

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CAROL BOLT,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. 4:02-cv-0021-RRB

**ORDER DENYING MOTION
FOR RECONSIDERATION**

Before the Court is Defendant United States of America with a Motion for Reconsideration at Docket 173. Defendant argues that the Court should reconsider and modify its prior ruling at Docket 171, in which the Court held that the Ninth Circuit's earlier decision in this case compels a finding of negligence per se. Defendant argues that the Ninth Circuit's ruling that the Army Snow Removal Plan required removal of the snow before April 1, 1999, was dicta. Alternatively, Defendant argues that the evidence brought out at trial was substantially different from the evidence at the summary judgment stage and that deviation from the "law of the case" is therefore justified.

The Court disagrees. The question of whether the deadline was mandatory or discretionary was essential to the Ninth Circuit's ruling. Moreover, the Ninth Circuit was aware when it issued its ruling that the Army interpreted the removal policy to allow plowing after April 1. Therefore, the trial testimony of the defense witnesses to that effect, however persuasive, does not vary so much from the evidence before the Ninth Circuit that it warrants deviation from the appellate ruling. Of course, if this Court has misinterpreted the Ninth Circuit's instructions, the matter can be cleared up on appeal.

For the foregoing reasons, Defendant's Motion For Reconsideration at **Docket 173** is **DENIED**.

IT IS SO ORDERED.

ENTERED this 13th day of November, 2009.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE