

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

MAR 13 2014

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

B+B FARMS

Brooks Minton, Jr. d/b/a Claimant

vs.

State of Arkansas, Respondent Dept. of Correction

Do Not Write in These Spaces Claim No. 14-0695-CC Date Filed March 13, 2014 Amount of Claim \$ 21,490.18 Fund DOC

Negligence, Loss of Profit, Refund of Expenses, Property Damage

COMPLAINT

Brooks Minton, Jr. the above named Claimant, of 104 Cambridge Pl. England AR 72046 501-591-9020 County of Jefferson represented by Cook Law Firm, P.A. 8114 Cantrell Road Ste 100 Little Rock AR 72227 5-255-1800 5-255-1116

State agency involved: ARKANSAS DEPT. OF CORRECTION Amount sought: \$21,490.18 Month, day, year and place of incident or service: June 5, 2017, Jefferson County, Arkansas

Explanation: SEE ATTACHED FACTUAL NARRATIVE

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? YES when June 17, 2017 to whom? Mark S. McClown - ADC AGRICULTURE ADMINISTRATOR and that the following action was taken thereon: DENIED LIABILITY

and that \$ 0.00 was paid thereon: (2) Has any third person or corporation an interest in this claim? NO if so, state name and address N/A

and that the nature thereof is as follows: N/A and was acquired on N/A in the following manner: N/A

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Harold E. Cook (Print Claimant/Representative Name) Signature of Claimant/Representative

SWORN TO and subscribed before me at Little Rock AR on this 11th day of March 2014

SARA E. CRITTENDEN NOTARY PUBLIC-STATE OF ARKANSAS PULASKI COUNTY My Commission Expires 06-26-2016

Signature of Notary Public

SFI- R7/99

My Commission Expires: 6 / 26 / 2016

ARKANSAS STATE CLAIMS COMMISSION
NON VEHICLE PROPERTY DAMAGE/PERSONAL INJURY INCIDENT REPORT FORM
d/b/a B+G Farms

SECTION I

CLAIMANT Brooks Minton, Jr. ADDRESS 104 Cambridge Pl

CITY & STATE England, AR ZIP CODE 72044

DATE OF INCIDENT: JUNE 5, 2013 TIME unknown

Give a brief description of incident, showing how incident happened, exact loss and extent of damage to property and/or injury to person:

ARKANSAS DEPT. OF CORRECTIONS INMATE PERMITTED OVER SPRAY TO DRIFT ONTO CLAIMANT'S RICE CROP, RESULTING IN DAMAGE

(if personal injury claim only, move on to Section IV)

SECTION II N/A

Has this property been repaired? Yes () No () If repairs have been made, give the following information: Amount: \$ _____ Have you paid for the repairs? Yes () No ()

NOTE: Attach a copy of repair bill.

If repairs have not been made, list three estimates below and attach copies of each of them.

| NAME | ADDRESS | AMOUNT |
|----------|---------|----------|
| 1. _____ | _____ | \$ _____ |
| 2. _____ | _____ | \$ _____ |
| 3. _____ | _____ | \$ _____ |

SECTION III

Was property covered by insurance? Yes () No (X)
If yes, what is the deductible? \$ _____

NAME OF INSURANCE CARRIER _____ ADDRESS _____

SECTION IV N/A

Is injured covered by medical insurance? Yes () No ()
If yes, what is the deductible? \$ _____

NAME OF INSURANCE CARRIER _____ ADDRESS _____

Arkansas
State Claims Commission
MAR 13 2014

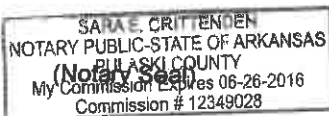
RECEIVED

SECTION V

If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation: ARKANSAS DEPT. OF CORRECTIONS - RANNY GILLESPIE, FARM MANAGER

SECTION VI

The undersigned states on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.



[Signature]
Signature of Claimant REPRESENTATIVE

Sworn to and subscribed before me at Little Rock, AR
City & State

on this 11th day of March, 2014
day month year

My Commission Expires 6/26/2016

[Signature]
Signature of Notary Public

Arkansas
Pure Claims Commission
MAR 18 2014

BEFORE THE ARKANSAS CLAIMS COMMISSION

RECEIVED

BROOKS MINTON, JR.
d/b/a B & G FARMS

CLAIMANT

v. CLAIM NO. _____

STATE OF ARKANSAS

RESPONDENT

FACTUAL NARRATIVE

That, on or about June 5, 2013, the Arkansas Department of Corrections (hereafter ADC) sprayed a herbicide which drifted upon a forty-four and twenty-six hundredths (44.26) acre plot of land (hereafter "Canada Field") under rice seed by Claimant.

On or about June 17, 2013 Claimant met with ADC representative, Ronny Gillespie, Farm Manager, who admitted the ADC was guilty of negligence, which was the proximate cause of the above-described incident, and Claimant's resulting damages in the following particulars:

- (a) ADC did apply a herbicide to its farm area located Southwest of Claimant's two (2) plots of seeded land (77.6 acres and 44.26 acres) on June 5, 2013 (Exhibit A);
- (b) ADC did not hire a commercial herbicide applicator to apply the herbicide;
- (c) ADC leased or obtained the herbicide application equipment it used by loan;
- (d) ADC permitted an inmate to operate the herbicide application equipment;
- (e) ADC permitted an inmate to operate the herbicide application equipment without supervision;
- (f) ADC Agricultural Administrator, Mark S. McCown committed to a "yield guarantee" on Claimant's crop, equal to that of rice yield production of the adjacent "Shop" rice field.

- (g) ADC does not have liability insurance to cover damages of Claimant;
- (h) ADC Agricultural Administrator, Mark S. McCown denied liability for crop damage, suggested the Claimant file a claim with the Arkansas Claims Commission (Exhibit B).

Claimant hired Tracy Welch of South Arkansas Crop Consulting, LLC. to investigate, advise, recommend and provide counsel on the origins of, and impact of herbicide contamination on the Canada Field. (Exhibit C). Mr. Welch conducted a visual examination of the crop in the Canada Field, and will provide oral testimony as to the factual basis for his opinions and conclusions.

Claimant hired Ford L. Baldwin, PhD. of Practical Weed Consultants, LLC, investigate, advise, recommend and provide counsel on the origins of, and impact of herbicide contamination on his crop. Dr. Baldwin performed a visual examination of the crop known in the "Canada Field" on June 17, 2013, determining that a herbicide (glyphosate) drift had occurred from the Southwest corner of the property creating a diagonal drift line across the rice crop killing seedling and reproductive stage plants. (Exhibit D).

Due to the significant damage created by the herbicide drift from ADC property, a soybean crop was planted to mitigate rice crop yield loss.

Dr. Baldwin will provide oral testimony as to the factual basis for his opinions and conclusions.



Arkansas Department of Correction

P.O. Box 8707
Pine Bluff, Arkansas 71611-8707
Phone: (870) 850-8454
Fax: (870) 850-8440
www.state.ar.us/doc

January 15, 2014

Minton Farm, Inc.
1799 Tar Bottom Road
England, Arkansas 72746

Re: Herbicide Drift

Dear Mr. Minton:

We discussed the fact that when the Arkansas Department of Correction (ADC) sprayed herbicide on June 5, 2013, there was some drift onto your rice field of approximately 2.46 acres. When we met on June 17, 2013, we discussed and you agreed to compensation in the amount of the average yield to be determined from surrounding rice fields at harvest.

You presented an assessment of damages far in excess of what we had agreed upon adding another field totaling 44.26 acres. Any problem incurred by you with regard to that field was not caused by the June 5 drift.

ADC remains willing to negotiate a fair and equitable settlement with regard to the 2.46 acres damaged by the drift. However, any claim you believe that you have with regard to the 44.26 acres is denied by ADC. Should you wish to pursue that claim, I suggest you file a claim with the Arkansas State Claims Commission.

Please contact me if you wish to negotiate a settlement on the 2.46 acres.

Sincerely,

Mark S. McCown
ADC Agricultural Administrator

cc: Ray Hobbs, Director
Marvin Evans, Deputy Director
Jan Dewoody Scussel, General Counsel

An Equal Opportunity Employer





Arkansas Department of Correction

P.O. Box 8707
Pine Bluff, Arkansas 71611-8707
Phone: (870) 850-8454
Fax: (870) 850-8440
www.state.ar.us/doc

January 15, 2014

Minton Farm, Inc.
1799 Tar Bottom Road
England, Arkansas 72746

Re: Herbicide Drift

Dear Mr. Minton:

We discussed the fact that when the Arkansas Department of Correction (ADC) sprayed herbicide on June 5, 2013, there was some drift onto your rice field of approximately 2.46 acres. When we met on June 17, 2013, we discussed and you agreed to compensation in the amount of the average yield to be determined from surrounding rice fields at harvest.

You presented an assessment of damages far in excess of what we had agreed upon adding another field totaling 44.26 acres. Any problem incurred by you with regard to that field was not caused by the June 5 drift.

ADC remains willing to negotiate a fair and equitable settlement with regard to the 2.46 acres damaged by the drift. However, any claim you believe that you have with regard to the 44.26 acres is denied by ADC. Should you wish to pursue that claim, I suggest you file a claim with the Arkansas State Claims Commission.

Please contact me if you wish to negotiate a settlement on the 2.46 acres.

Sincerely,

Mark S. McCown
ADC Agricultural Administrator

cc: Ray Hobbs, Director
Marvin Evans, Deputy Director
Jan Dewoody Scussel, General Counsel



South Arkansas Crop Consulting, LLC
153 West Little Lane
White Hall, AR 71602

B & G Farms
104 Cambridge
England, AR 72046

| | |
|--------------------------|-----------------------|
| DATE 2/10/2014 | INVOICE # 1 |
|--------------------------|-----------------------|

TERMS: Due upon receipt

| Date | Item | Description | Qty. | Rate | Amount |
|-----------|------|---|------|-----------|----------|
| 2/10/2014 | 101 | Canada | | | |
| | | 1 extra trip to monitor damage | 2.00 | \$ 150.00 | \$300.00 |
| | | 1 extra trip to monitor damage/pictures | 2.00 | \$ 150.00 | \$300.00 |
| | | 1 extra trip w/Dr. Jarod Hardke | 3.00 | \$ 150.00 | \$450.00 |
| | | 1 extra trip w/Dr. Ford Baldwin | 4.00 | \$ 150.00 | \$600.00 |
| | | 1 Trip to Cook Law Firm | 5.00 | \$ 150.00 | \$750.00 |
| | | Mileage to Cook Law Firm | 110 | \$ 0.56 | \$61.60 |

Please remit to the above address.
Thank you for your business.

| | |
|--------------|-------------------|
| TOTAL | \$2,461.60 |
|--------------|-------------------|



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PRACTICAL WEED CONSULTANTS, LLC.

Ford L. Baldwin Ph.D.
342 Webber Lane
Austin, AR 72007

Cell: 501-681-3413
Email:ford@weedconsultants.com

B and G Farms
104 Cambridge Place
England, AR 72046

6/23/13

Dear Mr. Minton,

I wish to document that I looked at a rice field called the Canada Field on 6-21-13. The field was water seeded to Rice Tec 745 Clearfield Hybrid. Your consultant, Tracy Welch, reported to me that he observed the field two weeks ago and the rice had sprouted and was pegging nicely and he recommended dropping the water to allow it to root and for herbicide application. He reported that he observed the field on 6/17 and the 2-leaf rice was dying on the west side of a southwest to northeast diagonal across the field. He reported that the field was still soupy and required boots to walk across. He felt at the time the rice was dying due to a drift of glyphosate. While the dead rice plants had deteriorated considerably by the time I was asked to look at it, the diagonal line across the field remained very evident. On the west side of that line that began in the southwest corner of the field, the seedling rice plants that remained were very scattered. There were a lot of volunteer hybrid plants in the field that were 6 to 12 inches tall and well tillered. Where these plants occurred in clumps, it was common to find a healthy seedling rice plant either in the clump or on the northeast side of the clump.

On the east side of the diagonal, a thin but acceptable stand of seedling rice plants was present. I could consistently find 3 to 6 rice plants per square foot in this portion of the field. The two things I considered in my diagnosis of the problem were water management and glyphosate drift. I ruled out water management based partly upon Tracy's observation of the field, but primarily upon my own observation that it is a zero grade field. In a zero grade field the water management, i.e. timing, depth, frequency and duration, would be expected to be reasonably uniform across the field. This would leave no explanation for the diagonal across the field. It is also very unlikely that any potential insect or disease issue would occur in a diagonal pattern in a zero grade field either. I believe the cause of injury was glyphosate drift from the southwest due to the rapid death of the plants, the diagonal drift pattern and the live plants within the clumps of volunteer rice and on the northeast sides of those clumps. Some have questioned how seedling plants could be killed with little to no symptoms present on the volunteer plants. Well tillered volunteer hybrid plants are quite tolerant to glyphosate and can in fact be quite difficult to kill with direct applications of glyphosate. I believe it is entirely possible that the dose required to kill 2-leaf, shallow rooted seedling plants would be low enough that no symptoms would occur on the large well tillered plants. Rice is much more tolerant to glyphosate in the tillering stage than in either the seedling or reproductive stages.

Professional Agricultural Consulting and Contract Research

EXHIBIT

tabber

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PRACTICAL WEED CONSULTANTS, LLC.

While I did not make a thorough investigation of where the drift may have originated, it obviously came from a very close source. The soybeans west of the rice field had obviously been sprayed with glyphosate in a similar time frame to when the drift would have occurred. I drove the road between the soybeans and rice. By casual observation the portion of the field just west of the rice field was only sprayed to the very edge of the field (and base of the dump) leaving a nice spray line in the grass. Only slight glyphosate symptoms could be observed on the vegetation on the ditch dump and in the ditch. However the portion of the soybean field beginning at the south side of the rice field (corner of the woods south of your field) and extending on to the south had been sprayed all the way up on the ditch dump and over to the woods. This would have required a higher boom height. While I was not present when the spraying occurred, just from casual observation it appeared much more care was taken on the application just west of the rice than the portion southwest of the rice. Your drift pattern has a definite southwest pattern to it beginning close to the southwest corner of your field. I believe some portion of the soybean field west of the ditch is the potential source. If I can further assist please feel free to contact me.

Yours truly,



Ford Baldwin, PH.D.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

BROOKS MINTON, JR. (d/b/a B&G FARMS)

CLAIMANT

V.

NO. 14-0695-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

ANSWER

COMES NOW the Respondent, Arkansas Department of Correction, and for its Answer, states and alleges as follows:

1. Respondent denies liability in this claim and asserts it will hold the Claimant to strict proof on each allegation unless admitted by Respondent. Respondent reserves the right to plead further upon completion of the investigation by internal affairs and requests the matter be held in abeyance until the investigation is complete.
2. The applicable account information required by the Commission is:
 - a. Agency number: 0480
 - b. Cost Center: HCA0100
 - c. Internal Order: 340301
 - d. Fund Center: 509

WHEREFORE, for the reasons cited above the Respondent prays that the claim be dismissed with prejudice and that Claimant take nothing, or in the alternative that the matter be held in abeyance until completion of the investigation by internal affairs.

Respectfully submitted,
Department of Correction Office of Counsel

Arkansas
State Claims Commission

MAR 19 2014

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Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190
Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 18 day of March, 2014, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Cook Law Firm
8114 Cantrell Road, Suite 100
Little Rock, AR 72227

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 21,490.18

Claim No. 14-0695-CC

B & G Farms vs. Claimant

Attorneys
Harold Cook, Attorney Claimant

Arkansas Department of Correction
State of Arkansas Respondent

Lisa Wilkins, Attorney Respondent

Date Filed March 13, 2014

Type of Claim Negligence, Loss of Profit, Property
Damage, Refund of Expenses

FINDING OF FACTS

This claim was filed for negligence, loss of profit property damage and refund of expenses in the amount of \$21,490.18 against the Arkansas Department of Correction.

Present at a hearing November 13, 2014, was the Claimant, represented by Harold Cook, Attorney, and the Respondent, represented by Lisa Wilkins, Attorney.

The Arkansas State Claims Commission unanimously finds negligence on the part of the Respondent and unanimously awards the Claimant the amount of \$29,831.41.

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously awards this claim in the amount of \$29,831.41 and will include the claim in a claims bill to be submitted to the 90th General Assembly, Arkansas State Legislature 2015 for subsequent approval and payment.

IT IS SO ORDERED

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously awards this claim in the amount of \$29,831.41 and will include the claim in a claims bill to be submitted to the 90th General Assembly, Arkansas State Legislature 2015 for subsequent approval and payment.

Date of Hearing November 13, 2014

Date of Disposition November 13, 2014

Richard D. Maye Chairman
Paula D. Dyer Commissioner
Alisa Strother Commissioner