



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: OIL SPILL BY THE OIL RIG : MDL 2179
"DEEPWATER HORIZON" IN THE :
GULF OF MEXICO, ON APRIL 20, 2010 : Section J
:
This Document Applies to: : Judge Barbier
:
No. 12-970, Bon Secour Fisheries, Inc., et : Mag. Judge Shushan
al. v. BP Exploration & Production Inc., et al. :

ORDER AND JUDGMENT

AND NOW this ____ day of January, 2014, pursuant to Rule 54, Federal Rules of Civil Procedure, and upon motion of the Special Master, Louis J. Freeh, seeking the return of payments made to Casey C. Thonn and others by the Deepwater Horizon Economic Claims Center ("DHECC"), and the Court having reviewed and considered any opposition and/or arguments in response thereto; and for the reasons set forth on the records; the Court hereby FINDS as follows:

1. The Court has continuing and exclusive jurisdiction over each of Casey C. Thonn, AndryLerner LLC, Jonathan Andry, Glen Lerner, Lionel Sutton, III, and the Coastal Claims Group, LLC for enforcing the Deepwater Horizon Economic and Property Damages Settlement Agreement as amended on May 2, 2012; and
2. Each of Casey C. Thonn, AndryLerner LLC, Jonathan Andry, Glen Lerner, Lionel Sutton, III, and the Coastal Claims Group, LLC was properly notified of the Court's proceedings pursuant to the Special Master's motion; and
3. Pursuant to Rule 54(b), Federal Rules of Civil Procedure, as this action presents more than one claim for relief and involves multiple parties, the Court expressly determines that there is no just reason for delay of the entry of a judgment on the issues

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1. The Court has continuing and exclusive jurisdiction over each of Casey C. Thonn, AndryLerner LLC, Jonathan Andry, Glen Lerner, Lionel Sutton, III, and the Coastal Claims Group, LLC for enforcing the Deepwater Horizon Economic and Property Damages Settlement Agreement as amended on May 2, 2012; and
2. Each of Casey C. Thonn, AndryLerner LLC, Jonathan Andry, Glen Lerner, Lionel Sutton, III, and the Coastal Claims Group, LLC was properly notified of the Court’s proceedings pursuant to the Special Master’s motion; and
3. Pursuant to Rule 54(b), Federal Rules of Civil Procedure, as this action presents more than one claim for relief and involves multiple parties, the Court expressly determines that there is no just reason for delay of the entry of a judgment on the issues

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presented in the Special Master's motion and this Order as to each of Casey C. Thonn, AndryLerner LLC, Jonathan Andry, Glen Lerner, Lionel Sutton, III, and the Coastal Claims Group, LLC.

PURSUANT TO these findings, it is hereby ORDERED that the Settlement Payments in favor of Casey C. Thonn based upon Claim 19690 (vessel owner) and Claim 19691 (vessel captain) are hereby RESCINDED and VACATED; and it is further

ORDERED that Casey C. Thonn shall make full restitution to the DHECC for Claims 19690 and 19691, and shall immediately return and disgorge \$357,002.35 plus prejudgment interest and costs to the DHECC, and Casey C. Thonn shall not participate in any further distribution under the DHECC Seafood Compensation Program; and it is further

ORDERED that AndryLerner LLC and its partners Jonathan Andry and Glen Lerner, jointly and severally, shall make full restitution to the DHECC for any money received from or in connection with Claims 19690 and 19691, and shall immediately return and disgorge all attorney's fees paid plus prejudgment interest and costs in relation to these DHECC claims; and it is further

ORDERED that Lionel Sutton, III, shall make full restitution to the DHECC for any money received from or in connection with Claims 19690 and 19691, and shall immediately return and disgorge \$35,700.23 in attorney's fees plus prejudgment interest and costs in relation to these DHECC claims; and it is further

ORDERED that the Coastal Claims Group, LLC shall make full restitution to the DHECC for any money received from or in connection with Claims 19690 and 19691, and shall immediately return and disgorge \$20,182.50 in accounting fees plus prejudgment interest and costs in relation to these DHECC claims; and it is further

presented in the Special Master's motion and this Order as to each of Casey C. Thonn, AndryLerner LLC, Jonathan Andry, Glen Lerner, Lionel Sutton, III, and the Coastal Claims Group, LLC.

PURSUANT TO these findings, it is hereby ORDERED that the Settlement Payments in favor of Casey C. Thonn based upon Claim 19690 (vessel owner) and Claim 19691 (vessel captain) are hereby RESCINDED and VACATED; and it is further ORDERED that Casey C. Thonn shall make full restitution to the DHECC for Claims 19690 and 19691, and shall immediately return and disgorge \$357,002.35 plus prejudgment interest and costs to the DHECC, and Casey C. Thonn shall not participate in any further distribution under the DHECC Seafood Compensation Program; and it is further ORDERED that AndryLerner LLC and its partners Jonathan Andry and Glen Lerner, jointly and severally, shall make full restitution to the DHECC for any money received from or in connection with Claims 19690 and 19691, and shall immediately return and disgorge all attorney's fees paid plus prejudgment interest and costs in relation to these DHECC claims; and it is further

ORDERED that Lionel Sutton, III, shall make full restitution to the DHECC for any money received from or in connection with Claims 19690 and 19691, and shall immediately return and disgorge \$35,700.23 in attorney's fees plus prejudgment interest and costs in relation to these DHECC claims; and it is further

ORDERED that the Coastal Claims Group, LLC shall make full restitution to the DHECC for any money received from or in connection with Claims 19690 and 19691, and shall immediately return and disgorge \$20,182.50 in accounting fees plus prejudgment interest and costs in relation to these DHECC claims; and it is further

ORDERED that within 14 days of the date of this Order, the DHECC shall make an appropriate application to the Court under Rule 54(d) of the Federal Rules of Civil Procedure for the costs associated with this Order.

Pursuant to Rule 58, Federal Rules of Civil Procedure, the Clerk of Court is directed to promptly prepare, sign, and enter judgments consistent with this Order and in separate documents against each of Casey C. Thonn, AndryLerner LLC, Jonathan Andry, Glen Lerner, Lionel Sutton, III, and the Coastal Claims Group, LLC.

The United States Marshal shall provide services as may be needed by the Special Master and DHECC in enforcement of these judgments.

Signed in New Orleans, Louisiana, this ____ day of January, 2014.

HONORABLE CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

ORDERED that within 14 days of the date of this Order, the DHECC shall make an appropriate application to the Court under Rule 54(d) of the Federal Rules of Civil Procedure for the costs associated with this Order.

Pursuant to Rule 58, Federal Rules of Civil Procedure, the Clerk of Court is directed to promptly prepare, sign, and enter judgments consistent with this Order and in separate documents against each of Casey C. Thonn, AndryLerner LLC, Jonathan Andry, Glen Lerner, Lionel Sutton, III, and the Coastal Claims Group, LLC.

The United States Marshal shall provide services as may be needed by the Special Master and DHECC in enforcement of these judgments.

Signed in New Orleans, Louisiana, this _____ day of January, 2014.

HONORABLE CARL J. BARBIER UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
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MOTION OF THE SPECIAL MASTER
FOR RETURN OF PAYMENTS MADE TO CASEY C. THONN AND OTHERS

COMES NOW the Special Master, Louis J. Freeh, seeking to remedy a fraud committed upon the Deepwater Horizon Economic Claims Center ("DHECC") by claimant Casey C. Thonn. As set forth more fully in the accompanying memorandum, incorporated herein by reference, Mr. Thonn presented false information and documents, including purported tax "returns" that in fact had never been filed with the Internal Revenue Service to support his alleged seafood compensation claim before the DHECC. Relying on these misrepresentations, the DHECC paid Mr. Thonn \$357,002.35 for his fraudulent claims.

The Court should enter a judgment requiring Mr. Thonn to return all money paid by DHECC for his improper claims and awarding such other relief as may be just and appropriate. All professionals who assisted Mr. Thonn and benefitted from this unjustified payment from the DHECC similarly should be required to return any payments received from Mr. Thonn's claims.

Respectfully submitted,

/s/ Louis J. Freeh
Louis J. Freeh
Special Master

Dated: January 8, 2014

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C. THONN AND OTHERS

COMES NOW the Special Master, Louis J. Freeh, seeking to remedy a fraud committed upon the Deepwater Horizon Economic Claims Center (“DHECC”) by claimant Casey C. Thonn. As set forth more fully in the accompanying memorandum, incorporated herein by reference, Mr. Thonn presented false information and documents, including purported tax “returns” that in fact had never been filed with the Internal Revenue Service to support his alleged seafood compensation claim before the DHECC. Relying on these misrepresentations, the DHECC paid Mr. Thonn \$357,002.35 for his fraudulent claims. The Court should enter a judgment requiring Mr. Thonn to return all money paid by DHECC for his improper claims and awarding such other relief as may be just and appropriate. All professionals who assisted Mr. Thonn and benefitted from this unjustified payment from the DHECC similarly should be required to return any payments received from Mr. Thonn’s claims.

Respectfully submitted,

_____/s/_Louis J. Freeh_____ Louis J. Freeh Special Master Dated: January
8, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing motion and supporting documents have been served on all counsel by electronically uploading the same to Lexis Nexis File & Serve in accordance with Pretrial Order No. 12, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF System, which will send a notice of electronic filing in accordance with the procedures established in MDL 2179, and that a copy of the foregoing have been served this 8th day of January, 2014, by electronic mail, on the following:

Frank G. DeSalvo
Brigid E. Collins
Frank G. DeSalvo APLC
739 Baronne Street
New Orleans, LA 70113
Attorneys for Casey C. Thonn

Michael S. Walsh
Taylor, Porter, Brooks & Phillips LLP
8th Floor Chase Tower South
451 Florida Street, PO Box 2471
Baton Rouge, Louisiana 70821
Attorney for Lionel H. Sutton, III

Lewis O. Unglesby
Lance C. Unglesby
Unglesby Law Firm
246 Napoleon Avenue
Baton Rouge, LA 70802
Attorneys for Jon Andry

Bert Verdigets
Coastal Claims Group, LLC
398 Azalea Drive
Mandeville, LA 70471
Coastal Claims Group, LLC

Pauline F. Hardin
James E. Wright, III
Virginia W. Gundlach
Jones Walker LLP
201 St. Charles Ave. - 49th Floor
New Orleans, LA 70170

/s/Louis J. Freeh
Louis J. Freeh

and

William W. Taylor, III
Amit P. Mehta
Zuckerman Spaeder LLP
1800 M. Street, NW - Suite 1000
Washington, DC 20036-5807
Attorneys for Glen J. Lerner

Douglas S. Draper
Heller, Draper, Patrick & Horn, LLC
650 Poydras Street - Suite 2500
New Orleans, LA 70130
Attorneys for Andry Lerner, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing motion and supporting documents have been served on all counsel by electronically uploading the same to Lexis Nexis File & Serve in accordance with Pretrial Order No. 12, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF System, which will send a notice of electronic filing in accordance with the procedures established in MDL 2179, and that a copy of the foregoing have been served this 8th day of January , 2014, by electronic mail, on the following:

Frank G. DeSalvo Brigid E. Collins Frank G. DeSalvo APLC 739 Baronne Street New Orleans, LA 70113 Attorneys for Casey C. Thonn

Lewis O. Unglesby Lance C. Unglesby Unglesby Law Firm 246 Napoleon Avenue Baton Rouge, LA 70802 Attorneys for Jon Andry

Pauline F. Hardin James E. Wright, III Virginia W. Gundlach Jones Walker LLP 201 St. Charles Ave. – 49th Floor New Orleans, LA 70170

and

William W. Taylor, III Amit P. Mehta Zuckerman Spaeder LLP 1800 M. Street, NW – Suite 1000 Washington, DC 20036-5807 Attorneys for Glen J. Lerner

Douglas S. Draper Heller, Draper, Patrick & Horn, LLC 650 Poydras Street – Suite 2500 New Orleans, LA 70130 Attorneys for Andry Lerner, LLC

Michael S. Walsh Taylor, Porter, Brooks & Phillips LLP 8th Floor Chase Tower South 451 Florida Street, PO Box 2471 Baton Rouge, Louisiana 70821 Attorney for Lionel H. Sutton, III

Bert Verdigets Coastal Claims Group, LLC 398 Azalea Drive Mandeville, LA 70471 Coastal Claims Group, LLC

/s/Louis J. Freeh Louis J. Freeh

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MEMORANDUM IN SUPPORT OF MOTION OF THE SPECIAL MASTER
FOR RETURN OF PAYMENTS MADE TO CASEY C. THONN AND OTHERS

Special Master Louis J. Freeh seeks to have Casey C. Thonn return \$357,002.35 in payments made by the Deepwater Horizon Economic Claims Center ("DHECC") under the Seafood Compensation Program. In filing claims with the DHECC, Mr. Thonn presented false information and documents, including tax "returns" that in fact had never been filed with the Internal Revenue Service. The DHECC paid Mr. Thonn \$357,002.35 based upon these false documents and Mr. Thonn's misrepresentation of his 2009 shrimping income. In fact, a 2009 tax return actually filed by Mr. Thonn -- but concealed by Mr. Thonn from the DHECC -- showed that Mr. Thonn was "unemployed" with no income that year.

The Court should enter a judgment requiring Mr. Thonn to return all money paid by DHECC and requiring all professionals who assisted Mr. Thonn and benefitted from this unjustified payment from DHECC to similarly return such payments.

A. Background

By Order dated September 6, 2013, the Court directed the Special Master to examine and investigate any past or pending claims submitted to the Court Supervised Settlement Program ("CSSP") which are deemed to be suspicious and initiate clawback proceedings for fraudulent claims. The Court retains continuing and exclusive jurisdiction over the parties

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and their counsel for enforcing the Deepwater Horizon Economic and Property Damages Settlement Agreement as amended on May 2, 2012 (the "Settlement Agreement"). *See* Settlement Agreement at ¶ 18.1. Any disputes arising out of or related to the interpretation, enforcement or implementation of the Settlement Agreement shall be made by motion to the Court. *Id.*

The Seafood Compensation Program under the Settlement Agreement covers and compensates commercial fishermen, seafood boat captains, other seafood crew, and seafood vessel owners for economic loss claims relating to damages suffered by such claimants that owned, operated, leased or worked on a vessel that: (a) was home ported in the Gulf Coast Areas at any time from April 20, 2010 to April 16, 2012, or (b) landed seafood in the Gulf Coast Areas at any time from April 20, 2009 to April 16, 2012. Claimants can file a single Seafood Compensation Program Sworn Claim Form with the DHECC, seeking compensation for multiple compensable claims.

B. Mr. Thonn's Seafood Compensation Claims

On June 24, 2012, Mr. Thonn filed claims, through legal counsel, with the DHECC for compensation under the Seafood Compensation Program as a vessel owner (Claim 19690) and vessel captain (Claim 19691), among others. *See* Exhibit A. The DHECC claim form submitted by Mr. Thonn provided:

I certify and declare under penalty pursuant to 28 U.S.C. Section 1746 that the information provided in this Claim Form is true and accurate to the best of my knowledge, and that supporting documents attached to or submitted in connection with this form and the information contained therein are true, accurate, and complete to the best of my knowledge, and I understand that false statements or claims made in connection with this Claim Form may result in fines, imprisonment, and/or any other remedy available by law to the Federal Government, and that suspicious claims will be forwarded to federal, state, and local law enforcement agencies for possible investigation and prosecution.

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In support of his claim, Mr. Thonn submitted to the DHECC several documents, including a "Forensic Analysis and Report" dated June 19, 2012 from the Coastal Claims Group, LLC, an accounting firm that provides claim support accounting (hereafter "Report," attached as Exhibit B). The Report stated that, "[a]fter review of the financial documentation for Mr. Thonn's commercial fishing business, it has been determined that the claimant has suffered an economic loss of income relating to the BP DWH Oil Spill as outlined in the DWH Court Supervised Settlement Program Agreement under the Seafood Compensation Program." *Id.* at 2.

The report calculated Mr. Thonn's claim using "[g]ross vessel revenue based on [Mr. Thonn's] tax return, monthly profit and loss statements as provided by Mr. Thonn is \$156,000." Exhibit B at 6. Attached to the report as supporting documents were "Federal Tax Returns 2009 and 2010" and "Federal Schedule C 2009 and 2010." *Id.* at 9. The supporting documents also included "[a]ffidavits from the local purchasers of Mr. Thonn's shrimp." *Id.* The 2009 "tax return" was a Form 1040 for Mr. Thonn, with an attached Schedule C indicating \$156,000 in business income for Mr. Thonn as a fisherman. *Id.* Also attached was a Form 1040X, Amended U.S. Individual Income Tax Return, for Mr. Thonn amending the 2009 return in ways that did not affect his shrimping income but increased his tax liability. *Id.*

On or about February 28, 2013, the DHECC paid Mr. Thonn and his counsel \$166,652.10 for Claim 19690 as a vessel owner under the Seafood Compensation Program. On or about April 29, 2013, the DHECC paid Mr. Thonn and his counsel \$190,350.25 for Claim 19691 as a vessel captain under the Seafood Compensation Program.

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Upon information and belief, Mr. Thonn's counsel, the AndryLerner LLC law firm and its partners Jonathan Andry and Glen Lerner, received attorney's fees for Mr. Thonn's seafood claims. Approximately \$35,700.23 of these fees was transferred as a referral fee to Lionel Sutton, III, a former DHECC staff member.

Coastal Claims Group, LLC submitted an invoice for \$20,182.50 for its accounting work preparing the Report supporting Mr. Thonn's seafood claims. *See* Exhibit B.

C. Evidence of Mr. Thonn's Fraudulent Claim

On November 6, 2013, after investigating Mr. Thonn's claims, the Special Master applied for an order to show cause directed to Mr. Thonn. On November 7, 2013, the Court issued a show cause order requiring Mr. Thonn to sign a release to authorize the Internal Revenue Service ("IRS") to provide the Special Master with Mr. Thonn's tax records for 2009 and 2010. The order also required Mr. Thonn to produce the documentation that a claimant is to provide to support a claim under the Settlement Agreement's Seafood Compensation Program. *See* Settlement Agreement at Exhibit 10 IV.B.1(b) & (d) and IV.B.2(b) & (d).

Mr. Thonn produced no records responsive to the show cause order, but he did sign an IRS form agreeing to release his income tax records to the Special Master.

IRS records released to the Special Master with Mr. Thonn's consent indicate that the 2009 tax documents presented to the DHECC by Mr. Thonn were never filed with the IRS. *See* Exhibit C (Mr. Thonn's 2009 IRS Record of Account & Wage and Income Transcript). Mr. Thonn never paid the 2009 tax liability shown in the documents he presented to the DHECC. *Id.*

Upon information and belief, Mr. Thonn's counsel, the AndryLerner LLC law firm and its partners Jonathan Andry and Glen Lerner, received attorney's fees for Mr. Thonn's seafood claims. Approximately \$35,700.23 of these fees was transferred as a referral fee to Lionel Sutton, III, a former DHECC staff member.

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IRS records released to the Special Master with Mr. Thonn's consent indicate that the 2009 tax documents presented to the DHECC by Mr. Thonn were never filed with the IRS. See Exhibit C (Mr. Thonn's 2009 IRS Record of Account & Wage and Income Transcript). Mr. Thonn never paid the 2009 tax liability shown in the documents he presented to the DHECC. Id.

The IRS records released to the Special Master by the IRS show that the only 2009 tax filing presented by Mr. Thonn to the IRS was a Form 1040A that represented that Mr. Thonn had no income for 2009 and was “unemployed” for that year. *See* Exhibits C and D (2009 Form 1040A). Mr. Thonn never presented or mentioned this 2009 tax return to the DHECC, and Coastal Claims Group Report similarly made no mention of this 2009 filing.

The IRS records also indicate that the 2010 tax form presented by Mr. Thonn with his claim indicating that the form was dated September 15, 2011, in fact had not been filed with the IRS when Mr. Thonn presented the document to the DHECC on June 24, 2012. *See* Exhibit E (Mr. Thonn’s 2010 IRS Record of Account & Wage and Income Transcript). This 2010 tax document was filed with the IRS, but not until September 17, 2012, after the IRS sent Mr. Thonn a warning about failure to file a tax return for 2010. *Id.*

The IRS records are consistent with records provided by Mr. Thonn’s tax preparer, who produced to the Special Master’s investigators income tax forms for 2009 indicating that Mr. Thonn had no 2009 income. *See* Exhibit D; Exhibit F at ¶ 4 (affidavit of Special Master investigator). The tax preparer could provide no information to explain the contradictory information on Mr. Thonn’s income for 2009, nor did the preparer know which, if any, of the forms had been filed with the IRS. *See* Exhibit F at ¶ 4.

The IRS records also are consistent with a statement that Mr. Thonn’s now-former spouse made to the Special Master’s investigators. Mr. Thonn’s now-former spouse stated that the 2009 tax form indicating that Mr. Thonn had no 2009 income was the form she filed with the IRS. *See* Exhibit D; Exhibit F at ¶ 5. Mr. Thonn’s former spouse further stated that Mr. Thonn was unemployed in 2009. *See* Exhibit F at ¶ 5. She said she was not aware of the filing of any amended tax returns for 2009. *Id.*

The IRS records released to the Special Master by the IRS show that the only 2009 tax filing presented by Mr. Thonn to the IRS was a Form 1040A that represented that Mr. Thonn had no income for 2009 and was “unemployed” for that year. See Exhibits C and D (2009 Form 1040A). Mr. Thonn never presented or mentioned this 2009 tax return to the DHECC, and Coastal Claims Group Report similarly made no mention of this 2009 filing. The IRS records also indicate that the 2010 tax form presented by Mr. Thonn with his claim indicating that the form was dated September 15, 2011, in fact had not been filed with the IRS when Mr. Thonn presented the document to the DHECC on June 24, 2012. See Exhibit E (Mr. Thonn’s 2010 IRS Record of Account & Wage and Income Transcript). This 2010 tax document was filed with the IRS, but not until September 17, 2012, after the IRS sent Mr. Thonn a warning about failure to file a tax return for 2010. Id.

The IRS records are consistent with records provided by Mr. Thonn’s tax preparer, who produced to the Special Master’s investigators income tax forms for 2009 indicating that Mr. Thonn had no 2009 income. See Exhibit D; Exhibit F at 4 (affidavit of Special Master investigator). The tax preparer could provide no information to explain the contradictory information on Mr. Thonn’s income for 2009, nor did the preparer know which, if any, of the forms had been filed with the IRS. See Exhibit F at 4.

The IRS records also are consistent with a statement that Mr. Thonn’s now-former spouse made to the Special Master’s investigators. Mr. Thonn’s now-former spouse stated that the 2009 tax form indicating that Mr. Thonn had no 2009 income was the form she filed with the IRS. See Exhibit D; Exhibit F at 5. Mr. Thonn’s former spouse further stated that Mr. Thonn was unemployed in 2009. See Exhibit F at 5. She said she was not aware of the filing of any amended tax returns for 2009. Id.