the original claim submission, a copy of a GCCF denial letter dated July 6, 2011 which the NPFC already had, a copy of a handwritten letter from the Claimant (undated) to the GCCF asking to add \$14,000.00 in depreciated value to his original claim with them, and a copy of typed letter from the Claimant to Mr. Feinberg dated September 1, 2010 requesting loss rent payments.

### **NPFC Analysis and Determination on Reconsideration**

To receive compensation from the OSLTF for lost profits and earnings, the Claimant MUST establish that his loss of profits and earnings was due to the injury, destruction or loss of real property, personal property or natural resource in order to have an OPA compensable damage. In this particular claim, Mr. Ladd states the basis for his request for reconsideration as funds lost due to money spent on foreclosing on his property. The Claimant further asserted the fact that he has a family member that works at the same shipyard as Ms. Lewis and the fact that his family member's hours were impacted during the oil spill is why he feels his claim should be granted.

Finally, the Claimant asserts that when Ms. Lewis lost her job due to the oil spill and couldn't pay her bills causing him to foreclose on the home, all outstanding bills against the home then became his liability including the attorney fees incurred during this foreclosure process. The Claimant states other than the GCCF information he provided with his request, he has nothing new to produce on reconsideration. The Claimant has amended his request for reimbursement from \$ 27,070.00 to \$6,635.44.

With respect to the Claimant's assertions associated with property taxes, homeowner insurance premiums and attorney fees requested as a result of the foreclosure on this home, the NPFC finds that the Claimant has not demonstrated that Ms. Lewis's failure to pay her obligations to the Claimant and the resulting foreclosure was the result of the Deepwater Horizon oil spill incident. The NPFC appreciates the fact that the Claimant has a relative that works for the same shipyard and who allegedly lost time as a result of the oil spill but the Claimant has provided no documentary evidence to support his assertions and as such, the NPFC again denies the claim because the Claimant has not established that his alleged losses are due to the injury, destruction or loss of property or natural resources.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *6/18/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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5890  
6/18/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4803 7568

MarCar Properties, LLC  
ATTN: [REDACTED]  
16748 E Smoky Hill Rd  
#181  
Centennial, CO 80015

RE: Claim Number: N10036-1642

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-1642 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

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

ENCL: Claim Summary / Determination Form