

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
NO.: 91-0986-CIV-GOLD/SIMONTON
Special Master Thomas E. Scott**

ALLAPATTAH SERVICES, INC., et al.,)
)
Plaintiffs,)
)
v.)
)
EXXON CORPORATION,)
)
Defendant.)

RUSSELL A. CLINE,)
)
Plaintiff,)
)
vs.)
)
THE GARDEN CITY GROUP, INC.,)
)
Defendant.)

**CONSOLIDATED WITH
CASE NO.: 05-21338-CIV-GOLD /
SIMONTON**

**REPORT AND RECOMMENDATION REGARDING ADJUDICATION PROCEDURES
FOR CONFLICTING CLAIMS IN THE CLAIMS ADMINISTRATION PROCESS**

THIS CAUSE is before the Special Master pursuant to the Order Appointing Special Master [D.E. 1759]. In that Order, the Court directed the Special Master to “work with the parties to establish detailed procedures for the processing of dealer claims,” and “to set hearings, trials and other proceedings necessary to the resolution of claims.” See D.E. 1759, p. 2. Throughout the course of the Claims Administration Process, numerous procedures have been implemented for the effective and efficient processing and payment of claims. See D.E. 2010, D.E. 2390, D.E. 2556, D.E. 2858, D.E. 3087, D.E. 3652, D.E. 3997. The Special Master believes that the additional procedures outlined below will

continue the expeditious resolution of claims in the Claims Administration Process.

After evaluating the current status of the claims process, the nature of the claimant issues that remain to be resolved, and a number of additional matters related to the Settlement Fund, the Special Master met with Class counsel and States' counsel to discuss the procedures being utilized to adjudicate conflicting claims. Under the current system, conflicting claims are referred to mediation to afford the parties an opportunity to discuss and evaluate the merits of their claims without a binding determination by the Special Master or the District Court. The mediation process has been effective in helping to resolve a number of difficult claimant disputes arising out of a wide variety of circumstances.¹

However, in some instances, claimants have pursued baseless claims or failed to meaningfully participate in the mediation process altogether. In these cases, the resources of the Special Master, Class counsel, and the Settlement Fund have unnecessarily been diverted from the processing and payment of countless other claims. In addition, an increasing number of disputes appear to be better suited for resolution through what effectively would be cross motions for summary judgment. While the mediation process may continue to be utilized for a select number of disputes, the Special Master concludes, with the agreement of the parties to this process, that it is in the best interest of the Settlement Fund and the Class to resolve many of the remaining conflicts through a direct process of evidentiary hearings before the Special Master or through the procedures governing non-responsive claimants. Accordingly, the Special Master recommends that

¹ The Special Master commends Mediator, Bonnie L. Rippingille for her services to both the Court and the Class throughout the mediation process.

the District Court adopt the following claimant dispute adjudication procedures:

1. Upon Class counsel's filing of a motion for resolution of claimant disputes, the Special Master will issue an order outlining the procedures to be employed and the affected claimants' deadlines and responsibilities.
2. A questionnaire will be mailed to the affected claimants with the Special Master's order that must be completed and returned to the Office of the Special Master and the Claims Administrator by a pre-trial filing deadline. The questionnaire will be created through the joint efforts of Class counsel and States' counsel and approved by the Special Master. The questionnaire will require the conflicting claimants to outline their respective positions as to why they are entitled to the damage award for the station and gallons at issue.
3. A claimant must submit all contracts, receipts, bills, records, statements or any other documentation necessary to substantiate his claim of ownership against the conflicting party. These documents shall be attached to the questionnaire submitted to the Special Master and Claims Administrator.
4. Upon receipt of the Special Master's order, Class counsel will mail each affected claimant a copy of the order, a blank questionnaire, and a complete copy of the conflicting claimant's claim file.
5. Each claimant dispute will be scheduled for a pre-trial telephonic conference with the Special Master's clerk. Where appropriate, the Special Master's clerk will speak briefly with each claimant about the relative strengths and weaknesses of his or her position, and will explore whether the claimants can

reach an agreement. The clerk will also provide information and instructions regarding the upcoming hearing before the Special Master.

6. Before the hearing, States' counsel has the option of filing a position paper setting forth any information in States' counsel's possession or any objections that may be relevant to the threshold dealer/claimant identity issues presented in the conflict motion. States' counsel's decision to file a position paper, or to decline to file a position paper, will not waive States' counsel's right to raise any and all appropriate objections after the conflict is resolved and the remaining claim(s) are advanced on summary judgment.
7. Those claims that are not resolved as a result of the pre-trial conferences will proceed to telephonic hearings before the Special Master, which will be scheduled consecutively over the course of several days. If the Special Master determines the a dispute involves matters that are sufficiently complicated, and the amount of money at issue is sufficiently high, the Special Master may order the parties to be present for a hearing before the Special Master.
8. Whether the hearings are conducted telephonically or in person, the Special Master will have the discretion to issue an oral ruling at the hearing or to defer ruling for a subsequent written order.

RESPECTFULLY SUBMITTED in Miami, Florida this 4th day of September, 2007.


SPECIAL MASTER THOMAS E. SCOTT

Copies furnished to:
United States District Court Judge Alan S. Gold
All counsel of records