

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

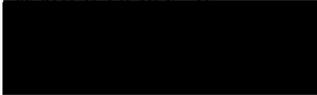


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7012 2210 0001 7215 0063

5890/DWHZ  
25 April 2013

Warren Henry, Jr.  


Re: Claim Number: N10036-1908

Dear Mr. Henry, Jr.,

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 N10036-1908 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 N10036-1908.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

  
Claims Adjudication Division  
National Pollution Funds Center  
U.S. Coast Guard

Enclosure (1): Claim Summary/Determination  
Enclosure (2): Evidence Submitted in Support of Claim N10036-1908

## CLAIM SUMMARY/DETERMINATION FORM

|                  |   |
|------------------|---|
| Claim Number     | N10036-1908                                       |
| Claimant         | Warren Henry, Jr.                                 |
| Type of Claimant | Private (US)                                      |
| Type of Claim    | Loss of Profits or Impairment of Earning Capacity |
| Amount Requested | \$128,177.00                                      |

### ***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 12 April 2013, Mr. Warren Henry, Jr., ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$128,177.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is a Merchant Mariner with a license to operate steam or motor vessels of not more than 100 gross tons upon near coastal waters. The Claimant alleges that he was unable to find work in the Gulf of Mexico due to "a reduction in employment in the offshore vessel operations" allegedly resulting from the Deepwater Horizon oil spill.<sup>2</sup>

The Claimant has not indicated how he reached his claim loss amount of \$128,177.00.

### ***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. 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.

<sup>1</sup> Optional OSLTF Claim Form dated 12 April 2013.

<sup>2</sup> Email from Claimant to NPFC dated 13 April 2013.

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; and
- (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.

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:  
***See, Enclosure (2).***

On 12 April 2013, the Claimant submitted their claim to the NPFC seeking to recover \$128,177.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>3</sup> The Claimant asserts that they previously presented to the Responsible Party via the Deepwater Horizon Claim Program and the claim has been either denied or left pending for a period of greater than 90 days.<sup>4</sup> However, the Claimant has not provided evidence sufficient to allow the NPFC to verify this assertion. The NPFC will adjudicate this claim to the extent that it satisfies OPA presentment requirements.<sup>5</sup> Any amount

<sup>3</sup> Optional OSLTF Claim Form dated 4 April 2013.

<sup>4</sup> Email from Claimant to NPFC dated 20 April 2013.

<sup>5</sup> 33 C.F.R. § 136.103(c)(2).

of the alleged damages which are included in this claim, which were not previously presented to and denied by the RP, are denied for improper presentment.

### **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 order to prove a claim for loss of profits damages, a claimant must provide evidence that proves (1) that the claimant sustained a loss or reduction in income, and (2) that the loss was caused by the discharge or substantial threat of discharge of oil.

This basis for this claim is an alleged reduction in employment opportunities available to the Claimant following the Deepwater Horizon oil spill. In an email to the NPFC, the Claimant cites at least ten mariner positions that he had held prior to the oil spill, and states that he was fired from nine of the positions and voluntarily left the other. At the time of the oil spill, he indicated that he was unemployed but that he anticipated beginning work through the Vessel of Opportunity (VoO) program, which was later cancelled.<sup>6</sup> The Claimant has not provided evidence to substantiate this assertion, but even if he had provided such evidence, the Claimant's missed opportunity to earn income as a result of the oil spill is not a loss caused by the oil spill.

The Claimant alleged that his losses continued from the time of the oil spill to the date of this claim submission. However, he has failed to provide evidence to indicate that he lost any particular job or employment opportunity as a result of the discharge of oil caused by the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount of \$128,177.00, or (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 discharge of oil.

Claim Supervisor: NPFC  *Claims adjudication Division*

Date of Supervisor's Review: 4/25/13

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>6</sup> Email from the Claimant to the NPFC, 20 April 2013.

**Enclosure (2)**  
**Evidence Presented in Support of**  
**NPFC Claim # N10036-1908**

- 1) Warren Henry Jr., Optional OSLTF Claim Form dated April 12, 2013, received at NPFC April 13, 2013.
- 2) Various documents:
  1. Internal Revenue Service (IRS) Wage and Income Transcripts 2007-2010, unemployment compensation 2009, IRS Form W-2 2012, IRS Form 1099-MISC 2012
  2. Identification and certification documents:
    - a. Social Security card
    - b. Transportation Worker Identification Card (TWIC)
    - c. U.S. Merchant Mariner's Document card
    - d. EMS Safety Services card
    - e. Marine Radio Operator permit
    - f. Merchant Mariner credential
  3. Email correspondence dated:
    - a. April 13, 2013 5:05 PM EST
    - b. April 17, 2013 9:18 PM EST
    - c. April 20, 2013 11:37 PM EST