

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-5154
	*	
VERSUS	*	SECTION "J"; MAGISTRATE: 3
	*	
	*	JUDGE: BARBIER
	*	
SHELL PIPELINE COMPANY, L.P., ET AL	*	MAGISTRATE: KNOWLES
	*	

ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT AND CERTIFYING
CLASS ACTION FOR SETTLEMENT PURPOSES

Upon consideration of the Joint Motion for Preliminary Approval of Class Action Settlement and finding that the proposed Settlement Class fulfills all requirements for certification, in the settlement context only, and that the proposed Settlement Agreement meets the applicable criteria for preliminary approval, the Court hereby finds and ORDERS as follows:

1. Settlement Class. The Court has considered the submissions of the parties with regard to class certification for settlement purposes only and has analyzed the proposed Settlement Class pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure. The Court finds that:

- a. *Numerosity*. The Settlement Class consists of over 1,000 persons or legal entities. Thus, the numerosity requirement of Federal Rule of Civil Procedure 23(a)(1) is satisfied.
- b. *Commonality*. Common questions of law and fact with regard to Defendant's liability, if any, and Settlement Class Members' damages

are present. These common issues include, but are not limited to, whether Defendant is liable and the nature, extent and duration of the oil contamination alleged to have occurred as a result of the Nairn levee breach, rupture of Shell's crude oil pipeline, and pipeline repair and relocation efforts following Hurricane Katrina. Thus, the commonality requirement of Federal Rule of Civil Procedure 23(a)(2) is satisfied.

- c. *Typicality.* The named Plaintiffs and Proposed Class Representatives allege that Defendant is liable for releasing hydrocarbons into the surrounding community as a result of the Shell Nairn pipeline rupture. Further, the Proposed Class Representatives allege that Shell is liable for the levee breach where the pipeline traverses the levee. The Plaintiffs seek recovery for damage to their immovable, movable, real or personal property, including devaluation, contamination, loss of use, delayed access due to secondary flooding of the affected area, business interruption, emotional distress and inconvenience resulting from their property damage. The claims of all Proposed Settlement Class Representatives are typical of the claims on behalf of the absent settlement class members that are set forth in the Settlement Agreement. Thus, the typicality requirement of Federal Rule of Civil Procedure 23(a)(3) is satisfied.
- d. *Adequate Representation in the Settlement Context.* The proposed Class Representatives' interests do not conflict with absent Settlement

Class Members and the Class Representatives' interests are co-extensive with those of the absent Settlement Class Members.

Additionally, this Court recognizes the experience and expertise of Settlement Class Counsel and finds that the Settlement Class Counsel have, and will, represent the interests of absent settlement class members. Thus, the adequacy requirement of Federal Rule of Civil Procedure 23(a)(4) is satisfied.

e. *Predominance of Common Issues.* Some of the issues common to all Settlement Class Members include:

- i. Whether Defendant is liable;
- ii. Whether Defendant is immune from liability for its pipeline rupture;
- iii. Whether Defendant is immune from liability for the Nairn levee breach;
- iv. The nature, extent and duration of oil contamination alleged to have occurred as a result of Defendant's pipeline rupture;
- v. The nature, extent and duration of secondary or extended flooding as a result of the Nairn levee breach;

Those common issues deserve one answer for all Settlement Class Members and predominate over individual issues.

f. *Superiority of the Class Action Mechanism.* The class action mechanism is ideally suited for treatment of the settlement of this matter. Class certification for settlement purposes promotes efficiency

and uniformity of judgment because the many Settlement Class Members will not be forced to separately pursue claims or execute settlements in multiple courts around the State of Louisiana. Further, this settlement allows compensation for many Settlement Class Members whose claims would likely be considered “negative value.”

- g. This Court further finds that there is no indication of any class members having an interest in individually controlling the prosecution of separate actions, that there is no indication that the extent and nature of litigation commenced by other members of the class impede certification here, that it is desirable to concentrate all claims in this Court, and that there will be only minimal difficulties encountered in the management of this settlement class action.

Therefore, this Court having found that all of the requirements of Rule 23(a) and (b)(3) have been satisfied, and that the putative class members are objectively identifiable, the Court hereby certifies as a Settlement Class the following class of plaintiffs:

All persons, entities, owners of property, businesses or residents who or which sustained damage to their immovable, movable, real or personal property and/or who suffered emotional damages or mental anguish, including fear, fright, worry, emotional distress and inconvenience resulting from such damage, including all individuals and businesses included in the *Lincoln, Frelich I, as modified by Frelich II* Complaints and *Petrovich* Petitions, arising out of or in any way related to or resulting from the rupture or repair of Shell’s Nairn Pipeline and/or the failure of the hurricane protection levee near Shell’s Nairn facility through which the Shell Pipeline was placed, including without limitation,

any such damage or damages arising out of or in any way related to or resulting from the release of crude oil, petroleum, fuel oil, hydrocarbons, or any other materials or substances from Shell's Nairn pipeline rupture or from Shell's Nairn facility during or following Hurricane Katrina on August 29, 2005, or due to flooding, re-flooding or salt water intrusion from the breach of the hurricane protection levee on the west side of Nairn at its intersection with Shell's Delta 20 pipeline following Hurricanes Katrina and Rita, (hereinafter, the "Class".)

The Settlement Class, as certified for settlement purposes, is further defined to include only those persons meeting the criteria in the paragraph above within the following geographic boundary:

the area between the Mississippi River to the east (the "Mississippi River eastern boundary"), the 40 Arpent line to the west or actual ownership of land by class members extending westward if farther than the 40 Arpent Line (the "40 Arpent Line western boundary"), the northern or upriver levee of the Doullut Canal to the south extending out in a straight line to the 40 Arpent Line western boundary and to the Mississippi River eastern boundary (in the vicinity of the Empire High Rise Bridge), and the southern property line of the Freeport golf course to the north extending out in a straight line to the 40 Arpent Line western boundary and the Mississippi River eastern boundary (including Homeplace, Nairn and Empire).

2. Class Representatives; Class Counsel. Frank Frelich, Clara Frelich, Kevin Frelich, Greta Frelich, Leo Roth, Vincent Frelich, Sr., Janice Ferach, Robin Gauthier, Hewitt Gauthier, Anna Zibilich Lincoln, John J. Pennison, Jr., Christopher D. Johnson, Harold J. Treadaway, Jr., and Empire Inn, L.L.C. are designated as Class Representatives. Philip Bohrer, Bohrer Law Firm, L.L.C., John Randall Whaley and Richard J. Arsenault, Neblett, Beard & Arsenault, Patrick W. Pendley, Pendley, Baudin & Coffin, L.L.P., Scott R. Bickford and Lawrence J. Centola, III, Martzell & Bickford,

and Charles J. Ballay, Ballay, Braud & Colon, are found to meet the requirements of Federal Rule of Civil Procedure 23(g) and are designated as Settlement Class Counsel.

3. Preliminary Approval of Settlement. The proposed settlement between the Class Members and Defendant appears, upon preliminary review, to be within the range of reasonableness to support possible final approval and accordingly shall be submitted to the Class Members for their consideration and for a hearing under Federal Rule of Civil Procedure 23(e). The terms of the settlement are set forth in the Settlement Agreement, which is hereby approved and made a part of this Order;

4. Final Fairness Hearing. A Final Fairness Hearing will be held before the Honorable Carl J. Barbier, Judge, at the United States courthouse for the Eastern District of Louisiana at 8:00 a.m. on **November 14, 2007**, to consider whether the Settlement should be given final approval.

- a. Objections by Class Members (who do not timely elect to exclude themselves from the Class) to the proposed Settlement will be considered if filed in writing and in compliance with the Detailed Notice and postmarked on or before October 31, 2007;
- b. Any Person who objects to the Settlement, the judgment to be entered thereon, or the award of attorneys' fees and costs, or who otherwise wishes to be heard by the Court on any aspect of this Settlement, may appear in person or by his or her attorney, at his or her own expense, at the Fairness Hearing, and present, as the Court allows, any evidence or argument that may be proper and relevant. However, no such Person shall be heard, and no papers, briefs, pleadings or other documents

submitted by any such Person shall be received and considered by the Court, unless no later than ten (10) days prior to the Fairness Hearing such Person has filed with the Court: (a) the specific grounds for such objections and any reasons why such Person desires to appear and to be heard, as well as all documents or writings which such Person desires the Court to consider; and (b) if the Class Member wishes to appear and be heard at the Fairness Hearing, a notice of intention to appear and, if such Person is represented by counsel, an appearance of such counsel. All of the foregoing documents must also be served upon all of the counsel listed in the Detailed Notice, contemporaneously with the filing of such documents with the Court. Any Person that fails to object in the manner set forth in this Paragraph shall be deemed to have forever waived his or her or its objections and shall forever be barred from making any such objections in the Litigation or in any other action or proceeding, unless the Court in its discretion shall thereafter otherwise direct upon application of such Person and for good cause shown.

- c. Counsel for the Class and Defendant should be prepared at the hearing to respond to objections filed by such Class Members and to provide other information, as appropriate, bearing on whether the Settlement should be approved.

d. Any Class Member who desires to opt-out of the Settlement must do so in compliance with the Detailed Notice by filing a written request to opt out postmarked on or before October 31, 2007;

5. Notice. The proposed Notice Plan, Summary Notice and Detailed Notice attached to the Joint Motion for Preliminary Approval as Exhibits “Z”, “AA” and “CC” are hereby approved. Notice shall be disseminated to the Class Members in accordance with the Notice Plan, and mailings of notice shall occur by no later than August 31, 2007;

6. Claim Form. The form and substance of the Claim Form, attached to the Joint Motion for Preliminary Approval as Exhibit “BB”, as well as the requirement of submitting said form, is hereby approved. All Claim Forms must be submitted in compliance with the Detailed Notice and postmarked on or before October 31, 2007;

7. Attorney Fees and Costs. Settlement Class Counsel will submit a memorandum in support of final approval of the Settlement and application for attorney fees, litigation expenses, and administrative costs no later than November 6, 2007.

8. Court Appointed Disbursing Agent (CADA). The Court hereby appoints Bourgeois Bennett, LLC as CADA, who shall perform the duties and responsibilities of the CADA as set forth in the Settlement Agreement, under the supervision of the Court or its designee, and as such, is hereby charged with the responsibility, in conjunction with the Special Master, of maintaining records pertaining to receipts and disbursements; managing the financial aspects of claims, fees, costs and expenses and the computerized generation and preparation of all data regarding evaluation of claims; managing the financial aspects of the eventual disbursement of the Class Settlement Fund; and the administration, with the Escrow Agent, of the Class Settlement Fund, subject in all

respects to further orders and direction of the Court. Further, CADA shall be responsible for implementation of the Notice Plan.

9. Special Master. The Court hereby appoints L.J. Hymel as Special Master. The Special Master shall have authority to contract with others or to appoint such agents as may be necessary to carry out his responsibility as Special Master. The Special Master shall carry out such responsibilities in as economical and effective manner as possible, and shall consult with and report to Settlement Class Counsel on a regular basis. The duties of the Special Master include, but are not limited to, the following: (i) establish, conduct and manage the claims administration process and hire his own employees; (ii) create claim forms; (iii) create the formulation of fair, equitable and reasonable procedures for the claims process, the allocation of the settlement to Participating Class Members, and distribution of the Settlement Fund; (iv) evaluate all claims and distribute the Settlement Fund in accord with the criteria established; (v) conduct hearings of Participating Class Members' allocation objections and allocation protocol; (vi) submit to the Court a report on the above, along with recommendations for the Court's consideration in proceeding with the allocation and distribution process following the Effective Date (*i.e.*, the day on which the Final Order and Judgment is signed and becomes final); and (vii) assist the Court and Settlement Class Counsel, as necessary and in accordance with this Settlement Agreement.

The Special Master shall also exercise his rights and responsibilities as follows:

- a) The Special Master shall perform the duties set forth in the Settlement Agreement, which are incorporated into this Order by reference;

- b) The Special Master shall have the authority to engage support personnel to assist in the exercise of his duties and he shall communicate with Settlement Class Counsel with regard to the selection of attorneys who may assist him;
- c) The Special Master shall be compensated from the Settlement Fund, as defined in the Settlement Agreement, in the amount of:
 - i) \$250.00 per hour for Special Master L.J. Hymel's services;
 - ii) \$175.00 per hour for attorneys who assist Special Master, L.J. Hymel;
 - iii) \$65.00 per hour for paralegals who assist Special Master, L.J. Hymel.

In the event the Special Master appoints additional administrative personnel to assist him in administering and managing the Settlement Fund who are not addressed in this Order, the Parties will file a supplemental motion and order to accommodate appointment of the same.

- d) The Special Master shall submit to the Court, with a copy to counsel for the Parties, periodic reports with respect to the administration and management of the Settlement Fund.
- e) The Special Master may communicate ex parte with the Court at the Special Master's discretion without providing notice to the Parties.

- f) The Special Master may initiate contact and communicate with Settlement Class Counsel, defense counsel, or any counsel for any claimant as he deems appropriate, with respect to the efficient administration and management of the Settlement Fund in rendering decisions he is authorized to make under the terms of the Settlement Agreement. However, such communications shall not involve the substance or merits of the claim. If the Special Master initiates any such contact with Settlement Class Counsel, defense counsel, or counsel for any claimant, he shall assure that Settlement Class Counsel and defense counsel are made aware of and have the right to participate in any such communication.
- g) All decisions rendered by the Special Master shall be in writing and shall be made of record.
- h) The Special Master shall not have authority to:
- i) Conduct any pre-trial or trial proceedings, except for conferences as the Special Master deems necessary for purposes of administering and managing the Settlement Fund;
 - ii) Sanction any party;
 - iii) Consider the amount of the Settlement Fund or exhaustion thereof as a limitation in making an award. In the event the total sums awarded to the Participating Class Members exceed the total sum available in the Settlement Fund, the awards shall be reduced and paid on a pro rata basis.

New Orleans, Louisiana this 22nd day of August, 2007.



JUDGE, UNITED STATES DISTRICT COURT