

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

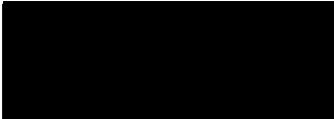


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 800-280-7118  
E-mail: arl-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2446 4272

5890/DWHZ  
20 April 2012

Parker Marine, Inc.  


Re: Claim Number: N10036-1718

Dear Mr. Parker:

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 N10036-1718 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 N10036-1718.

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) Documentation List: Claimant's Submission to the OSLTF

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1718
Claimant	Parker Marine, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$230,000.00

### ***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 15 March 2012, Mr. Ken Parker., on behalf of Parker Marine, Inc. (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$230,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is a boat dealership, specializing in the sale of high-end fishing boats, described by the Claimant as "offshore/blue water boats."<sup>2</sup> The Claimant operates out of D'Iberville, Mississippi and services clientele throughout Mississippi and Louisiana.<sup>3</sup> The Claimant alleged that he was unable to sell boats after the oil spill due to closures of fishing areas and also due to the economic effect of the oil spill on his clientele, whom he identifies as working "in the oil exploration industry."<sup>4</sup> Referencing 2010, the Claimant stated, "due to the oil spill and the closed fishing areas, I have not sold a single boat this season."<sup>5</sup>

The Claimant does not specifically indicate how he arrived at his sum certain amount of \$230,000.00, but references several losses throughout his claim submission. Losses identified by the Claimant as having resulted from the oil spill include: (1) loss of boat sales, (2) loss of an employee due to lack of business, and (3) lost income due to the Claimant's inability to participate in the VoO program.

### ***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

<sup>1</sup> Optional OSLTF Claim Form, signed on 12 January 2012.

<sup>2</sup> Letter from the Claimant to the GCCF, 27 September 2011.

<sup>3</sup> Letter from the Claimant to the GCCF, 27 September 2011.

<sup>4</sup> GCCF Claim Form generated online as of 12/28/2011.

<sup>5</sup> Letter from the Claimant to the GCCF, 27 September 2011.

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.
- (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**

To support this claim, the Claimant submitted the following documentation:  
**See Enclosure (2).**

Prior to presentment of this claim to the GCCF, BP issued a payment to the Claimant of \$17,415.30.<sup>6</sup>

On 23 August 2010, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking \$100,000.00 in loss of profits and wages damages. The Claimant was assigned Claimant ID 1146570 and the EAP claim was assigned claim # 2228.<sup>7</sup> The GCCF issued payment on this claim in the amount of \$100,000.00.<sup>8</sup>

<sup>6</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>7</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>8</sup> GCCF United States Coast Guard Report, 12 April 2012.

On 11 April 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking \$235,000.00 in loss of profits and wages damages. The FRF claim was assigned claim # 9351186 and the Claimant was sent a final payment offer of \$25,000.00, which the Claimant opted not to accept.<sup>9</sup>

On 28 December 2011, the Claimant presented a Fourth Quarter Interim Claim (ICQ42011) to the RP/GCCF, seeking \$100,000.00 in loss of profits and wages damages. The ICQ42011 was assigned claim # 9550642. The Claimant was again offered a \$25,000.00 final payment, and accepted a Transition Final Payment of \$15,000.00.<sup>10</sup> From both BP and the GCCF, the Claimant has received compensation for losses associated with the Deepwater Horizon oil spill, totaling \$132,415.30.

On 15 March 2012, the Claimant submitted this claim to the NPFC, seeking an additional \$230,000.00 in loss of profits and impairment of earning capacity damages.<sup>11</sup> Because damages that are the subject of this claim, have first been presented to and partially denied by the RP/GCCF, OPA presentment requirements<sup>12</sup> are satisfied and the NPFC may fully adjudicate this claim for \$230,000.00 in loss of profits and impairment of earning capacity damages.

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

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

#### **1. Lost sales**

This claim is largely based on the Claimant's inability to sell high-end fishing boats in the period following the Deepwater Horizon oil spill. However, the Claimant has failed to prove that any particular sales were lost or that business otherwise decreased as a result of the Deepwater Horizon oil spill.

The Claimant alleged that due to the temporary closure of certain fishing waters, and because of the general financial instability of the Claimant's customers following the oil spill, certain boat sales were lost and cancelled. In support of this assertion, the Claimant includes emails and letters from potential customers regarding their decision not to purchase boats from the Claimant. A letter from one such customer states that, "because of the oil spill and the inability to fish offshore in Louisiana, I can't see any reason to invest in a new fishing boat of this nature."<sup>13</sup> Letters such as this, however, do not indicate that the Claimant actually lost a certain sale. Rather the letters indicate that certain sales may have been delayed. The NPFC was able to contact two of the three individuals who provided letters on behalf of this claim submission. The individuals

<sup>9</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>10</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>11</sup> Optional OSLTF Claim Form, signed on 6 March 2012.

<sup>12</sup> 33 C.F.R. § 136.103(a).

<sup>13</sup> Letter from Elmer Pique to the Claimant, undated.

confirmed that although they each delayed purchasing boats following the oil spill, they did still purchase boats from the Claimant once fishing waters had reopened.<sup>14</sup>

Furthermore, although the Claimant's sales income in 2010 is lower than in previous years, the Claimant's income appears to have been decreasing in early 2010, prior to the oil spill. For example, in the first quarters of 2008 and 2009, the Claimant recorded retail sales of \$220,574.30 and \$10,197.09 respectively.<sup>15</sup> In the first quarter of 2010, however, the Claimant recorded retail sales of only \$276.32.<sup>16</sup> This indicates that the Claimant's earnings in 2010 were declining prior to the oil spill, and were not on track to match earnings from previous years. The Claimant has not provided evidence to prove that in spite of low first quarter earnings, the Claimant's income would have matched income from previous years had the oil spill not caused the Claimant to lose potential sales.

## 2. Loss of employee

The Claimant states that the lack of business in 2010 prompted the resignation of one of his employees, thereby causing the Claimant to incur additional hiring and training costs to replace the employee. Relative to this loss, the Claimant states that insufficient staffing has caused him to "turn away some business because [he] is without a qualified employee."<sup>17</sup>

As discussed above, the Claimant has failed to prove that any decrease in business was caused by the Deepwater Horizon oil spill. Accordingly, he has also failed to prove that the departure of his employee, which was prompted by the lack of business, was also caused by the Deepwater Horizon oil spill. Furthermore, the loss of an employee is not a reduction in the Claimant's income under OPA's loss of profits damage category, which allows compensation for "the actual net reduction or loss of earnings or profits suffered."<sup>18</sup> The loss of an employee is not a reduction or loss in the Claimant's earnings and is therefore not a compensable loss under OPA.

## 3. Inability to participate in VoO program

Throughout this claim submission, the Claimant discusses his inability to participate in the VoO program. In an email to the GCCF included in this claim submission, the Claimant states, "I would like to be paid for the work I was denied by BP during the VoO program."<sup>19</sup>

It is unclear how the Claimant calculated his losses to arrive at his sum certain of \$230,000.00. However, any amount of the Claimant's alleged loss which represents income the Claimant failed to earn by not participating in the VoO program, is not a financial loss caused by the Deepwater Horizon oil spill. Rather, the VoO program presented an opportunity to earn a profit as a result of the oil spill. The Claimant's inability to profit from an opportunity created by the oil spill is not a financial loss resulting from the oil spill, and is not compensable under OPA.

Based on the foregoing, this claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$230,000.00, and (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 a discharge of oil.

<sup>14</sup> PHONECON: NPFC Staff and Claimant's customer, 18 April 2012; PHONECON: NPFC Staff and Claimant's customer, 19 April 2012.

<sup>15</sup> Parker Marine Income Statement for the period ending 3/31/09.

<sup>16</sup> Parker Marine Income Statement for the period ending 3/31/10.

<sup>17</sup> Letter from the Claimant to the GCCF, 27 September 2011.

<sup>18</sup> 33 C.F.R. § 136.235.

<sup>19</sup> Email from the Claimant to the GCCF, 21 September 2010.

Claim Supervisor: *NPFC Claims Adjudication Division* RLR

Date of Supervisor's Review: *4/20/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

**Enclosure (2)**  
**Evidence Presented in Support of**  
**NPFC Claim # N10036-1718**

- Optional OSLTF Claim Form, signed on 6 March 2012;
- Letter from the Claimant to the GCCF, 27 September 2011;
- Letter from the Claimant, providing loss update, 6 March 2012;
- Authorization to retrieve GCCF submission, 5 March 2012;
- GCCF Claim Form Generated Online, Claimant # 1146570, claiming \$100,000.00 in loss of profits damages;
- GCCF 2000-C, Exhibit A;
- GCCF Interim Payment Claim Form, seeking \$1000,000.00 in loss of profits damages;
- GCCF Full Review Final Payment Claim Form;
- Claim form addendum, noting loss of employee, undated;
- 2010 Form 1120S, showing business income of \$70,675.00 (including GCCF payments);
- 2010 Form 1120S (Schedule K-1);
- Mississippi S-Corporation, Computation of Net Taxable Income Schedule 2010;
- Mississippi Corporate Franchise Tax Schedule, 2010;
- Parker Marine Income Statement, 2010;
- GCCF Postal Service Confirmation;
- Letter from the Claimant to Mr. Feinberg, undated;
- Emails between the Claimant and the GCCF re: employee resignation, 27 August 2010;
- Resignation letter from the Claimant's employee, 13 August 2010;
- Email from the Claimant to the GCCF, requesting VOO payment, 21 September 2010;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 27 July 2011;
- Accounting Expense invoice, 8 August 2011;
- Receipt, Mississippi Department of Revenue, 2 August 2011;
- Mississippi Sales Tax Returns, September 2010 – July 2011;
- Parker Marine Monthly Income Statements, January 2008 – July 2011;
- 2007 Form 1120S, showing gross sales of \$658,675 and total income of \$156,873;
- GCCF Re-Review Election Form, 6 October 2011;
- Monthly Income Statements, July 2011 – September 2011;
- BancorpSouth, record of checking account transactions, 1/31/2011;
- BancorpSouth, record of checking account transactions, 2/28/2011;
- BancorpSouth, record of checking account transactions, 3/31/2011;
- BancorpSouth, record of checking account transactions, 4/29/2011;
- BancorpSouth, record of checking account transactions, 5/30/2011;
- BancorpSouth, record of checking account transactions, 6/30/2011;
- BancorpSouth, record of checking account transactions, 7/29/2011;
- BancorpSouth, record of checking account transactions, 8/31/2011;
- BancorpSouth, record of checking account transactions, 9/30/2011;
- Whitney Bank deposit statements, 2011;
- McDonnell Accounting invoice, 8/8/2011;
- GCCF Interim Payment Claim Form, received on 27 December 2011;
- Copy of monthly interest payment records;
- Notice of Loan Payment Due, 11/18/11;
- Notice of Loan Payment Due, 12/21/11;
- Monthly Income Statement, July 2011 – December 2011;
- Case Information and Privacy Act Release Form, 22 February 2012;

- Record of payment from BP to Parker Marine Insurance, \$8,293.00;
- Sales log, April 2010 – June 2010;
- Fax Cover Sheet, 15 June 2010;
- Letter from David Fine to the Claimant, 15 June 2010;
- Letter from the GCCF to the Claimant re: Important Deadline to Elect Quick Payment Option: May 7, 2012;
- Copy of the Claimant's Driver's License;
- 1<sup>st</sup> Quarter, 2009, 2008 Income Statements;
- 2<sup>nd</sup> Quarter 2009, 2008 Income Statements;
- 3<sup>rd</sup> Quarter 2009, 2008 Income Statements;
- 4<sup>th</sup> Quarter 2009, 2008 Income Statements;
- 1<sup>st</sup> Quarter 2010, 2009 Income Statements;
- Sales log, January 2008 – May 2010;
- GCCF Deficiency Letter, 27 July 2011;
- GCCF Determination Letter on Final Payment Claim, 9 September 2011;
- GCCF Form 1012;
- GCCF Re-Review Determination Letter on Final Payment Claim, 23 December 2011;
- GCCF Form 1025;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 14 February 2012;
- Letter from the GCCF to the claimant RE: Pending Final Payment Offer with the GCCF, 15 March 2012;
- 2009 Form 1120S, showing gross sales of \$1,055,520.00 and total income of \$137,120.00;
- 2009 Schedule K-1 (Form 1120S);
- 2008 Form 1120S, showing gross sales of \$814,933 and total income of \$205,243.00;
- 2008 Schedule K-1 (Form 1120S);
- Mississippi Business Income Tax Returns, 2008;
- 2007 Form 1120S, showing gross sales of \$658,675 and total income of \$290,486.00;
- 2007 Schedule K-1 (Form 1120S);
- Letter from World Cat on behalf of the Claimant, undated;
- Email from Kent Delcambre to the Claimant, 27 May 2010;
- Letter from Elmer Pique to the Claimant, undated.