No. 19-739

In The
Supreme Court of the United States

JULIUS BARBOUR, et al.,

Petitioners,

v.

HALLIBURTON COMPANY, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS HALLIBURTON COMPANY AND HALLIBURTON ENERGY SERVICES, INC.

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QUESTIONS PRESENTED

Respondents Halliburton Company and Halliburton Energy Services, Inc. ("Halliburton") have limited interest in the outcome of this petition. The outcome will not affect Halliburton's liability, which is capped by its payment into the aggregate fund created by the relevant settlement agreements. Halliburton requests that the Court deny certiorari principally because the bargained-for waiver of appeal contained in the settlement agreements precludes the relief now requested. Accordingly, while Halliburton adopts and incorporates by reference the Questions Presented as set forth in the Petition for Writ of Certiorari ("Petition"), those questions should not be reached in this case.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Respondent Halliburton Energy Services, Inc. is 100 percent owned by its parent corporation, Respondent Halliburton Company, a publicly traded company. No other publicly held company owns 10 percent or more of either company's stock.

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OPINIONS BELOW

Halliburton adopts and incorporates by reference all opinions and orders below that are set forth in the Petition's Appendix.

CONSTITUTIONAL PROVISIONS INVOLVED

While Halliburton agrees that the Questions Presented could implicate the Due Process Clause of the United States Constitution's Fifth Amendment if the Petitioners had an existing property interest in settlement proceeds, the Court does not need to reach the Questions Presented because the appeal waiver contained in the relevant settlement agreements precludes the relief requested by Petitioners.

STATEMENT OF THE CASE

A. Case Background

The Petition arises from the April 20, 2010, blowout, explosion, and fire aboard the *Deepwater Horizon*, a semi-submersible oil-drilling vessel that was performing drilling completion in the Mississippi Canyon Block 252 ("MC252") in the Gulf of Mexico. BP was the holder of a lease granted by the Minerals Management Service authorizing the exploration, development, and production of crude oil in MC252. Respondent Transocean ("Transocean") owned the *Deepwater Horizon* vessel and leased the vessel to BP for drilling

exploratory wells. Respondent Halliburton Energy Services, Inc. ("HESI") was responsible, in part, for providing technical advice on the design, modeling, placement, and testing of the cement used in the Macondo well, and also provided certain mudlogging services.[1]

Multiple class-action suits were filed against the entities involved in the incident, including the B1 Master Complaint for economic and property damages. App. 6 n.1.[2] Petitioners did not file individual lawsuits arising from the *Deepwater Horizon* incident. App. 6.

B. The BP Settlement

In 2012, BP entered a class settlement of economic and property damages claims—the Deepwater Horizon Economic and Property Damages Settlement ("DHEPDS"). The DHEPDS resolved most claims against BP in the B1 Master Complaint, but its terms excluded Petitioners. App. 7.

C. The HESI and Transocean Settlements

On September 2, 2014, HESI entered into a settlement agreement, which was amended on September 2, 2015 (the "HESI Settlement"). R. App. 1. Transocean

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[1] Throughout this Brief in Opposition, the term "Respondents" refers to both the Halliburton entities and the Transocean entities.

[2] References to Petitioners' Appendix will be identified by "App."; references to Halliburton's Appendix will be identified by "R. App."

entered its own settlement agreement on May 29, 2015 (the "Transocean Settlement"). App. 7. The HESI and Transocean Settlements (collectively, the "Settlement Agreements") are substantially identical. App. 7 n.2. The Settlement Agreements cap Respondents' liability by creating an aggregate settlement fund of approximately $1.24 billion. *See* R. App. 22 (providing for HESI's aggregate payment of $1,028,000,000). Settlement proceeds were to settle two types of claims: (1) claims assigned from BP to plaintiffs who were part of the DHEPDS (the "Assigned Claims") and (2) punitive damages claims alleged by certain plaintiffs asserting liability against Respondents under general maritime law (the "Punitive Damages Claims"). R. App. 5. Plaintiffs potentially holding Assigned Claims were defined as members of the "DHEPDS Class," while plaintiffs potentially holding Punitive Damages Claims were defined as members of the "New Class." Petitioners are members of the New Class. Pet. 5.

As part of the Settlement Agreements, Respondents intentionally removed themselves from responsibility for distribution decisions. An Allocation Neutral would allocate proceeds between the classes. R. App. 23. Distribution decisions among claimants in the same class would be made by a Claims Administrator. R. App. 26–27. The Settlement Agreements instructed the Claims Administrator to develop a Distribution Model, thereby drawing attention to the fact that the Distribution Model, and any requirements included as part of the Distribution Model, would be forthcoming. R. App. 26 ("A Claims Administrator appointed by the

Court shall develop a Distribution Model for the Court-supervised Claims Program."); *see also* R. App. 1 ("The Parties recognize additional documents will be required in order to implement the [settlement agreement].").

To further prevent their entanglement in disputes over distribution decisions, HESI negotiated for a provision limiting a claimant's right to appeal:

> Appeal. In developing the Court Supervised Claims Program for the New Class, the Claims Administrator shall establish rules for appealing the determinations of the Claims Administrator to the [District] Court. The Court's decision on any such appeal involving the amount of any payment to any individual claimant (other than a determination that a claimant is not entitled to any payment due to a failure to meet the class definition) shall be final and binding, and there shall be no appeal to any other court including the U.S. Court of Appeals for the Fifth Circuit.

R. App. 28–29.

The district court preliminarily approved the Settlement Agreements on April 12, 2016. App. 8. A short-form notice was mailed to known class members and published in several newspapers; a long-form notice was posted on the district court's website. Pet. 7.

D. Pretrial Order No. 60

On March 29, 2016, the district court entered Pretrial Order No. 60 (PTO 60) to determine what claims remained pending following the various settlements. App. 8. PTO 60 dismissed the B1 Master Complaint and instructed plaintiffs who believed they had a pending claim, but who had not filed an individual lawsuit (such as Petitioners who were excluded from the DHEPDS), to file one with the district court by May 2, 2016. App. 8. Respondents, having entered the Settlement Agreements on the release terms they desired, had no stake in the district court's handling of the B1 Master Complaint.

Notice of PTO 60 was provided to everyone the parties could reasonably notice. It was sent to all counsel of record via the court's electronic filing system; it was mailed to all plaintiffs who had opted out of the DHEPDS and who indicated they were unrepresented; it was emailed to known counsel of record for plaintiffs who joined the Amended B1 Master Complaint and/or opted out of the DHEPDS; and it was posted on the district court's website. *In re Oil Spill by Oil Rig "Deepwater Horizon" in Gulf of Mex.*, MDL 2179, 2016 WL 10586172, at *5 (E.D. La. Dec. 16, 2016). On the May 2 deadline to comply with PTO 60, Petitioners neither filed individual lawsuits nor asked for additional time to comply. App. 8.

E. The Distribution Model and the PTO 60 Compliance Requirement

On June 7, 2016, the district court entered an order instructing plaintiffs that had not complied with PTO 60 to show cause by June 28, 2016, why their claims should not be dismissed with prejudice. App. 8.

On June 13, after entry of the show-cause order but fifteen days before the deadline to respond, the Claims Administrator filed a proposed Distribution Model explaining how claims from New Class members would be processed. App. 9. Both the Distribution Model and the attached Claim Form explained that claimants who had failed to comply with PTO 60, and thus failed to preserve their underlying liability claim, would have a value of $0 assigned to their claims. App. 9. On June 15, short-form notices of the Distribution Model began to be broadly mailed to interested parties. As noted by Petitioners, this broad notice included direct mail or email to members of the DHEPDS Class, persons who had opted out of the DHEPDS Class, persons who had filed short-form joinders in the MDL, real property owners identified in relation to the DHEPDS Class, and persons who had complied with PTO 60. Pet. 10. The Distribution Model was also posted on the district court's website and the website specific to the Settlement Agreements.[3] Petitioners failed to respond to the district court's show-cause order by June 28, 2016, and the district court subsequently dismissed all non-compliant claims with prejudice, including those of Petitioners. App. 8–9.

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[3] http://www.gulfspillpunitivedamagessettlement.com/.

F. Approval and Administration of the Settlement Agreements

The district court set a September 23, 2016, deadline for objecting to the Settlement Agreements. App. 8. Although other class members filed objections to the Distribution Model's PTO 60 compliance requirement by that date, Petitioners filed no objections. App. 9. The district court addressed these objections at an October 20, 2016, fairness hearing, which Petitioners did not attend. App. 9. On February 15, 2017, the district court approved the Settlement Agreements and the Distribution Model. App. 9. No appeals were taken from this final approval order.

After the Claims Administrator assigned their claims a value of $0 because they failed to comply with PTO 60, Petitioners appealed to the district court, which had referred all appeals of claim determinations to the magistrate judge according to an agreement between the parties. App. 10. The magistrate judge affirmed the Claims Administrator's denial on the ground that the PTO 60 compliance requirement was consistent with the Settlement Agreements and, under maritime law, a claimant may obtain punitive damages only if that claimant has underlying compensatory damages. App. 10.

Petitioners appealed the magistrate judge's ruling to the district court, claiming violation of their due process rights. App. 10. The district court overruled Petitioners' objection based on the appeal waiver in the Settlement Agreements. App. 10; *see also* App. 48–49.

G. The Opinion Below

In further disregard of the appeal waiver, Petitioners appealed the district court's order to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit held that Petitioners were not denied due process.

Petitioners acknowledged receiving notice of the PTO 60 compliance requirement once the Distribution Model was filed on June 13. App. 14, 21, 22. In spite of this notice, Petitioners did not respond to the show-cause order, did not object to the compliance requirement by the deadline to object to the Settlement Agreements, did not challenge the compliance requirement at the fairness hearing, and did not appeal the district court's order approving the Settlement Agreements and Distribution Model. App. 22. Given these numerous available, but unused, opportunities to address the PTO 60 compliance requirement before the Claims Administrator valued their claims at $0, the Fifth Circuit could not conclude that Petitioners did not receive notice or an opportunity to be heard. App. 22.[4]

[4] A year after the district court approved the Settlement Agreements, certain Petitioners filed a motion challenging that order under Federal Rule of Civil Procedure 60(b). App. 9–10. When the district court denied the motion, Petitioners appealed to the Fifth Circuit. App. 10. The Rule 60(b) motion contained the same arguments as Petitioners' challenge to the magistrate judge's ruling, and the Fifth Circuit affirmed the district court for the same reasons. App. 24.

REASONS FOR DENYING THE WRIT OF CERTIORARI

Because Respondents' liability is limited to their payments already made to the aggregate settlement fund, Halliburton's only interest in Petitioners' claims is to see that the terms of the Settlement Agreements are enforced. Because the Settlement Agreements include waivers of appeal, the Court should deny certiorari.

Additionally, this case is a poor vehicle for certiorari. The Petition is premised on the incorrect notion that Petitioners had a property interest in settlement proceeds at the time the Settlement Agreements were executed. The terms of the Settlement Agreements, however, make clear that class members did not have an interest in the proceeds for punitive damages until they demonstrated their claim for underlying compensatory damages. In advocating for their first Question Presented, Petitioners tell the Court that they did not receive the individual notice of the PTO 60 compliance requirement. But the law of notice is well settled and, given that Petitioners had done nothing to make themselves known in the lawsuit, the notice provided satisfied the constitutional requirement. Advocating for their second Question Presented, Petitioners complain about the lack of briefing on the notice theory adopted by the Fifth Circuit. Far from generating a new theory from whole cloth, the court of appeals merely made an assessment of the facts presented to it by the parties.

Individually, and certainly taken together, these issues make this case a poor candidate for certiorari.[5]

I. Certiorari should be denied because Petitioners have waived their right to appeal the determinations of the Claims Administrator.

Halliburton's only interest in Petitioners' case is to see the terms of the Settlement Agreements enforced. Because the Settlement Agreements contain appeal waivers, certiorari should be denied.

A. Halliburton has limited interest in the outcome of Petitioners' suit.

Respondents' contribution to the aggregate settlement fund is capped. Respondents paid a fixed amount for the settlement of both the Assigned Claims and the Punitive Damages Claims, and they negotiated specific terms to remove themselves from any further responsibility for settlement proceeds. Allocation of settlement proceeds between the two claim types was left to an Allocation Neutral. *See* R. App. 23 ("HESI shall not have any responsibility or liability whatsoever for, the allocation of the Aggregate Payment."). Division of

[5] In seeking review of their third Question Presented, Petitioners argue that the Claims Administrator's implementation of the PTO 60 compliance requirement violated their substantive due process rights. Halliburton had no involvement with the Claims Administrator's implementation of the PTO 60 compliance requirement and, consequently, does not address Petitioners' argument in this Brief in Opposition.

proceeds between individual claimants within those claim types was left to a Claims Administrator. *See* R. App. 26–27 ("HESI shall not have any responsibility or liability whatsoever for, the distribution or method of distribution of the Aggregate Payment."). Thus, whether Petitioners' claims are accepted or denied, Halliburton faces no different or additional liability, and cannot redress the issues raised by Petitioners.

Nonetheless, Halliburton has a general interest in whether Petitioners had any right to appeal to the Fifth Circuit or have a right to seek review from this Court. Respondents negotiated for and included a specific waiver of appellate rights in the Settlement Agreements to preclude their unnecessary entanglement in higher court review of determinations in which they had no involvement. Based upon the agreement of the parties, certiorari should be denied.[6]

B. Certiorari should be denied because Petitioners are members of the New Class and have consequently waived their right to appeal claim determinations.

Petitioners are bound by the terms and conditions of the Settlement Agreements. The HESI Settlement contains an express appeal waiver:

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[6] Given Respondents' lack of control over distribution decisions, and Petitioners' failure to make the Claims Administrator a part of the appeal, it is questionable whether a decision in Petitioners' favor could redress their injury. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (including redressability as a requirement for standing).

> Appeal. In developing the Court Supervised Claims Program for the New Class, the Claims Administrator shall establish rules for appealing the determinations of the Claims Administrator to the [District] Court. The Court's decision on any such appeal involving the amount of any payment to any individual claimant (other than a determination that a claimant is not entitled to any payment due to a failure to meet the class definition) shall be final and binding, and there shall be no appeal to any other court including the U.S. Court of Appeals for the Fifth Circuit.

The Transocean Settlement omits the exception in parentheses but is otherwise identical. App. 12.

Wright & Miller recognize that appellate waivers are enforceable and should result in dismissal of appeals:

> [The right to appeal] can be waived, just as the parties by settlement can waive the right to decision of their dispute by any court and can stipulate to entry of a consent judgment. The most likely occasion for waiver arises from a settlement agreement that calls for resolution of some disputed matter by the district court, coupled with an explicit agreement that the district court decision shall be final and that all rights of appeal are waived. Appeals attempted in violation of such agreements are dismissed.

15A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3901, Westlaw (updated Aug.

2019) (footnotes omitted); *see also Hill v. Schilling*, 495 F. App'x 480, 487 (5th Cir. 2012) (quoting the above language with approval).

The appeal waiver in the Settlement Agreements is an explicit agreement that (1) the Claims Administrator would develop rules for appealing claim determination to the district court and (2) the district court's determination on any such appeal involving the amount of payment to any claimant would be final and binding. The only exception to the waiver occurs when the district court determines that a claimant fails to meet the class definition, and Petitioners do not dispute that they meet the class definition. Pet. 5.

The Claims Administrator decided that Petitioners were entitled to receive $0, a clear determination of "the amount of any payment to any individual claimant." Contrary to the bargained-for terms of the Settlement Agreements, Petitioners appealed to the Fifth Circuit. They continue to violate the Settlement Agreements by seeking review from this Court. Petitioners should be bound to the terms of the Settlement Agreements, and certiorari should be denied.

II. Petitioners do not present the compelling reasons necessary to grant a Petition for Writ of Certiorari.

Petitioners raise several arguments related to their due process rights. Because of their limited interest in the outcome of Petitioners' suit, Halliburton will not reach each argument in detail. Nonetheless, the

fact remains that Petitioners' arguments do not alter the analysis of the appeal waiver or provide the compelling reasons necessary to grant certiorari.

A. Certiorari should be denied because Petitioners did not have a property interest in settlement proceeds at the time the Settlement Agreements were executed, casting the entire Petition in doubt.

The Petition is premised on Petitioners' argument that they did not receive constitutionally adequate notice of the PTO 60 compliance requirement. Execution of the Settlement Agreements, Petitioners contend, gave them "a property interest in their share of the settlement funds." Pet. 14. Petitioners then argue that, because of this "property interest," due process guaranteed them notice and an opportunity to comply before the government could place requirements on obtaining the settlement proceeds. Pet. 14. Petitioners' argument fails because execution of the Settlement Agreements did not give Petitioners a property interest in the settlement proceeds.

Procedural due process applies to property interests "that a person has already acquired in specific benefits." *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 576 (1972). Due process is intended to safeguard the benefits "upon which people rely in their daily lives." *Id.* at 577. Thus, a need, desire, or unilateral expectation of a benefit is insufficient to activate

the protections of due process. *Id.* The claimant "must have a legitimate claim of entitlement to it." *Id.*

The Settlement Agreements plainly state that mere class membership does not entitle the class member to settlement proceeds:

> It is the intent of the Parties to capture within the New Class definition all *potential* claimants who are not excluded from the New Class in accordance with Section 4(b) and who *may* have valid maritime law standing to make a Punitive Damages Claim under general maritime law against HESI. . . ."

R. App. 5–6 (emphasis added). By the terms of the Settlement Agreements, Petitioners' property interest was contingent on standing to receive punitive damages under maritime law. Under maritime law, a plaintiff's punitive damages are calculated based on the amount of her underlying compensatory damages. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 506–07 (2008).

Thus, Petitioners did not have a property interest in the settlement proceeds until demonstrating their underlying compensatory damages claim, which, by not complying with PTO 60, they failed to do. Because the fundamental premise of the Petition is flawed, this case is an improper vehicle for Petitioners' Questions Presented and certiorari should be denied.

B. Certiorari should be denied because Petitioners' question regarding notice of the PTO 60 compliance requirement involves only the application of settled law to case-specific facts.

The Court, Petitioners contend, "should grant the writ to ensure proper application of its precedents regarding the means of notice required to satisfy due process." Pet. 25. The constitutional requirements of notice are well established, and the district court properly applied this well-established law. Petitioners have not stated a compelling reason to grant the Petition.

In *Mullane v. Central Hanover Bank & Trust Co.*, a case determining the constitutionally required notice to beneficiaries of a common trust fund, this Court held that the means of notice employed "must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." 339 U.S. 306, 315 (1950). Thus, as to beneficiaries whose "names and post office addresses . . . [were] at hand," the Fourteenth Amendment required personal notice. *Id.* at 318. The same standard applies in class-action cases. In *Eisen v. Carlisle & Jacquelin*, the Court required individual notice by mail for the 2,250,000 class members whose names and addresses were "easily ascertainable" from the defendants' records. 417 U.S. 156, 166 & n.5, 175 (1974).

However, when the defendants' names and addresses are not easily available, less direct forms of notice satisfy the constitutional requirement. So in

Mullane, as to "beneficiaries whose interests or addresses [were] unknown," notice by publication was sufficient. *Mullane*, 399 U.S. at 317–18. Petitioners ignore the broad notice provided of the Settlement Agreements, PTO 60, and the Distribution Model, and they insist, in spite of never having appeared in the case or taking any other action to make their names or addresses known, that they were entitled to individual, direct notice. Petitioners' position is contrary to the well-settled law of constitutionally required notice.

Petitioners suggest that direct notice would not have been impracticable because someone could have asked the Petitioners' customers for their names and addresses. Pet. 18. Regardless of whether this sort of investigation is required to satisfy due process, it was not presented as an option to the district court and, at most, amounts to a post hoc claim that the district court misapplied the law. Even viewed in the light most favorable to Petitioners, their dispute with the district court is hardly the deep circuit split or issue of national importance that ordinarily receives this Court's attention. *See* Supreme Court Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

C. Certiorari should be denied because Petitioners' question regarding the notice theory adopted by the Fifth Circuit was merely a common-sense assessment of the facts presented by the parties.

The Fifth Circuit found that Petitioners suffered no shortage of due process. Even after their acknowledged notice of the PTO 60 compliance requirement upon filing of the Distribution Model, Petitioners did not use their "numerous opportunities to comply with, object to, or otherwise challenge the PTO 60 compliance requirement before the Claims Administrator denied their claims." App. 21–22. Specifically, Petitioners did not respond to the district court's show-cause order, they did not object to the Distribution Model, they did not attend the fairness hearing at which they could have challenged the Distribution Model, and they did not appeal the district court's order approving the Settlement Agreements and Distribution Model. App. 22. Petitioners could have taken each of these actions after they "unequivocally" received notice of the PTO 60 compliance requirement; instead, they did nothing. App. 22.

Petitioners argue that, because Respondents and amicus did not brief this notice theory below, the Fifth Circuit so departed from the usual course of proceedings that certiorari is warranted. Pet. 28. The Fifth Circuit did nothing more, however, than look at the timeline the parties had placed before it. Petitioners were at least as aware of this timeline as the Fifth Circuit, and neither Petitioners nor the court of appeals needed Respondents to point out the obvious

consequences of the series of events. *Cf. Hawkins v. Barney's Lessee*, 30 U.S. (5 Pet.) 457, 466 (1831) ("What right has any one to complain, when a reasonable time has been given him, if he has not been vigilant in asserting his rights?").

Moreover, Petitioners' appeal lacked the adversarial relationship between the parties that courts depend on to "sharpen[] the presentation of issues." *Baker v. Carr*, 369 U.S. 186, 204 (1962). Respondents' briefing below, much like this Brief in Opposition, asked only that the Fifth Circuit enforce the bargained-for appeal waiver. The claims administrator, as amicus below, took no position on the merits of Petitioners' claims and wrote only to provide the Fifth Circuit with the considerations leading to the Distribution Model and Petitioners' $0 awards under that model. This Court should decline to make binding precedent from an essentially non-adversarial case.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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