

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JUL 24 2009

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

In re: EXXON VALDEZ,

No. 07-35794

POLAR EQUIPMENT INC., dba Cook  
Inlet Processing, Inc.,

D.C. No. CV-89-00095-HRH

Plaintiff - Appellant,

MEMORANDUM\*

RICHARD NEWBY; MIKE LOPEZ;  
THEODORE JEWELL; LARRY  
POWERS; EAGLE FISHERIES, L.P.A.;  
ESTATE OF SEWARD SHEA AND  
STEVE COPELAND; SEA HAWK  
SEAFOODS, INC.; PLAINTIFFS'  
LIAISON COUNSEL, CO-LEAD  
COUNSEL OR LEAD TRIAL  
COUNSEL; OTHER PLAINTIFFS IN  
CONSOLIDATED CASES,

Plaintiffs - Appellees,

and

NAUTILUS MARINE ENTERPRISES,  
INC.,

Plaintiff - Appellant,

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

v.

EXXON MOBIL CORP.; EXXON  
SHIPPING CO.,

Defendants - Appellees.

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No. 07-35796

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POLAR EQUIPMENT INC., dba Cook  
Inlet Processing, Inc.,

Plaintiff - Appellant,

and

NAUTILUS MARINE ENTERPRISES,  
INC.,

Plaintiff - Appellant,

RICHARD NEWBY; MIKE LOPEZ;  
THEODORE JEWELL; LARRY  
POWERS; EAGLE FISHERIES, L.P.A.;  
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STEVE COPELAND; SEA HAWK  
SEAFOODS, INC.; PLAINTIFFS'  
LIAISON COUNSEL, CO-LEAD  
COUNSEL OR LEAD TRIAL  
COUNSEL; OTHER PLAINTIFFS IN  
CONSOLIDATED CASES,

Plaintiffs - Appellees,

v.

EXXON MOBIL CORP.; EXXON  
SHIPPING CO.,

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.

The appellants, Polar Equipment and Nautilus Marine, were two of the original plaintiffs in this litigation, but they split off from the rest of the plaintiffs' class in 2003 to pursue their claims against Exxon individually. As part of their 2003 agreement with the plaintiffs' class, appellants agreed to release their rights to share in any punitive damages recovery "awarded to and collected by" the class. Appellants now contend that the 2003 agreement should not be given effect because their 2006 settlement with Exxon, to which the plaintiffs' class was not a party, said that Exxon "reassigned and restored" Polar Equipment's and Nautilus Marine's rights to share in the class recovery of punitive damages.

In the 2003 agreement with the plaintiffs' class, however, Polar Equipment and Nautilus Marine agreed to be "bound by the terms and conditions of Order No. 351 and Order No. 352 for all purposes," and they agreed to "[w]aive, relinquish and discharge any right of any nature whatsoever which either of them may have to participate in any distribution of or receive any share of any recoveries by Plaintiffs pursuant to either the Amended Plan of Allocation approved . . . [in] Order No. 351, or the Amended Plan of Distribution of Allocations to the Processor Claim Category approved by the Court in Order No. 352."

In return for giving up their rights to share in any punitive damages recovery by the plaintiffs' class, these appellants were allowed to pursue their claims against Exxon. They settled those claims in 2006 for more than eight million dollars. The appellants do not have to share any of that recovery with the plaintiffs' class but, in return, they remain bound by the terms of the 2003 agreement that they will not share in the punitive damages collected by the rest of the plaintiffs. The appellants' 2006 settlement with Exxon did not affect the validity of the appellants' 2003 settlement with the plaintiffs' class. See Leroy Land Dev. v. Tahoe Reg'l Planning Agency, 939 F.2d 696, 698-99 (9th Cir. 1991).

The district court correctly so held.

AFFIRMED.