

1 In July, 2008, plaintiffs received \$383,349,750.00 from Exxon as a partial
2 payment on the judgment entered by the United States Supreme Court. Though issues
3 involving costs and interest continue to be litigated in the Ninth Circuit, and no resolution
4 is expected until 2009,¹ Lead Counsel wishes to distribute as much of the amount
5 received as possible during 2008. Efforts were underway to do so during the window
6 from October 15 through November 15, but have been delayed as a result of Sea Hawk's
7 demands and then motion to set aside the Plan of Allocation, on which we believe a
8 decision must be made before the distributions can begin. Assuming that the Court will
9 reject the Sea Hawk motion on or about November 15, this application seeks authority to
10 distribute available punitive damages funds (and a small amount of previously reserved
11 compensatory damages) to 13 of the 51 claim categories in the Plan of Allocation. If the
12 Court grants authority to do so, approximately \$150,000,000 in distributions can be made
13 before the end of 2008.

14
15
16
17 Determining the amount we can realistically distribute and the amounts that
18 should be distributed to each claimant involved six separate steps: (1) determining those
19 of the 51 claim categories to which we could move money before the end of the year; (2)
20 determining how much of the amount received from Exxon was available to distribute;
21 (3) doing a slight reallocation of the Plan of Allocation percentages as required by the
22
23

24 ¹ Oral argument has been scheduled on the dispute for December 15 in Pasadena, CA.

1 plan itself as a result of under-subscription to certain claim categories; (4) determining
2 how much of the available money needed to be assigned to some claim categories to
3 make sure that the Plan of Allocation's requirement is met, that is, all categories receive
4 their Plan of Allocation share of AQSF, TAPLF and Crawford Claim program monies
5 *before* additional distributions are made; (5) reallocating the balance of available funds to
6 make sure that the total of all funds distributed so far is as close as possible to final,
7 adjusted Plan of Distribution shares; (6) distributing those recalculated shares to
8 participants in the 13 Plans of Distribution.
9
10

11 1. As the Declaration of Lynn Sarko, Administrator of the EQSF makes clear,
12 we began by deciding which claim categories we should try to make distributions to in
13 2008 given that we could not do all of them within the one and one half month window
14 that will be available after we first anticipated that this Court could reasonably be
15 expected to resolve the Sea Hawk motion. We selected 13 of the 51 claim categories,
16 calculated to get as large a sum of money out to as many claimants as possible in the
17 window we hope to have. Those categories are as follows: Native (NATV), Native Opt
18 Out Settlement Class (NOOS), the Prince William Sound 1989 Fund (F00E), Prince
19 William Sound Salmon Seine (S01E), Prince William Sound Salmon Drift (S03E), Prince
20 William Sound Salmon Set Net (S04E), Cook Inlet Salmon Seine (S01H), Cook Inlet
21 Salmon Drift (S03H), Cook Inlet Salmon Set Net (S04H), Kodiak Salmon Seine (S01K),
22
23
24
25

LEAD COUNSEL'S APPLICATION FOR ORDER DISTRIBUTING
FUNDS TO NATV, NOOS, F00E, S01E, S03E, S04E, S01H,
S03H, S01K, S02K, S04K AND S01L CLAIMANTS - 3

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

DWT 12064483v2 0027510-000015

1 Kodiak Salmon Beach Seine (S02K), Kodiak Salmon Set Net (S04K) and Chignik
2 Salmon Seine (S01L).² The oiled salmon fisheries categories were selected because the
3 amount of money going to those claimants represents a significant portion of the total
4 available. The Native Subsistence and NOOS categories, together with the Prince
5 William Sound Fund category, were selected because they contain a large number of
6 claimants who would receive something in 2008.

7
8
9 2. The next step was to calculate how much of the \$383,349,750.00 received
10 from Exxon was available for distribution to those thirteen claim categories. Exhibit A,
11 attached to the Sarko Declaration tracks the calculation.³ Of the \$383,349,750.00 which
12 was received from Exxon, \$19,678,268.75 was distributed to the Chugach group of
13 Native Corporations because of their “off the top” status, and \$608,606.25 has been
14 reserved for that group’s 3% fund share. \$1,674,750.00 of the total was set aside for the
15 Seattle Seven’s share of the 3% fund. We have reserved 5% of \$437,500,000.00 –
16 \$21,875,000.00 -- as a reserve for Cook Inlet Processors and Nautilus Marine, who have
17 appealed this Court’s decision⁴ which rejected their position that they are entitled to an

18
19
20
21 _____
22 ² Declaration of Lynn Lincoln Sarko in Support of Lead Counsel's Application for an Order
23 Distributing Exxon Qualified Settlement Funds to NATV, NOOS, F00E, S01E, S03E, S04E,
24 S01H, S03H, S04H, S01K, S02K, S04K and S01L Claimants and Their Attorneys, (hereafter
25 Sarko Declaration), Par. 3.

³ Sarko Declaration, Par 4-9.

⁴ Order 371, at Docket No. 8622.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 800 · 701 West 8th Avenue
Anchorage, Alaska 99501
(907) 257-5300 · Fax: (907) 257-5399

1 “off the top” distribution like the Seattle Seven and the Chugach Native Corporation
2 group.

3
4 We next reserved \$29,000,000.00 for costs to plaintiffs’ counsel which will be the
5 subject of a motion to be filed shortly,⁵ which leads to our conclusion that
6 \$310,513,125.00 (before attorneys fees are deducted) is available for distribution to *all*
7 claim categories covered by the Plan of Allocation (and a small group of pro per
8 plaintiffs who are not covered by the Plan of Allocation). Because some of that figure
9 must be distributed to “off the top” pro per plaintiffs, and other claims are still the subject
10 of review by the Special Master, we are proposing a 1% reserve,⁶ so that the amount
11 remaining for distribution to *all* claim categories covered by the Plan of Allocation is
12 \$307,407,993.75 from the partial payment on punitive damages made by Exxon. We are
13 also proposing to simultaneously distribute \$6,153,815.83 previously reserved during
14 distributions of compensatory damages, for a total available for distribution to *all* 51
15 categories is \$313,561,809.58 in late 2008 and early 2009.

16
17
18 3. Next, we had to make slight adjustments to the original Plan of Allocation
19 shares because the Plan⁷ required such modifications if, in the personal injury, personal
20 property and non-Native subsistence categories, the value of class claims fell short of the
21

22
23 ⁵ Sarko Declaration, Par. 6.

24 ⁶ Sarko Declaration, Par. 8.

25 ⁷ Plan of Allocation (Docket No. 6592) at p. 24, fn. 31.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 800 · 701 West 8th Avenue
Anchorage, Alaska 99501
(907) 257-5300 · Fax: (907) 257-5399

1 amount of damages on which reserves were based in 1996 when the Plan of Allocation
2 was presented to the court. That slight reallocation was made, and is reflected in Exhibit
3 B in the difference between columns 5 and 6. Thus, for example, the Native Subsistence
4 share changes from 6.0109% to 6.0166%. Those shares are denominated “Adjusted POA
5 shares.”⁸

7 4. Because both the Court approved Plan of Allocation (Docket No. 6592), pp.
8 38-39, and the Distribution plans (see, for example, Plan of Distribution of Allocations to
9 the Chignik Salmon Seine (S01L) Claim Category, Section III, E, (Docket No. 6983) at
10 p. 24), require, for distributions of punitive damages, that we “calculate offsets for prior
11 distributions” to “ensure that net recoveries are distributed consistently with Final Percent
12 Shares,” Plan of Allocation at 39, we next did an analysis of all amounts received by each
13 Plan of Allocation category from the Exxon/Crawford Claims Program, the TAPL Fund,
14 the Alyeska Qualified Settlement Fund and the Exxon Qualified Settlement Fund, a total
15 of \$381,492,391.28.⁹ The \$381,492,391.28 is comprised of \$205,712,772.37, from
16 Exxon Claims, \$13,220,447.29 from the TAPLF, \$68,326,702.60 from the AQSF, and
17 \$94,232,469.01 of compensatory damages from the EQSF.

23 _____
24 ⁸ Sarko Dec. Par. 10.

25 ⁹ Sarko Dec.. Par. 11-13.

1 The Plans required that we give as much money as was necessary from the
2 \$313,561,809.58 first to those claim categories that had not yet received their share of the
3 \$381,492,391.28, which shares were calculated by multiplying Adjusted POA shares by
4 \$381,492,391.28. We concluded that \$67,298,132.24 was necessary to allocate among
5 *all* claim categories that had not yet received a full Adjusted POA Share of amounts
6 previously distributed. For example, because the Native Subsistence Claim Category had
7 not received any money from the Exxon/Crawford claims program and the TAPLF, but
8 was overpaid from the Alyeska Settlement in a lesser amount, \$7,286,391.40 needed to
9 be given to that claim category in order to allocate “its projected matrix share of
10 signatories’ aggregate Exxon claims and TAPL fund recoveries” before we made any
11 allocation of the remainder of the \$ 313,561,809.58 available for distribution. Similarly,
12 \$626,468.37 had to be reallocated to the NOOS (direct action Native Subsistence claims)
13 category. Of the 13 claim categories to which we are now proposing to make a Final
14 Distribution, eight categories must be allocated a total of \$48,943,929.06 in order that all
15 13 categories will have received at least as much as a full Adjusted POA share of all
16 monies previously distributed. Those amounts appear in the eleventh column of
17 Exhibit B.

22 5. Consistent with the Plan of Allocation and the Plans of Distribution, we
23 propose to distribute the remaining money (\$313,561,809.58 less \$67,298,132.24, or
24

25 LEAD COUNSEL’S APPLICATION FOR ORDER DISTRIBUTING
FUNDS TO NATV, NOOS, F00E, S01E, S03E, S04E, S01H,
S03H, S01K, S02K, S04K AND S01L CLAIMANTS - 7

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

DWT 12064483v2 0027510-000015

1 \$246,263,667.34), in a manner to bring each category as close as possible to the Adjusted
2 POA shares.¹⁰ Amounts going to the 13 claim categories are set out in Column 12 of
3 Exhibit B, and are approximately \$198,061,793.52 of the total \$246,263,667.34 available
4 to all 51 categories.
5

6 6. The final step for this proposed distribution is to determine how to allocate
7 the amounts in column 12 of Exhibit B to individual claimants in each of the 13
8 categories for which a distribution is proposed.¹¹ Final percent shares, previously
9 approved by the court, were employed, and are the basis of Exhibit C, which sets out the
10 amount going to each individual claimant (before attorneys' fees are deducted) in this
11 distribution. Because claimants with liens, levies and assignments require detailed
12 individual attention, Exhibit C to this application lists only those claimants whose claims
13 are currently expected to go directly to them. We will file a request in early 2009 for
14 distribution to those claimants whose claims are encumbered. Further, if the
15 Administrator receives notice of a lien, levy or assignment between the date of this
16 motion and the check issuance date for claimants listed in Exhibit C, we anticipate
17 withholding payment to that claimant, and will include a request to distribute to that
18 claimant or lien holder in the early 2009 request.
19
20
21
22

23 _____
24 ¹⁰ Sarko Dec., Par. 14.

¹¹ Sarko Dec. Par. 15.

1 If the Court approves the current request on or before November 15, the
2 Administrator will begin authorizing payments to be issued to each of the claimants listed
3 on Exhibit C within approximately two weeks of the Court's order, and is preparing his
4 staff to be ready to accomplish the distributions according to this timeline.
5

6 Respectfully submitted this 31st day of October, 2008.
7

8
9 s/ David W. Oesting
10 DAVIS WRIGHT TREMAINE LLP
11 701 West 8th Avenue, Suite 800
12 Anchorage, AK 99501
13 Telephone: (907) 257-5300
14 Facsimile: (907) 257-5399
15 ABA No. 8106041
16 E-mail: daveoesting@dwt.com

17 Certificate of Service

18 The undersigned certifies that on October 31, 2008, a true
19 and correct copy of the foregoing Application for Order Distributing EQSF Funds to
20 NATV, NOOS, F00E, S01E, S03E, S04E, S01H, S03H, S04H, S01K, S02K, S04K and S01L
21 Claimants was served on the following attorneys or parties of record by the court's ECF system:

22 Douglas J. Serdahely
23 PATTON BOGGS LLP
24 601 West 5th Avenue, Suite 700
25 Anchorage, AK 99501
E-mail: dserdahely@pattonboggs.com

Lloyd B. Miller
SONOSKY, CHAMBERS, SACHSE,
MILLER & MUNSON
900 West 5th Avenue, Suite 700
Anchorage, AK 99501
E-mail: lloyd@sonosky.net

By: s/ David W. Oesting

LEAD COUNSEL'S APPLICATION FOR ORDER DISTRIBUTING
FUNDS TO NATV, NOOS, F00E, S01E, S03E, S04E, S01H,
S03H, S01K, S02K, S04K AND S01L CLAIMANTS - 9

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

DWT 12064483v2 0027510-000015

Davis Wright Tremaine LLP
LAW OFFICES
Suite 800 · 701 West 8th Avenue
Anchorage, Alaska 99501
(907) 257-5300 · Fax: (907) 257-5399