No. 02-36142

(District Court No. A02 0032 CV (RRB)
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TANADGUSIX CORPORATION, a native village corporation formed under the Alaska Native Claims Settlement Act, and BERING SEA ECCOTECH, INC., an Alaska Corporation and a wholly owned subsidiary of Tanadgusix Corporation,
Appellants,

v.

DIEDRE HUBER, Director, Property Management Division, General Services Administration, in her official capacity; STEPHEN A. PERRY, Administrator, General Services Administration, in his official capacity; HECTOR V. BARRETO, Administrator, Small Business Administration, in his official capacity; THE UNITED STATES OF AMERICA; JAMES JOBKAR, Alaska Department of Administration, Division of General Services, in his official capacity.

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
Honorable Ralph R. Beistline

PETITION FOR REHEARING OR REHEARING *EN BANC*
(Fed. R. App. P. 35 and 40)

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

I. INTRODUCTION AND RULE 35(b) STATEMENT OF COUNSEL

Appellants Tanadgusix Corporation ("TDX") and Bering Sea Eccotech ("BSE") respectfully petition for rehearing or rehearing *en banc* of the decision in *Tanadgusix Corp. v. Huber*, No. 02-36142 (Apr. 21, 2005). The panel overlooked and misapprehended material facts and misconstrued a federal surplus property agreement (a Vessel Conditional Transfer Document or "VCTD"), to find that TDX (an Alaska Native Village Corporation) breached a provision restricting use of donated surplus federal property (a World War II-era drydock, *Ex-Competent*, located in Hawaii). This petition presents a question of exceptional importance warranting rehearing *en banc,* because the panel has altered the federal surplus property donation regulations—changing how title vests and limiting the use of donated property to the State of the donating agency.

Panel rehearing is appropriate because the panel overlooked material facts that should have been construed in TDX's favor:

- The panel misunderstood that General Services Administration's ("GSA") regulations require four documents to transfer conditional title to surplus property, not just a VCTD.
- Second, as a result of not considering all transfer documents, the panel missed the critical unresolved factual dispute over whether GSA's approval of TDX's written utilization plan saying the *Ex-Competent*

was to be used in Hawaii—that TDX submitted concurrently with the VCTD—constituted the "written approval of GSA" for use of the drydock in Hawaii.

- Third, the panel overlooked the importance of the Distribution Document that conveyed conditional title to TDX one year after the VCTD was signed.
- Fourth, the panel conflated "waiver" and "prior approval" in the VCTD, overlooking genuine issues of material fact that preclude summary judgment.
- Fifth, the panel misapprehended material facts concerning the two VCTDs supporting TDX's belief that it could use the *Ex-Competent* in Hawaii.
- Sixth, the panel overlooked the Small Business Administration ("SBA") completely.

TDX respectfully requests the Court to grant rehearing or rehearing *en banc*, vacate the decision of the District Court, and remand the case for trial. The tragic Aleut history recounted by the panel should not be compounded by denying the Aleuts a hearing on what the federal agencies approved here. Nor should actions of an oral culture be judged solely on the confused documentation below.

II. PANEL REHEARING IS WARRANTED.

A. The Panel Misapprehended GSA Regulations.

The panel found that the January 19, 2001 VCTD was "the most critical document in the case . . . since this is the paper that gave TDX the *Ex-Competent*." Slip op. 4589. That statement is wrong. GSA's regulations—codified at 41 C.F.R. pt. 101-44—require four separate documents to transfer conditional title.[1] Because the panel overlooked the regulations and misapprehended the effect of the documents that accompanied the January 2001 VCTD, the panel also overlooked a critical genuine issue of material fact presented by the transfer package: did GSA's approval of the VCTD's incorporated Letter of Intent and the letter from Marisco, Ltd. constitute "prior written approval" for TDX to use the drydock in Hawaii (as stated in the Letter of Intent and the Marisco letter) as expressly permitted under VCTD condition 8.

Two key regulations were overlooked by the panel: 41 C.F.R. § 101-44.108-9 (donation of vessels) and § 101-44.208 (property distributed to

[1] Further, the VCTD is not a totally integrated contract and did not purport to be the final and complete agreement of the parties. The parol evidence is inapplicable to the transfer document package required by regulations here. *See* J. Calamari & J. Perillo, Contracts § 40 (West Pub. 1970). Contract law requires considering extrinsic evidence including the intentions of the contracting parties. *Western Pioneer v. Harbor Enterprises*, 818 P.2d 654, 656 (1991).

donee) (2001).[2] The first section governs transfer of large vessels; it requires the donee to submit "a letter of intent . . . setting forth in detail the proposed use of the vessel." *Id*. § 101-44.108-9. The letter of intent must provide a "plan of utilization for the property," which must include:

> (3) A detailed description of the planned utilization of the vessel including, but not limited to, how the vessel will be used, its purpose, how often and for how long and whether the vessel is to be operated on the waterways or not.

Id. § 101-44.108-9(a). The following documents must also be submitted along with Form SF123:

> (i) a letter from the State agency director confirming the applicant's eligibility and other matters;
> (ii) a State agency distribution document, signed and dated by the authorized representative of the donee, and containing the terms, and restrictions prescribed by GSA; and
> (iii) a conditional transfer document ("VCTD").

Id. § 101-44.108-9(b) (paraphrased).

The other critical regulation, 41 C.F.R. § 101-44.208(a), requires donations of surplus property of this kind be accompanied by "a prenumbered State agency distribution document." Once these elements are fulfilled, "conditional title to surplus personal property shall pass to an eligible donee when the donee has executed the State agency distribution document and taken possession of the property." *Id.* § 101-44.208(c) (emphasis added). Thus, it is a signed Distribution

[2] GSA's regulations were restated and recodified in 2002. 67 Fed. Reg. 2583. The regulations published in 2001 governed this transaction.

Document (which is not mentioned by the panel), not a VCTD, that conveys conditional title, if at all, to donated surplus property. *E.g.,* ER 35-36.

B. The Panel Overlooked the Critical Fact that GSA Approved Use of the Drydock in Hawaii.

Because the panel misapprehended GSA's regulations, the panel overlooked the critical factual question presented by TDX: whether GSA's approval of the transfer package provided "prior written approval" for TDX to use the *Ex-Competent* in Hawaii.

Approval of the transfer package, including TDX's utilization plan, constitutes the "prior written approval" envisioned by VCTD condition 8. The panel only summarized VCTD condition 8, concluding that the language "unambiguously" required that "if, after taking a year to repair the vessel, TDX did not keep it in Alaska for the following four years, title would revert to the federal government." Slip op. 4589, 4593. However, the exact language of condition 8 is important and reveals that its effect turns more upon what is approved by GSA than it does upon the panel's issue—the "State" denoted in the condition. Condition 8 of the VCTD (that the panel purports to interpret, yet never quotes) states:

> During the periods of restriction prescribed in (3) and (4), above, the Donee shall not sell, trade, lease, lend, bail, cannibalize, encumber, or otherwise dispose of the Property, or remove it permanently for use outside the State, <u>without the prior written approval of GSA</u>. The proceeds from any sale,

> trade, lease, loan, bailment, encumbrance, or other disposal of the Property during the period of restriction set forth in (3) and (4) above, when such action is authorized in writing by GSA, shall be for the account of the United States Government.

ER 31 (emphasis added).

Importantly, documents describing the "donee's program" and the "planned utilization of the vessel" were provided by TDX to the GSA along with the VCTD. In pertinent part, the Letter of Intent clarified that rehabilitation would occur at Marisco's shipyard, "our partner in the State of Hawaii." ER 28 (emphasis added). The January 18, 2001 letter from Marisco, referenced and incorporated into the Letter of Intent, "reaffirm[ed] [Marisco's] commitment and interest in putting the [*Ex-Competent*] into service in Hawaii." ER 27-29 (emphasis added). Together, these letters, which were "incorporated" into the VCTD signed by the Alaska State Agency for Surplus Property ("SASP") on behalf of GSA, [3] made clear that the *Ex-Competent* was to remain in Hawaii and that TDX and Marisco were "fully prepared to put the Drydock into operation and utilize it for services to our various clients." ER 27, 30.

The panel acknowledges that the Letter of Intent was incorporated into the VCTD. Slip op. 4589. However, the words of the letters, as approved, were overlooked by the panel. In addition, the panel overlooked the significance of the

[3] The SASP acts as GSA's agent for donating surplus property. 41 C.F.R § 102-37.305 (2003).

stated use in the January 18, 2001 letter of "the shipyard owner, our partner in the state of Hawaii," which formed part of the Letter of Intent. 41 C.F.R. § 101-44.108-9(a) demonstrates the importance of this aspect of the Letter of Intent: it states the plan of utilization, a required element. Further, that planned utilization "for services to our various clients," was incorporated into the VCTD, which recites that the property:

> [W]ill be used solely in connection with such programs and more specifically for all the following purpose(s) and plan as set forth in the Donee's "Letter of Intent" dated January 19, 2001 which Expression of Intent is hereby incorporated herein and made a part hereof.

ER 30 (emphasis added).

In short, GSA's notarized signature on the VCTD approved the utilization plan described in TDX's attached letters and constituted the "prior written approval" of GSA envisioned by VCTD condition 8 for TDX to use the drydock in Hawaii. A trier of fact could conclude that GSA "knew [it was] transferring . . . a vessel that would stay in Hawaii,"[4] as described in the Letter of Intent's vessel utilization plan, and that GSA approved this plan in satisfaction of VCTD condition 8. Whether GSA's approval of these documents within the VCTD provided "written approval" to use the *Ex-Competent* in Hawaii presents—at the very least—a genuine issue of material fact. *See* TDX SER 41.

[4] Slip op. 4592. This observation is inconsistent with the panel's reliance on condition 8.

C. The Panel Misapprehended the Significance of the Distribution Document to the Passage of Conditional Title to TDX.

The panel focused solely on the VCTD, opining that it "is the paper that gave TDX the *Ex-Competent*." Slip op. 4589. That is not correct. Conditional title to surplus property passes to a donee "when the donee has executed the State agency distribution document and taken possession of the property." 41 C.F.R. § 101-44.208(c); *see also id.* § 101-44.108-9(b) (distribution document part of mandatory documentation).

The panel overlooked and made no reference to the Distribution Document signed by TDX nine months after obtaining possession of the *Ex-Competent* and after the vessel had been placed in service lifting ships in Hawaii, with the full knowledge of GSA. *See* ER 64. The Distribution Document (which was described as "missing" at argument and was not considered by the panel) conveys conditional title, not the VCTD, and presents a genuine issue of material fact as to whether GSA approved TDX's continued use of the drydock in Hawaii.

GSA initiated an investigation of TDX concerning use of the drydock in January 2002, one year after the VCTD was signed. U.S. SER 46. However, the Distribution Document, which according to GSA's regulations transferred conditional title, was issued to TDX by the SASP pursuant to 41 C.F.R.§ 101-44.208 on or about February 14, 2002 – three weeks after initiation of

the compliance action and more than a year after the VCTD was signed.[5] *Cf.* Alaska ER 12-13. Coming as it did, after the congressional controversy had arisen concerning TDX's operation of the drydock in Hawaii, and expressly referring to the discussions between TDX and GSA, it is clear that issuance of the Distribution Document approved TDX's use of the drydock in Hawaii. At the very least, reading the record favorably to TDX, as the Court must, the issuance of the Distribution Document after realizing TDX was operating the *Ex-Competent* in Hawaii reveals a genuine issue of material fact as to whether GSA approved use in Hawaii.

D. The Panel Misapprehended the "Waiver."

The panel's decision turned on an analysis of whether the VCTD's reference to "State" means Alaska or means "at the present location of the Property

[5] Before the district court, a SASP employee, Ken Browning, submitted an affidavit falsely stating that the drydock was transferred through an attached Distribution Document; however, he attached an unsigned document distributing the property to a different corporation, TDX Power, Inc. *See* Alaska ER 11, 13. In his deposition on July 19, 2004, in *U.S. ex rel. PSI v. TDX*, Mr. Browning testified that his district court affidavit was false. Bush Decl. ¶ 8 and Ex. 2 (accompanying Motion to Reopen the Record for Supplemental Briefing Regarding Transfer Document, filed July 29, 2004.) Mr. Browning identified another document as the correct and operative Distribution Document. *Id*. and Ex. 3. Mr. Browning further admitted that he secured the operative Distribution Document on February 14, 2002, and that it was modified by TDX's representative, so that it was executed "as discussed." Bush Decl. ¶ 9. Because Appellants' Motion was denied, *see n. 5, infra*, the operative Distribution Document was not before the panel.

regardless of where the same may be situated."[6] Slip op. 4593. The panel buttressed its finding that TDX was required to use the *Ex-Competent* in Alaska, by giving paramount importance to the waiver requested by TDX on July 20, 2001, pursuant to VCTD paragraph 12 six months after the VCTD was signed. *Id*. This focus was in error. *See* Section II.B *supra.*

First, the panel overlooked the fact that the waiver request was made at the behest of the Alaska SASP. TDX SER 42. TDX was simply following the SASP's advice to ensure, by using procedures provided by the GSA, that it could continue to use the drydock as previously planned and as it had always intended—in Hawaii with its partner shipyard.

Second, the waiver request was sent to GSA as a precautionary measure six months after the VCTD was signed on January 19, 2001. TDX SER 42. Nevertheless, the panel erroneously states that the waiver request was a "contemporaneous admission of what it understood condition 8 to mean when it requested the waiver." Slip op. 4593. Six months is not "contemporaneous." The

[6] The panel overlooked other provisions of the VCTD which contradict a finding that reference to the term "State" in condition 8 of the VCTD is "unambiguous." For instance, the VCTD provides that TDX takes the property on an "as is, where is" basis (which was in Hawaii), and stated that "delivery is made at the present location of the Property" (which was also in Hawaii). ER 30. A trier of fact could conclude that it would violate condition 8 to remove the *Ex-Competent* from Hawaii, as that section prohibits TDX from "remov[ing]" the *Ex-Competent* from an existing location. ER 31. The VCTD does not define the term "State." ER 30-31. The panel also failed to address the ambiguous scope of the term "permanently."

panel overlooked events between January and July that cast a cloud over the donation, requiring TDX to take steps to protect its interest in the drydock. *E.g.,* District Court Ex. 43 (e-mail forwarded by GSA to TDX for response); U.S. SER 24 (May 7, 2001 letter seeking inquiry into lawfulness of donation). TDX should not be penalized simply because it tried to cooperate with the agency that sponsored the donation. ER 234, TDX SER 41-42.

Third, the waiver request was not part of the multi-document transfer package that was approved by GSA in January 2001, and has no bearing on the critical fact question of whether GSA had provided "prior written approval" of the drydock's use in Hawaii. There are no grounds for the panel to opine that "TDX acknowledged that its agreement with GSA required that the vessel be moved to Alaska when it sought a waiver from that agreement." Slip op. 4593. The waiver provision of the VCTD is not found in condition 8 upon which the panel relies. Rather, it is found in VCTD paragraph 12, which provides:

> GSA may waive any or may terminate all of the terms and conditions set forth in (4) and (6) through (10) above, and give unrestricted title to the Property in favor of the Donee whenever such action is determined in writing by GSA to be appropriate.

ER 31. Inexplicably, the panel elected to treat the waiver as if it were a part of VCTD condition 8 and controlling of the interpretation of the term "State." Slip op. 4593. The panel never cites VCTD paragraph 12 and imports the waiver requirement into condition 8 approval. The waiver provision has no bearing on

TDX's contemporaneous understanding of GSA's "written approval" of use of the drydock in Hawaii based on the transfer package.

Regardless of the meaning of "State," the issue as to which TDX has demonstrated a genuine issue of material fact involves that portion of VCTD condition 8 that states TDX may not "remove [the drydock] permanently for use outside the State, without the prior written approval of GSA." ER 31 (emphasis added). TDX presented facts indicating that GSA provided "prior written approval" of use of the *Ex-Competent* in Hawaii. The panel overlooked these facts and misinterpreted the VCTD and the related documents which must all be read together to decide the issue of consent.

E. The Panel Overlooked Evidence of a Second VCTD and the Unresolved Fact Question Regarding Which VCTD Applied.

The panel disregarded the recently disclosed second VCTD and incorporated letter of intent that raise significant questions of material fact that, if considered by the panel, would have defeated summary judgment.

On July 29, 2004, TDX moved to reopen this record to consider a newly disclosed VCTD, fully executed by TDX and GSA, that purports to transfer conditional title to the *Ex-Competent* to TDX, for use by BSE, as of October 24, 2000—three months earlier than the January 2001 VCTD that panel mistakenly

viewed as "the most critical document in this case."[7] Slip op. 4589. The October 24, 2000 VCTD removes the factual underpinnings of the panel's decision. Bush Decl., Ex. 1.

The VCTD relied upon by the panel is dated January 19, 2001. Slip op. 4589. Thus, the earlier VCTD substantially alters the factual premises of the panel's decision. A trier of fact could certainly conclude that the January 2001 transfer package was mooted by the earlier conveyance of the *Ex-Competent* for use by BSE pursuant to its SBA approved business plan, on October 24, 2000.

First, the October 2000 VCTD was first in time and there is no evidence that it was superseded. The October 2000 VCTD was fully executed but was misplaced or overlooked. There is nothing in either document suggesting that the first VCTD could have lapsed in the less than three months before the January 2001 VCTD was executed. ER 30-32. A genuine issue of material fact exists as to whether the operative transfer documents included the October 2000 VCTD.

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[7] The Court erroneously denied TDX's motion to reopen the record to permit consideration of a newly discovered VCTD. Order (Aug. 11, 2004). *Mangini v. United States*, 314 F.3d 1158, 1161 (9th Cir. 2003), provides the basis for the court to supplement the appeal record with newly discovered documents. TDX hereby renews that motion. The Alaska SASP failed to disclose the existence of the October 2000 VCTD in discovery despite two requests for document production. The SASP further failed to supplement its disclosures in this case once they did know of the document's existence, choosing instead to disclose it in another proceeding, *U.S. ex rel. Pacific Shipyards Int'l v. TDX, et al*., Civ. No. 01-00758 HG LEK (D. Hawaii). The fact that the October 2000 VCTD was hidden or lost until recently justifies reopening the record.

Second, by incorporating an October 20, 2000 Letter of Intent, the newly discovered October 2000 VCTD materially differs from the January 2001 VCTD that incorporated an entirely different letter of intent. ER 27-33. The Letter of Intent accompanying the October 2000 VCTD makes clear the parties' understanding that the *Ex-Competent* would be used in BSE's Business Development Plan under the Small Business Administration § 8(a) Program. District Court Ex. 19. It makes no reference to moving the drydock except "from its current berthing in Pearl Harbor to a local dry dock within two weeks of acquiring the vessel." *Id.*

Third, the October 2000 VCTD for use by BSE entails far fewer restrictions on use of the drydock than were triggered by the January 2001 VCTD. The SBA program does not prohibit joint use of donated property nor limit use of the property to a particular state. 15 U.S.C. § 636(j)(13); *see* ER 56-57. The October 2000 VCTD and Letter of Intent support the lawfulness of TDX's use of the drydock in Hawaii in partnership with Marisco. 13 C.F.R. § 124.405(c) (2001).

The October 2000 VCTD overlooked by the panel buttresses TDX's and BSE's argument that GSA fully understood and intended that the *Ex-Competent* was to be used in Hawaii by BSE as part of its Small Business Plan. The documents are crucial to determining just what the Alaska SASP approved on behalf of GSA. *See* ER 37-38. At the very least, the disclosure of the October

2000 VCTD creates a genuine issue of material fact as to which VCTD applies in this matter. The panel disregarded material documents that warrant remand for trial.

F. The Panel Overlooked Small Business Administration Misconduct.

The panel's examination of "all the papers filed," slip op. n. 5, overlooked TDX's claim against the Small Business Administration. The SBA, obligated to "assist . . . small business concerns," 15 U.S.C. § 631(a), stalled and obstructed GSA's efforts to transfer the *Ex-Competent* to BSE. ER 37-38. That requested transfer would have facilitated financing needed for vessel repairs as well as avoided any concerns about operating in Hawaii.

The district court dismissed the SBA claims as moot under the theory that the January 2001 transfer documents made subsequent SBA action impossible. ER 257. That ruling was in error because, as discussed above, GSA's regulations clearly do not consummate transfer through signing a VCTD alone; instead, other papers, including a distribution document, are essential. Title did not transfer until 2002. As a result, SBA's action of acknowledging BSE's eligibility to receive the drydock as surplus property, while stating that SBA would sign no acceptance of the drydock (an unnecessary step that no one sought), ER 45, was capricious and forced GSA into a politically motivated retreat from the vessel utilization plan it had approved.

III. REHEARING *EN BANC* IS WARRANTED

The panel held that VCTD condition 8 (a GSA boilerplate provision) "unambiguously" meant that TDX had to use the drydock in "Alaska."[8] Slip op. 4593. The panel decision construing the boilerplate provision as "unambiguously" requiring use of the property in the State of the donating SASP (and without regard to the existence of contemporaneous evidence of consent) rewrites and nullifies GSA regulations that do not require surplus property to be used within the donating State.[9]

GSA's regulations authorize donations of property without reference to the location of the property. Donations of surplus property are keyed to "eligible donees in the State." *See, e.g.,* 40 U.S.C. §§ 484(j)(3), (j)(4)(B) *recodified at*, 40 U.S.C.§§ 549(c)(3), 549(e)(2)(A); 41 C.F.R. §§ 101-44.202(c)(7), (8), *recodified at*, 41 C.F.R. § 102-37.130(b). The Alaska SASP was only involved because the donee must "execute the distribution of documents of the State agency in which the donee is located." 41 C.F.R. § 101-44.206(d)(2), *recodified at*, 41 C.F.R. § 102-37.265(a). The panel never cites the Federal Property Act and though it

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[8] The panel boldly states that VCTD "explicitly says that TDX will" "take the *Ex-Competent* 5,000 miles north from Pearl Harbor to the Pribilof Islands." Slip op. 4594 (emphasis added). Nothing in the VCTD or contemporaneous documents says this.

[9] Similarly, the panel's decision that the VCTD alone transfers conditional title nullifies or rewrites 41 C.F.R. §§ 101-44.108-9, 101-44.208.

cites 41 C.F.R. § 101-44.206(d), it rules that the VCTD precludes what that regulation expressly allows.

The panel's interpretation of the term "State," without regard to approved vessel utilization plans, also nullifies GSA regulations. First, Interstate distribution agreements allow a SASP distribution to be made and the property to be distributed in another State. 41 C.F.R. § 101-44.206(d), *recodified at*, 41 C.F.R. § 102-37.265. Second, a SASP "may distribute surplus property to eligible donees of another State." 41 C.F.R. § 102-37.265. Third, two SASPs may enter into "cooperative agreements" to dispose of surplus property to a donee located in another State. 41 C.F.R. § 102-37.335. The panel has rendered these regulations superfluous because the regulations also require use of the VCTD, *e.g.,* 41 C.F.R. § 101-44.108-9, which the panel declares is "unambiguous" that property cannot be used outside the State of the donating SASP. Slip op. 4593-94.

Giving natural effect to the panel's decision interpreting VCTD condition 8, any donee currently using property donated pursuant to a VCTD outside the State of the issuing SASP is in violation of their agreement with the GSA and the property must revert to the United States. *Id*. at 4594; *see, e.g.,* ER 54, 78 (describing property used outside the donating State). *En banc* rehearing is appropriate to address the panel's plainly mistaken prohibition on the use of surplus vessels outside the State of the donating SASP.

IV. CONCLUSION

For the foregoing reasons, TDX respectfully requests the Court to grant rehearing or rehearing *en banc*, vacate the decision of the Alaska District Court, and remand the case for trial. Genuine issues of material fact preclude summary judgment.

Dated this 11th day of May, 2005.

Respectfully Submitted

MORISSET, SCHLOSSER, JOZWIAK & McGAW

_____

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Attorneys for Plaintiffs, Tanadgusix Corporation and Bering Sea Eccotech

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 11th day of May, 2005, I filed the original and 50 copies of *Petition for Rehearing or Rehearing* En Banc with the Ninth Circuit Court of Appeals via *Federal Express* next day air to:

Clerk of the Court
Cathy A. Catterson
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
95 Seventh Street
San Francisco, CA 94119-3939

I further certify that on the 11th day of May, 2005, I served a copy of *Petition for Rehearing or Rehearing* En Banc on counsel by ***Electronic Mail and First-Class Mail*** to the following address:

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I declare the above to be true and correct under penalty of perjury. Executed May 11th , 2005, at Seattle, Washington.

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