

August 1993

CLEAN WATER ACT

Private Property Takings Claims as a Result of the Section 404 Program





**Resources, Community, and
Economic Development Division**

B-253578

August 11, 1993

The Honorable Billy Tauzin
House of Representatives

The Honorable Don Young
House of Representatives

You requested that we identify private property takings claims that have been filed with the U.S. Court of Federal Claims (Claims Court) as a result of regulatory actions under section 404 of the Clean Water Act (33 U.S.C. 1344). In addition, you asked us to gather information on the actual and potential liability of the U.S. government—including the amounts of the claims, interest, and attorneys' fees and other litigation costs—and on federal agencies' costs in litigating these claims. This fact sheet, based on our May 24, 1993, briefing to your staff, presents the results of our review.

Background

Section 404 requires that anyone wanting to dredge or place fill material in waters of the United States, which include wetlands, must obtain a permit from the U.S. Army Corps of Engineers (Corps). Section 404(c) provides the Environmental Protection Agency (EPA) veto authority over the Corps' decision to issue a permit. EPA can prohibit the disposal of dredged or fill material in any site if this will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fisheries, wildlife, or recreation areas.

According to the Fifth Amendment of the U.S. Constitution, private property shall not be taken for public use without just compensation. In 1922, the Supreme Court recognized that a regulatory action may also constitute a taking that requires just compensation. Corps denial of a section 404 permit to fill wetlands has been the most common reason cited for takings claims filed with the Claims Court. Other regulatory actions cited by the plaintiffs as a taking include (1) the Corps' or EPA's issuing a cease and desist order concerning an unauthorized activity and (2) EPA's vetoing the Corps' decision to issue a section 404 permit.

The Supreme Court has held that there is no set formula for determining when a government action constitutes a taking. However, the Supreme Court has identified three factors of particular importance for making this determination: (1) the character of the action, (2) the regulation's economic impact on the claimant, and (3) the extent to which the

regulation has interfered with reasonable expectations for a return on investment. In deciding whether a government action, such as the denial of a section 404 permit, is a compensable taking, the Claims Court—where takings claims exceeding \$10,000 must be filed initially—generally has focused on the second factor, whether the action deprived the owner of all economically viable use of the property.

The costs incurred by a plaintiff in litigating his or her claim are reimbursable by the government if the Claims Court agrees that there was a taking and that the plaintiff is entitled to just compensation. Reimbursable costs include attorneys' fees and other litigation costs, such as the costs of expert witnesses, printing, and graphic and transcription services.

Summary of Results

We identified 28 cases in which a takings claim had been filed with the Claims Court as of May 31, 1993, as a result of a regulatory action involving the section 404 program. Thirteen of the 28 cases have been decided by the Claims Court (3 in favor of the plaintiff, the claimant; and 10 in favor of the defendant, the U.S. government), 1 case was settled before the Court rendered a decision, and the remaining 14 are pending. (See sec. 1 for a discussion of the status of the cases that had been filed with the Claims Court as of May 31, 1993.)

For the three cases in which the Claims Court found that a taking had occurred, the Court awarded the plaintiffs—Florida Rock Industries, Inc.; Loveladies Harbor, Inc.; and Ray Formanek et al.—a total of \$4.6 million in just compensation, plus interest of \$5.2 million¹ and reimbursement of litigation costs of over \$1 million.² As of May 31, 1993, the government had paid the plaintiff for only one of the three cases—Ray Formanek et al. received about \$1.7 million (including \$934,000 as just compensation, \$502,000 in interest, and \$254,000 for attorneys' fees and other litigation costs). The government has appealed the Claims Court's decisions for the other two cases and therefore has not made payments to the plaintiffs. For the one case that was settled before the Claims Court rendered its decision, the government paid the plaintiff, Beuré-Co., a total of about \$762,000 (\$425,000 as just compensation, \$237,000 in interest, and \$100,000 for litigation costs). (See sec. 2 for information on the amounts of just

¹Plaintiffs are generally paid simple interest on the amount of just compensation awarded. The interest is computed using the rates established for reimbursement under the Contract Disputes Act.

²Litigation costs for Loveladies Harbor, Inc., had not been determined as of May 31, 1993.

compensation, interest, and attorneys' fees and other litigation costs for those cases that have been decided in favor of the plaintiff or settled.)

In considering the federal government's potential liability for the 14 pending cases, we have no way of predicting what the Claims Court might decide. The Claims Court could award the full amount requested as just compensation, award a lesser amount, or give the plaintiff nothing. This variability in any discussion of potential liability is illustrated by the claim submitted by George F. Short et al. Though the plaintiff sought \$90 million, the claim was dismissed by the Claims Court, and the plaintiff received nothing as just compensation and was directed to reimburse the defendant for costs. The plaintiffs in 8 of the 14 cases have sought a total of nearly \$140 million as just compensation. For the remaining six cases, the plaintiffs have not stipulated an amount for just compensation. The accumulated interest on the amount of just compensation sought by the eight plaintiffs totaled almost \$162 million through May 31, 1993. (See sec. 3 for further information on the interest accrued as of May 31, 1993, for the eight pending cases in which the plaintiffs have stipulated an amount of just compensation or in which we could compute an amount.)

Neither the Department of Justice nor the Corps routinely maintains consolidated data on how much it costs the government to litigate each takings case. At our request, Justice reconstructed its costs for four judgmentally selected takings cases that had been litigated. The cost of litigating the four cases ranged from \$18,000 for a case that was dismissed 13 months after the complaint was filed to \$257,000 for a case that resulted in a decision by the Claims Court 8 years after the complaint was filed (this decision is under appeal). The Corps was unable to reconstruct its litigation costs. (See sec. 4 for a summary of the costs incurred by the Department of Justice to litigate these four takings cases.)

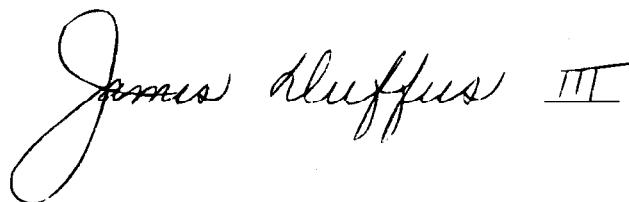
Scope and Methodology

We obtained documents and other data from the Office of Chief Counsel, Army Corps of Engineers, and from the General Litigation Section, Department of Justice. For those pending cases in which the plaintiffs have stipulated an amount of just compensation or in which we could compute an amount, we calculated the potential interest accrued by using interest rates established by the Secretary of the Treasury under the Contract Disputes Act. We also interviewed attorneys at both agencies. Because the Department of Justice and the Corps do not routinely maintain data on how much it costs the government to litigate a takings case, we requested and received from Justice data reconstructing the costs

to litigate four cases that had been either decided by the Claims Court or settled. As mentioned above, the Corps was unable to estimate its litigation costs. We conducted our review between March 1992 and May 1993.

The Deputy Chief of the Department of Justice's General Litigation Section, Environmental and Natural Resources Division, and the Assistant to the Department of the Army's General Counsel reviewed and agreed with the contents of this fact sheet. They suggested some minor changes, which we incorporated into our fact sheet.

Please call me at (202) 512-7756 if you or your staff have any questions concerning this fact sheet. Major contributors to this fact sheet are listed in appendix I.

A handwritten signature in cursive script that reads "James Duffus III". The signature is written in black ink and is positioned above the typed name.

James Duffus III
Director, Natural Resources
Management Issues

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Abbreviations

EPA	Environmental Protection Agency
GAO	General Accounting Office

Status of Takings Cases

As of May 31, 1993, a total of 28 section 404 private property takings claims had been filed in the U.S. Court of Federal Claims (Claims Court). The earliest of these complaints was filed in September 1976 and the most recent in September 1992. Fourteen of these cases are pending, 13 have been decided by the Claims Court, and 1 claim was settled before the Court made a decision. In 10 of the 13 decisions rendered, the Claims Court found in favor of the defendant (U.S. government) and dismissed the plaintiff's complaint. For the remaining three, the Court found in favor of the plaintiff and awarded just compensation plus interest. For two of the three, the Court also awarded sums as reimbursement of litigation costs.

After a complaint has been filed, the U.S. government must submit its response, after which there are other proceedings preparatory to a trial. The parties may make motions requesting that the Court take various specific actions. For instance, the defendant may make a motion requesting that the claim be dismissed, asserting that the case is not ready for the Court's consideration because the plaintiff had never applied for nor been denied a section 404 permit. A trial, if warranted, is held, after which more motions may be filed by the parties.

After the Court has rendered its decision, the party losing the case has 60 days to appeal. Appeals of the Claims Court's decisions must be filed with the U.S. Court of Appeals for the Federal Circuit. See table 1.1 for a listing of the section 404 takings claims that had been filed with the Claims Court as of May 31, 1993.

**Section 1
Status of Takings Cases**

Table 1.1: Status of the 28 Section 404 Takings Claims Filed With the U.S. Court of Federal Claims as of May 31, 1993, by Date of Complaint

Plaintiff	Date complaint filed	Status
The Deltona Corp.	9/15/76	Dismissed
James J. Jentgen, Trustee	8/9/77	Dismissed
Florida Rock Industries, Inc.	5/25/82	Decided for plaintiff ^a
Aylwyn L. Lachney	10/25/82	Dismissed
Loveladies Harbor, Inc.	4/14/83	Decided for plaintiff ^a
Beuré-Co.	2/27/86	Settled
Ray Formanek et al.	12/11/86	Decided for plaintiff
Robert Ciampitti et al.	7/23/87	Dismissed
1902 Atlantic Limited	10/9/87	Dismissed
George F. Short et al.	11/2/87	Dismissed
Harry L. Bowles	6/1/88	Pending
Charles E. Sims and Gulf Coast Filters, Inc.	11/14/88	Dismissed
Lawrence Marks et al.	9/18/89	Pending
Hazel P. Dufau et al.	10/13/89	Dismissed
Tabb Lakes, Ltd.	11/2/90	Dismissed
CiT Group/Equipment Financing, Inc.	12/19/90	Pending
Hobucken Gun Club, Inc.	12/20/90	Dismissed
Thomas Mercer et al.	2/4/91	Pending
Lawrence Russo, Jr.	3/19/91	Pending
Jacques Creppel et al.	7/6/91	Pending
Bayou Des Familles Development Corp.	7/25/91	Pending
Plantation Landing Resort, Inc.	9/27/91	Pending
Harold L. Molaison et al.	10/10/91	Pending
Lloyd J. Drachenberg et al.	10/11/91	Pending
Marrero Land & Improvement Association, Ltd.	10/11/91	Pending
St. Charles Associates	11/7/91	Pending
Carroll & Marilyn K. Swartz	12/2/91	Pending
Hempt Bros., Inc.	9/16/92	Pending

^aThe government has appealed this decision by the Claims Court.

Decisions for the Plaintiff

The Claims Court has rendered three decisions in favor of the plaintiff. The amounts awarded by the Court are as follows:

- Florida Rock Industries, Inc., was awarded \$1,029,000, plus interest from the date of the taking and reimbursement of attorneys' fees and other litigation costs.
- Loveladies Harbor, Inc., was awarded \$2,658,000, plus interest from the date of the taking and reimbursement of attorneys' fees and other litigation costs.
- Ray Formanek et al. were awarded \$933,921, plus interest from the date of the taking. The Court's decision did not stipulate that attorneys' fees and other litigation costs would be reimbursed.

The government is appealing two of the decisions in favor of the plaintiff (Florida Rock Industries, Inc., and Loveladies Harbor, Inc.). The government did not appeal the other case; rather, it negotiated a settlement in which it agreed to pay the plaintiff a total of \$1.7 million, which included the \$933,921 of just compensation awarded in the Claims Court's decision, plus interest and reimbursement for expenses. For the three cases in which the Court decided for the plaintiff, table 1.2 shows the date of the taking, the date the claim was filed with the Court, and the date of the decision.

Table 1.2: Takings Cases Decided for the Plaintiff, as of May 31, 1993

Plaintiff	Date of taking	Date of complaint	Date of decision
Florida Rock Industries, Inc.	10/2/80	5/25/82	7/23/90
Loveladies Harbor, Inc.	5/5/82	4/14/83	7/23/90
Ray Formanek et al.	6/25/86	12/11/86	5/14/92

Decisions for the Defendant

As of May 31, 1993, the Claims Court had decided 10 of the complaints in favor of the U.S. government and dismissed the cases. The Court can dismiss a case either (1) in response to a motion made by the government and/or the plaintiff before, during, or after the trial or (2) by rendering a decision, after the trial, based on the merits of the case. For those cases that had been dismissed as of May 31, 1993, table 1.3 shows the date of the alleged taking, the date the claim was filed, and the date the case was dismissed.

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**Table 1.3: Takings Cases Dismissed,
as of May 31, 1993**

Plaintiff	Date of alleged taking	Date of complaint	Date dismissed
Robert Ciampitti et al.	6/5/86	7/23/87	1/17/91
The Deltona Corp.	4/15/76	9/15/76	8/19/81
Hazel P. Dufau et al.	5/1/84	10/13/89	11/30/90
Hobucken Gun Club, Inc.	12/13/90	12/20/90	3/3/92
James J. Jentgen, Trustee	^a	8/9/77	8/19/81
Aylwyn L. Lachney	^a	10/25/82	2/1/85
1902 Atlantic Limited	10/26/81	10/9/87	6/19/92
George F. Short et al.	4/16/82	11/2/87	5/17/93
Charles E. Sims and Gulf Coast Filters, Inc.	11/18/87	11/14/88	3/16/93
Tabb Lakes, Ltd.	10/8/86	11/2/90	10/2/92

^aThis date was not readily available from the Department of Justice's records.

One of the cases in table 1.3 (Hobucken Gun Club, Inc.) was dismissed on a motion for dismissal because the Claims Court agreed with the defendant's motion asserting that the case was not ready for consideration by the Court, since the plaintiff had never applied for a section 404 permit. After the plaintiff's informal efforts to persuade the U.S. Army Corps of Engineers (Corps) to withdraw its cease and desist order failed, the plaintiff filed a takings claim. Another case (Robert Ciampitti et al.) was dismissed by the Court after the trial. The Court found no taking had occurred because the denial of a permit did not take all economically viable use of the plaintiff's property. One case (Charles E. Sims and Gulf Coast Filters, Inc.) was dismissed by the Claims Court in response to what is termed a joint stipulation of dismissal, submitted by the plaintiff and the defendant, requesting that the complaint be dismissed. Another case was dismissed upon an oral request from the plaintiff (George F. Short et al.). The six remaining cases were dismissed because the Court agreed with contentions made by the defendant, as stated in its motions, that no taking had occurred. For example, in dismissing the complaint of James J. Jentgen, Trustee, the Claims Court concluded that although the plaintiff may have sustained some economic loss as a result of the regulations, the loss was not sufficient to constitute a taking. One of the plaintiffs (Tabb Lakes, Ltd.) has appealed the Court's decision to dismiss the complaint. This plaintiff claimed a temporary taking for the 3 years a Corps cease and desist order was in force. In dismissing the complaint, the Court found that the plaintiff's sales of lots during the period of the alleged taking was more

than sufficient to demonstrate that the plaintiff was not deprived of all economically viable use of its property.

Claims Settled

One case was settled. The government agreed to pay the plaintiff (Beuré-Co.) a total of \$761,818—\$425,000 as just compensation, plus interest of \$236,818 covering the period from the date of the alleged taking to the date of payment and \$100,000 for reimbursement of litigation expenses. The government had filed a motion for dismissal, asserting the case was not ready for consideration by the Court, but when this motion was denied, the government decided to settle the claim. Table 1.4 shows the date of the alleged taking, the date the claim was filed, and the date of the settlement.

Table 1.4: Takings Cases Settled, as of May 31, 1993

Plaintiff	Date of alleged taking	Date of complaint	Date settled
Beuré-Co.	10/10/85	2/27/86	1/3/92

Claims Pending

The 14 takings cases still pending a decision by the Claims Court or settlement as of May 31, 1993, were at various stages of the process—from waiting for the U.S. government to answer the complaint filed by the plaintiff to waiting for the Claims Court to render a decision. Table 1.5 shows those takings cases that were pending as of May 31, 1993, along with the dates of the alleged takings and the dates the complaints were filed.

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Table 1.5: Takings Cases Pending, as of May 31, 1993

Plaintiff	Date of alleged taking	Date of complaint
Bayou Des Familles Development Corp.	9/21/79	7/25/91
Harry L. Bowles	10/26/84	6/1/88
CIT Group/Equipment Financing, Inc.	6/20/90	12/19/90
Jacques Creppel et al.	10/16/85	7/6/91
Lloyd J. Drachenberg et al.	10/16/85	10/11/91
Hempt Bros., Inc.	9/18/86	9/16/92
Lawrence Marks et al.	1/24/73	9/18/89
Marrero Land & Improvement Association, Ltd.	10/16/85	10/11/91
Thomas Mercer et al.	1/30/89	2/4/91
Harold L. Molaison et al.	10/16/85	10/10/91
Plantation Landing Resort, Inc.	12/21/90	9/27/91
Lawrence Russo, Jr.	3/25/85	3/19/91
St. Charles Associates	9/23/91	11/7/91
Carroll and Marilyn Swartz	^a	12/2/91

^aThis date was not readily available from the Department of Justice's records.

Four of the cases in table 1.5 (Jacques Creppel et al.; Lloyd J. Drachenberg et al.; Marrero Land & Improvement Association, Ltd.; and Harold L. Molaison et al.) were consolidated into one case. The four claims were filed after the Environmental Protection Agency (EPA) prohibited the discharge of dredge and fill material in wetland areas on plaintiffs' land pursuant to section 404(c) of the Clean Water Act, thus prohibiting the completion of a flood control project. With the four complaints processed at the same time, the Department of Justice anticipates that, if necessary, only one trial will be held and only one decision will be rendered by the Claims Court. The plaintiffs for these four cases are seeking just compensation (\$25.2 million) plus interest and reimbursement of attorneys' fees and other litigation costs.

Action in one of the other cases (Bayou Des Familles Development Corp.) has been suspended pending a decision from a state court. This plaintiff is asking \$97.4 million as just compensation, plus interest and reimbursement of attorneys' fees and other litigation costs. In one other case (Lawrence Marks et al.), the U.S. government has filed a motion for dismissal because the plaintiff never applied for a section 404 permit. The plaintiff in this case is seeking an unspecified amount as just compensation plus interest and reimbursement of attorneys' fees and

other litigation costs. For another case in table 1.5 (Harry L. Bowles), a trial was held on January 6, 1992, but the Claims Court has yet to render its decision. The plaintiff is asking for \$1 million as just compensation, plus reimbursement of attorneys' fees and other litigation costs. Although the claim does not request interest, it has been granted in the past as part of the just compensation.

Another complaint (Lawrence Russo, Jr.), filed on March 19, 1991, claimed both a permanent and a temporary taking—the former because EPA vetoed the plaintiff's request for a permit, and the latter because the Corps issued a cease and desist order that temporarily prevented the plaintiff from developing his property. On August 21, 1992, the plaintiff filed an amended complaint claiming only a temporary taking. The plaintiff's third and current complaint, filed on January 14, 1993, is virtually identical to the amended complaint filed in 1992. Each of the complaints requested an unspecified amount as just compensation plus reimbursement of attorneys' fees and other litigation costs.

Another complaint (Thomas Mercer et al.) requested an amount in excess of \$1.1 million as just compensation, plus compound interest and reimbursement of attorneys' fees and other litigation costs. A secondary plaintiff (Eastern Resources, Inc.) also filed a complaint, which is contingent on what the Claims Court decides on the complaint filed by the primary plaintiff (Thomas Mercer et al.). The secondary plaintiff asked for an unspecified amount as just compensation plus interest and reimbursement of attorneys' fees and other litigation costs. (Thomas Mercer et al. are the property owners, and Eastern Resources, Inc., is a mining company that has leased mining rights from Thomas Mercer et al.)

Only two of the five remaining pending cases requested a specific amount as just compensation. One plaintiff (CIT Group/Equipment Financing, Inc.), in documents submitted to the Court after the complaint was filed, requested just compensation of \$9.3 million for a temporary taking and \$5.4 million as just compensation for a permanent taking, plus interest and reimbursement of attorneys' fees and other litigation costs. The other plaintiff (Carroll and Marilyn Swartz) requested \$400,000 as just compensation, but did not stipulate when the taking occurred. The plaintiffs for the other three cases did not request a specific amount as just compensation either in the complaint or in subsequent documents submitted to the Claims Court. All three did request reimbursement of attorneys' fees and other litigation costs, but only one of the three requested interest on any amount awarded as just compensation.

Just Compensation, Interest, and Litigation Costs for Cases Settled or Decided for the Plaintiff

There have been four section 404 claims for which the plaintiffs were awarded compensation. For three of the claims (Florida Rock Industries, Inc.; Ray Formanek et al.; and Loveladies Harbor, Inc.), the Claims Court found that there had been a taking and rendered a decision against the U.S. government. For the remaining claim, the plaintiff (Beuré-Co.) and the U.S. government agreed to settle. For one of the three decisions rendered in favor of the plaintiff, Department of Justice officials informed us that after the Claims Court's decision awarding just compensation, the plaintiff (Ray Formanek et al.) and the government negotiated a settlement under which all issues were resolved and the government agreed not to appeal. Table 2.1 shows the amounts awarded to the plaintiffs for the one case that was settled and for the three cases that were decided for the plaintiff. No disbursements have been made for two of the cases (Florida Rock Industries, Inc., and Loveladies Harbor, Inc.) because the government is appealing the Claims Court's decisions.

Table 2.1: Amounts Awarded as Just Compensation, Interest, and Reimbursement for Litigation Costs for Takings Cases Settled or Decided for the Plaintiff

Plaintiff	Just compensation	Interest ^a	Litigation costs	Total
Beuré-Co.	\$425,000	\$236,818	\$100,000	\$761,818
Florida Rock Industries, Inc.	1,029,000	1,778,554	808,785	3,616,339^b
Ray Formanek et al.	933,921	502,061	254,349	1,690,331
Loveladies Harbor, Inc.	2,658,000	2,898,694	^c	5,556,694^b
Total	\$5,045,921	\$5,416,127	\$1,163,134	\$11,625,182

^aInterest is computed through May 31, 1993, for the two cases for which payment has not been made (Florida Rock Industries, Inc., and Loveladies Harbor, Inc.). Interest is computed to the date of payment for the two cases for which payment has been made (Beuré-Co. and Ray Formanek et al.). The amounts computed reflect simple interest in all cases except one (Florida Rock Industries, Inc.), for which the Claims Court stipulated that the interest be compounded.

^bThe government has not paid the plaintiff this amount because the government has appealed the decision of the Claims Court.

^cThe Claims Court has not issued its order awarding fees and costs to Loveladies Harbor, Inc.

The \$761,818 payment to Beuré-Co. to settle its claim included \$100,000 as reimbursement for litigation expenses. The \$808,785 awarded to Florida Rock Industries, Inc., as reimbursement for litigation costs included \$517,382 for attorneys' fees, \$67,633 for expert witnesses, and \$223,770 for other litigation expenses. The majority of the amount awarded, or \$500,547, was reimbursement for the cost of the initial litigation, and the remainder was reimbursement for the cost of an appeal, the retrial, and

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Costs for Cases Settled or Decided for the
Plaintiff

applying for reimbursement for attorneys' fees and other litigation costs. No breakdown was readily available of how much of the \$254,349 awarded to Ray Formanek et al. as reimbursement of litigation costs was for attorneys' fees, expert witnesses, or other litigation expenses.

Just Compensation and Accumulated Interest for Selected Pending Takings Cases

For 4 of the 14 takings cases that had not been either decided by the Claims Court, dismissed, or settled as of May 31, 1993, the plaintiff specified an amount as just compensation in the complaint filed with the Court. For one other case, the amount of just compensation was specified in other documents filed with the Court at a later date. For three other cases, no dollar amount was specified, but the plaintiffs requested just compensation for the acres affected by the regulatory action. These three cases are part of a case that has been consolidated, and since the fourth plaintiff (included among the four requesting a specific amount) asked for just compensation of \$10,000 per acre, we used this same per-acre amount to compute the just compensation for the other three cases.

Plaintiffs are generally paid simple interest on the amount of just compensation awarded, which is computed—from the date of the taking to the date of payment—using the rates established for reimbursement under the Contract Disputes Act (41 U.S.C. 611). However, for one of the cases, the Claims Court stipulated that the plaintiff (Florida Rock Industries, Inc.) be awarded compound interest because of the lengthy delay in resolving the case. As part of its appeal of this decision, the government is also appealing the award of compound interest on the premise that the plaintiff did not produce evidence during the trial justifying the award of compound interest.

For the eight cases in which we could determine the amount of just compensation, we computed the amount of simple interest that had accrued from the date of the alleged taking through May 31, 1993, to show what the potential liability might be if the Claims Court decided these cases in favor of the plaintiff and if the Claims Court awarded just compensation in the full amount requested by the plaintiffs. Following the Claims Court's usual practice, we computed simple interest using the rates established by the Secretary of the Treasury under the Contract Disputes Act.¹ Of course, if the Court decided to award compound interest instead of simple interest, the interest would accumulate much faster. As noted above, the Claims Court did award compound interest to Florida Rock Industries, Inc.

By showing the interest accrued on the amount of just compensation requested for these eight cases, we are not implying that a taking occurred or that the government will pay the amounts requested. The Claims Court

¹According to the Court, it has, since January 1, 1980, applied the same interest rates as provided for in the Contract Disputes Act. The Secretary of the Treasury is required to specify a new rate every 6 months that has been determined by considering current private commercial rates of interest for new loans maturing in approximately 5 years.

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Interest for Selected Pending Takings Cases

could award the full amount requested as just compensation, award a lesser amount, or give the plaintiff nothing. This variability in any discussion of potential liability is illustrated by the disposition of the claim of George F. Short et al. This claim for \$90 million was dismissed by the Claims Court shortly before the cutoff date for our review, and the plaintiff received nothing as just compensation. In addition, the plaintiff was directed to reimburse the defendant for costs. Just compensation and interest are only paid on those cases in which the Claims Court finds that a taking has occurred and that the plaintiff is entitled to just compensation under the Fifth Amendment. Table 3.1 shows the amount of just compensation requested and our computation of the simple interest accrued as of May 31, 1993, on the eight pending takings cases.

Table 3.1: Amount of Claim and Potential Liability for Accrued Interest (Through May 31, 1993) for Pending Takings Cases

Plaintiff	Amount of claim^a	Accrued Interest^b	Total—claim plus interest
Bayou Des Familles Development Corp.	\$97,369,010	\$138,789,517	\$236,158,527
Harry L. Bowles	1,000,000	768,205	1,768,205
CIT Group/Equipment Financing, Inc. ^c	9,313,000	4,153,646	13,466,646
	5,382,000	1,230,220	6,612,220
Jacques Creppel et al.	12,850,000	8,368,915	21,218,915
Lloyd J. Drachenberg et al.	4,000,000	2,603,973	6,603,973
Marrero Land & Improvement Association, Ltd.	5,490,000	3,575,513	9,065,513
Thomas Mercer et al.	1,110,000	393,797	1,503,797
Harold L. Molaison et al.	2,820,000	1,836,602	4,656,602
Total	\$139,334,010	\$161,720,388	\$301,054,398

Note: By presenting the amount of just compensation requested and the interest accrued, we are not implying that the government will pay the plaintiffs these amounts. The Claims Court could award the full amount requested, a lesser amount, or nothing.

^aThe amount of the claim is the amount of just compensation requested in the complaint filed, the amount requested in subsequent documents submitted to the Claims Court, or an amount we computed.

^bInterest, which was not compounded, was computed using the interest rate established under the Contract Disputes Act.

^cThe plaintiff's complaint contains two claims for just compensation. In the first instance, the plaintiff claims a temporary taking from July 26, 1985, the date the permit application was submitted, to June 20, 1990, the date the Corps denied the plaintiff a permit. In the second instance, the plaintiff claims a permanent taking from June 20, 1990.

Costs Incurred by the Department of Justice for Selected Takings Cases

Neither the Department of Justice nor the Army Corps of Engineers maintains consolidated data on what it costs to litigate individual takings cases. However, at our request, the Department of Justice was able to reconstruct what it cost them to litigate four takings cases. The Department provided us cost summaries for two cases (Robert Ciampitti et al. and Hazel Dufau et al.) serving as examples of what it cost to litigate cases that have been dismissed. We then requested cost summaries on two other cases with different statuses. We selected one case (Beuré-Co.) because it had been settled and another (Florida Rock Industries, Inc.) because the Claims Court had rendered a decision in favor of the plaintiff.

The salary costs in table 4.1 are for Department of Justice staff working on the cases. For two of the cases (Robert Ciampitti et al. and Hazel P. Dufau et al.), the salary costs reflect the actual number of hours worked multiplied by an average hourly rate for Department of Justice attorneys and paralegals. For another case (Florida Rock Industries, Inc.), the salary costs reflect the actual number of hours worked multiplied by the hourly rates earned by the individuals involved. The salary costs for the three cases include the cost of benefits and overhead. For the remaining case (Beuré-Co.), the Department of Justice could not provide us with an accurate figure for the salary costs. Justice provided the remaining costs in the table from its accounting records.

Table 4.1: Costs Incurred by the Department of Justice in Litigating Selected Takings Cases

Plaintiff	Costs					Total
	Salaries	Witnesses	Travel	Depositions	Special services ^a	
Beuré-Co.	0 ^b	\$48,015	\$5,538	\$2,700	\$62	\$56,315
Robert Ciampitti et al.	\$115,439	112,733	4,181	7,110	1,064	240,527
Hazel P. Dufau et al.	17,743	0	651	0	58	18,452
Florida Rock Industries, Inc.	229,332	18,291	6,874	2,427	267	257,191

^aSpecial services include printing and the production of transcripts and graphics.

^bThe Department of Justice could not provide us with accurate data on the salary costs for the departmental staff who worked on this case.

Source: The Department of Justice.

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