

BLOG POST

## Third Time is a Charm -- Federal Circuit Upholds \$100M Award to Oil Companies for Claims Related to WWII Fuel Contracts

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After remanding the case twice, on July 18, 2018, the Federal Circuit ended—at least for now—nearly three decades of litigation over World War II-era contracts for production of high-octane aviation gasoline when it affirmed the U.S. Court of Federal Claims’ decision awarding \$99.5M to four oil companies - Shell Oil Co., Union Oil Co., Atlantic Richfield Co. and Texaco Inc. A copy of the case is available [here](#).

The origin of the case goes back to 1942-43 when the government contracted with the four oil companies for the production of 100-octane aviation gasoline (or “avgas”), which the court noted was “the most critically needed refinery product during World War II.” The fuel production generated large amounts of hazardous waste—primarily acid sludge—being dumped at the McColl property in Fullerton, California, which subsequently became Superfund site.

In 1991, the federal government and the state of California sued the four oil companies under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) for costs of cleaning up the acid sludge caused by the avgas production. The four oil companies filed counterclaims against the federal government ultimately resulting in a decision in 2002 by the 9<sup>th</sup> Circuit that the government was only responsible for about 5.5% of the waste remediated at the McColl site.

The four oil companies subsequently sued the United States in the U.S. Court of Federal Claims for reimbursement of their CERCLA costs under the contractual theory that the avgas contracts obligated the government to pay “any” charges related to gasoline production. After two appeals to the Federal Circuit to determine that the government was contractually liable to reimburse the oil companies, in January 2017, the Court of Federal Claims awarded \$99.5M in damages, which included approximately \$31M in interest.

On the third appeal, the government challenged the Court of Federal Claims’ damages award, primarily on the basis that the trial court failed to distinguish between contractual avgas waste and pre-contractual activities, and therefore failed to properly allocate between recoverable and non-recoverable costs. The Federal Circuit panel reviewed the findings of the Court of Federal Claims and held that it had properly determined the amount of hazardous waste that can be attributed to the avgas contracts. The Federal Circuit also rejected procedural arguments advanced by the government and affirmed the Court of Federal Claims award.