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 a Writ of Certiorari
To The United States Court of Appeals
For the Fifth Circuit

MOTION FOR LEAVE TO FILE AND BRIEF OF NEW CLASS CLAIMS ADMINISTRATOR AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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MOTION FOR LEAVE TO FILE AMICUS BRIEF

This Honorable Court requested a response to the Petition for a Writ of Certiorari in this matter. Patrick A. Juneau, in his capacity as New Class Claims Administrator of the Punitive Damages Settlement Program (the "New Class Claims Administrator"), hereby moves the Court for leave to file a responsive brief as *amicus curiae*. Although the New Class Claims Administrator filed an amicus brief in the United States Court of Appeals for the Fifth Circuit and his counsel participated in oral argument before that court, and although the Petition repeatedly references the Claims Administrator's briefing and argument, Petitioners did not consent to the filing of the New Class Claims Administrator's amicus brief to this Court at this stage of consideration. Respondents have consented in writing to the filing of the New Class Claims Administrator's amicus brief.

The proposed amicus brief addresses the distribution model and claims determinations that were made while Michael J. Juneau was still New Class Claims Administrator. Michael J. Juneau served as New Class Claims Administrator of the Punitive Damages Settlement Claims Program from October 23, 2015, until his appointment to the United States District Court for the Western District of Louisiana. Patrick A. Juneau was appointed as New Class Claims Administrator on November 7, 2018. Patrick A. Juneau requests leave to file an amicus brief in his capacity as successor to that office.

An amicus brief from the New Class Claims Administrator will assist the Court because the Punitive Damages Settlements were limited-fund settlements, meaning that Halliburton's and Transocean's liability for punitive damages was fixed in the Settlement Agreements. After the Settlement Agreements were executed, Halliburton and Transocean were not involved in the distribution model to allocate the limited-fund settlements. And, unlike in the BP compensatory damages settlement, arising out of the same underlying events, Halliburton and Transocean are not involved in review or appeal of any punitive damages awards, or denials of awards, made by the New Class Claims Administrator under the distribution model.

The New Class Claims Administrator's sole interest in this matter lies in his predecessor's court-ordered responsibility for the creation and implementation of the Distribution Model, and his corresponding responsibility for implementing whatever modifications to the model might (or might not) result from the Court's consideration of this Petition. The New Class Claims Administrator, therefore, wishes only to inform the Court of the legal, procedural, and factual considerations that led to the Distribution Model and resulted in Petitioners' $0 awards. The New Claims Administrator, however, takes no position on the merits of Petitioners' arguments. Rather, the New Claims Administrator moves to submit this amicus statement solely to assist the Court in understanding and interpreting the record below.

The New Class Claims Administrator also is the party best positioned to set forth with detail and clarity exactly how the claims process was developed and administered in these cases, which led to a $0 award to these litigants. Indeed, it is hard to see how an explanation of this process could not be helpful to the disposition of this matter, no matter how this Court ultimately should determine to resolve it. Respectfully, the New Class Claims Administrator requests that this amicus brief be accepted as a resource to the Court in its assessment of the Petition.

Accordingly, the New Class Claims Administrator moves for the Court's leave to file this amicus brief.

Respectfully submitted,

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March 6, 2020

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INTEREST OF AMICUS CURIAE[1]

The explanations presented in this amicus brief of Patrick A. Juneau in his capacity as New Class Claims Administrator of the Punitive Damages Settlement Program (the "New Class Claims Administrator") are relevant to the Court's consideration of the Petition because the Punitive Damages Settlements were limited-fund settlements. Halliburton's and Transocean's liability for punitive damages was fixed in the limited-fund Settlement Agreements. After the Settlement Agreements were executed, Halliburton and Transocean also were not involved in the drafting or development of the Distribution Model to allocate the limited-fund settlements. Unlike the compensatory damages BP settlement, Halliburton and Transocean are not involved in review or appeal of any punitive damages awards, or denials of awards, made by the New Class Claims Administrator under the distribution model.

The New Class Claims Administrator's interest in this matter lies in his predecessor's court-ordered responsibility for the creation and implementation of the Distribution Model,[2] and his corresponding

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[1] This brief has been authored solely by counsel for Patrick A. Juneau in his capacity as New Class Claims Administrator of the Punitive Damages Settlement Program. No party contributed funding related to the preparation of this brief. All parties were notified in writing of the New Class Claims Administrator's intention to file this amicus brief on February 10, 2020.

[2] The district court appointed Michael J. Juneau to serve as New Class Claims Administrator of the Punitive Damages Settlement

responsibility for implementing whatever modifications to the model might (or might not) result from this matter. The New Class Claims Administrator, therefore, wishes to inform the Court of the legal, procedural, and factual considerations that led to the Distribution Model and thereafter resulted in Petitioners' $0 awards.

The New Class Claims Administrator offers this amicus brief as a resource in the Court's assessment of the Petition, which is the only basis on which it is offered.

Claims Program on October 23, 2015. Following Michael J. Juneau's appointment to the United States District Court for the Western District of Louisiana, Patrick A. Juneau was appointed as the New Class Claims Administrator on November 7, 2018. This amicus brief addresses the distribution model and claims determinations that were made while Michael J. Juneau was still New Class Claims Administrator. This brief is submitted by Patrick A. Juneau in his capacity as successor to that office.

SUMMARY OF AMICUS CURIAE STATEMENT

The New Class Claims Administrator respectfully submits this amicus curiae brief to assist the Court in reviewing this Petition for a Writ of Certiorari.

The HESI/Transocean Settlement Agreements[3] resolved and released claims for punitive damages against Halliburton and Transocean related to the *Deepwater Horizon* Incident, with which the Court is well-familiar.[4] The Settlement Agreements provided a limited fund of approximately $1.24 billion in aggregate settlement benefits, $903,638,743.58 of which was allocated to the settlement of New Class punitive damages claims.[5]

The court-approved and noticed Distribution Model divided the New Class into five "Claim Categories" based on their likelihood of recovering punitive damages under *Robins Dry Dock v. Flint*, 275 U.S. 303 (1927) and its progeny. The net punitive damages settlement fund was then allocated to the New Class in the following proportions to form Net

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[3] Although executed separately, by Transocean on May 29, 2015, and by Halliburton originally on September 2, 2014, and amended on September 2, 2015, the Settlement Agreements contain parallel language throughout and are referred to collectively in this brief. *See* Pet. App. 7.

[4] The "*Deepwater Horizon* Incident" is more fully defined in Section 5(o) of the Agreements.

[5] The remaining $338,247,923.42 was allocated to the DHEPDS Class to settle claims against Halliburton and Transocean that BP had assigned to that class in the DHEPDS Settlement § 1.1.3.

Settlement Fund Pools:

(1) Real Property (80.0%)
(2) Commercial Fishermen (17.8%)
(3) Loss of Subsistence (1.4%)
(4) Personal Property (0.6%)
(5) Charterboat (0.2%)

Within each Net Settlement Fund Pool, the amounts are divided among eligible claimants in direct proportion to their actual or expected recovery of compensatory damages or "base compensation amount." Accordingly, a claimant's recovery of punitive damages under the Distribution Model is in proportion to the value of his compensatory damages claim.

Petitioners had not received a compensatory damages award or settlement and their compensatory damages claims were assigned a $0 value because they had failed to preserve their compensatory claims pursuant to PTO 60. Under the mathematical formulae in the Distribution Model, a $0 value compensatory damages claim corresponded to a $0 punitive damages distribution.

Not only did Petitioners not file or seek to file a compensatory damages claim in the MDL, Petitioners confirmed to the Fifth Circuit that they "are not seeking to file individual suits for economic damages against BP or other responsible entities."[6] Without a compensatory damages claim to provide a base compensation amount, under the distribution model,

[6] *See* Pet. Br. 5th Cir. at 34.

Petitioners' claim determinations resulted in $0 awards.

That individuals who had not yet recovered compensatory damages or preserved their compensatory damages claims by compliance with PTO 60 would receive a $0 award was facially apparent both in the Distribution Model and its attached draft Claim Form, giving potential claimants substantial advance notice of this outcome.

An explanation of (a) the procedure for asserting this category of claims in the MDL and (b) the basis of the PTO 60 requirement in the New Class Claims Administrator's Distribution Model demonstrates why this group of menhaden fishermen—who at some point may have had potentially valid claims for compensatory and punitive damages due to the *Deepwater Horizon* incident—nevertheless received a $0 claim determination in the HESI/Transocean punitive damages settlement.

AMICUS CURIAE STATEMENT

I. Petitioners did not file compensatory damages claims as plaintiffs in the MDL.

The B1 Bundle Master Complaint asserted a broad range of claims against BP, Transocean, and Halliburton for both compensatory and punitive damages, on behalf of unnamed potential class members, defined as follows:

> *All individuals and entities residing or owning property in the United States who claim economic losses, or damages to their occupations, businesses, and/or property as a result of the April 20, 2010 explosions and fire aboard, and sinking of, the Deepwater Horizon, and the resulting Spill.*[7]

Menhaden fisheries and commercial fishermen were expressly included in the B1 Complaint's broad allegations of damages resulting from the *Deepwater Horizon* Incident.

Petitioners, therefore, along with many claimants in MDL 2179, passively relied at the outset on the B1 Master Complaint as unnamed potential class members to preserve their compensatory and punitive damages claims arising out of the *Deepwater Horizon* Incident. *See Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 552 (1974) (permitting class action plaintiffs to

[7] *See* Pet. App. 34–35.

passively rely on such a complaint).

The district court denied a motion to dismiss the B1 Master Complaint in a ruling that was later referenced and incorporated in the Settlement Agreements as the basis for the New Class's standing to bring claims under maritime law. On August 26, 2011, in the "B1 Order" (as it is referred to in the Settlement Agreements), the B1 Master Complaint was deemed sufficient for commercial fishermen, such as Petitioners, to state a claim under general maritime law for compensatory and punitive damages against BP, Halliburton, and Transocean.[8]

Less than one year later, on May 3, 2012, the *Deepwater Horizon* Economic and Property Damages Settlement (the "DHEPDS") was filed.[9] The DHEPDS eventually would resolve the vast majority of claims that had been preserved in the B1 Master Complaint through a Court-Supervised Settlement Program ("CSSP"), including claims for compensatory damages against BP and against the Respondents here, Halliburton and Transocean. Punitive damages claims against Halliburton and Transocean were

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[8] Specifically, United States District Court Judge Carl J. Barbier held that the B1 Complaint "state[d] a viable cause of action . . . under general maritime law on behalf of claimants who either allege physical damage to a proprietary interest and/or qualify for the commercial fishermen exception to *Robins Dry Dock*." B1 Order (Rec. Doc. 3830) at 25. The Court further analyzed the availability of punitive damages under general maritime law in light of the Oil Pollution Act and held that the B1 Plaintiffs who had asserted such general maritime law claims also had "assert[ed] plausible claims for punitive damages . . ." *Id.* at 27.

[9] *See* R.18-30243.2635.

specifically reserved and excluded from the DHEPDS, and later became the subject of the separate HESI/Transocean punitive damages settlement at issue in this appeal.

Menhaden fishermen fell within the few categories of B1 plaintiffs who were specifically excluded from participating in the DHEPDS to resolve their compensatory damages claims. Menhaden fishermen had been able to participate in the Gulf Coast Claims Facility ("GCCF") claims process that immediately followed the *Deepwater Horizon* incident, and some menhaden fishermen (not those involved in this appeal) took advantage of that early opportunity to resolve their damages claims through the GCCF. But the DHEPDS, for whatever reason, expressly excluded all "[c]laims relating to menhaden (or 'pogy') fishing, processing, selling, catching, or harvesting."[10]

Therefore, while other DHEPDS claims were being processed by the CSSP under the BP settlement, Petitioners' claims remained unresolved and passively asserted in the allegations contained in the B1 Master Complaint. It does not appear that Petitioners took any steps to pursue or resolve their compensatory damages claims between the filing of the DHEPDS in 2012 and the dismissal of the B1 Complaint in 2016. Indeed, the Petition states that they did not even retain counsel during this period.[11]

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[10] *See* R.18-30243.2649.

[11] Pet. at 7 n.6.

II. The district court dismissed the B1 Master Complaint in PTO 60, and Petitioners took no steps to preserve their right to seek compensatory damages.

Judge Barbier dismissed the B1 Complaint and entered Pretrial Order 60 ("PTO 60") on March 29, 2016.[12] That Order came nearly ***six years*** after the *Deepwater Horizon* Incident and with most of the B1 claims already having been resolved in the DHEPDS. PTO 60 expressly required any and all remaining plaintiffs who either had filed a short form joinder to the B1 complaint, or who were part of a complaint with more than one plaintiff (or a "mass joinder" lawsuit), to file individual complaints with a completed sworn statement by May 2, 2016.[13]

PTO 60 also included a notice plan that would provide a copy of the Order to all counsel of record, post the Order on the MDL website, and instruct BP and the PSC to transmit copies of the Order to plaintiffs who had opted out of the DHEPDS and all known counsel of record for B1 Plaintiffs.[14]

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[12] *See* Pet. App. 8; R.18-30243.4218.

[13] R.18-30243.4220–21. Petitioners contend that they (or their counsel) did not realize that PTO 60 applied to them based on the wording of the Order. PTO 60, however, dismissed the entire B1 Master Complaint—a dismissal that by its terms would apply to any unnamed B1 class plaintiffs, who no longer could rely on the B1 Complaint or any other "mass joinder" lawsuit to "preserve" their damages claims.

[14] R.18-30243.4222–23. Petitioners also contend that they (or their counsel) nevertheless did not receive adequate notice of PTO 60. The New Class Claims Administrator takes no position

Judge Barbier granted several extensions to the PTO 60 deadline to various claimants for good cause shown and issued a show cause order for any filings that did not fully comply with PTO 60.[15] Any former B1 plaintiffs, however, who did not comply with PTO 60 or timely show good cause for their failure to do so were "deemed noncompliant with PTO 60, and their B1 claims [were] dismissed with prejudice."[16]

Petitioners did not file an individual suit to preserve their claims and were not granted a "good cause" extension for their failure to comply with PTO 60. Accordingly, whatever compensatory damages claims they had preserved initially through the B1 Master Complaint as unnamed potential class members were dismissed by PTO 60 on March 29, 2016.[17]

With the dismissal of the B1 Master Complaint, Petitioners had no pending complaint for compensatory damages on file in the MDL to correspond with their claim in the settlement program for punitive damages. And, because they took no other action to preserve their right to compensatory damages, Petitioners had no basis to claim or recover compensatory damages in the MDL at the time their

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on this issue other than to inform the Court of the steps taken by the district court to insure adequate notice.

[15] *See* R.18-30243.4458.

[16] *See* R.18-30243.5196.

[17] *See* R.18-30243.4223 ("[T]he Court hereby DISMISSES the Amended Master B1 Complaint and orders the designated plaintiffs to act in compliance with this Order or face dismissal of their claims with prejudice without further notice.").

claims were submitted to the Punitive Damages Settlement Program.

III. The Distribution Model, in accordance with settled maritime law, based its proposed distribution of punitive damages on the amount of a claimant's actual or expected compensatory damages recovery.

The Settlement Agreements authorized the New Class Claims Administrator to create a Distribution Model for the HESI/Transocean punitive damages settlement fund. Pursuant to a court-established deadline, the New Class Claims Administrator submitted the proposed Distribution Model to the district court on June 13, 2016[18]—over a month after the deadline to file individual claims in compliance with PTO 60 had passed.

Following well-established maritime law, the Distribution Model for punitive damages was based upon a claimant's expected base compensation or actual compensatory damages. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 515 (2008) (applying generally a maximum punitive-to-compensatory ratio of 1:1 for claims under general maritime law).

In *Baker*, this Court held that the maximum amount of recoverable punitive damages under maritime law should generally be limited to a ratio of 1:1 to a plaintiff's compensatory damages. 554 U.S. at 515; *see also Louisiana Crawfish Producers Ass'n-W. v. Amerada Hess Corp.*, No. CV 6:10-0348, 2015 WL 10571063, at *7 (W.D. La. Nov. 23, 2015) (citing and

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[18] *See* Pet. App. 9.

applying *Baker* to the punitive damages claims of commercial fishermen and noting "[i]t is axiomatic that punitive damages may only be recovered in cases where compensatory damages are allowed in the underlying claim."). In a non-maritime context as well, this Court has endorsed the idea that the amount of allowable punitive damages should be related to the amount of compensatory damages. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580–81 (1996) ("The principle that exemplary damages must bear a 'reasonable relationship' to compensatory damages has a long pedigree. . . . Our decisions . . . endorsed the proposition that a comparison between the compensatory award and the punitive award is significant.").

The Settlement Agreements also specifically contemplated that the New Class Claims Administrator would set standards by which a claimant could establish the existence of an underlying claim for compensatory damages.

> *The plan for distribution of payments to the New Class recommended by the Claims Administrator may, at his/her discretion, include a standard to establish a claim for Real Property damage, a standard to establish a claim for Personal Property damage, including Vessel damage, a standard to establish a claim for commercial fishing loss, a standard to establish a claim for charter fishing loss, a standard to establish a claim for subsistence loss, and other standards*

> *as necessary to distribute the New Class Funds. Prior to distribution of any New Class Funds, the Effective Date must have occurred and the Distribution Model must be approved by a Final order of the Court. HESI [and Transocean] shall not have any responsibility or liability whatsoever for, the distribution or method of distribution of the Aggregate Payment.*[19]

Awards of punitive damages, therefore, would be tied to the existence of an actual claim for compensatory damages, and the New Class Claims Administrator would establish standards of proof for those claims as necessary to distribute funds in a Distribution Model.

Under the Distribution Model, New Class punitive damages claimants could establish their actual or expected amount of compensatory damages through:

> (1) an automatically-transferred DHEPDS claim;[20]

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[19] R.18-30243.4068, 4140.

[20] Such transferred claims save administrative costs and benefit from the substantial time, effort, and expense already incurred in determining DHEPDS claim valuations. But this category could not include any menhaden fishermen, given that they had been excluded from the DHEPDS.

> (2) a settlement obtained through the Court-Appointed Neutrals or otherwise providing compensatory damages;[21] or
>
> (3) proof of an existing compensatory damage claim that survived PTO 60 to be assigned an expected value according to criteria specified in the Distribution Model.

Menhaden fishermen could not satisfy the first method, having been excluded from the DHEPDS, and were, therefore, required to satisfy either method 2 or 3 to establish a compensatory claim for commercial fishing loss.

If a New Class member already had lost their compensatory damages claim by failing to comply with PTO 60, however, his claim for compensatory damages was valued at $0 because that claim was no longer asserted or preserved. The Distribution Model, following *Baker*, thus provided that class members with $0 value compensatory damage claims could not receive a greater award through the punitive damages settlement. *See Baker*, 554 U.S. at 515 (applying generally a maximum punitive-to-compensatory ratio of 1:1 for claims under general maritime law).

A $0 valuation determination for non-PTO 60 compliant claimants, therefore, was ***not*** based on a determination that these claimants were not part of

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[21] The Court-appointed Neutrals were Mike Moore and Drake Martin. The Neutrals oversaw a process outside the CSSP for voluntary settlements with BP of claims asserted in MDL 2179, which settlements generally reserved the settling party's punitive damages claims against Halliburton and Transocean.

the "New Class." Rather, they received a $0 determination because they had not settled or otherwise preserved their compensatory claims. A 1:1 ratio of a $0 value compensatory damages claim yields a $0 punitive damages award. No contrary result would be possible under maritime law.[22]

IV. A corresponding $0 punitive damages award for any claimant who had failed to preserve a compensatory damages claim was clearly stated and explained in the Distribution Model and Claim Form.

The requirement for compliance with PTO 60 was facially apparent both in the New Class Claims Administrator's Distribution Model and its attached draft Claim Form.[23] From the New Class Claims Administrator's Distribution Model, all New Class members who did not participate in the DHEPDS or receive a Neutrals settlement and who did not comply with PTO 60 (such as Petitioners) should have seen

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[22] *See* Distribution Model, R.18-30243.4657 ("Under maritime law, a claimant may obtain punitive damages only if that claimant has a valid claim for underlying compensatory damages. Accordingly, this Distribution Model does not assign any value to the claims of those who have not received compensatory damages through some vehicle or have a pending claim or lawsuit to recover compensatory damages arising from the Deepwater Horizon Incident.").

[23] *See id.* ("For those claimants who were not included within the DHEPDS and are allowed to file a new claim under this Distribution Model, their claims will be assigned no value unless they adequately preserved their right to pursue damages by complying with the MDL-2179 Pretrial Order 60 [Rec. Doc.16050]."); R.18-30243.4686, 4688. (also explaining this result on the draft Claim Form).

that their submission to the Settlement Program would result in an award of $0 from the punitive damages settlement.

The New Class Claims Administrator further explained this reasoning and discussed his application of *Baker* to the Distribution Model in a "Clarification of New Class Distribution Model Issues" that was filed and submitted before final approval of the Settlement Agreements by the district court, which clearly stated: "Given that these individuals and entities [who have not received compensatory damages or complied with PTO 60] have not and will not likely recover any compensatory damages, the New Class Distribution Model assesses the most reasonable value of their corresponding punitive damage claim as zero dollars ($-0-)."[24]

V. Petitioners did not opt-out, object, or appeal before the Settlement Agreements and Distribution Model became final.

New Class members who disagreed with the Distribution Model were given the option to object to or opt-out of the HESI/Transocean Settlement. The deadline to opt-out or object was September 23, 2016—over three months after the Distribution Model was submitted on June 13, 2016.[25] Petitioners did not exercise their right to opt-out of the Settlement Agreements or otherwise object to the settlement

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[24] R.18-30243.5068–70.

[25] *See* Pet. App. 8, 59, 89.

structure or the Distribution Model.[26]

Judge Barbier also held a fairness hearing on November 10, 2016 to address any remaining concerns with the Settlement Agreements and the Distribution Model.[27] Petitioners did not appear or assert an objection at the fairness hearing.

Some class members who owned beach-front property, e.g., the "Salas Objectors," did object to the Distribution Model, arguing that their non-compliance with PTO 60 should not result in a $0 award. The Salas Objectors argued (among other reasons for disagreement with the model) that they *did* have a valid pending damages claim that was not dismissed by PTO 60 in the form of a separate proposed class action lawsuit previously filed by their attorney, Camilo K. Salas, III, in 2013 in civil action no. 2:13-97.[28] This lawsuit is referred to in the Petition for certiorari as the "*Bruhmuller* complaint."[29]

The district court issued its Final Order approving the Settlement Agreements on February 15, 2017. In

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[26] In its Order and Reasons for final approval, the district court noted that "[u]nder the Preliminary Approval Order, failure to comply with its objection provisions waived and forfeited any and all of a putative objector's rights to object to the Proposed Settlements, forever foreclosing the objector from making any objection to the Proposed Settlements, and binding the objector by all the terms of the Proposed Settlements and by all proceedings, orders and judgments in this matter." R.18-30243.5269.

[27] Pet. App. 59, 92.

[28] *See* R.18-30243.4919.

[29] *See* Pet. at 4 n.2.

the Order and Reasons for approval, Judge Barbier briefly mentioned the objection that the Salas Objectors had asserted during the approval process, but held "[t]his objection is most properly considered in an appeal to this Court after claim determinations are concluded."[30] Fourteen days after entry of the Order, the Salas Objectors settled and dismissed the separate lawsuit they had filed in civil action no. 2:13-97, resulting in a compensatory damages settlement amount that in turn could serve as the basis to participate in this punitive damages settlement.[31]

By comparison, Petitioners never filed or sought to file any lawsuit in the MDL, relied only passively on the class allegations in the B1 Complaint (which had been dismissed), and confirmed to the Fifth Circuit that they "are not seeking to file individual suits for economic damages against BP or other responsible entities."[32]

The Petitioners never argued that they were included in the *Bruhmuller* class action on their claim forms, to the district court, or to the Fifth Circuit, and they were neither directly nor indirectly involved in the filing or resolution of that case. Neither could being included as a passive member of the putative class asserting beach-front property damages in *Bruhmuller* have resulted in a compensatory damages award or settlement amount to Petitioners. Judge

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[30] R.18-30423.5276.

[31] *See* Salas Objector's Dismissal of civil action no. 2:13-97 (Rec. Doc. 22329).

[32] Pet. Br. 5th Cir. at 34.

Barbier's PTO 60 reconciliation order expressly rejected an argument that a filed putative class action was sufficient to preserve a plaintiff's claim in the absence of compliance with PTO 60.[33]

That the parties to the *Bruhmuller* class action (who were actually involved in that litigation) were able to settle their damages claims with Defendants after this ruling and receive a settlement that could then be used as a base compensation amount demonstrates that the Distribution Model was flexible enough to accommodate circumstances in which Plaintiffs might be able to receive compensatory damages awards, despite having not initially complied with PTO 60.

What the distribution model does not do (and what it could not do, consistent with maritime law) was award punitive damages to claimants who had not been awarded any compensatory damages and are not seeking compensatory damages.

Like the Salas Objectors, other menhaden fishermen (represented by other counsel) either (a) settled their compensatory damages claims or (b) complied with PTO 60 and submitted evidence of their compliance, thereby preserving their compensatory damages claims. Petitioners, however, did not take such steps and did not opt-out of or object to the Distribution Model before its final approval, even though the model clearly stated from the outset that they would receive a $0 punitive damages distribution

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[33] *See* R.18-30243.5212.

to correspond to their $0 value compensatory damages claims.

Petitioners also did not appeal the February 15, 2017 final approval order. The "Effective Date" of the Settlement Agreements was triggered the day after the deadline to appeal the final approval Order, and the Settlement Agreements thereafter became "Final" and fully effective.[34]

VI. Petitioners challenged their $0 awards by seeking relief from the magistrate judge, the district judge, and in a Rule 60 motion, and appealed each of those rulings.

As stated under the court-approved Distribution Model, Petitioners received a claim determination of $0. Not until *after* their claims had been submitted and the awards processed through the claims program did these sixty-eight menhaden fishermen finally assert a delayed objection to the PTO 60 requirement. A series of challenges to the Distribution Model's PTO 60 requirement followed.

First, United States Magistrate Judge Joseph C. Wilkinson, Jr. reviewed and denied Petitioners' claims appeals in two separate rulings. In the first of these rulings, Magistrate Judge Wilkinson directly addressed and affirmed the propriety of the New Class Claims Administrator's Distribution Model requiring proof of a compensatory damages claim through a previously resolved claim or proof of an existing claim that survived PTO 60.[35] The second such ruling

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[34] R.18-30243.4130, 4154-56, 4159.

[35] Pet. App. 26–43.

affirmed the $0 award for the same reasons and noted that the Fifth Circuit had "recently affirmed the validity, enforceability and requirement of compliance with Pretrial Order No. 60."[36]

Next, Petitioners sought review of Magistrate Judge Wilkinson's claims appeal determination by the district judge. Judge Barbier held that the Settlement Agreement precluded district court review of a Magistrate's claims appeal determinations.[37]

Finally, some of the Petitioners moved for relief from Judge Barbier's final Order and Reasons approving the Distribution Model pursuant to Federal Rule of Civil Procedure 60, but Judge Barbier denied their Rule 60 motion.[38]

Petitioners then separately appealed each of these district court decisions and moved to consolidate the cases in the Fifth Circuit, addressing the overarching question of the propriety of their $0 awards through the claims program.

VII. The Fifth Circuit affirmed that Petitioners were not entitled to relief from the distribution model's PTO 60 requirement because they made no effort whatsoever to pursue compensatory damages upon learning of the requirement.

Counsel for HESI, Transocean, and the New Class Claims Administrator, as amicus curiae, presented this explanation for Petitioners' $0 awards to the Fifth

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[36] Pet. App. 45.

[37] Pet. App. 48–49.

[38] Pet. App. 47.

Circuit in briefing and at oral argument.[39] Affirming the district court in all respects, the Fifth Circuit correctly recognized that "[u]nder maritime law, a plaintiff's recovery of punitive damages is tied to his or her underlying compensatory damages claim."[40] The Fifth Circuit further rejected Petitioners' due process arguments, reasoning that "the Fishermen did not attempt to comply with PTO 60 once they *did* receive notice of it."[41] Given that Petitioners had no compensatory damages claim and took no steps to assert a compensatory damages claim in the MDL, the Fifth Circuit found that the district court did not err in affirming the $0 punitive damages awards.

Following the Fifth Circuit's panel's unanimous decision and denial of rehearing,[42] Petitioners are now seeking review in this Court. The New Class Claims Administrator is not a Respondent on the Court's

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[39] Petitioners claim that "Neither the appellees nor the claims administrator, appearing as amicus curiae, had asserted this non-pursuit of such opportunities as a ground for rejecting petitioners' due process argument; rather, the court of appeals raised this as an issue for the first time at oral argument." Pet. at 13. The New Class Claims Administrator's briefing as amicus was offered in the Fifth Circuit, as it is here, to assist the court and not to advocate for the rejection of any particular argument of the Petitioners. Nevertheless, that amicus brief did point out the multiple opportunities Petitioners had to opt out of, object to, or appeal before the Settlement Agreements and Distribution Model became final. Amicus Br. 5th Cir. at 21–25.

[40] Pet. App. 13.

[41] Pet. App. 21 (emphasis in original).

[42] *See* Pet. App. 55.

docket, and takes no position on the merits of the Petition itself. Rather, the New Class Claims Administrator appears only as amicus to help illuminate the complex procedural history of the claim process in the underlying case.

CONCLUSION

The New Class Claims Administrator respectfully submits this limited amicus response to inform the Court of the legal considerations and timeline of events that resulted in Petitioners' $0 punitive damages awards, and solely to assist the Court in its consideration of this Petition.

Respectfully submitted,

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