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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re)
)
)
the GLACIER BAY,)
_____)

A88-115 CIV.
(Consolidated)
(All Cases)

CASE MANAGEMENT PLAN

TABLE OF CONTENTS

Page

SECTION I

NATURE OF CASE, PARTY IDENTIFICATION AND ABBREVIATED STATEMENT OF CLAIMS

1

1. Nature of Case and Proposed Overall Order of Proceeding

1

- 1.1 Glacier Bay Oil Spill 1
- 1.2 Identification of Issues 1
- 1.3 Adjudication of Case in Phases..... 2
- 1.4 Phase I -- Compensatory Damages Issues..... 2
- 1.5 Phase I Proceedings 3
- 1.6 Phase II -- Liability and Punitive Damages Issues.. 4
- 1.7 Phase II -- Trials 4

2. Identification of Parties

5

2.1 Plaintiffs

5

2.1.1 Drift Netters

5

2.1.2 Set Netters

5

2.1.3 Tenders

5

2.1.4 Seafood Processors

6

2.2 Defendants

6

2.2.1 Vessel Defendants

6

2.2.2 Insurer and Statutory Defendants

7

2.2.3 The TAPS Fund

7

2.2.4 Other Defendants

8

2.2.5 Individual Defendants

8

2.3 United States Government

8

3. Abbreviated Statement of Claims

9

3.1 Basis of Claims

9

3.1.1 Plaintiffs' Claims

9

3.1.2 Defendants' Position on Plaintiffs' Claims

9

1	3.2	Legal Theories	11
2	3.3	Injuries Asserted by Plaintiffs	11
3	4.	Abbreviated Statement of Third-Party Claims	11
4	4.1	Third-Party Claims and Crossclaims for Contribution and Indemnification	11
5	4.2	TAPS' Claims	12
6	4.3	Claims Against the United States Government	12
7	4.4	Claims by the United States Government	12
8	4.5	Claims in the Limitation Action	12
9	4.6	Tesoro's Claims	13
10	4.7	SOHIO's Claims Against West of England	13
11	4.8	SPC's Claims	13
12		SECTION II	
13		JOINT STATEMENT OF ISSUES	14
14	5.	Plaintiffs' Issues	14
15	6.	Defendants' Legal and Factual Issues	14
16	6.1	Issues to be Addressed in Phase I (Compensatory Damages)	14
17	6.2	Issues to be Addressed in Phase II (Liability and Punitive Damages)	15
18	6.3	United States Government's Issues	16
19		SECTION III	
20		GOVERNING RULES AND PROTOCOLS	18
21	7.	Application of Federal Rules of Civil Procedure, Federal Rules of Evidence and the Local Rules of the United States District Court for Alaska	18
22	7.1	Applicable Rules	18
23	7.2	Plan Not Affect Parties' Substantive Rights	18
24	7.3	Leave to Request Relief from Plan	18
25	7.4	Manual for Complex Litigation	19
26	8.	Liaison Counsel	19
	8.1	Appointment	19
	8.2	Changes in Liaison Counsel	19
	8.3	Duties of Liaison Counsel	19

1	8.4	No Admission of Joint Responsibility or Liability from Agreement to Appoint Liaison Counsel	20
2	8.5	Plaintiffs' Liaison Counsel	20
3	8.6	Defendants' Liaison Counsel	20
4	8.7	Government Liaison Counsel	20
5	8.8	Master Service List	21
6	9.	Scheduling of Depositions	21
7	9.1	Deposition Discovery	21
8	9.2	No Multitracking of Depositions Except for Individual Fishermen Plaintiffs.....	23
9	9.3	Usual and Emergency Notice of Depositions.....	23
10	10.	Additional Discovery Procedures Relating to Document Productions	24
11	10.1	Identification System	24
12	10.2	Location for Production of Documents	26
13	10.2.1	Usual Procedures	26
14	10.2.2	Burdensome Production	26
15	10.3	Document Depository	27
16	10.3.1	Optional Election to Use Central Depository Records	27
17	10.3.2	Cost Sharing and Procedures for the Document Depository	27
18	10.4	Use of Stipulations To Identify and Authenticate Documents	27
19	10.4.1	Governed by Federal Rules of Evidence	27
20	10.4.2	Permissive Use of Stipulations	27
21	10.4.3	Preliminary Rulings by Discovery Special Master	28
22	10.5	Disputes Regarding Privileged Documents	28
23	10.5.1	Assertion of Objection	28
24	10.5.2	Nonwaiver of Privilege	29
25	10.5.3	Resolution of Disputes	29
26	11.	Additional Rules Relating to Interrogatories	30
	11.1	Supplementation of General Rules	30
	11.2	Additional Interrogatories Allowed	30

1	11.2.3	Contention Interrogatories	31
2	11.2.4	Repetitive Interrogatories or Requests for Production	31
3	11.2.5	Concurrent Written Discovery Allowed	31
4	11.2.6	Supplementation of Earlier Responses and Answers	31
5	12.	Objections to the Production of Documents, Interrogatories and Admissions and Time for Responding ..	32
6	12.1	Statement of Objections	32
7	12.2	Time for Answering and/or Responding	32
8	13.	Expert Witnesses	33
9	13.1	Expert Witness Identification	33
10	13.2	Expert Witness Depositions	34
11	13.2.1	Primary Expert Depositions	34
12	13.2.2	Rebuttal Expert Depositions	35
13	13.3	Rules Governing Expert Witness Depositions	35
14	14.	Rules Relating to Amending Pleadings and Joinder of Additional Parties	36
15	14.1	Amendment of Pleadings	36
16	15.	Jurisdictional, Dispositive and Summary Judgment Motions	38
17	15.1	Personal Jurisdictional Motions	38
18	15.2	Rule 12 Motions for More Definite Statement, to Strike and Insufficiency of Process or Service	38
19	15.3	Summary Judgment and Dismissal Motions.....	39
20	15.3.1	Phrasing	39
21	15.3.2	Motions for Dismissal and Summary Judgment	39
22	15.3.2.1	Motions Not Requiring Discovery..	39
23	15.3.2.2	Dismissal and Summary Judgment Motions Requiring Discovery.....	39
24	15.4	Additional Phase I Motions Permitted.....	41
25	15.5	Rule 12 Motions by USG	42
26	15.6	Motions for Default Under Rule 55.....	42

1	16. Resolution of Discovery Disputes	42
2	16.1 Discovery Conferences	42
3	16.1.1 Compliance Requirements	42
4	16.1.2 Obligation to Confer	42
5	16.1.3 Exceptions to Obligation to Confer and Filing of Statement of Disagreement	43
6	17. Appointment of Discovery Special Master	44
7	17.1 Selection of Master	44
8	17.2 Compensation of Discovery Special Master	44
9	17.3 Duties of the Discovery Special Master	45
10	17.3.1 Initial Ruling on Discovery Disputes	45
11	17.3.2 Presentation of Discovery Disputes to Master	45
12	17.3.2.1 Filing	45
13	17.3.2.2 Timing of Hearing of Discovery Disputes	46
14	17.3.2.3 Hearings	46
15	17.3.2.4 Rulings by Master	47
16	17.3.3 Appeals from Decisions of the Discovery Special Master	47
17	17.3.3.1 Finality	47
18	17.3.3.2 Written Decision Filed With Court	48
19	17.3.3.3 Appellate Procedure	48
20	17.3.3.4 Stay Pending Appeal	48
21	17.3.3.5 General Rule 5 Applies to Appeals	49
22	18. Coordination with State Proceedings	49
23	18.1 Proceedings Involving Individual Plaintiffs	49
24	18.2 State of Alaska Action	49
25	SECTION IV	
26	19. Phase I: Discovery and Trial of Private Plaintiffs and the USG's Compensatory Damage Claims	50
	19.1 Scope of Proceedings in Phase I.....	50
	19.2 Case Management Goals of Phase I.....	50
	19.3 USG's Compensatory Damage Trial.....	50
	19.4 Duration and Selection of Plaintiffs for Trial.....	51

1	19.4.1	January 30, 1990	51
2	19.4.2	May 30, 1990	51
3	19.4.3	June 30, 1990	52
4	19.4.4	Reasonable Efforts to Select Representative Plaintiffs	52
5	19.4.5	Substitution of Plaintiffs	52
6	19.4.5.1	Plaintiffs Selected by Plaintiffs Under § 19.4.1	53
7	19.4.5.2	Replacement of Plaintiffs Designated by the Defendants Under § 19.4.2	54
8	19.4.5.3	Replacement or Alteration of Groups	55
9	20.	First Round of Discovery in Phase I	56
10	20.1	Commencement	56
11	20.2	Scope of Discovery in Initial Round	56
12	21.	Second Round of Discovery in Phase I	56
13	21.1	Commencement	56
14	21.2	Scope of Discovery in Second Round	56
15	22.	Third Round of Discovery in Phase I	57
16	22.1	Duration	57
17	22.2	Scope	57
18	22.3	Scheduling of Expert Depositions	57
19	23.	Expansion of Time Allowed for Discovery or Modifications of Plan	58
20	24.	Preparation and Lodging of Pretrial Order	58
21	24.1	Schedule	58
22	24.2	Simplified Pretrial Order	58
23	24.2.1	Purpose	58
24	24.2.2	Contents	59
25	24.2.2.1	Witness Identification	59
26	24.2.2.2	Exhibit Identification	59
	24.2.2.3	List of Admitted Facts	59
	24.2.2.4	List of Issues to be Resolved	59

1	25. Establishment of Deadlines for Pretrial Motions,	
2	Submission of Pretrial Order, and Filing Jury	
	Instructions and Motions in Limine	60
3	25.1 Deadlines for Filing Pretrial Motions	60
	25.2 Jury Instructions	60
4	25.3 Exhibits, Witness Lists and Trial Briefs	60
	25.4 Lodging Pretrial Order	61
5	26. Setting Trial Date	61
6	27. Post Trial Discovery on Remaining Plaintiffs' Claims.....	61
7	28. Summary Adjudications by the Court of Remaining	
8	Compensatory Damage Claims	61
9	Appendix A - Proposed Protective Order	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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CASE MANAGEMENT PLAN

SECTION I

NATURE OF CASE, PARTY IDENTIFICATION AND
ABBREVIATED STATEMENT OF CLAIMS

Pursuant to the Court's Pretrial Order Number 1 (herein "PTO 1"), the parties, by and through their respective counsel, submit the following Case Management Plan ("Plan") for the future conduct of and fair administration of this proceeding and its just resolution.

1. Nature of Case and Proposed Overall Order of Proceeding.

This Section of the Plan is designed to give the court an overview of the parties' proposal for managing this consolidated action. This Section is not intended to control other, more specific provisions of the Plan nor to affect the terms of other stipulations or agreements between and among the parties being contemporaneously presented to the court. The stipulations and the Plan are, however, mutually dependent; the parties' agreements will be deemed null and void unless the court adopts the Plan and approves the stipulations.

1.1 Glacier Bay Oil Spill. These consolidated actions arise out of an oil spill in July 1987 involving the Tanker Vessel Glacier Bay.

1.2 Identification of Issues. The parties have identified in Section II the issues which each currently believes exist. The parties reserve the right to identify

1 additional issues from time to time for incorporation
2 into any pretrial order the court enters under Fed. R.
3 Civ. P. 16.

4 1.3 Adjudication of Case in Phases. In order to simplify
5 resolution of this action, the parties propose to the
6 court that the action be divided into two phases, the
7 first focusing on plaintiffs' and the United States'
8 compensatory damage claims, and the second on plaintiffs'
9 punitive damage and any remaining statutory or common law
10 claims and the contribution, reimbursement, subrogation
11 and indemnity claims of the various defendants and
12 third/fourth-party defendants inter se.

13 1.4 Phase I -- Compensatory Damages Issues. The focus of
14 Phase I will be:

- 15 a) Which plaintiffs may properly assert claims for
16 compensable damages;
17 b) Which of plaintiffs' damage claims are legally
18 cognizable; and
19 c) What evidence exists to substantiate such claims.

20 To facilitate this proceeding, and in accordance with and
21 subject to the terms of the Case Management Stipulation
22 submitted contemporaneously herewith, West, Trinidad, and
23 The TAPS Fund will stipulate to facts giving rise to
24 strict liability against them under TAPAA, and Trinidad
25 and SOHIO, solely as a guarantor of Trinidad under state
26 law, will stipulate to facts giving rise to strict

1 liability under AS 46.04.040 and 46.03.822. Motion
2 practice, discovery, trials and summary adjudications
3 will be limited to the issues presented by those
4 questions, and the parties will, consequently, avoid
5 liability discovery. Phase I discovery shall begin
6 around November 21, 1989 and be completed by October 15,
7 1990.

8 1.5 Phase I Proceedings. Phase I of the Plan is primarily
9 designed to bring the plaintiffs' and United States'
10 compensatory damage claims into a settlement posture at
11 the earliest possible opportunity. Plaintiffs and
12 defendants have differing views on plaintiffs'
13 entitlement to recover and the quantum of certain
14 elements of compensatory damages they seek in this
15 action. Accordingly, to the extent claims are not
16 settled, the parties propose proceeding with three
17 separate jury trials involving approximately forty-eight
18 (48) plaintiffs, fairly divided among the various
19 plaintiff groups (as set forth in § 2.1), and a bench
20 trial of the United States' affirmative claims (in
21 accordance with § 19.3, infra) in Phase I leading to Rule
22 54(b) judgments on the amount of various plaintiffs' and
23 the United States' compensatory damages. The parties
24 will, thereafter, begin submitting the remaining claims
25
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1 for summary adjudication by the court pursuant to the
2 terms of this Plan. There will be limited discovery
3 allowed on such claims. In such proceeding, the court
4 shall be guided by the jury verdicts in the various
5 Phase I trials.

6 1.6 Phase II -- Liability and Punitive Damages Issues. The
7 focus of Phase II will be to address all liability
8 issues, including any remaining compensatory damage
9 issues not resolved in Phase I, plaintiffs' right to
10 recover punitive damages against Trinidad, West of
11 England, J. Nichols and ITOPF as well as trial of the
12 defendants' and third/fourth-party defendants' damage,
13 reimbursement, subrogation, indemnity and contribution
14 claims. Plaintiffs, as part of this Plan, agree to
15 dismiss with prejudice all punitive damage claims against
16 all present defendants other than West and Trinidad. The
17 parties will begin conferring with respect to a plan for
18 the conduct of discovery and trial in that Phase within
19 ninety (90) days of the completion of the third trial of
20 Phase I. However, discovery can begin in Phase II ninety
21 days after the third Phase I trial regardless of whether
22 the parties have yet agreed on a plan.

23 1.7 Phase II Trials. The parties shall confer, in connection
24 with the Phase II planning process, with respect to how
25 trials should proceed in that Phase.
26

1 2. Identification of Parties.

2 2.1 Plaintiffs. Plaintiffs are individual fishermen, tenders
3 and processors, all of whom claim to have sustained
4 damage because of the effects of the spill. There will
5 be about 700 individual claims joined in this
6 consolidated action. The defendants are removing all
7 related state actions, and the parties will proceed with
8 all discovery in this proceeding, other than the State of
9 Alaska action which will remain in state court. For
10 purposes of this proceeding, the plaintiffs can be
11 generally grouped as follows:

12 2.1.1 Drift Netters--are those 1987 permit holders in
13 Upper Cook Inlet joined in this proceeding, and
14 others claiming under these permit holders, who
15 use medium-size fishing vessels equipped with
16 gill nets which the fisherman drift.

17 2.1.2 Set Netters--are those 1987 permit holders in
18 Upper Cook Inlet joined in this proceeding, and
19 others claiming under these permit holders, who
20 set their gill nets at or near the shore.

21 2.1.3 Tenders--are those joined in this proceeding who
22 purchased fish in 1987 from Drift Netters or Set
23 Netters and sold the fish to Seafood Processors.

1 2.1.4 Seafood Processors--are those joined in this
2 proceeding who purchased fish in 1987 from Drift
3 Netters, Set Netters and/or Tenders and who
4 prepared the fish for delivery to third-party
5 purchasers.

6 2.2 Defendants. Defendants are parties whom plaintiffs
7 and the United States (herein "USG") claim bear liability
8 for the oil spill under federal and state common and
9 statutory laws. Defendants can generally be grouped as
10 follows:

11 2.2.1 Vessel Defendants--defendants who have been
12 joined in this proceeding because of plaintiffs'
13 and/or the USG's allegations that they had some
14 interest by charter in T/V Glacier Bay. These
15 include: Kee Leasing, Inc. ("Kee"); Mathiasen's
16 Tankers Industries, Inc. ("Mathiasen"); Glacier
17 Bay Transportation Corporation ("GBTC"); and
18 Trinidad Corporation ("Trinidad") (collectively
19 "The Owner Interests"). Trinidad entered into a
20 Tanker Time Charter Party for the vessel with
21 S.P.C Shipping, Inc. ("SPC") ("the Time
22 Charterer") on or about June 27, 1986, and SPC
23 entered into a Tanker Voyage Charter Party on
24
25
26

1 June 27, 1986, with Tesoro Alaska Petroleum
2 Company ("Tesoro"). Tesoro owned the oil spilled
3 by the Glacier Bay. The USG has also sued
4 Glacier Bay, in rem.

5 2.2.2 Insurer and Statutory Defendants--defendants who
6 have been joined in this proceeding because of
7 plaintiffs' allegations that they provided
8 insurance coverage or have statutory liability
9 for damages resulting from the spill. These
10 include: West of England Ship Owners Mutual
11 Protection & Indemnity Association (Luxembourg)
12 ("West of England"); and the Standard Oil Company
13 ("SOHIO").

14 2.2.3 The TAPS Fund. The Trans-Alaska Pipeline System
15 Fund ("The TAPS Fund") is a non-profit
16 corporation which was created by the Act of
17 Congress that authorized the construction of the
18 Trans-Alaska Pipeline. Pursuant to that
19 legislation, the Fund is, subject to certain
20 defenses and liability limits, strictly liable
21 for economic damage claims arising from the
22 discharge from a vessel of oil that has been
23 loaded at the terminal facilities of the Trans-
24 Alaska Pipeline.

1 2.2.4 Other Defendants--defendants and third-party
2 defendants who have been joined in this
3 proceeding because of plaintiffs' or defendants'
4 allegations that they may bear some liability for
5 the spill and/or its cleanup. These include:
6 Kenai Pipeline Company ("KPL"); and Cook Inlet
7 Resource Organization ("CIRO") and its members.

8 2.2.5 Individual Defendants--defendants who have been
9 joined in this proceeding because of plaintiffs'
10 and/or the USG's allegations that they were
11 personally responsible for the spill. These
12 include: Mark Hawker (the vessel's master) and
13 Andrew Subcleff (the vessel's pilot at the time
14 of the incident).

15 2.3 United States Government--The USG seeks affirmative
16 recoveries against various defendants and fourth-party
17 defendants, including the Glacier Bay, in rem, on behalf
18 of the U.S. Coast Guard ("USCG") and the National
19 Oceanographic and Atmospheric Administration ("NOAA"),
20 both of which claim to have expended monies totalling
21 approximately \$2 million in pollution cleanup costs.
22 Three of the defendants, Trinidad, Tesoro, and West of
23 England, have filed actions against the USG, alleging the
24 USG caused or contributed to the oil spill as a result of
25 allegedly defective surveys and charts.
26

1 3. Abbreviated Statement of Claims.

2 3.1 Basis of Claims.

3 3.1.1 Plaintiffs' Claims. On July 2, 1987, the Tanker
4 Vessel Glacier Bay struck a submerged rock as the
5 vessel anchored in Cook Inlet, Alaska. The
6 Glacier Bay discharged crude oil on that day and
7 for several days thereafter. Plaintiffs claim
8 that the Glacier Bay discharged between 150,000
9 and 207,564 gallons, which plaintiffs allege
10 caused environmental damage and financial injury
11 to the plaintiffs.

12 3.1.2 Defendants' Position on Plaintiffs' Claims.

13 Defendants believe the amount of crude oil
14 discharged from the Glacier Bay did not exceed
15 60,000 gallons and contend that the economic loss
16 damages sought by plaintiffs are for less in the
17 aggregate than the plaintiffs claim.

18 3.2 Legal Theories. Plaintiffs assert a number of legal
19 theories including:

20 3.2.1 Strict liability under 43 U.S.C. §§ 1651-55
21 against Trinidad, Kee, West of England, GBTC, SPC
22 and SOHIO as alleged owners/operators of the
23 vessel;

24 3.2.2 Strict liability of The TAPS Fund under 43
25 U.S.C. §§ 1651-55;
26

- 1 3.2.3 Strict liability of Trinidad, Kee, GBTC,
2 Mathiasen, SPC, SOHIO, Tesoro, CIRO, West of
3 England, and Subcleff under AS 46.03.822 for
4 allegedly owning and/or having control over the
5 oil which spilled;
6 3.2.4 Common law abnormally dangerous activities (the
7 production, transportation, refining and handling
8 of crude oil) against all defendants except The
9 TAPS Fund;
10 3.2.5 Common law negligence of all defendants, except
11 The TAPS Fund, in the loading, transportation and
12 handling of crude oil and in the cleanup,
13 prevention and containment efforts following the
14 spill;
15 3.2.6 Common law nuisance and trespass claims against
16 all defendants, except The TAPS Fund.
17 3.2.7 Claims against West of England as beneficiaries
18 of its insurance contract with Trinidad;
19 3.2.8 Punitive damage claims arising out of the spill
20 and the cleanup thereof against Trinidad;
21 3.2.9 Punitive damage claims arising out of the cleanup
22 and bad faith claims settlement practices against
23 West of England; and
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1 3.2.10 Punitive damage claims arising out of the cleanup
2 and bad faith claims settlement practices against
3 J.P. Nichols, and, his employer, International
4 Tankers Owners Pollution Federation ("ITOPF") and
5 possibly others not presently parties to this
6 litigation.

7 3.3 Injuries Asserted by Plaintiffs. Plaintiffs claim each
8 individual plaintiff sustained damage involving, in
9 various ways, all or some of the following: closed,
10 restricted and cancelled fishing periods; fouled gear;
11 additional labor expense; loss of income due to
12 disruption of fishing; drop in price; impacts from glut
13 of fish and processing slowdowns due to the oil spill;
14 lost profits; and emotional distress. Plaintiffs only
15 seek punitive damages against Trinidad, the West of
16 England, Nichols and ITOPF.

17 4. Abbreviated Statement of Third-Party Claims.

18 4.1 Third-Party Claims and Crossclaims for Contribution and
19 Indemnification. Various defendants and third-party
20 defendants have asserted claims for their own damages and
21 for indemnification and contribution against all or some
22 of the other defendants and third-party defendants.
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- 1 4.2 TAPS' Claims. In the event The TAPS Fund is required to
2 make payment to one or more plaintiffs, The TAPS Fund
3 will seek to recover such payments from one or more
4 defendants and third-party defendants.
- 5 4.3 Claims Against the United States Government. One or more
6 of the defendants will claim that NOAA negligently failed
7 to survey and properly chart the waters in which the
8 spill occurred and that such negligence was either the
9 sole cause or a proximate cause of the plaintiffs'
10 damages and/or damages of one or more defendants.
- 11 4.4 Claims by the United States Government. The USG will, on
12 behalf of the USCG and NOAA, seek to recover from one or
13 more defendants and third/fourth-party defendants for
14 approximately \$2 million in cleanup and response costs
15 the USG allegedly incurred. The USG claims under the
16 Trans-Alaska Pipeline Authorization Act ("TAPAA"), 43
17 U.S.C. § 1653(c); the Federal Water Pollution Control Act
18 ("FWPCA"), 33 U.S.C. § 1321; the Refuse Act, 33 U.S.C.
19 § 407; and general maritime and federal common law. In
20 addition, the USG seeks contribution under general
21 maritime law.
- 22 4.5 Claims in the Limitation Action. It is expected that one
23 or more of the defendants and third-party defendants will
24 assert claims in the limitation action filed by Trinidad
25 in this court.
- 26

1 4.6 Tesoro's Claims. Tesoro has asserted that West of
2 England and The TAPS Fund are liable to Tesoro for its
3 clean up costs pursuant to 43 U.S.C. § 1653(c)(1) and
4 that SOHIO is liable for Tesoro's clean up costs pursuant
5 to AS 46.03.823. Tesoro has asserted claims under its
6 charter party against SPC which the parties have agreed
7 to litigate, if necessary, in Phase II.

8 4.7 SOHIO's Claims Against West of England. SOHIO has
9 tendered to West of England all claims asserted against
10 it in connection with its issuance of a statement of
11 financial guarantee under AS 46.03.822, and West of
12 England has agreed to accept the tender and fully
13 indemnify SOHIO for those claims.

14 4.8 SPC's Claims. SPC has asserted claims against Trinidad
15 and West of England arising from the Time Charter Party
16 between or involving those parties which the parties have
17 agreed to litigate, if necessary, in Phase II.

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The following is a list of the major legal and factual issues in this proceeding as presently viewed by each of the parties. The parties reserve the right to supplement and revise this list as discovery proceeds.

5.1 What amount of damage suffered by each of the individual plaintiffs was caused by the defendants?

5.3 Whether correspondence between the defendants and the Bradbury, Bliss firm concerning the cleanup and subsequent handling of claims are discoverable?

6. Defendants' Legal and Factual Issues.

6.1.1 What law governs plaintiffs' claims?

6.1.3 Are the claims of second-tier claimants recoverable under (a) TAPAA or (b) the Alaska strict liability statute?

- 1 6.1.4 What types of damages (e.g. emotional distress)
2 are recoverable by plaintiffs under (a) TAPAA or
3 (b) the Alaska strict liability statute?
4 6.1.5 Are claims for prejudgment and post-judgment
5 interest, disbursements, costs and/or attorneys'
6 fees recoverable under (a) TAPAA or (b) the
7 Alaska strict liability statute?
8 6.1.6 Have plaintiffs adequately established (a) their
9 claimed damages and (b) that their claimed
10 damages were proximately caused by the Glacier
11 Bay oil spill?
12 6.1.7 Were plaintiffs' alleged damages caused by any
13 other event or events?
14 6.1.8 What defenses may be asserted to plaintiffs' and
15 the USG's claims?
16 6.1.9 What is the amount of the USG's recoverable
17 damages for pollution cleanup costs and expenses?
18 6.1.10 Is the USG entitled to recover the full amount of
19 its "actual" pollution costs and expenses, or,
20 alternatively, only "reasonable" costs and
21 expenses?
22 6.1.11 What is the applicability of AS 09.17.010-900,
23 09.30.065, and 09.30.070?

24 6.2 Issues to be Addressed in Phase II (Liability and
25 Punitive Damages).

- 26 6.2.1 Under TAPAA, from whom may The TAPS Fund recover
 for claims it has paid?

- 1 6.2.2 What defendants are liable to plaintiffs under
2 the TAPAA, Alaska strict liability statutes,
3 common law, or general maritime law?
4 6.2.3 What defendants are liable to plaintiffs for
5 negligence, and what is the comparative
6 negligence of each defendant?
7 6.2.4 What defendants are liable to plaintiffs under
8 the doctrine of ultra-hazardous activity?
9 6.2.5 What defendants are liable to plaintiffs for
10 nuisance?
11 6.2.6 To what extent are the rights and obligations of
12 any party affected by the Limitation of Liability
13 Act?
14 6.2.7 To what extent, if any, are Trinidad, the West of
15 England, or other persons not presently parties
16 liable for punitive damages?

17 6.3 United States Government's Issues.

- 18 6.3.1 What is the nature and extent of liability of
19 certain defendants for damages under TAPAA in
20 excess of \$14 million?
21 6.3.2 What is the interrelationship of the various
22 statutes and causes of action pled by plaintiffs
23 and the USG and the extent of liability of
24 various defendants for damages (i) up to and
25 including \$14 million; (ii) in excess of \$14
26

million but below \$100 million; and (iii) in excess of \$100 million?

6.3.3 What is the relative priority of parties to first payment of damages from The TAPS Fund?

6.3.4 Do the parties who have filed a petition for limitation of liability have any right to do so, and, if so, are those parties entitled on the merits to exoneration from or limitation of liability?

6.3.5 What is the liability and amount of damages owed to the USG by each of the parties sued by the USG on its claims?

6.3.6 Are any of the claims asserted against the USG jurisdictionally barred as a result of the discretionary function exception to the waiver of sovereign immunity?

GOVERNING RULES AND PROTOCOLS

7.1 Applicable Rules. Unless specifically superseded by this Plan or by any other orders entered by the court, all discovery, pretrial, trial and other procedural matters shall be undertaken in accordance with the Federal Rules of Civil Procedure (herein "Federal Rules"), the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules, the Federal Rules of Evidence, and the Local Rules of the United States District Court for Alaska (herein usually referred to as "General Rules" or "Local Rules") to the extent applicable. Unless otherwise modified by any subsequent order entered by the court, the procedural requirements of PTO 1 are incorporated herein and made a part hereof.

7.2 Plan Not Affect Parties' Substantive Rights. Nothing set forth in this Plan shall be deemed to affect any substantive right, defense or claim, to constitute any admission of fault or liability or to waive any claim, defense or substantive right by or of any party hereto, except as otherwise expressly provided herein.

7.3 Leave to Request Relief from Plan. Subject to the requirements of the Federal Rules, Local Rules or

governing substantive law, nothing in this Plan shall preclude the parties from seeking leave of court to request relief from the operation or effect of this Plan.

7.4 Manual for Complex Litigation. The parties and the Discovery Special Master shall be guided by the Manual for Complex Litigation (Second) ("MCL").

8. Liaison Counsel.

8.1 Appointment. The plaintiffs and defendants shall each, respectively, designate one or more lawyers who shall serve as liaison counsel with the court, each other and the USG's counsel.

8.2 Changes in Liaison Counsel. The parties may change their respective designation of liaison counsel from time to time by giving all parties and the court ten days written notice thereof in the manner provided by PTO 1.

8.3 Duties of Liaison Counsel. Liaison counsel shall have the following duties:

8.3.1 Maintain and distribute to their respective co-counsel and opposing liaison counsel an up-to-date service list upon request;

8.3.2 Receive and distribute, as appropriate, court orders, pleadings and correspondence;

8.3.3 Coordinate with opposing liaison counsel, USG counsel, counsel for The TAPS Fund, if specifically requested, and others not so

1 represented, appropriate and reasonable times for
2 scheduling discovery, hearings and pretrial
3 conferences; and

4 8.3.4 Undertake such other responsibilities as their
5 respective co-parties may request or which may be
6 directed by the court.

7 8.4 No Admission of Joint Responsibility or Liability from
8 Agreement to Appoint Liaison Counsel. Any party's
9 agreement to proceed with liaison counsel shall not
10 constitute any admission of joint responsibility or
11 liability for the actions or omissions of any party
12 represented by liaison counsel.

13 8.5 Plaintiffs' Liaison Counsel. Plaintiffs have appointed
14 Brian O'Neill of the law firm of Faegre & Benson as
15 plaintiffs' Liaison Counsel.

16 8.6 Defendants' Liaison Counsel. Defendants have appointed
17 John Treptow of the law firm of Atkinson, Conway & Gagnon
18 as defendants' Liaison Counsel.

19 8.7 Government Liaison Counsel. In all matters relating to
20 the USG, R. Michael Underhill, or another attorney from
21 the Department of Justice, Torts Branch, shall represent
22 the interests of the USG and shall perform all duties
23 that normally would be owed to other litigants in a civil
24 action. The Department of Justice Attorney assigned as
25 USG Liaison Counsel (presently R. Michael Underhill) will
26

1 perform the same duties for the USG as performed by the
2 Liaison Counsel for plaintiffs and defendants.

3 8.8 Master Service List. All liaison counsel shall be added
4 to the Master Service List maintained by the court clerk,
5 if not already included.

6 9. Scheduling of Depositions.

7 9.1 Deposition Discovery. To the maximum extent possible,
8 all deposition discovery in this matter shall be
9 scheduled at a time and place most convenient to counsel
10 and the witnesses involved. In the absence of an express
11 agreement of the parties or third-party objections, the
12 following guidelines shall control such discovery:

13 9.1.1 Depositions of Alaska-based party witnesses shall
14 be scheduled in Anchorage, Alaska.

15 9.1.2 Unless otherwise agreed, depositions of non-
16 Alaska based party witnesses shall be scheduled
17 in a large metropolitan city of the state in
18 which the witness resides which has major air
19 line service to and from Anchorage. The parties
20 may ask the Discovery Special Master to establish
21 further guidelines on the conduct on such
22 discovery.

23 9.1.3 Depositions of third-party nonexpert witnesses,
24 unaffiliated with any party hereto, shall be
25
26

1 scheduled in accordance with the previous two
2 sections wherever reasonably possible.

3 9.1.4 Absent express agreement of the deponent and
4 attending parties, all depositions shall commence
5 no earlier than 9:30 a.m and conclude for that
6 day no later than 5:00 p.m., with reasonable
7 breaks to accommodate the witness, counsel and
8 the court reporter. Any party which anticipates
9 conducting a multi-day deposition of a witness
10 shall notify all parties thereof in its notice,
11 and every effort shall be made to complete such
12 deposition at the designated location and within
13 the agreed time to avoid the necessity of
14 reproducing a witness for later deposition. If
15 any other party attending the deposition believes
16 that its examination may extend the deposition
17 beyond the notice period, that party shall notify
18 all other parties in writing thereof at the
19 earliest possible time before the deposition is
20 scheduled to begin.

21 9.1.5 To the extent possible, Liaison Counsel and
22 counsel for the USG shall attempt to schedule
23 depositions of designated experts for the parties
24 either in Seattle, Washington or Anchorage,
25 Alaska. The party or parties whose expert(s) is
26

1 or are being deposed shall ordinarily be
2 responsible for paying the expert's fees for
3 attending the deposition, including airfare,
4 lodging and other ordinary reasonable expenses.

5 9.1.6 A party may take depositions by video tape, if
6 special notice is given of such intention. The
7 party requesting to video tape the deposition
8 shall bear all costs of production, and the court
9 reporter shall prepare a written transcript at
10 the expense of that party. Each party requesting
11 a copy of the video tape or written transcript
12 shall bear the usual and ordinary copying charges
13 for such.

14 9.1.7 Depositions shall be taken on no more than ten
15 (10) court days for every twenty (20) court days.
16 The parties shall attempt to divide their time
17 equitably.

18 9.2 No Multitracking of Depositions Except for Individual
19 Fishermen Plaintiffs. Depositions may not be scheduled
20 simultaneously except in the case of individual fishermen
21 plaintiffs which, after the first group of such
22 depositions have been taken, should be taken as
23 expeditiously as possible.

24 9.3 Usual and Emergency Notice of Depositions. Ordinarily,
25 all depositions shall be noted at least twenty (20) days
26

1 in advance. If a witness becomes ill or it becomes clear
2 that a witness will not be available for discovery or
3 trial unless his or her deposition is promptly taken, a
4 party may note a deposition on shorter notice. Leave
5 must be secured from the Special Discovery Master only
6 where a party objects to such emergency discovery. Even
7 in such emergency situations, Liaison Counsel and counsel
8 for the USG shall make every effort to schedule the
9 deposition at the most convenient time and place for
10 counsel and the witness.

11 10. Additional Discovery Procedures Relating to Document
12 Productions.

13 10.1 Identification System.

14 10.1.1 All documents produced, except the claims files
15 provided by the plaintiffs through informal
16 discovery, will be sequentially numbered using a
17 Bates stamp, computerized labels or similar
18 marking system by the party producing the
19 document.

20 10.1.2 Each party will use the prefix agreed upon
21 between Liaison and USG Counsel plus a number
22 intended to give the document a means of unique
23 identification. In the case of the plaintiffs,
24 documents produced by an individual plaintiff
25 (other than claims files referenced in § 10.1.1)
26 shall be produced in such manner that the

1 documents can be identified as that person's
2 records (e.g., use of the plaintiff's last name,
3 where unique, together with the identifying
4 number). Plaintiffs and defendants shall also
5 mark each record produced (other than claims
6 files referenced in § 10.1.1) by marking the
7 document with the "P" or defendant specific
8 prefix and any additional suffix necessary to
9 identify the source of the document (e.g., "CG"
10 would mean that plaintiffs secured the record
11 from the U.S. Coast Guard). Liaison and USG
12 counsel shall reach written working agreements
13 and provide same to all parties setting forth the
14 necessary identifying information to avoid
15 confusion, delay and prejudice to any party.

16 10.1.3 All documents obtained from a third party in the
17 course of discovery or through a Rule 45 subpoena
18 shall be marked and numbered in a fashion similar
19 to that provided in § 10.1.2, except the parties,
20 through their respective Liaison Counsel, shall
21 agree upon a prefix designation in advance for
22 that party's records. The party subpoenaing
23 records from a third party shall bear the
24 responsibility of making sure that such documents
25 are properly marked.
26

1 10.1.4 The identifying number for a record or document
2 shall not be assigned to more than one document,
3 and that unique number shall be used thereafter
4 for all discovery and trials in these
5 proceedings.

6 10.2 Location for Production of Documents.

7 10.2.1 Usual Procedures. In responding to a Request for
8 Production of Documents, a party shall not be
9 obliged to produce more than two sets of copies
10 of all responsive documents. One set shall be
11 for plaintiffs and one for defendants. Documents
12 shall be made available for inspection either at
13 location(s) upon which the parties mutually agree
14 and/or a document depository, whichever the
15 requesting party desires. Each party shall
16 ordinarily bear the cost of copying and
17 reasonable staff charges for assembling, stapling
18 and copying its own documents.

19 10.2.2 Burdensome Production. If a party feels that
20 compliance with § 10.2.1 would be unduly
21 burdensome, it may ask any requesting party to
22 share the cost of copying and assembling the
23 documents. Disputes regarding such matters shall
24 be handled as a discovery dispute in accordance
25 with the procedures set forth in this Plan.
26

1 10.3 Document Depository.

2 10.3.1 Optional Election to Use Central Depository
3 Records. Either plaintiffs or defendants may
4 establish a document depository at a location in
5 Anchorage, Alaska.

6 10.3.2 Cost Sharing and Procedures for the Document
7 Depository. The parties electing to create a
8 document depository shall be solely responsible
9 for paying the cost thereof and shall abide by
10 whatever procedures upon which such parties agree
11 for copying documents and using the facility.

12 10.4 Use of Stipulations To Identify and Authenticate
13 Documents.

14 10.4.1 Governed by Federal Rules of Evidence. All
15 issues relating to the identification or
16 authentication of or other foundational
17 requirements for the admissibility of documents
18 shall be governed by the Federal Rules of
19 Evidence.

20 10.4.2 Permissive Use of Stipulations. To the extent
21 possible, the parties shall use stipulations of
22 document custodians and otherwise stipulate to
23 the foundational requirements for the
24 admissibility of documents during discovery and
25 for trial exhibits and avoid unnecessary
26 depositions or other discovery on such matters.

1 The parties shall, however, be free to conduct
2 depositions of document custodians.

3 10.4.3 Preliminary Rulings by Discovery Special Master.

4 Where a dispute exists between the parties
5 regarding the need for additional discovery
6 regarding the identification or authentication of
7 documents, the parties shall submit that dispute
8 to the Discovery Special Master prior to trial
9 whenever reasonably possible. The procedures
10 governing the resolution of discovery disputes by
11 the Discovery Special Master set forth in this
12 Plan shall apply to the resolution of such
13 disputes.

14 10.5 Disputes Regarding Privileged Documents.

15 10.5.1 Assertion of Objection. Any party objecting to
16 the production of documents on grounds of
17 privilege or work product shall identify the
18 document sufficiently to permit the Discovery
19 Special Master and the court to consider the
20 objection, including the identity of the author,
21 the date of its preparation, the person(s) to
22 whom the document was disclosed and, if so
23 ordered by the Discovery Special Master or the
24 court, the document itself. No party shall
25 normally be required to identify correspondence,
26

1 memoranda and other written communications
2 between counsel for the present parties and their
3 respective clients with respect to this
4 litigation. If, however, a party believes it
5 needs additional disclosure with respect to such
6 documents, it may petition the Discovery Special
7 Master for disclosure of such.

8 10.5.2 Nonwaiver of Privilege. Failure to assert a
9 privilege as to one document or communication
10 shall not be deemed to constitute a waiver of the
11 privilege as to any other document or
12 communication so protected, even involving the
13 same subject matter, unless the Discovery Special
14 Master or this court rules that the partial
15 disclosure made would make a failure to disclose
16 the remaining documents or communications
17 manifestly unfair and prejudicial or that such
18 privilege was waived as a matter of substantive
19 law.

20 10.5.3 Resolution of Disputes. As with other discovery
21 matters, the parties shall abide by the
22 procedures set forth in this Plan for resolution
23 of discovery disputes in resolving disputes
24 pertaining to privileged or work product
25 documents or other communications.
26

11. Additional Rules Relating to Interrogatories.

11.1 Supplementation of General Rules. The parties have agreed to supplement General Rule 8. Except where specifically provided by this Plan, however, General Rule 8 shall otherwise govern.

11.2 Additional Interrogatories Allowed. During any phase of this litigation and only to the extent generally pertinent to the issues arising in that phase of the proceedings, the parties may serve interrogatories as follows:

11.2.1 Plaintiffs, as a group, may serve no more than 25 interrogatories, including any subparts, on each defendant they have sued.

11.2.2 Each defendant and third/fourth-party defendant, including the USG, may serve 25 interrogatories on any of the other parties hereto, except the plaintiffs. With respect to the fishermen plaintiffs, defendants and third/fourth-party defendants, as a group, shall serve no more than 25 interrogatories, including any subparts, to be answered by the plaintiffs as a group. In addition, the defendants and third/fourth-party defendants as a group may serve up to an additional 10 interrogatories on each processor and tender plaintiff which each such plaintiff shall separately answer.

1 11.2.3 Contention Interrogatories. Contention
2 interrogatories, as discussed in Federal Rule
3 33(b) and § 21.463 of the MCL, may only be served
4 by a party which has sought and received
5 permission from the Discovery Special Master to
6 do so after disclosing the content of such
7 interrogatories to the Discovery Special Master.

8 11.2.4 Repetitive Interrogatories or Requests for
9 Production. No party shall be required to answer
10 a particular interrogatory or respond to a
11 request for production more than once. It shall
12 be a sufficient answer or response to identify
13 the duplicate discovery request and the party's
14 answer or response thereto.

15 11.2.5 Concurrent Written Discovery Allowed. The
16 parties shall be free to conduct concurrent
17 written discovery.

18 11.2.6 Supplementation of Earlier Responses and Answers.
19 The parties shall be under a duty, in addition to
20 that set forth in Federal Rule 26(e), to
21 seasonably provide additional information and
22 documents in regard to any interrogatory or
23 request for documents which come to light after
24 the date on which said party first responded and
25 on or before the date of the discovery cutoff
26

provided for in this Plan, which information or documents would have been provided had the information or documents then been known or available.

12. Objections to the Production of Documents, Interrogatories and Admissions and Time for Responding.

12.1 Statement of Objections. Any party objecting to any requests for production or admission and/or interrogatories must file those objections within forty-five (45) days of the date from which counsel for that party actually receives the written discovery request. Disputes concerning such objections shall be resolved as a discovery dispute in accordance with the procedures provided by this Plan.

12.2 Time for Answering and/or Responding. Notwithstanding anything in the Federal or General Rules to the contrary, a party's response to a request for production of documents and/or interrogatories is due forty-five (45) days after such written discovery requests are actually received by counsel for said party. Where requested, parties shall accommodate one another and allow reasonable, limited extensions of time in which to respond to all discovery requests and avoid involving the court or the Discovery Special Master in a resolution of such disputes. Such accommodation shall include executing appropriate stipulations and/or waiving the requirements of Federal or Local Rules where appropriate.

1 13. Expert Witnesses.

2 13.1 Expert Witness Identification. Unless otherwise
3 expressly modified by agreement of the parties or the
4 terms of this Plan, at least one hundred fifty (150) days
5 prior to the cutoff of discovery in any phase of these
6 proceedings, plaintiffs, and any other party seeking
7 affirmative relief arising from the issues addressed in
8 that phase of these proceedings, shall disclose, in
9 writing, and without the necessity of interrogatories
10 being first served, the identity of the experts they plan
11 to call at trial and the information called for by
12 Federal Rule 26(a)(4)(A)(i) including, without
13 limitation, the identity of all materials on which the
14 expert's opinion is based (including publications or
15 treatises relied on by the expert). In addition, the
16 disclosing party shall make any documentary material
17 reviewed, prepared or considered by the expert, which has
18 not previously been produced, available for inspection
19 and copying at least ten (10) days prior to the scheduled
20 date for the expert's deposition. Defendants, and any
21 party defending a claim for affirmative relief, shall
22 disclose the same information regarding their experts at
23 least ninety (90) days before the cutoff of discovery in
24 that phase and make available the same documents
25 described above at least ten (10) days before the
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1 expert's deposition. Twenty (20) days after defendants
2 make such disclosure, plaintiffs, and any other party
3 seeking affirmative relief, shall disclose the same
4 information for their rebuttal experts. Defendants
5 shall, within twenty (20) days thereof, make the
6 requested disclosure called for herein for their
7 surebuttal experts.

8 13.2 Expert Witness Depositions. Depositions of expert
9 witnesses shall proceed in the following manner unless
10 modified by agreement of the parties or the terms of this
11 Plan:

12 13.2.1 Primary Expert Depositions. Depositions of
13 plaintiffs' experts, the USG's experts and the
14 experts of any other party seeking affirmative
15 relief in that phase of the proceedings, shall
16 take place over the first forty-five (45) day
17 period assigned for expert witness deposition.
18 If an expert is not available during that time
19 period, plaintiffs and/or the USG shall make
20 every effort to arrange for his or her deposition
21 at the next available time. Plaintiffs and the
22 USG shall then have the next forty-five (45) days
23 in which to depose defendants' experts. If a
24 defense expert will not be available during that
25 time, the defendants shall notify the plaintiffs
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1 and the USG well in advance and arrange a
2 convenient time for conducting such examination.

3 13.2.2 Rebuttal Expert Depositions. Depositions of
4 plaintiffs' and the USG's rebuttal experts shall
5 take place following defendants' experts'
6 depositions in the next available thirty (30) day
7 period. If an expert is not available during
8 that time period, plaintiffs and the USG, as
9 applicable, shall make every effort to arrange
10 for his or her deposition at the next available
11 time. Plaintiffs and the USG shall then have the
12 next thirty (30) day period in which to depose
13 defendants' surebuttal experts. If a defense
14 expert will not be available during that time,
15 the defendants shall notify the plaintiffs and
16 the USG well in advance and arrange a convenient
17 time for conducting such examination. .

18 13.3 Rules Governing Expert Witness Depositions. Expert
19 witness depositions shall, except as governed by these
20 specific provisions, proceed in accordance with the terms
21 of this Plan, including the provisions hereof regarding
22 the place and time for taking depositions and resolution
23 of discovery disputes.
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1 14. Rules Relating to Amending Pleadings and Joinder of Additional
2 Parties.

3 14.1 Amendment of Pleadings.

4 14.1.1 Plaintiffs and the USG shall have ninety (90)
5 days from the date the court approves this Plan
6 to amend their complaints to assert any
7 additional claims or bring in additional parties
8 without leave of court. No claim shall be added
9 thereafter by plaintiffs and/or the USG, unless
10 the court, after notice and hearing, concludes
11 that plaintiffs did not know, and with the
12 exercise of reasonable diligence could not have
13 known of such claim, or that other grounds,
14 contemplated by Rule 14(a) or 14(c), justify such
15 amendment. Notwithstanding the above, the
16 plaintiffs, without a court order, may add
17 additional persons as fishermen plaintiffs, in
18 conformance with the provisions of PTO 1, through
19 the filing of an appropriate summary document
20 reflecting such joinder.

21 14.1.2 Defendants shall have twenty-five (25) days from
22 the date of service in which to answer any
23 amended complaint filed hereinafter by plaintiffs
24 for which the court grants leave to amend.
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1 14.1.3 Defendants shall have twenty-five (25) days from
2 the date of service in which to answer any
3 complaint which is deemed consolidated with these
4 proceedings. If plaintiffs combine all their
5 complaints and/or file summary amendments adding
6 plaintiffs in accordance with PTO 1, then
7 defendants need not replead their answer, and any
8 answer they have theretofore filed or hereafter
9 file in response to substantially the same or
10 similar claims shall be deemed that defendant's
11 answer to all such claims.

12 14.1.4 The court shall hear motions for leave to amend
13 any pleading in accordance with General Rule 5(B)
14 unless otherwise stipulated by the parties.

15 14.1.5 Within one hundred eighty (180) days from the
16 date the court approves this Plan, defendants and
17 third/fourth-party defendants shall file for
18 leave to join any additional parties to this
19 consolidated action and/or to add any additional
20 defenses, counterclaims, cross-claims and third-
21 party type claims. No claim, defense or party
22 shall be added thereafter by defendants and/or
23 third/fourth-party defendants, unless the court,
24 after notice and hearing, concludes that
25 defendants and third/fourth-party defendants did
26

1 not know, and with the exercise of reasonable
2 diligence could not have known of such claim or
3 defense, or that other grounds, as contemplated
4 by Rule 14(a) or 14(c), justify such relief.

5 14.1.6 In the event that the court grants any motion(s)
6 to amend any of the pleadings in this action,
7 each party shall have twenty-five (25) days in
8 which to file their reply or answer, as may be
9 appropriate, and to assert such additional
10 defenses, counterclaims, cross-claims and/or
11 third-party type claims to which such amended
12 pleading gives rise.

13 15. Jurisdictional, Dispositive and Summary Judgment Motions.

14 15.1 Personal Jurisdiction Motions. Any party challenging
15 the personal jurisdiction of this court over it shall
16 file its motion for dismissal within forty-five (45) days
17 after the court approves this Plan or such party is first
18 joined hereto, whichever last occurs.

19 15.2 Rule 12 Motions for More Definite Statement, to Strike
20 and Insufficiency of Process or Service. All motions for
21 more definite statement, to strike, for insufficiency of
22 process or service, or other waivable motions under
23 Federal Rule 12 shall be brought no later than forty-five
24 (45) days after the court approves this Plan or the
25 moving party is first joined hereto, whichever last
26 occurs.

1 15.3 Summary Judgment and Dismissal Motions.

2 15.3.1 Phasing. No party may move for summary judgment
3 during any phase of these proceedings which
4 either (a) does not relate to an issue pertinent
5 to that phase; or (b) requires discovery for its
6 resolution which goes beyond allowable discovery
7 in that phase and cannot be supported by evidence
8 otherwise or previously developed.

9 15.3.2 Motions for Dismissal and Summary Judgment.

10 15.3.2.1 Motions Not Requiring Discovery.

11 Motions not requiring discovery or
12 which the parties agree can be
13 presented on the record then available
14 shall be filed, unless otherwise
15 provided in this Plan, no later than
16 ninety (90) days prior to the trial
17 date in these proceedings.

18 15.3.2.2 Dismissal and Summary Judgment Motions
 Requiring Discovery.

19 15.3.2.2.1 Any party which believes that it
20 is entitled to dismissal or
21 summary judgment on one of more
22 of its claims or defenses may
23 file such motions at any time,
24 unless otherwise provided herein.
25 The moving parties are encouraged
26

1 to advise parties likely to
2 oppose such motion at the
3 earliest possible opportunity of
4 the moving party's intentions,
5 and the court should consider
6 such notice in connection with
7 any subsequent request for
8 additional time by an opposing
9 party.

10 15.3.2.2.2 The moving party shall cooperate
11 with any party opposing such
12 motion to facilitate discovery to
13 oppose such motion during the
14 next forty-five (45) day period
15 after its motion is filed, if
16 such discovery has not already
17 been had.

18 15.3.2.2.3 Any request for additional time
19 shall be supported, as required
20 by Federal Rule 56(e).

21 15.3.2.2.4 The court will endeavor to advise
22 the parties as soon as reasonably
23 possible of its rulings on any
24 motions for additional time or
25
26

1 continuance and shall set a date
2 certain for the hearing of the
3 underlying motion(s).

4 15.3.2.2.5 Except as modified herein,
5 briefing and argument on such
6 motions, as with all other
7 motions in this matter, shall
8 proceed in accordance with the
9 General Rules and PTO 1, unless
10 the court grants leave for
11 noncompliance.

12 15.4 Additional Phase I Motions Permitted. Notwithstanding
13 any other provision of the Plan, during any Phase of the
14 Plan (including Phase I), any party may file motions
15 seeking (1) dismissal of the Limitation of Liability
16 action pursuant to Rule 12; (2) posting of additional
17 security by the limitation plaintiffs pursuant to
18 Supplemental Admiralty Rule F(7); (3) determination of
19 questions of law relating to the scope of recovery under
20 TAPAA; (4) definition of the classes of plaintiffs
21 entitled to recovery under TAPAA or the Alaska strict
22 liability statute; and/or (5) rulings on the scope of
23 Trinidad's and SOHIO's obligations relating to the state
24 law guaranty.
25
26

1 15.5 Rule 12 Motions by USG. Notwithstanding any other
2 provision of the Plan, during any Phase of the Plan
3 (including Phase I), the USG may file motions under Rule
4 12 pertaining to its claim that the USG is entitled to
5 dismissal of all claims and actions against the USG as a
6 result of the discretionary function exception to the
7 waiver of sovereign immunity and/or the separation of
8 powers doctrine of the Constitution.

9 15.6 Motions for Default Under Rule 55. Notwithstanding any
10 other provision of the Plan, during any Phase of the Plan
11 (including Phase I), any party may move for default
12 against any non-answering party pursuant to Rule 55(a)
13 and Rule 55(b).

14 16. Resolution of Discovery Disputes.

15 16.1 Discovery Conferences.

16 16.1.1 Compliance Requirements. Prior to filing any
17 motion regarding discovery under the Federal or
18 Local Rules, including Federal Rules 25 to 37,
19 inclusive, or Rule 45, the parties must fully
20 comply with the provisions of this Plan.

21 16.1.2 Obligation to Confer. Before filing of any
22 motion to compel or oppose discovery, the parties
23 shall confer in good faith about the dispute and
24 attempt to resolve their differences. At least
25 ten (10) court days before submitting any dispute
26

1 to the Discovery Special Master or the court (in
2 the case of USG discovery disputes), or such
3 shorter time as the Discovery Special Master or
4 the court (in the case of USG discovery disputes)
5 may order under exigent circumstances, the moving
6 party shall file a statement setting forth the
7 matters upon which the parties were unable to
8 agree.

9 16.1.3 Exceptions to Obligation to Confer and Filing of
10 Statement of Disagreement.

11 16.1.3.1 The obligation to confer and to file a
12 statement of disputed matters shall not
13 apply to disputes arising during
14 depositions regarding questions which a
15 witness refuses to answer. The parties
16 shall discuss the matter off the record
17 and attempt to agree on a resolution of
18 the dispute. If they are unable to
19 agree, the parties shall notify the
20 Discovery Special Master as soon
21 thereafter as reasonably possible, and
22 he or she shall rule on the matter. As
23 part of his or her ruling, the
24 Discovery Special Master shall provide
25 which party(ies) shall reimburse him or
26 her for his/her costs and expenses. To

1 the greatest extent possible, the
2 parties shall try to resolve all such
3 disputes during the course of the
4 deposition by telephone conference with
5 the Discovery Special Master and not
6 reserve such objections for "further
7 proceedings" at a "later date."

8 16.1.3.2 Notwithstanding the provisions of
9 16.1.3.1, if the Discovery Special
10 Master cannot hear the dispute when
11 called or is unable to resolve it at
12 that time, such matter shall be brought
13 on for hearing as a discovery dispute
14 in the regular course after a discovery
15 conference as set forth in this Plan.

16 17. Appointment of Discovery Special Master.

17 17.1 Selection of Master. Pursuant to PTO 1, the parties have
18 selected David Ruskin to serve as Discovery Special
19 Master, subject to approval by this court.

20 17.2 Compensation of Discovery Special Master.

21 17.2.1 The Discovery Special Master shall be compensated
22 for his or her services on the basis of time
23 spent and reimbursement for his or her ordinary
24 and reasonable expenses actually incurred,
25 including travel and lodging.
26

1 17.2.2 In every dispute taken up with the Discovery
2 Special Master, the Master will include in
3 his/her order an allocation of responsibility for
4 his/her fees and costs. Ordinarily, the
5 Discovery Special Master shall assess such fees
6 against the losing party.

7 17.2.3 While the USG has no objection to utilization of
8 a Discovery Special Master, the USG may be
9 prohibited by applicable, nonwaivable regulations
10 from paying the fees and expenses of such Master.
11 If the USG asserts that position, all discovery
12 disputes, as defined by this Plan, involving the
13 USG shall be brought before the court instead of
14 the Discovery Special Master after the parties
15 confer as required by § 16.1 of the Plan.

16 17.3 Duties of the Discovery Special Master.

17 17.3.1 Initial Ruling on Discovery Disputes. The
18 Discovery Special Master will initially address
19 and decide all discovery disputes in accordance
20 with the procedures established by this Plan.

21 17.3.2 Presentation of Discovery Disputes to Master.

22 17.3.2.1 Filing. After the discovery
23 conference, the parties shall file
24 their motions for resolution of
25 discovery disputes with the Discovery
26 Special Master and the Court Clerk.

17.3.2.2 Timing of Hearing of Discovery

Disputes. No motion for resolution of a discovery dispute shall be brought on for hearing on less than ten court days notice, unless truly exigent circumstances require, the court or Discovery Special Master otherwise order, or this Plan so provides. The moving party shall be responsible for ascertaining the availability of the Discovery Special Master and counsel for at least one of the principal parties from which discovery is sought on the date of the hearing. Five (5) court days prior to the hearing, the party against which such discovery is sought shall file its response to the motion. The moving party shall file its reply no later than two (2) court days before the hearing.

17.3.2.3 Hearings. The Discovery Special Master may conduct all hearings on discovery disputes by telephone conference call or in person, depending on the availability of counsel, the nature of

1 the motion and the needs of the
2 Discovery Special Master.

3 17.3.2.4 Rulings by Master. The Discovery
4 Special Master shall rule upon all
5 discovery disputes by issuing a written
6 decision, which may be in summary form,
7 no later than the fifth court day after
8 the hearing. If the Discovery Special
9 Master requires additional time, he/she
10 shall so advise the parties involved by
11 no later than the fifth day and shall
12 provide a date certain for his/her
13 ruling.

14 17.3.3 Appeals from Decisions of the Discovery Special
15 Master.

16 17.3.3.1 Finality. Unless appealed as provided
17 for herein, the rulings of the
18 Discovery Special Master on discovery
19 disputes shall be final. As part of
20 its order approving this Plan, the
21 court shall provide that failure to
22 appeal such ruling shall not constitute
23 a failure to preserve such issue for
24 purposes of any later appeal to any
25 appellate court and that the rulings of
26 the Discovery Special Master on

1 discovery disputes shall be deemed the
2 rulings of the court for all purposes.

3 17.3.3.2 Written Decision Filed With Court. The
4 written ruling of the Discovery Special
5 Master shall be filed with the court
6 and served as provided in PTO 1 and
7 this Plan and on any parties' counsel
8 specifically appearing in connection
9 with that ruling.

10 17.3.3.3 Appellate Procedure. Any party
11 aggrieved by a ruling of the Special
12 Discovery Master may file a motion to
13 set aside or modify the decision. Such
14 motion must be filed within ten court
15 days of the moving party's receipt of
16 the written decision.

17 17.3.3.4 Stay Pending Appeal. Until the court
18 has ruled on such appeal, the party
19 affected by such ruling need not comply
20 therewith to the extent and only to the
21 extent of its specific objection to the
22 ruling.

17.3.3.5 General Rule 5 Applies to Appeals.

Appeals of the Discovery Special
Master's rulings shall proceed in
accordance with General Rule 5.

18. Coordination with State Proceedings.

18.1 Proceedings Involving Individual Plaintiffs. All
individual plaintiffs whose suits arise out of the
Glacier Bay incident and whose civil actions have been
consolidated with this matter, shall be bound by the
provisions of this Plan. Defendants are removing the
remaining actions, and the parties believe all plaintiffs
whose cases are subsequently removed will agree to be
bound by this Plan during the course of these
proceedings.

18.2 State of Alaska Action. The State of Alaska has informed
the parties it will not participate in this proceeding.
The State does not intend to be bound by the provisions
of this Plan, although the State will consider joint
depositions on a case-by-case basis.

SECTION IV

19. Phase I: Discovery and Trial of Private Plaintiffs and the
USG's Compensatory Damage Claims

19.1 Scope of Proceedings in Phase I. For purposes of
Phase I, West, Trinidad, The TAPS Fund and SOHIO, as a
guarantor only under state law, have admitted facts
sufficient to give rise to liability to the plaintiffs
and the USG for compensatory damages pursuant to the Case
Management Plan Stipulation. Phase I will consist of the
discovery, preparation and trial of plaintiffs'
compensatory damage claims and the USG's cleanup claims.

19.2 Case Management Goals of Phase I. The goal of Phase I is
to accomplish an efficient and expeditious final
resolution of all of plaintiffs' and the USG's
compensatory damage claims. This will be accomplished,
in large part, by trying to three juries certain
plaintiffs' compensatory damage claims in three groups of
sixteen (16) plaintiffs, and submission of all remaining
compensatory damage claims to the court for summary
adjudication without a jury after the first three jury
trials have been completed. There will be limited
discovery allowed after the third trial and prior to
submission of claims to the court.

19.3 USG's Compensatory Damage Trial. If the USG's claims are
not fully settled before the conclusion of discovery in
Phase I, the USG's remaining claims shall be tried before

1 the second private plaintiffs' trial takes place. Such
2 trial shall be to the court as an admiralty and maritime
3 claim within the meaning of Rule 9(h) of the Federal
4 Rules and shall not be decided or determined by any jury
5 hearing any trial of the private plaintiffs' claims,
6 either directly or as an advisory jury. The court shall
7 conduct a separate trial on the USG's claims.

8 19.4 Duration and Selection of Plaintiffs for Trial. The
9 schedule for completion of Phase I discovery is October
10 15, 1990. This schedule is premised upon discovery
11 beginning on or about November 21, 1989, and the
12 following tasks being completed by the indicated dates.

13 19.4.1 January 30, 1990. Plaintiffs shall designate the
14 three groups of 8 plaintiffs whose compensatory
15 damage claims will be tried and the order in
16 which trials of those three groups will proceed.

17 19.4.2 May 30, 1990. Defendants shall designate three
18 groups of 16 plaintiffs whose compensatory damage
19 claims will be tried and the order in which trial
20 of those groups' claims shall proceed. The
21 defendants shall have the further right to
22 designate subgroups of plaintiffs in making their
23 selection, and plaintiffs shall be obligated to
24 make their final selection, as called for by
25 § 19.4.3, from those subgroups.
26

1 19.4.3 June 30, 1990. Plaintiffs shall designate 3
2 individuals out of each of the three groups
3 selected by defendants under § 19.4.2 whose
4 compensatory damage claims will be tried.

5 19.4.4 Reasonable Efforts to Select Representative
6 Plaintiffs. The parties agree to make reasonable
7 efforts in selecting plaintiffs for the jury
8 trials provided for by this Plan to ensure that
9 the three plaintiffs' groups fairly and equitably
10 represent both the different groups of plaintiffs
11 (Set Netters, Drift Netters, Tenders and Seafood
12 Processors) and the types of claims the
13 individual plaintiffs have asserted, so that the
14 parties and/or the court can meaningfully rely
15 upon the different jury verdicts in evaluating
16 the remaining claims. With regard thereto, the
17 parties reserve the right to petition the court
18 for adjustment of the groups, including the
19 addition of other plaintiffs, to make the
20 selected groups fairly representative.

21 19.4.5 Substitution of Plaintiffs. In the event that
22 one or more plaintiffs are no longer available
23 for trial (due to settlement, death, disability
24 or other similar reason), the following
25 procedures shall apply:
26

1 19.4.5.1 Plaintiffs Selected by Plaintiffs Under
2 § 19.4.1. If a plaintiff selected by
3 the plaintiffs under § 19.4.1 becomes
4 unavailable, as defined herein,
5 plaintiffs shall designate another
6 similarly situated plaintiff to replace
7 that plaintiff. If that plaintiff's
8 deposition has not been taken,
9 plaintiffs shall make reasonable
10 efforts to arrange for such to occur at
11 the earliest opportunity, subject to
12 counsels' availability. In addition,
13 if the unavailable plaintiff was
14 selected for one of the earlier trials,
15 then a plaintiff in one of the later
16 trials shall be substituted for the
17 unavailable plaintiff, and the newly
18 designated plaintiff shall replace the
19 plaintiff whose trial is moved forward.
20 In no event shall any newly designated
21 plaintiff's case proceed to trial
22 unless defendants have had at least
23 sixty (60) days notice and, in
24 addition, been afforded an opportunity
25 to conduct discovery on such
26

1 plaintiff's claims which is generally
2 consistent with the discovery conducted
3 of the claims of other plaintiffs whose
4 claims will be submitted to the juries.

5 19.4.5.2 Replacement of Plaintiffs Designated by
6 the Defendants Under § 19.4.2. If a
7 plaintiff selected by the defendants
8 under § 19.4.2 becomes unavailable, as
9 defined herein, defendants shall
10 designate another similarly situated
11 plaintiff to replace that plaintiff.
12 Plaintiffs shall have ten (10) days
13 within which to object in writing to
14 that selection; if no objection is so
15 made, the plaintiff replaces the
16 unavailable plaintiff. If plaintiffs
17 object, then defendants shall select
18 another similarly situated plaintiff,
19 and that selection shall be final. If
20 that plaintiff's deposition has not
21 been taken, plaintiffs shall make
22 reasonable efforts to arrange for such
23 to occur at the earliest opportunity,
24 subject to counsels' availability. In
25
26

1 addition, if the unavailable plaintiff
2 was selected for one of the earlier
3 trials, then a plaintiff in one of the
4 later trials shall be substituted for
5 the unavailable plaintiff, and the
6 newly designated plaintiff shall
7 replace the plaintiff whose trial is
8 moved forward. In no event shall any
9 newly designated plaintiff's case
10 proceed to trial unless defendant have
11 had a least sixty (60) days notice and,
12 in addition, been afforded an
13 opportunity to conduct discovery on
14 such plaintiffs' claims which is
15 generally consistent with the discovery
16 conducted of the claims of other
17 plaintiffs whose claims will be
18 submitted to the juries.

19 19.4.5.3 Replacement or Alteration of Groups.

20 If the parties agree or the court
21 orders a change in the composition of
22 the groups, the parties shall
23 accommodate each other to permit
24 reasonable discovery on any plaintiffs'
25 claims which have not yet been had.
26

1 20. First Round of Discovery in Phase I.

2 20.1 Commencement. The initial round of discovery shall begin
3 on the date the court adopts and orders implementation of
4 the Plan.

5 20.2 Scope of Discovery in Initial Round. During Round 1, the
6 parties shall focus on assembling all pertinent documents
7 including those from third parties, propounding and
8 responding to interrogatories as allowed by the Plan, and
9 identifying witnesses who may have relevant knowledge.
10 Depositions of records custodians may proceed to the
11 extent required to secure and properly authenticate a
12 party's records.

13 21. Second Round of Discovery in Phase I.

14 21.1 Commencement. The Second Round shall begin on February
15 1, 1990.

16 21.2 Scope of Discovery in Second Round.

17 21.2.1 The purpose of the Second Round is to secure
18 information regarding the issues raised by Phase
19 I which is not obtained through written discovery
20 or the informal exchange of documents.

21 21.2.2 During the Second Round of discovery, depositions
22 shall cover plaintiffs and fact witnesses who
23 have knowledge and information relevant to proof
24 of plaintiffs' damage claims.

1 21.2.3 To the extent it remains necessary to depose
2 third parties to obtain documentary information,
3 such depositions shall be scheduled to be
4 completed during the Second Round.

5 22. Third Round of Discovery in Phase I.

6 22.1 Duration. The Third Round of Discovery shall begin on
7 May 15, 1990 and conclude October 15, 1990. All
8 discovery for Phase I shall be terminated at the end of
9 that period.

10 22.2 Scope. All remaining discovery applicable to Phase I
11 shall be conducted during this Round, including:

12 22.2.1 Depositions of other plaintiffs and fact
13 witnesses;

14 22.2.2 Disclosure of expert witnesses and depositions of
15 same;

16 22.2.3 Supplementation of all written discovery as
17 required by this Plan; and

18 22.2.4 Requests for admission, which shall be served no
19 later than July 15, 1990. The provisions of this
20 Plan pertaining to interrogatories shall also
21 apply to requests for admission, except to the
22 specific extent this Plan otherwise provides.

23 22.3 Scheduling of Expert Depositions. During Phase I, the
24 parties have agreed not to make designations of rebuttal
25 or surebuttal expert witnesses as allowed by the Plan.
26

Hence, there shall be a single designation by plaintiffs and the USG and a single designation by defendants in accordance with the terms of § 13 of the Plan.

Depositions of the plaintiffs' and the USG's experts shall begin approximately 90 days before October 15, 1990 and conclude about 45 days later; thereafter, defendants' experts' depositions shall be scheduled.

23. Expansion of Time Allowed for Discovery or Modifications of Plan. The parties may agree to expand the time allowed by this Plan for conducting discovery in any phase by jointly petitioning the Discovery Special Master for a continuance. In addition, any party or parties may individually or jointly request such relief. However, the Discovery Special Master shall not allow a continuance without a showing of good cause and prejudice.

24. Preparation and Lodging of Pretrial Order.

24.1 Schedule. After the completion of the Phase I discovery, and for a period of thirty (30) days thereafter, the parties shall confer with respect to preparation of a joint pretrial order under Federal Rule 16.

24.2 Simplified Pretrial Order.

24.2.1 Purpose. The pretrial order shall be prepared to facilitate trial proceeding in an orderly manner and shall not be a substitute for the pleadings

1 or otherwise an argumentative statement of any
2 party's position.

3 24.2.2 Contents.

4 24.2.2.1 Witness Identification. Each party
5 shall identify the witnesses (expert
6 and lay) each party plans to call and
7 the order in which they will probably
8 testify, along with a very brief
9 summary of their testimony (not to
10 exceed ten lines).

11 24.2.2.2 Exhibit Identification. Each party
12 shall identify the exhibits they plan
13 to offer, including all demonstrative
14 exhibits, and shall, consistent with
15 the provisions of § 10.4 hereof, agree
16 to the admissability of such exhibits
17 to the greatest extent possible.

18 24.2.2.3 List of Admitted Facts. The parties
19 shall attempt to agree on admitted
20 facts.

21 24.2.2.4 List of Issues to be Resolved. Each
22 party shall submit to the other a list
23 of the issues which will be tried in
24 that phase of these proceedings. The
25 parties shall attempt to agree on a
26

1 joint list; however, any party shall be
2 free to submit a list of issues which
3 it believes will be addressed in that
4 phase of the proceedings.

5 25. Establishment of Deadlines for Pretrial Motions, Submission of
6 Pretrial Order, and Filing Jury Instructions and Motions in
7 Limine.

8 25.1 Deadlines for Filing Pretrial Motions.

9 25.1.1 Except as otherwise specifically provided in this
10 Plan, all nondispositive motions shall be filed
11 and noted for hearing no later than thirty (30)
12 days before the cutoff of discovery in any phase
13 of these proceedings. This limitation shall not
14 apply to discovery disputes which arise during
15 that time period or to motions in limine.

16 25.1.2 All dispositive motions shall be filed and noted
17 for hearing no later than ninety (90) days before
18 the scheduled trial date, unless leave of Court
19 is secured for a later hearing.

20 25.2 Jury Instructions. Jury instructions, if needed, shall
21 be filed in accordance with General Rule 15 at least
22 twenty (20) court days prior to the scheduled trial date.

23 25.3 Exhibits, Witness Lists and Trial Briefs. Trial
24 exhibits, witness lists and trial briefs shall be filed
25 in accordance with General Rules 10, 11 and 12, except
26 that the deadline for doing so shall be twenty (20) court
days prior to the scheduled trial date.

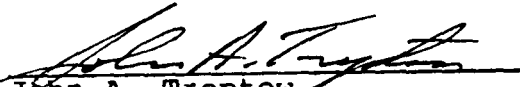
1 25.4 Lodging Pretrial Order. A pretrial order shall be lodged
2 with the court as required by this Plan twenty (20) court
3 days prior to the scheduled trial date.

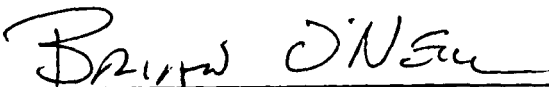
4 26. Setting Trial Date. The Court shall hold a trial setting
5 conference in this matter. Any party may apply to the court
6 for a trial date(s) at such time as the court allows.

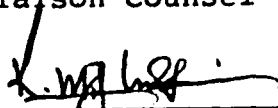
7 27. Post Trial Discovery on Remaining Plaintiffs' Claims. Ninety
8 (90) days after the conclusion of the third jury trial in Phase
9 I, the parties may commence Phase II discovery and limited
10 discovery on any plaintiffs' compensatory damage claims not
11 fully settled. With regard to Phase II, the parties, as set
12 forth in this Plan, shall confer with respect to a Phase II
13 discovery and trial case management plan and present same to
14 the court for its approval. Phase I discovery shall, however,
15 continue for as long as is necessary to complete resolution of
16 the compensatory damage claims of the plaintiffs.

17 28. Summary Adjudications by the Court of Remaining Compensatory
18 Damage Claims. After the parties have completed the additional
19 limited discovery called for by § 27 of the Plan on plaintiffs'
20 remaining compensatory damage claims, such claims shall be
21 presented to the court for summary adjudication by the court.
22 The parties agree that the court shall resolve such claims as
23 expeditiously as possible, bearing in mind the objective of
24 fairness to and justice for the parties.

1 RESPECTFULLY SUBMITTED this 28 day of November, 1989.

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4 
5 John A. Treptow
6 ATKINSON, CONWAY AND GAGNON
7 Liaison Counsel for Defendants


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8
9 
R. Michael Underhill
Attorney for the United States
Torts Branch, Civil Division
U.S. Department of Justice

10 084/03717/AH2

11
12
13 Service of the foregoing has been
14 plan has been made upon all counsel
15 of record based upon the court's
Master Service List of 10/05/ 89.

16
17 
18 John A. Treptow