KIM DELEO, ET AL. V.
BOUCHARD TRANSPORTATION COMPANY, INC., ET AL.

PRINCIPLES OF ALLOCATION AND EXPLANATION OF BENEFITS

If approved by the Court, the following principles will govern the allocation of Settlement benefits. They are explained below to help Class Members understand the estimated amount of their potential recovery under the Settlement. Details underlying the allocation principles are provided at the end of this document. You may contact Class Counsel, without charge, if you would like assistance in determining your possible estimated recovery.

The following formula will allow you to calculate the estimated recovery a Class Member can expect from this Settlement. The final recovery for any claim will not be determined until completion of the Final Master Class List of Class Properties and affected Property Interests, and final approval of the Court. The multiplier applied below may be adjusted somewhat downward or upward during this process.

Step 1: Calculation of Monthly Recovery

a) Summer Month Recovery

Multiply the 2004 assessed value of the property, as set forth in the Town of Mattapoisett FY '04 Taxpayer Real Property Assessment Listing, by

(i) if your property interest in the oiled property is a **fee interest**: **.0076**, or
(ii) if your property interest in the oiled property is an **easement interest**: **.0038**.

This will give you the estimated recovery per month for the summer months of June, July, and August.

b) Off-Season Month Recovery

Multiply the 2004 assessed value of the property by

(i) if your property interest in the oiled property is a **fee interest**: **.0017**, or
(ii) if your property interest in the oiled property is an **easement interest**: **.00085**.

This will give you the estimated recovery per month for the off-season months of January – May, and September – December.

Step 2: Determine Oiling Duration

Each property has an Oiling Duration, based on its Oil Classification. You can determine the Oil Classification of your property by consulting the Oil Classification Map at www.buzzardsbaysettlement.com , or contacting Class Counsel. The Oiling Durations are as follows:

(a) for Class Properties having an Oil Classification of "Light/Very Light" or "Light/Moderate": May – September, 2003;
(b) for Class Properties having an Oil Classification of "Moderate": May – October, 2003;
(c) for Class Properties having an Oil Classification of "Heavy": May – November, 2003;
(d) for Class Properties having an Oil Classification of "Leisure Shores/Heavy": May, 2003 – October, 2007.

Step 3: Determine the Estimated Total Potential Recovery for Your Property

To determine the estimated total potential recovery for your property,

(a) multiply the Summer Month Recovery by the number of Summer Months in your Oiling Duration in which you owned the property,[1]
(b) multiply the Off-Season Month Recovery by the number of Off-Season Months in your Oiling Duration in which you owned the property,
(c) add 3(a) and 3(b) to determine the estimated total potential recovery for your property.

Step 4: Apply Recovery Cap

The recovery for each property is capped under the Settlement. If the recovery as determined in Step 3 is less than the cap, the full recovery may be paid. If the recovery as determined in Step 3 is greater than the cap, the recovery is the cap amount. The caps are:

(a) For any easement interest, other than Leisure Shores easement interests, \$10,000 per Class Property.

(b) For any fee interest, \$20,000 per Class Property.

(d) For any Leisure Shores easement interest, \$30,000 per Class Property.

There will be only one recovery per property though there may be multiple distributions of a single recovery. In other words, if there is more than one owner of the property, all owners will share the single recovery amount for that property.

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[1] You should count any month in your Oiling Duration during which you owned the property for one or more days.

Examples

Example 1 – John & Jane Fee Owner

Assume John & Jane Fee Owner's property had an assessed value, for FY '04, of $500,000.

Example 1, Step 1:

John & Jane Fee Owner have a Summer Month Recovery of $3800 ($500,000 x .0076).

John & Jane Fee Owner have an Off-Season Month Recovery of $850 ($500,000 x .0017).

Example 1, Step 2:

Assume John & Jane Fee Owner's property has an Oil Classification of Heavy. They will be able to recover for three Summer Months (June – August, 2003), and four Off-Season Months (May, September, October & November, 2003).

Example 1, Step 3:

(a) Multiply Summer Month Recovery ($3800) times the total number of Summer Months (3): $3800 x 3 = $11,400.
(b) Multiply Off-Season Month Recovery ($850) times the total number of Off-Season Months (4): $850 x 4 = $3400.
(c) Total potential recovery = $14,800 ($11,400 + $3400).

Example 1, Step 4:

As a Fee Owner, the Recovery Cap for John & Jane Fee Owner's property is $20,000. Since the total potential recovery does not exceed the cap, John & Jane Fee Owner may recover all of their total potential recovery under the Settlement ($14,800 total).

Example 2 – Sam & Sally Easement Owner

Assume Sam & Sally Easement Owner's property had an assessed value, for FY '04, of $350,000.

Example 2, Step 1:

Sam & Sally Easement Owner have a Summer Month Recovery of $1330 ($350,000 x .0038).

Sam & Sally Easement Owner have an Off-Season Month Recovery of $297.50 ($350,000 x .00085).

Example 2, Step 2:

Assume Sam & Sally Easement Owner's property has an Oil Classification of Light. They will be able to recover for three Summer Months (June – August, 2003), and two Off-Season Months (May & September, 2003).

Example 2, Step 3:

(d) Multiply Summer Month Recovery ($1330) times the total number of Summer Months (3): $1330 x 3 = $3990.
(e) Multiply Off-Season Month Recovery ($297.50) times the total number of Off-Season Months (2): $297.50 x 2 = $595.
(f) Total potential recovery = $4585 ($3990 + $595).

Example 2, Step 4:

As an Easement Owner, the Recovery Cap for Sam & Sally Easement Owner's property is $10,000. Since the total potential recovery does not exceed the cap, Sam & Sally Easement Owner may recover all of their total potential recovery under the Settlement ($4585 total).

<u>Example 3 – Bob & Betty Leisures</u>

Assume Bob & Betty Leisures' property had an assessed value, for FY '04, of $275,000.

Example 3, Step 1:

Bob & Betty Leisures have a Summer Month Recovery of $1045 ($275,000 x .0038).

Sam & Sally Easement Owner have an Off-Season Month Recovery of $233.75 ($275,000 x .00085).

Example 3, Step 2:

Assume Bob & Betty Leisures' property has an Oil Classification of Leisure Shores/Heavy. They will be able to recover for fifteen Summer Months (June, July & August, 2003 - 2007), and thirty-nine Off-Season Months (May, 2003 – October, 2007, excluding summer months).

Example 3, Step 3:

(g) Multiply Summer Month Recovery ($1045) times the total number of Summer Months (15): $1045 x 15 = $15,675.
(h) Multiply Off-Season Month Recovery ($233.75) times the total number of Off-Season Months (39): $233.75 x 39 = $9,116.25.
(i) Total potential recovery = $24,791.25 ($15,675 + $9,116.25).

Example 3, Step 4:

As a Leisure Shores Easement Owner, the Recovery Cap for Bob & Betty Leisures' property is $30,000. Since the total potential recovery does not exceed the cap, Bob & Betty Leisures may recover all of their total potential recovery under the Settlement ($24,791.25 total).

Example 4 – Carl & Christine Cap

Assume Carl & Christine Cap have fee ownership of a waterfront property that had an assessed value, for FY '04, of $1,000,000.

Example 4, Step 1:

Carl & Christine Cap have a Summer Month Recovery of $7600 ($1,000,000 x .0076).

Carl & Christine Cap have an Off-Season Month Recovery of $1700 ($1,000,000 x .0017).

Example 4, Step 2:

Assume Carl & Christine Cap's property has an Oil Classification of Very Light. They will be able to recover for three Summer Months (June – August, 2003), and two Off-Season Months (May & September, 2003).

Example 4, Step 3:

(j) Multiply Summer Month Recovery ($7600) times the total number of Summer Months (3): $7600 x 3 = $22,800.
(k) Multiply Off-Season Month Recovery ($1700) times the total number of Off-Season Months (2): $1700 x 2 = $3400.
(l) Total potential recovery = $26,200 ($22,800 + $3400).

Example 4, Step 4:

As a Fee Owner, the Recovery Cap for Carl & Christine Cap's property is $20,000. Since the total potential recovery exceeds the cap, Carl & Christine Cap may recover the Recovery Cap under the Settlement ($20,000 total).

Calculations and Assumptions for Step 1

The multipliers contained in Step 1 (.0076 for fee interest Summer Month Recovery; .0017 for fee interest Off-Season Month Recovery; .0038 for easement interest Summer Month Recovery; .00085 for easement interest Off-Season Month Recovery) are based on the calculation of the component parts of the Settlement as follows.

The Settlement is intended to compensate the property owner for the temporary lost value of his/her property resulting from the Spill, for the duration of the Spill's material effects on the property. Temporary lost value is determined by the Spill's impact on the annual rental value of the property. Every property is deemed to have a rental value, even if you never rented it to anyone.

A basic and widely accepted principle in finance is that there is a direct relationship between an asset such as the market value of a house, and its annual return or rental value. The relationship is that annual rental value, R, is equal to the market value, V, times the sum of the interest rate, i, and the depreciation rate, λ:

$$R = V^*(i+\lambda)$$

To determine the market value of each property as of the time of the Spill, the Settlement relies on the assessed value reported in the *Town of Mattapoisett FY'04 Taxpayer Real Property Assessment Listing* (11/19/2003). However, analysis of sales data during the relevant period, as reported by the Mattapoisett Town Assessor, indicates that the assessed values of properties were on average lower than then-current market values by approximately 40%. To account for that difference, each property's assessed value has been multiplied by 1.4. Hence, the market value, V, in the above equation, is equal to the 2004 assessed value multiplied by 1.4.

The 30-year mortgage interest rate for 2003 averaged 6%.[2] The inflation rate for 2003 was 2.3%.[3] The depreciation rate of housing is 1.14%.[4] Adding the real interest rate of 3.7% (i = 6% - 2.3%) and the depreciation rate (λ = 1.14%) yields a value of 4.84% (rounded off to 5% for purposes of these calculations).

Therefore, the annual rental value of a property (R) equals the assessed value x <u>.07</u> (1.4 x .05).

For purposes of this Settlement, the three summer months of June, July, and August are

[2] Freddie Mac, http://www.freddiemac.com/pmms/pmms30.htm
[3] Federal Reserve Bank of Minneapolis, http://minneapolisfed.org/Research/data/us/calc/hist1913.cfm
[4] U.S. Bureau of Economic Analysis, BEA Depreciation Estimates, http://www.bea.gov/National/FA2004/Depreciation_2010.pdf. This assumes the average lifetime of a house is 80 years.

considered to account for 60% of a property's annual rental value.[5] Summer month rental value therefore equals R x .6/3, or R x <u>.2</u>.

The remaining nine summer months account for 40% of a property's annual rental value. Hence, Off-Season month rental value equals R x .4/9, or R x <u>.044</u>.

It is the Lost Beach Premium, however, that is the value of the damage being compensated for in the Settlement.[6] This represents an estimated 30% (<u>.30</u>) of the annual rent for property with a fee interest in an oiled beach, and half that for property with an easement interest in an oiled beach.[7] Hence, the recovery allocation for a property with a fee interest in a damaged beach is based on 30% of its rental value (R) for the duration of the oiling. The recovery allocation for a property with an easement interest in a damaged beach is half that.

Finally, an additional multiplier of <u>1.8</u> has been applied to each damages calculation for purposes of the Settlement.[8]

Therefore, the recovery multiplier, to be applied to 2004 assessed value for each Class Property, equals:

a) for fee interests,

(i) summer month recovery multiplier = .07 x .2 x .3 x 1.8 = .00756 (rounded to .0076)
(ii) off-season month recovery multiplier = .07 x .044 x .3 x 1.8 = .0017

b) for easement interests, you half the above recovery multipliers, therefore:

(i) summer month recovery multipler = .0038
(ii) off-season month recovery multiplier = .00085

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[5] See, Affidavit of Jonathan H. Avery, MAI, Nov. 11, 2005, *DeLeo, et al. v. Bouchard Transportation et al.*, docket #26, at paragraph 7.

[6] The "Beach Premium" is the added value a property enjoys because it includes access to a beach. This value is considered to have been "lost" while the beach was materially affected by the Spill and ensuing cleanup.

[7] Derived from verdicts rendered at the Phase 1 Trial in *DeLeo, et al. v. Bouchard Transportation et al.*

[8] This multiplier may be adjusted slightly upward or downward at the time of the final allocation of recovery for each property, once all Class members and Class properties have been identified and approved by the Court at the Final Approval Hearing.