

U.S. Department of  
Homeland Security

United States  
Coast Guard



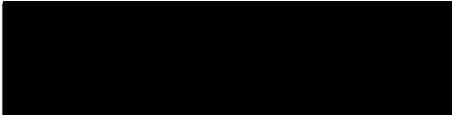
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7012 2210 0001 7215 0223

5890/DWHZ  
15 May 2013

The Gloria Baker Trust



Re: Claim Number: N10036-1928

Dear Mr. Baker,

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 N10036-1928 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 N10036-1928.

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

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1928
Claimant	Estate of Gloria Baker
Type of Claimant	Private (US)
Type of Claim	Personal Injury/Wrongful Death
Amount Requested	\$10,000,000.00

### ***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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

### ***CLAIM AND CLAIMANT***

On 8 May 2013, Mr. Timothy Baker on behalf of the estate of Gloria Baker, (collectively "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$10,000,000.00 in damages due to the wrongful death of Gloria Baker.<sup>1</sup>

The Claimant alleged that the death of Gloria Baker was caused by pollution associated with the Deepwater Horizon oil spill. Specifically, the Claimant alleged that the respiratory impairment which caused Mrs. Baker's death was the result of the oil spill and the spill response, which caused toxins to be released into the air. Mrs. Baker was 88 years old at the time of death.

The Claimant seeks to recover \$10,000,000.00 on behalf of the estate of Mrs. Baker.

### ***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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136.

<sup>1</sup> Claim cover letter, 29 April 2013.

OPA provides that compensation is available to pay claims for removal costs, damages to natural resources, loss of subsistence use, loss of government revenues, loss of profits or impairment of earning capacity damages, and real or personal property damages.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

### ***DETERMINATION OF LOSS***

#### **Claimant's Submission to the NPFC**

The Claimant submitted the following documentation in support of this claim:

- Cover letter, signed 29 April 2013;
- Copy of submission to the BP Claims Program, 21 January 2013;
- Copy of death certificate, Gloria Marie Baker;
- Direct filing short form for MDL-2179, 10 April 2011;
- Confirmation of receipt of short form joinder;
- Confirmation of delivery of claim to BP Claims Program.

The Claimant first presented this claim to the Responsible Party through the BP Claims Program on 31 January 2013.<sup>2</sup> According to the Claimant, the RP has not yet rendered a determination on this claim.

On 8 May 2013, the Claimant presented this claim to the NPFC seeking \$10,000,000.00 in damages due to the alleged wrongful death of the Claimant. Because the same claim has been previously presented to the RP and has not been settled after at least 90 days, OPA presentment requirements have been satisfied.<sup>3</sup>

#### **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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

In accordance with OPA, a private claimant may recover costs or damages that fall into one of the following categories: (1) real or personal property damage, (2) loss of subsistence use damages or (3) loss of profits and impairment of earning capacity damages. As such, this claim is not compensable under OPA, which does not authorize payments for claims based on personal injury or wrongful death.

Furthermore, it appears that the Claimant is attempting to recover these alleged damages in the U.S. District Court for the Eastern District of Louisiana. In accordance with OPA's implementing regulations, the NPFC may not make payment on a claim "during the pendency of

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<sup>2</sup> Confirmation of delivery to BP Claims Program, 31 January 2013.

<sup>3</sup> 33 C.F.R. § 136.103(a).

an action by the person in court to recover costs which are the subject of the claim.”<sup>4</sup> The Claimant has included a copy of a short form joinder, which the Claimant submitted to the court in order to pursue an action against the Responsible Party to recover these damages. As such, even if this claim did fall into one of OPA’s statutorily defined categories of costs or damages, the NPFC would be precluded from making a payment on this claim.

Based on the foregoing, this claim is denied because (1) claims for personal injury or wrongful death are not compensable under OPA, and (2) the damages presented in this claim are also subject of an action in court by the Claimant.

  
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *5/15/13*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

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<sup>4</sup> 33 C.F.R. § 136.103(d).