

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 23 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: EXXON VALDEZ,

No. 08-35978

D.C. No. 3:89-cv-00095-HRH

SEA HAWK SEAFOODS, INC.,

MEMORANDUM*

Plaintiff - Appellant,

COOK INLET PROCESSORS, INC.;
SAGAYA CORP.; WILLIAM
MCMURREN; PATRICK L.
MCMURREN; WILLIAM W. KING;
GEORGE C. NORRIS; RICHARD
FEENSTRA; WILDERNESS SAILING
SAFARIS; SEAFOOD SALES, INC.;
RAPID SYSTEMS PACIFIC LTD.;
NAUTILUS MARINE ENTERPRISES,
INC.; WILLIAM FINDLAY ABBOTT,
JR.; PLAINTIFFS' LIAISON COUNSEL,
CO-LEAD COUNSEL OR LEAD TRIAL
COUNSEL; OTHER PLAINTIFFS IN
CONSOLIDATED CASES; HUNTER
CRANE; RANDY BARNES; RICHARD
NEWBY; LARRY POWERS; EAGLES
FISHERIES, L.P.; THEODORE JEWELL;
MIKE LOPEZ; PRINCE WILLIAM
SOUND NATIVE CORPORATIONS,

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Plaintiffs - Appellees,

ESTATE OF IGNATIUS KOSBRUK;
JOHN B. NIELSEN; ESTATE OF JOHN
KOSBRUK, SR.; STEVE COPELAND;
ESTATE OF SEWARD SHEA; ADOLPH
LAW GROUP, PLLC; SMYTH AND
MASON, PLLC,

Claimants - Appellees,

v.

EXXON CORPORATION; EXXON
SHIPPING COMPANY; ALYESKA
PIPELINE SERVICE COMPANY;
ESTATE OF PETER PHILLIPS,

Defendants - Appellees.

Appeal from the United States District Court
for the District of Alaska
H. Russel Holland, District Judge, Presiding

Argued and Submitted June 24, 2009
Seattle, Washington

Before: SCHROEDER, KLEINFELD, and THOMAS, Circuit Judges.

When this Exxon Valdez litigation was young, Sea Hawk Seafoods became a party to agreements among the plaintiffs providing for the allocation of damages. The Plan of Allocation divided recoveries among groups of plaintiffs. The Distribution Plans allocated recoveries among individual plaintiffs within each

group. In February 2002, the district court approved amended versions of these agreements, and Sea Hawk Seafoods, apparently satisfied with the agreements, did not appeal.

In 2008, the main litigation in this case culminated in the Supreme Court's ruling that Exxon's liability for punitive damages is limited to a ratio of 1-to-1 with respect to compensatory damages. Exxon Shipping Co. v. Baker, 128 S. Ct. 2605, 2634 (2008). The Supreme Court did not consider or discuss the allocation of punitive damages among the plaintiffs. Sea Hawk Seafoods now contends that the Supreme Court's decision controls that allocation and that Sea Hawk Seafoods is entitled to more damages than provided in the agreements.

The district court correctly ruled that the Supreme Court's decision with respect to the extent of Exxon's liability to the plaintiffs did not affect the earlier agreements of the plaintiffs as to the allocation of the damages. The allocation agreements remain "fair, reasonable, and adequate" within the meaning of Federal Rule of Civil Procedure 23(e); the Supreme Court's decision does not alter the fairness of the agreements. Cf. Leroy Land Dev. v. Tahoe Reg'l Planning Agency, 939 F.2d 696, 698-99 (9th Cir. 1991). Moreover, Sea Hawk Seafoods failed to preserve any right to object to the Plan of Allocation or the Distribution Plan in the

not unforeseeable event that damages were to be reduced. See Slaven v. Am. Trading Transp. Co. Inc., 146 F.3d 1066, 1069 (9th Cir. 1998).

Sea Hawk Seafoods also argues that it should be allowed to identify additional compensatory damages in order to qualify for additional punitive damages under the 1-to-1 ratio. This argument is foreclosed by law of the case. The Supreme Court accepted the total relevant compensatory damages to be \$507.5 million. Exxon Shipping, 128 S. Ct. at 2634. Plaintiffs, including Sea Hawk Seafoods, then stipulated in this court to the entry of punitive damages in the amount of \$507.5 million. Sea Hawk Seafoods is not now in a position to ask us to reconsider that amount. Slaven, 146 F.3d at 1069; Leroy Land Dev., 939 F.2d at 699.

AFFIRMED.