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Honorable H. Russel Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:)
The EXXON VALDEZ) Case No. 3:89-cv-095 (HRH)
(Consolidated)

_____)
THIS DOCUMENT RELATES TO)
ALL CASES)
_____)

DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT OF LEAD
COUNSEL'S SIXTEENTH PUNITIVE DAMAGES APPLICATION FOR AN ORDER
DISTRIBUTING EXXON QUALIFIED SETTLEMENT FUNDS TO
CLAIMANTS IN VARIOUS CATEGORIES AND THEIR ATTORNEYS

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1 1. I am the Court-appointed Claims Administrator of the Exxon Qualified
2 Settlement Fund (hereinafter "EQSF") and the Alyeska Qualified Settlement Fund
3 (hereinafter "AQSF"). I make this declaration based on personal knowledge and am
4 competent to testify to the matters set forth herein.
5

6 2. At least \$128,412,899.27 which has not previously been the subject of prior
7 applications for distribution remains to be distributed through the EQSF in accordance
8 with the Plan of Allocation and the various Plans of Distribution. These are the funds
9 that will constitute the "Final Distribution," and I will refer to them as such in this and
10 subsequent declarations.
11

12 3. The source and amounts of the funds available for the Final Distribution are as
13 follows.
14

15 (a) \$68,513,543.07 remains available for distribution of the \$71,844,995.51
16 received from Exxon when it decided not to appeal the Ninth Circuit's cost ruling to the
17 United States Supreme Court (\$3,331,452.44 of the \$71,844,995.51 was the gross
18 amount, including a 3% fund payment, which has already been transferred to the six
19 Chugach Corporations under its "off the top" arrangement);
20

21 (b) \$21,875,000.00 was set aside in connection with the First Punitive Damages
22 application as a reserve for claims by Cook Inlet and Nautilus;
23

24 (c) \$23,513,445.43 was set aside in connection with the Seventh Punitive
25 Damages application as a reserve for claims by Cook Inlet and Nautilus;

DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT OF 16th PUNITIVE DAMAGES
APPLICATION FOR AN ORDER DISTRIBUTING EXXON QUALIFIED SETTLEMENT FUNDS
TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND THEIR ATTORNEYS - 2

In re the Exxon Valdez, Case No. 3:89-cv-095-HRH

1 (d) \$4,677,759.55 was set aside in connection with the Seventh Punitive Damages
2 application as a reserve for potential claims by Processors over and above what the Plan
3 of Allocation for all claim categories and the Plan of Distribution for Processors required
4 at that time;

5
6 (e) \$1,547,593.26 was set aside in connection with the Seventh Punitive Damages
7 application as a reserve for potential claims by Cannery Workers over and above what the
8 Plan of Allocation for all claim categories and the Plan of Distribution for Cannery
9 Workers required at that time;

10
11 (f) \$3,181,056.39 remains to be distributed of \$5,681,056.39 set aside in
12 connection with the Exxon Processor assignment claim as part of the Seventh and Eighth
13 Punitive Damages applications, after settlement of that claim with Exxon;

14
15 (g) \$2,598,619.00 remains to be distributed from a Compensatory Damages
16 settlement with Exxon in 2003 for Cannery, Tender and Processor claims (less amounts
17 offset because of the Municipality trial judgment);

18
19 (h) \$2,505,882.57 remains of the \$29 million reserved for litigation costs in the
20 First Punitive Damages application, but for which no application for distribution to
21 plaintiff firms was made in the 2008 cost application.

22 (i) \$2,233,100.77 was set aside to cover the claims of All-Alaskan in the event it
23 was successful with its September 11, 2009 objection.

1 To determine the total amount available for the Final Distribution, Lead Counsel
2 instructed me to do the following.

3 First, I should assume that the monies described in paragraphs 3(a) through 3(h)
4 are all available to distribute as part of the Final Distribution. Second, I should assume
5 that there are three scenarios to resolve what should happen with the money reserved for
6 All-Alaskan in paragraph 3(i). Scenario 1 is that the money will be paid to All-Alaskan,
7 but it will not be counted as a prior payment to All-Alaskan or the Processor Claim
8 Category. Scenario 2 is that the money will be paid to All-Alaskan, but that it will be
9 counted as a prior payment to All-Alaskan and to the Processor Claim Category.
10 Scenario 3 is that the money will not be paid to All-Alaskan and will instead be poured
11 back into the Plan of Allocation to be shared by all claim categories that are not overpaid
12 as a whole.
13
14

15 Attached to this declaration as Exhibit A is a chart showing the amounts available
16 to each claim category under these three scenarios. This Exhibit shows that under all
17 three scenarios, the Processor Claim Category is now eligible to receive a share of the
18 Final Distribution, although the amounts are different under each scenario depending on
19 how the All-Alaskan reserve is treated. Exhibit A also shows that under all three
20 scenarios, the Cannery Workers remain overpaid as a category and therefore are not
21 eligible to receive a share of the Final Distribution. The total amounts available for the
22 Final Distribution are reported on Exhibit A as follows:
23
24
25

- 1 • Scenario 1 - \$128,412,899.27
- 2 • Scenario 2 - \$128,412,899.27
- 3 • Scenario 3 - \$130,646,000.04

4
5 4. Lead Counsel has directed me to assume in the first instance that the Court will
6 rule that I should follow Scenario 1 by paying the All-Alaskan reserve to All-Alaskan and
7 not treat it as a prior payment. This results in a total of \$128,412,899.27 being available
8 for the Final Distribution. Attached to this declaration are Exhibits A-1, A-2 and A-3,
9 which list the amounts that each claim category and specific claimants in those claim
10 categories will receive pursuant to Scenario 1.

11
12 The reason that Cannery Workers remain overallocated as a category under
13 Scenario 1 is as follows. When I filed my Supplemental Declaration on August 31, 2009
14 (Docket 9285), the total amount received for all claimants participating in the Plan of
15 Allocation was \$1,105,689,467.82. That amount was net of reserves. As part of the
16 Court's order approving the Seventh Application, the Court authorized me to take a
17 number of reserves (now being poured back into this distribution per paragraph 3) that
18 adjusted the amount available for distribution to \$1,091,629,099.42. In addition, since
19 the Seventh Application I have had to pay a claim pursuant to a Special Master Order and
20 have updated prior payments following receipt of correct taxpayer identification numbers
21 of claimants. Thus, the adjusted amount available for distribution, prior to this
22 application, is \$1,091,713,368.12.

1 Adding \$128,412,899.27 to that amount results in a total of \$1,220,126,267.39.
2 When multiplied by the Cannery Workers' 0.5304969% adjusted matrix share, the total
3 Cannery Worker share of all recoveries is \$6,472,732.37. Because Cannery Workers
4 have already recovered \$9,102,492.27¹ they remain overallocated by \$2,629,759.90.
5

6 Following Scenario 2, there is also \$128,412,899.27 available for the final
7 distribution. The difference from Scenario 1 is that because I would treat the payment of
8 the All-Alaskan reserve to All-Alaskan as a prior payment, less money is available to
9 Processors as a whole and All-Alaskan would become overpaid and entitled to none of
10 the money available to Processors. Attached hereto are Exhibits B-1, B-2 and B-3, which
11 list the amounts that each claim category and specific claimants in those claim categories
12 will receive pursuant to Scenario 2.
13

14 With respect to Cannery Workers, the calculation is very similar to that of
15 Scenario 1 with one exception; namely, that because Scenario 2 calls for the payment to
16 All-Alaskan to be counted as a prior payment, the total amount available prior to this
17 application increases to \$1,093,946,468.89. After adding \$128,412,899.27 to the total
18 amount previously available, total recoveries are \$1,222,359,368.16. When multiplied by
19 the Cannery Workers' 0.5304969% matrix share, the total Cannery Worker share of all
20
21

22
23
24 ¹ This number is slightly higher than the number reflected in the August 2009 Declaration
25 due to a correction of a prior payment for an approved Cannery Worker claim that was
not attributed as a prior payment last year.

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1 recoveries is \$6,484,578.90. Because Cannery Workers have already received
2 \$9,102,492.27, they remain overallocated by \$2,617,913.37.

3 Following Scenario 3, there is \$130,646,000.04 available to distribute, as all of the
4 funds currently reserved for All-Alaskan would be shared by all claim categories. Under
5 this scenario, All-Alaskan would recover zero from the All-Alaskan reserve, but it would
6 be underpaid and therefore be entitled to a share of the money available to distribute to
7 Processors as a Category. Attached hereto are Exhibits C-1, C-2 and C-3, which list the
8 amounts that each claim category and specific claimants in those claim categories will
9 receive pursuant to Scenario 3.
10

11 Even though Scenario 3 results in a higher total recovery available to other claim
12 categories, Cannery Workers still remain overallocated. The total amount previously
13 available is the same as that from Scenario 1, namely \$1,091,713,368.12. Adding
14 \$130,646,000.04 to the total amount previously available results in total recoveries of
15 1,222,359,368.16. When multiplied by the Cannery Workers' 0.5304969% matrix share,
16 the total Cannery Worker share of all recoveries is \$6,484,578.90. Because Cannery
17 Workers have already recovered \$9,102,492.27 they remain overallocated by
18 \$2,617,913.37.
19

20 5. As part of the process of making this application, I consulted with the Fee
21 Committee to determine if the reserves currently available to pay for litigation costs are
22 adequate to reimburse costs that have accrued so far but are not yet authorized to be paid,
23
24
25

DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT OF 16th PUNITIVE DAMAGES
APPLICATION FOR AN ORDER DISTRIBUTING EXXON QUALIFIED SETTLEMENT FUNDS
TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND THEIR ATTORNEYS - 7
In re the Exxon Valdez, Case No. 3:89-cv-095-HRH

1 as well as the costs anticipated to be accrued prior to completion of the case, discussed in
2 paragraph 6, below. I also analyzed the funds necessary to conclude administration of the
3 AQSF and EQSF, discussed in sections 7 and 8 below.

4
5 6. As to litigation costs, the Court approved a reserve of \$29,000,000 in
6 connection with the First Punitive Damages application, and subsequently approved
7 distribution of \$26,494,117.43 from that amount, leaving \$2,505,882.57 unexpended. In
8 addition, the Court authorized a reserve of \$7.5 million in connection with the Seventh
9 Punitive Damages application. Those two reserves total of \$10,005,882.57. I am advised
10 by the Fee Committee Chair that he intends to make a Second Cost Application before
11 the end of 2009, for approximately \$6.5 million composed of:

- 12
13 • About \$1.9 million in previously approved fees to counsel which counsel
14 used to pay litigation costs between 2002 and 2004;²
- 15
16 • About \$2.485 million in previously approved fees to counsel which counsel
17 used to pay EQSF administration costs between 2002 and 2004;³
- 18
19 • About \$450,000 in costs accrued by all plaintiffs' firms since the last cost
20 application; and

21
22
23 ² This cost category was discussed in the first cost application at page 7, Docket No.
24 8897.

25 ³ This cost category was also discussed in the first cost application at page 7, Docket No.
8897.

- About \$1,500,000 in costs requested by firms representing Chugach Native Corporations which had not been submitted to the Fee Committee prior to the 2008 cost application.

Because the amount reserved (approximately \$10 million) exceeds the amount that will be the subject of what is expected to be requested in the 2010 cost application, he is proposing that \$2,505,882.57 previously set aside for a potential cost distribution be made available for the payment of claims in the final distribution.

7. As a predicate for my estimate of the on-going costs of administering the AQSF and EQSF, I am projecting the following timetable of work that remains to be completed:

(a) During the balance of 2010, I anticipate receiving permission for and distributing claims money as follows:

(i) Punitive damages principal and interest to claimants with multiple impediments to distribution (the 14th Application, approved by the Court on September 10, 2010, at Docket No. 9625);

(ii) Compensatory damages, and punitive damages principal and interest to unoiled fisheries claimants with no impediments to distribution (the 15th application, approved by the Court on October 1, 2010, at Docket No. 9637);

(iii) "Final Distribution" amounts to claimants in all categories who have no impediments to distribution (this 16th application); and

DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT OF 16th PUNITIVE DAMAGES APPLICATION FOR AN ORDER DISTRIBUTING EXXON QUALIFIED SETTLEMENT FUNDS TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND THEIR ATTORNEYS - 9

In re the Exxon Valdez, Case No. 3:89-cv-095-HRH

1 (iv) Punitive damages principal and interest to claimants who remove
2 impairments to their claims.

3 (b) During 2011, I anticipate Lead Counsel requesting, the Court authorizing and
4 the EQSF distributing settlement funds as follows:
5

6 (i) Compensatory damages, and punitive damages principal and interest to
7 unopened fisheries claimants with one or more impediments to distribution, who
8 were not included in the 15th application;⁴

9 (ii) "Final distribution" amounts to claimants in all categories who have
10 one or more impediments to distribution outstanding;⁵ and
11

12 (iii) Any and all amounts due to claimants in both the AQSF and EQSF for
13 whom we have non-current or incomplete addresses, for whom we know the
14 claimant is deceased but have not yet received complete documentation to pay the
15 claim to the appropriate heir(s), and for whom continued work with claimants to
16 perfect paperwork is necessary to complete payment of their claims.⁶
17

18
19
20
21 ⁴ Because there are several thousand claimants in this category, and individual attention
22 is required for processing claims with multiple impediments, several court applications
23 are anticipated to cover this category.

24 ⁵ Because there are also several thousand claimants in this category, and individual
25 attention is required for processing claims with multiple impediments, several court
applications are envisioned to cover such claims.

⁶ As has been our practice, as such matters are resolved, permission to pay such claims is
presented in the next application that is presented to the Court.

1 (c) During the balance of 2010 and 2011, I anticipate attempting to work with
2 claimants whose claims are contested (and thus have not yet been the subject of an
3 application to the Court), including: (a) where partners have not resolved a dispute as to
4 how a claim should be divided; or (b) where a claimant and a lienor or multiple lienors
5 have not resolved their entitlement or priority to a claim. We are working diligently to
6 resolve all disputes, but there will inevitably be some that will need to be interpleaded
7 with the Court for resolution. I intend to reduce this group of claims to the minimum
8 number possible before interpleader action is taken.
9

10
11 (d) After the very last application for distribution is made to the Court, which I
12 anticipate will be in 2011, I expect continued administration obligations for at least
13 approximately two years additional years. I anticipate claimants for whom distributions
14 were not able to be made in the normal course will continue to come forward (because,
15 for example, there were non-current addresses, or unidentified estates). The AQSF and
16 EQSF will continue to resolve such claims over that two year period. However, I expect
17 that by 2013, we will have exhausted *all* avenues to try and resolve claims payments
18 through direct payments to claimants, lien agents, heirs and/or assignees.
19

20
21 (e) I anticipate that despite the AQSF's and EQSF's best efforts, some portion of
22 payments issued on approved claims will remain uncashed by claimants, lien agents,
23 heirs and/or assignees. Lead Counsel and I will present to the Court a detailed plan with
24 how we anticipate unclaimed (abandoned) proceeds should be dealt with. I expect that
25

1 the plan will be presented to the Court during 2011, prior to or in conjunction with the
2 very last distribution application. No funds will be transferred to any State's unclaimed
3 (abandoned) property division without prior authorization by the Court. I currently
4 envision completing the transference process of unclaimed (abandoned) property before
5 year-end 2013.
6

7 (f) In all years, typically in January, the AQSF and EQSF must issue and file tax
8 documents to claimants and the Internal Revenue Service for amounts distributed in the
9 prior year.
10

11 (g) Thus, I assume that there will be continued, although reduced, administration
12 of the AQSF and EQSF through approximately the second quarter 2014.
13

14 8. I have estimated the continuing costs of administering the EQSF until
15 anticipated termination of the Court's charge to the AQSF and EQSF at approximately
16 \$4.9 million. Because the corpus of the fund is declining and because interest rates are
17 very low, interest will be inadequate to fund the costs of Fund Administration in the
18 future. This current estimate also includes storage costs of AQSF and EQSF files for a
19 period of seven years after settlement funds are remitted as unclaimed (abandoned)
20 property, charges of the Special Master, and projected AQSF and EQSF windup
21 accounting and reporting costs.
22

23 9. As a result of the Court's prior orders, there are two contingent reserves which
24 I am proposing to continue to maintain as such: (1) \$3,105,131.25 which remains
25

1 uncommitted from the 1% reserve made in connection with the first punitive damages
2 application; and (2) \$4,095,349.36 which remains uncommitted from the 1% reserve
3 made in conjunction with the seventh punitive damages application. I anticipate using
4 the bulk of these funds over the next several years for the purposes set out in paragraphs
5 7 and 8 above; to pay “off the top claims” not yet resolved; and to maintain the reserve
6 for future disputes.
7

8 10. If there are any remaining funds from any reserves after the litigation and
9 AQSF and EQSF administration costs are paid, I understand that it is Lead Counsel’s
10 intent to apply to this Court for an order authorizing distribution of any residual funds
11 pursuant to a *cy-pres* remedy before year-end 2013. The additional cost of administering
12 the remaining funds and distributing them to claimants would far exceed any anticipated
13 amount available. A detailed *cy-pres* plan will be presented to the Court when
14 appropriate.
15
16

17 11. In consultation with Lead Counsel and the Plaintiffs’ Allocation Committee, it
18 has been determined that the initial distribution of the Final Distribution for those claims
19 participating under the Plan of Allocation should be made to those whose claims can be
20 paid the fastest, due to the status of claim impairments. Successive applications will
21 cover allocation of the final distribution for claims that have single or multiple
22 liens/impairments. By deferring payment on those claims with impairments that require
23
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25

1 more detailed review and processing by our claims staff, this proposed distribution can be
2 accomplished within approximately twenty (20) days after issuance of this Court's order.

3 12. There are approximately **24,251** claims covered by this application. This
4 application only seeks authorization to distribute only Final Distribution allocations.

- 5 • Scenario 1 seeks authority to distribute **\$99,539,196.66** of \$128,412,899.27.
- 6 • Scenario 2 seeks authority to distribute **\$100,286,691.42** of 128,412,899.27.
- 7 • Scenario 3 seeks authority to distribute **\$101,268,081.02** of \$130,646,000.04.

8 13. For each of the three scenarios, I have included the total amount allocated to
9 each claim category as Exhibits A-1, B-1 and C-1, and the individual detailed allocations
10 for each claimant in every claim category under each scenario as Exhibits A-2, A-3, B-2,
11 B-3, and C-2, C-3.

12 14. The dollar figures provided for Scenario 1 (Exhibits A-1, A-2 and A-3),
13 Scenario 2 (Exhibits B-1, B-2 and B-3) and Scenario 3 (Exhibits C-1, C-2 and C-3) are
14 gross dollar allocations on claims prior to any deductions for attorneys' fees.

15 15. If the Court approves any one of the three scenarios, I will begin authorizing
16 payments to be issued on behalf of or to the listed claimants as soon as possible after
17 entry of the Court's order approving the distribution application. Realistically, I will be
18 able to issue payments this calendar year only if I receive final Court approval on or
19 before December 1, 2010. Otherwise, due to the volume of payments and tax issues over
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