

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

PATRICK JOSEPH TURNER, ET AL.

*** CIVIL ACTION**

VERSUS

*** NO. 05-4206
* CONSOLIDATED CASE
* SECTION "L" (2)**

MURPHY OIL USA, INC.

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER NO. 8A

At yesterday's monthly status conference, Plaintiffs' Liaison Counsel urged an Oral Motion to Modify the Court's Order and Reasons Regarding Set-Asides for Common Benefit Reimbursement (See Rec. Doc. No. 277 for the Court's Order). The Court summarizes the parties' arguments for and against this motion.

The PSC argues that a modification of the common-benefit set-asides is necessary because Murphy has expanded its Settlement Program. As Murphy agrees, there has been a settlement "zone" in place since the fall of 2005 prior to class certification, but now Murphy has begun to settle the claims of certain individuals who resided within the EPA-defined oil plume perimeter. The PSC argues that Murphy is making these new settlements and has expanded its settlement area due to the efforts of the PSC in obtaining class certification. Therefore, the PSC argues that set-asides are necessary for *all* settlements made within the class boundary but not within Murphy's original settlement zone, without regard to whether these individuals are represented or unrepresented by counsel.

Defendant opposes any modification of the Court's Order, just as it opposed the

imposition of set-asides at all. Murphy contends that it never restricted its settlements to the settlement zone, but that any property that tested positive for Murphy crude oil was eligible for settlement. Murphy argues that the set-asides burden the individuals' rights to opt-out, to settle their claims, and to be represented by counsel of their choice. Defendant requests that, if any modification is made, the Court should certify its ruling for interlocutory appeal to the Fifth Circuit pursuant to 28 U.S.C. 1292(b).

The Court agrees with the PSC that modification of Pretrial Order Number 8 is necessary. Murphy's expansion of its Settlement Program is clearly due to the common-benefit work of Plaintiffs' counsel. Murphy was aware of the EPA oil-plume perimeter prior to class certification, but Murphy rigidly stood by its own settlement area. Murphy refused to expand its settlement area to the EPA perimeter until this case was certified as a class action. The Court believes that the expansion was directly linked to the efforts of the PSC in obtaining class certification. Therefore, imposition of set-asides on all settlements made outside of Murphy's original settlement zone is appropriate. Accordingly, Plaintiffs' Oral Motion for Modification is GRANTED. IT IS ORDERED that Pretrial Order Number 8 is AMENDED as follows:

Section 2(e) is amended to read:

e. This obligation attaches as follows:

The set-aside shall apply to cases currently pending or later filed in, transferred to, or removed to, this Court as well as unfiled cases treated as the consolidated case *Patrick Joseph Turner v. Murphy Oil USA, Inc.*, Civil Action No. 05-4206, and includes claimants:

(A) who reside within the class boundary and who are included in the class action,

(B) who reside in the Murphy Settlement Area, as defined by Murphy in Exhibit 4 to its Memorandum in Opposition to Plaintiffs' Motion for Class Certification (also Exhibit A to the Court's Order and Reasons dated January 30, 2006 granting class certification), who have opted out of the class action, and who are represented by counsel, OR

(C) who reside within the class boundary but not within the Murphy Settlement Area, as defined above, who have opted out of the class action, and who have retained counsel, OR

(D) who reside within the class boundary but not within the Murphy Settlement Area, as defined above, who have opted out of the class action, and who have not retained counsel.


This set-aside applies to all settlements made and judgments entered on or after the date on which this Order is signed. The set-aside in the cases in categories (A), (B) and (C) shall be twelve (12) percent of the "gross monetary recovery." Ten (10) percent shall be deemed fees to be subtracted from the attorneys' fees portion of individual fee contracts, and two (2) percent shall be deemed costs to be subtracted from the client portion of individual fee contracts. However, for individuals who fall into category (D) above, the set-aside shall be seven (7) percent of the "gross monetary recovery." Five (5) percent shall be deemed attorneys' fees, and two (2) percent shall be deemed costs, all to be subtracted from the individual's settlement award.

IT IS SO ORDERED.

Additionally, Defendant's request that this ruling be certified for interlocutory appeal

pursuant to 28 U.S.C. 1292(b) is DENIED. This ruling does not involve a controlling question of law which would materially prejudice either Plaintiffs or Defendant or which would advance the termination of this litigation.

New Orleans, Louisiana, this 7th day of April, 2006.

A handwritten signature in black ink, reading "Eldon C. Fallon". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

United States District Judge