

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

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1/6/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 6470

Robert Barrington  
[REDACTED]

RE: Claim Number: N10036-1384

Dear Mr. Barrington:

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 claim number N10036-1384 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

[REDACTED]  
Thomas B. Morrison  
Chief, Claims Adjudication Division  
U.S. Coast Guard

Copy: Gulf Beach & Kingsport  
8655 Gulf Beach Highway  
Pensacola, Florida 32507

USPS Certified Receipt: 7011 1570 0001 4802 6487

ENCL: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1384
Claimant	: Gulf Beach & Kingsport, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$152,564.16

### **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 claims for certain individual and business claims on behalf of BP.

### **CLAIM AND CLAIMANT:**

On 08 September 2011, Robert Barrington, on behalf of Gulf Beach & Kingsport, LLC (collectively the Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$152,564.16 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is the owner and landlord of a commercial property located at 8655 Gulf Beach Highway, Pensacola, Florida.<sup>1</sup> The Claimant leases the property to two furniture companies, Ronin Corporation dba Inside Out Furniture and DesignerFurnitureOutlet.com,<sup>2</sup> who use the space as a showroom and warehouse.<sup>3</sup> The Claimant stated that both lessee furniture stores sell furniture for beach rentals and condos on Perdido Key, Florida.<sup>4</sup> The Claimant asserted that the owners of these condos and rentals normally refurbish after the rental season but, due to the Deepwater Horizon oil spill, there was no rental season.<sup>5</sup> Consequently, property owners didn't buy furniture from the lessee furniture companies, which caused the lessees to be unable to pay the Claimant rent for use of the commercial space.<sup>6</sup>

The Claimant stated that rent for the property is \$19,070.52 per month and indicated that the tenants did not pay rent for the entire period of May through December of 2010.<sup>7</sup> Thus, the Claimant's alleged damages are the total of eight months of lost rental earnings (8 x \$19,070.52 = \$152,564.16).<sup>8</sup>

<sup>1</sup> GCCF Full Review Final Payment Claim Form, dated 13 April 2010.

<sup>2</sup> Commercial lease agreement between Gulf Beach & Kingsport, LLC and Ronin Corporation/ Designer Furniture Outlets.com, effective 1 October 2006.

<sup>3</sup> GCCF Full Review Final Payment Claim Form, dated 13 April 2010.

<sup>4</sup> Letter of claim explanation from R.J. Barrington to NPFC, undated.

<sup>5</sup> Letter of claim explanation from R.J. Barrington to NPFC, undated.

<sup>6</sup> Letter of claim explanation from R.J. Barrington to NPFC, undated.

<sup>7</sup> GCCF Full Review Final Payment Claim Form, dated 13 April 2010.

<sup>8</sup> GCCF Full Review Final Payment Claim Form, dated 13 April 2010.

Prior to presenting this claim to the NPFC, the Claimant filed a Full Review Final (FRF) claim with the GCCF on 11 May 2011 in the amount of \$152,564.16 for lost profits and earnings.<sup>9</sup> The Claimant was assigned Claimant ID # 3504166 and Claim # 9313690. This claim was denied by the GCCF on 14 May 2011.<sup>10</sup>

The NPFC denied the claim originally on November 28, 2011 because the Claimant failed to prove that it suffered a financial loss due to the Deepwater Horizon oil spill.

The Claimant provided a commercial lease for the property located at 8655 Gulf Beach Highway, Pensacola, Florida.<sup>11</sup> The commercial lease dictated that, effective 1 October 2001; the tenants would pay the Claimant rent in the amount of \$17,740.00 per month<sup>12</sup>; less than the \$19,070.52 per month in rent claimed to the NPFC by the Claimant. The terms further provide that the lease will not end until 30 September 2015.<sup>13</sup> Notably, the lease terms also specify all parties to the commercial lease agreement: Gulf Beach & Kingsport as lessor, and Ronin Corporation dba Inside Out Furniture and DesignerFurnitureOutlet.com, Inc. as lessees.<sup>14</sup> Information provided by the Claimant indicates that all three entities are owned and/or operated by Gail Taylor and Stuart Kaplan, husband and wife.<sup>15</sup>

The Claimant asserted that the furniture store lessees of the commercial property were unable to pay rent because of financial losses caused by the Deepwater Horizon oil spill. Documentation submitted by the Claimant indicates that the tenants of the property had common ownership with the Claimant. Although the Claimant alleges that the Deepwater Horizon oil spill is the reason why the lessees were unable to pay rent, financial documentation provided to the NPFC refutes this allegation. Very little, if any, rent had been paid to the Claimant since well before the Deepwater Horizon oil spill, which occurred in April 2010. The Claimant's financial records state that the Claimant received no rental income from the lessees in either 2008 or 2009.<sup>16</sup> This information is confirmed by the Claimant's 2009 federal tax return showing \$0.00 in earnings,<sup>17</sup> while the Claimant's tax return from 2008 shows earnings of \$28,606.00<sup>18</sup> (still significantly less than the \$212,880.00 prescribed by the lease). Accordingly, the lessees had not complied with the terms of the lease; therefore, the NPFC is unable to find any value in the lease agreement as a legal instrument. Further, there is no evidence that the failure of the lessees to pay rent was due to the Deepwater Horizon oil spill because the lessees were not paying rent prior to the oil spill.

The Claimant asserted that, even though the lessees have not actually paid rent in 2009 and 2010, the unpaid rents have continued to accrue and are owed to the Claimant.<sup>19</sup> However, 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

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<sup>9</sup> Report from the GCCF, dated 21 November 2011.

<sup>10</sup> Denial letter on Interim Payment/Final Payment Claim, dated 14 May 2011.

<sup>11</sup> Commercial lease agreement between Gulf Beach & Kingsport, LLC and Ronin Corporation/ Designer Furniture Outlets.com, effective 1 October 2006.

<sup>12</sup> Commercial lease agreement between Gulf Beach & Kingsport, LLC and Ronin Corporation/ Designer Furniture Outlets.com, effective 1 October 2006.

<sup>13</sup> The NPFC notes that the year of the original end date for the lease agreement has been altered.

<sup>14</sup> Commercial lease agreement between Gulf Beach & Kingsport, LLC and Ronin Corporation/ Designer Furniture Outlets.com, effective 1 October 2006.

<sup>15</sup> Email correspondence from Pauli Skomp of Sansom CPA to Breda King of Regions Bank, dated 26 October 2011, explaining the various business entities owned by Gail Taylor and Stu Kaplan.

<sup>16</sup> Gulf Beach & Kingsport, LLC "Tax Prep" worksheet for 2009.

<sup>17</sup> 2008 Form 1065 Federal Income Tax Return.

<sup>18</sup> 2009 Form 1065 Federal Income Tax Return.

<sup>19</sup> Gulf Beach & Kingsport, LLC "Tax Prep" worksheet for 2009.

suffered. Therefore, the Claimant can only be compensated for the actual rents that would have been paid if not for damages caused by the Deepwater Horizon oil spill. Since the lessees were not actually paying the Claimant rent prior to the Deepwater Horizon oil spill, the Claimant has not suffered a compensable loss under the Oil Pollution Act that 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.

Alternately, despite receiving little to no rental earnings in 2008 and 2009, as well as claiming its lessees were unable to pay rent in 2010, the Claimant reported \$272,051.00<sup>20</sup> in earnings in 2010. The NPFC is also unable to calculate a loss for the Claimant in 2010 when it reported earnings of \$28,606.00 in 2008, \$0.00 in 2009, yet had earnings of \$272,051.00 in 2010.

Accordingly, this claim was denied because (1) the Claimant failed to demonstrate a loss in the amount claimed, and (2) the Claimant failed to meet its burden to demonstrate that it experienced a loss 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.

### **REQUEST FOR RECONSIDERATION and CLAIMANT'S ARGUMENTS:**

On December 16, 2010, the Claimant's authorized representative, Mr. Barrington, sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider this claim. The Claimant requested reconsideration which was received by the NPFC on December 27, 2011. The Claimant provided a two-page letter on reconsideration accompanied by a copy of a Annual Meeting Memo dated August 31, 2008 removing Mr. Robert S. Duerstock as President and COO of Ronin Corporation and Designer Furniture Outlets Corporation for financial mismanagement. The Claimant also provided an excel spreadsheet of financials for Tax Year 2008, a copy of a letter dated September 15, 2008 to the Internal Revenue Service regarding back payroll taxes owed, a copy of Florida Department of Revenue notice effective August 1, 2010 for sales tax not paid, a copy of three emails between Stuart Kaplan and Mr. Duerstock, and a copy of letter dated June 1, 2010 with a subject line entitled "Business Impact of the BP Oil Disaster, April 20, 2010" from Stuart Kaplan to various company employees advising them that they should file claims for lost wages with the GCCF.

The Claimant made the following arguments on reconsideration in support of the request for eight months of unpaid rent in the amount of \$19,070.52 per month for May 2010 through December 2010:

1. The Claimant explains on reconsideration why rents were not paid for two years preceding the BP oil spill as being attributed to financial mismanagement by the former President and COO of Ronin Corp. (tenant).<sup>21</sup> The Claimant goes on to state the company, Ronin Corp., was put into dire financial straits in mid-2008 for over \$1 million. The Claimant states that the additional documentation presented on reconsideration demonstrates Ronin Corp. was able to pay rent until mid-2008 when the lessees stopped making rent payments to the Claimant.

<sup>20</sup> 2010 Form 1065 Federal Income Tax Return.

<sup>21</sup> Ronin was only one of the lessees on the lease at issue. Claimant provided no documentation on the second lessee, Designer Furniture Outlets.com dba DesignerHomeAccents.com.

The Claimant further asserts that after surviving the economic recession of 2008 and 2009, the company<sup>22</sup> was finally in a position to start paying the accrued past due rents after the first quarter of 2010 but on April 20, 2010, the Deepwater Horizon incident occurred causing an immediate economic impact on the entire geographic area, especially the housing and condo markets so no rents were ever started. The Claimant argues that since the company is a home furnishing business dealing primarily with condo home furnishings and annual replacement condo rental furnishings and with May being their alleged big month, no one showed in May 2010 and business dropped immediately by 50% and continued to deteriorate.

### **NPFC DETERMINATION on RECONSIDERATION**

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration, including the documentation presented by the Claimant with its initial claim and the documentation submitted with the request for reconsideration.

The NPFC, based on documentation presented by the Claimant, stated in its initial denial that the furniture companies had not paid rent to the Claimant since well before the Deepwater Horizon oil spill, i.e., Claimant received little rental income from the lessees in 2008 and no rental income in 2009.<sup>23</sup> This information is confirmed by the Claimant's 2009 federal tax return showing \$0.00 in earnings,<sup>24</sup> while the Claimant's tax return from 2008 shows earnings of \$28,606.00<sup>25</sup> (still significantly less than the \$212,880.00 prescribed by the lease). It is clear that the lessees had not complied with the terms of the lease. Considering the shared ownership between the lessor and lessees and the extended non-enforcement of material terms of the lease agreement, it is not clear that the lease was in effect or if it was void.

The Claimant asserted that, even though the lessees have not actually paid rent in 2009 and 2010, the unpaid rents have continued to accrue and are owed to the Claimant.<sup>26</sup> While the Claimant may be owed back rent it has not established that the failure to pay the rent from May through December 2010 was due to the Deepwater Horizon oil spill. The Claimant argued it was going to start receiving rent in 2010 had the Deepwater Horizon incident not occurred; however, the Claimant has failed to produce evidence to support such an assertion, i.e., historical sales records, customer contact information and/or client data from 2008 through 2010 to establish that the financial condition of the company had improved and would in fact have been able to begin paying rent in 2010.

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<sup>22</sup> It is unclear whether the "company" is only Ronin Corp. or whether it includes the other lessee, DesignerFurnitureOutlet.com

<sup>23</sup> Gulf Beach & Kingsport, LLC "Tax Prep" worksheet for 2009.

<sup>24</sup> 2008 Form 1065 Federal Income Tax Return.


<sup>25</sup> 2009 Form 1065 Federal Income Tax Return.

<sup>26</sup> Gulf Beach & Kingsport, LLC "Tax Prep" worksheet for 2009.

It should be noted that the information submitted with the request for reconsideration does not support Claimant's allegation that the lessees failure to pay rent was due to the Deepwater Horizon incident but in fact evidences that their financial woes were due to: (1) the COO's mismanagement of Ronin from at least 2008, and (2) general economic conditions related to the economy and housing market from 2008-2009 because revenues for the two furniture companies were derived from the housing market. As noted above Claimant provided no information on the second lessee, DesignerFurnitureOutlet.com. Accordingly, the Claimant has failed to prove that the Deepwater Horizon oil spill was the cause of any lost rental income.

Finally, the income tax records submitted by the Claimant do not establish that the Claimant suffered a loss of profit from the rental incomes due to the Deepwater Horizon oil spill. As noted above the income reported for 2008 was \$28,606; for 2009 was \$0.00 and for 2010 was \$272,051. Thus, the administrative record evidences that the Claimant did not suffer a loss of income at all in 2010, let alone from the Deepwater Horizon oil spill.

Based on the above information, this claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: *1/06/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: