

HB

100

COMMITTEE REPORT
HOUSE

5/1

(7)

FURTHER: RESOURCES

1/23/85

Date: _____

The Committee on TRANSPORTATION has had HB 100

"An Act relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- and recommends _____ new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

M. G. ...

...

...

MEMBERS HAVING
OTHER RECOMMENDATIONS:

W. F. ...

A. L. ...

J. K. ...

CH. IRMAN

CSHB 409(Trsp)

Representative M.M. Miller moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 409(Trsp) was referred to the Ch. Clerk for engrossment.

UNFINISHED BUSINESS

file
HB 100

Representative M.M. Miller moved that the House concur in the Senate amendment to HB 100, thus adopting SCS HB 100(Res) (page 2245), and recommended that the members vote yes.

The question being: "Shall the House concur in the Senate amendment to HB 100?" The roll was taken with the following result:

SCSHB 100(RES) CONCUR

Yeas: 37 Adams, Boucher, Cato, Collins, Cotten, Davis, Duncan, Frank, Fuller, Furnace, Goll, Gruenberg, Grussendorf, Hanley, Herrmann, Hurley, Jenkins, Koponen, Lars Marrou, Martin, Miller, M.M., Miller, M.W., Navarre, Pearce, Pettyjohn, Phillips, Pignalberi, Pourchot, Rieger, Ringstad, Sund, Szymanski, Taylor, Thompson, Uehling, Wallis

Nays: 0

Excused: 3 Binkley, Clocksin, Shultz

Absent: 0

And so, the House concurred in the Senate amendment to HB 100, thus adopting:

SENATE COMMITTEE SUBSTITUTE FOR HOUSE
BILL NO. 100 (Resources)

Relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; effective date.

SCSHB 100(Res)

Representative M.M. Miller moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

SCSHB 100(Res) was referred to the Chief Clerk for enrollment.

The Chief Clerk was instructed to so notify the Senate.

CSHB 240(HESS)am

Representative M.M. Miller moved and asked unanimous consent that the House concur in the Senate amendment to CSHB 240(HESS)am, thus adopting SCS CSHB 240(Trsp) (page 2245), and recommended that the members vote yes.

The question being: "Shall the House concur in the Senate amendment to CSHB 240(HESS)am?" The roll was taken with the following result:

SCS CSHB 240(TRSP) CONCUR

Yeas: 37 Adams, Boucher, Cato, Collins,
Cotten, Davis, Duncan, Frank,
Fuller, Furnace, Goll, Gruenberg,
Grussendorf, Hanley, Herrmann,
Hurley, Jenkins, Koponen, Larson,
Marrou, Martin, Miller, M.M.,
Miller, M.W., Navarre, Pearce,
Pettyjohn, Phillips, Pignalberi,
Pourchot, Rieger, Ringstad, Sund,
Szymanski, Taylor, Thompson,
Uehling, Wallis

Nays: 0

Excused: 3 Binkley, Clocksin, Shultz

Absent: 0

And so, the House concurred in the Senate amendment to CSHB 240(HESS)am, thus adopting:

SENATE COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR HOUSE BILL NO.
240 (Transportation)
Relating to overtaking and passing
school buses.

SCS CSHB 240(Trsp)

SCS CSHB 240(Trsp) was referred to the Chief Clerk for enrollment.

SB 338 cont'd

SENATE BILL NO. 338 was referred to the Finance Committee.

SB 356

The State Affairs Committee considered SENATE BILL NO. 356 (election campaign financing; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 356 (SA), entitled:

"An Act relating to election campaign financing and the Alaska Public Offices Commission; and providing for an effective date."

and a majority do pass. The report was signed by Senator Abood, Chairman and concurred in by Senators DeVries and Kelly. Senator Ray signed "do not pass" and Senator Vic Fischer signed "no recommendation".

SENATE BILL NO. 356 was referred to the Community and Regional Affairs Committee.

HB 100

The Resources Committee considered HOUSE BILL NO. 100 (detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; efd) and recommended it be replaced with

SENATE CS FOR HOUSE BILL NO. 100 (RES)

Senator Sturgulewski, Chairman and Senators Eliason and Vic Fischer signed "do pass". Senators Fahrenkamp and Halford signed "no recommendation".

HOUSE BILL NO. 100 was referred to the Rules Committee.

CONSIDERATION OF THE CALENDAR

CITATIONS

Honoring - Colleen Wallingford
by Representatives Phillips and Cotten
Senators Kelly and Halford

Honoring - Chugach Park Volunteers
by Representatives Szymanski, Cotten, Pourchot
and Phillips
Senators Vic Fischer and Halford

Senator Halford moved and asked unanimous consent that the citation calendar be adopted. Without objection, the citations were adopted and referred to the Secretary for transmittal.

ANNOUNCEMENTS

Announcements appear at the end of the journal.

SPECIAL ORDERS

Senator Ziegler moved and asked unanimous consent that he be excused from a call of the Senate, no subject to a call, on March 18, instead of March 11 and April 5-10. Without objection, Senator Ziegler was excused.

Senator Kerttula moved and asked unanimous consent that he be excused from a call of the Senate on February 25-26. Without objection, Senator Kerttula was excused.

ADJOURNMENT

Senator Halford moved and asked unanimous consent that the Senate adjourn until 11:00 a.m., February 25, 1986. Without objection, the Senate adjourned at 11:16 a.m.

Peggy Mulligan
Secretary of the Senate

February 1986

COMMUNICATIONS

Regulations posted 2/27/86:

DEPARTMENT OF NATURAL RESOURCES
proposed changes in Title 11 of the Alaska
Administrative Code, dealing with agricultural
parcels and subdivision of patented agri-
cultural parcels

DEPARTMENT OF NATURAL RESOURCES
proposed amendments: (1) in an application fee
for assignments or transfers of working or royalty
interests in oil and gas leases
(2) Division of Parks and Outdoor Recreation's
definition of "vehicle"
(3) revising the procedure for handling applica-
tions mailed in for over-the-counter limited
homestead staking authorizations

Senator Sturgulewski, Chairman, moved and asked unanimous
consent that the proposed regulations be referred to the
Resources Committee. Without objection, it was so ordered.

STANDING COMMITTEE REPORTS

SB 171

The Finance Committee considered SENATE BILL NO. 171
(making, transferring, and repealing fiscal year 1985
operating budget appropriations within the Department of
Commerce and Economic Development; efd) and recommended it
be replaced with

CS FOR SENATE BILL NO. 171 (FIN), entitled:

"An Act making special appropriations for
capital projects; and providing for an
effective date."

and a majority do pass. The report was signed by Senator
Faiks, Co-Chairman and concurred in by Senators Eliason,
Ferguson, Sackett and Halford. Senators Kerttula and Paul
Fischer signed "no recommendation".

SENATE BILL NO. 171 was referred to the Rules Committee.

SB 310

The State Affairs Committee considered SENATE BILL NO. 310 (establishing the Alaska Natural Hazards Safety Commission) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 310 (SA)

and do pass. The report was signed by Senator Abood, Chairman and concurred in by Senators DeVries and Vic Fischer.

SENATE BILL NO. 310 was referred to the Finance Committee.

SB 423

The State Affairs Committee considered SENATE BILL NO. 423 (creating a missing persons information clearinghouse) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 423 (SA)

and do pass. The report was signed by Senator Abood, Chairman and concurred in by Senators DeVries and Vic Fischer.

SENATE BILL NO. 423 was referred to the Judiciary Committee.

HB 100

The Rules Committee considered HOUSE BILL NO. 100 (detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; efd) and a majority of the committee recommended calendar February 27. The report was signed by Senator Kelly, Chairman and concurred in by Senators Coghill, Josephson and Faiks.

HOUSE BILL NO. 100 is on the calendar.

HB 240

The Rules Committee considered CS FOR HOUSE BILL NO. 240 (HESS) am (overtaking and passing school buses) and a majority of the committee recommended calendar February 27. The report was signed by Senator Kelly, Chairman and concurred in by Senators Coghill, Josephson and Faiks.

CS FOR HOUSE BILL NO. 240 (HESS) am is on the calendar.

SB 331

Message of March 20 was read, stating the Governor signed the following bill and transmitted the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing:

HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE
FOR SENATE BILL NO. 331 (FIN)

An Act relating to Winter Olympic funding; and providing for an effective date.

Chapter No. 6, SLA 1986

HB 100

Message of March 20 was read, stating the Governor signed the following bill and transmitted the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing:

SENATE CS FOR HOUSE BILL NO. 100 (RES)

An Act relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; and providing for an effective date.

Chapter No. 7, SLA 1986

HB 240

Message of March 20 was read, stating the Governor signed the following bill and transmitted the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing:

SENATE CS FOR CS FOR HOUSE BILL NO. 240 (TRSP)

An Act relating to overtaking and passing school buses.

Chapter No. 8, SLA 1986

HB 530

Message of March 20 was read, stating the Governor signed the following bill and transmitted the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing:

CSSB 114(Trsp)

The Transportation Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 114 (Transportation) (relating to the registration of heavy vehicles; effective date) and reports it back as follows: Cato (Chairman), Pignalberi, Furnace and Davis recommend do pass; Shultz has no recommendation; Marrou signed "Do not pass; this is fiscal bribery".

CSSB 114(Trsp) was referred to the Finance Committee.

CSSB 247(L&C)

The Labor & Commerce Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 247 (Labor & Commerce) (extending the termination date of the Alaska Public Utilities Commission; effective date) and reports it back as follows: Navarre (Chairman), Davis, Boucher, Pearce, Hanley and Collins recommend do pass. A zero fiscal note was attached.

CSSB 247(L&C) was referred to the Rules Committee for placement on the calendar.

HB 34

The Finance Committee has considered HOUSE BILL NO. 34 (relating to the limitation of certain types of liquor licenses), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 34 (Finance):

"An Act relating to the administration of liquor licenses and the licensing of partnerships; and providing for an effective date."

and reports it back as follows: Adams (Chairman), Szymanski and Binkley recommend do pass; Ringstad, Larson, Pourchot, Uehling, Rieger, Frank and Cotten have no recommendation.

HB 34 was referred to the Rules Committee for placement on the calendar.

HB 44

The Finance Committee has considered HOUSE BILL NO. 44 (establishing additional state land as marine park units of the state park system), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 44 (Judiciary) (page 819) and reports it back as follows: Adams (Chairman), Szymanski, Duncan, Larson, Pourchot, Binkley

HB 44

and Cotten recommend do pass; Ringstad, Uehling, Rieger and Frank have no recommendation. The Finance Committee endorsed the Judiciary Committee letter of intent (page 882).

HB 44 was referred to the Rules Committee for placement on the calendar.

HB 55

The Finance Committee has considered HOUSE BILL NO. 55 (relating to licensed premises), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 55 (Finance):

"An Act relating to liquor licensees' duty to contact taxis for patrons and to display alcohol warning signs."

and reports it back as follows: Adams (Chairman), Larson, Pourchot, Uehling, Rieger, Frank, Binkley and Cotten recommend do pass; Szymanski, Ringstad and Duncan have no recommendation.

HB 55 was referred to the Rules Committee for placement on the calendar.

HB 100

The Transportation Committee has considered HOUSE BILL NO. 100 (relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; effective date) and reports it back as follows: Cato (Chairman), Pignalberi and Davis recommend do pass; Furnace, Marrou and Shultz have no recommendation.

HB 100 was referred to the Resources Committee.

HB 114

The Finance Committee has considered HOUSE BILL NO. 114 (relating to correctional facilities, and the imprisonment and rehabilitation of offenders), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 114 (Judiciary) (page 1076) and reports it back as follows: Adams (Chairman), Ringstad, Duncan, Larson and Binkley recommend do pass; Szymanski, Pourchot, Uehling, Rieger, Frank and Cotten have no recommendation. A zero fiscal note was attached.

HB 114 was referred to the Rules Committee for placement on the calendar.

HB 100

HOUSE BILL NO. 100 by the Rules Committee by request of the Governor, entitled:

"An Act relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

was read the first time and referred to the Transportation and Resources Committees.

A zero fiscal note was attached. The Governor's transmittal letter, dated January 23, 1985, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the detention of vessels as security for oil-pollution damages and clarification of a definition relating to discharge of hazardous substances. This bill is intended to correct two statutory oversights brought to light as a result of the January 21, 1984 oil spill from the M/V Cepheus.

AS 46.03.760, providing for civil actions for pollution, and AS 46.03.770, providing for detention of vessels as security for oil-pollution damages, were both enacted by ch. 120, SLA 1971. As enacted, AS 46.03.760(b) set a maximum of \$100,000 for liquidated damages to be assessed by the court in an oil-pollution case. And, as enacted, AS 46.03.770 provided for the court to release a detained vessel upon posting of a bond set by the court in an amount not to exceed \$100,000. AS 46.03.770 referred to AS 46.03.760(b), and the two \$100,000 provisions were compatible with each other.

However, in 1976, along with other amendments, AS 46.03.760(b) was amended to remove the \$100,000 liquidated damages maximum, but AS 46.03.770 was not correspondingly amended. It has never been amended. This bill seeks to correct that oversight. It removes the reference to \$100,000 and inserts a reference (in two places) to the relevant civil penalty and damages statutes that were enacted and amended after AS 46.03.770 was enacted.

Second, AS 46.03.822 provides for strict liability for the discharge of hazardous substances, including oil, for a person owning or having control over the hazardous substance prior to its discharge. "Owning or having control over a hazardous substance" is presently defined in AS 46.03.826(5) in a manner which arguably negates the common sense definition of an owner. Section 2 of this bill corrects that problem by eliminating the word "owner" from the statutory definition section, thereby restoring the original meaning of that word.

Sincerely,

/s/

Bill Sheffield
Governor"

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 12/10/84

<u>REQUEST</u> Bill/Resolution No.: <u>HB 100</u> Title: <u>Detention of vessels as security for oil pollution damages</u> Sponsor: <u>House Rules/Governor</u> Requestor: <u>Governor</u> Date of Request: <u>12/6/84</u>	<u>FISCAL DETAIL</u> Agency Affected: <u>ADEC</u> Program Category Affected: _____ BRU, Program or Subprogram(s) Affected: _____
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EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 CRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: <u>Billie Trent</u>	Phone: <u>465-2600</u>
Division: <u>Office of the Commissioner</u>	Date: <u>12/10/84</u>
Approved by Commissioner: <u>Richard A. Neve</u>	Date: <u>12/10/84</u>
Agency: <u>Environmental Conservation</u>	

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the detention of vessels as security for oil-pollution damages and clarification of a definition relating to discharge of hazardous substances. This bill is intended to correct two statutory oversights brought to light as a result of the January 21, 1984 oil spill from the M/V Cepheus.

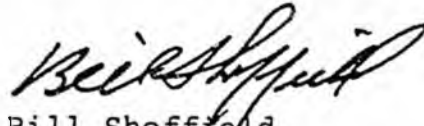
AS 46.03.760, providing for civil actions for pollution, and AS 46.03.770, providing for detention of vessels as security for oil-pollution damages, were both enacted by ch. 120, SLA 1971. As enacted, AS 46.03.760(b) set a maximum of \$100,000 for liquidated damages to be assessed by the court in an oil-pollution case. And, as enacted, AS 46.03.770 provided for the court to release a detained vessel upon posting of a bond set by the court in an amount not to exceed \$100,000. AS 46.03.770 referred to AS 46.03.760(b), and the two \$100,000 provisions were compatible with each other.

However, in 1976, along with other amendments, AS 46.03.760(b) was amended to remove the \$100,000 liquidated damages maximum, but AS 46.03.770 was not correspondingly amended. It has never been amended. This bill seeks to correct that oversight. It removes the reference to \$100,000 and inserts a reference (in two places) to the relevant civil penalty and damages statutes that were enacted and amended after AS 46.03.770 was enacted.

Second, AS 46.03.822 provides for strict liability for the discharge of hazardous substances, including oil, for a person owning or having control over the hazardous substance prior to its discharge. "Owning or having

control over a hazardous substance" is presently defined in AS 46.03.826(5) in a manner which arguably negates the common sense definition of an owner. Section 2 of this bill corrects that problem by eliminating the word "owner" from the statutory definition section, thereby restoring the original meaning of that word.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Sheffield", written in a cursive style.

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 12/10/84

REQUEST

Bill/Resolution No.: HB 100

Title: Detention of vessels as security for oil pollution damages

Sponsor: House Rules/Governor

Requestor: Governor

Date of Request: 12/6/84

FISCAL DETAIL

Agency Affected: ADEC

Program Category Affected: _____

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Billie Trent

Division: Office of the Commissioner

Phone: 465-2600

Date: 12/10/84

Approved by Commissioner: Richard A. Neve

Agency: Environmental Conservation

Date: 12/10/84

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

HB 430

Representative Boucher added his name as co-sponsor to HOUSE BILL NO. 430 (regulating audiologists, hearing aid dealers and the dispensing of hearing aids).

HB 479

Representative Szymanski added his name as co-sponsor to HOUSE BILL NO. 479 (relating to biomass fuel systems).

HB 660

Representative Binkley added "by request" to his name as sponsor of HOUSE BILL NO. 660 (regulating the use of land).

ENGROSSMENTCSHB 479(L&C)

CSHB 479(L&C) was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

CSHB 493(Jud)

CSHB 493(Jud) was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

ENROLLMENTSCSHB 100(Res) *file*

The following was enrolled, signed by the Speaker and Chief Clerk, President and Secretary of the Senate and the engrossed and enrolled copies were transmitted to the Office of the Governor at 2:05 p.m., March 6, 1986:

SCSHB 100(Res)

Relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; effective date

file
SCS CSHB 240(Trsp)

The following was enrolled, signed by the Speaker and Chief Clerk, President and Secretary of the Senate and the engrossed and enrolled copies were transmitted to the Office of the Governor at 2:05p.m., March 6, 1986:

SCS CSHB 240(Trsp)
Relating to overtaking and passing
school buses

ANNOUNCEMENTS

State Affairs Capitol 102 3:00 p.m., 3/7
Posted 3/4/86, but inadvertently dropped
from printed schedule:
Confirmation of Dr. John Schwartz to the
Violent Crimes Compensation Board

ADJOURNMENT

Representative Clocksin moved and asked unanimous consent that the House adjourn until 11:00 a.m., March 10, 1986. There being no objection, the House adjourned at 12:05 p.m.

Irene Cashen
Chief Clerk

PURPOSE

SENATE
AMENDMENT
ON PAGES 3
OF NOTES

THE PURPOSE OF HOUSE BILL 100 IS TO MAKE AS 46.03.770
CONSISTENT WITH ITSELF, AND WITH AS 46.03.760 TO ASSURE THAT
THE STATE WILL HAVE ENOUGH MONEY IN HAND TO COVER ANY DAMAGE
DONE IN THE EVENT OF AN OIL SPILL.

BACKGROUND

WHEN ENACTED, AS 46.03.760 PROVIDED FOR PENALTIES NOT TO
EXCEED \$100,000. IN 1976, THAT STATUTE WAS AMENDED TO REMOVE
ANY CEILING ON ASSESSED DAMAGES, BUT AS 46.03.770 RETAINS AN
OUTDATED REFERENCE TO AS 476.03.760 AND LIMITS TO \$100,000 ANY
BOND POSTED IN LIEU OF VESSEL DETENTION.

THIS RENDERS SECTION 770 INCONSISTENT WITH ITSELF, AND THE
REFERENCE TO 760(B) NO LONGER MAKES SENSE.

UNDER THE CURRENT LAW, THE STATE COULD HOLD A VESSEL TO SECURE \$30 MILLION IN OIL SPILL DAMAGES, BUT THAT VESSEL COULD LEAVE ALASKA AFTER POSTING A \$100,000 BOND. SUCH A SCENARIO DOES NOT PROVIDE THE TYPE OF COST RECOVERY GUARANTEE THAT ADEQUATELY PROTECTS STATE INTERESTS.

IMPETUS FOR HB 100

THIS SERIOUS DISCREPANCY WAS DISCOVERED WHEN THE GREEK VESSEL M/B CEPHEUS WENT AGROUND NEAR ANCHORAGE, SPILLING IN EXCESS OF 300,000 GALLONS OF OIL INTO ALASKA WATERS.

THE JUDGE IN THAT MATTER RULED THAT A \$20 MILLION BOND WAS NECESSARY (BASED ON THE \$20 MILLION FINANCIAL RESPONSIBILITY REQUIREMENT ELSE WHERE IN THE LAW) BECAUSE THE VESSEL PLANNED TO CONTINUE OFFLOADING IN ALASKA WATERS. HAD THE VESSEL

PLANNED T SIMPLY LEAVE ALASKA, HE WOULD PROBABLY HAVE ALLOWED
IT DO TO SO AFTER POSTING THE \$100,000 BOND.

AS 46.03.770 SHOULD HAVE BEEN CONTEMPORANEOUSLY REPEALED AND
REENACTED WITH SECTION 760(B) TO PROVIDE FOR A BOND NOT TO
EXCEED THE MAXIMUM AMOUNT OF DAMAGES AVAILABLE UNDER NEWLY
ENACTED 46.03.760 AND 46.03.822.

SECTION 2, AMENDING AS 46.03.826(5), MERELY RESTORES THE
ORIGINAL, COMMON SENSE MEANING OF THE TERM "OWNER"

SENATE AMENDMENT

THE DEPARTMENT OF LAW FOUND ONE FURTHER REFERENCE TO AS
46.03.760(B) THAT ESCAPED NOTICE WHEN THE BILL WAS DRAFTED --
THE REFERENCE ON PAGE 1, LINE 23. THE SENATE COMMITTEE
SUBSTITUTE SIMPLY MAKES THAT REFERENCE IDENTICAL TO THOSE MADE

ELSEWHERE IN THE BILL (PAGE 2, LINE 1 AND 2, AND LINES 5 AND

6)

Offered: 2/24/86
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 SENATE CS FOR HOUSE BILL NO. 100 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to detention of vessels as security
7 for oil-pollution damages; clarifying a definition
8 relating to discharge of hazardous substances; and
9 providing for an effective date."

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

11 * Section 1. AS 46.03.770 is amended to read:

12 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
13 FOR DAMAGES. A vessel that [WHICH] is used in or in aid of a
14 violation of AS 46.03.740 - 46.03.750 may be detained after a valid
15 search by the department, an agent of the department, a peace officer
16 of the state, or an authorized protection officer of the Department of
17 Fish and Game. Upon judgment of the court having jurisdiction that
18 the vessel was used in, or was the cause of, a violation of AS 46.03.-
19 740 - 46.03.750 with knowledge of its owner or under circumstances
20 indicating that the owner should reasonably have had this knowledge,
21 the vessel may be held as security for payment to the state of the
22 amount of damages assessed by the court under AS 46.03.758, 46.03.760,
23 and 46.03.822. If [AS 46.03.760(b), AND IF] the damages [SO] assessed
24 are not paid within 30 days after judgment or final determination of
25 an appeal, the vessel shall be sold at public auction, or as otherwise
26 directed by the court, and the damages paid from the proceeds. The
27 balance, if any, shall be paid by the court to the owner of the
28 vessel. The court shall permit the release of the vessel upon posting
29 of a bond set by the court in an amount not to exceed the maximum

1 amount of damages available under AS 46.03.758, 46.03.760, and
2 46.03.822 [\$100,000]. The damages received under this section shall
3 be transmitted to the proper state officer for deposit in the general
4 fund. A vessel seized under this section shall be returned or the
5 bond exonerated if no damages are assessed under AS 46.03.758, 46.03.-
6 760, or 46.03.822 [AS 46.03.760(b)].

7 * Sec. 2. AS 46.03.826(5) is amended to read:

8 (5) "[OWNING OR] having control over a hazardous substance"
9 means producing, handling, storing, transporting, or refining a
10 hazardous substance for commercial purposes immediately before entry
11 of the hazardous substance in or upon the waters, surface, or
12 subsurface lands of the state, and specifically includes bailees and
13 carriers of a hazardous substance;

14 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

HOUSE BILL 100

DETENTION OF VESSELS FOR OIL SPILL VIOLATIONS

BEFORE THE ALASKA HOUSE

March __, 1986

RECEIVED
MAR 1986
HAND DELIVERED
GOVERNOR'S OFFICE

SENATE AMENDMENT

The Department of Law found one further reference to AS 46.03.760(b) that escaped notice when the bill was drafted -- the reference on page 1, line 23. The Senate Committee Substitute simply makes that reference identical to those made elsewhere in the bill (page 2, lines 1 and 2, and lines 5 and 6).

HOUSE BILL 100 GENERALLY

PURPOSE

HB 100 makes AS 46.03.770 consistent with itself, and with AS 46.03.760, to assure that the State will have enough "money in hand" to cover any damage done in the event of an oil spill.

BACKGROUND

When enacted, AS 46.03.760 provided for penalties not to exceed \$100,000. In 1976, that statute was amended to remove any ceiling on assessed damages, but AS 46.03.770 retains an outdated reference to AS 46.03.760 and limits to \$100,000 any bond posted in lieu of vessel detention.

This renders § 770 inconsistent with itself, and the reference to 760(b) no longer makes sense.

Under the current law, the State could hold a vessel to secure \$30 million in oil spill damages, but that vessel could leave Alaska after posting a \$100,000 bond. Such a scenario does not provide the type of cost recovery guarantee that adequately protects state interests.

IMPETUS FOR HB 100

This serious discrepancy was discovered when the Greek vessel M/V CEPHEUS went aground near Anchorage, spilling in excess of 300,000 gallons of oil into Alaska waters.

The judge in that matter ruled that a \$20 million bond was necessary (based on the \$20 million financial responsibility requirement elsewhere in the law) because the vessel planned to continue offloading in Alaska waters. Had the vessel planned to simply leave Alaska, he would probably have allowed it to do so after posting the \$100,000 bond.

AS 46.03.770 should have been contemporaneously repealed and reenacted with § 760(b) to provide for a bond not to exceed the maximum amount of damages available under newly enacted 46.03.760 and 46.03.822.

*Sec. 2, amending AS 46.03.826(5), merely restores the original, common sense meaning of the term "owner."



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the detention of vessels as security for oil-pollution damages and clarification of a definition relating to discharge of hazardous substances. This bill is intended to correct two statutory oversights brought to light as a result of the January 21, 1984 oil spill from the M/V Cepheus.

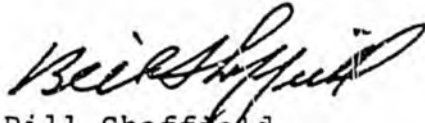
AS 46.03.760, providing for civil actions for pollution, and AS 46.03.770, providing for detention of vessels as security for oil-pollution damages, were both enacted by ch. 120, SLA 1971. As enacted, AS 46.03.760(b) set a maximum of \$100,000 for liquidated damages to be assessed by the court in an oil-pollution case. And, as enacted, AS 46.03.770 provided for the court to release a detained vessel upon posting of a bond set by the court in an amount not to exceed \$100,000. AS 46.03.770 referred to AS 46.03.760(b), and the two \$100,000 provisions were compatible with each other.

However, in 1976, along with other amendments, AS 46.03.760(b) was amended to remove the \$100,000 liquidated damages maximum, but AS 46.03.770 was not correspondingly amended. It has never been amended. This bill seeks to correct that oversight. It removes the reference to \$100,000 and inserts a reference (in two places) to the relevant civil penalty and damages statutes that were enacted and amended after AS 46.03.770 was enacted.

Second, AS 46.03.822 provides for strict liability for the discharge of hazardous substances, including oil, for a person owning or having control over the hazardous substance prior to its discharge. "Owning or having

control over a hazardous substance" is presently defined in AS 46.03.826(5) in a manner which arguably negates the common sense definition of an owner. Section 2 of this bill corrects that problem by eliminating the word "owner" from the statutory definition section, thereby restoring the original meaning of that word.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

Introduced: 1/23/85
Referred: Transportation and
Resources

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 100

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to detention of vessels as security
7 for oil-pollution damages; clarifying a definition
8 relating to discharge of hazardous substances; and
9 providing for an effective date."

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

11 * Section 1. AS 46.03.770 is amended to read:

12 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
13 FOR DAMAGES. A vessel which is used in or in aid of a violation of
14 AS 46.03.740 ⁵⁰ -- 46.03.750 may be detained after a valid search by the
15 department, an agent of the department, a peace officer of the state,
16 or an authorized protection officer of the Department of Fish and
17 Game. Upon judgment of the court [having jurisdiction that the vessel
18 was used in or the cause of a violation of AS 46.03.740 -- 46.03.750
19 with knowledge of its owner or under circumstances indicating that the
20 owner should reasonably have had this knowledge,] the vessel may be
21 held as security for payment to the state of the amount of damages
22 assessed by the court under AS 46.03.760(b); and if the damages so
23 assessed are not paid within 30 days after judgment or final deter-
24 mination of an appeal, the vessel shall be sold at public auction, or
25 as otherwise directed by the court, and the damages paid from the
26 proceeds. The balance, if any, shall be paid by the court to the
27 owner of the vessel. The court shall permit the release of the vessel
28 upon posting of a bond set by the court in an amount not to exceed the
29 maximum amount of damages available under AS 46.03.758, 46.03.760, and

Bliss

Bliss

1 46.03.822 [\$100,000]. The damages received under this section shall
2 be transmitted to the proper state officer for deposit in the general
3 fund. A vessel seized under this section shall be returned or the
4 bond exonerated if no damages are assessed under AS 46.03.758, 46.03.-
5 760, or 46.03.822 [46.03.760(b)].

6 * Sec. 2. AS 46.03.826(5) is amended to read:

7 (5) "[OWNING OR] having control over a hazardous substance"
8 means producing, handling, storing, transporting or refining a hazard-
9 ous substance for commercial purposes immediately before entry of the
10 hazardous substance in or upon the waters, surface or subsurface lands
11 of the state, and specifically includes bailees and carriers of a
12 hazardous substance;

13 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).

Mr. Brown: "The taxes are based on the gross vehicle weight of the vehicle. The highest tax, I think, is \$550."

Number 132

Representative Cato then called to the table James E. Fisher of the Department of Law.

Mr. Fisher: "...I think I would only speak to is to the matter of the fiscal note. Mr. Brown has alluded to the fact that the fiscal note and the need for the bill, the fiscal note has remained attached to the bill and has followed it through the Senate Finance under so rather close scrutiny. I think it's important, one, for the need for the administration. There is some administration costs and Mr. Brown is the person who has testified to that and is the one, in fact, prepared the fiscal note itself which is attached. I urged that be pass with the bill for an additional reason. I think it's important that the State of Alaska show that it's doing its utmost to comply with the federal law which requires refusal of the heavy vehicle registration if the federal tax is not taken. I think that's very important so that we can demonstrate the seriousness of the state to comply with federal law and thereby, insuring, if you will Madame Chair, the fact that the \$10 to \$12 million come to us without interruption or without question. That would be all that I have unless the committee would have further questions."

Number 169

Let the record show that Representative Marrou has joined the meeting. Discussion then ensued on the bill.

Number 277

Representative Pignalberi moved to pass the bill out of committee with individual recommendations. Representative Cato repeated his motion and asked whether there were any objections. Representative Marrou objected, so Representative Cato took a voice count of votes. Representatives Davis, Furnace, Pignalberi, and Cato voted "aye," and Representative Marrou voted "nay." The motion carried.

Number 291

Representative Cato then brought before the committee HB 100 which is entitled, "An Act relating to detention of vessels as security for oil-pollution damages; clarifying a

definition relating to discharge of hazardous substances; and providing for an effective date." The bill's original sponsor: the House Rules Committee by Request of the Governor. She then called to the table Bill Ross, the commissioner of the Department of Environmental Conservation.

Mr. Ross: "...As the transmittal letter from the governor and myself says, we believe that this is essentially a housekeeping measure; although, we do think it is important for reasons that I will describe...

"Essentially, what this legislation would do, is change the section of the statute which talks about the types of bonds that might be required after an oil pollution incident and to up the limit that is currently in the law from a maximum limit of \$100,000 to the potential damages that might be assessed against whoever might be responsible for the oil pollution incident.

"If you look at the law as it currently reads as well as what we are attempting to amend, you will see that section 770 makes reference back to section 760. In the middle of section 770, it says, 'the vessel may be held as security for payment to the state of the amount of damages assessed by the court under 760(b).'

"Prior to the amendment to this section of the statute in 1976, section 760(b) had a limit of \$100,000. In 1976, you'll see that it was amended to read 'actions under this section may not be used for punitive purpose and sums assessed by the court must be compensatory and remedial in nature. In other words, there is no limit now on the amount of damage that can be assessed as there was prior to 1976. However, if you look further in section 770, you'll see that the court shall permit the release of a vessel upon posting of a bond set by the court in an amount not to exceed \$100,000. Section 770 was not changed in 1976 and we believe that the reading of the record reflects this as an oversight by the Legislature, because now section 770 is virtually inconsistent with itself. It makes reference back to 760(b) which has no

limit and then it has within it, itself, a limit.

"You'll note the editor's note that says the reference to AS 760(b) near the middle of the section is to 760(b) as it existed prior to the 1976 amendment, e.g., when there was the \$100,000 limit in it. We believe that the reference back to 760(b) is appropriate to provide guidance as to the types of bonds that could be required in the basis of an oil pollution incident. But we do think that the reference to \$400,000 is inappropriate now in that it sets an inappropriately low limit.

"The impetus deemed by the committee could not have been an oversight in 1976. We, of course, would still advocate that we have such a change because we believe that it would be good public policy to be able to require posting of a bond after an oil spill incident that is equivalent to the maximum amount of damages that might be assessed on the basis of the spill itself rather than a relatively low limit such as \$100,000 might be in the case of a spill that could be much larger than that.

"This came to the department's attention when there was an oil spill incident in which we had we an oil tanker which had not complied with the financial responsibilities requirements that the state has. Before you transport oil in the state, you are supposed to apply to the department and show that you have financial responsibility of \$20,000,000 in effect and this then enables us to say, yes, you can operate in here--in case something that goes on, you got the capital behind you to take care of the incidents, so to speak.

"The particular tanker in question had not complied with that and then it ran aground and had a spill and so, we then had them in court and we were asking that there be a bond posted. It would essentially be equivalent to the amount of damages that may be assessed against them for the spill. The judge then was torn, so to speak, as to what to do. Should he go with the \$100,000 limit or should he comply with what the state requested. What the judge did was because

the tanker was going to offload the oil within the state that had not yet spilled, we were able to stop the spill before all of it had gone out, he said that it was continuing to transport oil; therefore, it should comply with the \$20,000,000 requirement. So we got a \$20,000,000 bond and essentially got them back into compliance with the law, but he did say that if they weren't going to transport any oil within the state, he might let the \$100,000 limit prevail. In other words, what would have happened if that had been the case, is that this particular vessel could have left the state--which it eventually did to go down to get repaired--merely posting a \$100,000 bond and I would leave it to, not necessarily in the case of this operator, but I would leave it to you to surmise whether or not let's say the damages were in a hypothetical case, and I'm not referring to the actual one now. Let's say there were \$10,000,000 damages and they posted a \$100,000 bond and they just decided not to come back. THAT'S the kind of problem that we're faced with here in that we feel that the limit is artificially low in that the state may not be able to recupe the damages that are going to accrue to any actual spill.

"To conclude my testimony, we should have a congruence between section 770 and 760(b) like we used to and the way to do that is to remove the \$100,000 and merely say, as we do in the amendment, the maximum amount of that damages available under the sections of the law that put out damages and there are other sections in 760(b), but they are essentially the same in terms of being able to assess damages for an oil spill.

"Section two in the bill merely removes the words 'owning or' to indicate that you do not have to own the control of the hazardous substance in order to be strictly liable for responsibility to clean up any such substance that might spill one you have it under your control."

Number 428

Representative Cato asked for a clarification of this. She asked if this also applied if one were transporting oil for another company and if one lacked the

ownership for that company. Commissioner Ross said that this did apply.

Discussion then ensued on the definition of hazardous substances. Although oil is not considered a hazardous waste, it is considered a hazardous substance. Further discussion followed on how damages were determined, penalties, and the logic if this bill compared to federal procedures.

Representative Marrou argued that the zero fiscal note was not accurate and that costs would incur if this bill were passed.

Number 537

Representative Davis requested from Commissioner Ross a brief on the issues raised by HB 100 for the Special Committee on Oil and Gas of which he is the chairman.

Number 548

Representative Cato thanked Mr. Ross for his testimony and then called on Ron Bliss who was connected with today's meeting via the Legislative Teleconference System.

Mr. Bliss represents a law firm which handles maritime cases and he voiced his opposition to the bill because he claimed that it would apply another level of fiscal responsibility, that it would allow the court to hold a vessel (an act which he said would serve to the detriment of ship owners), and that it was unconstitutional in that it does not provide for due process.

CHANGE TAPE #39 TO SIDE TWO

Number 003

Mr. Bliss was the attorney involved in the Cepheus case which Mr. Ross mentioned. Discussion on this case then ensued.

Number 049

Tom Jahnke of the Attorney General's office came to the table to address the issues of bonding, detention, and due process. Representative Pignalberi requested information from Mr. Jahnke on the question of constitutionality. More discussion continued on the Cepheus case.

Number 336

Representative Pignalberi moved to pass HB 100 out of committee with individual recommendations. Representative Cato repeated his motion and asked if there were any objections. Being none, so ordered.

DEPARTMENT OF LAW

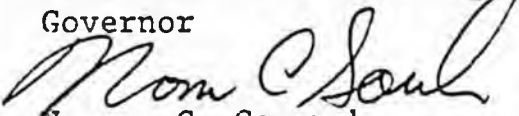
POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

November 26, 1984

M E M O R A N D U M

TO: Honorable Bill Sheffield
Governor

FROM: 
Norman C. Gorsuch
Attorney General

RE: Attached bill regarding detention of vessels for
security for oil-pollution damages
Our file: 377-001-85

Attached is a bill that was requested by the Department of Environmental Conservation, and approved by your office on July 30, 1984. The bill simply makes the bond posting provision in the statute on detention of vessels involved in oil spills consistent with the 1976 amendment of the statute providing for damages for oil pollution. This is intended as a simple, but important, housekeeping amendment.

A nearly identical bill, SB 534 (Department of Law file no. 377-136-84), was prepared by this department last year, and was introduced by the Senate Resources Committee. That bill was still in committee when the legislature adjourned. The version which is presented now adds one technical change. Section 2 clarifies the definition of "owner" with regard to strict liability for oil spills and other hazardous substances. This, too, is merely a technical housekeeping amendment.

Also attached is a draft transmittal letter to the legislature.

NCG:MRL:md

cc w/enc.: Hon. Richard Neve'
Commissioner
Department of Environmental
Conservation

Madeleine R. Levy
Assistant Attorney General
Natural Resources Section
Anchorage



D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the detention of vessels as security for oil-pollution damages and clarification of a definition relating to discharge of hazardous substances. This bill is intended to correct two statutory oversights brought to light as a result of the January 21, 1984 oil spill from the M/V Cepheus.

AS 46.03.760, providing for civil actions for pollution, and AS 46.03.770, providing for detention of vessels as security for oil-pollution damages, were both enacted by ch. 120, SLA 1971. As enacted, AS 46.03.760(b) set a maximum of \$100,000 for liquidated damages to be assessed by the court in an oil-pollution case. And, as enacted, AS 46.03.770 provided for the court to release a detained vessel upon posting of a bond set by the court in an amount not to exceed \$100,000. AS 46.03.770 referred to AS 46.03.760(b), and the two \$100,000 provisions were compatible with each other.

However, in 1976, along with other amendments, AS 46.03.760(b) was amended to remove the \$100,000 liquidated damages maximum, but AS 46.03.770 was not correspondingly amended. It has never been amended. This bill seeks to correct that oversight. It removes the reference to \$100,000 and inserts a reference (in two places) to the

relevant civil penalty and damages statutes that were enacted and amended after AS 46.03.770 was enacted.

Second, AS 46.03.822 provides for strict liability for the discharge of hazardous substances, including oil, for a person owning or having control over the hazardous substance prior to its discharge. "Owning or having control over a hazardous substance" is presently defined in AS 46.03.826(5) in a manner which arguably negates the common sense definition of an owner. Section 2 of this bill corrects that problem by eliminating the word "owner" from the statutory definition section, thereby restoring the original meaning of that word.

Sincerely,

Bill Sheffield
Governor

MEMORANDUM

State of Alaska

TO: Ms. Billie Trent
Administrative Assistant
Department of Environmental
Conservation-Juneau

DATE: February 8, 1984

FILE NO: 122-548-84

TELEPHONE NO: 276-3550

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: State v. Transportes
del Este Navegacion,
S.A., et al.

By: *ll*
Madeleine R. Levy
Assistant Attorney General
Natural Resources Section-Anchorage

The recent oil spill from the M/V Cepheus and the hearing on the temporary restraining order (T.R.O.) in that case point out the imminent need to amend AS 46.03.770 and AS 46.03.765. Section 770 provides for detention of a vessel without warrant for security for oil spill damages assessed under AS 46.03.760(b) as that latter statute existed prior to the 1976 amendments. Under 770, a vessel may be released after posting a bond not to exceed \$100,000.00. Prior to 1976, AS 46.03.760(b) permitted the court to assess liquidated damages for an oil spill not to exceed \$100,000.00, so the limitation of a bond to \$100,000.00 under 770 made sense at that time.

However, in 1976, the legislature repealed and re-enacted AS 46.03.760(b). § 9, ch. 220 SLA 1976. The re-enacted version eliminates any reference to a maximum amount of damages; it states only that damages assessed under section 760 may not be punitive and must be remedial and compensatory in nature. Section 770 should have been contemporaneously repealed and re-enacted to provide for a bond not to exceed the maximum amount of damages available under newly enacted 46.03.760 and 46.03.822. Unfortunately, section 770 was left untouched, but not unaffected, by the 1976 legislative changes.

The above discrepancy came to the forefront when we asked the court to grant the T.R.O. enjoining the Cepheus under AS 46.03.765 from leaving the port of Anchorage until it had complied with the requirements of AS 46.04.040(c) by posting a twenty million dollar bond. Attorneys for the Cepheus' owners argued that the proper remedy was not the requested injunctive relief but, rather, detention and release after posting \$100,000.00 bond under AS 46.03.770. While we did prevail on our argument in front of Judge Shortell, we might not be so fortunate in the future. Since section 770 is a vestigial remnant emptied of meaning after the 1976 re-enactments contained in ch 220 SLA 1976, your department should request a bill repealing section 770 as a technical, corrective measure. I would urge you to seek such legislative relief immediately. In order to preserve detention

Ms. Billie Trent
A.G. File No. 122-548-84

February 8, 1984
Page 2

of a vessel as a remedy under AS 46.03.765, I would suggest requesting the legislature to insert the following language in section 765 when and if 770 is repealed:

Sec. 46.03.765. Injunctions. The superior court has jurisdiction to enjoin a violation of this chapter or AS 46.04, or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04. In actions brought under this section, temporary or preliminary relief, INCLUDING DETENTION OF A VESSEL, may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

Please let me know if the Department of Law can be of further assistance in this regard.

MRL:cai

cc: Dick Neve'-Commissioner, DEC
Chris Noah-Deputy Commissioner, DEC
Ron Lorensen-Deputy Attorney General
Bob Martin-Deputy Director, DEC

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
POUCH O
JUNEAU, ALASKA 99811

Telephone: (907)
Address:
(907) 465-2600

April 26, 1985

The Honorable Bette Cato
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Cato:

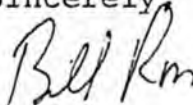
Thank you for scheduling HB 100 for hearing on May 1. While the housekeeping measures represented in that bill are relatively simple, that should not detract from the value of the legislation.

For your reference I have enclosed a copy of Governor Sheffield's transmittal letter, the Attorney General's cover letter to the governor, a comprehensive background memorandum prepared by the state's attorney who is preparing for the M/V CEPHEUS oil spill trial, and the transcript of hearing on the restraining order filed in that lawsuit.

The most recent estimate of the CEPHEUS spill puts it in excess of 300,000 gallons. The dollars-per-gallon penalties alone (under AS 46.03.758) will probably exceed \$400,000. Under the present law, the state could require a bond in the amount of only \$100,000.

I appreciate your using your good offices to see that this important legislation is addressed by the Legislature. If further information would be helpful, I will seek to provide it.

Sincerely,



Bill Ross
Commissioner

WRR:BT
Enclosures

cc: Madeleine R. Levy
Department of Law, Anchorage

Thomas M. Jahnke
Department of Law, Juneau

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HEARING ON PLAINTIFF'S MOTION
FOR T.R.O.

FEBRUARY 1, 1984
STATE v TRANSPORTES DEL ESTE NAVEGACION

H & M COURT REPORTING
1031 WEST 4TH AVENUE, SUITE 220
ANCHORAGE, ALASKA 99501
(907) 274-5661

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs)
)
 TRANSPORTES DEL ESTE NAVEGACION,)
 S.A., et al.,)
)
 Defendants.)

No. 84-961

HEARING ON PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER

BEFORE THE HONORABLE BRIAN SHORTELL

A P P E A R A N C E S:

MADELEINE R. LEVY, ESQ. for plaintiff
1031 West 4th Avenue, Suite 220
Anchorage, Alaska 99501

RICHARD D. MONKMAN, ESQ. for plaintiff
1031 West 4th Avenue, Suite 220
Anchorage, Alaska 99501

RONALD BLISS, ESQ. for defendant
431 West 7th Avenue, Suite 201
Anchorage, Alaska 99501

MICHAEL WODELL, ESQ. for defendant
431 West 7th Avenue, Suite 201
Anchorage, Alaska 99501

TAPE: 3ANK 1023
LOGS: 0000 - 0714

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PROCEEDINGS

FEBRUARY 1, 1984

(Whereupon the court convened at 4:50 pm.)

THE COURT:

We're on the record in State of Alaska
versus Transportes Del Este Navegacion; 84-961.

This case was assigned to Judge Serdahely,
but because he couldn't take it this week, and
because he feared it needed immediate
attention, it's been assigned to me for this
particular motion. That doesn't mean that I'm
assigned to the case, it's only that I'm
assigned to this one motion.

This is a Motion for Temporary Restraining
Order.

Ms. Levy?

MS. LEVY:

Thank you, Your Honor

Before I begin I would like to note for the
record that copies of all the pleadings that
the State has filed in this case have been
delivered to all counsel. And I cannot
represent whether service under Rule 4 (c) has
yet been perfected, but I understand that
that's in the process of being perfected.

H & M COURT REPORTING
1031 WEST 4TH AVENUE, SUITE 220
ANCHORAGE, ALASKA 99501
(907) 274-5661

1 Any vessel that is going to be coming into
2 state waters for the purpose of loading or
3 unloading oil, is required, 65 days before the
4 time that it begins its operation, to obtain a
5 Certificate of Financial Responsibility.

6 The statutes regulate the nature of that
7 certificate, and the purpose of the certificate
8 -- or, at least one of the purposes, is
9 referenced in 46.04.040 (i), which states,
10 financial responsibility under this section
11 extends to a loss compensable under those very
12 statutes which we reference in our complaint as
13 the basis for the State's action here.

14 Our concern is that, as documented in the
15 Affidavit of Robert Martin, submitted in
16 support of our memorandum for the TRO. The
17 vessel, as we understand it, is about to leave
18 the Port of Anchorage.

19 The latest estimate I have been given is
20 that it will leave the Port of Anchorage some
21 time Thursday afternoon; the Coast Guard will
22 permit it to do that.

23 The vessel will then proceed down to
24 Nikiski, where it will offload some of the
25 contaminated fuel. And at that point the, the

1 I did also give a copy of the complaint to
2 Mr. Bliss yesterday, and he indicated at that
3 point in time that he was not authorized to
4 accept service, but I believe he's changed his
5 position since then.

6 Essentially, the State has filed a
7 complaint arising out of the incident of the
8 oil spill from the tanker, M/T Cepheus, in Cook
9 Inlet.

10 And the complaint asks for penalties under
11 certain sections of Title 46, which is the
12 Water, Air, Energy and Environmental
13 Conservation title. And we are here before the
14 court this afternoon in an attempt to get a
15 restraining order.

16 Now, the purpose of the temporary
17 restraining order is to require the owners and
18 the operators of the vessel to comply with
19 46.040 (c), which is a statute requiring
20 demonstration of financial responsibility for
21 any vessel which is of the nature of an oil
22 tanker, coming into the waters of the state of
23 Alaska. And under the regulations which have
24 been adopted pursuant to that statute, and they
25 are at 18 AAC 20.005.

1 And we are, of course, concerned that,
2 since we have a Greek vessel, which is owned by
3 a Panamanian corporation, and operated by a
4 London agent, with a substantial oil spill,
5 which, at this point in time, we can only
6 estimate to be in excess of 180,000 gallons,
7 with unknown environmental damages, and ongoing
8 violations of State statutes, requiring not
9 only the financial responsibility showing,
10 which I indicated earlier, but also an oil disc
11 charge contingency plan, which the owners and
12 operators failed to get before the vessel
13 entered the waters.

14 That the vessel is about to leave
15 Anchorage, and there is absolutely no financial
16 security as required by State statutes.

17 We are asking this court only to enjoin the
18 moving of the vessel from the Port of Anchorage
19 until the owners and operators have complied
20 with the statute, which they were required to
21 comply with 65 days before the vessel actually
22 entered state waters.

23 And I would like to -- if the court has no
24 questions now, reserve the rest of my time to
25 respond to...

1 Coast Guard's intentions, as I understand them,
2 are to require an under water examination of
3 the hull of the vessel, to insure, for Coast
4 Guard purposes, that it can proceed through
5 state waters, down to a port, which has
6 facilities to repair the vessel.

7 And...

8 THE COURT:

9 Where would the inspection take place?

10 MS. LEVY:

11 Excuse me?

12 THE COURT:

13 Where would the inspection take place?

14 MS. LEVY:

15 It's not certain at this point in time.
16 What the Coast Guard wants to do is have the
17 inspection take place somewhere where the
18 waters are going to be still, and where we do
19 not have the ice conditions that we have in
20 Cook Inlet.

21 My understanding is that divers have
22 attempted to go down, and that they haven't
23 been able to assess all of the damage because
24 of the ice -- presence of the ice, which
25 prohibits them from really examining the hull.

1 THE COURT:

2 Thank you, Ms. Levy.

3 MS. LEVY:

4 Oh, one other thing, Your Honor, if I
5 might,

6 The attorneys for the defendant, Mapco, who
7 is present in the courtroom, Mr. Horton, had
8 indicated to me that Mapco does not oppose the
9 State's motion.

10 THE COURT:

11 All right.

12 Mr. Bliss?

13 MR. BLISS:

14 Thank you, Your Honor.

15 Has a time been allotted for the argument?

16 THE COURT:

17 No.

18 MR. BLISS:

19 I will try to be brief, and not take
20 that...

21 THE COURT:

22 All right.

23 MR. BLISS:

24 I would like, first, to address the legal
25 side of the State's argument, and then flesh in

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some of the facts, because while we can't agree with all of the facts that have been -- precisely as they have been recited.

The essential facts are true. The vessel is here. It does not have the financial responsibility certificate that it was required to have, and I'll later distinguish between having that certificate and being financially responsible.

But going directly to the relief which the State has requested. They requested relief under Alaska Statutes 46.03.765, which says: "The Superior Court has jurisdiction to enjoin a violation of this chapter." It goes on with other details.

But "enjoin a violation of this chapter", appears to me, has to address what that vessel is doing. And for that vessel to leave the Port of Anchorage, would not, in any way, violate this chapter.

Indeed, if we look at the very next section in this statutory scheme, 46.03.770, we find a section which is addressed specifically to the question of when may a vessel be detained as security for damages for an oil spill. And the

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State hasn't cited to that, and I don't have an explanation for that.

In that section it says that a vessel may be detained and held as security for payment to the State of the amount of damages assessed by the court under AS 46.03.760 (b), which is more narrow than the scope of the State's complaint here.

It then goes on in that section to say: "The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed \$100,000. The damages received under this section shall be transmitted to the proper State officer...", etc., etc.

So there is a statute which addresses the question of when the court may detain a vessel as security for the damages.

And what the State has cited to the court here, again, grants the jurisdiction to enjoin a violation.

Well, the violation of this statute is not coming to the State without having posted this piece of paper which is a Certificate of Financial Responsibility, it is pumping

1 operations. It is the transfer of oil from a
2 tank vessel ashore -- or, ashore to a tank
3 vessel. It can be a barge, it can be a self-
4 propelled vessel.

5 The -- it is so that the certificate is not
6 in place, and it's simply not in place because
7 the owners were not made aware before they came
8 here, that such a certificate was required.

9 Alaska is...

10 THE COURT:

11 How long does it take to get such a
12 certificate?

13 MR. BLISS:

14 Well, the problem is this, and that's the
15 whole long story -- it's unavailable to this
16 owner. It's unavailable to any ship owner if
17 they go out on the market to buy it; they can't
18 buy it.

19 It requires the compliance, or the --
20 rather, the cooperation of the person who is
21 receiving the cargo, or some other properly
22 qualified Alaskan company to put up the
23 certificate.

24 Indeed, this ship owner has offered to the
25 State, security in the amount of \$20 million,

1 backed by a letter of guarantee from the United
2 Kingdom Mutual Ship Owners Protection and
3 Indemnity Association, and that association has
4 entered something like, as I've heard, 75% of
5 the world's tonnage in its -- in its
6 membership. It's a huge organization. They
7 have financial responsibility. And this vessel
8 is entered in that organization with complete
9 insurance for this kind of occurrence.

10 There is not a problem here of financial
11 responsibility. There is a problem of
12 compliance with a particular aspect of the
13 State law, which is impossible to comply with
14 in this circumstance.

15 I've been working with the State Department
16 of Environmental Conservation for three or four
17 years now, with this problem. In fact, the
18 statute itself was -- essentially there was a
19 moratorium on its enforcement for a number of
20 years, for the reason that it's impossible for
21 a vessel owner to go into the insurance market
22 and purchase, from any source, anywhere in the
23 world, coverage which -- in which the insurance
24 company will author the little certificate
25 which then goes to the State of Alaska. And

1 there are a lot of reasons for that, but it's
2 unavailable, and has been since the beginning
3 of this law.

4 There is one exception to that, and through
5 the dogged efforts of the State Department of
6 Environmental Conservation. There has been
7 located, about a year ago now, one small area
8 in the London Insurance market, who will author
9 these certificates for tank barges only. And
10 those tank barges have a \$1 million, rather
11 than a \$20 million piece of paper that's
12 required for the State.

13 There do exist other financial
14 responsibility schemes in place here, over
15 which the State has an overlay. And in this
16 case the vessel is carrying a federal maritime
17 certificate -- a FMC certificate for oil spill
18 damages and clean-up, and that is authored by
19 the -- this UK P and I association, it's called
20 -- the organization I spoke of before.

21 They are qualified to do business with the
22 federal government, but what they haven't done
23 is met the detailed requirements of these State
24 regulations, because, of course, to be -- to
25 write insurance, if you will, in the state of

1 spills, and has occurred in this one, and
2 within the team that works under him, the State
3 has input. And, indeed, the Department of
4 Environmental Conservation, which is the
5 interested agency here, has been working hand
6 in glove with the Coast Guard and with this
7 owner, and the team that has been brought from
8 around the world to assist in this problem, to
9 abate this pollution hazard. It's been the
10 number one interest of every person involved in
11 it since -- since the incident occurred.

12 We spoke this afternoon with the federal
13 on-scene coordinator, and asked him whether he
14 would be willing to appear here to tell Your
15 Honor what he thinks about what's happened, and
16 I think it may be important, because he has the
17 responsibility, I think, over, in fact, the
18 State agency.

19 He can countermand an order of the State
20 agency if he thinks it's necessary in the
21 abatement of the pollution hazard and its
22 clean-up.

23 And he was unable to come this afternoon.
24 As I understand it -- I didn't speak to him
25 personally, Mr. Woodell did. The reason he was

1 unable to come is, first he's busy, but second
2 he needs a subpoena through the governmental
3 channels to appear on behalf of a private
4 party.

5 But what he has said is, that ever since
6 that spill has occurred, the owners have worked
7 very closely with the Coast Guard, and with the
8 State Department of Environmental Conservation,
9 in an effort to abate the spill.

10 He said that they brought, and they have,
11 the best experts in the country and around the
12 world, to assist in this problem. We have a
13 tanker with the bottom damaged, to an extent
14 that we don't currently know.

15 They have spared no expense, and spared no
16 effort. There hasn't been a suggestion made by
17 the Coast Guard, or by the State, that hasn't
18 been acted upon, and not a nickel has been
19 saved by this owner; they've done what has been
20 requested and what's been required.

21 He has said, and it's true, that a plan has
22 been developed, in concert with the State
23 agencies, and Adak is in complete agreement
24 with it; in concert with the owner; and in
25 concert with the various experts that are here,

1 Alaska, you have to qualify as a licensed
2 company in Alaska.

3 Alaska is one of the 50 states that has
4 this kind of a requirement, and that's the
5 reason this ship owner was utterly unaware when
6 it came in here, that it was required.

7 Now, the one thing that has permitted the
8 ongoing shipping traffic into Cook Inlet --
9 especially Cook Inlet, where, as this vessel
10 was, bringing in products for use, primarily,
11 at the airport.

12 The one thing that's permitted that to
13 occur is, in advance of those ships coming in,
14 there is another interested party, and that is
15 the cargo owner -- the purchaser -- the
16 receiver, if you will, who wants the cargo to
17 come in. And those companies are almost always
18 able to comply with the State's requirements,
19 and will do so for the vessel, and then take a
20 letter of guarantee back from the vessel's
21 insurance company.

22 In this case, the vessel had already
23 arrived; grounded, actually, just before it
24 came to the dock; and once that event had
25 occurred, there no longer was an incentive for

1 the cargo receivers to cooperate in a -- it's
2 not a thing which causes money to change hands,
3 but rather letters of guarantee.

4 We're not dealing here with a financially
5 irresponsible owner. We're not dealing with
6 an owner who doesn't have insurance -- well
7 covered for this event. We are dealing with an
8 owner who didn't know, and doesn't have this
9 particular State document.

10 Now, the problem with the relief the State
11 is asking for here is -- actually, there are a
12 number of practical problems, and it seems to
13 be very much against their interest, to have
14 this vessel stay here, now that it has holes in
15 its bottom, and has, in fact, leaked oil.

16 Addressing that, if I may, for a moment,
17 there is a problem here of preemption by the
18 federal government, in that, when an oil spill
19 occurs there is federal legislation, the Clean
20 Water Act, which -- which gives to the United
21 States Coast Guard, the responsibility for
22 managing, for want of a better word, the
23 operations to abate and clean up an oil spill.

24 And under that legislation, a federal on-
25 scene coordinator is designated for major

1 a plan for abating this pollution hazard and
2 getting the vessel out of here, and that plan
3 -- he said, as the federal on-scene
4 coordinator, he wants the plan carried out as
5 agreed.

6 And it calls for discharge of the sound
7 cargo here at Anchorage, closely monitored by
8 the Coast Guard and Adak, both of which are
9 onboard the vessel. He wants it to depart for
10 Nikiski as soon as possible. He is concerned
11 about it staying here at Anchorage, because of
12 the ice conditions at Anchorage.

13 At Nikiski it's to offload its remaining,
14 what is now contaminated by sea water, cargo,
15 and then he wants it to proceed, as soon as
16 practicable, under a tug escort to the nearest
17 repair port.

18 That's the plan that has been worked out
19 with Adak; Adak has agreed to it; and it's the
20 plan that the federal on-scene coordinator
21 wants to be carried out.

22 Entry of the order which the State has
23 requested, in addition to the legal
24 infirmities, runs counter to the agreement of
25 Adak, which appears to be in the best interest

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of Cook Inlet and the people of the State of Alaska, to get this vessel out of here, abating the pollution hazard; get it to a place where it could be repaired, because there aren't repair facilities here.

Finally, I think the critical thing, again, returning to the legal aspect of it, is, you have authority to enjoin a violation. The sailing of this vessel is not a violation.

Pumping operations, if it weren't under the request of the Coast Guard, would be a violation, because that's the thing that the statute prohibits in the absence of the appropriate piece of paper.

I fail to understand why the State has declined on the the \$20 million of security that's been offered to them, because it's orders of magnitude greater than -- than this lawsuit involves. But that's the position they've taken, and accordingly, we think that what the State ought to do if it wants this vessel detained, is proceed under 46.03.770. Ask this court to hold a hearing and set a bond in an amount not to exceed \$100,000.

Thank you.

1 THE COURT:

2 Thank you, Mr. Bliss.

3 MR. BLISS:

4 And one final thing. We did have, as
5 mentioned in chambers -- the deposition of the
6 master has been noticed for tomorrow, and the
7 reason Mr. Woodell is here is, in due course,
8 he would like to address that question.

9 THE COURT:

10 All right.

11 MS. LEVY:

12 Your Honor, the reason that we have
13 proceeded under 770 -- that's 46.03.770, is
14 because it's simply not applicable, by its own
15 terms, to the situation at hand.

16 That statute says that: "A vessel may be
17 held as security for payment to the State of
18 the amount of damages assessed by the court
19 under AS 46.03.760 (b)."

20 And the editor notes that the reference to
21 760 (b), is to 760 (b) as it existed prior to
22 the 1976 amendment.

23 I have a copy here of 760 (b) as it existed
24 prior to the 1976 amendment. And it states --
25 and I would be happy to give it to Your Honor,

1 if you'd like to look at it.

2 "In addition to the penalties provided in
3 subsection (a) of this section, a person who
4 violates 470-750 of this chapter, is liable in
5 a civil action to the State for liquidated
6 damages to be assessed by the court for an
7 amount of not less than \$5,000, nor more than
8 \$100,000, depending on the severity of the
9 violation."

10 That section has been repealed. It no
11 longer exists anywhere in Title 46.

12 I believe that the reason why 770, as it
13 now exists, talks about a bond not to exceed
14 \$100,000, is clearly because it was geared to
15 the old statute, which permitted the court to
16 assess liquidated damages not to exceed
17 \$100,000.

18 As I say, that statute no longer is a
19 viable statute. It has been repealed by the
20 legislature.

21 In any event, we are not seeking damages
22 under 46.03.760 (b), and that's the only
23 purpose for detention of vessel without warrant
24 as security for damages under the current 770.

25 As to the argument on the fact that an

1 injunction should not issue because there is no
2 continuing violation. That is not what the
3 statute says.

4 46.04.040 (c) states: "A person may not
5 cause or permit the transfer of oil to or from
6 a tank vessel, or to or from an oil barge,
7 unless proof of financial responsibility for
8 the tank vessel or barge has been accepted by
9 the department."

10 We've already established that such proof
11 has not been accepted by the department; none
12 was ever tendered to it.

13 And the movement -- excuse me.

14 THE COURT:

15 None was ever tendered to it. The security
16 that Mr. Bliss mentions has never been -- has
17 never been shown to you?

18 MS. LEVY:

19 Well, I've never seen a -- a proposed
20 certificate, if that's what Your Honor is
21 asking me, and I would like to get to that in a
22 minute.

23 We contend that it would be a violation of
24 the statutes to permit the vessel to move,
25 knowing that its intention is to go to

1 Nikiski. No one's disputed that it intends to
2 go to Nikiski to offload fuel.

3 It is a further violation of subsection (i)
4 of 040, which specifically requires financial
5 responsibility for the kinds of losses that we
6 have alleged in this complaint.

7 Now, as far as the financial responsibility
8 certificate itself is concerned, the
9 regulations permit four different kinds of
10 acceptable financial responsibility, and one is
11 self insurance -- would Your Honor like the
12 citations to the code?

13 THE COURT:

14 Yes.

15 MS. LEVY:

16 18 AAC 20.005. One is an insurance
17 police. That's 18 AAC 20.065. One is a surety
18 bond. That's 18 AAC 20.075. And one is a
19 guarantee, and that's 18 AAC 20.085.

20 And all of those requirements share the
21 common denominator, which simply is not present
22 in the security that is now offered to the
23 State, the common denominator having some
24 assets in the State of Alaska.

25 Mr. Bliss did inform me that the only

1 assets of the corporation which own the ship,
2 consist of the ship.

3 We were informed by Mr. Bliss, or by
4 persons on his behalf, that the ship, in good
5 condition, would be worth perhaps \$5 million.
6 No one knows at this point in time what its
7 current value is.

8 MR. BLISS:

9 I'll object to any representations made by
10 me, for the simple reason that, first of all,
11 neither of those representations is accurate.
12 And, second, they were made in the course of an
13 attempt, this morning, to settle the dispute
14 which stands before this court now.

15 THE COURT:

16 I won't accept them as proof.

17 MR. BLISS:

18 Thank you, Your Honor.

19 MS. LEVY:

20 We're unable, at this point in time, as has
21 been stated in Mr. Martin's affidavit, to give
22 the court an exact accounting of what we think
23 the damages are going to amount to. But I did
24 want to point out to the court that these are
25 strict liability statutes. We have a dollars

1 per gallon statute that says, "You spill
2 gallons; you pay "x" amount of dollars."

3 And the base calculation that we have been
4 able to come up with, if we assume that no more
5 than 180,000 gallons has been spilled, is
6 somewhere in the neighborhood of \$167,000.

7 There are other per se violations of the
8 statutes, and there is a strict liability
9 penalty for those violations of the statutes,
10 and those are -- were cited in the complaint.

11 If Your Honor would permit, I would like to
12 ask Mr. Monkman to address the question of why
13 the State is not satisfied with the kind of
14 financial security that is being offered, or
15 being proposed at this point.

16 THE COURT:

17 Yes, I would like him to do that.

18 MS. LEVY:

19 Thank you.

20 MR. MONKMAN:

21 Your Honor, what has been offered as
22 security -- essentially, as a substitute for
23 what the statute requires, is a letter of
24 undertaking from a protection and indemnity
25 club, that is a ship owner's mutual insurance

1 club based in the Bahamas.

2 What we have, as Loni pointed out, a Greek
3 tanker operated by a London agent, insured --
4 owned by a Panamanian corporation, and insured
5 by a club based in the Bahamas.

6 The statutes and regulations are very
7 specific as to what sorts of security are
8 allowed for the \$20 million bond. There are
9 four types.

10 In the Administrative Code it specifies
11 exactly what types of undertakings are
12 available to a tanker.

13 The first is self insurance. The applicant
14 must maintain, in the United States, working
15 capital in net worth in an amount equal to or
16 more than the amount required by the statute,
17 which, in this case, is \$20 million. That's 18
18 AAC 20.055.

19 Regardless as to the representations made
20 this morning, the owners have not shown the
21 State any evidence at all that they maintain
22 \$20 million of working capital in the United
23 States, let alone in Alaska.

24 The second avenue is insurance. You can
25 purchase an insurance policy, which must be

1 through an insurer which is either authorized
2 to sell insurance in the state of Alaska, under
3 a certificate issued by the Director of the
4 Division of Insurance, or is an unauthorized
5 insurer listed by the Division of Insurance,
6 but it has to be an insurance company which is
7 approved by the State of Alaska, doing business
8 in the state of Alaska, with specific language
9 in the policy.

10 The specific language states that the
11 insurer agrees that any final judgment against
12 the insured for damages resulting from an
13 unlawful discharge of oil, may be enforced or
14 executed directly against the insurer. And
15 goes on to state that the language must bind
16 the insurance company to pay the State
17 directly. That is so the State can sue the
18 insurance company without trying to track down
19 the owners of a Panamanian vessel who may be in
20 London or may be in Greece.

21 The third option is a surety bond. If the
22 tanker/owner posts a surety bond, that's under
23 18 AAC 20.075 -- it can post a surety bond, but
24 the surety must be registered to do business in
25 Alaska. That is, the State must be able to

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collect on its judgment from the surety directly. That's a specific provision.

Last of all, it is for tankers only, which are carrying oil which has been transported through the TransAlaska Pipeline, A Federal Maritime Commission certificate is available.

This tanker is not carrying oil which was transported through the Alaska Pipeline, so that provisions of 18 AAC 20.045 do not apply.

Now, what the tanker owners have brought up is, a fifth variety. That is this letter of undertaking by an entity which is not licensed to do business in the state of Alaska; which, at least as of this morning, had not authorized Mr. Bliss to accept service on its behalf in the state of Alaska; has no assets in the state of Alaska; and is entirely unknown to the counsel here for the State.

Mr. Bliss -- I hate to make any representations as to what he said, but he did tell me -- I think he'll stand by this -- that that letter of undertaking is as good as gold. And we asked, "Well, why, if it's as good as gold, don't you go to a surety company which is registered in the state of Alaska, to

1 do business in the state of Alaska, and get a
2 bond for the damages, which are going to accrue
3 after this oil spill.", and there is no reply,
4 which is satisfactory to us.

5 Essentially have set out these four
6 specific types of financial -- financial
7 certificates of responsibility, which the
8 legislature said, are the types you need in
9 this situation, we think we are entirely within
10 our rights to request that the tanker come
11 forward with that type of certificate. That's
12 what the law says.

13 They should have had that certificate 65
14 days before they entered Alaska waters, and
15 they did not.

16 If they had complied with the law
17 originally, this matter wouldn't have been --
18 wouldn't be coming up.

19 So that's essentially the situation. The
20 statutes specifies four types of certificate:
21 they have come up with another thing, and
22 that's our position, Your Honor.

23 THE COURT:

24 Thank you. Thank you, Mr. Monkman.

25 Is there any reply at all?

1 MR. BLISS:

2 If I may just speak briefly.

3 I think that the reason that that's not
4 correct is, what the State is entitled to, and
5 we agree with it, and it hasn't been done, is
6 in advance of a ship coming in and operations
7 occurring, they're entitled to this Certificate
8 of Financial Responsibility, or they could
9 prohibit the entry of the ship and the
10 operations.

11 And what we have here is an existing tort,
12 an event that's occurred, and the question is,
13 do we now turn back to regulations, which have
14 to do with pre-existing insurance requirements,
15 and apply them to damages which are claimed in
16 a lawsuit, and I think it's fine, if that's the
17 policy they want to take; they don't have to
18 accept the security that we've offered them,
19 but it's valuable security, and they know it.

20 THE COURT:

21 Thank you, Mr. Bliss.

22 I'm going to take this motion under
23 advisement. That doesn't mean I won't decide
24 it quickly after we recess, but I'm not going
25 to decide it now.

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I'll deal with the deposition question --
at least I'll hear from you on it.

MR. WOODS: DELLS:

Your Honor, the deposition of the master,
the captain of the vessel, Mr. Michalinos
(ph.), has been set by the State, pursuant to
Rule 30 (b) (2) for 10:00 a.m. tomorrow
morning.

We got informal notice of it late yesterday
afternoon, and we object on four grounds,
unreasonable notice -- it's set for a time
that's just virtually impossible, and certainly
unreasonable for the master to attend, that
having the deposition this soon in a complex
lawsuit, will require two or more depositions
of the master before its all over, and we have
offered a -- to the State and other interested
parties, alternative arrangements, which we
think would certainly be reasonable and should
be accepted.

First, as to the notice, there's probably a
36 hour notice here, but the problem is this:
That the intention of everybody, before the
notice, and since the notice, has been, to
avoid further pollution.

1 And we have not been able to speak at
2 length, and certainly have not been able, in
3 any way, to prepare the master, because we have
4 not wanted to interfere with the concerns he
5 has right now as things are going on down at
6 the ship.

7 And the -- occurring at an unreasonable
8 time, is because there are many things going on
9 at the ship. This incident occurred 10 or 11
10 days ago; since that time the master has
11 virtually not left the ship; operations
12 attempting to avoid pollution have been going
13 on around the clock, and they're going on right
14 now.

15 There is contaminated cargo being shifted
16 in tanks; there are diver inspections going on;
17 there's the constant attention of keeping the
18 ship and proper trim, and I believe there's
19 some offloading of good cargo, if that has not
20 already been completed.

21 And all of those things involve the safety
22 of the ship. You're dealing with a flammable
23 cargo. You get involved in the stability of
24 the ship, because you're changing large
25 weights. You're dealing with the trim of the

1 ship. And essentially you're dealing with a
2 ship with holes on the bottom, and whether or
3 not oil can come out depend on what the draft
4 is.

5 All of those things are a problem to the
6 master, and he has taken upon himself, as he
7 should, to stay right there and monitor those
8 things for the safety of the ship and crew and
9 the environment. And all those will be going
10 on tomorrow at 10 o'clock when this deposition
11 is set.

12 And the other problem, Your Honor -- this
13 man, essentially, has not had a good night's
14 sleep in 10 or 11 days. He's been under a
15 tremendous strain. There have been people at
16 all hours and at all times, wanting something
17 from him, and he's at his end. He is not ready
18 to sit down and go over a lengthy deposition
19 with several parties involved, which could take
20 a great deal of his time.

21 It could, depending on the ruling today,
22 delay sailing. It certainly will delay the
23 pollution abatement activities taking place
24 now.

25 And we are informed today that the cargo

1 owner intends to bring a suit, we believe, in
2 this court. He has not had service yet. He
3 intends to sue, I understand, the parties
4 involved with the vessel, but also the pilot.
5 That pilot, as any other party here, will be
6 interested in having the deposition of the
7 master. And if it's taken now before these
8 suits are served, all we're faced with is
9 depositions down the road.

10 And we -- what we propose, and have offered
11 to the State -- and I've offered to -- the
12 State has not given me an answer. We've
13 offered to cargo, and they appear to be agreed;
14 we have not received a return call.

15 And to the pilot's lawyer, is to do this.
16 The vessel has to go to a west coast repair
17 yard to be repaired. The plans call for it to
18 go to Seattle. That trip will take a certain
19 amount of days. It will allow the master to
20 get the rest he needs, and we would offer to
21 make the master available at repair yard
22 while repairs are going on.

23 Repairs will be extensive; we don't know
24 the time period, but we know that it will be
25 enough time there to complete the deposition.

1 And what we have offered, and what we would
2 like to propose here is that the -- this
3 deposition be quashed. That the deposition of
4 the master be reset at a time to be agreed, the
5 second day or so after arrival at the repair
6 yard.

7 THE COURT:

8 What are you talking about? What kind of a
9 time frame are you talking about?

10 MR. WOODSELL:

11 Do you know how many days transit?

12 UNIDENTIFIED SPEAKER:

13 Oh, five days to Seattle.

14 MR. WOODSELL:

15 Five or six days transit after it leaves,
16 so it would be, we would say, within a week to
17 10 days. --that were to take the place -- the
18 other problem with having it now, or having it
19 even the day after tomorrow is this: Because
20 we've been concentrating on avoiding a further
21 pollution incident, we, essentially, haven't
22 even, ourselves, interviewed the master at
23 length as to the cause. We're worried now
24 about the immediate problem, and felt that
25 there would be time later. So we haven't even

1 completed our own interviewing of the master.
2 and we would have time to do that when they
3 arrive at the repair port and the master will
4 be ready to go at that time.

5 THE COURT:

6 Thank you.

7 MS. LEVY:

8 Your Honor, all I could say is, I accept,
9 but nobody ever made that proposition to me,
10 and I never heard about it until just now.

11 THE COURT:

12 All right. So you accept?

13 MS. LEVY:

14 Yes, I accept.

15 THE COURT:

16 So there's no issue.

17 Seven to 10 days is reasonable notice

18 MS. LEVY:

19 Providing that they will accept service of
20 process and service of the notice of the
21 deposition.

22 MR. BLISS:

23 I can't say, for any of the other clients
24 that I represent, that they should have to
25 waive the requirement of service of process for

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something that has to do with the master's deposition. I haven't gotten an answer back from the client of whether we could accept service of process.

I don't think that it's a reasonable condition, nor should the owner or the London agent be required to meet that when, indeed, this is a matter directly related to the master.

THE COURT:

Who are you representing?

MR. BLISS:

Our firm represents the master, represents the owner, and it represents the London agent, all three of which have been...

THE COURT:

Name them, please.

MR. BLISS:

Yes, I shall do so.

The owner...

MS. LEVY:

Your Honor, it is the deposition of the master that I seek to take.

MR. BLISS:

The owner of the vessel is Transportes Del

1 Este Navegacion, S.A.

2 Rethynis and Kulukundis are the London
3 agents, not operators in London, but London
4 agents.

5 The vessel has been named in the complaint
6 -- I'm not sure it can be a party in these
7 proceedings, but the master is Captain
8 Michalinos, I think it is, and I -- we also
9 represent him.

10 Mapco is represented by other counsel.

11 THE COURT:

12 All right. Now, I'm -- let me see if I
13 understand you. You are asking me to quash
14 this notice of deposition on behalf of clients
15 that you're representing here today in court.

16 They have not consented that you can accept
17 service of process?

18 MR. BLISS:

19 That's correct. As to service of summons
20 and complaint.

21 We are here today because we will be
22 representing them, assuming they're served. We
23 are here today because we were given notice of
24 this; because our clients are interested in it,
25 but they have not yet been served, so far as I

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know.

We may agree to accept service of process in the lawsuit. We assume that that is going to occur. If it does occur, either we accept service, or service is actually perfected, in either event, that the lawsuit is going to commence.

At this point it's a technical problem, I don't think it's a real one. It's not owners trying...

THE COURT:

What...

MR. BLISS:

I beg your pardon?

THE COURT:

Assume, then, that I simply don't quash the deposition until service is accepted. Do you think it will be much of a problem to get your clients to have somebody accept service?

MR. BLISS:

I can't say because I don't have an answer from them. And it's their...

THE COURT:

All right. Well, then I won't quash the deposition.

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MR. BLISS:

Well, certainly, it's their prerogative on the question of whether...

THE COURT:

Yes, it is. I'm not questioning that. I won't quash the deposition -- I will quash the deposition -- or, I assume the State will agree to put the deposition off for seven to 10 days, assuming this service of process is accepted?

MS. LEVY:

Yes, Your Honor, that is what we agree to do.

THE COURT:

So the motion is denied, but it certainly will be granted if service of process is accepted.

At this point, though, I'm not quashing the notice of deposition.

All right.

Anything further?

MR. MONKMAN:

No, Your Honor.

MR. BLISS:

No, Your Honor.

*

1 THE COURT:

2 All right. We'll recess then.

3 THE CLERK:

4 Please rise. Court is now in recess.

5 (Whereupon a brief off the record period
6 was then taken.)

7 THE CLERK:

8 Court now resumes its session.

9 You may be seated.

10 THE COURT:

11 I'm prepared to rule on the motion.

12 As I understand it, Mr. Horton, you want to
13 be heard on the question of the deposition?

14 MR. HORTON:

15 Your Honor, it seems to me that the court
16 might entertain a motion -- I represent Mapco,
17 not particularly involved in what's before the
18 court now, except that, we're going to find it
19 extremely difficult to deal with a critical
20 liability deposition at 10:00 in the morning
21 and not even know if it's going.

22 I was wondering if the court might
23 entertain a suggestion that you set it off at
24 least until Friday morning at 10 o'clock, to
25 give Mr. Bliss a reasonable opportunity to get

1 permission to accept service, but more
2 importantly to allow us to make some other
3 arrangements. And I have a feeling, under that
4 much time pressure, we will make other
5 arrangements that will suit the need. Because
6 at 10:00 in the morning, I'm not gonna be
7 prepared to take a deposition.

8 THE COURT:

9 Ms. Levy?

10 MS. LEVY:

11 I'll agree to that, Your Honor.

12 THE COURT:

13 I think that's very reasonable, yes.

14 That's all right. So, in other words, the
15 notice of deposition is simply changed to 10
16 o'clock on Friday?

17 MR. HORTON:

18 That would accomodate our problem.

19 THE COURT:

20 And I'm assuming that counsel will attempt
21 to find out about the question of service
22 quickly, and if there's no problem with
23 service, then the deposition could be simply
24 set off by the agreement of the parties, or by
25 me, if you come to me, and set for some time,

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seven to 10 days for now.

MR. HORTON:

And implicit -- and I believe it is the case, implicit is that, we do need the -- someone -- the representative of the owner, to say the ship is not leaving before Friday at 10 o'clock, of course, with the captain on it. And that would be something we would encourage the court to inquire into.

We believe that's the case, that it's not leaving before Friday at 10:00, but I'm sure someone besides me should address that.

MR. BISS:

We hope that's a relevant question, but indeed, it's not going to be leaving.

UNIDENTIFIED SPEAKER:

That's true, it's not gonna leave.

MS. LEVY:

I would have no objection if the ship left, as long as the captain stayed behind, to make himself available for the deposition -- for the purpose of this discussion.

MR. BISS:

It won't leave without the captain.

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THE COURT:

Only for the purposes of the discussion of the deposition, is that right?

MS. LEVY:

That's correct.

THE COURT:

All right. I've come to a resolution of the question in my mind, anyway, and it's different from the order -- I'm going to enter an order, but it's different from the order proposed by the State.

And since it is different, and since I don't have anybody to type it right now, I'm not going to give it to you in written form, but I will put it on the record here, and this is it:

Plaintiff having moved pursuant to Civil Rule 65 (b) and AS 46.03.765 for a temporary restraining order prohibiting the M/T Cepheus from leaving the Port of Anchorage until defendants have posted a bond, as required by AS 46.04.040 (c), I hereby enter the following order, pursuant to the provisions of A.S. 46.03.765.

1 Defendants, their agents, employees, and
2 attorneys are directed to prohibit the M/T
3 Cepheus from leaving the Port of Anchorage to
4 sail to Nikiski and transfer oil there, until
5 such time as they have complied with the proof
6 of financial responsibility provisions of AS
7 46.04.040 (c), and have given written notice of
8 such compliance to attorney for the plaintiff.

9 In the event that defendants' current plans
10 to transfer oil at Nikiski change, and they
11 decide to move the M/T Cepheus from the Port of
12 Anchorage for any purpose other than that
13 stated here in court, at this hearing, they
14 must give notice of this intent to the court,
15 and plaintiff, to determine whether this
16 temporary restraining order should be modified
17 pursuant to the provisions of AS 46.03.770, or
18 any other applicable legal authority.

19 Until such notice is given, and plaintiff
20 has had an opportunity to have a hearing before
21 this court on the issue, defendants, their
22 agents, employees' agents and attorneys are
23 directed to prohibit the M/T Cepheus from
24 leaving the Port of Anchorage.

25 Now, the reason that I've done that is

1 because it appears to me that the plans, as
2 they are, envision a violation of the financial
3 responsibility provisions.

4 There may be some other plan that the
5 defendants could come up with that would
6 involve simply leaving the Port of Anchorage,
7 at which point the provisions of 77 -- and not
8 transferring oil. At that point the provisions
9 of 770, and the \$100,000 security limit, might
10 come into effect. I'm not saying that they
11 will, but they might.

12 I could see where there might be an
13 argument that the limit I should require for
14 security is only \$100,000. But that's not the
15 case here because the intent appears to be to
16 transfer oil within the state.

17 Therefore, I'm enjoining leaving the Port
18 of Anchorage for that purpose, because it seems
19 clear that that is what the purpose is right
20 now.

21 Now, I assume -- I don't know what
22 restraints are being placed on the defendant by
23 Federal Authorities, or by any other
24 authorities with regard to moving that ship and
25 taking it, for instance, directly to Seattle.

1 and I haven't been informed of any such plans,
2 but I am enjoining the ship from leaving the
3 port for any purpose, until somebody tells me
4 what that purpose would be, and also notifies
5 counsel for the State, so that they could get
6 to me or another judge in order to have an
7 appropriate order entered.

8 Do the people understand the provisos of
9 the order?

10 MR. BLISS:

11 I understand, judge, but I am concerned
12 that we are approaching the weekend, and there
13 certainly is an enormous expense involved and
14 risk in having the vessel here in Anchorage.

15 If it comes to the question of whether or
16 not the vessel wants to simply leave, because
17 there is the problem, I agree with you about
18 transfer operations at Nikiski without a
19 financial responsibility certificate in place.

20 Then, it may be that that is the only
21 available alternative, and it looks to me like
22 it is. I don't see another available...

23 THE COURT:

24 What is the only available alternative?

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MR. BLISS:

To leave and not go to Nikiski.

THE COURT:

I see. All right.

MR. BLISS:

And that appearing to me to be -- it appears to me, looms large as the real possibility here. It's now late Wednesday -- it seems to me that we're going to run the risk of having this happen on the weekend. Is it possible to...

THE COURT:

Well, I'm available on the weekend. This case is assigned to Judge Serdahely, and, of course, he's really tied up in, I think, two big cases right now that are taking all his time.

I know that ordinarily he would be willing to be available on the weekend, but it may be that he just can't be this weekend.

Until Sunday night, or Monday morning at one o'clock, I'm available within limits. So I -- and I wouldn't hesitate to come down here if I was required to, for instance, on Saturday, to hear some sort of an application.

1 So what I'm telling you is, I'm available
2 on short notice. I didn't mean that you were
3 going to have to rove under normal time
4 provisions of the rules. You can come to me on
5 very short notice, and I would hear such an
6 application if that's what the plans are.

7 I should tell the State that if the plans
8 do change there, it's -- tentatively it's my
9 opinion, having just looked at these statutes,
10 and only read them today, that it may very well
11 be that Mr. Bliss' argument has some merit, and
12 that the limit is \$100,000 at that point,
13 assuming that the plans are not to transfer the
14 oil and some other particular violation of law,
15 except for the oil spill provision, is what
16 we're talking about.

17 MS. LEVY:

18 Your Honor, if I might clarify the order
19 which you just entered.

20 THE COURT:

21 Yes.

22 MS. LEVY:

23 I tried to write as fast as I could, but I
24 couldn't keep up with you.

25 You have enjoined moving the vessel frm the

1 Port of Anchorage until such time as the
2 defendants comply with 46.04.040, Proof of
3 Financial Responsibility, (c) (3), is that
4 right?

5 THE COURT:

6 That's true, as long as the plan is to take
7 the ship to Nikiski and transfer oil.

8 MS. LEVY:

9 Right.

10 THE COURT:

11 Assuming that they -- that there's another
12 plan, which I would think might be an
13 alternative, and that the plan is simply to
14 take the ship and run it to Seattle to get it
15 fixed. I am concerned that nobody does that --
16 tries to do it before they come to me and see
17 whether or not I should enter another order,
18 and if it's 770, that's the applicable statute
19 then, which would require posting of security
20 of \$100,000, and I would simply -- I thought it
21 was authorized by law, that that's all I could
22 require from them, assuming that they were
23 simply leaving, then that's probably the
24 statute that I would use.

25 So I'm trying to give notice to the State,

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as clearly as I can, that I think that statute
may be applicable, and also notice to the
defendants that they are not to move the ship
until they tell me what their plans are.

So they are enjoined from leaving the port
until that notice is given. But they are
enjoined from leaving it to go to Nikiski, and
to transfer oil, until they post proof of
financial responsibility.

MS. LEVY:

That's all that I wanted to clarify. Thank
you.

THE COURT:

Anything else.

MR. BLISS:

I guess there's the question of -- if it
comes to it, a hearing on a preliminary
injunction?

THE COURT:

That I'm really at a loss for, because I
won't be here for 10 days after Sunday, and it
may be that you will have to arrange that with
another judge, which can be done, even if it
isn't Judge Serdahely.

So if you think you're going to need a

1 hearing for preliminary injunction. I could
2 certainly schedule it for me, assuming Judge
3 Serdahely wasn't available, some times after
4 the 10 days. We could talk about it -- you
5 could come over here tomorrow and we could tal
6 about whether Judge Serdahely could do it
7 within 10 days, also.

8 MR. BLISS:

9 Very well. Perhaps it's best if -- surely
10 the plans will firm up in the next day or so,
11 if we just give you written notice in a letter
12 copied to everyone else...

13 THE COURT:

14 Yes, that would be fine.

15 MR. BLISS:

16 ...what the plans are.

17 THE COURT:

18 But if you're going to give me that notice
19 please bring it over here and deliver it to my
20 chambers, because after Friday I won't be here

21 MR. HORTON:

22 Your Honor, just for calendaring purposes,
23 it's my recollection that Judge Serdahely
24 represented Mapco Petroleum in a very long and
25 protracted antitrust case when he was with our

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CERTIFICATE

UNITED STATES OF AMERICA)
) ss.
STATE OF ALASKA)

I, Georgi Ann Haynes, Notary Public in and for the State of Alaska, residing at Anchorage, Alaska, and verbatim reporter for H & M Court Reporting, do hereby certify:

That this transcript, as heretofore annexed, is a true and correct transcription of testimony of said proceedings, to the best of my ability from tapes, with minimal notes supplied, by the Superior Court for the State of Alaska.

That this reporter is not responsible for any misspellings of proper names, nor misuse of names of persons speaking.

That the original of said transcript was filed with the Superior Court, as required by law;

I am not a relative, or employee, or attorney, or counsel of any of the parties, nor am I financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 21st day of February, 1984.

Georgi Ann Haynes
Notary Public in and for Alaska
My commission expires: