

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 04-35182

NO. 04-35183

In re: the EXXON VALDEZ

GRANT BAKER, et al., as representatives of the
Mandatory Punitive Damages Class,
Plaintiffs-Appellees-Cross-Appellants,

v.

EXXON CORPORATION, et al.,
Defendants-Appellants-Cross-Appellees.

On Appeal from the United States District Court
for the District of Alaska

MOTION TO SET ORAL ARGUMENT
BEFORE CHIEF JUDGE SCHROEDER,
JUDGE BROWNING AND
JUDGE KLEINFELD

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Plaintiffs-Appellees/Cross-Appellants respectfully move for expedited setting of oral argument in this matter. While mindful that the growth of the Court's immigration review caseload and other matters has increased the time required to process appeals, Plaintiffs submit that this case deserves a prompt argument, for three reasons.

First, an inordinate amount of time has passed since the underlying events and the jury verdict in issue. The verdict under review was rendered on September 16, 1994. It addressed Exxon's conduct between 1985, when Exxon returned Joseph Hazelwood to duty following his treatment for alcohol abuse, and 1989, when the Exxon Valdez ran aground. The passage of 16-20 years from the events in issue and 11 years from the verdict under review warrants a prompt argument. *Cf. Ortega v. O'Connor*, 146 F.3d 1149, 1166 (9th Cir. 1998) (passage of 17 years since events in issue dictates that "[i]t is time to bring this matter to a conclusion").

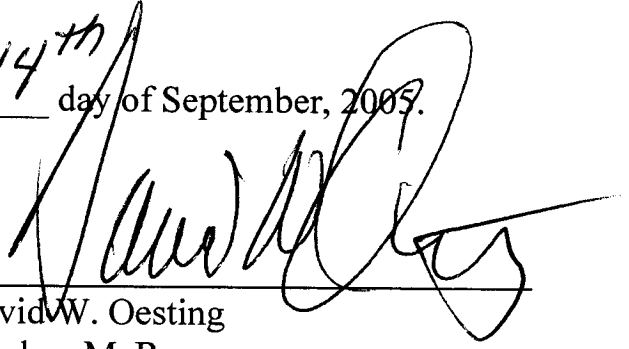
Second, the continued passage of time annually deprives more and more plaintiffs of the right to see this matter brought to a conclusion. The administrative personnel responsible for management of individual plaintiff records have received notification that over 3,300 plaintiffs, approximately 10% of the class, have died in the 16 years following the grounding. There is reason to believe that this figure

substantially undercounts the number of deceased plaintiffs. It is not appropriate that a substantial percentage of plaintiffs will not live to see the end of this litigation.

Third, continued delay steadily reduces the punitive and deterrent effects of the judgment. The 5.9% interest rate on the judgment is substantially less than Exxon's internal rate of return on the funds that it has held while continuing to litigate, which has varied between 13% and 26% since entry of judgment. As a result, the punitive and deterrent effects of the judgment decrease as time passes. Indeed, Exxon earned enough on the withheld judgment amount, net of interest, to pay the judgment with no loss at some point during 2001. The amount Exxon has earned on the judgment amount, net of interest, by continuing to delay the conclusion of this matter has now grown to over \$15 billion.

For the reasons set forth above, prompt oral argument before Chief Judge Schroeder, Judge Browning and Judge Kleinfeld is appropriate in this matter.

RESPECTFULLY SUBMITTED this 14th day of September, 2005.

A large, stylized handwritten signature in black ink, likely belonging to David W. Oesting, is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Set Oral Argument has been served by hand delivery on the 14th day of September, 2005 to the following:

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