

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

PERRY CLINE, on behalf of)	
himself and all others)	
similarly situated,)	
)	
Plaintiff,)	
)	
v.)	
)	
SUNOCO, INC. (R&M))	
and SUNOCO PARTNERS)	
MARKETING & TERMINALS, L.P.,)	
)	
Defendants.)	

Case No. 6:17-cv-313-JAG

AMENDED PLAN OF ALLOCATION ORDER

This matter comes before the Court following the Order and Judgment by the Tenth Circuit in Case No. 22-7018, which remanded this matter for further proceedings consistent with its opinion of August 3, 2023. The Court, being fully advised on the issues before it, hereby ORDERS as follows:

A. Definitions

For purposes of this Order:

The term “Judgment Fund” means the sum of all actual and punitive damages awarded in this matter and allowed after any appeal (or after the expiration of time allowed for filing an appeal, if no appeal is filed within that time), inclusive of any attorneys’ fees, expenses, costs, and pre- and post-judgment interest as have been or may be awarded to Class Representative and the Class, and inclusive of any interest earned through such investments as the Court may direct following Defendants’ payment of the judgment.

The term “Judgment Administrator” means the officer appointed by the Court pursuant to this Order to execute the Plan for Distribution and to perform such incidental and additional duties as are set forth in this Order or as the Court may subsequently direct.

The term “Net Class Award” means the Judgment Fund, less any: (i) case contribution award to Class Representative; (ii) attorneys’ fees, expenses, and costs awarded from the Judgment Fund to counsel for Class Representative and the Class; (iii) compensation and expenses paid or reimbursed to the Judgment Administrator; and (iv) any additional administrative expenses that may be charged against the Judgment Fund at the Court’s direction.

The term “Residual Unclaimed Funds” means the amount of the Net Class Award remaining as a result of uncashed distribution checks, inability to locate Class Members, and/or other such reasons after the Judgment Administrator distributes the Net Class Award to all Class Members using commercially reasonable efforts according to the Final Distribution Order.

B. The Formula That Will Determine the Division of Damages

The Tenth Circuit recognized that the original plan of allocation adopted a formula for dividing damages that was intended to assign each class member a ten-digit BA number taken from Sunoco’s records. Order and Judgment at 11. Under this formula, the judgment administrator would calculate each class member’s damages by multiplying their predetermined percentage of the total judgment by the total judgment itself. *Id.* at 11-12.

There is no dispute that this formula will produce individual damage figures for *most* class members because *most* of the BA numbers correspond to an individual class member. *Id.* at 12. But two of the BA numbers do not represent individual accounts held by a single class member, but instead, represent two undivided accounts that Sunoco deposited proceeds into whenever it did not know a mineral-interest owner’s name or address. Order at 12.

Finding that these undivided accounts prevented the original plan of allocation from achieving finality, the Tenth Circuit remanded and instructed this Court to include instructions for how the judgment administrator is to divide damages among the class members associated with those two BA numbers (0009134057 & 0007005424).

This Amended Plan of Allocation cures the Tenth Circuit's concern, *see* Order at 13 n.6, by now including instructions for the two undivided accounts.

1. Division of Damages for BA Numbers that Correspond to Individual Class Members

The formula that will determine the division of damages for BA numbers that correspond to individual class members is the same formula set forth in the Oklahoma Production Revenue Standards Act ("PRSA") for calculating 12% compound interest as applied by Barbara Ley at trial to calculate the damages for Class Members. That information is contained in PX454. That formula has been applied and set forth on a percentage basis in Exhibit 1 to the Declaration of Barbara Ley (Class Representative's damages expert) [Dkt. No. 317-1].

The methodology Ms. Ley used to prepare the proposed allocation was derived from, and consistent with, the methodology that this Court previously approved in support of Plaintiff's *Motion to Certify Class* [Dkt. No. 91] and admitted into evidence at the trial in this matter in order to determine the total amount of actual damages.¹

¹ Ms. Ley's methodology here is also consistent with the methodology that has been approved by this Court in the following cases: *Reirdon v. XTO Energy*, Final Plan of Allocation Order, Dkt. No. 141 (E.D. Okla. June 12, 2018); *Reirdon v. Cimarex*, Final Plan of Allocation Order, Dkt. No. 114 (E.D. Okla. April 25, 2019); *Chieftain v. Marathon Oil Co.*, Final Plan of Allocation Order, Dkt. No. 127 (E.D. Okla. June 11, 2019); *Chieftain v. Newfield Exploration Mid-Continent Inc.*, Final Plan of Allocation Order, Dkt. No. 75 (June 4, 2020); *DASA Investments, Inc. v. EnerVest Operating, et al.*, Final Plan of Allocation Order, Dkt. No. 124 (E.D. Okla. June 25, 2020); and *McClintock v. Continuum Producer Services, LLC*, Case No. 6:17-CV-259-JAG, Initial Plan of Allocation Order, Dkt. No. 64 (E.D. Okla. June 4, 2020).

Ms. Ley calculated the amount of damages owed to each individual Class Member, and then summed those figures to determine the amount of damages owed to the Class. Ms. Ley then updated those amounts, at the Court's direction, to reflect the time that had elapsed and the interest that had accrued since her original calculation. Ms. Ley then divided the updated damage figure for each Class Member by the total amount of damages awarded to the Class, and thereby determined each Class Member's proportional share of the Judgment. The result of this formulaic approach is a list containing Class Members' fractional share of the total amount of damages.

For Class Members other than those in the undivided accounts, the Judgment Administrator is directed to multiply the fractional share for each Class Member expressed in Ms. Ley's Declaration by the Net Class Award in order to arrive at the exact dollar amount that each Class Member shall be paid.

2. *Division of Damages for The Two Undivided Accounts with BA Numbers 0009134057 & 0007005424*

For the undivided accounts, PX454 contains the information related to each separate late principal payment made to a Class Member and labeled as "undivided," along with the formula and amount to calculate the damages owed for each payment. The Judgment Administrator is directed to calculate the fractional share for each such payment based on Ms. Ley's calculations and formula using the information in PX454, then apply the resulting percentage to the Net Class Award to arrive at the exact dollar amount owed for each payment and assign that amount to the Class Member, if possible. If the Judgment Administrator is unable to obtain further ownership information related to any particular payment, then the Judgment Administrator shall pay the same amount to the appropriate unclaimed property fund with a schedule identifying all information related to the original payment from PX454 so that the unclaimed property fund can correlate the damages to the original late principal payment. That schedule is attached hereto as Exhibit 1.

C. Procedures for Distribution

The Court already appointed JND Legal Administration to serve as Judgment Administrator in this matter. At such time as the Court directs, the Judgment Administrator, in consultation with Class Counsel, shall be responsible for applying the mathematical principles established in the Plan for Distribution to ascertain the precise amounts of the Net Class Award allocable to each Class Member and each separate late payment included in the undivided accounts. The result of the Judgment Administrator's calculations shall be submitted to the Court for approval as the Final Plan for Distribution.

Upon approval, the Court will enter a Final Distribution Order establishing the allocation for purposes of disbursements to Class Members.

The Judgment Administrator will also be responsible for distributing the Net Class Award pursuant to such further orders as the Court shall issue.

The Judgment Administrator shall report to the Court from time to time to advise the Court of its progress in discharging its responsibilities under this Order, on such occasions and at such intervals as the Judgment Administrator may deem appropriate or as the Court may direct. The Judgment Administrator is authorized to make reasonable expenditures to secure the resources and assistance reasonably necessary to the performance of its duties, including obtaining support from experts such as Barbara Ley and landmen. Such expenses, and the compensation of the Judgment Administrator at its usual and customary hourly rates, will be paid and reimbursed from the Judgment Fund periodically, as incurred.

The Judgment Administrator shall not commence the performance of its duties under this Order until such time as the case is remanded to this Court from any appeal (or until after the expiration of the time allowed for filing such appeal, if no appeal is filed within that time).

D. Procedures and Principles for the Distribution of any Unclaimed Funds

Any Residual Unclaimed funds will be sent to the appropriate state accounts for unclaimed property. After the Judgment Administrator has used commercially reasonable efforts to complete the distribution process outlined in the Final Distribution Order, Class Counsel shall file a motion stating the amount of any Residual Unclaimed Funds. The Court will then order the Residual Unclaimed Funds to be remitted to the unclaimed property funds as indicated.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: 17 October 2023
Richmond, VA

/s/ J. J.
John A. Gibney, Jr.
United States District Judge