

ORIGINAL

Clerk, U.S. District Court Southern District of Texas FILED

AUG 09 1994

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

Magistrate U.S. District Court

GOLNOY BARGE COMPANY and APEX R.E. & T., INC. d/b/a APEX TOWING COMPANY

VS.

CIVIL ACTION NO. H-90-2414

M/T SHINOUSSA, Her Engines, Tackle, Etc. (In Rem) and ELETSON CORPORATION, Her Owner and/or Operator and/or Charterer and/or Managing or General Agent (In Personam) and M/T HELLESPONT FAITH, Her Engines, Tackle, Etc. (In Rem) and PAPACHRISTIDIS SHIP MANAGEMENT SERVICES, LTD. FIDELIS SHIPPING CORPORATION, Her Owners and/or Operators and/or Charterers and/or Managing or General Agents (In Personam)

IN RE: THE COMPLAINT AND PETITION OF FIDELIS SHIPPING CORPORATION, As Owner of the M/T HELLESPONT FAITH, Its Engines, Tackle, Etc., In a Cause of Exoneration From or Limitation of Liability

CIVIL ACTION NO. H-90-2476 IN ADMIRALTY 9(h) (Consolidated with Cause No. 90-2414)

IN RE: THE COMPLAINT AND PETITION OF SHINOUSSA SHIPPING CORPORATION, As Owner of the M/T SHINOUSSA, Its Engines Tackle, Etc., In a Cause of Exoneration From or Limitation of Liability

CIVIL ACTION NO. H-90-2488 IN ADMIRALTY 9(h) (Consolidated with Cause NO. 90-2414)

In Re: The Matter of the Complaint of GOLNOY BARGE COMPANY, INC. And APEX R.E.&T. INC. d/b/a APEX TOWING COMPANY As Owners and/or Owners Pro Hac Vice of the TUG CHANDY N, Her Engines, Tackle, Appurtenances, Etc., In a

CIVIL ACTION NO. H-91-180 IN ADMIRALTY 9(h) (Consolidated with Cause NO. 90-2414)

JOINT STIPULATION AND RULE 54(b) FINAL JUDGMENT

On July 28, 1990, the tanker M/T SHINOUSSA, the tanker M/T HELLESPONT FAITH, and the Tow Boat CHANDY N with several tank barges in tow, were maneuvering in Galveston Bay. During these maneuvers, the M/T SHINOUSSA came into collision with one or more tank barges in tow of the CHANDY N, as a result of which collision, a petroleum substance was released from the barges into the waters of Galveston Bay. As a result, the United States of America ("United States"), the State of Texas ("Texas"), and the Apex Towing Interests ("Apex") responded to clean up the spill. The United States, Texas, and Apex eventually concluded their efforts to clean up the oil spill. Both the United States and Texas incurred costs in responding to the spill.

The United States' natural resource trustees in this action include the Department of the Interior and the National Oceanic & Atmospheric Administration of the Department of Commerce. The state natural resource trustees are the Texas Natural Resource Conservation Commission (formerly Texas Water Commission), the Texas Parks and Wildlife Department, and the Texas General Land Office. The Texas Department of Health is a claimant for response costs.^{1/}

^{1/} These agencies and entities, including the Texas Department of Health, are referred to collectively as "the Trustees."

The Trustees were of the view that extensive injuries, damages, and/or loss to natural resources occurred in Galveston Bay and the surrounding waters as a result of the oil spill, as a result of which the Trustees took measures to assess the nature and extent of the injury, damage and/or loss.

The United States and Texas filed claims and amended claims in these causes pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, general maritime law, and Texas law (including without limiting the breadth of the State's claims, Ch. 26, Texas Water Code), which claims of the Trustees are stated in complete detail in the Trustees' individual and collective claims, amended claims, pleadings, and discovery responses (all of which documents are hereinafter collectively referred to as the Trustees' "court papers") filed in the above referenced consolidated actions, which court papers are incorporated herein. These court papers describe the Trustees' alleged grounds for recovery against Shinoussa Shipping Corporation; M/T SHINOUSSA; Golnoy Barge Company and Apex R.E.&T, Inc. (d/b/a Apex Towing Company); Barges Apex 3417, Apex 3503, Apex 3510, and Tug CHANDY N; Fidelis Shipping Corporation; and M/V HELLESPONT FAITH^{2/} for past, present and future injuries to natural resources, response costs, and other

^{2/} Shinoussa Shipping Corporation; M/T SHINOUSSA; Golnoy Barge Company and Apex R.E.&T, Inc. (d/b/a Apex Towing Company); Barges Apex 3417, Apex 3503, Apex 3510, and Tug CHANDY N; Fidelis Shipping Corporation; Eletson Corporation; Papachristidis Ship Management Services, Ltd.; M/V HELLESPONT FAITH; and the partners, owners, directors and officers of all of the aforesaid business entities will be referred to collectively as "Vessel Interests."

matters as stated in the Trustees' court papers resulting from the July 28, 1990 oil spill into Galveston Bay.^{3/}

The Vessel Interests assert that no natural resource injury or damage occurred as claimed, or if any such injury or damage had occurred as claimed, the nature and extent of such injury and damage was very limited and transitory.

A strategy was developed for the study of natural resources of Galveston Bay to determine whether any such injury and damage occurred. As a result, the Vessel Interests paid one hundred fifty-six thousand two hundred thirty-three and no/100 dollars (\$156,233.00) to the Trustees to help defray the cost of such studies.

As a result of mediation by the Trustees and Vessel Interests, the Vessel Interests and Trustees agreed to a compromise settlement of their differences. The United States, Texas, and the Vessel Interests have stipulated and agreed to this Joint Stipulation for the purpose of fully, finally, and forever compromising and settling all matters in dispute between the Trustees and the Vessel Interests, such matters in dispute being stated in full detail in the Trustees' court papers, without any adjudication of any issue of fact or law and without any admission of liability or fault as

^{3/} The United States and the Vessel Interests previously entered into a settlement agreement which required the Vessel Interests to reimburse the United States approximately \$1,800,000.00 in oil spill response costs incurred by the United States, which sum has been paid in full. That settlement is not affected by this Joint Stipulation and Rule 54(b) Final Judgment.

to any allegation or matter arising out of the pleadings, of any party, or otherwise.

The United States, Texas, and the Vessel Interests agree that settlement of this case is the most appropriate means of finally resolving this action and is in the public interest.

Notice of this proposed Joint Stipulation and Rule 54(b) Final Judgment will be published in the Federal Register and the public will be given the opportunity to comment on this document.

NOW, THEREFORE, IT IS AGREED as follows:

1. The Vessel Interest shall pay one million seven hundred thousand and no/100 dollars (\$1,700,000.00) to the Trustees in full and final satisfaction of the outstanding civil claims for damages, injury to or loss of natural resources resulting from the oil spill as asserted by the Trustees in this litigation, as stated in the Trustees' court papers, or which could have been asserted by the Trustees in this litigation.

2. Payment of this sum shall constitute full settlement and satisfaction of any and all civil claims asserted by the Trustees in this action against the Vessel Interests, which claims are stated in the Trustees' court papers, or which claims could have been asserted by the Trustees in this litigation. This Joint Stipulation and Order of Dismissal also constitutes full satisfaction of any and all civil claims which the Vessel Interests may assert against the Trustees in this matter.

3. The Vessel Interests shall pay the one million seven hundred thousand and no/100 dollars (\$1,700,000.00) to the Trustees

within forty-five (45) days after this Joint Stipulation and Rule 54(b) Final Judgment is entered by the Court. Payment shall be made in accordance with reasonable directions provided by the United States and Texas. Notice of the payment shall be sent to the following persons:

Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Ken Cross
Assistant Attorney General
Texas Attorney General's Office
Environmental Protection Division
P.O. Box 12548
Austin, Texas 78711-2548

Sue Ehlen
Department of the Interior
Office of the Field Solicitor
Southwest Region
Page Belcher Federal Building
P.O. Box 3156
Tulsa, Oklahoma 74101

Stephanie Fluke
NOAA
Office of General Counsel
9450 Koger Boulevard, Suite 116
St. Petersburg, Florida 33702

4. The court shall retain jurisdiction over the parties and this lawsuit until all required monies have been paid.

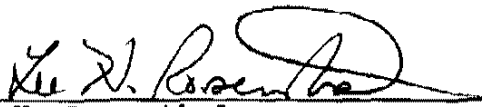
5. If payment is not timely made, post-judgment interest at the statutory rate shall be assessed from the date payment is due.

6. Court costs are to remain for the account of the party by whom they were incurred.

7. This Joint Stipulation and Rule 54(b) Final Judgment is subject to the comment provisions of the Department of Justice regulations at 28 C.F.R. § 50.7.

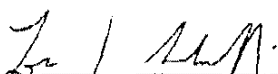
8. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court has determined that there is no just reason to delay entry of judgment concerning the natural resource damage assessment matters at issue in this litigation; and, therefore, expressly directs the Clerk to enter this Rule 54(b) Judgment in the docket.

SIGNED at Houston, Texas this 26th day of October,
1994.



Lee H. Rosenthal
United States District Judge

Approved and Entry Requested:

FOR THE UNITED STATES OF AMERICA:


Lois J. Schiffer
Acting Assistant Attorney General
Environment and Natural Resources
Division

8/2/94
(Date)


Bradley R. O'Brien
Attorney
Environmental Enforcement Section
Environment & Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station

8/8/94
(Date)

Washington, D.C. 20044
Telephone: (202) 514-2600
Telefax: (202) 514-8395

FOR THE STATE OF TEXAS on behalf of the Texas Natural Resource Conservation Commission, Texas Parks & Wildlife Department, Texas General Land Office, and Texas Department of Health:

Dan Morales
Attorney General of Texas


Ken Cross
Assistant Attorney General of Texas

(Date)

Amanda Atkinson
Assistant Attorney General of Texas
Environmental Protection Division
P.O. Box 12548
Capital Station
Austin, Texas 78711-2458
Telephone: (512) 463-2012
Telefax: (512) 320-0052

(Date)

FOR SHINOUSSA SHIPPING CORPORATION:

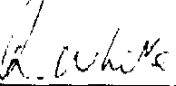


Mark Cohen
Its Attorney
Royston, Rayzor, Vickery & Williams, L.L.P.
Texas Commerce Tower
601 Milam, Suite 2200
Houston, Texas 77002-2913
Telephone: (713) 224-8380
Telefax: (713) 225-9945

4/12/94

(Date)

FOR GOLNOY BARGE COMPANY AND APEX R.E.&T., INC. (d/b/a Apex Towing Company):



Ronald L. White
Their Attorney
Brown, Sims, Wise & White

4/12/94

(Date)

2000 Post Oak Boulevard, Suite 2000
Houston, Texas 77056
Telephone: (713) 629-1580
Telefax: (713) 629-5027

FOR FIDELIS SHIPPING CORPORATION, ELETSON CORPORATION,
and PAPACHRISTIDIS SHIP MANAGEMENT SERVICES, LTD.



Dimitri P. Georgantou
Its Attorney
Filteau, Sullivan & Georgantou, P.C.
1111 Bagby, Suite 1500
Houston, Texas 77002
Telephone: (713) 236-1400
Telefax: (713) 236-1706


4/12/94
(Date)

FOR THE STATE OF TEXAS on behalf of the Texas Natural Resource Conservation Commission, Texas Parks & Wildlife Department, Texas General Land Office, and Texas Department of Health:

Dan Morales
Attorney General of Texas

Jorge Vega
First Assistant Attorney General

Gregg A. Cooke
Assistant Attorney General
Chief, Environmental Protection Division



Ken Cross
Assistant Attorney General of Texas



(Date)

Environmental Protection Division
P.O. Box 12548
Capitol Station
Austin, Texas 78711-2458
Tel: (512) 463-2012
Fax: (512) 320-0052