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FEB 09 2009

**CLERK, U.S. DISTRICT
COURT**

OPPOSITION TO MOTION OF ALL PLAINTIFFS

In re the EXXON VALDEZ Case No. 3:89-cv-0095 (Consol.)

HONORABLE H. RUSSEL HOLLAND

Larry Powers, pro se, would like to notify the court of opposition to distributing Exxon Qualified Settlement Funds to any claim categories (Docket 8959). The claims administrator was in error when calculating my final percent share and the question as to fairness is now before the Supreme Court of the United States (Docket No. 08-8416). I would like the court to consider this motion in opposition, in an expedited manner. Attached is a copy of the letter written by me to the Supreme Court better describing why I oppose this motion.

 2-4-09
Larry Powers

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Phone 360/379-5390

January 23, 2009

Supreme Court of the United States

1 First Street, N.E.

Washington, DC 20543

RE: Exxon Valdez Case no. 3:89-095-CV (HRH)(Consolidated)

Honorable Court Justices:

My story, actually our story, in that my father-in law, Burton Carver, my father, Carl Powers and I were all financially and actively involved in the everyday operation of the company begins in 1985, when my father-in-law was selling his garbage and school bus businesses. He supplied me quite a bit of equipment such as front end loaders and four wheel drive trucks and helped me build a 54'X80' shop. The next summer we began Cook Inlet Seafood Services. I negotiated a contract with Whitney Foods, an international company with a processing plant based in Anchorage, to purchase salmon in the Cook Inlet region. In 1987, we leased the new Kenai City Dock (we were the first to ever lease it) and operated trucks along Cook

Inlet beaches as buying agents for Whitney Foods. After the season, I signed a long-term lease on several lots bordering the Kenai River just downstream from the Kenai City Dock and Drednet Fisheries for the purpose of building two floating docks for unloading commercial fishing boats as well as winter boat storage.

Our success in 1987 was the foundation for the rapid growth of our business in 1988. I bought and equipped seven additional beach trucks with knuckle booms and operated buying stations at the Kenai City Dock, Salamantof Beach and Cohoe Beach. In addition to Whitney Foods, I negotiated a contract with John Cabot Company, another processor with a plant in Anchorage. My dad and my father-in-law acted as foremen. That summer I bought 2.5 million pounds of salmon. We also provided services to the local fishermen including repairs and aluminum skiff building. During the course of 1988, we employed over 100 people. In 1988, with my help in providing competition in the industry, I broke the record (and still hold it today) for having paid the highest ex-vessel price to Cook Inlet fishermen...\$3.15 per pound for sockeye.

In late 1988, I began negotiations with yet another fish processor, Seafoods From Alaska (SFA), based in Sterling, Alaska. The contract was a seven-year agreement whereas SFA would front \$250,000 to me to build a floating dock attached to the property I had leased on the Kenai River and SFA would lease it back for five years for \$50,000 per year, as my records

showed that was what I was paying the City of Kenai for their dock in 1988. The final two years of the agreement were not included in the leaseback on the dock. They would pay \$50,000 per year after the five years.

The Oil Spill had a profound effect on our business that summer and for many years on into the future. Just like many others the year of the Spill, we were in a state of shock, yet we wanted to do what we could to help. My wife, Dawn, gathered sheets and towels from the community to be used in bird rescue centers. I took a crew of men and two semi-truckloads of aluminum skiffs to Seward to find work with the clean-up efforts. Upon arrival in Seward, I went into Veco's office to talk about putting our resources to work. While I was talking with Bill Allen, one of my crew, a native Alaskan from the Lower Yukon region, Ralph Mailelle, was wandering around on the docks and engaged in a conversation with an Anchorage based TV station present. Bill Allen looked out the window and asked me if that was my crew and boats. When I affirmed. Bill Allen said. "We don't ever talk to the media." That one event proved to be a brick wall to my efforts and it was as if I was blacklisted from employment on the cleanup in Seward, Homer, Kenai and Valdez.

Other tenders who were hired made from \$2000 to \$50,000 per day. (This money was later considered an offset to compensatory monies paid in the settlement under the Plans of Allocation and Distribution, which is deducted from what the tenders share now.). Exxon bought fish totes from my

competitors (at the price of new) to use on the clean up, which they later cleaned and gave back at no charge, causing an imbalance of financial power among the processors and tenders. Another example of this imbalance of power negatively affected the boat-building portion of my business. Exxon brought hundreds of aluminum skiffs and other boats to Alaska for the clean-up effort and auctioned them off for pennies on the dollar when they were finished. My demand for new boats dwindled to nothing. My claim to Exxon reflects none of these losses, as it is hard to put an accurate number on them, but I estimate that my business lost \$750,000 over the next ten years due to market overstock.

On July 11, 1989, Barry Morgan, attorney for Exxon, and I entered into an agreement that Exxon would give me \$90,000 in payment for a release for all losses up to and including July 11, 1989 with both parties agreeing that Exxon would be responsible and pay for any and all losses due to the spill. I have received \$10,000 more money from Alyeska Settlement.

The majority of the fishermen from whom I bought fish were Cook Inlet drift fishermen. They didn't fish in 1989 because of the Oil Spill. The State of Alaska Dept of Fish and Game didn't tell me there would be no fishery until the day before it was to open. I had hired over 100 employees, did the dirt work for two docks on the Kenai River and got all of the permits and leases in place (sub-tidelands from the City of Kenai, Corps of Engineers, as well as engineering from private firms)

I had enough money to proceed on my own with building one of the docks. In 1990 I operated it for Keener Packing. In 1991 and 1992 I operated it for Cook Inlet Processing. Keener Packing, Whitney Foods, John Cabot Company, Dragnet Fisheries Kenai, Columbia Ward Fisheries all went out of business shortly after the Spill. These are companies that I had close relations with and expected to do business with had the spill not happened.

My business was struggling. I had to sell my beach trucks, knuckle booms and other items too numerous to mention. After the 1992 commercial fishing season, I realized that the oil spill had caused much more damage than previously known. My business was being swallowed up by the Seattle Seven and in 1992 I leased my dock property, long term, to Cook Inlet Processing.

Shortly after the oil spilled, I hired a local attorney firm in Soldotna to file suit against Exxon for our losses. That firm ended up partnering with Faegre and Benson, an international law firm. From the beginning, I was assured that the attorneys would represent me to the best of their abilities. In 1996, I was notified that I had a huge win in the case! That was exciting! I didn't really know how much money I would get, but expected it to be at least enough to sufficiently, adequately and fairly compensate me as per the attorneys.

In 1999, I was allowed to supplement my preliminary claim with additional damages. I calculated the financial loss I suffered with the loss of

the SFA contract. This brought my total compensatory claim to \$1,265,834. Unfortunately, my attorneys disagreed with my line of reasoning and would not recognize my supplemental claim.

It wasn't until 2005 when I was actually notified of my final percent share of the Exxon Qualified Settlement Fund (EQSF). Basically, I was offered four cents on the dollar of my original claim amount. I appealed the decision to the special master, Thomas Amodio. With that appeal my original claim was upped a little bit to \$397,715. I appealed again, this time to H. Russell Holland at U.S. District court in Anchorage, and he opined my claim should be \$977,357, even though my attorney, Peter Ehrhardt, misrepresented me by saying that I would forego rent for seven years on the dock. I was to only forego rent for five years at the rate of \$50,000 per year. I appealed again, to the 9th Circuit Court of Appeals. They reaffirmed Judge Holland's decision. The EQSF is now calculating my claim at \$58,000 to compensate me for my \$977,357 claim. I would be happy with \$977,357 at this point to settle my claim. \$58,000 is not reasonable, sufficient, adequate or fair to offset \$977,357.

(Applicable law) *Ficalora V. Lockheed California Corp.*, 751 F.2d 995 (9th Cir. 1985), The court stated:

Before approving a class action settlement, the district court must reach a reasoned judgment that the proposed agreement is not the product of fraud or overreaching by, or collusion among, the negotiating parties and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned parties. Officers for Justice v. Civil Service Comm'n, 688 F.2d 615 at 625 [(9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).]

The Plan of Allocation accommodates valuation of the claims on a case-by-case basis. I also argue that I was not properly notified of the Plan of Allocation and how it would affect me until 2005. I have been objecting to the amount and how it was derived ever since. I believe this is where I was denied due process. When I asked my attorneys how the Plan of Allocation would affect me, they conveyed to me that I would be treated in a fair and balanced manner and that the allocation would be sufficient to compensate me.

Most other tender men in my class worked to help clean up the oil and made record profits that year. Now, 19 years later, they want to offset my compensation with their gross profits and act as if 19 years has not passed, they having the money and me not. This method of calculating and paying for individuals' losses is unfair and discriminatory. I was not contacted

during the plan of allocation and the plan of distribution conception, though I have the largest claim in my category by more than double anyone else.

I seek to be sure that everyone in all classes has the same type of loss as each other. A dollar of loss to me should be valued equally to a dollar lost by anyone else in this litigation. I believe that \$58,000 to compensate me for \$977,357 is neither sufficient, fair, nor adequate or reasonable. Other people in my class and other classes have recovered at a better and different rate than each other, and me, creating deference in calculating different people's losses. My dollars don't seem to be as important as other people in my class and other classes.

Brian O'Neil, of Faegre and Benson, was present when I first went before the EQSF board and recused himself, as he was one of the board members that derived the Plan of Allocation. Even in recusen, he still spoke at the event. I believe there has been collusion amongst the EQSF board and Faegre and Benson, as Brian O'Neil was representing me and was determining the Plan of Allocation which allocated enough to compensate only one other and me out of 400 in the tender class. It is also possible that there is collusion between Faegre and Benson, the EQSF and Exxon. If everyone is taking six cents on the dollar as to their claim, the statement that Faegre and Benson made to me "That the compensatory award was a little small, but the punitive award would be enough to sufficiently compensate "

was an over-exaggeration. I told them back in 2005 that the punitive award was a pie in the sky and could not be counted upon.

In relief, I ask the court to direct the EQSF to pay me at least \$977,357 and reallocate funds from people who have been overpaid to accommodate. I also want to ask the court for interest from 1996 to present on the \$977,357 plus whatever the court deems appropriate for punitive damages. I ask the court to award me reasonable attorneys' fees at the court's discretion. I am also available to be contacted for any questions at 360 921 9829.

In closing, I would like to revisit briefly the Plan of Allocation and Plan of Distribution to fairly, adequately, reasonably and sufficiently compensate me enough to put me back to the point where I was before the Spill. The Plan of Allocation and Plan of Distribution cause a gross disparity in the distribution of funds amongst the parties. I was denied due process because I did not know what my final percent share was and what I would get until 2005. I object to how my claim is being figured. I am being discriminated against.

Sincerely,

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