

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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: 7011 1570 0001 4802 9631

5890/DWHZ  
02 May 2012

Adam Rubenstein  
[REDACTED]

Re: Claim Number: N10036-1631

Dear Mr. Rubenstein:

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 your claim number N10036-1631 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1631.

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

Enclosures: (1) Claim Summary/Determination Form  
(2) Evidence Provided by the Claimant in Support of Claim N10036-1631

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1631
Claimant	Adam Rubenstein
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$28,899.53

### ***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 06 January 2012, Adam Rubenstein (the Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$28,899.53 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is employed as a shrimp broker for Rubenstein Seafood Sales in Austin, Texas.<sup>1</sup> The Claimant asserted that his company represents all the major gulf shrimp processors and that there was a reduction in shrimp availability due to the Deepwater Horizon oil spill.<sup>2</sup> The Claimant stated that he experienced an average loss of 68% in sales for the period of May through August of 2010 and had over 10 truckloads cancelled from five accounts.<sup>3</sup> Additionally, the Claimant indicated that his reduced sales have continued through 2011.<sup>4</sup>

### ***APPLICABLE LAW***

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the

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<sup>1</sup> GCCF Interim Payment Claim Form dated 12/27/2010.

<sup>2</sup> Letter of claim explanation from the Claimant, faxed on 27 October 2010.

<sup>3</sup> Letter of claim explanation from the Claimant, faxed on 27 October 2010.

<sup>4</sup> GCCF Interim Payment Claim Form dated 6/30/2011.

responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 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 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***

### **The Claimant's Submission to the OSLTF**

In support of the claim, the Claimant presented all of the documentation listed in Enclosure 2.

Prior to presenting this claim to the NPFC, the Claimant filed six claims with the GCCF for loss of earnings, all under Claimant ID # 3440301. The table below provides relevant information for the Claimant's GCCF claims.<sup>5</sup>

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<sup>5</sup> Report from the GCCF, dated 17 April 2012.

<u>Date Presented to GCCF</u>	<u>Claim No.</u>	<u>Claim Type</u>	<u>Amount Claimed</u>	<u>GCCF Status</u>
11/23/2010	523504	Emergency Advance (EAP)	\$42,500.00	Denied
12/27/2010	9124604	Interim 1 (ICQ12011)	\$42,500.00	Paid \$3,395.13
04/27/2011	9371594	Interim 2 (ICQ22011)		Denied
06/30/2011	9411013	Interim 3 (ICQ32011)	\$17,000.00	Denied
10/05/2011	9520020	Interim 4 (ICQ42011)	\$28,899.53	Denied
03/18/2012	9581132	Interim 5 (ICQ52012)	\$12,131.35	Under Review

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant lost earnings as a shrimp broker. The NPFC deems that the Claimant's GCCF claims were properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1631 considers and addresses the earnings claimed in the claims presented to the responsible, specifically; GCCF Claim #'s 523504 (EAP), 9124604 (ICQ21011), 9371594 (ICQ22011), 9411013 (ICQ32011), and 9520020 (ICQ42011).<sup>6</sup>

### **NPFC Determination**

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. The NPFC considered all documentation presented by the Claimant.

This claim is denied because the Claimant failed to prove that he experienced a financial loss as result of the Deepwater Horizon oil spill. The Claimant asserted he experienced a reduction in sales, as well as cancelled sales, because of decreased inventory and higher prices caused by the Deepwater Horizon oil spill. In his submission to the NPFC, the Claimant provided assorted pay stubs, tax information, and charts of shrimp sales. On 06 March 2012, the NPFC requested that the Claimant provide additional information to verify the losses asserted and to establish a connection between the alleged loss and the Deepwater Horizon oil spill.

The NPFC requested that the Claimant provide, among other things, documentation of cancelled sales, sales records for all his seafood commission-sales from 2008-2011, tax returns from Rubenstein Seafood Sales, Inc. for 2008-2010, and information regarding the amount of non-Gulf Coast seafood sold by the Claimant.<sup>7</sup> To date, the NPFC has not received any additional information from the Claimant. Accordingly, the Claimant failed to meet his burden to prove that he experienced a loss of earnings from decreased shrimp sales caused by the Deepwater Horizon oil spill.

<sup>6</sup> The NPFC does not have presentment for the Claimant's Interim 5 claim. In order for the NPFC to have proper presentment, a claim must have either been denied in full, or in part, or have gone 90 days without action from the responsible party. Regarding this claim, none of the aforementioned exists.

<sup>7</sup> Letter from the NPFC to the Claimant, dated 06 March 2012.

Based on the foregoing, this claim is denied because (1) the Claimant failed to meet his burden to demonstrate that there was a loss in the amount claimed, and (2) the Claimant failed to meet his burden to 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.

Claims Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/2/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

**Enclosure (2)**

**Evidence Presented by the Claimant in Support of  
Claim N10036-1631**

- Optional OSLTF Claim Form, dated 28 December 2011;
- Gulf Coast Claims Facility ("GCCF") Determination Letter on Final Payment Claim, dated 22 December 2011 (pages 1 & 4-6 of 10 pages);

- Letter of claim explanation from the Claimant, faxed on 27 October 2010;
- Claimant's "authorization and release" for documents previously provided by you to GCCF.
- GCCF letter dated 31 January 2011
- GCCF "Supporting Documentation for a Claim" form;
- 2008 Form W-2 from Rubenstein Seafood Sales, Inc.
- 2009 Form W-2 from Rubenstein Seafood Sales, Inc.
- Pay stubs (and assorted corresponding checks and deposit slips) for Claimant from Rubenstein Seafood Sales, Inc. with the following pay dates: 12/29/2008, 12/30/2009, 5/12/2010, 6/14/2010, 6/22/2010, 6/30/2010, 7/15/2010, 7/30/2010, 8/16/2010, 9/17/2010, 10/1/2010, 10/13/2010, 10/28/2010, 11/15/2010, 11/29/2010, 12/13/2010, 12/29/2010, 1/13/2011, 1/31/2011, 2/14/2011, 2/28/2011, 3/16/2011, 3/30/2011, 4/15/2011, 4/29/2011, 5/13/2011, 5/27/2011, 6/15/2011, 6/30/2011, 7/14/2011, 7/26/2011, 8/15/2011, 8/29/2011, 9/14/2011, 10/1/2011;
- Monthly "Sales in LBS" spreadsheet for 2007-2010;
- "2010 Actual vs. Expected pay" document noting projected versus expected income from May 2010 through December 2010;
- Revised 2010 "Actual, Projected, Expected" pay document noting projected versus expected income from May 2010 through December 2010 (fax-dated 4/15/2011);
- "Actual, Projected, Expected" pay document noting projected versus expected income from May 2010 through March 2011 (fax-dated 4/18/2011- 2 copies);
- GCCF Interim Payment Claim Form dated 12/27/2010;
- GCCF Interim Payment Claim Form dated 4/27/2011;
- GCCF Interim Payment Claim Form dated 6/30/2011;
- GCCF Interim Payment Claim Form dated 9/30/2011;
- Claimant's "GCCF Claim Form Generated Online" dated 11/23/2010;
- Claimant's 2010 federal tax return;
- Claimant's 2010 W-2 from Rubenstein Seafood Sales, Inc.;
- GCCF letter dated 12/10/2010;
- GCCF deficiency letter dated 12/12/2010;
- GCCF Determination Letter on Interim Payment/Final Payment Claim letter dated 3/6/2011;
- GCCF Re-Review Determination Letter on Interim Payment/Final Payment Claim dated 4/14/2011;
- GCCF Re-Review Determination Letter on Final Payment Claim dated 6/16/2011;
- GCCF Determination Letter on Interim Payment/Final Payment Claim letter dated 6/29/2011;
- GCCF Re-Review Determination Letter on Final Payment Claim dated 7/7/2011;
- GCCF Determination Letter on Interim Payment/Final Payment Claim dated 9/22/2011;
- GCCF Re-Review Election Form dated 9/26/2011;
- GCCF Determination Letter on Interim Payment/Final Payment Claim dated 10/3/2011;
- GCCF Determination Letter on Interim Payment/Final Payment Claim dated 12/22/2011;
- GCCF Final Payment Election Form dated 12/22/2011.