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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

CRUISE LINES INTERNATIONAL)
ASSOCIATION ALASKA, and)
CRUISE LINES INTERNATIONAL)
ASSOCIATION,)
)
Plaintiffs,)
)
v.)
)
CITY AND BOROUGH OF JUNEAU,)
ALASKA, a municipal Corporation,)
and RORIE WATT, in his Official)
capacity as City Manager)
)
)
Defendants.)
_____)

Case No. 1:16-cv-00008-HRH

**MOTION TO ALLOW THE STATE OF ALASKA
TO PARTICIPATE AS AN AMICUS IN SUPPORT OF
THE CITY AND BOROUGH OF JUNEAU’S OPPOSITION TO
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT (ECF 67)**

Under Federal Rules of Civil Procedure 7 and District of Alaska Local Rule 7.1,
the State of Alaska moves for leave to file an amicus brief in support of the City and
Borough of Juneau’s Opposition to Plaintiff’s Motion for Summary Judgment (ECF 67).

CLIAA, et al. v. CBJ, et al. Case No. 1:16-cv-00008-HRH
MOTION TO ALLOW THE STATE OF ALASKA TO PARTICIPATE AS AN AMICUS IN
SUPPORT OF THE CITY AND BOROUGH OF JUNEAU’S OPPOSITION TO PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT (ECF NO. 67)

The State of Alaska has a unique perspective regarding the legal issues raised in this case given that the State’s tax system allows for a regular appropriation of fees collected from cruise ship passengers to the City and Borough of Juneau, and those fees dovetail with the fees at issue in this case.

Specifically, Cruise Lines International Association Alaska and Cruise Lines International Association (jointly referred to as Cruise Lines) have sued the City and Borough of Juneau challenging Juneau’s \$8 marine passenger and port development fees (“fees”). Cruise Lines has moved for summary judgment arguing that the fees violate the Tonnage Clause of the U.S. Constitution, and the Rivers and Harbors Appropriation Act of 1884, § 33 U.S.C. § 5. Cruise Lines’ Motion for Summary Judgment (ECF 67). The crux of Cruise Lines’ argument is that the fees must be used exclusively for services to the Cruise Lines’ *vessels* themselves—*i.e.*, not for services to vessel passengers and not for any services that are also used by members of the general public.

In addition to its own fees, Juneau also receives \$5 from the State of Alaska’s commercial passenger vessel tax under AS 43.52.230(b). In addition, the taxes imposed on a passenger under AS 43.52.200-AS 43.52.295 are “reduced by the total amount of a tax on the passenger . . . that is imposed and collected by a home rule or general law municipality under a law enacted before December 17, 2007,” such as Juneau’s fees.

AS 43.52.255; *see* Amended Complaint at 6 ¶ 19 (ECF 28 at 6 of 15); Plaintiff’s

Statement of Facts in Support of Motion for Summary Judgment at 12-13 ¶¶ 54-60 (ECF

CLIAA, et al. v. CBJ, et al.

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68 at 14-15 of 38). Thus, there is a close inverse relationship between the State's tax and the Juneau fees.

The cruise ship industry through the Alaska Cruise Association, in previous litigation in 2009 in federal district court for the District of Alaska, raised similar Tonnage Clause and Rivers and Harbors Act issues against the State's commercial passenger vessel tax. The Alaska Cruise Association was a not-for-profit association of nine member cruise lines.¹ *Complaint for Declaratory and Injunctive Relief, Alaska Cruise Association v. Galvin, Commissioner of the State of Alaska Department of Revenue*, Case 3:09-cv-00195-RRB (filed 9/17/2009). The 2009 litigation was settled in 2010, following the U.S. Supreme Court's decision in *Polar Tankers v. City of Valdez*, 557 U.S. 1 (2009). Cruise Lines' Motion for Summary Judgment at 5-6 n.2 (ECF 67 at 11 of 33). That settlement was the impetus for changes to the State's commercial passenger vessel tax provisions, including the offset between the state tax and the municipal cruise ship passenger taxes.

¹ Here, the City and Borough of Juneau has been sued by Cruise Lines International Association Alaska and Cruise Lines International Association. First Amended Complaint (ECF 28). The member cruise lines of Cruise Lines International Association Alaska are: Carnival Cruise Lines, Celebrity Cruises, Crystal Cruises, Disney Cruise Line, Holland America Line, Norwegian Cruise Line, Oceania Cruises, Ponant Yacht Cruises and Expeditions, Princess Cruises, Regent Seven Seas Cruises, Royal Caribbean International, and Silversea Cruises. First Amended Complaint at ¶ 4 (ECF 28). Three of these cruise lines—Disney, Oceania, and Ponant—as well as the new umbrella organization (Cruise Lines International Association Alaska) were not parties to the 2010 settlement with prejudice of the 2009 commercial passenger vessel tax litigation. *CLIAA, et al. v. CBJ, et al.* Case No. 1:16-cv-00008-HRH MOTION TO ALLOW THE STATE OF ALASKA TO PARTICIPATE AS AN AMICUS IN SUPPORT OF THE CITY AND BOROUGH OF JUNEAU'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (ECF NO. 67)

Because of the prior litigation and the interrelationship between the state taxes and municipal taxes, the State has an interest in this litigation and the proper interpretation of the Tonnage Clause and the Rivers and Harbors Act. For these reasons, the State of Alaska requests that it be allowed to participate as an amicus in the summary judgment briefing before this court.

JAHNA LINDEMUTH
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Certificate of Service

I certify that on January 30, 2018, I caused a true and correct copy of the foregoing document to be filed using the Court's Electronic Case Files System ("ECF"). The document is available for review and downloading via the ECF system, and will be served by operation of the ECF system upon all counsel of record.

s/ Mary Ann Lundquist
Mary Ann Lundquist

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