

## New Information Made Available on Settlement of Frozen Fish Jones Act Case

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The U.S. Department of Justice recently made available the [Settlement Agreement](#) in the case involving the transportation of frozen fish from Alaska to New England via Canada allegedly in violation of the Jones Act. The Settlement Agreement was provided in response to a Freedom of Information Act request. It was not included in the case docket when the Stipulation for Dismissal was submitted to the U.S. District Court for the District of Alaska in February 2024.

The Jones Act prohibits the transportation of “merchandise” between two “points in the United States” “by land and water” except by qualified U.S.-flag vessel. The ocean transportation of merchandise from one U.S. port to Canada and then overland to a place in the United States is therefore encompassed by the terms of the Jones Act.

There is, however, an exception to the Jones Act inserted in the 1920 debate on the Merchant Marine Act, 1920 by Senator Wesley L. Jones for certain foreign vessel movements which include qualified Canadian rail transportation. Now located at 46 U.S.C. § 55116, that exception provides that the Jones Act does not apply “between points in the continental United States, including Alaska, over through routes in part over Canadian rail lines and connecting water facilities if the routes are recognized by the Surface Transportation Board and rate tariffs for the routes have been filed with the Board.”

As enacted in 1920, the words “including Alaska” were “excluding Alaska” which was opposed by the Alaskan territorial government. The U.S. Supreme Court in 1922 affirmed that the exclusion did not violate the “Ports Preference” clause in the U.S. Constitution. The word “excluding” was changed to “including” in 1958 when Alaska became a state.

In August 2021, U.S. Customs and Border Protection issued penalty notices alleging violations of the Jones Act to a variety of persons involved in the transportation of frozen fish via foreign vessels to eastern Canada, then onto a short set of train tracks, and then by truck to New England. Some of the penalized parties sued CBP in September 2021 in the case of *Kloosterboer International Forwarding LLC and Alaska Reefer Management LLC v. U.S.* seeking to void the penalties. The case centered on whether the transportation complied with the Canadian rail exception.

On February 8, 2024, the District Court approved a stipulation to dismiss the case with prejudice and the parties indicated that they had entered into a settlement agreement resolving all claims and counterclaims. A Justice

Department [press release](#) indicated that the settlement agreement required the plaintiff to pay CBP \$9.5 million, and, separately, that the plaintiffs stopped utilizing the short train tracks for the shipment of seafood to the United States.

The Settlement Agreement obtained via a FOIA request confirms the \$9.5 million settlement amount and that any cessation of the use of the short train tracks in Canada was not referenced in that Agreement. The Settlement Agreement indicates that the total potential unasserted penalties amounted to approximately \$1.9 billion and provides a list of the entities which had exposure to penalties. The Settlement Agreement, however, although a final disposition of the Alaska case involving the short set of train tracks in Canada, does not address the substantive issues of interpretation of the Canadian rail exception.

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