

Offered: 5/4/89
Referred: Finance

6-1164M

Original sponsors: Kelly, Kerttula,
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1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 255 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing special arbitration procedures
7 for claims related to the Exxon Valdez oil discharge
8 disaster; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. PRESENTATION OF CLAIMS. A person who has a claim for
11 damages arising from the Exxon Valdez oil discharge disaster may apply to
12 the superior court in writing for arbitration of the claim. The appli-
13 cation for arbitration must state the nature and amount of the claim and
14 identify the party or parties from whom damages are sought.

15 * Sec. 2. APPOINTMENT OF ARBITRATORS. (a) Upon receipt of an applica-
16 tion for arbitration under this Act, the court shall mail to the claimant
17 and the parties from whom damages are sought identical lists of names of
18 potential arbitrators for the claim. The court may not list the name of a
19 person who is not a member of the National Panel of Commercial Arbitrators
20 of the American Arbitration Association.

21 (b) The claimant and other parties may, within 10 calendar days after
22 the mailing date of the list described in (a) of this section, cross off
23 from the list the names objected to, number the remaining names in order of
24 preference, and mail the list to the court. If a person does not mail the
25 list to the court within 10 calendar days, all persons named on the list
26 are considered acceptable.

27 (c) From among the persons who have been approved on the lists of
28 potential arbitrators, and in accordance with the designated order of
29 mutual preference, the court shall invite an arbitrator or a panel of

1 arbitrators to serve. If the amount of damages sought in the claim is less
2 than \$50,000, the court shall attempt to obtain one arbitrator. If the
3 amount of damages sought is \$50,000 or greater, the court shall attempt to
4 assemble a panel of three arbitrators.

5 (d) If the parties fail to agree on a potential arbitrator or panel
6 of arbitrators, if acceptable arbitrators are unable to act, or if for any
7 other reason appointment of an arbitrator or panel cannot be made, the
8 claimant may pursue other remedies for the claim.

9 * Sec. 3. ARBITRATION PROCEDURES. (a) Arbitration under this Act is
10 governed by AS 09.43.010 - 09.43.180 (Uniform Arbitration Act), except as
11 provided in this Act.

12 (b) If an award for damages is made to a claimant in an amount equal
13 to or greater than the amount of damages initially requested by the claim-
14 ant, the award must provide that the arbitrator's or panel's expenses and
15 fees, together with expenses of the claimant, including reasonable attorney
16 fees, incurred in the conduct of the arbitration, shall be paid by the
17 person against whom the claim was brought.

18 (c) If an arbitrator or panel makes an award of damages to a claimant
19 that is less than the amount initially requested by the claimant, the award
20 must provide that the portion of expenses and fees described in (b) of this
21 section that shall be paid by the person against whom the claim was brought
22 shall bear the same relationship to total expenses and fees described in
23 (b) of this section that the damages awarded bears to the amount of the
24 damages initially requested.

25 (d) The arbitrator or panel shall provide in an award made under (c)
26 of this section that the claimant shall pay the expenses and fees described
27 in (b) of this section that are not assessed against the person against
28 whom the claim was brought.

29 (e) The arbitrator or panel may not provide that the claimant pay any

1 expenses or fees of the person against whom the claim was brought.

2 * Sec. 4. FUTURE CLAIMS. If a person presents a claim under this Act
3 and the claim is arbitrated, the person may not present another claim for
4 damages that arises from the Exxon Valdez oil discharge disaster in any
5 forum unless the person demonstrates that the new claim is based on evi-
6 dence that could not have been ascertained with reasonable effort at the
7 time the prior claim was arbitrated.

8 * Sec. 5. DEFINITIONS. In this Act

9 (1) "damages" means any personal injury or property damage,
10 including economic and noneconomic damages, arising out of or resulting
11 from the Valdez oil discharge disaster, including but not limited to:

12 (A) containment, cleanup, and removal costs;

13 (B) injury to, or destruction of, natural resources or real
14 or personal property;

15 (C) loss of use of natural resources or real or personal
16 property;

17 (D) loss of profits or impairment of earning capacity due
18 to injury or destruction of natural resources or real or personal
19 property, including loss of subsistence hunting, fishing, and gather-
20 ing opportunities;

21 (E) loss of tax revenue for a period of one year due to
22 injury to natural resources or real or personal property;

23 (F) costs required to restock injured land or water, to
24 replenish a damaged or degraded resource, or to otherwise restore the
25 environment of the state to its condition before the injury;

26 (2) "Exxon Valdez oil discharge disaster" means the incident
27 involving the discharge of crude oil after the grounding of the Exxon
28 Valdez south of Valdez on March 24, 1989; the discharge of ballast water
29 from another tanker on the subsequent weekend in order to accommodate the

1 transfer of crude oil from the Exxon Valdez to the second tanker; and
2 attendant containment and cleanup actions;

3 (3) "panel" means a panel of three arbitrators who arbitrate
4 a claim under this Act that involves \$50,000 or more in damages.

5 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).