

1 David W. Oesting
2 DAVIS WRIGHT TREMAINE LLP
3 701 West 8th Avenue, Suite 800
4 Anchorage, AK 99501
5 (907) 257-5300

6 Lead Counsel for Plaintiffs

7 Lloyd B. Miller
8 SONOSKY, CHAMBERS, SACHSE,
9 MILLER & MUNSON
10 900 West 5th Avenue, Suite 700
11 Anchorage, AK 99501
12 (907) 258-6377

13 Liaison Counsel for Plaintiffs

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 **SUPPLEMENTAL DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT**
23 **OF LEAD COUNSEL'S SEVENTH PUNITIVE DAMAGES APPLICATION AND**
24 **RESPONDING TO THE COURT'S ORDER AT DOCKET 9277**
25

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

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6 2. This supplemental declaration responds to the court's request for further
7 explanation of "how a group could receive more than its full allocation, but individual
8 members of the group receive less than is due them" (Docket No. 9277). At the outset, I
9 want to be clear that I have only made payments pursuant to the Plans of Allocation and
10 Distribution, and that none of the "under" or "over" issues described in the 7th
11 Application resulted from the EQSF making payments to claimants outside of the court
12 approved requirements of the various Plans, or the orders that implemented those Plans.
13 Instead, the answer to how a group could have already received more than its full
14 allocation, while at the same time individuals within that group have yet to receive their
15 full allocation, is based on three general factors: (1) large payments made by Exxon after
16 the spill, via settlements or the Crawford claims program, to some but not all claimants
17 within the Processor and Cannery Worker claim categories; (2) the provisions of the
18 Plans of Allocation and Distribution that apply group matrix shares against all recoveries,
19 including the payments made by Exxon via settlement or Crawford claims program; and
20 (3) the Supreme Court's reduction of the amount of punitive damages Exxon was ordered
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1 to pay, compared to the amount of punitive damages assumed in the Plans based on the
2 original judgment.

3 3. In 1996 and 1997, two core concepts motivated the Plan of Allocation and
4 the Plans of Distribution that were presented to the Court. First, the 51 claim categories
5 should ultimately receive total damage awards in proportion to percentages agreed on in
6 the Plan of Allocation. As explained in the Plan of Allocation:

8 [T]he Joint Prosecution Agreement is a contract among counsel for
9 signatory plaintiffs to pool all recoveries and allocate them using Matrix
10 Shares. The Matrix Shares comprise part of this contract, and we seek
11 approval of them, after notice, as a fair, adequate and reasonable settlement
12 of plaintiffs' respective claims to punitive damages awarded to all plaintiffs
13 as a class, and to aggregate compensatory damages.¹

14 Second, with reference to damage amounts that had already been recovered (from the
15 Exxon Crawford program, other Exxon settlements, the TAPLF and from the AQSF),
16 because some groups had already recovered significantly more than their matrix shares in
17 the Plan of Allocation, punitive damages recoveries, when they came, had to be allocated
18 first to those claim categories that were under their matrix shares in an attempt to bring
19 them up to their full matrix shares:

20 Once all recoveries are collected, there will be a "Final
21 Distribution," in which account will be taken of previous distributions to
22 ensure that Final Percent Shares govern distribution of (1) all recoveries
23 collected after the Alyeska Settlement . . . and (2) net recoveries . . . from
24 the Exxon Claims Program, TAPL Fund, and Alyeska Settlement.²

24 ¹ Clerk's Docket No. 6592; Plan of Allocation of Recoveries Obtained by Plaintiffs in Litigation
25 Arising from the Exxon Valdez Oil Spill, p. 7.

² See *Id.* at p. 11.

1 4. Per the Plan of Allocation, Cannery Workers as a group were to recover
2 0.53 % of all recoveries and Processors as a group were to recover 2.1 %. We were
3 aware in 1997, though, that Processors as a category and Cannery Workers as a category
4 had both already recovered more than their matrix shares of recoveries to date (pre-
5 punitive damages), primarily because Exxon had, prior to this Court’s Robins Drydock
6 ruling, made settlements with certain processors, and at the same time, had agreed to
7 make settlements with those processors’ employees, whereas they had refused to make
8 settlements with many other claim categories.

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11 5. Indeed, the Plan of Distribution of Allocations to the Cannery Worker
12 Claim Category specifically recognized that Cannery Workers *as a group* had already
13 received more from prior recoveries than their matrix share, and that some adjustment
14 would be needed.

15
16 Cannery workers \$1,053,000 allocation from the Alyeska
17 Settlement exceeded their projected matrix share of \$462,000 (0.5291%).
18 Also, plaintiffs’ counsel estimate that roughly 4,500 cannery workers were
19 paid \$11,400,000 from the Exxon claims program and TAPL Fund, which
20 exceeds all cannery workers 0.5300% matrix share of \$1,066,000 from
21 these recoveries. In the Final Distribution to be conducted once all of
22 signatories’ recoveries are collected, distributions to cannery workers will
23 be adjusted to account for these “prepayments.” *See* Allocation Plan 38-39.
24 As a result, plaintiffs’ counsel expect the allocation to Cannery Worker
25 Claim Category in the Final Distribution to be reduced.³

³ Clerk’s Docket No. 6983; Plan of Distribution of Allocations to the Cannery Worker Claim Category, Section I, C, attached as Exhibit A to this declaration.

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

1 The Plan went on to explain in the section entitled “Adjustments for Previous
2 Compensation” that if punitive damages were recovered as expected (and at the time we
3 expected \$5 billion in principal), for many of the cannery workers who had received
4 payments from Exxon, they would receive relatively small amounts from the final
5 distribution:
6

7 Most of the 4500 cannery workers paid by Exxon Claims (“Exxon
8 payees”) received what should prove to be a large portion of their final
9 percent shares of total cannery worker allocations. Assuming a total
10 cannery worker allocation of \$27,536,000 and 8,000 claimants, the
11 averages allotment per claimant would be \$3,470. . . . [P]laintiffs’ counsel
12 estimate that the 4,500 Exxon payees received roughly \$2,510 apiece on
13 average, -- more than 70% of the projected average allotment of \$3,470 . . .

14 To begin closing this gap, the Court-approved Alyeska Distribution
15 Plan . . . allotted Exxon non-payees larger shares than Exxon payees, [but]
16 this achieved only slight progress towards parity. The 4,500 Exxon payees
17 – who comprise 56.3% of the potential 8,000 claimants – have received
18 92.7% of recoveries to date from Exxon Claims, the TAPL Fund and the
19 Alyeska Settlement. *See* Exhibit A, Section IV.

20 6. Processors were similarly situated – as a group they had already recovered
21 more than their 2.1% Plan of Allocation share as a result of recoveries that some
22 processors received from Exxon prior to approval of the Plan. The Amended Plan of
23 Distribution of Allocations to the Processor Claim Category recognized that some
24 processors had already received, through settlements with Exxon after the spill,
25 significantly more than their Plan shares, and that those recoveries would affect interim
distributions and any final distribution of punitive damages:

SUPPLEMENTAL DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT OF LEAD COUNSEL’S
SEVENTH PUNITIVE DAMAGES DISTRIBUTION APPLICATION DISTRIBUTING FUNDS TO MULTIPLE
CLAIM CATEGORIES- 5

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

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LAW OFFICES
Suite 800 · 701 West 8th Avenue
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1 In the Supplemental Claims Program, Participating Processors'
2 distributions from the Native/Municipality/Kodiak Island Borough
3 recoveries will be adjusted for payments already received from the Alyeska
4 Settlement and settlements with Exxon. CRFC, KSP, Seahawk and
Western received sizeable settlement payments from Exxon, while the
others did not. . . .

5 Accordingly, Plaintiffs counsel propose to begin "catching up" in the
6 Supplemental Claims Program. To this end, CRFC, KSP, Seahawk and
7 Western would not be paid anything in the supplemental Claims Program,
8 and distributions to other Participating Processors would be calculated in a
9 manner which to the greatest extent possible applies Final Percent Shares to
[both the] Alyeska Settlement and the Native/ Municipality/Kodiak Island
Borough recoveries.

10 Once punitive damages recoveries are collected, there will be a Final
11 Distribution, in which offsets will be made for distributions from prior
12 recoveries, including the Exxon Claims Program, TAPL Fund, Alyeska
13 Settlement and the Native/ Municipality/Kodiak Island Borough
14 recoveries.⁴

15 7. The Supreme Court's decision, reducing the principal of the punitive
16 damages judgment to \$507 million, significantly reduced the amount of money available
17 for any "final distribution." The total amounts received for all claimants participating in
18 the Plan of Allocation from all sources (Crawford payments, Exxon settlements, TAPLF,
19 Alyeska and prior EQSF distributions) counting the \$470 million received from Exxon on
20 July 1, 2009, is \$1,105,689,467.82.⁵

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24 ⁴ Clerk's Docket No. 7372 ; Amended Plan of Distribution of Allocations to the Processor Claim
Category, pp. 9-10, attached hereto as Exhibit B.

25 ⁵ This figure is net of reserves specified in my prior declarations.

1 8. Per the Plan of Allocation, Processors are therefore entitled to an adjusted
2 matrix share of 2.1019690 %⁶ of \$1,105,689,467.82, or \$23,241,249.41. In fact, the
3 members of the Processor category have already received \$23,395,406.52 from all
4 sources already. As a group, they received \$12,066,908.00 from the Exxon
5 Claims/Settlement program; \$5,361,917.26 from the TAPL Fund; \$3,949,999.47 from the
6 AQSF; and \$2,016,581.79 from EQSF distributions so far. Thus, as a group Processors
7 have already recovered \$154,157.11 more than their matrix share.
8

9 9. Similarly, per the Plan of Allocation, Cannery Workers, as a claim
10 category, are entitled to an adjusted matrix share of 0.5304969 % of \$1,105,689,467.82,
11 or \$5,865,648.66. In fact, the members of the Cannery Worker category have already
12 received \$9,101,986.24 from all sources to date. As a group, Cannery Workers received
13 \$6,499,909.10 from the Exxon Claims/Settlement program; \$1,295,944.99 from the
14 TAPL Fund; \$811,106.08 from the AQSF; and \$495,026.07 from EQSF distributions.
15 Thus, as a group Cannery Workers have already recovered \$3,236,301.58 more than their
16 matrix share.
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18 10. To explain how an individual claimant in each of these plans could have at
19 this point received “less than is due them,” when the claim category has received “more
20 than its full allocation,” I will give examples from each claim category. Take processor
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23 ⁶ Plan of Allocation Matrix shares for all claim categories were adjusted from those figures
24 listed in the Plan of Allocation due to under-subscription of claims in the Personal Injury,
25 Personal Property and Non-Native Subsistence claim categories (see paragraph 10 of my October
29, 2008 declaration in Support of the First Punitive Damages Application, Docket No. 8885).

1 X,⁷ who received nothing directly from Exxon or from the Exxon Crawford Settlement
2 program, but who later received \$148,902.00 from the AQSF and has received
3 \$155,940.12 from the EQSF, for a total recovery to date of \$304,842.12. The final
4 percent share for processor X is 2.78620 %. If that processor *as an individual claimant*
5 received its calculated final percent share of all available recoveries, it would have
6 received \$649,234.33. Instead, it has received \$344,392.20 less than its final percent
7 share of monies paid to date. In contrast, processor Y has already recovered more than its
8 final percent share of recoveries to date. Y received only a direct Exxon Settlement of
9 \$2,020,000.00 shortly after the spill, but nothing from the AQSF or the EQSF because we
10 were still “catching up” with under allocated processors. The final percent share for
11 processor Y is 6.16150 %. Y’s target share of all available recoveries to date is
12 \$1,435,739.47, so it had previously recovered \$584,260.53 more than its full final percent
13 share allocation. In fact, six processors have already recovered in excess of their final
14 percent shares due primarily to their direct recoveries from Exxon shortly after the spill,
15 while twenty-six processors have thus far recovered less than their final percent shares.

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22 ⁷ Various individual processors have contacted the EQSF asking for information immediately
23 about not just their own potential shares, but all other processors covered by the Plan as well. It
24 has been the practice of the EQSF not to give information regarding any other claimant’s final
25 percent share or entitlement, until an application is made to this Court. As such, I have denied
such requests at this time. I am ready, willing and able to provide this information to the Court if
the Court requests it.

1 11. An example of a cannery worker who has recovered less than is due is
2 V.C., who received nothing from the Exxon Claims program, but who later received
3 \$488.01 from the AQSF and the EQSF. The final percent share for V.C. is .0381783 %,
4 under the Cannery Worker Plan of Distribution, which would have translated to a total
5 recovery from all sources of \$2,245.36. Thus, *as an individual* V.C. is currently under
6 allocated by \$1,757.37. In contrast, cannery worker R.S. has already recovered more
7 than is due him under the Plan of Allocation. R.S. received only an Exxon direct
8 settlement payment (\$6,168.50) shortly after the spill, but nothing later from the AQSF or
9 the EQSF because we were still “catching up” with under allocated cannery workers such
10 as V.C. R.S.’s target based on his final percent share of .0381783 % would have been
11 \$2,245.36, and thus he has, by receiving a large direct Exxon settlement shortly after the
12 spill, received an “over-allocation” of \$3,923.14 in comparison to his expected share
13 under the matrix. In fact, 1,995 cannery workers have already recovered in excess of
14 their final matrix percent shares (i.e., are over-allocated) due primarily to their direct
15 recoveries from Exxon shortly after the spill, while 1,547 cannery workers have
16 recovered less than their final percent shares (i.e., are under allocated.)

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21 12. The Seventh Application proposes to set aside \$6,225,352.81 comprised of
22 \$4,677,759.55 for Processors and \$1,547,593.26 for Cannery Workers, before making the
23 distribution envisioned in Eighth Application. We have also made reserves for Cook
24 Inlet and Nautilus (together in excess of \$46 million) pending final resolution of their
25

SUPPLEMENTAL DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT OF LEAD COUNSEL’S
SEVENTH PUNITIVE DAMAGES DISTRIBUTION APPLICATION DISTRIBUTING FUNDS TO MULTIPLE
CLAIM CATEGORIES- 9

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

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appeal and expect that money will be available for a later distribution along with the \$70 million we expect to receive from Exxon once the cost issues are finally resolved. Once these litigation issues are resolved, sums available for distribution will be poured through the Plan of Allocation, at which time we can determine more clearly the exact extent of any over or under allocation to Processors and Cannery Workers on a group and individual basis.

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

DATED this 31ST day of August 2009 at Seattle, Washington.



Lynn Lincoln Sarko
Administrator
Exxon Qualified Settlement Fund
Alyeska Qualified Settlement Fund
Post Office Box 21945
Seattle, Washington 98111
(206) 623-1900

Certificate of Service

The undersigned certifies that on August 31, 2009 a true and correct copy of the foregoing SUPPLEMENTAL DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT OF LEAD COUNSEL'S SEVENTH APPLICATION SETTING ASIDE FUNDS TO CLAIMANTS IN THE PROCESSOR AND CANNERY WORKER CLAIM CATEGORIES was served on the following attorneys or parties of record by the court's ECF system:

Douglas J. Serdahely
PATTON BOGGS LLP
E-mail: dserdahely@pattonboggs.com

Lloyd B. Miller
SONOSKY, CHAMBERS, SACHSE,
MILLER & MUNSON
E-mail: lloyd@sonosky.net

By: s/ David W. Osting

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