

## CLAIM SUMMARY / DETERMINATION ON RECONSIDERATION

<b>Claim Number:</b>	N14026-0001
<b>Claimant:</b>	Carnival Corporation
<b>Type of Claimant:</b>	BUSINESS
<b>Type of Claim:</b>	Loss of Profits and Impairment of Earnings Capacity
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$3,265,000.00

### **Incident:**

On March 22, 2014, at about 1235 central daylight time, the Tug MISS SUSAN was pushing two barges from Texas City to Port Bolivar on the eastern side of the Houston Ship Channel. The bulk carrier M/V SUMMER WIND with a Houston pilot on board was headed north, inbound from the Gulf of Mexico toward Houston. The SUMMER WIND and the forward barge, KIRBY 27706, collided in the Houston Ship Channel causing a discharge from the barge. The barge discharged heavy marine fuel oil into Lower Galveston Bay at the Texas City Y, the intersection of the Texas City Ship Channel and the Houston Ship Channel. Coast Guard Marine Safety Unit Texas City initially responded. On the same day, the CG closed the Houston Ship Channel, the Texas City Ship Channel, and the Intracoastal Waterway in the area. The waterways were reopened to commercial traffic in the early afternoon on March 25, 2014.

The identified responsible party (RP) is KIRBY INLAND MARINE LP (Kirby or RP), as owner and operator of the KIRBY 27706.

### **Claimant:**

The Claimant, Carnival Corporation (Claimant or Carnival), is a passenger cruise line that operates both the MAGIC and the TRIUMPH out of the port of Houston, sailing on Caribbean cruise itineraries.

### **RP Presentment:**

Carnival first presented its claim to the responsible party via letter dated April 21, 2014,<sup>1</sup> with an initial demand of \$3,374,000.00. It then submitted a second demand letter<sup>2</sup> to the RP dated January 27, 2015 for the same amount. Carnival presented its final demand letter, dated August 19, 2015,<sup>3</sup> to the RP with an updated sum certain of \$3,265,000.00, the same amount that was presented in its claim to the NPFC. On December 29, 2015, Carnival, represented by counsel,<sup>4</sup> submitted a loss of profits and earning capacity claim to the National Pollution Funds Center (NPFC), for reimbursement of profits lost in the amount of \$3,265,000.00.

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<sup>1</sup> See, Initial Demand Letter from Carnival to Kirby (Exhibit A), dated 4/21/2014, and submitted with the claim by the Claimant on 12/29/2015.

<sup>2</sup> See, Second Demand Letter from Carnival to Kirby (Exhibit B), dated 1/27/2015, and submitted with the claim by the Claimant on 12/29/2015.

<sup>3</sup> See, Final Demand Letter from Carnival to Kirby (Exhibit C), dated 8/19/2015, and submitted with the claim by the Claimant on 12/29/2015.

<sup>4</sup> Mr. [REDACTED] of Fowler Rodriguez.

***Procedural History***

On September 22, 2016, the NPFC issued its decision to Carnival, which denied payment on the entire amount of the claim (\$3,265,000.00) for the reasons explained in that determination.<sup>5</sup> The Claimant’s attorney, [REDACTED] at Fowler Rodriguez, emailed his letter to the NPFC on October 18, 2016, in which the Claimant requested reconsideration of the NPFC’s initial decision.<sup>6</sup>

On April 5, 2017, the NPFC received notice from Carnival’s attorney that Kirby settled Carnival’s claim for damages related to the incident.<sup>7</sup> Both Kirby and Carnival stated that the terms of the settlement are confidential.

**DETERMINATION:**

The Claimant notified the NPFC that it reached settlement of its claim with Kirby on April 5, 2017, and no longer seeks reimbursement of losses from the OSLTF. The Claimant requested that its claim be dismissed with prejudice. Having been fully compensated for its losses, Carnival no longer has a compensable claim before the Fund. Therefore, the NPFC denies the claim.

Claim Supervisor:	[REDACTED]
Date of Supervisor’s review:	4/06/2017 [REDACTED]
Supervisor Action:	<b><i>Denial Approved</i></b>
Supervisor’s Comments:	

<sup>5</sup> See, Initial Claim Determination, issued by the NPFC to the Claimant on 10/06/2016.

<sup>6</sup> See, Email from Mr. [REDACTED], Fowler Rodriguez, to the NPFC, dated 10/18/2016.

<sup>7</sup> See, Letter from Mr. [REDACTED], Fowler Rodriguez, to the NPFC, dated 4/05/2017.