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Honorable H. Russel Holland

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ALASKA

16 In re:)
17 The EXXON VALDEZ) Case No. 3:89-cv-00095-HRH
18 _____) (Consolidated)

19 THIS DOCUMENT RELATES TO)
20 ALL CASES)
21 _____)

22 LEAD COUNSEL'S SIXTEENTH PUNITIVE DAMAGES APPLICATION FOR AN
23 ORDER DISTRIBUTING EXXON QUALIFIED SETTLEMENT FUNDS
24 TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND THEIR ATTORNEYS

25 This is the sixteenth of several applications for authority to distribute portions of
the money plaintiffs received from Exxon as partial payments on the punitive damages

1 judgment entered by the United States Supreme Court. The current application to
2 distribute approximately \$128.4 million, which I will term the “final distribution,” is
3 composed primarily of: (a) about 95% of the \$72 million which Exxon paid in 2009 when
4 it abandoned any appeal to the Supreme Court on the costs issue; (b) approximately \$45.4
5 million which was previously being held until resolution of the claims of Polar
6 Equipment, Inc. dba Cook Inlet Processing (“Cook Inlet”) and Nautilus Marine
7 Enterprises, Inc. (“Nautilus”) (which have now been resolved by this Court’s order of
8 July 28, 2010, at Clerk’s Docket 9600);¹ and (c) the release of approximately \$17 million
9 of compensatory damages from other sources previously received but not yet distributed.
10 I am proposing that this distribution go to claimants in all claim categories, including the
11 Unoiled Fishery Claim Category (U00B), who have no impairments to their claims. *See*
12 Declaration Of Lynn Lincoln Sarko In Support Of Lead Counsel's Sixteenth Punitive
13 Damages Application For An Order Distributing Exxon Qualified Settlement Funds To
14 Claimants In Various Claim Categories And Their Attorneys, filed herewith.
15 Approximately 24,250 claimants are expected to receive a distribution if this application
16 is approved.

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¹ On August 27, 2010, Cook Inlet filed an appeal from this Court’s July 28 Order, but no stay application. Nautilus has joined in the appeal. Whether or not either of those processors does file a stay, this Court should not require that these claimants wait further for distribution of these proceeds; nor should the ultimate completion of EQSF Administration await what may be another two years for resolution of a second round of appeals by Nautilus or Cook Inlet on exactly the same issues resolved already by the Ninth Circuit and for which certiorari was rejected by the United States Supreme Court.

1 As Mr. Sarko explains in detail in his declaration, the \$128.4 million that is
2 available for the final distribution is made up of the following components, summarized
3 on Exhibit A hereto:

4 a. \$21,875,000.00 was set aside in connection with the first punitive damages
5 application as a reserve for claims by Cook Inlet and Nautilus;

6 b. \$23,513,445.43 was set aside in connection with the seventh punitive
7 damages application as a reserve for claims by Cook Inlet and Nautilus;

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

13 d. \$4,677,759.55 was set aside in connection with the seventh punitive
14 damages application as a reserve for potential claims by processors over and above what
15 the Plan of Allocation for all claim categories and the Plan of Distribution for Processors
16 required at that time;

17 e. \$1,547,593.26 which was set aside in connection with the seventh punitive
18 damages application as a reserve for potential claims by Cannery Workers over and
19 above what the Plan of Allocation for all claim categories and the Plan of Distribution for
20 Cannery Workers required at that time;

1 f. \$2,599,219 remains to be distributed from the compensatory damages
2 settlement with Exxon in 2003 for Cannery, Tender and Processor claims (less amounts
3 offset because of the municipality trial judgment);

4 g. \$3,181,056.39 remains to be distributed of \$5,681,056.39 set aside in
5 connection with the Exxon Processor claim as part of the seventh and eighth punitive
6 damages applications, after settlement of that claim with Exxon; and

7 h. \$2,505,882.57 of the \$29 million reserved in the first punitive damages
8 application, but for which no application for distribution to plaintiff firms was made in
9 the 2008 cost application.
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12 Though \$4,677,759.55 was previously set aside in connection with the seventh
13 punitive damages application (as a reserve for potential claims by Processors over and
14 above what the Plan of Allocation for all claim categories and the Plan of Distribution for
15 Processors required before we knew whether Exxon would in fact prevail on the cost
16 issue with the Supreme Court), I do not recommend that the Plan of Allocation and the
17 Plan of Distribution for Processors be amended because processors are no longer
18 overpaid as a group.
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21 This motion assumes, as Mr. Sarko states in his Declaration, that the All Alaskan
22 stipulation, presented to the Court at Clerk's Docket No. 9632 will be approved. I have
23 thus asked Mr. Sarko to assume that the Court will accept the Stipulation at Clerk's
24 Docket No. 9632 including the provisions in the stipulation, viz: that the amount to be
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1 distributed to All Alaskan would not be considered a “prior recovery” to be offset against
 2 All Alaskan’s final distributive share and would not be considered a payment recovered
 3 by processors for purposes of calculating the amount of prior recoveries recovered by
 4 processors as a whole. Mr. Sarko attaches to his Declaration as Exhibit A-2-3 lists of the
 5 amounts that claimants will receive on the assumption that the Court does accept the
 6 stipulation at Clerk’s Docket No. 9632.

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 8 Because the Court had concerns about one of the terms of the All Alaskan
 9 stipulation, and in an effort to permit the Court to consider the effect of other resolutions
 10 for the All Alaskan hold back besides that which Lead Counsel reached through
 11 stipulation with All Alaskan, Mr. Sarko’s Declaration also presents data for two alternate
 12 scenarios. *See* Lead Counsel’s Response to the Court’s Questions About the All Alaskan
 13 Seafoods Inc. Proposed Settlement at Clerk’s Docket No. 9633². In the first alternate
 14 scenario, I directed him to assume that the Court would permit All Alaskan to receive the
 15 \$2,233,100.77 set aside but that the Court would require that amount to be considered a
 16 “prior recovery” for both All Alaskan individually and processors as a claim category. In
 17 the second alternate scenario, I directed him to assume that the Court would not accept
 18 the stipulation but would require the \$2,233,100.77 previously set aside to be included in
 19 the total amount to be distributed to all claim categories not already over allocated. This
 20 iteration would have the effect of adding the \$2,233,100.77 to the \$128,412,899.27
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² Clerk’s Docket No. 9638.

1 otherwise available, and thus a total of \$130,646,000.04 would be distributed in the Final
2 Distribution.

3 As Mr. Sarko explains at paragraph 3 of his declaration, with the receipt of the \$72
4 million from Exxon and release of the approximately \$45 million previously set aside for
5 Cook Inlet and Nautilus, as well as the release of other funds mentioned above, if this
6 application and the All Alaskan stipulation as submitted is approved, processors will
7 ultimately receive approximately \$2.2 million which will flow through the Processor Plan
8 of Distribution in the amounts set out in Exhibit A2-A3. Processors will no longer be
9 underpaid as a claim category.³ While there will remain individual processors who will
10 not be receiving 100% of their allocation on an individual basis, that is true not just of
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19 ³ In connection with the 7th application, Mr. Sarko explained in his August 20, 2009 Declaration,
20 at Clerk's Docket No. 9270, that processors as a group had already received more than their full
21 allocation under the Plan of Allocation. At that time, processors were entitled to receive
22 \$23,241,249.41, calculated by multiplying their adjusted matrix share, 2.1019690 % and
23 \$1,105,689,467.82, the total amounts received for all claimants participating in the Plan of
24 Allocation from all sources. Because individual processors had, at that time, received
25 \$23,395,406.52, they were overpaid by approximately \$150,000. I asked for, and received,
authority to reserve \$4.7 million, indicating that if the Court ultimately determined they were
entitled to any portion of those funds, a distribution could be made to processors at that time, and
if not, the amount set aside could be added to other amounts to be distributed to claimants who
had not been overpaid. *Id.* Page 4-5, Paragraph 7. In fact, \$2.2 million is now available under
the Plan of Allocation for Distribution to Processors, and they are no longer overpaid as a group.

1 claimants in the processor category, but in all claim categories because the amount
2 available for distribution has been severely reduced by court decisions.⁴

3 Though \$1,547,593.26 was previously set aside in connection with the seventh
4 punitive damages application as a reserve for potential claims by cannery workers over
5 and above what the Plan of Allocation for all claim categories and the Plan of
6 Distribution for Cannery Workers required before we knew whether Exxon would in fact
7 prevail on the cost issue with the Supreme Court, I do not recommend that the Plan of
8 Allocation and the Plan of Distribution for Cannery Workers be amended. With the
9 additional money available from the final distribution, cannery workers as a claim
10 category remain underpaid.⁵ Thus Individual cannery workers are not eligible for
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14 ⁴ As the court observed in its Order on the Joint Motion of Cannery Workers and Seafood Sales,
15 Inc., at Docket No. 9360, page 2, n.7, the “problem” of potential under-allocation to individual
16 claimants, was known to exist when those plans were approved, and exists because there is far
17 less money to distribute than all parties had hoped would be available.

18 ⁵ In connection with the 7th application, Mr. Sarko explained in his Declaration, at Clerk’s
19 Docket No. 9270, that cannery workers as a group had already received more than their full
20 allocation under the Plan of Allocation. At that stage, we asked for, and received, authority to
21 reserve approximately \$1.5 million, indicating that if the Court ultimately determined they were
22 entitled to any portion of those funds, a distribution could be made to cannery workers at that
23 time, and if not, the amount set aside could be added to other amounts to be distributed to
24 claimants who had not been overpaid. *Id.* Page 5-6, Paragraph 8.

25 Even after the additional \$128.4 million available through the final distribution,
Cannery Workers, as a group, have still recovered over \$2.6 million more than their matrix share
under the Plan of Allocation. Per that plan, as a claim category, they are entitled to an adjusted
matrix share of 0.5304969 % of the total amount now available, \$1,220,126,267.39, or
\$6,472,732.37. In fact, the Cannery Workers have already received \$9.1 million from all sources
to date, including the Exxon Claims/Settlement program, the TAPL Fund, the AQSF, and prior
EQSF distributions. Thus, as a group, Cannery Workers have still received over \$2.67 million
more than their matrix share. But they are significantly less overpaid as a claim category than
they were prior to the final distribution.

1 additional payments even if they are under-allocated on an individual basis. With no
2 modification being made to the Plan of Distribution, the entire amount of this reserve will
3 pass through the Plan of Allocation to all categories of claimants eligible to receive it.

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5 Through his Declaration, Mr. Sarko at paragraphs 5-11 explains the calculations
6 he has made to make sure that adequate funds will be available from prior reserves to
7 continue to pay costs, and to complete the administration of the AQSF and EQSF to the
8 point where funds will eventually be turned over to various state lost property funds for
9 those claimants who, despite multiple efforts, cannot be found. He also outlines the
10 substantial work which remains to be done after this application, primarily resolving
11 claims with multiple impairments. He concludes that the full \$128.4 million can be
12 distributed to claimants in the final distribution, and that at least \$98 million is available
13 in this first final distribution application to the claimants with no impairments.

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16 Exhibits A1 and A2-A3 to Mr. Sarko's Declaration set out the amounts of the final
17 distribution going to claimants in the various categories. There are over 24,000 claims
18 being paid, the total amount of which is over \$98 million.

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1 The dollar figures provided in Exhibits A2-A3 are gross dollar allocations on
2 claims prior to any deductions for attorneys' fees or costs. A proposed order is attached
3 authorizing the proposed distributions discussed in this application.⁶
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5 Respectfully submitted this 14th day of October 2010.
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15 Certificate of Service

16 The undersigned certifies that on October 14, 2010 a true and correct copy
17 of the foregoing LEAD COUNSEL'S 16th PUNITIVE DAMAGES APPLICATION
18 FOR AN ORDER DISTRIBUTING EXXON QUALIFIED SETTLEMENT FUNDS
19 TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND THEIR ATTORNEYS
20 was served on the following attorneys or parties of record by the court's ECF system

21 Douglas J. Serdahely 22 PATTON BOGGS LLP 23 E-mail: dserdahely@pattonboggs.com	24 Lloyd B. Miller 25 SONOSKY, CHAMBERS, SACHSE, 26 MILLER & MUNSON 27 E-mail: lloyd@sonosky.net
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By: s/ David W. Oesting

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29 ⁶ Anticipating that there will be objections to this application, Lead Counsel now anticipates that
30 replies to any such objections can be filed quickly after their due date, and will request a hearing
31 thereafter at the Court's earliest convenience, as it remains our goal to be able to get challenges
32 resolved fairly but expeditiously, so that we may make the bulk of this "final distribution" in
33 2010.