

Inupiat sovereignty suit rejected

By **BILL HESS**

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Inupiat suing the United States, Alaska, and several energy companies lost one round of a court battle to determine who has jurisdiction over much of the Arctic Ocean when a U.S. district judge ruled against them.

"We're disappointed of course," Richard Berley, one of the Seattle-based attorneys who represented the Inupiat Community of the Arctic Slope and the Ukpeagvik Inupiat Corporation, said Monday.

Berley described the court action as a "case of first impression," and stressed that the judge based his decision almost entirely upon "paramountcy" cases resolving jurisdiction disputes between federal and state governments, rather than with Native groups. (Berley noted that Judge James M. Fitzgerald of the District of Alaska, did not even mention the Alaska Native Claims Settlement Act in his ruling, and did not give any indication of whether the Act would have extinguished Inupiat rights over the area.)

The plaintiffs have 60 days from Oct. 1 to decide whether or not they want to appeal.

George Ahmoagak, vice-president of UIC, said the corporation's board of directors plans to take a close look at Fitzgerald's ruling. They will then decide whether or not to appeal. Until then, said Ahmoagak, he could make no comment on behalf of the corporation.

The Inupiat argued that for thousands of years they had used and occupied vast

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areas of the Beaufort and Chukchi waters and sea ice. At no time had they ever surrendered their jurisdiction over that territory, either through treaty or other document, or in warfare.

When the federal government conducted an oil lease sale in the Beaufort Sea in 1979, the Inupiat argued, it had violated its trust responsibility to them and had acted illegally. The Inupiat contended that the sea and what lay beneath it is theirs by aboriginal right from three miles to at

least 65 miles offshore.

The Inupiat religion is deeply tied into whaling and other subsistence activities in the disputed area, the plaintiffs argued further. Oil exploration and drilling would interfere with these activities and therefore the practice of their religion, violating their religious freedom.

Fitzgerald rejected their arguments.

The United States has jurisdiction over the high seas, the judge said. He cited earlier cases where the Supreme Court

had ruled for the federal government against the state governments of California and Texas when those states had sought jurisdiction over maritime waters.

The federal government has the responsibility for defense and commerce and must therefore have "paramount rights" in the sea Fitzgerald said. "It makes no difference whether the competing domestic claimant is a state or a tribe of American Natives. All are subordinate to the federal government."

The Inupiat had argued in court that the Arctic seas were different from the high seas that the states had sought to

gain control over, because they are frozen over the greatest part of the year and have been lived upon by their people just the same as the land. The judge did not acknowledge this distinction in his ruling.

"Any exercise of external sovereignty by the Inupiat in the area of the outer continental shelf would be inconsistent with their status as members of the United States and hostile to the interests of the nation as a whole," the judge said.

He rejected the Inupiat claim of having jurisdiction before the Russians sold Alaska to the United States, and of having never relinquished that

jurisdiction. "As late as 1876, the concept of territorial sovereignty over adjacent seas remained doubtful under international law," the judge said.

"This claim also fails," Fitzgerald said of the plaintiff's contention that the trust relationship between them and the federal government had been violated by the oil-lease sales. "Unless Indian money or property is involved, a trust relationship can only arise from a legislative enactment, a treaty or executive order."

The judge already had rejected the Inupiat claim of property, and stated that no documents or agreements of trust in the matter had been shown him.