

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: OIL SPILL BY THE OIL RIG : MDL 2179
"DEEPWATER HORIZON" IN THE :
GULF OF MEXICO, ON APRIL 20, 2010 : Section J
:
This Document Applies to: : Judge Barbier
:
No. 12-970, Bon Secour Fisheries, Inc., et : Mag. Judge Shushan
al. v. BP Exploration & Production Inc., et al. :

ORDER

[Regarding the Claims Administrator's Report of December 17, 2015 Proposing the Seafood Compensation Program Supplemental Distributions]

The Settlement Agreement approved by the Court's Order dated May 2, 2012 [Rec. Doc. 6414] provided for a Seafood Compensation Program ("SCP"), and established a \$2.3 billion SCP fund ("the "SCP Fund") for seafood harvesters and oyster leaseholders. It provided that the balance of any amounts remaining in the SCP Fund after the completion of the initial distributions would be divided proportionately and delivered to all eligible claimants, unless the Court-Appointed Seafood Neutrals (the "Seafood Neutrals") recommended a different formula. On September 19, 2014, the Seafood Neutrals submitted their Recommendations (the "Neutrals' Recommendations") proposing a partial distribution targeted at \$500 million ("Supplemental Distribution Round One"), based on a *pro rata* distribution formula, which was approved by the Court's Order dated November 18, 2014 [Rec. Doc. 13416].

In December 2014, the Claims Administrator proceeded to make Supplemental Distribution Round One payments in accordance with the Neutrals' Recommendations. The Court has now received the Claims Administrator's letter report and recommendations dated December 17, 2015 (the "Claims Administrator's Recommendations") providing for a subsequent distribution ("Supplemental Distribution Round Two"), and thereafter a residual distribution ("Residual Distribution"). The Court finding that the Claims Administrator's Recommendations are appropriate and well founded and should be adopted and approved, and with the concurrence of the Seafood Neutrals; accordingly,

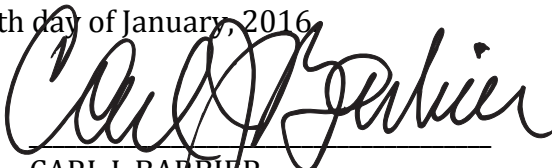
IT IS ORDERED that the attached Claims Administrator's Recommendations be filed into the record.

IT IS FURTHER ORDERED that the Claims Administrator's Recommendations be and are hereby approved, and that the Claims Administrator implement the proposed Supplemental Distribution Round Two in accordance with the Claims Administrator's Recommendations.

IT IS FURTHER ORDERED that, at the appropriate time, the Claims Administrator: (1) consult with the Seafood Neutrals, Class Counsel, and BP to ensure that all parties agree regarding whether all necessary conditions have been met before disbursing the Residual Distribution; and (2) consult with the Seafood Neutrals, Class Counsel, and BP to ensure that all parties agree regarding the amount remaining in the SCP Fund before disbursing the Residual Distribution in accordance with the Claims Administrator's Recommendations.

IT IS FURTHER ORDERED that after the completion of the Residual Distribution, the Claims Administrator has authority to close out the SCP Fund in accordance with the Claims Administrator's Recommendations. The Claims Administrator will confer and coordinate with the Seafood Neutrals, Class Counsel and BP in order to seek agreement as to (1) the amount remaining in the SCP Fund after the completion of the Residual Distribution; and (2) the appropriate disposition of any residual amounts remaining in the SCP Fund if, at the end of the Residual Distribution, the amount remaining in the SCP Fund is depleted to the extent that it is impractical to disburse another round and that an alternate disposition such as a *cy pres* award is necessary or appropriate. If such agreement cannot be reached, any unresolved issues shall be presented to the Court for resolution.

Signed in New Orleans, Louisiana, this 7th day of January, 2016



CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

**DEEPWATER HORIZON
CLAIMS CENTER**
ECONOMIC & PROPERTY DAMAGE CLAIMS

Patrick A. Juneau
Claims Administrator

December 17, 2015

Via Electronic E-mail

Honorable Carl Barbier
U.S. District Court
Eastern District of Louisiana
500 Poydras Street, Chambers C256
New Orleans, LA 70130

Re: Additional Distributions from the Seafood Compensation Fund

Judge Barbier:

The Settlement Agreement approved on May 2, 2012, contained a Seafood Compensation Program (“SCP”), and established a \$2.3 billion SCP fund for seafood harvesters and oyster leaseholders. It provided that the balance of any remaining SCP funds after an initial distribution would be divided proportionately to all eligible claimants, unless the Court Appointed Seafood Neutrals recommended a different formula. On September 19, 2014, the Seafood Neutrals’ recommended a partial distribution targeting \$500 million (“Supplemental Distribution Round One”), based on a *pro rata* distribution formula, which was approved by the Court on November 18, 2014. In December 2014, the Claims Administrator proceeded to make payments in accordance with the Court approved Neutrals’ report. All claims for which the Initial Distribution review was still In Process as of December 5, 2014 were omitted from the Supplemental Distribution Round One population. Those In Process claims ultimately deemed eligible will receive a Supplemental Distribution Eligibility Notice through Round Two, described in further detail below.

A. The Seafood Neutrals’ Plan for Supplemental Distribution.

Under the Seafood Neutrals’ plan, the values for the Supplemental Distribution Round One formula, $(g/G)(D + N) - n = d$, were defined as:

- Supplemental Distribution Award (“d”). The amount that a claimant is eligible to receive in the Supplemental Distribution Round One.
- Gross Compensation (“g” and “G”). The gross compensation amount for an individual Seafood Claim is the value of the Seafood portion of the claim before deducting Prior Seafood Spill-Related Payments or other offsets. Each claimant’s “g” value is the sum of the gross compensation amounts for all of the claimant’s eligible Seafood Claims. The aggregate “G” value is the sum of each participating claimant’s underlying “g” value.
- Negative Balance (“n” and “N”). The balance for an individual claimant (“n”) is the amount of remaining prior payment offsets that have not yet been deducted from the claimant’s eligible Seafood Claims. The aggregate “N” value is the sum of each participating claimant’s underlying “n” value.

- Supplemental Distribution Amount (“D”). This is the amount set aside for payment to claimants participating in the Supplemental Distribution Round One. Under the Court-approved Supplemental Distribution Plan, the value for Round One was set at \$500 million.

In addition to providing the formula, the Seafood Neutrals’ plan included a recommendation that if a balance remained in the SCP fund after the first Supplemental Distribution, the Seafood Neutrals, along with the Claims Administrator, DHECC, Class Counsel and BP would determine whether and when additional distributions should be made to eligible claimants.

- **Recommendation for Additional Supplemental Distributions**

Based on the processing of Seafood claims over the course of the past year, the Claims Administrator will seek Court Approval for two additional rounds of Supplemental Distributions, a “Supplemental Distribution Round Two” followed by a “Residual Distribution.” The Supplemental Distribution Round Two would address two populations: (1) claimants with SCP claims finalized after the Claims Administrator began Supplemental Distribution Round One, and (2) claimants requiring a true-up on the awards included in Supplemental Distribution Round One. Subsequently, the Residual Distribution would award the remaining balance of SCP funds to any eligible claimant who participated in Supplemental Distribution Round One and/or Supplemental Distribution Round Two using the same *pro rata* distribution. In this way, the SCP Fund would be fully distributed to eligible claimants with each claimant being paid the same pro-rata amount based on their eligible awards as outlined by the Seafood Neutrals’ plan.

- 1. Supplemental Distribution Round Two.**

As of December 14, 2015, we have approximately 300 claimants who would participate in Supplemental Distribution Round Two at an aggregate supplemental award amount of approximately \$15 million. These are claimants whose claims were resolved subsequent to the calculation of the Supplemental Round One that began in December 2014. Approximately 350 claimants remain in process as of December 14, 2015. Claimants from this sub-population will participate in the Supplemental Distribution Round Two only if their additional claims are determined to be eligible. We estimate that if all of these claimants ultimately participate, the value of their Supplemental Distribution Round Two award would be approximately \$13 million.

The second part of the Supplemental Distribution Population Round Two, the True-Up Population, consists of approximately 100 claimants with a Supplemental Distribution Round Two value of approximately \$1 million. These are claimants who require compensation for various issues identified subsequent to the calculation of the Supplemental Distribution Round One that began in December 2014 or were omitted from the Supplemental Distribution Round One calculations that began in December 2014 because of some unique aspect to their claim. Therefore, the total amount required to execute Supplemental Distribution Round Two ranges from \$16 to \$29 million depending on how many remaining in process claims are finalized as eligible claims.

For the Supplemental Distribution Round Two, we recommend using the same G and N values used for the first Round of the Supplemental Distribution. This will ensure that all claimants prior to the

final Residual Distribution have been compensated at the same pro rata amount.¹ For claimants participating in the Supplemental Distribution Round Two, the claimant specific “g” and “n” values will re-calculated to account for only those claims, or portion of those claims, that require a true-up following the Supplemental Distribution Round One population set in December 2014.

2. Residual Distribution.

After the completion of Supplemental Distributions Round One and Two, we recommend a Residual Distribution to proportionately divide the remainder of the SCP Fund. The following conditions affect the aggregate balance of the remaining SCP Fund and must be resolved prior to a Residual Distribution:

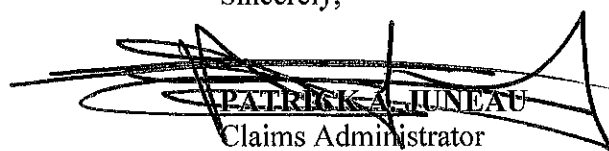
1. Resolution of the remaining In Process Seafood Claim population and any related open holds or appeals processes, including both Round One and Round Two disbursements;
2. Confirmation of the Transition Payment Credit Amount outlined in Section 4.2.7 of the Settlement Agreement; and
3. All Clawback motions decided by the Court and judgments collected or determined to be uncollectable.

Based on the existing Court approved Supplemental Distribution plan, we recommend that a Residual Distribution proceed using the same *pro rata* distribution detailed above. The values of D, G, and N will be adjusted with **D** being total funds remaining in the SCP subsequent to the completion of Supplemental Distribution Rounds One and Two and the True Up Distribution, **G** will be the sum of g values from all eligible claimants, and **N** will be the sum of n values from all eligible claimants. To ensure the exact amount remaining in the SCP Fund is distributed in the Residual Distribution, a new variable R will be added to the Residual Distribution formula. R will be a percentage reduction to claimant's awards to account for the population of claimants who remain in a \$0 Pay position in the Residual Distribution. We estimate the funds remaining for the Residual Distribution to be approximately \$600 million, after the Supplemental Distributions Round One and Two. If approved, an estimated population of 5,500 distinct claimants who participated in Supplemental Distribution Rounds One and Two would receive these remaining funds.

The Claims Administrator will consult with the Seafood Neutrals, Class Counsel, and BP to ensure all parties agree regarding whether all necessary conditions have been met before disbursing the Residual Distribution. Likewise, the Claims Administrator will consult with the Seafood Neutrals, Class Counsel, and BP to ensure all parties agree regarding the amount remaining in the Seafood Fund before disbursing the Residual Distribution.

¹ Pursuant to the Supplemental Round One Distribution formula, $(g/G)(D + N) - n = d$, and using agreed upon values for G, D, and N, the formula results in a payment of \$.41 for every dollar of claimant's initial award. Accordingly, this approach will create a consistent award level of \$1.41 for each claimant prior to the final Residual Distribution.

Sincerely,



PATRICK A. JUNEAU
Claims Administrator

CC: John W. Perry Jr.
Daniel J. Balhoff
Randi S. Ellis