UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FREDRIC A. GUENTHER, an individual; and WALTON FUJIMOTO, an individual, Plaintiffs, v. 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.	NO. COMPLAINT

COMPLAINT

Plaintiffs, Fredric A. "Fritz" Guenther and Walton "Walt" Fujimoto, allege:

I. NATURE OF THE ACTION

1. Plaintiffs bring this class action against the BP Retirement Accumulation Plan ("RAP") and BP Corporation North America Inc. ("BP") under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132 (a)(3), and ERISA section 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A), on behalf of certain participants and

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

beneficiaries of the BP Plan. These participants and beneficiaries include approximately 450 or more former Standard Oil of Ohio ("Sohio") employees who, on September 19, 2014, were notified by BP's Ombudsman, retired United States District Court Judge Stanley Sporkin, that after an extensive investigation over a period exceeding three years, BP had rejected his recommendation that BP correct the disparity between (1) the retirement benefits BP promised former Sohio employees after acquiring their employer, and (2) the benefits BP's retirement plan administrator calculates are due under BP's modified benefits formula.

II. JURISDICTION AND VENUE

2. This Court has exclusive subject matter jurisdiction over this matter under 28 U.S.C. § 1331 and ERISA § 502(e)(1), (f), 29 U.S.C. § 1132(e)(1), (f), and ERISA § 502(c), 29 U.S.C. § 1132(c). Venue is proper, and this court has personal jurisdiction over the Defendants, under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), and ERISA § 502(c), 29 U.S.C. § 1132(c). The Plan is administered in this district and one or more of the Defendants resides or transacts business throughout this district.

III. THE PARTIES

A. Plaintiffs

3. Plaintiff, Frederic "Fritz" A. Guenther ("Guenther"), is a resident of Washington State. Guenther was employed by Sohio commencing in 1979, and has worked for BP since BP acquired Sohio in 1987.

4. Plaintiff Walton "Walt" Fujimoto ("Fujimoto") is a resident of Arizona. He was employed by Sohio and worked for BP after it acquired Sohio. Fujimoto retired from BP in 2014 after 37 years of service to BP and Sohio.

5. Plaintiffs Guenther and Fujimoto have been participants and/or beneficiaries, within the meaning of ERISA § 3(7), (8), 29 U.S.C. § 1002(7), (8), in the defined benefit plans sponsored by BP and Sohio. Plaintiffs accrued benefits under the plan's final average pay formula and BP

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

promised them additional benefits. BP's actions subjected Plaintiffs' pension benefit accruals to the RAP's cash balance accrual formula.

B. Defendants

6. Defendant BP is a subsidiary of BP plc, and was the plan sponsor of the Sohio defined benefit plan and the BP America Retirement Plan ("ARP"). BP is the plan sponsor of the BP Retirement Accumulation Plan ("RAP"), within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B).

7. Defendant BP RAP is an employee pension benefit plan, within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), and is a defined benefit plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35). It is successor to and a continuation of the Sohio defined benefit plan and the BP America Retirement Plan, and has the duties and obligations of the BP America Retirement Plan as it existed on and before January 1, 1989, including any required communications that were delayed past that date or never made. BP's Senior Vice President of Human Resources is the Plan Administrator, within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A), a plan fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and its Senior Vice President-Finance and Control, is a named fiduciary within the meaning of ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). The BP RAP's Summary Plan Description lists its Plan Administrator as Director, Retirement Plans, Western Hemisphere, BP Corporation North America, Inc. Upon information and belief, Clifford York holds that position. Through this arrangement, BP acts as the plan sponsor, plan administrator and a plan fiduciary, and controls the named fiduciary. When BP as employer communicated with Plan Participants about plan changes and benefits, it acted as an ERISA fiduciary.

IV. FACTS SUPPORTING CLAIMS

A. Plaintiffs were employed by Standard Oil of Ohio and were participants in its defined benefit retirement plan.

8. Guenther and Fujimoto were employees of Sohio before 1987.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

9. While employed by Sohio, Guenther and Fujimoto were participants in a defined benefit retirement plan sponsored by Sohio.

B. BP acquired Sohio and continued its traditional defined benefit plan as the BP America Retirement Plan.

10. In a traditional defined benefit plan, a participant's accrued benefit is expressed as a defined benefit amount that a participant will receive each year after the participant retires. In a defined benefit plan, the employee has the right to receive specified future benefits according to a formula. The employer provides periodic funding that is sufficient, in the opinion of licensed actuaries, to provide funds to pay the specified benefits as they become due. The plan administrator invests the funds, and the investment returns help fund the benefits paid to participants. Favorable investment returns operate to reduce the employer's cost of funding the pension benefits. The employer bears the risk that investment returns could be greater or less than expected. Defined benefit plans allow an employer to fund a smaller portion of the future pension obligation, leaving more working capital available for the employer's operations than if the employer fully funded the future pension obligation. By changing certain features of a defined benefit plan to resemble features of a defined contribution plan, while retaining the status of a defined benefit plan, the employer can continue to use more funds for working capital in its business operations than if it offered a defined contribution plan with similar expected benefits.

11. A traditional defined benefit plan may pay accrued benefits in a lump sum, rather than over time as an annuity. In doing so, that plan will calculate the lump sum benefit by estimating the present value of the future benefits to be paid during a participant's retirement.

12. Traditional defined benefit plans apply assumptions to calculate the present value of the future pension payments, including assumptions regarding the life expectancy of the participant and salary growth. When calculating present value, traditional defined benefit plans also assume a reasonable interest rate used to discount the value of future benefit payments.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

13. Interest rate discounting used in calculating the lump sum present value of future payments considers the "time value of money." The "time value of money" recognizes that a lower amount paid today may be worth the same to an individual as a higher amount paid in the future. Investment returns will enable the lower amount paid today to grow to the higher amount. The lower amount paid today is the "present value" of a higher amount that would be paid in the future.

14. The interest rate used as an assumption for annual investment rates of return has an inverse effect on present value calculations. The higher the interest rate used to discount a future payment, or a stream of payments, the lower the present value. A small increase in the interest rate used to discount future payments will significantly decrease the present value.

15. ERISA and the Internal Revenue Code contain parallel provisions that protect the value of participants' accrued benefits when determined as a lump sum, rather than an annuity.

16. ERISA and the Internal Revenue Code provide that "if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age . . . the employee's accrued benefit . . . shall be the actuarial equivalent of such benefit . . . ." ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3); IRC § 411(c)(3).

17. ERISA and the Internal Revenue Code prohibit plans from containing provisions that cause accrued benefits to be forfeitable before normal retirement age. ERISA § 203(a), 29 U.S.C. § 1053(a); IRC § 411(a). Under applicable IRS rules, adjustments to plan benefits "in excess of reasonable actuarial reductions can result in rights being forfeited." Treas. Reg. § 1.411(a)-4T; *see also* Treas. Reg. § 1.401(a)-11(b)(2).

18. The "anti-cutback" rule under ERISA and the Internal Revenue Code prohibits pension plans from adopting amendments that would decrease a benefit that has already been accrued by a participant. ERISA § 204(g), 29 U.S.C. § 1054(g); IRC § 411(d)(6).

19. Congress mandated in ERISA § 204(h), as in effect in 1989, that a plan sponsor's attempt to amend a defined benefit plan which significantly reduces the rate of future benefit accrual or

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

that eliminates or significantly reduces an early retirement benefit is ineffective when the plan administrator does not provide sufficient advance notice of the amendment.

20. BP acquired Sohio in 1987, and made it the cornerstone of its United States operation, BP America. BP continued to sponsor the Sohio defined benefit plan. The Plan Administrator was based in Cleveland, Ohio. The employer's contributions to the plan were held in trust in New York, New York. The Plan's main office was relocated to Warrenville, Illinois, and currently has its office in Houston, Texas. The Plan trustee is located in New York, New York.

21. Effective January 1, 1988, BP America Inc. merged the Sohio plan and several other subsidiary companies' defined benefit plans into a new plan called the BP America Retirement Plan ("ARP"). BP did not notify participants of substantive changes to the Sohio plan's benefit formula or definitions made in connection with restating and amending the plan.

22. BP performed the dual role of both plan sponsor and plan administrator.

23. BP retained the Sohio plan's defined benefit formula, which was a "final average pay" formula, for the employees who had been participants in the Sohio defined benefit plan. The final average pay formula accrued benefits as a percentage of pay for each year of service. The annual amount of a participant's normal retirement benefit was calculated by multiplying the number of years of benefit service by 1.7% for years and months worked prior to July 1, 1971, and 1.6% percent of final average earnings for years and months worked after July 1, 1971, and reducing the sum by a portion of the participant's expected social security benefit.

24. BP designated its Vice President-Human Resources to serve as Plan Administrator and its Senior Vice President- Finance and Control to serve as Named Fiduciary.

25. BP decided to change the Sohio defined benefit plan for multiple reasons. BP acquired other U.S. companies in addition to Sohio, and decided that greater uniformity among the plans sponsored by these subsidiaries would be beneficial. The existing plan accrued benefits at a lower rate at the start of a career and then increased accruals significantly as the employee approached retirement age. This rewarded career employees for remaining with the company,

but it did not attract new, younger employees. BP expected to attract new and younger employees with a pension plan offering a more linear rate of accrual and benefits that were more portable than the existing Sohio plan. The new BP RAP had features that resembled a defined contribution plan from the perspective of an employee, but retained the advantages to the employer of a defined benefit plan. These benefits included the ability to control more working capital for BP's operations and the ability to use returns on invested employer fund contributions to reduce overall pension expenses. Legislative changes also encouraged BP to make changes to the Sohio plan in order to retain the tax advantages of a qualified pension plan.

C. BP converted the BP America Retirement Plan (a continuation of the Sohio traditional defined benefit plan) to a cash balance plan.

26. Cash balance formulas are premised upon accruing a pension evenly over the course of an employee's career, with interest credits compensating for the diminishing value of a dollar over time. In contrast, the final average pay formula accrued the bulk of the pension benefits toward the end of the employee's career, encouraging long-term employment.

27. Although they are defined benefit plans, cash balance plans appear similar to defined contribution plans (*e.g.*, individual-account plans like 401(k) plans) because cash balance plans express accrued benefits as account balances in hypothetical plan accounts established for each participant. Cash balance plans create a benefit structure that simulates that of defined contribution plans, but employers do not deposit funds in individual participant accounts. As with other defined benefit plans, employers bear the market risks and retain the benefit of favorable market performance. Despite any similarities a cash balance plan might bear to a defined contribution plan, a cash balance plan is considered a defined benefit plan for purposes of ERISA. This is because the individual accounts and contributions under the plan are "notional" and exist merely for purposes of record keeping, and cash balance plans guarantee participants a defined benefit at retirement, determined by the plan's benefit formula.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

28. Although cash balance plans, including the RAP, establish hypothetical accounts, they are not defined contribution plans within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34). Rather, cash balance plans like the RAP are defined benefit plans within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35). Like other defined benefit plans, the employees' hypothetical cash accounts are reflected by balance sheet (liability) obligations of the sponsoring company and such reserves as may support those obligations under generally accepted accounting principles, governing statutes, or collective bargaining agreements. Unlike defined contribution plans, cash balance plans allow employers to fully fund a smaller portion of the future pension obligation, leaving more working capital available than if the employer fully funded the future pension obligation. By continuing to operate a defined benefit plan rather than changing to a defined contribution plan, BP could continue to fund only part of its pension obligation by accruing a liability to the pension fund, enabling it to reduce the amount BP borrowed through sale of its corporate bonds.

29. Traditional defined benefit plans express accrued benefits as an annuity – *i.e.*, as annual retirement plan payments payable to the participant commencing upon retirement. A defined benefit plan converted to a cash balance plan typically converts the annual accrued benefits earned under the plan's traditional formula and payable to a participant upon retirement into a single lump sum. The plan then credits the participant's hypothetical "opening account" for the lump sum based on a "present value" calculation.

30. Each cash balance plan participant accrues additional plan benefits in the plan through credits to his or her account. Cash balance plans credit each participant with a "pay credit" – a percentage of the participant's compensation – and with an "interest credit" – an amount determined by applying an interest rate to the account balance. Pay credits and interest credits comprise the additional accruals that participants earn in a typical cash balance plan. When the rate at which pay credits are accrued under the cash balance plan decreases, the benefit accrued will decrease. When the rate at which interest credits are accrued under the cash balance plan

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

decreases, the benefit accrued will also decrease. When the sum of pay-credits and interest-credits provide the RAP participant benefits that are less than the benefits available under the final average pay formula, the benefits under the RAP will not be as good as or better than the benefits calculated under the final average pay formula. Unless the employer adds another credit to a participant's hypothetical account to make up the difference, the rate of accrual in the cash balance plan will have been significantly reduced from the rate of accrual under the traditional plan's formula.

31. The conversion of a final average pay plan to a cash balance plan typically freezes the growth of benefit accruals, and converts the value of the earned pension benefit to a cash-out amount. That amount or "account," if a worker is not yet ready to retire, is increased by monthly credits based on a percentage of the employee's compensation for that year. The result is a significantly lower rate of accrual, and in most cases, a lower total pension benefit than under the original final average pay formula.

32. If an employee initially accumulates earned benefits under a final average pay formula which is later changed to a cash balance formula, that employee is likely to accrue a significantly lower retirement benefit. The result of a change from a final average pay formula to a cash balance formula is a significant reduction in the rate of future benefit accruals.

33. Shortly after converting the original Sohio retirement plan to the BP ARP, BP management decided to amend the plan's benefit formula from a final average pay formula to a cash balance formula.

34. In deciding to convert to a cash balance plan, BP and the BP Plan Administrator gathered information about how such a conversion might affect benefits. BP recognized at the time of conversion that, on average, its employees retired at age 60.

35. In a letter dated August 26, 1988, BP's consulting actuary notified BP that some participants would retire with lower benefits under the cash balance plan than they would under

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

the final average pay formula, even though the "average" of benefits provided by the two plans might be similar.

36. On January 1, 1989, BP converted the BP ARP (which included the former Sohio defined benefit retirement plan) to a cash balance plan, and named it the BP America Retirement Accumulation Plan ("RAP"). BP did not immediately inform its employees of this change. In June 1989, BP informed its employees after-the-fact that, effective January 1, 1989, the BP ARP had been merged into the BP RAP and had been converted to a cash balance plan.

37. BP told employees that the conversion would not affect the amount, timing, or form of payment of any benefit provided by the prior plan.

D. BP failed to give timely and sufficient notice about the plan conversion; the information BP provided about the plan conversion misrepresented the benefits the RAP was expected to provide at retirement.

38. BP knew, or should have known, that its conversion from a final average pay formula to a cash balance formula risked a significant reduction in the rate of future benefit accruals for career employees.

39. BP and the BP Plan Administrator exercised discretionary authority over the Plan and controlled the information the Plan Administrator provided to participants regarding the change in benefit formulas.

40. BP and the BP Plan Administrator developed a communication campaign designed to: 1) promote employee acceptance of the change; 2) reduce employee concerns and inquiries; and 3) prevent opposition in order to guard against employee attrition and discontent due to the change. BP disclosed only information that portrayed the conversion favorably. BP and the BP Plan Administrator led participants to believe the plan change was in the participants' best interest and that they should not be concerned the change would reduce pension benefits. BP and the BP Plan Administrator sought to retain employees by assuring them if they continued employment with BP they could "count on" the future pension benefits under the RAP, and that these benefits

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

were "comparable to-and, in most cases, better than" their prior benefits available under the BP ARP.

41. As part of its campaign to promote employee acceptance of the RAP, BP hosted meetings with employees where it told employees that the conversion to the RAP would make them "much better off" than under the old plan. BP intended that employees share this information to promote employee acceptance of the change to the RAP.

42. When BP announced to its employees that it had converted the BP ARP to the BP RAP, BP told its employees that: (1) it had preserved the principal strengths of the BP ARP; (2) BP would continue to pay the full cost to maintain the plan benefits; and (3) the changes to the plan were designed to provide a retirement benefit that was comparable to - and, in most cases, better than - the benefit they would have received under the prior pension formula. BP represented that while the RAP would make long-term pension costs more stable and predictable for BP, its principal motivation for the change was to obtain greater value by providing employees a more flexible program that better fit their expectations and needs. BP also told employees the RAP conversion was not a cost cutting exercise. BP failed to disclose that while it hoped the RAP would not increase its pension cost, the RAP was designed to reduce the cost to BP of being able to offer pension benefits that were more portable and more attractive to younger employees. BP did not disclose that the cost of making pension benefits portable was shifted to career employees, whose benefits were significantly reduced under the RAP. BP also did not disclose that the cash balance plan amendments to the defined benefit plan enabled BP to portray the plan's benefits as individual accounts without bearing the cost of actually providing individual accounts through a defined contribution plan, cutting BP's cost of offering retirement benefits that appeared like those provided by an individual-account plan. BP reduced expenses and preserved cash liquidity by smoothing benefit accruals.

43. Statements by BP and the Plan Administrator to plan participants regarding the changes included:

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

- Your BP America pension plan was revised and renamed as of January 1, 1989. … Your pension benefit will continue to be fully supported by contributions from the Company. This means that BP America – not you – bears all the risk associated with investments in the Plan.

- The plan is designed to provide a retirement benefit that is comparable to – and, in most cases, better than – the benefit you would have received under the prior pension formula…..Simply put, the BP America Retirement Accumulation Plan is an innovative pension plan that provides retirement benefits participants can count on. …

- The enclosed brochure highlights the principal changes; …. BP America pays the full cost. BP America is responsible for funding, and bears the full investment risk. And the plan provides a retirement benefit to career employees that is comparable to the fully competitive benefit under the prior formula.

- Answering your Questions:
  …
  In general, how do benefits under the Retirement Accumulation Plan compare with prior benefits? Overall, the Retirement Accumulation Plan provides better retirement benefits than those previously available.

44. BP and the BP Plan Administrator did not disclose that some participants would accrue benefits at a significantly reduced rate due to the conversion to the RAP, or at a minimum, that many participants faced a risk of such reductions. BP's statements and nondisclosures assured participants that the plan amendments would not "provide for a significant reduction in the rate of future benefit accrual," as described in 29 U.S.C. § 1054(h)(1). To employees, the accuracy of BP's assurances was bolstered by the fact that BP did not warn employees that there was a risk of a significant reduction in future benefits accruals, as ERISA § 204(h) required if such a reduction were being put into effect.

45. BP intended these misleading statements to ease its transition into what it knew was a retirement program that was less favorable to certain employees. BP and the Plan Administrator intended that plan participants would believe their misleading statements and rely on their truthfulness. In stating that BP America, and not the participant, would bear the risk associated with the plan conversion, BP intentionally misled plan participants.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

46. BP represented that the RAP conversion was not a cost cutting exercise. However, BP and the Plan Administrator failed to disclose that the RAP formula reduced the risk that its unfunded pension liability would increase in a volatile market, while at the same time increasing the degree that BP would benefit from invested employer contributions in a favorable market. BP failed to inform its employees that the RAP's formula limited the amount that plan benefits would increase in a favorable investment market compared to the prior plan or that the RAP would shift more risk to employees in a volatile market. As BP recently acknowledged, "Clearly, it is impossible to know in advance how interest rates and salary growth will change over time." Yet, BP's assurances to participants in 1989 did not inform them that the conversion shifted the risk of salary growth and interest rate volatility to plan participants while at the same time shifting the potential benefits of interest rate and market volatility to BP.

47. BP and the Plan Administrator failed to disclose to Plan Participants that they had shifted the cost of BP's promised pension benefit portability under the RAP to career employees in the form of reduced benefit accruals. Contrary to BP and the Plan Administrator's representations, the RAP was not designed to provide a retirement benefit comparable to – and, in most cases, better than – the benefit the career employees would have received under the Retirement Plan's prior formula. The RAP did not provide career employees better retirement benefits than those previously available.

48. BP's recent statements about the RAP conversion have been contradictory and confusing. BP and the Plan Administrator have continued to claim that the RAP provides as good or better benefits than the ARP. BP and the Plan Administrator have recently asserted that any decrease in benefits for certain participants have been de minimis. At the same time BP admitted in recent correspondence that the RAP benefits are not as great as the lump sum equivalent of the benefits the ARP provided.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

49. Under ERISA, when BP communicated about the participant's future ERISA plan benefits, BP and the Plan Administrator had a fiduciary duty, as well as a non-fiduciary legal duty, to refrain from misrepresentations. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

50. One of ERISA's central goals is to enable plan beneficiaries to learn their rights and obligations at any time, and this notice requirement was intended to advance that goal. ERISA § 204(h)(1), 29 U.S.C. § 1054(h)(1), provided that a defined benefit plan such as the BP ARP "may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to (A) each participant in the plan, (B) each beneficiary who is an alternate payee … under an applicable qualified domestic relations order …, and (C) each employee organization representing participants in the plan…." Public Law 99-272, sec. 11006(a), 100 Stat. 243-244, (added to ERISA through the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), enacted April 7, 1986).

51. BP and the Plan Administrator did not provide BP ARP participants advance notice of the conversion to the RAP as required by ERISA § 204(h). Plan participants received communications from BP and the Plan Administrator in June 1989 stating that, effective January 1, 1989, their defined benefit retirement plan had been converted to a cash balance plan. BP and the Plan Administrator did not provide notice of the plan amendments before their January 1, 1989 effective date.

E. When converting the ARP to the RAP, BP reduced the present value of opening balances by using an unreasonably high interest rate to calculate the present value of opening balances, and by calculating the opening balances retroactively.

52. Under the RAP, BP established an Opening Account and a Current Account retroactively to January 1, 1989, for each participant who continued to participate in the RAP. BP assured

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

participants their Opening Accounts equaled the lump sum present value of any benefits converted from the BP America Retirement Plan.

53. During the cash balance conversion, the RAP reduced the accrued benefits that participants had already earned in the BP ARP by calculating the present value of the accrued benefit as though the formula change had been made before January 1, 1989, and by using an interest rate (8%) to calculate the present value of the accrued benefits that was higher than an appropriate interest rate. Consequently, the Opening Account balance reduced participants' accrued benefits. The vested benefit due at retirement was not preserved by the method BP used of establishing opening account balances because those accounts did not provide the same amount due under the final average pay formula as calculated upon actual retirement using the appropriate treasury department interest rate.

F. BP's performance representations were not met.

54. BP's predictions about future market interest rates being at or above 8% were unreasonable. BP knew or reasonably should have known that the RAP conversion put its employees at risk of a significant reduction in future benefit accruals due in part to interest rate volatility, which in fact occurred. Projected pension benefits for former Sohio employees who remained employed by BP for many years after BP converted the BP ARP to the RAP are significantly lower than the benefits BP told employees they could count on when they retired. And, the benefits provided by the portion of participants' accounts that represents the Opening Balance BP established in 1989 are less than the benefits participants had accrued as of the conversion date under the final average pay formula that would become due upon retirement.

G. BP adjusted the RAP to protect benefits for certain former Sohio employees.

55. When retirement benefits for former Sohio "career employees" failed to accrue in a manner at least equal to benefits calculated under the prior final average pay formula, BP adjusted pension benefits of some former Sohio Heritage Employees to "harmonize" BP's U.S.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

executive reward programs. BP provided those additional benefits under a Supplemental Executive Retirement Benefit Plan ("SERB"). BP only provided this benefit to Sohio Heritage Employees who were at a certain level (referred to as "Band D") or above between 2002 and 2011. BP did not offer this supplemental benefit to its "lower level" employees. Nor did BP inform "lower level" employees that such an adjustment was necessary to obtain the benefits BP had originally promised. By making this adjustment, BP acknowledged the benefits provided to "lower level" employees under the RAP were inferior to the benefits they would have received under the ARP.

56. As participants became concerned that the RAP's performance was lagging behind what BP had promised, Plaintiffs, as well as other plan participants, asked BP to explain and correct any disparity between (a) what they had been promised in 1989 when BP announced the RAP, and (b) what the Plan Administrator estimated their retirement benefits would actually be under the RAP.

H. BP's Code of Conduct assured employees that BP would keep its promises.

57. BP maintained a "Code of Conduct" which set forth a commitment by BP to foster trust and reliance between the company and its employees, stating: "If something is not right, we will correct it" and "We aim to make sure everyone in BP and everyone we come into contact with is treated with fairness, respect and dignity, and is never unfairly discriminated against." BP's Code of Conduct assured BP employees it was reasonable to rely on BP's commitments, and to expect that BP would adjust the pension benefits to provide the level of benefits BP and the Plan Administrator described in the 1989 promotional announcements regarding conversion to the cash balance formula.

58. BP's conduct vis-à-vis other heritage groups suggested that BP had followed its Code of Conduct and honored its promises regarding RAP benefits. When BP recognized that other similarly situated heritage-employee groups (including but not limited to ARCO and AMOCO

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

heritage groups) RAP benefits were less than BP had promised, BP enhanced benefit balances to remedy those plan-performance issues. BP enhanced benefits for these heritage-employee groups in accord with the Code of Conduct, and Plaintiffs reasonably believed that BP would do the same for the former Sohio pension participants.

59. BP asked Plaintiffs to address their concerns about the RAP through the BP Office of the Ombudsman. BP maintained the BP America Ombudsman Program to address worker disputes with BP and to resolve work place concerns. At the time, the program was led by Judge Stanley Sporkin (Retired, United States District Court, D.C.), who reported directly to John Mingé, Chairman and President of BP America.

60. BP urged Plaintiffs, and those similarly situated, to participate in the Ombudsman process and to file a complaint with the Office of the Ombudsman asking BP to remedy any inequity in the benefits. BP intended that plaintiffs would participate in this time-consuming and costly type of non-binding arbitration before resorting to litigation.

61. In 2011, approximately 450 former Sohio employees, including plaintiffs, filed a complaint with BP's Office of the Ombudsman raising concerns about their retirement benefits, and other concerns. After filing the complaint with the Office of the Ombudsman, BP's President, John Mingé actively encouraged Plaintiffs to rely on the BP Ombudsman process to address Sohio Heritage employees' concerns about the RAP, stating that the Ombudsman was fully aware of the details and that those in the Ombudsman's office were in the process of reviewing the issue. The Ombudsman review process lasted over three years.

62. President John Mingé later reported to Plaintiffs that during the subsequent three years of the Ombudsman process, the highest levels of BP executive management, including BP employees in its legal department, worked with the Office of the Ombudsman to analyze the allegations of the concerned BP/former Sohio employees. Former BP ARP participants were encouraged to participate in the process and await the Ombudsman's conclusions and BP's response to the Ombudsman's recommendations.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

63. On March 21, 2014, Janet L. Weiss, Regional President of BP Alaska, responded to BP employees' concerns about how long the Ombudsman review was taking. She told Mr. Guenther the Ombudsman's office had recently provided Mr. Mingé a letter and report, and assured him "the matter is taken very seriously by John [Mingé] and everyone in BP who is involved, and in my opinion, we will likely have a decision on issues raised by the Ombudsman's office by June [2014]…. Ms. Weiss urged Plaintiffs to allow "those in BP who are responsible for reviewing the Sohio matter" "a chance to conduct their review as I believe the issues have been raised by the Ombudsman…."

64. According to documents later produced by BP, during the review process the Ombudsman's Office reviewed numerous documents and submissions from former Sohio employees and from BP as part of its analysis. Guenther, Fujimoto, and numerous other employees participated in this investigation and analysis by the Office of the Ombudsman.

65. Judge Sporkin later described the materials reviewed by his office as follows:

> This matter has been under review and investigation for almost two years. It has required extensive research of historical data that has been difficult to collect and review. In addition, it required a financial review of relevant market and economic conditions and indicators, BP statements at the time, and a data assessment of comparable heritage retirement programs. Throughout the pendency of the case, increasing numbers of employees and former employees contacted our office, often raising new issues and providing additional information. Ultimately 16 separate and unique issues were identified for investigation.
>
> Since this matter required substantial data from BP's Legal Department and Benefits programs, there was a dialogue and review of the issues throughout the investigation process. In addition, interim dialogue, meetings and reviews were held with several members of the CI group with the most technical knowledge of the case. Numerous meetings and telephone conferences were held with concerned employees, updates were provided to the increasing number of concerned employees, and several personal meetings occurred between the Ombudsman and concerned employees.
>
> The draft report was reviewed with BP to determine that the factual data relied upon was accurate, and that our understanding of the program and its variances was correct. In the end there is little, if any, dispute over the relevant facts of the case and our recommendations stem from a consideration of these undisputed facts.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

A copy of the Ombudsman's Report (without Exhibits listed on the report's page 31, but with transmittal letter), is attached to this Complaint as **Exhibit "A"** and incorporated herein.

66. As part of the dialogue between BP and the Ombudsman regarding the claim that BP's conversion to the RAP ultimately caused a significant reduction in pension benefits, the Office of the Ombudsman framed the inquiry to BP, in part, as follows:

> Issue 1: The current values of SOHIO heritage individual retirement accounts are less than if BP had maintained the original pre-1989 SOHIO plan. This is not consistent with BP's statements that the plan would be "as good or better" than the previous retirement plan.
>
> Ombudsman Inquiry:
>
> In responding to this issue, please explain, in detail, the calculations of the SOHIO heritage individual retirement account using the model employee parameters included with these questions as Attachment A. (This is the same information that was provided in the April, 2013 e-mail from Garde [a representative of the Ombudsman's office] to Heller [a BP employee in its legal department.] Also, please identify any specific circumstances where a retiring SOHIO heritage employee's retirement income would be "as good or better" than the original SOHIO plan.

BP's response asserted that its interest rate assumptions were reasonable based on actuarial assumptions and that the projections communicated to employees were accurate. BP stated:

> …
>
> In the communication materials, BP indicated that the projections of future benefits were estimates based on assumptions and were not a promise of what the actual benefit under the plan ultimately would be. Indeed, it would have been impossible to forecast exactly what a participant's cash balance benefit would be because the benefit depends on interest rates and other factors going forward. Clearly, it is impossible to know in advance how interest rates and salary growth will change over time. BP's communications at the time used reasonable assumptions based on both then current and historical data.
>
> The new cash balance formula of Sohio employees generated a pension benefit that was generally greater than the final average pay benefit would have been at younger ages. However, due to lower interest rates since 1989, the Sohio final average pay formula generally produces a greater lump sum benefit than the cash balance formula during the early retirement years (late 50s/early 60s). The fact remains that Sohio employees have received a pension benefit that is consistent with both the governing plan terms and the formula described to them in the original communications.

BP's response to the Ombudsman's inquiries also asserted:

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

> [W]ith interest rates having subsequently dropped - to historic lows in recent years - the cash balance benefit now is not as great as the lump sum equivalent of the benefit the Sohio final average pay formula would have produced. The fact remains, however, that Sohio employees have received a pension benefit that is consistent with both the governing plan terms and the formula described to them in the original communications.
>
> The historically low interest rates have further increased the difference between the cash balance account and the Sohio final average pay formula because the lower interest rates increase the lump sum equivalent of the monthly Sohio annuity. It is important to bear in mind, though, that historically low interest rates in recent years do not mean that the communications in 1989, which spelled out precisely how the benefit would be calculated, were incorrect or misleading.

67. On March 7, 2014, the BP Ombudsman substantiated the claims by the former Sohio plan participants affected by the RAP by way of a report submitted to BP management only. The Ombudsman found:

> The current values of SOHIO heritage individual retirement accounts for current and recently retired employees are less than if BP had maintained the original SOHIO plan. The outcome was not consistent with BP's statements at the time in the Plan's promotional material that the plan would be "as good or better" than the previous retirement plan, or that BP bore all the risks of the Plan.

68. In response to BP's assertions that the low interest rate was a "historical anomaly" and that BP's 8% interest rate prediction was reasonable, the Ombudsman found that the opposite was true and that the, "8% interest rate turned out to be a high projection, based on an historical anomaly."

69. The Ombudsman concluded that the original promotional material BP had its Plan Administrator provide to plan participants was overly optimistic about the future of interest rates and its impact on the RAP plan accumulations. The Ombudsman found that the Treasury note forecasts during the relevant time predicted a "precipitous drop in interest rates…which is what occurred." The Ombudsman also found:

> In addition, the new retirement plan presented certain risks. These risks included what would happen if the projected interest rates could not be sustained. This is what, in fact, occurred. The employees simply were not told that the risks associated with a decline in interest rates would be solely borne by the employees. Simply put, there would be no allocation of these risks.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

70. The Ombudsman recommended BP rectify the disparity between the benefits promised and the benefits provided by the RAP. He stated that BP should determine the full retirement benefits that the affected individuals would have received under their prior Sohio retirement plan and offer the employees additional benefits to bridge the difference between what the Sohio plan would have paid them and the benefit calculated by the RAP. The Ombudsman offered suggestions to BP about how to accomplish the above-described remedy and recommended that third party independent experts analyze and determine a payout methodology.

71. Some BP America management employees recognized the Ombudsman's recommendation was consistent with BP's promises in 1989 and its assurances to employees through its code of conduct and treatment of other heritage-employee groups; they recommended that BP provide funding to the RAP and direct the Pension Administrator to increase the pension accounts of the affected former Sohio employees as recommended by the Ombudsman.

I. BP broke faith with its career employees and repudiated BP's promise to provide retirement benefits they could count on to be comparable to the fully competitive benefit under the plan's prior formula.

72. On September 15, 2014, BP America President John Mingé wrote a letter communicating BP's "final decision" on the matter. In a letter to BP employees, Mingé wrote that the issue had, "been the subject of extensive analysis on the part of BP and the Ombudsman over the past three years." Mingé stated:

> With the Ombudsman's review and our assessment of the findings complete, we now communicate to you BP's final decision on the matter. . .
>
> After full cooperation with the Ombudsman's investigation and critical analysis of the matter at the highest levels of the company, we have decided to maintain our original position - changes will not be made to the SOHIO Heritage Pension Plan benefits.

This was the first formal communication from BP to the Sohio Group participating in the Ombudsman process.

73. Mr. Mingé's letter, however, did not reveal to BP employees the Ombudsman's recommendation. BP refused to discuss the Ombudsman's recommendations and findings with

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

participants. His letter merely stated that the Ombudsman's review was complete and that BP had made a "final decision on the matter."

74. On September 19, 2014, four days later, the Ombudsman wrote a letter to BP employees revealing for the first time that the Ombudsman had decided in the employees' favor and had recommended that BP correct the disparity between the promised benefits and the benefits under the RAP. The Ombudsman wrote, "BP did not accept the Office of the Ombudsman's (OoO) recommendations to take action to address the heritage employee concerns." The letter went on to express disappointment in BP's decision and that, "[u]ltimately, we believe in your position that you're due some relief as a consequence of the market impact on the accounts of so many of you providing long years of service to BP – on at least an equitable basis." The Ombudsman attached a summary of its report to BP, and urged plan participants to review the issues with a personal attorney or advisor. A copy of this letter and the summary report are attached as Exhibit B.

75. On information and belief, this is the only occasion where BP failed to follow the recommendations of the Office of the Ombudsman. BP recently discontinued the Office of the Ombudsman.

J. Guenther filed an administrative claim with the RAP Plan Administrator and requested documents; BP withheld documents responsive to his requests.

76. After BP's final decision on the RAP pension issue, Mr. Guenther filed an administrative claim with the Plan Administrator requesting that the BP RAP provide him benefits "as good as or better than" his benefits calculated under the original Sohio defined benefit plan.

77. During that claim process, Guenther requested that the Plan Administrator and BP provide information about the conversion of the BP ARP (which had assimilated the Sohio Plan) to the BP Retirement Accumulation Plan, as well as all historical data that was collected, reviewed, or made available during the protracted Ombudsman's analysis.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

78. The Plan Administrator declined to provide most of the documents requested by Guenther. Instead, Guenther received a letter from a Senior Attorney in BP's Labor, Employment & Employee Benefits Group containing BP's response to Mr. Guenther's document request. The responses were incomplete and evasive.

79. Guenther specifically asked BP to provide copies of all documents related to the RAP conversion prepared by Karen Salinaro (formerly with BP's consulting actuarial firm, Kwasha Lipton, which studied the plan options and advised BP in converting to the cash balance formula). BP falsely reported that it had not identified any actuarial studies prepared in connection with the conversion of the ARP into the RAP. BP's response stated,

> "Letter dated December 8, 1989 from Karen Salinaro to BP's Pension Plan Manager. Our review of the company's files identified no other documentation prepared by Karen Salinaro."

(Exhibit C (redacted to shield the identity of the responding attorney)).

80. In fact, BP had in its possession an August 26, 1988 letter from Karen Salinaro to BP's Manager, Pension Plans (Elizabeth Rossman), referred to in paragraph 35; it was attached to BP's federal district court filing on January 29, 2010, in other litigation involving the RAP. BP and its actuary expert discussed the letter and represented it to be authentic. (The letter and attachment were numbered in that litigation as BP00001388-1403. A copy is attached as Exhibit D.) In that letter, Ms. Salinaro advised BP that, even with the assumptions of 6% annual pay increases and 8% basic annual interest credits to the accounts, "some will be retiring with less than they would have under the final pay plan, some with more." BP's court filings indicate it has additional related documents.

81. BP withheld evidence that is material to Guenther's claims and would have supported Plaintiffs' claims. BP knowingly withheld the August 26, 1988 letter and many additional documents responsive to Guenther's requests during the administrative claim process.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

K. BP denied Guenther's administrative claim and his appeal and continued to withhold responsive documents requested by Guenther.

82. The Plan Administrator denied Guenther's claim, and denied his assertion that the RAP accrued benefit was less than it would have been had the Sohio Plan final average pay formula been retained. Consistent with the statements BP made repeatedly to employees beginning in 1989, the Plan Administrator maintained again that Plaintiff's projected benefit from the RAP was better than his projected benefit under the ARP, despite the fact that the Ombudsman studied similar representations by BP's legal department and found them untrue.

83. The Plan Administrator's actions were fiduciary acts. The Plan Administrator owed a special duty of loyalty to the plan beneficiaries, including Mr. Guenther and Mr. Fujimoto. However, the Plan Administrator's representative had a conflict of interest because she was employed by and represented BP, which funded the plan and evaluated administrative claims.

84. Guenther appealed the Plan Administrator's decision to redetermine his accrued pension benefits. Guenther again asked for document production and asked that the Appeal Administrator consider those additional materials. The Appeal Administrator denied the bulk of Guenther's document requests, based in part on BP's false and misleading responses to document requests. The Appeal Administrator denied Guenther's appeal on December 30, 2015.

85. Because the Plan Administrator and the Appeals Administrator denied Guenther's document requests and his administrative claims it is reasonable to assume that administrative claims by similarly situated plan participants would be futile.

86. Guenther and Fujimoto filed this cause of action on their own behalf and on behalf of similarly situated individuals.

V. CLASS ALLEGATIONS RELATED TO COUNTS 1, 3, 4, and 5
Retroactive Opening Account Class

87. Plaintiffs bring the claims for relief in Counts 1, 3, 4, and 5 as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of similarly situated employees who participated in the RAP and are former Sohio employees, whose pension plans have not

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

been previously adjusted, and their beneficiaries, for whom an Opening Account was established retroactively to January 1, 1989, even though they were not informed of the conversion until June 1989 or later (**"Retroactive Opening Account Class"**).

88. The requirements for maintaining this action as a class action under Rule 23(a) of the Federal Rules of Civil Procedure are satisfied:

(a) The members of each of the classes are so numerous that joinder of all members is impracticable. The exact number of class members is not known to Plaintiffs. Plaintiffs believe that the number of class members, including active participants, participants and beneficiaries receiving retirement benefits, and retired or separated participants who are entitled to receive benefits in the future exceeds four-hundred-and-fifty people, and may exceed one thousand.

(b) There are questions of law and fact that are common to the Retroactive Opening Account Class, including whether they were not informed until June 1989 that their plan had been converted from the BP America Retirement Plan to the BP RAP, and whether that change resulted in forfeiture of accrued benefits in violation of ERISA §§ 203(a) and 204(g), 29 U.S.C. §§ 1053(a) and 1054(g).

(c) Plaintiffs are members of the Retroactive Opening Account Class and their claims are typical of the members of the class.

(d) Plaintiffs will fairly and adequately protect the interests of the classes and have retained counsel experienced in ERISA and class action litigation. Plaintiffs have no interests that are adverse or antagonistic to the interests of the Retroactive Opening Account Class.

89. The requirements under Rule 23(b)(1), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure are satisfied:

(a) The prosecution of separate actions by individual members of the Retroactive Opening Account Class would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for the Defendants. Alternatively, prosecution of separate

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

actions by individual class members would create a risk of adjudications regarding individual members of the Retroactive Opening Account Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests, since ERISA authorizes participants to obtain relief that includes relief for the Plan as a whole;

(b) The Defendants have acted and refused to act on grounds applicable to the Retroactive Opening Account Class, making appropriate final injunctive relief or corresponding declaratory relief regarding the Retroactive Opening Account Class as a whole;

(c) The questions of law and fact that are common to the members of the Retroactive Opening Account Class predominate over questions affecting only individual members; and

(d) A class action is superior to other available methods for the fair and efficient adjudication of the dispute:

(1) The injuries suffered by many individual class members or their stake in the matter may be relatively small. The cost and burden of litigation, which would likely be the same whether claims are brought by an individual plaintiff or on behalf of a class, may make it impossible for class members to individually seek relief for the Defendants' wrongful conduct.

(2) The commonality of all legal and factual issues should make the class action easy to manage.

VI. CLASS ALLEGATIONS RELATED TO COUNTS 1, 2, 3, 4, and 5
Notice Class

90. Plaintiffs bring the claims for relief in Counts 1, 2, 3, 4, and 5 as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of similarly situated individuals who participated in the BP RAP and are former Sohio employees, and their beneficiaries, who did not receive adequate notice of the plan conversion (**"Notice Class"**) as required by ERISA § 204(h) as set out in Public Law 99-272, sec. 11006(a), 100 Stat. 243-244.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

91. The requirements for maintaining this action as a class action under Rule 23(a) of the Federal Rules of Civil Procedure are satisfied:

(a) The members of each of the classes are so numerous that joinder of all members is impracticable. Although the exact number of class members is not known, Plaintiffs believe that the number of class members, including active participants, participants and beneficiaries receiving retirement benefits, and retired or separated participants entitled to receive benefits in the future exceeds four-hundred-and-fifty people, and may exceed one thousand.

(b) There are questions of law and fact that are common to the Notice Class, including whether the notice of plan conversion was proper and timely under ERISA § 204(h) as set out in Public Law 99-272, sec. 11006(a), 100 Stat. 243-244; and whether lack of proper notice rendered BP's attempt at conversion ineffective and voidable by those participants whose benefits calculated by the RAP Administrator are not "as good as or better than" benefits provided under the traditional final average pay formula used by the BP America Retirement Plan.

(c) Plaintiffs are members of the Notice Class and their claims are typical of the members of the class.

(d) Plaintiffs will fairly and adequately protect the interests of the classes and have retained counsel experienced in ERISA and class action litigation. Plaintiffs have no interest that is adverse or antagonistic to the interests of the Notice Class.

92. The requirements under Rule 23(b)(1), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure are satisfied:

(a) The prosecution of separate actions by individual members of the Notice Class would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for the Defendants. Alternatively, prosecution of separate actions by individual class members would create a risk of adjudications regarding individual members of the Notice Class that would, as a practical matter, be dispositive of the interests of the other members not parties

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

to the adjudications, or substantially impair or impede their ability to protect their interests, since ERISA authorizes participants to obtain relief that includes relief for the Plan as a whole;

(b) The Defendants have acted and refused to act on grounds generally applicable to the Notice Class, making appropriate final injunctive relief or corresponding declaratory relief regarding the Notice Class as a whole;

(c) The questions of law and fact that are common to the members of the Notice Class predominate over any questions affecting only individual members; and

(d) A class action is superior to other available methods for the fair and efficient adjudication of the dispute:

(1) The injuries suffered by many individual class members or their stake in the matter may be relatively small. The cost and burden of litigation, which would likely be the same whether claims are brought by an individual plaintiff or on behalf of a class, may make it impossible for class members to individually seek relief for the Defendants' wrongful conduct.

(2) The commonality of all legal and factual issues should make the class action easy to manage.

VII. CLASS ALLEGATIONS RELATED TO COUNTS 1, 4, and 5
Excessive Interest Rate Class

93. Plaintiffs bring the claims for relief in Counts 1, 4, and 5 as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of similarly situated individuals who participated in the BP RAP and are former Sohio employees, and their beneficiaries, whose opening balances were calculated with actuarial assumptions that used an interest rate that was excessive and not appropriate under ERISA, resulting in rights to accrued benefits being forfeited, contrary to ERISA § 203(a), 29 U.S.C. § 1053(a), IRC § 411(a), and ERISA § 204(g), 29 U.S.C. § 1054(g), and IRC § 411(d)(6) (**"Excessive Interest Rate Class"**).

94. The requirements for maintaining this action as a class action under Rule 23(a) of the Federal Rules of Civil Procedure are satisfied:

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

(a) The members of each of the classes are so numerous that joinder of all members is impracticable. Although the exact number of class members is not known, Plaintiffs believe that the number of class members, including active participants, participants and beneficiaries receiving retirement benefits, and retired or separated participants entitled to receive benefits in the future exceeds four-hundred-and-fifty people, and may exceed one thousand.

(b) There are questions of law and fact that are common to the Excessive Interest Rate Class, including whether the interest rates used by BP to calculate the lump sum present value of accrued benefits when Opening Accounts were established were excessive under ERISA § 205(g), 29 U.S.C. § 1055(g), and caused the RAP to reduce accrued benefits in violation of ERISA §§ 203(a) and 204(g), 29 U.S.C. §§ 1053(a) and 1054(g).

(c) Plaintiffs are members of the Excessive Interest Rate Class and their claims are typical of the members of the class.

(d) Plaintiffs will fairly and adequately protect the interests of the classes and have retained counsel experienced in ERISA and class action litigation. Plaintiffs have no interest that is adverse or antagonistic to the interests of the Excessive Interest Rate Class.

95. The requirements under Rule 23(b)(1), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure are satisfied:

(a) The prosecution of separate actions by individual members of the Excessive Interest Rate Class would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for the Defendants. Alternatively, prosecution of separate actions by individual class members would create a risk of adjudications regarding individual members of the Excessive Interest Rate Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests, since ERISA authorizes participants to obtain relief that includes relief for the Plan as a whole;

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

(b) The Defendants have acted and refused to act on grounds generally applicable to the Excessive Interest Rate Class, thereby making appropriate final injunctive relief or corresponding declaratory relief regarding the Excessive Interest Rate Class as a whole;

(c) The questions of law and fact that are common to the members of the Excessive Interest Rate Class predominate over any questions affecting only individual members; and

(d) A class action is superior to other available methods for the fair and efficient adjudication of the dispute:

(1) The injuries suffered by many individual class members or their stake in the matter may be relatively small. The cost and burden of litigation, which would likely be the same whether claims are brought by an individual plaintiff or on behalf of a class, may make it impossible for class members to individually seek relief for the Defendants' wrongful conduct.

(2) The commonality of all legal and factual issues should make the class action easy to manage.

VIII. CAUSES OF ACTION AND CLAIMS FOR RELIEF FOR ERISA AND PLAN VIOLATIONS

COUNT 1

BP's RAP CHANGES CAUSED UNLAWFUL FORFEITURES AND VIOLATED THE ANTI-CUTBACK RULE BY USING AN ARTIFICIALLY HIGH INTEREST RATE TO CALCULATE OPENING BALANCES AND BY ESTABLISHING OPENING BALANCES RETROACTIVELY

96. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 95 and assert this claim for equitable relief under ERISA §502(a)(3).

97. For purposes of establishing the Opening Accounts, in determining the "lump sum present value" of the pension benefits that had accrued under the BP RAP Plan, BP applied an unlawful and unreasonable assumption that had the effect of reducing the accrued benefits that participants had already earned in the plans before January 1, 1989.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

98. In establishing the Opening Accounts as of January 1, 1989, the BP Plan used an interest rate of 8 percent to calculate the present value of the benefits that had accrued under the original Sohio Plan. That interest rate exceeded the maximum interest rate permitted under ERISA and the Internal Revenue Code for determining lump sum present values.

99. The maximum rate the BP Plan could have used under ERISA § 205(g)(3)(A)(i), 29 U.S.C. § 1055(g)(3)(A)(i), and under the Internal Revenue Code Section 417(e), to determine the present value of accrued benefits as of January 1, 1989 was less than 8%. The applicable PBGC rate as of January 1, 1989 was 7.75%. To calculate an opening balance that would be consistent with BP's representations at the time of the RAP conversion, BP should have used an interest rate significantly lower than 8%. Moreover, by converting the accrued benefit due at retirement to an opening account balance calculated to discount the projected future payments to present value, without providing for supplementation if the calculation failed to provide fully the vested benefits when the participant actually retires, BP failed to protect the vested benefits. The lump sum amount calculated in 1989, with subsequent interest credit accruals provided by the revised plan formula, has not provided the accrued defined benefit that the final average pay formula specified would be determined upon actual retirement. That benefit would be stated in monthly payments, and if paid as a lump sum upon actual retirement, the amount would be determined by a present value calculation that used the treasury department interest rates in effect at retirement. BP's conversion process that used 1989 estimates to determine the accrued future benefit as a lump sum amount placed in the Opening Account failed to protect participants' actual accrued benefits determined at retirement.

100. BP further artificially depleted the value of opening accounts by establishing the RAP Opening Accounts retroactively to a date that preceded the date participants ceased to participate in the BP ARP and had their hypothetical accounts converted to accounts in the RAP as of that earlier date. By establishing the Opening Accounts retroactively, BP caused participants to forfeit the accruals they had earned in the BP ARP defined benefit plan between the retroactive

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

Opening Account date of January 1, 1989 and the date they were notified their pension account had been converted to a RAP account. BP delayed providing notice of the conversion until June 1989 or later.

101. By using an inappropriately high interest rate and a retroactive date to establish Opening Accounts, and by failing to ensure the benefits participants had accrued as of the date they were notified their pension accounts had been converted to RAP accounts, BP caused forfeitures and reductions in benefit accruals, in violation of ERISA §§ 203(a) and 204(g), 29 U.S.C. §§ 1053(a) and 1054(g).

102. By informing participants that the plan conversion had already occurred months earlier BP's actions had a "chilling effect" on plan participants who were less likely to oppose the plan change because it had already occurred. This chilling effect combined with BP's efforts to obfuscate the fact that the RAP would result in significantly decreased future benefit accruals and future benefits served BP by impeding plan participants from understanding that their pension benefits had been significantly reduced. These acts also served BP by delaying participant efforts to enforce their rights under ERISA to compel BP to keep its promises about the RAP benefits.

COUNT 2

BP FAILED TO PROVIDE PROPER NOTICE OF REDUCTIONS IN THE RATE OF FUTURE BENEFIT ACCRUALS UNDER ERISA § 204(h)

103. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 102 and assert this claim for equitable relief under ERISA §502(a)(3).

104. Contrary to BP's representation that the RAP would provide benefits as good as, or better than, the BP America Retirement Plan, the RAP resulted in significant reductions in benefit accruals for former Sohio employees, including Plaintiffs.

105. BP's 1989 RAP conversion shifted risks associated with market volatility to the participant, contrary to BP's representations. The RAP as currently administered and operated

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

by BP is providing significantly reduced benefit accruals to class members compared with what the BP America Retirement Plan would have provided through its final average pay formula.

106. Provision of a proper § 204(h) notice was within BP's control.

107. BP did not provide a § 204(h) notice at least 15 days prior to the effective date of the plan amendment, and did not provide notice that the plan amendments provided for a significant reduction in the rate of future benefit accrual, as required by Public Law 99-272, sec. 11006(a), 100 Stat. 243-244.

108. In fact, BP provided no 204(h) notice at the time of conversion from the Sohio Pension Plan to the BP America Retirement Plan (ARP) or at the time of the conversion from the ARP to the BP Retirement Accumulation Plan (RAP).

109. BP knowingly and intentionally failed to provide a proper § 204(h) notice as part of its campaign to convince participants that the RAP conversion that had already occurred months earlier did not provide for a significant reduction in the rate of future benefit accruals.

110. BP did not provide participants with a § 204(h) notice even after the risk foretold by Kwasha Lipton in 1988 that the RAP would reduce some pension benefits had become a reality. BP continues to assure plan participants that the RAP benefits are as good as benefits they would have received under the ARP. BP has never sent a § 204(h) notice regarding the RAP conversion to inform participants their benefit accruals would be reduced.

111. BP's disclosures subsequent to the plan conversion were not "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan," in violation of § 102 of ERISA, 29 U.S.C. § 1022. On the contrary, they were designed to obfuscate and divert participants and beneficiaries from exercising their rights and obligations under the plan.

112. BP's purposeful failure to disclose the disadvantages of the RAP conversion, as well as its affirmative statements that the rate of future benefit accruals would not be reduced, violates its fiduciary duty under ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to provide participants with

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

the information needed to make well-informed employment, savings, and retirement decisions. BP's misrepresentations and nondisclosures also violate the duties of candor and truthfulness that apply to non-fiduciaries.

113. Under ERISA § 204(h) as set out in Public Law 99-272, sec. 11006(a), 100 Stat. 243-244, BP may not enforce, as to class members, its conversion of the BP ARP (successor to the Sohio defined benefit plan) to the BP RAP. Absent a § 204(h) notice, the plan amendments that would reduce benefits from those available to former Sohio employees under the ARP are invalid in their entirety. The Court should declare that the 1989 conversion to the RAP may not be imposed on Plaintiffs or other former Sohio employees to reduce the benefits they would have received under the ARP formula.

114. The Court should enter an order that directs the BP Plan Administrator to calculate the class members' retirement benefits according to the ARP's final average pay formula, with BP funding the plan as necessary to provide the retirement benefits.

COUNT 3

BP'S SUMMARY PLAN DESCRIPTION FAILED TO DISCLOSE BENEFIT REDUCTIONS

115. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 114 and assert this claim for equitable relief under ERISA §502(a)(3).

116. ERISA requires that Summary Plan Descriptions (SPDs) must be distributed to participants and must disclose the circumstances that may cause reductions, disqualification, denial, loss, or forfeiture of any benefits that a participant might otherwise reasonably expect to receive on the basis of the description of the benefits offered by the plan. 29 C.F.R. 2520.102-3(i). The disclosure must be written in a manner calculated to be understood by the average plan participant. 29 C.F.R. 2520.102-2(a). Reductions, restrictions and other disadvantages must be described no less prominently or understandably than the advantages of the plan. 29 C.F.R. 2520.102-2(b).

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

117. Since before 1989 when BP notified Plan Participants that it had converted the BP ARP to the RAP, these same regulations provided that the format of, “the summary plan description must not have the effect of misleading, misinforming, or failing to inform participants and beneficiaries. Any description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure, or otherwise made to appear unimportant. Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe or summarize plan benefits. The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations.” *Id.*, 42 Fed. Reg. 37180.

118. When a plan administrator, or an employer, communicates with plan participants about plan changes and benefits, they act as fiduciaries regarding those communications.

119. The SPDs and correspondence that BP distributed to participants in 1989 did not describe the benefit reductions, conditions on receipt, or other disadvantages of the RAP. The information BP provided about the new RAP exaggerated the benefits and minimized the limitations of the changes, and failed to inform participants that BP’s unqualified promotional statements were subject to exceptions, limitations, reductions, and restrictions.

120. Absent the notice and disclosures required by ERISA §§ 102 and 204(h), a plan’s rule that causes benefits to be lost or forfeited may not be enforced. BP may not impose the RAP benefits-formula to reduce participants’ benefits to less than what would have been available to them under the final average pay formula used by the BP ARP. Plaintiffs are entitled to a judgment ordering the plan administrator to calculate their retirement benefits under the RAP so that the benefits are no less than those calculated under the BP America Retirement Plan’s final average pay formula, with BP funding the plan as necessary to provide the benefits.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

COUNT 4:

THE PLAN SHOULD BE REFORMED OR BP SHOULD PAY A SURCHARGE TO REMEDY BP's FIDUCIARY BREACH UNDER ERISA § 502(a)(3)

121. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 120 and assert this claim for equitable relief under § 502(a)(3).

122. Plaintiffs have suffered "actual harm," in the loss of rights protected by ERISA and in diminished pension benefits.

123. Plaintiffs suffered a "related loss" because of BP's fiduciary breach set forth above in the loss of a right protected by ERISA and in diminished pension benefits.

124. BP failed to inform the plan participants of all material facts, and its omissions were a violation of good faith, were unconscionable, and were inequitable.

125. BP and the BP Plan Administrator intentionally minimized and dismissed risks presented by the plan amendment. BP and the BP Plan Administrator withheld information that would have informed participants that the change to the cash balance plan could significantly reduce the rate of future pension benefit accruals. Information BP provided was inaccurate and misleading. BP did not disclose that the enhancement of retirement benefits for some employees by making benefits portable came at the cost of reduced retirement benefits for other employees, particularly career employees. BP and the BP Plan Administrator did not disclose that employees who remained with BP for their entire careers faced significant risk that their retirement benefits under the cash balance formula would not accrue to a level equal to benefits that would have accrued under the final average pay formula.

126. BP misled Sohio plan participants about the reason for the change in formulas. BP told participants that the amendment was "not a cost cutting measure." BP and the Plan Administrator did not disclose that the plan amendments made future benefit accruals dependent on unpredictable interest rates and salary growth, while putting limits on the range of the interest rate credit BP would have to credit to participants. The cash balance formula allowed BP to

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

capture more of the potential upside earning potential from market interest rate volatility without funding the cost of a corresponding increase in the accrued benefit, compared with the prior formula. BP also limited its liability for benefits under the plan in the event market interest rates decreased, compared to the prior benefit formula. BP represented it would bear the risk of market volatility, rather than the truth: the risk of market volatility had been shifted to the plan participants and beneficiaries

127. When BP made its representations concerning the plan conversion, it intended that the plan participants would rely on the representations.

128. The plan participants, including plaintiff, reasonably relied upon the representations.

129. BP's misrepresentations caused plan participants to be mistaken about the terms of their pension plan.

130. BP was unjustly enriched because of its misrepresentations. BP would not have obtained the enrichment absent the misleading communications and fiduciary breaches.

131. BP and the BP Plan Administrator violated ERISA §§ 404(a) and 102 by issuing false, misleading, and incomplete plan descriptions and information promoting the 1989 RAP cash balance conversion. The information BP and the BP Plan Administrator distributed to plan participants in 1989 did not describe the benefit reductions, conditions on receipt, or other disadvantages of the new cash balance pension accruals. The information BP and the BP Plan Administrator provided about the plan changes exaggerated the benefits and minimized the limitations of the changes, and failed to inform participants that the unqualified promotional statements were subject to exceptions, limitations, reductions, and other restrictions. As a result of these ERISA violations, BP employees reasonably but mistakenly believed that growth in their cash balance benefit would equal or exceed growth that would have been provided under the Retirement Plan's final average pay formula; they believed what BP had told them. BP obtained an undue advantage vis-à-vis its workforce by making these false, misleading, and incomplete statements in the Plan descriptions and promotional correspondence. To remedy the

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

resulting inequitable harm, the RAP should be reformed to meet Class members' reasonable expectations of benefits resulting from the misrepresentations made by BP and the BP Plan Administrator. BP's and the BP Plan Administrator's deceptive conduct set forth above warrants reformation of the cash balance pension plan document under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), or other equitable relief such as a surcharge, in order to grant Class members the pension benefits BP promised in June 1989 and thereafter.

COUNT 5:

THE COURT SHOULD DETERMINE THAT THE RAP AND BP MUST PRODUCE THE RECORDS REQUESTED INCLUDING RECORDS MADE AVAILABLE TO THE OMBUDSMAN

132. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 131 and assert this claim for legal and equitable relief under ERISA §502(a)(1)(A).

133. ERISA § 502(c)(1), 29 U.S.C. § 1132(c)(1) and 29 C.F.R. § 2560.503-1 (h)(2)(iii), provide that a claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits.

134. ERISA § 502(c)(1), 29 U.S.C. § 1132(c)(1), provides that whenever a plan administrator fails or refuses to comply with a request for any information which such administrator is required by the subchapter to furnish to a participant or beneficiary, the court may, in addition to awarding the participant a statutory penalty, order such other relief as it deems proper.

135. Pursuant to ERISA §502(a)(1)(A) and § 502(c)(1), the Court should order that the RAP and BP provide Plaintiffs complete information within its control about the conversion of the ARP to the RAP, including: (a) BP's evaluation of what information the Plan Administrator should or should not disclose to Plan Participants about the conversion of the Sohio Plan and the ARP to the RAP since 1987; (b) BP's direction to the Plan Administrator, and the Plan Administrator's evaluations, regarding the timing and content of notices to participants about the conversion to the RAP since 1987; (c) data provided to BP during the Ombudsman review

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

process; (d) the substantial data submitted to the Ombudsman by BP, including submissions by its Legal Department; its Labor, Employment & Employee Benefits Group; its Pension Administrator; and its other benefits program employees; and (e) other historical data that was collected and reviewed during the Ombudsman's analysis, including statements by BP after 1987 regarding the conversion from the ARP to the RAP.

136. The Court should provide appropriate remedies under ERISA § 502(a)(1)(A) for BP's refusal to provide information requested by Guenther during the administrative claim process, including determination of an appropriate remedy for the false and misleading statement in the letter dated June 3, 2015 from BP's Labor, Employment & Benefits Group (Exhibit C) and BP's spoliation of evidence in withholding the August 26, 1988 letter (Exhibit D) and related documents responsive to Guenther's request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

A. Certify the Retroactive Opening Account Class, the Notice Class, and the Excessive Interest Rate Class.

B. Determine, pursuant to ERISA § 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A), that the RAP and BP must provide Plaintiffs the records information about the conversion of the ARP to RAP, including, but not limited to: (a) BP's evaluation of what information the Plan Administrator should or should not disclose to Plan Participants about the conversion of the Sohio Plan and the ARP to the RAP; (b) BP's direction to the Plan Administrator, and the Plan Administrator's evaluations, regarding the timing and content of notices to participants about the conversion to the RAP; (c) data provided to BP during the Ombudsman review process; (d) the substantial data submitted by BP's Legal Department and Benefits programs to the Ombudsman; and (e) other historical data that was collected, reviewed, or otherwise made available during the Ombudsman's analysis, including statements by BP regarding the conversion from the ARP to the RAP. The Court should also consider granting additional equitable relief to Plaintiffs based

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

upon BP's withholding of and/or spoliation of evidence during the administrative claim process, including BP's withholding of the August 26, 1988 letter from Karen Salinaro and related false statements by BP's Labor, Employment & Employee Benefit Group; and withholding actuarial studies and other documents responsive to Guenther's requests.

C. Declare, pursuant to ERISA § 502(a)(3), that BP's retroactive establishment of Opening Accounts violates ERISA §§ 203(a) and 204(g); 29 U.S.C. § 1053(a) and 1054(g).

D. Declare, pursuant to § 502(c)(3), that the change in the BP America Retirement Plan benefit formula to a cash balance formula violated notice requirements under ERISA § 204(h) as set out in Public Law 99-272, sec. 11006(a), 100 Stat. 243-244, as well as the requirements set out in ERISA § 204(h) as later amended, as well as the disclosure requirements of ERISA § 102 and 29 C.F.R. 2520.102-2, and therefore BP's attempt at conversion to the RAP was ineffective and voidable as to those Class member participants who would receive benefits under the RAP that are not "as good as or better than" benefits provided under the traditional final average pay formula used by the BP America Retirement Plan.

E. Order Reformation of the Plan and that the BP Plan Administrator determine accrued benefits for the Notice Class by calculating their accrued benefits according to the BP America Retirement Plan's final average pay formula as an equitable remedy under ERISA § 502(a)(3) for the violations of ERISA §§ 102; 203(a); 204(g); and 204(h).

F. As an equitable remedy for BP's deceptive conduct set forth above, order reformation of the RAP plan document under ERISA § 502(a)(3) to provide Class members benefits at least as great as those calculated under the BP America Retirement Plan's final average pay formula.

G. As a remedy under ERISA § 502(a)(3) for BP's deceptive conduct set forth above, grant equitable relief such as a surcharge by having BP fund additional account credits sufficient to provide Class members pension benefits at least equal to those available under the BP America Retirement Plan, as BP promised plan participants when informing them the ARP had been converted to the RAP.

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

H. As a surcharge remedy under ERISA § 502(a)(3), order defendants to pay to any Class members who have begun to receive pension benefits the difference between what they have been paid and what they should have been paid under the BP America Retirement Plan as a cure for the ERISA violations.

I. Award the Plaintiffs costs, expenses, and reasonable attorneys' fees.

J. Award the Plaintiffs such other relief as the Court deems just and equitable.

DATED this 13th day of April, 2016.

MERRICK, HOFSTEDT & LINDSEY, P.S.

By /s/ *Peter Steilberg, III*
Peter Steilberg, III
Washington State Bar No. 22190
S.D. Texas Bar No. 2639089

Attorney for Plaintiffs and Attorney-in-Charge

Merrick, Hofstedt & Lindsey, P.S.
3101 Western Avenue, Suite 200
Seattle, WA 98121-3017
(206) 682-0610 - Telephone
(206) 467-2689 - Facsimile
psteilberg@mhlseattle.com

MERRICK, HOFSTEDT & LINDSEY, P.S.

By /s/ *Philip R. Meade*
Philip R. Meade
Washington State Bar No. 14671
S.D. Texas Bar No. 2639087

Of Counsel Associated Attorney

Merrick, Hofstedt & Lindsey, P.S.
3101 Western Avenue, Suite 200
Seattle, WA 98121-3017
(206) 682-0610
pmeade@mhlseattle.com

JAMES, VERNON & WEEKS, P.A.

By /s/ *Leander L. James*
Leander L. James
Idaho Bar No. 4800
S.D. Texas Bar No. 2611757

Of Counsel Associated Attorney

James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur D'Alene, ID 83814
(208) 667-0683
ljames@jvwlaw.net

JAMES, VERNON & WEEKS, P.A.

By /s/ *Susan Weeks*
Susan Weeks
Idaho Bar No. 4255
S.D. Texas Bar No. 2636824

Of Counsel Associated Attorney

James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur D'Alene, ID 83814
(208) 667-0683
sweeks@jvwlaw.net

EXHIBIT A

OFFICE OF THE OMBUDSMAN

Stanley Sporkin
Ombudsman
(USDC Judge, Retired)

1130 Connecticut Ave., NW – Suite 500
Washington, DC 20036
Phone: (202) 248-4482 / Fax: (202) 248-4600

March 7, 2014

John Mingé
Chairman and President
BP America, Inc.
501 WestLake Park Boulevard
Houston, Texas 77079

Re: Office of the Ombudsman (OoO) Case Number 2011-052

Dear John:

As you know our office has received concerns from over 429 long term SOHIO heritage employees and recently retired employees. The issues they have raised are, essentially, that the 1989 conversion of their SOHIO retirement program to the BP Retirement Accumulation Plan (RAP) has resulted in a significant financial inequity to those SOHIO heritage employees who have served BP the longest, during its most challenging times. We realize this is a controversial matter and there are strong feelings on both sides of the issue. We also understand that this matter has been around for many years and is in need of resolution.

Our work consisted of receiving and reviewing all the concerns brought to our office, of which we identified sixteen specific issues to review and/or investigate. BP's Legal and Human Resources offices cooperated with our investigation and review, and have been provided an opportunity to review and comment on our work. Thus, we believe we have fully heard and understand the concerns of the employees as well as the views of management.

Our work on this matter has not identified any legal issues for reconsideration. The growing perception of this dispute is one in which the SOHIO heritage staff -- many of whom are senior level employees --believe that BP management has not given the attention to their personal concerns that this matter requires. Most of the concerned employees have served the company for over twenty, thirty, and in some cases forty years. They believe they have been treated unfairly, and have not been heard about these important economic issues. A few of them have become hostile towards the company. This is not the work environment a world-class company wants to engender. Employees are the lifeblood of a company; hostility between itself and a large portion of its most senior employees is not something that BP wants to create or even tolerate. There are no winners or losers in this matter.

After very careful consideration of all the issues, large and small, we have come to the conclusion that BP needs to take bold action to try to rectify the SOHIO employees heritage concerns.

The statements from certain of the affected employees included in our Report express their strong feelings and exemplifying the views of most. Here are some examples in their own words:

- "The collective contribution and value of the SOHIO heritage employees is equal to any other group in the firm.... A key reason I have stayed with BP for thirty years is that I have seen our executives make the right decision of a range of difficult ethical and moral choices over many years. Now it is time to do so again. I have faith that our executive leadership will once again do what is right over what is expected."

- "Many of us are Senior Managers who have worked hard for our company and it is unnatural for us to speak up, but I feel this disparate treatment warrants special attention."

- "The decision [about the SOHIO heritage employees] creates a gross inequity and unfairness that should be corrected. [We] are senior staff with a long standing commitment and service to the company and should not be excluded from these plans."

- "The detrimental impact of extended retirement age and the financial burden of the underperforming program impact our children's education, choices in health care, ability to care for aging parents, and many other real aspects of our lives."

- "I have 49 years of service with SOHIO/BP and was always proud of the work I did to make the company a good place to work.....The SOHIO heritage folks were the ones who worked during those trying years of bringing on the Alaska pipeline, wage restrictions [etc.] Without our sacrifice, the Amoco and Arco folks might not have been added to the BP family."

- "When there is obvious inequity in the workplace, there needs to be answers to the inequity. The entire One BP is certainly void of meaning with an effort to make all employees truly feel valued, respected and appreciated."

It is not a good work environment where such a large number of employees believe their employer is not treating them fairly. Employees are disheartened and frustrated. In this case the many employees who have given a lifetime of service to the corporation have raised a legitimate concern, and while not every aspect of the issues they have raised has been substantiated, the fundamental issues have been. The relevant facts of this matter are not in serious dispute. In 1989 BP made statements to the SOHIO heritage employees that the RAP plan would provide "a retirement benefit that is comparable to -- and in most cases, better than" the retirement benefit that they would have received under the prior pension formula. That prediction didn't come true over the long term, because the interest rate environment did not meet the hoped-for expectations.

What is key here is that in the 1989 "conversion" there were certain risks that the new retirement plan presented. These risks included what would happen if the projected interest rates could not be sustained. This is what, in fact, occurred. The employees simply were not told that the risks associated with a decline in interest rates would be solely born by the employees. Simply put, there would be no allocation of these risks.

To further exacerbate this situation, in 2011 BP provided an enhancement and incentive for the Arco/Amoco heritage employees to stay with the company as a consequence of the conditions of their plan. A similar challenge did not exist for retention of the remaining SOHIO heritage employees, therefore no similar incentive was offered to them. In addition, a modification to the RAP Plan was made for those executive SOHIO heritage employees reaching Band D and above, but not for those below that level. The reasons, at the time, were certainly explainable and deemed in the best interest of the company and the affected employees. Likewise, although the retirement benefits accrued more favorably for the longest serving Arco/Amoco heritage employees than their comparable SOHIO heritage colleagues, our findings and recommendations are not based on the perceived inequity in the outcome of the different retirement programs. We recognize that BP, as a growing global company has numerous arrangements with different companies it acquired. The consequences these decisions have had have been to create a situation that poses another risk to BP -- its relationship with its SOHIO heritage employees, a significant and important part of its work force, and the real life financial consequences for those people and their families at the end of lengthy terms of service.

As BP considers a resolution to this issue, we note that we believe that most of the original 7,000 SOHIO heritage employees have left active employment with BP, and the majority of those people accrued the benefits of the "grandfathered" provision for those 50 or older, or the portability of the RAP Plan and other incentives which provided benefits that were comparable to or better than would have been available to their heritage program. For the approximately 1,000 employees who have stayed with BP the longest, their situations have not been comparable.

Where our office has found the need for BP to take action, we have also tried to propose a solution. While we have not worked out the details, we would recommend that a plan involving the following elements be considered:

- A determination of the cost of the full amount of the retirement benefits that the affected individuals would have received under their prior retirement plan;

- A determination as to a realistic amount to be offered to them to bridge the difference. Here the amount could be anywhere between 50 % and 100% of the original benefits.

Whatever the formula that would be developed and applied would be administered in an unbiased fashion. For those SOHIO heritage employees who were grandfathered or left the company early, there would be little exposure, since the new plan worked to their benefit. For those who have stayed the longest, the outcome would be different. There are several ways such benefits could be provided to those individuals as a non-qualified payment. These include:

a. Each of the affected individuals be given an agreed upon lump sum payment at this time, or over a short period of time;

b. Evaluate each employee's retirement balance at the date of retirement and add to it a percentage of the difference between the current and prior retirement amounts;

c. Any other equitable distribution method that experts, in this area, might come up with that achieves the same purpose.

Whatever plan is accepted, it should be executed as soon as possible. Of course, we stand ready to be helpful in getting the matter resolved. I have attached a recent newspaper article that reports on a CEO of a major company reversing the company's determination on a retirement policy. This shows that a company can respond to the concerns of its employees even when it has reversed its position. BP has demonstrated a willingness to make such changes particularly where it is in everyone's best interest to do so. We believe this is such a case and recommend such action be taken.

Sincerely,

Stanley Sporkin
Ombudsman

Cc: Luke Keller
Vice President
BP America

Jeff Heller
Associate General Counsel
Labor, Employment & Employee Benefits

CONFIDENTIAL
INVESTIGATION FINAL REPORT
CASE NO: 2011-052

DATE

March 7, 2014

LOCATION

BP America, Inc.

BUSINESS/FUNCTION

This matter applies across all BP America business functions, but has a significant percentage of the Concerned Individuals in Exploration and Production facilities.

SPA FOR INVESTIGATION

Billie Garde, Esq.
Deputy Ombudsman
BP Ombudsman Employee Concerns Program
1130 Connecticut Ave., NW, Suite 500
Washington, DC 20036

Mike Brothers, Esq.
Investigator
30 Atlantic Street
Niantic, CT 06357

Concerned Individuals

This issue was originally raised in October, 2011 by one Concerned Individual (CI), who requested confidentiality. Since that time, 429 current and, in some cases, recently retired BP employees had contacted the Office of the Ombudsman (OoO) regarding this concern. Most of the CIs have requested confidentiality, some did not. However, there is no reason to identify the CIs in this report and, in accordance with our normal practices, no one is identified.

Executive Summary, Findings and Recommendations

The issue raised in this case by SOHIO heritage employees are, essentially, that the 1989 conversion of their SOHIO retirement program to the BP Retirement Accumulation Plan (RAP) has resulted in a significant financial inequity to those SOHIO heritage employees who have served BP the longest, during its most challenging times.

Our work consisted of receiving and reviewing all the concerns brought to our office, of which we identified sixteen specific sub-issues to review and/or investigate. BP's legal and Human Resources offices cooperated with our investigation and review. Our work on this matter has not identified any legal issues for reconsideration. However, after very careful consideration of all the issues, large and small, we have come to the conclusion that BP needs to take bold action to try to rectify the SOHIO Employees Heritage concerns.

The relevant facts of this matter are not in serious dispute. In 1989 BP converted the SOHIO defined benefit plan retirement program to a BP America cash balance program, called the BP Retirement Accumulation Plan. In advising SOHIO heritage employees of the change it made statements to the SOHIO heritage employees that the RAP plan would provide "a retirement benefit that is comparable to – and in most cases, better than" the retirement benefit that they would have received under the prior pension formula.[1] That didn't happen because the interest rate environment did not meet the hoped-for expectations. In addition, there were certain risks connected with the 1989 conversion that the new retirement plan presented. These risks included what would happen if the projected interest rates could not be sustained. This is what, in fact, occurred. The employees simply were not told that the risks associated with a decline in interest rates would be solely born by the employees. Instead, the statements made in the original promotional and explanatory materials stated that the risks would be borne solely by BP.[2]

To further exacerbate this situation, in 2011 BP provided an enhancement and incentive for the Arco/Amoco heritage employees to stay with the company as a consequence of the conditions of their retirement plan. A similar challenge did not exist for retention of the remaining SOHIO heritage employees, and no similar incentive was offered. In addition, a modification to the RAP Plan was made for those executive SOHIO heritage employees reaching Band D and above, as well as other heritage senior executives, but not for those below that level. The reasons were certainly explainable and deemed in the best interest of the company and the affected employees. Although the retirement benefits accrued more favorably for the longest serving Arco/Amoco heritage employees than their comparable SOHIO heritage colleagues, our findings and recommendations are not based on the perceived inequity in the outcome of the different retirement programs. We recognize that BP, as a growing global company has numerous arrangements with different companies. However, the consequences these decisions have had have been to create a situation that poses another risk to BP – its relationship with its SOHIO heritage employees, a significant and important part of its work force, and the real life financial consequences for those people and their families.

As BP considers a resolution to this issue, we note that we believe that most of the original 7,000 SOHIO heritage employees have left active employment with BP, and most of those people accrued the benefits of the "grandfathered" provision for those 50 or older, or the portability of the RAP plan and other incentives which provided benefits that were comparable to or better than would have been available to their heritage program. For the approximately 1,000

---

1 See, Exhibit 1, 1989 BP RAP Brochure.

2 See, Exhibit 2, June 12, 1989 RAP Memorandum from James Ross to BP America employees.

employees who have stayed with BP the longest, their situations have not been comparable.

Based on a careful consideration of the options, and while we have not worked out the details, we would recommend that a plan involving the following elements be considered:

- A determination of the cost of the full amount of the retirement benefits that the affected individuals would have received under their prior retirement plan;

- A determination as to a realistic amount to be offered to them to bridge the difference. Here the amount could be anywhere between 50% and 100% of the original benefits.

Whatever the formula that would be developed and applied would be administered in an unbiased fashion. For those SOHIO heritage employees who were grandfathered or left the company early, there would be little exposure, or liability since the plan worked to their benefit. For those who have stayed the longest, the outcome would be different. There are several ways such benefits could be provided to those individuals as a non-qualified payment. These include:

- Each of the affected individuals be given a lump sum payment at this time;

- Evaluate each employee's retirement balance at the date of retirement and add to it a percentage of the difference between the current and prior retirement amounts;

- Any other equitable distribution method that experts, in this area, might come up with.

Whatever plan is accepted, it should be executed as soon as possible. Our office, of course, is prepared to assist in whatever way we can in the implementation of the proposed resolution

Method of Review

This matter has been under review and investigation for almost two years. It has required extensive research of historical data that has been difficult to collect and review. In addition, it required a financial review of relevant market and economic conditions and indicators, BP statements at the time, and a data assessment of comparable heritage retirement programs. Throughout the pendency of the case, increasing numbers of employees and former employees contacted our office, often raising new issues and providing additional information. Ultimately 16 separate and unique issues were identified for investigation.

Since this matter required substantial data from BP's Legal Department and Benefits programs, there was a dialogue and review of the issues throughout the investigation process. In addition, interim dialogue, meetings and reviews were held with several members of the CI group with the most technical knowledge of the case. Numerous meetings and telephone conferences were held with concerned employees, updates were provided to the increasing number of concerned employees, and several personal meetings occurred between the Ombudsman and concerned employees.

The draft report was reviewed with BP to determine that the factual data relied upon was accurate, and that our understanding of the program and its variances was correct. In the end there is little, if any, dispute over the relevant facts of the case and our recommendations stem from a consideration of these undisputed facts.

Background and Chronology

The relevant background facts are laid out in each of the underlying sixteen issues addressed below.

Specific Issues

The following issues/questions were developed from the combined concerns of the 429 SOHIO heritage employees and former employees who have contacted the Office of the Ombudsman. This report includes the consolidated issues presented to BP, BP's response to the issues received on October 22, 2013 and the final position of the Office of the Ombudsman on each specific issue. The Ombudsman's position was finalized after full consideration of the information provided by BP, communications with principal members of BP's support staff on these matters, and consideration of additional information provided to the OoO as part of the investigation process.

Issue 1: *The current values of SOHIO heritage individual retirement accounts are less than if BP had maintained the original pre-1989 SOHIO plan. This is not consistent with BP's statements that the plan would be "as good or better" than the previous retirement plan.*

Ombudsman Inquiry:

In responding to this issue, please explain, in detail, the calculations of the SOHIO heritage individual retirement account using the model employee parameters included with these questions as Attachment A. (This is the same information that was provided in the April, 2013 e-mail from Garde to Heller.) Also, please identify any specific circumstances where a retiring SOHIO heritage employee's retirement income would be "as good or better" than the original SOHIO plan.

BP Response[3]:

The communications BP provided to SOHIO employees at the time of the pension conversion accurately described how their benefit would be converted to an opening account balance—and how their pension benefit would then grow going forward. Projections in these communications were based on the interest rates and salary growth figures of that time period. Specifically, BP used 8.0% for the interest rate and 6.0% for salary growth in the illustrations that projected the future cash balance retirement benefits. This interest rate assumption was

[3] All the highlighted language is taken, verbatim, from BP correspondence provided to the Office of the Ombudsman for use in this report.

also consistent not just with then current interest rates, but also rates over the prior 20-year period, which had averaged 8.2%.

The actuary for the BP Retirement Accumulation Plan ("RAP"), Mercer, has conducted an independent review of the assumptions and has expressly confirmed that they were consistent with actuarial assumptions used at the time and that the projections used in the communications are accurate. See Mercer document accompanying this response.

In the communication materials, BP indicated that the projections of future benefits were estimates based on assumptions and were not a promise of what the actual benefit under the plan ultimately would be. Indeed, it would have been impossible to forecast exactly what a participant's cash balance benefit would be because the benefit depends on interest rates and other factors going forward. Clearly, it is impossible to know in advance how interest rates and salary growth will change over time. BP's communications at the time used reasonable assumptions based on both then current and historical data.

The new cash balance formula for SOHIO employees generated a pension benefit that was generally greater than the final average pay benefit would have been at younger ages. However, due to lower interest rates since 1989, the SOHIO final average pay formula generally produces a greater lump sum benefit than the cash balance formula during the early retirement years (late 50s/early 60s). The fact remains that SOHIO employees have received a pension benefit that is consistent with both the governing plan terms and the formula described to them in the original communications.

Final OoO Position:

This issue is substantiated.

The current values of SOHIO heritage individual retirement accounts for current and recently retired employees are less than if BP had maintained the original SOHIO plan. The outcome was not consistent with BP's statements at the time in the Plan's promotional material that the plan would be "as good or better" than the previous retirement plan, or that BP bore all the risks of the Plan.

BP has essentially provided two responses to this allegation. First, it asserts that the promotional materials were not the controlling documents which, in fact, stated that the plan would follow actual interest rates; and, thus, the final results may not match the promotional materials. Second, it provides a supporting chart to its position paper that is based on a consistent interest rate of 8%, asserting that it was a reasonable projection since that had been the average for the previous twenty years. In fact, an 8% interest rate turned out to be a high projection, based on an historical anomaly.[4]

[4] The "20-year average" was distorted by spikes that coincided with the OPEC Embargo and the Iranian Revolution. Generally, it is debatable whether the average of a mere 20-year period is likely to render a reliable indicator for forecasting future economic performance. Longer periods

Two issues are suggested with respect to BP's use of an 8% interest rate in its communications provided to SOHIO employees at the time of the pension conversion:

- Whether BP's assumption of 8% growth was questionable, when it was made, in 1989;
- Whether BP's use of the "average" interest rates of the previous 20 years, in 1989, to predict future rates was questionable.

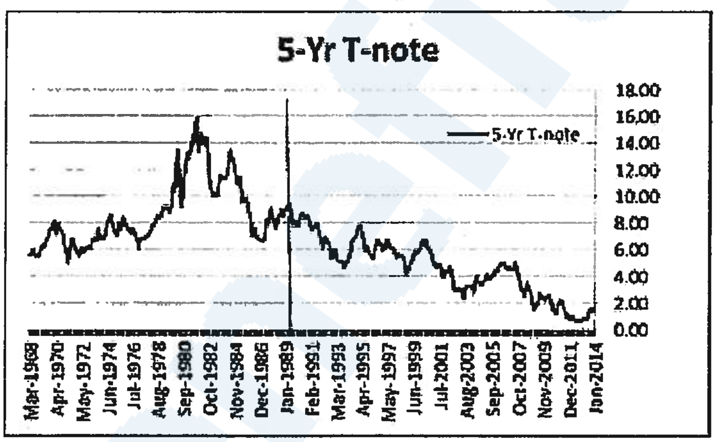
These are reasonable questions in light of solid data, such as 5 year Treasury notes.[5] In addition, the assumption of 8% growth was significantly in excess of the Fed's contemporaneous forecasts for CPI and GDP. BP has rightly pointed out that "pension plans use the interest rate as defined by the plan document, not forecasts involving CPI or GDP," but we believe it is also fair to consider data such as those included in the annual Economic Reports of the President to evaluate the apparent reasonableness of the interest rate forecasts that were promulgated to employees.

The OoO concludes that the original promotional material proved to be optimistic about the future of interest rates and its impact on the RAP plan accumulations. This is particularly true on the impact of employees who were already invested in the original plan and had several years of service with SOHIO.

---

would have yielded lower averages. For purposes of illustration, expanding the period to 30 years, beginning in 1959, yields an average increase in CPI of less than 6%, and average yields on long-term, taxable U.S. Government bonds of about 7.5%. Expand the period further, 1953-1986, and the S&P reported high-grade municipal bonds having an average yield of about 5.5%.

5



The 5-year Treasury note chart is particularly revealing. 1989's values actually are the part of the right shoulder of an enormous head and shoulders pattern that predicts a huge drop in interest rates...which is what occurred.

The interest rates projections used in 1989 to assure the employees that the new BP RAP plan would be "as good or better" than the SOHIO plan may have been consistent with other corporate plans being offered at the time. We assume, for the purposes of our work, that there was a belief that the future was bright for interest rates and that those people making the statements in the promotional material believed it at the time. We don't know, but it may well be that BP used a rate of 8% or higher for purposes of its own internal business forecasting, but regardless, the projected rate used in the promotional and explanatory materials regarding the RAP was provided to the SOHIO heritage workforce.

In addition, the new retirement plan presented certain risks. These risks included what would happen if the projected interest rates could not be sustained. This is what, in fact, occurred. The employees simply were not told that the risks associated with a decline in interest rates would be solely born by the employees. Simply put, there would be no allocation of these risks.

Issue 2: *The current values of SOHIO heritage individual retirement accounts in the RAP are less than those BP maintained for Arco/Amoco heritage employees for the same period of time.*

Ombudsman Inquiry:

Please explain what the actual current retirement values are for SOHIO heritage employees, using the hypothetical information provided in Attachment A, as compared to those for Arco and Amoco employees.

BP Response:

Many employees working for BP today come from various predecessor companies through a litany of acquisitions. BP has never specifically intended nor communicated that benefits for employees of one heritage would be similar or equal to those of other heritages. In general, a number of factors at the time of each respective merger determined the way that benefits were structured for that particular heritage group. The pension benefits of employees from various heritage companies that later became part of BP were all different, so comparisons today of the benefits of one heritage relative to another heritage are not particularly meaningful (like comparing apples and oranges).

BP believes that its cash balance pension benefit, which is provided to all SOHIO heritage employees (and to all new hires), is very competitive in the oil industry and even more so in the broader US industry where many companies are freezing or terminating their pension plans. Further, BP has always met its pension obligations. In particular, BP has provided heritage SOHIO employees with precisely the pension formula they were promised in 1989. Moreover, BP has a history of maintaining a well-funded pension plan.

The cash balance provisions (including pay credits, interest credits, etc.) applicable to SOHIO employees are identical to the cash balance provisions applicable to Amoco and Arco employees. Based on agreements made at the time of the respective mergers, Amoco and Arco employees were given a transition period during which their "heritage" final average pay benefit would continue in effect for a grandfathered period. A transition period was also afforded to SOHIO employees age 50 or older at the time of conversion. The pension benefit under the RAP for these "grandfathered" Amoco, Arco and SOHIO employees is the greater of their cash balance benefit or their final average pay benefit.

SOHIO employees who were under age 50 at the time of conversion were converted to the cash balance formula in 1989. Based on the interest rate environment since 1989, it is generally true that their cash balance benefit is smaller than the final average pay benefit of similarly-situated heritage Amoco and Arco employees when they are in their late 50s and early 60s. For other periods (younger and older ages), however, the BP cash balance benefit is generally greater than the SOHIO final average pay benefit.

Final OoO Position:

This issue is substantiated.

BP agrees that "*it is generally true that [the] cash balance benefit is smaller than the final average pay benefit of similarly situated heritage Amoco and Arco employees when they are in the late 50s and early 60s*." (See, above response.) The calculations performed by Mercer for BP in response to our inquiry are different because it uses the projections and assumptions for a "hypothetical" employee that is different than the model we used. Our model is more aligned with the population of the 400+ people that have contacted our office, not the "hypothetical" person contained in the Mercer projections. Our projections also use the actual interest rates that occurred throughout the past twenty plus years, as the Plan stated it would do. While we attempted to create an "apples to apples" comparison with BP, this we have been unable to do.

The analysis we provided in the spread sheet comparison provided to BP for its review, in April, and again in September, 2013 shows that the hypothetical SOHIO heritage employee will receive between a third to a half less than they would have received if they had simply continued in the original SOHIO plan and about the same difference to their Arco and Amoco heritage co-workers. (See, Exhibits 3-6.)

We agree with BP that for those heritage employees 50 and above at the time of the 1989 merger, they were offered the option to "grandfather" their plan. We also agree that for the younger and older age heritage employees the cash benefit is generally greater than the SOHIO final average pay benefit, and that for the 50+ SOHIO employees who were grandfathered their options were at least as good, and in some cases, better than the SOHIO plan provided. This is why the population of those who have contacted our office is much smaller than the entirety of the SOHIO heritage employees who became BP employees at the time of the merger.

We also agree that BP has honored its commitment to fund the plan in accordance with the formula it agreed to, and put in a 5% floor to the interest rate when the markets fell to all time lows. BP is, as it claims, a generous and responsible employer and has provided a healthy retirement program, fully funded, to its workforce. It has merged and acquired numerous companies over the previous thirty years and obviously strived to create an environment where its workforce was well cared for in a time of historic changes in such programs across the country.

However, the current values of SOHIO heritage individual retirement accounts in the RAP are less than those BP has maintained for Arco/Amoco heritage employees for the same period of time, as a consequence of market factors not anticipated by BP. While we do not quarrel with any of the statements made by BP in response to this Issue, none of the explanations change the real world outcome for the SOHIO heritage employees with respect to their "take home" retirement allotment. While clearly unintended, the consequences of the conversion of the SOHIO original plan to a cash balance plan, coupled with the interest rate plunge over the past twenty years, has produced a uniquely disparate result for those SOHIO heritage employees who have stayed with BP the longest and provided the devoted service that has allowed BP to prosper and thrive.

This situation is particularly harsh on employees with the longest service, who have done the most to help BP become the company it is today. During the dialogue between BP and the OoO over the years that this matter has been under review, there has been a tendency to assert that the issue was only a concern to a handful of disgruntled and/or bargaining unit employees unhappy with other aspects of their employment.[6] That characterization is not applicable to the many long term SOHIO heritage employees who have served BP and raised this issue with reluctance and respect, and those who have not raised it at all but are following the issue with great concern.[7] The sentiments below capture the views of most of those who have contacted our office, including some recent retirees:

- "*I am a loyal 30 year BP employee of SOHIO heritage and have been following the situation for some time.....My perspective is simple, I have stayed with BP because it has always strived to live up to its stated values. When it makes a mistake, as all human institutions do, it fixes it. If the intent of the revised Amoco Heritage program was to address urgent retention issues and maintain critical capabilities, then the exclusion of the SOHIO Heritage employees was clearly a mistake. Further, the handling of it thus far has created needless anxiety and discord for many individuals. ....The collective contribution and value of Sohio Heritage employees is equal to that of any other group in the firm, and the error of excluding them from the retention solution should be corrected. This is entirely consistent with our stated values, and is in fact a reasonable test of how committed the current executive leadership of the firm is to them. A key reason I have stayed with BP for thirty years is that I have seen our*

---

[6] Indeed, a January 21, 2014 article in **Truthout**, an on-line magazine, features the same named employees who have been advocating on this issue for years.

[7] At an October 2013 meeting on the North Slope with employees concerned about this issue, over half of the attendees indicated that they have not contacted the Office of the Ombudsman for fear of unspecified retaliation, but are following developments through their colleagues.

executives make the right choices on a range of difficult ethical and moral choices over many years. Now that is time to do so again. I have faith that our executive leadership will once again do what is right over what is expected."

Email April 26, 2013 (69.174.58.76)

- *I am a [Senior BP] SOHIO heritage employee.....This is a very serious issue for me and frankly, the fact that BP has resisted fixing it for so long has shaken my confidence in its leadership. There are no more loyal, dedicated, or long serving staff inside BP than the SOHIO veterans. Many of us are the Senior Leaders that keep this company running. It amazes me that BP chooses to resist fixing the issue. The fact that the company long ago fixed the issue for the Group Leader level SOHIO heritage staff makes it even more gauling.*[sic]

Email April 17, 2013 (208.31.91.78)

- *I have 49 years of service with SOHIO/BP and was always proud of the work I did to make the company a good place to work. The folks I worked with were the greatest and most ethical and honest people I've ever known. It was disheartening to see this group was not offered the pension incentives the other heritage groups were offered. We all deserve to be treated like the Amoco and Arco heritage folk.....The SOHIO heritage folks were the ones who worked during those trying years of bringing on the Alaskan pipeline and went through periods of wage restrictions, restrictions to our 401(k) plans, etc., in order to get that project going and successfully built. Without that hard work and sacrifice, the Amoco and Arco folks might not have been added to the BP family. Thank you for considering our concern.*

Email April 26, 2013(99.95.180.0)

- *I started with SOHIO in Houston in 1984 and [recently retired]. Along the way, I bled Yellow and Green for BP, supporting the company in all aspects. I went over and above on behalf of the company during the time I worked at different sites in the US and abroad. I never questioned stepping up and committing to deliver what was required, I took on many roles requiring extra effort and personal dedication on activities such as Crisis Management, charitable activities, etc....when asked to answer the bell in supporting the Macondo incident, I responded as you would expect, I worked extremely hard during the incident and went over and above. Yes, I was paid, but there were many many hours worked while off the clock on this 24/7 disaster. My contribution was similar to the many hundreds of retirees who responded to the incident regardless of heritage affiliation......I find this preferential treatment of distinct heritage groups to be highly inequitable and unjust. It downplays, diminishes and discounts the major contribution that heritage SOHIO employees played during the extremely tough times BP went through in the past. I recall the times we did not receive merit increases or bonuses because the company could not afford to pay them given the financial standing in those years. I recall vividly when the company almost went under in 1992, the stock tanked and the very* *survival of BP was called into question. ...I think it is high time for BP to step up to their statements of fair treatment of all employee groups and correct this wrong.*

Email Nov. 12, 2013 (72.37.249.68)

- *"...I appreciate all the opportunities BP has given me, and it certainly has been a great place to work. But we're all here to make a living be rewarded for our efforts by a consistent and fair application of rewards and benefits without prejudice. When there is obvious inequity in the workplace, there needs to be answers to the inequity. The entire OneBP is certainly void of meaning with an effort to make all employees feel truly valued, respected and appreciated."*

Email April 4, 2013 (24.106.68.79)

Equally important to the decision makers considering this matter are the employees themselves, many of whom are based in or started with the company's critical Alaska based business, and where this issue has a strong impact on the work environment and morale of its leadership. We have included three specific examples[8] of the hundreds of employees who have contacted our office, and whose names will never be associated with the public debate on the matter:

Employee A - Employee A, a SOHIO heritage employee, has been a key engineering project leader throughout BP world wide since 1983. He has been a "go to" problem solver on high profile controversial projects, from the Alyeska Electrical Code Compliance project in 1994 which was the subject of congressional hearings and regulatory scrutiny and ultimately resolved in a credible manner. He was subsequently given a project engineering role on the North Slope; and also has been asked to manage major projects in China, the Gulf of Suez, Siberia, Norway, and finally returned to Alaska as the third (and only successful) Program Manager for the long term BP Alaska Fire & Gas Automation Renewal project.

The management of the BP Alaska Fire & Gas Automation Renewal project has been key to the recovery of confidence in BP's commitment to safety, while upgrading an old and deteriorating infrastructure. It has involved leading a difficult and complicated project, coordinating between field staff and Anchorage engineering, managing risk reduction, infrastructure upgrades, and continuation of operations. His efforts have provided a major risk reduction effort for BP, improved relations on this issue with partners, and convinced external stakeholders of the wisdom of the multi-year approach.

Employee A has dedicated his career to making BP as safe as possible, always sacrificing his family commitments to ensure that BP meets its obligations and the challenges presented by budget and reputation challenges. His wife joins in this concern as having

[8] The employees have given explicit permission for the OoO to include their personal information, including their names, in this report. However, to protect confidentiality, we have redacted their names from this report.

given up the many benefits of having a home-based husband for the many years of their career. She points out that he is not a "disgruntled" employee with an ax to grind, but has given the best years of his life to the company. He has joined the group of concerned employees contacting the OoO for assistance in this issue out of frustration and disappointment that there is a lack of recognition of the significant negative impact the RAP plan conversion made to his retirement income. After 32 years of service, his total pension amount will be half that of his Amoco heritage counterpart, and also less than his SOHIO heritage retirement plan.

Employee B - Employee B is a 32 year BP upstream engineer who has spent the past twenty plus years in Alaska. He was the HSE Operations Manager at the time of the 2006 spills. In that position he was one of the key engineers responsible for providing accurate and complete information during the response to the 2006 Prudhoe Bay spills, and earned a reputation among stakeholders as a professional, honest and candid source of information. His extraordinary efforts, commitment and competence during the spill response provided BPXA's engineering department a much needed boost of morale and professionalism.

Employee B has played a major role in the Alaska oilfield, serving as a Project Team Lead, Operations Manager, an HSE Operations Manager, the Greater Prudhoe Bay HSE Manager, leading several high profile and important incident investigations, and various special projects. He was instrumental in delivering the successful restart of bradenhead welding operations on BPXA operated wells, provided direction and focus to help deliver the best safety performance BP has ever had in Alaska for 3 years in a row (2007 to 2009). Employee B is known as a "go to" professional that can be counted on to do whatever he is called upon to do in an exemplary manner, without complaint or objection.

As a SOHIO heritage employee, Employee B finds himself after 32 years of service with a comparatively reduced monthly benefit coming from the BP RAP program, as compared to his Arco/Amoco colleagues or his projected SOHIO heritage amount . As a result Employee B has no choice but to keep working until he can reach a retirement amount necessary to support him and his family.

Employee C - Employee C has been a Reservoir Engineer since 1977, moving into the Commercial role in 2005, where he continues to serve as a Resource Business Advisor for Alaska on development plans, reserves, strategic planning, State of Alaska fiscal analysis and is currently working on the Alaska LNG project. He has lived a life of service, being a Big Brother numerous times, and establishing a Scholar's Fund at the University of Minnesota to provide financial assistance to engineering students in perpetuity.

Employee C has provided BP years of dedicated service as a resource engineer, doing some of the original work of running the full field simulation model for Greater Prudhoe Bay from 1979 to 1984, working on exploration projects around the world, and returning to Alaska to develop reservoir simulation for the Pt. McIntyre, Kuparuk, and Niakuk reservoirs. He is a respected and trusted leader among the Alaska workforce and heavily relied upon in business strategy and development.

As an analyst Employee C prepared his own estimates of the impact of the SOHIO and BP RAP disparity, which he has given us permission to include with this report. As demonstrated in Exhibits 7 and 8, Employee C's calculations show – as we have also calculated – that there is a significant disparity between his BP RAP monthly pay and the amount he would have earned had the SOHIO Pension plan been continued. At age 60, a 38% shortfall from a SOHIO pension; at age 65, a 29% shortfall. Employee C has reached out to BP's executive leadership, including John Mingé and Janet Weiss, with ideas and proposed solutions. He is a problem solver and has garnered the respect and support of his leadership team and colleagues in many areas of work, his strategic solution to this situation is no different.[9]

As has been stated before, many of those SOHIO heritage employees that survived multiple layoffs through the past decade have risen to important positions of responsibility throughout BP. The group of concerned employees that have contacted our office includes Vice Presidents, Directors, Project Managers, Lead Engineers, persons in positions of leadership, responsibility and authority throughout the company, along with represented and unrepresented technicians and operators. Many of these employees are in leadership positions at BP facilities around the world. While many of the concerned employees have indicated personal distress over the situation they find themselves in, most of the employees and retired employees, express their belief that BP will do the right thing.

Issue 3: *The 2011 enhancements provided to Arco/Amoco heritage employees as an inducement to stay with BP beyond the original grandfathered program was "unfair" to the SOHIO heritage employees, who were not provided a similar enhancement. Besides creating an extremely negative morale situation for the many SOHIO heritage employees still working in BP's business units, it further exacerbates the situation in which the alleged stated "intent" of BP -- to, eventually, equalize the retirement program benefits for all heritage employees -- would never be achieved.*

Ombudsman Inquiry:

Please address the enhancements, and the impact of these enhancements to the intent to equalizing retirement program benefits to all.

---

[9] Employee C's proposed resolution for his estimated 550 active SOHIO heritage employees who are not Band D and above and not grandfathered to the SOHIO plan, is a proposed lump sum pension enhancement of an individual annuity to make up the difference for those longest serving employees.

BP Response:

To understand the 2011 heritage pension changes, it is important to know that the Amoco and Arco heritage pension benefits essentially provided an unintended incentive for these heritage employees to leave BP – meaning their lump sum benefit could actually **decline** due to rising interest rates, even if they continued working (since the normal form of the benefit is a life annuity). Likewise, after the end of their respective grandfather dates, their pension benefit potentially would **not grow** for a period of time despite continued BP employment.

To address these consequences and strengthen BP's employee retention capability immediately following the oil spill in the Gulf of Mexico, BP capped the lump sum interest rate and added a new cash balance current account to the grandfathered benefit. Both of these 2011 pension changes were designed to remove the incentive for heritage employees to leave. Heritage SOHIO employees have continued to accrue additional pension benefits in the form of a lump sum the longer they work. Because their benefit does not contain the same incentive to leave and is not adversely affected by continued employment, no corresponding change was needed to the SOHIO pension benefit.

Final OoO Position:

This issue is partially substantiated.

BP's explanation for providing the additional incentive for Amoco and Arco heritage employees to stay with the company was clearly within BP's discretion and based on a legitimate business objective. However, the SOHIO heritage employees considered it "the final insult," and it is cited by almost all of those employees who have contacted us as "rubbing salt in the wound" to their own situation, or being "the final straw" of the disparity they can tolerate. Moreover, for the SOHIO heritage employees, BP's willingness to recognize and address the unintended negative financial impact of the original "deal" with Amoco and Arco employees, while not willing to do so for the unintended negative financial impact of SOHIO heritage employees of the market downturn was hurtful.

Unfortunately, it does not appear that the planned communication "roll out" of this added incentive for Amoco and Arco heritage employees was considered from the perspective of the impact that it would have on the SOHIO heritage employees. Instead, most of them considered the roll out as totally "tone deaf" to their situation, i.e., BP has the advantage of relying on the SOHIO heritage employees continuing their employment because they have to stay to maximize the amount of retirement income they can realize. In short, it is claimed BP was advantaged by the SOHIO heritage employee's dilemma.

Eliminating an affirmative incentive to leave BP, while not a bonus, had a negative, impact on the SOHIO heritage employees. The OoO recommends some form of acknowledgment of the long and loyal service and extensive contributions to the company made by the SOHIO heritage employees at all levels of the company.

Issue 4: *The treatment of the SOHIO heritage employees' retirement is a violation of the BP Code of Conduct and is unfair.*

Ombudsman Inquiry:

Please include in your response the details regarding the operating guideline that exempts pay and benefit issues from the Code of Conduct, except in instances of discrimination or retaliation, and identify where BP employees have been advised that Code of Conduct violations do not include pay and benefit issues.

BP Response:

BP's Code of Conduct states (in relevant part):

> "We aim to make sure that everyone at BP – and everyone we come into contact with – is treated with fairness, respect and dignity, and never unfairly discriminated against.
> Our aim is that as a BP employee you:
> Know what is expected of you in your role.
> Have open and constructive performance conversations.
> Get the help you need to develop your capabilities.
> *Are recognized and rewarded fairly for your performance (italics added)."*

BP today is the amalgamation of many different companies. Consequently, BP maintains many different pension plans and pension formulas. It is therefore not unusual in BP to have different heritage formulas applicable to different groups of employees that have become part of BP. BP's Code of Conduct does not mandate uniform benefits. It never was designed or intended to do that. Additionally, it has been uniformly interpreted since implementation to be inapplicable to benefit issues and disputes for these very reasons. Given its background as a global company that has acquired many companies over the years, BP has not attempted to force or require uniformity of benefits across the board.

The SOHIO heritage employees today are receiving a pension benefit that is calculated using precisely the same formula that was described to them in 1989. The fact that employees of other heritages have different pension formulas is not a violation of the Code of Conduct. Rather, it is a reflection of the reality that BP's workforce today is comprised of people from various heritages that were integrated into BP over periods of time — and that they each had different benefit structures when they joined BP. SOHIO heritage employees were never told that they would receive benefits that were the same as those of other heritages. The BP benefits program is intended to be competitive within the oil industry.

Final OoO Position:

The issue as to whether BP's Code of Conduct applies to BP is, essentially, a legal issue with respect to which we decline to express an opinion. There is however; among the affected employees, the belief and perception that BP has not adhered to its own Code of Conduct on this issue. Based upon our inquiry, we discuss below what we believe is the basis of the employees' concerns.

The Office of the Ombudsman recognizes that the Code of Conduct is a document of principles created to capture the values and standards of BP, and guide the behaviors, conduct and decisions of its employees. The position of the concerned employees that have contacted our office is that BP leadership has not followed its own expectations, and thus "violated" the Code of Conduct. As noted above, while not addressing the issue of whether the Code of Conduct applies to its own executives, BP asserts that the BP Code of Conduct does not apply to benefit decisions unless such decisions raise a legal question. It is not our position to conclude whether the Code of Conduct should be applied to the recent executive decisions on the BP RAP plan. Rather, it is our responsibility to ensure that this widely held view about the unfairness of the impact of the SOHIO heritage issues is communicated as part of our report.

The Code of Conduct has been widely, and universally, presented throughout the past few years as the foundation of everything that BP is and stands for. Everyone that works at BP has had training to and about the Code and is expected to follow it. The emphasis of the training has been on treating everyone fairly, doing what you say you are going to do, being ethical in your dealings with each other and contractors, and conducting yourself honorably.[10] It is a document that reflects the highest level of values and standards of conduct. In recent years disciplinary enforcement has begun to follow verified violations of the Code of Conduct. Notably, the Code does not state that it exempts any types of transactions, decisions, or actions from its expectations; nor does it establish legal compliance as the bar.

The Concerned Employees who have raised the inequity in pension benefits between different heritage groups -- or between the current plan and the SOHIO plan -- have asserted that impact on them is so significantly inequitable as to be a violation of the Code of Conduct. Almost all of those who have contacted our office describe it that way, and have pointed to some provision of the Code. Some of those are extremely articulate about the meaning of a Code of Conduct that is not being followed on issues of fundamental fairness, equity, commitment, and moral values. Others are hurt, feel devalued, and confused about why BP is not remedying the obvious inequity that occurred in their plan. See, for example.

---

[10] Some of the provisions of the BP Code of Conduct most cited by the over 400 concerned employees have included the question to ask yourself, "Does it match our commitments and guarantees that we have made to others." And the values, "BP aspires to create a work environment of mutual trust and respect, in which diversity and inclusion are valued, and where everyone who works for BP, …is recognized and competitively rewarded for their performance based on merit, …is fairly treated, with respect and dignity, without discrimination,…" (p. 20); and "At BP, we believe every employee is entitled to fair treatment, courtesy and respect."

- *"When I joined SOHIO a little over 35 years ago, the first conversation I had with my hiring manager, VP of Retail, included a statement from him to never do anything immoral, unethical, or dishonest... Throughout my 35 years I have ALWAYS supported the company even through the most difficult of times, including 13 reorganizations, product recalls, product waivers, GoM, asset sales impacting long term customers, and the like. ALWAYS. To be clear, I'm not looking for a hand out OR a 'me too.' I'm looking to be given the same consideration as the [other] Heritage employees -- to do anything short of that is to simply discriminate against the more senior SOHIO heritage employees."*

Email November 16, 2013 (72.37.249.68)

- "*The only explanation for the treatment of SOHIO heritage staff relative to retirement is that what was done in 1989 was "technically legal." BP's Code of Conduct and What We Stand For do not indicate that BP is intending to operate with standards based on "technically legal."*"

Email January 12, 2013 (72.37.244.76)

- "*From an ethics point of view, BP is a fair and loyal employer, I struggle with why they aren't willing to treat the SOHIO heritage employees the same as other heritage employees (Arco and Amoco). The final decision won't change my work ethic or my loyalty to BP, but it could allow a 33 year employee an opportunity to enjoy an earlier retirement and a more full life...."*

Email January 23, 2013 (69.174.113.26)

Some of the employees who contacted our office, also contacted Open Talk. The answer they received from Open Talk was illustrative of the current BP position on this point, stated above. The common response was:

> "Thank you for raising your concern to OpenTalk, BP's helpline for answering questions and responding to concerns related to Ethics and Compliance and BP's Code of Conduct. *We understand that this is a matter concerning benefits and HR policy. As such, it is not an issue under BP's Code of Conduct.* We further understand that Rick Dorazil responded to this issue in a recent official communication to SOHIO heritage employees. There is nothing more that Open Talk can do about this situation and will therefore be closing this case." (emphasis added)

This position is reiterated in BP's response to our inquiry. Simply put, BP has exempted itself from consideration of issues in the area of compensation or benefits unless it is for an illegal reason. This answer has not been accepted by the hundreds of employees who have identified a perceived inequity that applies to a single group of employees, resulting from circumstances over which they had no control.

Whether included within the Code of Conduct or not, a decision that has had such a wide-spread impact on so many long term employees, of one specific group, has created at the very least, an employee relations dilemma, with real business implications for BP. The issue needs to be addressed in accordance with the principles BP has stated in its Code of Conduct, including fairness, respect, and dignity.

Issue 5: *Concerned SOHIO employees assert that certain statements made by BP personnel at the time of the conversion to the RAP program have proven to be untrue; others assert that the statements were knowingly untrue at the time they were made. The basis for this concern varies, but essentially turns on the belief that the representations made at the time were so outside of the financial realities of the market that no responsible program trustee could have believed it to be true. Specifically, the following statements made in the 1989 printed materials are the most cited by concerned employees*:

- *"And the [RAP] plan provides a retirement benefit to career employees that is comparable to the fully competitive benefit under the prior formula."*

Memorandum, undated, "Dear Colleague."

- *"[RAP] is designed to provide a retirement benefit that is comparable to – and, in most cases, better than – the benefit you would have received under the prior pension formula."*

BP America Retirement Accumulation Plan, undated, p. 1.

Ombudsman Inquiry:

Please explain what was the basis of the statement that the RAP plan would be "comparable to – and in most cases, better than" the SOHIO retirement program, including what were the specific representations by the Plan's actuary to BP at the time. Are there any circumstances where a retiring SOHIO heritage employee would have the opportunity to achieve a "comparable or better than" benefit?

BP Response:

The statements made by BP at the time of the conversion to the cash balance formula were based on the interest rates in effect at that time and also over the prior 20-year period. We are not aware of any documentation or evidence that would suggest that these statements were untrue at the time they were made. Furthermore, we have no indication that any statements were knowingly untrue when made. To the contrary, we have now identified a chart prepared by the plan's actuary, Kwasha Lipton, at the time of conversion, which illustrates the basis for statements that an employee's cash balance benefit would be projected to be comparable to or better than the SOHIO final average pay formula in most cases. See Kwasha Lipton document accompanying this response.

The pension plan's current actuary, Mercer, has now confirmed this graph prepared in 1989 and indicated that the assumptions used in doing so were consistent with the prevailing assumptions at the time this graph was produced. We therefore strongly reject any assertion by the Ombudsman or any employees (or former employees) that BP lied or falsely made any statements at any time. We reserve our rights in all respects to challenge continued false statements of this sort.

Had interest rates continued at or above 8.0%, no one would be challenging whether the statements made in 1989 were true. Indeed, if interest rates in subsequent years were at or above 8.0%, heritage SOHIO employees may have accrued a pension benefit that is comparable or better than the benefit they had under the SOHIO final average pay formula.

Final OoO Position:

This issue is partially substantiated.

Certain statements made by BP personnel at the time of the conversion to the RAP program have not "stood the test of time." By acknowledgment of BP, the predictions made at the time of the SOHIO conversion to the RAP cash benefit plan have not turned out to be correct. However, there is no reason to believe that the BP benefits department personnel who were marketing the plan conversion did not believe their statements to be true, no matter how events played out.

The contemporaneous 1989 Kwasha Lipton documents provided by BP demonstrate what the Mercer spread sheet confirms, that using the 8% interest rate projections, the plan would have been as generous as described, and certainly as hoped for. Although this is true, the disclosures could have been better. At the least, the language could have contained more cautionary statements such as explaining if the projections didn't come to pass the risk would all be borne by the employees. And as noted above, the wisdom of using the 8% interest rate projection is debatable.

Issue 6: *BP made an adjustment to the SOHIO heritage employees that achieved Band D, in recognition of disparity of the pension plan.*

Ombudsman Inquiry:

Please explain the details of the adjustments made to the retirement program benefits, or the additional financial incentives, offered to those SOHIO employees who reached Band D and above within the BP RAP program. Include in this explanation how these adjustments were made consistent with RAP plan regulatory restrictions, and/or the basis for the financial payment formula. Also, please explain why these adjustments were made for those senior employees. Were similar adjustments offered for any other heritage employees? If not, why not, and what was the motivating driver for these financial adjustments. Have the adjustments stopped? If so, why?

BP Response:

Many companies offer some form of executive compensation and benefits to their senior leadership. These benefits generally are not the same as benefits provided to non-executive employees. The heritage companies that became part of BP had different executive reward programs. The Supplemental Executive Retirement Benefit Plan ("SERB") was adopted by BP effective January 1, 2002 to provide executive-level compensation. This was part of an effort to harmonize some of the executive reward programs provided in the US. In particular, the SERB provided a supplemental pension benefit for all employees in Grade Level D or above. Eligibility for the SERB benefit was frozen effective May 1, 2011. Executives of various heritages, including SOHIO heritage, have received benefits from the SERB.

To understand the SERB, it is important to recognize the difference between *qualified* and *non-qualified* retirement plans in the US. BP's principal pension plan for its employees, the BP RAP, is a *qualified* pension plan. This means it must satisfy a lengthy list of requirements set forth in the Internal Revenue Code. Various tax benefits are afforded to retirement plans that are qualified — and such plans are subject to greater regulatory requirements than those plans which are not qualified. The SERB is a *non-qualified* plan. This means it is not subject to the same regulatory restrictions that apply to the RAP and can thus provide benefits to executives that differ from those provided to non-executive employees.

Final OoO Position:

This issue is partially substantiated.

BP made an adjustment to the SOHIO heritage employees that achieved Band D between 2002 and 2011. Based on information provided by BP, BP adopted a nonqualified retirement plan for all U.S. group leaders of various heritages for the purpose of "harmonizing" some of the U.S. executive reward programs.

The OoO will assume, consistent with the information provided to our office, that the SERB was used to bring the executive-level compensation packages for SOHIO heritage employees, along with some other heritage groups, compatible with the compensation package for other upper level executives. As a non-qualified benefit, BP is of course free to make such awards and adjustments for its executives.

Obviously where, as here, BP desires to create a non-qualified benefit to address inequities or "harmonize" pay and benefits it is free to do so, and has done so in this case, as well as in the more recent 2011 situation when it decided to provide Arco and Amoco heritage employees an incentive to continue their employment. Thus, should BP decide to provide some form of non-qualified recognition for those long term SOHIO heritage employees impacted by the longer term consequences of the original 1989 conversion, it is also free to do so for that group as it has done for others to achieve a business purpose in the best interest of the corporation.

Issue 7: *Some Arco/Amoco heritage employees were provided a life insurance policy as part of the "grandfathered" retirement program, while neither the SOHIO heritage employees nor any other RAP plan participants were offered a life insurance policy.*

Ombudsman Inquiry:

Please explain who was provided this benefit, and whether a similar policy benefit was provided to any other BP future retirees.

BP Response:

This grandfathered life insurance benefit was provided to a group of Amoco and Arco heritage employees who met certain age requirements at the time of the mergers. We are not aware that it was provided to other BP employees, but are seeking documentation to confirm this.

Final OoO Position:

This issue is substantiated.

BP acknowledges that some of the Amoco and Arco heritage employees, meeting certain age requirements at the time of the merger, were provided life insurance. The majority were not. BP has advised the OoO that it was "seeking documentation to confirm" whether it was provided to any other employees, but has not yet provided this information.

Issue 8: *The SOHIO heritage employees, part of the Master Hourly Plan, working at the Toledo refinery, have been provided the opportunity to continue the original SOHIO retirement program, while no other SOHIO heritage employees have had that opportunity.*

Ombudsman Inquiry:

Please explain the basis for the decision to continue the original SOHIO retirement program to Toledo Refinery employees under the Master Hourly Plan. How was this continuation possible under ERISA constraints? Is it possible to offer an equivalent program to other SOHIO heritage employees? If not, please explain why such an option is not feasible.

BP Response:

The BP America, Inc. Master Hourly Plan for Represented Employees was a union plan that had remained separate from the BP RAP through the BP/Amoco merger. As a separately bargained plan, it retained the SOHIO final average pay formula until the union agreed to merge it into the RAP effective December 31, 2002. In other words, the union plan was not converted to the cash balance formula in 1989 and remained separate until agreement was reached with the union in 2002.

Under the terms of this agreement, a cash balance opening account was established for affected employees, as well as a current account for ongoing pay and regular interest credits. Further, the SOHIO final average pay formula was grandfathered through the end of 2013, such that affected employees would ultimately receive the greater of the two benefits. At the end of 2013, the SOHIO formula will be frozen with respect to future accruals. These collectively bargained changes for this group of employees were in compliance with all relevant regulations.

Final OoO Position:

This issue is substantiated, but found to have no bearing on the issues raised by the remaining unrepresented SOHIO heritage employees, or those represented employees that did not bargain for the continuation of the original plan. The SOHIO heritage employees, part of the Master Hourly Plan, working at the Toledo Refinery were, indeed, provided the opportunity to continue the original SOHIO retirement program as part of their separately bargained for plan.

Issue 9: *The current inequity between the various retirement programs being offered by BP to different groups of employees is an illegal violation of ERISA, discriminates against certain groups, and is not merit based.*

Ombudsman Inquiry:

Please explain why the current offering of different retirement programs to different groups of BP employees is not an illegal violation of ERISA.

BP Response:

ERISA does not require that all participants in a pension plan have identical pension benefits. In fact, many large companies offer different pension formulas to different classes of employees. BP's pension plan has been reviewed by in-house counsel, outside counsel and the IRS itself—and was found to be in compliance with applicable laws and regulations. We understand that the Ombudsman similarly found no legal precedent to challenge this determination.

Final OoO Position:

While generally we do not make legal determinations, we have found here that there is no evidence that the actions taken by BP with regard to the Arco and Amoco heritage 2011 enhancements were in violation of ERISA requirements or were discriminatory.

Issue 10: *Virtually all of the employees and former employees who have contacted us have asserted that the retirement benefits for the SOHIO heritage employees are so dramatically different than either the BP employees under the RAP plan, or the Arco/Amoco heritage* *employees under their grandfathered plans, that it creates a fundamentally unfair and inequitable result. This historic anomaly, coupled with the more recent financial enhancement to the Arco/Amoco employees, leads to the belief that, as a matter of equity, the plan -- which promised 'equal to or better' than benefits-- is a violation of ERISA.*

Ombudsman Inquiry:

Given the U.S. Supreme Court's decision in Cigna Corp. v. Amara, et.al., 131 S. Ct. 1866, 179 L. Ed. 2d 843 (2011) and where, as here, the plan's SOHIO heritage beneficiaries claim that they have been harmed by the change in the original plan, does BP believe that equitable remedies should be available to the SOHIO heritage beneficiaries? If not, and given the disparity as included in Attachment B, please explain why not? We welcome an independent review of this question from legal authorities with ERISA expertise.

BP Response:

The two key issues here are: (1) did the SOHIO heritage employees receive the benefits that they are entitled to under the governing terms of the pension plan; and (2) did the communications they received accurately describe that benefit. After significant research and analysis, we have concluded that the answer is "yes" to both questions. Therefore, we see no issue under the Supreme Court's recent decision in *Amara*. We have vetted this matter with both in-house and outside legal counsel who have expertise in ERISA and they concur.

Extensive work has been done with the plan's actuary, Mercer, to confirm that the benefits of the SOHIO heritage employees are indeed accurate and consistent with the formula set forth in the governing pension plan document.

Similarly, based on our review, the communications shared with employees at the time of the conversion accurately described how their benefit would be converted to an opening account balance—and how their pension benefit would then grow going forward based on reasonable assumptions at that time. Projections in these communications were based on the interest rates in effect during that time period. Specifically, BP used 8.0% as the interest rate in the illustrations that projected what the future cash balance retirement benefits would be. This interest rate assumption was consistent with interest rates over the prior 20 year period, which had averaged 8.2%. Our outside actuary has confirmed that the assumptions used were indeed consistent with the assumptions used at that time.

In the communication materials, BP indicated that the projections regarding future benefits were estimates based on assumptions about interest rates and salary growth—and were not a promise of what the actual benefit under the plan ultimately would be. Indeed, it would have been impossible to forecast exactly what a participant's cash balance benefit ultimately would be because the benefit depends on variables like interest rates and salary growth. Like trying to predict the stock market, it is impossible to know in advance how these financial assumptions will change going forward.

For many years after the cash balance conversion, the cash balance formula generated a pension benefit that was greater for younger SOHIO heritage employees than their final average pay benefit would have provided. But with interest rates having subsequently dropped to historic lows in recent years, the cash balance benefit now is not as great as the lump sum equivalent of the benefit the SOHIO final average pay formula would have produced. The fact remains, however, that SOHIO employees have received a pension benefit that is consistent with both the governing plan terms and the formula described to them in the original communications.

The historically low interest rates have further increased the difference between the cash balance account and the SOHIO final average pay formula because the lower interest rates increase the lump sum equivalent of the monthly SOHIO annuity. It is important to bear in mind, though, that historically low interest rates in recent years do not mean that communications in 1989, which spelled out precisely how the benefit would be calculated, were incorrect or misleading.

If the Ombudsman has any evidence or legal precedent to challenge these assumptions and statements, please produce it now.

Final OoO Position:

While generally, the OoO does not get involved in legal determinations, we are unaware of any legal precedent that challenges the legal positions by BP on this issue.

Issue 11: *Many of the concerned employees who have contacted our office assert that because of the need for SOHIO heritage employees to maximize their retirement incomes, many SOHIO heritage employees are working years beyond retirement eligibility and, in some cases, beyond the time frame that they can safely perform their jobs. The concerned employees cite specific examples of employees who have died on the job, are working while sick or unhealthy, and/or are "too old" to be working field jobs that are more appropriate for younger and healthier employees.*

Ombudsman Inquiry:

Please explain whether BP has kept records that would enable it to identify any trends in accidents or incidents (including death on the job from natural causes) specifically involving SOHIO heritage employees, or by the age of employees, in order to determine whether there is any statistical support for this concern. If information is not currently maintained for this purpose, is it possible to review available data to determine whether there is any statistical proof of this concern, or evidence to disprove it? Also, please explain what process or procedures exist to ensure that employees continue to be qualified to perform the duties of their jobs, even if they are beyond potential retirement age.

BP Response:

We are not aware of any records that track these types of data points by an employee's heritage. Line managers, working closely with their employees, are in the best position to assess whether the employees continue to be qualified to perform the duties of their job. We have not seen any evidence, even anecdotally, to suggest that SOHIO employees are working longer and therefore are unsafe in doing their jobs.

Final OoO Position:

This issue is indeterminate. No statistical evidence is maintained by the heritage status of employees, and reconstructing such data would be overly cumbersome for the purposes of this investigation.

Issue 12: *The calculation of opening cash balances all used the same formula, but did so at different times, thus resulting in very different opening cash balances for employees, not because the formula was different but because of the time when the calculations were made. SOHIO heritage calculations were made in 1989; Amoco opening balance was calculated in 2000; and Arco in 2001. Thus opening balances have a 12-14 year gap (years in service and annual salary levels.) Many of the concerned employees assert that this situation has led to an inherent disparity that can never be overcome, without a financial bonus payment of some sort to compensate.*

Ombudsman Inquiry:

Please explain the impact on opening balances of the ten + year difference in dates when opening cash balances were calculated.

BP Response:

Pension plan mergers occur at a given point in time consistent with business demands. Related pension changes are generally made only on a prospective basis, with full understanding that prior accruals may be significantly different. As with a defined contribution or 401(k) type plans, the past is the past. Otherwise, plan sponsors would constantly be looking retrospectively to "top up" various pockets of employees.

Final OoO Position:

This issue is unsubstantiated. BP's calculation of the opening balances was done consistent with the appropriate practice under ERISA.

Issue 13: *The method of calculating the opening cash balance for Amoco/Arco heritage personnel appears to be different from that utilized in calculating the opening cash balance for SOHIO heritage personnel. This resulted in a lower opening cash balance for SOHIO heritage personnel than similarly situated Amoco/Arco heritage personnel. The disparity between the opening cash balance for SOHIO Heritage personnel as compared to Amoco/Arco heritage personnel was exacerbated over the years through the effects of compounding interest.*

Ombudsman Inquiry:

Please explain whether the method of calculating the Amoco/Arco opening cash balance was different from the method used to calculate the SOHIO opening cash balance? If so, please describe the difference(s) and the rationale for using two different methods to calculate the opening cash balances.

BP Response:

The methodology for creating the opening account in the transition from a final average pay formula to the cash balance formula was the same for the SOHIO heritage employees as it was for the Amoco and ARCO heritage employees. The interest rates used to commute the value of the three heritage final average pay formulas may have been different, but the methodology was the same. Interest rates are not controlled by BP; they fluctuate based on market conditions.

Final OoO Position:

This issue is unsubstantiated. The methodology used to establish opening cash balances for Amoco and Arco heritage employees was the same as the SOHIO heritage employees.

Issue 14: *Some of the SOHIO heritage concerned employees who have contacted our office, have raised the concern that handling of this matter has caused and will continue to cause damage to BP's reputation regarding how BP treats its employees, has caused tension between co-workers, and decreased morale among the SOHIO heritage employees.*

Ombudsman Inquiry:

Please explain whether BP has considered the issue of the SOHIO pension disparity from the perspective of impact on work environment morale, tension between co-workers, and the reputation of BP on the issue of treating its employees equally and recognizing the contributions of all its employees equally

BP Response:

BP has certainly considered the impact that the SOHIO pension matter has on its current workforce, employee morale and the reputation of BP. We trust that the SOHIO employees are acting in good faith and have heartfelt beliefs and desires. To be sure, the decision of how to address the SOHIO pension matter has not been an easy one—but we can provide a strong assurance that the decisions made regarding this matter have been thoughtfully considered and decided by BP's senior leadership.

Final OoO Position:

This issue is substantiated.

Virtually all of the over 400 employees who have contacted our office for assistance with this matter have expressed a loss of confidence in BP leaderships' response to the concern, the reflection on their own morale, and a loss of morale as a consequence of feeling undervalued and treated as a "second class citizen." Employees at the Vice President and Director levels, Team Leads, engineers, technicians, analysts, transport drivers, commercial personnel, and others all feel that BP has taken advantage of their loyalty and service and avoided "doing the right thing." This has been particularly difficult against the back drop of the increased commitment to the BP Code of Conduct during the time frame that they have sought answers and relief. Unfortunately, both the written communications as well as the meetings presented to purportedly address the issue have had the impact of increasing frustration, anxiety, and despair about the corporate response.

In BP Alaska the impact on the North Slope and Alaska operations has been significant. There is a high number of SOHIO heritage employees and a very close relationship between all members of the workforce. They have worked together closely over decades in remote locations and harsh conditions which has developed a strong sense of mutual support and respect. On the SOHIO issue there is a sense of unfairness and outrage regularly and openly expressed, both from the SOHIO heritage employees and their Arco/Amoco heritage counterparts. The explanations provided to date have been less than acceptable to the employees, who continue to raise this issue to BP Alaska leadership as well as the Office of the Ombudsman.

While there is no evidence that BP America leadership in general or the Benefits Department personnel intended to cause the SOHIO heritage employees to feel undervalued or disrespected, most express such feelings. There is a wide variance of feelings within the group --- from deep despair, to general feelings of disappointment, to hostility and anger at the company. It is a serious issue that requires further evaluation.

Issue 15: *Many of the SOHIO heritage employees who contacted the OoO raised the concern that BP's Benefits Department has not been transparent about the details of the RAP program as it applies to the SOHIO heritage workforce; they have provided examples where the information provided in writing and in meetings has been superficial, unresponsive, inaccurate, and/or presented in a manner that has led to SOHIO heritage employees feeling devalued and disrespected.*

Ombudsman Inquiry:

Please explain what restrictions, if any, exist with regards to providing information regarding the retirement plan benefits to SOHIO heritage employees generally or specifically, and what consideration has been given to the manner in which information has been provided to the SOHIO heritage employees.

BP Response:

BP has sought to be responsive and thoughtful in its handling of inquiries from SOHIO heritage employees regarding their pension benefits. BP recognizes that this is an emotional issue that impacts these employees on a personal and financial level. Because of this, the SOHIO pension matter was thoroughly researched, explored and then vetted at the highest levels within BP.

Once a decision was made by senior leadership to maintain the SOHIO pension benefit in its current form, a communication was sent to SOHIO heritage employees on July 21, 2011. See Exhibit B. Subsequent to this communication, BP's U.S. Benefits team has provided various calculations and other information in response to requests from SOHIO employees. BP has also met individually and with large groups of SOHIO employees to listen carefully to their concerns and to ensure these concerns are understood and conveyed to senior leadership.

Various individual SOHIO employees and retirees have had email and telephone correspondence with U.S. Benefits regarding how their benefits are calculated—and U.S. Benefits has taken time to answer the various questions posed to them (generally prior to contacting the Office of the Ombudsman). While we have sought to be responsive and have provided information to many such individuals, we have been inundated with special requests of all kinds. We are not legally required to provide much of the documentation or hypothetical calculations that have been requested in some instances. Indeed, we are simply not staffed to do so. Although we could not accommodate every unique data request that has come in, we have made an earnest effort to help SOHIO heritage employees, individually and collectively, understand how their retirement plan benefits are calculated.

BP certainly has never sought in any way to make the SOHIO employees feel disrespected or devalued. They clearly play a key role in the success of BP and are a valued part of the company. BP and the U.S. Benefits team have made good faith efforts to respond fairly and professionally to the requests made by SOHIO employees. In addition, BP has fully cooperated with the Ombudsman's Office in its review of this matter. Once the SOHIO pension issue was submitted by the heritage SOHIO employees to the Ombudsman's Office, BP's responses generally have been channeled through BP Legal to the Ombudsman's Office in the interest of consistency and protocol.

Final OoO Position:

This issue is partially substantiated.

Many of the employees who contacted our office have provided numerous examples of treatment they received in attempting to understand the impact of the conversion of the SOHIO heritage conversion to the RAP plan. Some have provided examples of responses received that they have perceived as unresponsive, humiliating, and callous. Some have said the handling of their questions or concerns have made them feel like "second class citizens." An example provided by one CI was a story of when he was referred for a psychological examination, because of what he believed was his continuous raising of legitimate concerns over the financial impact of this situation on he and his family. Other examples come from the impact of comments and statements made at meetings, seminars, through emails, and other communications which have contributed to their feelings of frustration and lack of concern.

It was not our intent to make a separate determination on each event, or even to investigate the examples provided. For the purpose of this report, we assume that the feelings reports are genuine. In addition, we assume, that the impact on the employees was not intended by those people in the BP HR and benefits organization tasked with addressing the numerous – and increasingly frustrated – concerns raised by the SOHIO heritage workforce.

There is no question that the employees who contacted our office have felt hurt, devalued, disrespected and their service underappreciated. We have no reason to doubt their sincerity. BP has adamantly stated that the handling of this difficult issue has been done professionally, without any intent or bias to cause harm or animosity among the SOHIO heritage employees. Both positions are credible and understandable. It is one of the principal reasons that our office recommends a prompt resolution.

Issue 16: *It has been alleged that the Arco/Amoco enhancement violates the IRS regulations regarding payments to persons in "identical situations."*

Ombudsman Inquiry:

Did the Arco/Amoco financial enhancements trigger any IRS obligation to provide equal payments to similarly situated employees?

BP Response:

The changes made to the Amoco/Arco benefits in 2011 were made in full compliance with the law and IRS regulations. These changes were carefully vetted with both in-house legal counsel and outside legal counsel who have expertise in federal pension law (ERISA). The changes did not trigger any IRS obligation to provide any benefit enhancement or payment to SOHIO heritage participants. Our understanding is that the Ombudsman's Office has found no authority to the contrary.

It is not uncommon for pension plans sponsored by large companies, like BP, to have different pension formulas that apply to subsets of employees who joined the company via mergers and acquisitions over the years. Nothing about having different pension formulas in this fashion runs afoul of IRS rules. Indeed, the IRS recently finished a detailed, 2 year audit of BP's pension plan and raised no concerns about how various heritage employees have different pension formulas under the plan—or about the 2011 pension changes made to address heritage employee retention.

Furthermore, the IRS has repeatedly issued favorable "determination letters" to BP which reinforce the IRS' view that the benefits set forth in BP's pension plan comply with applicable law and regulations.

Final OoO Position:

This issue is unsubstantiated. While generally we do not make legal determinations, we have found here that there is no evidence that the actions taken by BP with regard to the Arco and Amoco heritage 2011 enhancements were in violation of the IRS regulations or ERISA requirements.

Recommendations:

At the time of the conversion from the SOHIO retirement program to the BP RAP plan, there were around 7,000 impacted employees. We believe that most of the original 7,000 SOHIO heritage employees have left active employment with BP, and the majority of those people accrued the benefits of the "grandfathered" provision for those 50 or older, or the portability of the RAP Plan and other incentives which provided benefits that were comparable to, or better than, would have been available to their heritage program. For the approximately 1,000 employees who have stayed with BP the longest, their situations have not been comparable.

While we have not worked out all the details of a resolution, we would recommend that BP take action involving the following elements:

- A determination of the cost of the full amount of the retirement benefits that the affected individuals would have received under their prior retirement plan;
- A determination as to a realistic amount to be offered to them to bridge the difference. Here the amount could be anywhere between 50 % and 100% of the original benefits.

Whatever the formula that would be developed and applied would be administered in an unbiased fashion. For those SOHIO heritage employees who were grandfathered or left the company early, there would be little exposure, since the new plan worked to their benefit. For those who have stayed the longest, the outcome would be different. There are several ways such benefits could be provided to those individuals as a non-qualified payment. These include:

- Each of the affected individuals be given an agreed upon lump sum payment at this time, or over a short period of time;

- Evaluate each employee's retirement balance at the date of retirement and add to it a percentage of the difference between the current and prior retirement amounts;

- Any other equitable distribution method that experts, in this area, might come up with that achieves the same purpose.

As we have explained throughout the process, we recognize this is a difficult and complex issue and our intention is to provide a path forward to a full, fair and final resolution. We believe that this provides a framework and basis to achieve that result.

List of Exhibits

1. 1989 BP RAP Brochure
2. June 12, 1989 RAP Brochure Memorandum from James Ross to BP America Employees
3. Sohio Q&A Attachment B1 - AMOCO
4. Sohio Q&A Attachment B2 – ARCO
5. Sohio Q&A Attachment B3 – SOHIO Current
6. Sohio Q&A Attachment B4 – SOHIO Original
7. Employee C Sohio Pension Overview
8. Employee C Annuity Comparison

EXHIBIT B

OFFICE OF THE OMBUDSMAN

Stanley Sporkin
Ombudsman
(USDC Judge, Retired)

1130 Connecticut Ave., NW – Suite 500
Washington, DC 20036
Phone: (202) 248-4482 / Fax: (202) 248-4600

September 19, 2014

Dear Concerned Employee,

BP has announced its decision regarding the Sohio heritage concerns. BP did not accept the Office of the Ombudsman's (OoO) recommendations to take action to address the Sohio heritage employee concerns. We are, understandably, disappointed – as we know you are as well.

We have had this issue under review for a long period of time. We hoped that an issue that involves so many of you would be addressed by the company in a more favorable light. However, the company has concluded that it will not formally change its position. We are also aware that many parts of BP are undergoing reorganizations or will have reorganizations in the future. It is our understanding that, where those situations exist, BP will provide an opportunity for current employees to express their interest in leaving the company with a severance package.

We have expressed our concerns to BP with regard to those of you who retired, and to those of you who desire to continue your employment. We've worked diligently on your behalf and regret that we couldn't achieve a better outcome. We are pleased that the severance opportunity will benefit those who wish to accept it. We think that we've been of some help in having the company provide you with this opportunity. We urge those employees who are interested in this option where and when it is offered to make a personal decision on whether this is the right choice for them and their family.

Ultimately, we believe in your position that you're due some relief as a consequence of the market impact on the accounts of so many of you providing long years of service to BP - on at least an equitable basis. We thank you for the opportunity to be of service and to consider this very important issue.

Given BP's decision, we are attaching a summary of our report, including the issues, findings, and recommendations to BP. For those of you who want an additional briefing, please contact us and we will do so. It goes without saying that our office advocated for a different result. We believe that BP gave us both time and consideration, and we had many meetings with various decision makers explaining and asserting our findings and recommendations.

As you know, the OoO was set up to look into matters and to present our findings. We cannot provide you with legal advice, or in any way attempt to represent you on a legal basis. If you have any lingering issues or wish to proceed further in this matter, we urge you to review this issue with your own personal attorney or advisor.

Sincerely,

Stanley Sporkin

On behalf of the Office of the Ombudsman

September 19, 2014

INVESTIGATION FINAL REPORT SUMMARY
CASE NUMBER 2011-052

Summary of Issues

Beginning in fall 2011, more than 450 SOHIO heritage retirees and current employees raised concerns to the Office of the Ombudsman (OoO) because BP's 1989 conversion of their SOHIO retirement program to the BP Retirement Accumulation Plan (RAP) failed to achieve hoped-for results. These numerous individuals, including many who have served BP the longest, during its most challenging times, felt further aggrieved because of perceived disparate treatment. In 2011 BP provided an enhancement and incentive for the Arco/Amoco heritage employees, but not SOHIO heritage employees, to stay with the company. In addition, a modification to the RAP Plan was made for those executive SOHIO heritage employees reaching Band D and above, as well as other heritage senior executives, but not for those below that level. Those who contacted us expressed concerns about the lack of company responsiveness to their concerns over the past few years, and the belief that the company's handling of the issue was a violation of BP's own Code of Conduct.

Approach

Our work consisted of receiving and reviewing all the concerns brought to our office, which we organized into sixteen specific sub-issues to review and/or investigate. BP's legal and Human Resources offices cooperated with our investigation and review.

We did not identify any legal issues for reconsideration. The Office of the Ombudsman generally does not make legal determinations; although we did review the materials from earlier litigation surrounding the SOHIO conversion and the company's position regarding the legality of its position as part of our review of the dispute. (As we have repeatedly stated, the OoO does not provide legal advice to employees in connection with our work, and we have urged many of you to seek your own counsel if you believe it is appropriate to do so.)

Facts[1]

In 1989, when BP converted the SOHIO defined benefit plan retirement program to the RAP[2], BP represented to its SOHIO heritage employees[3] that the RAP plan would provide "a retirement benefit that is comparable to – and in most cases, better than" what they would have received under their prior pension formula. Initially, the promise of "similar or better" benefits was borne out, at least for most of the original SOHIO heritage employees. However, retirement

[1] The report contains a more detailed summary of the background of this issue.

[2] The BP Retirement Accumulation Plan is a cash balance program.

[3] There was a grandfather provision provided to some of the longest serving SOHIO employees, but most were converted to the BP RAP plan.

benefits for longer-serving employees continued to grow, but at a slower rate under the RAP plan.

There were risks presented by the 1989 conversion, including lower returns if projected interest rates could not be sustained, but the SOHIO heritage employees were not told that such risks would be solely born by themselves. Instead, the statements made in the original promotional and explanatory materials stated that the "full investment risk" would be borne by BP.

As the years passed, many SOHIO heritage employees left the company through a series of reorganizations, downsizings, and mergers. In the early years of the program, these employees generally did as good or better as they would have done under the SOHIO heritage programs; however, those employees who stayed and continued to serve BP began to see a decline in their account balances as compared to some of the other programs. Our office confirmed that these differences exist as a consequence of the types of plans that different employee groups have.

As the OoO report states: "*Although the retirement benefits accrued more favorably for the longest serving Arco/Amoco heritage employees than their comparable SOHIO heritage colleagues, our findings and recommendations are not based on the perceived inequity in the outcome of the different retirement programs. We recognize that BP, as a growing global company has numerous arrangements with different companies. However, the consequences these decisions have had have been to create a situation that poses another risk to BP --- its relationship with its SOHIO heritage employees, a significant and important part of its workforce, and the real life financial consequences for those people and their families.*"

The OoO recommended that a plan be constructed containing the following elements:

- A determination of the cost of the full amount of the retirement benefits that the affected individuals would have received under their prior retirement plan;

- A determination as to a realistic amount to be offered to them to bridge the difference. Here the amount could be anywhere between 50 and 100% of the original benefits.

Our report makes a number of suggestions to BP for consideration of how to accomplish this review and assessment for an equitable distribution methodology for assessment and payment, but ultimately recommends the inclusion of third party independent experts to conduct the analysis and determine a payout methodology.

The following section includes the sixteen (16) issues identified by the OoO in this investigation. The OoO's findings regarding each issue are summarized accordingly.

September 19, 2014

Chart of Issues and Final OoO Positions:

***Issue 1*:** The current values of SOHIO heritage individual retirement accounts are less than if BP had maintained the original pre-1989 SOHIO plan. This is not consistent with BP's statements that the plan would be "as good or better" than the previous retirement plan.	***Substantiated.*** The OoO concluded that the original promotional material proved to be optimistic about the future of interest rates and its impact on the RAP plan accumulations. This is particularly true of the impact on employees who were already invested in the original plan and had several years of service with SOHIO. The employees were not told that they alone would bear the risks associated with a decline in interest rates, as there would be no allocation of these risks.
***Issue 2*:** The current values of SOHIO heritage individual retirement accounts in the RAP are less than those BP maintained for Arco/Amoco heritage employees for the same period of time.	***Substantiated.*** While BP has honored its commitment to fund the plan in accordance with the formula it agreed to, and put in a 5% floor to the interest rate when the markets fell to all-time lows, the current values of SOHIO heritage individual retirement accounts in the RAP are less than those BP has maintained for Arco/Amoco heritage employees for the same period of time, as a consequence of market factors not anticipated by BP.
Issue 3: The 2011 enhancements provided to Arco/Amoco heritage employees as an inducement to stay with BP beyond the original grandfathered program was "unfair" to the SOHIO heritage employees, who were not provided a similar enhancement. Besides creating an extremely negative morale situation for the many SOHIO heritage employees still working in BP's business units, it further exacerbated the situation in which the alleged stated "intent" of BP -- to, eventually, equalize the retirement program benefits for all heritage employees -- would never be achieved.	***Partially substantiated.*** BP's decision to provide the additional incentive for Amoco and Arco heritage employees to stay with the company was within the company's discretion and based on a legitimate business objective. However, for the SOHIO heritage employees, BP's willingness to recognize and address the unintended negative financial impact of the original "deal" with Amoco and Arco employees, while being unwilling to do so for SOHIO heritage employees facing the unintended negative financial impact of the market downturn damaged morale.

Issue 4: The treatment of the SOHIO heritage employees' retirement is a violation of the BP Code of Conduct and is unfair.	Concerned employees feel strongly that BP has violated its own Code of Conduct, by unfairly discriminating against them and failing to reward them equally to other employees for their performance. BP maintains that, by unwritten rule, its Code of Conduct does not apply to decisions involving benefits and HR policy. The OoO reviewed all of the concerns about this internal policy, but ultimately concluded that the issue as to whether BP's Code of Conduct applies to itself in this situation is a legal issue, and therefore declined to reach a conclusion as a matter of law. The OoO also concluded it was not necessary to reach a determination on whether or not the BP Code of Conduct should apply, or did apply, to the 2011 decision on the SOHIO heritage concerns, because we reviewed the issues as a matter of equity and/or fundamental fairness (the original 1989 conversion decision is obviously within BP's discretion). Thus, we considered the issues from the overall impact of the BP decisions on the company and the SOHIO heritage employees, not simply a narrow legalistic decision on whether the Code of Conduct applied and was violated. There was simply no need to rest our decision on the basis of a legal analysis, since we found the best way to remedy the unintended consequences was to recommend the corporation voluntarily take action to correct the inequities created by these circumstances.
***Issue 5*:** Concerned SOHIO employees assert that certain statements made by BP personnel at the time of the conversion to the RAP program have proven to be untrue; others assert that the statements were knowingly untrue at the time they were made. The basis for this concern varies, but essentially turns on the belief that the representations made at the time were so	***Partially substantiated.*** BP acknowledges that the predictions made at the time of the SOHIO conversion to the RAP cash benefit plan have not turned out to be correct. However, the statements were not knowingly untrue; and, there is no reason to believe that the BP benefits department personnel who were marketing the plan conversion did not believe their statements to

outside of the financial realities of the market that no responsible program trustee could have believed it to be true. Specifically, the following statements made in the 1989 printed materials are the most cited by concerned employees: • "And the [RAP] plan provides a retirement benefit to career employees that is comparable to the fully competitive benefit under the prior formula." • "[RAP] is designed to provide a retirement benefit that is comparable to – and, in most cases, better than – the benefit you would have received under the prior pension formula."	be true, no matter how events played out. The contemporaneous 1989 documents provided by BP demonstrate what the Mercer spread sheet already confirms, that using the 8% interest rate projections, the plan would have been as generous as described, and certainly as hoped for. The OoO concluded that disclosures made at the time of the conversion could have contained more cautionary statements, such as explaining that if the projections didn't come to pass, all the risk would be borne by the employees. We noted also that the wisdom of using the 8% interest rate projection, on a ten year average, is debatable.
***Issue 6*:** BP made an adjustment to the SOHIO heritage employees that achieved Band D, in recognition of disparity of the pension plan.	***Partially substantiated.*** BP made an adjustment-the Supplemental Executive Retirement Benefit Plan ("SERB")-to the SOHIO heritage employees that achieved Band D between 2002 and 2011. Based on information provided by BP, it adopted a nonqualified retirement plan for all U.S. group leaders of various heritages for the purpose of "harmonizing" some of the U.S. executive reward programs. As a non-qualified benefit, BP is of course free to make such awards and adjustments for its executives. Should BP decide to provide some form of non-qualified recognition for those long term SOHIO heritage employees impacted by the longer term consequences of the original 1989 conversion, it is also free to do so.
Issue 7: Some Arco/Amoco heritage employees were provided a life insurance policy as part of the "grandfathered" retirement program, while neither the SOHIO heritage employees nor any other RAP plan participants were offered a life insurance policy.	***Substantiated.*** BP acknowledges that some of the Amoco and Arco heritage employees, meeting certain age requirements at the time of the merger, were provided life insurance. The majority were not.

September 19, 2014

Issue 8: The SOHIO heritage employees, part of the Master Hourly Plan, working at the Toledo refinery, have been provided the opportunity to continue the original SOHIO retirement program, while no other SOHIO heritage employees have had that opportunity.	***Substantiated.*** This issue is substantiated, but found to have no bearing on the issues raised by the remaining unrepresented SOHIO heritage employees, or those represented employees that did not bargain for the continuation of the original plan. The SOHIO heritage employees, part of the Master Hourly Plan, working at the Toledo Refinery were, indeed, provided the opportunity to continue the original SOHIO retirement program as part of their separately bargained for plan.
***Issue 9*:** The current inequity between the various retirement programs being offered by BP to different groups of employees is an illegal violation of ERISA, discriminates against certain groups, and is not merit based.	***Not substantiated.*** While generally we do not make legal determinations, we have found no evidence that the actions taken by BP with regard to the Arco and Amoco heritage 2011 enhancements were in violation of ERISA requirements or were discriminatory as that term is considered under ERISA.
***Issue 10*:** Virtually all of the employees and former employees who have contacted us have asserted that the retirement benefits for the SOHIO heritage employees are so dramatically different than either the BP employees under the RAP plan, or the Arco/Amoco heritage employees under their grandfathered plans, that it creates a fundamentally unfair and inequitable result. This historic anomaly, coupled with the more recent financial enhancement to the Arco/Amoco employees, leads to the belief that, as a matter of equity, the plan -- which promised 'equal to or better' than benefits-- is a violation of ERISA.	***Not substantiated.*** While generally the OoO does not make legal determinations, we are unaware of any legal precedent that supports the belief that BP violated ERISA, or challenges the legal positions by BP on this issue.

September 19, 2014

***Issue 11*:** Many of the concerned employees who have contacted our office assert that because of the need for SOHIO heritage employees to maximize their retirement incomes, many SOHIO heritage employees are working years beyond retirement eligibility and, in some cases, beyond the time frame that they can safely perform their jobs. The concerned employees cite specific examples of employees who have died on the job, are working while sick or unhealthy, and/or are "too old" to be working field jobs that are more appropriate for younger and healthier employees.	***Indeterminate*** No statistical evidence is maintained by the heritage status of employees, and reconstructing such data would be overly cumbersome for the purposes of this investigation. Thus, it is not possible to determine whether this allegation is factually accurate.
Issue 12: The calculation of opening cash balances all used the same formula, but did so at different times, thus resulting in very different opening cash balances for employees, not because the formula was different but because of the time when the calculations were made. SOHIO heritage calculations were made in 1989; Amoco opening balance was calculated in 2000; and Arco in 2001. Thus opening balances have a 12-14 year gap (years in service and annual salary levels.) Many of the concerned employees assert that this situation has led to an inherent disparity that can never be overcome, without a financial bonus payment of some sort to compensate.	***Not substantiated.*** BP's calculation of the opening balances was done consistently, and done in accordance with the appropriate practice under ERISA.
***Issue 13*:** The method of calculating the opening cash balance for Amoco/Arco heritage personnel appears to be different from that utilized in calculating the opening cash balance for SOHIO heritage personnel. This resulted in a lower opening cash balance for SOHIO heritage personnel than similarly situated	***Not substantiated.*** The methodology used to establish opening cash balances for Amoco and Arco heritage employees was the same as the SOHIO heritage employees.

September 19, 2014

Amoco/Arco heritage personnel. The disparity between the opening cash balance for SOHIO Heritage personnel as compared to Amoco/Arco heritage personnel was exacerbated over the years through the effects of compounding interest.	
Issue 14: Some of the SOHIO heritage concerned employees who have contacted our office, have raised the concern that handling of this matter has caused and will continue to cause damage to BP's reputation regarding how BP treats its employees, has caused tension between co-workers, and decreased morale among the SOHIO heritage employees.	***Substantiated.*** While there is no evidence that BP America leadership in general, or the Benefits Department personnel specifically, intended to cause the SOHIO heritage employees to feel undervalued or disrespected, most expressed such feelings. There is a wide variance of feelings within the group --- from deep despair, to general feelings of disappointment, to hostility and anger at the company. It is a serious issue that requires further evaluation.
Issue 15: Many of the SOHIO heritage employees who contacted the OoO raised the concern that BP's Benefits Department has not been transparent about the details of the RAP program as it applies to the SOHIO heritage workforce; they have provided examples where the information provided in writing and in meetings has been superficial, unresponsive, inaccurate, and/or presented in a manner that has led to SOHIO heritage employees feeling devalued and disrespected.	***Partially substantiated.*** Many of the employees who contacted our office have provided numerous examples of poor treatment they received, including responses received that they have perceived as unresponsive, humiliating, and callous. One CI related that he was referred for a psychological examination, apparently because he raised legitimate concerns over the financial impact of this situation on him and his family. Others related the impact of comments and statements made at meetings, seminars, through emails, and other communications which have contributed to their feelings of frustration and lack of concern. The OoO assumes that the feelings reported by the CIs are genuine, and that the impact on the employees was not intended by those people in the BP HR and benefits organization tasked with addressing the numerous – and increasingly frustrated – concerns raised by the SOHIO heritage workforce.

September 19, 2014

***Issue 16*:** It has been alleged that the Arco/Amoco enhancement violates the IRS regulations regarding payments to persons in "identical situations."	***Not substantiated.*** While generally we do not make legal determinations, we have found here that there is no evidence that the actions taken by BP with regard to the Arco and Amoco heritage 2011 enhancements were in violation of the IRS regulations or ERISA requirements.

EXHIBIT C

bp

[redacted] REDACTED
Senior Attorney
Labor, Employment & Employee Benefits Group

BP America Inc.
501 Westlake Park Blvd.
MC 16.161
Houston, TX 77079
Direct: 281-366-5350
Fax: 281-366-2033
[redacted]@bp.com
REDACTE

Via Hand Delivery

June 3, 2015

VIA MAIL

RECEIVED
SEP 17 2015
MERRICK
HOFSTEDT
& LINDSEY

Vicki Beckenbaugh
BP ERISA Claims and Appeals Analyst
BP America Inc.
P.O. Box 941644
Houston, TX 77079-8644

Re: Guenther pension claim — document request

Dear Ms. Beckenbaugh,

This letter is in response to the document request you submitted to us regarding the pension claim of Mr. Fritz Guenther. Below is a description of the documentation you requested, along with a summary of the documentation we were able to locate that is responsive to your request. You will note that, after carefully searching our BP records, there are certain requested documents that either do not exist or which we were unable to locate. There are a few items referenced below that we are still actively seeking to locate—and which we will forward along to you once they are located.

1. **REQUEST NO. 1:** Copies of the Sohio Retirement Plan (the "Sohio Plan") and all amendments thereto as in effect on December 31, 1988.

   DOCUMENTS IDENTIFIED:

   BP America Inc. Retirement Accumulation Plan 1988 plan document

2. **REQUEST NO. 2:** A copy of the Sohio Plan as restated effective January 1, 1989 as the BP America Retirement Accumulation Plan (the "RAP"). Please also provide a copy of the board resolutions adopting the Sohio Plan restatement as the RAP and a copy of the Sohio and RAP trusts.

   DOCUMENTS IDENTIFIED:

   BP America Retirement Accumulation Plan 1989 plan document

   We were unable to locate any Sohio trust document or RAP trust document for this time period or any board resolutions regarding the Sohio Plan restatement as the RAP.

3. **REQUEST NO. 3:** Copies of all amendments to the RAP adopted in the period of 1989 to 2000.

   DOCUMENTS IDENTIFIED: Please see item number two for the BP America RAP 1989 plan document. We are still searching for all amendments from 1989 to 2000.

4. **REQUEST NO. 4:** A complete copy of all documents and correspondence related to all actuarial studies prepared in connection with the restatement of the Sohio Plan as a cash balance retirement plan.

   DOCUMENTS IDENTIFIED:

   While we did not identify any actuarial studies, we did identify several documents from the relevant time period which the actuary drafted or helped prepare:

   A. Kwasha Lipton pension feasibility discussion agenda, November 1987
   B. Kwasha Lipton letter regarding merger of several heritage plans, September 9, 1988
   C. RAP major features overview, December 13, 1988
   D. BP America Inc. Retirement Plans for U.S. Employees, Pension Expense Valuation as of January 1, 1989
   E. Proposed Pension Plan for Salaried Employees of BP America slide presentation, June 1988

5. **REQUEST NO. 5:** All actuarial studies and correspondence related thereto prepared in connection with the restatement of the Sohio Plan as the RAP.

   DOCUMENTS IDENTIFIED:

   See item number four for materials we believe the actuary prepared or helped draft. However, we were unable to locate any formal actuarial studies or related correspondence.

6. **REQUEST NO. 6:** Copies of all favourable determination letters issued for the Sohio Plan and the RAP from 1986 through the present.

   DOCUMENTS IDENTIFIED:

   A. 1997 BP Retirement Accumulation Plan determination letter
   B. 2009 BP Retirement Accumulation Plan determination letter
   C. 2014 BP Retirement Accumulation Plan determination letter
   D. IRS announcement regarding cash balance plan determination letter moratorium. Due to a moratorium period during which the IRS temporarily suspended review of determination letter applications for cash balance plans from 1999 – 2007, the RAP was unable to obtain any determination letters during this period.

7. **REQUEST NO. 7:** Copies of the summary plan descriptions (SPDs), summaries of material modification (SMMs) and employee communications issued in connection with the Sohio Plan as in effect on December 31, 1988 and as restated as the RAP effective January 1, 1989.

DOCUMENTS IDENTIFIED:

A. Description of Sohio Plan, 1988
B. Description of BP America RAP, 1989
C. BP America RAP Plan Highlights slide presentation (no date shown)
D. Sample RAP participant statements and opening account balance and projection statements
E. BP Exploration Alaska memo to all staff (June 12, 1989), accompanying a letter to employees from James Ross
F. BP America RAP major features slide presentation (no date shown)
G. Fax from Joanne Wancata (BP America, Benefits Coordinator) to Sara Stags (Amoco) communicating copies of a plan highlights brochure and slides from employee communication meeting
H. Model benefit conversion calculation

8. **REQUEST NO. 8:** A copy of the 1988 annual report (Form 5500) and attachments thereto for the Sohio Plan.

DOCUMENTS IDENTIFIED:

1988 Sohio Form 5500

9. **REQUEST NO. 9:** A copy of the 1989 annual report (Form 5500) and attachments thereto for the RAP.

DOCUMENTS IDENTIFIED:

1989 RAP Form 5500

10. **REQUEST NO. 10:** Copies of all employee communications, other company documents, notes, drafts, contracts and agreements prepared from January 1, 1988 through December 31, 2003 related to the mergers of the Atlantic Richfield Retirement Plan and The Employee Retirement Plan of Amoco Corporation and Participating Subsidiaries into the RAP.

DOCUMENTS IDENTIFIED:

We are still searching company records to identify documents responsive to this request.

11. **REQUEST NO. 11:** Copies of collective bargaining agreements, negotiating proposals, notes or drafts pertaining to the establishment of the BP Master Hourly Plan (i.e. the plan

covering Sohio heritage hourly employees at the Toledo, Ohio refinery), including but not limited to the initial plan document adopted.

DOCUMENTS IDENTIFIED:

A. BP Master Hourly Plan for Represented Employees, plan amendments from 1991-1993
B. BP Master Hourly Plan for Represented Employees, plan document January 1, 1990
C. Toledo Collective Bargaining Agreement, 1988 – 1990
D. Toledo Collective Bargaining Agreement, 1990 – 1993

We are in the process of searching for the memorandum of agreement dated March 6, 1986, which is referenced in the benefits provisions of the collective bargaining agreements above.

12. **REQUEST NO. 12:** Sohio Code of Conduct in effect in 1989.

DOCUMENTS IDENTIFIED:

We were unable to locate a Sohio Code of Conduct.

13. **REQUEST NO. 13:** Copies of all documents related to the restatement of the Sohio Plan as the RAP prepared by Squire, Sanders Dempsey (now known as Squire Patton Boggs).

DOCUMENTS IDENTIFIED:

We were unable to locate any documents responsive to this request.

14. **REQUEST NO. 14:** Copies of all documents related to the restatement of the Sohio Plan as the RAP prepared by Karen Salinaro (formerly with Kwasha Lipton).

DOCUMENTS IDENTIFIED:

Letter dated December 8, 1989 from Karen Salinaro to BP's Pension Plan Manager

Our review of the company's files identified no other documentation prepared by Karen Salinaro.

15. **REQUEST NO. 15:** Communications to Fredric Guenther or other Sohio employees regarding the restatement of the Sohio Plan as the RAP.

DOCUMENTS IDENTIFIED:

A. Mr. Guenther's personalized opening account and projection statement that appears to have been mailed to his home address at the time.

B. See item #7 above for communications sent to employees regarding the conversion of the Sohio Plan to the RAP.

16. **REQUEST NO. 16:** All personnel file documents for Fredric Guenther that relate to his removal from the position of Health and Safety and Environmental Representative position. Please include all notes, emails and communications to/from Mr. Guenther, all payroll change notices, pay slips, grievance and arbitration documents, and SAP entries.

DOCUMENTS IDENTIFIED:

The company's Associate General Counsel for Labor, Employment and Employee Benefits has advised that Mr. Guenther's employment-related allegations have already been reviewed and responded to by BP Legal in Alaska. The company believes these employment-related allegations are well beyond the scope of this pension claim. Accordingly, the company will not be providing personnel-related files for purposes of reviewing Mr. Guenther's pension claim.

17. **REQUEST NO. 17:** For the period of 1988 to the present, please provide copies of all RAP personalized communications such as annual benefit statements, calculations and retirement estimates provided to, created by or for Frederic Guenther. If any of these items are in the custody and control of a third party vendor for the RAP, please advise.

DOCUMENTS IDENTIFIED:

BP Retirement Services at Fidelity provided the following documents in response to the request above. We did not identify any additional documentation specific to Mr. Guenther's pension benefit in the company's files.

A. Response to request for benefit calculation letter, November 29, 2012
B. Pension Estimates Modeling, December 6, 2013
C. Pension Estimates Modeling, March 2, 2015

See item #15 for Mr. Guenther's personalized opening account and projection statement.

18. **REQUEST NO. 18:** Communications to Fredric Guenther or other Sohio heritage employees which stated that BP would provide equalized RAP benefits to all heritage employees.

DOCUMENTS IDENTIFIED:

We did not identify any communications that would satisfy this request. Moreover, we are not aware that the company has ever stated that it would equalize pension benefits for all heritage groups.

19. **REQUEST NO. 19:** We believe the following communications, while not specifically referenced in your document request, are relevant to the Guenther pension claim review.

DOCUMENTS IDENTIFIED:

A. Rick Dorazil Letter to Sohio Employees, July 21, 2011
B. Mercer confirmation of Kwasha Lipton pension accrual pattern, Sept 19, 2013
C. Office of the Ombudsman ("OoO") Letter to John Mingé and OoO's Final Sohio report, March 7, 2014
D. John Mingé Letter to Sohio employees, September 15, 2014
E. OoO Letter to Sohio employees, September 19, 2014

We are glad to discuss further any specific documents about which you may have questions. Please let us know if there is anything further you need in regard to Mr. Guenther's pension claim.

Kind Regards,

REDACTED

EXHIBIT D

Kwasha Lipton

Street Address
2100 North Central Road
(at Bridge Plaza North)
Fort Lee
New Jersey

Telephones
201 592 1300
212 279 6800

Telex 701707
PLAN FORT

Mail Address
Post Office Box 1400
Fort Lee, NJ 07024

August 26, 1988

Ms. Elizabeth Rossman
Manager, Pension Plans
Room 34-L-2753
BP America Inc.
200 Public Square
Cleveland, Ohio 44114-2375

Re: Account Balance Plan

Dear Liz:

We have completed some material that we hope will be helpful in your presentation to Mr. Browne next week. It includes:

- A brief description of the Account Balance Plan, its transition provisions, its payout provisions and its treatment of benefits due upon death

- Revisions of the comparative benefit scatters presented to Mr. Browne at our last meeting -- both with and without the 35 year service cap

- A more detailed scatter for the group currently age 40 to 49 (the "problem group") -- again, with and without the 35 year cap

- A summary for the "problem group" of the benefits delivered by the Account Balance Plan versus those of the current plan at every retirement age

- An illustration of the annual annuities that would be payable at age 60 under the Account Balance Plan and the current plan for certain sample employees in the "problem group"

This final version of the plan attempts to balance the effect of the transition provisions on the "problem group" versus that on those employees currently age 50 and over. The age-related credits help out all of the employees with short periods of past service at the date of transition to the Account Balance Plan. The additional interest credit on the opening account helps out the employees with significant periods of past service at transition. In order to balance the effect of the special interest credit we concluded that 4% (or one-half the basic interest credit) for the balance of the employee's career will do a better job than a higher rate for a shorter period of time. The higher rate would result in a significant windfall for employees currently age 50 and over, and was discarded for that reason.

Kwasha Lipton

Ms. Elizabeth Rossman

Page 2

The design of the plan also involves a tradeoff between the benefits available at age 60 and those at age 65. In order to give the "problem group" benefits close to the current plan at age 60, the Account Plan will overshoot the current plan at age 65. Since our last meeting with Mr. Browne we concluded that it was necessary to show him that the "problem group" would receive somewhere between 90% and 100% of the current plan benefits. The closer we get to the 100% figure, the higher the percentages become for retirements at age 65. We feel that this plan should be acceptable to Mr. Browne in that it acheives a good balance across the various ages of retirement.

As you will notice, the Account Balance Plan benefits increase relative to the current plan as retirement age approaches 65. This would concern us if we thought that this plan would have a significant influence on retirement patterns in the short term. In fact, we believe that the employees at or nearing retirement eligibility will continue their current pattern, which averages age 60. The Account Plan is roughly equal to the current plan at that age, so we do not anticipate any significant cost increase due to retirements in the near term. Over the long term, we feel that retirements should become more age neutral; this would imply that some will be retiring with less than they would have had under the final pay plan, some with more. On average, we think that the benefits provided under the new plan will equal those that would have been provided by your current plan.

The issue of the 35 year service cap has been unresolved to this point. Based upon these final numbers, our recommendation is that the service cap be retained. The Account Balance Plan without a service cap is such an improvement over the current plan for those with more than 35 years of service, that we feel that it might be unacceptable to management. We recommend, however, that the cap be removed at some point in the future when the final pay plan is forgotten and the "equal pay for equal work" concept is more firmly entrenched at BP.

As has been the case throughout this study, we have assumed 6% annual pay increases and 8% basic annual interest credits to the accounts.

Please let us know what else we can do to help in your preparation for this meeting.

Sincerely,

Karen

Karen S. Salinaro, A.S.A.
Consulting Actuary

KSS:ks
Enclosures

Kwasha Lipton

BP AMERICA INC.

Details of Proposed Account Balance Plan Formula

Basic Formula:

Annual pay credits based upon length of service with the Company

Length of Service	Credit on pay up to 1/4 of SSWB	Credit on pay over 1/4 of SSWB
0 to 9 years	4%	7%
10 to 19 years	5%	9%
20 years and over	6%	11%

Annual pay credits will cease after 35 years of service

Transition Provisions:

Special provisions for those employees hired before January 1, 1989

- o Additional interest credit of one-half of the regular interest credit on the opening balance is payable to the date of termination/retirement

- o Schedule of annual pay credits above also dependent upon age:

  5%/9% formula at earlier of age 40 and 10 years of service

  6%/11% formula at earlier of age 50 and 20 years of service

Availability of Account:

Upon termination or retirement on or after age 55

Upon attainment of age and service combination equal to 65 points after termination prior to age 55

Upon death at any age after completion of 5 years of service

Kwasha Lipton
August 26, 1988

Kwasha Lipton

BP AMERICA INC.

Details of Proposed Account Balance Plan Formula

Basic Formula:

Annual pay credits based upon length of service with the Company

Length of Service	Credit on pay up to 1/4 of SSWB	Credit on pay over 1/4 of SSWB
0 to 9 years	4%	7%
10 to 19 years	5%	9%
20 years and over	6%	11%

Annual pay credits will cease after 35 years of service

Transition Provisions:

Special provisions for those employees hired before January 1, 1989

- o Additional interest credit of one-half of the regular interest credit on the opening balance is payable to the date of termination/retirement

- o Schedule of annual pay credits above also dependent upon age:

  5%/9% formula at earlier of age 40 and 10 years of service

  6%/11% formula at earlier of age 50 and 20 years of service

Availability of Account:

Upon termination or retirement on or after age 55

Upon attainment of age and service combination equal to 65 points after termination prior to age 55

Upon death at any age after completion of 5 years of service

Kwasha Lipton
August 26, 1988

Kwasha Lipton

BP AMERICA INC.

Details of Proposed Account Balance Plan Formula

Basic Formula:

Annual pay credits based upon length of service with the Company

Length of Service	Credit on pay up to 1/4 of SSWB	Credit on pay over 1/4 of SSWB
0 to 9 years	4%	7%
10 to 19 years	5%	9%
20 years and over	6%	11%

Annual pay credits will cease after 35 years of service

Transition Provisions:

Special provisions for those employees hired before January 1, 1989

- o Additional interest credit of one-half of the regular interest credit on the opening balance is payable to the date of termination/retirement
- o Schedule of annual pay credits above also dependent upon age:

  5%/9% formula at earlier of age 40 and 10 years of service

  6%/11% formula at earlier of age 50 and 20 years of service

Availability of Account:

Upon termination or retirement on or after age 55

Upon attainment of age and service combination equal to 65 points after termination prior to age 55

Upon death at any age after completion of 5 years of service

Kwasha Lipton
August 26, 1988

Kwasha Lipton

BP AMERICA INC.

Details of Proposed Account Balance Plan Formula

Basic Formula:

Annual pay credits based upon length of service with the Company

Length of Service	Credit on pay up to 1/4 of SSWB	Credit on pay over 1/4 of SSWB
0 to 9 years	4%	7%
10 to 19 years	5%	9%
20 years and over	6%	11%

Annual pay credits will cease after 35 years of service

Transition Provisions:

Special provisions for those employees hired before January 1, 1989

- o Additional interest credit of one-half of the regular interest credit on the opening balance is payable to the date of termination/retirement
- o Schedule of annual pay credits above also dependent upon age:

  5%/9% formula at earlier of age 40 and 10 years of service

  6%/11% formula at earlier of age 50 and 20 years of service

Availability of Account:

Upon termination or retirement on or after age 55

Upon attainment of age and service combination equal to 65 points after termination prior to age 55

Upon death at any age after completion of 5 years of service

Kwasha Lipton
August 26, 1988

Kwasha Lipton

BP AMERICA INC.

Details of Proposed Account Balance Plan Formula

Basic Formula:

Annual pay credits based upon length of service with the Company

Length of Service	Credit on pay up to 1/4 of SSWB	Credit on pay over 1/4 of SSWB
0 to 9 years	4%	7%
10 to 19 years	5%	9%
20 years and over	6%	11%

Annual pay credits will cease after 35 years of service

Transition Provisions:

Special provisions for those employees hired before January 1, 1989

- o Additional interest credit of one-half of the regular interest credit on the opening balance is payable to the date of termination/retirement

- o Schedule of annual pay credits above also dependent upon age:

  5%/9% formula at earlier of age 40 and 10 years of service

  6%/11% formula at earlier of age 50 and 20 years of service

Availability of Account:

Upon termination or retirement on or after age 55

Upon attainment of age and service combination equal to 65 points after termination prior to age 55

Upon death at any age after completion of 5 years of service

Kwasha Lipton
August 26, 1988

BP00001394

KwashaLipton

BP America Inc.

Effect of Transition to Recommended Plan:
Account Balance Plan Benefit as Percentage of Current Plan Benefit

	Employees Affected		Age at Retirement			
	No.	% Total	55	60	62	65
Over 65	17	0.2%	-	-	-	100%
Age 60-64						
0 - 9 yrs.	135	1.3%	-	100%	107%	118%
10 - 19 yrs.	39	0.4%	-	100%	109%	119%
20 - 29 yrs.	13	0.1%	-	100%	110%	129%
30 and over	22	0.2%	-	100%	111%	137%
Total	209	2.0%	-	100%	108%	121%
Age 55-59						
0 - 9 yrs.	283	2.8%	100%	101%	110%	125%
10 - 19 yrs.	103	1.0%	100%	103%	115%	136%
20 - 29 yrs.	42	0.4%	100%	103%	117%	145%
30 and over	54	0.5%	100%	106%	125%	164%
Total	482	4.7%	100%	102%	113%	134%
Age 50-54						
0 - 9 yrs.	433	4.2%	104%	99%	108%	124%
10 - 19 yrs.	214	2.1%	97%	98%	110%	130%
20 - 29 yrs.	102	1.0%	95%	99%	115%	146%
30 and over	54	0.5%	96%	111%	132%	171%
Total	803	7.8%	100%	100%	111%	132%
Age 40-49						
0 - 9 yrs.	1,974	19.3%	103%	95%	103%	117%
10 - 19 yrs.	889	8.7%	95%	92%	103%	125%
20 - 29 yrs.	154	1.5%	92%	99%	116%	148%
30 and over	7	0.0%	95%	111%	132%	170%
Total	3,024	29.5%	100%	94%	104%	121%
Age 30-39						
0 - 9 yrs.	3,421	33.3%	104%	95%	104%	122%
10 - 19 yrs.	848	8.3%	100%	100%	114%	142%
20 - 29 yrs.	2	0.0%	100%	108%	126%	157%
30 and over	0	0.0%	--	--	--	--
Total	4,271	41.6%	103%	96%	106%	127%
Under age 30	1,454	14.2%	113%	107%	120%	145%
Grand Total	10,260	100.0%	103%	98%	108%	128%

BP00001395

Kwasha Lipton

BP America Inc.

Effect of Transition to Recommended Plan:
Account Balance Plan Benefit as Percentage of Current Plan Benefit
35 Year Service Cap Retained in Recommended Plan

	Employees Affected		Age at Retirement			
	No.	% Total	55	60	62	65
Over 65	17	0.2%	-	-	-	100%
Age 60-64						
0 - 9 yrs.	135	1.3%	-	100%	107%	118%
10 - 19 yrs.	39	0.4%	-	100%	109%	119%
20 - 29 yrs.	13	0.1%	-	100%	110%	129%
30 and over	22	0.2%	-	100%	108%	128%
Total	209	2.0%	-	100%	107%	120%
Age 55-59						
0 - 9 yrs.	283	2.8%	100%	101%	110%	125%
10 - 19 yrs.	103	1.0%	100%	103%	115%	136%
20 - 29 yrs.	42	0.4%	100%	103%	117%	142%
30 and over	54	0.5%	100%	104%	119%	148%
Total	482	4.7%	100%	102%	113%	132%
Age 50-54						
0 - 9 yrs.	433	4.2%	103%	99%	108%	123%
10 - 19 yrs.	214	2.1%	97%	98%	110%	130%
20 - 29 yrs.	102	1.0%	95%	98%	111%	136%
30 and over	54	0.5%	96%	100%	115%	144%
Total	803	7.8%	100%	99%	110%	128%
Age 40-49						
0 - 9 yrs.	1,974	19.3%	103%	95%	103%	116%
10 - 19 yrs.	889	8.7%	95%	92%	101%	119%
20 - 29 yrs.	154	1.5%	92%	94%	105%	126%
30 and over	7	0.0%	91%	95%	109%	134%
Total	3,024	29.5%	100%	94%	102%	118%
Age 30-39						
0 - 9 yrs.	3,421	33.3%	104%	95%	103%	117%
10 - 19 yrs.	848	8.3%	100%	93%	102%	119%
20 - 29 yrs.	2	0.0%	95%	90%	101%	120%
30 and over	0	0.0%	--	--	--	--
Total	4,271	41.6%	103%	94%	102%	117%
Under age 30	1,454	14.2%	113%	101%	109%	123%
Grand Total	10,260	100.0%	103%	96%	104%	120%

Kwasha Lipton

BP America Inc.

Effect of Transition to Recommended Plan:
Account Balance Plan Benefit as Percentage of Current Plan Benefit
Year by Year Analysis for Ages 40 - 49

	Employees Affected		Age at Retirement			
	No.	% Total	55	60	62	65
Age 40						
0 - 4 yrs.	169	5.7%	108%	96%	104%	118%
5 - 9 yrs.	149	4.9%	99%	91%	100%	114%
10 - 14 yrs.	84	2.7%	96%	90%	100%	121%
15 - 19 yrs.	67	2.2%	96%	94%	110%	138%
20 - 24 yrs.	2	0.1%	95%	103%	121%	151%
25 and over	0	0.0%	-	-	-	-
Total	471	15.6%	101%	93%	103%	120%
Age 41						
0 - 4 yrs.	177	5.9%	107%	96%	103%	117%
5 - 9 yrs.	145	4.8%	98%	91%	99%	114%
10 - 14 yrs.	81	2.7%	96%	90%	100%	119%
15 - 19 yrs.	84	2.7%	95%	94%	109%	137%
20 - 24 yrs.	6	0.2%	96%	104%	121%	153%
25 and over	0	0.0%	-	-	-	-
Total	493	16.3%	100%	93%	103%	120%
Age 42						
0 - 4 yrs.	92	3.1%	107%	96%	103%	116%
5 - 9 yrs.	83	2.7%	99%	92%	100%	114%
10 - 14 yrs.	57	1.9%	95%	90%	99%	117%
15 - 19 yrs.	60	2.0%	95%	93%	106%	135%
20 - 24 yrs.	4	0.1%	96%	106%	122%	155%
25 and over	0	0.0%	-	-	-	-
Total	296	9.8%	100%	93%	102%	120%
Age 43						
0 - 4 yrs.	118	3.9%	108%	97%	105%	118%
5 - 9 yrs.	72	2.4%	98%	92%	100%	115%
10 - 14 yrs.	41	1.4%	93%	90%	98%	116%
15 - 19 yrs.	49	1.6%	94%	92%	104%	131%
20 - 24 yrs.	10	0.3%	93%	101%	117%	148%
25 and over	0	0.0%	-	-	-	-
Total	290	9.6%	101%	94%	103%	120%
Age 44						
0 - 4 yrs.	109	3.6%	107%	97%	104%	117%
5 - 9 yrs.	67	2.2%	97%	92%	100%	115%
10 - 14 yrs.	43	1.4%	94%	91%	100%	115%
15 - 19 yrs.	34	1.1%	93%	91%	102%	127%
20 - 24 yrs.	22	0.8%	93%	97%	114%	144%
25 and over	0	0.0%	-	-	-	-
Total	275	9.1%	100%	94%	103%	120%
Age 45						
0 - 4 yrs.	105	3.5%	108%	98%	105%	118%
5 - 9 yrs.	74	2.4%	98%	93%	101%	116%
10 - 14 yrs.	38	1.3%	94%	91%	100%	116%
15 - 19 yrs.	44	1.4%	93%	91%	102%	124%
20 - 24 yrs.	16	0.6%	92%	96%	112%	143%
25 and over	6	0.2%	93%	106%	124%	157%
Total	283	9.4%	100%	95%	104%	120%

Case: 2:08-cv-00216-DLB-JGW Doc #: 39-18 Filed: 01/29/10 Page: 50 of 75 - Page ID#: 1366

Kwasha Lipton

BP America Inc.

Effect of Transition to Recommended Plan:
Account Balance Plan Benefit as Percentage of Current Plan Benefit
Year by Year Analysis for Ages 40 - 49

	Employees Affected		Age at Retirement			
	No.	% Total	55	60	62	65
Age 46						
0 - 4 yrs.	78	2.6%	106%	98%	105%	117%
5 - 9 yrs.	67	2.2%	98%	94%	102%	116%
10 - 14 yrs.	42	1.4%	94%	92%	102%	118%
15 - 19 yrs.	42	1.4%	94%	93%	104%	126%
20 - 24 yrs.	19	0.6%	92%	96%	112%	142%
25 and over	3	0.1%	94%	108%	126%	160%
Total	251	8.3%	99%	95%	104%	121%
Age 47						
0 - 4 yrs.	70	2.2%	107%	99%	106%	119%
5 - 9 yrs.	44	1.4%	97%	94%	102%	117%
10 - 14 yrs.	41	1.4%	95%	94%	104%	120%
15 - 19 yrs.	30	1.0%	93%	93%	103%	124%
20 - 24 yrs.	11	0.4%	93%	95%	110%	139%
25 and over	5	0.2%	92%	106%	125%	159%
Total	201	6.6%	99%	96%	105%	122%
Age 48						
0 - 4 yrs.	87	2.8%	106%	98%	106%	118%
5 - 9 yrs.	60	2.0%	99%	95%	105%	119%
10 - 14 yrs.	31	1.0%	96%	95%	105%	122%
15 - 19 yrs.	23	0.8%	94%	95%	106%	124%
20 - 24 yrs.	17	0.6%	91%	93%	107%	137%
25 and over	12	0.4%	94%	108%	128%	164%
Total	230	7.6%	100%	97%	107%	124%
Age 49						
0 - 4 yrs.	78	2.6%	107%	99%	107%	120%
5 - 9 yrs.	57	1.9%	99%	96%	105%	121%
10 - 14 yrs.	32	1.0%	96%	96%	106%	123%
15 - 19 yrs.	33	1.0%	95%	95%	107%	126%
20 - 24 yrs.	11	0.4%	93%	96%	111%	141%
25 and over	23	0.8%	93%	106%	127%	163%
Total	234	7.7%	100%	98%	109%	127%
Grand Total	3,024	100.0%	100%	95%	104%	122%

Kwasha Lipton

BP America Inc.

Effect of Transition to Recommended Plan:
Account Balance Plan Benefit as Percentage of Current Plan Benefit
Year by Year Analysis for Ages 40 - 49
35 Year Service Cap Retained in Recommended Plan

	Employees Affected		Age at Retirement			
	No.	% Total	55	60	62	65
Age 40						
0 - 4 yrs.	169	5.7%	108%	96%	104%	117%
5 - 9 yrs.	149	4.9%	99%	91%	99%	114%
10 - 14 yrs.	84	2.7%	96%	90%	99%	116%
15 - 19 yrs.	67	2.2%	96%	92%	101%	120%
20 - 24 yrs.	2	0.1%	93%	89%	99%	118%
25 and over	0	0.0%	-	-	-	-
Total	471	15.6%	101%	93%	101%	116%
Age 41						
0 - 4 yrs.	177	5.9%	107%	95%	103%	116%
5 - 9 yrs.	145	4.8%	98%	91%	99%	114%
10 - 14 yrs.	81	2.7%	96%	90%	100%	116%
15 - 19 yrs.	84	2.7%	95%	91%	101%	120%
20 - 24 yrs.	6	0.2%	95%	91%	102%	122%
25 and over	0	0.0%	-	-	-	-
Total	493	16.3%	100%	92%	101%	116%
Age 42						
0 - 4 yrs.	92	3.1%	107%	96%	103%	116%
5 - 9 yrs.	83	2.7%	99%	92%	100%	114%
10 - 14 yrs.	57	1.9%	95%	90%	99%	116%
15 - 19 yrs.	60	2.0%	95%	91%	102%	121%
20 - 24 yrs.	4	0.1%	96%	93%	103%	124%
25 and over	0	0.0%	-	-	-	-
Total	296	9.8%	100%	93%	101%	117%
Age 43						
0 - 4 yrs.	118	3.9%	108%	97%	104%	117%
5 - 9 yrs.	72	2.4%	98%	92%	100%	115%
10 - 14 yrs.	41	1.4%	93%	89%	98%	115%
15 - 19 yrs.	49	1.6%	94%	91%	102%	120%
20 - 24 yrs.	10	0.3%	93%	92%	102%	122%
25 and over	0	0.0%	-	-	-	-
Total	290	9.6%	100%	94%	102%	117%
Age 44						
0 - 4 yrs.	109	3.6%	107%	97%	104%	117%
5 - 9 yrs.	67	2.2%	97%	92%	100%	115%
10 - 14 yrs.	43	1.4%	94%	91%	100%	115%
15 - 19 yrs.	34	1.1%	93%	91%	101%	120%
20 - 24 yrs.	22	0.8%	93%	92%	103%	123%
25 and over	0	0.0%	-	-	-	-
Total	275	9.1%	100%	94%	102%	117%
Age 45						
0 - 4 yrs.	105	3.5%	108%	98%	105%	117%
5 - 9 yrs.	74	2.4%	98%	93%	101%	116%
10 - 14 yrs.	38	1.3%	94%	91%	100%	116%
15 - 19 yrs.	44	1.4%	93%	91%	102%	120%
20 - 24 yrs.	16	0.6%	92%	92%	103%	124%
25 and over	6	0.2%	92%	92%	104%	125%
Total	283	9.4%	100%	94%	103%	118%

BP00001399

Kwasha Lipton

BP America Inc.

Effect of Transition to Recommended Plan:
Account Balance Plan Benefit as Percentage of Current Plan Benefit
Year by Year Analysis for Ages 40 - 50
35 Year Service Cap Retained in Recommended Plan

	Employees Affected		Age at Retirement			
	No.	% Total	55	60	62	65
Age 46						
0 - 4 yrs.	78	2.6%	106%	98%	105%	117%
5 - 9 yrs.	67	2.2%	98%	94%	102%	116%
10 - 14 yrs.	42	1.4%	94%	92%	102%	118%
15 - 19 yrs.	42	1.4%	94%	93%	104%	123%
20 - 24 yrs.	19	0.6%	92%	93%	105%	125%
25 and over	3	0.1%	92%	93%	105%	127%
Total	251	8.3%	99%	95%	103%	119%
Age 47						
0 - 4 yrs.	70	2.2%	107%	99%	106%	119%
5 - 9 yrs.	44	1.4%	97%	94%	102%	117%
10 - 14 yrs.	41	1.4%	95%	94%	104%	120%
15 - 19 yrs.	30	1.0%	93%	93%	103%	122%
20 - 24 yrs.	11	0.4%	93%	94%	106%	127%
25 and over	5	0.2%	92%	93%	106%	129%
Total	201	6.6%	99%	95%	105%	120%
Age 48						
0 - 4 yrs.	87	2.8%	106%	98%	106%	118%
5 - 9 yrs.	60	2.0%	99%	95%	105%	119%
10 - 14 yrs.	31	1.0%	96%	95%	105%	122%
15 - 19 yrs.	23	0.8%	94%	95%	106%	124%
20 - 24 yrs.	17	0.6%	91%	92%	104%	126%
25 and over	12	0.4%	92%	95%	108%	132%
Total	230	7.6%	100%	96%	106%	121%
Age 49						
0 - 4 yrs.	78	2.6%	107%	99%	107%	120%
5 - 9 yrs.	57	1.9%	99%	96%	105%	121%
10 - 14 yrs.	32	1.0%	96%	96%	106%	123%
15 - 19 yrs.	33	1.0%	95%	95%	107%	126%
20 - 24 yrs.	11	0.4%	93%	96%	109%	132%
25 and over	23	0.8%	92%	96%	109%	134%
Total	234	7.7%	100%	97%	107%	124%
Grand Total	3,024	100.0%	100%	94%	103%	118%

Kwasha Lipton

BP AMERICA INC.

Illustration of Benefits Due upon Retirement
Proposed Account Balance Plan vs. Current Plan
35 Year Service Cap Retained

Age/Service at Change	Retirement Age 55	56	57	58	59	60	61	62	63	64	65
35 / 5	98	96	94	92	91	90	94	98	102	106	111
35 / 10	102	100	98	96	95	94	100	104	109	114	120
40 / 1	106	103	100	98	96	94	98	102	105	110	114
40 / 5	105	102	100	98	96	95	99	103	107	112	117
40 / 10	97	95	94	93	92	91	95	100	105	110	115
40 / 15	96	94	93	92	91	91	96	101	106	112	118
45 / 1	104	101	99	96	94	92	95	98	101	104	107
45 / 5	102	100	99	97	96	95	99	103	107	112	117
45 / 10	97	96	95	95	94	94	98	103	107	113	118
45 / 15	92	91	91	91	91	91	96	101	106	111	117
49 / 1	108	106	104	102	100	99	103	106	110	114	117
49 / 5	108	106	104	102	101	100	104	108	112	116	120
49 / 10	97	96	96	96	96	96	101	106	112	117	123
49 / 15	97	96	96	96	97	97	103	108	114	121	127
49 / 20	94	94	94	94	95	95	101	107	113	120	127

August 26, 1988

Kwasha Lipton

BP AMERICA INC.

Illustration of Benefits Due upon Retirement
Proposed Account Balance Plan vs. Current Plan
35 Year Service Cap Removed

Age/Service at Change	Retirement Age 55	56	57	58	59	60	61	62	63	64	65
35 / 5	98	96	94	92	91	90	94	98	102	106	111
35 / 10	102	100	98	96	95	94	100	107	110	115	123
40 / 1	106	103	100	98	96	94	98	102	105	110	114
40 / 5	105	102	100	98	96	95	99	103	107	112	117
40 / 10	97	95	94	93	92	91	95	100	105	110	115
40 / 15	96	94	93	92	91	91	96	103	111	120	130
45 / 1	104	101	99	96	94	92	95	98	101	104	107
45 / 5	102	100	99	97	96	95	99	103	107	112	117
45 / 10	97	96	95	95	94	94	98	103	107	113	118
45 / 15	92	91	91	91	91	91	96	101	106	111	117
49 / 1	108	106	104	102	100	99	103	106	110	114	117
49 / 5	108	106	104	102	101	100	104	108	112	116	120
49 / 10	97	96	96	96	96	96	101	106	112	117	123
49 / 15	97	96	96	96	97	97	103	108	114	121	127
49 / 20	94	94	94	94	95	95	101	107	113	120	127

August 26, 1988

Case: 2:08-cv-00216-DLB-JGW Doc #: 39-18 Filed: 01/29/10 Page: 55 of 75 - Page ID#: 1371

Kwasha Lipton

BP AMERICA INC.

Illustration of Benefits Due upon Retirement at Age 60
Proposed Account Balance Plan vs. Current Plan
35 Year Service Cap Retained

Age/Service at Change	Current Plan Annuity	Current Plan as % Final Pay	Account Plan Annuity	Account Plan as % Final Pay	Shortfall Annuity	Shortfall as % Final Pay
35 / 5	$58,000	34	$52,200	31	$ 5,800	3
35 / 10	$42,200	36	$39,700	34	$ 2,500	2
40 / 1	$32,400	24	$30,500	23	$ 1,900	1
40 / 5	$36,300	27	$34,500	26	$ 1,800	1
40 / 10	$47,300	34	$43,000	31	$ 4,300	3
40 / 15	$71,900	41	$65,400	37	$ 6,500	4
45 / 1	$14,600	15	$13,400	14	$ 1,200	1
45 / 5	$26,000	22	$24,700	21	$ 1,300	1
45 / 10	$29,400	27	$27,600	25	$ 1,800	2
45 / 15	$35,800	34	$32,600	31	$ 3,200	3
49 / 1	$ 5,400	12	$ 5,300	13	$ 100	0
49 / 5	$10,500	13	$10,500	13	$ N/A	
49 / 10	$24,900	24	$23,900	23	$ 1,000	1
49 / 15	$29,900	27	$29,000	26	$ 900	1
49 / 20	$38,800	35	$36,900	33	$ 1,900	2

August 26, 1988