

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

ALLAPATTAH SERVICES, INC.,)	NO. 91-0986-CIV-GOLD/SIMONTON
et al.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
EXXON CORPORATION,)	
)	
Defendant.)	

**STEARNS WEAVER’S PETITION FOR
AN INTERMEDIATE DISTRIBUTION OF ATTORNEYS’ FEES**

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. (“Stearns Weaver”) respectfully petitions the Court for an intermediate distribution of attorneys’ fees as provided for in the Court’s Order on Petitions for an Award of Attorneys’ Fees, Costs, and Reimbursable Expenses and for Incentive Awards to Named Plaintiffs (the “Order”). 454 F. Supp. 2d 1185.

MEMORANDUM OF LAW

1. Introduction

As the Court well knows, this lawsuit commenced in 1991, and after extensive pretrial work, two trials, appeals to the Eleventh Circuit and the United States Supreme Court, and the beginning phases of a laborious and contentious claims process, the Class entered into a settlement with Exxon Corporation pursuant to which Exxon transferred \$1.075 billion in satisfaction of all claims.

In July 2006, upon consideration of the petitions presented and arguments made by the five firms seeking an award of attorneys' fees for the work performed in this case,^{1/} the Court issued a lengthy decision in which the Court found that "Class Counsel's performance establishes the highest level of achievement" and "the result obtained in this case is truly extraordinary." Order at 35, 36. The Court awarded 31 1/3% of the common fund created by the Settlement in this case to Class Counsel collectively, for a total attorneys' fee of \$325,380,997. Of this amount, the Court awarded Stearns Weaver a fee of \$247,289,557.

The Court ordered that one-half of Stearns Weaver's fee, or \$123,644,779, was to be paid then, as well as all of the fees due to the other firms who had provided services to the Class.^{2/} In recognition of the ongoing work remaining to be performed in the claims administration process, the need to maintain adequate reserves to generate interest for payment of claims administration expenses, and Stearns Weaver's status as the "sole remaining Class Counsel," Order at 104, the Court stated that it would "permit Stearns Weaver to file for an intermediate additional distribution of their remaining attorneys' fee when more than one-half of the total Class Members have received their distributions,

^{1/}The fee petitions initially were filed on or about August 15, 2005. An evidentiary hearing was originally scheduled for December 19, 2005, but this hearing was postponed due to the pending process for approval of the settlement with Exxon Corporation. Supplemental petitions were filed in April 2006, and the evidentiary hearing took place on May 3, 25 and 26, 2006.

^{2/}Before obtaining his fee, Gerald Bowen is required to comply with certain requirements, which still have not been satisfied. Accordingly, the fee to Mr. Bowen remains payable as of the date of filing of this Petition.

provided that there are sufficient interest funds and reserves generated at that time to pay the remaining costs of the Claims Administration Process.”^{3/} *Id.* at 104-105.

2. Discussion

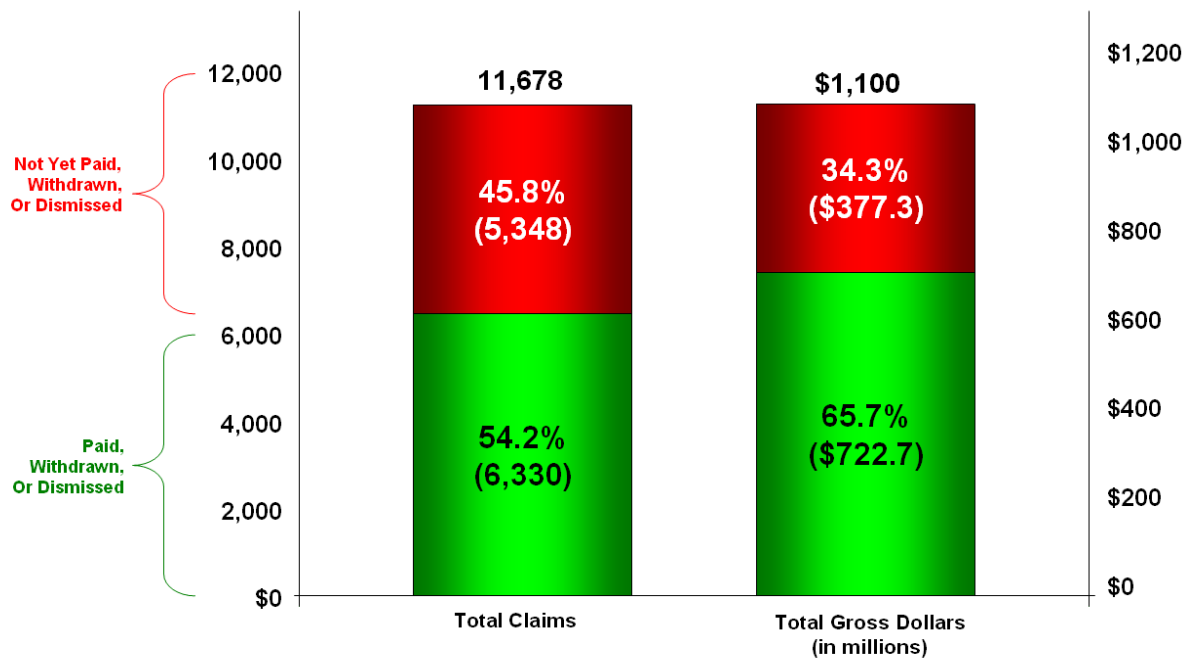
As set forth above, this Court has already determined Stearns Weaver’s entitlement to attorneys’ fees and the magnitude of those fees. The sole issue presented herein is whether the requirements established by the Court for an intermediate additional distribution have been satisfied. In light of the fact that more than 50% of claimants have been paid (or their claims withdrawn or dismissed), that more than 65% of the dollars owed to claimants have been paid, and that there are more than sufficient funds and reserves to pay the remaining expenses of the claims administration process, Stearns Weaver respectfully submits that an intermediate distribution in the amount of one half of the remaining unpaid fees (\$61,822,389) should be made to Stearns Weaver at this time. This amount matches Stearns Weaver’s current fee to the work it has performed, and leaves a substantial incentive for the timely resolution of the claims administration process.

^{3/}The Court also addressed the issue of interest on the withheld fees. Stearns Weaver defers a request for interest at this time and will petition for interest, as appropriate, at a later time.

A. More Than 50% of Claims Have Been Fully Resolved

The Court's benchmark for Stearns Weaver's eligibility for an intermediate fee distribution, "when more than one-half of the total Class Members have received their distributions," has been achieved. As of July 18, 2007, 54.2% of claimants have achieved this standard, representing 65.7% of the total dollar value of all claims. The following graph, also attached as Exhibit A, depicts this progress in green^{4/}:

54.2% OF ALL CLAIMS (65.7% BY DOLLARS) ARE FULLY RESOLVED (i.e., Paid, Withdrawn, or Dismissed)

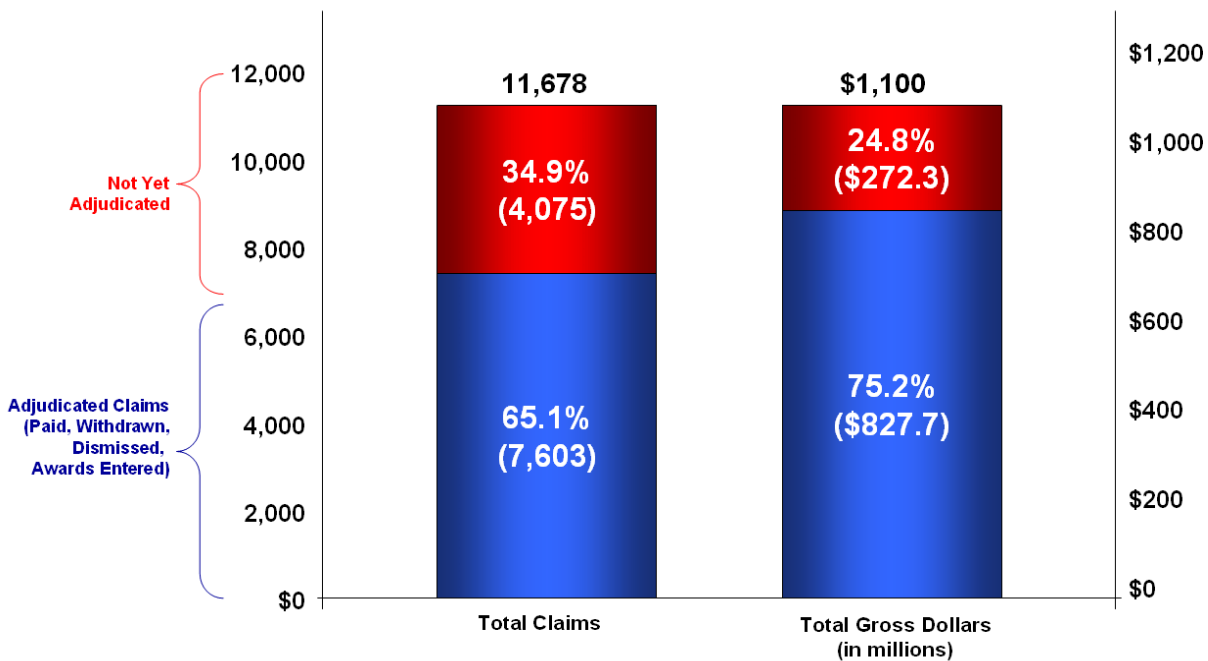


Statistics as of July 18, 2007

^{4/}This information also is reflected on Exhibits G and H, which depict the statistics in the format we have been presenting to the Court on a periodic basis.

Moreover, when all adjudicated claims are considered, the percentage rises to 65.1% (75.2% by dollars), as reflected in the following chart in blue (also attached as Exhibit B). Because this statistic reflects all claims that have been fully adjudicated and are eligible for payment upon such time as the claimant supplies the necessary paperwork and resolves independent issues with third party claims to payment, it provides a more accurate indicator of the success of the claims administration process. Indeed, since the intent of the Court's order was to incentivize our ongoing work, this is the appropriate measure of our performance.

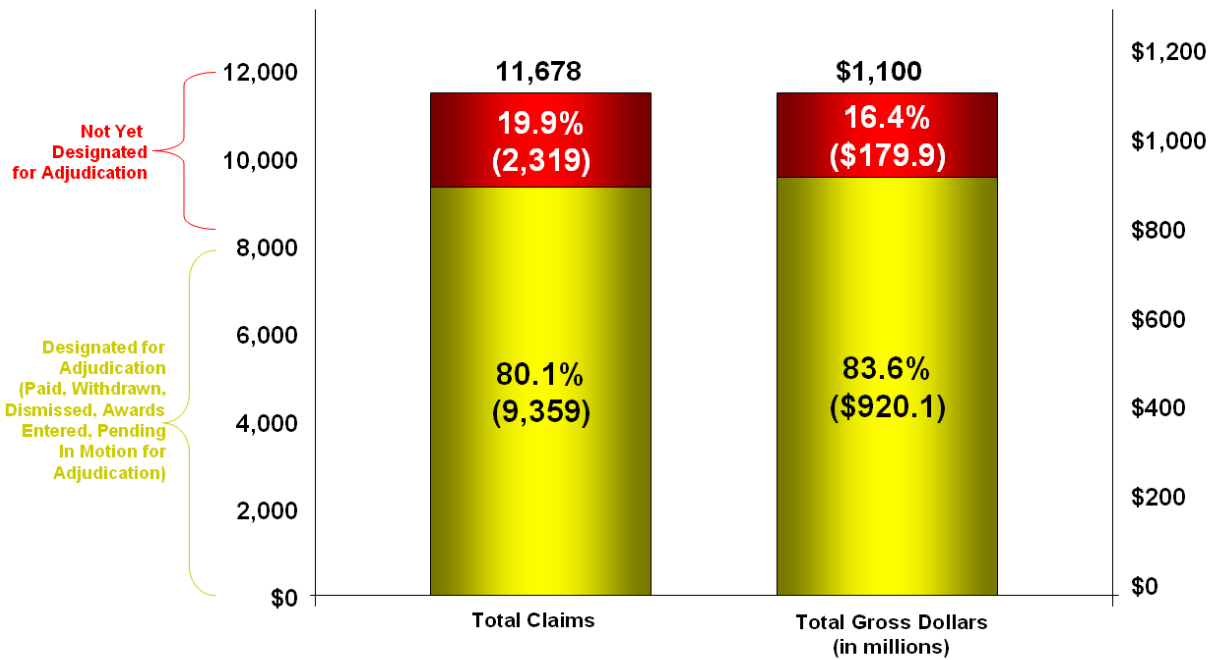
65.1% (75.2% BY DOLLAR) HAVE BEEN ADJUDICATED



Statistics as of July 18, 2007

Another key indicator of progress includes all claims that are pending in motions for adjudication, which are in a well-established pipeline towards resolution. As reflected in the following graph in yellow (also attached as Exhibit C), 80.1% of claimants (83.6% by dollars) fall within this category. The vast majority of these claims will be paid, withdrawn, or dismissed within the next 3-6 months.

80.1% (83.6% BY DOLLARS) HAVE BEEN PRESENTED TO THE SPECIAL MASTER FOR CONSIDERATION



Statistics as of July 18, 2007

The charts attached as Exhibits D and E depict the substantial progress made in each of these three categories since the Court's July 6, 2006 Order. Exhibit D charts the increase in the number of Paid/Withdrawn claims (the green line), Allowed claims (the blue line), and Advanced claims (the yellow line) in the period from August 2006 to July 2007.

It also depicts the substantial decrease in the number of claims remaining to be designated for adjudication (the red line).

Exhibit E charts the same three categories by dollars, and reflects that since August 2006, the total gross value of Paid claims (the green line) has increased from \$0 to \$722.7 million; the total gross value of Allowed claims (the blue line) has increased from \$276.5 million to \$827.8 million; and the total gross value of Advanced claims (the yellow line) has increased from \$610.3 million to \$920.1 million. Over this same period, the total gross value of claims remaining to be designated for adjudication has dropped from \$489.7 million to just \$179.9 million.

The next chart, Exhibit F, provides the Court with insight into the work remaining to be done. Of the 2,319 claims remaining to be designated for adjudication (approximately 19.9% of total claims), work on the large majority has been commenced and many such claims are close to being ready for designation in a motion for adjudication. Just 643 claims, 5.5% of all claims, remain to be assigned to one of Stearns Weaver's attorneys for processing. The vast majority of these are either claims that appear to be invalid or those to which Exxon asserted a bankruptcy objection and for which we had been awaiting the possibility of identifying with States' Counsel a compromise to avoid the need for claimants to reopen bankruptcies. Now that this possibility has been set aside and we have commenced the process of advising claimants of the steps they need to take within their bankruptcy proceedings, we anticipate that all of these claims will be under way within the next 3-4 months.

It should hopefully be clear at this point that this firm has invested the resources, employed the staff, and equipped that staff with the best of tools to complete the entire

process expeditiously. We are proud of the substantial progress that has been achieved in the last year,^{5/} believe it merits the intermediate fee distribution sought herein, and assure the Court that there will be no respite from the vigor of our work.

B. Sufficient Reserves Exist to Permit an Intermediate Distribution

As anticipated, interest on the Settlement Fund has added more than \$60 million to sustain the costs of the claims process and ensure that the 5% reserve held back for each claim can be paid in full at the end of the process. The Settlement Fund has been well invested in a favorable interest rate environment, with maturities matched to cash outflows. More than sufficient reserves have been generated, in excess of expenses, to permit an intermediate distribution of funds to Stearns Weaver.

As of July 25, 2007, the obligations of the fund are as follows:

<u>ESTIMATED REMAINING FIXED OBLIGATIONS</u>	
Net payments to remaining claimants (assuming all establish entitlement in full)	\$ 232,528,689
Tax payments remaining	\$ 5,440,000
Administrative expenses remaining	\$ 7,135,838
Unpaid Class Counsel Fees	\$ 136,699,678
Maximum Class Counsel Expenses	<u>\$ 800,000</u>
TOTAL ESTIMATED FIXED OBLIGATIONS	\$ 382,604,205
<u>ESTIMATED CONTINGENT OBLIGATIONS (SUBJECT TO DISTRICT COURT RULINGS)</u>	
Refund to claimants of 5% withhold	\$ 55,000,000
Refund to claimants of interest on 5% withhold	\$ 1,948,000
Class Counsel Interest	\$ 7,919,000
Forfeited fee award	\$ 5,336,428
Forfeited incentive award	<u>\$ 1,776,667</u>
TOTAL ESTIMATED CONTINGENT OBLIGATIONS	\$ 71,980,095

^{5/}Of course, this progress could not have been achieved without the diligence of the other participants in the process, including the Court, the Special Master, the Claims Administrator, States' Counsel, and the banking and accounting professionals who have been instrumental to date.

After accounting for payment of all of the fixed obligations and all of the contingent obligations listed above, interest earned on the Settlement Fund is expected to leave, at a minimum, a surplus of \$11.5 million to \$18.6 million (depending on the allocation of forfeitures) to be held by the States for the benefit of dealers who did not participate in the claims process. See Exhibit I, financial projection prepared by Kip Rabin (adviser to the Special Master and the Settlement Fund Committee). Significantly, this analysis assumes the intermediate distribution to Stearns Weaver of \$62 million in August 2007 (sought in this motion), an additional \$30 million intermediate distribution in December 2007, and the balance of \$32 million when the process is complete (i.e., the timing of these distributions was taken into account when the projected interest income was calculated). The analysis also assumes interest to Stearns Weaver on the withheld fees.

Because this surplus will be generated even if the Fund's contingent obligations of almost \$72 million are paid, there is a substantial cushion ensuring sufficient funds will be available for the payment of the remaining claims. Moreover, this analysis assumes that all claims will be allowed at 100%, i.e., it assumes there will be no abandoned, disallowed, or discounted claims (a scenario which we know will be incorrect, but cannot yet calculate).^{6/} It also assumes that the Fund will not be successful in challenging the IRS's tax rulings (which could generate an additional net \$13 million for the Fund).

^{6/} The financial model for the settlement assumed an aggregate total gross claim value of \$1.1 billion. Class Counsel's calculator, which is continually updated on a real time basis as claims are processed, currently calculates a total claim value of \$1.098 billion, just under the \$1.1 billion initially estimated, assuming all remaining claims are approved in full.

Likewise, from a cash flow standpoint, the Fund has ample liquid funds to make this distribution without liquidating any of the treasury obligations held (the income from which is included in Mr. Rabin's cash flow analysis). As of the close of business on July 31, 2007, the cash balance of the fund invested in JPMorgan's Money Market Account will exceed \$110 million (in addition to approximately \$341 million in treasuries and accrued income). Additional maturities will be reached in upcoming months, including a maturity and interest payment of more than \$81 million in August. Moreover, all maturities through January 2008 have unrealized gains.

Accordingly, the financial condition of the Fund is strong, there is a substantial reserve, and the conditions for an interim payment have been met.

C. Investment of the Settlement Fund

After a lengthy competitive bidding process, this Court appointed JP Morgan Chase as the Depository Institution for the Settlement Fund. For a short period following Exxon's satisfaction of its payment obligation of \$1.075 billion, the Settlement Fund established at the Depository Institution was held in short term, liquid, risk-free investments (to the extent US Government obligations are risk free).

The Special Master thereafter established the Allapattah Settlement Fund Committee which met, employed additional financial advisors and accountants, and undertook an evaluation of an investment strategy for the Settlement Fund that would fit within the most prudent constraints expected of funds invested under the auspices of the District Court. The Committee determined that all investments should present no credit risk (limited to instruments of the United States Government or like investments for short term liquidity

purposes) and that the investment strategy should avoid interest rate risk – that is, the Settlement Fund should not speculate on the possible future movement of interest rates.

Fortuitously, the interest rate environment existing at the time of these investment decisions permitted the Committee to fix rates at a level which would guarantee that the total fund would increase by interest income in excess of \$60 million, an amount known to be sufficient to fully fund the cost of claims administration, fully fund the 5% reserve together with interest, and leave a residual of some magnitude which, pursuant to the Settlement Agreement, would flow to the participating state governments.

The Committee determined that it should not speculate on the possibility that future interest rates could be higher, but should avoid the risk that future rates could be lower. To avoid the risk of interest rate fluctuations, the Committee established a schedule of likely cash flows over the claims process (i.e., the amount of payments going out to claimants and others at any one time). The Committee directed the Depository Institution to enter into investments with maturities to match the expected rate of outgoing payments. On an ongoing basis, the Committee has monitored its expected cash flows with actual results, adjusted investment maturities to fit changing circumstances, and (where advisable) reinvested funds that were not paid out as estimated. The result is that the favorable interest rate that existed at the outset has been managed to insure that the Fund will meet all of its obligations and leave a substantial residual.

3. Conclusion

The Court's Order balanced the desire to provide an incentive for achieving the goals of the claims process with the propriety of awarding fees for work performed. We believe that at this time, the balance has shifted towards another interim payment. For the foregoing reasons, Stearns Weaver requests an intermediate distribution of attorneys' fees in the amount of \$61,822,389.

Respectfully submitted,

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By: _____
EUGENE E. STEARNS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via CM/ECF on this 26th day of July, 2007.

By: _____
EUGENE E. STEARNS

