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Honorable H. Russel Holland

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ALASKA

16 In re:)
17) Case No. 3:89-cv-095-HRH
18 The EXXON VALDEZ) (Consolidated)
19 _____)

20 THIS DOCUMENT RELATES TO)
21 ALL CASES)
22 _____)

23 LEAD COUNSEL'S TWENTY-FOURTH APPLICATION FOR AN ORDER
24 DISTRIBUTING EXXON QUALIFIED SETTLEMENT FUNDS TO CLAIMANTS IN
25 VARIOUS CATEGORIES AND THEIR ATTORNEYS, AND TO VARIOUS STATE
PROPERTY FUNDS IF CLAIMANTS CANNOT BE LOCATED

This is the twenty-fourth application for authority to distribute portions of the

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1 money plaintiffs received from Exxon as partial payments on the punitive damages
2 judgment entered by the United States Supreme Court along with other funds received by
3 the Exxon Qualified Settlement Fund (“EQSF”).

4 With the exception of a limited group of claimants for whom we have been unable
5 to distribute claims primarily because of bad addresses or the deaths of the claimants
6 without a person having come forward to receive the claim, all distributions pursuant to
7 the Plan of Allocation and the Plans of Distribution have now been made. This
8 application seeks permission to distribute shares to that limited group of claimants, with
9 the understanding that if the EQSF is not able to locate them, or no one is available to
10 make the claim after a period of about two years, their funds will be turned over to
11 various state unclaimed property funds. This application also seeks authority, for those
12 claimants whom the court previously authorized distributions, but who subsequently
13 became lost or died, to also turn over their funds to state unclaimed property funds if the
14 EQSF is not able to locate them during the same period.

15 As explained more fully in the Declaration of Lynn Lincoln Sarko, Administrator
16 of the EQSF, there are two categories of entities (claimants, or claimants’ lien agents,
17 heirs, assignees or other 3rd-party judgment holders, whom I will term “claimants’
18 agents”) which are entitled to an award for whom we are currently unable to make a
19 distribution.

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**LEAD COUNSEL'S TWENTY-FOURTH APPLICATION FOR AN ORDER DISTRIBUTING EXXON
QUALIFIED SETTLEMENT FUNDS TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND
THEIR ATTORNEYS, AND TO VARIOUS STATE PROPERTY FUNDS IF CLAIMANTS CANNOT
BE LOCATED - 2**

1 The first category involves those entities that have been the subject of prior orders
 2 authorizing distributions but for whom we do not have a current address or payee
 3 identified. Typically, this problem has resulted when, after we made and received
 4 approval for a distribution, we learned that an address that the EQSF and/or AQSF
 5 thought was viable turned out not to be so, or we learned that the person was deceased.
 6 There are also some entities for whom a technical problem remains with their claim.
 7 Despite ongoing efforts to find such entities, to identify a representative to come forward
 8 for an entity that is deceased, and to resolve technical problems, many of which efforts
 9 have been successful, there remains a group of such entities whom the EQSF and/or
 10 AQSF still have been unable to fully pay. Entities that are not fully paid are categorized
 11 alphabetically on Exhibits A1-A3, with data regarding the sources of undistributed funds
 12 by claim category and distribution source, as well as data regarding the extent to which
 13 the claimant or a lienholder is scheduled to receive the allocation(s). Claimants who have
 14 a previously approved allocation, but are not fully paid, are listed in Exhibit A-1 to the
 15 Sarko declaration.¹ Currently, there are 2326 claimants listed on Exhibit A-1 along with
 16 specific information about how much of each allocation for the claimant would go, if any,
 17 to a lien-holder. Exhibit A-2 lists exclusively those 1846 claimants who are currently

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¹ Because our efforts to process claims are ongoing, some of the persons on this list will have been found and their claims paid by the time this declaration is submitted to the Court.

LEAD COUNSEL'S TWENTY-FOURTH APPLICATION FOR AN ORDER DISTRIBUTING EXXON
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 BE LOCATED - 3

1 scheduled to actually receive a portion of their award and the amount they will receive.
 2 Exhibit A-3 lists exclusively the 350 lien-holders who are scheduled to actually receive a
 3 portion of claimants' awards and the amount each lien-holder will receive.² For all of
 4 these entities we seek authority through this application to turn over their awards to state
 5 unclaimed property funds³ if we are not able to pay them over approximately the next
 6 two years.
 7

8 The second category involves those claimants who we have known for some time
 9 do not have a current address, or who are deceased and no representative has come
 10 forward, and, as a result, we have not included those claims on prior applications. Those
 11 persons and the gross amounts of their awards are listed in Exhibits B1-4 to the Sarko
 12

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 14 _____
 15 ² Because there are some lienholders who receive the entire amount of multiple claimants'
 awards, the sum of 1836 and 350 is less than the 2326 claimants on Exhibit A-1.

16 ³ Each of the 50 states maintains funds for the deposit of unclaimed property which may provide
 17 a resource for ultimate distribution of unclaimed awards if the EQSF and/or AQSF remain
 18 unable to identify a proper recipient and distribute the awards that are the subject of Exhibits A
 19 and B. Representative legislation authorizing the establishment of such funds and describing
 20 their operation is contained in *A.S. 34.45.110-780* for Alaska, *R.C.W. 63.29.010-906* for
 21 Washington, *Code of Civil Procedure, Part 3, Title 10, Chapter 7, Secs. 1500-1582* for
 22 California, and *O.R.S. 98.05-.436* for Oregon. To the extent we are unable to transfer awards to
 23 the persons entitled to receive them, we are proposing to turn over those awards to the state of
 24 the last known address of such persons. Of the unique entities (claimants and lienholders) who
 are entitled to receive a distribution, for those that ultimately have a last known address that is a
 foreign jurisdiction, or have an unknown address, if the efforts to find them as outlined below in
 paragraphs 6-9 are unsuccessful, we are proposing to turn over their claims to the State of
 Washington's unclaimed property program. Mr. Sarko's declaration details the potential
 distribution of such awards, though we anticipate, through the efforts outlined below, to be able
 to transfer the great bulk of the funds that are listed on Exhibits A and B.

25 LEAD COUNSEL'S TWENTY-FOURTH APPLICATION FOR AN ORDER DISTRIBUTING EXXON
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 BE LOCATED - 4

1 declaration. Claims are listed in the format we have used for prior original applications.
2 Thus Exhibit B-1 lists those 322 unoled fishery claimants for whom an application is
3 being made to distribute compensatory damages; Exhibit B-2 lists those 626 claimants
4 from multiple claim categories for whom an application is being made to distribute
5 punitive damages principal payments; Exhibit B-3 lists those 655 claimants from multiple
6 claim categories for whom an application is being made to distribute punitive damages
7 principal payments; and Exhibit B-4 lists those 677 claimants from multiple claim
8 categories for whom an application is being made to distribute final distribution payments
9 (the source of which is the \$70 million Exxon transferred after it determined not to appeal
10 on costs). Exhibit B-5 collects all of the claimant names on Exhibits B-1 through B-4,
11 and lists the 732 claimants for whom this application is being made, along with the total
12 net amount, after attorneys' fees have been deducted, that those claimants are scheduled
13 to receive and the last known jurisdiction with which they were associated. For all of the
14 entities in Exhibit B5, we seek authority through this application both to distribute their
15 funds and to turn over their awards to state unclaimed property funds if we are not able to
16 pay them over approximately the next two years.

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Though all amounts that remain available are listed in each of the Exhibits A-B,
above, I anticipate that the amount that will ultimately have to be remitted to the various
state unclaimed property funds will be very small. This is because, over the period of

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BE LOCATED - 5

1 administration, with a particular focus during the last six months, we propose to
 2 undertake an aggressive program to identify persons with defects in their claims,
 3 primarily claimants who do not have current addresses, and claimants who are deceased
 4 but for whom no proper entity has yet come forward to receive the claim. Over the past
 5 few months, we have focused on claims in excess of \$10,000, and have been over 98%
 6 successful in transferring claim amounts for that group, which claims have now been
 7 paid. It is our intention (as it is for the direct action firms with claimants),⁴ to continue
 8 such efforts for the claims that are the subject of Exhibits A and B. Indeed, we have
 9 contacted a substantial number of the entities on those exhibits already, and efforts are
 10 underway to claim amounts due by personal representatives who are opening estates,
 11 representatives of decedents who are gathering information to comply with collection
 12 affidavit statutes, and others who are providing whatever is needed to claim funds to
 13 which they are entitled.

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 17 Based on our successful work identifying such entities so far, I am proposing to

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1 make at least the following efforts during the period following approval of this
2 application prior to the distribution of any funds to a state unclaimed property fund.
3 (Such efforts are, of course, already underway.) Each of the direct action firms which
4 will receive funds for their own clients has also agreed to use at least the same level of
5 efforts to try to find the claimants for which they will receive funds.
6

- 7 • The EQSF website would contain a list of all 2645 entities on Exhibit C
8 listing the amount of their claim, and with instructions available on how to
9 contact someone at the EQSF (or the applicable direct action firm) to
10 collect the claim. To call attention to the information available on the
11 website, we would intend to publish notices in the Anchorage Daily News,
12 the Cordova Times, the Kodiak Daily Mirror, the Homer Tribune, the
13 Seward Phoenix Log, the Peninsula Clarion, the Valdez Star, the Juneau
14 Empire and the Seattle Times, advising potential recipients that information
15 regarding undistributed funds is available on the website, providing a
16 telephone number for access to a person who could assist with collecting
17 the proper information, and providing an address to which someone could
18 write for further information.
19
- 20 • For each of the approximately 1650 entities scheduled to receive over \$50,
21
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25 LEAD COUNSEL'S TWENTY-FOURTH APPLICATION FOR AN ORDER DISTRIBUTING EXXON
QUALIFIED SETTLEMENT FUNDS TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND
THEIR ATTORNEYS, AND TO VARIOUS STATE PROPERTY FUNDS IF CLAIMANTS CANNOT
BE LOCATED - 7

1 we would attempt to use the IRS's letter forwarding service to contact lost
2 claimants. At a marginal cost of approximately \$2.00 per entity, the IRS is
3 willing to send *our* letter to the entity at the most recent address *the IRS* has
4 if we provide the content of the letter, and the person's social security
5 number. We would anticipate sending different letters to those entities
6 whom the EQSF and/or AQSF believes are alive, and those who we believe
7 are deceased, with the latter asking that a representative of the decedent
8 come forward to claim the money.

- 9
- 10 • For each of the 750 entities scheduled to receive over \$1,000, we would
11 assign an individual to attempt to find the entity and assist in the perfection
12 of the claim through a combination of devices including some or all of the
13 following:

14 (1) Internet searches to identify most recent address or other contact
15 information;

16 (2) Attempting to contact persons who appear from our files to possibly have
17 some relationship with the applicant (such as previous skippers for
18 commercial fishing claims);

19 (3) Contacting Native organizational entities, such as regional corporations,
20 village corporations, tribal entities, municipal entities and non-profit Native
21

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25 LEAD COUNSEL'S TWENTY-FOURTH APPLICATION FOR AN ORDER DISTRIBUTING EXXON
QUALIFIED SETTLEMENT FUNDS TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND
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BE LOCATED - 8

1 organizations to locate those with Native claims, or who otherwise appear
2 to be Alaska Native;

3 (4) Searching obituary records and state probate records for evidence of estates
4 that may have been opened for decedents, and then contacting lawyers or
5 personal representatives who may have been involved with the estates;

6 (5) Trying to find claimant relatives or friends identifiable from EQSF files or
7 other sources;

8 (6) Searching *Courtview* (Alaska's site that lists all open and closed state Court
9 cases) and similar sites in other jurisdictions to locate entities; and

10 (7) Contacting trade groups (such as fishermen's organizations) for relevant
11 entities.
12

13 Assuming that the Court approves this application on or about December 1, 2011,
14 it is my intention to file a report with the Court regarding the progress that we make
15 releasing funds to the claimants and claimant agents on Exhibits A and B every six
16 months. We anticipate that the great bulk of our efforts would occur during the first six-
17 month period, and that after that period, very few entities would come forward to claim
18 their shares. Nonetheless, the EQSF and/or AQSF would continue to be available to
19 distribute shares if entities come forward with appropriate documentation. I also
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25 LEAD COUNSEL'S TWENTY-FOURTH APPLICATION FOR AN ORDER DISTRIBUTING EXXON
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BE LOCATED - 9

1 anticipate a final report to the Court on or about December 1, 2013, that the EQSF and/or
2 AQS⁵ have in fact concluded the administration of the settlement funds by distributing
3 the balance to the various lost property funds.

4 A proposed order is attached authorizing the proposed distributions discussed in
5 this application.
6

7 Respectfully submitted this 4th day of November 2011.
8

9 s/ David W. Oesting
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21 _____
22 ⁵ The AQS⁵ is in the process of identifying entities that have yet to be fully distributed, similar
23 to that information detailed by the EQSF as summarized in Exhibit C. All AQS⁵ funds have
24 been the subject of prior distribution orders. It is our intent, that for each time we prepare the
25 semi-annual reports to the Court as outlined in Section 9 above, we will include detailed AQS⁵
information as well. As of today, we estimate that there are approximately 700 non-fully paid
entities in the AQS⁵ who have claims worth approximately \$460,000.

LEAD COUNSEL'S TWENTY-FOURTH APPLICATION FOR AN ORDER DISTRIBUTING EXXON
QUALIFIED SETTLEMENT FUNDS TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND
THEIR ATTORNEYS, AND TO VARIOUS STATE PROPERTY FUNDS IF CLAIMANTS CANNOT
BE LOCATED - 10

In re the Exxon Valdez, Case No. 3:89-cv-095-HRH
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Certificate of Service

The undersigned certifies that on November 4th, 2011, a true and correct copy of the foregoing LEAD COUNSEL'S LEAD COUNSEL'S TWENTY-FOURTH APPLICATION FOR AN ORDER DISTRIBUTING EXXON QUALIFIED SETTLEMENT FUNDS TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND THEIR ATTORNEYS, AND TO VARIOUS STATE PROPERTY FUNDS IF CLAIMANTS CANNOT BE LOCATED was served on the following attorneys or parties of record by the court's ECF system:

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LEAD COUNSEL'S TWENTY-FOURTH APPLICATION FOR AN ORDER DISTRIBUTING EXXON QUALIFIED SETTLEMENT FUNDS TO CLAIMANTS IN VARIOUS CLAIM CATEGORIES AND THEIR ATTORNEYS, AND TO VARIOUS STATE PROPERTY FUNDS IF CLAIMANTS CANNOT BE LOCATED - 11