

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

ANNA Z. LINCOLN, ET. AL * **CIVIL ACTION NO.: 05-CV-4197**
 * **c/w 05-CV-4199 and 06-CV-5144**
 *
VERSUS * **SECTION "J"; MAGISTRATE: 3**
 *
 * **JUDGE: BARBIER**
 *
SHELL PIPELINE COMPANY, * **MAGISTRATE: KNOWLES**
L.P., ET. AL *
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**SPECIAL MASTER’S REPORT AND RECOMMENDATION
ON INDIVIDUAL ALLOCATIONS AND PROTOCOL
TO IMPLEMENT THE SETTLEMENT**

This Special Master’s Report And Recommendation On Individual Allocations and Protocol To Implement The Settlement is now presented to the Court for its review, analysis, consideration and approval.

I.

HISTORY OF THE LITIGATION

A. Background

Plaintiffs commenced these consolidated class actions against Defendant Shell Pipeline Company, L.P., (hereinafter “Shell”) based on the rupture and/or repair of a pipeline belonging to Shell which is located near the town of Nairn, Louisiana, in Plaquemines Parish, Louisiana. Shell’s pipeline ruptured during or following Hurricane Katrina on August 29, 2005, which resulted in the concomitant failure of the hurricane protection levee near Shell’s Nairn facility through which the Shell pipeline ran. This latter event resulted in extended water intrusion into the affected area.

A Settlement Agreement was executed by the parties to this litigation. On August 22, 2007, the Court preliminarily approved the class action settlement and class action certification for settlement purposes. On November 14, 2007, the Court gave final approval to the Settlement Agreement. As part of the Court's Order on August 22, 2007, the undersigned Special Master was appointed and certain duties and responsibilities were set forth including a duty to "... create the formulation of fair, equitable and reasonable procedures for the claims process, the allocation of the settlement to Participating Class Members and the distribution of the Settlement Fund . . ." See: Record Documents 27, 62 and 69. This Special Master's Report And Recommendation On Individual Allocations and Protocol To Implement The Settlement is being submitted in compliance with that mandate of the Court.

B. Timeliness/Geographical Limits Of The Class

To be considered for an allocation, each claimant must have filed a sworn proof-of-claim form on or before October 31, 2007. In addition, each proof-of-claim must concern property located within the defined geographical area of the class. See: Record Document 70-2 and 70-4.

Where an allocation recommendation of zero is made in this report, it is based on one or more of the following conclusions:¹

- 1) Proof-of-claim form did not involve property located within the defined geographical area of the class;
- 2) Proof-of-claim form was not timely filed and post marked by October 31,

¹ Each zero allocation category is designated by a different numerical code on Exhibit A and a listing of claimants in each code is found at Exhibits C through U.

2007;

- 3) Proof-of-claim form was submitted by an attorney and not by a claimant;
- 4) Proof-of-claim form had no schedule of damages attached;
- 5) Proof-of-claim form filed on behalf of a minor whose parent or parents received an allocation;
- 6) Proof-of-claim form only included a Schedule G claim and property was not in the Immediate Impact Zone;
- 7) Proof-of-claim form was not signed;
- 8) Claimed damages did not relate to Shell pipeline rupture;
- 9) Claimant received an allocation under a different claimant name or number;
- 10) Claimant did not own real property and made no claim concerning personal property related to Shell pipeline rupture;
- 11) Claimant did not own real property;
- 12) Proof-of-claim form related to marsh land which was outside the area affected by oil contamination;
- 13) Proof-of-claim form related to marsh for which there was no recover for salt marsh flooding;
- 14) Claim could not be made on behalf of a decedent's estate due to it being claimed by heirs of the decedent;
- 15) Proof-of-claim form did not state or set forth any damages.

II.

Protocol For Calculating Allocation Recommendations

The procedural history of this class action settlement was contained in the initial report of this Special Master filed with the Court on November 29, 2007. *See:* Record Document No. 70. As noted above, all persons wishing to be included as a class member were to submit sworn proof-of-claim forms on or before October 31, 2007. One thousand, one hundred ninety-six (1,196) proof-of-claim forms were filed and received by the Special Master. *See:* Exhibit A. Eight hundred forty-two (842) of those claimants have received an allocation recommendation and three hundred fifty-four (354) of these proof-of-claim forms have been rejected with no allocation recommendations being made to the Court. *See:* Exhibits B through U.

Of the claimants who will receive an allocation recommendation, all were confirmed to own real or personal property within the geographical confines of the settlement definition. Pursuant to the timely filed proof-of-claim forms, allocations were made according to submitted schedules using an allocated point system for each of the following areas:

- Schedule A:** Fear, Fright, Mental and/or Emotion Injuries
- Schedule B:** Business Loss
- Schedule C:** Damage to Real Property
- Schedule D:** Personal Property
- Schedule E:** Delayed Access Claim
- Schedule F:** Extraordinary Damage
- Schedule G:** Immediate Impact Zone

A fairness hearing was conducted by the Court on November 14, 2007. At that time, the Court considered and approved the overall fairness of the proposed settlement and the total settlement figure of \$5.5 million. *See*: Record Document No. 69. Subsequently, the Court approved the allocation methodology submitted by this Special Master. *See*: Record Document No. 70. Of the \$5.5 million total settlement, the Court permitted this Special Master to allocate 50% or \$2.75 million during this allocation phase of the case; thereby, reserving 50% or \$2.75 million for later use for the payment of various costs including attorneys' fees and administrative costs. Any remaining funds are to be distributed by the Court to the class members on a *pro rata* basis or to make a *cy pres* award.

The initial allocation phase of the case is now completed and this Special Master is requesting that the Court accept and approve the allocation recommendations as contained in Exhibit B.

Additionally, the following deadline dates for the remaining allocation process are submitted to the Court for approval:

- February 11, 2008:** Mailing of/postmark for each claimant's Allocation Letter from Special Master;
- March 12, 2008:** Mailing of/postmark for the filing of allocation objections from claimants to Special Master;
- March 26, 2008:** Mailing of /postmark for letters from Special Master to claimants scheduling objection hearings;
- April 2-11, 2008:** Objection hearings;
- May 5, 2008:** Filing deadline for claimants to file appeals with the Clerk of Court's office;

- May 9, 2008:** Deadline for filing Special Master's report to the Court on objection hearings;
- May 30, 2008:** Appeal hearings before the Court.

The 1,196 proof-of-claim forms have been analyzed by this Special Master.²

Exhibits explaining the allocation recommendations are attached hereto as follows:

- Exhibit A:** Spreadsheet listing all claimants who filed sworn proof-of-claim forms with assigned claimant number;³
- Exhibit B:** Spreadsheet listing all claimants who were awarded an allocation recommendation;
- Exhibits C through U:** Listing of claimants who were awarded a zero allocation recommendation based upon reasons set out therein;
- Exhibit V:** Allocation Letter to claimants;
- Exhibit W:** Rights form regarding filing of objection;⁴
- Exhibit X:** Form letter advising claimants of date of their objection hearing;
- Exhibit Y:** Form to be used by Special Master at objection hearings where claimants withdraw their objections;
- Exhibit Z:** Form to be used by Special Master at objection hearings explaining the rights of claimants to appeal to the Court;⁵

² Between December 3, 2007 and January 18, 2008, each of the 1,196 proof-of-claim forms was reviewed and analyzed pursuant to the methodology previously approved by this Court. The Special Master, two additional attorneys and a team of paralegals participated in the review process.

³ This exhibit will be filed under seal of court as will Exhibit B.

⁴ This rights form will appear on the back side of the page of the Allocation Letter (Exhibit V) so that only one sheet of paper will be mailed to each claimant.

⁵ This form will be hand delivered by the Special Master to each claimant at the conclusion of the objection hearing in those instances where the claimant does not withdraw his/her objection. The Special Master will rule on and make a decision on each objection immediately after the conclusion of each hearing and on the recorded/written record.

Exhibit AA: Examples of several claimants' Allocation Letters.

The allocation protocol previously approved by the Court mandates that all claims be evaluated identically. In doing so, the Special Master and his staff gathered information from the proof-of-claim forms and entered it onto work sheets using the established points system. *See:* Record Document No. 70-10.

Each work sheet resulted in a point score for each claimant. The information and point score were then taken from each claimant work sheet and entered into a computerized database designed to capture and display all of the facts pertaining to each claimant and his or her point score. This objective allocation process eliminated any bias in the calculations and avoided any claimant being treated differently from others similarly situated. Thus, the methodology used enhanced consistency, efficiency and accuracy of calculations and allocations.

A combination of factors was used in arriving at a point score and ultimate allocation for each claimant. Each proof-of-claim form was evaluated in light of the submitted Schedules A through G and points were awarded as outlined in each schedule and corresponding work sheet.

Each claimant's score was tallied and then all of the claimants' scores were added together. The total for all points awarded to all claimants was 67,769. This figure was then divided into the money to be allocated, which was \$2,550,000.⁶ This method was used to calculate the dollar value for each point, which was determined to be \$37.63 per

⁶ This figure was derived by subtracting the \$200,000 to be awarded for damages suffered by claimants in the Immediate Impact Zone from the \$2,750,000 to be allocated during this phase of the allocation process. *See:* Record Document 72, December 3, 2007 Order of the Court.

point. This per point amount was then multiplied by the total number of points awarded to each respective claimant to arrive at the allocation amount for each of the 842 claimants who received an allocation. *See: Exhibit B.*⁷

Separate, apart and in addition to the above points allocation protocol, a special fund of not less than \$200,000 was set aside. This was done pursuant to the Settlement Agreement and Orders of this Court wherein a specific area of damages entitled Immediate Impact Zone was created. *See: Record Documents 62 and 69.* Claimants seeking damages within this zone were required to fill out and attach a Schedule G to their proof-of-claim forms if they wished to participate in this \$200,000 damage fund.⁸ Damages in this zone were different from the other damages awarded under Schedules A through F. Immediate Impact Zone damages were suffered by claimants as a result of the efforts and work of Shell in repairing the ruptured pipeline and levee breach. Because Shell was required to re-route its pipeline, the property of some claimants was used for that purpose. This is also an item of damages set out in Schedule G. Because the set aside of \$200,000 was a minimum, any additional Schedule G damages suffered by a claimant above this \$200,000 resulted in an award of additional points on his or her Schedule G. As such, a Schedule G claimant could have a monetary award and a points award. The Immediate Impact Zone damages, as defined by the Settlement Agreement, consist of four (4) categories. They are:

⁷ Exhibit B is a computer printout of points and dollars awarded to each of the 842 claimants who received an allocation. Said Exhibit will be filed under seal of court.

⁸ The proof-of-claim forms used in this litigation contained seven schedules (A through G) wherein each schedule pertained to a specific set or category of damages. *See: Record Document 62, Exhibit BB.*

- a. Claimants who had property on the western or marsh side of the back levee destroyed, altered or dredged in order for Shell and/or its contractors to gain barge access to the ruptured pipeline, in an amount not less than \$75,000;
- b. Claimants who owned land west of the back levee that was used by Shell and/or its contractors as a staging or work area or access corridor during the remediation and repair of the ruptured pipeline, in an amount not less than \$25,000;
- c. Claimants who owned land on the east or landward side of the back levee that was used as a staging or work area or access corridor during the remediation and repair of the ruptured pipeline, in an amount not less than \$50,000; and,
- d. Claimants who own land on which the pipeline was re-routed or reconfigured outside the prior Shell servitude, in an amount not less than \$50,000.

During the remainder of this allocation process, a number of forms will be used by the Special Master. Court approval of the form and content of these documents will be required. Those forms are attached hereto as Exhibits V through Z.

III.

RECOMMENDATIONS OF SPECIAL MASTER

It is respectfully requested that the Court accept and approve the allocation recommendations assigned to each claimant/member of the class in the amounts reflected in Exhibit B. Request is made that the zero allocations reflected in Exhibits C through U likewise be accepted and approved. The forms that will be used by the Special Master during the remaining allocation processes consisting of Exhibits V through Z are submitted for approval by the Court. Further, Exhibits A and B are to be filed under seal of the Court.

Finally, it is recommended that the following dates regarding the remaining

allocation proceedings be as follows:

- February 11, 2008:** Mailing of/postmark for each claimant's Allocation Letter from Special Master;
- March 12, 2008:** Mailing of/postmark for the filing of allocation objections from claimants to Special Master;
- March 26, 2008:** Mailing of /postmark for letters from Special Master to claimants scheduling objection hearings;
- April 2-11, 2008:** Objection hearings to be held in Courtroom C-311 in the Hale Boggs Federal Building, 500 Poydras Street, New Orleans, Louisiana 70130;
- May 5, 2008:** Filing deadline for claimants to file appeals with the Clerk of Court's office;
- May 9, 2008:** Deadline for filing Special Master's report to the Court on objection hearings;
- May 30, 2008:** Appeal hearings before the Court in Courtroom C-268 in the Hale Boggs Federal Building, 500 Poydras Street, New Orleans, Louisiana 70130;

Respectfully submitted,

s/ L. J. Hymel

L. J. Hymel

Bar Role No. 07137

Court Appointed Special Master

10602 Coursey Boulevard

Baton Rouge, LA 70816

Telephone: 225/281-8118

Facsimile: 225/281-8119

E-Mail: ljhymel@hymeldavis.com

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2008, a copy of the foregoing Special Master's Report and Recommendation on Individual Allocations and Protocol to Implement the Settlement was electronically filed with the Clerk of Court using the CM/ECF system which will send a notice of electronic filing to the following: Richard J. Arsenault, Charles Joseph Ballay, Stanley Paul Baudin, Scott R. Bickford, Philip Bohrer, Stephen Charles Braud, Lawrence J. Centola, III, Ardian Anthony Colon, Jr., Spencer R. Doody, Mary S. Johnson, Jill Thompson Losch, John Robert Martzell, Thomas M. McNamara, Patrick Wayne Pendley, Roy J. Rodney, Jr., Christopher H. Sherwood and John Randall Whaley. I further certify that I have mailed this filing to the following non-CM/ECF participants: Bourgeois and Bennett, LLC, Court Appointed Disbursing Agent, Attention: Gwen Hankenhof and Tim Scandurro.

Baton Rouge, Louisiana, this 28th day of January, 2008.

s/ L. J. Hymel

L. J. Hymel

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VERSUS	*	SECTION "J"; MAGISTRATE: 3
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	*	JUDGE: BARBIER
	*	
SHELL PIPELINE COMPANY, L.P., ET. AL	*	MAGISTRATE: KNOWLES
	*	
	*	

ORDER

Considering the foregoing Special Master's Report And Recommendation On Individual Allocations and Protocol To Implement The Settlement;

IT IS ORDERED that the Special Master's Report And Recommendation On Individual Allocations and Protocol To Implement The Settlement is hereby accepted and approved whereby the allocation recommendations assigned to each claimant/member of the class in the amounts reflected in Exhibit B attached to said report are accepted and approved and the zero allocations reflected in Exhibits C through U are accepted and approved.

IT IS FURTHER ORDERED that the forms attached to the Special Master's Report herein and identified as Exhibits V through Z are hereby approved for use by the Special Master during the remaining phases of this litigation.

IT IS FURTHER ORDERED that Exhibits A and B be filed under seal of this Court and are to remain so until further Orders of this Court.

IT IS FURTHER ORDERED that the dates and deadlines regarding the

remaining allocation proceedings are set as follows:

- February 11, 2008:** Mailing of/postmark for each claimants' Allocation Letter from Special Master;
- March 12, 2008:** Mailing of/postmark for the filing of allocation objections from claimants to Special Master;
- March 26, 2008:** Mailing of /postmark for letters from Special Master to claimants scheduling objection hearings;
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DONE AND SIGNED this _____ day of _____, 2008, at New Orleans, Louisiana.

CARL J. BARBIER
UNITES STATES DISTRICT JUDGE
EASTERN DISTRICT OF LOUISIANA