

COMMITTEE REPORT
HOUSE

FURTHER:

3/17/81

(11)

Date: 4-2-81

Mr. Speaker:

The Committee on FINANCE has had HB 294

"An Act making a supplemental appropriation to the Department of Law; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with ^{FINANCE} CS for HB 294 (FINANCE) same title
 new title
- and recommends it "do pass"
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature] No Rec

[Signature]

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CHAIRMAN

Request

Original sponsor: Rules/Governor

<u>Funding Information</u>	
General Fund	\$964,400
Other Funds	-0-
	<u>\$964,400</u>

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 294 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a supplemental appropriation to the
7 Department of Law; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. The sum of \$964,400 is appropriated from the general fund
11 to the Department of Law, civil division, to pay miscellaneous judgments
12 against the state.

13 * Sec. 2. The unexpended and unobligated part of the appropriation made
14 by this Act lapses into the general fund June 30, 1981.

15 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
16 070(c).

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4/3/81
Action at 4/2/81 meeting

Funding Information
General Fund \$956,000 ^{964,400}
Other Funds -0-
~~\$956,000~~ ^{964,400}

Introduced: 3/9/81
Referred: Judiciary and
Finance

FINANCE
BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 CS for HOUSE BILL NO. 294

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a supplemental appropriation to the
7 Department of Law; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. The sum of ^{964,400} ~~\$956,000~~ is appropriated from the general fund
11 to the Department of Law, civil division, for the purpose of paying miscel-
12 laneous judgments against the state.

13 * Sec. 2. The unexpended and unobligated part of the appropriation made
14 in sec. 1 of this Act lapses into the general fund June 30, 1981.

15 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
16 070(c).

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Funding Information
General Fund \$956,000
Other Funds -0-
\$956,000

Introduced: 3/9/81
Referred: Judiciary and
Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 294

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act making a supplemental appropriation to the
7 Department of Law; and providing for an effective
8 date."

9

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10

* Section 1. The sum of \$956,000 is appropriated from the general fund
11 to the Department of Law, civil division, for the purpose of paying miscel-
12 laneous judgments against the state.

13

* Sec. 2. The unexpended and unobligated part of the appropriation made
14 in sec. 1 of this Act lapses into the general fund June 30, 1981.

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* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
16 070(c).

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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 2, 1981

The Honorable Samuel R. Cotten
Chairman
House Finance Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Cotten:

I am pleased to provide the fiscal information which you requested yesterday, during the House Finance Committee's review of HB 294.

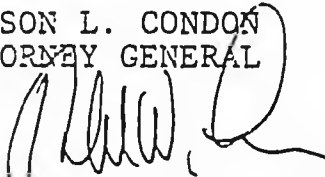
Three additional judgments against the state, totalling \$8,400, have been received by the department since February 1, 1981. Amending HB 294, to include these judgments, will allow us to pay these claims somewhat prior to July 1, 1981, when our regular judgments appropriation for FY 82 becomes available. Copies of these new judgments are attached for your review.

The Department of Law collected and deposited to the general fund \$194,850.92 in costs, fees, penalties and liquidated damages during the twelve months of FY 80, as a result of litigation undertaken by the Civil Division. The amount collected during the first eight months of FY 81, July 1, 1980 through February 28, 1981, totals \$209,889.37.

Please let me know if I can provide any further information.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Ronald W. Lorensen
Deputy Attorney General

RWL:cjs

March 9, 1981

The Honorable Jim Duncan
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which would make a supplemental appropriation to the Department of Law, civil division, to pay miscellaneous judgments against the state.

Miscellaneous judgments against the state have exceeded the \$15,000 appropriated for that purpose for FY 81. The FY 81 appropriation was fully spent by September 1980, and since that time nine additional judgments have been made against the state. This appropriation would cover the costs of legal action and court awards in those nine cases.

The amount needed for one of the cases is \$881,400 (92 percent of the total appropriation request), and arose from the Hidden Falls hatchery project. Erroneous site condition information caused delays in the construction of the hatchery. This resulted in increased construction costs above the original amount of the contract, and the court approved a settlement between the parties awarding money to the contractor.

The interest being paid for these judgments varies from 8 percent to 10 1/2 percent. I urge immediate enactment of this bill.

Sincerely,

S/SSH

Jay S. Hammond
Governor

MEMORANDUM

State of Alaska

TO: Art Peterson
Assistant Attorney General
Department of Law

DATE: February 23, 1981

FILE NO:

TELEPHONE NO:

FROM: Ronald D. Lehr, Director *Ron*
Division of Budget & Management
Office of the Governor

SUBJECT: Category: General Government
Department: Law - Civil Division
Suppl. Request: \$956.0-GF

To Settle Judgements

Appropriation Request

Please prepare a bill for the Governor's introduction making a Supplemental Appropriation in the amount of \$956.0 to the Department of Law - Civil Division - for the purpose of settling judgements against the state in excess of the \$15.0 appropriations for miscellaneous judgements.

This \$956.0 should be appropriated from the General fund.

This act should take effect immediately and include a lapse date of June 30, 1981.

Special Comments

There are nine separate cases covered by this request. One of the cases, Christiansen & Assn. vs. State is for \$881.4 (92% of the total request) and arose from the Hidden Falls Hatchery project site and site plan inefficiencies. All the amounts are, of course, the result of legal action and court awards.

The known outstanding judgements as of February 17, 1981 are:

Thomas vs. Craft	23.2
Kimura v ABC Board	1.2
Gardner v State	1.0
Tyonek v State	10.7
Copeland v CFEC	1.3
Gjosund v F&G	9.5
Christenson, Rober, Kief & Assoc. v State	881.4
Barley v. Thomas & Bierne	13.4
Zobel v. Williams	14.3
	<u>956.0</u>

For additional information contact John Nixon, telephone 465-3580 in Budget and Management.

MEMORANDUM

5100301
State of Alaska

TO: Ron Lehr, Director
Division of Budget and
Management
Office of the Governor

DATE: January 7, 1981

FILE NO:

TELEPHONE NO: 465-3695

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Supplemental Appropriation--
FY 81 Judgments

Richard I. Pegues
By: Richard I. Pegues
Administrative Officer

The Department of Law anticipates submitting a supplemental judgment request of approximately \$940,595 to settle judgments against the state for FY 81. Unpaid settlements, to date, are as follows:

<u>Case</u>	<u>Amount</u>		
Thomas v. Croft	\$23,200 ✓	23,199	23.2
Kimura v. ABC Board	1,215 ✓	1,215	1.2
Gardiner v. CFEC	1,000 ✓	998	1.0
Tyonek v. State	10,675 ✓	10,674	10.7
Hutcherson v. Labor	265		
Copeland v. CFEC	1,340 ✓	1,337	1.3
Gjosund v. F&G	9,530 ✓	9,527	9.5
Zobel v. Williams	12,000	14,264	14.3
Christiansen & Assn. v. State	881,370	881,367	881.4
<i>BRALLOY vs. THOMAS & BEIRNE</i>		13,353	13.4
		<u>955,934</u>	

Additional judgment claims may occur before the legislature limits their consideration of supplemental requests. Please let us know when the request cutoff will take place, once this information becomes available to you.

RIP:cjs

*To Toppin
2/17/81*

RECEIVED

JAN 8 1981

BUDGET AND MANAGEMENT

MEMORANDUM

State of Alaska

TO: Ron Lehr, Director
Division of Budget and
Management
Office of the Governor

DATE: February 17, 1981

FILE NO:

TELEPHONE NO:

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: FY 81 Supplemental
Appropriation-Judgments

Richard I. Pegues
By: Richard I. Pegues, Director
Administrative Services Division

As you know, the Department of Law each year receives an appropriation of \$15,000 to pay miscellaneous judgments which covers costs and fees awarded in court settlements against the state. This initial appropriation was fully expended in September, 1980. Since that time, nine additional judgments have been made against the state totalling \$955,930.84, including interest. Of this amount, a single judgment of \$881,367 was awarded as a result of a contract claim against the Department of Transportation of Public Facilities arising from the construction of a state owned salmon hatchery at Hidden Falls, on Baranof Island. The major portion of this claim represents contractor construction costs rather than court costs and attorney fees. The state's counsel, in this matter, has concluded that the contractor's claim of \$2.5 million would have resulted in a liability to the state somewhat in excess of \$1.0 million, if the case had gone to full trial. Counsel therefore negotiated this settlement which all parties agreed was equitable.

The remaining eight judgments, in total amount, are similar to past years' experience where, in FY 80, we paid \$62,800 for judgments and, in FY 79, when we paid \$75,300 for judgments.

Interest paid varies by actual judgment. Some claims receive 8.0 percent, others receive 10.5 percent and some do not receive interest depending upon the specific conditions of the judgment award. The maximum interest allowed is now 10.5 percent and this limit was increased from 8.0 percent in mid-year. Interest, where it applies, has been computed from date of award through May 31, 1981.

Attached for your review and transmittal to the legislature are: a summary of the judgments, showing the amount of the award and interest; copies of the judgments, together with relevant correspondence, and; the supplemental budget request forms.

RIP:cjs

Attachments

KNOWN OUTSTANDING JUDGMENTS AS OF 2/17/81

<u>CASE</u>	<u>AMOUNT</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
Thomas v. Croft	19,797.15	3,401.20	23,198.35
Kimura v. ABC Board	1,140.00	74.75	1,214.75
Gardner v. State	997.60		997.60
Tyonek v. State	10,000.00	673.92	10,673.92
Copeland v. CFEC	1,250.00	86.40	1,336.40
Gjosund v. F & G	9,022.51	504.41	9,526.92
Christenson, Raber, Kief & Assc. v. State	835,000.00	46,367.00	881,367.00
Bailey v. Thomas & Beirne	12,817.50	535.05	13,352.55
Zobel v. Williams	<u>13,707.35</u>	<u>556.00</u>	<u>14,263.35</u>
TOTAL	\$903,732.11	\$52,198.73	\$955,930.84

STATE OF ALASKA
Office of the Governor
Budget & Management Div.

REVISED PROGRAM SUMMARY
by
BUDGET COMPONENT

CATEGORY	General Government
COVER PROGRAM	Legal Services
AGENCY	Department of Law
DIVISION	Civil - Reimbursable
BUDGET REQUEST UNIT	Legal Services Operations
BUDGET COMPONENT	Legal Services
APPROPRIATION	
ALLOCATION	

Page 1 of 4

	INITIAL AUTHORIZATION	RP 81-5X-24	RP 81-5X-51	RP 81-5X-110	81-60-X RP	RP 81-5X-61	RP 81-90-X	RP 81-5X-61	AMENDED AUTHORIZATION
01	PERSONAL SERVICES	4131.9	55.4		84.9	6.9	158.5		4,437.6
02	TRAVEL	188.7	15.0		7.5				211.2
03	CONTRACTUAL	921.3	85.0	12.0	10.0		6.0	15.0	1,049.3
04	COMMODITIES	59.5			1.5				61.0
05	EQUIPMENT	12.3	2.0		3.5		6.4		24.2
06	LANDS, BUILDINGS	9.6							9.6
07	GRANTS, CLAIMS								
08	MISCELLANEOUS	15.0							15.0
	TOTAL	5338.3	100.0	12.0	107.4	6.9	170.9	15.0	5,807.9
1002	FEDERAL RECEIPTS								
1003	G/F MATCH								
1004	GENERAL FUND	3612.9							3,612.9
1005	I/A RECEIPTS	1725.4	100.0	12.0	107.4	6.9	170.9	15.0	2,195.0
1028	PROGRAM RECEIPTS								
		5338.3	100.0	12.0	107.4	6.9	170.9	15.0	5,807.9
15	FULL TIME	102.0		1.0	2.0		4.0		109.0
16	PART TIME	2.0							2.0
17	TEMPORARY	.4							.4
18	MAN-MONTHS	1243.5		12.0	21.0		40.0		1,316.5

STATE OF ALASKA
Office of the Governor
Budget & Management Div.

REVISED PROGRAM SUMMARY
by
BUDGET COMPONENT

CATEGORY	General Government
COVER PROGRAM	Legal Services
AGENCY	Department of Law
DIVISION	Civil-Reimbursable Services
BUDGET REQUEST UNIT	Legal Services
BUDGET COMPONENT	Legal Services Operations
APPROPRIATION	
ALLOCATION	

Page 2 of 4

		Gov Human Rights	NOAA IPA	Rev Revision	Gov Coastal Zone	DNR	Commerce	Rev CSPA	AMENDED AUTHORIZATION	
		INITIAL AUTHORIZATION	Pending RP Request	RP Request	Pending RP Request	Pending RP Request	Pending RP Request	Pending RP Request		
01	PERSONAL SERVICES	4,437.6	11.0	54.1	7.6	1.9	75.1	3.6	43.3	4,634.2
02	TRAVEL	211.2		8.3	15.8		3.0	(2.0)		236.3
03	CONTRACTUAL	1,049.3		(45.0)	1.1		2.4	(2.2)	5.3	1,010.9
04	COMMODITIES	61.0					2.2	(.8)	.4	62.8
05	EQUIPMENT	24.2					1.5		1.8	27.5
06	LANDS, BUILDINGS	9.6								9.6
07	GRANTS, CLAIMS									
08	MISCELLANEOUS	15.0								15.0
	TOTAL	5,807.9	11.0	17.4	24.5	1.9	84.2	(1.4)	50.8	5,996.3
1002	FEDERAL RECEIPTS			17.4						17.4
1003	G/F MATCH			22.0						22.0
1004	GENERAL FUND	3,612.9		(22.0)						3,590.9
1005	I/A RECEIPTS	2,195.0	11.0		24.5	1.9	84.2	(1.4)	50.8	2,366.0
1028	PROGRAM RECEIPTS									
	TOTAL	5,807.9	11.0	17.4	24.5	1.9	84.2	(1.4)	50.8	5,996.3
15	FULL TIME	109.0		1.0			1.0		1.0	112.0
16	PART TIME	2.0								2.0
17	TEMPORARY	.4					.4			.8
18	MAN-MONTHS	1,316.5		10.0			1.4		1.0	1,328.9

STATE OF ALASKA
Office of the Governor
Budget & Management Div.

REVISED PROGRAM SUMMARY
by
BUDGET COMPONENT

CATEGORY	General Government
COVER PROGRAM	Legal Services
AGENCY	Department of Law
DIVISION	Civil
BUDGET REQUEST UNIT	Legal Services
BUDGET COMPONENT	Legal Services Operations
APPROPRIATION	
ALLOCATION	

page 3 of 4 Labor Pipeline Risk Salary Anti-
Surv. Mgt. DNR DOT/PF Increase Trust

	INITIAL AUTHORIZATION	RP 81-5X346	RP 81-5X355	RP 81-3X-8	RP 81-154X	RP 81-5X428	RP	RP 81-53	AMENDED AUTHORIZATION	
01	PERSONAL SERVICES	4,634.2	17.6	81.9	18.4	(8.8)	339.3	693.9	47.9	5824.4
02	TRAVEL	236.3		2.0		(8.0)	28.8			259.1
03	CONTRACTUAL	1,010.9		11.5	5.2		434.5		4.7	1466.6
04	COMMODITIES	62.8		1.5			5.0			69.3
05	EQUIPMENT	27.5		4.1			13.8			45.4
06	LANDS, BUILDINGS	9.6								9.6
07	GRANTS, CLAIMS									
08	MISCELLANEOUS	15.0								15.0
	TOTAL	5,996.3	17.6	101.0	23.6	(16.8)	821.4	693.9	52.6	7689.6
1002	FEDERAL RECEIPTS	17.4							52.6	70.0
1003	G/F MATCH	22.0								22.0
1004	GENERAL FUND	3,590.9						550.1		4141.0
1005	I/A RECEIPTS	2,366.0	17.6	101.0	23.6	(16.8)	821.4	143.8		3456.6
1028	PROGRAM RECEIPTS									
	Total	5,996.3	17.6	101.0	23.6	(16.8)	821.4	693.9	52.6	7689.6
15	FULL TIME	112.0		2.0			3.0		1.0	118.0
16	PART TIME	2.0								2.0
17	TEMPORARY	8								8
18	MAN-MONTHS	1,328.9		20.0			29.5		9.0	1387.4

STATE OF ALASKA
Office of the Governor
Budget & Management Div.

REVISED PROGRAM SUMMARY
by
BUDGET COMPONENT

CATEGORY	General Government
COVER PROGRAM	Legal Services
AGENCY	Dept. of Law
DIVISION	Civil
BUDGET REQUEST UNIT	Legal Services
BUDGET COMPONENT	Legal Services Operations
APPROPRIATION	
ALLOCATION	

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Legal Svcs. Adm. Judgment
G.F. Rev/Zobel Svc. Supplemental

	INITIAL AUTHORIZATION	Pending RP Request	Pending RP Request	This RP Request	This RP Request	RP	RP	RP	AMENDED AUTHORIZATION
01	PERSONAL SERVICES	5824.4	(100.0)	(128.4)					5596.0
02	TRAVEL	259.1		(1.5)					257.6
03	CONTRACTUAL	1566.8	12.6	10.0	(13.8)				1475.6
04	COMMODITIES	69.3		(2.0)					67.3
05	EQUIPMENT	45.4	87.4						132.8
06	LANDS, BUILDINGS	9.6							9.6
07	GRANTS, CLAIMS	15.0			955.9				970.9
08	MISCELLANEOUS								
	TOTAL	7689.6	-0-	10.0	(145.7)	955.9			8509.8
1002	FEDERAL RECEIPTS	70.0							70.0
1003	G/F MATCH	22.0							22.0
1004	GENERAL FUND	4141.0			(112.9)	955.9			4984.0
1005	I/A RECEIPTS	3456.6		10.0	(32.8)				3443.8
1028	PROGRAM RECEIPTS								
	Total	7689.6	-0-	10.0	(145.7)				8509.8
15	FULL TIME	118.0			(7.0)				111.0
16	PART TIME	2.0							2.0
17	TEMPORARY	.8							.8
18	MAN-MONTHS	1387.4			(38.5)				1348.9

STATE OF ALASKA
Office of the Governor
Budget & Management Div.

REVISED PROGRAM SUMMARY
by
BUDGET COMPONENT

CATEGORY	General Government
COVER PROGRAM	Legal Services
AGENCY	Dept. of Law
DIVISION	Civil
BUDGET REQUEST UNIT	Legal Services
BUDGET COMPONENT	Administration and Support
APPROPRIATION	
ALLOCATION	

Adm Svcs

		INITIAL AUTHORIZATION	RP 81-342X	RP	RP	RP	RP	RP	RP	AMENDED AUTHORIZATION
01	PERSONAL SERVICES		171.1							171.1
02	TRAVEL		1.5							1.5
03	CONTRACTUAL		13.8							13.8
04	COMMODITIES		2.0							2.0
05	EQUIPMENT									
06	LANDS, BUILDINGS									
07	GRANTS, CLAIMS									
08	MISCELLANEOUS									
	TOTAL		188.4							188.4
1002	FEDERAL RECEIPTS									
1003	G/F MATCH									
1004	GENERAL FUND		155.6							155.6
1005	I/A RECEIPTS		32.8							32.8
1028	PROGRAM RECEIPTS									
			188.4							188.4
15	FULL TIME		10.0							10.0
16	PART TIME									
17	TEMPORARY									
18	MAN-MONTHS		55.0							55.0

SUPPLEMENTAL REQUEST ANALYSIS

	1	2	3	4	5	6	7	8	9	10	11
	FY 79 ACTUAL	FY 80 FINAL AUTH.	FY 80 ACTUAL	FY 81 GOV. BUDGET	FY 81 INITIAL AUTH.	FY 81 CURRENT AUTH.	FY 81 EXPENDITURES + ENCUMBRANCES 7/1/ to 1/31	FY 81 OTHER OBLIGATIONS 7/1/ to 1/31	FY 81 PROJECTED EXPENDI- TURES + ENCUMBRANCES 2/1 to 6/30	FY 81 (DEFICIT) OR EXCESS	FY 81 CONT.
SERVICES	3,902.1	4,359.5	4,281.6	4,070.7	4,111.9	5,596.0	2,706.3		2,889.7	-0-	4.92
	187.8	201.7	191.5	178.7	188.7	257.6	132.8		124.8	-0-	21
AL SERVICES	830.2	1,120.8	1,041.9	856.3	921.3	1,475.6	726.8		747.4	1.4	94
ES	47.6	46.0	58.2	57.5	59.5	67.3	35.2		32.1	-0-	6
	33.8	3.0	3.7	10.3	12.3	132.8	29.0	78.0	25.8	-0-	
OG. ...	9.5	9.6	9.6	9.6	9.6	9.6	9.6		-0-	-0-	
LAIMS. ...	75.3	63.8	62.8	15.0	15.0	15.0	16.4	955.9	-0-	(957.3)	
EOUS											
	5,086.3	5,804.4	5,649.3	5,198.1	5,338.3	7,553.9	3,656.1	1,033.9	3,819.8	(955.9)	6.18
RECEIPTS	162.3					70.0	28.3		41.7		
GF MATCHING						22.0	2.1		19.9		
ERAL FUND	2,972.0	3,577.4	3,489.1	3,472.7	3,612.9	4,028.1	2,154.2	1,030.9	1,798.9	(955.9)	4.0
NCY RECEIPTS	1,952.0	2,227.0	2,160.2	1,725.4	1,725.4	3,433.8	1,471.5	3.0	1,959.3		2.1

DEPARTMENT OF LAW

BRU: LEGAL SERVICES

COMPONENT: LEGAL SERVICES OPERATIONS

REVISED: 2/17/81

MEMORANDUM

State of Alaska

TO: Dick Pegues
Administrative Officer
AGO - Juneau

DATE: September 3, 1980

FILE NO:

TELEPHONE NO:

FROM: Carolyn E. Jones
Assistant Attorney General
AGO - Anchorage

SUBJECT: Thomas v. Croft
No. A22-699-79

I am enclosing the Supreme Court mandate in the above-entitled case. The State owes Chancy Croft as follows:

\$15,000	Attorney's fees for the election contest case
4,208.85	As costs for the election contest case
588.30	On the issue of attorney's fees.

CEJ:tb
Enclosures

RECEIVED
Department of Law
Alaska

SEP 6 1980

AM

PM

2:08 PM

*

Supreme Court



Court of Appeals

State of Alaska

OFFICE OF THE CLERK
303 "K" STREET
ANCHORAGE, ALASKA
99501
(907) 264-0629

July 31, 1980

RECEIVED
Department of Law

AUG 1 1980

Office of the Attorney General
Richard W. French
Juneau, Alaska

Mrs. Kim Smith
Appeals Clerk
303 K Street
Anchorage, Alaska

Re: Thomas v Croft
Superior Court No. 3AN-78-6243 &
3AN-78-6264
Supreme Court No. 4719

Dear Mrs. Smith:

Enclosed is the mandate of the Supreme Court issued
July 28, 1980. Copies have been sent to counsel.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Caroline Hedwall".

Deputy Clerk of Court

cc: Supreme
Juneau
Fairbanks
Counsel
file

THE SUPREME COURT OF THE STATE OF ALASKA

LOWELL THOMAS, JR.,)
Lieutenant Governor of)
Alaska, et al.,)

Appellants,)

File No. 4719

v.)

CHANCY CROFT,)

MANDATE

Appellee.)

TO: Superior Court of the State of Alaska,
Third Judicial District at Anchorage.

Lowell Thomas, Jr., Lieutenant Governor of
Alaska, et al., filed an appeal from an Order of the
Superior Court, Third Judicial District at Anchorage
in Civil action No. 3AN-78-6243 and 3AN-78-6264 entitled
" WALTER J. HICKEL, Plaintiff vs. LOWELL THOMAS, JR.,
et al., Defendants and EDWARD A. MERDES, Plaintiff vs.
LOWELL THOMAS, JR., et al., Defendants". The case was
heard by this court on January 24, 1980. On July 18,
1980, the court filed its written opinion.

IT IS ORDERED:

The Order of the Superior Court, entered April
20, 1979, is affirmed.

Appellee shall recover from appellant costs and
attorney fees as shown below:

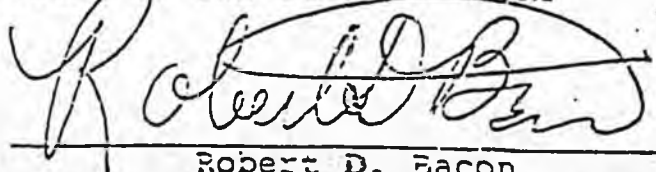
Costs and Attorney's Fees

Duplicating Appellee's Brief-----	\$ 88.30
Attorney's Fees-----	\$ 500.00
Total	\$ 588.30

WITNESS the Honorable Jay A. Rabinowitz, Chief Justice
of the Supreme Court, State of Alaska, this 28th day of
July, 1980.

SEAL

CLERK OF THE SUPREME COURT



Robert D. Bacon

WALTER J. HICKEL,
 Plaintiff,
 vs.
 LOWELL THOMAS, JR., et al.,
 Defendants.

Case No. 3AN78-6243 Civil

EDWARD A. MERDES,
 Plaintiff,
 vs.
 LOWELL THOMAS, JR., et al.,
 Defendants.

Case No. 3AN78-6264 Civil

ORDER AWARDING ATTORNEY'S FEES

The factual situation to which the question of attorney's fees arises in these cases was fully set out in this court's opinion dated October 13, 1978, and the Alaska Supreme Court opinion in the appeal of these cases on October 20, 1978, and, therefore, will not be repeated.

Defendant Chancy Croft is the only party to this action who has made a timely motion for attorney's fees. See Civil Rule 79, Civil Rule 82, Civil Rule 54(d) and this court's order of February 16, 1979 (setting briefing and argument schedule). This court heard oral argument by representatives for Croft, the State of Alaska, and Edward Merdes (Walter Hickel joined in Merdes' briefs and argument).

It is concluded that Chancy Croft is a prevailing party in this litigation and, as such, is presumptively entitled to an award of attorney's fees. Buza v. Columbia Lumber Company, 395 P.2d 511 (Alaska 1964). Since these cases did not generate a money award, this court may fix attorney's fees in a reasonable amount. Civil Rule 82(a)(1).

The most hotly contested issue before the court on this motion for attorney's fees is who will pay the award of fees to Croft. The State relies on its status as a co-prevailing party to insulate it from liability. Merdes and Hickel contend that these cases constitute public interest litigation and that it would be an abuse of discretion to award attorney's fees against them. Gilbert v. State, 526 P.2d 1131 (Alaska 1974). If the court were to accept the position of both the State and Merdes and Hickel, Croft would be without a source for the recovery of fees to which he is admittedly entitled. In the interest of preventing such a gross inequity, this court has carefully examined the briefs and authorities cited therein. This court concludes that these cases are genuine public interest litigation and that attorney's fees should not be awarded against Hickel and Merdes. Concomitantly, the court rejects the theory of the State that it is insulated from an award of attorney's fees against it because it was a co-prevailing party.

The test for whether a party has brought public interest litigation is set out in Anchorage v. McCabe, 568 P.2d 986, 991 (Alaska 1977). The test, derived from La Raza Unida v. Volpe, 57 F.R.D. 94 (N.D.Cal. 1972), has three factors:

- (1) the effectuation of strong public policies;
- (2) the fact that numerous people received benefits from the plaintiffs' litigation success;
- (3) the fact that only a private party could have been expected to bring this action.

Plaintiffs Hickel and Merdes actions meet these three factors. These cases were election contests brought pursuant to AS 15.20.540, a section of the election code. It is clear, without citing cases, that there is a strong public policy favoring fair and correctly conducted elections. The importance of this policy is underscored by the legislature creating a statutory cause of action in AS 15.20.540. These cases, which

revealed questionable practices and some actual misconduct in the conduct of the challenged primary election, clearly effectuated the policy of keeping election practices in the public eye. As to the second factor, this court concludes that the voters of the State of Alaska are all beneficiaries of the litigation in that election practices have been regularized and are currently under renewed scrutiny of both the executive and legislative branches of state government as a result of these suits, scrutiny which hopefully will lead to needed reform. As to the third factor, the fact that the legislature saw fit to place the right to bring an election contest in the private citizenry (be they candidates or 10 qualified voters) evidences a recognition by the legislature that it is up to private citizens to vindicate their right to a properly conducted election. Therefore, the court finds that plaintiffs Hickel and Merdes have raised questions of genuine public interest and that their litigation furthered the public interest. Accordingly, they should not be penalized by an award of attorney's fees against them.

The State claims that there is no provision in Civil Rule 82 for award of attorney's fees against a co-prevailing party and that there is a strong public policy against such an award. As a general matter, this court is in agreement with the State. The circumstances of this case are not typical, however. Here, Croft had no control over the conduct of the election, the subject of these lawsuits. The conduct of the election was solely in the hands of the State and its agents. There would have been no lawsuit if the State had not engaged in questionable and, indeed, illegal practices in the conduct of the election. Chancy Croft would not have incurred the fees in question if the election had been conducted in a manner above reproach. The fact that the extent of the misconduct by the State did not result in the election being set aside does not vindicate the State in

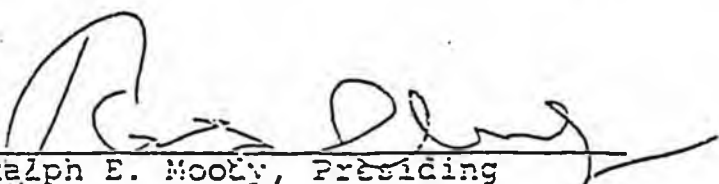
this matter. The State's malconduct is responsible for Mr. Croft having generated attorney's fees in this case, and the State should pay. This court holds that attorney's fees may be awarded against a co-prevailing party where the lawsuit arises from improper conduct of a co-prevailing party, which has necessitated the expenses of defense by the innocent co-prevailing party. Accordingly, the State must pay this court's award of attorney's fees to Mr. Croft.

One point remains. Mr. Croft seeks an award of his entire attorney's fees in this action. Anchorage v. McCabe, supra, indicates that in a proper case full fees may be awarded a successful public interest litigant. This court is not convinced that this is a proper case to extend that portion of the McCabe rationale. Accordingly, this court will apply the general rationale of Malvo v. J.C. Penney Co., Inc., 512 P.2d 575, 587 (Alaska 1973) that the purpose of Civil Rule 82 is to partially compensate a prevailing party. The court also notes that while Mr. Croft was certainly justified in employing his own counsel and committing his own resources in defense of these actions, the brunt of the research and technical preparation for the defense of this case was borne by the State. Clearly, Mr. Croft was a beneficiary of the vast resources the State brought to bear in its defense of the action.


Therefore,

IT IS ORDERED that Chancy Croft recover attorney's fees in the amount of \$15,000 (FIFTEEN THOUSAND DOLLARS) from the State of Alaska.

DONE at Anchorage, Alaska, this 20th day of April, 1979.


Ralph E. Moody, Presiding
Superior Court Judge

Copies of the above Order were forwarded to all parties of record on 4-20-79.


Secretary to Judge Moody

MEMORANDUM

State of Alaska

TO: Cynthia Stolenberg
Administrative Assistant
Attorney General's Office
Anchorage

DATE: September 23, 1980

FILE NO:

TELEPHONE NO:

FROM: Richard I. Pegues
Administrative Officer
Attorney General's Office
Juneau

SUBJECT: Kimura v. ABC Board

The department's FY 82 appropriation to pay judgments has already been expended. Payment of costs fees in Kimura v. ABC Board must therefore await supplemental appropriation by the Legislature. Such appropriation is not expected until about June 1, 1981, as the legislature usually does not act on supplemental requests until shortly before adjournment. Please ask Dave Leblond to advise Plaintiff's counsel of this delay.

RIP:mb

\$ 1,140.00
+ 74.75 INT Aug 6, 1980 thru 5-31-81

\$ 1,214.75

MEMORANDUM

State of Alaska
Department of Law
Juneau Alaska

DEPT. _____
DIV. _____
SEC. SEP 22 1980

TO:

Judy Thomsom
Juneau AGO

AM _____ PM _____
7,8,9,10,11,12,1,2,3,4,5,6

DATE : 9/18/80

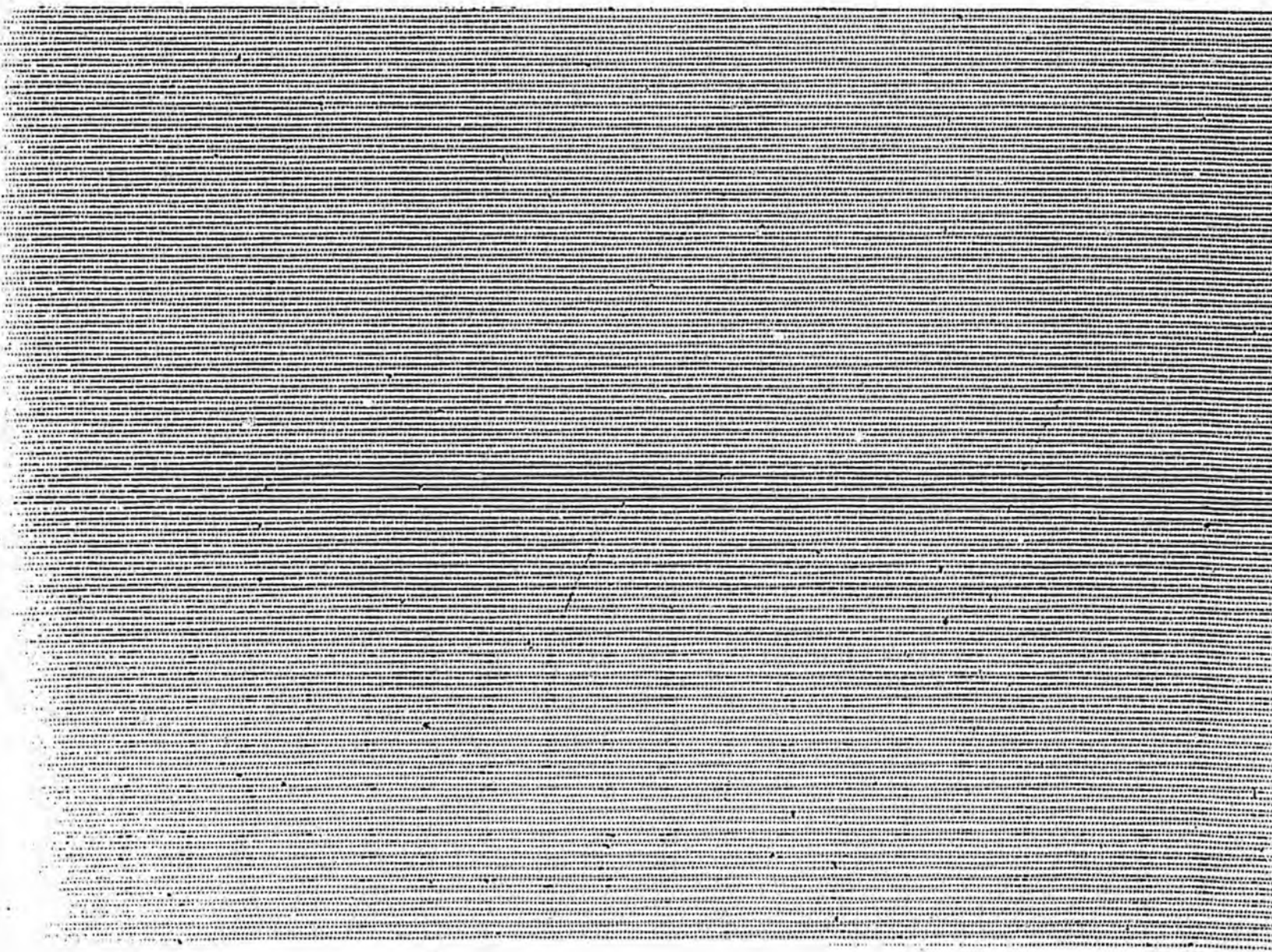
FROM: Cynthia Stoltenberg
Anchorage AGO

SUBJECT: Costs and attorney's fees
Kimura v. ABC Board
3AN-79-8061-CIV.

Please have a warrant issued for \$1,140.00 in payment of the Summary Judgment in the above matter, payable to Wohlforth & Flint, and send it to David LeBlond for transmittal.

Thanks, Judy.

Attachments



SEP 15 1980

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

GEORGE Y. KIMURA,)
)
Plaintiff,)
)
vs.)
)
ALCOHOLIC BEVERAGE CONTROL)
BOARD,)
)
Defendant.)

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT

AUG 6 1980

Clerk of the Trial Courts
By [Signature] Deputy

No. 3AN-79-8061-CIV.

SUMMARY JUDGMENT

Upon the plaintiff's Motion for Summary Judgment, and the Court finding that the pleadings, exhibits and affidavit showed an absence of any genuine issue of any material fact,

IT IS ORDERED, ADJUDGED AND DECREED:

1. that the action of the Alcoholic Beverage Control Board dated September 27, 1979 requiring the construction of hotel or motel units pursuant to AS 04.10.260 as a requirement for operation or transfer of the license of George Y. Kimura is null and void; and

2. that George Y. Kimura is the licensee of a beverage dispensary license subject only to the same laws, regulations, privileges and restrictions applicable to all beverage dispensary licensees generally; and

3. that the Alcoholic Beverage Control Board is hereby ordered to ^{decide whether to} transfer the license of George Y. Kimura upon proper application and compliance with laws and regulations applicable to all beverage dispensary licensees generally without regard to any restrictions relating to hotels, motels or tourist facilities; and

4. that plaintiff recover from defendant costs in the amount of \$ 140.00, and attorney's fees of

JUN 9 1980

\$ 1,140.00 , for a total judgment of \$ 1,140.00 . Said judgment shall bear interest at the rate of eight percent (8%) per annum until paid.

DATED at Anchorage, Alaska, this 6th day of August , 1980.

William A. Dando
SUPERIOR COURT JUDGE

I certify that on 8-11-80
a copy of this document was sent to:
 Attorney(s) of Record, or
 Other: _____
at address of record.
D.O.E. 8-11-80 W.A.D.
Deputy Clerk

I Certify that on 9-12-80
a copy of the above was mailed to each
of the following at their address of
record.
Russell Brown Robert B. Flint
DAVID T. LeBlond
Secretary

AUG 08 1980

By KRISTEN O'DOWD, Clerk
Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

PATRICK W. GARDNER)
Appellant,)
vs.)
COMMERCIAL FISHERIES)
ENTRY COMMISSION,)
Appellee.)

No. 1KE-79-350 Civil

JUDGMENT FOR COSTS

The Court having considered Appellant's motion for award of costs, together with the entire record herein, the motion is granted.

It is hereby ordered that PATRICK W. GARDNER, Appellant, recover from the Appellee, an agency of the State of Alaska, costs in the amount of \$ 997.60.

It is further ordered that a deposit as security for costs made by PATRICK W. GARDNER (at the insistence of the State) be immediately returned to him if it has not already been returned.

DONE and ordered entered at Ketchikan, Alaska this 5th day of July, 1980.

Thomas E. Schulz
Thomas E. Schulz
Superior Court Judge

7/14/80

MEMORANDUM


State of Alaska

TO: Dick Pegues
Administrative Officer
Department of Law

DATE: October 15, 1980

FILE NO:

TELEPHONE NO:

FROM: 
John G. Gissberg
Assistant Attorney General
Anchorage - AGO

SUBJECT: Tyonek v. State,
3AN 80-3073 Civil

The enclosed order directs us to pay plaintiffs' attorneys costs and fees of \$10,000. We resisted plaintiffs' motion for fees because there was no breakdown of the costs. However, the court only disregarded \$2,600 of their claim.

Plaintiffs were represented by Norman Cohen (an attorney working at Rural Cap) and Don Mitchell (a lawyer with the Alaska Federation of Natives). Please have the check made out to "Rural Alaska Community Action Inc., attention: Norman Cohen."

Thank you for your cooperation.

Encl: Judgment

P.S. Now I know what the other side is like!

JGG/jmo

\$ 10,673.92

NORMAN A. COHEN
P.O. Box 3-3908
Anchorage, Alaska 99501

DONALD C. MITCHELL
1577 C Street, Suite 304
Anchorage, Alaska 99501

Attorneys for Plaintiffs

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

SEP. 5 4 27 PM 1980

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
CLERK: *KCB*
DEPT:

NATIVE VILLAGE OF TYONEK, et al.,)
)
Plaintiffs)
)
vs.)
)
ALASKA BOARD OF FISHERIES, et al.,)
)
Defendants.)

CIVIL ACTION NO. 3AN-80-3073

MOTION FOR COSTS AND ATTORNEYS FEES

COME NOW the plaintiffs, the prevailing parties in the above-entitled action, and move this Court for an award of costs and attorneys fees pursuant to A.R.C.P. 82(a)(1). The plaintiffs are entitled to \$60.00 in costs and \$12,600.00 in attorney's fees. This motion is based upon the attached Affidavit of Counsel and Memorandum of Law.

DATED this 5th day of September, 1980, at Anchorage, Alaska.

Norman A. Cohen
Norman A. Cohen
Attorney for Plaintiffs

OCT 9 1980

BY RB CLERK OF THE TRIAL COURTS
DEPUTY

ORDER

IT IS HEREBY ORDERED that defendants pay to plaintiffs
\$60.00 in costs and ^{12,000.00} \$12,000.00 in attorneys fees.

DATED this 9th day of ^{October} ~~September~~, 1980, at Anchorage,
Alaska.

John Carlson
Judge of the Superior Court

I certify that on 10-10-80
a copy of this document was sent to:
 Attorney's of Record, or
 Other:
D.O.E. 10-15-80 RB
Deputy Clerk
Rec'd Jnl: _____

A copy of this document has been
served upon counsel for defendants.
September 5, 1980. WAC

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

AT KODIAK

FILED IN
Alaska Trial Courts
Third Judicial District
at Kodiak

OCT 28 1980

Clerk of the Trial Courts

By: J. Wood
DEPUTY

STEVEN COPELAND,)
)
Appellant,)
)
vs.)
)
ALASKA COMMERCIAL FISHERIES)
ENTRY COMMISSION,)
)
Appellee.)

No. 3AN-79-2207 Civil

JUDGMENT

This matter having come on for consideration before this court, and the parties having briefed and been heard on the issues;

IT IS HEREBY ADJUDGED that this case is remanded to the Commercial Fisheries Entry Commission for a hearing at which appellant may make a showing of additional points, including special circumstances and income dependence points, consistent with my Memorandum Decision and Opinion dated August 13, 1980. The Memorandum Decision and Opinion shall constitute the findings of fact and conclusions of law in this case.

In particular, the Commission is directed to take cognizance of the fact that the year 1970 substituted for 1972 was completely unrepresentative of appellants' participation in the fishery and his dependence thereon, and thus in connection with other compelling facts constituted a "special circumstance." Appellant's income dependence points were not realistically reflected by his income dependence for 1970 and 1971, and he is entitled to a hearing to demonstrate

SEP 16 1980

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K. BLISS
CAN. INC.
1975
11 10 1975
11 24 1975
11 24 1975

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Department of Law
State of Alaska

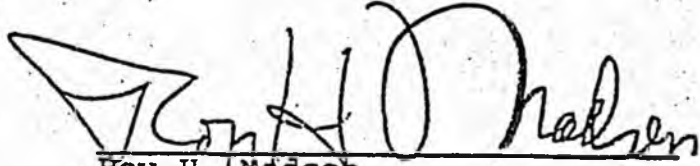
NOV 3 1980

NOV 9 1980

both special circumstances and income dependence points.

IT IS ORDERED that appellant recover from the Alaska Commercial Fisheries Entry Commission \$ 1250⁰⁰ in costs, including attorneys fees.

DATED at Anchorage, Alaska, this 25 day of September, 1980.


Roy H. Madson,
Superior Court Judge

AFFIDAVIT OF SERVICE
STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)
I, Marcia Metcalf, being first
duly sworn, depose and state: I am employed by
the law firm of Bradbury, Bliss & Riordan, Inc.,
Anchorage, Alaska. On the 16th day of
September 1980, I ~~sent~~ mailed a true
and correct copy(s) of: Judgment

to: Jonathan Tillinghast

Marcia Metcalf
this 10th day of Oct 1980
Jonathan Tillinghast
NOTARY PUBLIC IN AND FOR ALASKA
My Commission Expires: 10/19/83

MEMORANDUM

State of Alaska

Dick
TO: ~~Red Pegues~~
Assistant Attorney General
Juneau

DATE: December 4, 1980

FILE NO:

TELEPHONE NO:

FROM: *LS*
Larri Irene Spengler
Assistant Attorney General
Anchorage - AGO

SUBJECT: Attorney's Fee Judgment
& Costs

Attached is a copy of an order awarding attorney's fees and a clerk's ruling on a cost bill in Lewis Gjosund, et al., Plaintiffs, v. Alaska Dept. of Fish & Game, et al., Defendants, Case No. 3HO 80-92 CIV. The attorney's fee award totals \$8,680, and the costs total \$342.51.

These rulings came at the end of one of the subsistence cases our office lost this summer. By copy of this memo I am informing Marty Friedman that once the legislature makes the appropriation for the attorney's fees (at a time we cannot foresee at this point) you will be forwarding him his check.

I am closing my file, but if I can answer any questions on the matter, please feel free to contact me.

LIS:dr
Attachment

cc: Marty Friedman
Box 337
Homer, Alaska

Attorney fees
Costs

DEC 8 1980
\$ 8,680.00
342.51

9,022.51
504.41

9,526.92

10.50% INTEREST

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

RECEIVED
Department of Law

LEWIS GJOSUND, DORA WELCH,)
and KACHEMAK BAY SUBSISTENCE)
GROUP, INC.,)

Plaintiffs,)

v.)

ALASKA DEPARTMENT OF FISH)
AND GAME; RONALD O. SKOOG,)
individually and in his)
capacity as Commissioner of)
the Alaska Department of Fish)
and Game; ALASKA BOARD OF)
FISHERIES; ALASKA DEPARTMENT)
OF FISH AND GAME,)

Defendants.)

NOV 24 1980
Office of the Attorney General
Insurance Branch
Anchorage, Alaska

FILED IN THE TRIAL COURTS
STATE OF ALASKA, THIRD
JUDICIAL DISTRICT AT HOMER

NOV 18 1980

Clerk of the Trial Courts
By _____ Deputy

Case No. 3HO-80-92-Civil

ORDER AWARDING FULL AMOUNT OF
ATTORNEY'S FEES CLAIMED

IT IS HEREBY ORDERED that Plaintiffs, the prevailing parties, are awarded full amount of attorney's fees claimed in the sum of \$8,680.00, pursuant to Civil Rule 82(a).

This award is supported by Findings In Support Of Order Awarding Full Amount Of Attorney's Fees Claimed filed herewith.

SIGNED & DATED this 17th day of November, 1980.

PAUL B. JONES
Superior Court Judge

THIRD JUDICIAL DISTRICT

LEWIS GJOSUND, DORA WELCH,)
and KACHEMAK BAY SUBSISTENCE)
GROUP, INC.,)

Plaintiffs,)

v.)

ALASKA DEPARTMENT OF FISH)
AND GAME; RONALD O. SKOOG,)
individually and in his)
capacity as Commissioner of)
the Alaska Department of Fish)
and Game; ALASKA BOARD OF)
FISHERIES: ALASKA DEPARTMENT)
OF FISH AND GAME,)

Defendants.)

FILED IN THE TRIAL COURTS
STATE OF ALASKA, THIRD
JUDICIAL DISTRICT AT HOMER

NOV 18 1980

Clerk of the Trial Courts
By _____ Deputy

Case No. 3HO-80-92-Civil

FINDINGS IN SUPPORT OF ORDER AWARDING
FULL AMOUNT OF ATTORNEY'S FEES CLAIMED

Declaratory Judgment and Permanent Injunctive Relief was granted to the Plaintiffs on July 11, 1980, which further ordered that the Plaintiffs were the prevailing parties and were awarded costs taxed pursuant to Civil Rule 79 and attorney's fees fixed pursuant to Civil Rule 82(a). The Court having reviewed the Plaintiffs' Motion for Attorney's Fees and the Defendants' Response to Motion for Attorney's Fees and to Bill of Costs and Notice of Application for Costs and the Plaintiffs' Reply to Defendants' Response to Motion for Attorney's Fees and to Bill of Costs and Notice of Application for Costs, submitted by the parties without request for oral argument, and the Court being otherwise fully advised in the premises, awards full amount of attorney's fees claimed by Plaintiffs in the amount of Eight Thousand Six Hundred-Eighty Dollars (\$8,680.00), supporting the award with the following findings:

1. Plaintiffs were the prevailing parties as indicated in the Declaratory Judgment and Permanent Injunctive

Relief dated July 11, 1980.

2. This matter was public interest litigation because of the presence of the following three factors:
 - a. The effectuation of strong public policies, to-wit: the priority given to subsistence fishing and whether this should continue in the traditional, customary, and historical manner existing prior to 1978 in the Southern District of Cook Inlet as to the permissible length of set-gill nets and in the re-opening of the waters of the north shore of Kachemak Bay from Anchor Point to a Department of Fish and Game marker located approximately 1.8 miles east of the Homer Spit, and including the Homer Spit, to subsistence fishing.
 - b. Plaintiffs, Lewis Gjosund, Dora Mulch and the Kachemak Bay Subsistence Group, Inc. represent numerous people similarly situated who will receive benefits from Plaintiffs' litigation success.
 - c. Only private parties could have been expected to bring this action as they are subsistence fishermen in the Southern District of Cook Inlet who depend upon subsistence fishing as a means of providing a substantial part of their annual food supply.
3. Counsel for Plaintiffs has filed a verified statement of the hours of work performed in representing the Plaintiffs in this action, totalling 124 hours at \$70.00 per hour for a total amount claimed to be incurred of \$8,680.00.
4. The hours listed in Finding No. 3 preceding, as verified by Plaintiffs' counsel, reflects approximately 90 percent of the actual hours and work involved in presentation and preparation of the case.

5. From the familiarity of the Court with the case, the amount of research and investigation required of a legal nature supports 124 hours of work by the Plaintiffs' attorney as claimed.

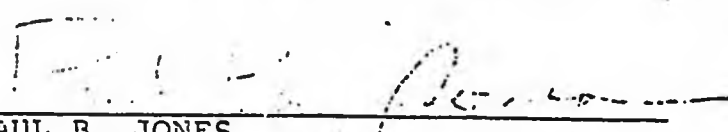
6. The fee of \$70.00 per hour is neither the highest nor the lowest and is consistent with many private practitioners in the Third Judicial District of the State of Alaska who may practice in the Homer area.

7. The result achieved by the Plaintiffs' attorney is important to all the subsistence fishermen in the area of concern in the Southern District of Cook Inlet, preserving the highest priority given to subsistence users of fish resources for providing a food supply to those similarly situated as the Plaintiffs.

8. The attorney representing the Plaintiffs has, from the Court's experience, represented clients in public interest issues in the past and is skilled in the means of preparation of such cases for presentation to the Court.

9. The action brought by the Plaintiffs is a substantial public interest issue and not frivolous in its benefit to the Plaintiffs and others similarly situated and effects the policy of the State to give its highest priority to subsistence-resource users of fish and game.

DATED at Homer, Alaska this 11 day of November, 1980.


PAUL B. JONES
Superior Court Judge

IN THE TRIAL COURTS FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

LEWIS GJOSUN, DORA MULCH
et al

Plaintiff(s),

vs.
ALASKA DEPARTMENT OF FISH
and GAME, RONALD O. SKOOG,
et al Defendant(s).

FILED IN THE TRIAL COURTS
STATE OF ALASKA, THIRD
JUDICIAL DISTRICT AT HOMER

SEP 17 1980

Clerk of the Trial Courts
By _____ Deputy

Civil Action No. 3110-80-02 CIV

CLERK'S RULING ON COST BILL

Plaintiff's Memorandum of Costs and
Disbursements came on for hearing before the Clerk on the
* day of _____, 1980; Plaintiff(s) appearing
by _____, and Defendant(s) also
appearing by _____.

No objections to the cost bill having been filed,
costs are hereby taxed in favor of Plaintiff's
and against Defendants as follows:

Filing Fees	\$ 50.00
Service Fees	\$ 7.55
Witness Fees	\$
Per Diem	\$
Depositions	\$
Travel	\$
Copy Costs	\$
Other	\$ 284.96
	\$
TOTAL	\$ 342.51

DATED at Homer Alaska, this 17th day of
September, 1980.

I hereby certify that
a copy of the foregoing
cost bill was mailed on
Sept 17, 1980
to the attorneys of
record:

A. Creasey
Deputy Clerk

T.S. MONINSKI
Clerk of Court
By Anna Creasey
Deputy Clerk

* Talked to Larry Spengler & Marty Friedman
on 9-11-80. Neither party wished to appear.

MEMORANDUM

State of Alaska

TO: Richard I. Pegues
Administrative Officer
Department of Law

DATE: February 3, 1981

FILE NO: J-22-367-79

TELEPHONE NO: 465-3603

FROM: William F. Cummings *W.F.C.*
Assistant Attorney General
Transportation Section
Department of Law - Juneau

SUBJECT: Supplemental Appropriation
to Fund the Settlement of
Christiansen, Raber, Kief
and Associates v. State
IJU-79-164; Hidden Falls
Construction Contract Claim

As you are aware, the Department of Law is seeking a supplemental appropriation in the amount of \$881,367 to fund the settlement of Christiansen, Raber, Kief and Assoc. v. State. In this memorandum you will find an analysis of the rationale behind the settlement.

William T. Council was retained to represent the state in the litigation. In the course of preparing the case for trial he came to the conclusion that the state could not escape liability for the contractor's claims and that reasonable attempts should be made to settle the case. Mr. Council ultimately settled the case for \$835,000, which is a lump sum figure inclusive of compensation, pre-judgment interest, costs and attorney's fees. By the terms of the settlement, C.R.K. would receive interest at the rate of 8% per annum until paid.

The settlement with C.R.K. was made with my concurrence and that of the Attorney General in accordance with AS 44.23.020. It is a settlement which is in the best interests of the state. Further, it represents reasonableness on the part of the state and the contractor. These aspects will be clear when the background of the claim is explored below.

The Hidden Falls Fish Hatchery is located on Baranof Island. The project involved piping water from a lake down a more or less vertical rock face to a hatchery building where the salmon eggs would be incubated, reared, and eventually released as fry. There were no facilities at the job site of any sort, e.g., docks, crew quarters, or storage areas. The only access available was via float plane or barge. All construction materials and equipment were shipped from Seattle.

Richard I. Pegues
February 3, 1981
Page 2

The contract was awarded to Christiansen, Raber, Kief and Associates in November, 1977, for approximately \$3.2 million. Work commenced in January, 1978. The contractor mobilized its forces under the assumption that a land-based camp was feasible. This assumption was reasonably based upon the representations contained in the plans.

The contractor attempted for approximately six weeks to construct a land-based camp at the site and to accomplish other earthwork. However, the contractor experienced soil conditions at the site which were much different than indicated in the plans, i.e., there was more overburden to be wasted than the plans indicated and much of the material taken from the structure excavation could not be used for construction purposes, nor was it suitable for the construction of a camp. Finally, the contractor demobilized its forces to Sitka and returned with a floating camp.

After the contractor's return, the work on the site proceeded in a more or less orderly fashion. However, it was behind schedule due to the initial problems experienced getting the job under way and the changed conditions experienced in the earthwork. The delays experienced were to impact the remainder of the job.

In the contractor's amended complaint, \$2.5 million in additional compensation was sought. This represents compensation for the changed conditions claims, i.e., the extra costs of camp construction and earthwork, claims for extra items of work, and delay and impact claims for itself and its mechanical subcontractor. The contractor would be also entitled to pre-judgment interest, costs and attorney's fees should it prevail on its claims.

In preparing the case for trial, it became clear that the state could not escape liability for the contractor's claims due to the representations found in the plans. The central question in the case became determining how much the contractor was entitled to receive. An offer of judgment was made in the amount of \$600,000 plus interest, costs and attorney's fees. The interest would have amounted to approximately \$96,000 and the costs and attorney's fees pursuant to Civil Rule 82 would have been \$60,000, which brought the total settlement package to \$756,000. This computation did not provide compensation for the contractor's delay claims. The contractor responded with an informal offer to settle the case for \$835,000 plus post-judgment interest with the understanding that an initial

Richard I. Pegues
February 3, 1981
Page 3

payment be made from available funds with the balance funded through a supplemental appropriation. That offer was accepted and judgment was entered against the state. It is likely that had the state gone to trial, the contractor would have obtained a judgment well in excess of \$1,000,000 plus interest, costs and attorney's fees.

The funds for the construction of this hatchery were appropriated in 1976. As referenced above, the contract was awarded in the fall of 1977. During that period the state, assisted by its design consultants, selected the site for the facility and accomplished the design work necessary for the construction of the facility. Given the information available at the time, it was reasonably decided that the facility could be designed and constructed without elaborate, expensive and time consuming soils studies. In hindsight, that decision was a mistake.

In analyzing the events which led to the contractor's claims and the subsequent settlement of the case, lawyers have 20/20 hindsight. There were decisions made by the state and its design consultants which led to the contractor's problems. However, when the overall design process is considered and the constraints of time and money during that process are considered, those decisions were not unreasonable. It would have been possible to do a more exhaustive soils analysis on the site which would have raised the cost of designing the project but, more significantly, would have consumed valuable time. Had those soils studies been made, the project probably would have been delayed until the 1979 construction season, thereby increasing the cost of the project.

WFC/mt

MEMORANDUM

State of Alaska

TO: Ron Lorensen
Deputy Attorney General
Department of Law

DATE: November 24, 1980

FILE NO: J-22-367-79

TELEPHONE NO: 465-3603

FROM: William F. Cummings
Assistant Attorney General
Transportation Section
Department of Law - Juneau

SUBJECT: Supplemental Appropriation
to fund the settlement of
Christiansen & Assoc. v.
State; 1JU-79-164 (Hidden
Falls Fish Hatchery Contract
Claim

Attached you will find the stipulation which settles this case and the judgment entered by the court. By the terms of the settlement, the state is obligated to pay the plaintiff \$835,000 plus 8% interest until paid. The \$835,000 represents a lump sum payment of compensation, prejudgment interest, costs and attorney's fees. Under the terms of the settlement, the state was required to pay the contractor all that it could out of presently available funds with the balance funded from a supplemental appropriation. On November 21, 1980, \$115,000 was delivered to plaintiffs' counsel. Of the principal amount, \$720,000 remains to be paid.

The Department of Fish and Game provided the \$115,000 to fund the initial payment. It was agreed that the \$115,000 would be replaced via a supplemental appropriation.

A supplemental appropriation in the amount of \$881,367 is required to fund the settlement. It is based upon the following calculations:

Principal Amount	\$835,000
Interest	
Interest on \$835,000 at 8% per annum for the period November 1 through November 21, 1980	\$ 4,175
Interest on \$720,000 at 8% per annum for the period November 22, 1980 through August 15, 1981	<u>\$ 42,192</u>
Total Interest	<u>\$ 46,367</u>
Total Amount of Supplemental Appropriation	\$881,367

Ron Lorensen
November 24, 1980
Page 2

In these calculations it is assumed that the funds would not be available until the new fiscal year and that a certain amount of time would be necessary to get the money "on the books" so that it could be paid to the contractor.

The disbursement of the funds will result in a transfer to the Department of Fish and Game in the amount of \$115,000 as outlined above. The remainder would consist of a payment to the contractor of \$720,000 plus accrued interest to the date of payment. Any funds not paid as interest could be returned to the general fund.

WFC/mt

Nov 3 11 53 AM '80

CLERK, TRIALS COURT
THE SUPERIOR COURT FOR THE STATE OF ALASKA
BY *[Signature]*
DEPUTY CLERK
FIRST JUDICIAL DISTRICT AT JUNEAU

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5 CHRISTENSEN, RABER, KIEF &)
6 ASSOCIATES, INC., a Washington)
7 corporation,)
8
9 Plaintiff,)
10
11 v.)
12)
13 STATE OF ALASKA,)
14)
15 Defendant,)
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No. 1JU-79-164 Civil

STIPULATION FOR SETTLEMENT

It is hereby stipulated by and between the parties through their respective attorneys of record that all claims of the plaintiff set forth in its Amended Complaint dated October 27, 1980, are hereby compromised and settled in full as follows:

1. Defendant State of Alaska agrees that judgment may be immediately entered in favor of plaintiff Christensen, Raber, Kief & Associates, Inc. in the sum of \$835,000.00 in full settlement of all of said plaintiff's claims arising out of the construction of the Hidden Falls Hatchery project, including all claims set forth in said Amended Complaint and all claims for prejudgment interest, costs and attorney's fees.

2. Defendant State of Alaska agrees that it will pay plaintiff on or before November 20, 1980, as much of the judgment as can be paid with all state funds presently legally available for this purpose, and will, at the first opportunity, submit an appropriation to the Alaska

FAULKNER, DANFIELD, DOGAN & HOLMES
SUITE 201, 311 FRANKLIN ST. JUNEAU, ALASKA 99901
PHONE (907) 986-2210

Legislature for the balance of the judgment.

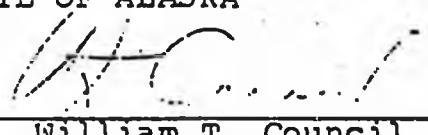
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3. The judgment to be entered pursuant to this stipulation shall bear interest at the rate of eight per cent (8%) per annum from November 1, 1980, until satisfied.

4. The parties hereby mutually release any claim, demand, cause of action, responsibility or liability of each of the respective parties to the other for any matter arising out of or in any way associated with the construction of the Hidden Falls Hatchery project, except for defects presently not known and express warranties.

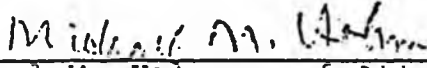
DATED October 31, 1980.

CARPENETI & COUNCIL,
Attorneys for defendant,
STATE OF ALASKA

By 
William T. Council

DATED October 31, 1980.

FAULKNER, BANFIELD, DOOGAN & HOLMES


Michael M. Holmes, of Attorneys
for plaintiff, Christensen, Raber,
Kief & Associates, Inc.

NOV 3 11 53 AM '80

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

CLERK
DEPUTY CLERK *Reed*

FIRST JUDICIAL DISTRICT AT JUNEAU

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CHRISTENSEN, RABER, KIEF &)
ASSOCIATES, INC., a Washington)
corporation,)
)
Plaintiff,)
)
v.)
)
STATE OF ALASKA,)
)
Defendant,)

No. 1JU-79-164 Civil

JUDGMENT

The parties to this action have entered into a Stipulation for Settlement dated October 31, 1980, agreeing that judgment may be entered against the defendant State of Alaska in the sum of \$835,000.

IT IS ORDERED that plaintiff Christensen, Raber, Kief & Associates, Inc. recover from defendant State of Alaska \$835,000.00 which sum includes prejudgment interest, costs and attorney's fees. This judgment shall bear interest at the rate of eight per cent (8%) per annum from November 1, 1980, until satisfied.

DATED this th 3 day of NOVEMBER, 1980.

William T. Council
Superior Court Judge

Submitted by

PAULKNER, BANFIELD, DOOGAN & HOLMES

By *M. M. Holmes*
Michael M. Holmes, of Attorneys for Plaintiff Christensen, Raber, Kief & Associates, Inc.

Approved as to form and content by

CARPENETI & COUNCIL
By *William T. Council*
William T. Council, of Attorneys for Defendant State of Alaska

I certify that this is a full, true and correct copy of an original document on file in the Alaska Trial Court at Juneau.
Witness my hand and the seal of this court.
William T. Council
Date 11/5/80 Clerk

2-11-80 #5

PAULKNER, BANFIELD, DOOGAN & HOLMES
ATTORNEYS AT LAW
JUNEAU, ALASKA 99801
PHONE (907) 586-2210

MEMORANDUM

State of Alaska

TO: Ronald O. Skoog
Commissioner
Department of Fish
and Game

DATE: November 14, 1980

FILE NO:

TELEPHONE NO: 465-3600

FROM: Wilson L. Condon
Attorney General

SUBJECT: Christenson & Assoc. v.
State (Hidden Falls
Hatchery Contract Claim)

Some time back the state was sued by the contractor for the Hidden Falls Hatchery on claims which aggregated to approximately \$2.3 million. Following close review of the claims by both attorneys within the Department of Law and by private counsel retained to represent the state in the lawsuit, we concluded that the state's probable liability on the claims exceeded \$1 million.

Settlement negotiations were undertaken, and a tentative settlement figure of \$835,000 was arrived at, pending the state's being able to pay at least a portion of that figure almost immediately. We determined that the only funds currently available for that purpose would be any balance remaining in the bond issue which initially funded the Hidden Falls Hatchery--ch.214, SLA 1976. After being advised by your staff that somewhere between \$100,000 and \$200,000 remained available in ch.214, we approached the attorneys for the contractor and offered a total settlement of \$835,000, with the outstanding balance in ch.214 (described as somewhere between \$100 and \$200 thousand) payable on or before November 20, 1980 and the remainder to be funded by a supplemental appropriation in the upcoming legislative session. This offer was accepted and a binding "Stipulation for Settlement" was entered by the parties on October 31, 1980 and filed with the court.

Since entry of the settlement we have experienced difficulties with members of your staff who indicate they do not wish to utilize the remaining ch.214 funds in accordance with the settlement because they apparently have other "plans" for the outstanding balance.

On November 21, 1980, the state will be in breach of its settlement agreement if the remaining funds in ch.214, SLA 1976 have not been paid over to the plaintiff. I would appreciate your taking whatever steps are necessary to see to it that those funds are paid over to the plaintiffs in

Ronald W. Skoog

- 2 -

November 14, 1980

accordance with the state's agreement. The warrant should be made payable jointly to Christensen, Raber, Kief and Associates, Inc.; and the law firm of Faulkner, Banfield, Doogan and Holmes.

cc: William T. Council, Esq.
Carpeneti & Council

William F. Cummings
Assistant Attorney General

Ron Lind
Deputy Commissioner, Administration
Department of Transportation and
Public Facilities

Jerry Reinwand
Executive Assistant
to the Governor

MEMORANDUM

State of Alaska

TO: Ronald W. Lorensen
Deputy Attorney General
Department of Law

DATE: November 10, 1980

FILE NO: J-22-367-79

TELEPHONE NO: 465-3603

FROM: William F. Cummings *WFC*
Assistant Attorney General
Transportation Section
Department of Law - Juneau

SUBJECT: Christenson & Assoc.
v. State (Hidden Falls
Hatchery Contract Claim)

Attached is the stipulation of settlement in the action captioned above. By its terms the state is to pay as much as it can now out of available funds toward the settlement and the balance plus interest would be funded by a supplemental appropriation by the legislature.

As you will recall, we were led to believe that between \$100,000 and \$200,000 was available from the SLA 214 (1976) funding to pay a portion of the settlement. This information was conveyed to Mike Holmes, representing C.R.K. during settlement negotiations. In short then, the contractor expects to get at least \$100,000 almost immediately under the settlement.

I have consulted with the Department of Fish and Game to determine the exact amount which is presently available for the settlement. My first contact was Ernest Greek. He indicated, after checking various ledgers, that there was no money available for the settlement. I was, to say the least, surprised. Upon further inquiry, I found that there are funds remaining under SLA 214 (1976), but that Fish and Game has "plans" for them, though few, if any, formal obligations of the funds.

My next contact was Robert Roys, the Director of Fish and Game's Division of Fisheries Rehabilitation Enhancement and Development. I got the same story. There is money left from the 1976 funding, but Fish and Game has plans to spend all of the money. Roys indicated that if part of the remaining funds are used on the settlement, then Fish and Game would need to get a supplemental appropriation to implement the projects started under the 1976 funding. It is his belief that it is better to fund the entire settlement of the Hidden Falls Hatchery contract claim with a supplemental appropriation.

November 10, 1980
Ron Lorensen
Page 2

It appears that we have a "glitch" in the settlement of the case. We were led to believe that funds were immediately available to fund a portion of the settlement. This fact was conveyed to opposing counsel during settlement negotiations. The case has been settled with this understanding. Now, we cannot deliver unless the necessary funds are released, which is apparently possible if the Fish and Game cooperates.

A supplemental appropriation will be necessary even if we get partial funding through Fish and Game from presently available funds. Your guidance would be appreciated as to the next step to take.

Attachment
WFC/mt

MEMORANDUM

State of Alaska

TO: Ronald Skoog
Commissioner
Department of Fish and Game

DATE: November 20, 1980

FILE NO: J-22-367-79

TELEPHONE NO: 465-3603

FROM: William F. Cummings *W.F.C.*
Assistant Attorney General
Transportation Section
Department of Law - Juneau

SUBJECT: Settlement of C.R.K.
v. State; Hidden Falls
Hatchery Construction
Contract Claims

This memorandum is to confirm our telephone conversations of November 19 and 20, 1980 regarding partial payment of the settlement with the contractor in the action captioned above.

As you will recall, the state and the contractor have agreed to settle this case for \$835,000 inclusive of interest, costs, and attorney's fees with the provision that as much as possible would be paid out of available funds, and the remainder to be paid out of a supplemental appropriation. During negotiations with the contractor it was represented that between \$100,000 and \$200,000 could be paid. Under the terms of the settlement the \$835,000 would bear interest at 8% from November 1, 1980 until paid.

You have indicated that \$115,000 could be made available to make the initial payment under the settlement. Please direct that a state warrant in that amount be issued payable to the contractor and his local counsel, as requested in Mr. Condon's memorandum of November 14, 1980.

The Department of Law will obtain a supplemental appropriation to fund the \$835,000 plus interest, which must be paid to the contractor under the terms of the settlement. Of that amount \$115,000 will be allocated to the Department of Fish and Game to replace the advance for the settlement's initial payment. The remainder will be paid to the contractor.

Your assistance and many courtesies in this matter are appreciated.

WFC/mt

cc: Ron Lorensen ✓

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT ANCHORAGE

RECEIVED
Department of Law
Juneau, Alaska

EDGAR BAILEY, et al.,
Plaintiffs,

v.

LOWELL THOMAS, JR., Lieutenant
Governor of the State of Alaska,
Defendant,

and

MICHAEL BEIRNE, et al.,
Defendant-
Intervenors.

JAN 28 1981

AM
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No. 3AN-78-1592 Civil

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT

JAN 26 1981

CLERK OF THE TRIAL COURTS
BY: *[Signature]* DEPUTY

JUDGMENT

IT IS HEREBY ORDERED AND ADJUDGED that plaintiff Trustees for Alaska recover from the State of Alaska the sum of \$12,817.50 in attorneys fees plus interest at eight percent per annum from August 18, 1978 until the date of payment:

DATED at Anchorage, Alaska this 26 day of

January, 1981.

[Signature]
Superior Court Judge

I certify that on 1-26-81
a copy of this document was sent to:
[Signature] of Record, or
LJ [Signature]
D.C.E. 26-81 [Signature]
Deputy Clerk

Rec'd Jnl: _____

JAN 28 1981

JAN 20 1981

THIRD JUDICIAL DISTRICT

EDGAR BAILEY, et al.,
 Plaintiffs,
 LOWELL THOMAS, JR., Lieutenant
 Governor of the State of Alaska,
 Defendant,
 and
 MICHAEL BEIRNE, et al.,
 Defendant-
 Intervenors.

No. 3AN 78-1592 Civil

ORDER

Having reviewed the plaintiff's Motion for Attorney Fees, the defendant's Opposition filed thereto, and the Supreme Court's Opinion in Thomas v. Bailey, Op. No. 2094, May 16, 1980, the Court concludes that an award of actual attorney's fees is appropriate in the instant case. Having reached this conclusion it is hereby

ORDERED that plaintiffs shall recover from the State of Alaska the sum of \$12,817.50 in attorney's fees.

DATED at Anchorage, Alaska this 6 day of January, 1981.

[Signature]
 MARK C. ROWLAND
 Superior Court Judge

I certify that on January 6, 1981
 a copy of the above was mailed to each
 of the following at their addresses of
 record: *[Handwritten names and addresses]*
[Signature]
 Secretary

*Birch Home State
 INSTANT initiative*

Filed in the Trial Courts
 STATE OF ALASKA THIRD DISTRICT

JAN 6 1980

CLERK OF THE TRIAL COURTS
 BY *[Signature]* DEPUTY
RECEIVED
 Department of Law

JAN 7 1981

Office of the Attorney General
 Anchorage Branch
 Anchorage, Alaska

[Handwritten notes and signatures]
 I certify that on 1/7/81
 a copy of this document was sent to:
 [List of recipients]
[Signature]

THIRD JUDICIAL DISTRICT

RONALD M. ZOBEL and
PATRICIA L. ZOBEL,
husband and wife,

Plaintiffs,

v.

THOMAS WILLIAMS,
COMMISSIONER OF REVENUE
and STATE OF ALASKA,

Defendants.

STATE OF ALASKA
THIRD JUDICIAL DISTRICT
RECEIVED 10 31 AM 1981
Department of Law
Juneau, Alaska
FEB 02 1981
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Case No. 3AN-80-2856 Civil

STIPULATION AND ORDER RE ATTORNEY FEES

In order to settle all disputes relating to attorney fees and costs incurred in the litigation of this case before the superior court and the Alaska Supreme Court, the parties agree as follows:

1. The State of Alaska agrees to pay attorney fees and costs incurred by plaintiffs as of October 24, 1980, and attributable to the portion of this litigation dealing with the income tax exemption statute (AS 43.20.017).

2. Plaintiffs agree that the attorney fees and costs referred to in paragraph 1 are as follows:

Superior Court:

Attorney fees \$ 8,730.00
Costs 172.35

Alaska Supreme Court:

Attorney fees \$ 4,805.00
Costs -0-

TOTAL

\$13,707.35

3. If plaintiffs prevail in their appeal to the United States Supreme Court relating to the permanent fund dividend program (AS 43.23), the state agrees to pay attorney fees and costs incurred by plaintiffs as of October 24, 1980, and attributable to the portion of the litigation dealing with the permanent fund divided program.

10.5% interest 9/13/81 - 5/81 @ \$4.00 per day
JAN 20 1981

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
JOSHUA K. JUNEAU, ALASKA 99811
PHONE 465-3600

referred to in paragraph 3 are as follows:

Superior Court:

Attorney fees	\$ 8,730.00
Costs	172.35

Alaska Supreme Court:

Attorney fees	\$ 4,805.00
Costs	<u>-0-</u>

TOTAL \$13,707.35

DATED at Juneau, Alaska, this 13th day of January,

1981:

WILSON L. CONDON
ATTORNEY GENERAL

By: Susan A. Burke
Susan A. Burke
Assistant Attorney General

DATED at Anchorage, Alaska, this 15 day of January,

1981.

Mark A. Sandberg
Mark A. Sandberg
Attorney for Plaintiffs

FILED IN THE TRIAL COURTS
State of Alaska Third District
JAN 20 1981

ORDER
Clerk of the Trial Courts
By sdj Deputy

IT IS SO ORDERED.

DATED at Anchorage, Alaska, this 20 day of Jan

1981.

1-27-81
 A copy of this document was sent to:
 attorney(s) of record, at
 Other: _____
 at address of record _____
 D.O.E. _____
 Deputy Clerk

[Signature]
Judge of the Superior Court

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
FOUCH K. JUNEAU, ALASKA 99811
PHONE 465-3600

MEMORANDUM

State of Alaska

TO: Dick Pegues
Administrative Officer
AGO - Juneau

DATE: September 3, 1980

FILE NO:

PHONE NO:

FROM: Carolyn E. Jones
Assistant Attorney General
AGO - Anchorage

SUBJECT: Thomas v. Croft
No. A22-699-79

I am enclosing the Supreme Court mandate in the above-entitled case. The State owes Chancy Croft as follows:

\$15,000	Attorney's fees for the election contest case
4,208.85	As costs for the election contest case
588.30	On the issue of attorney's fees.

CEJ:tb
Enclosures

RECEIVED
Department of Law
Alaska

SEP 6 1980

AM 7:18 PM 3:16

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Supreme Court



Court of Appeals

State of Alaska

OFFICE OF THE CLERK
303 "K" STREET
ANCHORAGE, ALASKA
99501
(907) 264-0629

July 31, 1980

RECEIVED
Department of Law

AUG 1 1980
Office of the Attorney General
1000 North Fairbanks
ANCHORAGE, ALASKA

Mrs. Kim Smith
Appeals Clerk
303 K Street
Anchorage, Alaska

Re: Thomas v Croft
Superior Court No. 3AN-78-6243 a
3AN-78-6264
Supreme Court No. 4719

Dear Mrs. Smith:

Enclosed is the mandate of the Supreme Court issued
July 28, 1980. Copies have been sent to counsel.

Very truly yours,

Deputy Clerk of Court

cc: Supreme
Juneau
Fairbanks
Counsel
file

THE SUPREME COURT OF THE STATE OF ALASKA

LOWELL THOMAS, JR.,)
Lieutenant Governor of)
Alaska, et al.,)

Appellants,)

File No. 4719

v.)

CHANCY CROFT,)

MANDATE

Appellee.)

TO: Superior Court of the State of Alaska,
Third Judicial District at Anchorage.

Lowell Thomas, Jr., Lieutenant Governor of Alaska, et al., filed an appeal from an Order of the Superior Court, Third Judicial District at Anchorage in Civil action No. 3AN-78-6243 and 3AN-78-6264 entitled "WALTER J. HICKEL, Plaintiff vs. LOWELL THOMAS, JR., et al., Defendants and EDWARD A. MERDES, Plaintiff vs. LOWELL THOMAS, JR., et al., Defendants". The case was heard by this court on January 24, 1980. On July 18, 1980, the court filed its written opinion.

IT IS ORDERED:

The Order of the Superior Court, entered April 20, 1979, is affirmed.

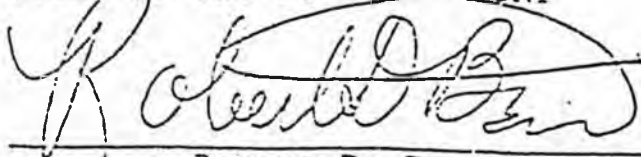
Appellee shall recover from appellant costs and attorney fees as shown below:

<u>Costs and Attorney's Fees</u>	
Duplicating Appellee's Brief-----	\$ 88.30
Attorney's Fees-----	\$ 500.00
Total	\$ 588.30

WITNESS the Honorable Jay A. Rabinowitz, Chief Justice of the Supreme Court, State of Alaska, this 28th day of July, 1980.

SEAL

CLERK OF THE SUPREME COURT



Robert D. Bacon

The most hotly contested issue before the court on this motion for attorney's fees is who will pay the award of fees to Croft. The State relies on its status as a co-prevailing party to insulate it from liability. Mercedes and Hickel contend that these cases constitute public interest litigation and that it would be an abuse of discretion to award attorney's fees against them. Gilbert v. State, 526 P.2d 1131 (Alaska 1974). If the court were to accept the position of both the State and Mercedes and Hickel, Croft would be without a source for the recovery of fees to which he is admittedly entitled. In the interest of preventing such a gross inequity, this court has carefully examined the briefs and authorities cited therein. This court concludes that these cases are genuine public interest litigation and that attorney's fees should not be awarded against Hickel and Mercedes. Concomitantly, the court rejects the theory of the State that it is insulated from an award of attorney's fees against it because it was a co-prevailing party.

The test for whether a party has brought public interest litigation is set out in Anchorage v. McCabe, 568 P.2d 986, 991 (Alaska 1977). The test, derived from La Raza Unida v. Volpe, 57 F.R.D. 94 (N.D.Cal. 1972), has three factors:

- (1) the effectuation of strong public policies;
- (2) the fact that numerous people received benefits from the plaintiffs' litigation success;
- (3) the fact that only a private party could have been expected to bring this action.

Plaintiffs Hickel and Mercedes actions meet these three factors. These cases were election contests brought pursuant to AS 15.20.540, a section of the election code. It is clear, without citing cases, that there is a strong public policy favoring fair and correctly conducted elections. The importance of this policy is underscored by the legislature creating a statutory cause of action in AS 15.20.540. These cases, which

revealed questionable practices and some actual misconduct in the conduct of the challenged primary election, clearly effectuated the policy of keeping election practices in the public eye. As to the second factor, this court concludes that the voters of the State of Alaska are all beneficiaries of the litigation in that election practices have been regularized and are currently under renewed scrutiny of both the executive and legislative branches of state government as a result of these suits, scrutiny which hopefully will lead to needed reform. As to the third factor, the fact that the legislature saw fit to place the right to bring an election contest in the private citizenry (be they candidates or 10 qualified voters) evidences a recognition by the legislature that it is up to private citizens to vindicate their right to a properly conducted election. Therefore, the court finds that plaintiffs Hickel and Merdes have raised questions of genuine public interest and that their litigation furthered the public interest. Accordingly, they should not be penalized by an award of attorney's fees against them.

The State claims that there is no provision in Civil Rule 82 for award of attorney's fees against a co-prevailing party and that there is a strong public policy against such an award. As a general matter, this court is in agreement with the State. The circumstances of this case are not typical, however. Here, Croft had no control over the conduct of the election, the subject of these lawsuits. The conduct of the election was solely in the hands of the State and its agents. There would have been no lawsuit if the State had not engaged in questionable and, indeed, illegal practices in the conduct of the election. Chancy Croft would not have incurred the fees in question if the election had been conducted in a manner above reproach. The fact that the extent of the misconduct by the State did not result in the election being set aside does not vindicate the State in

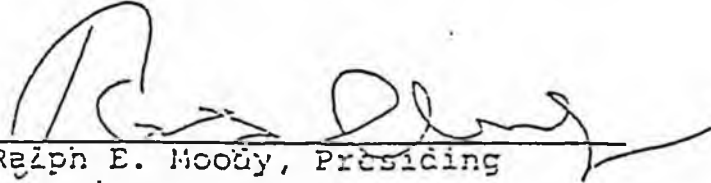
this matter. The State's malconduct is responsible for Mr. Croft having generated attorney's fees in this case, and the State should pay. This court holds that attorney's fees may be awarded against a co-prevailing party where the lawsuit arises from improper conduct of a co-prevailing party, which has necessitated the expenses of defense by the innocent co-prevailing party. Accordingly, the State must pay this court's award of attorney's fees to Mr. Croft.

One point remains. Mr. Croft seeks an award of his entire attorney's fees in this action. Anchorage v. McCabe, supra, indicates that in a proper case full fees may be awarded a successful public interest litigant. This court is not convinced that this is a proper case to extend that portion of the McCabe rationale. Accordingly, this court will apply the general rationale of Malvo v. J.C. Penney Co., Inc., 512 P.2d 575, 587 (Alaska 1973) that the purpose of Civil Rule 82 is to partially compensate a prevailing party. The court also notes that while Mr. Croft was certainly justified in employing his own counsel and committing his own resources in defense of these actions, the brunt of the research and technical preparation for the defense of this case was borne by the State. Clearly, Mr. Croft was a beneficiary of the vast resources the State brought to bear in its defense of the action.


Therefore,

IT IS ORDERED that Chancy Croft recover attorney's fees in the amount of \$15,000 (FIFTEEN THOUSAND DOLLARS) from the State of Alaska.

DONE at Anchorage, Alaska, this 20th day of April, 1979.


Ralph E. Moody, Presiding
Superior Court Judge

Copies of the above Order were forwarded to all parties of record on 4-30-79.


Secretary to Judge Moody

MEMORANDUM

State of Alaska

TO: Cynthia Stolenberg
Administrative Assistant
Attorney General's Office
Anchorage

DATE: September 23, 1980

FILE NO:

TELEPHONE NO:

FROM: Richard I. Pegues
Administrative Officer
Attorney General's Office
Juneau

SUBJECT: Kimura v. ABC Board

The department's FY 82 appropriation to pay judgments has already been expended. Payment of costs fees in Kimura v. ABC Board must therefore await supplemental appropriation by the Legislature. Such appropriation is not expected until about June 1, 1981, as the legislature usually does not act on supplemental requests until shortly before adjournment. Please ask Dave Leblond to advise Plaintiff's counsel of this delay.

RIP:mb

\$ 1,140.00
+ 74.75 INT Aug 6, 1980 thru 5-31-81

\$ 1,214.75

MEMORANDUM

State of Alaska
DEPARTMENT OF LAW

DEPT. Juneau, Alaska

DIV. _____

SEC. SEP 22 1980

TO:

Judy Thomsom
Juneau AGO

AM _____ PM _____
7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6

DATE: 9/18/80

FROM: Cynthia Stoltenberg
Anchorage AGO

SUBJECT: Costs and attorney's fees
Kimura v. ABC Board
3AN-79-8061-CIV.

Please have a warrant issued for \$1,140.00 in payment of the Summary Judgment in the above matter, payable to Wohlforth & Flint, and send it to David LeBlond for transmittal.

Thanks, Judy.

Attachments



SEP 15 1980
ANCHORAGE BRANCH
ANCHORAGE, ALASKA

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

GEORGE Y. KIMURA,)
)
Plaintiff,)
)
vs.)
)
ALCOHOLIC BEVERAGE CONTROL)
BOARD,)
)
Defendant.)

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT

AUG 6 1980

Clerk of the Trial Courts
By [Signature] Deputy

No. 3AN-79-8061-CIV.

SUMMARY JUDGMENT

Upon the plaintiff's Motion for Summary Judgment, and the Court finding that the pleadings, exhibits and affidavit showed an absence of any genuine issue of any material fact,

IT IS ORDERED, ADJUDGED AND DECREED:

1. that the action of the Alcoholic Beverage Control Board dated September 27, 1979 requiring the construction of hotel or motel units pursuant to AS 04.10.260 as a requirement for operation or transfer of the license of George Y. Kimura is null and void; and
2. that George Y. Kimura is the licensee of a beverage dispensary license subject only to the same laws, regulations, privileges and restrictions applicable to all beverage dispensary licensees generally; and
3. that the Alcoholic Beverage Control Board is hereby ordered to ^{decide whether to} transfer the license of George Y. Kimura upon proper application and compliance with laws and regulations applicable to all beverage dispensary licensees generally without regard to any restrictions relating to hotels, motels or tourist facilities; and
4. that plaintiff recover from defendant costs in the amount of \$ 140.00, and attorney's fees of

11:11 1980

\$ 1,110.00, for a total judgment of \$ 1,140.00. Said judgment shall bear interest at the rate of eight percent (8%) per annum until paid.

DATED at Anchorage, Alaska, this 6th day of August, 1980.

William A. Warden
SUPERIOR COURT JUDGE

I certify that on 8-11-80
a copy of this document was sent to:
 Attorney(s) of Record, or
 Clerk:
at address of record.
D.O.E. 8-11-80 W.A.W.
Deputy Clerk

I Certify that on 9-12-80
a copy of the above was mailed to each
of the following at their address of
record.
Michelle Brown Robert B. Flint
DAVID T. LeBlond
Secretary

KRISTEN O'DOWD, Clerk
By _____; Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN

PATRICK W. GARDNER)
)
Appellant,)
)
vs.)
)
COMMERCIAL FISHERIES)
ENTRY COMMISSION,)
)
Appellee.)

No. 1KE-79-350 Civil
JUDGMENT FOR COSTS

The Court having considered Appellant's motion for award of costs, together with the entire record herein, the motion is granted.

It is hereby ordered that PATRICK W. GARDNER, Appellant, recover from the Appellee, an agency of the State of Alaska, costs in the amount of \$ 997.60.

It is further ordered that a deposit as security for costs made by PATRICK W. GARDNER (at the insistence of the State) be immediately returned to him if it has not already been returned.

DONE and ordered entered at Ketchikan, Alaska this 5th day of July, 1980.

Thomas E. Schulz
Thomas E. Schulz
Superior Court Judge

7/14/80

MEMORANDUM

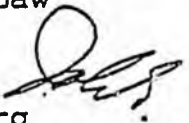
State of Alaska

TO: Dick Pegues
Administrative Officer
Department of Law

DATE: October 15, 1980

FILE NO:

TELEPHONE NO:

FROM: 
John G. Gissberg
Assistant Attorney General
Anchorage - AGO

SUBJECT: Tyonek v. State,
3AN 80-3073 Civil

The enclosed order directs us to pay plaintiffs' attorneys costs and fees of \$10,000. We resisted plaintiffs' motion for fees because there was no breakdown of the costs. However, the court only disregarded \$2,600 of their claim.

Plaintiffs were represented by Norman Cohen (an attorney working at Rural Cap) and Don Mitchell (a lawyer with the Alaska Federation of Natives). Please have the check made out to "Rural Alaska Community Action Inc., attention: Norman Cohen."

Thank you for your cooperation.

Encl: Judgment

P.S. Now I know what the other side is like!

JGG/jmo

\$ 10,673.92

NORMAN A. COHEN
P.O. Box 3-3903
Anchorage, Alaska 99501

DONALD C. MITCHELL
1577 C Street, Suite 304
Anchorage, Alaska 99501

Attorneys for Plaintiffs

FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

SEP. 5 4 27 PM 1980

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT


NATIVE VILLAGE OF TYONEK, et al.,)
)
 Plaintiffs)
)
 vs.)
)
 ALASKA BOARD OF FISHERIES, et al.,)
)
 Defendants.)

CIVIL ACTION NO. 3AN-80-3073

MOTION FOR COSTS AND ATTORNEYS FEES

COME NOW the plaintiffs, the prevailing parties in the above-entitled action, and move this Court for an award of costs and attorneys fees pursuant to A.R.C.P. 82(a)(1). The plaintiffs are entitled to \$60.00 in costs and \$12,600.00 in attorney's fees. This motion is based upon the attached Affidavit of Counsel and Memorandum of Law.

DATED this 5th day of September, 1980, at Anchorage, Alaska.


Norman A. Cohen
Attorney for Plaintiffs

OCT 9 1980

CLERK OF THE TRIAL COURTS
BY KB DEPUTY

ORDER

IT IS HEREBY ORDERED that defendants pay to plaintiffs
\$60.00 in costs and ^{7,000.00} \$12,000.00 in attorneys fees.

DATED this 9th day of ^{October} ~~September~~, 1980, at Anchorage,
Alaska.

John Carlson
Judge of the Superior Court

I certify that on 10-10-80
a copy of this document was sent to:
 Attorney(s) of Record, or
 Other:
D.O.E. 10-10-80 KB
Deputy Clerk
Sec'd In: _____

A copy of this document has been
served upon counsel for defendants.
September 5, 1980. KB

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

AT KODIAK

FILED IN
Alaska Trial Courts
Third Judicial District
at Kodiak

OCT 28 1980

Clerk of the Trial Courts

By: J. W. [Signature]
DEPUTY

STEVEN COPELAND,)
)
Appellant,)
)
vs.)
)
ALASKA COMMERCIAL FISHERIES)
ENTRY COMMISSION,)
)
Appellee.)

No. 3AN-79-2207 Civil

JUDGMENT

This matter having come on for consideration before this court, and the parties having briefed and been heard on the issues;

IT IS HEREBY ADJUDGED that this case is remanded to the Commercial Fisheries Entry Commission for a hearing at which appellant may make a showing of additional points, including special circumstances and income dependence points, consistent with my Memorandum Decision and Opinion dated August 13, 1980. The Memorandum Decision and Opinion shall constitute the findings of fact and conclusions of law in this case.

In particular, the Commission is directed to take cognizance of the fact that the year 1970 substituted for 1972 was completely unrepresentative of appellants' participation in the fishery and his dependence thereon, and thus in connection with other compelling facts constituted a "special circumstance." Appellant's income dependence points were not realistically reflected by his income dependence for 1970 and 1971, and he is entitled to a hearing to demonstrate

SEP 16 1980

-036
FRY, BLISS
SEAN, INC.
LAWYERS
1111 EAST 10TH
ANCHORAGE, ALASKA 99501
278-4571
278-5575

RECEIVED
Department of Law
KODIAK

NOV 3 1980

Page 91

MEMORANDUM

State of Alaska

Dick
TO: ~~Ed~~ Pegues
Assistant Attorney General
Juneau

DATE: December 4, 1980

FILE NO:

TELEPHONE NO:

FROM: Larri Irene Spengler *LS*
Assistant Attorney General
Anchorage - AGO

SUBJECT: Attorney's Fee Judgment
& Costs

Attached is a copy of an order awarding attorney's fees and a clerk's ruling on a cost bill in Lewis Gjosund, et al., Plaintiffs, v. Alaska Dept. of Fish & Game, et al., Defendants, Case No. 2HO 80-92 CIV. The attorney's fee award totals \$8,680, and the costs total \$342.51.

These rulings came at the end of one of the subsistence cases our office lost this summer. By copy of this memo I am informing Marty Friedman that once the legislature makes the appropriation for the attorney's fees (at a time we cannot foresee at this point) you will be forwarding him his check.

I am closing my file, but if I can answer any questions on the matter, please feel free to contact me.

LIS:dr
Attachment

cc: Marty Friedman
Box 337
Homer, Alaska

Attorney fees
Costs

DEC 3 1980

\$ 8,680.00
342.51
<hr/>
9,022.51
504.41
<hr/>
9,526.92

10.5% INTEREST

THIRD JUDICIAL DISTRICT

NOV 18 1980

LEWIS GJOSUND, DORA WELCH,
and KACHEMAK BAY SUBSISTENCE
GROUP, INC.,

Plaintiffs,

v.

ALASKA DEPARTMENT OF FISH
AND GAME; RONALD O. SKOOG,
individually and in his
capacity as Commissioner of
the Alaska Department of Fish
and Game; ALASKA BOARD OF
FISHERIES; ALASKA DEPARTMENT
OF FISH AND GAME,

Defendants.

Office of the Attorney General
Judiciary Branch
Juneau, Alaska

FILED IN THE TRIAL COURTS
STATE OF ALASKA, THIRD
JUDICIAL DISTRICT AT HOMER

NOV 18 1980

Clerk of the Trial Courts

By _____ Deputy

Case No. 3HO-80-92-Civil

ORDER AWARDING FULL AMOUNT OF
ATTORNEY'S FEES CLAIMED

IT IS HEREBY ORDERED that Plaintiffs, the prevailing parties, are awarded full amount of attorney's fees claimed in the sum of \$8,680.00, pursuant to Civil Rule 82(a).

This award is supported by Findings In Support of Order Awarding Full Amount Of Attorney's Fees Claimed filed herewith.

SIGNED & DATED this 17th day of November, 1980.

PAUL B. JONES
Superior Court Judge

THIRD JUDICIAL DISTRICT

LEWIS GJOSUND, DORA WELCH,)
and KACHEMAK BAY SUBSISTENCE)
GROUP, INC.,)

Plaintiffs,)

v.)

ALASKA DEPARTMENT OF FISH)
AND GAME; RONALD O. SKOOG,)
individually and in his)
capacity as Commissioner of)
the Alaska Department of Fish)
and Game; ALASKA BOARD OF)
FISHERIES; ALASKA DEPARTMENT)
OF FISH AND GAME,)

Defendants.)

FILED IN THE TRIAL COURTS
STATE OF ALASKA, THIRD
JUDICIAL DISTRICT AT HOMER

NOV 18 1980

Clerk of the Trial Courts

By _____ Deputy

Case No. 3HO-80-92-Civil

FINDINGS IN SUPPORT OF ORDER AWARDING
FULL AMOUNT OF ATTORNEY'S FEES CLAIMED

Declaratory Judgment and Permanent Injunctive

Relief was granted to the Plaintiffs on July 11, 1980, which further ordered that the Plaintiffs were the prevailing parties and were awarded costs taxed pursuant to Civil Rule 79 and attorney's fees fixed pursuant to Civil Rule 82(a).

The Court having reviewed the Plaintiffs' Motion for Attorney's Fees and the Defendants' Response to Motion for Attorney's Fees and to Bill of Costs and Notice of Application for Costs and the Plaintiffs' Reply to Defendants' Response to Motion for Attorney's Fees and to Bill of Costs and Notice of Application for Costs, submitted by the parties without request for oral argument, and the Court being otherwise fully advised in the premises, awards full amount of attorney's fees claimed by Plaintiffs in the amount of Eight Thousand Six Hundred-Eighty Dollars (\$8,680.00), supporting the award with the following findings:

1. Plaintiffs were the prevailing parties as indicated in the Declaratory Judgment and Permanent Injunctive

Relief dated July 11, 1980.

2. This matter was public interest litigation because of the presence of the following three factors:

- a. The effectuation of strong public policies, to-wit: the priority given to subsistence fishing and whether this should continue in the traditional, customary, and historical manner existing prior to 1978 in the Southern District of Cook Inlet as to the permissible length of set-gill nets and in the re-opening of the waters of the north shore of Kachemak Bay from Anchor Point to a Department of Fish and Game marker located approximately 1.8 miles east of the Homer Spit, and including the Homer Spit, to subsistence fishing.
- b. Plaintiffs, Lewis Gjosund, Dora Mulch and the Kachemak Bay Subsistence Group, Inc. represent numerous people similarly situated who will receive benefits from Plaintiffs' litigation success.
- c. Only private parties could have been expected to bring this action as they are subsistence fishermen in the Southern District of Cook Inlet who depend upon subsistence fishing as a means of providing a substantial part of their annual food supply.

3. Counsel for Plaintiffs has filed a verified statement of the hours of work performed in representing the Plaintiffs in this action, totalling 124 hours at \$70.00 per hour for a total amount claimed to be incurred of \$8,680.00.

4. The hours listed in Finding No. 3 preceding, as verified by Plaintiffs' counsel, reflects approximately 90 percent of the actual hours and work involved in presentation and preparation of the case.

5. From the familiarity of the Court with the case, the amount of research and investigation required of a legal nature supports 124 hours of work by the Plaintiffs' attorney as claimed.


6. The fee of \$70.00 per hour is neither the highest nor the lowest and is consistent with many private practitioners in the Third Judicial District of the State of Alaska who may practice in the Homer area.

7. The result achieved by the Plaintiffs' attorney is important to all the subsistence fishermen in the area of concern in the Southern District of Cook Inlet, preserving the highest priority given to subsistence users of fish resources for providing a food supply to those similarly situated as the Plaintiffs.

8. The attorney representing the Plaintiffs has, from the Court's experience, represented clients in public interest issues in the past and is skilled in the means of preparation of such cases for presentation to the Court.

9. The action brought by the Plaintiffs is a substantial public interest issue and not frivolous in its benefit to the Plaintiffs and others similarly situated and effects the policy of the State to give its highest priority to subsistence-resource users of fish and game.

DATED at Homer, Alaska this 11 day of November, 1980.



PAUL E. JONES
Superior Court Judge

THIRD JUDICIAL DISTRICT

LEWIS GJOSUN, DORA MULCH
et al

Plaintiff(s),

vs.

ALASKA DEPARTMENT OF FISH
and GAME, RONALD O. SKOOG,
et al Defendant(s).

FILED IN THE TRIAL COURTS
STATE OF ALASKA, THIRD
JUDICIAL DISTRICT AT HOMER

SEP 17 1980

Clerk of the Trial Courts

By _____ Deputy

Civil Action No. 3110-80-02 CIV

CLERK'S RULING ON COST BILL

Plaintiff's Memorandum of Costs and Disbursements came on for hearing before the Clerk on the 17 day of _____, 1980; Plaintiff(s) appearing by _____, and Defendant(s) also appearing by _____.

No objections to the cost bill having been filed, costs are hereby taxed in favor of Plaintiff's and against Defendants as follows:

Filing Fees	\$ 50.00
Service Fees	\$ 7.55
Witness Fees	\$
Per Diem	\$
Depositions	\$
Travel	\$
Copy Costs	\$
Other	\$ 284.96
	\$
TOTAL	\$ 342.51

DATED at Homer Alaska, this 17th day of

September; 1980.

I hereby certify that a copy of the foregoing cost bill was mailed on Sept 17, 1980 to the attorneys of record:

A. Prasher
Deputy Clerk

T.S. MONINSKI

Clerk of Court

By A. Prasher
Deputy Clerk

Talked to Larry Spengler & Marty Friedman on 9-11-80. Neither party wished to appear.

MEMORANDUM

State of Alaska

TO: Richard I. Pegues
Administrative Officer
Department of Law

DATE: February 3, 1981

FILE NO: J-22-367-79

TELEPHONE NO: 465-3603

FROM: William F. Cummings *W.F.C.*
Assistant Attorney General
Transportation Section
Department of Law - Juneau

SUBJECT: Supplemental Appropriation
to Fund the Settlement of
Christiansen, Raber, Kief
and Associates v. State
IJU-79-164; Hidden Falls
Construction Contract Claim

As you are aware, the Department of Law is seeking a supplemental appropriation in the amount of \$881,367 to fund the settlement of Christiansen, Raber, Kief and Assoc. v. State. In this memorandum you will find an analysis of the rationale behind the settlement.

William T. Council was retained to represent the state in the litigation. In the course of preparing the case for trial he came to the conclusion that the state could not escape liability for the contractor's claims and that reasonable attempts should be made to settle the case. Mr. Council ultimately settled the case for \$835,000, which is a lump sum figure inclusive of compensation, pre-judgment interest, costs and attorney's fees. By the terms of the settlement, C.R.K. would receive interest at the rate of 8% per annum until paid.

The settlement with C.R.K. was made with my concurrence and that of the Attorney General in accordance with AS 44.23.020. It is a settlement which is in the best interests of the state. Further, it represents reasonableness on the part of the state and the contractor. These aspects will be clear when the background of the claim is explored below.

The Hidden Falls Fish Hatchery is located on Baranof Island. The project involved piping water from a lake down a more or less vertical rock face to a hatchery building where the salmon eggs would be incubated, reared, and eventually released as fry. There were no facilities at the job site of any sort, e.g., docks, crew quarters, or storage areas. The only access available was via float plane or barge. All construction materials and equipment were shipped from Seattle.

Richard I. Pegues
February 3, 1981
Page 2

The contract was awarded to Christiansen, Raber, Kief and Associates in November, 1977, for approximately \$3.2 million. Work commenced in January, 1978. The contractor mobilized its forces under the assumption that a land-based camp was feasible. This assumption was reasonably based upon the representations contained in the plans.

The contractor attempted for approximately six weeks to construct a land-based camp at the site and to accomplish other earthwork. However, the contractor experienced soil conditions at the site which were much different than indicated in the plans, i.e., there was more overburden to be wasted than the plans indicated and much of the material taken from the structure excavation could not be used for construction purposes, nor was it suitable for the construction of a camp. Finally, the contractor demobilized its forces to Sitka and returned with a floating camp.

After the contractor's return, the work on the site proceeded in a more or less orderly fashion. However, it was behind schedule due to the initial problems experienced getting the job under way and the changed conditions experienced in the earthwork. The delays experienced were to impact the remainder of the job.

In the contractor's amended complaint, \$2.5 million in additional compensation was sought. This represents compensation for the changed conditions claims, i.e., the extra costs of camp construction and earthwork, claims for extra items of work, and delay and impact claims for itself and its mechanical subcontractor. The contractor would be also entitled to pre-judgment interest, costs and attorney's fees should it prevail on its claims.

In preparing the case for trial, it became clear that the state could not escape liability for the contractor's claims due to the representations found in the plans. The central question in the case became determining how much the contractor was entitled to receive. An offer of judgment was made in the amount of \$600,000 plus interest, costs and attorney's fees. The interest would have amounted to approximately \$96,000 and the costs and attorney's fees pursuant to Civil Rule 82 would have been \$60,000, which brought the total settlement package to \$756,000. This computation did not provide compensation for the contractor's delay claims. The contractor responded with an informal offer to settle the case for \$835,000 plus post-judgment interest with the understanding that an initial

Richard I. Pegues
February 3, 1981
Page 3

payment be made from available funds with the balance funded through a supplemental appropriation. That offer was accepted and judgment was entered against the state. It is likely that had the state gone to trial, the contractor would have obtained a judgment well in excess of \$1,000,000 plus interest, costs and attorney's fees.

The funds for the construction of this hatchery were appropriated in 1976. As referenced above, the contract was awarded in the fall of 1977. During that period the state, assisted by its design consultants, selected the site for the facility and accomplished the design work necessary for the construction of the facility. Given the information available at the time, it was reasonably decided that the facility could be designed and constructed without elaborate, expensive and time consuming soils studies. In hindsight, that decision was a mistake.

In analyzing the events which led to the contractor's claims and the subsequent settlement of the case, lawyers have 20/20 hindsight. There were decisions made by the state and its design consultants which led to the contractor's problems. However, when the overall design process is considered and the constraints of time and money during that process are considered, those decisions were not unreasonable. It would have been possible to do a more exhaustive soils analysis on the site which would have raised the cost of designing the project but, more significantly, would have consumed valuable time. Had those soils studies been made, the project probably would have been delayed until the 1979 construction season, thereby increasing the cost of the project.

WFC/mt

MEMORANDUM

State of Alaska

TO: Ron Lorensen
Deputy Attorney General
Department of Law

DATE: November 24, 1980

FILE NO: J-22-367-79

TELEPHONE NO: 465-3603

FROM: William F. Cummings
Assistant Attorney General
Transportation Section
Department of Law - Juneau

SUBJECT: Supplemental Appropriation
to fund the settlement of
Christiansen & Assoc. v.
State; LJU-79-164 (Hidden
Falls Fish Hatchery Contract
Claim

Attached you will find the stipulation which settles this case and the judgment entered by the court. By the terms of the settlement, the state is obligated to pay the plaintiff \$835,000 plus 8% interest until paid. The \$835,000 represents a lump sum payment of compensation, prejudgment interest, costs and attorney's fees. Under the terms of the settlement, the state was required to pay the contractor all that it could out of presently available funds with the balance funded from a supplemental appropriation. On November 21, 1980, \$115,000 was delivered to plaintiffs' counsel. Of the principal amount, \$720,000 remains to be paid.

The Department of Fish and Game provided the \$115,000 to fund the initial payment. It was agreed that the \$115,000 would be replaced via a supplemental appropriation.

A supplemental appropriation in the amount of \$881,367 is required to fund the settlement. It is based upon the following calculations:

Principal Amount	\$835,000
Interest	
Interest on \$835,000 at 8% per annum for the period November 1 through November 21, 1980	\$ 4,175
Interest on \$720,000 at 8% per annum for the period November 22, 1980 through August 15, 1981	\$ <u>42,192</u>
Total Interest	\$ <u>46,367</u>
Total Amount of Supplemental Appropriation	\$881,367

Ron Lorensen
November 24, 1980
Page 2

In these calculations it is assumed that the funds would not be available until the new fiscal year and that a certain amount of time would be necessary to get the money "on the books" so that it could be paid to the contractor.

The disbursement of the funds will result in a transfer to the Department of Fish and Game in the amount of \$115,000 as outlined above. The remainder would consist of a payment to the contractor of \$720,000 plus accrued interest to the date of payment. Any funds not paid as interest could be returned to the general fund.

WFC/mt

Nov 3 11 53 AM '80

THE SUPERIOR COURT FOR THE
FIRST JUDICIAL DISTRICT

CLERK, THIS COURT
STATE OF ALASKA
BY *[Signature]*
DEPUTY CLERK
AT JUNEAU

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CHRISTENSEN, RABER, KIEF &)
ASSOCIATES, INC., a Washington)
corporation,)
)
Plaintiff,)
)
v.)
)
STATE OF ALASKA,)
)
Defendant,)
)

No. 1JU-79-164 Civil

STIPULATION FOR SETTLEMENT

It is hereby stipulated by and between the parties through their respective attorneys of record that all claims of the plaintiff set forth in its Amended Complaint dated October 27, 1980, are hereby compromised and settled in full as follows:

1. Defendant State of Alaska agrees that judgment may be immediately entered in favor of plaintiff Christensen, Raber, Kief & Associates, Inc. in the sum of \$835,000.00 in full settlement of all of said plaintiff's claims arising out of the construction of the Hidden Falls Hatchery project, including all claims set forth in said Amended Complaint and all claims for prejudgment interest, costs and attorney's fees.

2. Defendant State of Alaska agrees that it will pay plaintiff on or before November 20, 1980, as much of the judgment as can be paid with all state funds presently legally available for this purpose, and will, at the first opportunity, submit an appropriation to the Alaska

FAULKNER, DAYFIELD, DOOGAN & HOLMES
SUITE 201, 311 FRANKLIN ST. PHONE (907) 586-2210
JUNEAU, ALASKA 99801

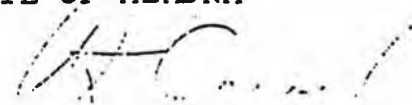
Legislature for the balance of the judgment.

1
2 3. The judgment to be entered pursuant to this stipula-
3 tion shall bear interest at the rate of eight per cent (8%)
4 per annum from November 1, 1980, until satisfied.

5 4. The parties hereby mutually release any claim,
6 demand, cause of action, responsibility or liability of each
7 of the respective parties to the other for any matter arising
8 out of or in any way associated with the construction of the
9 Hidden Falls Hatchery project, except for defects presently
10 not known and express warranties.

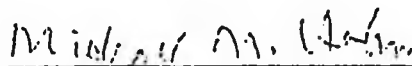
11 DATED October 31, 1980.

CARPENETI & COUNCIL,
Attorneys for defendant,
STATE OF ALASKA

12
13
14 By 
15 William T. Council

16 DATED October 31, 1980.

17 FAULKNER, BANFIELD, DOOGAN & HOLMES

18
19 
20 Michael M. Holmes, of Attorneys
21 for plaintiff, Christensen, Raber,
Kief & Associates, Inc.

Reed

CHRISTENSEN, RABER, KIEF &
ASSOCIATES, INC., a Washington
corporation,

Plaintiff,

v.

STATE OF ALASKA,

Defendant,

No. 1JU-79-164 Civil

JUDGMENT

The parties to this action have entered into a
Stipulation for Settlement dated October 31, 1980, agreeing
that judgment may be entered against the defendant State of
Alaska in the sum of \$835,000.

IT IS ORDERED that plaintiff Christensen, Raber,
Kief & Associates, Inc. recover from defendant State of
Alaska \$835,000.00 which sum includes prejudgment interest,
costs and attorney's fees. This judgment shall bear interest
at the rate of eight per cent (8%) per annum from November 1,
1980, until satisfied.

DATED this th 3 day of NOVEMBER, 1980.

Michael M. Holmes
Superior Court Judge

Submitted by

PAULKNER, BANFIELD, DOOGAN
& HOLMES

By *Michael M. Holmes*
Michael M. Holmes, of
Attorneys for Plaintiff
Christensen, Raber, Kief
& Associates, Inc.

Approved as to form
and content by

CARPENETTI & COUNCIL

By William T. Council,
of Attorneys for
Defendant State of
Alaska

I hereby certify that this is a true
and correct copy of an
original now on file in the
Alaska Trial Court at Juneau.
Witness my hand and the
seal of this court.

11/5/80 *Michael M. Holmes* *Reed*
Date Clerk

9-11-80 #5

PAULKNER, BANFIELD, DOOGAN & HOLMES
COURT, 311 PARKSIDE ST. PHONE 19071 506-2210
JUNEAU, ALASKA 99901

MEMORANDUM

State of Alaska

TO: Ronald O. Skoog
Commissioner
Department of Fish
and Game

DATE: November 14, 1980

FILE NO:

TELEPHONE NO: 465-3600

FROM: Wilson L. Condon
Attorney General

SUBJECT: Christenson & Assoc. v.
State (Hidden Falls
Hatchery Contract Claim)

Some time back the state was sued by the contractor for the Hidden Falls Hatchery on claims which aggregated to approximately \$2.3 million. Following close review of the claims by both attorneys within the Department of Law and by private counsel retained to represent the state in the lawsuit, we concluded that the state's probable liability on the claims exceeded \$1 million.

Settlement negotiations were undertaken, and a tentative settlement figure of \$835,000 was arrived at, pending the state's being able to pay at least a portion of that figure almost immediately. We determined that the only funds currently available for that purpose would be any balance remaining in the bond issue which initially funded the Hidden Falls Hatchery--ch.214, SLA 1976. After being advised by your staff that somewhere between \$100,000 and \$200,000 remained available in ch.214, we approached the attorneys for the contractor and offered a total settlement of \$835,000, with the outstanding balance in ch.214 (described as somewhere between \$100 and \$200 thousand) payable on or before November 20, 1980 and the remainder to be funded by a supplemental appropriation in the upcoming legislative session. This offer was accepted and a binding "Stipulation for Settlement" was entered by the parties on October 31, 1980 and filed with the court.

Since entry of the settlement we have experienced difficulties with members of your staff who indicate they do not wish to utilize the remaining ch.214 funds in accordance with the settlement because they apparently have other "plans" for the outstanding balance.

On November 21, 1980, the state will be in breach of its settlement agreement if the remaining funds in ch.214, SLA 1976 have not been paid over to the plaintiff. I would appreciate your taking whatever steps are necessary to see to it that those funds are paid over to the plaintiffs in

Ronald W. Skoog

- 2 -

November 14, 1980

accordance with the state's agreement. The warrant should be made payable jointly to Christensen, Raber, Kief and Associates, Inc., and the law firm of Faulkner, Banfield, Doogan and Holmes.

cc: William T. Council, Esq.
Carpeneti & Council

William F. Cummings
Assistant Attorney General

Ron Lind
Deputy Commissioner, Administration
Department of Transportation and
Public Facilities

Jerry Reinwand
Executive Assistant
to the Governor

MEMORANDUM

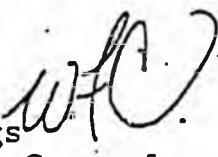
State of Alaska

TO: Ronald W. Lorensen
Deputy Attorney General
Department of Law

DATE: November 10, 1980

FILE NO: J-22-367-79

TELEPHONE NO: 465-3603

FROM: William F. Cummings 
Assistant Attorney General
Transportation Section
Department of Law - Juneau

SUBJECT: Christenson & Assoc.
v. State (Hidden Falls
Hatchery Contract Claim)

Attached is the stipulation of settlement in the action captioned above. By its terms the state is to pay as much as it can now out of available funds toward the settlement and the balance plus interest would be funded by a supplemental appropriation by the legislature.

As you will recall, we were led to believe that between \$100,000 and \$200,000 was available from the SLA 214 (1976) funding to pay a portion of the settlement. This information was conveyed to Mike Holmes, representing C.R.K. during settlement negotiations. In short then, the contractor expects to get at least \$100,000 almost immediately under the settlement.

I have consulted with the Department of Fish and Game to determine the exact amount which is presently available for the settlement. My first contact was Ernest Greek. He indicated, after checking various ledgers, that there was no money available for the settlement. I was, to say the least, surprised. Upon further inquiry, I found that there are funds remaining under SLA 214 (1976), but that Fish and Game has "plans" for them, though few, if any, formal obligations of the funds.

My next contact was Robert Roys, the Director of Fish and Game's Division of Fisheries Rehabilitation Enhancement and Development. I got the same story. There is money left from the 1976 funding, but Fish and Game has plans to spend all of the money. Roys indicated that if part of the remaining funds are used on the settlement, then Fish and Game would need to get a supplemental appropriation to implement the projects started under the 1976 funding. It is his belief that it is better to fund the entire settlement of the Hidden Falls Hatchery contract claim with a supplemental appropriation.

November 10, 1980
Ron Lorensen
Page 2

It appears that we have a "glitch" in the settlement of the case. We were led to believe that funds were immediately available to fund a portion of the settlement. This fact was conveyed to opposing counsel during settlement negotiations. The case has been settled with this understanding. Now, we cannot deliver unless the necessary funds are released, which is apparently possible if the Fish and Game cooperates.

A supplemental appropriation will be necessary even if we get partial funding through Fish and Game from presently available funds. Your guidance would be appreciated as to the next step to take.

Attachment
WFC/mt

MEMORANDUM

State of Alaska

TO: Ronald Skoog
Commissioner
Department of Fish and Game

DATE: November 20, 1980

FILE NO: J-22-367-79

TELEPHONE NO: 465-3603

FROM: William F. Cummings *W.F.C.*
Assistant Attorney General
Transportation Section
Department of Law - Juneau

SUBJECT: Settlement of C.R.K.
v. State; Hidden Falls
Hatchery Construction
Contract Claims

This memorandum is to confirm our telephone conversations of November 19 and 20, 1980 regarding partial payment of the settlement with the contractor in the action captioned above.

As you will recall, the state and the contractor have agreed to settle this case for \$835,000 inclusive of interest, costs, and attorney's fees with the provision that as much as possible would be paid out of available funds, and the remainder to be paid out of a supplemental appropriation. During negotiations with the contractor it was represented that between \$100,000 and \$200,000 could be paid. Under the terms of the settlement the \$835,000 would bear interest at 8% from November 1, 1980 until paid.

You have indicated that \$115,000 could be made available to make the initial payment under the settlement. Please direct that a state warrant in that amount be issued payable to the contractor and his local counsel, as requested in Mr. Condon's memorandum of November 14, 1980.

The Department of Law will obtain a supplemental appropriation to fund the \$835,000 plus interest, which must be paid to the contractor under the terms of the settlement. Of that amount \$115,000 will be allocated to the Department of Fish and Game to replace the advance for the settlement's initial payment. The remainder will be paid to the contractor.

Your assistance and many courtesies in this matter are appreciated.

WFC/mt

cc: Ron Lorensen ✓

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT
 AT ANCHORAGE

RECEIVED
 Department of Law
 Juneau, Alaska

EDGAR BAILEY, et al.,
 Plaintiffs,
 v.
 LOWELL THOMAS, JR., Lieutenant
 Governor of the State of Alaska,
 Defendant,
 and
 MICHAEL BEIRNE, et al.,
 Defendant-
 Intervenors.

JAN 28 1981
 AM
 7 8 9 10 11 12 1 2 3 4 5 6
 PM

No. 3AN-78-1592 Civil

Filed in the Trial Courts
 STATE OF ALASKA THIRD DISTRICT

JAN 26 1981

CLERK OF THE TRIAL COURTS
 BY *[Signature]* DEPUTY

JUDGMENT

IT IS HEREBY ORDERED AND ADJUDGED that plaintiff Trustees for Alaska recover from the State of Alaska the sum of \$12,817.50 in attorneys fees plus interest at eight percent per annum from August 18, 1978 until the date of payment:

DATED at Anchorage, Alaska this 26 day of

January, 1981.

[Signature]
 Superior Court Judge

I certify that on 1-26-81
 a copy of this document was sent to:
 Clerk of Record, or
 Other:
 D.C.E. 26-81-983
 Deputy Clerk
 Rec'd Jnl. _____

JAN 28 1981

JAN 20 1981

THIRD JUDICIAL DISTRICT

EDGAR BAILEY, et al.,)
)
 Plaintiffs,)
)
 LOWELL THOMAS, JR., Lieutenant)
 Governor of the State of Alaska,)
)
 Defendant,)
)
 and)
)
 MICHAEL BEIRNE, et al.,)
)
 Defendant-)
 Intervenors.)

*Bixm. Homestead
Inst. Initiative*

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT

JAN 6 1981

CLERK OF THE TRIAL COURTS

DEPUTY

RECEIVED

Department of Law

JAN 7 1981

No. 3AN 78-1592 Civil

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

ORDER

Having reviewed the plaintiff's Motion for Attorney Fees, the defendant's Opposition filed thereto, and the Supreme Court's Opinion in Thomas v. Bailey, Op. No. 2094, May 16, 1980, the Court concludes that an award of actual attorney's fees is appropriate in the instant case. Having reached this conclusion it is hereby

ORDERED that plaintiffs shall recover from the State of Alaska the sum of \$12,817.50 in attorney's fees.

DATED at Anchorage, Alaska this 6 day of January, 1981.

Mark C. Rowland
MARK C. ROWLAND
Superior Court Judge

I certify that on January 6, 1981
a copy of the above was mailed to each
of the following at their addresses on
record: *John Thomas, P.O. Box 1000, Anchorage, Alaska*

James L. Walker
Secretary

1/17/81
I certify that this document was sent to:
[List of names and addresses]
[Signature]

THIRD JUDICIAL DISTRICT

RONALD M. ZOBEL and
PATRICIA L. ZOBEL,
husband and wife,

Plaintiffs,

v.

THOMAS WILLIAMS,
COMMISSIONER OF REVENUE
and STATE OF ALASKA,

Defendants.

STATE OF ALASKA
THIRD JUDICIAL DISTRICT
RECEIVED
Department of Law
Juneau, Alaska
FEB 02 1981
PH
7 12 13 14 15 16

Case No. 3AN-80-2856 Civil

STIPULATION AND ORDER RE ATTORNEY FEES

In order to settle all disputes relating to attorney fees and costs incurred in the litigation of this case before the superior court and the Alaska Supreme Court, the parties agree as follows:

1. The State of Alaska agrees to pay attorney fees and costs incurred by plaintiffs as of October 24, 1980, and attributable to the portion of this litigation dealing with the income tax exemption statute (AS 43.20.017).

2. Plaintiffs agree that the attorney fees and costs referred to in paragraph 1 are as follows:

Superior Court:

Attorney fees \$ 8,730.00
Costs 172.35

Alaska Supreme Court:

Attorney fees \$ 4,805.00
Costs -0-

TOTAL \$13,707.35

3. If plaintiffs prevail in their appeal to the United States Supreme Court relating to the permanent fund dividend program (AS 43.23), the state agrees to pay attorney fees and costs incurred by plaintiffs as of October 24, 1980, and attributable to the portion of the litigation dealing with the permanent fund divided program.

10.5% interest 9/13/81 - 5/81 @ \$4.00 per day
1001 OF RVP

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
FOUCH K. JUNEAU, ALASKA 99011
PHONE 465-3600

referred to in paragraph 3 are as follows:

Superior Court:

Attorney fees	\$ 8,730.00
Costs	172.35

Alaska Supreme Court:

Attorney fees	\$ 4,805.00
Costs	-0-

TOTAL \$13,707.35

DATED at Juneau, Alaska, this 13th day of January, 1981.

WILSON L. CONDON
ATTORNEY GENERAL

By: Susan A. Burke
Susan A. Burke
Assistant Attorney General

DATED at Anchorage, Alaska, this 15 day of January, 1981.

Mark A. Sandberg
Mark A. Sandberg
Attorney for Plaintiffs

FILED IN THE TRIAL COURTS
State of Alaska Third District
APPELLATE DEPT.

JAN 15 1981

ORDER
Clerk of the Trial Courts
By Wdy Deputy

IT IS SO ORDERED.

DATED at Anchorage, Alaska, this 20 day of Jan 1981.

1-27-81
A copy of this document was sent to
 Attorney(s) of record, or
 Other:
at address of record
D.O.E. [Signature]
Deputy Clerk

[Signature]
Judge of the Superior Court

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
FOUCH K. JUNEAU, ALASKA 99011
PHONE 465-3600

JAN 20 1981