

Sea Hawk Seafoods, Inc. v. Exxon Mobil Corp., No. 07-35806

DEC 19 2008

GRABER, Circuit Judge, dissenting:

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

I respectfully dissent, because the district court clearly erred in finding that the agreement to pay compound interest depended on application of the federal rate of interest. First, Exxon's letter states without qualification that the parties had agreed to annual compounding of interest. Because the question whether state or federal law supplied the rate was being litigated actively, and had been reserved for appeal, the lack of qualification is significant. Second, under Alaska law, a contractual ambiguity is construed against the drafter, which was Exxon.

Ledgens, Inc. v. Kerr, 91 P.3d 960, 963 (Alaska 2004) (per curiam) (appendix A).

Third, the provision makes the most sense when applied to Alaska law, which requires an agreement to support compounding of interest.