

SCOMM

77:39

BIXBY, COWAN & GERRY

Attorneys At Law

P.O. BOX 790

705 2ND AVENUE

CORDOVA, ALASKA 99574

(907) 424-5999

FAX # (907) 424-5357

April 15, 1991

My name is Bill Bixby; I am with the law firm of Bixby, Cowan & Gerry. We represent almost 1,300 commercial fishermen who suffered damage as a result of the Exxon Valdez oil spill.

I have listened to a tele-conference held in Cordova wherein Attorney General Cole seemed to be a little annoyed that individuals who testified asked him questions which were prepared by attorneys. Mr. Cole's position was that the attorneys could address those questions in court and therefore it was somewhat "wrong" for clients to pose those questions to him.

This is only a ploy from Attorney General Cole's part to avoid answering tough questions about the settlement. Mr. Cole knows full well that attorneys such as myself have no standing to bring a motion in court to object to the settlement. It would be akin to any of you on the committee trying to voice an objection of a settlement of an auto accident case of mine. The judge would ask you what business you had sticking your nose into my business.

The problem of standing aside there are also time constraints. The legislature must take action approving or disapproving the settlement in the very near future. As far as I'm aware there are no court hearings scheduled on this matter before the legislature must take action. The tough questions dodged by Mr. Cole must be answered before then if we are to know the meaning of the agreement.

Finally, there is nothing wrong with a client asking you or the Attorney General about the consequences this agreement will have on him. Like most of you, my clients are not lawyers. They can read the agreement but really do not understand the consequences of some of the language in it. Once their attorneys have explained what consequences the language of the agreement could have on them, you can bet your bottom dollar that none of them would ever vote for anyone who approved this settlement in its uncertain form.

Now let me discuss the gravest concern that I have regarding this settlement. It deals with language found in

paragraph 13(c) of the settlement agreement. That paragraph states:

Nothing in this agreement shall affect or impair the following:

c. The rights and obligations, if any, of legal entities or persons other than governments who are the holders of any present right, title, interest in land or other property interest affected by the oil spill.

When attorneys in our office first read that paragraph we had concerns as to the consequences of this paragraph. Our concerns became even greater when Exxon confirmed our suspicions as to how they would interpret this paragraph. We have been told by Exxon that they will not owe money to any fisherman for any damage done to the natural resource (i.e., fish) after the agreement has been adopted by the State. Under their interpretation they have paid the owner (the State) for damage done to the resource. Therefore, they do not have to pay the fishermen except for damages that have been presently accrued to the fishermen. In short, Exxon will not have to pay for damages to the 1991 salmon runs and every salmon run thereafter to fishermen who utilize the resource because they will claim that they have paid the owner (the State) for the damage already via their settlement agreement.

The following example will illustrate the problem. Suppose a client of mine has damages that once they are totally calculated amount to \$100 (for illustrative purposes only). Of that \$100 my client suffered \$30 worth of damage for 1989 and 1990. Under the terms of this agreement my client would only be able to recover the \$30 of damages he has accrued in 1989 and 1990 but will not be able to recoup the rest of his losses as that part of his case has already been settled by the State.

In Cordova, Bobby VanBrocklin posed this question to Attorney General Cole. Mr. Cole referred Bobby to paragraph 32 of the agreement. The last sentence of paragraph 32 says:

Nothing in this agreement, however, is intended to affect legally the claims, if any, of any person or entity not a party to this agreement.

Mr. Cole's reference to this sentence did not truly answer Mr. VanBrocklin's question. He again side-stepped the issue. Going back to my example of the fisherman who suffered \$100 worth of damage, this sentence still gives my client the right to go after his \$30 but still does not allow him to seek the total amount of damage he suffered by the oil spill because of paragraph 13(c) limitations.

Attorney General Cole needs to be pinned down and a definite answer received as to the answer to this question. Does paragraph 13(c) mean that commercial fishermen have no claim for damage to the fish runs after the agreement has been adopted? The agreement needs to be changed to reflect that the fishermen still have the right to go after the total damages incurred by them, i.e., both present and future damages, without interference by the State's settlement agreement.

All we ask is that the agreement reflect this in writing or by having Mr. Cole and all the other parties stipulate to this in open court.

In summary, if this agreement interferes with the right of fishermen to receive total compensation for the damages they have suffered, and will suffer in the future, it needs to be rejected.

Best regards,

William Bixby
BIXBY, COWAN & GERRY

WB/jam