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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Attorneys for Third-party Defendant and
Fourth-party Plaintiff United States of America

UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

IN RE)
) No. A88-115 Civil
THE GLACIER BAY)
) (Consolidated)
)

FOURTH-PARTY COMPLAINT OF UNITED STATES OF AMERICA
AGAINST KEE LEASING COMPANY, MATHIASSEN'S TANKER
INDUSTRIES, INC., GLACIER BAY TRANSPORTATION COMPANY,
AND MARK HAWKER, IN PERSONAM,
AND S.S. GLACIER BAY, IN REM,
IN CASE NO. A89-137 CIV (AUSTIN)

The fourth-party complaint of the United States of America,
against fourth-party defendants, Kee Leasing Company, Mark
Hawker, Mathaisen's Tanker Industries, Inc., and Glacier Bay
Transportation Company, in personam, and the S.S. GLACIER BAY, in
rem, alleges on information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction, as
hereinafter more fully appears, and within Rules 9(h) and 14(c)
of the Federal Rules of Civil Procedure.

2. At all times hereinafter mentioned, the United States of

1 America was, and still is, a sovereign authorized to sue under
2 28 U.S.C. § 1345.

3 3. At all times material herein, fourth-party defendant S.S.
4 GLACIER BAY (Official Number 526588), her engines, tackle,
5 appurtenances, etc., was a deep draft vessel, documented under
6 the laws of the United States, and is now or during the pendency
7 of this action will be within the navigable waters of this
8 District and within the jurisdiction of this Honorable Court,
9 and, further, was at all material times engaged in the trans-
10 portation of crude oil cargo within this district and within the
11 jurisdiction of this Court.

12 4. Fourth-party defendant Kee Leasing Company (hereafter
13 "Kee"), was at all material times a corporation organized and
14 existing under the laws of the State of Delaware, with a place of
15 business and doing business within the State of Alaska and within
16 this district and within the jurisdiction of this Court, includ-
17 ing, but not limited to, through its ownership, chartering,
18 operation, management, and control of its vessel, the S.S.
19 GLACIER BAY.

20 5. At all times material herein, Kee was the owner of the
21 S.S. GLACIER BAY.

22 6. At all times material herein, Kee chartered the S.S.
23 GLACIER BAY.

24 7. At all times material herein, Kee operated the S.S.
25 GLACIER BAY.

26 8. At all times material herein, Kee managed the S.S.
27 GLACIER BAY.

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1 9. At all times material herein, Kee controlled the S.S.
2 GLACIER BAY.

3 10. Fourth-party defendant Mathaisen's Tanker Industries,
4 Inc. (hereafter, "Mathiasen's"), was at all material times a
5 corporation organized and existing under the laws of the State
6 of Delaware, with a place of business and doing business within
7 the State of Alaska and within this district and within the
8 jurisdiction of this Court, including, but not limited to,
9 through its chartering, operation, management, and control of
10 the S.S. GLACIER BAY.

11 11. Fourth-party defendant Mathaisen's is a debtor-in-
12 possession in Chapter 11 proceedings titled In re Apex Oil
13 Company, et al., No. 87-3804-BKS-BSS (Consolidated Cases), United
14 States Bankruptcy Court for the Eastern District of Missouri,
15 Eastern Division.

16 12. The fourth-party complaint of the United States of
17 America herein is a proceeding by the United States to enforce
18 the police and regulatory powers of the United States, as a
19 sovereign, pertaining to the enforcement of the environmental
20 protection laws of the United States, and, as such, is an action
21 to enforce sovereign police and regulatory powers within the
22 meaning of 11 U.S.C. § 362(b)(4).

23 13. Mathiasen's invoked the jurisdiction of this Court by
24 filing actions in this Court, and, by doing so, has waived the
25 applicability, if any there is, of the automatic stay provisions
26 of 11 U.S.C. § 362(a).

27 14. At all times material herein, Mathaisen's chartered the
28 S.S. GLACIER BAY.

1 15. At all times material herein, Mathaisen's operated the
2 S.S. GLACIER BAY.

3 16 At all times material herein, Mathaisen's managed the
4 S.S. GLACIER BAY.

5 17. At all times material herein, Mathaisen's controlled the
6 S.S. GLACIER BAY.

7 18. Fourth-party defendant Glacier Bay Transportation Company
8 (hereafter, "GBTC"), was at all material times a corporation
9 organized and existing under the laws of the State of Delaware,
10 with a place of business and doing business within the State of
11 Alaska and within this district and within the jurisdiction of
12 this Court, including, but not limited to, through its
13 chartering, operation, management, and control of the S.S.
14 GLACIER BAY.

15 19. Fourth-party defendant GBTC is a debtor-in-possession in
16 Chapter 11 proceedings titled In re Apex Oil Company, et al., No.
17 87-3804-BKS-BSS (Consolidated Cases), United States Bankruptcy
18 Court for the Eastern District of Missouri, Eastern Division.

19 20. The fourth-party complaint of the United States of
20 America herein is a proceeding by the United States to enforce
21 the police and regulatory powers of the United States, as a
22 sovereign, pertaining to the enforcement of the environmental
23 protection laws of the United States, and, as such, is an action
24 to enforce sovereign police and regulatory powers within the
25 meaning of 11 U.S.C. § 362(b)(4).

26 21. GBTC invoked the jurisdiction of this Court by filing
27 actions in this Court, and, by doing so, has waived the applic-
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ability, if any there is, of the automatic stay provisions of 11 U.S.C. § 362(a).

22. At all times material herein, GBTC chartered the S.S. GLACIER BAY.

23. At all times material herein, GBTC operated the S.S. GLACIER BAY.

24. At all times material herein, GBTC managed the S.S. GLACIER BAY.

25. At all times material herein, GBTC controlled the S.S. GLACIER BAY.

26. At all times material herein, fourth-party defendant Mark Hawker was a resident of the State of Oregon, and was licensed by the United States Coast Guard as a Master of vessels and was doing business within the State of Alaska and within this district and within the jurisdiction of this Court, including, but not limited to, through his employment as Master of the S.S. GLACIER BAY, and through his operation, management, and control of the S.S. GLACIER BAY.

27. At all times material herein, Mark Hawker was the Master of the S.S. GLACIER BAY.

28. At all times material herein, Mark Hawker operated the S.S. GLACIER BAY.

29. At all times material herein, Mark Hawker managed the S.S. GLACIER BAY.

30. At all times material herein, Mark Hawker controlled the S.S. GLACIER BAY.

31. At all times material herein, Trinidad Corporation (hereafter, "Trinidad") was a charterer of the S.S. GLACIER BAY.

1 32. At all times material herein, Trinidad operated the S.S.
2 GLACIER BAY.

3 33. At all times material herein, Trinidad managed the S.S.
4 GLACIER BAY.

5 34 At all times material herein, Trinidad controlled the
6 S.S. GLACIER BAY.

7 35. At all times material herein, Tesoro Alaska Petroleum
8 Company (hereafter, "Tesoro"), was a charterer of the S.S.
9 GLACIER BAY.

10 36. At all times material herein, Tesoro managed the S.S.
11 GLACIER BAY.

12 37. At all times material herein, Tesoro controlled the S.S.
13 GLACIER BAY.

14 38. At all times material herein, Tesoro operated the S.S.
15 GLACIER BAY.

16 39. At all times material herein, Tesoro owned the cargo of
17 crude oil aboard the S.S. GLACIER BAY.

18 40. At all times material herein, S.P.C. Shipping, Inc.,
19 (hereafter "S.P.C. Shipping"), was a charterer of the S.S.
20 GLACIER BAY.

21 41. At all times material herein, S.P.C. Shipping operated
22 the S.S. GLACIER BAY.

23 42. At all times material herein, S.P.C. Shipping managed the
24 S.S. GLACIER BAY.

25 43. At all times material herein, S.P.C. Shipping controlled
26 the S.S. GLACIER BAY.

27 44. At all times material herein, Andrew C. Subcleff was
28 licensed by the United States Coast Guard as a Master of vessels,

1 and further licensed by the United States Coast Guard as a Pilot
2 of vessels within the waters of Lower Cook Inlet.

3 45. At all times material herein, Andrew C. Subcleff was the
4 pilot of the S.S. GLACIER BAY.

5 46. At all times material herein, Andrew C. Subcleff operated
6 the S.S. GLACIER BAY.

7 47. At all times material herein, Andrew C. Subcleff managed
8 the S.S. GLACIER BAY.

9 48. At all times material herein, Andrew C. Subcleff control-
10 led the S.S. GLACIER BAY.

11 49. At all times material herein, fourth-party defendants
12 Kee, Mathiasen's, GBTC, Mark Hawker, and S.S. GLACIER BAY, and
13 Trinidad, Tesoro, S.P.C. Shipping, and Andrew C. Subcleff, and
14 each of them, were agents of each other, wherefore each and every
15 said person or entity is responsible and liable, jointly and
16 severally, for the fault, negligence, and strict liability of
17 each and every other said person or entity, as well as for the
18 fault, negligence, unseaworthiness, and strict liability of the
19 S.S. GLACIER BAY, with respect to all matters alleged in this
20 fourth-party complaint herein.

21 50. On or about July 1, 1987, approximately 383,000 barrels
22 of Alaska North Slope crude oil was loaded aboard the S.S.
23 GLACIER BAY at the terminus of the Trans-Alaska Pipeline in
24 Valdez, Alaska, which oil was to be discharged at a pier or berth
25 at Nikiski, Alaska.

26 51. At or about the time of predicted low water on the morn-
27 ing of July 2, 1987, the S.S. GLACIER BAY negligently crossed
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1 eastward of the ten fathom curve on the eastern side of Cook
2 Inlet.

3 52. On the morning of July 2, 1987, and prior to discharging
4 her cargo of crude oil at Nikiski, Alaska, the S.S. GLACIER BAY
5 negligently grounded/allided, thereby piercing her hull and
6 commencing the discharge of a portion of her cargo of crude oil
7 into and upon the waters and adjacent shoreline of Cook Inlet,
8 which waters are navigable waters of the United States.

9 53. Commencing on or about July 2, 1987, the United States
10 Coast Guard responded to the oil spill pursuant to the Trans-
11 Alaska Pipeline Act ("TAPA"), 43 U.S.C. § 1653, and section
12 311(c) of the Federal Water Pollution Control Act ("FWPCA"), 33
13 U.S.C. § 1321, and implementing regulations, 40 C.F.R. Part 300,
14 Subpart E, and incurred costs in connection with the clean-up and
15 related response costs in an amount in excess of \$1,936,020.12,
16 as nearly as may ascertained at the present time, said amount
17 being subject to adjustment as further information and proof is
18 obtained, which costs include monies expended from the fund
19 established pursuant to section 311(k) of the FWPCA, 33 U.S.C. §
20 1321(k).

21 54. The oil spill caused significant and immediate loss of
22 wildlife and immediate and severe damage to other natural
23 resources under the trusteeship of the United States Department
24 of Commerce and/or the joint trusteeship of the United States and
25 the State of Alaska.

26 55. Commencing on or after July 2, 1987, NOAA, an agency of
27 the United States Department of Commerce, responded to the oil
28 spill pursuant to the TAPA, 43 U.S.C 1653, and section 311 of the

1 FWPCA, 33 U.S.C. § 1321(f)(4) and (f)(5), and implementing
2 regulations thereto, 40 C.F.R. Part 300, Subparts E and G, and
3 incurred costs in connection with the clean-up of the oil spill,
4 the mitigation of the damage caused by it, and the assessment of
5 the effects of the said oil spill, said costs in an amount
6 presently in excess of \$13,893.60, as nearly as may ascertained
7 at the present time, said amount being subject to adjustment as
8 further information and proof is obtained.

9 56. The United States will continue to incur costs, including
10 the costs associated with assessing the damages to the natural
11 resources and the costs associated with prosecuting this action,
12 all as a result of the discharge of oil by the S.S. GLACIER BAY,
13 which costs are presently unascertained and will be subsequently
14 presented upon the obtaining of further information and proof.

15 AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST KEE, MATHIASSEN'S,
16 GBTC, AND MARK HAWKER, IN PERSONAM

17 (TRANS-ALASKA PIPELINE ACT, 43 U.S.C. § 1653(c))

18 57. Fourth-party plaintiff, United States of America, refers
19 to and incorporates by reference as though fully set forth herein
20 Paragraphs 1 through 56 of its fourth-party complaint herein.

21 58. The discharge of oil from the S.S. GLACIER BAY was in
22 violation of the Trans-Alaska Pipeline Act, 43 U.S.C. § 1653(c).

23 59. The discharge of oil from the S.S. GLACIER BAY was not
24 caused by an act of war or by any negligence or fault of the
25 United States of America or any governmental agency.

26 60. As a result of the discharge of oil from the S.S. GLACIER
27 BAY, Kee, Mathiasen's, GBTC, and Mark Hawker, among others,
28 jointly and severally, in accordance with the provisions of the

1 Trans-Alaska Pipeline Act, 43 U.S.C. § 1653(c), are liable to the
2 United States of America for all damages sustained by the United
3 States.

4 61. Pursuant to the Trans-Alaska Pipeline Act, 43 U.S.C.
5 § 1653(c), all the aforesaid damages sustained by the United
6 States are entitled to first and prior payment before payment of
7 claims or damages to any other person, party, or entity.

8 AS AND FOR A SECOND CAUSE OF ACTION AS AGAINST KEE, MATHIASSEN'S,
9 MARK HAWKER, AND GBTC, IN PERSONAM,

10 AND THE S.S. GLACIER BAY, IN REM

11 (FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. § 1321)

12 62. Fourth-party plaintiff, United States of America, refers
13 to and incorporates by reference as though fully set forth herein
14 Paragraphs 1 through 61 of its fourth-party complaint herein.

15 63. The discharge of oil from the S.S. GLACIER BAY was in
16 violation of the FWPCA, 33 U.S.C. § 1321(b)(3).

17 64. The discharge of oil from the S.S. GLACIER BAY was
18 harmful within the meaning of 33 U.S.C. § 1321(b)(4) and the
19 Federal Regulations implementing such statutory provisions.

20 65. Said discharge of oil was the result of willful negli-
21 gence or willful misconduct within the privity and knowledge of
22 Kee, Mathiasen's, GBTC, and Mark Hawker, their officers, agents,
23 crew, vessels, servants, employees, or others for whom they were
24 responsible, and the negligence, fault, and unseaworthiness of
25 the S.S. GLACIER BAY.

26 66. After the said discharge of oil, Kee, Mathiasen's, GBTC,
27 and Mark Hawker failed to remove properly the oil from the
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1 navigable waters of the United States and its adjoining
2 shorelines.

3 67. Pursuant to 33 U.S.C. § 1321(f)(1), Kee, Mathiasen's,
4 GBTC, and Mark Hawker, in personam, and the S.S. GLACIER BAY, in
5 rem, are liable, jointly and severally, to the United States for
6 the actual costs incurred under 33 U.S.C. § 1321(c)(1) in the
7 removal of the oil discharged from the S.S. GLACIER BAY.

8 68. Pursuant to 33 U.S.C. § 1321(f)(4) and (f)(5), Kee,
9 Mathiasen's, GBTC, and Mark Hawker, in personam, and the S.S.
10 GLACIER BAY, in rem, are liable, jointly and severally, to the
11 United States for the costs and expenses incurred, and to be
12 incurred, for the restoration, rehabilitation, or replacement of
13 natural resources damaged or destroyed as a result of the oil
14 discharged from the S.S. GLACIER BAY.

15 69. Kee, Mathiasen's, GBTC, Mark Hawker, and the S.S. GLACIER
16 BAY have failed to pay the costs incurred by the United States
17 for the response and removal costs following the oil spill, and
18 the costs of the United States incurred or to be incurred in the
19 restoration, rehabilitation, and replacement of natural resources
20 damaged or destroyed as a result of the oil discharged from the
21 S.S. GLACIER BAY.

22 70. By reason of the foregoing, Kee, Mathiasen's, GBTC, and
23 Mark Hawker, in personam, and the S.S. GLACIER BAY, in rem, are
24 liable, jointly and severally, to the United States for all the
25 aforesaid damages sustained by the United States as a result of
26 the discharge of oil from the S.S. GLACIER BAY.

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1 AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST KEE, MATHIASEN'S,
2 MARK HAWKER, AND GBTC, IN PERSONAM,
3 AND THE S.S. GLACIER BAY, IN REM

4 71. Fourth-party plaintiff, United States of America, refers
5 to and incorporates by reference as though fully set forth herein
6 Paragraphs 1 through 70 of its fourth-party complaint herein.

7 72. Kee, Mathiasen's, GBTC, Mark Hawker, and the S.S. GLACIER
8 BAY negligently caused or contributed to the discharge of oil
9 from the GLACIER BAY.

10 73. By reason of the matters aforesaid, Kee, Mathiasen's,
11 GBTC, Mark Hawker, and the S.S. GLACIER BAY are liable to the
12 United States for the actual cost of removal of the afore-
13 mentioned harmful quantity of oil plus interest and costs.

14 74. No part of the aforementioned amount has been paid
15 although duly demanded.

16 75. By reason of the matters aforesaid, Kee, Mathiasen's,
17 GBTC, Mark Hawker, and the S.S. GLACIER BAY are liable for any
18 costs or expenses which may be incurred by the Federal
19 Government, or anyone acting on its behalf and under its
20 authorization, in the restoration and replacement of natural
21 resources damaged or destroyed as a result of the discharge of
22 oil.

23 AS AND FOR A FOURTH CAUSE OF ACTION AS AGAINST KEE, MATHIASEN'S,
24 MARK HAWKER, AND GBTC, IN PERSONAM,
25 AND THE S.S. GLACIER BAY, IN REM

26 76. Fourth-party plaintiff, United States of America, refers
27 to and incorporates by reference as though fully set forth herein
28 Paragraphs 1 through 75 of its fourth-party complaint herein.

1 77. The discharge of oil from the GLACIER BAY into and upon
2 the navigable waters of the United States violated Section 13 of
3 the Rivers and Harbors Act, 33 U.S.C. § 407, and Kee,
4 Mathiasen's, GBTC, Mark Hawker, and the S.S. GLACIER BAY are
5 liable to the United States for a penalty of from \$500 to \$2,500
6 for the aforesaid discharge and for the costs of oil pollution
7 clean-up, plus interest and costs, no part of which has been
8 paid.

9 AS AND FOR A FIFTH CAUSE OF ACTION AS AGAINST KEE, MATHIASEN'S,
10 MARK HAWKER, AND GBTC, IN PERSONAM,
11 AND THE S.S. GLACIER BAY, IN REM

12 78. Fourth-party plaintiff, United States of America, refers
13 to and incorporates by reference as though fully set forth
14 herein Paragraphs 1 through 77 of its fourth-party complaint
15 herein.

16 79. The discharge of oil from the GLACIER BAY into and upon
17 the navigable waters of the United States was caused by the
18 unseaworthiness of the vessel and the negligence and carelessness
19 of Kee, Mathiasen's, GBTC, Mark Hawker, and the S.S. GLACIER BAY,
20 their employees, agents, or other individuals acting on their
21 behalf or with authorization of Kee, Mathiasen's, GBTC, Mark
22 Hawker, and the S.S. GLACIER BAY.

23 80. By reason of the matters aforesaid, Kee, Mathiasen's,
24 GBTC, Mark Hawker, and the S.S. GLACIER BAY have breached the
25 general maritime law of negligence and are liable to the United
26 States for all damages proximately resulting from said breach of
27 duty, including but not limited to, the aforesaid cost of clean-
28 up plus interest and costs, no part of which has been paid.

1 81. By reason of the matters aforesaid, Kee, Mathiasen's,
2 GBTC, Mark Hawker, and the S.S. GLACIER BAY are liable for any
3 costs or expenses which may be incurred by the Federal
4 Government, or anyone acting on its behalf and under its
5 authorization, in the restoration and replacement of natural
6 resources damaged or destroyed as a result of the discharge of
7 oil.

8 AS AND FOR A SIXTH CAUSE OF ACTION AS AGAINST KEE, MATHIASEN'S,
9 MARK HAWKER, AND GBTC, IN PERSONAM,
10 AND THE S.S. GLACIER BAY, IN REM

11 82. Fourth-party plaintiff, United States of America, refers
12 to and incorporates by reference as though fully set forth
13 herein Paragraphs 1 through 81 of its fourth-party complaint
14 herein.

15 83. By reason of the matters aforesaid, Kee, Mathiasen's,
16 GBTC, Mark Hawker, and the S.S. GLACIER BAY have been unjustly
17 enriched in having their oil pollution cleanup duties performed
18 on their behalf and for their account by and at the expense of
19 the United States of America, and Kee, Mathiasen's, GBTC, Mark
20 Hawker, and the S.S. GLACIER BAY are liable to reimburse,
21 indemnify, and make restitution to the United States of America
22 in the amount of the aforesaid clean-up costs plus interest and
23 costs.

24 84. By reason of the matters aforesaid, Kee, Mathiasen's,
25 GBTC, Mark Hawker, and the S.S. GLACIER BAY are liable for any
26 costs or expenses which may be incurred by the Federal
27 Government, or anyone acting on its behalf and under its
28 authorization, in the restoration and replacement of natural

resources damaged or destroyed as a result of the discharge of oil.

AS AND FOR A SEVENTH CAUSE OF ACTION AS AGAINST KEE, MATHIASEN'S,
MARK HAWKER, AND GBTC, IN PERSONAM,
AND THE S.S. GLACIER BAY, IN REM

85. Fourth-party plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein Paragraphs 1 through 84 of its fourth-party complaint herein.

86. By reason of the matters aforesaid, Kee, Mathiasen's, GBTC, Mark Hawker, and the S.S. GLACIER BAY created a danger and menace to navigation and to the marine environment, all of which created a public nuisance which Kee, Mathiasen's, GBTC, Mark Hawker, and the S.S. GLACIER BAY wrongfully failed to remove and abate and which was removed and abated by the United States of America, and Kee, Mathiasen's, GBTC, Mark Hawker, and the S.S. GLACIER BAY are liable to reimburse, indemnify, and make restitution to the United States of America in the aforesaid amount of the cleanup costs, plus interest and costs.

87. By reason of the matters aforesaid, Kee, Mathiasen's, GBTC, Mark Hawker, and the S.S. GLACIER BAY are liable for any costs or expenses which may be incurred by the Federal Government, or anyone acting on its behalf and under its authorization, in the restoration and replacement of natural resources damaged or destroyed as a result of the discharge of oil.

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1 AS AND FOR A EIGHTH CAUSE OF ACTION AS AGAINST KEE, MATHIASEN'S,
2 MARK HAWKER, AND GBTC, IN PERSONAM,
3 AND THE S.S. GLACIER BAY, IN REM

4 88. Fourth-party plaintiff, United States of America, refers
5 to and incorporates by reference as though fully set forth
6 herein Paragraphs 1 through 87 of its fourth-party complaint
7 herein.

8 89. Tesoro has filed a first amended third-party complaint in
9 this action against the United States of America, a copy of which
10 pleading is attached hereto as Exhibit A. A copy of the answer
11 of the United States to said corrected first amended third-party
12 complaint is attached hereto as Exhibit B. In that first amended
13 third-party complaint, Tesoro claims that negligence of the
14 United States or its vessels, which is denied, caused or
15 contributed to the discharge of oil from the S.S. GLACIER BAY and
16 resulted in damage to Tesoro.

17 90. If Tesoro or any other person, party, or entity who may
18 hereafter file actions, complaints, cross-claims, counterclaims,
19 or third-party complaints against the United States as a result
20 of the matters pertaining to the discharge of oil from the S.S.
21 GLACIER BAY, sustained damages as a result of the matters alleged
22 in said actions, complaints, cross-claims, counterclaims, or
23 third-party complaints, which is denied, such damages arose or
24 grew out of, in whole or in part, the negligence, fault, and
25 strict liability of Kee, Mathiasen's, GBTC, and Mark Hawker, in
26 personam, and the negligence, fault, strict liability, and
27 unseaworthiness of the S.S. GLACIER BAY, in rem, and each of
28 them, their officers, agents, crew, vessels, servants, employees,

1 or others for whom they were responsible, and Kee, Mathiasen's,
2 GBTC, and Mark Hawker, in personam, and the S.S. GLACIER BAY, in
3 rem, are therefore liable to reimburse and indemnify the United
4 States for all attorneys' fees, costs, expenses, and disburse-
5 ments incurred by said United States of America in defending
6 against said actions, and if the United States of America is held
7 liable to Tesoro or any other person, party, or entity who may
8 hereafter file actions, complaints, cross-claims, counterclaims,
9 or third-party complaints against the United States as a result
10 of the matters pertaining to the discharge of oil from the S.S.
11 GLACIER BAY, then, for the full amount of any judgment entered
12 against the United States of America by way of reimbursement,
13 indemnity, contribution, recovery over, or otherwise, in addition
14 to the aforesaid attorneys' fees, costs, expenses, and dis-
15 bursements as aforesaid, and the United States hereby tenders
16 the defense of such actions to Kee, Mathiasen's, GBTC, and Mark
17 Hawker, in personam, and to the S.S. GLACIER BAY, in rem.

18 WHEREFORE, the United States of America prays as follows:

19 1. That actual notice of the commencement of this suit in
20 manner approved by the Court be given to the custodian, master or
21 other ranking officer of the S.S. GLACIER BAY, as may be
22 applicable, and to any person, firm or corporation which has
23 recorded a notice of claim of any undischarged lien upon the said
24 Vessel;

25 2. That, pursuant to Rule C(3) of the Supplemental Rules for
26 Certain Admiralty and Maritime Claims this Honorable Court enter
27 an order authorizing a warrant for the arrest of the S.S. GLACIER
28 BAY, her engines, tackle, appurtenances, etc.;

1 3. That a warrant issue for the arrest of the S.S. GLACIER
2 BAY her engines, tackle, appurtenances, etc.;

3 4. That process in due form of law issue in accordance with
4 the rules and practice of this Court, citing fourth-party
5 defendants Kee, Mathiasen's, GBTC, and Mark Hawker, in personam,
6 and the S.S. GLACIER BAY, in rem, to appear and answer the
7 matters set forth in the corrected first amended third-party
8 complaint of Tesoro, or any other actions, complaints, cross-
9 claims, counterclaims, or third-party complaints as may hereafter
10 be filed by any person, party, or entity against the United
11 States with respect to the oil spill by the S.S. GLACIER BAY, and
12 to appear and answer in the fourth-party complaint of the United
13 States herein, all as required by Rule 14(c), Federal Rules of
14 Civil Procedure;

15 5. That if any judgment is entered in favor of Tesoro or in
16 favor of any other person, party, or entity which may hereafter
17 file actions, complaints, cross-claims, counterclaims, or third-
18 party complaints against the United States with respect to the
19 oil spill by the S.S. GLACIER BAY, that said judgment or
20 judgments be entered directly against fourth-party defendants
21 Kee, Mathiasen's, GBTC, and Mark Hawker, in personam, and the
22 S.S. GLACIER BAY, in rem, jointly and severally;

23 6. That the first amended third-party complaint and action of
24 Tesoro be dismissed with prejudice and costs;

25 7. That United States of America be granted judgment against
26 Kee, Mathiasen's, GBTC, and Mark Hawker, in personam, jointly and
27 severally, pursuant to the First Cause of Action herein;

28

1 8. That United States of America be granted judgment against
2 Kee, Mathiasen's, GBTC, and Mark Hawker, in personam, and the
3 S.S. GLACIER BAY, in rem, jointly and severally, pursuant to the
4 Second Cause of Action;

5 9. That United States of America be granted judgment against
6 Kee, Mathiasen's, GBTC, and Mark Hawker, in personam, jointly and
7 severally, pursuant to the Third Cause of Action.

8 10. That United States of America be granted judgment against
9 Kee, Mathiasen's, GBTC, and Mark Hawker, in personam, jointly and
10 severally, pursuant to the Fourth Cause of Action.

11 11. That United States of America be granted judgment against
12 Kee, Mathiasen's, GBTC, and Mark Hawker, in personam, jointly and
13 severally, pursuant to the Fifth Cause of Action.

14 12. That United States of America be granted judgment against
15 Kee, Mathiasen's, GBTC, and Mark Hawker, in personam, jointly and
16 severally, pursuant to the Sixth Cause of Action.

17 13. That United States of America be granted judgment against
18 Kee, Mathiasen's, GBTC, and Mark Hawker, in personam, jointly and
19 severally, pursuant to the Seventh Cause of Action.

20 14. For the United States' Eighth Cause of Action, that if
21 judgment is entered in favor of Tesoro, or any other person,
22 party, or entity, which hereafter may file actions, complaints,
23 cross-claims, counterclaims, or third-party complaints against
24 the United States, with respect to the oil spill by the S.S.
25 GLACIER BAY, then that judgment over with interest, costs,
26 attorneys' fees, expenses, and disbursements be entered in favor
27 of said United States of America and against Kee, Mathiasen's,
28 GBTC, and Mark Hawker, in personam, and the S.S. GLACIER BAY, in

1 from, jointly and severally, requiring them to pay said United
2 States of America the full amount of any such judgment against
3 the United States of America paid by or on behalf of said United
4 States of America, and to otherwise indemnify, exonerate, and
5 hold harmless the United States of America as against all
6 liability herein.

7 15. That judgment of condemnation and sale be entered against
8 the S.S. GLACIER BAY, her engines, tackle, appurtenances, etc.;

9 16. That plaintiff United States of America be declared the
10 holder of a valid preferred maritime lien on the Vessel;

11 17. The S.S. GLACIER BAY be sold and the proceeds of the
12 Vessel be applied first to any judgments, costs, and expenses of
13 the United States with respect to this fourth-party complaint of
14 the United States herein;

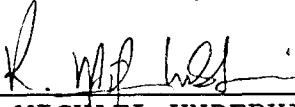
15 18. For such other relief as the Court deems just and proper
16 in the premises.

17 Dated: October 26, 1989.

18 STUART E. SCHIFFER
19 Acting Assistant Attorney General

20 MARK DAVIS
21 Acting United States Attorney

22 PHILIP A. BERNIS
23 Attorney in Charge, West Coast
24 Office
25 Torts Branch, Civil Division

26 
27 R. MICHAEL UNDERHILL, Trial Attorney
28 Torts Branch, Civil Division
U. S. Department of Justice
RICHARD A. KNEE, Trial Attorney
Torts Branch, Civil Division
U. S. Department of Justice

Attorneys for Fourth-party Plaintiff
United States of America

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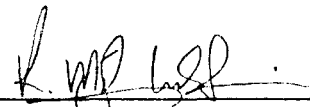
VERIFICATION

R. MICHAEL UNDERHILL says:

I am a Trial Attorney in the West Coast Office, Torts Branch, Civil Division, U. S. Department of Justice, and one of the attorneys for third-party defendant and fourth-party plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing fourth-party complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

DATED: October 26, 1989.



R. MICHAEL UNDERHILL

John A. Treptow, Esq.
ATKINSON, CONWAY & GAGNON
ATTORNEYS FOR TESORO ALASKA
PETROLEUM COMPANY AND TESORO
ALASKA PIPELINE COMPANY
420 L Street, Fifth Floor
Anchorage, Alaska 99501-1989
(907)276-1700

FILED
NOV 17 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re _____)
the GLACIER BAY) No. A88-115 Civil
(Consolidated)

Refers to all actions

NOTICE OF FILING CASE MANAGEMENT PLAN,
CASE MANAGEMENT PLAN STIPULATION, PROTECTIVE ORDER
AND ORDER FOR RETENTION & PRESERVATION OF DOCUMENTS

The parties in the above-captioned litigation hereby
file with the Court the following documents: 1) Case
Management Plan; 2) Protective Order; 3) Non-Destruct Order;
4) Case Management Plan Stipulation.

The Case Management Plan, the Protective Order and
the Order For Retention and Preservation of Documents are in
final form. There are minor aspects of the Case Management
Plan Stipulation that the parties are still in the process of
resolving. It is anticipated that those problems will be
resolved and, at the Pretrial Conference scheduled in this

NOTICE OF FILING
Page 1
796/3685.43

LAW OFFICES
ATKINSON, CONWAY
& GAGNON, INC.
420 L STREET
SUITE 800
ANCHORAGE, ALASKA
TELEPHONE 276-1700

267

matter for November 21, 1989, the parties will present to the Court a Case Management Plan Stipulation that the parties are in full agreement with.

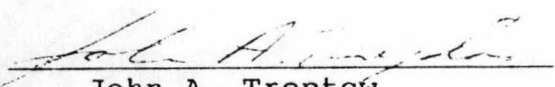
DATED this 4th day of November, 1989.

ATKINSON, CONWAY & GAGNON
Attorneys for Tesoro

By 

John A. Treptow

Service of the foregoing motion
has been made upon all counsel of
record based upon the court's
Master Service List of September 16, 1989.


John A. Treptow

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NOTICE OF FILING
Page 2
796/3685.43

The Honorable H. Russel Holland

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San Francisco, CA 94102-3463
(415) 556-3145
Counsel for United States

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
the GLACIER BAY) No. A88-115 Civil
)
) (Consolidated)
)

CASE MANAGEMENT PLAN STIPULATION

WHEREAS, the undersigned represent all parties presently
appearing in In Re the GLACIER BAY (Cause No. A88-115 Civil,
Consolidated) ("this action"); and

WHEREAS, all parties desire to resolve their differences in an
expeditious, orderly and reasonable manner; and

CASE MANAGEMENT PLAN
STIPULATION

1 WHEREAS, all parties have jointly agreed to a proposed Case
2 Management Plan ("Plan") which is being submitted herewith to the
3 court; and

4 WHEREAS, all parties have made significant compromises in order
5 to achieve a consensus on the Plan and this stipulation; and

6 WHEREAS, no party will be bound by this stipulation or Plan
7 unless the court approves the Plan as proposed and enters an order
8 approving this stipulation as offered;

9 NOW THEREFORE, in consideration of the foregoing and other
10 mutual consideration, the undersigned hereby agree as follows:

11 1. This stipulation and the proposed Case Management Plan
12 are conditioned upon all of the following:

- 13 a. the adoption by the court of the Plan as proposed;
- 14 b. the approval of the court of this stipulation as
15 offered;
- 16 c. the dismissal with prejudice of all punitive damage
17 claims which have been or could have been asserted
18 arising out of the Glacier Bay spill against any
19 present parties (other than Trinidad and West) and
20 their parents, subsidiaries, employees, officers and
21 directors in these proceedings;
- 22 d. the agreement by all defendants and third/fourth-
23 party defendants not to assert punitive damage claims
24 against any other party hereto; and
25
26

1 e. an order of the court making the Plan and this
2 stipulation binding on all parties presently
3 appearing in the action and ordering that no future
4 party to this action shall receive any benefit from
5 the Plan and this stipulation without also being
6 bound by the obligations and agreements undertaken by
7 present parties.

8 If any of these conditions are not met, the Plan and this
9 stipulation are void.

10 2. Each of the undersigned agree to be bound to every
11 stipulation made or contained herein.

12 3. Trinidad Corporation ("Trinidad"), and The West of England
13 Ship Owners Mutual Insurance Association (Luxembourg) ("West"),
14 formerly known as The West of England Ship Owners Mutual Protection
15 and Indemnity Association (Luxembourg), stipulate that:

- 16 a. The vessel GLACIER BAY discharged a quantity of North
17 Slope crude oil into Cook Inlet, Alaska on or about
18 July 2, 1987.
- 19 b. In resolving the claims of individual plaintiffs it
20 shall be presumed that any oil encountered in Upper
21 Cook Inlet between July 2, 1987 and September 30,
22 1987, was discharged by the vessel GLACIER BAY, unless
23 defendants produce admissible evidence that the oil
24 causing damage to a particular plaintiff was from
25 another source, in which case the affected plaintiff
26 will have the burden of proving his damages were not
caused by that other source.

1 c. Trinidad and West waive all statutory defenses under
2 the Trans-Alaska Pipeline Authorization Act ("TAPAA")
3 that the spill was caused by an act of war or the
4 negligence of the United States or other governmental
5 agency. Except for defenses specifically concerning
6 the entitlement to, and the fact or amount of damages
7 of any particular plaintiffs and except as provided in
8 paragraph 4 of this Stipulation and Section II,
9 paragraph 6.1 of the Plan, Trinidad and West waive all
10 other defenses to plaintiffs' and the USG's
11 compensatory damage claims under TAPAA.

12 d. At the time of the spill, Trinidad was an operator, as
13 that phrase is defined in 43 C.F.R. § 29.1(k)(2), of
14 the vessel GLACIER BAY and West was an insurer, as
15 that term is defined in 33 C.F.R. § 131.2(g), who
16 provided a certificate of insurance for Trinidad and
17 the vessel GLACIER BAY pursuant to 33 C.F.R. § 131.6.

18 4. All parties stipulate that:

19 a. Trinidad and West are strictly liable jointly and
20 severally under TAPAA for up to the first \$14 million
21 in damages compensable under TAPAA, but only to the
22 extent that:

23 (1) plaintiffs are among the class of claimants who
24 are entitled to recover under TAPAA. (A dispute
25 exists between plaintiffs and defendants as to
26

1 whether certain classes of plaintiffs such as
2 tenders, cash buyers and processors are entitled
3 to recovery, and this stipulation does not
4 resolve this dispute);

5 (2) plaintiffs' damages are of the type compensable
6 under TAPAA;

7 (3) plaintiffs' damages were in fact and proximately
8 caused by the spill and not by their own
9 negligence or other causes;

10 (4) plaintiffs have suffered damages in the amount
11 they claim;

12 (5) plaintiffs have timely asserted their claims; and

13 (6) plaintiffs have not failed to mitigate their
14 damages.

15 b. The plaintiffs assert they are entitled to pre-
16 judgment interest, post-judgment interest, costs,
17 disbursements and attorneys' fees against Trinidad and
18 West under TAPAA. Trinidad and West assert that there
19 are legal issues requiring resolution by the court as
20 to plaintiffs' entitlement, if any, to pre-judgment
21 interest, post-judgment interest, costs,
22 disbursements, and attorneys' fees under TAPAA. That
23 dispute is not resolved by this stipulation. Trinidad
24 and West assert that any such amounts that are awarded
25 by the court shall be included within the meaning of
26 the phrases "compensable damages," under TAPAA; "TAPAA

1 liability"; or "strict liability under TAPAA" or any
2 like phrase, as used in this stipulation to define
3 their limit of liability under TAPAA. Plaintiffs
4 assert that any such amounts that are awarded by the
5 court should be in addition to the limits of
6 Trinidad's and West's TAPAA liability. That dispute
7 is also not resolved by this stipulation.

8 c. Final judgment[s], pursuant to Rule 54(b), shall be
9 entered against West and Trinidad for their TAPAA
10 liability, if any, jointly and severally as to the
11 TAPAA liability admitted this paragraph only, no later
12 than the conclusion of the trial of the third group of
13 sixteen plaintiffs in Phase I and at the end of each
14 summary proceeding thereafter in favor of each
15 plaintiff who has obtained a verdict or award under
16 TAPAA; provided however:

17 (1) no plaintiff may obtain a judgment against West
18 and Trinidad for strict liability under TAPAA in
19 excess of the remainder of \$14 million less the
20 sum of (a) amounts compensable under TAPAA
21 previously paid by settlement (other than by the
22 Fund) and (b) amounts awarded under TAPAA to any
23 plaintiff by prior judgments against West and
24 Trinidad; and

25 (2) all parties reserve all rights to immediately
26 appeal any final judgment entered in Phase I.

1 d. Plaintiffs agree that they will not execute on any
2 judgments entered against West and Trinidad under
3 TAPAA in Phase I for amounts that exceed the limits of
4 liability of Trinidad and West under TAPAA as defined
5 by this Stipulation.

6 e. (1) Trinidad and West agree to pay to the United
7 States Government ("USG") \$1.5 million of the
8 USG's claims for cleanup costs and expenses
9 within thirty days of receiving written
10 agreement, satisfactory to the USG, Trinidad,
11 and West, and further subject to any approvals,
12 if necessary, by the USG, that said payment
13 shall be without prejudice to the claims and
14 rights, if any, of any party in Phase II
15 against the USG alleging negligence of the USG
16 (which negligence is denied by the USG) in
17 causing the spill and resulting damages.

18
19 The balances owed to the USG, if any, for
20 cleanup costs and expenses, if not settled or
21 otherwise resolved prior to the conclusion of
22 Phase I discovery and motion practice, shall be
23 the subject of a bench trial to be held in
24 accordance with paragraphs 1.5 and 19.3 of the
25 Joint Case Management Plan. At such trial, and
26 subject to Trinidad's and West's rights, if

1 any, to assert claims for contribution against
2 the USG in Phase II, Trinidad and West shall be
3 deemed to have waived any and all statutory
4 defenses under TAPAA to strict liability with
5 respect to the claims of the USG for pollution
6 cleanup costs and expenses, including the
7 statutory defense, as alleged by Trinidad,
8 West, and others, that negligence of the United
9 States or other governmental agency caused the
10 spill. This paragraph is without prejudice to
11 Trinidad's and West's rights, if any, to
12 litigate in Phase I said parties' contentions
13 that the USG's claims for pollution cleanup
14 costs and expenses are limited to "reasonable"
15 costs or that the USG failed to mitigate its
16 damages for pollution cleanup costs and
17 expenses.

18 Final judgment, pursuant to Rule 54(b), may
19 be entered against Trinidad and West for the
20 USG's pollution cleanup costs and expenses at
21 the conclusion of the aforesaid bench trial.
22 All parties reserve all rights immediately to
23 appeal any final judgment entered in Phase I as
24 a result of the aforesaid bench trial.
25
26

1 Trinidad or West will pay any judgment for
2 cleanup costs and expenses within thirty (30)
3 days after entry of a final judgment not
4 subject to further appeal.

5 (2) Payments of the aforesaid \$1.5 million to the
6 USG do not constitute, and shall not be
7 considered as, a release, an accord and
8 satisfaction, or a final settlement of the
9 USG's claims for pollution cleanup costs and
10 expenses, or of any other claims, actions, and
11 demands of the USG, Trinidad, and West for
12 other relief against any party in these
13 consolidated cases, it being expressly agreed
14 and understood by the parties that the balance
15 of the USG's claims for pollution cleanup costs
16 and expenses, if any, and the claims of the
17 USG, Trinidad, and West for contribution, shall
18 be resolved or litigated in accordance with the
19 terms of the Case Management Plan.

20 (3) This stipulation is without prejudice to any
21 and all rights, if any, of the USG, Trinidad
22 and West in Phase I to assert, claim, move, and
23 litigate the contention of the USG that,
24 pursuant to the Federal Water Pollution Control
25 Act, 33 U.S.C. § 1321 ("FWPCA") and TAPAA, the
26 USG is entitled to recover the full amount of

1 its "actual" cleanup costs and expenses, as
2 opposed to "reasonable" costs and expenses.

3 (4) This stipulation is without prejudice to any
4 and all rights, if any, of the USG, Trinidad
5 and West in Phase II to claim, litigate, take
6 to trial, and execute judgment(s) against any
7 defendant and/or third/fourth party defendant,
8 including, but not limited to, the GLACIER BAY,
9 in rem (except, to the extent applicable, any
10 letter of undertaking has been substituted in
11 place, and in lieu of, the defendant vessel
12 GLACIER BAY), with respect to liability of any
13 defendants and/or third/fourth party defendants
14 under other statutes and applicable law
15 concerning any and all claims and actions
16 asserted by the USG which are not resolved in
17 Phase I.

18 f. Trinidad and West agree that their strict liability,
19 jointly and severally, under TAPAA for up to
20 \$14 million in damages compensable under TAPAA may not
21 be reduced by the Limitation of Liability Act.
22 Trinidad and West do not waive their rights, if any,
23 to claim the benefits of limitation of liability under
24 the Limitation of Liability Act for all other
25 liability arising under TAPAA.
26

1 5. The Trans-Alaska Pipeline Liability Fund ("Fund")
2 stipulates that:

- 3 a. The vessel GLACIER BAY discharged a quantity of North
4 Slope crude oil into Cook Inlet, Alaska on or about
5 July 2, 1987.
- 6 b. In resolving the claims of individual plaintiffs it
7 shall be presumed that any oil encountered in Upper
8 Cook Inlet between July 2, 1987, and September 30,
9 1987, was discharged by the vessel GLACIER BAY, unless
10 defendants produce admissible evidence that the oil
11 causing damage to a particular plaintiff was from
12 another source, in which case the affected plaintiff
13 will have the burden of proving his damages were not
14 caused by that other source.
- 15 c. The Fund waives all statutory defenses under TAPAA
16 that the spill was caused by an act of war or the
17 negligence of the United States or other governmental
18 agency. Except for defenses specifically concerning
19 the entitlement to, and the fact or amount of damages
20 of any particular plaintiffs and except as provided in
21 paragraph 6 of this Stipulation, and Section II,
22 paragraph 6.1 of the Plan, the Fund waives all other
23 defenses to plaintiffs' compensatory claims under
24 TAPAA.

1 6. All parties stipulate that:

2 a. The Fund is strictly liable under TAPAA for damages
3 compensable under TAPAA that were caused by the spill
4 but:

5 (1) only if damages compensable under TAPAA exceed
6 \$14 million, in which case the Fund is liable for
7 such damages in excess of \$14 million up to the
8 statutory limit of \$100 million in damages
9 compensable under TAPAA (whether paid by
10 settlement with any claimants or as a result of a
11 judgment), and

12 (2) with respect to plaintiffs' claims, only to the
13 extent that

14 (A) plaintiffs are among the class[es] of
15 claimants who are entitled to recover under
16 TAPAA. (A dispute exists between plaintiffs
17 and defendants as to whether certain classes
18 of plaintiffs such as tenders, cash buyers
19 and processors are entitled to recovery and
20 this stipulation does not resolve this
21 dispute);

22 (B) plaintiffs' damages are of the type
23 compensable under TAPAA;

24 (C) plaintiffs' damages were in fact and
25 proximately caused by the spill and not by
26 their own negligence or other causes;

1 (D) plaintiffs have suffered damages in the
2 amount they claim;

3 (E) plaintiffs have timely asserted their
4 claims; and

5 (F) plaintiffs have not failed to mitigate their
6 damages; and

7 (3) with respect to the USG's claims, only to the
8 extent that the USG proves the amount of its
9 damages for pollution cleanup cost claims.

10 b. The plaintiffs assert they are entitled to pre-
11 judgment interest, post-judgment interest, costs,
12 disbursements and attorneys' fees against the Fund
13 under TAPAA. The Fund asserts that there are legal
14 issues requiring resolution by the court as to
15 plaintiffs' entitlement, if any, to pre-judgment
16 interest, post-judgment interest, costs, disbursements
17 and attorneys' fees under TAPAA and its implementing
18 regulations. That dispute is not resolved by this
19 stipulation. The Fund asserts that such amounts that
20 are awarded by the court shall be included within the
21 meaning of the phrase "compensable damages," under
22 TAPAA, "TAPAA liability"; "strict liability under
23 TAPAA" or any like phrase, as used in this Stipulation
24 to define the amount of the Fund's liability under
25 TAPAA. Plaintiffs assert that any such amounts that
26 are awarded by the court should be in addition to the

1 limits of the Fund's liability under TAPAA. That
2 dispute is not resolved by this stipulation.

3 c. Subject to the limitations set out in this
4 paragraph 6, and to the extent that the limits of its
5 TAPAA liability have not been exhausted by prior
6 settlements, judgment[s] may be entered against the
7 Fund pursuant to Rule 54(b) for its TAPAA liability,
8 to the plaintiffs whose claims have been tried, no
9 later than the conclusion of the trial of the third
10 group of sixteen plaintiffs in Phase I.

11 d. To the extent that the limits of its TAPAA liability
12 have not been exhausted by prior settlement of claims
13 or prior judgments entered against it, final
14 judgment[s] shall be entered simultaneously against
15 the Fund pursuant to Rule 54(b) for its TAPAA
16 liability, subject to the limitations set out in this
17 paragraph 6, to all remaining plaintiffs at the
18 conclusion of all summary proceedings adjudicating the
19 claims of the remaining plaintiffs.

20 e. Subject to the limitation set out in
21 paragraph 6(a)(3), and to the extent that the limits
22 of its TAPAA liability have not been exhausted by
23 prior settlements of claims or judgments entered
24 against it, final judgment shall be entered against
25 the Fund pursuant to Rule 54(b) for its TAPAA
26 liability to the USG with respect to any pollution

1 cleanup costs and expenses not paid to the USG by
2 Trinidad and/or West or not covered by a judgment
3 against them pursuant to paragraphs 4 and 5 above.
4 The Fund and the USG acknowledge that the Fund will
5 have an opportunity in Phase II of these proceedings
6 to seek to recover amounts paid to the USG pursuant to
7 this paragraph, in the event the USG's negligence
8 (which negligence is denied) is established in Phase
9 II of these proceedings, but only to the extent that
10 such negligence would have relieved the Fund of
11 liability to the USG in the first instance.

12 f. The Fund stipulates that it will not seek to limit its
13 liability to plaintiffs and the USG under TAPAA by
14 claiming the protections of the Limitation of
15 Liability of Act.

16 g. With respect to any judgments entered against the Fund
17 pursuant to subparagraphs c, d, and e above:

18 (1) The Fund's liability is defined to be damages
19 compensable under TAPAA that exceed \$14 million
20 up to the TAPAA statutory limit (less amounts
21 previously paid by the Fund to plaintiffs or
22 claimants or awarded by prior judgments against
23 the Fund);

24 (2) No judgment may be entered against the Fund until
25 judgments have been entered against West and
26 Trinidad or payments have been made by them to

1 plaintiffs and claimants to the full extent of
2 their TAPAA liability as set out in paragraph 4
3 above;

4 (3) The Fund, on the one hand, and West and Trinidad,
5 on the other hand, undertake to attempt to
6 establish a mechanism that would resolve among
7 themselves any disputes as to whether Trinidad
8 and West have made payments to plaintiffs and
9 claimants or had judgments entered against them
10 to the full extent of their TAPAA liability as
11 set out in Paragraph 4 of this Stipulation.
12 Failing agreement on a mechanism, the Fund,
13 Trinidad, and West agree to submit said dispute
14 to the court for decision at such point in time
15 as it is determined that a dispute over this
16 issue exists.

17 7. Trinidad and the Standard Oil Company ("SOHIO"), as
18 guarantor of Trinidad only under AS 46.03.822, stipulate that:

- 19 a. Alaska North Slope crude oil entered into the waters
20 of Upper Cook Inlet, Alaska from the vessel GLACIER
21 BAY on or about July 2, 1987 ("the spill").
22 b. In resolving the claims of individual plaintiffs it
23 shall be presumed that any oil encountered in Upper
24 Cook Inlet between July 2, 1987, and September 30,
25 1987, was discharged by the vessel GLACIER BAY, unless
26 defendants produce admissible evidence that the oil

1 causing damage to a particular plaintiff was from
2 another source, in which case the affected plaintiff
3 will have the burden of proving his damages were not
4 caused by that other source.

5 c. At the time of the spill, Trinidad had control over
6 the hazardous substance, as that phrase is defined in
7 AS 46.03.826(3), and SOHIO was a guarantor of Trinidad
8 pursuant to AS 46.04.040.

9 d. Trinidad and SOHIO, and each of them are, subject to
10 the other terms of this paragraph and paragraph 8 of
11 this Stipulation, strictly liable under AS 46.03.822
12 ("Alaska statute") to those plaintiffs:

13 (1) who can establish they are among the class of
14 claimants who are entitled to recovery under the
15 Alaska statute (a dispute exists between
16 plaintiffs and defendants as to whether certain
17 classes of plaintiffs such as tenders, cash
18 buyers and processors are entitled to recovery
19 and this stipulation does not resolve this
20 dispute);

21 (2) who have suffered damages of the type compensable
22 under the Alaska statute;

23 (3) whose damages were in fact and proximately
24 caused by the spill and not by their own
25 negligence or other causes;

26 (4) who have timely asserted their claims;

1 (5) who have not failed to mitigate their damages;
2 and

3 (6) whose recovery under state law is not preempted.

4 e. The plaintiffs assert they are entitled to pre-
5 judgment interest, post-judgment interest, costs,
6 disbursements and attorneys' fees against Trinidad and
7 SOHIO under the Alaska Statute. Trinidad and SOHIO
8 assert that there are legal issues requiring
9 resolution by the court as to plaintiffs' entitlement,
10 if any, to pre-judgment interest, post-judgment
11 interest, costs, disbursements and attorneys' fees
12 under the Alaska Statute. That dispute is not
13 resolved by this Stipulation.

14 f. Trinidad and SOHIO admit the spill was not solely the
15 result of an act of war; an intentional act or a
16 negligent act of a third party, other than a party (or
17 its employees) in privity of contract with, or
18 employed by Trinidad or SOHIO; negligence on the part
19 of the USG or the State of Alaska; or an act of God.
20 Except for defenses specifically concerning the
21 entitlement to, and the fact or amount of damages of
22 any particular plaintiffs and except as provided in
23 this paragraph 7 of this Stipulation and Section II,
24 paragraph 6.1 of the Plan, Trinidad and SOHIO waive
25 all other defenses to plaintiffs' compensatory damages
26 claims under Alaska Statute.

- 1 g. Trinidad and SOHIO admit Trinidad and SOHIO are not
2 entitled to exoneration under the Limitation of
3 Liability Act.
- 4 h. Except as stated in 7(g) above, Trinidad and SOHIO do
5 not waive any rights they may have to claim the
6 benefits of limitation of liability pursuant to the
7 Limitation of Liability Act for all liabilities
8 arising under the Alaska statute. (Other parties deny
9 Trinidad's and SOHIO's entitlement to limit their
10 liability pursuant to the Limitation of Liability Act.
11 Any party may move pursuant to Rule 12 during Phase I
12 to dismiss the Complaint in Limitation filed by
13 Trinidad and others, as provided in the Plan.)
- 14 i. The parties agree and stipulate that any and all of
15 the stipulations and agreements in paragraphs 7 and 8
16 made by SOHIO are made solely in SOHIO's role as a
17 guarantor pursuant to a guarantee regarding oil
18 discharge liability relating to the spill from the
19 GLACIER BAY, and are not binding on SOHIO or an any
20 affiliate of SOHIO in any other role.

21 8. All parties stipulate that

- 22 a. Subject to the provisions of this paragraph, final
23 judgment, pursuant to Rule 54(b), may be entered
24 against Trinidad or SOHIO for amounts compensable
25 under the Alaska statute at the conclusion of the
26 trial of the third group of 16 plaintiffs in Phase I

1 and at the end of each summary proceeding thereafter
2 in favor of each plaintiff who has obtained a judgment
3 or award under the Alaska Statute.

4 b. In the event Trinidad's Complaint in Limitation is
5 dismissed during Phase I, subject to paragraph 8(f)
6 below and pending the completion of the proceedings
7 there described, plaintiffs agree to limit their right
8 to execute on judgments obtained in Phase I against
9 Trinidad or SOHIO, and each of them under the Alaska
10 statute, to a total amount of 14 million less the sum
11 of:

12 (1) amounts compensable under the Alaska statute
13 previously paid by settlement (other than by the
14 Fund), and

15 (2) amounts awarded under the Alaska statute by prior
16 judgments against Trinidad or SOHIO.

17 c. In the event Trinidad's Complaint in Limitation is not
18 dismissed during Phase I, but is found by the court
19 not to limit SOHIO's guarantee, subject to
20 paragraph 8(f) below and pending completion of the
21 proceedings there described, plaintiffs agree to limit
22 their right to execute on judgments obtained in
23 Phase I against SOHIO under the Alaska statute to
24 \$14 million less the sum of:

1 (1) amounts compensable under the Alaska statute
2 previously paid by settlement (other than by the
3 Fund), and

4 (2) amounts awarded under the Alaska statute by prior
5 judgments against Trinidad or SOHIO.

6 d. In the event Trinidad's Complaint in Limitation is not
7 dismissed during Phase I and the court holds that the
8 SOHIO guarantee is limited by the benefits available
9 to Trinidad under the Limitation Act (or the court
10 fails to rule on the issue), subject to paragraph 8(f)
11 below and pending the completion of the proceedings
12 there described, plaintiffs agree to limit their right
13 to execute on judgments obtained in Phase I against
14 Trinidad or SOHIO under the Alaska statute, to
15 \$6.5 million (or as adjusted by the court pursuant to
16 Admiralty Rule (f)(7) less the sum of:

17 (1) amounts compensable under the Alaska statute
18 previously paid by settlement (other than the
19 Fund), and

20 (2) amounts awarded under the Alaska statute to any
21 plaintiff by prior judgments against Trinidad or
22 SOHIO.

23 e. Plaintiffs agree not to execute judgments pursuant to
24 paragraphs 8(b)-(d) above prior to 30 days following
25 the entry of judgment.
26

1 f. With respect to any judgments obtained against
2 Trinidad or SOHIO under the Alaska Statute that are
3 not funded at the conclusion of Phase I as a result of
4 the limitations contained herein, plaintiffs agree not
5 to execute on each judgment until 30 days after the
6 entry of judgments in the Phase II proceeding that
7 apportion ultimate liability among the various
8 defendants.

9 f. All parties reserve all rights to appeal immediately
10 any final judgment entered in Phase I.

11 9. a. SPC, Tesoro, CIRO and KPL agree not to contest the
12 amount of damages awarded to any plaintiff in Phase I,
13 except SPC, Tesoro, CIRO and KPL reserve the right to
14 contest amounts paid in settlements to plaintiffs
15 against any party except plaintiffs to the extent that
16 any contribution or indemnity claim is made against
17 them to recover any of those amounts.

18 b. SPC, Tesoro, CIRO and KPL further agree that to the
19 extent one or more of them are found strictly or
20 otherwise liable (except to the extent that such
21 liability arises from charter parties or other
22 contractual agreements) to any other party to this
23 proceeding in Phase II for amounts paid or awarded in
24 Phase I, then to the extent plaintiffs' Phase I
25 judgments remain unfunded, SPC, Tesoro, CIRO and KPL
26 (as applicable) shall be similarly liable to

1 plaintiffs to that same extent, even though plaintiffs
2 have not appeared or otherwise asserted such claims in
3 Phase II.

4 c. In the event it is determined in Phase II that
5 Trinidad and SOHIO are entitled to the benefits of the
6 Limitation of Liability Act, plaintiffs agree that to
7 the extent any unfunded judgments obtained against
8 Trinidad and SOHIO under the Alaska statute during
9 Phase I exceed the amount of the limitation fund,
10 plaintiffs will not execute in excess of the total
11 amount of the limitation fund determined by the court
12 to be due to plaintiffs against Trinidad and SOHIO, as
13 guarantor.

14 10. Nothing in this stipulation shall be deemed to waive or
15 diminish any obligations which may be imposed or to
16 prejudice any rights or defenses that may be created, by
17 any revision of TAPAA by Congress, to the extent that those
18 revisions would apply to this proceeding absent this
19 stipulation.

20 11. All parties agree:

21 a. The stipulations, admissions, waiver of defense,
22 consent to judgments, settlements, or payment of
23 judgments by Trinidad, West, SOHIO and the Fund shall
24 be (i) wholly without prejudice to their rights and
25 defenses with respect to plaintiffs' punitive damages
26 claims and (ii) wholly without prejudice to all

1 claims, rights, or defenses against each other and
2 against any present or future defendant, third-party
3 defendant or fourth-party defendant in this action, or
4 any other action arising out of the spill, including
5 without limitation, the right:

- 6 (1) to assert that any defendant, third or fourth-
7 party defendant or non-party is liable, jointly
8 and severally, in whole or in part, for the
9 damages awarded or paid by settlement to
10 plaintiffs; and
11 (2) to seek reimbursement, subrogation, contribution
12 or indemnification for such damages or settlement
13 payments from any defendant, third/fourth-party
14 defendant or third party.

15 b. Any dismissal of claims or parties in Phase I or any
16 election by plaintiffs not to pursue compensatory
17 damages claims against any defendant in Phase I shall
18 be without prejudice to the right of Trinidad, West,
19 SOHIO and the Fund, or any other defendant, third
20 party defendant or fourth-party defendant in Phase II
21 of this action, or other actions arising out of the
22 oil spill, to assert any dismissed claims, to pursue
23 any rights against dismissed parties, to seek
24 reimbursement, subrogation, contribution or
25
26

1 indemnification from any such party or to assert that
2 any such party is jointly and severally liable for
3 damages awarded or paid by settlement to plaintiffs.

4 c. Notwithstanding the above, Trinidad, West and the
5 plaintiffs acknowledge that in any punitive damages
6 trial in Phase II the amounts paid in compensatory
7 damages are relevant to any punitive damages claims of
8 plaintiffs, but they have not been able to agree as to
9 what facts may be admissible or how to most fairly
10 present those facts to a jury during the punitive
11 damages trial in Phase II. The parties agree to
12 submit their respective views to the court in advance
13 of the punitive damages trial.

14 d. To the extent that the funding mechanisms described in
15 this stipulation are not available up to and including
16 the time of execution of any judgments (for example,
17 should the Fund be dissolved or West become judgment
18 proof), plaintiffs and the USG shall be free to pursue
19 any and all defendants and third/fourth party
20 defendants to recover the amount of the unavailable
21 funding under such rights of action as may exist
22 against each defendant and third/fourth party
23 defendant, it being understood that this provision
24 creates no new or additional rights of action and does
25 not create joint liability where such liability would
26 not otherwise exist.

1 e. All parties stipulate that the results of any of the
2 trials of the blocks of 16 plaintiffs' claims for
3 compensatory damages shall not have any subsequent res
4 judicata, collateral estoppel or any other issue
5 preclusive effect, or in any manner be binding on
6 defendants or upon any plaintiffs whose compensatory
7 damages claims have not actually been tried, except
8 with respect to the claims for compensatory damages
9 asserting that a price drop in the price of salmon in
10 late July 1987 was caused by the GLACIER BAY spill.
11 As to that single issue, the initial jury verdict or
12 Court determination shall be binding on all defendants
13 and all plaintiffs and shall be given res judicata and
14 collateral estoppel effect in all subsequent
15 proceedings herein, it being understood that no party
16 waives any rights of appeal.

17 f. Plaintiffs stipulate (without prejudice to their right
18 to offer rebuttal evidence on any issue as to their
19 damages, and reserving all other evidentiary
20 objections) that in the first three jury trials they
21 will not object on the ground of relevance to the
22 admissibility of evidence that defendants seek to
23 present regarding (a) the total number of claimants
24 who are seeking recovery; (b) the total damages sought
25
26

1 or suffered by all claimants; and (c) the alleged
2 appropriate methodologies for awarding damages to
3 plaintiffs in these circumstances.

4 g. The jury verdicts of the first three trials in Phase I
5 shall be given determinative weight by the court in
6 the summary proceedings unless doing so would provide
7 a clearly unfair basis for awarding damages.

8 12. Bankruptcy clause. Except for the USG, all parties
9 (including Mathiason and Glacier Bay Transportation) agree to join
10 in a stipulation (or not to oppose a motion made by any party
11 hereto) to be presented to the United States Bankruptcy Court for
12 the Eastern District of Missouri asking the court to order:

13 a. that the bankruptcy stay be lifted with respect to all
14 proceedings herein, including without limitation any
15 judgment(s) obtained in this action by any defendant,
16 third party or fourth party defendant or by any
17 plaintiff who was within the putative classes of the
18 McGahan and UCIDA actions, on the condition that the
19 foregoing persons or entities agree, (1) to first
20 attempt to execute as to any unsatisfied portions of
21 any judgment(s) against Trinidad against any available
22 proceeds available under Trinidad's insurance contract
23 with West of England Ship Owners Mutual Insurance
24 Association (Luxembourg), and, (2) in the event any
25 such judgment(s) remain unsatisfied after 30 days, the
26

1 foregoing persons or entities agree to file their
2 judgments in the bankruptcy court, which shall be
3 entered by the bankruptcy court as allowed claims;

4 b. that all other plaintiffs (which term does not include
5 the USG) not described in the preceding subparagraph
6 (i.e., processor plaintiffs) shall be required to
7 submit their claims to the bankruptcy court, which
8 claims will be opposed by Trinidad; but in the event
9 the court allows the filing of such claims, Trinidad
10 will stipulate to the bankruptcy court as set out in
11 the preceding subparagraph;

12 c. that West's obligations under its insurance contract
13 with Trinidad (including Mathiason and Glacier Bay
14 Transportation) are in no way limited by the
15 bankruptcy of Trinidad, and West shall be obligated to
16 comply in full with its obligations under its
17 insurance contract with Trinidad with respect to
18 Trinidad's liability as to any party, and West will
19 provide to the Bankruptcy Court in the Apex
20 proceeding, of which Trinidad is a party, with all
21 necessary undertakings to assure that West will honor
22 said insurance agreements;

23 d. that the foregoing be without prejudice to any of the
24 other provisions of this stipulation with respect to
25 the funding or payment of plaintiffs' TAPAA or Alaska
26 State Statutory damages by SOHIO, West, or the Fund,

1 or by Trinidad to the extent of \$6.5 million or such
2 greater amount as the court directs Trinidad to
3 provide as a bond in the Limitation proceeding.

4 13. All parties agree that an essential element of this
5 Stipulation and the Plan is that the plaintiffs entitlement to
6 recover compensatory damages will be tried independently of and
7 prior to the discovery or trial of any issues pertaining to the
8 fault of any party. The court or discovery master shall be guided
9 by the foregoing principle in resolving any disputes about the
10 appropriate scope of discovery or the admissibility of any evidence
11 at trial during Phase I.

12 14. Plaintiffs agree to stay until Phase II, all causes of
13 actions they may have against any present party other than their
14 claims against (a) Trinidad, West and the Fund under TAPAA, and (b)
15 Trinidad and SOHIO under the Alaska Statute.

16 15. To the extent a proper predicate tort may be necessary to
17 assert punitive damages claims against Trinidad or West, Trinidad
18 and West agree not to assert as a defense to a punitive damages
19 claim against them that plaintiffs have failed to prove a predicate
20 tort. Except as stated in the preceding sentence, nothing in this
21 agreement shall be deemed a waiver by Trinidad or West of any
22 defenses to plaintiff's punitive damages claims.

23 16. All parties stipulate and agree that all claims against BP
24 America, Inc., and Tesoro Petroleum Corporation in this action shall
25
26

1 be dismissed forthwith without prejudice and without an award of
2 costs or fees to any party and without prejudice of the Fund to seek
3 reimbursement against them under TAPAA.

4 RESPECTFULLY SUBMITTED this ____ day of November, 1989.

5
6
7 Brian O'Neill
8 FAEGRE & BENSON
9 Attorneys for Plaintiffs

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GALBRAITH & OWEN
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26
CASE MANAGEMENT PLAN
STIPULATION

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25 SOHIO

26 GJS/03717/AK8

CASE MANAGEMENT PLAN
STIPULATION

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FILED
NOV 17 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
)
the GLACIER BAY) No. A88-115 Civil
)
) (Consolidated)
_____)

Refers to all actions

NOTICE OF FILING CASE MANAGEMENT PLAN,
CASE MANAGEMENT PLAN STIPULATION, PROTECTIVE ORDER
AND ORDER FOR RETENTION & PRESERVATION OF DOCUMENTS

The parties in the above-captioned litigation hereby
file with the Court the following documents: 1) Case
Management Plan; 2) Protective Order; 3) Non-Destruct Order;
4) Case Management Plan Stipulation.

The Case Management Plan, the Protective Order and
the Order For Retention and Preservation of Documents are in
final form. There are minor aspects of the Case Management
Plan Stipulation that the parties are still in the process of
resolving. It is anticipated that those problems will be
resolved and, at the Pretrial Conference scheduled in this

NOTICE OF FILING
Page 1
796/3685.43

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267

matter for November 21, 1989, the parties will present to the Court a Case Management Plan Stipulation that the parties are in full agreement with.

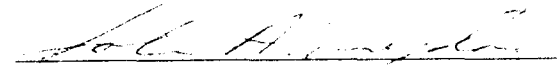
DATED this 17 day of November, 1989.

ATKINSON, CONWAY & GAGNON
Attorneys for Tesoro

By 

John A. Treptow

Service of the foregoing motion
has been made upon all counsel of
record based upon the court's
Master Service List of September 16, 1989.


John A. Treptow

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NOTICE OF FILING
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The Honorable H. Russel Holland

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
the GLACIER BAY) No. A88-115 Civil
) (Consolidated)
)

CASE MANAGEMENT PLAN STIPULATION

WHEREAS, the undersigned represent all parties presently
appearing in In Re the GLACIER BAY (Cause No. A88-115 Civil,
Consolidated) ("this action"); and

WHEREAS, all parties desire to resolve their differences in an
expeditious, orderly and reasonable manner; and

CASE MANAGEMENT PLAN
STIPULATION

1 WHEREAS, all parties have jointly agreed to a proposed Case
2 Management Plan ("Plan") which is being submitted herewith to the
3 court; and

4 WHEREAS, all parties have made significant compromises in order
5 to achieve a consensus on the Plan and this stipulation; and

6 WHEREAS, no party will be bound by this stipulation or Plan
7 unless the court approves the Plan as proposed and enters an order
8 approving this stipulation as offered;

9 NOW THEREFORE, in consideration of the foregoing and other
10 mutual consideration, the undersigned hereby agree as follows:

11 1. This stipulation and the proposed Case Management Plan
12 are conditioned upon all of the following:

- 13 a. the adoption by the court of the Plan as proposed;
- 14 b. the approval of the court of this stipulation as
15 offered;
- 16 c. the dismissal with prejudice of all punitive damage
17 claims which have been or could have been asserted
18 arising out of the Glacier Bay spill against any
19 present parties (other than Trinidad and West) and
20 their parents, subsidiaries, employees, officers and
21 directors in these proceedings;
- 22 d. the agreement by all defendants and third/fourth-
23 party defendants not to assert punitive damage claims
24 against any other party hereto; and

1 e. an order of the court making the Plan and this
2 stipulation binding on all parties presently
3 appearing in the action and ordering that no future
4 party to this action shall receive any benefit from
5 the Plan and this stipulation without also being
6 bound by the obligations and agreements undertaken by
7 present parties.

8 If any of these conditions are not met, the Plan and this
9 stipulation are void.

10 2. Each of the undersigned agree to be bound to every
11 stipulation made or contained herein.

12 3. Trinidad Corporation ("Trinidad"), and The West of England
13 Ship Owners Mutual Insurance Association (Luxembourg) ("West"),
14 formerly known as The West of England Ship Owners Mutual Protection
15 and Indemnity Association (Luxembourg), stipulate that:

- 16 a. The vessel GLACIER BAY discharged a quantity of North
17 Slope crude oil into Cook Inlet, Alaska on or about
18 July 2, 1987.
- 19 b. In resolving the claims of individual plaintiffs it
20 shall be presumed that any oil encountered in Upper
21 Cook Inlet between July 2, 1987 and September 30,
22 1987, was discharged by the vessel GLACIER BAY, unless
23 defendants produce admissible evidence that the oil
24 causing damage to a particular plaintiff was from
25 another source, in which case the affected plaintiff
26 will have the burden of proving his damages were not
caused by that other source.

1 c. Trinidad and West waive all statutory defenses under
2 the Trans-Alaska Pipeline Authorization Act ("TAPAA")
3 that the spill was caused by an act of war or the
4 negligence of the United States or other governmental
5 agency. Except for defenses specifically concerning
6 the entitlement to, and the fact or amount of damages
7 of any particular plaintiffs and except as provided in
8 paragraph 4 of this Stipulation and Section II,
9 paragraph 6.1 of the Plan, Trinidad and West waive all
10 other defenses to plaintiffs' and the USG's
11 compensatory damage claims under TAPAA.

12 d. At the time of the spill, Trinidad was an operator, as
13 that phrase is defined in 43 C.F.R. § 29.1(k)(2), of
14 the vessel GLACIER BAY and West was an insurer, as
15 that term is defined in 33 C.F.R. § 131.2(g), who
16 provided a certificate of insurance for Trinidad and
17 the vessel GLACIER BAY pursuant to 33 C.F.R. § 131.6.

18 4. All parties stipulate that:

19 a. Trinidad and West are strictly liable jointly and
20 severally under TAPAA for up to the first \$14 million
21 in damages compensable under TAPAA, but only to the
22 extent that:

23 (1) plaintiffs are among the class of claimants who
24 are entitled to recover under TAPAA. (A dispute
25 exists between plaintiffs and defendants as to
26

1 whether certain classes of plaintiffs such as
2 tenders, cash buyers and processors are entitled
3 to recovery, and this stipulation does not
4 resolve this dispute);

5 (2) plaintiffs' damages are of the type compensable
6 under TAPAA;

7 (3) plaintiffs' damages were in fact and proximately
8 caused by the spill and not by their own
9 negligence or other causes;

10 (4) plaintiffs have suffered damages in the amount
11 they claim;

12 (5) plaintiffs have timely asserted their claims; and

13 (6) plaintiffs have not failed to mitigate their
14 damages.

15 b. The plaintiffs assert they are entitled to pre-
16 judgment interest, post-judgment interest, costs,
17 disbursements and attorneys' fees against Trinidad and
18 West under TAPAA. Trinidad and West assert that there
19 are legal issues requiring resolution by the court as
20 to plaintiffs' entitlement, if any, to pre-judgment
21 interest, post-judgment interest, costs,
22 disbursements, and attorneys' fees under TAPAA. That
23 dispute is not resolved by this stipulation. Trinidad
24 and West assert that any such amounts that are awarded
25 by the court shall be included within the meaning of
26 the phrases "compensable damages," under TAPAA; "TAPAA

1 liability"; or "strict liability under TAPAA" or any
2 like phrase, as used in this stipulation to define
3 their limit of liability under TAPAA. Plaintiffs
4 assert that any such amounts that are awarded by the
5 court should be in addition to the limits of
6 Trinidad's and West's TAPAA liability. That dispute
7 is also not resolved by this stipulation.

8 c. Final judgment[s], pursuant to Rule 54(b), shall be
9 entered against West and Trinidad for their TAPAA
10 liability, if any, jointly and severally as to the
11 TAPAA liability admitted this paragraph only, no later
12 than the conclusion of the trial of the third group of
13 sixteen plaintiffs in Phase I and at the end of each
14 summary proceeding thereafter in favor of each
15 plaintiff who has obtained a verdict or award under
16 TAPAA; provided however:

17 (1) no plaintiff may obtain a judgment against West
18 and Trinidad for strict liability under TAPAA in
19 excess of the remainder of \$14 million less the
20 sum of (a) amounts compensable under TAPAA
21 previously paid by settlement (other than by the
22 Fund) and (b) amounts awarded under TAPAA to any
23 plaintiff by prior judgments against West and
24 Trinidad; and

25 (2) all parties reserve all rights to immediately
26 appeal any final judgment entered in Phase I.

1 d. Plaintiffs agree that they will not execute on any
2 judgments entered against West and Trinidad under
3 TAPAA in Phase I for amounts that exceed the limits of
4 liability of Trinidad and West under TAPAA as defined
5 by this Stipulation.

6 e. (1) Trinidad and West agree to pay to the United
7 States Government ("USG") \$1.5 million of the
8 USG's claims for cleanup costs and expenses
9 within thirty days of receiving written
10 agreement, satisfactory to the USG, Trinidad,
11 and West, and further subject to any approvals,
12 if necessary, by the USG, that said payment
13 shall be without prejudice to the claims and
14 rights, if any, of any party in Phase II
15 against the USG alleging negligence of the USG
16 (which negligence is denied by the USG) in
17 causing the spill and resulting damages.

18
19 The balances owed to the USG, if any, for
20 cleanup costs and expenses, if not settled or
21 otherwise resolved prior to the conclusion of
22 Phase I discovery and motion practice, shall be
23 the subject of a bench trial to be held in
24 accordance with paragraphs 1.5 and 19.3 of the
25 Joint Case Management Plan. At such trial, and
26 subject to Trinidad's and West's rights, if

1 any, to assert claims for contribution against
2 the USG in Phase II, Trinidad and West shall be
3 deemed to have waived any and all statutory
4 defenses under TAPAA to strict liability with
5 respect to the claims of the USG for pollution
6 cleanup costs and expenses, including the
7 statutory defense, as alleged by Trinidad,
8 West, and others, that negligence of the United
9 States or other governmental agency caused the
10 spill. This paragraph is without prejudice to
11 Trinidad's and West's rights, if any, to
12 litigate in Phase I said parties' contentions
13 that the USG's claims for pollution cleanup
14 costs and expenses are limited to "reasonable"
15 costs or that the USG failed to mitigate its
16 damages for pollution cleanup costs and
17 expenses.

18 Final judgment, pursuant to Rule 54(b), may
19 be entered against Trinidad and West for the
20 USG's pollution cleanup costs and expenses at
21 the conclusion of the aforesaid bench trial.
22 All parties reserve all rights immediately to
23 appeal any final judgment entered in Phase I as
24 a result of the aforesaid bench trial.
25
26

1 Trinidad or West will pay any judgment for
2 cleanup costs and expenses within thirty (30)
3 days after entry of a final judgment not
4 subject to further appeal.

5 (2) Payments of the aforesaid \$1.5 million to the
6 USG do not constitute, and shall not be
7 considered as, a release, an accord and
8 satisfaction, or a final settlement of the
9 USG's claims for pollution cleanup costs and
10 expenses, or of any other claims, actions, and
11 demands of the USG, Trinidad, and West for
12 other relief against any party in these
13 consolidated cases, it being expressly agreed
14 and understood by the parties that the balance
15 of the USG's claims for pollution cleanup costs
16 and expenses, if any, and the claims of the
17 USG, Trinidad, and West for contribution, shall
18 be resolved or litigated in accordance with the
19 terms of the Case Management Plan.

20 (3) This stipulation is without prejudice to any
21 and all rights, if any, of the USG, Trinidad
22 and West in Phase I to assert, claim, move, and
23 litigate the contention of the USG that,
24 pursuant to the Federal Water Pollution Control
25 Act, 33 U.S.C. § 1321 ("FWPCA") and TAPAA, the
26 USG is entitled to recover the full amount of

1 its "actual" cleanup costs and expenses, as
2 opposed to "reasonable" costs and expenses.

3 (4) This stipulation is without prejudice to any
4 and all rights, if any, of the USG, Trinidad
5 and West in Phase II to claim, litigate, take
6 to trial, and execute judgment(s) against any
7 defendant and/or third/fourth party defendant,
8 including, but not limited to, the GLACIER BAY,
9 in rem (except, to the extent applicable, any
10 letter of undertaking has been substituted in
11 place, and in lieu of, the defendant vessel
12 GLACIER BAY), with respect to liability of any
13 defendants and/or third/fourth party defendants
14 under other statutes and applicable law
15 concerning any and all claims and actions
16 asserted by the USG which are not resolved in
17 Phase I.

18 f. Trinidad and West agree that their strict liability,
19 jointly and severally, under TAPAA for up to
20 \$14 million in damages compensable under TAPAA may not
21 be reduced by the Limitation of Liability Act.
22 Trinidad and West do not waive their rights, if any,
23 to claim the benefits of limitation of liability under
24 the Limitation of Liability Act for all other
25 liability arising under TAPAA.
26

1 5. The Trans-Alaska Pipeline Liability Fund ("Fund")
2 stipulates that:

- 3 a. The vessel GLACIER BAY discharged a quantity of North
4 Slope crude oil into Cook Inlet, Alaska on or about
5 July 2, 1987.
- 6 b. In resolving the claims of individual plaintiffs it
7 shall be presumed that any oil encountered in Upper
8 Cook Inlet between July 2, 1987, and September 30,
9 1987, was discharged by the vessel GLACIER BAY, unless
10 defendants produce admissible evidence that the oil
11 causing damage to a particular plaintiff was from
12 another source, in which case the affected plaintiff
13 will have the burden of proving his damages were not
14 caused by that other source.
- 15 c. The Fund waives all statutory defenses under TAPAA
16 that the spill was caused by an act of war or the
17 negligence of the United States or other governmental
18 agency. Except for defenses specifically concerning
19 the entitlement to, and the fact or amount of damages
20 of any particular plaintiffs and except as provided in
21 paragraph 6 of this Stipulation, and Section II,
22 paragraph 6.1 of the Plan, the Fund waives all other
23 defenses to plaintiffs' compensatory claims under
24 TAPAA.

1 6. All parties stipulate that:

2 a. The Fund is strictly liable under TAPAA for damages
3 compensable under TAPAA that were caused by the spill
4 but:

5 (1) only if damages compensable under TAPAA exceed
6 \$14 million, in which case the Fund is liable for
7 such damages in excess of \$14 million up to the
8 statutory limit of \$100 million in damages
9 compensable under TAPAA (whether paid by
10 settlement with any claimants or as a result of a
11 judgment), and

12 (2) with respect to plaintiffs' claims, only to the
13 extent that

14 (A) plaintiffs are among the class[es] of
15 claimants who are entitled to recover under
16 TAPAA. (A dispute exists between plaintiffs
17 and defendants as to whether certain classes
18 of plaintiffs such as tenders, cash buyers
19 and processors are entitled to recovery and
20 this stipulation does not resolve this
21 dispute);

22 (B) plaintiffs' damages are of the type
23 compensable under TAPAA;

24 (C) plaintiffs' damages were in fact and
25 proximately caused by the spill and not by
26 their own negligence or other causes;

1 (D) plaintiffs have suffered damages in the
2 amount they claim;

3 (E) plaintiffs have timely asserted their
4 claims; and

5 (F) plaintiffs have not failed to mitigate their
6 damages; and

7 (3) with respect to the USG's claims, only to the
8 extent that the USG proves the amount of its
9 damages for pollution cleanup cost claims.

10 b. The plaintiffs assert they are entitled to pre-
11 judgment interest, post-judgment interest, costs,
12 disbursements and attorneys' fees against the Fund
13 under TAPAA. The Fund asserts that there are legal
14 issues requiring resolution by the court as to
15 plaintiffs' entitlement, if any, to pre-judgment
16 interest, post-judgment interest, costs, disbursements
17 and attorneys' fees under TAPAA and its implementing
18 regulations. That dispute is not resolved by this
19 stipulation. The Fund asserts that such amounts that
20 are awarded by the court shall be included within the
21 meaning of the phrase "compensable damages," under
22 TAPAA, "TAPAA liability"; "strict liability under
23 TAPAA" or any like phrase, as used in this Stipulation
24 to define the amount of the Fund's liability under
25 TAPAA. Plaintiffs assert that any such amounts that
26 are awarded by the court should be in addition to the

1 limits of the Fund's liability under TAPAA. That
2 dispute is not resolved by this stipulation.

- 3 c. Subject to the limitations set out in this
4 paragraph 6, and to the extent that the limits of its
5 TAPAA liability have not been exhausted by prior
6 settlements, judgment[s] may be entered against the
7 Fund pursuant to Rule 54(b) for its TAPAA liability,
8 to the plaintiffs whose claims have been tried, no
9 later than the conclusion of the trial of the third
10 group of sixteen plaintiffs in Phase I.
- 11 d. To the extent that the limits of its TAPAA liability
12 have not been exhausted by prior settlement of claims
13 or prior judgments entered against it, final
14 judgment[s] shall be entered simultaneously against
15 the Fund pursuant to Rule 54(b) for its TAPAA
16 liability, subject to the limitations set out in this
17 paragraph 6, to all remaining plaintiffs at the
18 conclusion of all summary proceedings adjudicating the
19 claims of the remaining plaintiffs.
- 20 e. Subject to the limitation set out in
21 paragraph 6(a)(3), and to the extent that the limits
22 of its TAPAA liability have not been exhausted by
23 prior settlements of claims or judgments entered
24 against it, final judgment shall be entered against
25 the Fund pursuant to Rule 54(b) for its TAPAA
26 liability to the USG with respect to any pollution

1 cleanup costs and expenses not paid to the USG by
2 Trinidad and/or West or not covered by a judgment
3 against them pursuant to paragraphs 4 and 5 above.
4 The Fund and the USG acknowledge that the Fund will
5 have an opportunity in Phase II of these proceedings
6 to seek to recover amounts paid to the USG pursuant to
7 this paragraph, in the event the USG's negligence
8 (which negligence is denied) is established in Phase
9 II of these proceedings, but only to the extent that
10 such negligence would have relieved the Fund of
11 liability to the USG in the first instance.

12 f. The Fund stipulates that it will not seek to limit its
13 liability to plaintiffs and the USG under TAPAA by
14 claiming the protections of the Limitation of
15 Liability of Act.

16 g. With respect to any judgments entered against the Fund
17 pursuant to subparagraphs c, d, and e above:

18 (1) The Fund's liability is defined to be damages
19 compensable under TAPAA that exceed \$14 million
20 up to the TAPAA statutory limit (less amounts
21 previously paid by the Fund to plaintiffs or
22 claimants or awarded by prior judgments against
23 the Fund);

24 (2) No judgment may be entered against the Fund until
25 judgments have been entered against West and
26 Trinidad or payments have been made by them to

1 plaintiffs and claimants to the full extent of
2 their TAPAA liability as set out in paragraph 4
3 above;

4 (3) The Fund, on the one hand, and West and Trinidad,
5 on the other hand, undertake to attempt to
6 establish a mechanism that would resolve among
7 themselves any disputes as to whether Trinidad
8 and West have made payments to plaintiffs and
9 claimants or had judgments entered against them
10 to the full extent of their TAPAA liability as
11 set out in Paragraph 4 of this Stipulation.
12 Failing agreement on a mechanism, the Fund,
13 Trinidad, and West agree to submit said dispute
14 to the court for decision at such point in time
15 as it is determined that a dispute over this
16 issue exists.

17 7. Trinidad and the Standard Oil Company ("SOHIO"), as
18 guarantor of Trinidad only under AS 46.03.822, stipulate that:

- 19 a. Alaska North Slope crude oil entered into the waters
20 of Upper Cook Inlet, Alaska from the vessel GLACIER
21 BAY on or about July 2, 1987 ("the spill").
22 b. In resolving the claims of individual plaintiffs it
23 shall be presumed that any oil encountered in Upper
24 Cook Inlet between July 2, 1987, and September 30,
25 1987, was discharged by the vessel GLACIER BAY, unless
26 defendants produce admissible evidence that the oil

1 causing damage to a particular plaintiff was from
2 another source, in which case the affected plaintiff
3 will have the burden of proving his damages were not
4 caused by that other source.

5 c. At the time of the spill, Trinidad had control over
6 the hazardous substance, as that phrase is defined in
7 AS 46.03.826(3), and SOHIO was a guarantor of Trinidad
8 pursuant to AS 46.04.040.

9 d. Trinidad and SOHIO, and each of them are, subject to
10 the other terms of this paragraph and paragraph 8 of
11 this Stipulation, strictly liable under AS 46.03.822
12 ("Alaska statute") to those plaintiffs:

13 (1) who can establish they are among the class of
14 claimants who are entitled to recovery under the
15 Alaska statute (a dispute exists between
16 plaintiffs and defendants as to whether certain
17 classes of plaintiffs such as tenders, cash
18 buyers and processors are entitled to recovery
19 and this stipulation does not resolve this
20 dispute);

21 (2) who have suffered damages of the type compensable
22 under the Alaska statute;

23 (3) whose damages were in fact and proximately
24 caused by the spill and not by their own
25 negligence or other causes;

26 (4) who have timely asserted their claims;

1 (5) who have not failed to mitigate their damages;

2 and

3 (6) whose recovery under state law is not preempted.

4 e. The plaintiffs assert they are entitled to pre-
5 judgment interest, post-judgment interest, costs,
6 disbursements and attorneys' fees against Trinidad and
7 SOHIO under the Alaska Statute. Trinidad and SOHIO
8 assert that there are legal issues requiring
9 resolution by the court as to plaintiffs' entitlement,
10 if any, to pre-judgment interest, post-judgment
11 interest, costs, disbursements and attorneys' fees
12 under the Alaska Statute. That dispute is not
13 resolved by this Stipulation.

14 f. Trinidad and SOHIO admit the spill was not solely the
15 result of an act of war; an intentional act or a
16 negligent act of a third party, other than a party (or
17 its employees) in privity of contract with, or
18 employed by Trinidad or SOHIO; negligence on the part
19 of the USG or the State of Alaska; or an act of God.
20 Except for defenses specifically concerning the
21 entitlement to, and the fact or amount of damages of
22 any particular plaintiffs and except as provided in
23 this paragraph 7 of this Stipulation and Section II,
24 paragraph 6.1 of the Plan, Trinidad and SOHIO waive
25 all other defenses to plaintiffs' compensatory damages
26 claims under Alaska Statute.

- 1 g. Trinidad and SOHIO admit Trinidad and SOHIO are not
2 entitled to exoneration under the Limitation of
3 Liability Act.
- 4 h. Except as stated in 7(g) above, Trinidad and SOHIO do
5 not waive any rights they may have to claim the
6 benefits of limitation of liability pursuant to the
7 Limitation of Liability Act for all liabilities
8 arising under the Alaska statute. (Other parties deny
9 Trinidad's and SOHIO's entitlement to limit their
10 liability pursuant to the Limitation of Liability Act.
11 Any party may move pursuant to Rule 12 during Phase I
12 to dismiss the Complaint in Limitation filed by
13 Trinidad and others, as provided in the Plan.)
- 14 i. The parties agree and stipulate that any and all of
15 the stipulations and agreements in paragraphs 7 and 8
16 made by SOHIO are made solely in SOHIO's role as a
17 guarantor pursuant to a guarantee regarding oil
18 discharge liability relating to the spill from the
19 GLACIER BAY, and are not binding on SOHIO or an any
20 affiliate of SOHIO in any other role.

21 8. All parties stipulate that

- 22 a. Subject to the provisions of this paragraph, final
23 judgment, pursuant to Rule 54(b), may be entered
24 against Trinidad or SOHIO for amounts compensable
25 under the Alaska statute at the conclusion of the
26 trial of the third group of 16 plaintiffs in Phase I

1 and at the end of each summary proceeding thereafter
2 in favor of each plaintiff who has obtained a judgment
3 or award under the Alaska Statute.

4 b. In the event Trinidad's Complaint in Limitation is
5 dismissed during Phase I, subject to paragraph 8(f)
6 below and pending the completion of the proceedings
7 there described, plaintiffs agree to limit their right
8 to execute on judgments obtained in Phase I against
9 Trinidad or SOHIO, and each of them under the Alaska
10 statute, to a total amount of 14 million less the sum
11 of:

- 12 (1) amounts compensable under the Alaska statute
13 previously paid by settlement (other than by the
14 Fund), and
15 (2) amounts awarded under the Alaska statute by prior
16 judgments against Trinidad or SOHIO.

17 c. In the event Trinidad's Complaint in Limitation is not
18 dismissed during Phase I, but is found by the court
19 not to limit SOHIO's guarantee, subject to
20 paragraph 8(f) below and pending completion of the
21 proceedings there described, plaintiffs agree to limit
22 their right to execute on judgments obtained in
23 Phase I against SOHIO under the Alaska statute to
24 \$14 million less the sum of:

1 (1) amounts compensable under the Alaska statute
2 previously paid by settlement (other than by the
3 Fund), and

4 (2) amounts awarded under the Alaska statute by prior
5 judgments against Trinidad or SOHIO.

6 d. In the event Trinidad's Complaint in Limitation is not
7 dismissed during Phase I and the court holds that the
8 SOHIO guarantee is limited by the benefits available
9 to Trinidad under the Limitation Act (or the court
10 fails to rule on the issue), subject to paragraph 8(f)
11 below and pending the completion of the proceedings
12 there described, plaintiffs agree to limit their right
13 to execute on judgments obtained in Phase I against
14 Trinidad or SOHIO under the Alaska statute, to
15 \$6.5 million (or as adjusted by the court pursuant to
16 Admiralty Rule (f)(7) less the sum of:

17 (1) amounts compensable under the Alaska statute
18 previously paid by settlement (other than the
19 Fund), and

20 (2) amounts awarded under the Alaska statute to any
21 plaintiff by prior judgments against Trinidad or
22 SOHIO.

23 e. Plaintiffs agree not to execute judgments pursuant to
24 paragraphs 8(b)-(d) above prior to 30 days following
25 the entry of judgment.
26

1 f. With respect to any judgments obtained against
2 Trinidad or SOHIO under the Alaska Statute that are
3 not funded at the conclusion of Phase I as a result of
4 the limitations contained herein, plaintiffs agree not
5 to execute on each judgment until 30 days after the
6 entry of judgments in the Phase II proceeding that
7 apportion ultimate liability among the various
8 defendants.

9 f. All parties reserve all rights to appeal immediately
10 any final judgment entered in Phase I.

11 9. a. SPC, Tesoro, CIRO and KPL agree not to contest the
12 amount of damages awarded to any plaintiff in Phase I,
13 except SPC, Tesoro, CIRO and KPL reserve the right to
14 contest amounts paid in settlements to plaintiffs
15 against any party except plaintiffs to the extent that
16 any contribution or indemnity claim is made against
17 them to recover any of those amounts.

18 b. SPC, Tesoro, CIRO and KPL further agree that to the
19 extent one or more of them are found strictly or
20 otherwise liable (except to the extent that such
21 liability arises from charter parties or other
22 contractual agreements) to any other party to this
23 proceeding in Phase II for amounts paid or awarded in
24 Phase I, then to the extent plaintiffs' Phase I
25 judgments remain unfunded, SPC, Tesoro, CIRO and KPL
26 (as applicable) shall be similarly liable to

1 plaintiffs to that same extent, even though plaintiffs
2 have not appeared or otherwise asserted such claims in
3 Phase II.

4 c. In the event it is determined in Phase II that
5 Trinidad and SOHIO are entitled to the benefits of the
6 Limitation of Liability Act, plaintiffs agree that to
7 the extent any unfunded judgments obtained against
8 Trinidad and SOHIO under the Alaska statute during
9 Phase I exceed the amount of the limitation fund,
10 plaintiffs will not execute in excess of the total
11 amount of the limitation fund determined by the court
12 to be due to plaintiffs against Trinidad and SOHIO, as
13 guarantor.

14 10. Nothing in this stipulation shall be deemed to waive or
15 diminish any obligations which may be imposed or to
16 prejudice any rights or defenses that may be created, by
17 any revision of TAPAA by Congress, to the extent that those
18 revisions would apply to this proceeding absent this
19 stipulation.

20 11. All parties agree:

21 a. The stipulations, admissions, waiver of defense,
22 consent to judgments, settlements, or payment of
23 judgments by Trinidad, West, SOHIO and the Fund shall
24 be (i) wholly without prejudice to their rights and
25 defenses with respect to plaintiffs' punitive damages
26 claims and (ii) wholly without prejudice to all

1 claims, rights, or defenses against each other and
2 against any present or future defendant, third-party
3 defendant or fourth-party defendant in this action, or
4 any other action arising out of the spill, including
5 without limitation, the right:

6 (1) to assert that any defendant, third or fourth-
7 party defendant or non-party is liable, jointly
8 and severally, in whole or in part, for the
9 damages awarded or paid by settlement to
10 plaintiffs; and

11 (2) to seek reimbursement, subrogation, contribution
12 or indemnification for such damages or settlement
13 payments from any defendant, third/fourth-party
14 defendant or third party.

15 b. Any dismissal of claims or parties in Phase I or any
16 election by plaintiffs not to pursue compensatory
17 damages claims against any defendant in Phase I shall
18 be without prejudice to the right of Trinidad, West,
19 SOHIO and the Fund, or any other defendant, third
20 party defendant or fourth-party defendant in Phase II
21 of this action, or other actions arising out of the
22 oil spill, to assert any dismissed claims, to pursue
23 any rights against dismissed parties, to seek
24 reimbursement, subrogation, contribution or
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1 indemnification from any such party or to assert that
2 any such party is jointly and severally liable for
3 damages awarded or paid by settlement to plaintiffs.

4 c. Notwithstanding the above, Trinidad, West and the
5 plaintiffs acknowledge that in any punitive damages
6 trial in Phase II the amounts paid in compensatory
7 damages are relevant to any punitive damages claims of
8 plaintiffs, but they have not been able to agree as to
9 what facts may be admissible or how to most fairly
10 present those facts to a jury during the punitive
11 damages trial in Phase II. The parties agree to
12 submit their respective views to the court in advance
13 of the punitive damages trial.

14 d. To the extent that the funding mechanisms described in
15 this stipulation are not available up to and including
16 the time of execution of any judgments (for example,
17 should the Fund be dissolved or West become judgment
18 proof), plaintiffs and the USG shall be free to pursue
19 any and all defendants and third/fourth party
20 defendants to recover the amount of the unavailable
21 funding under such rights of action as may exist
22 against each defendant and third/fourth party
23 defendant, it being understood that this provision
24 creates no new or additional rights of action and does
25 not create joint liability where such liability would
26 not otherwise exist.

1 e. All parties stipulate that the results of any of the
2 trials of the blocks of 16 plaintiffs' claims for
3 compensatory damages shall not have any subsequent res
4 judicata, collateral estoppel or any other issue
5 preclusive effect, or in any manner be binding on
6 defendants or upon any plaintiffs whose compensatory
7 damages claims have not actually been tried, except
8 with respect to the claims for compensatory damages
9 asserting that a price drop in the price of salmon in
10 late July 1987 was caused by the GLACIER BAY spill.
11 As to that single issue, the initial jury verdict or
12 Court determination shall be binding on all defendants
13 and all plaintiffs and shall be given res judicata and
14 collateral estoppel effect in all subsequent
15 proceedings herein, it being understood that no party
16 waives any rights of appeal.

17 f. Plaintiffs stipulate (without prejudice to their right
18 to offer rebuttal evidence on any issue as to their
19 damages, and reserving all other evidentiary
20 objections) that in the first three jury trials they
21 will not object on the ground of relevance to the
22 admissibility of evidence that defendants seek to
23 present regarding (a) the total number of claimants
24 who are seeking recovery; (b) the total damages sought
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1 or suffered by all claimants; and (c) the alleged
2 appropriate methodologies for awarding damages to
3 plaintiffs in these circumstances.

4 g. The jury verdicts of the first three trials in Phase I
5 shall be given determinative weight by the court in
6 the summary proceedings unless doing so would provide
7 a clearly unfair basis for awarding damages.

8 12. Bankruptcy clause. Except for the USG, all parties
9 (including Mathiason and Glacier Bay Transportation) agree to join
10 in a stipulation (or not to oppose a motion made by any party
11 hereto) to be presented to the United States Bankruptcy Court for
12 the Eastern District of Missouri asking the court to order:

13 a. that the bankruptcy stay be lifted with respect to all
14 proceedings herein, including without limitation any
15 judgment(s) obtained in this action by any defendant,
16 third party or fourth party defendant or by any
17 plaintiff who was within the putative classes of the
18 McGahan and UCIDA actions, on the condition that the
19 foregoing persons or entities agree, (1) to first
20 attempt to execute as to any unsatisfied portions of
21 any judgment(s) against Trinidad against any available
22 proceeds available under Trinidad's insurance contract
23 with West of England Ship Owners Mutual Insurance
24 Association (Luxembourg), and, (2) in the event any
25 such judgment(s) remain unsatisfied after 30 days, the
26

- 1 foregoing persons or entities agree to file their
2 judgments in the bankruptcy court, which shall be
3 entered by the bankruptcy court as allowed claims;
- 4 b. that all other plaintiffs (which term does not include
5 the USG) not described in the preceding subparagraph
6 (i.e., processor plaintiffs) shall be required to
7 submit their claims to the bankruptcy court, which
8 claims will be opposed by Trinidad; but in the event
9 the court allows the filing of such claims, Trinidad
10 will stipulate to the bankruptcy court as set out in
11 the preceding subparagraph;
- 12 c. that West's obligations under its insurance contract
13 with Trinidad (including Mathiason and Glacier Bay
14 Transportation) are in no way limited by the
15 bankruptcy of Trinidad, and West shall be obligated to
16 comply in full with its obligations under its
17 insurance contract with Trinidad with respect to
18 Trinidad's liability as to any party, and West will
19 provide to the Bankruptcy Court in the Apex
20 proceeding, of which Trinidad is a party, with all
21 necessary undertakings to assure that West will honor
22 said insurance agreements;
- 23 d. that the foregoing be without prejudice to any of the
24 other provisions of this stipulation with respect to
25 the funding or payment of plaintiffs' TAPAA or Alaska
26 State Statutory damages by SOHIO, West, or the Fund,

1 or by Trinidad to the extent of \$6.5 million or such
2 greater amount as the court directs Trinidad to
3 provide as a bond in the Limitation proceeding.

4 13. All parties agree that an essential element of this
5 Stipulation and the Plan is that the plaintiffs entitlement to
6 recover compensatory damages will be tried independently of and
7 prior to the discovery or trial of any issues pertaining to the
8 fault of any party. The court or discovery master shall be guided
9 by the foregoing principle in resolving any disputes about the
10 appropriate scope of discovery or the admissibility of any evidence
11 at trial during Phase I.

12 14. Plaintiffs agree to stay until Phase II, all causes of
13 actions they may have against any present party other than their
14 claims against (a) Trinidad, West and the Fund under TAPAA, and (b)
15 Trinidad and SOHIO under the Alaska Statute.

16 15. To the extent a proper predicate tort may be necessary to
17 assert punitive damages claims against Trinidad or West, Trinidad
18 and West agree not to assert as a defense to a punitive damages
19 claim against them that plaintiffs have failed to prove a predicate
20 tort. Except as stated in the preceding sentence, nothing in this
21 agreement shall be deemed a waiver by Trinidad or West of any
22 defenses to plaintiff's punitive damages claims.

23 16. All parties stipulate and agree that all claims against BP
24 America, Inc., and Tesoro Petroleum Corporation in this action shall
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1 be dismissed forthwith without prejudice and without an award of
2 costs or fees to any party and without prejudice of the Fund to seek
3 reimbursement against them under TAPAA.

4 RESPECTFULLY SUBMITTED this ____ day of November, 1989.

5
6
7 Brian O'Neill
8 FAEGRE & BENSON
9 Attorneys for Plaintiffs

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GALBRAITH & OWEN
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26
CASE MANAGEMENT PLAN
STIPULATION

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5 Glacier Bay Transportation

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17 The TAPS Fund

18 John A. Reeder
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24 Attorneys for BP, SPC and
25 SOHIO

26 GJS/03717/AK8

CASE MANAGEMENT PLAN
STIPULATION

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FILED
DEC 01 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

In re)
)
the GLACIER BAY) No. A88-115 Civil
)
) (Consolidated)
)

WHEREAS, all parties desire to resolve their differences in an expeditious, orderly and reasonable manner; and

268

1 WHEREAS, all parties have jointly agreed to a proposed Case
2 Management Plan ("Plan") which is being submitted herewith to the
3 court; and

4 WHEREAS, all parties have made significant compromises in order
5 to achieve a consensus on the Plan and this stipulation; and

6 WHEREAS, no party will be bound by this stipulation or Plan
7 unless the court approves the Plan as proposed and enters an order
8 approving this stipulation as offered; and

9 WHEREAS, Trinidad is a debtor-in-possession in a Chapter 11 case
10 in the United States Bankruptcy Court for the Eastern District of
11 Missouri, Eastern Division (the "Bankruptcy Court"), Case No.
12 87-038 45, as part of the procedurally consolidated Chapter 11 cases
13 under the caption Apex Oil Company, et al (87-3804-BKC-BSS) (the
14 "Trinidad Bankruptcy");

15 NOW THEREFORE, in consideration of the foregoing and other
16 mutual consideration, the undersigned hereby agree as follows:

17 1. This stipulation and the proposed Case Management Plan
18 are conditioned upon all of the following:

- 19 a. the adoption by the court of the Plan as proposed;
- 20 b. the approval of the court of this stipulation as
21 offered;
- 22 c. the dismissal with prejudice of all punitive damage
23 claims which have been or could have been asserted
24 arising out of the Glacier Bay spill against any
25 present parties (other than Trinidad, West, and Doug
26 Davis) and their parents, subsidiaries, employees,
officers and directors in these proceedings;

- 1 d. the agreement by all defendants and third/fourth-
2 party defendants not to assert punitive damage claims
3 against any other party hereto; and
4 e. an order of the court making the Plan and this
5 stipulation binding on all parties presently
6 appearing in the action and ordering that no future
7 party to this action shall receive any benefit from
8 the Plan and this stipulation without also being
9 bound by the obligations and agreements undertaken by
10 present parties.

11 If any of these conditions are not met, the Plan and this
12 stipulation are void.

13 2. Each of the undersigned agree to be bound to every
14 stipulation made or contained herein.

15 3. Trinidad Corporation ("Trinidad"), and The West of England
16 Ship Owners Mutual Insurance Association (Luxembourg) ("West"),
17 formerly known as The West of England Ship Owners Mutual Protection
18 and Indemnity Association (Luxembourg), stipulate that:

- 19 a. The vessel GLACIER BAY discharged a quantity of North
20 Slope crude oil into Cook Inlet, Alaska on or about
21 July 2, 1987. [The Spill]
22 b. In resolving the claims of individual plaintiffs it
23 shall be presumed that any oil encountered in Upper
24 Cook Inlet between July 2, 1987 and September 30,
25 1987, was discharged by the vessel GLACIER BAY, unless
26 defendants produce admissible evidence that the oil

1 causing damage to a particular plaintiff was from
2 another source, in which case the affected plaintiff
3 will have the burden of proving his damages were not
4 caused by that other source.

5 c. Trinidad and West waive all statutory defenses under
6 the Trans-Alaska Pipeline Authorization Act ("TAPAA")
7 that the spill was caused by an act of war or the
8 negligence of the United States or other governmental
9 agency. Except for defenses specifically concerning
10 the entitlement to, and the fact or amount of damages
11 of any particular plaintiffs and except as provided in
12 paragraph 4 of this Stipulation and Section II,
13 paragraph 6.1 of the Plan, Trinidad and West waive all
14 other defenses to plaintiffs' and the USG's
15 compensatory damage claims under TAPAA.

16 d. At the time of the spill, Trinidad was an operator, as
17 that phrase is defined in 43 C.F.R. § 29.1(k)(2), of
18 the vessel GLACIER BAY and West was an insurer, as
19 that term is defined in 33 C.F.R. § 131.2(g), who
20 provided a certificate of insurance for Trinidad and
21 the vessel GLACIER BAY pursuant to 33 C.F.R. § 131.6.

22 4. All parties stipulate that:

23 a. Trinidad and West are strictly liable jointly and
24 severally under TAPAA for up to the first \$14 million
25 in damages compensable under TAPAA, but only to the
26 extent that:

- 1 (1) plaintiffs are among the class of claimants who
2 are entitled to recover under TAPAA. (A dispute
3 exists between plaintiffs and defendants as to
4 whether certain classes of plaintiffs such as
5 tenders, cash buyers and processors are entitled
6 to recovery, and this stipulation does not
7 resolve this dispute);
8 (2) plaintiffs' damages are of the type compensable
9 under TAPAA;
10 (3) plaintiffs' damages were in fact and proximately
11 caused by the spill and not by their own
12 negligence or other causes;
13 (4) plaintiffs have suffered damages in the amount
14 they claim;
15 (5) plaintiffs have timely asserted their claims; and
16 (6) plaintiffs have not failed to mitigate their
17 damages.

18 b. The plaintiffs assert they are entitled to pre-
19 judgment interest, post-judgment interest, costs,
20 disbursements and attorneys' fees against Trinidad and
21 West under TAPAA. Trinidad and West assert that there
22 are legal issues requiring resolution by the court as
23 to plaintiffs' entitlement, if any, to pre-judgment
24 interest, post-judgment interest, costs,
25 disbursements, and attorneys' fees under TAPAA. That
26 dispute is not resolved by this stipulation. Trinidad

1 and West assert that any such amounts that are awarded
2 by the court shall be included within the meaning of
3 the phrases "compensable damages," under TAPAA; "TAPAA
4 liability"; or "strict liability under TAPAA" or any
5 like phrase, as used in this stipulation to define
6 their limit of liability under TAPAA. Plaintiffs
7 assert that any such amounts that are awarded by the
8 court should be in addition to the limits of
9 Trinidad's and West's TAPAA liability. That dispute
10 is also not resolved by this stipulation.

11 c. Final judgment[s], pursuant to Rule 54(b), shall be
12 entered against West and Trinidad for their TAPAA
13 liability, if any, jointly and severally as to the
14 TAPAA liability admitted this paragraph only, no later
15 than the conclusion of the trial of the third group of
16 sixteen plaintiffs in Phase I and at the end of each
17 summary proceeding thereafter in favor of each
18 plaintiff who has obtained a verdict or award under
19 TAPAA; provided however:

20 (1) no plaintiff may obtain a judgment against West
21 and Trinidad for strict liability under TAPAA in
22 excess of the remainder of \$14 million less the
23 sum of (a) amounts compensable under TAPAA
24 previously paid by settlement (other than by the
25 Fund) and (b) amounts awarded under TAPAA to any
26 plaintiff by prior judgments against West and
Trinidad; and

1 (2) all parties reserve all rights to immediately
2 appeal any final judgment entered in Phase I.

3 d. Plaintiffs agree that they will not execute on any
4 judgments entered against West and Trinidad under
5 TAPAA in Phase I for amounts that exceed the limits of
6 liability of Trinidad and West under TAPAA as defined
7 by this Stipulation.

8 e. (1) West agrees to pay to the United States
9 Government ("USG") \$1.5 million of the USG's
10 claims for cleanup costs and expenses within
11 thirty days of receiving written agreement,
12 satisfactory to the USG, Trinidad, and West,
13 and further subject to any approvals, if
14 necessary, by the USG, that said payment shall
15 be without prejudice to the claims and rights,
16 if any, of any party in Phase II against the
17 USG alleging negligence of the USG (which
18 negligence is denied by the USG) in causing the
19 spill and resulting damages.

20 The balances owed to the USG, if any, for
21 cleanup costs and expenses, if not settled or
22 otherwise resolved prior to the conclusion of
23 Phase I discovery and motion practice, shall be
24 the subject of a bench trial to be held in
25 accordance with paragraphs 1.5 and 19.3 of the
26 Joint Case Management Plan. At such trial, and

1 subject to Trinidad's and West's rights, if
2 any, to assert claims for contribution against
3 the USG in Phase II, Trinidad and West shall be
4 deemed to have waived any and all statutory
5 defenses under TAPAA to strict liability with
6 respect to the claims of the USG for pollution
7 cleanup costs and expenses, including the
8 statutory defense, as alleged by Trinidad,
9 West, and others, that negligence of the United
10 States or other governmental agency caused the
11 spill. This paragraph is without prejudice to
12 Trinidad's and West's rights, if any, to
13 litigate in Phase I said parties' contentions
14 that the USG's claims for pollution cleanup
15 costs and expenses are limited to "reasonable"
16 costs or that the USG failed to mitigate its
17 damages for pollution cleanup costs and
18 expenses.

19 Final judgment, pursuant to Rule 54(b), may be
20 entered against Trinidad and West for the USG's
21 pollution cleanup costs and expenses at the
22 conclusion of the aforesaid bench trial. All
23 parties reserve all rights immediately to
24 appeal any final judgment entered in Phase I as
25 a result of the aforesaid bench trial.
26

1 Trinidad or West will pay any judgment for
2 cleanup costs and expenses within thirty (30)
3 days after entry of a final judgment not
4 subject to further appeal.

5 (2) Payments of the aforesaid \$1.5 million to the
6 USG do not constitute, and shall not be
7 considered as, a release, an accord and
8 satisfaction, or a final settlement of the
9 USG's claims for pollution cleanup costs and
10 expenses, or of any other claims, actions, and
11 demands of the USG, Trinidad, and West for
12 other relief against any party in these
13 consolidated cases, it being expressly agreed
14 and understood by the parties that the balance
15 of the USG's claims for pollution cleanup costs
16 and expenses, if any, and the claims of the
17 USG, Trinidad, and West for contribution, shall
18 be resolved or litigated in accordance with the
19 terms of the Case Management Plan.

20 (3) This stipulation is without prejudice to any
21 and all rights, if any, of the USG, Trinidad,
22 and West in Phase I to assert, claim, move, and
23 litigate the contention of the USG that,
24 pursuant to the Federal Water Pollution Control
25 Act, 33 U.S.C. § 1321 ("FWPCA") and TAPAA, the
26 USG is entitled to recover the full amount of

1 its "actual" cleanup costs and expenses, as
2 opposed to "reasonable" costs and expenses.

3 (4) This stipulation is without prejudice to any
4 and all rights, if any, of the USG, Trinidad
5 and West in Phase II to claim, litigate, take
6 to trial, and execute judgment(s) against any
7 defendant and/or third/fourth party defendant,
8 including, but not limited to, the GLACIER BAY,
9 in rem (except, to the extent applicable, any
10 letter of undertaking has been substituted in
11 place, and in lieu of, the defendant vessel
12 GLACIER BAY), with respect to liability of any
13 defendants and/or third/fourth party defendants
14 under other statutes and applicable law
15 concerning any and all claims and actions
16 asserted by the USG which are not resolved in
17 Phase I.

18 f. Trinidad and West agree that their strict liability,
19 jointly and severally, under TAPAA for up to
20 \$14 million in damages compensable under TAPAA may not
21 be reduced by the Limitation of Liability Act.
22 Trinidad and West do not waive their rights, if any,
23 to claim the benefits of limitation of liability under
24 the Limitation of Liability Act for all other
25 liability arising under TAPAA.
26

1 5. The Trans-Alaska Pipeline Liability Fund ("Fund")
2 stipulates that:

- 3 a. The vessel GLACIER BAY discharged a quantity of North
4 Slope crude oil into Cook Inlet, Alaska on or about
5 July 2, 1987.
- 6 b. In resolving the claims of individual plaintiffs it
7 shall be presumed that any oil encountered in Upper
8 Cook Inlet between July 2, 1987, and September 30,
9 1987, was discharged by the vessel GLACIER BAY, unless
10 defendants produce admissible evidence that the oil
11 causing damage to a particular plaintiff was from
12 another source, in which case the affected plaintiff
13 will have the burden of proving his damages were not
14 caused by that other source.
- 15 c. The Fund waives all statutory defenses under TAPAA
16 that the spill was caused by an act of war or the
17 negligence of the United States or other governmental
18 agency. Except for defenses specifically concerning
19 the entitlement to, and the fact or amount of damages
20 of any particular plaintiffs and except as provided in
21 paragraph 6 of this Stipulation, and Section II,
22 paragraph 6.1 of the Plan, the Fund waives all other
23 defenses to plaintiffs' and the USG's compensatory
24 damage claims under TAPAA.

1 6. All parties stipulate that:

2 a. The Fund is strictly liable under TAPAA for damages
3 compensable under TAPAA that were caused by the spill
4 but:

5 (1) only if damages compensable under TAPAA exceed
6 \$14 million, in which case the Fund is liable for
7 such damages in excess of \$14 million up to the
8 statutory limit of \$100 million in damages
9 compensable under TAPAA (whether paid by
10 settlement with any claimants or as a result of a
11 judgment), and

12 (2) with respect to plaintiffs' claims, only to the
13 extent that

14 (A) plaintiffs are among the class[es] of
15 claimants who are entitled to recover under
16 TAPAA. (A dispute exists between plaintiffs
17 and defendants as to whether certain classes
18 of plaintiffs such as tenders, cash buyers
19 and processors are entitled to recovery and
20 this stipulation does not resolve this
21 dispute);

22 (B) plaintiffs' damages are of the type
23 compensable under TAPAA;

24 (C) plaintiffs' damages were in fact and
25 proximately caused by the spill and not by
26 their own negligence or other causes;

1 (D) plaintiffs have suffered damages in the
2 amount they claim;

3 (E) plaintiffs have timely asserted their
4 claims; and

5 (F) plaintiffs have not failed to mitigate their
6 damages; and

7 (3) with respect to the USG's claims, only to the
8 extent that the USG proves the amount of its
9 damages for pollution cleanup cost claims.

10 b. The plaintiffs assert they are entitled to pre-
11 judgment interest, post-judgment interest, costs,
12 disbursements and attorneys' fees against the Fund
13 under TAPAA. The Fund asserts that there are legal
14 issues requiring resolution by the court as to
15 plaintiffs' entitlement, if any, to pre-judgment
16 interest, post-judgment interest, costs, disbursements
17 and attorneys' fees under TAPAA and its implementing
18 regulations. That dispute is not resolved by this
19 stipulation. The Fund asserts that such amounts that
20 are awarded by the court shall be included within the
21 meaning of the phrase "compensable damages," under
22 TAPAA, "TAPAA liability"; "strict liability under
23 TAPAA" or any like phrase, as used in this Stipulation
24 to define the amount of the Fund's liability under
25 TAPAA. Plaintiffs assert that any such amounts that
26 are awarded by the court should be in addition to the

1 limits of the Fund's liability under TAPAA.

2 dispute is not resolved by this stipulation.

- 3 c. Subject to the limitations set out in this
4 paragraph 6, and to the extent that the limits of its
5 TAPAA liability have not been exhausted by prior
6 settlement of claims or prior judgments entered
7 against it, judgment[s] may be entered against the
8 Fund pursuant to Rule 54(b) for its TAPAA liability,
9 to the plaintiffs whose claims have been tried, no
10 later than the conclusion of the trial of the third
11 group of sixteen plaintiffs in Phase I.
- 12 d. To the extent that the limits of its TAPAA liability
13 have not been exhausted by prior settlement of claims
14 or prior judgments entered against it, final
15 judgment[s] shall be entered simultaneously against
16 the Fund pursuant to Rule 54(b) for its TAPAA
17 liability, subject to the limitations set out in this
18 paragraph 6, to all remaining plaintiffs at the
19 conclusion of all summary proceedings adjudicating the
20 claims of the remaining plaintiffs.
- 21 e. Subject to the limitation set out in
22 paragraph 6(a)(3), and to the extent that the limits
23 of its TAPAA liability have not been exhausted by
24 prior settlements of claims or judgments entered
25 against it, final judgment shall be entered against
26

1 the Fund pursuant to Rule 54(b) for its TAPAA
2 liability to the USG with respect to any pollution
3 cleanup costs and expenses not paid to the USG by
4 Trinidad and/or West or not covered by a judgment
5 against them pursuant to paragraphs 4 and 5 above.
6 The Fund and the USG acknowledge that the Fund will
7 have an opportunity in Phase II of these proceedings
8 to seek to recover amounts paid to the USG pursuant to
9 this paragraph, in the event the USG's negligence
10 (which negligence is denied) is established in Phase
11 II of these proceedings, but only to the extent that
12 such negligence would have relieved the Fund of
13 liability to the USG in the first instance.

14 f. The Fund stipulates that it will not seek to limit its
15 liability to plaintiffs and the USG under TAPAA by
16 claiming the protections of the Limitation of
17 Liability of Act.

18 g. With respect to any judgments entered against the Fund
19 pursuant to subparagraphs c, d, and e above:

20 (1) The Fund's liability is defined to be damages
21 compensable under TAPAA that exceed \$14 million
22 up to the TAPAA statutory limit (less amounts
23 previously paid by the Fund to plaintiffs or
24 claimants or awarded by prior judgments against
25 the Fund);
26

1 (2) No judgment may be entered against the Fund until
2 judgments have been entered against West and
3 Trinidad or payments have been made by them to
4 plaintiffs and claimants to the full extent of
5 their TAPAA liability as set out in paragraph 4
6 above;

7 (3) The Fund, on the one hand, and West and Trinidad,
8 on the other hand, undertake to attempt to
9 establish a mechanism that would resolve among
10 themselves any disputes as to whether Trinidad
11 and West have made payments to plaintiffs and
12 claimants or had judgments entered against them
13 to the full extent of their TAPAA liability as
14 set out in Paragraph 4 of this Stipulation.
15 Failing agreement on a mechanism, the Fund,
16 Trinidad, and West agree to submit said dispute
17 to the court for decision at such point in time
18 as it is determined that a dispute over this
19 issue exists.

20 (4) All parties reserve all rights to immediately
21 appeal any final judgment entered in Phase I.

22 7. Trinidad and The Standard Oil Company ("SOHIO"), as
23 guarantor of Trinidad only under AS 46.03.822, stipulate that:

24 a. Alaska North Slope crude oil entered into the waters
25 of Upper Cook Inlet, Alaska from the vessel GLACIER
26 BAY on or about July 2, 1987 ("the spill").

- 1 b. In resolving the claims of individual plaintiffs it
2 shall be presumed that any oil encountered in Upper
3 Cook Inlet between July 2, 1987, and September 30,
4 1987, was discharged by the vessel GLACIER BAY, unless
5 defendants produce admissible evidence that the oil
6 causing damage to a particular plaintiff was from
7 another source, in which case the affected plaintiff
8 will have the burden of proving his damages were not
9 caused by that other source.
- 10 c. At the time of the spill, Trinidad had control over
11 the hazardous substance, as that phrase is defined in
12 AS 46.03.826(3), and SOHIO was a guarantor of Trinidad
13 pursuant to AS 46.04.040.
- 14 d. Trinidad and SOHIO, and each of them are, subject to
15 the other terms of this paragraph and paragraph 8 of
16 this Stipulation, strictly liable under AS 46.03.822
17 ("Alaska statute") to those plaintiffs:
- 18 (1) who can establish they are among the class of
19 claimants who are entitled to recovery under the
20 Alaska statute (a dispute exists between
21 plaintiffs and defendants as to whether certain
22 classes of plaintiffs such as tenders, cash
23 buyers and processors are entitled to recovery
24 and this stipulation does not resolve this
25 dispute);
26

- 1 (2) who have suffered damages of the type compensable
2 under the Alaska statute;
3 (3) whose damages were in fact and proximately caused
4 by the spill and not by their own negligence or
5 other causes;
6 (4) who have timely asserted their claims;
7 (5) who have not failed to mitigate their damages;
8 and
9 (6) whose recovery under state law is not preempted.
- 10 e. The plaintiffs assert they are entitled to pre-
11 judgment interest, post-judgment interest, costs,
12 disbursements and attorneys' fees against Trinidad and
13 SOHIO under the Alaska Statute. Trinidad and SOHIO
14 assert that there are legal issues requiring
15 resolution by the court as to plaintiffs' entitlement,
16 if any, to pre-judgment interest, post-judgment
17 interest, costs, disbursements and attorneys' fees
18 under the Alaska Statute. That dispute is not
19 resolved by this Stipulation.
- 20 f. Trinidad and SOHIO admit the spill was not solely the
21 result of an act of war; an intentional act or a
22 negligent act of a third party, other than a party (or
23 its employees) in privity of contract with, or
24 employed by Trinidad or SOHIO; negligence on the part
25 of the USG or the State of Alaska; or an act of God.
26

1 Except for defenses specifically concerning the
2 entitlement to, and the fact or amount of damages of
3 any particular plaintiffs and except as provided in
4 paragraphs 7 and 8 of this Stipulation and Section II,
5 paragraph 6.1 of the Plan, Trinidad and SOHIO waive
6 all other defenses to plaintiffs' compensatory damages
7 claims under Alaska Statute.

8 g. Trinidad and SOHIO admit Trinidad and SOHIO are not
9 entitled to exoneration under the Limitation of
10 Liability Act.

11 h. Except as stated in 7(g) above, Trinidad and SOHIO do
12 not waive any rights they may have to claim the
13 benefits of limitation of liability pursuant to the
14 Limitation of Liability Act for all liabilities
15 arising under the Alaska statute. (Other parties deny
16 Trinidad's and SOHIO's entitlement to limit their
17 liability pursuant to the Limitation of Liability Act.
18 Any party may move pursuant to Rule 12 during Phase I
19 to dismiss the Complaint in Limitation filed by
20 Trinidad and others, as provided in the Plan.)

21 i. The parties agree and stipulate that any and all of
22 the stipulations and agreements in paragraphs 7 and 8
23 made by SOHIO are made solely in SOHIO's role as a
24 guarantor pursuant to a guarantee regarding oil
25 discharge liability relating to the spill from the
26

1 GLACIER BAY, and are not binding on SOHIO or an any
2 affiliate of SOHIO in any other role.

3 8. All parties stipulate that

4 a. Subject to the provisions of this paragraph, final
5 judgment, pursuant to Rule 54(b), may be entered
6 against Trinidad or SOHIO for amounts compensable
7 under the Alaska statute at the conclusion of the
8 trial of the third group of 16 plaintiffs in Phase I
9 and at the end of each summary proceeding thereafter
10 in favor of each plaintiff who has obtained a judgment
11 or award under the Alaska Statute.

12 b. In the event Trinidad's Complaint in Limitation is
13 dismissed during Phase I, subject to paragraph 8(f)
14 below and pending the completion of the proceedings
15 there described, plaintiffs agree to limit their right
16 to execute on judgments obtained in Phase I against
17 Trinidad or SOHIO, and each of them under the Alaska
18 statute, to a total amount of 14 million less the sum
19 of:

- 20 (1) amounts compensable under the Alaska statute
21 previously paid by settlement (other than by the
22 Fund), and
23 (2) amounts awarded under the Alaska statute by prior
24 judgments against Trinidad or SOHIO.
25
26

1 c. In the event Trinidad's Complaint in Limitation is not
2 dismissed during Phase I, but is found by the court
3 not to limit SOHIO's guarantee, subject to
4 paragraph 8(f) below and pending completion of the
5 proceedings there described, plaintiffs agree to limit
6 their right to execute on judgments obtained in
7 Phase I against SOHIO under the Alaska statute to
8 \$14 million less the sum of:

- 9 (1) amounts compensable under the Alaska statute
10 previously paid by settlement (other than by the
11 Fund), and
12 (2) amounts awarded under the Alaska statute by prior
13 judgments against Trinidad or SOHIO.

14 d. In the event Trinidad's Complaint in Limitation is not
15 dismissed during Phase I and the court holds that the
16 SOHIO guarantee is limited by the benefits available
17 to Trinidad under the Limitation Act (or the court
18 fails to rule on the issue), subject to paragraph 8(f)
19 below and pending the completion of the proceedings
20 there described, plaintiffs agree to limit their right
21 to execute on judgments obtained in Phase I against
22 Trinidad or SOHIO under the Alaska statute, to
23 \$6.5 million (or as adjusted by the court pursuant to
24 Admiralty Rule (f)(7) less the sum of:

1 (1) amounts compensable under the Alaska statute
2 previously paid by settlement (other than the
3 Fund), and

4 (2) amounts awarded under the Alaska statute to any
5 plaintiff by prior judgments against Trinidad or
6 SOHIO.

7 e. Plaintiffs agree not to execute judgments pursuant to
8 paragraphs 8(b)-(d) above prior to 30 days following
9 the entry of judgment.

10 f. With respect to any judgments obtained against
11 Trinidad or SOHIO under the Alaska Statute that are
12 not funded at the conclusion of Phase I as a result of
13 the limitations contained herein, plaintiffs agree not
14 to execute on each judgment until 30 days after the
15 entry of judgments in the Phase II proceeding that
16 apportion ultimate liability among the various
17 defendants.

18 f. All parties reserve all rights to appeal immediately
19 any final judgment entered in Phase I.

20 9. a. SPC, Tesoro, CIRO and KPL agree not to contest the
21 amount of damages awarded to any plaintiff in Phase I.
22 SPC, Tesoro, CIRO and KPL reserve the right, however,
23 to contest against any party, except plaintiffs,
24 amounts paid in settlements to plaintiffs in the event
25 that any contribution or indemnity claim is made
26 against them to recover any of those amounts.

- 1 (1) amounts compensable under the Alaska statute
2 previously paid by settlement (other than the
3 Fund), and
4 (2) amounts awarded under the Alaska statute to any
5 plaintiff by prior judgments against Trinidad or
6 SOHIO.
- 7 e. Plaintiffs agree not to execute judgments pursuant to
8 paragraphs 8(b)-(d) above prior to 30 days following
9 the entry of judgment.
- 10 f. With respect to any judgments obtained against
11 Trinidad or SOHIO under the Alaska Statute that are
12 not funded at the conclusion of Phase I as a result of
13 the limitations contained herein, plaintiffs agree not
14 to execute on each judgment until 30 days after the
15 entry of judgments in the Phase II proceeding that
16 apportion ultimate liability among the various
17 defendants.
- 18 f. All parties reserve all rights to appeal immediately
19 any final judgment entered in Phase I.
- 20 9. a. SPC, Tesoro, CIRO and KPL agree not to contest the
21 amount of damages awarded to any plaintiff in Phase I.
22 SPC, Tesoro, CIRO and KPL reserve the right, however,
23 to contest against any party, except plaintiffs,
24 amounts paid in settlements to plaintiffs in the event
25 that any contribution or indemnity claim is made
26 against them to recover any of those amounts.

1 b. SPC, Tesoro, CIRO and KPL further agree that to the
2 extent one or more of them are found strictly or
3 otherwise liable (except to the extent that such
4 liability arises from charter parties or other
5 contractual agreements) to any other party to this
6 proceeding in Phase II for amounts paid or awarded in
7 Phase I, then to the extent plaintiffs' Phase I
8 judgments remain unfunded, SPC, Tesoro, CIRO and KPL
9 (as applicable) shall be similarly liable to
10 plaintiffs to that same extent, even though plaintiffs
11 have not appeared or otherwise asserted such claims in
12 Phase II.

13 c. In the event it is determined in Phase II that
14 Trinidad and SOHIO are entitled to the benefits of the
15 Limitation of Liability Act, plaintiffs agree that to
16 the extent any unfunded judgments obtained against
17 Trinidad and SOHIO under the Alaska statute during
18 Phase I exceed the amount of the limitation fund,
19 plaintiffs will not execute in excess of the total
20 amount of the limitation fund determined by the court
21 to be due to plaintiffs against Trinidad and SOHIO, as
22 guarantor.

23 10. Nothing in this stipulation shall be deemed to waive or
24 diminish any obligations which may be imposed or to
25 prejudice any rights or defenses that may be created, by
26

1 any revision of TAPAA by Congress, to the extent that those
2 revisions would apply to this proceeding absent this
3 stipulation.

4 11. All parties agree:

5 a. The stipulations, admissions, waiver of defense,
6 consent to judgments, settlements, or payment of
7 judgments by Trinidad, West, SOHIO and the Fund shall
8 be (i) wholly without prejudice to their rights and
9 defenses with respect to plaintiffs' punitive damages
10 claims and (ii) wholly without prejudice to all
11 claims, rights, or defenses against each other and
12 against any present or future defendant, third-party
13 defendant or fourth-party defendant in this action, or
14 any other action arising out of the spill, including
15 without limitation, the right:

16 (1) to assert that any defendant, third or fourth-
17 party defendant or non-party is liable, jointly
18 and severally, in whole or in part, for the
19 damages awarded or paid by settlement to
20 plaintiffs; and

21 (2) to seek reimbursement, subrogation, contribution
22 or indemnification for such damages or settlement
23 payments from any defendant, third/fourth-party
24 defendant or third party.

25 b. Any dismissal of claims or parties in Phase I or any
26 election by plaintiffs not to pursue compensatory

1 damages claims against any defendant in Phase I shall
2 be without prejudice to the right of Trinidad, West,
3 SOHIO and the Fund, or any other defendant, third
4 party defendant or fourth-party defendant in Phase II
5 of this action, or other actions arising out of the
6 oil spill, to assert any dismissed claims, to pursue
7 any rights against dismissed parties, to seek
8 reimbursement, subrogation, contribution or
9 indemnification from any such party or to assert that
10 any such party is jointly and severally liable for
11 damages awarded or paid by settlement to plaintiffs.

12 c. Notwithstanding the above, Trinidad, West and the
13 plaintiffs acknowledge that in any punitive damages
14 trial in Phase II the amounts paid in compensatory
15 damages are relevant to any punitive damages claims of
16 plaintiffs, but they have not been able to agree as to
17 what facts may be admissible or how to most fairly
18 present those facts to a jury during the punitive
19 damages trial in Phase II. The parties agree to
20 submit their respective views to the court in advance
21 of the punitive damages trial.

22 d. To the extent that the funding mechanisms described in
23 this stipulation are not available up to and including
24 the time of execution of any judgments (for example,
25 should the Fund be dissolved or West become judgment
26 proof), plaintiffs and the USG shall be free to pursue

1 any and all defendants and third/fourth party
2 defendants to recover the amount of the unavailable
3 funding under such rights of action as may exist
4 against each defendant and third/fourth party
5 defendant, it being understood that this provision
6 creates no new or additional rights of action and does
7 not create joint liability where such liability would
8 not otherwise exist.

9 e. All parties stipulate that the results of any of the
10 trials of the blocks of 16 plaintiffs' claims for
11 compensatory damages shall not have any subsequent res
12 judicata, collateral estoppel or any other issue
13 preclusive effect, or in any manner be binding on
14 defendants or upon any plaintiffs whose compensatory
15 damages claims have not actually been tried, except
16 with respect to the claims for compensatory damages
17 asserting that a price drop in the price of salmon in
18 late July 1987 was caused by the GLACIER BAY spill.
19 As to that single issue, the initial jury verdict or
20 Court determination shall be binding on all defendants
21 and all plaintiffs and shall be given res judicata and
22 collateral estoppel effect in all subsequent
23 proceedings herein, it being understood that no party
24 waives any rights of appeal.

25 f. Plaintiffs stipulate (without prejudice to their right
26 to offer rebuttal evidence on any issue as to their

1 damages, and reserving all other evidentiary
2 objections) that in the first three jury trials they
3 will not object on the ground of relevance to the
4 admissibility of evidence that defendants seek to
5 present regarding (a) the total number of claimants
6 who are seeking recovery; (b) the total damages sought
7 or suffered by all claimants; and (c) the alleged
8 appropriate methodologies for awarding damages to
9 plaintiffs in these circumstances.

10 g. The jury verdicts of the first three trials in Phase I
11 shall be given determinative weight by the court in
12 the summary proceedings unless doing so would provide
13 a clearly unfair basis for awarding damages.

14 12. Except for the USG, all parties
15 (including Mathiason and Glacier Bay Transportation) agree to join
16 in a stipulation (or not to oppose a motion made by any party
17 hereto) to be presented to the United States Bankruptcy Court for
18 the Eastern District of Missouri asking the court to order:

19 a. that the bankruptcy stay be lifted with respect to all
20 proceedings herein, including without limitation any
21 judgment(s) obtained in this action by any defendant,
22 third party or fourth party defendant or by any
23 plaintiff who was within the putative classes of the
24 McGahan and UCIDA actions, on the condition that the
25 foregoing persons or entities agree, (1) to first
26 attempt to execute as to any unsatisfied portions of

1 any judgment(s) against Trinidad against any available
2 proceeds available under Trinidad's insurance contract
3 with West of England Ship Owners Mutual Insurance
4 Association (Luxembourg), and, (2) in the event any
5 such judgment(s) remain unsatisfied after 30 days, the
6 foregoing persons or entities agree to file their
7 judgments in the bankruptcy court, which shall be
8 entered by the bankruptcy court as allowed claims of a
9 class and priority determined pursuant to the
10 Bankruptcy Code by the Bankruptcy Court;

11 b. that all other plaintiffs (which term does not include
12 the USG) not described in the preceding subparagraph
13 (i.e., processor plaintiffs) shall be required to
14 submit their claims to the bankruptcy court, which
15 claims will be opposed by Trinidad; but in the event
16 the court allows the filing of such claims, Trinidad
17 will stipulate to the bankruptcy court as set out in
18 the preceding subparagraph;

19 c. that West's obligations under its insurance contract
20 with Trinidad (including Mathiason and Glacier Bay
21 Transportation) are in no way limited by the
22 bankruptcy of Trinidad, and West shall be obligated to
23 comply in full with its obligations under its
24 insurance contract with Trinidad with respect to
25 Trinidad's liability as to any party, and West will
26 provide to the Bankruptcy Court in the Apex

1 proceeding, of which Trinidad is a party, with all
2 necessary undertakings to assure that West will honor
3 said insurance agreements;

4 d. that the foregoing be without prejudice to any of the
5 other provisions of this stipulation with respect to
6 the funding or payment of plaintiffs' TAPAA or Alaska
7 State Statutory damages by SOHIO, West, or the Fund,
8 or by Trinidad to the extent of \$6.5 million or such
9 greater amount as the court directs Trinidad to
10 provide as a bond in the Limitation proceeding.

11 13. All parties agree that an essential element of this
12 Stipulation and the Plan is that the plaintiffs entitlement to
13 recover compensatory damages will be tried independently of and
14 prior to the discovery or trial of any issues pertaining to the
15 fault of any party. The court or discovery master shall be guided
16 by the foregoing principle in resolving any disputes about the
17 appropriate scope of discovery or the admissibility of any evidence
18 at trial during Phase I.

19 14. Plaintiffs agree to stay until Phase II, all causes of
20 actions they may have against any present party other than their
21 claims against (a) Trinidad, West and the Fund under TAPAA, and (b)
22 Trinidad and SOHIO under the Alaska Statute.

23 15. Should plaintiffs prove a punitive damage predicate tort in
24 Phase II, the compensatory damages proven in Phase I will be the
25 compensatory damages to be associated with the predicate tort proven
26 in Phase II. Except as stated in the preceding sentence, nothing in


1 this agreement shall be deemed a waiver by Trinidad or West of any
2 defenses to plaintiff's punitive damages claims.

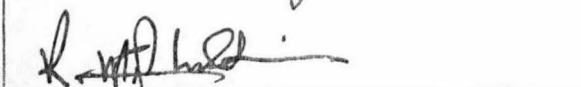
3 16. All parties stipulate and agree that all claims against BP
4 America, Inc., and Tesoro Petroleum Corporation in this action shall
5 be dismissed forthwith without prejudice and without an award of
6 costs or fees to any party and without prejudice of the Fund to seek
7 reimbursement against them under TAPAA.


8 RESPECTFULLY SUBMITTED this 30th day of November, 1989.

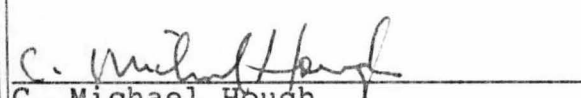
10 

11 Brian O'Neill
12 FAEGRE & BENSON
13 Attorneys for Plaintiffs

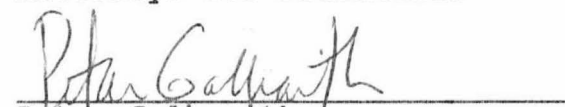
14 
15 Arthur S. Robinson
16 ROBINSON, BEISWENGER & ERHARDT
17 Attorneys for Plaintiffs


18 
19 R. Michael Underhill
20 Attorney for the United States
21 Torts Branch, Civil Division
22 U.S. Department of Justice


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24 Timothy T. Petumenos
25 BIRCH, HORTON, BITTNER,
26 CHEROT & ANDERSON
Attorneys for Plaintiffs

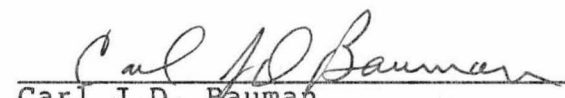

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CASE MANAGEMENT PLAN
STIPULATION

1
2
3 John A. Treptow
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6 Lawrence A. Waks
MILGRIM THOMAJAN & LEE
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9 Michael Woodell
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10 Attorneys for Trinidad, Kee
Leasing, West of England and
11 Glacier Bay Transportation, Mathiasen Tanker Industries

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13 Stephen M. Ellis
DELANEY, WILES, HAYES,
14 REITMAN & BRUBAKER
Attorneys for CIRO and
15 CIRO Members

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17 Alan Braverman
WILMER, CUTLER & PICKERING
18 Attorneys for The TAPS Fund

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20 Charles Flynn
BURR, PEASE & KURTZ
21 Attorneys for Defendant
The TAPS Fund

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23 John A. Reeder
BP Exploration
24 Attorneys for SPC and
25 SOHIO
26

John L. Underhill for
Gary J. Strauss
GARVEY, SCHUBERT & BARER
Attorneys for BP, SPC and
SOHIO

John C. Pharr
Attorney for Plaintiffs

FILED

DEC 13 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
Deputy

By

Service of the foregoing stipulation
has been made upon all counsel of
record based upon the court's Master
Service List of 10/05/89.

John A. Treptow

CASE MANAGEMENT PLAN
STIPULATION

- 31 -

Approved 12/12/89
W. Underhill
U.S.D.J.
cc: B. O'Neill, J. Treptow,
R. Underhill

RESPECTFULLY SUBMITTED this ____ day of November, 1989.

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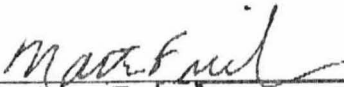
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CIRO Members

CASE MANAGEMENT PLAN
STIPULATION

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(907)276-1700

FILED

DEC 04 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
)
the GLACIER BAY) No. A88-115 Civil
)
) (Consolidated)
_____)

Refers to all actions

NOTICE OF FILING PROTECTIVE ORDER

The parties hereby file with the Court a Proposed Protective Order that is Appendix A to the Case Management Plan. Liaison counsel for Defendants inadvertently failed to attach it to the Case Management Plan which was filed on December 1, 1989.

DATED this 4TH day of December, 1989.

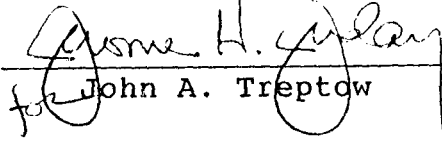
ATKINSON, CONWAY & GAGNON
Attorneys for Tesoro Alaska
Petroleum Company and Tesoro
Petroleum Company

By James H. Gagnon
for John A. Treptow

LAW OFFICES
ATKINSON, CONWAY
& GAGNON, INC.
420 L STREET
SUITE 500
ANCHORAGE, ALASKA
TELEPHONE 276-1700

270

Service of the foregoing protective
order has been made upon all counsel of
record based upon the court's
Master Service List of October 5, 1989.


for John A. Treptow

LAW OFFICES
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& GAGNON, INC.
420 L STREET
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NOTICE OF FILING
Page 2
813/3685.43

The Honorable H. Russel Holland

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Counsel for United States

FILED
DEC 01 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
the GLACIER BAY) No. A88-115 Civil
(Consolidated)

CASE MANAGEMENT PLAN STIPULATION

WHEREAS, the undersigned represent all parties presently
appearing in In Re the GLACIER BAY (Cause No. A88-115 Civil,
Consolidated) ("this action"); and

WHEREAS, all parties desire to resolve their differences in an
expeditious, orderly and reasonable manner; and

CASE MANAGEMENT PLAN
STIPULATION

1 WHEREAS, all parties have jointly agreed to a proposed Case
2 Management Plan ("Plan") which is being submitted herewith to the
3 court; and

4 WHEREAS, all parties have made significant compromises in order
5 to achieve a consensus on the Plan and this stipulation; and

6 WHEREAS, no party will be bound by this stipulation or Plan
7 unless the court approves the Plan as proposed and enters an order
8 approving this stipulation as offered; and

9 WHEREAS, Trinidad is a debtor-in-possession in a Chapter 11 case
10 in the United States Bankruptcy Court for the Eastern District of
11 Missouri, Eastern Division (the "Bankruptcy Court"), Case No.
12 87-038 45, as part of the procedurally consolidated Chapter 11 cases
13 under the caption Apex Oil Company, et al (87-3804-BKC-BSS) (the
14 "Trinidad Bankruptcy");

15 NOW THEREFORE, in consideration of the foregoing and other
16 mutual consideration, the undersigned hereby agree as follows:

17 1. This stipulation and the proposed Case Management Plan
18 are conditioned upon all of the following:

- 19 a. the adoption by the court of the Plan as proposed;
- 20 b. the approval of the court of this stipulation as
21 offered;
- 22 c. the dismissal with prejudice of all punitive damage
23 claims which have been or could have been asserted
24 arising out of the Glacier Bay spill against any
25 present parties (other than Trinidad, West, and Doug
26 Davis) and their parents, subsidiaries, employees,
officers and directors in these proceedings;

- 1 d. the agreement by all defendants and third/fourth-
- 2 party defendants not to assert punitive damage claims
- 3 against any other party hereto; and
- 4 e. an order of the court making the Plan and this
- 5 stipulation binding on all parties presently
- 6 appearing in the action and ordering that no future
- 7 party to this action shall receive any benefit from
- 8 the Plan and this stipulation without also being
- 9 bound by the obligations and agreements undertaken by
- 10 present parties.

11 If any of these conditions are not met, the Plan and this

12 stipulation are void.

13 2. Each of the undersigned agree to be bound to every

14 stipulation made or contained herein.

15 3. Trinidad Corporation ("Trinidad"), and The West of England

16 Ship Owners Mutual Insurance Association (Luxembourg) ("West"),

17 formerly known as The West of England Ship Owners Mutual Protection

18 and Indemnity Association (Luxembourg), stipulate that:

- 19 a. The vessel GLACIER BAY discharged a quantity of North
- 20 Slope crude oil into Cook Inlet, Alaska on or about
- 21 July 2, 1987. [The Spill]
- 22 b. In resolving the claims of individual plaintiffs it
- 23 shall be presumed that any oil encountered in Upper
- 24 Cook Inlet between July 2, 1987 and September 30,
- 25 1987, was discharged by the vessel GLACIER BAY, unless
- 26 defendants produce admissible evidence that the oil

1 causing damage to a particular plaintiff was from
2 another source, in which case the affected plaintiff
3 will have the burden of proving his damages were not
4 caused by that other source.

5 c. Trinidad and West waive all statutory defenses under
6 the Trans-Alaska Pipeline Authorization Act ("TAPAA")
7 that the spill was caused by an act of war or the
8 negligence of the United States or other governmental
9 agency. Except for defenses specifically concerning
10 the entitlement to, and the fact or amount of damages
11 of any particular plaintiffs and except as provided in
12 paragraph 4 of this Stipulation and Section II,
13 paragraph 6.1 of the Plan, Trinidad and West waive all
14 other defenses to plaintiffs' and the USG's
15 compensatory damage claims under TAPAA.

16 d. At the time of the spill, Trinidad was an operator, as
17 that phrase is defined in 43 C.F.R. § 29.1(k)(2), of
18 the vessel GLACIER BAY and West was an insurer, as
19 that term is defined in 33 C.F.R. § 131.2(g), who
20 provided a certificate of insurance for Trinidad and
21 the vessel GLACIER BAY pursuant to 33 C.F.R. § 131.6.

22 4. All parties stipulate that:

23 a. Trinidad and West are strictly liable jointly and
24 severally under TAPAA for up to the first \$14 million
25 in damages compensable under TAPAA, but only to the
26 extent that:

- 1 (1) plaintiffs are among the class of claimants who
2 are entitled to recover under TAPAA. (A dispute
3 exists between plaintiffs and defendants as to
4 whether certain classes of plaintiffs such as
5 tenders, cash buyers and processors are entitled
6 to recovery, and this stipulation does not
7 resolve this dispute);
- 8 (2) plaintiffs' damages are of the type compensable
9 under TAPAA;
- 10 (3) plaintiffs' damages were in fact and proximately
11 caused by the spill and not by their own
12 negligence or other causes;
- 13 (4) plaintiffs have suffered damages in the amount
14 they claim;
- 15 (5) plaintiffs have timely asserted their claims; and
16 (6) plaintiffs have not failed to mitigate their
17 damages.

18 b. The plaintiffs assert they are entitled to pre-
19 judgment interest, post-judgment interest, costs,
20 disbursements and attorneys' fees against Trinidad and
21 West under TAPAA. Trinidad and West assert that there
22 are legal issues requiring resolution by the court as
23 to plaintiffs' entitlement, if any, to pre-judgment
24 interest, post-judgment interest, costs,
25 disbursements, and attorneys' fees under TAPAA. That
26 dispute is not resolved by this stipulation. Trinidad

1 and West assert that any such amounts that are awarded
2 by the court shall be included within the meaning of
3 the phrases "compensable damages," under TAPAA; "TAPAA
4 liability"; or "strict liability under TAPAA" or any
5 like phrase, as used in this stipulation to define
6 their limit of liability under TAPAA. Plaintiffs
7 assert that any such amounts that are awarded by the
8 court should be in addition to the limits of
9 Trinidad's and West's TAPAA liability. That dispute
10 is also not resolved by this stipulation.

11 c. Final judgment[s], pursuant to Rule 54(b), shall be
12 entered against West and Trinidad for their TAPAA
13 liability, if any, jointly and severally as to the
14 TAPAA liability admitted this paragraph only, no later
15 than the conclusion of the trial of the third group of
16 sixteen plaintiffs in Phase I and at the end of each
17 summary proceeding thereafter in favor of each
18 plaintiff who has obtained a verdict or award under
19 TAPAA; provided however:

20 (1) no plaintiff may obtain a judgment against West
21 and Trinidad for strict liability under TAPAA in
22 excess of the remainder of \$14 million less the
23 sum of (a) amounts compensable under TAPAA
24 previously paid by settlement (other than by the
25 Fund) and (b) amounts awarded under TAPAA to any
26 plaintiff by prior judgments against West and
Trinidad; and

(2) all parties reserve all rights to immediately
appeal any final judgment entered in Phase I.

d. Plaintiffs agree that they will not execute on any
judgments entered against West and Trinidad under
TAPAA in Phase I for amounts that exceed the limits of
liability of Trinidad and West under TAPAA as defined
by this Stipulation.

e. (1) West agrees to pay to the United States
Government ("USG") \$1.5 million of the USG's
claims for cleanup costs and expenses within
thirty days of receiving written agreement,
satisfactory to the USG, Trinidad, and West,
and further subject to any approvals, if
necessary, by the USG, that said payment shall
be without prejudice to the claims and rights,
if any, of any party in Phase II against the
USG alleging negligence of the USG (which
negligence is denied by the USG) in causing the
spill and resulting damages.

The balances owed to the USG, if any, for
cleanup costs and expenses, if not settled or
otherwise resolved prior to the conclusion of
Phase I discovery and motion practice, shall be
the subject of a bench trial to be held in
accordance with paragraphs 1.5 and 19.3 of the
Joint Case Management Plan. At such trial, and

1 subject to Trinidad's and West's rights, if
2 any, to assert claims for contribution against
3 the USG in Phase II, Trinidad and West shall be
4 deemed to have waived any and all statutory
5 defenses under TAPAA to strict liability with
6 respect to the claims of the USG for pollution
7 cleanup costs and expenses, including the
8 statutory defense, as alleged by Trinidad,
9 West, and others, that negligence of the United
10 States or other governmental agency caused the
11 spill. This paragraph is without prejudice to
12 Trinidad's and West's rights, if any, to
13 litigate in Phase I said parties' contentions
14 that the USG's claims for pollution cleanup
15 costs and expenses are limited to "reasonable"
16 costs or that the USG failed to mitigate its
17 damages for pollution cleanup costs and
18 expenses.

19 Final judgment, pursuant to Rule 54(b), may be
20 entered against Trinidad and West for the USG's
21 pollution cleanup costs and expenses at the
22 conclusion of the aforesaid bench trial. All
23 parties reserve all rights immediately to
24 appeal any final judgment entered in Phase I as
25 a result of the aforesaid bench trial.
26

1 Trinidad or West will pay any judgment for
2 cleanup costs and expenses within thirty (30)
3 days after entry of a final judgment not
4 subject to further appeal.

5 (2) Payments of the aforesaid \$1.5 million to the
6 USG do not constitute, and shall not be
7 considered as, a release, an accord and
8 satisfaction, or a final settlement of the
9 USG's claims for pollution cleanup costs and
10 expenses, or of any other claims, actions, and
11 demands of the USG, Trinidad, and West for
12 other relief against any party in these
13 consolidated cases, it being expressly agreed
14 and understood by the parties that the balance
15 of the USG's claims for pollution cleanup costs
16 and expenses, if any, and the claims of the
17 USG, Trinidad, and West for contribution, shall
18 be resolved or litigated in accordance with the
19 terms of the Case Management Plan.

20 (3) This stipulation is without prejudice to any
21 and all rights, if any, of the USG, Trinidad,
22 and West in Phase I to assert, claim, move, and
23 litigate the contention of the USG that,
24 pursuant to the Federal Water Pollution Control
25 Act, 33 U.S.C. § 1321 ("FWPCA") and TAPAA, the
26 USG is entitled to recover the full amount of

1 its "actual" cleanup costs and expenses, as
2 opposed to "reasonable" costs and expenses.

3 (4) This stipulation is without prejudice to any
4 and all rights, if any, of the USG, Trinidad
5 and West in Phase II to claim, litigate, take
6 to trial, and execute judgment(s) against any
7 defendant and/or third/fourth party defendant,
8 including, but not limited to, the GLACIER BAY,
9 in rem (except, to the extent applicable, any
10 letter of undertaking has been substituted in
11 place, and in lieu of, the defendant vessel
12 GLACIER BAY), with respect to liability of any
13 defendants and/or third/fourth party defendants
14 under other statutes and applicable law
15 concerning any and all claims and actions
16 asserted by the USG which are not resolved in
17 Phase I.

18 f. Trinidad and West agree that their strict liability,
19 jointly and severally, under TAPAA for up to
20 \$14 million in damages compensable under TAPAA may not
21 be reduced by the Limitation of Liability Act.
22 Trinidad and West do not waive their rights, if any,
23 to claim the benefits of limitation of liability under
24 the Limitation of Liability Act for all other
25 liability arising under TAPAA.
26

1 5. The Trans-Alaska Pipeline Liability Fund ("Fund")
2 stipulates that:

- 3 a. The vessel GLACIER BAY discharged a quantity of North
4 Slope crude oil into Cook Inlet, Alaska on or about
5 July 2, 1987.
- 6 b. In resolving the claims of individual plaintiffs it
7 shall be presumed that any oil encountered in Upper
8 Cook Inlet between July 2, 1987, and September 30,
9 1987, was discharged by the vessel GLACIER BAY, unless
10 defendants produce admissible evidence that the oil
11 causing damage to a particular plaintiff was from
12 another source, in which case the affected plaintiff
13 will have the burden of proving his damages were not
14 caused by that other source.
- 15 c. The Fund waives all statutory defenses under TAPAA
16 that the spill was caused by an act of war or the
17 negligence of the United States or other governmental
18 agency. Except for defenses specifically concerning
19 the entitlement to, and the fact or amount of damages
20 of any particular plaintiffs and except as provided in
21 paragraph 6 of this Stipulation, and Section II,
22 paragraph 6.1 of the Plan, the Fund waives all other
23 defenses to plaintiffs' and the USG's compensatory
24 damage claims under TAPAA.

1 6. All parties stipulate that:

2 a. The Fund is strictly liable under TAPAA for damages
3 compensable under TAPAA that were caused by the spill
4 but:

5 (1) only if damages compensable under TAPAA exceed
6 \$14 million, in which case the Fund is liable for
7 such damages in excess of \$14 million up to the
8 statutory limit of \$100 million in damages
9 compensable under TAPAA (whether paid by
10 settlement with any claimants or as a result of a
11 judgment), and

12 (2) with respect to plaintiffs' claims, only to the
13 extent that

14 (A) plaintiffs are among the class[es] of
15 claimants who are entitled to recover under
16 TAPAA. (A dispute exists between plaintiffs
17 and defendants as to whether certain classes
18 of plaintiffs such as tenders, cash buyers
19 and processors are entitled to recovery and
20 this stipulation does not resolve this
21 dispute);

22 (B) plaintiffs' damages are of the type
23 compensable under TAPAA;

24 (C) plaintiffs' damages were in fact and
25 proximately caused by the spill and not by
26 their own negligence or other causes;

1 (D) plaintiffs have suffered damages in the
2 amount they claim;

3 (E) plaintiffs have timely asserted their
4 claims; and

5 (F) plaintiffs have not failed to mitigate their
6 damages; and

7 (3) with respect to the USG's claims, only to the
8 extent that the USG proves the amount of its
9 damages for pollution cleanup cost claims.

10 b. The plaintiffs assert they are entitled to pre-
11 judgment interest, post-judgment interest, costs,
12 disbursements and attorneys' fees against the Fund
13 under TAPAA. The Fund asserts that there are legal
14 issues requiring resolution by the court as to
15 plaintiffs' entitlement, if any, to pre-judgment
16 interest, post-judgment interest, costs, disbursements
17 and attorneys' fees under TAPAA and its implementing
18 regulations. That dispute is not resolved by this
19 stipulation. The Fund asserts that such amounts that
20 are awarded by the court shall be included within the
21 meaning of the phrase "compensable damages," under
22 TAPAA, "TAPAA liability"; "strict liability under
23 TAPAA" or any like phrase, as used in this Stipulation
24 to define the amount of the Fund's liability under
25 TAPAA. Plaintiffs assert that any such amounts that
26 are awarded by the court should be in addition to the

limits of the Fund's liability under TAPAA. This dispute is not resolved by this stipulation.

- c. Subject to the limitations set out in this paragraph 6, and to the extent that the limits of its TAPAA liability have not been exhausted by prior settlement of claims or prior judgments entered against it, judgment[s] may be entered against the Fund pursuant to Rule 54(b) for its TAPAA liability, to the plaintiffs whose claims have been tried, no later than the conclusion of the trial of the third group of sixteen plaintiffs in Phase I.
- d. To the extent that the limits of its TAPAA liability have not been exhausted by prior settlement of claims or prior judgments entered against it, final judgment[s] shall be entered simultaneously against the Fund pursuant to Rule 54(b) for its TAPAA liability, subject to the limitations set out in this paragraph 6, to all remaining plaintiffs at the conclusion of all summary proceedings adjudicating the claims of the remaining plaintiffs.
- e. Subject to the limitation set out in paragraph 6(a)(3), and to the extent that the limits of its TAPAA liability have not been exhausted by prior settlements of claims or judgments entered against it, final judgment shall be entered against

1 the Fund pursuant to Rule 54(b) for its TAPAA
2 liability to the USG with respect to any pollution
3 cleanup costs and expenses not paid to the USG by
4 Trinidad and/or West or not covered by a judgment
5 against them pursuant to paragraphs 4 and 5 above.
6 The Fund and the USG acknowledge that the Fund will
7 have an opportunity in Phase II of these proceedings
8 to seek to recover amounts paid to the USG pursuant to
9 this paragraph, in the event the USG's negligence
10 (which negligence is denied) is established in Phase
11 II of these proceedings, but only to the extent that
12 such negligence would have relieved the Fund of
13 liability to the USG in the first instance.

14 f. The Fund stipulates that it will not seek to limit its
15 liability to plaintiffs and the USG under TAPAA by
16 claiming the protections of the Limitation of
17 Liability of Act.

18 g. With respect to any judgments entered against the Fund
19 pursuant to subparagraphs c, d, and e above:

20 (1) The Fund's liability is defined to be damages
21 compensable under TAPAA that exceed \$14 million
22 up to the TAPAA statutory limit (less amounts
23 previously paid by the Fund to plaintiffs or
24 claimants or awarded by prior judgments against
25 the Fund);
26

1 (2) No judgment may be entered against the Fund until
2 judgments have been entered against West and
3 Trinidad or payments have been made by them to
4 plaintiffs and claimants to the full extent of
5 their TAPAA liability as set out in paragraph 4
6 above;

7 (3) The Fund, on the one hand, and West and Trinidad,
8 on the other hand, undertake to attempt to
9 establish a mechanism that would resolve among
10 themselves any disputes as to whether Trinidad
11 and West have made payments to plaintiffs and
12 claimants or had judgments entered against them
13 to the full extent of their TAPAA liability as
14 set out in Paragraph 4 of this Stipulation.
15 Failing agreement on a mechanism, the Fund,
16 Trinidad, and West agree to submit said dispute
17 to the court for decision at such point in time
18 as it is determined that a dispute over this
19 issue exists.

20 (4) All parties reserve all rights to immediately
21 appeal any final judgment entered in Phase I.

22 7. Trinidad and The Standard Oil Company ("SOHIO"), as
23 guarantor of Trinidad only under AS 46.03.822, stipulate that:

24 a. Alaska North Slope crude oil entered into the waters
25 of Upper Cook Inlet, Alaska from the vessel GLACIER
26 BAY on or about July 2, 1987 ("the spill").

1 b. In resolving the claims of individual plaintiffs it
2 shall be presumed that any oil encountered in Upper
3 Cook Inlet between July 2, 1987, and September 30,
4 1987, was discharged by the vessel GLACIER BAY, unless
5 defendants produce admissible evidence that the oil
6 causing damage to a particular plaintiff was from
7 another source, in which case the affected plaintiff
8 will have the burden of proving his damages were not
9 caused by that other source.

10 c. At the time of the spill, Trinidad had control over
11 the hazardous substance, as that phrase is defined in
12 AS 46.03.826(3), and SOHIO was a guarantor of Trinidad
13 pursuant to AS 46.04.040.

14 d. Trinidad and SOHIO, and each of them are, subject to
15 the other terms of this paragraph and paragraph 8 of
16 this Stipulation, strictly liable under AS 46.03.822
17 ("Alaska statute") to those plaintiffs:

18 (1) who can establish they are among the class of
19 claimants who are entitled to recovery under the
20 Alaska statute (a dispute exists between
21 plaintiffs and defendants as to whether certain
22 classes of plaintiffs such as tenders, cash
23 buyers and processors are entitled to recovery
24 and this stipulation does not resolve this
25 dispute);
26

- 1 (2) who have suffered damages of the type compensable
2 under the Alaska statute;
3 (3) whose damages were in fact and proximately caused
4 by the spill and not by their own negligence or
5 other causes;
6 (4) who have timely asserted their claims;
7 (5) who have not failed to mitigate their damages;
8 and
9 (6) whose recovery under state law is not preempted.
10 e. The plaintiffs assert they are entitled to pre-
11 judgment interest, post-judgment interest, costs,
12 disbursements and attorneys' fees against Trinidad and
13 SOHIO under the Alaska Statute. Trinidad and SOHIO
14 assert that there are legal issues requiring
15 resolution by the court as to plaintiffs' entitlement,
16 if any, to pre-judgment interest, post-judgment
17 interest, costs, disbursements and attorneys' fees
18 under the Alaska Statute. That dispute is not
19 resolved by this Stipulation.
20 f. Trinidad and SOHIO admit the spill was not solely the
21 result of an act of war; an intentional act or a
22 negligent act of a third party, other than a party (or
23 its employees) in privity of contract with, or
24 employed by Trinidad or SOHIO; negligence on the part
25 of the USG or the State of Alaska; or an act of God.
26

1 Except for defenses specifically concerning the
2 entitlement to, and the fact or amount of damages of
3 any particular plaintiffs and except as provided in
4 paragraphs 7 and 8 of this Stipulation and Section II,
5 paragraph 6.1 of the Plan, Trinidad and SOHIO waive
6 all other defenses to plaintiffs' compensatory damages
7 claims under Alaska Statute.

8 g. Trinidad and SOHIO admit Trinidad and SOHIO are not
9 entitled to exoneration under the Limitation of
10 Liability Act.

11 h. Except as stated in 7(g) above, Trinidad and SOHIO do
12 not waive any rights they may have to claim the
13 benefits of limitation of liability pursuant to the
14 Limitation of Liability Act for all liabilities
15 arising under the Alaska statute. (Other parties deny
16 Trinidad's and SOHIO's entitlement to limit their
17 liability pursuant to the Limitation of Liability Act.
18 Any party may move pursuant to Rule 12 during Phase I
19 to dismiss the Complaint in Limitation filed by
20 Trinidad and others, as provided in the Plan.)

21 i. The parties agree and stipulate that any and all of
22 the stipulations and agreements in paragraphs 7 and 8
23 made by SOHIO are made solely in SOHIO's role as a
24 guarantor pursuant to a guarantee regarding oil
25 discharge liability relating to the spill from the
26

1 GLACIER BAY, and are not binding on SOHIO or an any
2 affiliate of SOHIO in any other role.

3 8. All parties stipulate that

4 a. Subject to the provisions of this paragraph, final
5 judgment, pursuant to Rule 54(b), may be entered
6 against Trinidad or SOHIO for amounts compensable
7 under the Alaska statute at the conclusion of the
8 trial of the third group of 16 plaintiffs in Phase I
9 and at the end of each summary proceeding thereafter
10 in favor of each plaintiff who has obtained a judgment
11 or award under the Alaska Statute.

12 b. In the event Trinidad's Complaint in Limitation is
13 dismissed during Phase I, subject to paragraph 8(f)
14 below and pending the completion of the proceedings
15 there described, plaintiffs agree to limit their right
16 to execute on judgments obtained in Phase I against
17 Trinidad or SOHIO, and each of them under the Alaska
18 statute, to a total amount of 14 million less the sum
19 of:

- 20 (1) amounts compensable under the Alaska statute
21 previously paid by settlement (other than by the
22 Fund), and
23 (2) amounts awarded under the Alaska statute by prior
24 judgments against Trinidad or SOHIO.
25
26

1 c. In the event Trinidad's Complaint in Limitation is not
2 dismissed during Phase I, but is found by the court
3 not to limit SOHIO's guarantee, subject to
4 paragraph 8(f) below and pending completion of the
5 proceedings there described, plaintiffs agree to limit
6 their right to execute on judgments obtained in
7 Phase I against SOHIO under the Alaska statute to
8 \$14 million less the sum of:

9 (1) amounts compensable under the Alaska statute
10 previously paid by settlement (other than by the
11 Fund), and

12 (2) amounts awarded under the Alaska statute by prior
13 judgments against Trinidad or SOHIO.

14 d. In the event Trinidad's Complaint in Limitation is not
15 dismissed during Phase I and the court holds that the
16 SOHIO guarantee is limited by the benefits available
17 to Trinidad under the Limitation Act (or the court
18 fails to rule on the issue), subject to paragraph 8(f)
19 below and pending the completion of the proceedings
20 there described, plaintiffs agree to limit their right
21 to execute on judgments obtained in Phase I against
22 Trinidad or SOHIO under the Alaska statute, to
23 \$6.5 million (or as adjusted by the court pursuant to
24 Admiralty Rule (f)(7) less the sum of:

1 (1) amounts compensable under the Alaska statute
2 previously paid by settlement (other than the
3 Fund), and

4 (2) amounts awarded under the Alaska statute to any
5 plaintiff by prior judgments against Trinidad or
6 SOHIO.

7 e. Plaintiffs agree not to execute judgments pursuant to
8 paragraphs 8(b)-(d) above prior to 30 days following
9 the entry of judgment.

10 f. With respect to any judgments obtained against
11 Trinidad or SOHIO under the Alaska Statute that are
12 not funded at the conclusion of Phase I as a result of
13 the limitations contained herein, plaintiffs agree not
14 to execute on each judgment until 30 days after the
15 entry of judgments in the Phase II proceeding that
16 apportion ultimate liability among the various
17 defendants.

18 f. All parties reserve all rights to appeal immediately
19 any final judgment entered in Phase I.

20 9. a. SPC, Tesoro, CIRO and KPL agree not to contest the
21 amount of damages awarded to any plaintiff in Phase I.
22 SPC, Tesoro, CIRO and KPL reserve the right, however,
23 to contest against any party, except plaintiffs,
24 amounts paid in settlements to plaintiffs in the event
25 that any contribution or indemnity claim is made
26 against them to recover any of those amounts.

1 (1) amounts compensable under the Alaska statute
2 previously paid by settlement (other than the
3 Fund), and

4 (2) amounts awarded under the Alaska statute to any
5 plaintiff by prior judgments against Trinidad or
6 SOHIO.

7 e. Plaintiffs agree not to execute judgments pursuant to
8 paragraphs 8(b)-(d) above prior to 30 days following
9 the entry of judgment.

10 f. With respect to any judgments obtained against
11 Trinidad or SOHIO under the Alaska Statute that are
12 not funded at the conclusion of Phase I as a result of
13 the limitations contained herein, plaintiffs agree not
14 to execute on each judgment until 30 days after the
15 entry of judgments in the Phase II proceeding that
16 apportion ultimate liability among the various
17 defendants.

18 f. All parties reserve all rights to appeal immediately
19 any final judgment entered in Phase I.

20 9. a. SPC, Tesoro, CIRO and KPL agree not to contest the
21 amount of damages awarded to any plaintiff in Phase I.
22 SPC, Tesoro, CIRO and KPL reserve the right, however,
23 to contest against any party, except plaintiffs,
24 amounts paid in settlements to plaintiffs in the event
25 that any contribution or indemnity claim is made
26 against them to recover any of those amounts.

1 b. SPC, Tesoro, CIRO and KPL further agree that to the
2 extent one or more of them are found strictly or
3 otherwise liable (except to the extent that such
4 liability arises from charter parties or other
5 contractual agreements) to any other party to this
6 proceeding in Phase II for amounts paid or awarded in
7 Phase I, then to the extent plaintiffs' Phase I
8 judgments remain unfunded, SPC, Tesoro, CIRO and KPL
9 (as applicable) shall be similarly liable to
10 plaintiffs to that same extent, even though plaintiffs
11 have not appeared or otherwise asserted such claims in
12 Phase II.

13 c. In the event it is determined in Phase II that
14 Trinidad and SOHIO are entitled to the benefits of the
15 Limitation of Liability Act, plaintiffs agree that to
16 the extent any unfunded judgments obtained against
17 Trinidad and SOHIO under the Alaska statute during
18 Phase I exceed the amount of the limitation fund,
19 plaintiffs will not execute in excess of the total
20 amount of the limitation fund determined by the court
21 to be due to plaintiffs against Trinidad and SOHIO, as
22 guarantor.

23 10. Nothing in this stipulation shall be deemed to waive or
24 diminish any obligations which may be imposed or to
25 prejudice any rights or defenses that may be created, by
26

1 any revision of TAPAA by Congress, to the extent that those
2 revisions would apply to this proceeding absent this
3 stipulation.

4 11. All parties agree:

5 a. The stipulations, admissions, waiver of defense,
6 consent to judgments, settlements, or payment of
7 judgments by Trinidad, West, SOHIO and the Fund shall
8 be (i) wholly without prejudice to their rights and
9 defenses with respect to plaintiffs' punitive damages
10 claims and (ii) wholly without prejudice to all
11 claims, rights, or defenses against each other and
12 against any present or future defendant, third-party
13 defendant or fourth-party defendant in this action, or
14 any other action arising out of the spill, including
15 without limitation, the right:

- 16 (1) to assert that any defendant, third or fourth-
17 party defendant or non-party is liable, jointly
18 and severally, in whole or in part, for the
19 damages awarded or paid by settlement to
20 plaintiffs; and
21 (2) to seek reimbursement, subrogation, contribution
22 or indemnification for such damages or settlement
23 payments from any defendant, third/fourth-party
24 defendant or third party.

25 b. Any dismissal of claims or parties in Phase I or any
26 election by plaintiffs not to pursue compensatory

1 damages claims against any defendant in Phase I shall
2 be without prejudice to the right of Trinidad, West,
3 SOHIO and the Fund, or any other defendant, third
4 party defendant or fourth-party defendant in Phase II
5 of this action, or other actions arising out of the
6 oil spill, to assert any dismissed claims, to pursue
7 any rights against dismissed parties, to seek
8 reimbursement, subrogation, contribution or
9 indemnification from any such party or to assert that
10 any such party is jointly and severally liable for
11 damages awarded or paid by settlement to plaintiffs.

12 c. Notwithstanding the above, Trinidad, West and the
13 plaintiffs acknowledge that in any punitive damages
14 trial in Phase II the amounts paid in compensatory
15 damages are relevant to any punitive damages claims of
16 plaintiffs, but they have not been able to agree as to
17 what facts may be admissible or how to most fairly
18 present those facts to a jury during the punitive
19 damages trial in Phase II. The parties agree to
20 submit their respective views to the court in advance
21 of the punitive damages trial.

22 d. To the extent that the funding mechanisms described in
23 this stipulation are not available up to and including
24 the time of execution of any judgments (for example,
25 should the Fund be dissolved or West become judgment
26 proof), plaintiffs and the USG shall be free to pursue

1 any and all defendants and third/fourth party
2 defendants to recover the amount of the unavailable
3 funding under such rights of action as may exist
4 against each defendant and third/fourth party
5 defendant, it being understood that this provision
6 creates no new or additional rights of action and does
7 not create joint liability where such liability would
8 not otherwise exist.

9 e. All parties stipulate that the results of any of the
10 trials of the blocks of 16 plaintiffs' claims for
11 compensatory damages shall not have any subsequent res
12 judicata, collateral estoppel or any other issue
13 preclusive effect, or in any manner be binding on
14 defendants or upon any plaintiffs whose compensatory
15 damages claims have not actually been tried, except
16 with respect to the claims for compensatory damages
17 asserting that a price drop in the price of salmon in
18 late July 1987 was caused by the GLACIER BAY spill.
19 As to that single issue, the initial jury verdict or
20 Court determination shall be binding on all defendants
21 and all plaintiffs and shall be given res judicata and
22 collateral estoppel effect in all subsequent
23 proceedings herein, it being understood that no party
24 waives any rights of appeal.

25 f. Plaintiffs stipulate (without prejudice to their right
26 to offer rebuttal evidence on any issue as to their

1 damages, and reserving all other evidentiary
2 objections) that in the first three jury trials they
3 will not object on the ground of relevance to the
4 admissibility of evidence that defendants seek to
5 present regarding (a) the total number of claimants
6 who are seeking recovery; (b) the total damages sought
7 or suffered by all claimants; and (c) the alleged
8 appropriate methodologies for awarding damages to
9 plaintiffs in these circumstances.

- 10 g. The jury verdicts of the first three trials in Phase I
11 shall be given determinative weight by the court in
12 the summary proceedings unless doing so would provide
13 a clearly unfair basis for awarding damages.

14 12. Except for the USG, all parties
15 (including Mathiason and Glacier Bay Transportation) agree to join
16 in a stipulation (or not to oppose a motion made by any party
17 hereto) to be presented to the United States Bankruptcy Court for
18 the Eastern District of Missouri asking the court to order:

- 19 a. that the bankruptcy stay be lifted with respect to all
20 proceedings herein, including without limitation any
21 judgment(s) obtained in this action by any defendant,
22 third party or fourth party defendant or by any
23 plaintiff who was within the putative classes of the
24 McGahan and UCIDA actions, on the condition that the
25 foregoing persons or entities agree, (1) to first
26 attempt to execute as to any unsatisfied portions of

1 any judgment(s) against Trinidad against any available
2 proceeds available under Trinidad's insurance contract
3 with West of England Ship Owners Mutual Insurance
4 Association (Luxembourg), and, (2) in the event any
5 such judgment(s) remain unsatisfied after 30 days, the
6 foregoing persons or entities agree to file their
7 judgments in the bankruptcy court, which shall be
8 entered by the bankruptcy court as allowed claims of a
9 class and priority determined pursuant to the
10 Bankruptcy Code by the Bankruptcy Court;

11 b. that all other plaintiffs (which term does not include
12 the USG) not described in the preceding subparagraph
13 (i.e., processor plaintiffs) shall be required to
14 submit their claims to the bankruptcy court, which
15 claims will be opposed by Trinidad; but in the event
16 the court allows the filing of such claims, Trinidad
17 will stipulate to the bankruptcy court as set out in
18 the preceding subparagraph;

19 c. that West's obligations under its insurance contract
20 with Trinidad (including Mathiason and Glacier Bay
21 Transportation) are in no way limited by the
22 bankruptcy of Trinidad, and West shall be obligated to
23 comply in full with its obligations under its
24 insurance contract with Trinidad with respect to
25 Trinidad's liability as to any party, and West will
26 provide to the Bankruptcy Court in the Apex

1 proceeding, of which Trinidad is a party, with all
2 necessary undertakings to assure that West will honor
3 said insurance agreements;

4 d. that the foregoing be without prejudice to any of the
5 other provisions of this stipulation with respect to
6 the funding or payment of plaintiffs' TAPAA or Alaska
7 State Statutory damages by SOHIO, West, or the Fund,
8 or by Trinidad to the extent of \$6.5 million or such
9 greater amount as the court directs Trinidad to
10 provide as a bond in the Limitation proceeding.

11 13. All parties agree that an essential element of this
12 Stipulation and the Plan is that the plaintiffs entitlement to
13 recover compensatory damages will be tried independently of and
14 prior to the discovery or trial of any issues pertaining to the
15 fault of any party. The court or discovery master shall be guided
16 by the foregoing principle in resolving any disputes about the
17 appropriate scope of discovery or the admissibility of any evidence
18 at trial during Phase I.

19 14. Plaintiffs agree to stay until Phase II, all causes of
20 actions they may have against any present party other than their
21 claims against (a) Trinidad, West and the Fund under TAPAA, and (b)
22 Trinidad and SOHIO under the Alaska Statute.

23 15. Should plaintiffs prove a punitive damage predicate tort in
24 Phase II, the compensatory damages proven in Phase I will be the
25 compensatory damages to be associated with the predicate tort proven
26 in Phase II. Except as stated in the preceding sentence, nothing in

1 this agreement shall be deemed a waiver by Trinidad or West of any
2 defenses to plaintiff's punitive damages claims.

3 16. All parties stipulate and agree that all claims against BP
4 America, Inc., and Tesoro Petroleum Corporation in this action shall
5 be dismissed forthwith without prejudice and without an award of
6 costs or fees to any party and without prejudice of the Fund to seek
7 reimbursement against them under TAPAA.

8 RESPECTFULLY SUBMITTED this 30th day of November, 1989.

9
10
11 Brian O'Neill
12 Brian O'Neill
13 FAEGRE & BENSON
14 Attorneys for Plaintiffs

15 Arthur S. Robinson
16 ARTHUR S. ROBINSON
17 ROBINSON, BEISWENGER & ERHARDT
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19 R. Michael Underhill
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21 Attorney for the United States
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CASE MANAGEMENT PLAN
STIPULATION

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2
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11 Glacier Bay Transportation, Mathiasen Tanker Industries

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13 Stephen M. Ellis
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15 Attorneys for CIRO and
CIRO Members

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17 Alan Braverman
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18 Attorneys for The TAPS Fund

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20 Charles Flynn
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The TAPS Fund

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23 John A. Reeder
BP Exploration
24 Attorneys for SPC and
25 SOHIO
26

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Gary J. Strauss
GARVEY, SCHUBERT & BARER
Attorneys for BP, SPC and
SOHIO

John C. Pharr
Attorney for Plaintiffs

FILED

DEC 13 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
Deputy

By

Service of the foregoing stipulation
has been made upon all counsel of
record based upon the court's Master
Service List of 10/05/89.

John A. Treptow

CASE MANAGEMENT PLAN
STIPULATION

- 31 -

Approved 12/12/89
Waks
U.S.O.J.
cc: B. O'Neill, J. Treptow,
R. Underhill

RESPECTFULLY SUBMITTED this ____ day of November, 1989.

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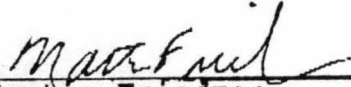
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CASE MANAGEMENT PLAN
STIPULATION

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FILED

DEC 04 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
)
the GLACIER BAY) No. A88-115 Civil
)
) (Consolidated)

Refers to all actions

NOTICE OF FILING PROTECTIVE ORDER

The parties hereby file with the Court a Proposed Protective Order that is Appendix A to the Case Management Plan. Liaison counsel for Defendants inadvertently failed to attach it to the Case Management Plan which was filed on December 1, 1989.

DATED this 4TH day of December, 1989.

ATKINSON, CONWAY & GAGNON
Attorneys for Tesoro Alaska
Petroleum Company and Tesoro
Petroleum Company

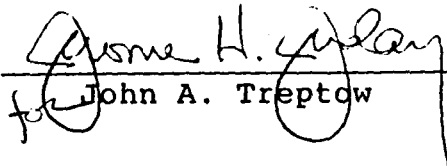
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TELEPHONE 276-1700

By George H. Gagnon
for John A. Treptow

NOTICE OF FILING
Page 1
813/3685.43

27

Service of the foregoing protective
order has been made upon all counsel of
record based upon the court's
Master Service List of October 5, 1989.


for John A. Treptow

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NOTICE OF FILING
Page 2
813/3685.43

The Honorable H. Russel Holland

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FILED
DEC 01 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
the GLACIER BAY) No. A88-115 Civil
)
) (Consolidated)
)

CASE MANAGEMENT PLAN STIPULATION

WHEREAS, the undersigned represent all parties presently
appearing in In Re the GLACIER BAY (Cause No. A88-115 Civil,
Consolidated) ("this action"); and

WHEREAS, all parties desire to resolve their differences in an
expeditious, orderly and reasonable manner; and

CASE MANAGEMENT PLAN
STIPULATION

1 WHEREAS, all parties have jointly agreed to a proposed Case
2 Management Plan ("Plan") which is being submitted herewith to the
3 court; and

4 WHEREAS, all parties have made significant compromises in order
5 to achieve a consensus on the Plan and this stipulation; and

6 WHEREAS, no party will be bound by this stipulation or Plan
7 unless the court approves the Plan as proposed and enters an order
8 approving this stipulation as offered; and

9 WHEREAS, Trinidad is a debtor-in-possession in a Chapter 11 case
10 in the United States Bankruptcy Court for the Eastern District of
11 Missouri, Eastern Division (the "Bankruptcy Court"), Case No.
12 87-038 45, as part of the procedurally consolidated Chapter 11 cases
13 under the caption Apex Oil Company, et al (87-3804-BKC-BSS) (the
14 "Trinidad Bankruptcy");

15 NOW THEREFORE, in consideration of the foregoing and other
16 mutual consideration, the undersigned hereby agree as follows:

17 1. This stipulation and the proposed Case Management Plan
18 are conditioned upon all of the following:

- 19 a. the adoption by the court of the Plan as proposed;
- 20 b. the approval of the court of this stipulation as
21 offered;
- 22 c. the dismissal with prejudice of all punitive damage
23 claims which have been or could have been asserted
24 arising out of the Glacier Bay spill against any
25 present parties (other than Trinidad, West, and Doug
26 Davis) and their parents, subsidiaries, employees,
officers and directors in these proceedings;

- 1 d. the agreement by all defendants and third/fourth-
- 2 party defendants not to assert punitive damage claims
- 3 against any other party hereto; and
- 4 e. an order of the court making the Plan and this
- 5 stipulation binding on all parties presently
- 6 appearing in the action and ordering that no future
- 7 party to this action shall receive any benefit from
- 8 the Plan and this stipulation without also being
- 9 bound by the obligations and agreements undertaken by
- 10 present parties.

11 If any of these conditions are not met, the Plan and this

12 stipulation are void.

13 2. Each of the undersigned agree to be bound to every

14 stipulation made or contained herein.

15 3. Trinidad Corporation ("Trinidad"), and The West of England

16 Ship Owners Mutual Insurance Association (Luxembourg) ("West"),

17 formerly known as The West of England Ship Owners Mutual Protection

18 and Indemnity Association (Luxembourg), stipulate that:

- 19 a. The vessel GLACIER BAY discharged a quantity of North
- 20 Slope crude oil into Cook Inlet, Alaska on or about
- 21 July 2, 1987. [The Spill]
- 22 b. In resolving the claims of individual plaintiffs it
- 23 shall be presumed that any oil encountered in Upper
- 24 Cook Inlet between July 2, 1987 and September 30,
- 25 1987, was discharged by the vessel GLACIER BAY, unless
- 26 defendants produce admissible evidence that the oil

1 causing damage to a particular plaintiff was from
2 another source, in which case the affected plaintiff
3 will have the burden of proving his damages were not
4 caused by that other source.

5 c. Trinidad and West waive all statutory defenses under
6 the Trans-Alaska Pipeline Authorization Act ("TAPAA")
7 that the spill was caused by an act of war or the
8 negligence of the United States or other governmental
9 agency. Except for defenses specifically concerning
10 the entitlement to, and the fact or amount of damages
11 of any particular plaintiffs and except as provided in
12 paragraph 4 of this Stipulation and Section II,
13 paragraph 6.1 of the Plan, Trinidad and West waive all
14 other defenses to plaintiffs' and the USG's
15 compensatory damage claims under TAPAA.

16 d. At the time of the spill, Trinidad was an operator, as
17 that phrase is defined in 43 C.F.R. § 29.1(k)(2), of
18 the vessel GLACIER BAY and West was an insurer, as
19 that term is defined in 33 C.F.R. § 131.2(g), who
20 provided a certificate of insurance for Trinidad and
21 the vessel GLACIER BAY pursuant to 33 C.F.R. § 131.6.

22 4. All parties stipulate that:

23 a. Trinidad and West are strictly liable jointly and
24 severally under TAPAA for up to the first \$14 million
25 in damages compensable under TAPAA, but only to the
26 extent that:

- (1) plaintiffs are among the class of claimants who are entitled to recover under TAPAA. (A dispute exists between plaintiffs and defendants as to whether certain classes of plaintiffs such as tenders, cash buyers and processors are entitled to recovery, and this stipulation does not resolve this dispute);
- (2) plaintiffs' damages are of the type compensable under TAPAA;
- (3) plaintiffs' damages were in fact and proximately caused by the spill and not by their own negligence or other causes;
- (4) plaintiffs have suffered damages in the amount they claim;
- (5) plaintiffs have timely asserted their claims; and
- (6) plaintiffs have not failed to mitigate their damages.

b. The plaintiffs assert they are entitled to pre-judgment interest, post-judgment interest, costs, disbursements and attorneys' fees against Trinidad and West under TAPAA. Trinidad and West assert that there are legal issues requiring resolution by the court as to plaintiffs' entitlement, if any, to pre-judgment interest, post-judgment interest, costs, disbursements, and attorneys' fees under TAPAA. That dispute is not resolved by this stipulation. Trinidad

1 and West assert that any such amounts that are awarded
2 by the court shall be included within the meaning of
3 the phrases "compensable damages," under TAPAA; "TAPAA
4 liability"; or "strict liability under TAPAA" or any
5 like phrase, as used in this stipulation to define
6 their limit of liability under TAPAA. Plaintiffs
7 assert that any such amounts that are awarded by the
8 court should be in addition to the limits of
9 Trinidad's and West's TAPAA liability. That dispute
10 is also not resolved by this stipulation.

11 c. Final judgment[s], pursuant to Rule 54(b), shall be
12 entered against West and Trinidad for their TAPAA
13 liability, if any, jointly and severally as to the
14 TAPAA liability admitted this paragraph only, no later
15 than the conclusion of the trial of the third group of
16 sixteen plaintiffs in Phase I and at the end of each
17 summary proceeding thereafter in favor of each
18 plaintiff who has obtained a verdict or award under
19 TAPAA; provided however:

20 (1) no plaintiff may obtain a judgment against West
21 and Trinidad for strict liability under TAPAA in
22 excess of the remainder of \$14 million less the
23 sum of (a) amounts compensable under TAPAA
24 previously paid by settlement (other than by the
25 Fund) and (b) amounts awarded under TAPAA to any
26 plaintiff by prior judgments against West and
Trinidad; and

1 (2) all parties reserve all rights to immediately
2 appeal any final judgment entered in Phase I.

3 d. Plaintiffs agree that they will not execute on any
4 judgments entered against West and Trinidad under
5 TAPAA in Phase I for amounts that exceed the limits of
6 liability of Trinidad and West under TAPAA as defined
7 by this Stipulation.

8 e. (1) West agrees to pay to the United States
9 Government ("USG") \$1.5 million of the USG's
10 claims for cleanup costs and expenses within
11 thirty days of receiving written agreement,
12 satisfactory to the USG, Trinidad, and West,
13 and further subject to any approvals, if
14 necessary, by the USG, that said payment shall
15 be without prejudice to the claims and rights,
16 if any, of any party in Phase II against the
17 USG alleging negligence of the USG (which
18 negligence is denied by the USG) in causing the
19 spill and resulting damages.

20 The balances owed to the USG, if any, for
21 cleanup costs and expenses, if not settled or
22 otherwise resolved prior to the conclusion of
23 Phase I discovery and motion practice, shall be
24 the subject of a bench trial to be held in
25 accordance with paragraphs 1.5 and 19.3 of the
26 Joint Case Management Plan. At such trial, and

1 subject to Trinidad's and West's rights, if
2 any, to assert claims for contribution against
3 the USG in Phase II, Trinidad and West shall be
4 deemed to have waived any and all statutory
5 defenses under TAPAA to strict liability with
6 respect to the claims of the USG for pollution
7 cleanup costs and expenses, including the
8 statutory defense, as alleged by Trinidad,
9 West, and others, that negligence of the United
10 States or other governmental agency caused the
11 spill. This paragraph is without prejudice to
12 Trinidad's and West's rights, if any, to
13 litigate in Phase I said parties' contentions
14 that the USG's claims for pollution cleanup
15 costs and expenses are limited to "reasonable"
16 costs or that the USG failed to mitigate its
17 damages for pollution cleanup costs and
18 expenses.

19 Final judgment, pursuant to Rule 54(b), may be
20 entered against Trinidad and West for the USG's
21 pollution cleanup costs and expenses at the
22 conclusion of the aforesaid bench trial. All
23 parties reserve all rights immediately to
24 appeal any final judgment entered in Phase I as
25 a result of the aforesaid bench trial.
26

1 Trinidad or West will pay any judgment for
2 cleanup costs and expenses within thirty (30)
3 days after entry of a final judgment not
4 subject to further appeal.

5 (2) Payments of the aforesaid \$1.5 million to the
6 USG do not constitute, and shall not be
7 considered as, a release, an accord and
8 satisfaction, or a final settlement of the
9 USG's claims for pollution cleanup costs and
10 expenses, or of any other claims, actions, and
11 demands of the USG, Trinidad, and West for
12 other relief against any party in these
13 consolidated cases, it being expressly agreed
14 and understood by the parties that the balance
15 of the USG's claims for pollution cleanup costs
16 and expenses, if any, and the claims of the
17 USG, Trinidad, and West for contribution, shall
18 be resolved or litigated in accordance with the
19 terms of the Case Management Plan.

20 (3) This stipulation is without prejudice to any
21 and all rights, if any, of the USG, Trinidad,
22 and West in Phase I to assert, claim, move, and
23 litigate the contention of the USG that,
24 pursuant to the Federal Water Pollution Control
25 Act, 33 U.S.C. § 1321 ("FWPCA") and TAPAA, the
26 USG is entitled to recover the full amount of

1 its "actual" cleanup costs and expenses, as
2 opposed to "reasonable" costs and expenses.

3 (4) This stipulation is without prejudice to any
4 and all rights, if any, of the USG, Trinidad
5 and West in Phase II to claim, litigate, take
6 to trial, and execute judgment(s) against any
7 defendant and/or third/fourth party defendant,
8 including, but not limited to, the GLACIER BAY,
9 in rem (except, to the extent applicable, any
10 letter of undertaking has been substituted in
11 place, and in lieu of, the defendant vessel
12 GLACIER BAY), with respect to liability of any
13 defendants and/or third/fourth party defendants
14 under other statutes and applicable law
15 concerning any and all claims and actions
16 asserted by the USG which are not resolved in
17 Phase I.

18 f. Trinidad and West agree that their strict liability,
19 jointly and severally, under TAPAA for up to
20 \$14 million in damages compensable under TAPAA may not
21 be reduced by the Limitation of Liability Act.
22 Trinidad and West do not waive their rights, if any,
23 to claim the benefits of limitation of liability under
24 the Limitation of Liability Act for all other
25 liability arising under TAPAA.
26

1 5. The Trans-Alaska Pipeline Liability Fund ("Fund")
2 stipulates that:

- 3 a. The vessel GLACIER BAY discharged a quantity of North
4 Slope crude oil into Cook Inlet, Alaska on or about
5 July 2, 1987.
- 6 b. In resolving the claims of individual plaintiffs it
7 shall be presumed that any oil encountered in Upper
8 Cook Inlet between July 2, 1987, and September 30,
9 1987, was discharged by the vessel GLACIER BAY, unless
10 defendants produce admissible evidence that the oil
11 causing damage to a particular plaintiff was from
12 another source, in which case the affected plaintiff
13 will have the burden of proving his damages were not
14 caused by that other source.
- 15 c. The Fund waives all statutory defenses under TAPAA
16 that the spill was caused by an act of war or the
17 negligence of the United States or other governmental
18 agency. Except for defenses specifically concerning
19 the entitlement to, and the fact or amount of damages
20 of any particular plaintiffs and except as provided in
21 paragraph 6 of this Stipulation, and Section II,
22 paragraph 6.1 of the Plan, the Fund waives all other
23 defenses to plaintiffs' and the USG's compensatory
24 damage claims under TAPAA.

1 6. All parties stipulate that:

2 a. The Fund is strictly liable under TAPAA for damages
3 compensable under TAPAA that were caused by the spill
4 but:

5 (1) only if damages compensable under TAPAA exceed
6 \$14 million, in which case the Fund is liable for
7 such damages in excess of \$14 million up to the
8 statutory limit of \$100 million in damages
9 compensable under TAPAA (whether paid by
10 settlement with any claimants or as a result of a
11 judgment), and

12 (2) with respect to plaintiffs' claims, only to the
13 extent that

14 (A) plaintiffs are among the class[es] of
15 claimants who are entitled to recover under
16 TAPAA. (A dispute exists between plaintiffs
17 and defendants as to whether certain classes
18 of plaintiffs such as tenders, cash buyers
19 and processors are entitled to recovery and
20 this stipulation does not resolve this
21 dispute);

22 (B) plaintiffs' damages are of the type
23 compensable under TAPAA;

24 (C) plaintiffs' damages were in fact and
25 proximately caused by the spill and not by
26 their own negligence or other causes;

1 (D) plaintiffs have suffered damages in the
2 amount they claim;

3 (E) plaintiffs have timely asserted their
4 claims; and

5 (F) plaintiffs have not failed to mitigate their
6 damages; and

7 (3) with respect to the USG's claims, only to the
8 extent that the USG proves the amount of its
9 damages for pollution cleanup cost claims.

10 b. The plaintiffs assert they are entitled to pre-
11 judgment interest, post-judgment interest, costs,
12 disbursements and attorneys' fees against the Fund
13 under TAPAA. The Fund asserts that there are legal
14 issues requiring resolution by the court as to
15 plaintiffs' entitlement, if any, to pre-judgment
16 interest, post-judgment interest, costs, disbursements
17 and attorneys' fees under TAPAA and its implementing
18 regulations. That dispute is not resolved by this
19 stipulation. The Fund asserts that such amounts that
20 are awarded by the court shall be included within the
21 meaning of the phrase "compensable damages," under
22 TAPAA, "TAPAA liability"; "strict liability under
23 TAPAA" or any like phrase, as used in this Stipulation
24 to define the amount of the Fund's liability under
25 TAPAA. Plaintiffs assert that any such amounts that
26 are awarded by the court should be in addition to the

limits of the Fund's liability under TAPAA. This dispute is not resolved by this stipulation.

- c. Subject to the limitations set out in this paragraph 6, and to the extent that the limits of its TAPAA liability have not been exhausted by prior settlement of claims or prior judgments entered against it, judgment[s] may be entered against the Fund pursuant to Rule 54(b) for its TAPAA liability, to the plaintiffs whose claims have been tried, no later than the conclusion of the trial of the third group of sixteen plaintiffs in Phase I.
- d. To the extent that the limits of its TAPAA liability have not been exhausted by prior settlement of claims or prior judgments entered against it, final judgment[s] shall be entered simultaneously against the Fund pursuant to Rule 54(b) for its TAPAA liability, subject to the limitations set out in this paragraph 6, to all remaining plaintiffs at the conclusion of all summary proceedings adjudicating the claims of the remaining plaintiffs.
- e. Subject to the limitation set out in paragraph 6(a)(3), and to the extent that the limits of its TAPAA liability have not been exhausted by prior settlements of claims or judgments entered against it, final judgment shall be entered against

1 the Fund pursuant to Rule 54(b) for its TAPAA
2 liability to the USG with respect to any pollution
3 cleanup costs and expenses not paid to the USG by
4 Trinidad and/or West or not covered by a judgment
5 against them pursuant to paragraphs 4 and 5 above.
6 The Fund and the USG acknowledge that the Fund will
7 have an opportunity in Phase II of these proceedings
8 to seek to recover amounts paid to the USG pursuant to
9 this paragraph, in the event the USG's negligence
10 (which negligence is denied) is established in Phase
11 II of these proceedings, but only to the extent that
12 such negligence would have relieved the Fund of
13 liability to the USG in the first instance.

14 f. The Fund stipulates that it will not seek to limit its
15 liability to plaintiffs and the USG under TAPAA by
16 claiming the protections of the Limitation of
17 Liability of Act.

18 g. With respect to any judgments entered against the Fund
19 pursuant to subparagraphs c, d, and e above:

20 (1) The Fund's liability is defined to be damages
21 compensable under TAPAA that exceed \$14 million
22 up to the TAPAA statutory limit (less amounts
23 previously paid by the Fund to plaintiffs or
24 claimants or awarded by prior judgments against
25 the Fund);
26

1 (2) No judgment may be entered against the Fund until
2 judgments have been entered against West and
3 Trinidad or payments have been made by them to
4 plaintiffs and claimants to the full extent of
5 their TAPAA liability as set out in paragraph 4
6 above;

7 (3) The Fund, on the one hand, and West and Trinidad,
8 on the other hand, undertake to attempt to
9 establish a mechanism that would resolve among
10 themselves any disputes as to whether Trinidad
11 and West have made payments to plaintiffs and
12 claimants or had judgments entered against them
13 to the full extent of their TAPAA liability as
14 set out in Paragraph 4 of this Stipulation.
15 Failing agreement on a mechanism, the Fund,
16 Trinidad, and West agree to submit said dispute
17 to the court for decision at such point in time
18 as it is determined that a dispute over this
19 issue exists.

20 (4) All parties reserve all rights to immediately
21 appeal any final judgment entered in Phase I.

22 7. Trinidad and The Standard Oil Company ("SOHIO"), as
23 guarantor of Trinidad only under AS 46.03.822, stipulate that:

24 a. Alaska North Slope crude oil entered into the waters
25 of Upper Cook Inlet, Alaska from the vessel GLACIER
26 BAY on or about July 2, 1987 ("the spill").

1 b. In resolving the claims of individual plaintiffs it
2 shall be presumed that any oil encountered in Upper
3 Cook Inlet between July 2, 1987, and September 30,
4 1987, was discharged by the vessel GLACIER BAY, unless
5 defendants produce admissible evidence that the oil
6 causing damage to a particular plaintiff was from
7 another source, in which case the affected plaintiff
8 will have the burden of proving his damages were not
9 caused by that other source.

10 c. At the time of the spill, Trinidad had control over
11 the hazardous substance, as that phrase is defined in
12 AS 46.03.826(3), and SOHIO was a guarantor of Trinidad
13 pursuant to AS 46.04.040.

14 d. Trinidad and SOHIO, and each of them are, subject to
15 the other terms of this paragraph and paragraph 8 of
16 this Stipulation, strictly liable under AS 46.03.822
17 ("Alaska statute") to those plaintiffs:

18 (1) who can establish they are among the class of
19 claimants who are entitled to recovery under the
20 Alaska statute (a dispute exists between
21 plaintiffs and defendants as to whether certain
22 classes of plaintiffs such as tenders, cash
23 buyers and processors are entitled to recovery
24 and this stipulation does not resolve this
25 dispute);
26

- 1 (2) who have suffered damages of the type compensable
2 under the Alaska statute;
3 (3) whose damages were in fact and proximately caused
4 by the spill and not by their own negligence or
5 other causes;
6 (4) who have timely asserted their claims;
7 (5) who have not failed to mitigate their damages;
8 and
9 (6) whose recovery under state law is not preempted.
10 e. The plaintiffs assert they are entitled to pre-
11 judgment interest, post-judgment interest, costs,
12 disbursements and attorneys' fees against Trinidad and
13 SOHIO under the Alaska Statute. Trinidad and SOHIO
14 assert that there are legal issues requiring
15 resolution by the court as to plaintiffs' entitlement,
16 if any, to pre-judgment interest, post-judgment
17 interest, costs, disbursements and attorneys' fees
18 under the Alaska Statute. That dispute is not
19 resolved by this Stipulation.
20 f. Trinidad and SOHIO admit the spill was not solely the
21 result of an act of war; an intentional act or a
22 negligent act of a third party, other than a party (or
23 its employees) in privity of contract with, or
24 employed by Trinidad or SOHIO; negligence on the part
25 of the USG or the State of Alaska; or an act of God.
26

1 Except for defenses specifically concerning the
2 entitlement to, and the fact or amount of damages of
3 any particular plaintiffs and except as provided in
4 paragraphs 7 and 8 of this Stipulation and Section II,
5 paragraph 6.1 of the Plan, Trinidad and SOHIO waive
6 all other defenses to plaintiffs' compensatory damages
7 claims under Alaska Statute.

8 g. Trinidad and SOHIO admit Trinidad and SOHIO are not
9 entitled to exoneration under the Limitation of
10 Liability Act.

11 h. Except as stated in 7(g) above, Trinidad and SOHIO do
12 not waive any rights they may have to claim the
13 benefits of limitation of liability pursuant to the
14 Limitation of Liability Act for all liabilities
15 arising under the Alaska statute. (Other parties deny
16 Trinidad's and SOHIO's entitlement to limit their
17 liability pursuant to the Limitation of Liability Act.
18 Any party may move pursuant to Rule 12 during Phase I
19 to dismiss the Complaint in Limitation filed by
20 Trinidad and others, as provided in the Plan.)

21 i. The parties agree and stipulate that any and all of
22 the stipulations and agreements in paragraphs 7 and 8
23 made by SOHIO are made solely in SOHIO's role as a
24 guarantor pursuant to a guarantee regarding oil
25 discharge liability relating to the spill from the
26

1 GLACIER BAY, and are not binding on SOHIO or an any
2 affiliate of SOHIO in any other role.

3 8. All parties stipulate that

4 a. Subject to the provisions of this paragraph, final
5 judgment, pursuant to Rule 54(b), may be entered
6 against Trinidad or SOHIO for amounts compensable
7 under the Alaska statute at the conclusion of the
8 trial of the third group of 16 plaintiffs in Phase I
9 and at the end of each summary proceeding thereafter
10 in favor of each plaintiff who has obtained a judgment
11 or award under the Alaska Statute.

12 b. In the event Trinidad's Complaint in Limitation is
13 dismissed during Phase I, subject to paragraph 8(f)
14 below and pending the completion of the proceedings
15 there described, plaintiffs agree to limit their right
16 to execute on judgments obtained in Phase I against
17 Trinidad or SOHIO, and each of them under the Alaska
18 statute, to a total amount of 14 million less the sum
19 of:

20 (1) amounts compensable under the Alaska statute
21 previously paid by settlement (other than by the
22 Fund), and

23 (2) amounts awarded under the Alaska statute by prior
24 judgments against Trinidad or SOHIO.

1 c. In the event Trinidad's Complaint in Limitation is not
2 dismissed during Phase I, but is found by the court
3 not to limit SOHIO's guarantee, subject to
4 paragraph 8(f) below and pending completion of the
5 proceedings there described, plaintiffs agree to limit
6 their right to execute on judgments obtained in
7 Phase I against SOHIO under the Alaska statute to
8 \$14 million less the sum of:

9 (1) amounts compensable under the Alaska statute
10 previously paid by settlement (other than by the
11 Fund), and

12 (2) amounts awarded under the Alaska statute by prior
13 judgments against Trinidad or SOHIO.

14 d. In the event Trinidad's Complaint in Limitation is not
15 dismissed during Phase I and the court holds that the
16 SOHIO guarantee is limited by the benefits available
17 to Trinidad under the Limitation Act (or the court
18 fails to rule on the issue), subject to paragraph 8(f)
19 below and pending the completion of the proceedings
20 there described, plaintiffs agree to limit their right
21 to execute on judgments obtained in Phase I against
22 Trinidad or SOHIO under the Alaska statute, to
23 \$6.5 million (or as adjusted by the court pursuant to
24 Admiralty Rule (f)(7) less the sum of:

- 1 (1) amounts compensable under the Alaska statute
2 previously paid by settlement (other than the
3 Fund), and
4 (2) amounts awarded under the Alaska statute to any
5 plaintiff by prior judgments against Trinidad or
6 SOHIO.
- 7 e. Plaintiffs agree not to execute judgments pursuant to
8 paragraphs 8(b)-(d) above prior to 30 days following
9 the entry of judgment.
- 10 f. With respect to any judgments obtained against
11 Trinidad or SOHIO under the Alaska Statute that are
12 not funded at the conclusion of Phase I as a result of
13 the limitations contained herein, plaintiffs agree not
14 to execute on each judgment until 30 days after the
15 entry of judgments in the Phase II proceeding that
16 apportion ultimate liability among the various
17 defendants.
- 18 f. All parties reserve all rights to appeal immediately
19 any final judgment entered in Phase I.
- 20 9. a. SPC, Tesoro, CIRO and KPL agree not to contest the
21 amount of damages awarded to any plaintiff in Phase I.
22 SPC, Tesoro, CIRO and KPL reserve the right, however,
23 to contest against any party, except plaintiffs,
24 amounts paid in settlements to plaintiffs in the event
25 that any contribution or indemnity claim is made
26 against them to recover any of those amounts.

1 (1) amounts compensable under the Alaska statute
2 previously paid by settlement (other than the
3 Fund), and

4 (2) amounts awarded under the Alaska statute to any
5 plaintiff by prior judgments against Trinidad or
6 SOHIO.

7 e. Plaintiffs agree not to execute judgments pursuant to
8 paragraphs 8(b)-(d) above prior to 30 days following
9 the entry of judgment.

10 f. With respect to any judgments obtained against
11 Trinidad or SOHIO under the Alaska Statute that are
12 not funded at the conclusion of Phase I as a result of
13 the limitations contained herein, plaintiffs agree not
14 to execute on each judgment until 30 days after the
15 entry of judgments in the Phase II proceeding that
16 apportion ultimate liability among the various
17 defendants.

18 f. All parties reserve all rights to appeal immediately
19 any final judgment entered in Phase I.

20 9. a. SPC, Tesoro, CIRO and KPL agree not to contest the
21 amount of damages awarded to any plaintiff in Phase I.
22 SPC, Tesoro, CIRO and KPL reserve the right, however,
23 to contest against any party, except plaintiffs,
24 amounts paid in settlements to plaintiffs in the event
25 that any contribution or indemnity claim is made
26 against them to recover any of those amounts.

1 b. SPC, Tesoro, CIRO and KPL further agree that to the
2 extent one or more of them are found strictly or
3 otherwise liable (except to the extent that such
4 liability arises from charter parties or other
5 contractual agreements) to any other party to this
6 proceeding in Phase II for amounts paid or awarded in
7 Phase I, then to the extent plaintiffs' Phase I
8 judgments remain unfunded, SPC, Tesoro, CIRO and KPL
9 (as applicable) shall be similarly liable to
10 plaintiffs to that same extent, even though plaintiffs
11 have not appeared or otherwise asserted such claims in
12 Phase II.

13 c. In the event it is determined in Phase II that
14 Trinidad and SOHIO are entitled to the benefits of the
15 Limitation of Liability Act, plaintiffs agree that to
16 the extent any unfunded judgments obtained against
17 Trinidad and SOHIO under the Alaska statute during
18 Phase I exceed the amount of the limitation fund,
19 plaintiffs will not execute in excess of the total
20 amount of the limitation fund determined by the court
21 to be due to plaintiffs against Trinidad and SOHIO, as
22 guarantor.

23 10. Nothing in this stipulation shall be deemed to waive or
24 diminish any obligations which may be imposed or to
25 prejudice any rights or defenses that may be created, by
26

1 any revision of TAPAA by Congress, to the extent that those
2 revisions would apply to this proceeding absent this
3 stipulation.

4 11. All parties agree:

5 a. The stipulations, admissions, waiver of defense,
6 consent to judgments, settlements, or payment of
7 judgments by Trinidad, West, SOHIO and the Fund shall
8 be (i) wholly without prejudice to their rights and
9 defenses with respect to plaintiffs' punitive damages
10 claims and (ii) wholly without prejudice to all
11 claims, rights, or defenses against each other and
12 against any present or future defendant, third-party
13 defendant or fourth-party defendant in this action, or
14 any other action arising out of the spill, including
15 without limitation, the right:

- 16 (1) to assert that any defendant, third or fourth-
17 party defendant or non-party is liable, jointly
18 and severally, in whole or in part, for the
19 damages awarded or paid by settlement to
20 plaintiffs; and
21 (2) to seek reimbursement, subrogation, contribution
22 or indemnification for such damages or settlement
23 payments from any defendant, third/fourth-party
24 defendant or third party.

25 b. Any dismissal of claims or parties in Phase I or any
26 election by plaintiffs not to pursue compensatory

1 damages claims against any defendant in Phase I shall
2 be without prejudice to the right of Trinidad, West,
3 SOHIO and the Fund, or any other defendant, third
4 party defendant or fourth-party defendant in Phase II
5 of this action, or other actions arising out of the
6 oil spill, to assert any dismissed claims, to pursue
7 any rights against dismissed parties, to seek
8 reimbursement, subrogation, contribution or
9 indemnification from any such party or to assert that
10 any such party is jointly and severally liable for
11 damages awarded or paid by settlement to plaintiffs.

12 c. Notwithstanding the above, Trinidad, West and the
13 plaintiffs acknowledge that in any punitive damages
14 trial in Phase II the amounts paid in compensatory
15 damages are relevant to any punitive damages claims of
16 plaintiffs, but they have not been able to agree as to
17 what facts may be admissible or how to most fairly
18 present those facts to a jury during the punitive
19 damages trial in Phase II. The parties agree to
20 submit their respective views to the court in advance
21 of the punitive damages trial.

22 d. To the extent that the funding mechanisms described in
23 this stipulation are not available up to and including
24 the time of execution of any judgments (for example,
25 should the Fund be dissolved or West become judgment
26 proof), plaintiffs and the USG shall be free to pursue

1 any and all defendants and third/fourth party
2 defendants to recover the amount of the unavailable
3 funding under such rights of action as may exist
4 against each defendant and third/fourth party
5 defendant, it being understood that this provision
6 creates no new or additional rights of action and does
7 not create joint liability where such liability would
8 not otherwise exist.

9 e. All parties stipulate that the results of any of the
10 trials of the blocks of 16 plaintiffs' claims for
11 compensatory damages shall not have any subsequent res
12 judicata, collateral estoppel or any other issue
13 preclusive effect, or in any manner be binding on
14 defendants or upon any plaintiffs whose compensatory
15 damages claims have not actually been tried, except
16 with respect to the claims for compensatory damages
17 asserting that a price drop in the price of salmon in
18 late July 1987 was caused by the GLACIER BAY spill.
19 As to that single issue, the initial jury verdict or
20 Court determination shall be binding on all defendants
21 and all plaintiffs and shall be given res judicata and
22 collateral estoppel effect in all subsequent
23 proceedings herein, it being understood that no party
24 waives any rights of appeal.

25 f. Plaintiffs stipulate (without prejudice to their right
26 to offer rebuttal evidence on any issue as to their

1 damages, and reserving all other evidentiary
2 objections) that in the first three jury trials they
3 will not object on the ground of relevance to the
4 admissibility of evidence that defendants seek to
5 present regarding (a) the total number of claimants
6 who are seeking recovery; (b) the total damages sought
7 or suffered by all claimants; and (c) the alleged
8 appropriate methodologies for awarding damages to
9 plaintiffs in these circumstances.

10 g. The jury verdicts of the first three trials in Phase I
11 shall be given determinative weight by the court in
12 the summary proceedings unless doing so would provide
13 a clearly unfair basis for awarding damages.

14 12. Except for the USG, all parties
15 (including Mathiason and Glacier Bay Transportation) agree to join
16 in a stipulation (or not to oppose a motion made by any party
17 hereto) to be presented to the United States Bankruptcy Court for
18 the Eastern District of Missouri asking the court to order:

19 a. that the bankruptcy stay be lifted with respect to all
20 proceedings herein, including without limitation any
21 judgment(s) obtained in this action by any defendant,
22 third party or fourth party defendant or by any
23 plaintiff who was within the putative classes of the
24 McGahan and UCIDA actions, on the condition that the
25 foregoing persons or entities agree, (1) to first
26 attempt to execute as to any unsatisfied portions of

1 any judgment(s) against Trinidad against any available
2 proceeds available under Trinidad's insurance contract
3 with West of England Ship Owners Mutual Insurance
4 Association (Luxembourg), and, (2) in the event any
5 such judgment(s) remain unsatisfied after 30 days, the
6 foregoing persons or entities agree to file their
7 judgments in the bankruptcy court, which shall be
8 entered by the bankruptcy court as allowed claims of a
9 class and priority determined pursuant to the
10 Bankruptcy Code by the Bankruptcy Court;

11 b. that all other plaintiffs (which term does not include
12 the USG) not described in the preceding subparagraph
13 (i.e., processor plaintiffs) shall be required to
14 submit their claims to the bankruptcy court, which
15 claims will be opposed by Trinidad; but in the event
16 the court allows the filing of such claims, Trinidad
17 will stipulate to the bankruptcy court as set out in
18 the preceding subparagraph;

19 c. that West's obligations under its insurance contract
20 with Trinidad (including Mathiason and Glacier Bay
21 Transportation) are in no way limited by the
22 bankruptcy of Trinidad, and West shall be obligated to
23 comply in full with its obligations under its
24 insurance contract with Trinidad with respect to
25 Trinidad's liability as to any party, and West will
26 provide to the Bankruptcy Court in the Apex

1 proceeding, of which Trinidad is a party, with all
2 necessary undertakings to assure that West will honor
3 said insurance agreements;

4 d. that the foregoing be without prejudice to any of the
5 other provisions of this stipulation with respect to
6 the funding or payment of plaintiffs' TAPAA or Alaska
7 State Statutory damages by SOHIO, West, or the Fund,
8 or by Trinidad to the extent of \$6.5 million or such
9 greater amount as the court directs Trinidad to
10 provide as a bond in the Limitation proceeding.

11 13. All parties agree that an essential element of this
12 Stipulation and the Plan is that the plaintiffs entitlement to
13 recover compensatory damages will be tried independently of and
14 prior to the discovery or trial of any issues pertaining to the
15 fault of any party. The court or discovery master shall be guided
16 by the foregoing principle in resolving any disputes about the
17 appropriate scope of discovery or the admissibility of any evidence
18 at trial during Phase I.

19 14. Plaintiffs agree to stay until Phase II, all causes of
20 actions they may have against any present party other than their
21 claims against (a) Trinidad, West and the Fund under TAPAA, and (b)
22 Trinidad and SOHIO under the Alaska Statute.

23 15. Should plaintiffs prove a punitive damage predicate tort in
24 Phase II, the compensatory damages proven in Phase I will be the
25 compensatory damages to be associated with the predicate tort proven
26 in Phase II. Except as stated in the preceding sentence, nothing in

1 this agreement shall be deemed a waiver by Trinidad or West of any
2 defenses to plaintiff's punitive damages claims.

3 16. All parties stipulate and agree that all claims against BP
4 America, Inc., and Tesoro Petroleum Corporation in this action shall
5 be dismissed forthwith without prejudice and without an award of
6 costs or fees to any party and without prejudice of the Fund to seek
7 reimbursement against them under TAPAA.

8 RESPECTFULLY SUBMITTED this 30th day of November, 1989.

9
10
11 Brian O'Neill

12 Brian O'Neill
13 FAEGRE & BENSON
14 Attorneys for Plaintiffs

15 Arthur S. Robinson

16 Arthur S. Robinson
17 ROBINSON, BEISWENGER & ERHARDT
18 Attorneys for Plaintiffs

19 R. Michael Underhill

20 R. Michael Underhill
21 Attorney for the United States
22 Torts Branch, Civil Division
23 U.S. Department of Justice

24 Timothy T. Petumenos

25 Timothy T. Petumenos
26 BIRCH, HORTON, BITTNER,
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Attorneys for Plaintiffs

27 C. Michael Hough

28 C. Michael Hough
29 Attorney for Plaintiffs

30 Martin Friedman
FRIEDMAN & BROS.
Attorneys for Plaintiffs

31 Peter Galbraith

32 Peter Galbraith
33 GALBRAITH & OWEN
34 Attorneys for Plaintiff
35 Cook Inlet Processing, Inc.

36 Robert Hahn

37 Robert Hahn
38 HAHN, JEWELL & STANFILL
39 Attorneys for Plaintiff

40 James D. Gilmore

41 James D. Gilmore
42 GILMORE & FELDMAN
43 Attorneys for Andrew Subcleff

44 Carl J.D. Bauman

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46 HUGHES, THORSNESS, GANTZ, POWELL
47 & BRUNDIN
48 Attorneys for Defendant
49 Kenai Pipe Line, Inc.

1
2 John A. Treptow
3 John A. Treptow
4 ATKINSON, CONWAY AND GAGNON
Attorneys for Defendant
Tesoro

5 Lawrence A. Waks
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8 Michael Woodell
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Leasing, West of England and
11 Glacier Bay Transportation, Mathiasen Tanker Industries

12 Stephen M. Ellis
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14 DELANEY, WILES, HAYES,
REITMAN & BRUBAKER
Attorneys for CIRO and
15 CIRO Members

16 Alan Braverman
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18 WILMER, CUTLER & PICKERING
Attorneys for The TAPS Fund

19 Charles Flynn
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21 BURR, PEASE & KURTZ
Attorneys for Defendant
The TAPS Fund

22 John A. Reeder
23 John A. Reeder
24 BP Exploration SPC and
25 Attorneys for SOHIO
26

Gary J. Strauss
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SOHIO

John C. Pharr
John C. Pharr
Attorney for Plaintiffs

FILED
DEC 13 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Service of the foregoing stipulation
has been made upon all counsel of
record based upon the court's Master
Service List of 10/05/89.

John A. Treptow
John A. Treptow

CASE MANAGEMENT PLAN
STIPULATION

- 31 -

Approved 12/12/89
J. Underhill
cc: B. O'Neill, J. Treptow,
R. Underhill

RESPECTFULLY SUBMITTED this ____ day of November, 1989.

Brian O'Neill
FAEGRE & BENSON
Attorneys for Plaintiffs

Robert Hahn
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Attorneys for Plaintiff

Arthur S. Robinson
ROBINSON, BEISWENGER & ERHARDT
Attorneys for Plaintiffs

Carl J.D. Bauman
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& BRUNDIN
Attorneys for Defendant
Kenai Pipe Line, Inc.

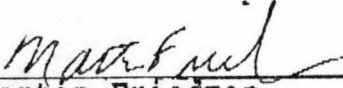
R. Michael Underhill
Attorney for the United States
Torts Branch, Civil Division
U.S. Department of Justice

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Leasing, West of England and
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Cook Inlet Processing, Inc.

Stephen M. Ellis
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Attorneys for CIRO and
CIRO Members

CASE MANAGEMENT PLAN
STIPULATION

John A. Treptow, Esq.
ATKINSON, CONWAY & GAGNON
ATTORNEYS FOR TESORO ALASKA
PETROLEUM COMPANY AND TESORO
ALASKA PIPELINE COMPANY
420 L Street, Fifth Floor
Anchorage, Alaska 99501-1989
(907)276-1700

FILED
DEC 04 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
)
the GLACIER BAY) No. A88-115 Civil
)
)
) (Consolidated)

Refers to all actions

NOTICE OF FILING PROTECTIVE ORDER

The parties hereby file with the Court a Proposed Protective Order that is Appendix A to the Case Management Plan. Liaison counsel for Defendants inadvertently failed to attach it to the Case Management Plan which was filed on December 1, 1989.

DATED this 4TH day of December, 1989.

ATKINSON, CONWAY & GAGNON
Attorneys for Tesoro Alaska
Petroleum Company and Tesoro
Petroleum Company

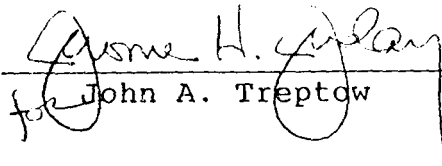
LAW OFFICES
ATKINSON, CONWAY
& GAGNON, INC.
420 L STREET
SUITE 500
ANCHORAGE, ALASKA
TELEPHONE 276-1700

By

John A. Treptow
John A. Treptow

27

Service of the foregoing protective
order has been made upon all counsel of
record based upon the court's
Master Service List of October 5, 1989.


for John A. Treptow

LAW OFFICES
ATKINSON, CONWAY
& GAGNON, INC.
420 L STREET
SUITE 500
ANCHORAGE, ALASKA
TELEPHONE 276-1700

NOTICE OF FILING
Page 2
813/3685.43

FILED

DEC 13 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
the GLACIER BAY)
_____)

No. A88-115 Civil
(Consolidated)

PRE-TRIAL ORDER NO. 5

Adoption of Case Management Plan
and Related Matters

Approval of Stipulations
for Development of Case

The court has heretofore received and reviewed the case management plan stipulation of the parties, the case management plan, and a proposed protective order to which all parties have stipulated. The case management plan is approved. The court has noted its approval of the case management plan stipulation thereon. The court has signed the protective order. The court has received a draft of a stipulation for preservation of docu-

1 ments, which the court understands is currently being circulated
2 for approval. It will be approved upon submission. The fore-
3 going approvals are subject, however, to the following.

4 (1) Organization of Counsel. The case management plan
5 provides far less organization as between counsel than the court
6 had expected. The case management plan does make provision for
7 liaison counsel. (Messrs. O'Neill and Treptow are to remain
8 liaison counsel for plaintiffs and defendants, respectively.) No
9 provision is made for lead counsel. The court perceives the
10 functions of liaison counsel and lead counsel to be different.
11 Manual for Complex Litigation, Second § 20.221 (1985). The court
12 perceives that the functions of both liaison counsel and lead
13 counsel are necessary in this case. The court is informally
14 advised that Mr. O'Neill will act as lead counsel for plaintiffs,
15 and that role for Mr. O'Neill is also approved. Although the
16 subject was not addressed, the court understands that
17 Mr. Underhill is to act as lead counsel for the Government. The
18 situation as to the other defendants as regards the need for
19 designation of lead counsel and a possible candidate for that
20 position is not so clear. The court will defer any further
21 action with respect to the organization of defense counsel so
22 long as the absence of a designated lead attorney does not appear
23 to inhibit the ordinary and expeditious development of the case.

24 The court expects all counsel to coordinate their
25 efforts where positions are the same to the end that redundant
26 briefing and argument is avoided.

1 (2) Discovery. The case management plan, while con-
2 taining a general outline for the conduct of discovery in this
3 case as well as considerable detail on various aspects of discov-
4 ery, does not make specific provision for the holding of a
5 Rule 26(f) discovery conference. If counsel are able to plan and
6 schedule the necessary discovery within the framework of the
7 present plan, they are of course free to do so. The court
8 assumes and expects that the parties are planning their discovery
9 in such a fashion as to have the same completed by the agreed
10 discovery close date.

11 The case management plan makes provision for and nomi-
12 nates a discovery master. The court had heretofore informally
13 advised counsel that the court would require a special master for
14 discovery proceedings in this case inasmuch as the press of other
15 business to which this court and its magistrates must attend
16 makes it impossible for the judicial officers of the court to
17 timely accommodate discovery issues which may arise in this case.
18 It is the court's perception that timely disposition of discovery
19 matters is imperative to the integrity of the case management
20 plan which the court has approved. Accordingly, the court will
21 in due course enter an order specially referring to a master all
22 discovery matters which arise in this case.

23 In connection with the appointment of a discovery
24 master, and as an exception to the court's general approval of
25 the case management plan, the court's order of reference to a
26 discovery master will contain provisions for the processing of

1 appeals from the discovery master somewhat different from those
2 spelled out by the parties in Section 1, Article 17.3.3. In
3 particular, the time-line employed by the court's Local General
4 Rule 5 is not acceptable for discovery appeals. It takes too
5 much time.

6 (3) Disclosure of Witnesses. The case management plan
7 appears not to restrict the parties from calling at trial persons
8 who have not been identified during the discovery phase of the
9 case. Discovery with respect to Phase I of the case is scheduled
10 to conclude October 15, 1990. Not less than sixty days prior to
11 the date for the concluding of all discovery as to Phase I, each
12 party shall serve and file a final witness list, naming all lay
13 and expert witnesses whom the party may wish to call for trial
14 testimony. Witnesses not so disclosed will not be permitted to
15 testify.

16 (4) Motion Practice. The case management plan
17 contains provision for the presentation of motions in Section II,
18 Article 15. It strikes the court that certain of the provisions
19 made for the filing of motions to dismiss or for summary judgment
20 (Section II, Article 15.3.2) hold considerable potential for the
21 withholding of numerous motions until ninety days prior to trial.
22 If any significant number of motions are held until only ninety
23 days prior to trial, the parties' trial dates will be in severe
24 jeopardy. Motions which do not require any discovery should be
25 filed at the earliest possible time after the completion of the
26 first round of motions which are required to be filed forty-five

1 days following approval of the case management plan. While the
2 court deems it unnecessary at this juncture to attempt to impose
3 a schedule on counsel other than that suggested by the case
4 management plan, the court does expect to pursue this subject
5 further with counsel as the case develops during the course of
6 status conferences.

7 (5) Status Reports or Conferences. The court desires
8 to have the parties report to it regularly with respect to the
9 progress of this case. Initially, the court desires that liaison
10 counsel provide it with a status report at sixty-day intervals,
11 the first such report to be due on or before January 2, 1990.
12 Absent an agreement of the parties to the contrary, these reports
13 shall be prepared by liaison counsel for plaintiff. Liaison
14 counsel shall in each instance consult with Government counsel in
15 the course of preparing such reports. Alternatively, liaison
16 counsel may, at their discretion, opt for telephonic status
17 conferences with the court at sixty-day intervals, beginning
18 January 2, 1990. The date and time for such telephonic confer-
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20 who can be contacted at 907-271-5577. Liaison counsel shall
21 confer with Government counsel before such telephonic status
22 conferences or shall have him join in such conferences by tele-
23 phone.

24 (6) Final Pre-Trial Order. It is the court's normal
25 practice to call upon the parties to certify a case ready for
26 trial by an order normally issued at or about the date set for

1 the close of discovery. By such order, the court looks to the
2 parties to identify matters yet to be done, if any, and to
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7 response to its order to certify a case ready for trial. In any
8 event, the court expects to fix a trial date for this case
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10 established, it is the court's normal practice to enter a
11 detailed order for final pre-trial proceedings, which order by
12 and large addresses the sort of considerations dealt with by
13 Section IV, Articles 24 and 25, of the case management plan. The
14 court will likely issue such an order in this case, and that
15 order will likely contain both the same or similar requirements
16 as set out in Articles 24 and 25 as well as additional pre-trial
17 requirements which at the time appear necessary or appropriate.

18 The court will schedule a final pre-trial conference
19 approximately one to three weeks prior to trial. Attendance at
20 this conference by trial counsel will be mandatory.

21
22 Subject to the foregoing, the case management plan
23 submitted by the parties has been approved. The court's approval
24 of the case management plan should be understood to be subject to
25 the right of any party to move for a modification of the plan, or
26

1 for the court, after notice and an opportunity for input from the
2 parties, to require a change in the case management plan.

3 DATED at Anchorage, Alaska, this 12 day of December,
4 1989.

5 
United States District Judge

6
7 cd: B. O'Neill
8 J. Treptow
9 R. Underhill
10 CMC
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26

FILED
DEC 13 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re
the GLACIER BAY

No. A88-115 Civil
(Consolidated)

PRE-TRIAL ORDER NO. 5

Adoption of Case Management Plan
and Related Matters

Approval of Stipulations
for Development of Case

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26

1 for the court, after notice and an opportunity for input from the
2 parties, to require a change in the case management plan.

3 DATED at Anchorage, Alaska, this 12 day of December,
4 1989.

5 
United States District Judge

6
7 cc: B. O'Neill
8 J. Treptow
9 R. Underhill
10 CMC
11
12
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14
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16
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