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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA <i>ex rel.</i>	)	CASE NO. CV 95-4153 AHM (AJWx)
RICHARD D. BAGLEY,	)	
	)	ORDER DENYING DEFENDANT’S
Plaintiff,	)	MOTION FOR CERTIFICATION OF
	)	INTERLOCUTORY APPEAL OF THIS
v.	)	COURT’S ORDER ON THE
	)	RELATOR’S ODYSSEY CLAIM
TRW, INC.	)	
	)	
Defendant.	)	
	)	
	)	

This matter comes before the Court on Defendant TRW’s Motion for Certification of Interlocutory Appeal (“TRW’s Motion”), pursuant to 28 U.S.C. § 1292(b), of this Court’s December 12, 2000 Order Granting Plaintiffs’ Motion For Partial Summary Judgment On The Odyssey Claim.

Certification of this interlocutory decision for immediate appeal is controlled by 28 U.S.C. § 1292(b), which provides in relevant part:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. . . .

///

1 TRW's Motion relies in part on the Court's prefatory language in its December 12, 2000

2 Order stating that:

3 Before turning to the facts and analysis, the Court is compelled to note that in  
4 excellent briefs and oral argument, all the parties recognized that the outcome of these  
5 motions requires the Court to construe regulations, legislative history and administrative  
6 pronouncements that are far from clear, consistent or coherent. The Court agrees.  
7 Both sides also pointed out that the other side's analysis and interpretations would  
8 make sense only if portions of those regulations, legislative history and pronouncements  
9 are deemed superfluous. That, too, is true. When is a contract not a contract but a  
10 memorialization of a "cooperative agreement"? Does "sponsored" mean the same as  
11 "required"? Do both mean "paid"? When an apparent change in a regulation makes  
12 costs allowable that arguably were not previously recoverable, but does so only "to the  
13 extent they . . . are not otherwise unallowable" has there really been a change? That a  
14 decision as potentially consequential as this requires the Court to delve into such a  
15 linguistic morass is regrettable. But as the parties presented the issues, there is no  
16 choice.

17 December 12, 2000 Order at 2.

18 The Court is not compelled to find that there is a "substantial ground for difference of opinion"  
19 as to the result reached in its prior Order merely because the decision was a difficult one. In fact, the  
20 Court is unaware of any conflicting authority on the issue. The Court need not revisit the opposing  
21 arguments that were at issue on the cross-motions for summary judgment. Suffice it to say the fact that  
22 TRW and other interested government contractors disagree with the result reached by the Court is not  
23 compelling or even persuasive on this factor.

24 The Court must also consider whether the Odyssey ruling involved a "controlling question of  
25 law." Of course, an issue of law is "controlling" if reversal on appeal would terminate the litigation in its  
26 entirety. *See Klinghoffer v. S.N.C. Achille Lauro*, 921 F.2d 21, 24 (2d Cir. 1990). The Court  
27 recognizes that an issue of law may be "controlling" in instances where the entire lawsuit would not  
28 necessarily be terminated by reversal of an interlocutory district court order, such as the dismissal of all  
claims against some but not all parties. *See, e.g., id.* However, the Odyssey claims are "not dispositive  
of the entire case against [TRW]." *Federal Deposit Insurance Corporation v. Jackson-Shaw  
Partners No. 46, Ltd.*, No. 92-20556 SW, 1995 WL 594866, at \*2 (N.D. Cal. Oct. 4, 1995). In  
fact, the Odyssey claims do not even appear to account for the bulk of the claims against TRW.  
Therefore, the Court finds that its prior Order is not on a sufficiently "controlling" question of law.

The Court is not persuaded by TRW's assertion that the Court's Odyssey Order has far-

1 reaching implications for the defense contracting industry. *See* Mot. at 4 n.1. Although the Court’s  
2 Order may go unreviewed as an interlocutory order and as precedent it may affect many members of  
3 the defense contracting industry, nevertheless the Order is not binding on non-parties or other  
4 contracts. Therefore, if TRW, or anyone else, strongly believes that the Court got it wrong, they are  
5 free to continue charging similar costs as “B&P” and re-litigate the issue if necessary.

6       Next, the Court must consider whether “an immediate appeal from the order may materially  
7 advance the ultimate termination of the litigation.” Again, the Court is unpersuaded that whether the  
8 Odyssey claims remain in the case will materially affect the efficient resolution of this litigation. Although  
9 trial on the Odyssey claims would be unnecessary if the Court’s December 12, 2000 Order were  
10 reversed, “[i]t is difficult to ascertain the amount of the remaining claims and the time it will take to  
11 litigate them. Further, settlement on the remaining claims is far from certain.” *Jackson-Shaw Partners*,  
12 at \*4. Because a substantial amount of litigation remains in this complex case regardless of the  
13 correctness of the Court’s Odyssey Order, TRW’s arguments that interlocutory appeal would advance  
14 the resolution of this litigation are unpersuasive.

15       Finally, an immediate appeal could unnecessarily consume appellate resources if the Court  
16 were affirmed. On the other hand, the incremental additional costs of a trial on the Odyssey claim on  
17 top of the other four claims do not justify the extraordinary relief TRW seeks here. Moreover, the  
18 government represented at the hearing that the other two pending motions for partial summary judgment  
19 involve the interpretation of regulations that are no less of a linguistic morass than the regulations at issue  
20 in the Odyssey motions. It would be inefficient for the Court to certify its Odyssey Order for  
21 interlocutory appeal when another of the pending summary judgment motions might also warrant  
22 interlocutory appeal under the same reasoning. Such piecemeal litigation is what the presumption  
23 against interlocutory review is intended to avoid.

24       In summary, the Court is not convinced that TRW has carried its heavy burden to show that  
25 “exceptional circumstances justify[] departure from the basic rule that appellate review becomes  
26 available only after entry of final judgment.” *Jackson-Shaw Partners*, at \*1. For all the foregoing  
27 reasons, and good cause appearing therefor, TRW’s Motion is DENIED.

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IT IS SO ORDERED.

DATE: March 26, 2001

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A. Howard Matz  
United States District Judge