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Liaison Counsel for Plaintiffs

Honorable H. Russel Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re:)
)
The EXXON VALDEZ) Case No. 3:89-cv-095 (HRH)
) (Consolidated)
)
)
THIS DOCUMENT RELATES TO)
ALL CASES)
)

DECLARATION OF LYNN LINCOLN SARKO IN SUPPORT OF LEAD
COUNSEL'S APPLICATION FOR AN ORDER DISTRIBUTING BOTH ALYESKA
AND EXXON QUALIFIED SETTLEMENT FUNDS TO CLAIMANTS IN THE
HALIBUT AND RECREATIONAL USE CLAIM CATEGORIES AND THEIR
ATTORNEYS

1 1. I am the Court-appointed Claims Administrator of 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 application seeks authority to distribute all of the funds that have been
7 held in reserve for approved claims filed in the Halibut (B05B) and Recreational Use
8 (RECU) claim categories. Due to the relatively small amounts available for distribution
9 in these two categories, no prior applications have been made to distribute any of the
10 AQSF or EQSF funds that have been held for distribution in these categories.
11

12 3. The Halibut Plan of Distribution defines that the matrix share for the claim
13 category is .0006%.¹
14

15 4. The source and amounts of the funds available for the following distribution for
16 approved Halibut claims are as follows.
17

18 (a) \$42,314.00 was set aside by the Alyeska Settlement for the benefit for
19 approved Halibut claims.

20 (b) \$148.33 was side aside from the Native/Municipality/Kodiak Island Borough
21 recoveries;
22

23 _____
24 ¹ Footnote 13 from the Halibut Plan of Distribution States: "The halibut matrix share is based on the
25 fishery's losses relative to other claim categories, discounted by 97% for litigation risk like those of the
unoiiled fishery claim categories.

1 (c) The Plan of Allocation and Halibut Plan of Distribution set the matrix share
2 for the category at .0006%, and has been since revised slightly higher, to .0006006%.²

3 (d) Under the same methodology I performed for the 16th Punitive Damages
4 Application,³ all signatories' total recoveries subject to the allocation matrix were
5 \$1,220,126,267.39. When multiplying the Halibut claim category's .0006006% adjusted
6 matrix share by all signatories' recoveries, the total target of Halibut claimants' share of
7 all recoveries is \$7,328.08.

8 (e) Because signatories' total recoveries including punitive damages ended up
9 being reduced significantly on appeal, and because the amounts previously allocated to
10 Halibut claimants per paragraphs 4(a) and 4(b) exceed the total target of Halibut
11 claimants' share of all recoveries, the Halibut claim category will receive no additional
12 allocations from any funds the EQSF received from Exxon after 2002.⁴ By the terms of
13 the Court approved EQSF plan of distribution for the Halibut claim category, these
14 previously allocated amounts are to be distributed pursuant to the EQSF plan of
15 distribution.
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20 ² This is due to under-subscriptions and a reallocation of matrix shares from the Non-Native Subsistence
21 (NNSU), Personal Injury (PINJ) and Personal Property (PPRO) claim categories. See: Administrator
22 Declaration in Support of the 1st Application for Distribution of Punitive Damages, Docket 8885 at
23 Section 10.

24 ³ See Docket 9640, at Section 4.

25 ⁴ This fact was known at the time the Halibut Plan of Distribution was approved. Footnote 19 to that plan
provided: "It is conceivable, but unlikely, that signatories' recoveries from Exxon could grow so large –
e.g., by successful appeals by plaintiffs or accrual of post-judgment interest – that halibut claimants'
matrix share of all signatories' recoveries would exceed the \$42,150 already allocated to them. If this

1 (f) Thus, the total gross amount currently available for distribution to pay all
2 approved Halibut claims is \$42,462.33, the amount previously reserved by the AQSF and
3 EQSF. Lead Counsel and I seek authority to allocate and distribute this amount to
4 approved Halibut lost income and damaged gear claims.
5

6 5. The EQSF mailed approximately 4700 halibut claim forms and received 1319
7 claim forms before the Court specified cut-off date. Final Determination letters were
8 mailed and there are currently 735 claimants with a positive Final Percent Share eligible
9 to receive an allocation.
10

11 6. Additionally there are three claimants with approved damaged gear claims. As
12 noted in the Halibut Plan of Distribution, damaged gear claims were calculated on a *pro-*
13 *rata* basis, proportional to the ratio of loss to the total relevant matrix damages, as set
14 forth in the plans of distribution. As further noted in all plans with damaged gear
15 provisions, damaged gear claims are only awarded “up to the amount of loss,” but there is
16 no guarantee that there will be sufficient recoveries to pay all damaged gear claims the
17 total amount of the loss.
18

19 7. Gross allocations to individual Halibut claimants for lost income range from
20 approximately \$490.46 to \$1.02. Claim allocations average approximately \$36.25 and
21 665 of the 735 payments are for less than \$100.00.
22

23 8. The deadline for claimants to file a written objection to their Halibut final
24

25 occurs, additional distributions will be made to halibut claimants.”

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CATEGORIES AND THEIR ATTORNEYS - 4

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

1 percent shares was September 19, 2011. As of today, the EQSF has not received any
2 such objections.

3 9. There exists a sufficient balance in the 1% contingency fund to ensure payment
4 of contested Halibut claims should they ultimately prevail on a late-filed appeal.

5
6 10. To lessen administrative expense, the Halibut plan of distribution
7 contemplated that the AQSF funds would be distributed by the EQSF. Lead Counsel and
8 I are seeking authority to transfer the AQSF reserved funds and EQSF reserved funds to
9 one common pool of Halibut recoveries for a total of \$42,462.33.⁵ Given the modest
10 amounts of payments being released, pooling the recoveries reduces Administrative
11 expense of releasing payments to claimants or on behalf of claimants.

12
13 11. As noted in the Plan of Allocation, the Recreational-Use claim category *does*
14 *not* include claims by individual recreational users. Rather, the Recreational Use share of
15 recoveries was to be contributed to a trust fund to be used for purposes of restoration and
16 recreational enhancement.

17
18 12. The Recreational-Use Plan of Distribution defines that the matrix share for the
19 claim category is .008%.

20
21 13. The source and amounts of the funds available for the following distribution

22
23 ⁵ For recoveries from the AQSF pool, the 3% Fund assessment was already applied to those allocations.
24 Attorney's fees were fixed at 15% of the \$42,314.00. For the EQSF pool, the gross allocations are before
25 the 3% fund or 19.4% fund attorney fee assessment. So, for the AQSF recovery 15% fees were applied,
and for the EQSF recovery, 22.4% fees were deducted to calculate net allocations to claimants.

1 for the Recreational-Use trust are as follows.

2 (a) \$155,295.00 was set aside by the Alyeska Settlement for the benefit of the
3 Recreational Use trust fund.

4 (b) \$1,979.04 was side aside from the Native/Municipality/Kodiak Island
5 Borough recoveries, and \$6,060.11 was set aside from the Phase IIA compensatory
6 damage judgment and interest recoveries.⁶

7 (c) The Plan of Allocation and Recreational-Use Plan of Distribution set the
8 matrix share for the category at .008%, and has been since revised slightly higher, to
9 .0080075%.⁷

10 (d) Under the same methodology I performed for the 16th Punitive Damages
11 Application,⁸ all signatories' total recoveries subject to the allocation matrix were
12 \$1,220,126,267.39. When multiplying the Recreational-Use claim category's .0080075%
13 adjusted matrix share to all signatories' recoveries, the total target of the Recreational
14 Use's share of all recoveries is \$97,701.62.

15 (e) As a consequence of the reserves held for the Recreational Use trust under
16 11(a) and 11(b) above, the Recreational-Use claim category was allocated amounts that

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22 ⁶ These recoveries have been informally referred to as the Supplemental, Compensatory Damages and
23 Compensatory Interest or the "Combined Compensatory Damages Distributions" in recent filings.

24 ⁷ This is due to under-subscriptions and a reallocation of matrix shares from the Non-Native Subsistence
25 (NNSU), Personal Injury (PINJ) and Personal Property (PPRO) claim categories. See: Administrator
26 Declaration in Support of the 1st Application for Distribution of Punitive Damages, Docket 8885 at
27 Section 10.

⁸ See Docket 9640, at Section 4.

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SETTLEMENT FUNDS TO CLAIMANTS IN THE HALIBUT AND RECREATIONAL USE CLAIM
CATEGORIES AND THEIR ATTORNEYS - 6

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

1 exceeded its target share of all of signatories' recoveries. Thus, the Recreational-Use
2 claim category received no additional allocations from any funds the EQSF received from
3 Exxon after 2002.⁹

4 (f) The total gross amount currently reserved by the AQSF and EQSF to the
5 Recreational-Use trust is \$163,334.15.
6

7 14. Lead Counsel and I are working with Alaskan attorney Geoffrey Parker in the
8 establishment of the Recreational-Use trust. The 501(c)(3) fund will require that the
9 funds be used for public purposes that foster the types of conservation and recreational
10 interests affected by the Exxon Valdez Oil Spill. Although Lead Counsel and I are
11 seeking authority to distribute funds to the trust at this time, the AQSF and EQSF will
12 distribute no funds to the Recreational-Use trust until the trust formally receives a section
13 503(c) or similar recognition by the Internal Revenue Service as a federal tax-exempt
14 organization. Additionally, Lead Counsel will require that the trust apply for and receive
15 a valid tax-identification number and establish a bank account in the name of the trust
16 before funds are transferred from the AQSF and EQSF to the trust.
17

18 15. The current application covers all currently approved claims and allocations¹⁰
19 within the Halibut and Recreational-Use claim categories.
20

21 _____
22 ⁹ Signatories' total recoveries ended up being reduced significantly on appeal, guaranteeing no additional
23 matrix allocations for the Recreational-Use trust.

24 ¹⁰ The number of claims with impairments (liens, claims with bad address, etc.) is sufficiently small so
25 that those payments that can be made to claimants, heirs, assignees or other 3rd-party judgment holders

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CATEGORIES AND THEIR ATTORNEYS - 7

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

1 16. Exhibit A to this declaration sets out the gross amounts of the total allocations
2 to non-disputed claimants with lost income claims in the Halibut claim category. There
3 are a total of 735 lost income claims being paid, the total amount of which is \$40,316.54.

4 17. Exhibit B to this declaration sets out the gross amounts of the total allocations
5 to claimants with damaged-gear claims in the Halibut claim category. There are a total of
6 three damaged gear claims being paid, the total amount of which is \$2,145.79.

7 18. The gross dollar amounts included in Exhibit C for the Recreational Use Trust
8 from the AQSF is \$155,295.00.¹¹

9 19. The gross dollar amounts included in Exhibit D for the Recreational Use Trust
10 from the EQSF Combined Compensatory Damages (the Supplemental, Compensatory
11 Damages and Compensatory Interest allocations are consolidated on Exhibit D) is
12 \$8,039.15¹².

13 209. The dollar figures provided in Exhibits A through D are gross dollar
14 allocations on claims prior to any deductions for attorneys' fees or costs. The total
15 amount of gross payments under this current application is approximately \$163,334.15

16 21. If the Court approves the current request, I will begin authorizing payments to

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22 will be processed within 45 days of the Order granting approval to distribute these funds.

23 ¹¹For recoveries from the AQSF pool, the 3% Fund assessment was already applied to those allocations.
24 Attorney's fees were fixed at 15% of the \$155,295.00. For the EQSF pool, the gross allocations are
25 before the 3% fund or 19.4% fund attorney fee assessment. So, for the AQSF recovery 15% fees were
applied, and for the EQSF recovery, 22.4% fees were deducted for net allocations to the trust.

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APPLICATION FOR AN ORDER DISTRIBUTING ALYESKA AND EXXON QUALIFIED
SETTLEMENT FUNDS TO CLAIMANTS IN THE HALIBUT AND RECREATIONAL USE CLAIM
CATEGORIES AND THEIR ATTORNEYS - 8

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

