

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FREDRIC A. GUENTHER, an individual;
WALTON FUJIMOTO, an individual, and
LESLIE OWEN, an individual,

Plaintiffs,

v.

Civil Action No. 4:16-cv-00995

BP RETIREMENT ACCUMULATION
PLAN, by its Plan Administrator, the Senior
Vice President of Human Resources of BP
CORPORATION NORTH AMERICA
INC.; and BP CORPORATION NORTH
AMERICA INC., a corporation,

Defendants.

PLAINTIFFS' EQUITABLE RELIEF MEMORANDUM

TABLE OF CONTENTS

NATURE AND STAGE OF THE PROCEEDINGS 1

A. The Court should reform and declare the RAP consistent with the testimony of Lawrence Deutsch, E.A., FSPA 2

 1. Reformation of the Initial 1989 Plan Amendment 2

 2. Reformation and Declaration of the Plan Compensation Component. 3

 3. Reformation of the Conversion Factor Component 9

 4. Reformation of the Service Cap 10

 5. Determination of the Primary Social Security Amount 10

B. The Court should order the Plan to calculate benefits after reformation 11

C. The Court should enter a reformation order consistent with the above analysis 13

TABLE OF AUTHORITIES

| Cases | <i>Page(s)</i> |
|--|----------------|
| <i>Arete Partners v. Gunnerman</i> , 643 F.3d 410 (5th Cir. 2011) | 13 |
| <i>Branch Banking & Tr. Co. v. Re Rez LP</i> , 2021 WL 863766, at *9 (E.D. Tex. Jan. 8, 2021)..... | 13 |
| <i>CIGNA Corp. v. Amara</i> , 563 U.S. 421, 422 (2011) | 1 |
| <i>Mertens v. Hewitt Associates</i> , 508 U.S. 248, 256 (1993) | 1 |
| <i>Perez v. Bruister</i> , 823 F.3d 250 (5 th Cir. 2016) | 12 |
| <i>R. & R. adopted</i> , 2021 WL 857937 (E.D. Tex. Mar. 5, 2021)..... | 13 |
| <i>Ramirez v. United of Omaha Life Ins. Co.</i> , 872 F.3d 721 (5th Cir. 2017)..... | 6 |
| <i>Smith v. Life Ins. Co. of North America</i> , 459 F. App'x 480, (5th Cir. 2012)..... | 6 |
| Statutes: | |
| Tex. Fin. Code Ann. § 304.003 | 13 |

NATURE AND STAGE OF THE PROCEEDING

In response to the Court's Order in its Findings of Fact and Conclusions of Law (Dkt. 507, at 57), Plaintiffs respectfully request the following equitable relief pursuant to ERISA §502(a)(3), 29 U.S.C. §1132(a)(3) to redress BP's violations of ERISA.

In *Mertens v. Hewitt Associates*, 508 U.S. 248, 256 (1993), the U.S. Supreme Court defined as "equitable relief" under § 502(a)(3) "those categories of relief that were typically available in equity." *CIGNA Corp. v. Amara*, 563 U.S. 421, 422 (2011), makes clear "[t]he power to reform contracts is a traditional power of an equity court and is used to prevent fraud."

Plaintiffs submit the appropriate form of equitable relief to redress BP's ERISA violations under ERISA §502(a)(3), 29 U.S.C. §1132(a)(3), is an order to reform the plan formula of the current BP North America Retirement Accumulation Plan ("RAP"), retroactive to January 1, 1989, to be consistent with the promise made to BP employees during the 1989 plan conversion ((i.e. the ultimate benefit paid is not less than what the benefit would have been had the benefit formula not been amended in 1989). After reformation, the Plan should recalculate the benefit amounts due to each participant and then pay the difference (with prejudgment interest and post-judgment interest) to each class member. A proposed form of language to be included in the Court's Order accompanies this Memorandum.

A. The Court should reform and declare the RAP consistent with testimony of Lawrence Deutsch, E.A., FSPA.¹

In his Report, Mr. Deutsch identified three issues the Court should address during Plan reformation to ensure participants receive the promised benefit. For example, Deutsch Report at ¶ 2, in particular ¶ 2.e. The first issue is reformation of the plan consistent with the 2000 plan amendment definition of compensation. For example, Deutsch Report at ¶¶ 267-68. The second is reformation of the conversion rate used to convert between an annuity and a lump sum consistent with plan amendments effective in 1989, 2000, 2003 and 2009. For example, Deutsch Report at ¶¶ 77-92, in particularly ¶ 92. The third is reformation of the 35-year plan cap on Benefit Service in line with plan amendments effective in 2000 and 2007. Deutsch Report at ¶ 169.

In the Deutsch Report, Mr. Deutsch also addressed two issues where plan reformation is required due to changes in law. The first is reformation by applying actuarial increases for delayed payment of benefits due to a law change effective in 1989. Deutsch Report at ¶ 200. The second is reformation to comply with the legally required minimum lump sum on the ARP benefit. Deutsch Report at ¶ 215.

1. Reformation of the Initial 1989 Plan Amendment

Consistent with BP's expressed commitment "to provide a retirement benefit that is comparable to – and, in most cases, better than – the benefit you would have received under

¹ Mr. Deutsch provided an expert report submitted as Plaintiff's Exhibit 276. An updated May 2, 2023, Expert Report was submitted as Plaintiff's Exhibit 425 following receipt from BP of a volume of additional discovery documents. This report is identified in this document as Deutsch Report. Mr. Deutsch addressed these reports in his trial testimony.

the prior pension formula” the Plan should be reformed to provide that benefit. The original RAP formula did provide this for certain employees (the Grandfather group) but did not provide this benefit to younger employees. The language of section 3.6 of the RAP should be expanded to cover all participants as of December 31, 1988. It should also be expanded to address participants who will only receive the lower early retirement subsidy (due to terminating prior to age 55, while receiving the benefit after age 55) and participants who would not be eligible for early retirement under the ARP. Further, the plan must be reformed to comply with two provisions of law. The first is that the lump sum cannot be less than the legally required minimum lump sum value. Deutsch Report at ¶ 51. The second is that the benefit cannot be less than the benefit with actuarial increases after age 65 in cases where the benefit is paid after age 65 and the participant was either not employed for some period of the post-65 delay or was not provided with a suspension of benefits notice. Deutsch Report at ¶ 200.

2. Reformation and Declaration of the Plan Compensation Component

The 1989 RAP defined “Compensation” in section 1.9 as “the regular base salary or wage paid to an Employee for normally prescribed hours in pay periods during a calendar year ... But shall exclude payments for *unscheduled overtime*, premiums, bonuses, and living or other allowances.” (Emphasis added.) Deutsch Report at ¶ 255. This means scheduled overtime was included. *Id.*

The relevance of the definition of compensation in the 1989 RAP relative to the 1988 ARP is whether the change in 1989 was a significant change to Plan compensation or simply a refinement. Deutsch Report at ¶ 259. Mr. Deutsch concluded there was no suggestion that compensation for Plan purposes of calculating the pension benefit was going either significantly up or down. *Id.* This was underscored by BP_0027875², which posed the anticipated employee question: “Will employees on a normal work schedule in excess of 40 hours *continue* to get credit for the extra regular scheduled work hours? (Emphasis added). *Id.* The answer was, “Regularly scheduled overtime for certain locations will receive credit for the hours worked in excess of 40 hours per week.” *Id.* Mr. Deutsch concluded that not only does this indicate that after 1989 the regularly scheduled hours in excess of 80 would be counted, but it is also a continuation of the practice from prior to 1989 (*i.e.*, under the ARP). *Id.* Thus, under the plan reformation, the Court should order that in calculating the Normal Basic Earning (“NBE”) component, BP must use the actual regular base hourly rate and the regularly scheduled normal number of work hours for employees, including regularly scheduled overtime (not truncated to 80) to determine an employee’s equivalent monthly rate of earnings. Deutsch Report at ¶ 260.

Consistent with Mr. Deutsch’s report, the evidence showed BP treated scheduled overtime and holiday pay as regular earnings. It can be seen from Mr. Guenther’s pay stubs that he worked one week on for 7 days straight on a 12 hour shift and one week off (the

² See Plaintiff’s Exhibit 241, page BP_0027875 (Train the Trainer manual page)

two weeks combined were called a “tour”). Deutsch Report at ¶ 254. BP paid him every 2 weeks, meaning most months he received two (2) paychecks, each representing one tour, but in some months he received 3 pay checks. *Id.* After 1991, Mr. Guenther’s pay pattern was more akin to a salary adjusted for actual hours worked. *Id.* When determining how much Mr. Guenther regularly earned, for payroll purposes, BP took his biweekly pay based upon 84 hours, multiplied it times 26 biweekly periods in a year, and then divided that into 24 semi-monthly paychecks. *Id.* Mr. Guenther’s regularly scheduled hours in effect in his work unit was 84 hours per tour. *Id.*

As demonstrated by Mr. Guenther’s wage history, BP then converted the 84 hours per tour to a monthly earnings rate to arrive at his salary. Deutsch Report at ¶ 255.³ Mr. Guenther’s wage history shows his annual “salary” at \$50,648.16 for the years 1985, 1986, and 1987 and \$50,648.12 for 1988. *Id.* This lines up with the compensation used by BP in determining Mr. Guenther’s December 31, 1988, ARP benefit. *Id.* However, when converting Mr. Guenther to an annual salary, BP used 80 hours rather than the full 84 hours per tour and ignored overtime and holiday pay. *Id.* In doing so, BP simply ignored the clear terms of the Plan, which would have required, at an absolute minimum, the use of 84 hours, not 80, in the calculation. *Id.*

Mr. Deutsch drew two points from the above facts. Deutsch Report at ¶ 258. First, the erroneous treatment of scheduled overtime and holiday pay existed both prior to and

³ Mr. Deutsch utilized BP_0033116, contained in Plaintiff’s Exhibit 437, to arrive at this conclusion.

after the 1989 amendment. *Id.* Second, BP simply ignored the clear (i.e., unambiguous) terms of the Plan when determining the NBE under the ARP. *Id.* Including the regularly scheduled overtime and holiday pay results in a 38% increase in Mr. Guenther's (and similarly situated employees') NBE over BP's incorrect NBE calculations. Deutsch Report at ¶ 260.

Federal common law governs the interpretation of all ERISA-regulated plan provisions. *Ramirez v. United of Omaha Life Ins. Co.*, 872 F.3d 721, 725 (5th Cir. 2017)

Under federal common law, courts construing ERISA plan provisions “are to give the language of an insurance contract its ordinary and generally accepted meaning if such a meaning exists.” “Only if the plan terms remain ambiguous after applying ordinary principles of contract interpretation are [courts] compelled to apply the rule of contra proferent[e]m and construe the terms strictly in favor of the insured.” We “interpret the contract language in an ordinary and popular sense as would a person of average intelligence and experience, such that the language is given its generally accepted meaning if there is one.” *Green v. Life Ins. Co.*, 754 F.3d 324, 331 (5th Cir. 2014).

Id. (internal quotes and citations omitted.) Contra proferentum does not apply where a plan grants the administrator discretionary authority to interpret plan terms because discretionary authority empowers the administrator to resolve ambiguities. *See Smith v. Life Insurance Company of North America*, 459 F. App'x 480, 484 (5th Cir. 2012) (per curiam) (citing *High v. E-Systems Inc.*, 459 F.3d 573, 579 (5th Cir. 2006)). Since the plan language is unambiguous, no deference should be provided to BP in the determination of NBE. The Court should declare the determination of NBE shall: 1) include all regularly scheduled hours (i.e., 84 hours every two weeks for Mr. Guenther) not just 80 hours; 2) in

converting the hourly rate and regularly scheduled hours to the “monthly rate of earnings,” it shall include the payment of overtime pay on regularly scheduled overtime hours (that not only was provided by BP in the determination of the monthly rate of earnings,-for example, as illustrated on Mr. Guenther’s pay stubs) but would legally be required when determining earnings for the period (29 U.S.C. § 207(a)) and 3) since earnings routinely includes holiday pay, include holiday pay, even if identified separately in the pay records.

BP restated the RAP in 2000, 2009 and 2015. Deutsch Report at ¶ 34. Collectively, these amendments significantly impacted the comparison of the ultimate resulting benefits under the two Plan formulas over time. *Id.* Further, whether parallel amendments would apply to the ARP formula has a significant impact on the comparison of the resulting benefit (both lump sum and annuity) under the two formulas. *Id.*

Plan participants who were age 50 or older at the time of the plan formula conversion fell under the Grandfather provision. Plaintiff’s Exhibit 294, Section 3.6. Grandfathered employees were entitled to a pension benefit equal to the greater of an amount equal to the RAP or an amount equal to the Participant's accrued benefit under the ARP as of December 31, 1988, adjusted for continued participation as if the provisions of the Prior Plan were still in effect. *Id.*

Shortly before the trial, BP located and produced additional documents responsive to Plaintiffs’ discovery. These new documents revealed how BP calculated the difference between the ARP and RAP benefit to determine which benefit provided the greater pension

benefit to the Grandfathered participants. Deutsch Report at ¶ 4. This discovery revealed that the Plan Administrator treated the ARP as having parallel amendments to the RAP amendments for purposes of comparison, during the time period provided. Deutsch Report at ¶¶ 7, 12.

The first of these parallel amendments to be addressed is the change in the compensation used for plan purposes. Mr. York testified that in 2000, following the Amoco merger, BP amended the RAP plan so BP employees would obtain the enhanced definition of earnings including bonuses and unscheduled overtime enjoyed by Amoco employees. Day 11 Tr. 85:10-21. Thus, BP should continue its practice of presuming parallel amendments to the Plan, and the plan reformation related to the compensation component should account for this change. Further, as Mr. Deutsch explained, it would be disingenuous of BP, and inconsistent with its promise, to reflect amendments to the conversion factors (discussed below), which would reduce the benefits owed, while ignoring other amendments, like the 2000 amendment to the definition of compensation, which would increase benefits owed. Rather, increasing the benefits is consistent with BP's "as good or better" promise. Therefore, the Plan should be reformed (per the attached proposed order) to provide that effective July 1, 2000, Final Average Compensation should not be less than Final Average Compensation based upon the amended definition of compensation. Due to constraints of governing Department of Labor regulations, the Final

Average Compensation cannot be reduced below what the determination would be without regard to the 2000 amendment. Deutsch Report at ¶ 263.

3. Reformation of the Conversion Factor Component

The second parallel amendment changes the conversion factors. In the ARP, the annuity benefit was converted to a lump sum using 120% of the PBGC rate, which complied with the law at the time. Deutsch Report ¶ 163. The controlling law was amended, first in 1994 (as part of the General Agreement on Trade and Tariffs, or “GATT,” which allowed a Plan as long as until 2002 to comply) and again in 2006 (as part of the Pension Protection Act of 2006, or “PPA” which applied [with a phase-in] starting in 2008). *Id.* Changing the PBGC rates to the GATT rate is how the Plan treated the determination of the ARP lump sum for Grandfathered participants in the 2000 RAP. Deutsch Report ¶ 166. Logically, this change would have been made to the ARP. *Id.*

Presumably the subsequent amendments, first changing the Applicable Mortality Table (in conformance with IRS guidance), and then conforming the plan to PPA would have also been made to the ARP. These changes had the reverse effect on the ARP as compared to the RAP. Deutsch Report at ¶ 300. The amendment to reflect the GATT rates generally increased the RAP benefits (which may be why BP delayed that amendment) but would generally decrease the ARP benefits, thus reflecting these changes reduces the amount owed under the ARP formula. Deutsch Report at ¶ 301 showing the results using 100% of the PBGC rates (i.e. not reflecting the subsequent amendment to the conversion

factors) as significantly higher than using the amended conversion factors. For example, in the first column, the underpayment would be \$444M using 100% of the PBGC rates, but only \$252M reflecting the various amendments to the conversion factors. Therefore, the Plan should be reformed to provide that the factors used to convert the ARP formula benefit to a lump sum would change at the same time and in the same manner as the factors used to convert the RAP account into a life only annuity

4. Reformation of the Service Cap

The ARP contained a 35-year service cap. Deutsch Report at ¶ 57. Under the 1989 RAP, like under the ARP, there was a maximum of 35 years of credit, i.e., once a participant had 35 years of service, the service credits ceased. Deutsch Report at ¶ 94. Subsequently, this cap was changed, first to 37 years and then was removed altogether. *Id.* This issue would only impact participants with over 35 years of Benefit Service at retirement, so is of extremely limited impact. *Id.* Nonetheless, for consistency, the service cap should follow the plan amendments. Therefore, the Plan should be reformed to provide that the 35-year service cap Benefit Service in the ARP formula is first increased to 37 years and then removed in the same manner that the cap was changed in the RAP.

5. Determination of the Primary Social Security Amount

The ARP provides that the Primary Social Security Amount should be the least of three methods for determining that amount. Deutsch Report ¶¶ 58-66. In practice, BP used only one of those three methods. *Id.* One of the three methods provides participants the

option of obtaining their actual compensation history from the Social Security Administration, and having that compensation used for years prior to employment by the Company. Since the plan language is unambiguous, no deference should be provided to BP on the use of all three methods for determining the Primary Social Security Amount and the Court should declare that the determination of Primary Social Security Amount should be the smallest of 1) the method using “the actual change in the average compensation from year to year as determined by the Social Security Administration” 2) the method using “a level percentage per year which is not less than six percent per annum” (which is the method BP used) or 3) the method using, at the participants option the “actual compensation for Social Security purposes” based upon “a statement from the Social Security Administration,” as well as declaring BP’s obligation to inform Class Members of the third option, with appropriate guidance on how to effectuate that option.

B. The Court should order the Plan to calculate benefits after reformation.

Estimates of the effect of the reformation set forth above is found in the chart summary in Deutsch Report at ¶ 301 utilizing the “Total Compensation” Column, the “With 35 Year Cap ‘No’” row, “using RAP Factors Underpayment with interest” row (i.e. last column last row) for a total estimated value of \$915,587,128.⁴

⁴ Mr. Deutsch utilized a 5% placeholder prejudgment interest rate in arriving at this number which Plaintiffs contend should be higher, as discussed below. Deutsch Report ¶ 296, noting, “Of course, this would be another issue the Court must decide.” However, the reformation approach remains the same.

Regarding prejudgment interest, where a cause of action arises out of a federal statute, federal law governs the scope of the remedy available to plaintiffs, including whether prejudgment interest is to be allowed and at what rate. *Perez v. Bruister*, 823 F.3d 250, 274 (5th Cir. 2016), *citing Hansen v. Continental Ins. Co.*, 940 F.2d 971, 983 (5th Cir. 1991), and recognizing as *abrogated on other grounds by CIGNA Corp. v. Amara*, 563 U.S. 421 (2011.) Prejudgment interest is available in ERISA cases. *Perez*, at 274, *citing Hansen* at 984 n.11. “Because there is no ERISA law setting prejudgment interest rates, courts look to state law for that purpose. *See Hansen*, 940 F.2d at 984–85.” *Perez v. Bruister*, 823 F.3d at 274.

After analyzing the Texas rate of prejudgment interest under the then-applicable state statute, the *Hansen* court held, “...because state law is not binding but merely provides guidance, it is within the discretion of the district court to select an equitable rate of prejudgment interest. (Cite omitted.) *Id.* at 984. The *Hansen* court held “[w]hile this rule would permit the district court to apply the 6% rate of art. 5069-1.03, it also permits the district court to select another rate. We cannot say that the district court abused its discretion by selecting the 10% rate set forth in art. 5069-1.05, which, by its terms, applies to ‘all judgments.’” *Id.* at 985.

Applying the above holding to the present case, this Court should award prejudgment interest, and may consider the current versions of Texas statutes that provide

for interest on judgments. Those statutes address interest rates on a money judgment on a contract that provides for interest or time price differential, and other money judgments.

In a breach of contract case, the prejudgment interest rate is the same as the post-judgment interest rate. Post-judgment interest—and thus prejudgment interest—is the lesser of the interest rate specified in the contract or 18% per year. *See* Tex. Fin. Code Ann. § 304.002 (West 2016). *See Branch Banking & Tr. Co. v. Re Rez LP*, No. 4:19-cv-630, 2021 WL 863766, at *9 (E.D. Tex. Jan. 8, 2021), *R. & R. adopted*, 2021 WL 857937 (E.D. Tex. Mar. 5, 2021). When no contract provides for a rate of interest, then the pre- and post-judgment interest rate is calculated based on the statutory rate provided in the Finance Code. *See* Tex. Fin. Code Ann. § 304.003. Under *Perez* and *Hansen*, the Court has discretion to adopt any of these rates. If the Court uses a money judgment rate specified in Tex. Fin. Cod Ann. § 304.003, the rate is the published prime rate, subject to a minimum rate of 5% and maximum rate of 15%. *See Arete Partners v. Gunnerman*, 643 F.3d 410 (5th Cir. 2011). The prime rate stands at 8.5% currently.⁵

C. The Court should enter a reformation order consistent with the above analysis.

Plaintiffs suggest entry of a reformation order in substantially the following form to provide for a Correction Procedure consisting of a **Corrective Distribution**, plus, if applicable, a **Corrective Annuity** plus, if applicable, a **Corrected Benefit** (collectively **Corrective Payments**) which are determined in the following proposed order:

⁵ *See* <https://www.federalreserve.gov/releases/h15/>. “Bank Prime Loan.”

The Court orders reformation of the 1989 RAP and declares as follows:

1. RAP Article III is reformed by adding as a new section the following:

Certain BP Heritage Employees Under Age 50 as of December 31, 1988

If a BP Heritage Employee Participant was an Employee as of December 31, 1988, and had not yet attained age 50 as of that date, notwithstanding any other provision of this Plan, such Participant's benefit, payable in the form selected by the participant, will not be less than:

- (a) if the participant elects a lump sum benefit, and
 - (1) the participant has attained the age of 55 or older, at the time of termination of employment, the immediately payable life only benefit that would be payable under Article VI of the Pre-1989 Plan (as reformed), multiplied by an immediate life only conversion factor determined using the Applicable Interest Rate and Applicable Mortality Table.
 - (2) the participant has not yet attained the age of 55 at the time of payment then the lump sum benefit will equal the age 65 life only benefit that would be payable under Article VI of the Pre-1989 Plan (as reformed), multiplied by a deferred (from the age at payment to age 65) life only conversion factor determined using the Applicable Interest Rate and Applicable Mortality Table, with mortality applied only after age 65.
 - (3) the participant had not yet attained the age of 55 at the time of termination of employment but had attained the age of 55 at the time of payment, then the lump sum benefit will equal the greater of (A) the lump sum determined under (1), but using the factors in section 10.2 of the Pre-1989 Plan (as reformed) in place of the factors in section 6.4 of the Pre-1989 Plan (as reformed) or (B) the lump sum determined under (2).
 - (4) If the participant is over the age of 65 at the time of benefit commencement, then the immediately payable life only annuity used in (1) and (3) will not be less than the immediately payable determined as follows:
 - (A) The immediately payable annuity if the participant elected to receive their benefit at age 65, based upon the Final Average Earnings and Benefit Service as of the month the participant turns age 65
 - (B) The greater of the benefit in (A) actuarially increased to the December 31 of the year in which the participant turned age 65 (assuming the benefit has not yet commenced as of that date), determined using the Applicable Interest Rate and Applicable

Mortality Table (as of the eventual actual Commencement Date) and the immediately payable annuity that would be payable as of that December 31, based upon Final Average Earnings and the Benefit Service as of that December 31.

- (C) As of each December 31 after the December 31 in (B) and prior to the actual Commencement Date, the greater of the benefit as of the prior December 31, actuarially increased to that December 31, determined using the Applicable Interest Rate and Applicable Mortality Table (as of the eventual actual Commencement Date) and the immediately payable annuity that would be payable as of that December 31, based upon Final Average Earnings and the Benefit Service as of that December 31.
- (D) The greater of the benefit in (A), (B) or (C) (whichever is calculated as of the latest date) actuarially increased to the Commencement Date, determined using the Applicable Interest Rate and Applicable Mortality Table (as of the eventual actual Commencement Date) and the immediately payable annuity that would be payable as of the Commencement Date, based upon the ultimate Final Average Earnings and Benefit Service.

- (b) if the participant elects an annuity, then the benefit that would be payable under this plan if the account balance equaled the lump sum determined under (a).

For purposes of this section:

Applicable Interest Rate and Applicable Mortality Table means, if the benefit commences,

- (a) Prior to January 1, 2000, the Applicable Interest Rate shall be the interest rate that would be used by the Pension Benefit Guaranty Corporation to determine the present value of a benefit that would commence during the month prior to the determination date and the Applicable Mortality Table shall be a unisex Mortality Table projected to 1988 using Scale H. The unisex basis is developed using 70% of the rates applicable to males and 30% of the rates applicable to females.
- (b) On or after January 1, 2000 but prior to January 1, 2003, the Applicable Interest Rate shall be the annual interest rate on 30-year Treasury securities as specified by the Commissioner of the Internal Revenue Service in revenue rulings, notices or other guidance, published in the Internal Revenue Bulletin, for the fourth month preceding the first day of the month

in which the Benefit Commencement Date occurs; provided, however, that during the one-year period commencing on January 1, 2000, the annual interest rate on 30-year Treasury securities for the third month preceding the first day of the month in which the benefit Commencement Date occurs will be used instead of the fourth preceding month if it provides a greater benefit. The Applicable Mortality Table shall be the 83 Group Annuity Mortality Table as published by the IRS for use for section 417(e) purposes.

- (c) On or after January 1, 2003 but on or prior to December 1, 2009, the Applicable Interest Rate shall be the annual interest rate on 30-year Treasury securities as specified by the Commissioner of the Internal Revenue Service in revenue rulings, notices or other guidance, published in the Internal Revenue Bulletin, for the fourth month preceding the first day of the month in which the Benefit Commencement Date occurs. The Applicable Mortality Table shall be the GAR 94 mortality table as Published by the IRS in Revenue Ruling 2001-62.
 - (d) After December 1, 2009, the Applicable Interest Rate and Applicable Mortality Table shall be the Applicable Interest Rate and Applicable Mortality Table as defined in Appendix E, section (k).
2. ARP section 2.1.15 (at BP_0000009) is reformed, by adding the following at the end of the first sentence:

(iii) for retirements and terminations effective on or after July 1, 2000, the Final Average Earnings will be the greater of the amount from (ii) or with the amount determined by replacing “the aggregate of a Participant’s Normal Basic Earnings” for the portion of the 36 months that if for a period after January 1, 2000 with “the aggregate of a Participant’s Eligible Compensation as determined under BP AMOCO Retirement Accumulation Plan section 1.19” for that same period. For example, if determining the Final Average Earnings for a participant for the 36 months ending on December 31, 2001, the Final Average Earnings will not be less than the Participant’s aggregate Normal Basic Earnings for the 18 months from January 1, 1999 through June 30, 2000 plus the Participant’s aggregate Eligible Compensation for the 18 months from July 1, 2000 through December 31, 2001, with the total divided by 3.

3. ARP section 2.1.30 (at BP_0000012-13) is reformed, by adding the following sentence after the first sentence:

For years starting with the 2000 calendar year, the total compensation paid by the Company will be used, rather than the Participant's Normal Basic Earnings.

4. ARP section 4.6 (at BP_0000019) is reformed to provide:

Notwithstanding any other provision of this Article IV, a participant who terminates prior to June 30, 2000, may not accrue more than 35 years of Benefit Service; a Participant who was an Employee on or after June 30, 2000, but terminated prior to January 1, 2007, may not accrue more than 37 years of Benefit Service; and for Participants who have at least one hour of service on or after January 1, 2007, the Benefit Service will not be limited (*i.e.* this paragraph will cease to apply to such Participants).

5. ARP section 6.1 (at BP_0000023) is reformed so that the last sentence is changed to:

Benefit Service for purposes of this section 6.1 will be limited to 35 years of Benefit Service, reduced by any benefit service for purposes of section 6.2 or 6.3. For a Participant who was an Employee on or after June 30, 2000, but terminated prior to January 1, 2007, the 35 year limit will be increased to a 37 year limit. For Participants who have at least one hour of service on or after January 1, 2007, the Benefit Service will not be limited (*i.e.* this paragraph will cease to apply to such Participants).

6. ARP section 2.1.22 at BP_0000011-12 is declared to provide that:

“converted to a monthly rate of earnings” means to equal what the annual compensation for an individual who worked exactly the “normal number of work hours in effect in the Participant’s work unit” normally scheduled periods would be, divided by 12. This means that the annual compensation would include payment (including overtime pay) for the regularly scheduled overtime. Further, this means that, if the holiday pay is paid in addition to other compensation (rather than as part of the other compensation) then the conversion would include the addition of what the additionally paid holiday pay would be. For example, if a Participant has an hourly rate of \$50.00 an hour, is regularly scheduled to work 84 hours for one week, and no hours the next week, and is paid for 10 hours a month for holiday pay, then the monthly rate of earning would be \$50.00 X 40 hours of straight time plus \$50.00 X 44 hours of overtime X 1.5 or \$5,300.00 for each two weeks. \$5,300.00 X 26 two

week periods per year or \$137,800.00 per year. The \$137,800.00 would be increase by \$50.00 X 10 hours per month X 12 months per year or \$6,000.00 per year for holiday pay, for a total of \$143,800.00 per year, or a monthly rate of \$143,800.00 / 12 equals \$11,983.33 as the monthly rate of earnings.

7. ARP section 2.1.22 at BP_0000011-12 is declared to provide that for Class Members who are not paid based upon the hours worked, the Normal Basic Earnings for a month is the monthly salary rate in effect for that month.
8. ARP section 2.1.30 at BP_0000012-13 is declared to provide that it requires 3 separate calculations of the Primary Social Security Amount. The first calculation is done assuming a 6% salary increase for years prior to employment by the Company, but with the assumption of no compensation prior to the calendar year in which the Class Member turned age 21. The second calculation is done assuming that the change in compensation for years prior to employment by the Company were at the same rate as “the actual change in the average compensation from year to year as determined by the Social Security Administration,” but with the assumption of no compensation prior to the calendar year in which the Class Member turned age 21. The third calculation is determined using actual compensation history as obtained from the Social Security Administration for years prior to employment by the Company, with this third calculation only required if requested by the Class Member after the Class Member takes such steps as are necessary to obtain the actual compensation history from the Social Security Administration. The Primary Social Security Amount is the smallest of these three calculations.
9. ARP section 2.1.30 at BP_0000012-13 is further declared that if the Class Member is past age 65 at benefit payment, the Primary Social Security Amount will be determined as the Primary Social Security Amount determined as of when the Class Member was age 65.
10. For each participant who was not grandfathered under the ARP per RAP section 3.6 (hereinafter “Class Member”), BP will accumulate the following information upon which the calculation of the Corrected Benefit will be determined. To the extent the records containing the relevant information cannot be located for any Class Member, Plaintiffs and Defendants will meet and confer to resolve the appropriate method to deal with the missing records. The Court retains jurisdiction to resolve any potential dispute on how to address missing records in the calculations should

the parties not come to a resolution. Should either party request the Court to appoint a special master with experience in determination of benefits for benefit payment purposes to help mediate disputes between the parties and make recommendations to the Court for disputes that cannot be resolved, the Court will determine if a special master is appropriate and determine how the cost of the special master shall be paid. The guiding principle for resolving missing data will be to responsibly minimize the potential for underpayment of benefits to the individual Class Member, (i.e. it is not acceptable to underpay one Class Member simply because an average of those underpaid and overpaid cancel out). The required records are as follows:

10.1 The Class Member's Date of Birth (see, for example, ARP section 6.4 at BP_0000024-25, which bases the benefit payable upon the participant age at payment).

10.2 The Class Member's Date of Hire (see, for example, ARP section 6.1 at BP_0000023, which bases the benefit payable upon Service)

10.3 The Class Member's date of entry into the plan (see, for example, ARP section 4.1(b) at BP_0000018, crediting Benefit Service only after the Participant becomes a Participant).

10.4 The Class Member's Date of Termination (see, for example, ARP section 6.1 at BP_0000023, which bases the benefit upon Service).

10.5 To the extent that a Class Member is terminated and rehired, each date of termination and rehire, along with whether the service is bridged (see, for example, ARP section 3.4 at BP_0000016, which provides the rules for Bridging of Service).

10.6 The Class Member's credited Hours of Service for each year after 1975 (see ARP section 2.1.16 at BP_0000009-10, defining Hours of Service (noting the rule for determining Hour of Service for "a Participant whose compensation is not determined on the basis of certain amount for each hour worked") and, for example, ARP section 4.1(c) using the Hours of Service to determine the Benefit Service credited for the year)

10.7 The months in which the Class Member made required contributions (only applies prior to July 1, 1971, see ARP section 4.1(a) only providing Benefit Service for months in which the participant "made required contributions").

10.8 For periods in which the Class Member was paid based upon the hours worked, the "normal number of work hours in effect in the Participant's work unit" including

which of the regularly scheduled hours are regularly scheduled overtime hours (see ARP section 2.1.22 at BP_0000011-12 and as declared, basing the determination of Normal Basic Compensation upon the “normal number of work hours in effect in the Participant’s work unit”).

10.9 For periods in which the Class Member was paid based upon the hours worked, the “regular base hourly rate” (see ARP section 2.1.22 at BP_0000011-12 basing the determination of Normal Basic Compensation upon the “regular base hourly rate”).

10.10 For periods in which the Class Member was paid holiday pay in addition to other compensation, the normal additional hours paid as holiday pay for employees in the Participant’s work unit (see ARP section 2.1.22 as declared).

10.11 For periods in which the Class Member was paid not based upon the hours worked, the monthly salary rate in effect (without regard to the actual amount that may have been paid).

10.12 Starting January 1, 2000, for each month, the total compensation paid to the Class Member during the month (see ARP sections 2.1.22 and 2.1.30 as reformed).

10.13 For a Class Member whose benefit was paid as a lump sum, the date of each lump sum payment (including any payments to an alternate payee).

10.14 For a Class Member whose benefit was paid as a lump sum, the amount of each lump sum payment (including any payments to an alternate payee).

10.15 For a Class Member whose benefit was paid as an annuity, the start date of each annuity (including any payments to an alternate payee). For example, if on January 1, 2001 a benefit of \$4,000 a month is paid to the participant, but on July 1, 2001 the amount of the annuity is changed, then there are two annuity starting dates, January 1, 2001 and July 1, 2001.

10.16 For a Class Member whose benefit was paid as an annuity, the initial monthly annuity payment of each annuity (including any payments to an alternate payee).

10.17 For a Class Member whose benefit was paid as an annuity, the form of each annuity (including any payments to an alternate payee) including the timing and reduction in the annuity payment. For example, designating the benefit form as a 50% QJSA would mean that the benefit is reduced to 50% upon the annuitant’s death. On the other hand, a level income option must indicate the date of the reduction and dollar amount of the reduction.

10.18 For a Class Member whose benefit is paid in the form of an annuity that continues to a beneficiary, the date of birth of the beneficiary.

10.19 For a Class Member whose benefit is paid in the form of an annuity and who has died, the date of the Class Member's death.

10.20 For a Class Member whose benefit is paid in the form of an annuity that continues to a beneficiary and where the beneficiary is dead, the date of the beneficiary's death.

11. For purposes of this order only, the Class Members are broken into three calculation groups: Lump Sum Recipients, Annuity Recipients and Unpaid Class Members. Lump Sum Recipients are Class Members who previously received their Plan benefit in the form of a lump sum. Annuity Recipients are Class Members who previously received their Plan benefit in the form of an annuity (and who may still be receiving that annuity). Unpaid Class Members are Class Members who have not yet received their Plan benefit.

12. The calculations will be performed in the following steps:

12.1 Cost Factor - As used herein, the term "Cost Factor" refers to 100% of the Estimated Value of Class Members' Payments as determined in section 12.24 reduced by the litigation costs (consisting of Court-approved attorneys' fees and costs, Named Plaintiffs' Case Contribution Awards and Administrative Costs) as a percent of the total Estimated Value of Class Members' Payments as determined in section 12.24.

12.2 Normal Basic Earnings (ARP section 2.1.22 at BP_0000011 as declared). For each month the Normal Basic Earnings is determined in the manner described under Plan Provisions that are declared. (Note that the Normal Basic Earnings is used both for the determination of the Final Average Earnings and the Primary Social Security Amount, so is required for all years of employment.)

12.3 Primary Social Security Amount (ARP section 2.1.30 at BP_0000012-13) – The Primary Social Security Amount will be calculated, as explained under Plan Provisions that are declared, i.e. in the same manner as BP previously calculated the Primary Social Security Amount, but with the compensation history modified, as declared, and calculated with alternate compensation histories.

12.4 Pre July 1, 1971 Benefit Service (ARP section 4.1(a) at BP_0000018) – The Pre July 1, 1976 Benefit Service is the sum of 1/12 for each month in which the Class Member made required contributions. If BP cannot locate whether a Class Member made the required contributions, it will be assumed that the Class Member did make the required contributions.

12.5 July 1, 1971 – December 31, 1975 Benefit Service (ARP section 4.1(b) at BP_0000018) – July 1, 1976 – December 31, 1975 Benefit Service is the sum of 1/12 for each month during which the Class Member is both a Participant in the Plan (i.e. entered the Plan in that month or a prior month) and an employee at any time during the month (i.e. any day in the month between a date of hire or rehire and the subsequent date of termination).

12.6 Post 1975 Benefit Service (ARP section 4.1(c) at BP_0000018) – Post 1975 Benefit Service will be the sum, for each year of the Benefit Service provided under the schedule in ARP section 4.1(c), with the applicable adjustment in the year the Class Member enters the Plan and in the year the Class Member terminates.

12.7 Adjustment for Bridging of Service (ARP section 3.4 at BP_0000015) – For a Class Member who terminates and is rehired, the Benefit Service as determined under 3), 4) and 5) will be adjusted, as applicable for the Bridging of Service.

12.8 Post July 1, 1971 Benefit Service (ARP section 6.1 at BP_0000023) – Post July 1, 1971 Benefit Service is the sum of July 1, 1971 – December 31, 1975 Benefit Service and Post 1975 Benefit Service, limited to the applicable maximum Benefit Service, with the applicable maximum Benefit Service reduced by the Pre July 1, 1971 Benefit Service. The applicable maximum Benefit Service is 35 if the Class Member terminated prior to June 30, 2000, 37 if the Class Member terminated on or after June 30, 2000, but has no hour of service on or after January 1, 2007, and the Post July 1, 1971 Benefit Service is not limited if the Class Member has at least one hour of service on or after January 1, 2007.

12.9 Final Average Earnings (ARP section 2.1.15 at BP_0000008 and as reformed) – The Final Average Earnings is determined as follows:

- a) A list of the Normal Basic Earnings for the 396 months preceding termination is formed.
- b) A list of the Eligible Compensation for the 395 months ending in the month of termination.

- c) for each of the 360 months ending in the month of termination, a list of the total of the Normal Basic Earnings for the 36 months ending in that month, divided by 3 is formed.
- d) for each of the 360 months ending in the month termination, a list of the total of the Normal Basic Earning for the portion of the 36 months ending in that month that precede July 2000 plus the total of the Eligible Compensation for the portion of the 36 months ending in the month thar are on or after July 2000, with the sum of the two divided by 3 is formed.
- e) the Final Average Earnings is the highest amount that appears in either of the list in c) or d).

12.10 Original Payment Date – If the Class Member is a Lump Sum Recipient, then the Original Payment Date is the date that the Original Lump Sum Payment was made. If a Class Member received multiple Lump Sum Payments, then the Original Lump Sum Payment Date is the date of the first Lump Sum Payment. If the Class Member is an Annuity Recipient, then the Original Payment date is the date of the first annuity payment.

12.11 Age 65 Benefit (ARP sections 6.1 – 6.3 at BP_0000023-24) – The Age 65 Benefit is the sum of 1) a) 1.7 percent of Final Average Earnings multiplied by Pre July 1, 1971 Benefit Service minus b) one-half of the Primary Social Security Amount, multiplied by the Pre July 1, 1971 Benefit Service (but excluding any period during which the Class Member had no wages subject to the Social Security Act) divided by 35 plus 2) a) 1.6 percent of Final Average Earnings multiplied by Post July 1, 1971 Benefit Service minus b) one-half of the Primary Social Security Amount, multiplied by the Post July 1, 1971 Benefit Service (but excluding any period during which the Class Member had no wages subject to the Social Security Act) divided by 35. For participants who were over age 65 on the Original Payment Date, this calculation is performed first as of age 65, and then incrementally increased to each December 31 following age 65, but prior to the Original Payment Date, and finally increased to the Original Payment Date, in the manner prescribed in Article III of the reformed Plan.

12.12 Early Retirement Eligible Class Member – A determination is made as to whether the Class Member is an Early Retirement Eligible Class Members. A Class Member is an Early Retirement Eligible Class Member if the Class Member would be eligible for early retirement under section 5.3 of the BP America Inc. Retirement Plan Restated and Amended as of January 1, 1988

(which can be found at BP_0000021), i.e. the Original Payment Date is prior to attaining age 65 and on or after attaining age 55.

12.13 Applicable Interest Rate and Applicable Mortality Table (Article III of the reformed Plan) – Based upon the provisions of the reformed Plan and the Original Payment Date, the Applicable Interest Rate and Applicable Mortality Table are determined (i.e. by looking up the applicable rates for the month containing the Original Payment Date).

12.14 Lump Sum Value (ARP section 11.3 at BP_0000039 as reformed and Article III of the reformed Plan) – The Lump Sum Value is determined differently depending upon whether or not the Class Member is an Early Retirement Eligible Class Member. If the Class Member is an Early Retirement Eligible Class Member then the Lump Sum Value is the Age 65 Benefit multiplied by the applicable factor from the table in ARP section 6.4 at BP_000024, if the Class Member was at least age 55 at termination of employment, or the table in ARP section 10.2 Table II at BP_0000037 if the Class Member was under age 55 at termination of employment multiplied by an immediate conversion factor to convert an immediate life only annuity at the Class Member's age on the Original Payment Date determined based upon the age in completed years and months and using the Applicable Interest Rate and Applicable Mortality Table. If the Class Member is not an Early Retirement Eligible Class Member and under age 55 on the Original Payment Date then the Lump Sum Value is the Age 65 Benefit multiplied by a present value conversion factor to convert a deferred to age 65 life only annuity into an immediate lump sum, determined using Applicable Interest Rate and Applicable Mortality Table, but with no mortality applied prior to age 65, and based upon the Class Member's age in completed years and months on the Original Payment Date. If the Class Member is over age 65 on the Original Payment Date, then the Lump Sum Value is equal to the Age 65 Benefit multiplied by an immediate conversion factor to convert an immediate life only annuity at the Class Member's age in completed years and months on the Original Payment Date and using the Applicable Interest Rate and Applicable Mortality Table.

12.15 Minimum Annuity (Article III of the reformed Plan) – The Minimum Annuity only applies to Annuity Recipients. The Minimum Annuity is what the annuity under the Plan would have been had the Class Member elected the benefit form they in fact elected, starting on the Original Payment Date, but if their Account Balance had equaled the Lump Sum Value.

12.16 Original Lump Sum Payment - The Original Lump Sum Payment is the amount that the Class Member was originally paid as a lump sum. If the Class Member was paid multiple lump sum payments, then it is the sum of each lump sum payment, discounted with interest at the Pre Judgment Interest rate (compounded monthly, with a partial month counted as a full month) to the Original Payment Date.

12.17 Value of the *Nichols* Payment - The Value of the *Nichols* Payment is equal to the amount actually received by the Class Member as a result of claims brought in *Nichols v. BP America Retirement Accumulation Plan* (i.e. after any charges for fees) divided by the Cost Factor and discounted with interest at the Pre Judgment Interest rate (compounded monthly, with a partial month counted as a full month) to the Original Payment Date. As used herein and throughout this Section, the term “Cost Factor” refers to 100% of the Class Member’s Corrective Payments reduced by the litigation costs (consisting of Court-approved attorneys’ fees and expenses, Named Plaintiffs’ Case Contribution Awards and Administrative Costs) as a percent of the total estimated value of all Corrective Payments as of the Effective Date of this Order.

12.18 Lump Sum Underpayment - The Lump Sum Underpayment only applies to Lump Sum Recipients. The Lump Sum Underpayment is equal to the excess (if any) of a) the Lump Sum Value over b) the sum of the Original Lump Sum Payment plus the Value of the *Nichols* Payment, with c) the excess multiplied by the Cost Factor.

12.19 Annuity Payment Date – The Annuity Payment Date only applies to Annuity Recipients. The Annuity Payment Date is each date that a Class Member (or the Class Member’s beneficiary) received (or will receive) an annuity payment, under the terms of the Plan and the benefit form selected by the Class Member.

12.20 Annuity Underpayment -The Annuity Underpayment only applies to Annuity Recipients. The Annuity Underpayment, as of each Annuity Payment Date is equal to the excess (if any) of the Minimum Annuity that would be owed (under the terms of the Plan and the benefit form selected by the Class Member) over the actual annuity payment on that Annuity Payment Date, with the excess multiplied by the Cost Factor.

12.21 Date of the Corrective Distribution – The Date of the Corrective Distribution is the date that the Lump Sum Corrective Distribution is made, and

any monthly annuity payments are increased by the Annuity Underpayment going forward (if applicable).

12.22 Lump Sum Corrective Distribution - The Lump Sum Corrective Distribution for Lump Sum Recipients is the Lump Sum Underpayment as of the Original Payment Date, increased with Pre Judgment Interest (illustrated at 8.5 % compounded interest) compounded for each month, counting a partial month as a full month, from the Original Payment Date until the Effective Date of this Order, further increased with Post Judgment Interest (illustrated at 8.5 % compounded interest) compounded for each month, counting a partial month as a full month from the Effective Date of this Order until the Date of the Corrective Distribution. For example, if the Lump Sum Underpayment as of the Original Payment Date is \$10,000.00, the Original Payment Date is January 3, 2000, the Effective Date of this Order is January 1, 2025 and the Date of the Corrective Distribution is March 3, 2025, then there would be 300 months from the Original Payment Date until the Effective Date of this Order and an additional 3 months from the Effective Date of this Order until the Date of the Corrective Distribution, making the Corrective Distribution equal to \$10,000.00 times 1.085 raised to the (300/12) power times 1.085 raised to the (3/12) power or \$78,451.43.

The Lump Sum Corrective Distribution for Annuity Recipients is the sum of each Annuity Underpayment, as of each Annuity Payment Date prior to the Date of the Corrective Distribution, increased with Prejudgment Interest, compounded for each month, counting a partial month as a full month, from each Annuity Payment Date until the Effective Date of this Order (treating the period as zero months if the Annuity Payment Date is after the Effective Date of this Order), further increased with Post Judgment Interest, compounded for each month, counting a partial month as a full month, from the later of the Effective Date of this Order or the Annuity Payment Date until the Date of the Corrective Distribution. For example, the Annuity Underpayment is in the form of a life only annuity, which, on each Annuity Payment Date is \$100.00, the first Annuity Payment Date is January 1, 2000, with an additional Annuity Payment Date on the first of each month up to the Date of the Corrective Distribution (because the Class Member is still alive on the Corrective Distribution Date), the Effective Date of this Order is January 1, 2025 and the Date of the Corrective Distribution is March 3, 2025, then there would be 300 Annuity Payment Dates prior to the Effective Date of the Distribution and an additional 3 Annuity Payment Dates on or after the Effective Date of the Distribution, with a total value of the Annuity Underpayments, with interest, of \$101,031.21.

The Lump Sum Corrective Distribution for Unpaid Class Members is zero.

12.23 Corrective Annuity - The Corrective Annuity for Lump Sum Recipients is zero.

The Corrective Annuity for Annuity Recipients is the Annuity Underpayment, as of each Annuity Payment date on or after the Date of the Corrective Distribution, paid in the same form as the Original Annuity. For example, if the Original Annuity was \$4,000.00 a month, in the form of a joint and 50% surviving spouse level annuity (see plan section 6.3(a) at BP0000113-14), the Annuity Underpayment on the first Annuity Payment Date is \$100.00, and the Class Member is still alive on the Date of the Corrective Distribution, then, on each Annuity Payment Date on or after the Date of the Corrective Distribution at which the Class Member is already entitled to the \$4,000.00 annuity payment, the participant will also receive an additional \$100.00 Corrective Annuity payment. After the Class Member's death, on each Annuity Payment Date on or after the Date of the Corrective Distribution at which the Class Member's surviving spouse is entitled to the \$2,000.00 50% surviving spouse annuity, the Class Member's surviving spouse will also receive an additional \$50.00 Corrective Annuity payment.

12.24 Estimated Value of Class Members' Payments - For purposes of determining the Cost Factor only, Plaintiffs shall provide an Excel spreadsheet to Defendants, using the data from previously provided discovery, including estimates of any missing information, and using an estimated Date of Corrective Distributions, valuing future annuity payments using applicable 26 U.S.C. § 417(e) mortality rates and 26 U.S.C. § 430 interest rates, which spreadsheet will assume any Unpaid Class Members will earn no additional benefit after the date of the previously provided data, and will elect a lump sum as of the later of the date of the latest discovery is as of or age 62 (noting that a Class Member who was age 25 on January 1, 1989 would be 60 on January 1, 2024).

13. The Corrective Annuity for Unpaid Class Members is zero.

14. Corrective Benefit –

14.1 The Corrective Benefit for Lump Sum Recipients is zero.

14.2 The Corrective Benefit for Annuity Recipients is zero.

14.3 The Corrective Benefit for Unpaid Class Members is equal to the amount of what the Lump Sum Underpayment would be (if the Class Member selects to receive the benefit as a lump sum) or what the Annuity Underpayment would be (if the Class Member selects to receive the benefit as an annuity), calculated as of the actual benefit commencement date of the Plan benefit.

15. Correction Procedure:

Once final judgment is entered by the Court, including determination of attorney fees, costs and named plaintiff case contribution awards, Defendants will commence collecting the relevant information and performing the calculations as described above. At the end of each month, starting with the month following the month in which the final order is made final, BP will provide to Plaintiffs an Excel spreadsheet containing the relevant information, and the supporting calculations, as outlined above. Plaintiffs' expert will review that information and calculations, with any questions regarding the information or calculations resolved as discussed above. Once the Lump Sum Corrective Distribution and Corrective Annuity for a Class Member are approved by Plaintiffs' expert, BP will commence payment of the Lump Sum Corrective Distribution, and correct future annuity payments by the Corrective Annuity. The only permissible delay on payment of the Lump Sum Corrective Distribution past 60 days after approval by Plaintiffs' expert are an inability to locate the Class Member, or due to the Class Member not timely responding to instructions regarding the distribution (for example, regarding withholding), in which case, distribution will occur within 30 days after the cause of the delay is resolved. In no event will payment to one Class Member be delayed due to information not yet assembled for other Class Members (*i.e.* the corrections should be processed as the information becomes available for each Class Member). BP shall pay for Plaintiffs' expert's review.

With regard to a Class Member's right under ERISA to have the calculations performed based upon the actual compensation history from the Social Security Administration, the calculations will be performed, and the amounts paid under the presumption that the Class Member will not make the election, the Class Member will be informed of the right to make the election, and how to make the election, and that if the election is made, an additional correction will be made if the election results in additional amounts due. In other words, payment of the correction will not be delayed due to the Class Member not yet informing BP of their election to use the actual compensation history.

16. Prejudgment and post judgment interest is awarded at 8.5%.
17. Plaintiffs are the prevailing party in this matter. The Court reserves the issue of the award of costs, attorney fees and named plaintiff case contribution awards to be determined in accordance with ERISA and the federal rules of civil procedure.

Respectfully submitted this 1st day of May, 2024.

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CERTIFICATE OF SERVICE

I do hereby certify that on May 1, 2024, I electronically filed the foregoing Memorandum using the Court's CM/EFC method, and that a copy of the foregoing was served on all counsel of record, as listed below, via the Court's CM/EFC method. This document was filed with the permission of the attorney in charge for Plaintiffs.

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