

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
EXXON CORPORATION, et al.,	)	No. 3:91-cv-0082-HRH
	)	
Defendants.	)	
_____	)	

O R D E R

Motion for Leave to File Amicus Curiae Brief

Professor Richard Steiner moves pro se for an order granting him leave to file an amicus curiae brief in this case.<sup>1</sup> The motion is opposed by all of the parties to this case: the United States, Exxon, and the State of Alaska.<sup>2</sup> Oral argument was scheduled and has been heard.

This case was closed in 1991 by the entry of a consent decree. Paragraphs 17, 18, and 19 of the consent decree<sup>3</sup> held open the possibility of the Exxon Defendants being liable for an additional \$100 million of restoration projects in Prince William Sound as a

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<sup>1</sup>Docket No. 346.

<sup>2</sup>The State of Alaska is plaintiff in Alaska v. Exxon Corp., No. 3:91-cv-0083. The same agreement and consent decree was filed and approved by the court in the environmental litigation commenced by the United States in this case, No. 3:91-cv-0082, and by the State of Alaska in No. 3:91-cv-0083.

<sup>3</sup>See Declaration of Douglas J. Serdahely in Support of Opposition of Defendants Exxon Corporation, et al., to Motion of Richard Steiner for Leave to File Amicus Curiae Brief, Exhibit A, Docket No. 357-2.

consequence of the Exxon Valdez oil spill. In 2006, the United States of America and the State of Alaska (hereinafter "the Governments") delivered to Exxon what they believe to be a valid claim under the reopener provision of the consent decree. In responding to Professor Steiner's motion, ExxonMobil states that it "has no further obligations under the Agreement."<sup>4</sup>

In furtherance of their claim, the Governments have over the past four years commissioned studies in support of their claim, some of which studies have been completed, others of which are nearing completion. The Governments and their trustees have not wanted for funding for the studies because of reserves that are still available from the original settlement of this environmental litigation. Moreover, it would appear to the court that significant funds will remain to carry out remediation projects, if deemed appropriate, irrespective of whether ExxonMobil is or is not liable to the Governments under the reopener provision.

By paragraph 38 of the consent decree, this court retained jurisdiction of the case for purposes of entering such further orders as may appear necessary for enforcement of the consent decree, including the reopener provision. At the present time, however, none of the parties has invoked this jurisdictional provision. While the Governments have lodged a claim with ExxonMobil, no claim has been filed with the clerk of court. This case has long been closed.

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<sup>4</sup>Opposition of Defendants Exxon Corporation to Motion of Richard Steiner for Leave to File Amicus Curiae Brief at 12, Docket No. 356.

Because the case is closed, and because no party has filed any new claim with the court in this case, there is neither an issue nor any cause of action as to which Professor Steiner could serve in an amicus curiae capacity. For the reasons and upon the authorities set forth by all of the parties to this case, Professor Steiner's motion to file an amicus curiae brief is denied.

During the course of oral argument on his motion, Professor Steiner expanded his request, in substance asking the court to reopen criminal proceedings instituted by the United States against Exxon.<sup>5</sup> Like the instant case, the criminal proceedings involving the grounding of the Exxon Valdez have long been closed. Professor Steiner was never a party to the criminal proceedings, and there is no legal basis upon which Professor Steiner might inject himself into the closed criminal proceedings.

On the same day the court heard oral argument on the motion for leave to file an amicus curiae brief in this case, W. Findlay Abbott, a claimant in In re the Exxon Valdez, No. 3:89-cv-0095, filed a pro se petition to be heard as a friend of the court.<sup>6</sup> For the same reasons that the court has rejected Professor Steiner's motion, the petition of Mr. Abbott is also denied.

As a consequence of the filing of Professor Steiner's motion, and in the course of scheduling oral argument on that motion, the court inquired of the parties as to the status of proceedings with respect to the reopener clause of the consent decree. That request

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<sup>5</sup>See United States v. Exxon Corp., No. 3:90-cr-0015.

<sup>6</sup>Docket No. 361.



generated a considerable amount of input which went well beyond the court's inquiry and which might go to the merits of a claim to reopen this case. The merits of any possible claim under the reopener provision of the consent decree are not before the court at this time because there is no cause of action or case pending before the court. The following comments should not be taken by anyone to intimate any view of the court on the merits of a possible reopener claim by the Governments.

Professor Steiner and others have urged that the matter of the Governments' further claim against Exxon/ExxonMobil be resolved. Indeed, there is a public perception that the matter has been unresolved for far too long. In scheduling oral argument, the court has expressed its interest in seeing overall closure of proceedings flowing from the grounding of the Exxon Valdez. The Governments and Exxon all urge the court to let them proceed as they see fit.

The possible reopener claim belongs to the Governments, not the court. The Governments and Exxon have a right to decide for themselves how and when to proceed further with the claim which has been asserted. The court believes that the Governments and Exxon, as much as the public and the court, would welcome an early resolution to the Governments' reopener claim. However, the fact that the development of that claim has taken longer than many would wish does not justify the court in taking action contrary to all of the parties' wishes. Were the court to endeavor to require the parties to take action before they are prepared to do so because of its own perceptions or because of public pressure, the result could preju-

dice some party, and there is no way of knowing in advance who might suffer. The court urges the Governments and their trustees to proceed with all possible speed to complete studies that are underway and any necessary evaluation which they may require.

Although Exxon has stated to the court that it has no further obligations under the consent decree, it is abundantly clear to the court from the representations of all of the parties that they have discussed the claim between themselves and that they are all amenable to continue doing so.

In consideration of the foregoing, the Governments and Exxon will please provide the court with a status report with respect to the reopener provisions of the consent decree on or before September 15, 2011.

DATED at Anchorage, Alaska, this 7th day of March, 2011.

/s/ H. Russel Holland  
United States District Judge