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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-095 (HRH)
18 _____) (Consolidated)
19 THIS DOCUMENT RELATES TO)
20 ALL CASES)
21 _____)

22 **DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT OF LEAD**
23 **COUNSEL'S SEVENTH PUNITIVE DAMAGES APPLICATION SETTING**
24 **ASIDE FUNDS TO CLAIMANTS IN THE PROCESSOR AND CANNERY**
25 **WORKER CLAIM CATEGORIES**

1 1. I am the Court-appointed Claims Administrator of both 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. This declaration and that accompanying the “Eighth Punitive Damages
7 Distribution Application” seek authority to allocate and distribute portions of the
8 \$470,268,908.71 the EQSF received from Exxon on July 1, 2009. Lead Counsel has
9 asked that I separate the two applications because, though both deal with the allocation
10 and distribution of the \$470,268,908.71, the two applications have very different goals
11 that affect different groups of claimants. Through this application, Lead Counsel and I
12 seek the court’s authority to set aside a number of reserves in the cannery worker and
13 processor claim categories. I also explain how those reserves and that for costs, leads me
14 to conclude that \$407,049,250.24 can safely be distributed at this time to claimants who
15 take under the Plan of Allocation. As I did in my declaration in support of the First
16 Application for Distribution of Punitive Damages, I will first review the decisions I made
17 to determine the amount of money currently available for distribution to claimants
18 participating in the Plan of Allocation.
19

20 3. Of the \$470,268,908.71 which was received from Exxon, \$21,152,178.22 was
21 distributed to the Chugach group of Native Corporations because of their “off the top”
22 status, and \$654,191.08 has been reserved for that group’s 3% fund share, for a total of
23 \$21,806,369.30. With direction from Lead Counsel, I then subtracted 5% of
24
25

1 \$470,268,908.71– \$23,513,445.43 – as a contingent reserve for Cook Inlet Processors
2 and Nautilus Marine, who have sought review and en banc review after they lost their
3 appeal with the Ninth Circuit Court of Appeals, and who continue to argue that, like the
4 Seattle Seven and the Chugach Native Corporation group, they are entitled to an “off the
5 top” distribution.
6

7 4. With the assistance of members of the Plaintiffs’ Fee Committee, who
8 anticipate filing a second motion for a distribution of costs to counsel, I next estimated
9 that \$7,500,000.00 should be tentatively reserved for costs to plaintiffs’ counsel.
10

11 5. Subtraction of the various amounts discussed in paragraphs 3 and 4, as
12 summarized on the spreadsheet that is attached hereto as Exhibit A, leaves a total of
13 \$417,449,093.99 (before attorneys’ fees are deducted) as available for distribution to *all*
14 claim categories covered by the Plan of Allocation (and a small group of pro per
15 plaintiffs who are not covered by the Plan of Allocation).
16

17 6. As I did in my October, 2008 declaration, I continue to recommend that 1% of
18 that amount (\$4,174,490.94) be held in reserve for contingencies and costs that arise
19 during the course of administration, including the need to allocate some share to “off the
20 top” pro per plaintiffs, and claims that are still the subject of ongoing review by the
21 Special Master, and the courts.
22

23 7. I have been informed by Lead Counsel that it is premature to propose a
24 distribution to processors at this time for two reasons. First, the pendency of the
25 Nautilus/CIP appeal within the Ninth Circuit, and the possibility that Seahawk will

1 appeal to the United States Supreme Court, make it impossible to do final calculations in
2 the processor claim category. Second, at the category level, processors as a group have
3 already recovered more than their matrix share of signatories' recoveries from the
4 Crawford/Exxon 1989-1990 claims program, the TAPL Fund, the Alyeska settlement and
5 distributions of compensatory damages received from Exxon. Thus, when I "calculate
6 offsets for prior distributions" to "ensure that net recoveries are distributed consistently
7 with Final Percent Shares," as required by the Plan of Allocation, processors *as a group*
8 have already received more than their full allocation, and I cannot distribute more monies
9 to a category that has already recovered its full matrix share to date. Nonetheless, I am
10 aware that many individual processors have been *underpaid* in relation to their final
11 percent shares because other processors have received more than their matrix allocations
12 due to prior payments. Various individual processors in the latter category have
13 suggested that I ask the Court to modify its prior orders to permit a distribution to them. I
14 have calculated the maximum gross amount that would be necessary to bring all
15 processor claimants who have yet to recover their full final percent shares of signatory
16 recoveries to be \$4,677,759.55. At this time, given the pendency of processor appeals, I
17 seek authority to reserve that amount pending further application to the Court. If the
18 Court determines that they are entitled to all or part of the set aside at that time, a
19 distribution can be made to them, and if not, the amount can be added to other amounts
20 that I now anticipate will be the subject of a later punitive damages distribution, including
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1 the \$70,000,000 that Exxon still owes plaintiffs in costs, and the money that has been set
2 aside for Cook Inlet and Nautilus Marine, collectively over \$45,000,000.

3 8. Cannery workers are situated similarly to processors in that as a group, they
4 have already recovered more than their matrix share of signatories' recoveries from the
5 Crawford/Exxon 1989-1990 claims program, the TAPL Fund, the Alyeska settlement,
6 and distributions of compensatory damages recoveries from Exxon. Thus, when I
7 "calculate offsets for prior distributions" to "ensure that net recoveries are distributed
8 consistently with Final Percent Shares," as required by the Plan of Allocation, cannery
9 workers *as a group* have already received more than their full allocation. Nonetheless, as
10 with processors, I am aware that many individual cannery workers have been *underpaid*
11 in relation to their final percent shares because other cannery workers have received more
12 than their matrix allocations due to prior payments such as the Crawford claims program.
13 As with processors, various individual cannery workers in the latter category have
14 suggested that I ask the Court to modify prior orders to permit a distribution to them. I
15 have calculated the maximum gross amount that would be necessary to bring all cannery
16 worker claimants who have yet to recover their full final percent shares of signatory
17 recoveries to be \$1,547,593.26. Rather than presenting any such application at this time,
18 I seek authority to reserve that amount pending further application to the court. If the
19 court determines that they are entitled to all or part of this set aside at that time, a
20 distribution can be made to them, and if not, the amount can be added to other amounts
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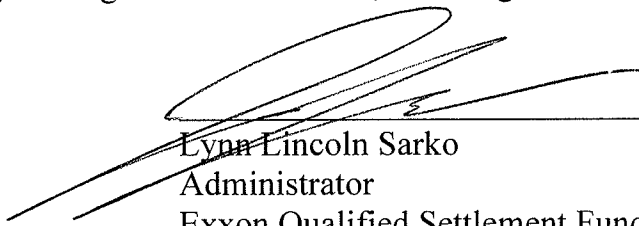
1 that I now anticipate will be the subject of a later punitive damages distribution as set out
2 in paragraph 7 above.

3 9. After accounting for the 1% reserve, and making the set asides described in
4 paragraphs 7 and 8 above for processors and cannery workers, the amount remaining for
5 distribution to *all* claim categories covered by the Plan of Allocation is \$407,049,250.24.
6

7 10. If the Court approves the current request, I will make the above reserves and
8 set asides in the respective categories.

9 11. I certify under penalty of perjury of the laws of the State of Washington that
10 the foregoing is true and correct.
11

12 DATED this 19th day of August 2009 at Seattle, Washington.

13
14 
15 Lynn Lincoln Sarko
16 Administrator
17 Exxon Qualified Settlement Fund
18 Alyeska Qualified Settlement Fund
19 Post Office Box 21945
20 Seattle, Washington 98111
21 (206) 623-1900

22 Certificate of Service

23 The undersigned certifies that on August 20, 2009, a true
24 and correct copy of the foregoing DECLARATION OF LYNN LINCOLN SARKO was served
25 on the following attorneys or parties of record by the court's ECF system:

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By: s/ David W. Oesting

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