

FILED

JUN 24 1991

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
Deputy

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2 WEVLY WM. SHEA  
United States Attorney  
3 PHILIP A. BERNIS  
Attorney in Charge, West Coast Office  
4 Torts Branch, Civil Division  
R. MICHAEL UNDERHILL, Trial Attorney  
5 RICHARD A. KNEE, Trial Attorney  
Torts Branch, Civil Division  
6 U.S. Department of Justice  
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7 450 Golden Gate Avenue  
San Francisco, California 94102-3463  
8 Telephone: (415) 556-3145

9 Attorneys for Third-party Defendant  
United States of America

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF ALASKA

12 IN RE )  
13 ) No. A88-115 Civil  
14 THE GLACIER BAY ) (Consolidated)  
\_\_\_\_\_ )

15  
16 MEMORANDUM OF THE UNITED STATES IN PARTIAL OPPOSITION  
TO THE TERMS OF THE FUND'S MOTION FOR APPROVAL  
17 OF SETTLEMENT AGREEMENT  
18 (ALL CASES)

19 The United States files this memorandum in partial opposition  
20 to the terms of the Fund's motion for approval of its settlement  
21 agreement with certain of the fishermen plaintiffs. As will be  
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7 A. The TAPAA Regulations

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16 B. Assignment and Subrogation

17 Numbered paragraph four of the Settlement Agreement attempts  
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25 C. The Fund's Attempt to Make Settlements Binding Upon  
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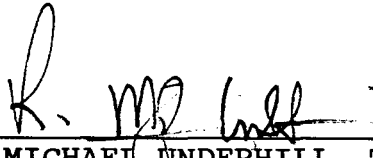
specific terms addressed above be removed from the proposed  
Settlement Agreement.

Dated: January 11, 1991.

STUART E. GERSON  
Assistant Attorney General

WEVLY WM. SHEA  
United States Attorney

PHILIP A. BERNIS  
Attorney in Charge, West Coast  
Office  
Torts Branch, Civil Division

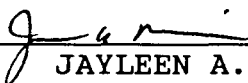
  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the United States' Memorandum in Partial Opposition to the Terms of the Fund's Motion for Approval of Settlement Agreement has been made on all counsel of record based upon the Court's Master Service List.

  
JAYLEEN A. MORRIS



1/24- We filed the  
attached memo per instruction  
from San Francisco - We  
served copies, & by first  
class mail on the attys  
on attached list



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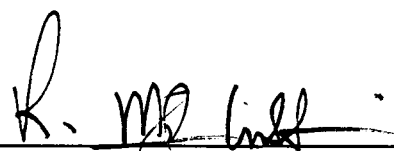
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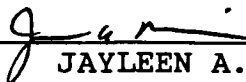
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JAYLEEN A. MORRIS



U.S. Department of Justice  
Civil Division

January 10, 1991

RMU:sel  
62-6-120

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VIA AIRBORNE OVERNIGHT DELIVERY

Sue Lattin  
CACI  
645 G street, 4th Floor  
Anchorage, Alaska 99501

Re: T/T GLACIER BAY - Stranding/pollution  
July 2, 1987  
In re GLACIER BAY  
D. Alaska, Civil No. A88-115-CIV

Dear Sue:

Enclosed please find the original plus one copy of a memo in the GLACIER BAY case. Since the memo concerns a TAPAA/Fund issue which is directly relevant to both the EXXON VALDEZ and AMERICAN TRADER cases, I turn to you for help. Basically, Phil is out of the office until tomorrow -- which is when the memo has to be filed. Although Phil and I have gone over the issues, I would prefer not filing the memo until he has a chance to see it. Accordingly, I would request that you hold on to the enclosures until I call you and let you know Phil has signed off; if he does, I then would request you have the enclosures filed with the Court and a conformed copy returned to me. We will take care of service on the parties.

I owe you -- but what else is new. If any questions, please call. Thanks much.

Very truly yours,

R. MICHAEL UNDERHILL  
Trial Attorney  
Torts Branch, Civil Division

Enclosures

1 STUART E. GERSON  
Assistant Attorney General  
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4 Settlement Agreement, the Fund's subrogation rights can be no  
5 greater than the rights possessed by the parties to whom the Fund  
6 would be subrogated. As with the above discussion regarding  
7 "assignment", such rights have already expired -- even assuming  
8 for the sake of argument they once existed.

9 We note that statutes of limitation regarding suits against  
10 the United States are jurisdictional. See, e.g., Roberts v.  
11 United States, 498 F.2d 520, 526 (9th Cir. 1974), cert. denied  
12 419 U.S. 1070 (1974), quoting States Marine Corp. of Delaware v.  
13 United States, 283 F.2d 776, 778 (2nd. Cir. 1960), as follows:

14 The two year time-bar of the Suits in Admiralty Act is  
15 unlike a time-bar period prescribed under an ordinary  
16 Statute of Limitations. Under an ordinary time-bar statute  
17 a claim is not extinguished after the statutory period has  
18 elapsed. It is only unenforceable. The time-bar of the  
19 Suits in Admiralty Act renders a claim against the United  
States not only unenforceable, but extinguishes the claim  
itself, for when the sovereign, immune from suit, consented  
to be sued it was made a condition of the right to sue that  
suits so authorized had to be brought within the time-bar  
period.

20 Accordingly, even if the Fund goes forward with the instant  
21 settlement, it still would not have any substantive, enforceable  
22 "assignment" or "subrogation" rights against the United States,  
23 such purported "rights" already having been extinguished by  
24 operation of law.

25 C. The Fund's Attempt to Make Settlements Binding Upon  
26 Parties Other Than Itself and the Settling Fishermen

27 In numbered paragraph 8(b) of the proposed Settlement Agree-  
28 ment, it appears that the Fund seeks to make the amount of its  
settlements binding upon third parties it has sued -- such as the



1 United States. That is, in actions over by the Fund, the latter  
2 would attempt to foreclose other parties from arguing that the  
3 amounts the Fund paid in settlement were too much.

4 As pointed out above, the Fund has no rights against the  
5 United States. Even if it did, we note as a practical matter  
6 that the Fund's motion papers do not advise as to the amounts of  
7 the settlements. It is therefore impossible for one to ascertain  
8 whether or not he/she would later choose to object or agree to  
9 the settlement amounts. While we strongly suspect that non-  
10 settling defendants may ultimately not dispute the settlement  
11 figures as a basis for establishing the amount of third-party  
12 liability, we also suspect that such parties would not want to  
13 waive the right now, particularly without having benefit of the  
14 specific amounts and their underlying rationale.

15 In any event, the United States feels that the Fund's  
16 responsibility is to pay the fishermen all amounts owed, immedi-  
17 ately; conversely, the Fund should not use the fishermen's desire  
18 and right to be paid quickly as a means of bootstrapping itself  
19 with additional rights and advantages Congress did not intend.  
20 For these reasons, the Fund should pay the settlements to the  
21 fishermen and paragraph 8(b) should be removed from the Settle-  
22 ment Agreement.

#### 23 CONCLUSION

24 The United States urges that the settlements between the Fund  
25 and fishermen be consummated as quickly as possible, but that the

26 //

27 //

28 //


specific terms addressed above be removed from the proposed  
Settlement Agreement.

Dated: January 11, 1991.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the United States' Memorandum in Partial Opposition to the Terms of the Fund's Motion for Approval of Settlement Agreement has been made on all counsel of record based upon the Court's Master Service List.

  
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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF ALASKA

12 IN RE )  
13 ) No. A88-115 Civil  
14 THE GLACIER BAY )  
(Consolidated)  
15 )

16 MEMORANDUM OF THE UNITED STATES IN PARTIAL OPPOSITION  
17 TO THE TERMS OF THE FUND'S MOTION FOR APPROVAL  
OF SETTLEMENT AGREEMENT WITH CERTAIN PROCESSOR PLAINTIFFS  
18 (ALL CASES)

19 The United States files this memorandum in partial opposition,  
20 to the terms of the Fund's January 24, 1991, motion for approval  
21 of its settlement agreement with certain of the processor  
22 plaintiffs.

23 On or about December 14, 1990, the Fund filed an almost  
24 identical motion for approval of a settlement agreement with  
25 certain (non-processor) fishermen plaintiffs. On January 24,  
26 1991, the United States filed a memorandum in partial opposition  
27 to the latter motion. In substance, the United States supported  
28 immediate and appropriate settlements by the Fund with all  
plaintiffs. The United States nevertheless objected to specific

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UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

1 terms of the proposed settlement as being unnecessary, prejudi-  
2 cial, and potentially designed to give the Fund rights not other-  
3 wise conferred upon it by Congress or law.

4 It appears that the terms of the instant motion regarding the  
5 processor settlements is identical in all material respects to  
6 the motion papers previously submitted by the Fund in support of  
7 its settlements with fishermen. Accordingly, the United States'  
8 position with respect to the Fund's present motion is the same as  
9 set forth in the Government's January 24th partial opposition to  
10 the fishermen settlements. Rather than reiterate those same  
11 arguments in these papers, we respectfully incorporate as though  
12 fully set forth herein the Government's January 24th memorandum.

13 CONCLUSION

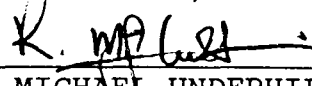
14 The United States urges that the settlements between the Fund  
15 and processor plaintiffs be consummated as quickly as possible,  
16 but that the specific settlement terms addressed in the United  
17 States' Memorandum of January 24, 1991, be removed from the  
18 proposed Settlement Agreement.

19 Dated: February 4, 1991.

20 STUART E. GERSON  
21 Assistant Attorney General

22 WEVLY WM. SHEA  
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24 PHILIP A. BERNIS  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the United States' Memorandum in Partial Opposition to the Terms of the Fund's Motion for Approval of (Processor) Settlement Agreement has been made on all counsel of record based upon the Court's Master Service List.

  
JAYLEEN A. MORRIS

# CACI

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February 6, 1991

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Re: Glacier Bay  
Confirmation of Filing

Dear Mr. Underhill:

Per your request we filed the following document with the Clerk of the U.S. District Court in Anchorage, Alaska on February 5, 1991:

U.S. District Court Case No. A88-115, Memorandum of the United States in Partial Opposition to the Terms of the Fund's Motion for Approval of Settlement Agreement with Certain Processor Plaintiffs (All Cases)

A conformed copy of the document is enclosed.

If we may be of further assistance please contact me at the Anchorage Document Center.

Sincerely,



Sue Lattin  
Project Supervisor

Enclosure

c: OLS (2)  
LSG (1)  
L. Carroll  
ADCR Files

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VIA FEDERAL EXPRESS

Sue Lattin  
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Re: T/T GLACIER BAY - Stranding/pollution  
July 2, 1987  
In re GLACIER BAY  
D. Alaska, Civil No. A88-115-CIV

Dear Sue:

Enclosed please find the original plus two copies of a memo in the GLACIER BAY case. Since the memo concerns a TAPAA/Fund issue which is directly relevant to both the EXXON VALDEZ and AMERICAN TRADER cases, I would request that your staff file the original plus one, returning a conformed copy to us. We have made service upon all counsel.

If any questions, please call. Thanks much.

Very truly yours,

R. MICHAEL UNDERHILL  
Trial Attorney  
Torts Branch, Civil Division

Enclosures