

1 This is the seventh of several applications relating to the distribution of punitive
2 damages to claimants. On July 1, 2009, the EQSF received \$470,268,908.71 in punitive
3 damages interest from the Exxon defendants. This application explains how much of that
4 money we calculate is currently available to distribute to all claimants. In addition, this
5 application seeks court approval that no money be allocated to the Processor and Cannery
6 worker claim categories and that, instead, a reserve be established for the Processor and
7 Cannery Worker claim categories.
8
9

10 Following the methodology we described in the First Application to distribute
11 punitive damages, from the \$470,268,908.71, \$21,152,178.22 was distributed to the
12 Chugach group of Native Corporations because of their “off the top” status and
13 \$654,191.08 was reserved for their group’s 3% Fund share.
14

15 I have instructed the Administrator to further reserve \$7.5 million for
16 unreimbursed costs to certain plaintiffs’ counsel, which will be the subject of a separate
17 motion. These are costs that were not previously reimbursed.
18

19 In addition, while a three-judge panel of the Ninth Circuit Court of Appeals has
20 ruled against CIP and Nautilus, these parties have petitioned for panel rehearing and
21 rehearing en banc. As with the reserve we established from the punitive damages
22 principal, I agreed with counsel for CIP and Nautilus to set aside 5% of the punitive
23 damages interest as a reserve pending the final resolution of their appeals. As with the
24
25

LEAD COUNSEL’S SEVENTH APPLICATION TO DISTRIBUTE
PUNITIVE DAMAGES FUNDS - 2

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

1 punitive damages principal, I also instructed the Administrator to reserve 1% of the net
2 amount of punitive damages interest available for distribution at this time for
3 contingencies and costs that arise during the course of administration, including the need
4 to allocate some share to “off the top” pro per plaintiffs, and claims that are still the
5 subject of ongoing review by the Special Master, and the courts.
6

7 While the foregoing deductions and reserves are similar in kind to those made
8 from the punitive damages principal, in this application I am proposing additional
9 reserves for the Processor and Cannery Worker claim categories. That is because we
10 have determined that both of those categories have already received their full matrix
11 share of ALL recoveries to date from their collective prior payments from the
12 Crawford/Exxon 1989-1990 claims program, the TAPL Fund, the Alyeska settlement,
13 and distributions of compensatory damages received from Exxon. When the
14 Administrator calculates offsets for prior distributions to “ensure that net recoveries are
15 distributed consistently with Final Percent Shares,” as required by the Plan of Allocation,
16 it turns out that processors and cannery workers, on a group basis, have already received
17 more than their final percent share of all recoveries to date. By the terms of the Plan of
18 Allocation, we cannot distribute more monies to a category that has already recovered its
19 full matrix share to date.
20
21
22
23
24
25

1 However, we are aware that some individual processors and cannery workers have
2 received *less* than their individual final percent shares of recoveries to date because other
3 Processors and Cannery workers have previously received more than their final percent
4 shares. While the sum total of these individual over and under allocations result in the
5 category/group being over allocated, many individual processors and cannery workers
6 who are under allocated on an individual basis have complained to us that they have yet
7 to receive a punitive damages distribution. In anticipation of objections being made by
8 individual processors and cannery workers to their categories receiving no allocation of
9 the money available to distribute, I instructed the Administrator to calculate the
10 maximum amount of dollars it would take to establish a reserve assuming (1) that the
11 Processor and Cannery worker claim categories would each receive its full matrix share
12 per the Plan of Allocation; and (2) all approved, individual Processor and Cannery
13 worker claimants would receive 100% of their individual final percent shares of (1).

14 To that end, Mr. Sarko calculated the maximum gross amount that would be
15 necessary to bring all Processor claimants to 100% of their final percent shares of
16 signatory recoveries at \$4,677,759.55. He further calculated that the maximum gross
17 amount that would be necessary to bring all Cannery worker claimants to 100% of their
18 final percent shares of signatory recoveries at \$1,547,593.26. I have therefore instructed

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

1 Mr. Sarko to reserve a total of \$6,225,352.81 as a contingency for any objections to our
2 request that no monies be allocated to these two categories.

3
4 I anticipate that there will be another punitive damages distribution, including the
5 \$70,000,000.00 that Exxon still owes plaintiffs in costs, and the money that has been set
6 aside for Cook Inlet and Nautilus Marine, collectively over \$45,000,000.00. When any
7 or all of those monies become available for distribution, we will update our calculations
8 and advise the Court as to whether the Processor and/or Cannery Worker claim categories
9 continue to be over allocated on a category/group basis.

10
11 Upon the basis of the foregoing discussion, Lead Counsel seeks the Court's
12 approval to not make distributions to the Processor and Cannery Worker claim categories
13 at this time from the money currently available for distribution from the punitive
14 damages and punitive damages interest recoveries to date.

15
16 In addition to the Processors and Cannery Worker claim categories, we propose no
17 allocation to the Halibut category. That is because, as specified in the Halibut Plan of
18 Distribution, the \$42,150.00 collected prior to the recovery of punitive damages,
19 "exceeds the halibut category's projected 0.0006% matrix share...[and] plaintiffs'
20 counsel do not expect to make any additional distributions to halibut claimants."

21
22 After accounting for all of the foregoing, we have determined that there is
23 \$407,049,250.24 available to distribute to the remaining 49 claim categories. Of those 49
24

25
LEAD COUNSEL'S SEVENTH APPLICATION TO DISTRIBUTE
PUNITIVE DAMAGES FUNDS - 5

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

1 claim categories, work remains on processing the approximately 10,000 claims of unopened
2 fishery claimants, and we do not yet have a plan to distribute monies to the Recreational
3 Use claim category. We are therefore filing a contemporaneous Eighth Application
4 proposing distributions to the remaining 47 claim categories.
5

6 In sum, we request via this application an order confirming that (1) no
7 distributions be made to the Processor and Cannery Worker claim categories at this time;
8 and (2) that the Administrator may establish the reserves as set forth herein.
9

10 Respectfully submitted this 20th day of August, 2009.
11

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

21 Certificate of Service

22 The undersigned certifies that on August 20, 2009, a true
23 and correct copy of the foregoing Seventh Application Pertaining to the
24 Distribution of Punitive Damages and to the Establishment of Reserves in the Processor
25 And Cannery Worker Claim Categories was served on the
following attorneys or parties of record by the court's ECF system:

22 Douglas J. Serdahely	Lloyd B. Miller
23 PATTON BOGGS LLP	SONOSKY, CHAMBERS, SACHSE,
24 E-mail: dserdahely@pattonboggs.com	MILLER & MUNSON
	25 E-mail: lloyd@sonosky.net

By: s/ David W. Oesting

LEAD COUNSEL'S SEVENTH APPLICATION TO DISTRIBUTE
PUNITIVE DAMAGES FUNDS - 6
In re: the Exxon Valdez, Case No. 3:89-cv-095-HRH

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