

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)	
)	
the EXXON VALDEZ)	
_____)	
This Document Relates to)	No. 3:89-cv-0095-HRH
)	
ALL CASES)	
_____)	

O R D E R

Decision on All Plaintiffs'
Application for Order Distributing Funds

Having at last received a substantial payment of punitive damages by Exxon, Lead Counsel for All Plaintiffs applied for an order distributing Exxon Qualified Settlement Funds to thirteen claimant groups and their attorneys.¹ The only party responding to the motion was Sea Hawk Seafoods, Inc.² Oral argument was not requested on this motion and was not deemed necessary. Having reviewed the motion papers, the response, and All Plaintiffs' reply,³ the court authorized the entry of All Plaintiffs' proposed

¹Docket No. 8884.

²Docket No. 8911.

³Docket No. 8914.

order authorizing the distribution of funds as proposed by the EQSF Administrator in his affidavit of October 31, 2008.⁴

By order of November 12, 2008,⁵ the court denied Sea Hawk's motion to vacate the Plan of Allocation upon which all distributions of Exxon Valdez Fund recoveries depend. In so ruling, the court informed Sea Hawk in no uncertain terms that "Baker does not stand for the proposition that Sea Hawk asserts."⁶ Yet Sea Hawk is still arguing in its response to the instant motion that "Lead Counsel's Application for Distribution should be denied because it conflicts with the Supreme Court's required 1:1 ratio."⁷ Sea Hawk justifies its persistence in an argument that the court has rejected, because Sea Hawk has filed a notice of appeal. Sea Hawk further suggests that the court did not address its contention that All Plaintiffs should be required "to withhold approximately \$60 million from any distribution from the Exxon Qualified Settlement Fund ("EQSF") pending final resolution of Sea Hawk's Motion to Vacate [the Plan of Allocation]."⁸

Indeed, the court did not specifically talk about a hold-back in its order denying Sea Hawk's motion to vacate the Plan of Allocation. There was a reason. Without coming right out and saying it, the court considered Sea Hawk's position - which Sea Hawk now

⁴Docket No. 8885.

⁵Docket No. 8898.

⁶Id. at 13.

⁷Sea Hawk's Response to Application for Order Distributing Settlement Funds at 2, Docket No. 8911.

⁸Id.

reasserts - to be frivolous. There is no responsible way to interpret Baker as Sea Hawk does. The Supreme Court's decision plainly and expressly addresses the maximum amount of punitive damages that may be imposed upon a defendant. Baker says nothing about how punitive damages should or might be shared amongst plaintiffs. Bluntly, Sea Hawk's reassertion of its failed argument results in the court's suspicions about Sea Hawk's motivation to ripen into a belief that Sea Hawk is again attempting, through an appeal and now the instant opposition to a distribution, to intimidate All Plaintiffs into affording Sea Hawk special treatment.

Pursuant to the Joint Prosecution Agreements, All Plaintiffs, including Sea Hawk, agreed that certain recoveries, including that for punitive damages, would be shared amongst All Plaintiffs as received. Displeased with that result, Sea Hawk managed to talk All Plaintiffs into allowing it to keep the whole of its compensatory damages settlement with Exxon instead of sharing it. Naturally, that concession to Sea Hawk had a price: All Plaintiffs are entitled to hold back from any distribution of punitive damages recovered and otherwise due Sea Hawk, the amount of money that Sea Hawk settled for and was allowed to retain instead of sharing.⁹ As the time for a distribution of some of the punitive damages recovery approached, Sea Hawk again complained to All Plaintiffs. When it was not able to negotiate another new deal, Sea Hawk attempted to upset the Plan of Allocation; and, having lost on that, Sea Hawk now responds to All Plaintiffs' application for an

⁹Order re Motion to Vacate Plan of Allocation at 9, Docket No. 8898.

order distributing settlement funds to thirteen claims categories on the same failed theory that the court rejected.

By its order of November 24, 2008,¹⁰ the court has granted All Plaintiffs' application for distribution of settlement funds to thirteen claimant groups. The court will not countenance Sea Hawk's efforts to impose the withholding of \$60 million from any distribution as originally argued by Sea Hawk, nor the withholding of \$11.753 million that Sea Hawk's principal now contends should be withheld.

Having joined in the Joint Prosecution Agreements, and having achieved what Sea Hawk sought during the process of approving the Plans of Allocation and Distribution, it is with considerable ill grace that Sea Hawk again attempts to disrupt the distribution of punitive damages recovered from Exxon. Indeed, what Sea Hawk is perpetuating is the very kind of dissension amongst plaintiffs that the Joint Prosecution Agreements were intended to prevent. By and large, the Joint Prosecution Agreements worked as intended. Certainly there have been bumps in the road, but Sea Hawk stands out even amongst those who have caused trouble. It is one of the larger claimants, and therefore in a position to cause greater disruption than the individual, pro se parties who could not understand the value of joint case development and trial. Sea Hawk of course went along with the Joint Prosecution Plan, up to a point. As discussed above, Sea Hawk demanded and got special treatment when it came time to share recoveries amongst All Plaintiffs. Now

¹⁰Docket No. 8918; redistributed at Docket No. 8920.

that it is time to distribute a portion of the punitive damages recovery - under circumstances which the court infers will result in Sea Hawk receiving no money because of the deal that it made to retain its compensatory recovery - Sea Hawk wants out of its deal. As one litigator for plaintiffs is fond of reminding the court, a deal is a deal. Under these circumstances, the court refuses to require the EQSF Administrator to effect any sort of hold-back because of Sea Hawk's attempted "hold-up".

The unfairness of Sea Hawk's attempts to upset the Plans of Allocation and Distribution are underscored by the fact that there are some 30,000 members of the punitive damages class now awaiting distributions. This litigation has gone on for almost two decades. All Plaintiffs argue, and surely All Plaintiffs' counsel would know, that "many of [the claimants] have endured substantial financial hardship while waiting to be paid."¹¹ Many have died. All Plaintiffs' counsel reports that 12.5% of the claimants are now deceased. The court knows from conversations with bankruptcy court judges that the bankruptcy court has hundreds of files that are still open for no other reason than the possibility of recovering money for creditors out of Exxon Valdez Settlement Fund distributions. The time for these distributions is now. The funds are available. The court will not assist in Sea Hawk's attempt to bootstrap itself into yet another better deal than it has already obtained.

¹¹All Plaintiffs' Reply on Application for Order Distributing EQSF Funds at 5, Docket No. 8914.

By order of November 24, 2008, Lead Counsel's application for an order distributing EQSF funds to thirteen claimant categories has been granted without qualification.

DATED at Anchorage, Alaska, this 24th day of November, 2008.

/s/ H. Russel Holland
United States District Judge