

# TEXAS LAWYER

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## Mediator Settles Exxon Valdez Brawl — Without Counsel

by **BRENDA SAPINO JEFFREYS**

Once mediator Susan Soussan of Houston got the lawyers out of the mix, she was able to coax Exxon Corp. and its insurers to settle a coverage dispute over who should pay for the cleanup of the 1989 Exxon Valdez oil spill.

The bottom line: Exxon will get \$480 million under the terms of a settlement announced Oct. 31.

Soussan, a former state district judge in Houston, says she decided before she flew to London in October for a three-day mediation that getting the business people together without lawyers was probably her best shot at a settlement. Soussan already had been through two rounds of mediations with Exxon and the underwriters, and she says that while the lawyers were not a hindrance, she wanted to go one-on-one with key executives.

"This round we had to focus differently," she says. "There was no way I would ever convince Exxon their legal position was wrong. There was no way I would ever convince the underwriters their legal position was wrong. I know business people need to talk business."

Before flying to London, Soussan met privately with Exxon Chairman Lee

Raymond. Once in London, she met privately with underwriters on Oct. 8 so that she could get a handle on the business concerns of both sides. At that point, she says, she figured that a business deal would be the only way to settle the dispute.

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So she asked the lawyers to step to the sidelines; they had limited involvement.

Exxon's lead lawyer, Donald Bowen, a name partner in Houston's Helm, Pletcher, Bowen & Saunders, says Soussan's plan obviously worked, but he joked it was the first time a client told him to go shopping during a mediation.

Harry Reasoner, managing partner of

Houston's Vinson & Elkins, led the underwriters' legal team. He did not return telephone messages, but V&E partner John Murchison, who also worked on the litigation, agrees that it was unusual to mediate without lawyers.

### Tidy Fees

The settlement calls for the underwriters, a group of about 150 insurers led by Lloyd's of London, to pay Irving-based Exxon \$480 million to settle a civil suit Exxon filed against them in state court in Houston. But it also settles other related litigation over insurance coverage for the Valdez accident: an arbitration in New York and litigation the underwriters filed against Exxon in federal court in New York.

The settlement comes in the wake of a final judgment 189th District Judge Carolyn Marks Johnson of Houston signed in July ordering the insurance companies to pay Exxon \$410.3 million in the civil suit, *Exxon Corp. v. Certain Underwriters at Lloyd's of London*, No. 93-040252. A jury in Johnson's court had found the underwriters should have paid

Exxon for cargo liabilities and expenses from the massive oil spill. The \$480 million is in addition to an earlier \$300 million partial settlement of property-damage claims in the suit following a mediation with Soussan in January.

While Exxon is getting \$480 million, Soussan, of counsel with Oldenettel & McCabe, did not do too badly either. She says she was paid a total of \$140,000 for the three mediations, split equally between the two sides, including \$100,000 plus expenses for a weeklong mediation in North Carolina in October 1995, \$20,000 for the January mediation in Houston, and another \$20,000 plus expenses for the October talks in London. She says the parties set the fee for the North Carolina and London talks, but she set the fee for the Houston session.

Neither Bowen nor V&E partner John Murchison would say how much their firms earned in fees for *Exxon v. Lloyd's*, but the judgment Johnson signed called for Exxon to get \$10.8 million for attorneys' fees and costs through trial. 