

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CRUISE LINES INTERNATIONAL
ASSOCIATION ALASKA, et al.

v.

CITY AND BOROUGH OF JUNEAU,
ALASKA, et al.

JUDGE H. RUSSEL HOLLAND

CASE NO. 1:16-cv-0008-HRH

PROCEEDINGS: ORDER FROM CHAMBERS

The following statements set out a series of possible subjects for oral argument on September 18, 2018. They are intended to facilitate discussions, and may or may not reflect a tentative view concerning a particular issue.

- (1) Plaintiffs' first, third, and fourth causes of action are Section 1983 civil rights claims. Plaintiffs' second cause of action is a statutory claim.
- (2) The Rivers and Harbors Appropriation Act (RHAA) creates a private cause of action. If the RHAA does not create a private cause of action, it nonetheless contains a persuasive congressional expression of the intent of the Tonnage Clause of the United States Constitution.
- (3) Plaintiffs have standing to sue on behalf of their members. Plaintiffs have sufficiently alleged a concrete harm caused by defendants' imposition of fees imposed upon vessels using the Port of Juneau. That harm could be remedied through these proceedings.
- (4) Plaintiffs' first, third, and fourth causes of action are subject to a two-year statute of limitations. Plaintiffs' second cause of action is

subject to a four-year statute of limitations. In this case, those statutes of limitations have not expired as to plaintiffs' claims for prospective relief because of the continuing violation doctrine.

- (5) Plaintiffs' affirmative defenses:
 - (a) Plaintiffs were not required to exhaust their administrative remedies.
 - (b) Each of defendants' defenses of waiver, laches, equitable estoppel, and quasi-estoppel, have factual components which may or may not be susceptible to resolution on motion for summary judgment. Are there material facts as to which there is a genuine dispute which should be the subject of a separate, first trial?
 - (c) A decision should / should not be reached as to defendants' affirmative defenses as a predicate to addressing defendants' motion to determine law of the case on the Tonnage Clause and RHAA.
- (6) MPF/PDF fees imposed on plaintiffs' members are not, per se, facially invalid because of the Tonnage Clause. However, some uses of those fees by defendants appear to be in the nature of general fund raising rather than fees for services to vessels.
- (7) There is no dispute that plaintiffs seek only prospective relief.
- (8) Plaintiffs do not contend that all uses of MPF/PDF fees collected from plaintiffs' members are unlawful. Fees collected from plaintiffs' members are lawful under both the Tonnage Clause and the RHAA if employed for the benefit of a vessel – that is, there must be a demonstrable nexus between defendants' expenditure of MPF/PDF fees and services or benefits to a vessel. For example, use of MPF/PDF fees for the funding of construction, repair, and maintenance of docks used by plaintiffs' members' vessels are

lawful. Expenditures of MPF/PDF fees for dock facilities that facilitate passenger embarking and debarking from vessels are lawful. The expenditure of MPF/PDF fees to cover defendants' expenses ex-vessel and ex-dock present the difficult issue which must be decided in this case. Where is the line between fees employed to pay the cost of service(s) to a vessel, including monies spent for the safe and efficient operation of vessels in the Port of Juneau, and:

- general government operations
- legal fees and costs
- infrastructure construction, maintenance, and improvements to city sidewalks, roadways, and walkways
- hospital costs
- internet service
- library upgrades
- police and crossing guards
- parks and beautification projects
- public transit

The nexus between many of these and service to a vessel is tenuous. There is a legally significant difference between defendants' expenditures of MPF/PDF fees in ways that benefit plaintiffs' members' business – i.e., the enhancement of tourists' experiences in Juneau – and the expenditure of funds for the benefit of vessels and port operations. In this regard, defendants tend to view expenditure of MPF/PDF fees from a “impact upon the city” point of view.

Vessels annually carry perhaps a million passengers to Juneau during

a five-month season, and many deposit as many as 5,000 to 8,000 passengers a day into a city of 32,000 people. But the focus of the Tonnage Clause and the RHAA is upon vessels and port operations, not municipal operations (some very distant from vessels and docking facilities).
