

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2421

5890
25 April 2012

Robert Normand
[REDACTED]

Re: Claim Number: N10036-1647

Dear Mr. Normand:

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 N10036-1647 involving Deepwater Horizon. 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 N10036-1647.

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: (1) Claim Summary / Determination Form
(2) Information Provided by the Claimant

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1647
Claimant	: Robert Normand
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$311,000.00

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 24 January 2012, Robert Normand ('the Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$311,000.00 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant is a homeowner, who asserts lost profits on the sale of his home on Big Pine Key, Florida, (near Key West) due to prospective customers becoming apprehensive about buying there when news of the spill became widespread.²

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 Optional OSLTF Claim Form signed 12 January 2012 and received 24 January 2012.

² Claimant's letter to the NPFC dated 5 January 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

The Claimant asserts having presented a claim to the GCCF in June 2010 and that it had been denied.³ The NPFC independently confirmed that presentation that a Full Review/Final Payment (FRF) Claim had been made to the GCCF on 24 June 2011, in the amount of \$311,000.00. The GCCF claim was filed under GCCF Claimant Identification Number 3526899 and Claim Number 9404457 and this GCCF claim has been denied.⁴

On 24 January 2012, the Claimant presented this claim to the Oil Spill Liability Trust Fund (OSLTF) for \$311,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.⁵

Based upon the information provided and independent verification by the NPFC, this claim can be adjudicated in the full amount of damages presented to the NPFC, \$311,000.00. Further, because the subject matter of the Claimant's FRF Claim appear to be based upon the same subject matter, i.e. that he lost profits on the sale of his home as a result of the Deepwater Horizon oil spill, the NPFC deems this Claim Summary Determination as being outcome determinative for the Claimant's GCCF claim.

To support this claim the Claimant presented a large amount of documentation, which is listed in Enclosure (2).

The Claimant's documentation with the original claim included, among other things, an explanation letter,⁶ an appraisal for the Claimant's property in 2006,⁷ contract with a real estate

³ Optional OSLTF Claim Form signed 12 January 2012 and received 24 January 2012.

⁴ GCCF – U.S. Coast Guard Report as of 16 February 2012.

⁵ GCCF – U.S. Coast Guard Report as of 16 February 2012.

⁶ Claimant letter to NPFC dated 5 January 2012.

⁷ Uniform Residential Appraisal Report (Fannie Mae Form 1004, March 2005), effective on 19 April 2006.

agent for listing the property, interior and exterior photographs, and documents relating to the property's eventual sale on 30 December 2010,⁸ as well as a statement of hardship.⁹

NPFC Determination

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. Pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, the OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages.

This claim is denied because the Claimant failed to prove the alleged loss of profits and that the cause of the loss was the Deepwater Horizon oil spill.

After an initial review, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses. The Claimant was given 14 days to respond to the letter, dated 1 February 2012.

On 22 February 2012, the Claimant responded in part to the information request by providing a number of explanations,¹⁰ two pages of a 2006 appraisal report,¹¹ a newsletter from the Claimant's real estate agent with information on real estate values in the Keys with year-over-year changes, days on market for 2010 and other statistics,¹² a signed copy of the Claimant's letter to NPFC dated 5 January 2012, three articles on the potential impact of the oil spill on homeowners, a follow-up letter from the GCCF,¹³ and authorization for Melanie Normand to communicate with the NPFC regarding the claim.¹⁴

On 5 April 2012, the NPFC requested the Claimant to provide contact information for the two prospective buyers whom the Claimant attested were very interested [in his property], but declined pursuing the property after the "spill".¹⁵ To date, the requested contact information has not been received.

Failure to Prove Loss of Profits

The Claimant explained that he calculated lost profits associated with his home in the amount of \$311,000.00 by starting with an April 2006 appraisal, then adjusting it for known decreases in 2007, 2008, and 2009, as well as a predicted decrease for 2010. The Claimant states that those

⁸ Emails from Abby Ogelsbee on 23 December 2009; Warranty Deed dated 29 December 2012 between the Robert J. & Melanie Normand and Geoffrey L. and Leone L. Gabor; HUD-1 Settlement Statement for 30312 Prince Road, Big Pine Key, Florida 33043, dated 30 December 2010 with addendum; "AS IS" Residential Contract for Sale and Purchase between Robert J. and Melanie Normand and Geoffrey L. and Leone L. Gabor, offered on 10 December 2010 and accepted on 11 December 2010, with Rider, Addendum and Disclosures,

⁹ Hardship Letter, unsigned, dated 17 June 2011.

¹⁰ Claimant's letter to NPFC dated 22 February 2012.

¹¹ Two pages of six total pages to a 2006 Uniform Residential Appraisal Report on 30312 Prince Road, Big Pine Key, effective as of 19 April 2006.

¹² Coldwell Banker/Schmitt Real Estate Co. Newsletter, Volume 10, Number 1, Winter 2011.

¹³ Claimant's letter to NPFC dated 5 January 2012.

¹⁴ GCCF Follow-up to Previous Denial Letter dated 29 December 2011.

¹⁵ Email from NPFC Staff to Claimant on 5 April 2012 and Claimant's letter to NPFC dated 22 February 2012.

adjustments resulted in a predicted market value of \$929,000.00, which was the Claimant's actual listing price in January 2010. The Claimant calculated what he terms a 'conservative anticipated sales price' of \$836,000.00 by subtracting an additional \$93,000.00 (about 10%) from the original listing price. The amount claimed to the NPFC is the difference between \$836,000.00 and the actual sales price at closing in December 2010, which was \$525,000.00.¹⁶

The NPFC has considered all documentation and information presented by the Claimant.

The NPFC does not believe that the estimate contained in the Claimant's 22 February 2012 letter represents a reliable estimate of the home's pre-spill value. Based on publicly available real estate information,¹⁷ the NPFC believes that the real estate market in Big Pine Key was not stable before the oil spill and that average prices continued to fall through the remainder of 2010. Further, prices continued to be volatile through May of 2011, after which they stabilized. Moreover, basing the home value on a 2006 appraisal is not appropriate without skilled adjustment by a professional state licensed appraiser. The NPFC also notes that other publicly available information indicates that Florida Keys-wide average sales prices had fallen 52% over the past 5 years.¹⁸

Even assuming that sufficient evidence is developed to establish the home's pre-spill value, simply providing evidence of the home's value before the spill for comparison with the actual sale value of the home in question would still be insufficient. For example, at a minimum, evidence would need to be provided to establish the home's value after the oil spill by providing home sales data for comparable homes (i.e., same size, amenities, and location as the home in question). For comparison homes, detailed information regarding sale price, sale timing and home characteristics, including property type, size, and location (both relative to amenities and in terms of town/county/other geographic designation) and absorption rate of these homes into the market is critical – comparable homes would have to be as similar as possible to the Claimant's property. Also, if comparison homes are being used, the comparison homes selected should be those that actually have been sold, and not simply assessed.

If the Claimant submits a Request for Reconsideration to the NPFC, evidence of the Claimant having presented another claim amount to the RP/GCCF should be provided to the NPFC at that time.

Failure to Prove Causation

The NPFC requested that the Claimant provide evidence or documentation that would indicate that the claimed damages were caused by the Deepwater Horizon oil spill. Causation is an element of every claim that must be proven by the Claimant. Here, the Claimant has provided a newsletter from the Claimant's real estate agent with information on real estate values in the Keys with year-over-year changes, days on market for 2010 and other statistics,¹⁹ and three articles on the potential impact of the oil spill on homeowners,²⁰ as well as the names of two prospective buyers to whom the Claimant personally showed the property.²¹

¹⁶ Claimant's letter to NPFC dated 22 February 2012 and HUD-1 Settlement Statement Addendum executed 30 December 2010.

¹⁷ Zillow.com, Claimant's property and Postal Code 33043, last accessed 5 April 2012.

¹⁸ *Tropical Breezes* (Vol. 10, No. 2, Spring 2011) by Schmitt Real Estate Co.

¹⁹ Coldwell Banker/Schmitt Real Estate Co. Newsletter, Volume 10, Number 1, Winter 2011.

²⁰ "Gulf Could Lose \$3 Billion in Property Values" article by Brian O'Connell, accessed from www.bankingmyway.com/real-estate/gulf-could-lose3-billion-property-values-on-17-February-2012; "Realtors along gulf lose contracts, hope as spill halts recovery of fragile market", article by Kimberly Miller of Palm Beach Post, posted 26 June 2010 at www.palmbeachpost.com/money/real-estate/realtors-along-gulf-lose-contracts-hope-...,

Real Estate Newsletter.

The real estate agent's newsletter that was provided by the Claimant includes a year-over-year comparison of Florida Keys' Multiple Listing Service (MLS) data for 2009 and 2010 and other historical data. This newsletter includes a statement that the BP Gulf oil spill had an immediate and direct negative impact on The Keys real estate market.²²

The NPFC researched the *Tropical Breezes* newsletters and notes that comments on the oil spill are found in the Summer, Fall, and Winter editions of the newsletter.²³ The NPFC disagrees with the Claimant's assertion that the oil spill had an immediate and direct negative impact on the Keys' real estate market.

Based on our reading of the 2010 *Tropical Breezes*, the overall picture of real estate sales in the Florida Keys seems to be an increased number of sales in 2010, falling prices over a number of years, and a general increase in pending transactions through 2010. The NPFC also believes that comments in the Winter 2011 *Tropical Breezes* that were addressed by the Claimant do not accurately reflect referenced comments and do not indicate specific losses in value as a result of the oil spill. For example, the 2010 *Tropical Breezes* newsletters indicate that the 1st Quarter saw a 14 % reduction in average sale prices (ASP); the 2nd Quarter saw a 13% reduction in ASP, the 3rd Quarter saw an 11% reduction in ASP; and the 4th Quarter saw a reduction of 8% in ASP.²⁴ Documentation provided by the Claimant has not proven that the Claimant's alleged loss of property value was due to the oil spill.

News/Internet Articles.

One article discussed potential damages to homeowners along the coast under a worst case scenario, including actual oil on the Keys, but it did not forecast that oil would impact the Keys. But if oil did actually land on a beach, the article projected that the loss in amenity value for a beachfront home could be as high as \$80,000.²⁵

Another article discussed the number of claims for real estate losses along the Gulf Coast. It did mention a statement by the Monroe County Commissioner (Monroe County includes the Keys), in which he said that real estate sales were at a standstill. He said, "The real estate market that we worked so hard to recover from has gone straight downhill; it's stopped." Referring to the Florida Keys real estate data above, the market did not stop.²⁶

The third article discusses the potential oil spill impact on Florida tourism. It mentions the Keys, saying, "Since the Keys and South Florida do the bulk of their tourism business from late fall to early spring, the disaster shouldn't have a devastating an effect, at least this year." The article also indicates that the Governor was poised to extend his state of emergency to Tampa Bay area,

accessed 17 February 2012; and "Florida Hopes for Best but Braces for Oil Spill", article by Tim Padgett of Time, May 20, 2010, at www.time.com/time/printout/0,8876,1990589,00.html, accessed 17 February 2012.

²¹ Claimant's letter to NPFC dated 22 February 2012.

²² *Tropical Breezes* (Vol. 10, No. 1, Winter 2011) by Schmitt Real Estate Co.

²³ *Tropical Breezes* (Vol. 9, No. 2, Spring 2010; Vol. 9, No. 3, Summer 2010; Vol. 9, No. 4, Fall 2010; Vol. 10, No. 1, Winter 2011; and Vol. 10, No. 2, Summer 2011) by Schmitt Real Estate Co.

²⁴ *Tropical Breezes* (Vol. 9, No. 2, Spring 2010; Vol. 9, No. 3, Summer 2010; Vol. 9, No. 4, Fall 2010; and Vol. 10, No. 1, Winter 2011) by Schmitt Real Estate Co.

²⁵ "Gulf Could Lose \$3 Billion in Property Values" article by Brian O'Connell, accessed from www.bankingmyway.com/real-estate/gulf-could-lose3-billion-property-values on 17 February 2012.

²⁶ *Tropical Breezes* (Vol. 9, No. 3, Summer 2010; Vol. 9, No. 4, Fall 2010; Vol. 10, No. 1, Winter 2011; and Vol. 10, No. 2, Summer 2010) by Schmitt Real Estate Co.

to the Keys and South Florida.²⁷ The Claimant has provided no information that the Governor did extend the state of emergency to the Keys.

The NPFC does not find that the articles provided by the Claimant prove that the Deepwater Horizon oil spill adversely impacted home sales in the Keys.

Prospective Buyers.

The Claimant attributed one of the prospective buyers with having said at a point after the oil spill that he, “would not touch [that] house now with a ten-foot pole”. The other prospective buyer the Claimant had showed the home to was not attributed as having made any remark about the oil spill. The Claimant indicated, “We do not have any written correspondence, just verbal”. The NPFC requested contact information for these prospective buyers, but to date, the requested information has not been received.

The Claimant has not provided evidence sufficient to prove that his alleged loss of value in his home/property is the result of the Deepwater Horizon oil spill.

Accordingly, this claim is denied for the following reasons: (1) Claimant has failed to provide adequate financial or other evidentiary documentation to support the Claimant’s lost profits and earnings and (2) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *4/25/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

²⁷ “Florida Hopes for Best but Braces for Oil Spill”, article by Tim Padgett of Time, May 20, 2010, at www.time.com/time/printout/0,8876,1990589,00.html, accessed 17 February 2012.

1. Optional OSLTF Claim Form received 24 January 2012.
2. Unsigned letter to the National Pollution Funds Center dated 5 January 2010. (3 pages)
3. Two pages of six total pages to Uniform Residential Appraisal Report on 30312 Prince Road, Big Pine Key, effective as of 19 April 2006.
4. Abby Oglesbee email bearing handwritten date of 12/23/2009, suggesting a listing price of \$925K.
5. 'Abby' email bearing handwritten date of 12/23/2009, suggesting a listing price of \$925K and that the home would eventually sell in the \$850K range.
6. Listing Agreement dated 26 January 2010.
7. Abby Oglesbee, two-part email dated 30 January 2011.
8. Eight photographs of 30312 Prince Road, Big Pine Key, Florida, showing driveway entrance, front side and rear exteriors, living room, kitchen, family room, water frontage (E-W, canal side) and water frontage (N-S).
9. Warranty Deed by Robert J. Normand and Melanie Normand on 29 December 2010.
10. HUD-1 Settlement Statement for 30312 Prince Road, Big Pine Key, Florida 33043, dated 30 December 2010.
11. HUD-1 Settlement Statement Addendum executed 30 December 2010.
12. "As Is" Residential Contract for Sale and Purchase, completed 15 December 2010.
13. Comprehensive Rider to the Residential Contract for Sale and Purchase, unsigned and undated.
14. Buyer's Inspection Disclosure, completed 15 December 2010.
15. Central Sewage Disclosure, completed 11 December 2010.
16. Chinese/Defective Drywall Addendum, completed 10 December 2010.
17. Homeowner's Association/Community Disclosure, completed 10 December 2010.
18. Email from Michael Hendrickson, undated, regarding a new mortgage.
19. Your letter to GCCF dated 17 June 2011.
20. Hardship Letter to GCCF dated 17 June 2011.
21. Your letter to NPFC dated 22 February 2012.
22. Unsigned Uniform Residential Appraisal Report on 30312 Prince Road, Big Pine Key, FL, 33043, effective 19 April 2006. (Only two pages of six provided)
23. Coldwell Banker/Schmitt Real Estate Co. Newsletter, Volume 10, Number 1, Winter 2011. (4 pages)
24. Signed copy of letter to NPFC dated 5 January 2012. (3 pages)
25. Two pages of six total pages to Uniform Residential Appraisal Report on 30312 Prince Road, Big Pine Key, effective as of 19 April 2006.
26. *Tropical Breezes* (Winter 2011) by Schmitt Real Estate Co. (4 pages).
27. Signed copy of the Claimant's 5 January 2012 letter to the NPFC. (3 pages)
28. "Gulf Could Lose \$3 Billion in Property Values" article by Brian O'Connell, accessed from www.bankingmyway.com/real-estate/gulf-could-lose3-billion-property-values on 17 February 2012.
29. "Realtors along gulf lose contracts, hope as spill halts recovery of fragile market", article by Kimberly Miller of Palm Beach Post, posted 26 June 2010 at www.palmbeachpost.com/money/real-estate/realtors-along-gulf-lose-contracts-hope-..., accessed 17 February 2012. (2 pages)
30. "Florida Hopes for Best but Braces for Oil Spill", article by Tim Padgett of Time, May 20, 2010, at www.time.com/time/printout/0,8876,1990589,00.html, accessed 17 February 2012. (3 pages)

31. GCCF Follow-up to Previous Denial Letter dated 29 December 2011. (2 pages)
32. Copy of NPFC letter dated 1 February 2012. (2 pages)
33. Letter to NPFC dated 5 January 2012, authorizing Melanie Normand to act in all communications with the NPFC.