

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS

Mary Louise Fairey, et al., )  
 )  
Plaintiffs, )

Civil Action No. 94-CP-38-118

vs. )

**ORDER**

The Exxon Corporation, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

This 11 year old certified class action was settled on July 18, 2003. *Transcript of Settlement Agreement, July 18, 2003*. This Court finally approved the terms of the settlement on October 7, 2003 after the class had been notified of the settlement and of the Court's intent to consider whether to make it final.

As a part of that settlement, the parties agreed that class counsel would prepare and submit for this Court's consideration class claims procedures which would allow class members to submit claims against the settlement fund. *Id at 4*. Class counsel did so and a hearing was held on December 4, 2003 in St. George, South Carolina to consider the class claims procedures. ExxonMobil submitted a proposed order relating to these procedures at this hearing for the Court's consideration. Appearing on behalf of the class were C. Alan Runyan, and Bud Fairey of Speights & Runyan and Thomas H. Pope of Pope & Hudgens. Appearing on behalf of ExxonMobil were Robert H. Hood of the Hood Law Firm LLC and Walt Tollison of Nelson, Mullins Riley and Scarborough. This order sets forth the class claims procedures to be followed.

The claims process will consist of 5 stages or periods of time: 1) The period for notice to the class of the procedures and of the existence of a claim form to be completed and filed with the Court before a Bar Date; 2)The period within which claimants may file those claim forms; 3) The period within which claimants may file supporting proofs of the claims they made through

the claim forms; 4) The period within which the Special Referee, this Court's designee, will consider the merits of those claims and proofs of claim as guided by this order and submit recommendations to this Court concerning those claims; and 5) The period within which this Court will consider the recommendations of the Special Referee and any claimant objections to them.

#### **Notice to Class (Publication and Mailing)**

Class Counsel shall cause notice of the claims procedure to be published in the same manner as notice of settlement commencing after January 13, 2004 but prior to January 23, 2004 for 6 consecutive weeks. A copy of the notice to be given is **Exhibit A**.

Class Counsel shall also mail, via first class mail this notice, claims forms and claims procedures to those addresses where notice of the settlement was mailed and was unreturned. This mailing shall be deposited with the Post Office no later than January 26, 2004.

#### **Claim Forms**

Claimants must submit a Court-approved Claim Form, **Exhibit B**. Claims forms will be available from Class Counsel, the Orangeburg County Clerk of Court's office or may be completed online at the class website which shall be created and maintained by class counsel: [www.scexxonmobilustclassaction.com](http://www.scexxonmobilustclassaction.com). This Court may also provide for methods to allow for electronic filing with the Orangeburg County Clerk's office. These methods will be publicized on the class action website or as further ordered by this court. **Claimants wishing to complete their Claim Form online must do so not later than May 21, 2004. Claim forms must be filed with the Orangeburg County Clerk of Court not later than 5:00 pm on May 28, 2004 ("Bar Date").**<sup>1</sup> Class counsel shall file with the Orangeburg County Clerk's Office, as received, claim forms which have been completed online at the class action website.

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<sup>1</sup>Filing deadlines are set forth in **bold** lettering throughout this Order. This Court may alter the deadlines presently set for action by the Special Referee or the Court.

### Proof of Claims

Claimants who have timely filed a claims form may file proofs of their claims. **Proof of claims must be filed with the Orangeburg County Clerk of Court's office not later than 5:00 pm on August 30, 2004.** The procedures to be followed by claimants in proving their claims are set forth in **Exhibit C**. Class Counsel shall mail Proof of Claims Procedures to all potential claimants who filed claim forms by the Bar Date. They shall also be provided to claimants or their authorized representatives upon request by Class Counsel, the Orangeburg County Clerk of Court's office and shall be available on the class website: [www.scexxonmobilustclassaction.com](http://www.scexxonmobilustclassaction.com).

### Claims Consideration Process and Reports of Special Referee

The settlement agreement contemplated, and the parties agreed, that this Court would appoint a Special Referee to assist it in the decision making required during the claims process. *Id at 11-12.* The Court appoints the Honorable Luke Brown, a retired circuit judge as Special Referee to assist the Court in this process. Judge Brown's fees and expenses shall be paid by the settlement fund upon application by Judge Brown and as approved by further orders of this

Court.

*add signature* *if Judge Brown is unable to complete his task for special referee. the court may appoint a successor special*  
The Special Referee shall consider all claims for which Proofs of Claim have been timely filed and shall be guided by this Order and by the Claims Procedures, **Exhibit C**, in the decision-making process and by such other direction as this Court may give. The Special Referee shall allow such claims as are found to be allowable, in any percentage up to 100 % as he determines are appropriate. The Special Referee may also direct class counsel to notify claimants of deficiencies in their proofs of claim. The notice of deficiency shall provide that any supplemental information submitted to the Special Referee must be received within 21 days of the date of the deficiency notice, or the claimants proof of claim is subject to dismissal or

rejection. **The Special Referee shall issue a Claims Allowance Report not later than October 15, 2004 in which he shall specify, by claim, the allowed percentage of that claim. The Special Referee shall thereafter issue his Final Report recommending payment and shall, if applicable, provide for a payment amount for each claim no later than October 29, 2004.**

The Reports of the Special Referee shall be submitted to the Court, Class Counsel, Counsel for each Claimant and designated Exxon counsel, Bobby Hood.

*The special Referee in his report to the Court will identify the claims for which*  
The Special Referee shall have the discretion to recommend a decision to this Court on

all aspects of claims. He may consider the proofs submitted, any permitted filings by ExxonMobil and the law of South Carolina as it relates to the claims and the procedures, **Exhibit C.** The Special Referee may seek guidance from this Court at any time and on any issue he deems appropriate. He may choose the manner and method for any inquiry into the proofs of claims submitted for his recommendations. However, he shall do so in a simplified procedural manner that is most convenient to the claimants consistent with his own need to make considered recommendations concerning the claims before him. The rules of evidence shall apply but shall be relaxed in the interest of justice as determined by the Special Referee. He may consider such material as ExxonMobil or class counsel file with respect to such claims "for whatever consideration" he wishes to give to such material. The Special Referee may not, however, order any party or claimant to take any action not authorized by this Order, subsequent orders of this Court or the claims procedures.

Subject to the rights of class counsel and claimants to object or appeal, the Special Referee shall designate in his Final Report the payment amount each claimant is entitled to receive and shall direct class counsel to pay claimant, upon claimant's execution of a release of all causes of action raised in the class action complaint, the form of which is to be approved by further order of the Court and upon this Court's order of payment.

*defenses were raised and indicate also briefly the basis of the defense raised*

### **ExxonMobil Participation in the Claims Process**

ExxonMobil and its counsel, consistent with the parties settlement agreement, may only participate in the claims process to the extent provided by this order. ExxonMobil shall not otherwise participate in the claims process or offer argument on any position at any time. ExxonMobil may not at any time and in any manner appear in an adversarial manner. Any ExxonMobil submission which the Special Referee determines, in his sole discretion, to be adversarial or inconsistent with the terms of this order shall be disregarded by him.<sup>2</sup>

### *ExxonMobil's Presentation of Factual Information*

ExxonMobil may file with the Orangeburg County Clerk of Court, with copies to Class Counsel and to any other identified claimant or their counsel, not later than 30 days after the Bar Date such non-argumentative factual information as it presently has relating to such property; provided however, that if ExxonMobil chooses to file such non-argumentative factual information, it must also simultaneously provide the claimant all factual information in its (ExxonMobil, its attorneys, agents or consultants) possession relating to such property. ExxonMobil or its attorneys shall also certify under oath at the time of filing that the information submitted or provided is complete to the best of their knowledge and belief and that they are aware of no other information relating to such property that has not been filed. The failure of ExxonMobil to certify or its failure to disclose shall result in the Court's or the Special Referee's right to disregard in whole or in part the factual information actually filed by ExxonMobil.

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<sup>2</sup>The parties settlement agreement, which was finally approved by this Court after notice to the class, repeatedly states that ExxonMobil will only be involved in the claims process in a non-adversarial manner: Exxon may only appear "where necessary to assist the fact finder", *Transcript of Settlement, July 18, 2003 at 7*; it may not appear in an adversarial role, *Id at 7, 9 and 11*; and its common law defenses may only be presented "in a non-adversarial manner for whatever consideration the referee wants to give to that subject." *Id.*

*ExxonMobil Non-Adversarial Statement of Defenses and their Factual Basis*

ExxonMobil may file with the Court, with copies to Class Counsel and any other identified claimant or their counsel not later than 30 days after the Bar Date, a non-adversarial statement of facts present with regard to a claim under which the law of South Carolina does not allow recovery. ExxonMobil must do so on a claim-by-claim basis. Such statement must be limited to the following form: "The claim is barred because claimant's claim accrued before \_\_\_\_\_ and the applicable statute of limitation \_\_\_\_\_, operates to bar such claim. The factual basis of the accrual is \_\_\_\_\_." Any argumentative statements made in support of ExxonMobil's factual statement shall result in the Court's or the Special Referee's disregarding of the asserted defense.

**Objections to Final Report of Special Referee**

**Claimants and/or Class Counsel may appeal or object to the final ruling of the Special Referee by filing objections with this Court so long as the objections are received at the Orangeburg County Clerk of Court's office no later than 5:00 pm on November 29, 2004.** Copies of objections or appeals must be provided to this Court and be served on class counsel, the individual claimant(s) to which the appeal pertains and Exxon's designated counsel on the same date and in the same manner that the appeal is filed with the Orangeburg County Clerk of Court. Any recommendation of the Special Referee not timely appealed or objected to will be considered to be final subject to this Court's consideration and issuance of its payment order.

**Court's Consideration of Special Referee Final Report and Order of Payment**

**The Court will consider the Special Referee's report, any objections timely filed to it by claimants and/or class counsel and will issue its order of payment not later than December 21, 2004.** The order of payment will finally resolve all matters associated with the claims process and will provide for the payment of class claims and for such other payments as may be contemplated by the settlement agreement and this Court's orders.

The procedures set forth by this order and its exhibits are intended to accomplish the resolution of class claims in a manner that is simple, fair and inexpensive to claimants with the goal of assisting claimants in the resolution of their claims through this settlement and not in any way unfairly hindering those claims. To that end class counsel shall report to this court any procedure, practice or process that needs modification or correction in order to facilitate these goals.

**IT IS SO ORDERED.**



The Honorable Diane S. Goodstein  
Circuit Court Judge for the First Judicial Circuit

January 14, 2004  
~~St. George, South Carolina~~  
*N. Charles*

*Exhibit A*

## **Notice of Class Claims Procedures**

*Mary Louise Fairey, et al. v. The Exxon Corporation, et. al.*

### **NOTICE OF CLASS ACTION CLAIMS PROCEDURES**

TO MEMBERS OF THE SOUTH CAROLINA EXXON CONTAMINATION CLASS ACTION:

YOU ARE HEREBY NOTIFIED OF THE EXISTENCE OF A CLAIMS PROCEDURE TO BE FOLLOWED FOR CLASS MEMBERS TO RECOVER FROM A SETTLEMENT FUND CREATED AS A RESULT OF THE SETTLEMENT OF THE ABOVE-REFERENCED ACTION.

The class, on whose behalf these claims were asserted and on whose behalf this action has been settled, consists of:

THOSE PERSONS WHO POSSESS AN INTEREST IN REAL PROPERTY WITHIN THE STATE OF SOUTH CAROLINA THAT HAVE BEEN POTENTIALLY CONTAMINATED BY PETROLEUM PRODUCTS, OR CHEMICALS ASSOCIATED WITH PETROLEUM PRODUCTS THAT HAVE LEAKED, SPILLED, OR BEEN RELEASED INTO THE ENVIRONMENT EITHER FROM EQUIPMENT OWNED, OPERATED OR CONTROLLED BY EXXON, ITS AGENTS OR ITS PREDECESSORS, OR FOR SERVICE STATION OPERATIONS CONDUCTED BY EXXON, ITS AGENTS OR PREDECESSORS, OR UNDER THE CONTROL OF EXXON OR ITS PREDECESSORS.

This Court previously certified this case as a class action on March 13, 1998 and gave notice concerning the existence of this Class on March, 1999, which afforded all of those who wished to be excluded an opportunity to exclude themselves from this case. IF YOU FIT THE DESCRIPTION SET FORTH ABOVE AND DID NOT REQUEST TO BE EXCLUDED BY JULY 30, 1999, YOU ARE A MEMBER OF THIS CLASS AND HAVE THE RIGHT TO FILE A CLAIM AGAINST THE SETTLEMENT FUND CREATED AS A RESULT OF THE RESOLUTION OF THIS CLASS ACTION.

YOU ARE ALSO NOTIFIED THAT A **CLAIM FORM** IS AVAILABLE FOR YOU TO **COMPLETE AND FILE PRIOR TO MAY 28, 2004 (THE BAR DATE)**. TO BE ALLOWED TO FILE PROOF OF YOUR CLAIM, YOU MUST FILE A CLAIM FORM WITH THE ORANGEBURG COUNTY CLERK OF COURT'S OFFICE. UPON THE SUBMISSION OF A CLAIM FORM, YOU WILL BE PROVIDED PROCEDURES TELLING YOU HOW TO

COMPLETE THE CLAIMS PROCESS.

The Claim Form can be obtained from Class Counsel, the Orangeburg County Clerk of Court's Office or it may be found online and completed online at the class website: [www.scexxonmobileustclassaction.com](http://www.scexxonmobileustclassaction.com). Claimants wishing to complete their Claim Form online must do so not later than May 21, 2004. Claim forms completed online on or before May 21<sup>st</sup> will be filed by Class Counsel.

**IN ORDER TO PARTICIPATE IN THE SETTLEMENT FUND, YOU MUST COMPLETE A CLAIM FORM ONLINE ON OR BEFORE MAY 21, 2004 OR FILE A CLAIM FORM WITH THE ORANGEBURG COUNTY CLERK OF COURT'S OFFICE ON OR BEFORE MAY 28, 2004. CLAIM FORMS CAN BE FILED IN PERSON AT 190 GIBSON STREET, ORANGEBURG, SOUTH CAROLINA OR BY MAIL AT POST OFFICE DRAWER 9000, ORANGEBURG, SOUTH CAROLINA 29116. FAILURE TO FILE A CLAIM FORM ON OR BEFORE MAY 28, 2004 WILL RESULT IN YOUR INABILITY TO PARTICIPATE IN THE CLAIMS PROCESS. IF YOU FAIL TO FILE A CLAIM FORM BY THE DATE SET FORTH ABOVE, ANY CLAIM WHICH YOU HAVE WILL NOT BE ALLOWED AND YOUR RIGHTS AGAINST EXXON-MOBIL ARISING OUT OF THIS ACTION WILL BE FOREVER BARRED.**

CLASS COUNSEL:

C. Alan Runyan, Esq.  
Marion C. Fairey, Esq.  
Lee D. Cope, Esq.  
SPEIGHTS & RUNYAN  
Post Office Box 685  
Hampton, SC 29924  
(800) 348-3805  
[www.speightsrunyan.com](http://www.speightsrunyan.com)  
[exxonca@speightsrunyan.com](mailto:exxonca@speightsrunyan.com)

Charles H. Williams, Esq.  
WILLIAMS & WILLIAMS  
370 St. Paul Street, N.E.  
Post Office Box 1084  
Orangeburg, SC 29116  
(803) 534-5218

*Exhibit B*

**South Carolina ExxonMobil UST Class Action  
Claims Form**

*Mary Louise Fairey, et al v. The Exxon Corp., et al*  
C/A No.: 94-CP-38-118

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This is a Court approved claims form for those claimants who are members of the class described below which must be filed with the Orangeburg County Clerk of Court's Office not later than May 28, 2004 ("Bar Date"). Claim forms can be filed in person at 190 Gibson Street, Orangeburg, South Carolina or by mail at Post Office Drawer 9000, Orangeburg, South Carolina 29116.

Those persons who possess an interest in real property within the state of South Carolina that have been potentially contaminated by petroleum products, or chemicals associated with petroleum products that have leaked, spilled, or been released into the environment either from equipment owned, operated or controlled by Exxon, its agents or its predecessors, or for service station operations conducted by Exxon, its agents or predecessors, or under the control of Exxon or its predecessors.

If you are a member of the class described above, you are entitled to file a claim for recovery of damages to be paid from a fund created by the settlement of the referenced class action. The procedure to be followed to prove your entitlement to damages will be provided to you upon your timely completion and filing of this Claim Form. You may also have access to this claims procedure and this claim form for online completion at [www.scexxonmobilustclassaction.com](http://www.scexxonmobilustclassaction.com). Those claimants wishing to complete their Claim Form online must do so not later than May 21, 2004. Claim forms completed online will be filed by Class Counsel.

**IF YOU ARE A MEMBER OF THIS CLASS, YOU MUST SUBMIT A CLAIM FORM BY THE BAR DATE SET FORTH ABOVE OR ANY CLAIM YOU HAVE AS A MEMBER OF THIS CLASS WILL NOT BE ALLOWED AND YOUR RIGHTS AGAINST EXXON ARISING OUT OF THIS ACTION WILL BE FOREVER BARRED.**

If you are uncertain about whether you are a member of this class, you should consult with your counsel or you may contact Class Counsel at the following address:

C. Alan Runyan  
Marion C. Fairey, Jr.  
Lee D. Cope  
Speights & Runyan  
200 Jackson Avenue East  
PO Box 685  
Hampton, South Carolina 29924  
1-800-348-3805  
[www.speightsrunyan.com](http://www.speightsrunyan.com)  
[exxonca@speightsrunyan.com](mailto:exxonca@speightsrunyan.com)

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1. List the following for each claimant(s):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

(If property is owned by more than one individual or company, please list all owners on separate sheet of paper)

2. List the physical address of each property for which claimant(s) is/are making a claim:

\_\_\_\_\_

\_\_\_\_\_

3. Identify the ownership interest claimant(s) has/have in the property listed in 2 above:

\_\_\_\_\_

\_\_\_\_\_

4. Provide a brief statement of your basis to believe that the property listed in 2 above was/is contaminated from Exxon's service station operations.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Claimant(s) or Claimant(s) Authorized  
Representative

\_\_\_\_\_  
Date

## *Exhibit C*

### **South Carolina ExxonMobil UST Class Action Proof of Claims Procedures**

Claimants who have filed a Claim Form on or before the Bar Date may file with the Orangeburg County Clerk of Court's office such proof as claimant desires in support of the following requirements. Methods of proof set forth below are not exclusive methods of proving the requirements in question. *Attached to these procedures is a sample of the types of information that might be filed to support a hypothetical claim.* **The failure to file proof of a claim will result in the claim not being considered for payment.**

These procedures and standards shall govern the claimant's obligations in the submission and support of proof associated with claims of property contamination and damage.

These procedures are intended to create a process through which claimants may prove their entitlement to payment from the settlement fund in a relatively simple, inexpensive and uncomplicated manner that nevertheless complies with the essential elements of class membership and proof of associated loss. To that the end, the rules of evidence shall apply but shall be relaxed in the interest of justice as determined by this Court or the Special Referee.

#### **Glossary of Terms**

These procedures reference various terms whose meaning may not be clear to you. The following is a definition of some of these terms. These definitions are not intended to limit the meaning of a term but rather to make it more understandable to you. If you have any questions about these terms or others not defined, you should ask your counsel or class counsel for assistance.

- "Exxon" means Exxon, Esso, Humble, Standard Oil of New Jersey, or any of its predecessors or successors. This does **not** include Mobil or any of its predecessors.
- "Contamination" means the presence in measurable concentrations on claimant's real property of chemicals or other substances associated with the operation of a service station, including constituents of gasoline, oil, or any other product used as a part of normal service station operations.
- "Interest in real property" usually means owning all or a part of land about which you are making a claim. It may also mean having some other type of ownership interest in that land. You may own all or part of land that is or used to be an Exxon service station. You may also own all or part of land that adjoins a current or former Exxon service station. You should consult with your attorney or with class counsel if you are uncertain of whether you have an interest in real property that is covered in this class action.
- "Evidence of ownership" is some proof that you own the property about which you are making a claim. This is usually a deed you have for this property. You may be the sole owner or you may share ownership with others.
- "DHEC records" means records which the Department of Health & Environmental control may have concerning the property about which you are making a claim. These records are usually in the Columbia office and may include such things as soil and groundwater monitoring data that shows the level of contaminants present when the readings were taken, the number and type of underground tanks that may have been reported to DHEC for the property as well as other information that might be useful in supporting a claim.

- “Special warranty” or “baseline deeds”, mean those deeds that sometimes were given for contaminated property by Exxon when it sold the property. These deeds contain some type of information in them about the state of the contamination when the property was transferred.
- “Service station operations” means any type of activity performed at a station during the period in question. Examples of such activity would be fuel storage and dispensing, oil replacement and waste oil storage, vehicle lubrication as well as any other activity associated with the operation and maintenance of vehicles which involved petroleum products.
- “Claimant averments” means statements made under oath usually in the form of affidavits by you or by others who have first hand knowledge about the matters stated. This might include some of the following: the approximate dates Exxon or its predecessors operated a service station on the property or on property adjoining yours; leak or spill incidents that occurred, the discovery of the contamination or similar types of information.
- “Remediation” means a practice or series of practices designed to remove contaminants from the soil or groundwater.
- “Adjoining property” means any real property that is sufficiently close to the current or former Exxon service station that the claimant has a basis to believe has been damaged by the contamination from that service station. It may be physically located next to the current or former station or it may be some distance away so long as there is a basis to believe that contamination from the current or former station is impacting the property.
- “Suitably qualified expert” means one who would be qualified, in the sole judgment of the Special Referee, by experience or training to offer expert opinions in a South Carolina court of general jurisdiction.

## **I. Class Membership**

### **!** *Property Ownership*

- Claimants must establish that they were members of the defined class.
- Membership may be established by proof of an “interest in real property” that falls within the class definition such as
  - land that is currently, or formerly was, an Exxon service station;
  - “adjoining property” to a current or former Exxon station.
- Proof may include such “evidence of ownership” as certified copies of deeds or other instruments evidencing claimant’s ownership ‘interest in real property’ which falls within the class definition. Proof may also include any other evidence that the Special Referee or the Court finds adequate to determine a claimants membership in the class.

### **!** *Contamination*

- Claimants must establish that the property was contaminated during the period that the claimant contends the loss occurred.

- Proof of “contamination” may be through the following types of documentation:
  - “DHEC records” which state the level of “contamination” during the period of the claimant’s ownership interest or otherwise indicate that the property was contaminated.
  - Class documentation from records obtained as a result of the class action, such as Exxon station files, deposition testimony and other such other documentation that may demonstrate “contamination”.
  - Deeds which by their nature establish the existence of “contamination” on the property, such as “special warranty” deeds or “baseline deeds” referencing the contaminated state of the property.
  - Sampling data of soil or groundwater from present or former sites or adjoining sites or sites adjoining present or former service station sites.
  - Any other evidence that establishes to the satisfaction of the Special Referee or the Court that the claimant’s property was contaminated.

! *Causation*

- Claimant shall furnish proof that the “contamination” for which a claim is made was caused by Exxon’s “service station operations” as defined in the class definition.
- This proof may include:
  - “DHEC records” such as where DHEC has found Exxon the responsible party;
  - class documentation as described above;
  - “claimant averments” based on their personal knowledge;
  - deeds; or
  - such other documentation establishing or tending to establish that Exxon’s “service station operations” were a cause, in fact, of the property damage claimant is asserting.
  - any other evidence that establishes to the satisfaction of the Special Referee or the Court that the claimant’s property was contaminated by Exxon’s “service station operations”.

## II. Damages

! *Costs of “Remediation”*

- Claimant may provide proof of the cost to remediate its real property so that:
  - the contaminants present are not more than the South Carolina risk-based corrective action (RBCA) standards, if applicable, which absent an actual determination from DHEC shall be assumed to be drinking water at the limits of the applicable property lines or
  - such other drinking water standards as may be applicable in the absence of South Carolina DHEC standards for such contaminants.
  - The cost of remediation recoverable shall be limited to the fair market value of the property in an uncontaminated state.
  
- The proof may include:
  - estimates for “remediation” costs from experts suitably qualified to make such estimates;
  - through the submission of the documentation of costs actually incurred to remediate or partially remediate such property;
  - costs required to be spent by any local, state or federal agency or government as a result of the “contamination”;
  - other costs which are or could be incurred as a result of the “remediation” of the property.
  - any other evidence that establishes to the satisfaction of the Special Referee or the Court that the claimant’s property has incurred or will incur costs to remediate it to the standard set forth above. contaminated.

! *Devaluation of Property*

- Claimant may provide proof that the value of the real property was diminished due to the presence of the “contamination”.
- The measure of claimant’s damages shall be the difference between its diminished value as a result of such “contamination” and the value it would have had in an uncontaminated state.
- Proof of such loss in value may be by:
  - the submission of an appraisal by a “suitably qualified expert” setting forth these values and the loss associated with the “contamination”,
  - contracts reflecting a reduced sales price due to such “contamination”, proof of a lost sale due to such “contamination”, or
  - any combination of evidence supporting a loss in value caused by the “contamination”.
  - any other evidence that establishes to the satisfaction of the Special Referee or the Court that the claimant’s property has suffered a loss in value due to the “contamination”.

! *Other Losses*

- documented actual losses incurred as a result of “contamination” such as loss of business during testing and clean up activities, professional fees, costs for prior testing and/or assessment of the property, or other out-of-pocket expenses incurred as a result of the “contamination”.

- *Maximum recovery*

The maximum amount that may be recovered on a claim is the uncontaminated fair market value of the property that is the subject of the claim.

### **III. ExxonMobil Non-Adversarial Statement of Defenses and their Factual Basis**

! ExxonMobil may file with the Court, with copies to Class Counsel and any other identified claimant or their counsel not later than 30 days after the Bar Date, a non-adversarial statement of facts present with regard to a claim under which the law of South Carolina does not allow recovery.

! ExxonMobil must do so on a claim-by-claim basis.

! Such statement must be limited to the following form (where a statute of limitations defense is used as an example): “The claim is barred because claimant’s claim accrued before \_\_\_\_\_ and the applicable statute of limitation, \_\_\_\_\_, operates to bar such claim. The factual basis of the accrual is \_\_\_\_\_.”

! Any argumentative statements made in support of ExxonMobil’s factual statement shall result in the Court’s or the Special Referee’s disregarding of the asserted defense.

! ExxonMobil shall not otherwise participate in the claims process or offer argument on any position at any time.

## **Sample Proof of Claims Information**

The following is an example of the type of information that might be used to support a claim. *This is sample is only intended to be for class member guidance. It is not intended to, nor does it require, the Special Referee or the Court to allow a claim simply because this type of information is used to support a claim.* The type of supporting information for your claim will vary depending upon the facts related to your site.

### **Sample Claim**

In this example, the class members are multiple the owners of land where Humble

Oil, Esso and Exxon operated a station between 1953 and 1987. The land is located in the center of a small South Carolina town. In 1987, Exxon shut the station down and removed some of its tanks. In 1989, the owners discovered contamination after having soil and groundwater tests of the property because someone wanted to purchase it. The purchasers decided against buying the land when they learned that it was contaminated.

**Proof of Class membership**( These elements establish that you are a member of the class.)

*Property Ownership:* The owners intended to submit a certified copy of their deed to this property showing they owned it during the period it was used by Exxon and when the contamination was discovered.

*Contamination:* The owners intend to submit a copy of the 1989 tests they got from the firm that did the tests. They also plan to submit copies of the DHEC records where DHEC has tested the soil and groundwater and found petroleum products present. They also plan to submit copies of Exxon records which they got from Class Counsel that discuss the contamination on the site.

*Exxon was the cause of the contamination:* The owners plan to submit an affidavit( a written document that is sworn to before a notary) from one of them that states that in all the years there has been a gas station on the property, Exxon has been the only operator and that they are unaware of any other sources for the contamination on their property. They have also called class counsel who provided them with copies of Exxon records related to this site. In these records Exxon admits the contamination came from Exxon service station operations.

**Proof of Damages** (These elements establish that you have suffered losses as a result of the contamination.)

*Costs of Remediation ( “cleaning up”):* The owners have obtained an estimate on the cost of remediation from an environmental firm who does that type of work. The estimate is \$200,000.00 to do the clean up to DHEC’s RBCA standards, and the clean up will take two years. The site will be unusable for 6 months while a certain type of cleanup is performed. They intend to submit this quote as a part of their proof of damages.

*Devaluation of property:* The owners have an appraisal that states 1) the value of their property with the present level of contamination and 2) the value assuming it had never been contaminated. The appraiser sent them an appraisal that listed its present value is -\$150,000.00 and its value uncontaminated would be \$375,000.00. The owners plan to submit this appraisal as part of their proof of damages.

*Other losses:* The owners have also incurred other losses because the

property is contaminated.

*Testing costs:* The cost of the 1989 testing was \$1500.00. Additionally, it was necessary to tear up part of the parking lot and a mailbox to conduct the testing. The replacement cost for the parking lot and mail box were \$6,400.00. The owners plan to submit the cancelled check for this testing, the final testing report, a cancelled check to a paving contractor and a credit card receipt to Lowe's showing the purchase of a replacement mailbox to prove these damages.

*Costs of remediation, appraisal and lost value of sale reports:* These reports costs the owners \$1200.00 and \$1800.00 and \$300.00, respectively and they plan to furnish copies of proof that these were paid.

*Loss of business during the remediation:* The owners have been told by the remediation firm that they will not be able to conduct their business which is presently a car wash during a 6 month portion of the cleanup. They intend to submit an affidavit of one of the owners stating the average income of the business over the past few years of its operation is \$15,000.00 and setting forth the value , using these averages of a loss of 6 months: \$7,000.00.