

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

Motion to Reconsider<sup>1</sup>

Certain members of the Cannery Claim Category move to reconsider this court's order of November 10, 2010.<sup>2</sup> Because of time constraints involved with making a sixteenth distribution from the Exxon Qualified Settlement Fund (EQSF) by the end of the year, the court made provision for expedited consideration of the cannery workers' motion.<sup>3</sup> In due course, the court received Lead Counsel's response on behalf of the EQSF Administrator,<sup>4</sup> as well as a supporting declaration of Mr. Jamin.<sup>5</sup> The moving cannery workers

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<sup>1</sup>Docket No. 9659.

<sup>2</sup>Docket No. 9658.

<sup>3</sup>Docket No. 9660.

<sup>4</sup>Docket No. 9668.

<sup>5</sup>Docket No. 9669.

replied.<sup>6</sup> Lead Counsel was granted leave to file a surreply.<sup>7</sup> The moving cannery workers filed a notice supplemental authority.<sup>8</sup> The court heard oral argument on November 30, 2010.

While the foregoing motion was developing, the court received and has considered objections to its November 10, 2010, order from John Michael Monasmith<sup>9</sup> and from Richard A. McQuade.<sup>10</sup>

The cannery workers and the court initially treated the matters now before the court as a motion for reconsideration under local rules. In their reply memorandum,<sup>11</sup> the cannery workers made reference to Rules 59 and 60, Federal Rules of Civil Procedure. Inasmuch as the EQSF Administrator's sixteenth application for distribution of funds was and is intended to be a final distribution to all of the claimants covered by the application, including cannery workers whose claims are unimpaired, the court considers its order on the sixteenth application for distribution to be a final order. As a consequence, it will be more appropriate to consider the cannery workers' motion under Rule 59, as explained below.

The cannery workers do not appear to raise any of the grounds for relief set forth in Rule 60(b)(1) through -(5), and while their

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<sup>6</sup>Docket No. 9672.

<sup>7</sup>Docket No. 9677.

<sup>8</sup>Docket No. 9679.

<sup>9</sup>Docket Nos. 9663 & 9665.

<sup>10</sup>Docket Nos. 9652 & 9673.

<sup>11</sup>Reply to Opposition to Motion to Reconsider Order Vacating Distribution of Funds to Cannery Class at 3, Docket No. 9672.

motion for reconsideration could conceivably come under Rule 60(b)(6) (any other reason that justifies relief), what the cannery workers are in fact asking is that the court grant a rehearing as to its order of November 10, 2010.

Pursuant to Rule 59(a)(1), grounds for a new trial in a non-jury matter consist of "any reason for which a rehearing has heretofore been granted in a suit in equity in federal court." Rule 59(a)(2) provides that:

After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

Amplifying on the matter of the grounds for further action in a non-jury matter, the Ninth Circuit Court of Appeals observes in Brown v. Wright, 588 F.2d 708, 710 (9th Cir. 1978), that: "[t]here are three grounds for granting new trials in court-tried actions under Rule 59(a)(2): (1) manifest error of law; (2) manifest error of fact; and (3) newly discovered evidence. 6A Moore's Federal Practice § 59.07 at 59-94."

Because the cannery workers' arguments which commenced with their objections to the EQSF Administrator's sixteenth application for distribution of funds evolved considerably with the filing of the motion for reconsideration and the cannery workers' reply to the EQSF Administrator's opposition, the court concludes that the motion for reconsideration should be treated as a Rule 59(a)(2) matter. The court has in substance granted the cannery workers a new hearing.

The court has completed its analysis of not only the memoranda submitted in connection with the motion for reconsideration, but also all of the underlying documents to which the parties have made reference and some documents going beyond what the parties have discussed. The court concludes that there is no manifest error of fact or law nor is there any new evidence – only new arguments – as to the order of November 10, 2010. Based upon its reexamination of the EQSF Administrator's sixteenth application for distribution of funds, the court again concludes that the application should be granted. The court confirms its order of November 10, 2010.<sup>12</sup> The EQSF Administrator shall proceed as directed by the order of November 10, 2010 (pages 11 to/through 13).<sup>13</sup> The motion for reconsideration is denied.

This summary order is entered at this time so that the EQSF Administrator's authority to proceed as previously ordered will be clear. Within the next week, the court will enter a further order, amplifying the order of November 10, 2010, setting forth the court's reasons for denying the motion to reconsider and for rejecting the individual cannery workers' objections.

DATED at Anchorage, Alaska, this 1st day of December, 2010.

/s/ H. Russel Holland  
United States District Judge

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<sup>12</sup>Docket No. 9658.

<sup>13</sup>The clerk of court need not refile, replicate, nor redistribute the order of November 10, 2010 – which, with attached exhibits scheduling the distribution to be made, runs to nearly 1,000 pages.