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Alaska State Senate

Office of the President

Senator Richard I. Eliason, President

This notebook was
provided by Atty. Gen.
Cole. It lists
the cases filed by
third party litigants

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Attorneys for Exxon Corporation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA,

Plaintiff,

vs. pt

EXXON CORPORATION, a New Jersey)
corporation, and EXXON SHIPPING)
COMPANY, a Delaware corporation,)

Defendants.)

AND COUNTERCLAIM)

Civil Action No. A91-083 Civ.

ANSWER OF EXXON CORPORATION TO
COMPLAINT OF THE STATE OF
ALASKA AND COUNTERCLAIMS FOR
DAMAGES, CONTRIBUTION AND
INDEMNITY

ACE 1014070

Exxon Corporation, for convenience identified in this answer as "Exxon," for its answer to the complaint herein, admits, denies and alleges as follows:

As to each and every allegation denied herein for lack of information or belief, Exxon alleges that it is without knowledge or information sufficient categorically to admit or deny said allegation at this time, wherefore Exxon denies each such allegation, using the phrase "denies for lack of information or belief."

Defense to First Claim for Relief

1. Denies each and every allegation in ¶1, except admits that this civil action purports to be brought as a result of the accidental discharge of crude oil from the T/V Exxon Valdez into navigable waters of Prince William Sound on March 24, 1989 (the "Spill").

2. Answering ¶2, admits that this Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 33 U.S.C. § 1321.

3. Answering ¶3, admits that Exxon transacts business within this State for purposes of personal jurisdiction.

4. Answering ¶4, admits that venue is proper in the District of Alaska.

5. Denies for lack of information or belief each and every allegation of ¶5, except admits that the State of Alaska ("Alaska") is one of the states of the United States, having the attributes of sovereignty appurtenant to such statehood, and that Alaska purports to bring this action on its behalf as owner of lands, waters and resources owned by the State, on behalf of all administrative departments and agencies of the State, and as public trustee of all lands, waters and resources within the jurisdictional boundaries of the State.

6. Denies each and every allegation of ¶6, except admits that Exxon was and is a corporation existing under the laws of the state of New Jersey, that the principal business of Exxon is energy, involving exploration for and production of crude oil and natural gas, refining and marketing of petroleum products, and exploration for and mining and sale of coal, that Exxon owns the stock of other corporations engaged in similar and dissimilar

businesses, and that Exxon owned the cargo carried by the Exxon Valdez on the night of March 23-24, 1989.

7. Denies each and every allegation of ¶7, except admits that Exxon Shipping Company ("Shipping") is a Delaware corporation, that all of the stock of Shipping is owned by Exxon, that Shipping does business in Alaska, and that Shipping was the sole owner of the T/V Exxon Valdez within the meaning of 33 U.S.C. § 1321(a)(6).

8. Answering ¶8, admits that Alaska defines "ANS" to mean crude oil produced on Alaska's North Slope and transported through the Trans Alaska Pipeline System to the marine terminal facilities at Valdez, Alaska.

9. Denies each and every allegation of ¶9, except admits that Alaska intends to refer to Exxon and Shipping collectively by the terms "Exxon," "defendants Exxon" and "Exxon defendants."

10. Denies each and every allegation of ¶10, except admits that plaintiff purports to state its intended meaning of the terms "grounding," "spill," "discharge," "lease," and "accident."

11. Denies each and every allegation of ¶11, except admits that Alaska defines "vessel" to mean the vessel known as the Exxon Valdez.

12. Denies each and every allegation of ¶12, except admits that the Exxon Valdez is a very large crude oil carrier, that the Exxon Valdez was one of the two largest tank vessels owned by Shipping, that the Exxon Valdez left the Valdez Marine Terminal at approximately 9:15 p.m., local time, on March 23, 1989 bound for Long Beach, California, that the cargo of the Exxon Valdez consisted of approximately 50,000,000 gallons of ANS that had been transported through the Trans Alaska Pipeline System.

13. Denies for lack of information or belief each and every allegation of ¶13, except admits that from the time it left the terminal, until the vessel passed through Valdez Narrows, the Exxon Valdez was navigated under the direction of William Edward Murphy, a state-licensed marine pilot; that the master, Capt. Joseph Hazelwood, left the bridge after the vessel got underway; and that Capt. Hazelwood returned to the bridge several minutes before pilot Murphy disembarked near Rocky Point at approximately 11:24 p.m., local time, March 23, 1989.

14. Denies for lack of information or belief each and every allegation of ¶14, except admits that Capt. Hazelwood informed the Vessel Traffic Center ("VTC") of the Vessel Traffic System ("VTS") operated by United States Coast Guard ("Coast Guard") that the vessel would probably divert from the normal southbound lane of the Traffic Separation System ("TSS") because of ice, and that the VTC concurred in this action.

15. Denies each and every allegation of ¶15, except admits that Capt. Hazelwood ordered several changes of the vessel's heading to avoid ice, and that the Exxon Valdez eventually went beyond the TSS.

16. Denies each and every allegation of ¶16, except admits that after approximately 11:54 p.m., local time, on March 23, 1989, Third Mate Gregory Cousins had the conn of the Exxon Valdez, and that Robert Kagan assumed the watch as helmsman for the period midnight until 2:00 a.m., local time, on March 24, 1989.

17. Denies each and every allegation of ¶17, except admits that shortly after midnight, local time, on March 24, 1989,

the Exxon Valdez struck a portion of Bligh Reef, that the grounding ruptured several of the vessel's cargo and ballast tanks, and that, when the grounding occurred, Capt. Hazelwood was not on the bridge.

18. Denies each and every allegation of ¶18.

19. Denies each and every allegation of ¶19, except denies for lack of information or belief that Capt. Hazelwood drank alcoholic beverages while on duty aboard Exxon tankers between 1985 and March 1989.

20-21. Denies each and every allegation of ¶¶20 and 21.

22. Denies each and every allegation of ¶22, except admits that the Spill caused damage to certain natural resources within the trusteeship of Alaska or within the joint trusteeship of the United States and Alaska, including the death of certain wildlife.

23. Denies for lack of information and belief each and every allegation of ¶23, except admits that Alaska has made certain expenditures in connection with actions it took in reaction to the Spill.

24. Answering ¶24, Exxon realleges, and incorporates herein by reference, each and every admission, denial and allegation contained in ¶¶1 through 23 hereof, as if set out in full.

25. Answering ¶25, admits that on March 24, 1989, the Exxon Valdez struck a portion of Bligh Reef, a known hazard to navigation in Prince William Sound, and that as a result of the rupture of its cargo tanks, the Exxon Valdez spilled approximately 11 million gallons of ANS into the waters of the Sound.

26. Denies for lack of information or belief each and every allegation of ¶26, except admits that some of the oil spilled by the Exxon Valdez spread through the western and southern portions of Prince William Sound, into Lower Cook Inlet and into Shelikof Strait; that an unknown number of marine animals and birds were killed; and that quantities of crude oil came ashore in Prince William Sound and the Gulf of Alaska, in part as a result of the negligence of the Coast Guard and the wrongful interference of Alaska.

27-28. Denies each and every allegation of ¶¶27 and 28, and each of them.

29. Denies for lack of information or belief each and every allegation of ¶29, except admits that Alaska incurred costs in connection with actions it took in reaction to the Spill.

30. Denies for lack of information or belief each and every allegation of ¶30, except admits that the ANS spilled by the Exxon Valdez was in harmful quantities within the meaning of 33 U.S.C. §1321(b) and the federal regulations implementing that provision.

31. Denies each and every allegation of ¶31.

32. Denies for lack of information or belief each and every allegation of ¶32.

33. Denies each and every allegation of ¶33.

Defense to Second Claim for Relief

34. Answering ¶34, Exxon realleges, and incorporates herein by reference, each and every admission, denial and allegation contained in ¶¶1 through 33 hereof, as if set out in full.

35. Denies each and every allegation of ¶35, except admits that Shipping is a wholly-owned subsidiary of Exxon.

36. Denies each and every allegation of ¶36.

37. Denies each and every allegation of ¶37, except admits that, pursuant to an arm's length contract between Exxon and Shipping, Exxon provides certain essential administrative support services to Shipping at an agreed-upon price.

38-39. Denies each and every allegation of ¶¶38 and 39, and each of them.

Third Defense -- General Denial

40. Denies each and every allegation of the complaint herein not specifically admitted by the foregoing paragraphs.

First Affirmative Defense -- Failure to State a Claim

41. The complaint, and each count thereof, fails to state a claim upon which relief can be granted as to Exxon.

Second Affirmative Defense -- Lack of Standing

42. Exxon is informed and believes and, therefore, alleges that Alaska lacks standing to assert some or all of the claims purportedly alleged in the complaint herein.

Third Affirmative Defense -- Unconstitutionality of Natural Resource Damage Claims

43. The claims for natural resource damages asserted by Alaska herein are not recoverable consistent with the Fourteenth Amendment of the Constitution of the United States in that the alleged interest asserted, and the alleged means of estimating the

value of such interest, are so speculative, uncertain and arbitrary that a judgment awarding Alaska such alleged damages would not conform with due process of law.

Fourth Affirmative Defense -- Failure to Join Indispensable Parties

44. As a matter of due process guaranteed to Exxon by the Fourteenth Amendment of the United States Constitution under the rule of Western Union Co. v. State of Pennsylvania, 368 U.S. 71 (1961), and under Rule 19 F. R. Civ. P., Alaska may not pursue its claim for natural resource damages without joinder of persons and parties known to Alaska to assert the right to recover damages to the natural resources referred to, inter alia, in ¶¶ 22, 23, 30, 33 and 40 of the complaint herein. Such persons include, but may not be limited to, the United States of America.

Fifth Affirmative Defense -- Interference With Effective Oil Spill Response

45. Exxon incorporates herein by reference each and every allegation contained in ¶¶ 67-83 of its counterclaims herein, as if set out in full.

46. From and after March 24, 1989, agents and officials of the State of Alaska continuously interfered with and obstructed timely and effective cleanup, and thereby aggravated the effects of the Spill upon Alaska and upon Alaska's natural resources. Such interference included, but was not limited to, obstruction of optimal use of bioremediation techniques, obstruction of use of detergent agents, and insistence upon cleanup techniques with negative net environmental effects.

47. Alaska may not recover cleanup costs, expenses or damages that would not have been incurred except for its own negligence, incompetence and obstruction of effective cleanup measures.

Sixth Affirmative Defense -- Failure to Comply with the Statute and Regulations Concerning Natural Resource Damage Assessment

48. The natural resource damage assessment studies purportedly conducted by or on behalf of Alaska with respect to the Spill were not conducted in accordance with applicable regulations, nor in accordance with the terms and conditions of the contract between Exxon and the Alaska trustees for natural resources.

49. The natural resource damage assessments purportedly conducted by or on behalf of Alaska with respect to the Spill were not properly conceived or designed to assess natural resource damage recoverable under the Clean Water Act, or otherwise.

50. Alaska did not take reasonable measures to avoid duplication of expense in conducting purported natural resource damage assessment studies, and, as a result, Alaska made unnecessary and duplicative expenditures for natural resource damage assessment studies for which no recovery may be allowed.

51. Alaska is not entitled to recover for expenditures made for natural resource damage assessment studies that were not properly conceived or designed to assess damages to natural resources recoverable under the Clean Water Act, or otherwise.

52. Alaska is not entitled to recover for expenditures made for natural resource damage assessment studies that were not properly or competently conducted.

Seventh Affirmative Defense -- Failure to Mitigate Damage

53. Alaska failed to take reasonable steps to mitigate damages and, in fact, needlessly aggravated the consequences of the Spill. Such acts in aggravation included, by way of illustration, and not by way of limitation, creation of the false and harmful perception that fish and other marine food sources presented unreasonable dangers to subsistence users, and creation of the false and harmful perception that significant after-effects of the Spill persisted when, in fact, areas affected by the Spill were fit to provide human services at levels equal or superior to those that had existed prior to March 24, 1989.

54. To the extent that Alaska failed to mitigate alleged damages, or aggravated those damages, Alaska may not recover for losses caused by its own conduct.

Eighth Affirmative Defense -- Avoidance of Loss by Third Persons

55. Certain persons were able to avoid or mitigate damage from interruption of their activities due to the Spill because they were engaged or employed in connection with the Cleanup. To the extent that Alaska's claim of damage is based on

the damages to such persons, payment received by such persons are a set off against losses, if any, resulting from interruption of activities in the area affected by the Spill.

Ninth Affirmative Defense -- Failure of Third Persons to Mitigate Loss

56. To the extent that persons able to mitigate damages failed to do so, Exxon cannot be held liable for such avoidable losses.

Tenth Affirmative Defense -- Settlements

57. Claims by some persons or entities purportedly encompassed within Alaska's alleged damages herein have been settled and released, or, in the alternative, payments received by such persons or entities operate as an accord and satisfaction of such claims.

Eleventh Affirmative Defense -- Res Judicata

58. Other persons or entities who have filed actions against Exxon relating to the Spill purport to represent the

plaintiff in this action. If such judgments are entered in such actions before entry of judgment herein, such judgments will bar Alaska's claims herein, or certain of them.

Twelfth Affirmative Defense -- No Multiple Recovery for a Single Injury

59. Numerous persons and entities have filed actions against Exxon seeking recoveries that form a part of the alleged measure of Alaska's damages herein. To the extent that such actions result in recovery against Exxon, Alaska may not obtain multiple recovery for the same injury.

Thirteenth Affirmative Defense -- Preemption

60. Some of Alaska's claims here are preempted or superseded by the comprehensive scheme of federal statutes and regulations.

Fourteenth Affirmative Defense -- Ripeness

61. Certain claims asserted by Alaska are not ripe for adjudication.

Fifteenth Affirmative Defense -- First Amendment Privilege

62. Certain of Alaska's claims herein may not be maintained because they seek to penalize Exxon for the exercise of its state and federal constitutional right to petition the government concerning the passage or enforcement of laws.

Sixteenth Affirmative Defense, -- Privilege to Comply with Governmental Direction

63. No recovery may be had for actions of Exxon that were undertaken pursuant to government mandate, direction, supervision, or with government approval.

Seventeenth Affirmative Defense -- Unclean Hands/Estoppel

64. Alaska is barred by its own conduct from seeking damages or injunctive relief.

Eighteenth Affirmative Defense -- Injuria Non Curat Lex

65. Certain damages sought in this action are general costs of government, and are not properly recoverable as damages.

As and for its counterclaims herein, Exxon further alleges as follows:

First Counterclaim -- For Wrongful Interference With Oil Spill Response and Cleanup

66. This counterclaim is brought pursuant to Rule 13 F.R.Civ.P. to recover damages attributable to the negligent or wrongful interference of the State of Alaska with efforts to contain and treat the spill from the Exxon Valdez, including its negligent or wrongful acts which prevented the timely use of oil spill dispersants. The Court also has jurisdiction of this counterclaim under 28 U.S.C. §1333.

67. This counterclaim arises under the federal maritime law, federal statutory and common law, and the constitutional, statutory and common law of Alaska. Alaska is subject to suit

pursuant to AS §09.50.250 et seq. and Article II, §21 of the Alaska Constitution and the doctrine of recoupment.

68. Exxon is a corporation organized and existing under the laws of the State of New Jersey, within its principal place of business at 225 East John W. Carpenter Freeway, Irving, Texas. principal business of Exxon is energy, involving exploration and production of crude oil and natural gas and refining and marketing of petroleum products.

69. On March 24, 1989, shortly after midnight, the tank ship Exxon Valdez ran aground on Bligh Reef, in Prince William Sound. Shipping was then and is now the sole owner of the vessel; Exxon was then the owner of the cargo aboard the vessel, which consisted of crude oil. As a result of the grounding, crude oil began to spill into the waters of Prince William Sound.

70. Alyeska's Oil Spill Contingency Plan ("the Plan"), which had been approved by Alaska, made clear that immediate use of dispersants was a necessity to mitigate the potential impact of a large spill. The Plan explicitly provided that dispersants would be used promptly as part of the cleanup and containment strategy, and emphasized at several points that it was vitally important to

obtain a prompt and unequivocal decision allowing the use of dispersants.

71. Prior to the Spill, the Coast Guard, the U.S. Environmental Protection Agency and Alaska had entered into a Memorandum of Agreement with respect to pre-consultation and pre-approval of dispersant use. The Agreement provided for the designation of certain waters as "Zone 1," and provided that use of dispersants in Zone 1 was "acceptable." The Agreement further provided that the decision to use dispersants in Zone 1 rested solely with the Coast Guard, and that "no further approval, consultation, or concurrence" by or with Alaska was required. On March 20, 1989, a few days before the Spill, the State executed an amendment to this Memorandum of Agreement designating as Zone 1 the central portion of Prince William Sound, beginning at a point about two miles south of Bligh Reef.

72. Alaska's fully-considered joinder in the March 1989 amendment of the Memorandum of Agreement established a State policy approving the use of dispersants in Zone 1 in the event of an oil spill emergency. This policy implicitly barred State agencies from interfering with federal approval of the use of dispersants, especially under the emergency conditions foreseen by the

Memorandum of Agreement. The policy of pre-approved dispersant use in Zone 1 recognized that any requirement of discretionary State approval of dispersant use in that Zone, or any action by State agencies or officials to delay or forestall such use would increase the risk of environmental and ecological damage.

73. After the Spill, Shipping and Exxon immediately began a massive program to mitigate the effects of the Spill, including efforts to prevent further loss of the cargo remaining aboard the ship, to contain the Spill, to treat affected beaches, shoreline, and islands, and to restore injured wildlife to health and to return injured animals to the wild. This response and cleanup activity was conducted under emergency conditions in which the need for Shipping and Exxon to be able to act expeditiously was plain to Alaska and to the public generally.

74. Within a few hours after the Exxon Valdez ran aground in Bligh Reef, the Coast Guard coordinator on the scene ("OSC") gave Shipping oral approval for full-scale application of dispersants. The OSC thereafter asked Alyeska Pipeline Service Company ("Alyeska") to submit an application to use dispersants in order to contain the Spill.

75. On the morning of March 24, 1989, a few hours after the Spill, Alyeska submitted to the Coast Guard its application to use dispersants. Throughout that day, and throughout Saturday, March 25, and Sunday, March 26, Alyeska, Shipping and Exxon repeatedly urged that approval be given for general use of dispersants in Zone 1.

76. In violation of its own policy and contrary to the best interest of the public and the environment, agencies and officials of Alaska wrongfully and recklessly opposed full-scale use of dispersants, even in Zone 1. As a result of this interference and objection by State officials, the Coast Guard withdrew its prior, oral authorization of full-scale application of dispersants, and instead required time-wasting and needless test runs.

77. If full-scale application of dispersants had been authorized immediately after submission of the Alyeska application, large quantities of spilled oil would have been dispersed with no discernible impact upon the environment, and oil remaining in the water would have been more easily removed from impacted beaches.

78. The actions of Alaska's officials in actively and persistently opposing the use of dispersants when application of such dispersants could have minimized the impact of the Spill was contrary to Alaska's clearly-established policy, contrary to the terms of the Plan, which Alaska had approved, and contrary to the terms of the Memorandum of Agreement, as amended, which Alaska had approved only a few days prior to March 24. Under the Plan, dispersants were not intended to be a last resort, but were the central feature of Alyeska's strategy. Under the Memorandum of Agreement, as amended, Alaska had amplified and reaffirmed its policy of facilitating prompt application of dispersants by withdrawing any State objection to use of dispersants in Zone 1.

79. As reflected in the long consideration of the Memorandum of Agreement and its amendment, the State knew, or should have known, that opposition of State officials would result in significant delays in the use of dispersants, and that such delays would needlessly aggravate the consequences of a large marine spill both in intensity and in geographic scope. Alaska knew or should have known that the vigorous and active opposition to use of dispersants mounted by its agencies and officials in violation of its own policies would cause the Coast Guard to delay granting permission for the use of dispersants notwithstanding

state policy, the Plan, the Memorandum of Agreements, and the need for prompt action well known to persons adequately informed on oil spill response procedures.

80. The delay in approving unrestricted use of dispersants in Zone 1 until after dark on the evening of Sunday, March 26, 1989, prevented general use of dispersants in Zone 1 prior to Monday, March 27, 1989. During the night of March 26, however, a storm came up with gale force winds which drove the Spill nearly 40 miles into Prince William Sound, blew much of the oil out of Zone 1, and pushed the leading edge of the Spill near to the shorelines of Naked Island, Knight Island, and elsewhere. Thereafter, the best chance to use dispersants to minimize the impact of the Spill had been irrevocably lost.

81. The wrongful and reckless interference by Alaska agencies and officials with the timely and full-scale use of dispersants on the oil released by the Exxon Valdez did, in fact, cause much larger volumes of oil to wash onto beaches, shorelines, and islands, and into intertidal and estuarine areas; did, in fact, cause large volumes of the oil to emulsify and form "mousse," thus complicating and retarding containment and treatment; did, in fact, cause oil and mousse to wash onto beaches that would not have been

oiled; and did, in fact, needlessly cause the death of numerous birds and other wildlife.

82. Exxon, as owner of the oil spilled by the Exxon Valdez, and pursuant to Alaska law, accepted responsibility to cleanup the Spill. Pursuant to that commitment, Exxon made expenditures exceeding \$2 billion in treating land, water and wildlife affected by spilled oil, a significant amount of which oil would have been dispersed or treated but for the State's wrongful interference with early, full-scale application of dispersants. It is probable that yet further such expenditures will be incurred.

83. Exxon is a defendant in approximately 150 civil actions brought by private persons in this Court and elsewhere; it is also subject to the claims asserted in this litigation by the State of Alaska, and in related litigation by the United States. Under federal maritime law and under Alaska law, Alaska is liable to contribute to any liability incurred by Exxon in such civil litigation in proportion to its fault in aggravating and magnifying the consequences of the Spill by violating its own well-considered policy of facilitating and encouraging prompt, full-scale use of dispersants in Zone 1 in Prince William Sound.

84. As a direct and proximate result of the wrongful conduct of Alaska officials, Exxon has suffered damage, in an amount according to proof, in that:

(a) it has been required to expend funds for cleanup greatly in excess of what would otherwise have been required;

(b) it has been and is exposed to claims for damages by persons and entities who, but for the State's negligence or wrongful conduct as alleged herein, would have suffered no injury from the oil spill; and

(c) it has been and is exposed to claims by persons and entities whose damages resulted in part from, or were increased by, the State's negligence or wrongful conduct, and for whose claims the State in justice and equity should be in part responsible.

Second Counterclaim -- Wrongful Aggravation of Exxon's Cleanup Expense

85. The Court has jurisdiction of this counterclaim under Rule 13, F.R.Civ.P. and Alaska is answerable for the wrongs alleged herein under the doctrine of recoupment and under Article II, §21 of the Alaska Constitution and AS §09.50.250 et seq.

86. Pursuant to law and at Alaska's insistence, Exxon made every reasonable effort to recover from the waters of Alaska and impacted shorelines all such free oil or oil derivatives as could realistically be collected.

87. Alaska, in violation of its legal and equitable duties to Exxon, arbitrarily prevented Exxon from burning dirty cleanup materials and oil residues, although Alaska knew or should have known that incineration was the most efficient and environmentally responsible means for disposition of such materials.

88. As a direct and proximate result of Alaska's wrongful obstruction of Exxon's opportunity to dispose of soiled

cleanup materials and collected oil by burning, the cost of the cleanup to Exxon was materially and unjustifiable increased.

Third Counterclaim -- Discriminatory Aggravation of Exxon's Cleanup Expense

89. Exxon realleges and incorporates herein by reference each and every allegation contained in ¶¶ 84 and 87 hereof, as if set out in full.

90. Alaska wrongfully discriminated against Exxon in connection with the Cleanup by denying to Exxon permission to use incineration equipment that Alaska or its agencies used for their own benefit under similar circumstances.

WHEREFORE, Exxon prays for judgment as follows:

1. That plaintiff take nothing on its complaint and be granted no relief, legal or equitable;
2. That Exxon be awarded judgment on its counterclaims in the amount of Exxon's unnecessarily increased cleanup costs;

3. That judgment be entered that Alaska indemnify Exxon and hold it harmless from liability to third parties damaged by oil that would have been dispersed but for Alaska's wrongful conduct;

4. That judgment be entered against Alaska ordering it to contribute in proportion to its share of the fault in causing injury to third persons;

5. That Exxon be awarded its costs in this action, including reasonable attorneys' fees; and

6. For such other and further relief as the Court deems just and proper.

DATED: March 22, 1991

JOHN F. CLOUGH, III
CLOUGH & ASSOCIATES

CHARLES W. MATTHEWS
JAMES R. STEVENS, JR.
EXXON CORPORATION

CHARLES W. BENDER
O'MELVENY & MYERS

By _____

Attorneys for Exxon Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA,	)	
	)	Case No. A91-083 Civil
Plaintiff,	)	
	)	
v.	)	
	)	
EXXON CORPORATION, a New Jersey	)	
corporation, and EXXON SHIPPING	)	
COMPANY, a Delaware corporation,	)	
	)	
Defendants.	)	

AFFIDAVIT OF SERVICE

STATE OF ALASKA	)
	: ss.
THIRD JUDICIAL DISTRICT	)

Joy C. Steveken, being duly sworn, upon oath, deposes and says: that she is employed as a legal secretary in the offices of Bogle & Gates, 1031 West 4th Street, Suite 600, Anchorage, Alaska 99501; that she has hand served on March 22, 1991 the following document:

**Answer of Exxon Corporation to Complaint of the
State of Alaska and Counterclaims for Damages,
Contribution and Indemnity**

BOGLE & GATES

Suite
1031 West 4th Avenue
Anchorage, AK 99501
(907) 276-4537

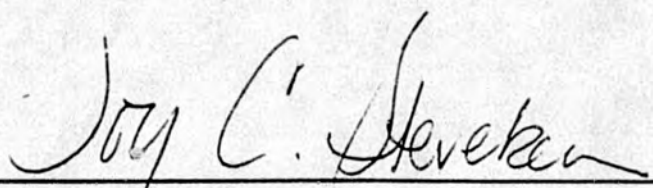
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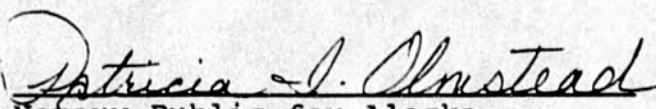
ACE 1014100

upon:

Barbara Herman, Esq.
Craig J. Tillery, Esq.
Assistant Attorneys General
State of Alaska
Department of Law
1031 West Fourth Avenue
Suite 200
Anchorage, Alaska 99501


Joy C. Steveken

SUBSCRIBED AND SWORN to before me
this 22nd day of March, 1991.


Notary Public for Alaska
My Commission Expires: 5-11-93

BOGLE & GATES

Suite 600
1031 West 4th Avenue
Anchorage, AK 99501
(907) 276-4537

AFFIDAVIT OF SERVICE

ACE 1014101

John F. Clough, III
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Suite 202
Juneau, Alaska 99801
(907) 586-5777

Attorneys for Defendant
Exxon Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA,

Plaintiff,

v.

EXXON CORPORATION, a New Jersey
corporation, and EXXON SHIPPING
COMPANY, a Delaware corporation

Defendants.

Case No. A91-083 CIV

APPLICATION OF NONRESIDENT
ATTORNEY FOR PERMISSION TO
APPEAR AND PARTICIPATE IN
THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
ALASKA

COMES NOW Edward J. Lynch of Exxon Corporation and, pursuant to Rule 3(c) of the General Rules of the United States Court for the District of Alaska, makes this application to appear and participate herewith as counsel for defendant, Exxon Corporation. Applicant filed with this Court on March 13, 1991, a Certificate of Good Standing from the Clerk of the Supreme Court of Texas, dated March 11, 1991 (attached as Exhibit A) in Case No. A90-15 CR.

Applicant designates John F. Clough, III of Clough & Associates, 431 Franklin Street, Suite 202, Juneau, Alaska 99801, (907) 586-5777, an authorized member of the Alaska Bar Association with whom the Court and opposing counsel may readily communicate regarding the conduct of this case.

Dated at Dallas, Texas, this 18th day of March, 1991.

EXXON CORPORATION

By Edward J. Lynch
Edward J. Lynch
EXXON CORPORATION
225 East John W. Carpenter Freeway
Irving, Texas 75062-2298

CONSENT TO PARTICIPATE

I hereby consent to the granting of the foregoing Application.

Dated this 20th day of March, 1991 at Tunon, Alaska.

CLOUGH & ASSOCIATES

By John F. Clough, III
John F. Clough, III

The Supreme Court of Texas

AUSTIN

CLERK'S OFFICE

I JOHN T. ADAMS, Clerk of the Supreme Court of Texas, certify that the records of this office show that

EDWARD JAMES LYNCH

was duly admitted and licensed as an attorney and counselor at law by the Supreme Court of Texas on the 9th day of April, 1979.

I further certify that the records of this office show that

EDWARD JAMES LYNCH

is presently enrolled with the State Bar of Texas as a member in good standing.

IN TESTIMONY WHEREOF witness my hand

and the seal of the Supreme

Court of Texas at the City of

Austin, this, the 11th day of

March, 1991.

JOHN T. ADAMS, Clerk

by Hortencia Damian
Hortencia Damian, Deputy

ACE 1014104

Attorneys for Defendant
Exxon Corporation

STATE OF ALASKA,

V.

Defendants.

APPLICATION OF NONRESIDENT
ATTORNEY FOR PERMISSION TO
APPEAR AND PARTICIPATE IN
THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
ALASKA

Dated at Anchorage, Alaska, this _____ day of March, 1991.

ACE 1014105

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA,	)	
	)	Case No. A91-083 Civil
Plaintiff,	)	
	)	
v.	)	
	)	
EXXON CORPORATION, a New Jersey	)	
corporation, and EXXON SHIPPING	)	
COMPANY, a Delaware corporation,	)	
	)	
Defendants.	)	

AFFIDAVIT OF SERVICE

STATE OF ALASKA	)
	: ss.
THIRD JUDICIAL DISTRICT	)

Joy C. Steveken, being duly sworn, upon oath, deposes and says: that she is employed as a legal secretary in the offices of Bogle & Gates, 1031 West 4th Street, Suite 600, Anchorage, Alaska 99501; that she has hand served on: March 22, 1991 the following document:

**Application of Nonresident Attorney for
Permission to Appear and Participate in the
United States District Court for the District
of Alaska**

BOGLE & GATES

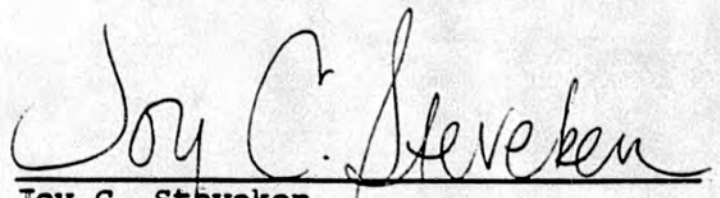
Suite 600
1031 West 4th Avenue
Anchorage, AK 99501
(907) 276-4557

ACE 1014106

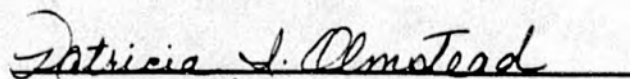
AFFIDAVIT OF SERVICE

upon:

Barbara Herman, Esq.
Craig J. Tillery, Esq.
Assistant Attorneys General
State of Alaska
Department of Law
1031 West Fourth Avenue
Suite 200
Anchorage, Alaska 99501


Joy C. Steveken

SUBSCRIBED AND SWORN to before me
this 22nd day of March, 1991.


Notary Public for Alaska
My Commission Expires: 5-11-93

BOONE & GATES

Suite 600
1031 West 4th Avenue
Anchorage, AK 99501
907 276-4557

AFFIDAVIT OF SERVICE

-2-

ACE 1014107

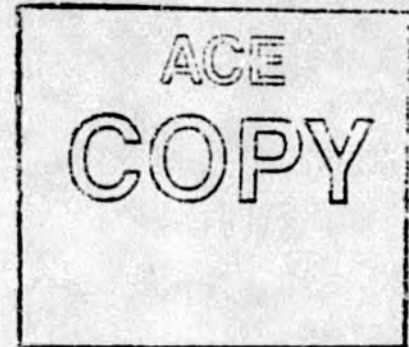
SONOSKY, CHAMBERS, SACHSE & MILLER
900 WEST FIFTH AVENUE
SUITE 700
ANCHORAGE, ALASKA 99501
(907) 258-6377

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

In re

EXXON VALDEZ OIL SPILL LITIGATION

THIS DOCUMENT RELATES TO
ALL CASES



3AN-89-2533 Civil (Consolidated)

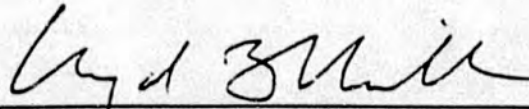
CLASS ACTION PLAINTIFFS' MOTION FOR
TECHNICAL CORRECTION OF PRETRIAL ORDER NO. 22

Undersigned class counsel for the Alaska Native class, as certified by Pretrial Order No. 22 of this Court, respectfully moves the Court for technical correction of the class to include Seward and Valdez. This Motion is supported by the accompanying Memorandum.

DATED at Anchorage, Alaska, this 25th day of March, 1991.

SONOSKY, CHAMBERS, SACHSE, MILLER & MUNSON

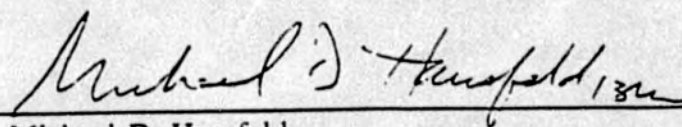
By:


Lloyd Benton Miller
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(907) 258-6377

SONOSKY, CHAMBERS, SACHSE & MILLER
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(907) 258-6377

COHEN, MILSTEIN, HAUSFELD & TOLL

By:



Michael D. Hausfeld
1401 New York Avenue, Suite 600
Washington, D.C. 20005
(202) 628-3500

Attorneys for Plaintiffs P-46 through P-55 and P-110
through P-138

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ANCHORAGE, ALASKA 99501
(907) 258 6377

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

In re)
EXXON VALDEZ OIL SPILL LITIGATION)
_____)
THIS DOCUMENT RELATES TO)
ALL CASES)
_____)

3AN-89-2533 Civil (Consolidated)

MEMORANDUM IN SUPPORT OF CLASS ACTION PLAINTIFFS'
MOTION FOR TECHNICAL CORRECTION OF PRETRIAL ORDER NO. 22

By Pretrial Order No. 22 (February 14, 1991) this Court certified four classes including the "Alaska Native class." Although the amended consolidated class action complaint and the motion papers filed in connection with the motion for certification of the Alaska Native class did not limit the class definition to certain geographic areas, Pretrial Order No. 22 specifically references certain geographic areas within which members of the class must be located. Although the geographic description set forth in the class definition (and presumably drawn from the class discovery) sets forth a comprehensive list of virtually all of the geographic area affected by the EXXON VALDEZ oil spill, it would appear that inadvertently two Native communities have been omitted from the definition and are not included by reference to any other entities such as boroughs. Specifically, it appears that the Native communities of Seward and Valdez have been omitted.

ACE 1399618

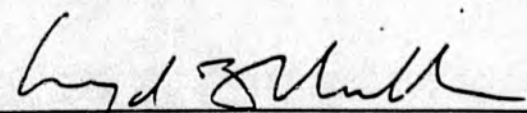
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ANCHORAGE, ALASKA 99501
(907) 258-6377

To correct this oversight undersigned counsel respectfully requests that the Court amend the definition of the Alaska Native class in the following respects (additional language is italicized):

(a) Alaska Native Class. The "Alaska Native Class" consists of all Alaska Natives, tribal entities, Native governments, Native entities performing quasigovernmental functions, and their agencies, who engage in, rely upon, promote, preserve, or provide services for, wholly or in part, a subsistence way of life in the following areas: Native Village of Chenega Bay, Eyak Native Village, Port Graham Village, the Native Village of English Bay, the Native Village of Tatitlek, the Native Village of Kodiak, the Native Village of Larsen Bay, the Native Village of Karluk, the Native Village of Port Lions, the Native Village of Akhiok, the Native Village of Ouzinkie, Ivanoff Bay Village, the Native Village of Chignik Bay, the Native Village of Chignik Lagoon, Chignik Lake Village, *Seward, Valdez*, and the Native Village of Perryville, the Kenai Peninsula Borough, the Kodiak Island Borough, the Lake and Peninsula Borough and the Aleutians East Borough.

DATED at Anchorage, Alaska, this 25th day of March, 1991.

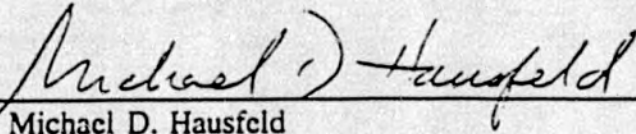
SONOSKY, CHAMBERS, SACHSE, MILLER & MUNSON

By: 

Lloyd Benton Miller
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(907) 258-6377

COHEN, MILSTEIN, HAUSFELD & TOLL

By:



Michael D. Hausfeld
1401 New York Avenue, Suite 600
Washington, D.C. 20005
(202) 628-3500

Attorneys for Plaintiffs P-46 through P-55 and P-110
through P-138

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SUITE 700
ANCHORAGE, ALASKA 99501
(907) 258-6377

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

In re)
)
EXXON VALDEZ OIL SPILL LITIGATION)
)
_____)
)
THIS DOCUMENT RELATES TO)
ALL CASES)
_____)

3AN-89-2533 Civil (Consolidated)

PRETRIAL ORDER NO. _____

ORDER GRANTING CLASS ACTION PLAINTIFFS' MOTION
FOR TECHNICAL CORRECTION OF PRETRIAL ORDER NO. 22

IT IS HEREBY ORDERED that the definition of the Alaska Native class, as certified
in this Court's Pretrial Order No. 22 (paragraph (a)), is amended to read as follows:

(a) Alaska Native Class. The "Alaska Native Class" consists of all Alaska Natives, tribal entities, Native governments, Native entities performing quasigovernmental functions, and their agencies, who engage in, rely upon, promote, preserve, or provide services for, wholly or in part, a subsistence way of life in the following areas: Native Village of Chenega Bay, Eyak Native Village, Port Graham Village, the Native Village of English Bay, the Native Village of Tatitlek, the Native Village of Kodiak, the Native Village of Larsen Bay, the Native Village of Karluk, the Native Village of Port Lions, the Native Village of Akhiok, the Native Village of Ouzinkie, Ivanoff Bay Village, the Native Village of Chignik Bay, the Native Village of Chignik Lagoon, Chignik Lake Village, Seward, Valdez, and the Native Village of Perryville, the Kenai Peninsula Borough, the Kodiak Island Borough, the Lake and Peninsula Borough and the Aleutians East Borough.

ACE 1399621

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ANCHORAGE, ALASKA 99501
(907) 258-6377

SONOSKY, CHAMBERS, SANCHEZ & MILLER
900 WEST 5TH AVENUE
SUITE 700
ANCHORAGE, ALASKA 99501
(907) 258 6377

DATED at Anchorage, Alaska, this _____ day of _____, 1991.

BRIAN SHORTELL
Superior Court Judge

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

In re)
)
EXXON VALDEZ OIL SPILL LITIGATION)
)
_____)
)
THIS DOCUMENT RELATES TO)
ALL CASES)
_____)

3AN-89-2533 Civil (Consolidated)

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

MONICA M. McDAID, being first duly sworn, upon oath, deposes and says that she is employed in the office of Sonosky, Chambers, Sachse, Miller & Munson, 900 W. 5th Ave., Suite 700, Anchorage, Alaska, 99501, and that service of CLASS ACTION PLAINTIFFS' MOTION FOR TECHNICAL CORRECTION OF PRETRIAL ORDER NO. 22; MEMORANDUM IN SUPPORT OF CLASS ACTION PLAINTIFFS' MOTION FOR TECHNICAL CORRECTION OF PRETRIAL ORDER NO. 22; and ORDER GRANTING CLASS ACTION PLAINTIFFS' MOTION FOR TECHNICAL CORRECTION OF PRETRIAL ORDER NO. 22 has been made via hand delivery to the following parties:

Douglas J. Serdahely, Esq.
Bogle & Gates
1031 W. 4th Ave., Suite 600
Anchorage, Alaska 99501

Charles P. Flynn, Esq.
Burr, Pease & Kurtz
810 N Street
Anchorage, Alaska 99501

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900 WEST 5TH AVENUE
SUITE 700
ANCHORAGE, ALASKA 99501
(907) 258-6377

SONOSKY, CHAMBERS, SCHMIDT & MILLER
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SUITE 700
ANCHORAGE, ALASKA 99501
(907) 258 6377

Frederick H. Boness, Esq.
Preston, Thorgrimson, Shidler,
Gates & Ellis
420 L Street, Suite 400
Anchorage, Alaska 99501

on this 25th day of March, 1991.

Monica M. McDAID
MONICA M. McDAID

SUBSCRIBED AND SWORN to before me this 25th day of March, 1991.

Margaret A. Bunker
NOTARY PUBLIC in and for Alaska
My Commission Expires: 2-13-92

INDEX

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(3)	Howard H. Winkelmann v. Exxon <i>Stepe / Kennelly</i>	3AN-91-2276
4	W. Findlay Abbott v. Exxon <i>no</i>	3AN-91-2280
(5)	Molitor, v. Exxon <i>Stepe -</i>	3AN-91-2327
6	Don Marino v. Exxon <i>pro se</i>	3AN-91-2328
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R 8	<i>ok</i> Jerald D. Eidem, v. Exxon - <i>not served</i> <i>pro se</i>	3AN-91-2356
R (9)	Michael M. Bullock, v. Exxon <i>not</i>	3AN-91-2368
10	Chugach Alaska Corporation, <i>Birdi Horton</i> v. State of Alaska <i>yes, but</i>	3AN-91-2405
11	Robert W. Musser v. Exxon <i>pro se</i>	3AN-91-2429
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R - (16)	Todd B. Adams v. Exxon <i>serve</i>	3AN-91-2466
(17)	Joseph Wade Banta v. Exxon	3AN-91-2467

I. Requiring mandating select class
make class an allegations involved.

1

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

MAR 2 1991

FILED
MAR 21 1991
CLERK OF COURT
JUDICIAL DISTRICT
THIRD

DANIEL DE NARDO,
PLAINTIFF,
VS.
EXXON CORP.,
ALTESKA PIPELINE CO.,
STATE OF ALASKA,
DEFENDANTS.

ACE
COPY

CASE NO. 3AN-91-2256

COMPLAINT AND DEMAND OF TRIAL BY JURY

JURISDICTON

Jurisdiction is taken under the general jurisdiction statute for the superior court. Jurisdiciton is also taken under the federal Civil Rights Act, 42 U.S.C. sections 1983 and 1988.

PARTIES

1. Daniel DeNardo is a citizen in the State of Alaska, the injured party to this action and a Merchant-Trader-At-Law.
2. Exxon is a corporation doing business in the State of Alaska.
3. Alyeska Pipeline Co. is an Alaskan corporation doing business in the State of Alaska.

The State of Alaska is an international municipal corporation.

DANIEL DENARDO, P.O. Box 10068 Anch. AK 99510

CAUSE OF ACTION

1. Defendants jointly and severally, undertook through numerous federal and state statutes, the responsibility to insure and guarantee the proper operation of the TAPS line in the loading and unloading of petroleum crude oil at the Valdez and its transportation through the waters of Alaska.

2. During the month of March 1989 there occurred the "Valdez" oil spill from the Exxon Valdez tanker in Prince William Sound, in the waters of Alaska.

3. The fisheries of Prince William Sound were closed to fishing during the season of 1989.

4. The fisheries of Prince William Sound are traded in international and national markets.

5. Plaintiff by the acts of the defendants jointly and severally, was denied access to the national and international fisheries markets in the fishing season of 1989 as protected by the Commerce Clause.

6. Plaintiff as a farmer of the sea trades in the national and international markets by and through the trade in salmon and "bottomfish" as protected by the Commerce Clause.

7. Plaintiff's area of trade is the Prince William Sound area in particular the Knight Islands.

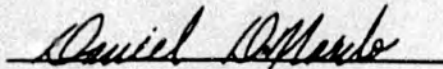
DAMAGES

1. Defendants acted jointly and severally with deliberate indifference and reckless disregard in their responsibilities to oversee the operation of the transportation of crude oil through the waters of Alaska.

2. Defendants acted with outrage and willfulness in their failure to fulfill the responsibilities they jointly and severally were accountable for in their relationships under federal and state law.

3. Plaintiff demands damages in the amount of \$750,000.00 in United States Notes.

DATED 21 March 1991.


Daniel DeNardo

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

DANIEL DE NARDO,

PLAINTIFF,

VS.

EXXON CORP.,

AYESKA PIPELINE CORP.,

STATE OF ALASKA,

DEFENDANTS.

CASE NO. 3AN-91-

DEMAND OF TRIAL BY JURY

Plaintiff hereby demands trial by jury on all issues.

DATED 21 March 1991.

Daniel DeNardo
Daniel DeNardo

2

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STEPOVICH, KENNELLY
& STEPOVICH, P.C.
ATTORNEYS AT LAW
PROFESSIONAL CORPORATION
SUITE 1
14 WEST 2ND AVENUE
ANCHORAGE, ALASKA
99501
(907) 279-9352

LAURA M. SCHAFFER,

Plaintiff,

vs.

EXXON COMPANY U.S.A., EXXON
CORPORATION, EXXON SHIPPING
COMPANY, GEORGE NELSON, ALYESKA
PIPELINE SERVICE COMPANY, EDWARD
MURPHY, and STATE OF ALASKA,
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Defendant.

Case No. 3AN-91-22 Civ.

COMPLAINT

COMES NOW, Plaintiff, LAURA M. SCHAFFER, by and through her attorneys, STEPOVICH, KENNELLY & STEPOVICH, P.C., and states for cause of action against Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, and STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, as follows:

COUNT I

1. That on March 24, 1989, the above-named Defendants did cause crude oil to be spilled in the Prince William Sound and failed to prevent the spread of this oil to Latouche Island. The spread of the oil from the Tanker, Exxon Valdez on that day eventually reached Latouche Island in which the Plaintiff owned the following Real Estate Lots: Lots 8, 9

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& STEPOVICH, P.C.
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99501
(907) 279-9352

15 of Block 1, Lot 2 of Block 2, Lots 9, 18, 19, 20, 30, 31, 32 of Block 3, Lots 10, 11, 30, 31, 32, 36 of Block 4, Lot 1 of Block 5, Lots 9, 10 of Block 6, Lots 1, 7, 8, 9, 10, 15, 16, 20, 21, 24 of Block 7, Lots 1, 2, 12, 16, 31, 32, 37, 42, 47 of Block 8, Lot 16 of Block 9, Lots 4, 5, 12, 13 of Block 11, Latouche Island Townsite Subdivision and Latouche Island Townsite Subdivision, Addition No. 1, Recorded in the Valdez Recording District, depriving the Plaintiff of the beneficial use and enjoy of the those Lots. Said property being located in the Third Judicial District, State of Alaska. Plaintiff, LAURA M. SCHAFER, is the holder of a beneficial interest in the following described Lots: Lot 37 of Block 4, Lots 17, 20, 35 of Block 8, Latouche Island Townsite Subdivision Addition No. 1, Recorded in the Valdez Recording District, State of Alaska, under Deed of Trust for payment of purchase money of said lots, which said Deed of Trust are presently in default. Plaintiff has the beneficial interest in those Deeds of Trust and as such has suffered damage to the interest in said real property and seeks all appropriate relief and therefore as prayed for in this paragraph and the rest of the complaint.

2. The deprivation of the beneficial use of the land described in paragraph 1 is continuous and amounts to a permanent on going trespass in the nature of a nuisance causing pollution of the above described property. Said pollution being obnoxious, poisonous and dangerous to the health and welfare of the owner and users of the above

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described land. The Plaintiff seeks therefore a permanent injunction, ordering the removal of this nuisance and restoration of the land and the access to the land to its original state.

3. Plaintiff has suffered nuisance, trespass and damages to the above described property in an amount in excess of Fifty Thousand Dollars, (\$50,000), to be more fully established at time of trial. Said damaged being of a continuous nature and on going and unless the land is restored it will be permanent. Plaintiff seeks damage against Defendant for pass, present and future harm.

4. The harm as alleged in paragraphs I, II, and III was caused by to gross negligence and/or willful conduct on the part of some or all of the above named Defendants. That Plaintiff has filed a claim under the Trans-Alaska Pipeline Liability Fund under authorization of 43 U.S.C. § 1653 (c), prior to filing this complaint and has received no payment.

COUNT II

Plaintiff hereby reallege and incorporate paragraphs one through four of Count I, into Count II of this complaint and further state:

5. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, pursuant to § 46.04.020, of the Alaska Statutes requires said defendants to assume the responsibility for clean up and oil spill containment if said

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clean up is not to be performed satisfactorily. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION were slow to react to the oil spill of March 24, 1989 and intentionally or negligently failed to adequately supervise any containment efforts, thus causing the contamination to spread and damage Plaintiff's real property described in Count I in Complaint.

6. Sections 46.03.865, 46.04.030, 46.04.060, and 46.04.080 of the Alaska Statutes requires the Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, insure an adequate oil spill contingency plan is in place in the event of a major oil spill, to periodically inspect the facilities and vessels to insure compliance with Environmental Laws including appropriate and adequate spill contingency plans, and declare a disaster emergency under Section 26.23 of the Alaska Statutes with defendants performing the duties of Alaska Division of Emergency Services, when a catastrophic oil spill such as the spill on the 24 March, 1989 occurs.

7. The Defendants STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, negligently failed to act in a responsible manner by immediately declaring a disaster emergency and containing or insuring containment of the oil spill which was allowed to drift and damage Plaintiff's real property as described above in Count I. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, also negligently performed their duties under the Alaska Statutes

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by failing to insure an adequate oil spill contingency plan existed, by failing to properly inspect the vessels and oil spill containment equipment and by failing to insure that Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, were ready and able to react to a catastrophic oil spill in Prince William Sound and the Gulf of Alaska.

8. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, were required by §§ 46.04 et. seq., to insure the existence of an oil spill contingency plan, to insure adequate equipment was in place to react to a catastrophic oil spill and to insure Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, possessed the ability to react to a catastrophic oil spill, thereby protecting the environment and Plaintiff's real property described above in Count I. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, had the authority and duty to establish oil spill contingency plans including contracting with private companies to provide these services pursuant to § 46.04.090 of the Alaska Statutes, Defendants negligently failed to supervise and implement Title 46, of the Alaska Statutes, and through defendants' negligence Plaintiff suffered damage to real property described above in Count I.

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9. Plaintiff seeks a permanent injunction compelling the Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, to restore the property described above in Count I to its condition prior to the time that the nuisance above-described started. Plaintiff alleges that this nuisance was caused by the Defendants intentionally or by the gross negligence in failing to ensure adequate spill contingency plans, failing to ensure the ability to rapidly deploy spill clean up equipment, failing to ensure the other named defendants would protect plaintiff's health and real property described above in Count I, by failing to react to the catastrophic oil spill of March 24, 1989 as an environmental disaster emergency.

WHEREFORE, Plaintiff LAURA M. SCHAFER, prays for damages in excess of Fifty Thousand Dollars, (\$50,000), in an amount as are established at the time of trial, a Permanent Injunction and directing Defendants to clean up the nuisance and the beaches, and as to Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ and STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION with such damages as are established at the time of trial, plus interest, costs and attorney's fees.

Plaintiff prays for punitive damages in excess of Fifty Thousand Dollars, (\$50,000), as to Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT

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& STEPOVICH, P.C.
ATTORNEYS AT LAW
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99501
(907) 279-9352

OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF
EXXON VALDEZ in an amount to be more fully established at the
time of trial, plus interest, costs and attorney's fees.

DATED this 21st day of March, 1991.

STEPOVICH, KENNELLY & STEPOVICH, P.C.
Attorneys for Plaintiff

By:

C.R. Kennelly
C.R. KENNELLY

3

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STEPOVICH, KENNELLY
& STEPOVICH, P.C.
ATTORNEYS AT LAW
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99501
(907) 279-9352

HOWARD H. WINKELMANN, ROBERT L.
TITCHENAL, SHIRLEY J. TITCHENAL,
and ETHAN WILLIAMS,

Plaintiff,

vs.

EXXON COMPANY U.S.A., EXXON
CORPORATION, EXXON SHIPPING
COMPANY, GEORGE NELSON, ALYESKA
PIPELINE SERVICE COMPANY, EDWARD
MURPHY, and STATE OF ALASKA,
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Defendant.

ATTORNEY FOR PLAINTIFFS

Case No. 3AN-91-22 Civ.

COMPLAINT

COMES NOW, Plaintiffs, HOWARD H. WINKELMANN, ROBERT L. TITCHENAL, SHIRLEY J. TITCHENAL, and ETHAN WILLIAMS, by and through their attorneys, STEPOVICH, KENNELLY & STEPOVICH, P.C., and states for cause of action against Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, and STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, as follows:

COUNT I

1. That on March 24, 1989, the above-named Defendants did cause crude oil to be spilled in the Prince William Sound and failed to prevent the spread of this oil to Latouche Island. The spread of the oil from the Tanker, Exxon

STEPOVICH, KENNELLY
& STEPOVICH, P.C.
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Valdez on that day eventually reached Latouche Island in which the Plaintiffs owned the following Real Estate Lots: Howard H. Winkelmann: Lot 11 and 12 of Block 9, Latouche Island Township Subdivision, Addition No. 1, Plat 79-3, Valdez Recording District; Robert L. & Shirley J. Titchenal: Lot 34, Block 3, Latouche Island Township Subdivision Addition No. 1, Plat 79-3, Valdez Recording District; Ethan Williams: Lot 11 Block 7, Latouche Island Township Subdivision Addition No. 1, Plat 79-3, Valdez Recording District, depriving the Plaintiffs of the beneficial use and enjoyment of the those Lots. Said property being located in the Third Judicial District, State of Alaska.

2. The deprivation of the beneficial use of the land described in paragraph 1 is continuous and amounts to a permanent on going trespass in the nature of a nuisance causing pollution of the above described property. Said pollution being obnoxious, poisonous and dangerous to the health and welfare of the owners and users of the above described land. The Plaintiffs seek therefore a permanent injunction, ordering the removal of this nuisance and restoration of the land and the access to the land to its original state.

3. Plaintiffs have suffered nuisance, trespass and damages to the above described property in an amount in excess of Fifty Thousand Dollars, (\$50,000), to be more fully established at time of trial. Said damaged being of a

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continuous nature and on going and unless the land is restored it will be permanent. Plaintiffs seeks damage against Defendants for pass, present and future harm.

4. The harm as alleged in paragraphs I, II, and III was caused by gross negligence and/or willful conduct on the part of some or all of the above named Defendants. That Plaintiffs have filed a claim under the Trans-Alaska Pipeline Liability Fund under authorization of 43 U.S.C. § 1653 (c), prior to filing this complaint and has received no payment.

COUNT II

Plaintiffs hereby reallege and incorporate paragraphs one through four of Count I, into Count II of this complaint and further state:

5. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, pursuant to § 46.04.020, of the Alaska Statutes requires said defendants to assume the responsibility for clean up and oil spill containment if said clean up is not to be performed satisfactorily. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION were slow to react to the oil spill of March 24, 1989 and intentionally or negligently failed to adequately supervise any containment efforts, thus causing the contamination to spread and damage Plaintiffs' real property described in Count I in Complaint.

6. Sections 46.03.865, 46.04.030, 46.04.060, and 46.04.080 of the Alaska Statutes requires the Defendants,

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STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, insure an adequate oil spill contingency plan is in place in the event of a major oil spill, to periodically inspect the facilities and vessels to insure compliance with Environmental Laws including appropriate and adequate spill contingency plans, and declare a disaster emergency under Section 26.23 of the Alaska Statutes with defendants performing the duties of Alaska Division of Emergency Services, when a catastrophic oil spill such as the spill on 24 of March 1989 occurs.

7. The Defendants STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, negligently failed to act in a responsible manner by immediately declaring a disaster emergency and containing or insuring containment of the oil spill which was allowed to drift and damage Plaintiffs' real property as described above in Count I. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, also negligently performed their duties under the Alaska Statutes by failing to insure an adequate oil spill contingency plan existed, by failing to properly inspect the vessels and oil spill containment equipment and by failing to insure that Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, were ready and able to react to a catastrophic oil spill in Prince William Sound and the Gulf of Alaska.

8. Defendants, STATE OF ALASKA, DEPARTMENT OF

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ENVIRONMENTAL CONSERVATION, were required by §§ 46.04 et. seq., to insure the existence of an oil spill contingency plan, to insure adequate equipment was in place to react to a catastrophic oil spill and to insure Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, possessed the ability to react to a catastrophic oil spill, thereby protecting the environment and Plaintiffs' real property described above in Count I. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, had the authority and duty to establish oil spill contingency plans including contracting with private companies to provide these services pursuant to § 46.04.090 of the Alaska Statutes, Defendants negligently failed to supervise and implement Title 46, of the Alaska Statutes, and through defendants' negligence Plaintiff suffered damage to real property described above in Count I.

9. Plaintiffs seek a permanent injunction compelling the Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, to restore the property described above in Count I to its condition prior to the time that the nuisance above-described started. Plaintiffs alleges that this nuisance was caused by the Defendants intentionally or by the gross negligence in failing to ensure adequate spill contingency plans, failing to ensure the ability to rapidly deploy spill clean up equipment, failing to ensure the other

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named defendants would protect plaintiffs' health and real property described above in Count I, by failing to react to the catastrophic oil spill of March 24, 1989 as an environmental disaster emergency.

WHEREFORE, Plaintiffs HOWARD H. WINKELMANN, ROBERT L. TITCHENAL, SHIRLEY J. TITCHENAL, and ETHAN WILLIAMS, prays for damages in excess of Fifty Thousand Dollars, (\$50,000), in an amount to be established at the time of trial, a Permanent Injunction and directing Defendants to clean up the nuisance and the beaches, and as to Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, and STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION with such damages as are established at time of trial, plus interest, costs and attorney's fees.

Plaintiffs prays for punitive damages in excess of Fifty Thousand Dollars, (\$50,000), as to Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, to be more fully established at the time of trial, plus interest, costs and attorney's fees.

DATED this 21st day of March, 1991.

STEPOVICH, KENNELLY & STEPOVICH, P.C.
Attorneys for Plaintiff

By: C.R. Kennelly
C.R. KENNELLY

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W. Findlay Abbott
Yukon Island, Kachemak Bay
Post Office Box 2454
Homer, Alaska 99603

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

W. FINDLAY ABBOTT,

Plaintiff,

vs.

EXXON CORPORATION, a New
Jersey corporation, EXXON
SHIPPING COMPANY, a Delaware
corporation, and VECO INC.,
an Alaska corporation,

Defendants.

ACE
COPY

Case No. 3AN91-2280 Civil

COMPLAINT

PLAINTIFF for a complaint against the Defendants
alleges as follows:

NATURE OF CASE

1. This is a case arising out of the massive oil
spill in the Prince William Sound, Alaska, on March 24, 1989.

PARTIES

2. Plaintiff Findlay Abbott is an Alaska resident
who resides on the south shore of Yukon Island, in Kachemak
Bay, Lower Cook Inlet, seven miles from Homer, Alaska, on
property owned by himself, his five sisters and mother.

Plaintiff was residing on Yukon Island at the time of the events subject matter of this lawsuit and was then as at present the only year around resident of the island.

Plaintiff has been, and will continue to be, severely injured in body, mind, spirit, and in the loss of subsistence and business opportunities by the wrongful, negligent discharge of oil as alleged herein, and by the highly ineffective, often mismanaged, sometimes fraudulent oil spill cleanup on the Outer Coast of the Kenai Peninsula (the immediate area which by way of currents, tides and winds directly affects Yukon Island), as alleged herein.

3. Defendant Exxon Corporation is a New Jersey corporation which owns an interest in the Alaska North Slope oil fields. Exxon owned and controlled the oil which was spilled by the grounding of the EXXON VALDEZ.

4. Defendant Exxon Shipping Company is a wholly owned subsidiary of Exxon Corporation. Exxon Shipping owns and operates the tanker EXXON VALDEZ.

5. Defendant VECO Inc. is an Alaska corporation with its principal place of business in Alaska. VECO contracted with Exxon to perform the oil spill cleanup and acted as Exxon's duly authorized agent and representative.

LEGAL AND FACTUAL ALLEGATIONS

6. On March 23, 1989, the EXXON VALDEZ departed the Port of Valdez loaded with approximately 53,000,000 gallons of oil that had been transported through the Trans-Alaska Pipeline.

7. Captain Joseph Hazelwood was intoxicated when he boarded the EXXON VALDEZ and continued drinking alcohol on the vessel.

8. After the coastal pilot was dropped off, the EXXON VALDEZ was in the command of third mate Gregory Cousins, who was unqualified and known to be unable to command the vessel.

9. Early in the morning of March 24, 1989, approximately one nautical mile outside the legal shipping channel, the EXXON VALDEZ became impaled on a charted well-marked reef and spilled at least 11,000,000 gallons of oil upon and into Prince William Sound.

10. Exxon and Exxon Shipping knew or should have known that Captain Hazelwood was not competent to command the vessel and that the vessel was not being operated safely.

11. Following the spill, authorized representatives of Exxon and Exxon Shipping admitted responsibility for the spill and resultant damage.

12. While retaining responsibility for the cleanup, Exxon was very slow to initiate cleanup activities, and stated publicly that they wanted to let it impact the shoreline before beginning the cleanup.

13. During the month of April, 1989, after heavily oiling some portions of the Outer Coast of the Kenai Peninsula, the mass of oil reached the mouth of Cook Inlet, where it hung for over two weeks because of fairly windless conditions before being blown to the southwest by northeast winds. If there had been southwest winds at this time the oil mass would have landed on plaintiff's beaches in a matter of hours. While the oil was hanging in Cook Inlet, plaintiff was building absorbent and diversion booms and a large V shaped oil collector float at Yukon Island to protect his beaches from the oil should it come that way.

14. Instead of utilizing existing organizations such as cities, communities, fishermen's groups and local teams of workers who were prepared to work and in many cases already working on the cleanup, Exxon chose to contract with several oil industry corporations to conduct the cleanup. VECO Inc. was the corporation which conducted most of the cleanup efforts in the area affecting the plaintiff.

15. Many employment and cleanup policies and practices of Exxon and VECO were divisive to local residents, in-

efficient, unnecessarily wasteful and showed a lack of understanding of local conditions. Most of the management positions were held by Exxon employees from outside Alaska and VECO employees from outside the local areas.

16. In late May, 1989, Exxon and VECO decided that no more oiled rocks or oiled gravel would be picked up from the Outer Coast of the Kenai Peninsula and that no attempt would be made to dig up and isolate or wash contaminated gravel although the technology and permits to do so were easily available and most of the remaining pollution was oiled gravel.

17. On June 8, 1989, during a two week boat job on the Outer Coast, plaintiff went ashore and observed a cleanup crew working at the head of Yalik Bay, near Nuka Island. There were patches of oiled gravel near the high tide mark which were being left undisturbed. The workers were putting clean seaweed into bags and loading the bags onto a four wheeled vehicle and then onto a small landing craft for loading on a large boat. Plaintiff asked a worker why they were doing this and was told they were not allowed to pick up oiled gravel anymore, but they had run out of dirty seaweed or free oil, and so to keep them busy and keep up the "bag count" they were told to pick up clean seaweed. In that one incident defendants were probably spending over \$20,000 per day to pick up clean seaweed and send it away

to hazardous waste storage sites. Plaintiff heard accounts of similar events in other areas of the Outer Coast.

18. The Barren Islands, in the mouth of Cook Inlet, directly affect the catchment beaches of Yukon Island, which are among the first beaches to catch floating drift as it enters Kachemak Bay. With an incoming tide and southwest winds, debris from the Barren Islands can be deposited on Yukon Island in a few hours. Some of the beaches in the Barren Islands were very heavily oiled. Defendants did not even attempt to clean the Barrens until the last week or two of the 1989 season, and some of the heavily oiled beaches were not cleaned at all. In 1990, because the oil had not washed away, the Defendants, over the protests of the State of Alaska, took heavy equipment to the Barrens and pushed oiled gravel back into the ocean, below the high tide line, thus re-polluting an environment which greatly affects plaintiff.

19. By assuming and holding on to control of the oil spill cleanup, Defendant effectively prevented the State or local groups from doing it. Evidence and case histories repeatedly suggest that the Defendants maintained control of the cleanup simply to hold down expenditures and numbers of people employed, that they did not want to clean up oil. Many people in the Homer/Seldovia area wanted to work on the oil spill cleanup but were not offered jobs. Defendants re-

fused to consider small scale labor intensive methods which could have cleaned up the whole area the first season. Defendants tried to let the oil disperse into the environment wherever possible.

20. Defendants did not effectively deploy and utilize the Soviet oil skimmer which was sent to Cook Inlet, and thereby negligently lost an opportunity to remove some of the pollution from the environment.

21. The demands of the oil spill upon Plaintiff, as amplified by the negligent acts and omissions of all Defendants was a serious burden on the social and business plans and obligations of the Plaintiff for the summer of 1989. Relationships with some friends or associates were severely strained as a direct result of the acts and omissions of the Defendants. Plaintiff spent most of the summer of 1989 picking up gobs of mousse and tar from the beaches of Yukon Island and maintaining his booms in case storm conditions should suddenly lift oil from the gravels of the Outer Coast or Barren Islands and send it into Kachemak Bay. Mild weather conditions and lack of a southwest storm spared Kachemak Bay from a heavy oiling.

22. Plaintiff used to rely regularly on clams and mussels for subsistence food. Plaintiff's clam and mussel beds appeared to have a massive die off after 1989, and have

not recovered. Plaintiff has been afraid to eat clams and mussels since the oil spill.

23. As a result of the negligent, grossly negligent and/or reckless acts and omissions by Defendants for causing the discharge of the oil upon and into the waters, subsurface and surface lands of Alaska, and for failing to provide adequate personnel, equipment or supplies for a satisfactory cleanup, the waters and marine life of the Lower Cook Inlet have been polluted and will continue to be polluted by the oil discharged from the EXXON VALDEZ. This oil is a "hazardous substance" as defined by AS 46.03.826(4)(B).

24. Defendants intentionally and/or negligently misrepresented and suppressed material facts about the oil spill and cleanup. Defendants conspire and maintain secrecy and confidentiality to all aspects of the cleanup operation in order to cover up the unduly wasteful, ineffective, and sometimes fraudulent practices in which they engaged. By such secrecy the public at large is denied the right to learn from this cleanup so as to improve the practices in the future.

DAMAGES TO PLAINTIFF

25. At the time the oil mass was in Cook Inlet and Plaintiff was working on the water on the Yukon Island beach facing into the oil mass (April 1989), mild winds from

the direction of the oil mass brought surface sheens and concentrated dangerous light petroleum evaporates at the catchment beach. This resulted in serious injury to the Plaintiff's inner ear. Plaintiff suffered from attacks of vertigo (complete balance loss) for three weeks. Plaintiff has never experienced such attacks before or since. Plaintiff was unable to work for three weeks and suffered from a justifiable fear of disability or death. Defendants knew about or should have known about such effects and should have warned persons such as Plaintiff and provided protective gear.

26. A great many items of importance in Plaintiff's life suffered or were delayed because of the burdens and demands imposed by the oil spill and the acts and omissions of all of the Defendants in the oil spill cleanup. Relationships were stressed. Previously promised obligations were disrupted and completions delayed. As a direct and proximate result of the oil spill and cleanup Plaintiff suffered from serious back pains for at least two weeks. An opportunity for Plaintiff to accept an invitation to visit with a world famous person was lost. Plaintiff was delayed at least a year in his plans to build a new structure on Yukon Island. Plaintiff was unable to follow up in a timely fashion on volunteer planning he was doing for certain Homer parks, thereby

delaying and complicating the projects.

27. The constant traffic of helicopters and aircraft flying directly over Plaintiff's home on Yukon Island, going from Homer to the Outer Coast during 1989 caused further injury and suffering by destroying Plaintiff's cherished peace and quiet.

28. Defendants refused to pay Plaintiff for the oil cleanup preparations and work he performed on Yukon Island. It took Plaintiff a year of intense litigation with Exxon to receive any payment for that work. Plaintiff could not afford an attorney and did all of the research, writing, and document preparation himself (as in the present litigation). The litigation was stressful to Plaintiff and took him away from other writing which might have inspired him and uplifted his spirit.

29. Plaintiff's subsistence opportunities and quiet wilderness lifestyle have been damaged and will continue to be damaged as a result of the negligent acts and omissions of the Defendants.

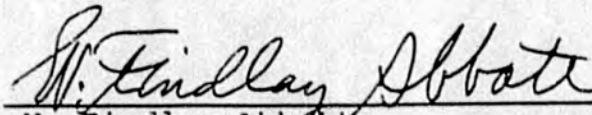
30. Many of Plaintiff's future plans and hopes for business and self-employment, which relied upon the pure and pristine reputation of the North Pacific shore have been damaged forever.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter a judgment against the Defendants jointly and severally as follows:

1. Award compensatory and punitive damages for all injuries and losses suffered by Plaintiff, in an amount to be determined at the time of trial.
2. Order that all records pertaining to the oil spill cleanup be opened for public viewing. Plaintiff seeks a certain healing from the injuries of the oil spill and cleanup by being allowed to help clarify the historical record. Plaintiff seeks access to records of the oil spill cleanup held by Defendants. When the defendants accepted responsibility for the cleanup they were acting in a capacity of public trust. The events of the oil spill cleanup are clearly a public matter and there is no justification for the Defendants to hold most of the cleanup information in secret.
3. Grant such other relief as this Court deems just and equitable in the premises.

Respectfully submitted this 21st day of March, 1991.


W. Findlay Abbott

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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MOLITOR, DOREMUS AND HANLIN

Plaintiff,

vs.

EXXON COMPANY U.S.A., EXXON
CORPORATION, EXXON SHIPPING
COMPANY, GEORGE NELSON, ALYESKA
PIPELINE SERVICE COMPANY, EDWARD
MURPHY, and STATE OF ALASKA,
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Defendant.

Case No. 3AN-91-2327 Civ.

COMPLAINT

COMES NOW, Plaintiffs, MOLITOR, DOREMUS AND HANLIN,
by and through their attorneys, STEPOVICH, KENNELLY &
STEPOVICH, P.C., and states for cause of action against
Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE
NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD
MURPHY, PILOT OF EXXON VALDEZ, and STATE OF ALASKA, DEPARTMENT
OF ENVIRONMENTAL CONSERVATION, as follows:

COUNT I

1. That on March 24, 1989, the above-named
Defendants did cause crude oil to be spilled in the Prince
William Sound and failed to prevent the spread of this oil to
Latouche Island. The spread of the oil from the Tanker, Exxon
Valdez on that day eventually reached Latouche Island in which

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the Plaintiffs owned the following Real Estate Lots: Lot 4 of Block 6, Lots 4, 6, 7 of Block 8, Latouche Island Township Subdivision Addition No. 1, Valdez Recording District, depriving the Plaintiffs of the beneficial use and enjoy of the those Lots. Said property being located in the Third Judicial District, State of Alaska.

2. The deprivation of the beneficial use of the land described in paragraph 1 is continuous and amounts to a permanent on going trespass in the nature of a nuisance causing pollution of the above described property. Said pollution being obnoxious, poisonous and dangerous to the health and welfare of the owners and users of the above described land. The Plaintiffs seek therefore a permanent injunction, ordering the removal of this nuisance and restoration of the land and the access to the land to its original state.

3. Plaintiffs have suffered nuisance, trespass and damages to the above described property in the amount in excess of Fifty Thousand Dollars, (\$50,000), to be more fully established at time of trial. Said damaged being of a continuous nature and on going and unless the land is restored it will be permanent. Plaintiffs seeks damage against Defendants for pass, present and future harm.

4. The harm as alleged in paragraphs I, II, and III was caused by gross negligence and/or willful conduct on the part of some or all of the above named Defendants. That

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Plaintiffs have filed a claim under the Trans-Alaska Pipeline Liability Fund under authorization of 43 U.S.C. § 1653 (c), prior to filing this complaint and has received no payment.

COUNT II

Plaintiffs hereby reallege and incorporate paragraphs one through four of Count I, into Count II of this complaint and further state:

5. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, pursuant to § 46.04.020, of the Alaska Statutes requires said defendants to assume the responsibility for clean up and oil spill containment if said clean up is not to be performed satisfactorily. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION were slow to react to the oil spill of March 24, 1989 and intentionally or negligently failed to adequately supervise any containment efforts, thus causing the contamination to spread and damage Plaintiffs' real property described in Count I in Complaint.

6. Sections 46.03.865, 46.04.030, 46.04.060, and 46.04.080 of the Alaska Statutes requires the Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, insure an adequate oil spill contingency plan is in place in the event of a major oil spill, to periodically inspect the facilities and vessels to insure compliance with Environmental Laws including appropriate and adequate spill contingency plans, and declare a disaster emergency under Section 26.23 of

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the Alaska Statutes with defendants performing the duties of Alaska Division of Emergency Services, when a catastrophic oil spill such as the spill on 24 of March 1989 occurs.

7. The Defendants STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, negligently failed to act in a responsible manner by immediately declaring a disaster emergency and containing or insuring containment of the oil spill which was allowed to drift and damage Plaintiffs' real property as described above in Count I. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, also negligently performed their duties under the Alaska Statutes by failing to insure an adequate oil spill contingency plan existed, by failing to properly inspect the vessels and oil spill containment equipment and by failing to insure that Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, were ready and able to react to a catastrophic oil spill in Prince William Sound and the Gulf of Alaska.

8. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, were required by §§ 46.04 et. seq., to insure the existence of an oil spill contingency plan, to insure adequate equipment was in place to react to a catastrophic oil spill and to insure Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF

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EXXON VALDEZ, possessed the ability to react to a catastrophic oil spill, thereby protecting the environment and Plaintiffs' real property described above in Count I. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, had the authority and duty to establish oil spill contingency plans including contracting with private companies to provide these services pursuant to § 46.04.090 of the Alaska Statutes, Defendants negligently failed to supervise and implement Title 46, of the Alaska Statutes, and through defendants' negligence Plaintiff suffered damage to real property described above in Count I.

9. Plaintiffs seek a permanent injunction compelling the Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, to restore the property described above in Count I to its condition prior to the time that the nuisance above-described started. Plaintiffs alleges that this nuisance was caused by the Defendants intentionally or by the gross negligence in failing to ensure adequate spill contingency plans, failing to ensure the ability to rapidly deploy spill clean up equipment, failing to ensure the other named defendants would protect plaintiffs' health and real property described above in Count I, by failing to react to the catastrophic oil spill of March 24, 1989 as an environmental disaster emergency.

WHEREFORE, Plaintiffs MOLITOR, DOREMUS AND HANLIN prays for damages in excess of Fifty Thousand Dollars,

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(\$50,000), in an amount to be established at the time of trial, a Permanent Injunction and directing Defendants to clean up the nuisance and the beaches, and as to Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, and STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION with such damages as are established at time of trial, plus interest, costs and attorney's fees.

Plaintiffs prays for punitive damages in excess of Fifty Thousand Dollars, (\$50,000), as to Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, to be more fully established at the time of trial, plus interest, costs and attorney's fees.

DATED this 2nd day of March, 1991.

STEPOVICH, KENNELLY & STEPOVICH, P.C.
Attorneys for Plaintiff

By:

C.R. Kennelly
C.R. KENNELLY

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

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STEPOVICH, P.C.
ATTORNEYS AT LAW
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MOLITOR, DOREMUS AND HANLIN

Plaintiff,

vs.

EXXON COMPANY U.S.A., EXXON
CORPORATION, EXXON SHIPPING
COMPANY, GEORGE NELSON, ALYESKA
PIPELINE SERVICE COMPANY, EDWARD
MURPHY, and STATE OF ALASKA,
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Defendant.

Case No. 3AN-91- Civ.

DEMAND FOR TRIAL BY JURY

COMES NOW, Plaintiff, MOLITOR, DOREMUS AND HANLIN, by and
through attorney's, STEPOVICH, KENNELLY & STEPOVICH, P. C.,
and hereby demands a trial by jury in the above-entitled
action.

DATED this 31st day of March, 1991.

STEPOVICH, KENNELLY & STEPOVICH, P.C.
Attorneys for Plaintiff

By:

C.R. Kennelly
C.R. KENNELLY

6

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

DON MARINO

Plaintiff,

vs.

EXXON COMPANY U.S.A., EXXON
CORPORATION, EXXON SHIPPING
COMPANY, GEORGE NELSON, ALYESKA
PIPELINE SERVICE COMPANY, EDWARD
MURPHY, and STATE OF ALASKA,
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Defendant.



Case No. 3AN-91-2528 Civ.

COMPLAINT

COMES NOW, Plaintiff, DON MARINO, pro se, states for cause of action against Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, and STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, as follows:

COUNT I

1. That on March 24, 1989, the above-named Defendants did cause crude oil to be spilled in the Prince William Sound and failed to prevent the spread of this oil to Latouche Island. The spread of the oil from the Tanker, Exxon Valdez on that day eventually reached Latouche Island. At

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1057 W. Fireweed, Anchorage, AK 99503
(907) 279-7447

that time certain property described as follows: Lots 25, 26, 27, 36 of Block 4, Lots 7, 8 of Block 6, Lots 24, 25, 26, 27, 34, 36, 43, 44 of Block 8, Lot 16 of Block 9, Latouche Island Township Subdivision Addition No. 1, Valdez Recording District, was titled in the name of RARE EARTH INC., which was a corporation in the process of dissolution. The assets of the corporation in the dissolution not used to satisfy outstanding obligations of the corporation have now been transferred to DON MARINO as the sole remaining stockholder of the corporation including the title to the above listed lots and any claim that may be had for damages or other relief as a result of the Exxon Valdez oil spill in the Prince William Sound and against any and all Parties or Funds liable for the same, with full right to sue thereon now belongs to Don Marino. Plaintiff has been deprived of the beneficial use and enjoyment of the those Lots. Plaintiff has in addition to the lots described above presently in Rare Earth Inc., held in trust at the time of the EXXON VALDEZ OIL SPILL, a beneficial interest in two (2) Deeds of Trust to the above described property, which have been transferred to DON MARINO retains all rights pertinent to them as to any or all claims due to damage from the EXXON VALDEZ OIL SPILL. Said lots described above are presently in default and being closed upon by DON MARINO as the beneficial owner. The relief sought on the on two Lots is fully described within this Complaint and goes to DON MARINO.

2. The deprivation of the beneficial use of the land described in paragraph 1 is continuous and amounts to a permanent on going trespass in the nature of a nuisance causing pollution of the above described property. Said pollution being obnoxious, poisonous and dangerous to the health and welfare of the owners and users of the above described land. The Plaintiff seeks therefore a permanent injunction, ordering the removal of this nuisance and restoration of the land and the access to the land to its original state.

3. Plaintiff has suffered nuisance, trespass and damages to the above described property in the amount in excess of Fifty Thousand Dollars, (\$50,000), to be more fully established at time of trial. Said damaged being of a continuous nature and on going and unless the land is restored it will be permanent. Plaintiff seeks damage against Defendants for pass, present and future harm.

4. The harm as alleged in paragraphs I, II, and III was caused by gross negligence and/or willful conduct on the part of some or all of the above named Defendants. That Plaintiff has filed a claim under the Trans-Alaska Pipeline Liability Fund under authorization of 43 U.S.C. § 1653 (c), prior to filing this complaint and has received no payment.

COUNT II

Plaintiff hereby reallege and incorporate paragraphs

one through four of Count I, into Count II of this complaint and further state:

5. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, pursuant to § 46.04.020, of the Alaska Statutes requires said defendants to assume the responsibility for clean up and oil spill containment if said clean up is not to be performed satisfactorily. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION were slow to react to the oil spill of March 24, 1989 and intentionally or negligently failed to adequately supervise any containment efforts, thus causing the contamination to spread and damage Plaintiffs' real property described in Count I in Complaint.

6. Sections 46.03.865, 46.04.030, 46.04.060, and 46.04.080 of the Alaska Statutes requires the Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, insure an adequate oil spill contingency plan is in place in the event of a major oil spill, to periodically inspect the facilities and vessels to insure compliance with Environmental Laws including appropriate and adequate spill contingency plans, and declare a disaster emergency under Section 26.23 of the Alaska Statutes with defendants performing the duties of Alaska Division of Emergency Services, when a catastrophic oil spill such as the spill on 24 of March 1989 occurs.

7. The Defendants STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, negligently failed to act in a

responsible manner by immediately declaring a disaster emergency and containing or insuring containment of the oil spill which was allowed to drift and damage Plaintiff's real property as described above in Count I. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, also negligently performed their duties under the Alaska Statutes by failin.g to insure an adequate oil spill contingency plan existed, by failing to properly inspect the vessels and oil spill containment equipment and by failing to insure that Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, -ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, were ready and able to react to a catastrophic oil spill in Prince William Sound and the Gulf of Alaska.

8. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, were required by §§ 46.04 et. seq., to insure the existence of an oil spill contingency plan, to insure adequate equipment was in place to react to a catastrophic oil spill and to insure Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, possessed the ability to react to a catastrophic oil spill, thereby protecting the environment and Plaintiff's real property described above in Count I. Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, had the authority and duty to establish oil spill contingency plans

including contracting with private companies to provide these services pursuant to § 46.04.090 of the Alaska Statutes, Defendants negligently failed to supervise and implement Title 46, of the Alaska Statutes, and through defendants' negligence Plaintiff suffered damage to real property described above in Count I.

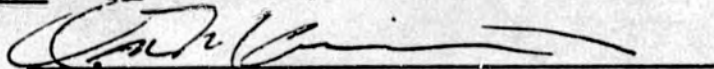
9. Plaintiff seek a permanent injunction compelling the Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, to restore the property described above in Count I to its condition prior to the time that the nuisance above-described started. Plaintiff alleges that this nuisance was caused by the Defendants intentionally or by the gross negligence in failing to ensure adequate spill contingency plans, failing to ensure the ability to rapidly deploy spill clean up equipment, failing to ensure the other named defendants would protect plaintiff's health and real property described above in Count I, by failing to react to the catastrophic oil spill of March 24, 1989 as an environmental disaster emergency.

WHEREFORE, Plaintiff, DON MARINO, prays for damages in excess of Fifty Thousand Dollars, (\$50,000), in an amount to be established at the time of trial, a Permanent Injunction and directing Defendants to clean up the nuisance and the beaches, and as to Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, and

STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION with such damages as are established at time of trial, plus interest, costs and attorney's fees.

Plaintiff prays for punitive damages in excess of Fifty Thousand Dollars, (\$50,000), as to Defendants, EXXON CORPORATION, EXXON SHIPPING COMPANY, GEORGE NELSON, PRESIDENT OF ALYESKA, ALYESKA PIPELINE COMPANY, EDWARD MURPHY, PILOT OF EXXON VALDEZ, to be more fully established at the time of trial, plus interest, costs and attorney's fees.

DATED this 22⁴⁰ day of March, 1991.


Don Marino, pro se

The Honorable Brian Shortell

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT ANCHORAGE

✓ THE NATIVE VILLAGE OF CHENEGA BAY,)
✓ THE NATIVE VILLAGE OF LARSEN BAY,)
✓ ELENOR McMULLEN, FRANK CARLSON,)
✓ PHILIP G. McCRUDDEN, ALASKA)
WILDERNESS SAILING SAFARIS,)
✓ TOM ELIAS, *SEA HAWK SEAFOODS,)
INC., THE ALASKA SPORTFISHING)
ASSOCIATION, JOSEPH KLOUDA, ALLEN)
TIGERT, REGION 37 OF THE INLAND)
BOATMAN'S UNION, THE ALASKA)
FISHERMAN'S UNION, CHARLES)
McMAHON, III, JENNIFER BRIGGS,)
OLD HARBOR NATIVE CORPORATION and)
NINILCHIK NATIVE ASSOCIATION, INC.,)

NO. 3AN-91-2344

FIRST AMENDED COMPLAINT

Plaintiffs,

v.

STATE OF ALASKA,

Defendant.

Checked *[Signature]*

Plaintiffs file this complaint on behalf of themselves and all others similarly situated. The complaint is alleged upon information and belief, except as to allegations pertaining to the named plaintiffs, which are alleged on knowledge. Plaintiffs' information and belief is based, inter alia, on

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500 West 1st Avenue, Suite 400
Anchorage, Alaska 99501
(907) 457-5300

1 plaintiffs' investigation of the available facts through counsel
2 herein.

3 JURISDICTION AND VENUE

4 1. All claims asserted herein arise out of the March 24,
5 1989 grounding of the EXXON VALDEZ and the resulting oil spill.
6 Plaintiffs' claims herein arise under Alaska common law.

7 2. Venue is proper in this district since the grounding of
8 the EXXON VALDEZ, the resulting oil spill and the great bulk of
9 damages occurred in this district, the claims asserted herein
10 arose in this district, defendant is present in this district,
11 and the majority of the defendants' activities upon which the
12 various causes of action are based occurred here.

13 THE PARTIES PLAINTIFF

14 3. Plaintiff THE NATIVE VILLAGE OF CHENEGA BAY is a
15 federally recognized Native American tribe situated on Evans
16 Island, Alaska, in Prince William Sound and is a representative
17 of Class I.

18 4. Plaintiff THE NATIVE VILLAGE OF LARSEN BAY is a
19 federally recognized Native American tribe situated in the
20 Kodiak Archipelago of Alaska and is a representative of Class I.

21 5. Plaintiff ELENOR McMULLEN is a member of the Village
22 of Port Graham and resides in Port Graham, Alaska. Plaintiff
23 McMullen is the Chief of the Village of Port Graham Traditional
24

25 FIRST AMENDED COMPLAINT - 2

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(907) 581-5500

ACE 1740620

1 Council. Plaintiff McMullen depends heavily on the subsistence
2 way of life and is a representative of Class I.

3
4 6. Plaintiff FRANK CARLSON is a Native Alaskan and is a
5 resident of Larsen Bay, Alaska. Plaintiff Carlson is a member of
6 the Larsen Bay Tribal Council and depends heavily on the
7 subsistence way of life and is a representative of Class I.

8 7. Plaintiff PHILIP G. MCCRUDDEN is a resident of
9 Bainbridge Island, Washington, who earns his living as a
10 commercial fisherman in Prince William Sound pursuant to permits
11 issued by the State of Alaska and is a representative of
12 Class II.

13 8. Plaintiff ALASKA WILDERNESS SAILING SAFARIS ("AWSS") is
14 a sole proprietorship of R. James Lethcoe, Ph.D., a citizen and
15 resident of Valdez, Alaska. Dr. Lethcoe and his wife, Dr. Nancy
16 Lethcoe, are authorities on the natural environment of Prince
17 William Sound. AWSS, whose principal place of business is
18 Valdez, Alaska, operates sailboat tours on Prince William Sound,
19 charters and sells sailboats on Prince William Sound and is a
20 representative of Class III.

21 9. Plaintiff TOM ELIAS is a resident of Anchorage, Alaska,
22 is the owner of Hunter Fisher Taxidermy, is the President of the
23 Alaska Sportfishing Association and sport fishes in Prince
24 William Sound. In his business Elias annually mounts about
25

FIRST AMENDED COMPLAINT - 3

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ACE 1746027

1 200 to 300 fish per year from Prince William Sound. Elias is
2 a representative of Class III.

3
4 10. Plaintiff SEA HAWK SEAFOODS, INC. ("Sea Hawk") is an
5 Alaska Corporation whose principal place of business is in
6 Valdez, Alaska. Sea Hawk purchases, processes and resells fish
7 and shellfish harvested in Prince William Sound and is a
8 representative of Class III.

9 11. Plaintiff THE ALASKA SPORTFISHING ASSOCIATION ("ASA")
10 is the largest fishery conservation organization in Alaska and
11 represents the interests of the sport fishing public. ASA has
12 2,000 members and includes 160 businesses involved in the sport
13 fishing and tourist industry. Its purpose is to actively promote
14 and protect public values and opportunities to consume and
15 otherwise obtain beneficial uses of natural resources associated
16 with sport fishing and includes protection of such values and
17 uses from environmental harm. ASA is a representative of
18 Class IV.

19 12. Plaintiff JOSEPH KLOUDA is a resident of Whittier,
20 Alaska and recreationally uses the Area for fishing, hunting,
21 shrimping, crabbing, photography, camping, boating and other
22 uses. Klouda is a member of the ASA and is a representative of
23 Class IV.

24 13. Plaintiff ALLEN TIGERT is a resident of Anchorage
25 Alaska, and kayaks in Prince William Sound 10-14 days per year in

FIRST AMENDED COMPLAINT - 4

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ACE 174662b

1 the Area. Tigert both recreationally and commercially fishes for
2 halibut in the Area and is a representative of Class IV.

3
4 14. Plaintiff REGION 37 OF THE INLAND BOATMAN'S UNION
5 ("IBU") is a labor organization whose members work in canneries
6 in Alaska and in the Area and who reside in states of the United
7 States other than Alaska and is a representative of Class V.

8 15. Plaintiff THE ALASKA FISHERMAN'S UNION is a labor
9 organization whose members work in canneries in Alaska and in the
10 Area and who reside in the State of Alaska and is a
11 representative of Class V.

12 16. Plaintiffs CHARLES McMAHON, III and JENNIFER BRIGGS are
13 cannery workers and seafood process employees at canneries within
14 the Area and are representatives of Class V.

15 17. Plaintiff OLD HARBOR NATIVE CORPORATION is an Alaska
16 Native Village Corporation created pursuant to the Alaska Native
17 Claims Settlement Act, 43 U.S.C. § 1601, et seq., duly organized
18 under the business for profit laws of the State of Alaska and is
19 a landowner. It has paid its biennial corporation tax last due
20 and has filed its biennial report for the last reporting period.
21 Plaintiff Old Harbor Native Corporation is a representative of
22 Class VI.

23 18. Plaintiff NINILCHIK NATIVE ASSOCIATION, INC.,
24 ("Ninilchik") is a Native village corporation, organized under
25 the laws of the State of Alaska. Ninilchik holds the right,

FIRST AMENDED COMPLAINT - 5

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ACE 1746629

1 title or interest in or entitlement to the surface estate of
2 approximately 161,000 acres of land in Alaska, including lands in
3 the area around Cook Inlet, damaged by the EXXON VALDEZ oil
4 spill. Ninilchik shareholders are primarily Native residents of
5 the community of Ninilchik or descendants or heirs thereof.
6 Ninilchik brings this action to recover damages to its property
7 and businesses, including its leasing programs, suffered as a
8 result of the oil spill.
9

10 **THE PARTY DEFENDANT**

11 19. Defendant is the State of Alaska.

12 **CLASS ACTION ALLEGATIONS**

13 20. This action is brought as a class action pursuant to
14 Rule 23 of the Alaska Rules of Civil Procedure on plaintiffs' own
15 behalf and on behalf of six classes of persons and entities who
16 have been and/or continue to be injured or adversely affected by
17 the rupture of the EXXON VALDEZ on March 24, 1989, the subsequent
18 oil spill and/or the ensuing cleanup effort in and around the
19 shores and waters of the Prince William Sound, the lower Kenai
20 Peninsula, the Kodiak Archipelago, the Alaska Peninsula, the
21 Aleutian Chain and all other areas of Alaska adversely affected
22 by the oil spill (the "Area"). Excluded from the classes are all
23 persons asserting tort claims based exclusively on bodily injury;
24 the defendant and its elected or appointed officials, agents,
25 employees and representatives.

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1
2 21. As alleged below, there are numerous issues of fact and
3 law common to the members of all classes. However, in accordance
4 with the facts and claims alleged herein, this action is brought
5 on behalf of six separate classes. These classes are described
6 and defined as follows:

7 a. **Alaska Natives Class.** This action is brought on
8 behalf of a class ("Class I" or the "Alaska Natives Class")
9 consisting of all Alaska natives and native organizations
10 including but not limited to individuals, native villages,
11 incorporated and unincorporated native entities and associations
12 and tribal entities, who engage in, rely upon, promote or
13 preserve, wholly or in part, a subsistence way of life and who
14 have been injured in this regard as a result of the oil spill.
15 This subsistence way of life is dependent upon the preservation
16 of uncontaminated natural resources, marine life and wildlife,
17 and reflects a personal, economic, psychological, social,
18 cultural, communal and religious form of daily living. This
19 Alaska Natives Class asserts all Claims for Relief in the
20 Complaint;

21 b. **Commercial Fishing Class.** This action is brought
22 on behalf of a class ("Class II" or the "Commercial Fishing
23 Class") which consists of all persons and entities engaged in the
24 commercial cultivation, fishing and/or harvesting of fish and
25 other seafood or marine resources in the Area who have been

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ACE 17+0031

1 damaged and injured as a result of the oil spill. Class II, and
2 subclasses of Class II which may be designated for various
3 species, harvest areas and/or types of permits or licenses,
4 include, inter alia, longline bottom fishermen, kelp pounders,
5 herring seiners, herring gillnetters, wild roe on kelp
6 harvesters, salmon seiners, salmon gillnetters, setnetters,
7 crabbers, tendermen, and other holders of commercial fishing
8 permits and/or licenses, their crews and their employees. This
9 Commercial Fishing Class asserts all Claims for Relief in this
10 Complaint;

11 "
12 c. **Area Business Class.** This action is brought on
13 behalf of a class ("Class III" or the "Area Business Class")
14 consisting of all persons and entities doing business in the
15 Area, including seafood processors, packagers, canneries, cold
16 storage operators, wholesale and retail distributors, and their
17 employees, who purchase fish, other seafoods or other marine
18 resources cultivated, caught or harvested by the members of
19 Classes I or II, and who process, prepare, market, sell or
20 otherwise distribute these products to the public or to others in
21 the commercial seafood industry, as well as all other persons and
22 entities who operate tours, charter boats, provide guide
23 services, develop timber, provide goods, equipment or services in
24 or to the Area or who otherwise do business in the Area, whose
25 businesses have been damaged or injured as the result of the oil

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DAVID W. BIRCHALL TREMAINE

Law Offices

Attn: Mr. Andrew J. Birchall

Attn: Mr. Andrew J. Birchall

10/27/97 10:54am

ACE 1746632

1 spill. This Area Business Class asserts all Claims for Relief in
2 this Complaint;

3
4 d. The Use and Enjoyment Class. This action is
5 brought on behalf of a class ("Class IV" or the "Use and
6 Enjoyment Class") consisting of all persons and entities,
7 including, inter alia, persons engaged in sports and recreational
8 fishing whose customary use and enjoyment of the natural
9 resources in and around the shores and waters of the Area has
10 been adversely affected by the oil spill. This Use and Enjoyment
11 Class asserts all Claims for Relief in this Complaint;

12 e. The Cannery Workers/Seafood Process Employees
13 Class. This action is brought on behalf of a class ("Class V" or
14 the "Cannery Workers/Seafood Process Employees Class") consisting
15 of all persons who are cannery workers and seafood process
16 employees and who personally and economically rely upon, use and
17 benefit from the land, structures, fish, wildlife and other
18 natural resources in and around the Area. Members of Class V
19 can, freeze, process and handle and rely, to varying degrees, for
20 their economic livelihood and subsistence, on such species as
21 king salmon, silver salmon, red salmon, pink salmon, chum salmon,
22 white king salmon, salmon roe, black cod and other species of
23 cod, halibut, herring, herring roe, Dungeness crab, king crab,
24 tanner crab, and other species of crab, and other sea life,
25 seafood and fish and aquatic species in the affected areas and

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ACE 1746033

elsewhere off the coast of Alaska. The water and subsurface lands of the Area are utilized by and for the benefit of the members of this Cannery Workers/Seafood Process Employees class. This Cannery Workers/Seafood Process Employees Class asserts all Claims for Relief in this Complaint; and

f. **Landowner Class.** This action is brought on behalf of a class ("Class VI" or the "Landowner Class") consisting of all land and real property owners, whether persons or entities, whose property was damaged by the oil released from the T/V EXXON VALDEZ and the EXXON BATON ROUGE. Class VI also includes land and real property owners whose land was, or may still be threatened by the oil and who suffered injury or damage through efforts, expenditure or assistance in preventing the spilled oil from actually polluting their property. Class VI may contain members of other classes. Class VI does not include any similarly situated plaintiffs who have filed non-class direct actions prior to class certification. This Landowner Class asserts all Claims for Relief in this Complaint.

22. There are hundreds or thousands of members of each class; they thus are so numerous that joinder of all members is impracticable.

23. Plaintiffs' claims are typical of the claims of the members of the classes because each plaintiff and all other members of the classes have sustained damages and injuries

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ACE 1740034

1 arising out of the oil spill. Each plaintiff is a member of each
2 class that he or she seeks to represent, has claims and has
3 suffered damages and injuries that are typical of the claims of
4 that class.

5
6 24. Plaintiffs will fairly and adequately protect the
7 interests of the members of their respective classes, have no
8 interests that are contrary to or in conflict with those of the
9 classes they seek to represent, and have retained attorneys
10 experienced in the prosecution of complex tort and class action
11 litigation.

12 25. Common questions of law and fact exist as to all
13 members of all classes, and as to the members of each class, and
14 predominate over any individual questions. Among such common
15 questions of law and fact are:

16 a. Whether Alaska statutes and/or common law were
17 violated by the acts and omissions of the defendant;

18 b. Whether the defendant was negligent;

19 c. Determination of the amount of oil spilled, the
20 movement of the oil slick and the biological, ecological and
21 physical effects thereof;

22 d. Whether, as a result of the determination of the
23 foregoing liability questions, damages should be granted against
24 the defendant; and
25

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1 e. Determination of the appropriate measure of and
2 means of calculating and allocating monetary damages and
3 affording relief.
4

5 26. There is a community of interest among the class
6 members in obtaining appropriate relief, including compensatory
7 damages.

8 27. A consolidated class action is superior to other
9 available methods for the fair and efficient adjudication of the
10 claims presented by this complaint and will prevent the undue
11 financial, administrative and procedural burdens on the parties
12 and on the court that individual litigation would impose.

13 28. Accordingly, the proposed classes each fulfill the
14 certification criteria of Alaska Rule of Civil Procedure
15 23(a)(1)-(4) and certification of each of the above-
16 classes is appropriate under one or more of the provisions of
17 Alaska Rule of Civil Procedure 23(b).

18 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

19 **A. Prespill Events.**

20 29. Alaska Statutes § 46.04.030 and Alaska Administrative
21 Code Title 18 Article 4 made the defendant's approval of
22 Alyeska's oil spill contingency plan a prerequisite to the
23 operation of the Valdez oil terminal facility. In connection
24 with Alyeska's obligations under the oil spill contingency plan,
25 Alyeska had a duty to:

1
2 a. have access to sufficient resources to protect
3 environmentally sensitive areas and areas of public concern and
4 to contain, clean up, and mitigate potential oil spills within
5 the shortest feasible time;

6 b. be prepared to contain, clean up and mitigate
7 potential oil spills within the shortest feasible time;

8 c. use oil spill containment and cleanup technology
9 capable of effectively containing and removing oil spills in
10 Prince William Sound;

11 d. adequately train response personnel in oil spill
12 containment and cleanup operations;

13 e. employ response personnel who would be qualified
14 to operate containment and cleanup equipment under expected
15 conditions in Prince William Sound;

16 f. demonstrate that it had fully considered, in
17 developing the contingency plan, the effects of geography,
18 climate and weather as they affect oil spill containment and
19 cleanup;

20 g. maintain in Prince William Sound sufficient oil
21 spill containment and removal equipment to rapidly contain an oil
22 spill of the size, frequency and location which, based on
23 experience, and on a reasonable analysis of possible operational
24 mishaps, was most likely to occur during the lifetime of the
25

1 facility and to remove that spill within a 48 hour period when
2 adverse conditions would not threaten safety of personnel;

3 h. provide and maintain exclusion equipment and have
4 the means to protect sensitive environmental zones in Prince
5 William Sound and areas of public concern that might be affected
6 by an oil spill;

7 i. store and maintain exclusion equipment so that it
8 could be deployed and operational earlier than the minimum
9 predicted time in which the spill would reach the nearest
10 sensitive environmental zone or area of public concern;

11 j. use the best available technology;

12 k. prepare a contingency plan that would (1) be in a
13 form usable as a working plan for oil spill containment and
14 cleanup, (2) be a carefully thought-out plan, (3) be in
15 accordance with accepted cleanup procedures and (4) have the full
16 approval of management at a level with authority to commit the
17 necessary resources to implement the plan fully;

18 l. adopt a reasonable proposed manner of oil spill
19 containment and cleanup operations for spills of varying sizes,
20 including the greatest possible spill that could occur and
21 prepare a contingency plan that included a detailed reasonable
22 description of same;

23 m. establish a communications plan capable of
24 directing and coordinating cleanup personnel;
25

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1
2 n. include in the contingency plan reasonable
3 estimates of the size, frequency, and location of the type of oil
4 spill, which based on experience and on an analysis of possible
5 operational mishaps, was most likely to occur during the lifetime
6 of the terminal; and detailed bases for the estimates;

7 o. adopt reasonable means of oil spill detection,
8 including surveillance schedules, leak detection, observation
9 wells, monitoring systems and spill-detection instrumentation;

10 p. include in the contingency plan an accurate
11 listing, in tabular form, of the amounts, specifications,
12 limitations, and storage locations for cleanup and containment
13 equipment and related supplies, including the age and condition
14 of the equipment;

15 q. adopt reasonable procedures for the use of
16 chemicals for oil spill control;

17 r. include in the contingency plan and comply with
18 reasonable best estimates of response times from the discovery of
19 the spill to deployment of containment, exclusion, and recovery
20 equipment;

21 s. adopt reasonable methods and sites to be used for
22 interim and ultimate disposal of removed oil, oil-contaminated
23 material, and other oily wastes, and include a description of
24 these methods and sites in the contingency plan, along with a
25

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specification of the capacity of the sites and the methods to be used;

t. include in the contingency plan all information reasonably required by the defendant to ensure that Alyeska's oil spill response capability would meet the requirements of Alaska Statutes § 46.04.030 and Alaska Administrative Code Title 18, Article 4;

u. include in the contingency plan a reasonable prediction of spill movement and spreading, based upon operational patterns and other specific features, such as oceanographic conditions;

v. hold spill exercises for the purpose of testing the adequacy of the contingency plan and Alyeska's performance thereunder;

w. hold additional exercises when the contingency plan was found to be inadequate, until Alyeska's performance became satisfactory;

x. be able to execute the contingency plan;

y. refrain from obtaining approval of the contingency plan by means of fraud and misrepresentation;

z. have access to the quality and quantity of resources described in the plan;

aa. comply with the terms of the contingency plan and;

1
2 ab. comply with the conditions of approval of the
3 contingency plan.

4 30. In fact, Alyeska prepared and obtained approval of its
5 contingency plan with reckless indifference to and in violation
6 of its duties as set forth in Paragraph 29. Following approval
7 of the contingency plan, Alyeska operated in deliberate disregard
8 of and with reckless indifference to the requirements of the
9 contingency plan and its duties thereunder. As a result of its
10 reckless indifference to and disregard of its obligations,
11 Alyeska, as of March 1989, was not in compliance with the
12 requirements of the contingency plan, was incapable of complying
13 with the plan and was incapable of containing and cleaning up oil
14 spills of a size, frequency and location which were likely to
15 occur.

16 **B. The Oil Spill and Post-spill Events.**

17 31. At approximately 12:04 a.m. on March 24, 1989, the
18 EXXON VALDEZ first struck Bligh Reef.

19 32. The initial collision, subsequent grounding of, and
20 later attempts to free the EXXON VALDEZ from Bligh Reef tore open
21 eight of the ship's eleven oil cargo tanks and three saltwater
22 ballast tanks extending the full length of the vessel. As a
23 result of these incidents, approximately 11 million gallons of
24 oil were spilled into the waters of Prince William Sound.
25

FIRST AMENDED COMPLAINT - 17

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2 33. Contrary to representations and assurances previously
3 given to the government and to the public, Alyeska and Exxon
4 failed to contain the oil, exclude it from environmentally
5 sensitive sites, or remove it from the water. These acts and
6 omissions, which were carried out in deliberate disregard of, or
7 with reckless indifference to, the rights and interests of
8 plaintiffs and class members, included, among other things, the
9 following:

10 a. Alyeska failed to initially respond to the spill
11 within five hours;

12 b. Despite the fact that the weather for the first
13 two days following the spill was calm and therefore ideal for
14 containment and removal, Alyeska and Exxon failed to contain or
15 remove the oil;

16 c. Alyeska failed to ensure that two oil skimmers and
17 4,500 feet of boom were at the scene within three hours and that
18 a barge and third skimmer with 3,000 additional feet of boom were
19 at the scene within five hours;

20 d. Alyeska sent home the marine technicians who were
21 on duty during the 12-hour shift between 6:00 p.m. March 23, 1989
22 and 6:00 a.m. March 24, 1989 without even attempting to have them
23 reach or combat the spill;

24 e. Representatives of Alyeska first appeared on the
25 scene of the spill without any containment equipment;

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2 f. The containment boom deployment barge of Alyeska
3 was out of service, the company having failed to notify Alaska
4 officials that this was the case;

5 g. Self-inflating containment booms of Alyeska,
6 designed to contain oil slicks immediately after a spill, were
7 unavailable for more than 24 hours;

8 h. Neither Alyeska nor Exxon had immediate access to
9 adequate containment booms, skimmer boats, or chemical
10 dispersants;

11 i. The skimmer boats eventually used by Alyeska and
12 Exxon were incapable of recovering significant amounts of oil;

13 j. Neither Alyeska nor Exxon had immediate access to
14 equipment which was needed to exclude spilled oil from
15 environmentally sensitive sites in Prince William Sound;

16 k. Neither Alyeska nor Exxon had communications
17 equipment capable of permitting an effective deployment or
18 coordination of oil spill response activities;

19 l. Neither Alyeska nor Exxon had sufficient
20 quantities of chemical dispersants available. At the time of the
21 spill, Alyeska had less than 3,000 gallons at its terminal, no
22 application equipment and no aircraft. Three trial applications
23 indicated that dispersants were ineffective as both Alyeska and
24 Exxon should have anticipated;

1
2 m. Both Alyeska and Exxon failed promptly to utilize
3 private commercial vessels either to assist in booming or for
4 logistical support despite offers from numerous individuals and
5 entities for use of their vessels;

6 n. After finally hiring local commercial vessels,
7 Exxon allowed many boats to drift about aimlessly without any
8 equipment or guidance as to how to proceed;

9 o. Neither Alyeska nor Exxon had on hand enough
10 equipment or trained manpower to encircle the tanker with booms,
11 contain the oil inside the booms, or clean it up;

12 p. In order to offset their lack of adequate oil
13 storage capacity for cleanup operations, Exxon allowed the steam
14 tanker EXXON BATON ROUGE to pump its ballast into Prince William
15 Sound in preparation for lightering crude oil from the EXXON
16 VALDEZ. This incident caused the discharge of oil, oily water
17 and/or hazardous substances into Prince William Sound, which
18 mingled with oil spilled from the EXXON VALDEZ.

19 q. Neither Alyeska nor Exxon efficiently or
20 effectively requisitioned or made use of the equipment and
21 manpower they did have on hand to minimize the spread of the oil
22 and clean up as much as possible before it spread; and

23 r. Neither Alyeska nor Exxon efficiently and
24 effectively mobilized available equipment and manpower from
25 elsewhere to contain the oil and clean it up before it spread.

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2 34. As a result, the oil spread across and out of Prince
3 William Sound into such areas as the Kenai Peninsula, the Cook
4 Inlet, the Kodiak Archipelago and the Alaska Peninsula,
5 significantly worsening the environmental contamination which
6 occurred.

7 **C. Effects of the Oil Spill.**

8 35. The spilled oil had the following effects, among
9 others:

10 a. The water surrounding the EXXON VALDEZ became
11 contaminated with approximately 11 million gallons of toxic crude
12 oil;

13 b. The prevailing winds and currents spread the
14 contamination throughout the Area;

15 c. The contamination polluted the water, shoreline
16 and beaches in the Area and spoiled and befouled the natural
17 resources therein;

18 d. The biota, marine and aquatic life, wildlife and
19 plants, including among others, herring, herring roe, salmon,
20 whales, sea otters, fur seals, diving ducks, grebes, loons, river
21 otters, mink, bald eagles, bear and deer, shellfish and mollusks
22 were killed or damaged;

23 e. The food chain for all living organisms and
24 creatures throughout the Area was adversely affected, damaged or
25 destroyed;

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2 f. The defendant closed or restricted cultivating,
3 fishing and/or harvesting of various species of fish, other
4 seafood or marine resources in the Area;

5 g. The number of fish, other seafood or marine
6 resources that would be cultivated, fished or harvested in the
7 Area was dramatically reduced or eliminated;

8 h. A public perception was created that all fish,
9 other seafood and marine resources cultivated, caught or
10 harvested in the Area were tainted or contaminated with oil;

11 i. The amount of fish, other seafood or marine
12 resources in the Area purchased for processing, packaging,
13 canning, cold storage and wholesale or retail distribution was
14 significantly diminished;

15 j. The general economy of the Area has been
16 diminished and disrupted. Goods, services and products that
17 would have been sold to support the economy and life in the Area
18 in the absence of the contamination caused by the spill were not
19 sold;

20 k. Subsistence hunting, fishing and gathering by
21 natives was destroyed or severely restricted throughout the Area;

22 l. Culturally significant native Alaska archaeologic
23 sites and artifacts were destroyed or damaged;

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25 FIRST AMENDED COMPLAINT - 22

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2 m. The subsistence way of life of natives throughout
3 the Area was significantly interfered with, altered, damaged or
4 destroyed; and

5 n. The water, beaches and biota in the Area were so
6 polluted and destroyed, the natural beauty of the Area so spoiled
7 and the disruption and damage created by the oil spill so
8 extensive that the use and enjoyment of the natural resources of
9 the Area, the value of the property in the Area and recreation in
10 the Area were significantly diminished.

11 **D. Damage and Injury to the Plaintiffs and**
12 **Plaintiff Classes.**

13 36. As a proximate result of the foregoing detrimental
14 effects:

15 a. The members of the Alaska Natives Class have
16 sustained injury to their subsistence way of life, archeological
17 sites and artifacts. Members of the Alaska Natives Class have
18 also sustained damage or injury to the natural resources and
19 property upon which they depend and/or which are part of their
20 natural habitat and lives;

21 b. The members of the Commercial Fishing Class have
22 been damaged and injured in their commercial cultivation, fishing
23 and/or harvesting of the fish, other seafood or marine resources
24 in the Area and in their commercial fishing permits and property
25 rights in the Area;

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2 c. The members of the Area Business Class have been
3 damaged and injured in their businesses and property;

4 d. The members of the Use and Enjoyment Class have
5 been damaged and injured in their use and enjoyment of the
6 natural resources of the Area;

7 e. The members of the Cannery Workers/Seafood Process
8 Employees Class have been damaged and injured in the pursuit of
9 their economic livelihood; and

10 f. The members of the Landowner Class have been
11 damaged and injured in the value of and in their use and
12 enjoyment of their land.

13 CLAIM FOR RELIEF

14 A. Negligence.

15 37. Plaintiffs reallege and incorporate by reference each
16 and every allegation set forth above.

17 38. At all times relevant, the defendant owed a duty of
18 care to plaintiffs and members of the plaintiff classes to comply
19 with the provisions of Alaska Statutes § 46.04.030 and Alaska
20 Administrative Code Title 18 Article 4.

21 39. At all times relevant, the defendant owed a fiduciary
22 duty to the plaintiffs and members of the plaintiff classes
23 under, inter alia, the public trust doctrine to protect and
24 conserve lands and resources held in trust by the defendant for
25

1 the benefit of the plaintiffs and members of the plaintiff
2 classes.

3
4 40. The defendant violated the duties set forth in
5 Paragraphs 38 and 39 through its acts and omissions, including,
6 without limitation, the approval of Alyeska's contingency plan
7 and failure to revoke approval of Alyeska's contingency plan,
8 despite the fact that defendant should have known that Alyeska
9 obtained approval of the contingency plan by fraud or
10 misrepresentation, that Alyeska operated in deliberate disregard
11 of and with a reckless indifference to its obligations under the
12 contingency plan and Alaska Statutes Section 46.04.030 and Alaska
13 Administrative Code Title 18, Article IV and to the rights and
14 interests of the plaintiffs and class members, and that Alyeska
15 was, as a result of its outrageous, egregious and reckless
16 conduct, incapable of executing the contingency plan or of
17 responding adequately to an oil spill. Defendant also breached
18 its duties as set forth in Paragraphs 38 and 39 by failing to
19 remedy the reckless indifference with which Alyeska and Exxon
20 failed to respond in an adequate manner to the oil spill.

21 41. On October 23, 1989, Alyeska Pipeline Service Company,
22 Amerada Hess Pipeline Corporation, Arco Pipe Line Company, BP
23 Pipelines (Alaska) Inc., Mobil Alaska Pipeline Company, Phillips
24 Alaska Pipeline Corporation and Unocal Pipeline Company filed
25 their Answer and Counterclaim to the Complaint filed by defendant

FIRST AMENDED COMPLAINT - 25

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1 in No. 3AN-89-6852. In the counterclaim, the counterclaimants
2 alleged, inter alia, that:

3 the [State of Alaska] approved the
4 Contingency Plan, including the Prince
5 William Sound Contingency Plan and was deeply
6 involved in, and exercised substantial
7 control over, the efforts of Alyeska and
8 other persons to contain and clean up the
9 spill. To the extent that the [State's]
10 conduct in these or other areas caused,
11 exacerbated or failed to mitigate the damages
12 complained of and for which the [State] or
13 other plaintiffs in other cases seek relief
14 from [counterclaimants], the [State] is
15 liable to [counterclaimants] by way of
16 indemnification and contribution if
17 [counterclaimants] are required to pay any
18 damages arising out of any lawsuit or
19 proceeding to which [counterclaimants] are or
20 will be made a party.

21 Id. at 23.

22 42. On October 23, 1989, Exxon Shipping Company filed its
23 Answer and Counterclaim to the Complaint filed by defendant in
24 No. 3AN-89-6852. In its counterclaim, Exxon Shipping Company
25 alleged, inter alia:

As a proximate result of the State's conduct,
Exxon Shipping has suffered damage, in an
amount according to proof, in that:

(a) it has been required to expend funds
for cleanup greatly in excess of what
would otherwise have been required;

(b) it has paid claims for damages by
persons and entities who, but for the
State's negligence or wrongful conduct
as alleged herein, would have suffered
no injury from the oil spill;

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(c) it has been and is exposed to claims by persons and entities whose damages resulted in part from, or were increased by, the State's negligence or wrongful conduct, and for whose claims the State in justice and equity should be in part responsible.

Id. at 34-35.

43. On October 23, 1989, Exxon Corporation filed its Answer and Counterclaim to the Complaint filed by defendant in No. 3AN-89-6852. In its counterclaim, Exxon Corporation alleged, inter alia:

As a proximate result of the State's conduct, Exxon has suffered damage, in an amount according to proof, in that:

(a) it has been required to expend funds for clean up greatly in excess of what would otherwise have been required;

(b) it has been and is exposed to claims for damages by persons and entities who, but for the State's negligence or wrongful conduct as alleged herein, would have suffered no injury from the oil spill;

(c) it has been and is exposed to claims by persons and entities whose damages resulted in part from, or were increased by, the State's negligence or wrongful conduct, and for whose claims the State in justice and equity should be in part responsible.

Id. at 32.

44. To the extent, if any, that the counterclaims set forth in Paragraphs 41 through 43 are correct in alleging and implying

FIRST AMENDED COMPLAINT - 27

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1 that the injuries of plaintiffs and the members of the plaintiff
2 classes were proximately caused by negligent conduct of the
3 defendant, defendant is liable for damages that plaintiffs and
4 the members of the plaintiff classes have suffered and are
5 continuing to suffer.

6
7 **PRAYER FOR RELIEF**

8 Plaintiffs pray that this court:

9 A. Enter an order as soon as practicable determining that
10 this case is a proper class action maintainable under Rule 23 of
11 the Alaska Rules of Civil Procedure;

12 B. Award compensatory damages for harm to property;

13 C. Award compensatory damages for economic losses;

14 D. Award compensatory damages for injuries to the
15 subsistence way of life of members of the Alaska Natives Class;

16 E. Award damages for interference with the use and
17 enjoyment of property interests and natural resources;

18 F. Award damages for the disruption and distress caused by
19 the spill;

20 G. Order the defendant to create a fund to be administered
21 by such class representatives as may be approved by the court, to
22 monitor the environment and ecology of the Area, to enhance that
23 environment and ecology after cleanup, to rehabilitate and
24 restore the Area, and to otherwise ameliorate and mitigate the
25 environmental, cultural and social damages caused by the spill;

FIRST AMENDED COMPLAINT - 28

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1 H. Award the plaintiffs' attorneys' fees and costs,
2 including expert and scientific fees and other disbursements;
3

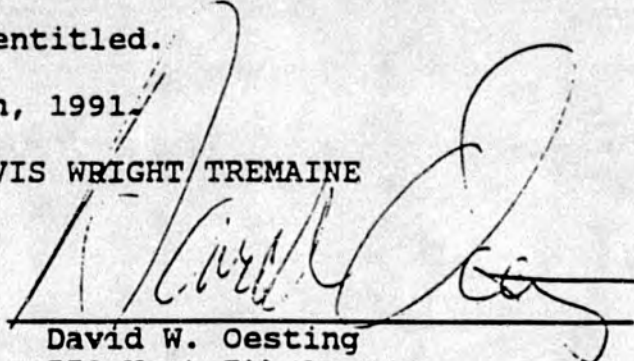
4 I. Award prejudgment interest; and

5 J. Award such other and further compensation and relief,
6 legal or equitable, to which plaintiffs and the members of the
7 plaintiff classes may be justly entitled.

8 DATED this 26th day of March, 1991.

9 DAVIS WRIGHT TREMAINE

10 By

11 
12 David W. Oesting
13 550 West 7th Avenue
14 Suite 1450
15 Anchorage, Alaska 99501
16 (907) 276-4488
17 Co-Lead Counsel for plaintiffs

18 COHEN MILSTEIN HAUSFELD & TOLL
19 By Jerry S. Cohen
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21 Suite 600
22 Washington, D.C. 20005
23 (202) 628-3500
24 Co-Lead Counsel for plaintiffs

25 SONOSKY, CHAMBERS, SACHSE, MILLER
AND MUNSON
By Lloyd Benton Miller
900 W. 5th Avenue, Suite 700
Anchorage, AK 99501
(907) 258-6377
Liaison Counsel for plaintiffs

The Honorable Brian Shortell

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT ANCHORAGE

THE NATIVE VILLAGE OF CHENEGA BAY,)
THE NATIVE VILLAGE OF LARSEN BAY,)
ELENOR McMULLEN, FRANK CARLSON,)
PHILIP G. McCRUDDEN, ALASKA)
WILDERNESS SAILING SAFARIS,)
TOM ELIAS, THE ALASKA SPORTFISHING)
ASSOCIATION, JOSEPH KLOUDA, ALLEN)
TIGERT, REGION 37 OF THE INLAND)
BOATMAN'S UNION, THE ALASKA)
FISHERMAN'S UNION, CHARLES)
McMAHON, III, JENNIFER BRIGGS,)
OLD HARBOR NATIVE CORPORATION and)
NINILCHIK NATIVE ASSOCIATION, INC.,)

Plaintiffs,

v.

STATE OF ALASKA,

Defendant.

NO. SAN 91-2344

COMPLAINT

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COPY

Plaintiffs file this complaint on behalf of themselves and all others similarly situated. The complaint is alleged upon information and belief, except as to allegations pertaining to the named plaintiffs, which are alleged on knowledge. Plaintiffs' information and belief is based, inter alia, on plaintiffs' investigation of the available facts through counsel herein.

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JURISDICTION AND VENUE

1. All claims asserted herein arise out of the March 24, 1989 grounding of the EXXON VALDEZ and the resulting oil spill. Plaintiffs' claims herein arise under Alaska common law.

2. Venue is proper in this district since the grounding of the EXXON VALDEZ, the resulting oil spill and the great bulk of damages occurred in this district, the claims asserted herein arose in this district, defendant is present in this district, and the majority of the defendants' activities upon which the various causes of action are based occurred here.

THE PARTIES PLAINTIFF

3. Plaintiff THE NATIVE VILLAGE OF CHENEGA BAY is a federally recognized Native American tribe situated on Evans Island, Alaska, in Prince William Sound and is a representative of Class I.

4. Plaintiff THE NATIVE VILLAGE OF LARSEN BAY is a federally recognized Native American tribe situated in the Kodiak Archipelago of Alaska and is a representative of Class I.

5. Plaintiff ELENOR McMULLEN is a member of the Village of Port Graham and resides in Port Graham, Alaska. Plaintiff McMullen is the Chief of the Village of Port Graham Traditional Council. Plaintiff McMullen depends heavily on the subsistence way of life and is a representative of Class I.

6. Plaintiff FRANK CARLSON is a Native Alaskan and is a resident of Larsen Bay, Alaska. Plaintiff Carlson is a member of

1 the Larsen Bay Tribal Council and depends heavily on the
2 subsistence way of life and is a representative of Class I.

3 7. Plaintiff PHILIP G. MCCRUDDEN is a resident of
4 Bainbridge Island, Washington, who earns his living as a
5 commercial fisherman in Prince William Sound pursuant to permits
6 issued by the State of Alaska and is a representative of
7 Class II.

8 8. Plaintiff ALASKA WILDERNESS SAILING SAFARIS ("AWSS") is
9 a sole proprietorship of R. James Lethcoe, Ph.D., a citizen and
10 resident of Valdez, Alaska. Dr. Lethcoe and his wife, Dr. Nancy
11 Lethcoe, are authorities on the natural environment of Prince
12 William Sound. AWSS, whose principal place of business is
13 Valdez, Alaska, operates sailboat tours on Prince William Sound,
14 charters and sells sailboats on Prince William Sound and is a
15 representative of Class III.

16 9. Plaintiff TOM ELIAS is a resident of Anchorage, Alaska,
17 is the owner of Hunter Fisher Taxidermy, is the President of the
18 Alaska Sportfishing Association and sport fishes in Prince
19 William Sound. In his business Elias annually mounts about
20 200 to 300 fish per year from Prince William Sound. Elias is
21 a representative of Class III.

22 10. Plaintiff THE ALASKA SPORTFISHING ASSOCIATION ("ASA")
23 is the largest fishery conservation organization in Alaska and
24 represents the interests of the sport fishing public. ASA has
25 2,000 members and includes 160 businesses involved in the sport

1 fishing and tourist industry. Its purpose is to actively promote
2 and protect public values and opportunities to consume and
3 otherwise obtain beneficial uses of natural resources associated
4 with sport fishing and includes protection of such values and
5 uses from environmental harm. ASA is a representative of
6 Class IV.

7 11. Plaintiff JOSEPH KLOUDA is a resident of Whittier,
8 Alaska and recreationally uses the Area for fishing, hunting,
9 shrimping, crabbing, photography, camping, boating and other
10 uses. Klouda is a member of the ASA and is a representative of
11 Class IV.

12 12. Plaintiff ALLEN TIGERT is a resident of Anchorage
13 Alaska, and kayaks in Prince William Sound 10-14 days per year in
14 the Area. Tigert both recreationally and commercially fishes for
15 halibut in the Area and is a representative of Class IV.

16 13. Plaintiff REGION 37 OF THE INLAND BOATMAN'S UNION
17 ("IBU") is a labor organization whose members work in canneries
18 in Alaska and in the Area and who reside in states of the United
19 States other than Alaska and is a representative of Class V.

20 14. Plaintiff THE ALASKA FISHERMAN'S UNION is a labor
21 organization whose members work in canneries in Alaska and in the
22 Area and who reside in the State of Alaska and is a
23 representative of Class V.

1 15. Plaintiffs CHARLES McMAHON, III and JENNIFER BRIGGS are
2 cannery workers and seafood process employees at canneries within
3 the Area and are representatives of Class V.

4 16. Plaintiff OLD HARBOR NATIVE CORPORATION is an Alaska
5 Native Village Corporation created pursuant to the Alaska Native
6 Claims Settlement Act, 43 U.S.C. § 1601, et seq., duly organized
7 under the business for profit laws of the State of Alaska and is
8 a landowner. It has paid its biennial corporation tax last due
9 and has filed its biennial report for the last reporting period.
10 Plaintiff Old Harbor Native Corporation is a representative of
11 Class VI.

12 17. Plaintiff NINILCHIK NATIVE ASSOCIATION, INC.,
13 ("Ninilchik") is a Native village corporation, organized under
14 the laws of the State of Alaska. Ninilchik holds the right,
15 title or interest in or entitlement to the surface estate of
16 approximately 161,000 acres of land in Alaska, including lands in
17 the area around Cook Inlet, damaged by the EXXON VALDEZ oil
18 spill. Ninilchik shareholders are primarily Native residents of
19 the community of Ninilchik or descendants or heirs thereof.
20 Ninilchik brings this action to recover damages to its property
21 and businesses, including its leasing programs, suffered as a
22 result of the oil spill.

23 / / / / /

24 / / / / /

25 / / / / /

THE PARTY DEFENDANT

18. Defendant is the State of Alaska.

CLASS ACTION ALLEGATIONS

19. This action is brought as a class action pursuant to Rule 23 of the Alaska Rules of Civil Procedure on plaintiffs' own behalf and on behalf of six classes of persons and entities who have been and/or continue to be injured or adversely affected by the rupture of the EXXON VALDEZ on March 24, 1989, the subsequent oil spill and/or the ensuing cleanup effort in and around the shores and waters of the Prince William Sound, the lower Kenai Peninsula, the Kodiak Archipelago, the Alaska Peninsula, the Aleutian Chain and all other areas of Alaska adversely affected by the oil spill (the "Area"). Excluded from the classes are all persons asserting tort claims based exclusively on bodily injury; the defendant and its elected or appointed officials, agents, employees and representatives.

20. As alleged below, there are numerous issues of fact and law common to the members of all classes. However, in accordance with the facts and claims alleged herein, this action is brought on behalf of six separate classes. These classes are described and defined as follows:

a. **Alaska Natives Class.** This action is brought on behalf of a class ("Class I" or the "Alaska Natives Class") consisting of all Alaska natives and native organizations including but not limited to individuals, native villages,

1 incorporated and unincorporated native entities and associations
2 and tribal entities, who engage in, rely upon, promote or
3 preserve, wholly or in part, a subsistence way of life and who
4 have been injured in this regard as a result of the oil spill.
5 This subsistence way of life is dependent upon the preservation
6 of uncontaminated natural resources, marine life and wildlife,
7 and reflects a personal, economic, psychological, social,
8 cultural, communal and religious form of daily living. This
9 Alaska Natives Class asserts all Claims for Relief in the
10 Complaint;

11 b. **Commercial Fishing Class.** This action is brought
12 on behalf of a class ("Class II" or the "Commercial Fishing
13 Class") which consists of all persons and entities engaged in the
14 commercial cultivation, fishing and/or harvesting of fish and
15 other seafood or marine resources in the Area who have been
16 damaged and injured as a result of the oil spill. Class II, and
17 subclasses of Class II which may be designated for various
18 species, harvest areas and/or types of permits or licenses,
19 include, inter alia, longline bottom fishermen, kelp pounders,
20 herring seiners, herring gillnetters, wild roe on kelp
21 harvesters, salmon seiners, salmon gillnetters, setnetters,
22 crabbers, tendermen, and other holders of commercial fishing
23 permits and/or licenses, their crews and their employees. This
24 Commercial Fishing Class asserts all Claims for Relief in this
25 Complaint;

1 c. Area Business Class. This action is brought on
2 behalf of a class ("Class III" or the "Area Business Class")
3 consisting of all persons and entities doing business in the
4 Area, including seafood processors, packagers, canneries, cold
5 storage operators, wholesale and retail distributors, and their
6 employees, who purchase fish, other seafoods or other marine
7 resources cultivated, caught or harvested by the members of
8 Classes I or II, and who process, prepare, market, sell or
9 otherwise distribute these products to the public or to others in
10 the commercial seafood industry, as well as all other persons and
11 entities who operate tours, charter boats, provide guide
12 services, develop timber, provide goods, equipment or services in
13 or to the Area or who otherwise do business in the Area, whose
14 businesses have been damaged or injured as the result of the oil
15 spill. This Area Business Class asserts all Claims for Relief in
16 this Complaint;

17 d. The Use and Enjoyment Class. This action is
18 brought on behalf of a class ("Class IV" or the "Use and
19 Enjoyment Class") consisting of all persons and entities,
20 including, inter alia, persons engaged in sports and recreational
21 fishing whose customary use and enjoyment of the natural
22 resources in and around the shores and waters of the Area has
23 been adversely affected by the oil spill. This Use and Enjoyment
24 Class asserts all Claims for Relief in this Complaint;

1 e. **The Cannery Workers/Seafood Process Employees**
2 **Class.** This action is brought on behalf of a class ("Class V" or
3 the "Cannery Workers/Seafood Process Employees Class") consisting
4 of all persons who are cannery workers and seafood process
5 employees and who personally and economically rely upon, use and
6 benefit from the land, structures, fish, wildlife and other
7 natural resources in and around the Area. Members of Class V
8 can, freeze, process and handle and rely, to varying degrees, for
9 their economic livelihood and subsistence, on such species as
10 king salmon, silver salmon, red salmon, pink salmon, chum salmon,
11 white king salmon, salmon roe, black cod and other species of
12 cod, halibut, herring, herring roe, Dungeness crab, king crab,
13 tanner crab, and other species of crab, and other sea life,
14 seafood and fish and aquatic species in the affected areas and
15 elsewhere off the coast of Alaska. The water and subsurface
16 lands of the Area are utilized by and for the benefit of the
17 members of this Cannery Workers/Seafood Process Employees class.
18 This Cannery Workers/Seafood Process Employees Class asserts all
19 Claims for Relief in this Complaint; and

20 f. **Landowner Class.** This action is brought on behalf
21 of a class ("Class VI" or the "Landowner Class") consisting of
22 all land and real property owners, whether persons or entities,
23 whose property was damaged by the oil released from the T/V EXXON
24 VALDEZ and the EXXON BATON ROUGE. Class VI also includes land
25 and real property owners whose land was, or may still be

1 threatened by the oil and who suffered injury or damage through
2 efforts, expenditure or assistance in preventing the spilled oil
3 from actually polluting their property. Class VI may contain
4 members of other classes. Class VI does not include any
5 similarly situated plaintiffs who have filed non-class direct
6 actions prior to class certification. This Landowner Class
7 asserts all Claims for Relief in this Complaint.

8 21. There are hundreds or thousands of members of each
9 class; they thus are so numerous that joinder of all members is
10 impracticable.

11 22. Plaintiffs' claims are typical of the claims of the
12 members of the classes because each plaintiff and all other
13 members of the classes have sustained damages and injuries
14 arising out of the oil spill. Each plaintiff is a member of each
15 class that he or she seeks to represent, has claims and has
16 suffered damages and injuries that are typical of the claims of
17 that class.

18 23. Plaintiffs will fairly and adequately protect the
19 interests of the members of their respective classes, have no
20 interests that are contrary to or in conflict with those of the
21 classes they seek to represent, and have retained attorneys
22 experienced in the prosecution of complex tort and class action
23 litigation.

24 24. Common questions of law and fact exist as to all
25 members of all classes, and as to the members of each class, and

- 1 predominate over any individual questions. Among such common
2 questions of law and fact are:
- 3 a. Whether Alaska statutes and/or common law were
 - 4 violated by the acts and omissions of the defendant;
 - 5 b. Whether the defendant was negligent;
 - 6 c. Determination of the amount of oil spilled, the
 - 7 movement of the oil slick and the biological, ecological and
 - 8 physical effects thereof;
 - 9 d. Whether, as a result of the determination of the
 - 10 foregoing liability questions, damages should be granted against
 - 11 the defendant; and
 - 12 e. Determination of the appropriate measure of and
 - 13 means of calculating and allocating monetary damages and
 - 14 affording relief.

15 25. There is a community of interest among the class
16 members in obtaining appropriate relief, including compensatory
17 damages.

18 26. A consolidated class action is superior to other
19 available methods for the fair and efficient adjudication of the
20 claims presented by this complaint and will prevent the undue
21 financial, administrative and procedural burdens on the parties
22 and on the court that individual litigation would impose.

23 27. Accordingly, the proposed classes each fulfill the
24 certification criteria of Alaska Rule of Civil Procedure
25 23(a)(1)-(4) and certification of each of the above-defined

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1 classes is appropriate under one or more of the provisions of
2 Alaska Rule of Civil Procedure 23(b).

3 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

4 **A. Prespill Events.**

5 28. Alaska Statutes § 46.04.030 and Alaska Administrative
6 Code Title 18 Article 4 made the defendant's approval of
7 Alyeska's oil spill contingency plan a prerequisite to the
8 operation of the Valdez oil terminal facility. In connection
9 with Alyeska's obligations under the oil spill contingency plan,
10 Alyeska had a duty to:

11 a. have access to sufficient resources to protect
12 environmentally sensitive areas and areas of public concern and
13 to contain, clean up, and mitigate potential oil spills within
14 the shortest feasible time;

15 b. be prepared to contain, clean up and mitigate
16 potential oil spills within the shortest feasible time;

17 c. use oil spill containment and cleanup technology
18 capable of effectively containing and removing oil spills in
19 Prince William Sound;

20 d. adequately train response personnel in oil spill
21 containment and cleanup operations;

22 e. employ response personnel who would be qualified
23 to operate containment and cleanup equipment under expected
24 conditions in Prince William Sound;
25

1 f. demonstrate that it had fully considered, in
2 developing the contingency plan, the effects of geography,
3 climate and weather as they affect oil spill containment and
4 cleanup;

5 g. maintain in Prince William Sound sufficient oil
6 spill containment and removal equipment to rapidly contain an oil
7 spill of the size, frequency and location which, based on
8 experience, and on a reasonable analysis of possible operational
9 mishaps, was most likely to occur during the lifetime of the
10 facility and to remove that spill within a 48 hour period when
11 adverse conditions would not threaten safety of personnel;

12 h. provide and maintain exclusion equipment and have
13 the means to protect sensitive environmental zones in Prince
14 William Sound and areas of public concern that might be affected
15 by an oil spill;

16 i. store and maintain exclusion equipment so that it
17 could be deployed and operational earlier than the minimum
18 predicted time in which the spill would reach the nearest
19 sensitive environmental zone or area of public concern;

20 j. use the best available technology;

21 k. prepare a contingency plan that would (1) be in a
22 form usable as a working plan for oil spill containment and
23 cleanup, (2) be a carefully thought-out plan, (3) be in
24 accordance with accepted cleanup procedures and (4) have the full
25

approval of management at a level with authority to commit the necessary resources to implement the plan fully;

1. adopt a reasonable proposed manner of oil spill containment and cleanup operations for spills of varying sizes, including the greatest possible spill that could occur and prepare a contingency plan that included a detailed reasonable description of same;

m. establish a communications plan capable of directing and coordinating cleanup personnel;

n. include in the contingency plan reasonable estimates of the size, frequency, and location of the type of oil spill, which based on experience and on an analysis of possible operational mishaps, was most likely to occur during the lifetime of the terminal; and detailed bases for the estimates;

o. adopt reasonable means of oil spill detection, including surveillance schedules, leak detection, observation wells, monitoring systems and spill-detection instrumentation;

p. include in the contingency plan an accurate listing, in tabular form, of the amounts, specifications, limitations, and storage locations for cleanup and containment equipment and related supplies, including the age and condition of the equipment;

q. adopt reasonable procedures for the use of chemicals for oil spill control;

1 r. include in the contingency plan and comply with
2 reasonable best estimates of response times from the discovery of
3 the spill to deployment of containment, exclusion, and recovery
4 equipment;

5 s. adopt reasonable methods and sites to be used for
6 interim and ultimate disposal of removed oil, oil-contaminated
7 material, and other oily wastes, and include a description of
8 these methods and sites in the contingency plan, along with a
9 specification of the capacity of the sites and the methods to be
10 used;

11 t. include in the contingency plan all information
12 reasonably required by the defendant to ensure that Alyeska's oil
13 spill response capability would meet the requirements of Alaska
14 Statutes § 46.04.030 and Alaska Administrative Code Title 18,
15 Article 4;

16 u. include in the contingency plan a reasonable
17 prediction of spill movement and spreading, based upon
18 operational patterns and other specific features, such as
19 oceanographic conditions;

20 v. hold spill exercises for the purpose of testing
21 the adequacy of the contingency plan and Alyeska's performance
22 thereunder;

23 w. hold additional exercises when the contingency
24 plan was found to be inadequate, until Alyeska's performance
25 became satisfactory;

- x. be able to execute the contingency plan;
- y. refrain from obtaining approval of the contingency plan by means of fraud and misrepresentation;
- z. have access to the quality and quantity of resources described in the plan;
- aa. comply with the terms of the contingency plan and;
- ab. comply with the conditions of approval of the contingency plan.

29. In fact, Alyeska prepared and obtained approval of its contingency plan with reckless indifference to and in violation of its duties as set forth in Paragraph 28. Following approval of the contingency plan, Alyeska operated in deliberate disregard of and with reckless indifference to the requirements of the contingency plan and its duties thereunder. As a result of its reckless indifference to and disregard of its obligations, Alyeska, as of March 1989, was not in compliance with the requirements of the contingency plan, was incapable of complying with the plan and was incapable of containing and cleaning up oil spills of a size, frequency and location which were likely to occur.

B. The Oil Spill and Post-spill Events.

30. At approximately 12:04 a.m. on March 24, 1989, the EXXON VALDEZ first struck Bligh Reef.

31. The initial collision, subsequent grounding of, and later attempts to free the EXXON VALDEZ from Bligh Reef tore open

1 eight of the ship's eleven oil cargo tanks and three saltwater
2 ballast tanks extending the full length of the vessel. As a
3 result of these incidents, approximately 11 million gallons of
4 oil were spilled into the waters of Prince William Sound.

5 32. Contrary to representations and assurances previously
6 given to the government and to the public, Alyeska and Exxon
7 failed to contain the oil, exclude it from environmentally
8 sensitive sites, or remove it from the water. These acts and
9 omissions, which were carried out in deliberate disregard of, or
10 with reckless indifference to, the rights and interests of
11 plaintiffs and class members, included, among other things, the
12 following:

13 a. Alyeska failed to initially respond to the spill
14 within five hours;

15 b. Despite the fact that the weather for the first
16 two days following the spill was calm and therefore ideal for
17 containment and removal, Alyeska and Exxon failed to contain or
18 remove the oil;

19 c. Alyeska failed to ensure that two oil skimmers and
20 4,500 feet of boom were at the scene within three hours and that
21 a barge and third skimmer with 3,000 additional feet of boom were
22 at the scene within five hours;

23 d. Alyeska sent home the marine technicians who were
24 on duty during the 12-hour shift between 6:00 p.m. March 23, 1989
25

1 and 6:00 a.m. March 24, 1989 without even attempting to have them
2 reach or combat the spill;

3 e. Representatives of Alyeska first appeared on the
4 scene of the spill without any containment equipment;

5 f. The containment boom deployment barge of Alyeska
6 was out of service, the company having failed to notify Alaska
7 officials that this was the case;

8 g. Self-inflating containment booms of Alyeska,
9 designed to contain oil slicks immediately after a spill, were
10 unavailable for more than 24 hours;

11 h. Neither Alyeska nor Exxon had immediate access to
12 adequate containment booms, skimmer boats, or chemical
13 dispersants;

14 i. The skimmer boats eventually used by Alyeska and
15 Exxon were incapable of recovering significant amounts of oil;

16 j. Neither Alyeska nor Exxon had immediate access to
17 equipment which was needed to exclude spilled oil from
18 environmentally sensitive sites in Prince William Sound;

19 k. Neither Alyeska nor Exxon had communications
20 equipment capable of permitting an effective deployment or
21 coordination of oil spill response activities;

22 l. Neither Alyeska nor Exxon had sufficient
23 quantities of chemical dispersants available. At the time of the
24 spill, Alyeska had less than 3,000 gallons at its terminal, no
25 application equipment and no aircraft. Three trial applications

1 indicated that dispersants were ineffective as both Alyeska and
2 Exxon should have anticipated;

3 m. Both Alyeska and Exxon failed promptly to utilize
4 private commercial vessels either to assist in booming or for
5 logistical support despite offers from numerous individuals and
6 entities for use of their vessels;

7 n. After finally hiring local commercial vessels,
8 Exxon allowed many boats to drift about aimlessly without any
9 equipment or guidance as to how to proceed;

10 o. Neither Alyeska nor Exxon had on hand enough
11 equipment or trained manpower to encircle the tanker with booms,
12 contain the oil inside the booms, or clean it up;

13 p. In order to offset their lack of adequate oil
14 storage capacity for cleanup operations, Exxon allowed the steam
15 tanker EXXON BATON ROUGE to pump its ballast into Prince William
16 Sound in preparation for lightering crude oil from the EXXON
17 VALDEZ. This incident caused the discharge of oil, oily water
18 and/or hazardous substances into Prince William Sound, which
19 mingled with oil spilled from the EXXON VALDEZ.

20 q. Neither Alyeska nor Exxon efficiently or
21 effectively requisitioned or made use of the equipment and
22 manpower they did have on hand to minimize the spread of the oil
23 and clean up as much as possible before it spread; and
24
25

1 r. Neither Alyeska nor Exxon efficiently and
2 effectively mobilized available equipment and manpower from
3 elsewhere to contain the oil and clean it up before it spread.

4 33. As a result, the oil spread across and out of Prince
5 William Sound into such areas as the Kenai Peninsula, the Cook
6 Inlet, the Kodiak Archipelago and the Alaska Peninsula,
7 significantly worsening the environmental contamination which
8 occurred.

9 C. Effects of the Oil Spill.

10 34. The spilled oil had the following effects, among
11 others:

12 a. The water surrounding the EXXON VALDEZ became
13 contaminated with approximately 11 million gallons of toxic crude
14 oil;

15 b. The prevailing winds and currents spread the
16 contamination throughout the Area;

17 c. The contamination polluted the water, shoreline
18 and beaches in the Area and spoiled and befouled the natural
19 resources therein;

20 d. The biota, marine and aquatic life, wildlife and
21 plants, including among others, herring, herring roe, salmon,
22 whales, sea otters, fur seals, diving ducks, grebes, loons, river
23 otters, mink, bald eagles, bear and deer, shellfish and mollusks
24 were killed or damaged;

e. The food chain for all living organisms and creatures throughout the Area was adversely affected, damaged or destroyed;

f. The defendant closed or restricted cultivating, fishing and/or harvesting of various species of fish, other seafood or marine resources in the Area;

g. The number of fish, other seafood or marine resources that would be cultivated, fished or harvested in the Area was dramatically reduced or eliminated;

h. A public perception was created that all fish, other seafood and marine resources cultivated, caught or harvested in the Area were tainted or contaminated with oil;

i. The amount of fish, other seafood or marine resources in the Area purchased for processing, packaging, canning, cold storage and wholesale or retail distribution was significantly diminished;

j. The general economy of the Area has been diminished and disrupted. Goods, services and products that would have been sold to support the economy and life in the Area in the absence of the contamination caused by the spill were not sold;

k. Subsistence hunting, fishing and gathering by natives was destroyed or severely restricted throughout the Area;

l. Culturally significant native Alaska archaeologic sites and artifacts were destroyed or damaged;

1 m. The subsistence way of life of natives throughout
2 the Area was significantly interfered with, altered, damaged or
3 destroyed; and

4 n. The water, beaches and biota in the Area were so
5 polluted and destroyed, the natural beauty of the Area so spoiled
6 and the disruption and damage created by the oil spill so
7 extensive that the use and enjoyment of the natural resources of
8 the Area, the value of the property in the Area and recreation in
9 the Area were significantly diminished.

10 **D. Damage and Injury to the Plaintiffs and**
11 **Plaintiff Classes.**

12 35. As a proximate result of the foregoing detrimental
13 effects:

14 a. The members of the Alaska Natives Class have
15 sustained injury to their subsistence way of life, archeological
16 sites and artifacts. Members of the Alaska Natives Class have
17 also sustained damage or injury to the natural resources and
18 property upon which they depend and/or which are part of their
19 natural habitat and lives;

20 b. The members of the Commercial Fishing Class have
21 been damaged and injured in their commercial cultivation, fishing
22 and/or harvesting of the fish, other seafood or marine resources
23 in the Area and in their commercial fishing permits and property
24 rights in the Area;

25 c. The members of the Area Business Class have been
damaged and injured in their businesses and property;

1 d. The members of the Use and Enjoyment Class have
2 been damaged and injured in their use and enjoyment of the
3 natural resources of the Area;

4 e. The members of the Cannery Workers/Seafood Process
5 Employees Class have been damaged and injured in the pursuit of
6 their economic livelihood; and

7 f. The members of the Landowner Class have been
8 damaged and injured in the value of and in their use and
9 enjoyment of their land.

10 CLAIM FOR RELIEF

11 A. Negligence.

12 36. Plaintiffs reallege and incorporate by reference each
13 and every allegation set forth above.

14 37. At all times relevant, the defendant owed a duty of
15 care to plaintiffs and members of the plaintiff classes to comply
16 with the provisions of Alaska Statutes § 46.04.030 and Alaska
17 Administrative Code Title 18 Article 4.

18 38. At all times relevant, the defendant owed a fiduciary
19 duty to the plaintiffs and members of the plaintiff classes
20 under, inter alia, the public trust doctrine to protect and
21 conserve lands and resources held in trust by the defendant for
22 the benefit of the plaintiffs and members of the plaintiff
23 classes.

24 39. At all time relevant, the defendant, as a trustee of
25 the natural resources of the State of Alaska, owed a fiduciary

1 duty to plaintiffs and to members of the plaintiff classes to
2 protect and safeguard those natural resources and to make
3 available to plaintiffs and to members of the plaintiff classes
4 all natural resource damage assessment studies, and materials
5 related thereto, prepared by defendant.

6 40. The defendant violated the duties set forth in
7 Paragraphs 37 and 38 through its acts and omissions, including,
8 without limitation, the approval of Alyeska's contingency plan
9 and failure to revoke approval of Alyeska's contingency plan,
10 despite the fact that defendant should have known that Alyeska
11 obtained approval of the contingency plan by fraud or
12 misrepresentation, that Alyeska operated in deliberate disregard
13 of and with a reckless indifference to its obligations under the
14 contingency plan and Alaska Statutes Section 46.04.030 and Alaska
15 Administrative Code Title 18, Article IV and to the rights and
16 interests of the plaintiffs and class members, and that Alyeska
17 was, as a result of its outrageous, egregious and reckless
18 conduct, incapable of executing the contingency plan or of
19 responding adequately to an oil spill. Defendant also breached
20 its duties as set forth in Paragraphs 37 and 38 by failing to
21 remedy the reckless indifference with which Alyeska and Exxon
22 failed to respond in an adequate manner to the oil spill.

23 41. The defendant violated the duty set forth in paragraph
24 39 by refusing to disclose to plaintiffs natural resource damage
25

1 assessment studies and materials related thereto prepared by the
2 defendant.

3 42. On October 23, 1989, Alyeska Pipeline Service Company,
4 Amerada Hess Pipeline Corporation, Arco Pipe Line Company, BP
5 Pipelines (Alaska) Inc., Mobil Alaska Pipeline Company, Phillips
6 Alaska Pipeline Corporation and Unocal Pipeline Company filed
7 their Answer and Counterclaim to the Complaint filed by defendant
8 in No. 3AN-89-6852. In the counterclaim, the counterclaimants
9 alleged, inter alia, that:

10 the [State of Alaska] approved the
11 Contingency Plan, including the Prince
12 William Sound Contingency Plan and was deeply
13 involved in, and exercised substantial
14 control over, the efforts of Alyeska and
15 other persons to contain and clean up the
16 spill. To the extent that the [State's]
17 conduct in these or other areas caused,
18 exacerbated or failed to mitigate the damages
19 complained of and for which the [State] or
20 other plaintiffs in other cases seek relief
21 from [counterclaimants], the [State] is
22 liable to [counterclaimants] by way of
23 indemnification and contribution if
24 [counterclaimants] are required to pay any
25 damages arising out of any lawsuit or
proceeding to which [counterclaimants] are or
will be made a party.

20 Id. at 23.

21 43. On October 23, 1989, Exxon Shipping Company filed its
22 Answer and Counterclaim to the Complaint filed by defendant in
23 No. 3AN-89-6852. In its counterclaim, Exxon Shipping Company
24 alleged, inter alia:

25 As a proximate result of the State's conduct,
Exxon Shipping has suffered damage, in an
amount according to proof, in that:

1 (a) it has been required to expend funds
2 for cleanup greatly in excess of what
3 would otherwise have been required;

4 (b) it has paid claims for damages by
5 persons and entities who, but for the
6 State's negligence or wrongful conduct
7 as alleged herein, would have suffered
8 no injury from the oil spill;

9 (c) it has been and is exposed to claims
10 by persons and entities whose damages
11 resulted in part from, or were increased
12 by, the State's negligence or wrongful
13 conduct, and for whose claims the State
14 in justice and equity should be in part
15 responsible.

16 Id. at 34-35.

17 44. On October 23, 1989, Exxon Corporation filed its
18 Answer and Counterclaim to the Complaint filed by defendant in
19 No. 3AN-89-6852. In its counterclaim, Exxon Corporation alleged,
20 inter alia:

21 As a proximate result of the State's
22 conduct, Exxon has suffered damage, in an
23 amount according to proof, in that:

24 (a) it has been required to expend funds
25 for clean up greatly in excess of what
would otherwise have been required;

(b) it has been and is exposed to claims
for damages by persons and entities who,
but for the State's negligence or
wrongful conduct as alleged herein,
would have suffered no injury from the
oil spill;

(c) it has been and is exposed to claims
by persons and entities whose damages
resulted in part from, or were increased
by, the State's negligence or wrongful
conduct, and for whose claims the State

1 in justice and equity should be in
2 part responsible.

3 Id. at 32.

4 45. To the extent, if any, that the counterclaims set forth
5 in Paragraphs 40 through 42 are correct in alleging and implying
6 that the injuries of plaintiffs and the members of the plaintiff
7 classes were proximately caused by negligent conduct of the
8 defendant, defendant is liable for damages that plaintiffs and
9 the members of the plaintiff classes have suffered and are
10 continuing to suffer.

11 **PRAYER FOR RELIEF**

12 Plaintiffs pray that this court:

13 A. Enter an order as soon as practicable determining that
14 this case is a proper class action maintainable under Rule 23 of
15 the Alaska Rules of Civil Procedure;

16 B. Award compensatory damages for harm to property;

17 C. Award compensatory damages for economic losses;

18 D. Award compensatory damages for injuries to the
19 subsistence way of life of members of the Alaska Natives Class;

20 E. Award damages for interference with the use and
21 enjoyment of property interests and natural resources;

22 F. Award damages for the disruption and distress caused by
23 the spill;

24 G. Order the defendant to make available to plaintiffs
25 natural resource damage assessment studies and materials related
thereto prepared by the defendant or at its direction, including

1 without limitation, all documents forwarded to, developed by or
2 for, or received from any person or entity which is studying, or
3 assisting in the study, of natural resource damages attendant to
4 the oil spill.

5 H. Order the defendant to create a fund to be administered
6 by such class representatives as may be approved by the court, to
7 monitor the environment and ecology of the Area, to enhance that
8 environment and ecology after cleanup, to rehabilitate and
9 restore the Area, and to otherwise ameliorate and mitigate the
10 environmental, cultural and social damages caused by the spill;

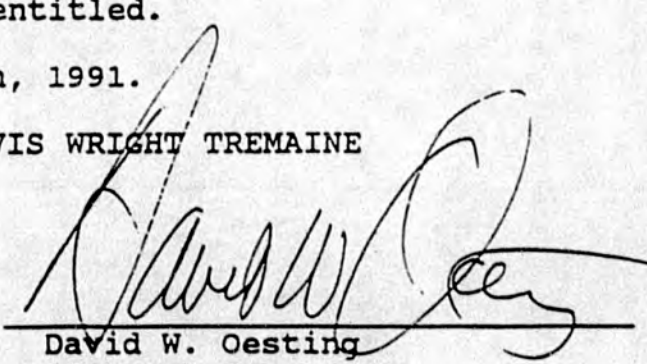
11 I. Award the plaintiffs' attorneys' fees and costs,
12 including expert and scientific fees and other disbursements;

13 J. Award prejudgment interest; and

14 K. Award such other and further compensation and relief,
15 legal or equitable, to which plaintiffs and the members of the
16 plaintiff classes may be justly entitled.

17 DATED this 22nd day of March, 1991.

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19
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21 By 

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

JERALD D. EIDEM and JACQUELLAN
JILL MAXWELL,

Plaintiffs,

vs.

EXXON CORPORATION, EXXON
SHIPPING CORPORATION,
ALYESKA PIPELINE SERVICE
COMPANY, U. S. COAST GUARD and
STATE OF ALASKA,

Defendants.

Case No. 3AN-91-2356 Civ.

COMPLAINT

COME NOW the plaintiffs and for their complaint against the defendants state as follows:

1. Plaintiffs JERALD D. EIDEM and JACQUELLAN JILL MAXWELL are residents of the State of Alaska.
2. Defendant EXXON CORPORATION is a New Jersey corporation.
3. Defendants EXXON SHIPPING CORPORATION and ALYESKA PIPELINE SERVICE COMPANY are Delaware corporations.
4. Each of the above defendants does, and at all times relevant hereto did, business in the State of Alaska.
5. Defendant U.S. COAST GUARD is an instrumentality of the United States government and provides services within the territorial waters of the State of Alaska.

Dist.

8

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STATE OF ALASKA
JAN 22 1991
ANCHORAGE
CLERK OF DISTRICT COURT
BY TELETYPE

6. The State of Alaska is subject to the jurisdiction of this court pursuant to AS 09.50.250.

7. Plaintiff JERALD D. EIDEM is the owner of the F/V Grata Lynn, State of Alaska Limited Entry Cook Inlet Drift Net Salmon Permit No. SOH65760Z, Halibut Permit No. B618B20865V, Sablefish/Cod Permit No. C61B25557C, and Miscellaneous Finfish Permit No. M61B255558N.

8. Plaintiff JACQUELLAN JILL MAXWELL was at all times relevant hereto employed as a crew member by JERALD D. EIDEM.

9. The M/V Exxon Valdez was at all times relevant hereto a 980 foot long supertanker regularly engaged in the transportation of crude oil between Valdez, Alaska and Long Beach, California. The Vessel was owned and operated at all times relevant hereto by EXXON SHIPPING CORPORATION, a subsidiary of EXXON CORPORATION which companies operated said Vessel as agents of ALYESKA PIPELINE SERVICE COMPANY.

10. The U. S. COAST GUARD maintains navigational aids in the area known as the Valdez Narrows and Prince William Sound.

11. On or about March 24, 1989 the M/V Exxon Valdez ran aground Bligh Reef, rupturing numerous of its compartments and releasing millions of gallons of crude oil into Prince William Sound and on to adjacent lands.

12. At that time, the M/V Exxon Valdez was skippered by Captain Joseph Hazelwood who was under the influence of intoxicating beverages.

13. Both the EXXON CORPORATION and EXXON SHIPPING

CORPORATION were or should have been aware of Captain Hazelwood's propensity for misuse of alcohol, but nonetheless entrusted operation of the M/V Exxon Valdez to him.

14. The discharge of such crude oil as a result of the negligence of EXXON CORPORATION, EXXON SHIPPING CORPORATION and ALYESKA PIPELINE SERVICE COMPANY and their employees violated state and federal law.

15. The failure of the U. S. COAST GUARD to maintain adequate watch over the progress of the M/V Exxon Valdez through the Valdez Narrows and to warn the crew when it strayed beyond the shipping lanes amounted to negligence.

16. The failure of EXXON CORPORATION, EXXON SHIPPING CORPORATION, ALYESKA PIPELINE SERVICE COMPANY, U. S. COAST GUARD, and STATE OF ALASKA to properly develop, implement and maintain plans to permit the safe transportation of ultrahazardous materials in the form of crude oil through dangerous waters amounted to negligence.

17. The failure of EXXON CORPORATION, EXXON SHIPPING CORPORATION and ALYESKA PIPELINE SERVICE COMPANY to maintain and properly implement a plan to contain the oil spill that occurred when the M/V Exxon Valdez collided with Bligh Reef amounted to negligence.

18. The failure of the STATE OF ALASKA to oversee the maintenance and proper implementation of an oil spill containment plan amounted to negligence.

18. The negligence of the non-governmental defendants was

so gross as to amount to wanton and reckless misconduct.

19. As the direct foreseeable and proximate result of the aforesaid actions by the defendants plaintiffs JERALD D. EIDEM and JACQUELLAN JILL MAXWELL sustained loss of income, increased operating expenses and other losses in an amount to be proven at trial, but exceeding \$50,000.00 each.

WHEREFORE, plaintiffs individually pray for judgment to enter against the defendants, jointly and severally, as follows:

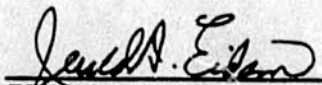
1. For actual damages as proven at trial in an amount in excess of \$50,000.00 each;

2. For punitive and exemplary damages in an amount sufficient to discourage similar misconduct in the future by the defendants and others;

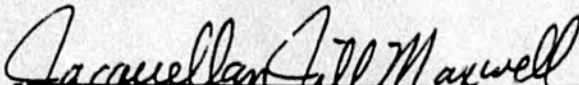
3. For plaintiffs costs, interest and attorney's fees; and

4. For such other and further relief as the court may deem just and equitable in the premises.

DATED this 23 day of March, 1991.



JERALD D. EIDEM
In propria persona



JACQUELLAN JILL MAXWELL
In propria persona

ACE 1826596

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

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ASSOCIATES, JIM ASHFORD JFA INC., d/b/a)
BARNEY'S LIQUORS, JIM ASHFORD, d/b/a)
ISLAND CANNING, JIM ASHFORD, d/b/a)
KODIAK TOURS, RALH D. BAILEY AND)
FRANCES N. BAILEY, d/b/a THE SMOKEHOUSE,)
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PAUL F. CONWAY, d/b/a ALASKA EAGLE)
LODGE, LESLIE DYER, d/b/a GREATLAND)
REFRIGERATION, DIANE F. EARL, B. JOAN)
HOOD, ISLAND PLUMBING AND HEATING,)
DENNIS G. JOHNSON, JOHN KINNEY, KODIAK)
SERVICES CO., ALEXANDER LAKTONEN, ELI)
B. MALUTIN, STEVE MILLEA, ROBERT)
MORGAN, NELSON'S AAA TAXIDERM, ERIK)
NIELSEN, LINDA RAE RICHARD OWEN OLDOW,)
PHILLIP N. PRIEBE, REDDEN NET CO.,)
INC., NICK SHANGIN, JESSIE JUNE M.)
SHEEHAN, ROBIN LEE SQUARTSOFF, JOSEPH)
D. STANTON, TOM WALKER, WADE A. WATKINS,)
JEFF WELCH, DAISY M. WHEELER, SHALENE)
S. WILLIAMSON, RICHARD GWIN WILLIAMSON,)
JAMES A. WITT, DAVIEANN WITT, CLARK)
YATSIK, LA QUITA YATSIK, PAUL S. YATSIK,)
ROBERT K. CARROLL, THOMAS J. WALKER,)
KIM PAISLEY, DONALD PAISLEY, EUGENE)
O'NEAL, SIMONE CHABERNAUD, AL CURRY,)
ALASKA PROPELLER CO., LINDA FISCH,)

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ALASKA BLUE ICE GLACIER WATER, ROBERT)
D. LICKINGTELLER, DONNA B. MACK, CHIN)
NO KO, MARY NORMAN, DON JOHNSON, JIM)
HATCH, RITA HATCH, DENNIS G. JOHNSON,)
DONALD C. HANKS, MARY HANKS, ZANE P.)
HENNING, ROGER W. AULABAUGH, LINDA)
OLSON, TAMARA LYNN LAWSON, BRIAN W.)
LAWSON, MATTHEW WAYNE LAWSON, SIANNA)
LYNN LAWSON, MICHELLE LAWSON, ROBERT)
MORGAN, KEN HINKLE, DONNA HINKLE, MIKE)
POSCIRI, DAVID LONG, RICHARD MORIN,)
DARRELL TISDALL, DIMITRY MELKOMUKOV,)
PIRIE INTROUT, LLOYD C. WHEELER,)
LEONARD S. OGLE, MAKE KUKIKOV, SAMUEL)
HAGUE, ROBERT SCHULTZ, CHET SIMMONS,)
VASILY SHARABARIN, LARRY STORY,)
MICHAEL M., HEINE, MARVIN L. BARTLESON)
MANFIELD PARK, DAVID AKIN, MARY LOU)
REDMOND, TONY FROLOV, JOHN ZACKAR,)
ROBERT GIGLER, CARL E. BLANKENSHIP,)
PETER HICKEY, THOMAS CLOCK, JAYSON)
GILES, TIMOTHY MCKITTRICK, GARY HAINES,)
DAVID CHAMP, ROBERT WALKER, JIM)
TUNGATE, BRIAN CAIN,)

Plaintiffs,

vs.

EXXON CORPORATION, JOSEPH HAZELWOOD,
EXXON SHIPPING COMPANY, GEORGE NELSON,
ALYESKA PIPELINE SERVICE COMPANY,
EDWARD MURPHY and STATE OF ALASKA,

Defendant(s).

Case No. 3AN-91-2368 CIVIL

EXXON VALDEZ OIL SPILL LITIGATION

AMENDED COMPLAINT

COME NOW, the Plaintiffs, by and through their attorneys,
CHARLES W. COE, and BELLI, BELLI, BROWN, MONZIONE, FABBRO &
ZAKARIA, who hereby allege as their cause of action as follows:

I

Plaintiffs are land owners, business owners in areas near
Alaska waters or dependent upon fishing in areas affected by the

oil spill. Plaintiff's are residents of Alaska or resided, owned businesses and/or worked in Alaska at the time the incident in this complaint occurred.

II

Defendant Exxon Corporation is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, New York 10020. Exxon Corporation is engaged in the business of operating petroleum companies through its subsidiaries and divisions in the State of Alaska and is an owner and operator of the vessel known as the "Exxon Valdez."

III

Defendant, Exxon Shipping Company is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 811 Dallas Avenue, Houston, Texas 77002. Exxon Shipping, a subsidiary of Exxon Corporation, is the registered owner of the vessel "Exxon Valdez" and operated the "Exxon Valdez" in the waters of Prince William Sound on or about March 24, 1989. Defendant, Joseph Hazelwood, was an employee of Defendant, Exxon Shipping Company, at the time this accident subject of this complaint occurred.

IV

Defendant, Alyeska Pipeline Service Company, is a company organized under laws outside the State of Alaska but which has its primary place of business in the State of Alaska. Defendant, George Nelson, is an Alaska resident who acted as president and

director of Alyeska Pipeline Service Company in Alaska. Defendant, Edward Murphy, is an Alaska resident. All Defendants are engaged in substantial and not isolated activities in the State of Alaska.

FACTS

VI

On Thursday evening, March 23, 1989, the Exxon Valdez owned and operated by the named Exxon Defendants, was a 98 foot tanker, weighing 211,000 deadweight tons with an oil cargo and bunker fuel, left the port of Valdez, Alaska in Prince William Sound, the southern terminal facility of the Trans-Alaska Pipeline System, bound for Long Beach, California.

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VII

The tanker's twelve oil tanks were filled to capacity with approximately 1.2 million barrels of crude oil which had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline via Alyeska Pipeline Service Company.

VIII

The "Exxon Valdez" passed through the harbor and Valdez Narrows under the command of the harbor pilot, Defendant Edward Murphy. Defendant, Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of Defendants, Exxon, was on the bridge of the ship when the harbor pilot, Edward Murphy, disembarked at the southern end of the Narrows at approximately 11:30 a.m. Friday morning, March 24, 1989. Captain Hazelwood was under the influence of alcohol while he was in command of the vessel and Defendant, Edward Murphy, failed to take any action to prevent Captain Hazelwood from piloting the vessel.

IX

Exxon Shipping, as the registered owner and operator of the "Exxon Valdez," and Exxon as the controlling owner of Exxon Shipping and owners and transporters of the cargo of said vessel, knew, should have known or were reckless in not knowing that Hazelwood had an alcohol abuse problem and was incompetent and effectively unable to command or control the vessel. Complaints of Hazelwood's abuse of crew members in an intoxicated state were

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known to the Exxon Defendants. The negligent, grossly negligent and reckless acts of Hazelwood were all within the privity and knowledge of the Exxon Defendants. Subsequent to Pilot Murphy's departure from the vessel, Captain Hazelwood retired to his cabin, leaving only Gregory Cousins, the third mate, and Robert Kagan, the helmsman, on the bridge. Neither Cousins or Kagan were qualified to operated the vessel in this area of Prince William Sound without supervision. At all times relevant hereto, Messrs. Cousins and Kagan were acting within the scope of their employment and as agents and/or representatives of Defendant Exxon. Additionally the vessel's navigational equipment was not working properly for the crew on deck who were not qualified to operate the vessel even if all equipment was in good order.

XI

The tanker proceeded three miles east past the alternative channel, outside the traffic lanes and entirely beyond the shipping channel into a chartered area of rocky reefs.

XII

The vessel was approximately one quarter mile outside the regular channel for vessels when she first struck the well-marked and well-known Bligh Reef, which ripped along the vessel's starboard side tearing three holes into the starboard tanks and ripping out a portion of the hull.

XIII

Upon information and belief, Captain Hazelwood remained in his cabin, although the noise and impact would have immediately

commanded the Captain to the bridge to prevent further damage to the vessel or its contents.

XIV

The grounding of the Exxon Valdez upon Bligh Reef cut open at least eight of the ship's twelve oil tanks which held 53 million gallons of crude oil, causing the largest oil spill in the United States history. To date, approximately 11 million gallons of crude oil has been discharged into the marine environment.

XV

Alyeska Pipeline Company under the direction of George Nelson and Exxon owed a duty to have a proper and adequate emergency containment plan for this area but failed to put any plan into affect within a reasonable or practical time period to contain the spilled oil.

XVI

Damages to the Plaintiffs caused by the discharge of millions of gallons of North Slope crude oil from the "Exxon Valdez," include but are not limited to damage to marine life and environment in the area of Prince William Sound, Kodiak, and Cook Inlet. Additionally, Plaintiffs have suffered property damage, business loss, economic loss, and personal losses which are specified below.

XVII

Plaintiffs have suffered property damage in excess of \$100,000.00, the exact amount to be proven at trial.

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XVIII

Plaintiffs have lost income both past and future in excess of \$100,000.00, the exact amount to be proven at trial.

XIX

Plaintiffs each have incurred general damages as a result of the "Exxon Valdez" oil spill in excess of \$100,000.00, the exact amount to be proven at trial.

XX

Upon information and belief, the damage caused by the spill will have a long-term effect upon the Plaintiffs trades and businesses, processing work, loss/damage to land and personal lives in the fishing industry of Alaska. Plaintiff's are primarily land owners, business owners and fishermen who survive due to the fishing industry in Alaska.

COUNT I

NEGLIGENCE OF DEFENDANTS ALYESKA AND EXXON WITH RESPECT TO
FAILURE TO EXERCISE ADEQUATE CLEANUP PROCEDURES

XXI

Plaintiffs reallege and incorporates herein by reference each and every allegation set forth above.

XXII

Defendants Alyeska and Exxon had continuously reassured environmentalists and others, including some or all Plaintiff, at all times prior to the accident that there existed an emergency clean-up plan by which any major oil spill could be successfully contained within five hours of occurrence; yet a day after the

spill little had been done to contain it other than an unsuccessful attempt to spray chemical dispersants.

XXIII

Upon information and belief, Alyeska and Exxon's contingent cleanup plan required them to be on site within five hours of the spill. Eighteen hours after the rupture, however, essentially nothing was in place; instead, it took nearly an entire day for Alyeska, George Nelson, and Exxon representatives to start placing barrier booms around the slick. By that time, the discharged oil had already become too large to contain and spread from Prince William Sound to Kodiak to Cook Inlet.

XXIV

The delays were in part due to repairs being performed on the barge required to pull the booms around the "Exxon Valdez" and the lack of preparation for spills.

XXV

Lack of proper equipment and supplies also hindered effective cleanup operations.

XXVI

Moreover, neither Alyeska nor Exxon had enough equipment or an adequate containment plan to handle a spill of this size.

XXVII

Pursuant to state laws, the proper control and total removal of the discharged oil which polluted and damaged the Plaintiffs property was the responsibility of the Defendants. In regard thereto, Defendants had a duty to Plaintiffs to have

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adequate resources available to immediately and effectively contain and cleanup any oil spill in any area within or without the right-of-way or permit area.

XXVIII

In the exercise of due care, Defendants knew or should have known that they lacked adequate equipment and supplies to effectively contain and cleanup a spill of this magnitude, that their contingent cleanup plan, including the tactics they developed thereunder and were extremely limited in their efficiency and use.

XXIX

The negligence and negligence per se of Defendants Alyeska and Exxon in the control and cleanup operation specifically included, but was not limited to, (i) failing to establish and provide for an adequate contingent plan to contain and cleanup any discharge of oil; (ii) inadequately planning and ensuing cleanup effort; (iii) inadequately carrying out the ensuing cleanup effort; (iv) unreasonable delaying the ensuing cleanup effort; (v) choosing inadequate tactics in the ensuing cleanup effort, (vi) processing inadequate equipment, supplies and personnel for deployment in the ensuing cleanup effort, (vii) violating state and federal laws, (viii) and failure to monitor, inspect and approve of an adequate and effective cleanup and containment plan.

XXX

As a direct and proximate result of the foregoing negligence, Plaintiffs have suffered damages as set forth in this Complaint.

XXXI

In addition, Defendants Alyeska, Joseph Hazelwood, and Exxon acted recklessly, grossly negligent, wantonly, and in willful disregard of the rights, safety, and economic well-being of Plaintiff in the control and cleanup operations of this spill, for which Plaintiffs are entitled to punitive and exemplary damages against these Defendants.

COUNT II

NEGLIGENCE OF EXXON AND ITS EMPLOYEES WITH RESPECT TO
MANAGEMENT AND OPERATION OF THE VESSEL "EXXON VALDEZ"

XXXII

Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

XXXIII

The captain of the Exxon Valdez, Joseph J. Hazelwood, upon information and belief had previously been convicted of charges involving drinking and driving twice in the past five years and had his driver's license suspended or revoked three times in that same period and was under the influence of alcohol while in command of the vessel.

XXXIV

Captain Hazelwood placed the navigation and direction of the vessel into the charge of the third mate, Gregory Cousins and Robert Kagan, when it ran aground although Cousins and Kagan lacked proper certification and guidance to pilot a vessel such as the "Exxon Valdez" through the waters of the Prince William Sound.

XXXV

Captain Hazelwood and third mate Cousins knew or should have known that it was not only unreasonably dangerous for Hazelwood to leave the bridge and relinquish control of the tanker to Cousins and Kagan, but also a violation of applicable Coast Guard rules and regulations.

XXXVI

Captain Hazelwood and third mate Cousins knew or should have known that Cousins and Kagan did not possess the requisite degree of competence to command the "Exxon Valdez" with reasonable prudence, skill or care.

XXXVII

The Exxon Defendants knew or should have known based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times in the same five year period, that Hazelwood did not possess the requisite degree of competence to command the "Exxon Valdez" with reasonable prudence, skill or care, nor the ability to transfer his duties to an uncertified third mate and Robert Kagan.

XXXVIII

The Exxon Defendants knew or should have known based on the service in which the "Exxon Valdez" was involved that its single hull construction and navigational system was not sufficient to allow it to safely engage in the trade for which it was intended.

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XXXIX

The negligence of the Exxon Defendants by and through their employees, in the operation of the "Exxon Valdez" specifically included, but was not limited to (i) failing to adequately crew the tanker; (ii) failing to adequately pilot and navigate Prince William Sound; (iii) commanding the vessel while under the influence of alcohol in violation of Coast Guard and State of Alaska standards, (iv) failing to monitor the sobriety of their crews in operating the vessel, (v) failing to operate the vessel away from known navigational dangers, (vi) operating the vessel in a dangerous manner, and (vii) failing to utilize a seaworthy vessel. As a direct and proximate result of the foregoing negligence, the Exxon Defendants, in their own right as well as by and through their agents, servants and employees, caused Plaintiff to suffer damages as described below.

XL

The Exxon Defendants acted recklessly, grossly negligent, wantonly and in willful disregard of the rights, safety, and economic well-being of the Plaintiffs in the ownership and operation of the "Exxon Valdez" for which Plaintiffs are entitled to punitive and exemplary damages against the Defendant.

COUNT III

STATE OF ALASKA LIABILITY

XLI

Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

XLII

Defendant State of Alaska had a duty to set up an oil spill response plan, which they failed to do in a safe and adequate manner. Furthermore, they failed to monitor the spill plans in existence. The other defendants claim that the State is responsible for the extent of the spill. Assuming these things to be true, the State would be liable to the plaintiffs for the damages done.

NEGLIGENT PER SE

XLI

Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

XLII

By virtue of the above, Defendants were negligent and negligent per se in that the acts and omissions of their employees, agents and representatives violated the laws of the United States and The State of Alaska and directly and proximately caused the damages suffered by the Plaintiffs.

COUNT V

ALASKA ENVIRONMENTAL CONSERVATION ACT

XLIII

Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

XLIV

Oil, including the approximately 10.1 million gallons of crude oil which has been released into the Prince William Sound as a result of the grounding and consequent rupture of the Exxon Valdez's oil tanks, is a hazardous substance, as that term is defined in Section 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

XLV

The presence of oil in the Prince William Sound area and its subsequent spreading to large areas of the Sound, Cook Inlet, Kodiak and beyond, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish,

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animals, vegetation, and/or any part of the natural habitat in which they are found.

XLVI

The Defendants own and/or have control, pursuant to Section 46.03.826(3) of the Alaska Environmental Conservation Act, over the oil which was loaded on the "Exxon Valdez" at the port of Valdez, Alaska and released into Prince William Sound.

XLVII

Upon information and belief, the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska was not caused solely as a result of: an act of war, an intentional act or negligent act of a third party, other than a party or its employees in privity with, or employed by, Defendants, negligence on the part of the United States government, or an act of God.

XLIII

Upon information and belief, upon discovery of the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska, Defendants delayed and/or failed to begin operations to contain and cleanup the hazardous substance within a reasonable period of time.

XLIX

The entry of the oil which is owned and/or within the control of the Defendants in or upon the waters, surface and/or subsurface lands of the State of Alaska, has caused damages to the

Plaintiffs for which the Defendants are strictly liable pursuant to Section 46.03.822 of the Alaska Environmental Conservation Act.

I.

As a direct and proximate result of the Defendants acts and omissions the Plaintiffs incurred the following damages:

1. Damage to all fisheries in the Plaintiffs fishing areas as well as their land and businesses;
2. Economic losses in the present and future;
3. Emotional pain and suffering, distress, and anxiety at the loss and prospective losses of economic livelihood, professions and a way of life;
4. Outrage and embarrassment, loss of lifestyle and subsistence use;
5. Costs for cleanup and protection of property, property rights property devaluation, business devaluation and equipment damage; and
6. Other damages to be proven at trial.

WHEREFORE PLAINTIFFS INDIVIDUALLY PRAY for a judgment against the Defendants jointly and severally as follows:

1. Compensatory damages in a sum to be proven at trial in excess of One Million Dollars and No Cents (\$1,000,000.00) per Plaintiff;
2. Punitive and exemplary damages in a sum to be awarded at trial in excess of One Million Dollars and No Cents (\$1,000,000.00) per Plaintiff;

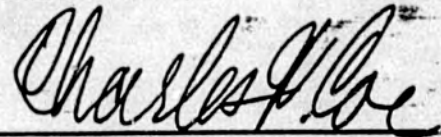
3. An order of the Plaintiffs' costs, interest, and attorney fees; and

4. Such other relief as this court deems just and equitable.

DATED at Anchorage, Alaska this 26 day of March,

199 91.

CHARLES W. COE



Charles W. Coe

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10

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

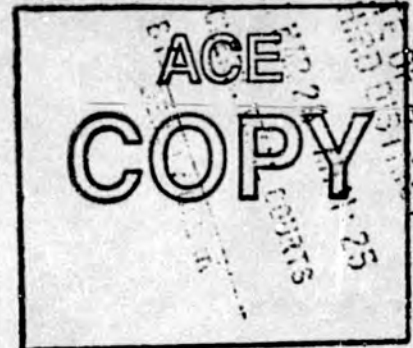
CHUGACH ALASKA CORPORATION, CHUGACH
FOREST PRODUCTS, INC., CHUGACH TIMBER
CORPORATION, CHUGACH DEVELOPMENT
CORPORATION, CHUGACH FISHERIES, INC.
BERING DEVELOPMENT CORPORATION,
CHENEGA CORPORATION, CHN, INC.,
PORT GRAHAM CORPORATION, PORT GRAHAM
DEVELOPMENT CORPORATION, ENGLISH BAY
CORPORATION, THE TATITLEK CORPORATION,
THE EYAK CORPORATION, EYAK DEVELOPMENT,
INC. and EYAK TIMBER, INC.,

Plaintiffs,

vs

THE STATE OF ALASKA,

Defendant.



Case # 3AN-91-265 Civil

COMPLAINT

PLAINTIFFS, by and through counsel, allege upon information and belief as follows:

JURISDICTION AND VENUE

1. This is an action for monetary damages arising out of the massive discharge of oil from the M/V EYXON VALDEZ upon and into the waters, surface and subsurface lands of the area in and around Prince William Sound, the Lower Kenai Peninsula and the Gulf of Alaska. Plaintiffs are Native village corporations incorporated under the laws of the state of Alaska pursuant to the Alaskan Native Claims Settlement Act, 43 U.S.C. §1601 et seq, as amended, ("ANCSA").

2. This Court has subject matter jurisdiction of this action pursuant to AS 22.10.020(a).

ACE 1953847

3. Defendant is the State of Alaska and is subject to the personal jurisdiction of this Court.

4. Venue is proper in this Court pursuant to Alaska Civil Rule 3(c) because the claims arose in the Third Judicial District.

5. CHUGACH ALASKA CORPORATION ("CAC") is an Alaska Native regional corporation incorporated under the laws of the State of Alaska pursuant to ANCSA. CAC's shareholders are primarily Native Alaskans whose history, culture, values and family life arose in and are tied to the Chugach Region, as defined in ANCSA (hereafter "Natives" or "Native Alaskans"). CAC holds the right, title, interest in and/or entitlement to the surface and/or subsurface estates of approximately one million acres of land in Alaska, including lands in the area in and around Prince William Sound, the Gulf of Alaska, and the Lower Kenai Peninsula damaged by the EXXON VALDEZ oil spill.

6. CHUGACH FOREST PRODUCTS, INC. ("Chugach Forest") is a corporation organized under the laws of the State of Alaska and is a wholly owned subsidiary of CAC. Chugach Forest is engaged in the processing and marketing of timber, including timber from the area in and around Prince William Sound and the Lower Kenai Peninsula damaged by the EXXON VALDEZ oil spill, and in manufacturing relating to wood and other forest products.

7. CHUGACH TIMBER CORPORATION ("Chugach Timber"), is a corporation organized under the laws of the State of Alaska, is a wholly owned subsidiary of Chugach Forest and is engaged in the

business of harvesting and marketing timber situated on lands owned by CAC and others throughout the coastal area of South Central Alaska damaged by the EXXON VALDEZ oil spill.

8. CHUGACH DEVELOPMENT CORPORATION ("Chugach Development") is a corporation organized under the laws of the State of Alaska, and is a wholly owned subsidiary of CAC. Chugach Development is involved in developing business opportunities relating to the lands owned by CAC damaged by the EXXON VALDEZ oil spill.

9. CHUGACH FISHERIES, INC. ("Chugach Fisheries") is a corporation organized under the laws of the State of Alaska, and is a wholly owned subsidiary of CAC. Chugach Fisheries is engaged in the seafood industry, including the processing, canning and marketing of seafood taken from the waters in and around Prince William Sound, the Gulf of Alaska, Kodiak and the Lower Kenai Peninsula polluted by the EXXON VALDEZ oil spill.

10. BERING DEVELOPMENT CORPORATION ("BDC"), a corporation organized under the laws of the State of Alaska, is a wholly owned subsidiary of CAC and Chugach Development, each of which owns 50% of BDC's stock. BDC is engaged in the business of the commercial exploitation of coal and other minerals and resources on, in, and under the lands held by CAC damaged by the EXXON VALDEZ oil spill.

11. CHENEGA CORPORATION ("Chenega") is a Native village corporation incorporated under the laws of the State of Alaska pursuant to ANCSA. Chenega, pursuant to ANCSA, holds the right, title interest in or entitlement to the surface estate of approxi-

mately 76,093 acres of land in Alaska, including lands in the area in and around Prince William Sound damaged by the EXXON VALDEZ oil spill. Chenega's shareholders are primarily Native residents (as that term is defined in § 8(a)), including survivors and descendants of the survivors of Chenega now relocated to Chenega Bay whose history, culture, values and family life arose in and are tied to Chenega (hereafter also referred to as "Natives" or "Native Alaskans"). Over 70 percent of the lands and property interests therein owned by, selected by, or withdrawn for Chenega, have been impacted by the Exxon Valdez oil spill.

12. CHN, INC. ("CHN") is a corporation organized under the laws of the State of Alaska and is a wholly owned subsidiary of Chenega. CHN holds timber harvesting rights to, and is engaged in the sale of timber from the area in and around Prince William Sound damaged by the EXXON VALDEZ oil spill.

13. PORT GRAHAM CORPORATION ("Port Graham") is a Native village corporation incorporated under the laws of the State of Alaska, pursuant to ANCSA. Port Graham, pursuant to ANCSA, holds the right, title, interest in or entitlement to the surface estate of approximately 111,642 acres of land in Alaska, including lands in and around the Gulf of Alaska, the Kenai Fjords National Park and Cook Inlet damaged by the EXXON VALDEZ oil spill. Port Graham owns a fish processing facility in the Village of Port Graham and is also engaged in the harvesting and marketing of timber. Port Graham's shareholders are primarily Native residents (as that term is used in § 8(a) of ANCSA) of Port Graham whose history, culture,

values and family life are tied to Port Graham (hereafter also referred to as "Natives" or "Native Alaskans"). Approximately 400 miles of ocean front property interests owned by, selected by, or withdrawn for Port Graham corporation have been impacted by the Exxon Valdez oil spill.

14. PORT GRAHAM DEVELOPMENT CORPORATION ("PGDC") is a corporation organized and existing under the laws of the State of Alaska. PGDC is engaged in a retail store business and a fuel sale business. Its customers include the residents of Port Graham as well as the seasonal commercial fishing fleet, processors, employees, tourists and visitors to Port Graham. PGDC's businesses have been damaged by the EXXON VALDEZ oil spill.

15. The ENGLISH BAY CORPORATION ("English Bay") is a Native Village Corporation organized under the laws of the State of Alaska pursuant to ANCSA. English Bay holds, pursuant to ANCSA, the right, title or interest in the surface estate of approximately 70,000 acres of land in Alaska, including lands in and around the Gulf of Alaska, the Kenai Fjords National Park and Cook Inlet. At present, approximately 400 miles of shoreline property owned by English Bay, including the environmentally sensitive and previously pristine Kenai Fjords, have been impacted by the EXXON VALDEZ oil spill. English Bay is engaged in the oversight of logging operations and potential land development. English Bay shareholders are primarily native residents (as the term is used in Section 8(a) of ANCSA) of English Bay (hereafter also referred to as "Natives" or "Native Alaskans").

16. THE TATITLEK CORPORATION ("Tatitlek") is a Native village corporation organized under the laws of the State of Alaska. Tatitlek holds the right, title or interest in or entitlement to the surface estate of approximately 137,248 acres of land in Alaska, including lands in the area in and around Prince William Sound damaged by the EXXON VALDEZ oil spill. Tatitlek shareholders are primarily Native residents of Tatitlek or descendants or heirs thereof (hereafter also referred to as "Natives" or "Native Alaskans").

17. THE EYAK CORPORATION ("Eyak") is a Native village corporation organized under the laws of the State of Alaska. Eyak holds the right, title interest in or entitlement to the surface estate of approximately 148,730 acres of land in Alaska, including lands in the area in and around Prince William Sound damaged by the EXXON VALDEZ oil spill. Eyak shareholders are primarily Native residents of Eyak or descendants or heirs thereof (hereafter also referred to as "Natives" or "Native Alaskans").

18. EYAK DEVELOPMENT, INC. ("Eyak Development") is a corporation organized and existing under laws of the State of Alaska and is a wholly owned subsidiary of Eyak. Eyak Development is principally engaged in two businesses: (i) operating a marina and warehousing storage facility in Prince William Sound and (ii) owning and operating a trailer court in Cordova, which activities have been damaged by the EXXON VALDEZ oil spill.

19. EYAK TIMBER, INC. ("Eyak Timber") is a corporation organized and existing under the laws of the State of Alaska and is

a wholly owned subsidiary of Eyak. Eyak Timber is engaged in the business of harvesting and marketing timber situated on lands owned by Eyak and others throughout the coastal area of South Central Alaska damaged by the EXXON VALDEZ oil spill.

20. The Native regional corporation, the Native village corporations and their subsidiaries referred to in paragraphs 5 through 19 have paid their biennial corporation tax last due and have filed their biennial reports for the last reporting period and are in all ways capable of bringing and maintaining this action.

21. CAC and the Native village corporations named above have selected and own, or have selected and/or conveyed and will own and hold, use and develop, lands together with the appurtenant resources, for the express purposes of improving and promoting the social and economic well-being of their Native shareholders, and of protecting the traditional values, customs and rights of such shareholders who rely upon, use and benefit from the said lands and natural resources. In that regard, much of said lands of the Native corporations has significant historical, cultural and archaeological importance.

22. In addition, CAC and the Native village corporations named above are the owners of riparian interests and hold direct and substantial interests in and to the natural resources appurtenant to and adjacent to the lands Plaintiffs own, have selected, or to which Plaintiffs are entitled. Plaintiffs' shareholders, or some of them, rely to varying degrees upon the wild, renewable resources taken for personal or family consumption, such as food,

lodging, resources, clothing and tools, or for making and selling handicraft articles out of byproducts from natural resources taken for consumption. The natural resources owned, held, and/or in which the Plaintiff corporations have substantial interest, have been damaged and impaired by the EXXON VALDEZ oil spill.

23. The Native village corporations named above, either directly or through wholly owned subsidiaries, are also engaged in the business management of the lands and natural resources they own, have selected, or to which they are entitled, and in various businesses related to and dependent upon the natural resources of the area damaged by the oil spilled from the EXXON VALDEZ. These activities include, but are not limited to, the following: (i) ownership and/or operation of fish processing facilities for the canning and/or preservation of seafood taken from the waters in and around Prince William Sound; (ii) ownership and operation of marinas and camping facilities; (iii) ownership and management of real estate; (iv) sale, lease and/or logging of timber situated on the lands they own or lease; (v) commercial exploitation of other forest and wood products; and (vi) other income generating activities relating to their property (including, but not limited to, the promotion of tourism), all for the social and economic benefit of their Native shareholders.

FACTUAL ALLEGATIONS

24. The M/V EXXON VALDEZ ("EXXON VALDEZ") is a 987 foot very large crude carrier ("VLCC") of 211,469 deadweight tons (dwt) built in 1986 by the National Steel and Shipbuilding Co. of San

Diego, California and owned and is operated by Exxon Shipping Co. On or about March 23, 1989, the EXXON VALDEZ loaded at Valdez, Alaska approximately 62 million gallons of crude oil that had been transported through the Trans-Alaska Pipeline.

25. The oil terminal in Valdez, Alaska, at which the EXXON VALDEZ was loaded, is owned by Alyeska Pipeline Company. The terminal is a facility of the Trans-Alaska Pipeline.

26. At approximately 9:30 p.m. on March 23, 1989, the fully laden EXXON VALDEZ departed the Port of Valdez. The EXXON VALDEZ entered Prince William Sound and successfully navigated the Valdez Narrows.

27. At approximately 12:04 a.m. on March 24, 1989, the vessel ran aground on Bligh Reef, a well-known, charted and buoyed hazard in Prince William Sound.

28. By reason of the aforesaid, the hull of the EXXON VALDEZ was breached in several places and enormous quantities of crude oil were discharged into the waters of Prince William Sound, thereby polluting the same and the places to which it was carried by the forces of wind and current, and physically touched and polluted lands owned by Plaintiffs, or some of them. Said cargo of crude oil laden on board the EXXON VALDEZ was known by the State of Alaska to be capable of floating a long period of time and polluting the sea and causing widespread ecological and economic harm wherever deposited on shore by force of wind and current and was, accordingly, a dangerous and/or potentially harmful substance.

29. As a result of the said grounding and consequent escape and continuous leakage of the vessel's crude oil cargo into the waters of Prince William Sound, said waters, together with the shores of islands within Prince William Sound and along the Lower Kenai Peninsula, Kodiak and the Gulf of Alaska owned, occupied or used by Plaintiffs, their Native shareholders and public and private fisheries and other public and private institutions and enterprises were, and continue to be, damaged or threatened by serious oil pollution to the detriment of Plaintiffs and many of their Native shareholders, inhabitants and local authorities.

CLAIM FOR RELIEF
(Negligence)

30. Plaintiffs reallege paragraphs 1 through 29 of this complaint and all allegations contained therein.

31. Alaska Statutes § 46.04.030 and Alaska Administrative Code Title 18 Article 4 made the State of Alaska's approval of an oil spill contingency plan a prerequisite to the operation of the Valdez oil terminal facility. In connection with its obligation, pursuant to these provisions of Alaska law, the State of Alaska was required to make a determination regarding approval of a contingency plan and to monitor performance under said plan.

32. The oil spill response plan of the Alyeska Pipeline Company ("Alyeska") for Prince William Sound (hereinafter "Contingency Plan") was submitted by Alyeska to the State of Alaska for its review and approval, including the submission for review and approval by the State of Alaska of all amendments or modifications of the Contingency Plan.

33. On October 23, 1989, Alyeska, Amerada Hess Pipeline Corporation, Arco Pipeline Company, BP Pipelines (Alaska) Inc., Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation and Unocal Pipeline Company filed their answer and counterclaim to the complaint filed by the State of Alaska in an action pending in this Court, Case No. 3AN-89-6852. In the counterclaim, the counterclaimants alleged, inter alia, that:

the [State of Alaska] approved the Contingency Plan, including the Prince William Sound Contingency Plan and was deeply involved in, and exercised substantial control over, the efforts of Alyeska and other persons to contain and clean up the spill. To the extent that the [State of Alaska's] conduct in these or other areas caused, exacerbated or failed to mitigate the damages complained of and for which [the State of Alaska] or other plaintiffs in other cases seek relief from [counterclaimants], the [defendant] is liable to [counterclaimants] by way of indemnification and contribution of [counterclaimants] are required to pay any damages arising out of any lawsuit or proceeding to which [counterclaimants] are or will be made a party.

Id. at 23.

34. On October 23, 1989, Exxon Shipping Company filed its Answer and Counterclaim to the complaint filed by the State of Alaska in Case No. 3AN-89-6852. In its counterclaim, Exxon Shipping Company alleged, inter alia:

As a proximate result of the State's conduct, Exxon Shipping has suffered damage, in an amount according to proof, in that:

(a) it has been required to expend funds for cleanup greatly in excess of what would otherwise have been required;

(b) it has paid claims for damages by persons and entities who, but for the State's negligence or wrongful conduct as alleged herein, would have suffered no injury from the oil spill;

(c) it has been and is exposed to claims by persons and entities whose damages resulted in part from, or were increased by, the State's negligence or wrongful conduct, and for whose claims the state in justice and equity should be part responsible.

Id. at 34-35.

35. On October 23, 1989, Exxon Corporation filed its Answer and Counterclaim to the complaint filed by the State of Alaska in No. 3AN-89-6852. In its Counterclaim, Exxon Corporation alleged, inter alia:

As a proximate result of the State's conduct, Exxon Shipping has suffered damage, in an amount according to proof, in that:

(a) it has been required to expend funds for cleanup greatly in excess of what would otherwise have been required;

(b) it has been exposed to claims for damages by persons and entities who, but for the State's negligence or wrongful conduct as alleged herein, would have suffered no injury from the oil spill;

(c) it has been and is exposed to claims by persons and entities whose damages resulted in part from, or were increased by, the State's negligence or wrongful conduct, and for whose claims the state in justice and equity should be part responsible.

Id. at 32.

36. The matters hereinafter set forth in paragraphs 37 through 47, inclusive, relating to the State of Alaska's alleged negligent or tortious conduct which allegedly proximately caused or otherwise contributed to Plaintiffs' injuries or damages are solely

and expressly premised upon, and asserted herein, only if and to the extent that the above-quoted allegations and claims by Alyeska, Exxon Corporation or Exxon Shipping Company are true or correct.

37. In reviewing, approving and/or enforcing the Contingency Plan and its amendments and modifications, the State of Alaska undertook a duty to Plaintiffs, upon which Plaintiffs reasonably relied, to use due care and reasonable effort to see to it that such Contingency Plan, and its implementation and enforcement, would be adequate and sufficient to effectively respond to oil spills in Prince William Sound.

38. The State of Alaska knew, should have known or was reckless in not knowing that unless Alyeska's Contingency Plan was adequate and sufficient to effectively respond to oil spills in Prince William Sound, Plaintiffs would be damaged in the event of such a spill.

39. During the course of its reviews of Alyeska's Contingency Plan, including the amendments and modifications to the Plan, the State of Alaska knew, should have known, or was reckless in not knowing that the Contingency Plan and/or its implementation was inadequate and insufficient to effectively respond to oil spills in Prince William Sound, especially to an oil spill of the nature and size that occurred on March 24, 1989.

40. The State of Alaska's approvals of the Contingency Plan, and its reviews and analyses of such Plan, were conducted negligently and carelessly and were insufficient to protect Plaintiffs from the foreseeable risk of substantial harm resulting

from an oil spill in Prince William Sound. Moreover, Plaintiffs reasonably relied, to their detriment, upon said undertakings by the State of Alaska.

41. If the State of Alaska had not been negligent and careless, as aforesaid, Plaintiffs would not have been damaged by the EXXON VALDEZ oil spill on March 24, 1989 or the resulting oil spill damages suffered by Plaintiffs would have been substantially reduced.

42. After the EXXON VALDEZ oil spill on March 24, 1989, the State of Alaska undertook responsibility to coordinate and, to some extent, supervise certain oil spill clean-up efforts in the Prince William Sound area.

43. The State of Alaska's oil spill clean-up efforts, and its supervision of oil spill clean-up efforts, were performed negligently, carelessly and in an unreasonable manner.

44. The State of Alaska's wrongful and tortious conduct exacerbated and increased Plaintiffs' damages.

45. Had the State of Alaska performed its oil spill clean-up efforts in a careful and reasonable manner, Plaintiffs' damages would have been substantially reduced.

46. The State of Alaska knew, should have known or was reckless in not knowing that the negligent performance of its duties and responsibilities in conducting and supervising oil spill clean-up activities from and after March 24, 1989 would increase and exacerbate Plaintiffs' damages.

47. As a direct and proximate result of the State of Alaska's negligent and wrongful conduct, Plaintiffs have suffered substantial damages, which are continuing.

PRAYER FOR RELIEF

WHEREFORE, each Plaintiff prays for judgment as against Defendant State of Alaska and in favor of each Plaintiff for:

(a) damages for physical harm to each Plaintiff's property and its direct and indirect economic losses, including, but not limited to, restoration of resources, loss of profits, loss of use, loss of benefits, lost opportunities, diminution in value, loss of productivity and such other damages as may be proved at trial;

(b) damages due to the inability of each Plaintiff to preserve, protect and develop the resources on the lands owned by each of them for each Plaintiff's own benefit and that of each Plaintiff's Native shareholders;

(c) subsistence damages of each Plaintiff's Native shareholders only to the extent not recovered in any related action brought individually or on behalf of a class of Native Alaskans;

(d) environmental damages including, but not limited to, all costs of the clean up and the creation of a fund to monitor the environment and ecology in the impacted area and to restore it to its pre-spill state;

(e) damages to Plaintiffs' historical and cultural sites and resources, located both on Plaintiffs' lands and elsewhere in the Prince William Sound Area, including damage caused by

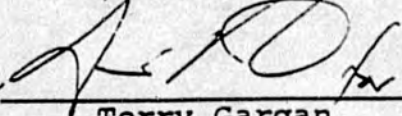
vandalism, looting and physical and other injuries to archaeological sites, properties, artifacts, cemeteries, and gravesites having unique and irreplaceable cultural, historical and other value to Plaintiffs and their Native shareholders; and

(f) the costs and disbursements of this action and such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this _____ day of _____, 1991.

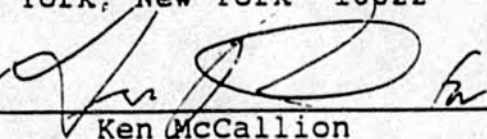
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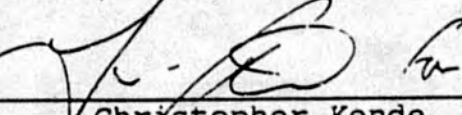
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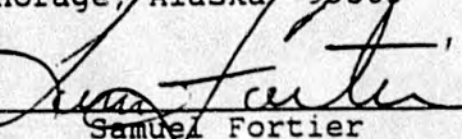
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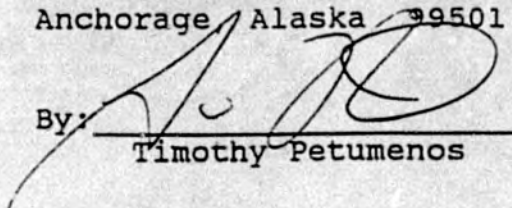
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT W. MUSSER,

Plaintiff,

vs.

EXXON CORPORATION, a New
Jersey corporation, EXXON
SHIPPING COMPANY, a
Delaware corporation,
ALYESKA PIPELINE SERVICE CO.,
a Delaware Corporation,
B.P. PIPE LINES (ALASKA) INC.,
MOBIL ALASKA
PIPELINE CO., INC., EXXON
PIPELINE CO., INC., ARCO PIPE
LINE COMPANY; UNION ALASKA
PIPELINE CO. INC., PHILLIPS
ALASKA PIPELINE CO., INC.,
AMERDA HEES PIPELINE CORPORA-
TION; VECO INTERNATIONAL, INC.,
STATE OF ALASKA, DEPARTMENT OF
ENVIRONMENTAL CONSERVATION; and
JOHN DOES I through XX,

Defendants.

Case No. 91-2424

FILED
STATE OF ALASKA
JUDICIAL DISTRICT
ANCHORAGE
MAY 26 PM 1:50
CLERK OF COURT
B. J. JONES

COMPLAINT

SUMMARY

This is a suit for compensatory and punitive damages arising from the EXXON VALDEZ oil spill in coastal waters of Alaska, and from negligent and tortious conduct engaged in by certain defendants both before and after the oil spill. Plaintiff is an Alaskan resident who owns property in Resurrection Bay. The property which plaintiff owns and the

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setting in which it is located has been directly damaged by the oil spill and defendants' tortious conduct.

JURISDICTION AND VENUE

Comes now PLAINTIFF Robert W. Musser, Pro Se, and alleges and complains as follows:

1. The claims asserted herein arise out of the March 24, 1989 grounding of the EXXON VALDEZ and the resulting oil spill. Plaintiff's claims herein arise under various Alaska statutes and Alaska common law.

2. Subject matter jurisdiction is proper under AS 22.10.020(a).

3. All defendants either transact business in or have sufficient contacts with the State of Alaska such that they are subject to the personal jurisdiction of this court.

4. Venue is proper in the Third Judicial District at Anchorage pursuant to Alaska Civil Rule 3(c) because the claims arose in the Third Judicial District.

5. Defendant, State of Alaska, Department of Environmental conservation is an agency of the State of Alaska. It is subject to suit pursuant to AS 09.50.250..

6. Plaintiff Robert W. Musser, is an Alaska resident who is a land owner in Resurrection Bay, Alaska.

7. Defendant Exxon Corporation ("Exxon Corp.") is a corporation organized under the laws of the State of New

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Jersey, that maintains its principal place of business in New York, New York. Through its subsidiaries and divisions, Exxon Corp. engages, among other things, in all phases and aspects of petroleum exploration, development, transportation, refining and marketing. It is an owner and/or operator of the EXXON VALDEZ, and it owned or controlled the crude oil cargo carried on the EXXON VALDEZ at the time the vessel discharged a substantial volume of its crude oil cargo into Prince William Sound and the Gulf of Alaska costal waters on or about March 24, 1989.

8. Defendant Exxon Shipping company ("Exxon Shipping"), a Delaware corporation, is a wholly-owned subsidiary of defendant Exxon Corporation. It maintains its principal place of business in Houston, Texas. Exxon Shipping is an owner and/or operator of the EXXON VALDEZ, and it owned or controlled the crude oil cargo carried on the EXXON VALDEZ at the time the vessel discharged a substantial volume of its crude oil cargo into Prince William Sound on or about March 24, 1989.

9. At all material times, Exxon Corp. was the corporate parent of Exxon Shipping, and owned all of Exxon Shipping's stock. Exxon Corp. so dominated and controlled Exxon Shipping as to render it liable for the conduct of Exxon Shipping as more fully described below.

10. Defendants Exxon Corp. and Exxon Shipping are

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collectively referred to herein as "the Exxon defendants."

11. Defendant Alyeska Pipeline Service company ("Alyeska") is a Delaware corporation with its principal place of business in Alaska. By and through the Alyeska Owners' committee, Alyeska is owned and controlled by subsidiaries of seven major oil companies, including Exxon, as more fully described below ("the Alyeska Owners"). Alyeska operates the Trans-Alaska Pipeline System ("TAPS") and the shipping terminal facilities at the Port of Valdez, Alaska. Alyeska was formed by its owner companies to act as their agent in the construction, operation and maintenance of TAPS and the terminal facility at the Port of Valdez. Alyeska was responsible and otherwise assumed responsibility to the public, including plaintiff, for formulation an oil spill contingency plan and maintaining adequate personnel and equipment to fulfill the obligations and undertakings of that plan for emergency response to spills in Prince William Sound, including the coordination of cleanup activities.

12. Defendant BP Pipelines (Alaska) Inc. ("BP") is a Delaware corporation with its principal place of business in Cleveland, Ohio. BP is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' committee.

13. Defendant ARCO Pipe Line Company ("ARCO") is a Delaware corporation with its principal place of business in

Independence, Kansas. ARCO is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' committee.

14. Defendant Mobil Alaska Pipeline Company ("Mobil") is a Delaware corporation with its principal place of business in Dallas, Texas. Mobil is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' Committee.

15. Defendant Exxon Pipeline Co., Inc. ("Exxon Pipeline") is a Delaware corporation with its principal place of business in Houston, Texas. Exxon Pipeline is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owner's Committee.

16. Defendant Unocal Pipeline Company ("Unocal") is a Delaware corporation with its principal place of business in Los Angeles, California. Unocal is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' Committee.

17. Defendant Phillips Alaska Pipeline Co., Inc. ("Phillips") is a Delaware corporation with its principal place of business in Bartlesville, Oklahoma. Phillips is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' committee.

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18. Defendant Amerada Hess Pipeline Corporation ("Amerada Hess") is a Delaware corporation with its principal place of business in Woodbridge, New Jersey. Amerada Hess is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' Committee.

19. The Alyeska owners so dominated and controlled Alyeska as to render them liable for the conduct of Alyeska as more fully described below.

20. Defendants Alyeska, BP, ARCO, Exxon Pipeline, Mobil, Unocal, Phillips, and Amerada Hess are collectively referred to herein as "the Alyeska defendants."

21. Defendant, VECO INTERNATIONAL, INC., a Delaware corporation, was contracted by Alyeska, staffed and supervised the clean-up in Resurrection Bay, Alaska.

22. Defendant, State of Alaska, Department of Environmental Conservation is an agency of the State of Alaska. It is subject to suit pursuant to AS 09.50.250..

LEGAL AND FACTUAL ALLEGATIONS

23. On or about March 23, 1989 the vessel EXXON VALDEZ took aboard a load of approximately 53 million gallons of crude oil at the southern terminus of the TAPS at Valdez, Alaska. This oil had been transported through the TAPS

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prior to being loaded onto the EXXON VALDEZ.

24. After the EXXON VALDEZ departed from the terminus, the vessel was negligently, grossly negligently and/or recklessly caused or allowed to collide with a known, chartered, buoyed undersea navigational hazard (Bligh Reef) located in Prince William Sound, on or about March 24, 1989.

25. As a result of the Exxon defendants' negligent, grossly negligent and/or reckless conduct, some of the cargo tanks of the EXXON VALDEZ were ruptured upon its grounding upon bligh Reef and/or upon subsequent efforts to dislodge the vessel.

26. Eleven of the EXXON VALDEZ's tanks were ruptured by either the initial grounding or the subsequent efforts to dislodge the vessel from Bligh Reef, causing the largest oil spill in United States history. Approximately 11 million gallons of crude oil spilled into Prince William Sound from the EXXON VALDEZ.

27. Other negligent, grossly negligent and/or reckless acts and omissions of defendants further contributed to the entry of oil upon and into the waters of Prince William Sound and Gulf of Alaska (Resurrection Bay) and subsurface and surface lands. The acts and omissions include, but are not limited to, manning the EXXON VALDEZ with an inadequate and unqualified crew; failing to respond to the oil spill in a timely manner; failing to maintain sufficient equipment

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and trained personnel to prevent released oil from spreading from the wrecked vessel; failing to maintain in working order vessels necessary to haul cleanup and containment equipment to the area of the spill; and otherwise failing to respond promptly and effectively.

28. Defendants Alyeska and Exxon were required by statute and regulation and ordinary prudence to be in a state of preparedness to implement a contingency plan in the event of an oil spill. Alyeska and Exxon unduly delayed in responding to the oil spill; failed to have proper personnel and equipment on hand; and failed to take prompt and adequate steps to contain and recover the oil after the spill occurred.

29. As a result of the negligent, grossly negligent and/or reckless acts and omissions by defendants, adequate containment and cleanup equipment and personnel did not reach the area of the spill when needed, thereby materially compounding the harm arising from the release of oil.

30. The crude oil released from the EXXON VALDEZ into and upon Prince William Sound and the Gulf of Alaska has polluted and will continue to pollute waters and subsurface and surface lands containing fish, shell fish and other marine life, damaging the ocean ecosystem.

31. After the oil was released, large quantities of crude oil were moved by the prevailing winds and currents to

various parts of Prince William Sound and into the Gulf of Alaska. Eventually, the oil spread along the Kenai Peninsula and the Kenai Fiords National Park, and to the Islands in Resurrection Bay.

FIRST CLAIM FOR RELIEF

Violation of Chapter 3 of Title 46 of the Alaska Statutes

32. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

33. Oil, including the approximately 11 million gallons of crude oil which was released as a result of the grounding and rupture of the EXXON VALDEZ's oil tanks, is a hazardous substance, as that term is defined in AS 46.03.826(4) (B) and (5) of the Alaska Environmental Conservation Act.

34. The Exxon defendants possessed no permit for the release of the approximately 11 million gallons of crude oil which spilled from the EXXON VALDEZ on March 24, 1989 into and upon the waters and subsurface lands of Prince William' sound and other areas of the State of Alaska.

35. The Exxon defendants owned and/or had control over the oil which was released in and on the waters and subsurface lands of Prince William sound and other areas of the State.

36. Pursuant to AS 46.03.822, the Exxon defendants are

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jointly and severally strictly liable to plaintiff, without regard to fault, for all damages to plaintiff as a result of the March 24, 1989 release of oil from the EXXON VALDEZ, including, but not limited to, injury or loss to real and personal property, loss of revenue, loss of economic benefits, loss of business opportunities and loss of future profits, as provided in AS 46.03.826(2) and (6), in amounts to be proven at trial.

SECOND CLAIM FOR RELIEF

Strict Liability for Ultra Hazardous Activity

37. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above, and further alleges that defendants have absolute and strict liability to plaintiff under 519-524 of the Restatement (Second) of Torts and Alaska law.

38. At all relevant times, the transport of oil through the Prince William Sound area was abnormally dangerous within the meaning of the Restatement (Second) of Torts 520, and Alaska law, because (a) this transport involved a high degree of risk of serious harm to the environment, and to the persons, land, and chattels of others, including plaintiff; (b) this high risk could not and cannot be eliminated even with the exercise of reasonable care; (c) defendants' method of oil transport was

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inappropriate to the Valdez Harbor-Prince William Sound area; (d) this method was not a matter of common usage; (e) and there was a likelihood that the harm resulting from defendants' method of transport would be great.

39. As a direct and proximate result of defendants' undertaking of the above-described ultra hazardous activity, plaintiff has suffered and will continue to suffer financial and economic loss, and irreparable pollution and contamination to the ecosystem, natural resources, and shore line upon which the plaintiff depends for its business, economic opportunity, and future earning capacity, and is entitled to damages and other relief for same regardless of defendants' fault.

THIRD CLAIM FOR RELIEF

Negligence of Exxon Defendants

40. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

41. At all times relevant, the Exxon defendants owed a duty of care to plaintiff to ensure that reasonable measures would be taken to safely transport and handle crude oil in Prince William Sound.

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42. The Exxon defendants breached that duty by their actions and omissions, including without limitation the following:

(a) The negligent navigation of the EXXON VALDEZ within the privity and knowledge of the Exxon defendants into a known, charted and buoyed navigational hazard (Bligh Reef) outside the designated shipping lanes;

(b) The inadequate manning of the EXXON VALDEZ, including but not limited to the failure of the Exxon defendants to ensure properly against the operation of Exxon vessels and the EXXON VALDEZ by persons impaired by alcohol or other substances, and their failure to ensure properly the continuing qualification of the Master of the EXXON VALDEZ and/or his ability to command and control the vessel in light of his known alcohol abuse problem or to ensure the presence on board the EXXON VALDEZ of another qualified officer licensed to navigate Prince William Sound to replace the Captain (Hazelwood) in the event of his incapacity to command the vessel;

(c) The negligent entrustment by the Exxon defendants of the EXXON VALDEZ to Captain Hazelwood;

(d) The use or allowance of use by the Exxon defendants of unsafe and improper methods of marine transport in transporting petroleum products through the Port of Valdez and Prince William Sound;

(e) The failure by the Exxon defendants to ensure

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properly the suitability of the EXXON VALDEZ for the particular purpose of transporting crude oil in the Prince William Sound;

(f) The failure by the Exxon defendants to prepare adequately for, respond to, contain, and clean up the oil spill from the EXXON VALDEZ; and

(g) The failure by the Exxon defendants, after they had announced their assumption of all cleanup responsibilities subsequently to the oil spill, to take immediate, necessary, and reasonable steps to contain and mitigate the effects thereof.

43. The foregoing actions, among others, constituted negligence within the privity and knowledge of the Exxon defendants.

44. The aforesaid negligent conduct of the Exxon defendants has proximately caused damage to the plaintiff herein, and these damages are continuing.

FOURTH CLAIM FOR RELIEF

Negligence of Alyeska Defendants

45. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

46. The Alyeska defendants undertook to plan for and to provide sufficient personnel and material to respond promptly to, contain and clean up an oil spill in Prince

William Sound before it caused damage.

47. At all times relevant herein, the Alyeska defendants had the duty and responsibility to plaintiff and to others to prevent oil pollution of the Prince William Sound and other areas of Alaska. They also had duties, responsibilities and authority to prevent oil spilled from tankers transporting crude oil from Port Valdez from causing pollution damage and to clean up and remove all oil in such a way as to prevent or minimize any damage to plaintiff. The Alyeska defendants repeated acknowledgements of these duties and responsibilities, in public records and reports, were critical factors in obtaining agreement by various state and local authorities to the use of the Port of Valdez and Prince William Sound for the transport of oil flowing through TAPS.

48. The Alyeska defendants knew, had reason to know or were reckless in not knowing that a spill of catastrophic proportions could occur in Prince William Sound. Further, the Alyeska defendants knew, had reason to know or were reckless in not knowing of the tide, current, and weather conditions in the Gulf of Alaska and Prince William Sound and the existence of reefs, rocks, and other dangerous conditions and hazards to navigation which they knew, should have known or were reckless in not knowing could result in the grounding of a very large crude carrier like the EXXON VALDEZ. Notwithstanding the foregoing, the Alyeska

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defendants negligently and recklessly failed to act properly, reasonably and effectively to prevent pollution and to clean up spilled oil so as to prevent or minimize the damage to plaintiff in at least the following manners:

(a) The Alyeska defendants negligently, recklessly and improperly failed to have in place the equipment and personnel necessary for responding to a spill in a prompt and effective manner that would prevent or minimize damage to areas of special economic and environmental importance;

(b) The Alyeska defendants negligently, recklessly and improperly failed to provide for prompt and efficient mobilization of public and private employees, entities and resources to combat oil spills and potential pollution and to prevent pollution of those areas of special economic and environmental importance; and

(c) The Alyeska defendants negligently, recklessly and improperly failed to prevent or minimize the effects of pollution.

49. The negligent, reckless and improper acts of the Alyeska defendants described above, caused and contributed to oil pollution damage; aggravated, exacerbated and prolonged the effects of such oil pollution; and proximately caused the damages suffered by plaintiff herein, which are continuing.

FIFTH CLAIM FOR RELIEF

Negligence - State of Alaska

50. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

51. The State of Alaska, Department of Environmental conservation is responsible under A.S. 46.04.020 for approving, directing or undertaking immediate containment or cleanup activities in the event of an oil spill.

52. The State of Alaska, Department of Environmental Conservation is responsible under A.S. 46.04.030 for reviewing and approving oil discharge contingency plans.

53. The State of Alaska, Department of Environmental Conservation is responsible under A.S. 46.04.060 for inspecting oil terminal facilities and tank vessels.

54. The State of Alaska, Department of Environmental Conservation is responsible under A.S. 46.04.080 for emergency action in the event of a catastrophic oil discharge.

55. The State of Alaska, Department of Environmental conservation is responsible under A.S. 47.09.020 for coordinating, directing or undertaking the containment or cleanup of oil spills.

56. The State of Alaska, Department of Environmental Conservation is responsible under A.S. 46.03.865 for issuing

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an order declaring an emergency when it finds that the discharge of oil or other hazardous substances poses an immediate threat to the public health or welfare or the environment of the state directing a person or persons to take action necessary to meet the emergency.

57. The State of Alaska, Department of Environmental Conservation is responsible under A.S. 46.04.090 for contracting for or establishing and maintaining cleanup personnel, equipment and supplies necessary for cleanup of oil discharge at ports, harbors or other locations.

58. The State of Alaska, Department of Environmental Conservation failed to meet its responsibilities under the above cited statutes on March 24, 1989 and in the days following the grounding of the Exxon Valdez, resulting in damages to the Plaintiff in amounts to be proved at trial.

SIXTH CLAIM FOR RELIEF

Gross Negligence and Recklessness

59. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

60. Defendants' actions constitute gross negligence and recklessness.

61. As a result of Defendants' gross negligence and recklessness Plaintiff has been damaged in amounts to be determined at trial.

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SEVENTH CLAIM FOR RELIEF

Negligence and Trespass

62. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

63. The defendant VECO INTERNATIONAL, used Sunny Cove, at Fox Island, in Resurrection Bay, where the Plaintiff's land is located as a staging area and anchorage for spill clean up boats and booms. This was done without consent or protection of shoreline and further damaged the area by doing so.

EIGHTH CLAIM FOR RELIEF

Private Nuisance

64. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

65. The conduct of defendants herein has resulted in a private nuisance which has injuriously affected the business and personal enjoyment by plaintiff in Prince William Sound and Resurrection Bay, Alaska, for which he is entitled to damages under AS 9.45.230.

66. Plaintiff has suffered injury as previously alleged with damages in amounts to be proven at trial.

NINTH CLAIM FOR RELIEF

Punitive Damages

67. The defendant's actions as alleged herein were willful, wanton, malicious, outrageous and were undertaken in deliberate disregard of, or with reckless indifference to, the rights and interests of plaintiff thereby entitling plaintiff an award of punitive damages.

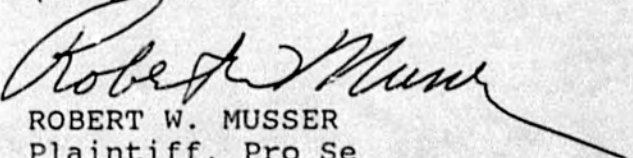
WHEREFORE plaintiff prays for the following relief:

1. A judgement against defendants in an amount in excess of \$100,000.00, the exact amount to be proven at trial.
2. An award of punitive damages as appropriate.
3. An award of fees and costs.
4. An award of prejudgment interest.
5. Such other relief as the court deems just.

PLAINTIFF REQUESTS A JURY TRIAL IN THIS ACTION.

DATED this ____ day of March, 1991.

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(907) 345-2605


ROBERT W. MUSSER
Plaintiff, Pro Se

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12

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FILED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT
ANCHORAGE
JUN 25 PM 2:34
CLERK JAMES COOK

Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

CI SEAFOOD INC. and TOKYO)
CHOKUHAN CO. LTD.,)

Plaintiffs,)

vs.)

EXXON CORPORATION, JOSEPH)
HAZELWOOD, EXXON SHIPPING)
COMPANY, GEORGE NELSON,)
ALYESKA PIPELINE SERVICE)
COMPANY, EDWARD MURPHY and)
STATE OF ALASKA,)

Defendants.)

Case No. 3AN-91- 2440 CIVIL

EXXON VALDEZ OIL SPILL LITIGATION

AMENDED COMPLAINT

COME NOW, the Plaintiffs, by and through their attorneys, CHARLES W. COE, and BELLI, BELLI, BROWN, MONZIO, FABBRO & ZAKARIA, who hereby allege as their cause of action as follows:

Amended Complaint

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I

Plaintiffs are corporations engaged in the business of commercial wholesale/resale retail sales of fish caught in Alaskan waters in the Prince William Sound, Kodiak and Cook Inlet areas. Plaintiffs primarily sell the product in the northwest area of the United States and Japan.

II

Defendant Exxon Corporation is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, New York 10020. Exxon Corporation is engaged in the business of operating petroleum companies through its subsidiaries and divisions in the State of Alaska and is an owner and operator of the vessel known as the "Exxon Valdez."

III

Defendant Exxon Shipping Company is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 811 Dallas Avenue, Houston, Texas 77002. Exxon Shipping Company, a subsidiary of Exxon Corporation, is the registered owner of the vessel "Exxon Valdez" and operated the "Exxon Valdez" in the waters of Prince William Sound on or about March 24, 1989. Defendant Joseph Hazelwood was an employee of Defendant Exxon Shipping Company at the time this accident subject of this complaint occurred.

IV

Defendant Alyeska Pipeline Service Company is a company

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organized under laws outside the State of Alaska but which has its primary place of business in the State of Alaska. Defendant George Nelson is an Alaska resident who acted as president and director of Alyeska Pipeline Service Company in Alaska. Defendant Edward Murphy is an Alaska resident. Defendant State of Alaska works through its employees and agencies, which formulate and monitor oil spill recovery plans in the State of Alaska. All defendants are engaged in substantial and not isolated activities in the State of Alaska.

FACTS

V

On Thursday evening, March 23, 1989, the "Exxon Valdez," owned and operated by Defendants Exxon Corporation and Exxon Shipping Company (collectively the "Exxon Defendants"), was a 98-foot tanker weighing 211,000 deadweight tons with an oil cargo and bunker fuel, left the port of Valdez, Alaska in Prince William Sound, the southern terminal facility of the Trans-Alaska Pipeline System, bound for Long Beach, California.

VI

The tanker's twelve oil tanks were filled to capacity with approximately 1.2 million barrels of crude oil, which had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline via Alyeska Pipeline Service Company.

VII

The "Exxon Valdez" passed through the harbor and Valdez Narrows under the command of the harbor pilot, Defendant Edward

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Murphy. Defendant Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of the Exxon Defendants, was on the bridge of the ship when the harbor pilot, Edward Murphy, disembarked at the southern end of the Narrows at approximately 11:30 Friday morning, March 24, 1989. Captain Hazelwood was under the influence of alcohol while he was in command of the vessel, and Defendant Edward Murphy failed to take any action to prevent Captain Hazelwood from piloting the vessel.

VIII

Exxon Shipping Company, as the registered owner and operator of the "Exxon Valdez," and Exxon Corporation, as the controlling owner of Exxon Shipping Company, owners and transporters of the cargo of said vessel, knew, should have known or were reckless in not knowing that Hazelwood had an alcohol abuse problem and was incompetent and effectively unable to command or control the vessel. Complaints of Hazelwood's abuse of crew members in an intoxicated state were known to the Exxon Defendants. The negligent, grossly negligent and reckless acts of Hazelwood were all within the privity and knowledge of the Exxon Defendants. Subsequent to Pilot Murphy's departure from the vessel, Captain Hazelwood retired to his cabin, leaving only Gregory Cousins, the third mate, and Robert Kagan, the helmsman, on the bridge. Neither Cousins nor Kagan was qualified to operate the vessel in this area of Prince William Sound without supervision. At all times relevant hereto, Messrs. Cousins and

Kagan were acting within the scope of their employment and as agents and/or representatives of Defendant Exxon. Additionally, the vessel's navigational equipment was not working properly for the crew on deck, who were not qualified to operate the vessel even if all equipment was in good order.

IX

The tanker proceeded three miles east past the alternative channel, outside the traffic lanes and entirely beyond the shipping channel, into a chartered area of rocky reefs.

X

The vessel was approximately one quarter mile outside the regular channel for vessels when she first struck the well-marked and well-known Bligh Reef, which ripped along the vessel's starboard side tearing three holes into the starboard tanks and ripping out a portion of the hull.

XI

Upon information and belief, Captain Hazelwood remained in his cabin although the noise and impact should have immediately commanded him to the bridge to prevent further damage to the vessel or its contents.

XII

The grounding of the Exxon Valdez upon Bligh Reef cut open at least eight of the ship's twelve oil tanks, which held 53 million gallons of crude oil, causing the largest oil spill in United States history. To date, approximately 11 million gallons of crude oil has been discharged into the marine environment.

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XIII

Alyeska Pipeline Company, under the direction of George Nelson, and the Exxon Defendants owed a duty to have a proper and adequate emergency containment plan for this area, but failed to put any plan into affect within a reasonable or practical time period to contain the spilled oil. The State of Alaska, through its employees and agencies, monitors the defendants and the pipeline with its oil spill recovery plan.

XIV

Damages to the Plaintiffs caused by the discharge of millions of gallons of North Slope crude oil from the "Exxon Valdez" include but are not limited to damage to marine life and the environment in the area of Prince William Sound, Kodiak, and Cook Inlet. Additionally, Plaintiffs have suffered property damage, economic loss, and personal losses as specified below.

XV

Plaintiffs have suffered lost profits and income damage in excess of \$100,000.00, the exact amount to be proven at trial.

XVI

Plaintiffs have lost income, lost customers, and lost sellers of fish in both past and future and suffered damages in excess of \$100,000.00, the exact amount to be proven at trial.

XVII

Plaintiffs have incurred general damages as a result of the "Exxon Valdez" oil spill in excess of \$100,000.00, the exact amount to be proven at trial.

XVIII

Upon information and belief, the damage caused by the spill will have a long-term effect upon the Plaintiffs' trades and businesses, processing work, and business in the fishing industry in Alaska.

COUNT I

NEGLIGENCE OF DEFENDANTS WITH RESPECT TO
FAILURE TO EXERCISE ADEQUATE CLEANUP PROCEDURES

XIX

Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

XX

Defendants Alyeska and Exxon had continuously reassured environmentalists and others, including the plaintiffs, at all times prior to the accident that there existed an emergency clean-up plan by which any major oil spill could be successfully contained within five hours of occurrence; yet a day after the spill little had been done to contain it other than an unsuccessful attempt to spray chemical dispersants. Alyeska and Exxon, in the alternative, cite that the State is negligent in its oil spill and recovery system and in preventing them from cleaning up in a timely manner.

XXI

Upon information and belief, Alyeska and Exxon's contingent cleanup plan required them to be on site within five hours of the spill. Eighteen hours after the rupture, however, essentially nothing was in place; instead, it took nearly an

Amended Complaint

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ACE 1287129

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entire day for Alyeska, George Nelson, and Exxon representatives to start placing barrier booms around the slick. By that time, the discharged oil had already become too large to contain and spread from Prince William Sound to Kodiak to Cook Inlet.

XXII

The delays were in part due to repairs being performed on the barge required to pull the booms around the "Exxon Valdez" and the lack of preparation for spills.

XXIII

Lack of proper equipment and supplies also hindered effective cleanup operations.

XXIV

Moreover, neither Alyeska nor Exxon had enough equipment or an adequate containment plan to handle a spill of this size.

XXV

Pursuant to state laws, the proper control and total removal of the discharged oil which polluted and damaged the Plaintiffs' property was the responsibility of the Defendants. In regard thereto, Defendants had a duty to Plaintiffs to have adequate resources available to immediately and effectively contain and clean up any oil spill in any area within or without the right-of-way or permit area. If other defendants are correct in their allegations, the State would owe a duty of care, which it breached in failing to properly assist them and in preventing them from cleaning up the area of the spill as they deemed necessary.

XXVI

Amended Complaint

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ACE 1287130

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In the exercise of due care, Defendants knew or should have known that they lacked adequate equipment and supplies to effectively contain and clean up a spill of this magnitude, that their contingent cleanup plan, including the tactics they developed thereunder, were extremely limited in their efficiency and use.

XXVII

The negligence and negligence per se of Defendants Alyeska and Exxon in the control and cleanup operation specifically included, but was not limited to, (i) failing to establish and provide for an adequate contingent plan to contain and clean up any discharge of oil; (ii) inadequately planning the ensuing cleanup effort; (iii) inadequately carrying out the ensuing cleanup effort; (iv) unreasonable delaying the ensuing cleanup effort; (v) choosing inadequate tactics in the ensuing cleanup effort, (vi) processing inadequate equipment, supplies and personnel for deployment in the ensuing cleanup effort, (vii) violating state laws, (viii) and failing to monitor, inspect and approve of an adequate and effective cleanup and containment plan.

XXVIII

As a direct and proximate result of the foregoing negligence, Plaintiffs have suffered damages as set forth in this Complaint.

XXIX

In addition, Defendants Alyeska, Joseph Hazelwood, and Exxon acted recklessly, in gross negligence, wantonly, and in

willful disregard of the rights, safety, and economic well-being of Plaintiffs in the control and cleanup operations of this spill, as well as the operation of the vessel, for which Plaintiffs are entitled to punitive and exemplary damages against these Defendants.

COUNT II

NEGLIGENCE OF EXXON AND ITS EMPLOYEES WITH RESPECT
TO MANAGEMENT AND OPERATION OF THE VESSEL "EXXON VALDEZ"

XXX

Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

XXXI

The captain of the Exxon Valdez, Joseph J. Hazelwood, upon information and belief had previously been convicted of charges involving drinking and driving twice in the past five years, had his driver's license suspended or revoked three times in that same period, and was under the influence of alcohol while in command of the vessel.

XXXII

Captain Hazelwood placed the navigation and direction of the vessel in the charge of the third mate and helmsman, Gregory Cousins and Robert Kagan, when it ran aground although Cousins and Kagan lacked proper certification and guidance to pilot a vessel such as the "Exxon Valdez" through the waters of the Prince William Sound.

XXXIII

Captain Hazelwood and third mate Cousins knew or should

Amended Complaint

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ACE 1287132

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have known that it was not only unreasonably dangerous for Hazelwood to leave the bridge and relinquish control of the tanker to Cousins and Kagan, but also a violation of applicable Coast Guard rules and regulations.

XXXIV

Captain Hazelwood and third mate Cousins knew or should have known that Cousins and Kagan did not possess the requisite degree of competence to command the "Exxon Valdez" with reasonable prudence, skill or care.

XXXV

The Exxon Defendants knew or should have known based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times in the same five year period, that Hazelwood did not possess the requisite degree of competence to command the "Exxon Valdez" with reasonable prudence, skill or care, nor the ability to transfer his duties to an uncertified third mate and helmsman.

XXXVII

The Exxon Defendants knew or should have known, based on the service in which the "Exxon Valdez" was involved, that its single hull construction and navigational system was not sufficient to allow it to safely engage in the trade for which it was intended.

XXXVII

The negligence of the Exxon Defendants, by and through their employees, in the operation of the "Exxon Valdez"

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specifically included, but was not limited to (i) failing to adequately crew the tanker; (ii) failing to adequately pilot and navigate Prince William Sound; (iii) commanding the vessel while under the influence of alcohol in violation of Coast Guard and State of Alaska standards, (iv) failing to monitor the sobriety of their crews in operating the vessel, (v) failing to operate the vessel away from known navigational dangers, (vi) operating the vessel in a dangerous manner, and (vii) failing to utilize a seaworthy vessel. As a direct and proximate result of the foregoing negligence, the Exxon Defendants, in their own right as well as by and through their agents, servants and employees, caused Plaintiffs to suffer damages as described below.

XXXVIII

The Exxon Defendants acted recklessly, in gross negligence, wantonly and in willful disregard of the rights, safety, and economic well-being of the Plaintiffs in the ownership and operation of the "Exxon Valdez" for which Plaintiffs are entitled to punitive and exemplary damages against the Defendants.

COUNT III

NEGLIGENT PER SE

XXXIX

Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

XL

By virtue of the above, Defendants were negligent and negligent per se in that the acts and omissions of their

employees, agents and representatives violated the laws of the State of Alaska and directly and proximately caused the damages suffered by the Plaintiffs.

COUNT V

ALASKA ENVIRONMENTAL CONSERVATION ACT

XLI

Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

XLII

Oil, including the approximately 10.1 million gallons of crude oil released into the Prince William Sound as a result of the grounding and consequent rupture of the Exxon Valdez's oil tanks, is a hazardous substance as that term is defined in Section 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

XLIII

The presence of oil in the Prince William Sound area and its subsequent spreading to large areas of the Sound, Cook Inlet, Kodiak and beyond, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and/or any part of the natural habitat in which they are found.

XLIV

The Defendants own and/or control, pursuant to Section 46.03.826(3) of the Alaska Environmental Conservation Act, the oil that was loaded on the "Exxon Valdez" at the port of Valdez, Alaska and released into Prince William Sound.

XLV

Upon information and belief, the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska was not caused solely as a result of: an act of war; an intentional act or negligent act of a third party, other than a party or its employees in privity with, or employed by, Defendants; negligence on the part of the United States government; or an act of God.

XLVI

Upon information and belief, upon discovery of the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska, Defendants delayed and/or failed to begin operations to contain and clean up the hazardous substance within a reasonable period of time.

XLVII

The entry of the oil owned by and/or within the control of the Defendants in or upon the waters, surface and/or subsurface lands of the State of Alaska has caused damages to the Plaintiffs for which the Defendants are strictly liable pursuant to Section 46.03.822 of the Alaska Environmental Conservation Act.

XLIX

As a direct and proximate result of the Defendants' acts and omissions, the Plaintiffs incurred the following damages;

1. Damage to all fisheries in the areas where fish were purchased;
2. Economic losses in the past, present and future;

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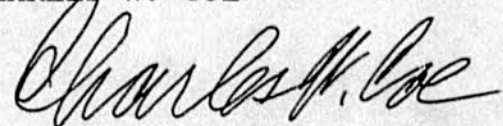
3. Business damages, loss of sales, loss of customers, loss of profits;
4. Outrage and embarrassment;
5. Costs to reestablish a market of sales and suppliers; and
6. Other damages to be proven at trial.

WHEREFORE, Plaintiffs individually pray for judgment against the Defendants jointly and severally as follows:

1. Compensatory damages in a sum to be proven at trial in excess of One Million Dollars (\$1,000,000) per plaintiff;
2. Punitive and exemplary damages in a sum to be awarded at trial in excess of One Million Dollars (\$1,000,000) per plaintiff;
3. An order of the Plaintiffs' costs, interest, and attorneys' fees; and
4. Such other relief as this court deems just and equitable.

DATED at Anchorage, Alaska this 20 day of March, 1991.

CHARLES W. COE



Charles W. Coe

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

ud in
ATE OF ALASKA, THIRD DISTRICT.

DONALD W. JOHNSON and PENNY M. JOHNSON,)
husband and wife,)
)
Plaintiffs,)
)
vs.)
)
EXXON CORPORATION; EXXON SHIPPING)
COMPANY; ALYESKA PIPELINE SERVICE)
COMPANY; and the STATE OF ALASKA,)
)
Defendants.)

MAR 26 1991

Clerk of the Trial Courts
By _____ Deputy

Case No. 91-2463

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

Plaintiffs, by and through their attorneys, Adolph &
Smyth, P.S. and Tugman, Clarke & Ray, state as follows:

1. Plaintiffs Donald and Penny Johnson are residents of
Kodiak, Alaska, and are engaged in the business of commercial
fishing and processing. The Johnsons own the F/V Margaret Lynn
and own an interest in the processing ship Ocean Phoenix, which
interests are valued collectively in excess of \$1,000,000.00.
Collectively, these investments allowed the production of gross
income in excess of \$1,000,000.00 per year.

1 2. Defendant, Exxon Corporation, is a corporation
2 organized under the laws of the State of New Jersey, with its
3 principal place of business at 1251 Avenue of the Americas, New
4 York, New York 10020. Exxon Corporation is engaged in the
5 business of operating petroleum companies through its
6 subsidiaries and division is the State of Alaska, and is an
7 owner and operator of the vessel known as the Exxon Valdez.

8 3. Defendant, Exxon Shipping Company, a Delaware
9 Corporation and maritime subsidiary of Defendant Exxon
10 Corporation with its principal place of business at 811 Dallas
11 Avenue, Houston, Texas 77002, operates in the State of Alaska,
12 and is an owner and operator of the vessel known as the Exxon
13 Valdez.

14 4. Defendant, Alyeska Pipeline Service Company, is an
15 association of the holders of the Pipeline right-of-way for the
16 Trans-Alaska Pipeline System.

17 5. The State of Alaska is responsible for approval,
18 monitoring, and compliance with its laws regarding
19 transportation of oil. Alyeska Pipeline Service Company
20 ("Alyeska") owns and operates the terminal at Valdez, Alaska,
21 and loaded the Exxon Valdez with North Slope crude oil at the
22 Valdez terminal.

23 SUMMARY OF FACTS

24 6. On or about March 23, 1989, the marine vessel EXXON
25 VALDEZ, vessel number 692966, an oil tanker owned and operated
26 by defendant Exxon Shipping Company, was loaded at Valdez,

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 2
c:\wp\exxon\johnson.com

ACE 1287151

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1 Alaska, with approximately 53 million gallons of crude oil that
2 had been transported through the Trans-Alaska Pipeline.

3 7. The Exxon Valdez passed through the harbor and Valdez
4 Narrows under the command of a harbor pilot. Captain Joseph J.
5 Hazelwood, who at all times relevant hereto was acting within
6 the scope of his employment and as an agent and/or
7 representative of Defendants Exxon, was on the bridge of the
8 ship when the harbor pilot disembarked at the southern end of
9 the Narrows at approximately 12:30 a.m. Friday morning, March
10 24, 1989. Captain Hazelwood was under the influence of alcohol
11 while he was in command of the vessel. Captain Hazelwood
12 retired to his cabin, one flight below the bridge, leaving
13 Gregory Cousins, the third mate, and Robert Kafan, the
14 helmsman, on the bridge. At all times relevant hereto, Messrs.
15 Cousins and Kafan were acting within the scope of their
16 employment and as agents and/or representatives of Defendants
17 Exxon.

18 8. The third mate, who was not certified for commanding
19 the tanker through these waters, steered the vessel through the
20 deep water southbound shipping lane of the channel due to
21 earlier reports that it contained icebergs from a glacier that
22 had broken to the northwest. The ship steered east into the
23 empty northbound lane, and then proceeded on a southwesterly
24 course bound for Long Beach, California. The tanker, however,
25 proceeded three miles east past the alternative channel,
26 outside the traffic lanes and entirely beyond the shipping

channel into a charted area of rocky reefs.

9. The vessel was approximately one quarter mile outside the regular channel for vessels when she first struck Bligh Reef, which ripped along the vessel's starboard side tearing three holes into the starboard tanks and ripping out a portion of the hull. Although the ship was still navigable after the first impact, she was so far east of deep water that when Cousins tried to turn the Exxon Valdez back toward the west, he struck a second part of the shallow reef. The second impact brought the ship aground, stopping the ship's progress completely, further damaging the vessel and its cargo.

10. The scraping impact and grounding of the Exxon Valdez upon Bligh Reef cut open at least eight of the ship's twelve oil tanks which held 53 million gallons of crude oil, causing the largest oil spill in the United States history. To date, approximately 10.1 million gallons of crude oil has been discharged into Prince William Sound, contaminating hundreds of square miles of the Sound's fisheries. The oil spill subsequently spread to encompass at least 3,00 square miles and has migrated 250 miles to the southwest toward Kodiak Island. Another spill, of at least one million gallons, occurred during subsequent attempts to remove additional oil from the damaged tanks.

11. On March 26, 1989, due to the slow pace of any attempted clean-up efforts by Alyeska and the Exxon Defendants and concerned about even further possible damage to the

1 property, marine and wildlife, the State of Alaska declared a
2 disaster emergency.

3 12. Alyeska, Exxon and the State of Alaska recruited
4 employees to participate in containment and clean-up activities
5 from all over Alaska, offering wage rates well in excess of
6 those which processing companies could offer and still remain
7 profitable. As a result, the processors to whom Plaintiffs had
8 committed to sell their product could not maintain an adequate
9 work force to operate at full capacity.

10 13. Alyeska Pipeline Company, Exxon, and the State of
11 Alaska owed a duty to have a proper and adequate emergency
12 containment plan for this area but failed to put any plan into
13 affect within a reasonable or practical time period to contain
14 the spilled oil. The Defendants additionally failed to act in
15 a timely or reasonable manner so as to mitigate the oil spill
16 and resulting effects of the clean-up process.

17 14. Plaintiffs' value in their fishing and processing
18 vessels, equipment, good will and future income has been
19 destroyed or greatly diminished as a result of Defendants'
20 actions.

21 FIRST CAUSE OF ACTION
22 NEGLIGENCE

23 15. Defendants Alyeska, Exxon, and the State of Alaska
24 had continuously reassured environmentalists and others,
25 including specifically Plaintiffs, at all times prior to the
26 accident that there existed an emergency clean-up plan by which

1 any major oil spill could be successfully contained with five
2 hours of occurrence. Yet a full day after the spill little had
3 been done to contain it other than an unsuccessful attempt to
4 spray chemical dispersants.

5 16. Upon information and belief, Alyeska, Exxon, and the
6 State of Alaska's contingency clean-up plan required them to be
7 on site within five hours of the spill. Eighteen hours after
8 the rupture, however, essentially nothing was in place;
9 instead, it took nearly an entire day for Alyeska and Exxon
10 representatives to start placing barrier booms around the
11 slick. By that time, the discharged oil had already become too
12 large to contain.

13 17. Neither Alyeska, Alaska, nor the Exxon Defendants has
14 enough equipment, supplies, manpower or an adequate containment
15 plan to handle a spill of this size. Chemical dispersants,
16 which could cause further harm to the water, proved
17 ineffective. The chemical dispersants could not be used
18 initially because the water was too cold and calm, making the
19 slick too thick for the dispersants to work. The oil remained
20 in the water too long for these dispersants to work since they
21 are most effective only if employed within twenty-four hours
22 after the spill.

23 18. In the exercise of care, Defendants knew or should
24 have known that they lacked adequate equipment, supplies and
25 manpower to effectively contain and clean-up a spill of this
26 magnitude, that their contingency clean-up plan, including the

1 tactics they developed thereunder were extremely limited in
2 their efficiency and use, and that they would be forced to tap
3 the Alaska work force in order to implement their plans.

4 19. The negligence of Defendants Alyeska, Exxon and
5 Alaska in the control and clean-up operations specifically
6 included, but was not limited to, (i) failing to establish and
7 provide for an adequate contingency plan to contain and clean
8 up any discharge of oil; (ii) inadequately planning the
9 ensuing clean-up effort; (iii) inadequately carrying out the
10 ensuing clean-up effort; (iv) unreasonably delaying the
11 ensuing clean-up effort; (v) choosing inadequate tactics in
12 the ensuing clean-up effort; (vi) relying solely upon the
13 Alaska work force to provide the necessary personnel for the
14 ensuing clean-up effort; and (vii) failure to monitor, inspect
15 and approve of an adequate and effective clean up and
16 containment plan.

17 20. As a direct and proximate result of the foregoing
18 negligence, Plaintiffs have suffered damages as set forth in
19 this complaint.

20 21. In addition, Defendants Exxon acted recklessly,
21 grossly negligently, wantonly and in willful disregard of the
22 rights, safety, and economic well-being of Plaintiffs in the
23 control and clean-up operations of this spill, for which
24 Plaintiffs are entitled to punitive and exemplary damages
25 against these Defendants.
26

SECOND CAUSE OF ACTION
GROSS NEGLIGENCE OF EXXON

22. The captain of the Exxon Valdez, Joseph J. Hazelwood, who upon information and belief had previously been convicted of charges involving drinking and driving twice in the past five years and had his driver's license suspended or revoked three times in that same period, was under the influence of alcohol while in command of the vessel.

23. Captain Hazelwood placed the navigation and direction of the vessel into the charge of the third mate, Gregory Cousins, when it ran aground although Cousins lacked proper certification and guidance to pilot vessels such as the Exxon Valdez through the waters of Prince William Sound.

24. Captain Hazelwood and third mate Cousins knew or should have known that it was unreasonably dangerous for Hazelwood to leave the bridge and relinquish control of the tanker to Cousins.

25. Captain Hazelwood and third mate Cousins knew or should have known that cousins did not possess the requisite degree of competence to command the Exxon Valdez with reasonable prudence, skill or care.

26. The Exxon Defendants knew or should have known based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times in the same five year period, that Hazelwood did not possess the requisite degree of competence to command the

1 Exxon Valdez with reasonable prudence, skill or care, nor the
2 ability to transfer his duties to an uncertified third mate.

3 27. The Exxon Defendants knew or should have known based
4 on the service in which Exxon Valdez was involved that its
5 single hull construction was not sufficient to allow it to
6 safely engage in the trade for which it was intended.

7 28. The negligence of the Exxon Defendants by and through
8 their employees, in the operation of the Exxon Valdez
9 specifically included, but was not limited to (i) failing to
10 adequately crew the tanker; (ii) failing to adequately pilot
11 and navigate Prince William Sound; (iii) commanding the vessel
12 while under the influence of alcohol per State of Alaska
13 Standards; (iv) failing to monitor the sobriety of their crews
14 in operating the vessel; (v) failing to operate the vessel
15 away from known navigational dangers; (vi) operating the vessel
16 in a dangerous manner; and (vii) failing to utilize a
17 seaworthy vessel. As a direct and proximate result of their
18 own right as well as by and through their agents, servants and
19 employee, they caused Plaintiffs to suffer damages as described
20 above.

21 29. The Exxon Defendants acted recklessly, grossly
22 negligently, wantonly and in willful disregard of the rights,
23 safety, and economic well-being of Plaintiffs in the ownership
24 and operation of the Exxon Valdez for which Plaintiffs are
25 entitled to punitive and exemplary damages against the
26 Defendant.

THIRD CAUSE OF ACTION
ALASKA ENVIRONMENTAL CONSERVATION ACT

30. Oil, including the over 10 million gallons of crude oil which has been released into the Prince William Sound as a result of the grounding and consequent rupture of the Exxon Valdez's oil tanks, is a hazardous substance, as that term is defined in Section 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

31. The presence of oil in the Price William Sound and its subsequent migration presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and/or any part of the natural habitat in which they are found.

32. The defendants own and/or have control, pursuant to Section 46.03.826(3) of the Alaska Environmental Conservation Act, over the oil which was loaded on the Exxon Valdez at the Port of Valdez, Alaska, and released in to Prince William Sound.

33. Upon information and belief, the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska was not caused solely as a result of: an act of war, an intentional acto or a negligent act of a third party, other than a party or its employees in privity with, or employed by, defendants, negligence on the part of the United States government, or an act of God.

34. Upon information and belief, upon discovery of the

1 entry of the oil in or upon the water, surface or subsurface
2 land of the State of Alaska, defendants delayed and/or failed
3 to begin operations to contain and clean up the hazardous
4 substance within a reasonable period of time.

5 35. The entry of the oil which is owned and/or within the
6 control of the defendants in or upon the waters, surface and/or
7 subsurface lands of the State of Alaska, has caused damages to
8 Plaintiffs as set forth in this complaint for which the
9 defendant are strictly liable pursuant to Section 46.03.822 of
10 the Alaska Environmental Conservation Act.

11 WHEREFORE PLAINTIFFS PRAY for a judgment against the
12 Defendants jointly and severally as follows:

13 1. Compensatory damages for present and future economic
14 loss, emotional suffering, distress, loss of property and
15 property rights in a sum to be proven at trial in excess of
16 FIVE MILLION and No Hundredths Dollars (\$5,000,000).

17 2. Punitive and exemplary damages in a sum to be awarded
18 at trial in excess of Ten Million and No Hundredths Dollars
19 (\$10,000,000.00).

20 3. Judgment awarding Plaintiffs costs, interest and
21 attorney's fees; and

22 4. Other relief as this court deems just and equitable.
23
24
25
26

1 DATED this 26 day of March, 1991 at Anchorage,
2 Alaska.

3 TUGMAN, CLARKE & RAY
4 Attorneys for Plaintiffs

5 By: Charles W. Ray, Jr.
6 Charles W. Ray, Jr.

7 ADOLPH & SMYTH P.S.
8 Of Counsel for Plaintiffs

9 By: Jeffrey A. Smyth
10 Jeffrey A. Smyth

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COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 12
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ACE 1287161

LAW OFFICES
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7100 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 621-7100

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5 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
6 THIRD JUDICIAL DISTRICT AT ANCHORAGE

7
8 MARK CHANDLER; and CHANDLER FISHERIES,)
9 INC., an Oregon corporation,)
10 Plaintiffs,)
11 vs.)
12 EXXON CORPORATION; EXXON SHIPPING)
13 COMPANY; ALYESKA PIPELINE SERVICE)
14 COMPANY; and the STATE OF ALASKA,)
15 Defendants.)

ud III
STATE OF ALASKA, THIRD DISTRICT
MAR 26 1991
Clerk of the Trial Courts
By _____ Deput

16 Case No. 91-2464

17 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

18 Plaintiffs, by and through their attorneys, Adolph &
19 Smyth, P.S. and Tugman, Clarke & Ray, state as follows:

20 1. Plaintiff Mark Chandler is a resident of Kodiak,
21 Alaska, and is engaged in the business of commercial fishing.
22 Mr. Chandler manages and owns an interest in Chandler
23 Fisheries, Inc., an Oregon corporation, through which he
24 operates his business. Chandler Fisheries owns the F/V Topaz,
25 a trawler, valued in excess of \$780,000.00. The electronic,
26 hydraulic and mechanical equipment and gear utilized on this

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
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1 vessel is valued in excess of \$200,000.00. Collectively, these
2 investments allowed the production of gross income in excess of
3 \$1,300,000.00 per year.

4 2. Defendant, Exxon Corporation, is a corporation
5 organized under the laws of the State of New Jersey, with its
6 principal place of business at 1251 Avenue of the Americas, New
7 York, New York 10020. Exxon Corporation is engaged in the
8 business of operating petroleum companies through its
9 subsidiaries and division is the State of Alaska, and is an
10 owner and operator of the vessel known as the Exxon Valdez.

11 3. Defendant, Exxon Shipping Company, a Delaware
12 Corporation and maritime subsidiary of Defendant Exxon
13 Corporation with its principal place of business at 811 Dallas
14 Avenue, Houston, Texas 77002, operates in the State of Alaska,
15 and is an owner and operator of the vessel known as the Exxon
16 Valdez.

17 4. Defendant, Alyeska Pipeline Service Company, is an
18 association of the holders of the Pipeline right-of-way for the
19 Trans-Alaska Pipeline System.

20 5. The State of Alaska is responsible for approval,
21 monitoring, and compliance with its laws regarding
22 transportation of oil. Alyeska Pipeline Service Company
23 ("Alyeska") owns and operates the terminal at Valdez, Alaska,
24 and loaded the Exxon Valdez with North Slope crude oil at the
25 Valdez terminal.
26

SUMMARY OF FACTS

1 6. On or about March 23, 1989, the marine vessel EXXON
2 VALDEZ, vessel number 692966, an oil tanker owned and operated
3 by defendant Exxon Shipping Company, was loaded at Valdez,
4 Alaska, with approximately 53 million gallons of crude oil that
5 had been transported through the Trans-Alaska Pipeline.

6 7. The Exxon Valdez passed through the harbor and Valdez
7 Narrows under the command of a harbor pilot. Captain Joseph J.
8 Hazelwood, who at all times relevant hereto was acting within
9 the scope of his employment and as an agent and/or
10 representative of Defendants Exxon, was on the bridge of the
11 ship when the harbor pilot disembarked at the southern end of
12 the Narrows at approximately 12:30 a.m. Friday morning, March
13 24, 1989. Captain Hazelwood was under the influence of alcohol
14 while he was in command of the vessel. Captain Hazelwood
15 retired to his cabin, one flight below the bridge, leaving
16 Gregory Cousins, the third mate, and Robert Kafan, the
17 helmsman, on the bridge. At all times relevant hereto, Messrs.
18 Cousins and Kafan were acting within the scope of their
19 employment and as agents and/or representatives of Defendants
20 Exxon.

21 8. The third mate, who was not certified for commanding
22 the tanker through these waters, steered the vessel through the
23 deep water southbound shipping lane of the channel due to
24 earlier reports that it contained icebergs from a glacier that
25 had broken to the northwest. The ship steered east into the
26

1
2 empty northbound lane, and then proceeded on a southwesterly
3 course bound for Long Beach, California. The tanker, however,
4 proceeded three miles east past the alternative channel,
5 outside the traffic lanes and entirely beyond the shipping
6 channel into a charted area of rocky reefs.

7 9. The vessel was approximately one quarter mile outside
8 the regular channel for vessels when she first struck Bligh
9 Reef, which ripped along the vessel's starboard side tearing
10 three holes into the starboard tanks and ripping out a portion
11 of the hull. Although the ship was still navigable after the
12 first impact, she was so far east of deep water that when
13 Cousins tried to turn the Exxon Valdez back toward the west, he
14 struck a second part of the shallow reef. The second impact
15 brought the ship aground, stopping the ship's progress
16 completely, further damaging the vessel and its cargo.

17 10. The scraping impact and grounding of the Exxon Valdez
18 upon Bligh Reef cut open at least eight of the ship's twelve
19 oil tanks which held 53 million gallons of crude oil, causing
20 the largest oil spill in the United States history. To date,
21 approximately 10.1 million gallons of crude oil has been
22 discharged into Prince William Sound, contaminating hundreds of
23 square miles of the Sound's fisheries. The oil spill
24 subsequently spread to encompass at least 3,00 square miles and
25 has migrated 250 miles to the southwest toward Kodiak Island.
26 Another spill, of at least one million gallons, occurred during
subsequent attempts to remove additional oil from the damaged

1
2 tanks.

3 11. On March 26, 1989, due to the slow pace of any
4 attempted clean-up efforts by Alyeska and the Exxon Defendants
5 and concerns about even further possible damage to the
6 property, marine and wildlife, the State of Alaska declared a
7 disaster emergency.

8 12. Alyeska, Exxon and the State of Alaska recruited
9 employees to participate in containment and clean-up activities
10 from all over Alaska, offering wage rates well in excess of
11 those which processing companies could offer and still remain
12 profitable. As a result, the processors to whom Plaintiffs had
13 committed to sell their product could not maintain an adequate
14 work force to operate profitably. The processors eventually
15 went bankrupt, and Plaintiffs no longer have a competitive
16 market within which to sell their product.

17 13. Alyeska Pipeline Company, Exxon, and the State of
18 Alaska owed a duty to have a proper and adequate emergency
19 containment plan for this area but failed to put any plan into
20 affect within a reasonable or practical time period to contain
21 the spilled oil. The Defendants additionally failed to act in
22 a timely or reasonable manner so as to mitigate the oil spill
23 and resulting effects of the clean-up process.

24 14. Plaintiffs' value in their fishing vessels,
25 equipment, good will and future income has been destroyed or
26 greatly diminished as a result of Defendants' actions.

1
2 FIRST CAUSE OF ACTION
3 NEGLIGENCE

4 15. Defendants Alyeska, Exxon, and the State of Alaska
5 had continuously reassured environmentalists and others,
6 including specifically Plaintiffs, at all times prior to the
7 accident that there existed an emergency clean-up plan by which
8 any major oil spill could be successfully contained with five
9 hours of occurrence. Yet a full day after the spill little had
10 been done to contain it other than an unsuccessful attempt to
11 spray chemical dispersants.

12 16. Upon information and belief, Alyeska, Exxon, and the
13 State of Alaska's contingency clean-up plan required them to be
14 on site within five hours of the spill. Eighteen hours after
15 the rupture, however, essentially nothing was in place;
16 instead, it took nearly an entire day for Alyeska and Exxon
17 representatives to start placing barrier booms around the
18 slick. By that time, the discharged oil had already become too
19 large to contain.

20 17. Neither Alyeska, Alaska, nor the Exxon Defendants has
21 enough equipment, supplies, manpower or an adequate containment
22 plan to handle a spill of this size. Chemical dispersants,
23 which could cause further harm to the water, proved
24 ineffective. The chemical dispersants could not be used
25 initially because the water was too cold and calm, making the
26 slick too thick for the dispersants to work. The oil remained
in the water too long for these dispersants to work since they

1
2 are most effective only if employed within twenty-four hours
3 after the spill.

4 18. In the exercise of care, Defendants knew or should
5 have known that they lacked adequate equipment, supplies and
6 manpower to effectively contain and clean-up a spill of this
7 magnitude, that their contingency clean-up plan, including the
8 tactics they developed thereunder were extremely limited in
9 their efficiency and use, and that they would be forced to tap
10 the Alaska work force in order to implement their plans.

11 19. The negligence of Defendants Alyeska, Exxon and
12 Alaska in the control and clean-up operations specifically
13 included, but was not limited to, (i) failing to establish and
14 provide for an adequate contingency plan to contain and clean
15 up any discharge of oil; (ii) inadequately planning the
16 ensuing clean-up effort; (iii) inadequately carrying out the
17 ensuing clean-up effort; (iv) unreasonably delaying the
18 ensuing clean-up effort; (v) choosing inadequate tactics in
19 the ensuing clean-up effort; (vi) relying solely upon the
20 Alaska work force to provide the necessary personnel for the
21 ensuing clean-up effort; and (vii) failure to monitor, inspect
22 and approve of an adequate and effective clean up and
23 containment plan.

24 20. As a direct and proximate result of the foregoing
25 negligence, Plaintiffs have suffered damages as set forth in
26 this complaint.

21. In addition, Defendants Exxon acted recklessly,

1
2 grossly negligently, wantonly and in willful disregard of the
3 rights, safety, and economic well-being of Plaintiffs in the
4 control and clean-up operations of this spill, for which
5 Plaintiffs are entitled to punitive and exemplary damages
6 against these Defendants.

7 SECOND CAUSE OF ACTION
8 GROSS NEGLIGENCE OF EXXON

9 22. The captain of the Exxon Valdez, Joseph J. Hazelwood,
10 who upon information and belief had previously been convicted
11 of charges involving drinking and driving twice in the past
12 five years and had his driver's license suspended or revoked
13 three times in that same period, was under the influence of
14 alcohol while in command of the vessel.

15 23. Captain Hazelwood placed the navigation and direction
16 of the vessel into the charge of the third mate, Gregory
17 Cousins, when it ran aground although Cousins lacked proper
18 certification and guidance to pilot vessels such as the Exxon
19 Valdez through the waters of Prince William Sound.

20 24. Captain Hazelwood and third mate Cousins knew or
21 should have known that it was unreasonably dangerous for
22 Hazelwood to leave the bridge and relinquish control of the
23 tanker to Cousins.

24 25. Captain Hazelwood and third mate Cousins knew or
25 should have known that cousins did not possess the requisite
26 degree of competence to command the Exxon Valdez with
reasonable prudence, skill or care.

1
2 26. The Exxon Defendants knew or should have known based
3 on Hazelwood's previous convictions for drinking and driving,
4 as well as the revocation or suspension of his driver's license
5 three times in the same five year period, that Hazelwood did
6 not possess the requisite degree of competence to command the
7 Exxon Valdez with reasonable prudence, skill or care, nor the
8 ability to transfer his duties to an uncertified third mate.

9 27. The Exxon Defendants knew or should have known based
10 on the service in which Exxon Valdez was involved that its
11 single hull construction was not sufficient to allow it to
12 safely engage in the trade for which it was intended.

13 28. The negligence of the Exxon Defendants by and through
14 their employees, in the operation of the Exxon Valdez
15 specifically included, but was not limited to (i) failing to
16 adequately crew the tanker; (ii) failing to adequately pilot
17 and navigate Prince William Sound; (iii) commanding the vessel
18 while under the influence of alcohol per State of Alaska
19 Standards; (iv) failing to monitor the sobriety of their crews
20 in operating the vessel; (v) failing to operate the vessel
21 away from known navigational dangers; (vi) operating the vessel
22 in a dangerous manner; and (vii) failing to utilize a
23 seaworthy vessel. As a direct and proximate result of their
24 own right as well as by and through their agents, servants and
25 employee, they caused Plaintiffs to suffer damages as described
26 above.

29. The Exxon Defendants acted recklessly, grossly

1
2 negligently, wantonly and in willful disregard of the rights,
3 safety, and economic well-being of Plaintiffs in the ownership
4 and operation of the Exxon Valdez for which Plaintiffs are
5 entitled to punitive and exemplary damages against the
6 Defendant.

7 THIRD CAUSE OF ACTION
8 ALASKA ENVIRONMENTAL CONSERVATION ACT

9 30. Oil, including the over 10 million gallons of crude
10 oil which has been released into the Prince William Sound as a
11 result of the grounding and consequent rupture of the Exxon
12 Valdez's oil tanks, is a hazardous substance, as that term is
13 defined in Section 46.03.826(4)(B) of the Alaska Environmental
14 Conservation Act.

15 31. The presence of oil in the Price William Sound and
16 its subsequent migration presents an imminent and substantial
17 danger to the public health or welfare, including but not
18 limited to fish, animals, vegetation, and/or any part of the
19 natural habitat in which they are found.

20 32. The defendants own and/or have control, pursuant to
21 Section 46.03.826(3) of the Alaska Environmental Conservation
22 Act, over the oil which was loaded on the Exxon Valdez at the
23 Port of Valdez, Alaska, and released in to Prince William
24 Sound.

25 33. Upon information and belief, the entry of the oil in
26 or upon the water, surface or subsurface land of the State of
Alaska was not caused solely as a result of: an act of war, an

1

2 intentional act or a negligent act of a third party, other
3 than a party or its employees in privity with, or employed by,
4 defendants, negligence on the part of the United States
5 government, or an act of God.

6 34. Upon information and belief, upon discovery of the
7 entry of the oil in or upon the water, surface or subsurface
8 land of the State of Alaska, defendants delayed and/or failed
9 to begin operations to contain and clean up the hazardous
10 substance within a reasonable period of time.

11 35. The entry of the oil which is owned and/or within the
12 control of the defendants in or upon the waters, surface and/or
13 subsurface lands of the State of Alaska, has caused damages to
14 Plaintiffs as set forth in this complaint for which the
15 defendant are strictly liable pursuant to Section 46.03.822 of
16 the Alaska Environmental Conservation Act.

17 WHEREFORE PLAINTIFFS PRAY for a judgment against the
18 Defendants jointly and severally as follows:

19 1. Compensatory damages for present and future economic
20 loss, emotional suffering, distress, loss of property and
21 property rights in a sum to be proven at trial in excess of Six
22 Million and No Hundredths Dollars (\$6,000,000.00).

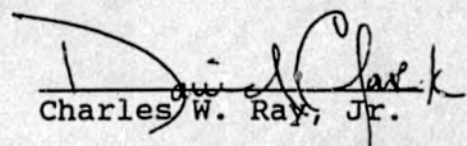
23 2. Punitive and exemplary damages in a sum to be awarded
24 at trial in excess of Ten Million and No Hundredths Dollars
25 (\$10,000,000.00).

26 3. Judgment awarding Plaintiffs costs, interest and
attorney's fees; and

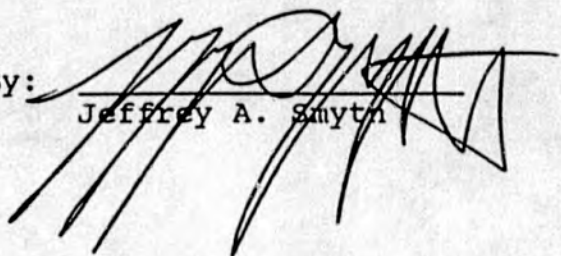
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2 4. Other relief as this court deems just and equitable.

3
4 DATED this 24 day of March, 1991 at Anchorage,
5 Alaska.

6 TUGMAN, CLARKE & RAY
7 Attorneys for Plaintiffs

8 By: 
9 Charles W. Ray, Jr.

10 ADOLPH & SMYTH P.S.
11 Of Counsel for Plaintiffs

12 By: 
13 Jeffrey A. Smyth

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

DAVID P. HARVILLE; ERIC C. STIRRUP,
KODIAK & WESTERN TRAWLER GROUP, INC.,
an Alaska corporation; KODIAK & WESTERN
TRAWLER WIRE, INC., an Alaska corpor-
ation,

Plaintiffs,

vs.

EXXON CORPORATION, EXXON SHIPPING
COMPANY; ALYESKA PIPELINE SERVICE
COMPANY; and the STATE OF ALASKA,

Defendants.

MAR 26 1991

Clerk of the Trial Courts
By _____ Deput

Case No. 91-2465

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

Plaintiffs, by and through their attorneys, Adolph &
Smyth, P.S. and Tugman, Clarke & Ray, state as follows:

1. Plaintiff David P. Harville is a resident of Kodiak,
Alaska, and is engaged in the business of commercial fishing
and charters. Mr. Harville owned or owns interests in the F/V
LITTLE BEAR, F/V HICKORY WIND, F/V PACIFIC STAR, and F/V TEN
BEARS, valued collectively in excess of \$4,000,000.00. The
electronic, hydraulic, and mechanical equipment and gear

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
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ACE 1287174

LAW OFFICES
ADOLPH & SMYTH, P.S.
7100 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 621-7100

1 utilized on these vessels for trawling is valued in excess of
2 \$700,000.00. Mr. Harville owns and manages Kodiak and Western
3 Trawler Group, Inc., an Alaska corporation, which manages the
4 fishing activities of these vessels. He also owned Kodiak and
5 Western Trawler Wire, Inc., an Alaska Corporation, which sold
6 gear for fishing vessels. Collectively, these investments
7 allowed the production of gross income in excess of
8 \$3,500,000.00 per year.

9 2. Plaintiff Eric Stirrup is a resident of Kodiak,
10 Alaska and is engaged in the business of commercial charters.
11 Mr. Stirrup owns an interest in the F/V TEN BEARS referenced
12 above, including the electronic, hydrolic and mechanical
13 equipment and gear associated with it, and accordingly shares
14 in the income generated by that vessel.

15 3. Defendant, Exxon Corporation, is a corporation
16 organized under the laws of the State of New Jersey, with its
17 principal place of business at 1251 Avenue of the Americas, New
18 York, New York 10020. Exxon Corporation is engaged in the
19 business of operating petroleum companies through its
20 subsidiaries and division is the State of Alaska, and is an
21 owner and operator of the vessel known as the Exxon Valdez.

22 4. Defendant, Exxon Shipping Company, a Delaware
23 Corporation and maritime subsidiary of Defendant Exxon
24 Corporation with its principal place of business at 811 Dallas
25 Avenue, Houston, Texas 77002, operates in the State of Alaska,
26 and is an owner and operator of the vessel known as the Exxon

Valdez.

5. Defendant, Alyeska Pipeline Service Company, is an association of the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System.

6. The State of Alaska is responsible for approval, monitoring, and compliance with its laws regarding transportation of oil. Alyeska Pipeline Service Company ("Alyeska") owns and operates the terminal at Valdez, Alaska, and loaded the Exxon Valdez with North Slope crude oil at the Valdez terminal.

SUMMARY OF FACTS

7. On or about March 23, 1989, the marine vessel EXXON VALDEZ, vessel number 692966, an oil tanker owned and operated by defendant Exxon Shipping Company, was loaded at Valdez, Alaska, with approximately 53 million gallons of crude oil that had been transported through the Trans-Alaska Pipeline.

8. The Exxon Valdez passed through the harbor and Valdez Narrows under the command of a harbor pilot. Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of Defendants Exxon, was on the bridge of the ship when the harbor pilot disembarked at the southern end of the Narrows at approximately 12:30 a.m. Friday morning, March 24, 1989. Captain Hazelwood was under the influence of alcohol while he was in command of the vessel. Captain Hazelwood retired to his cabin, one flight below the bridge, leaving

1 Gregory Cousins, the third mate, and Robert Kafan, the
2 helmsman, on the bridge. At all times relevant hereto, Messrs.
3 Cousins and Kafan were acting within the scope of their
4 employment and as agents and/or representatives of Defendants
5 Exxon.

6 9. The third mate, who was not certified for commanding
7 the tanker through these waters, steered the vessel through the
8 deep water southbound shipping lane of the channel due to
9 earlier reports that it contained icebergs from a glacier that
10 had broken to the northwest. The ship steered east into the
11 empty northbound lane, and then proceeded on a southwesterly
12 course bound for Long Beach, California. The tanker, however,
13 proceeded three miles east past the alternative channel,
14 outside the traffic lanes and entirely beyond the shipping
15 channel into a charted area of rocky reefs.

16 10. The vessel was approximately one quarter mile outside
17 the regular channel for vessels when she first struck Bligh
18 Reef, which ripped along the vessel's starboard side tearing
19 three holes into the starboard tanks and ripping out a portion
20 of the hull. Although the ship was still navigable after the
21 first impact, she was so far east of deep water that when
22 Cousins tried to turn the Exxon Valdez back toward the west, he
23 struck a second part of the shallow reef. The second impact
24 brought the ship aground, stopping the ship's progress
25 completely, further damaging the vessel and its cargo.

26 11. The scraping impact and grounding of the Exxon Valdez

upon Bligh Reef cut open at least eight of the ship's twelve oil tanks which held 53 million gallons of crude oil, causing the largest oil spill in the United States history. To date, approximately 10.1 million gallons of crude oil has been discharged into Prince William Sound, contaminating hundreds of square miles of the Sound's fisheries. The oil spill subsequently spread to encompass at least 3,00 square miles and has migrated 250 miles to the southwest toward Kodiak Island. Another spill, of at least one million gallons, occurred during subsequent attempts to remove additional oil from the damaged tanks.

12. On March 26, 1989, due to the slow pace of any attempted clean-up efforts by Alyeska and the Exxon Defendants and concerns about even further possible damage to the property, marine and wildlife, the State of Alaska declared a disaster emergency.

13. Alyeska, Exxon and the State of Alaska recruited employees to participate in containment and clean-up activities from all over Alaska, offering wage rates well in excess of those which processing companies could offer and still remain profitable. As a result, the processors to whom Plaintiffs had committed to sell their product could not maintain an adequate work force to operate profitably. The processors eventually went bankrupt, and Plaintiffs no longer have a competitive market within which to sell their product.

14. Alyeska Pipeline Company, Exxon, and the State of

1 Alaska owed a duty to have a proper and adequate emergency
2 containment plan for this area but failed to put any plan into
3 affect within a reasonable or practical time period to contain
4 the spilled oil. The Defendants additionally failed to act in
5 a timely or reasonable manner so as to mitigate the oil spill
6 and resulting effects of the clean-up process.

7 15. Plaintiffs' value in their fishing vessels,
8 equipment, good will and future income has been destroyed or
9 greatly diminished as a result of Defendants' actions.

10 FIRST CAUSE OF ACTION
11 NEGLIGENCE

12 16. Defendants Alyeska, Exxon, and the State of Alaska
13 had continuously reassured environmentalists and others,
14 including specifically Plaintiffs, at all times prior to the
15 accident that there existed an emergency clean-up plan by which
16 any major oil spill could be successfully contained with five
17 hours of occurrence. Yet a full day after the spill little had
18 been done to contain it other than an unsuccessful attempt to
19 spray chemical dispersants.

20 17. Upon information and belief, Alyeska, Exxon, and the
21 State of Alaska's contingency clean-up plan required them to be
22 on site within five hours of the spill. Eighteen hours after
23 the rupture, however, essentially nothing was in place;
24 instead, it took nearly an entire day for Alyeska and Exxon
25 representatives to start placing barrier booms around the
26 slick. By that time, the discharged oil had already become too

large to contain.

18. Neither Alyeska, Alaska, nor the Exxon Defendants has enough equipment, supplies, manpower or an adequate containment plan to handle a spill of this size. Chemical dispersants, which could cause further harm to the water, proved ineffective. The chemical dispersants could not be used initially because the water was too cold and calm, making the slick too thick for the dispersants to work. The oil remained in the water too long for these dispersants to work since they are most effective only if employed within twenty-four hours after the spill.

19. In the exercise of care, Defendants knew or should have known that they lacked adequate equipment, supplies and manpower to effectively contain and clean-up a spill of this magnitude, that their contingency clean-up plan, including the tactics they developed thereunder were extremely limited in their efficiency and use, and that they would be forced to tap the Alaska work force in order to implement their plans.

20. The negligence of Defendants Alyeska, Exxon and Alaska in the control and clean-up operations specifically included, but was not limited to, (i) failing to establish and provide for an adequate contingency plan to contain and clean up any discharge of oil; (ii) inadequately planning the ensuing clean-up effort; (iii) inadequately carrying out the ensuing clean-up effort; (iv) unreasonably delaying the ensuing clean-up effort; (v) choosing inadequate tactics in

1 the ensuing clean-up effort; (vi) relying solely upon the
2 Alaska work force to provide the necessary personnel for the
3 ensuing clean-up effort; and (vii) failure to monitor, inspect
4 and approve of an adequate and effective clean up and
5 containment plan.

6 21. As a direct and proximate result of the foregoing
7 negligence, Plaintiffs have suffered damages as set forth in
8 this complaint.

9 22. In addition, Defendants Exxon acted recklessly,
10 grossly negligently, wantonly and in willful disregard of the
11 rights, safety, and economic well-being of Plaintiffs in the
12 control and clean-up operations of this spill, for which
13 Plaintiffs are entitled to punitive and exemplary damages
14 against these Defendants.

15 SECOND CAUSE OF ACTION
16 GROSS NEGLIGENCE OF EXXON

17 23. The captain of the Exxon Valdez, Joseph J. Hazelwood,
18 who upon information and belief had previously been convicted
19 of charges involving drinking and driving twice in the past
20 five years and had his driver's license suspended or revoked
21 three times in that same period, was under the influence of
22 alcohol while in command of the vessel.

23 24. Captain Hazelwood placed the navigation and direction
24 of the vessel into the charge of the third mate, Gregory
25 Cousins, when it ran aground although Cousins lacked proper
26 certification and guidance to pilot vessels such as the Exxon

Valdez through the waters of Prince William Sound.

25. Captain Hazelwood and third mate Cousins knew or should have known that it was unreasonably dangerous for Hazelwood to leave the bridge and relinquish control of the tanker to Cousins.

26. Captain Hazelwood and third mate Cousins knew or should have known that cousins did not possess the requisite degree of competence to command the Exxon Valdez with reasonable prudence, skill or care.

27. The Exxon Defendants knew or should have known based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times in the same five year period, that Hazelwood did not possess the requisite degree of competence to command the Exxon Valdez with reasonable prudence, skill or care, nor the ability to transfer his duties to an uncertified third mate.

28. The Exxon Defendants knew or should have known based on the service in which Exxon Valdez was involved that its single hull construction was not sufficient to allow it to safely engage in the trade for which it was intended.

29. The negligence of the Exxon Defendants by and through their employees, in the operation of the Exxon Valdez specifically included, but was not limited to (i) failing to adequately crew the tanker; (ii) failing to adequately pilot and navigate Prince William Sound; (iii) commanding the vessel while under the influence of alcohol per State of Alaska

Standards; (iv) failing to monitor the sobriety of their crews in operating the vessel; (v) failing to operate the vessel away from known navigational dangers; (vi) operating the vessel in a dangerous manner; and (vii) failing to utilize a seaworthy vessel. As a direct and proximate result of their own right as well as by and through their agents, servants and employee, they caused Plaintiffs to suffer damages as described above.

30. The Exxon Defendants acted recklessly, grossly negligently, wantonly and in willful disregard of the rights, safety, and economic well-being of Plaintiffs in the ownership and operation of the Exxon Valdez for which Plaintiffs are entitled to punitive and exemplary damages against the Defendant.

THIRD CAUSE OF ACTION
ALASKA ENVIRONMENTAL CONSERVATION ACT

31. Oil, including the over 10 million gallons of crude oil which has been released into the Prince William Sound as a result of the grounding and consequent rupture of the Exxon Valdez's oil tanks, is a hazardous substance, as that term is defined in Section 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

32. The presence of oil in the Price William Sound and its subsequent migration presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and/or any part of the

1 natural habitat in which they are found.

2 33. The defendants own and/or have control, pursuant to
3 Section 46.03.826(3) of the Alaska Environmental Conservation
4 Act, over the oil which was loaded on the Exxon Valdez at the
5 Port of Valdez, Alaska, and released in to Prince William
6 Sound.

7 34. Upon information and belief, the entry of the oil in
8 or upon the water, surface or subsurface land of the State of
9 Alaska was not caused solely as a result of: an act of war, an
10 intentional act or a negligent act of a third party, other
11 than a party or its employees in privity with, or employed by,
12 defendants, negligence on the part of the United States
13 government, or an act of God.

14 35. Upon information and belief, upon discovery of the
15 entry of the oil in or upon the water, surface or subsurface
16 land of the State of Alaska, defendants delayed and/or failed
17 to begin operations to contain and clean up the hazardous
18 substance within a reasonable period of time.

19 36. The entry of the oil which is owned and/or within the
20 control of the defendants in or upon the waters, surface and/or
21 subsurface lands of the State of Alaska, has caused damages to
22 Plaintiffs as set forth in this complaint for which the
23 defendant are strictly liable pursuant to Section 46.03.822 of
24 the Alaska Environmental Conservation Act.

1 WHEREFORE PLAINTIFFS PRAY for a judgment against the
2 Defendants jointly and severally as follows:

3 1. Compensatory damages for present and future economic
4 loss, emotional suffering, distress, loss of property and
5 property rights in a sum to be proven at trial in excess of
6 Eight Million and No Hundredths Dollars (\$8,000,000.00).

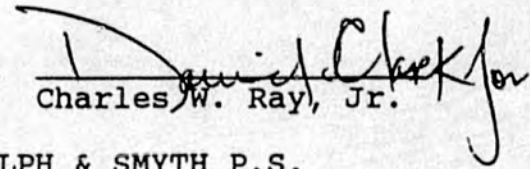
7 2. Punitive and exemplary damages in a sum to be awarded
8 at trial in excess of Ten Million and No Hundredths Dollars
9 (\$10,000,000.00).

10 3. Judgment awarding Plaintiffs costs, interest and
11 attorney's fees; and

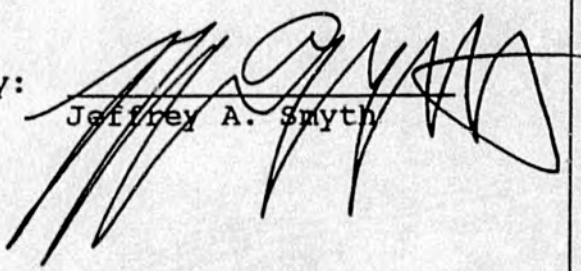
12 4. Other relief as this court deems just and equitable.

13 DATED this _____ day of _____, 1991 at Anchorage,
14 Alaska.

15 TUGMAN, CLARKE & RAY
16 Attorneys for Plaintiffs

17
18 By: 
Charles W. Ray, Jr.

19 ADOLPH & SMYTH P.S.
20 Of Counsel for Plaintiffs

21
22 By: 
Jeffrey A. Smyth

16

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

TODD B. ADAMS, et al.,

Plaintiff(s),

vs.

EXXON CORPORATION; EXXON SHIPPING
COMPANY; ALYESKA PIPELINE SERVICE
COMPANY; and the STATE OF ALASKA,

Defendant(s).

RECEIVED

Department of Law

MAR 28 1991
12:40

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

CASE NO. 3AN- 91-2466

SUMMONS

To Defendant: ATTORNEY GENERAL FOR THE STATE OF ALASKA

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 303 K Street, Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to plaintiff's attorney, TUGMAN, CLARK & RAY,

whose address is: 711 N STREET, SUITE 500, ANCHORAGE, AK 99501.

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

☒ This case has been assigned to Superior Court Judge Shantell.

☐ The special procedures set forth in Civil Rule 16.1 have been invoked in this action. See attached Case Characterization Form.

☐ This case has been assigned to District Court Judge _____.

CLERK OF COURT

Date

3/27/91

By:

Deputy Clerk



* The State or a state office or agency named as a defendant has 40 days to file its answer.

ACE 1287193

CIV-100 ANCH (4/87)(st.3)
SUMMONS

Civil Rules 4, 5, 12, 16.1, 55

9167655758

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

RODD E. ADAMS; et al.,

Plaintiff(s),

vs.

EXXON CORPORATION; EXXON SHIPPING
COMPANY; ALYESKA PIPELINE SERVICE
COMPANY; and the STATE OF ALASKA,

Defendant(s).

CASE NO. 3AN-

11-2466

SUMMONS

To Defendant: ATTORNEY GENERAL FOR THE STATE OF ALASKA

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 303 K Street, Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to plaintiff's attorney, TUGMAN, CLARK & RAY, whose address is: 721 K STREET, SUITE 500, ANCHORAGE, AK 99501.

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

☒ This case has been assigned to Superior Court Judge Sam Hill.

☐ The special procedures set forth in Civil Rule 16.1 have been invoked in this action. See attached Case Characterization Form.

☐ This case has been assigned to District Court Judge _____.

CLERK OF COURT

Date 7/9/91

By: [Signature]

Deputy Clerk



* The State or a state office or agency named as a defendant has 40 days to file its answer.

ACE 1287194

CIV-100 ANCH (4/87)(st.3)
SUMMONS

Civil Rules 4, 5, 12, 16.1, 55

1. PLAINTIFFS

TODD B. ADAMS, et al. (see attached caption listing plaintiffs)

DEFENDANTS

EXXON CORPORATION; EXXON SHIPPING COMPANY; ALYESKA PIPELINE SERVICE COMPANY; and the STATE OF ALASKA.

2. NATURE OF SUIT:

A. Place an X on one line only:

☐ Contract ☒ Personal Property ☐ Forfeiture/Penalty
☒ Personal Injury ☐ Civil Rights ☐ Labor
☐ Real Property ☐ Prisoner Petition ☒ Other, explain:

DAMAGES

B. Place an X on one of the following lines if applicable:

☐ Professional malpractice action
☐ Class action
☐ Derivative shareholder suit or security law action
☐ Products liability action
☒ Civil case involving unusually active pretrial discovery and/or motion work
☐ Reapportionment or election-challenge case
☐ Union dispute
☐ Condemnation case

3. ESTIMATED TRIAL TIME: ☐ 10 days or less ☒ More than 10 days

4. RELIEF INJUNCTIVE Yes ☐ No ☐ DEMAND*
REQUESTED: JURY DEMAND ☒ Yes ☐ No \$25000 of \$50000 "

*If less than \$50,000, state authority for filing in Superior Court.

5. RELATED CASE(S) IF ANY: Case No. _____
Case Name _____
Judge _____

6. PREVIOUS FILING

Has this case ever been previously filed and dismissed without prejudice under Civil Rule 16.1(g) or 41(a)? ☒ Yes ☐ No If yes, state the case name, number and date of dismissal:

3/28/91
Date

Signature of Plaintiff's Attorney
John T. Hansen
HANSEN & LEDERMAN
Print or Type Name

COURT USE ONLY

☐ Copy enclosed w/summons

Note: Plaintiff's attorney must file with the court the original of this form and a copy for each defendant. Attorney must provide photocopies where necessary.

CASE DESCRIPTION

Case No. 3AN-91-2466 Civil ☐ District Court ☒ Superior Court

Check the box below which best describes the case. Mark one box only. If the case involves both personal injury and property damage, check the appropriate box in the personal injury section.

CONTRACT

- ☐ Debt - General (DEB)
☐ Real Estate Matter (REM)
☐ Other Contract (OCT)

PERSONAL INJURY

- ☐ Personal Injury - Auto (PIA)
☒ Personal Injury - Other (PIO)
☐ Wrongful Death (PID)

DOMESTIC RELATIONS

- ☐ Dissolution Without Children (DIS)
☐ Dissolution With Children (DSC)
☐ Divorce Without Children (DIV)
☐ Divorce With Children (DVC)
☐ Domestic Violence (DVI)
☐ URESA - Child Support/Payment (URS)
☐ Other Domestic Relations (ODR)

PROPERTY DAMAGE

- ☐ Property Damage - Auto (PDA)
☐ Property Damage - Other (PDO)

OTHER CIVIL

- ☐ Change of Name (CON)
☐ Forcible Entry & Detainer (FED)
☐ Foreclosure (FOR)
☐ Foreign Judgment (FOJ)
☐ Injunctive Relief (INJ)
☐ Quiet Title (QIT)
☐ Administrative Review (ADR)
☒ Other (OCI). Please describe:

MALPRACTICE

- ☐ Medical Malpractice (MMP)
☐ Legal Malpractice (LMP)
☐ Other Malpractice (OMP)

Damages

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

TODD B. ADAMS, JASON D. ALEXANDER,)
 for himself and his crewmembers,)
 LESLIE P. ALLEN, AL L. ANDERSON and)
 AL L. ANDERSON ENTERPRISES, INC.,)
 PETE ANDERSON, JR., FRANK BABIAK,)
 JACK BOBIE, JR., and his crew)
 members DAVID HALL and BILL REID,)
 LINDA BASSETT, JERRY BLACKLER,)
 THOMAS D. BRANSHAW and his crew)
 members, JAMES N. BUTLER, III,)
 JOHN BUTLER, MARK and GLENDA CARR,)
 and employees, KIP R. CARROLL, JOE)
 S. CHMIEL, THOMAS CONCANNON,)
 CORDOVA AIR SERVICE, INC., MICHAEL)
 E. and LORI E. COWAN, TOM CUMMING,)
 DEBRA LEA, INC., DEW DROP, INC.,)
 JOSEPH A. DITTRICK and F/V MUSTANG)
 SEAFOODS, INC., and employee)
 MICHAEL ESTES, ALAN DRAKE, THOMAS)
 T. ELIASON, WILLIAM K. EVANS, EVE)
 FLYNN for EVE'S HAIR DESIGN, JAMES)
 EWING and his crewmembers, DENNIS)
 SKONBERG, ROGER CARTER and DAVID M.)
 PHILLIPS, KIETH FINDLEY,)
 CHRISTOPHER L. FULTON, KENNETH)
 GILL, JOHN GREGORY, GERALD GUDENAU,)
 ARLOT W. HALL and GEORGE ANCICH,)
 DONALD HANKS, MICHAEL J. HANLEY,)
 LARRY IMM, ERIC HASE, CAROL L.)
 JOHNSON, DICK JOHNSON, ELI J.)
 JOHNSON, ERNEST R. JOHNSON, JAMES)
 E. JOHNSON, WENDELL JONES, CHARLES)
 A. LAMB and his crewmembers,)
 DENNIS LARY and his crewmembers,)
 JANET LEBOLD, JOHN LLOYD LEBOLD,)
 MATTHEW LEWIS, BETTY E. LOWELL,)
 DANIEL LOWELL, RICHARD LOWELL,)
 MICHAEL MAULING, DANIEL P.)
 McCLINN, THOMAS M. MENCEL, LLOYD W.)
 MONTGOMERY, JEFF MOORE, BRIAN J.)
 MURPHY and REBECCA MURPHY, for)
 themselves and their minor sons,)
 THOMAS NAMTVEDT, DOUGLAS PEDERSEN,)
 for himself and his crewmember,)
 MARIUS PEDERSEN and his crewmembers)
 EUGENE CARLSON and ANDREW FOX, H.)
 LLOYD RANSOM and PAMELA HOLMQUIST,)

LAW OFFICES OF
 HANSEN & LEDERMAN
 711 H STREET, SUITE 900
 ANCHORAGE, ALASKA 99501
 (907) 278-4573

ACE 1287197

JAMES V. RAY, CHARMAINE RAYMOND,)
 GARY RAYMOND and RAYMOND ENTER-)
 PRISES, INC., TINY REES, TIM)
 REYNOLDS, RICHARD RUSSELL, ERWIN)
 SAMUELSON, G. GORDON SCOTT and his)
 crewmembers, BRENT SONGER, TAMAR,)
 INC., and its employees, RANDALL C.)
 WARNER, IRENE WEBBER, JAMES R.)
 WEBBER, JR., MICHAEL J. WEBBER,)
 WILLIAM F. WEBBER, SR. and KIMBO)
 CORP., JAMES and ANNE V. WICKERSHAM)
 MICHAEL WICKERSHAM, DUKE M. and)
 JEANNIE WILLIAMS, for themselves)
 and their minor children SHANNON)
 LEE and ADAM DUKE WILLIAMS, GREGORY)
 T. and MICHELLE WILLIAMS, for them-)
 selves and their minor children)
 JENNIFER LYNN and IAN LLEWELYN)
 WILLIAMS, NORMAN SHAWN and CATHLEEN)
 WILLIAMS, for themselves and their)
 minor children SHAWNA KATHLEEN,)
 MORGAN ALLEN and LYDIA MARIA)
 WILLIAMS, RUSSELL B. WILLIAMS, for)
 himself and his employees STEVEN)
 DODSON, JAMES SMITH and CHARLES)
 SMITHSON, SHIRLEY R. WILLIAMS,)
 ZACHERY B. WILLIAMS, PATRICIA A.)
 WRIGHT, ALAN L. YOUNKER, TODD)
 YOUNKER, CHAD YOUNKER, MARTIN)
 GORESON, JAMES R. GORESON, JEFFREY)
 A. MOORE, JAMES D. EWING, DOUG)
 JENSEN, DANIEL LOWELL, WHITTIER)
 SEAFOODS, INC., CORDOVA AIR)
 SERVICE, INC., F/V DEW DROP INC.,)
 F/V DEBRA LEE, INC., SHEILA R.)
 JENSEN, JEFFREY J. JENSEN, ANGELA)
 K. JENSEN, DOUGLAS R. JENSEN,)
 DANIEL and PAMELA STRICKLAND,)

Plaintiffs,)

vs.)

EXXON USA, Inc., a Delaware Corp.)
 EXXON CORPORATION, a Delaware)
 Corporation, EXXON SHIPPING)
 COMPANY, a Delaware Corporation,)
 ALYESKA PIPELINE SERVICE COMPANY,)
 a Delaware Corporation, EXXON)
 VALDEZ, in rem, and the STATE OF)
 ALASKA,)

Case No. 3AN-91-2466 Civ.

LAW OFFICES OF
 HANSEN & LEDERMAN
 711 H STREET, SUITE 600
 ANCHORAGE, ALASKA 99501
 (907) 278-4573

ACE 1287198

RECEIVED

Department of Law

KA

MAR 20 1991

12:40

Office of the Attorney General

Anchorage Branch

Anchorage, Alaska

Defendants.)
_____)

FIRST AMENDED COMPLAINT

Plaintiffs, by and through counsel, HANSEN & LEDERMAN and TUGMAN, CLARK & RAY, for their first amended complaint against Defendants, allege as follows:

JURISDICTION AND PARTIES

1. Plaintiffs are residents of Alaska and other states engaged in commercial fishing or other businesses in Alaska and/or are owners of real and personal property situated in that part of Alaska affected by the spill of oil from the EXXON VALDEZ on or about March 24, 1989.

2. The corporate Plaintiffs all are Alaska corporations doing business in Whittier or Cordova, Alaska. They are current with respect to all corporate taxes, fees and reports, and are authorized to bring this action.

3. Upon information and belief, Defendants EXXON U.S.A., Inc., EXXON Corporation and EXXON Shipping Company [hereinafter, collectively, "EXXON"] are corporations organized under the laws of Delaware and licensed to do business in the State of Alaska.

4. Defendants Exxon, or one or more of them, are the owners of the tanker EXXON VALDEZ.

5. Defendants Exxon are wholly owned or controlled, one by another, or are so closely related as to be liable for the wrongful acts of each other, inter se.

LAW OFFICES OF
HANSEN & LEDERMAN
711 H STREET, SUITE 800
ANCHORAGE, ALASKA 99501
(907) 278-4573

COMPLAINT
Page 3

ACE 1287199

6. The EXXON VALDEZ is an oil tanker vessel that, upon information and belief, is registered as a United States vessel, and is owned by Defendants Exxon. EXXON VALDEZ is now and will be within the jurisdiction of this court during the pendency of this action.

7. Upon information and belief, Defendant Alyeska Pipeline Service Company, Inc. is a corporation organized under the laws of Delaware and licensed to do business in the State of Alaska.

FACTS

8. Plaintiffs reallege and incorporate paragraphs 1 through 7 above as though set forth fully herein.

9. Exxon owns and operates a tanker known as the EXXON VALDEZ.

10. On or about March 24, 1989, the tanker known as the EXXON VALDEZ was en route from the Alyeska Pipeline Service Company Shipping Terminal in Valdez, Alaska to a refinery in Long Beach, California.

11. Exxon owns and controls the oil which was transported by the EXXON VALDEZ.

12. Alyeska Pipeline Service Company controls the loading and transportation of oil from the Port of Valdez and is responsible for prevention, containment and cleanup of oil spills associated with that loading and transportation in Prince William Sound.

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711 H STREET, SUITE 800
ANCHORAGE, ALASKA 99501
(907) 278-4573

13. The EXXON VALDEZ was carrying approximately 53 million gallons of crude oil.

14. Approximately twenty-five miles from Valdez, the EXXON VALDEZ ran aground the Bligh Reef. At the time the EXXON VALDEZ ran aground it was under the command of an intoxicated, incompetent Master, Joseph Hazelwood. As a result of the tanker running aground it sustained damages and more than eleven million gallons of oil leaked from the tanker into the water, surface and subsurface land of Prince William Sound.

15. Alyeska Pipeline Service Company, Exxon, and the State of Alaska owed a duty to have a proper and adequate emergency containment plan for this area but failed to put any plan into effect within a reasonable or practical time period to contain the spilled oil. The Defendants additionally failed to act in a timely or reasonable manner so as to mitigate the oil spill and resulting damage.

16. Said spill has damaged and will continue to damage Plaintiffs in at least the following respects: diminution in the value of their vessels, permits, real estate and other property; destruction of the marine environment with consequent loss of the fisheries upon which Plaintiffs depend; interruption and interference with Plaintiffs' business; loss of enjoyment of life; and emotional and mental distress.

17. Plaintiffs' damages were proximately caused by the torts described herein for which the defendants are liable in a

sum in excess of \$50,000.00, the exact amount to be proven at trial.

FIRST CAUSE OF ACTION
(NEGLIGENCE - EXXON SHIPPING COMPANY)

18. Plaintiffs reallege and incorporate paragraphs 1 through 17 as though set forth fully herein.

19. At all relevant times hereto Joseph Hazelwood was acting within the scope of his employment with Defendant Exxon.

20. As the employer of Joseph Hazelwood, Exxon is liable to the Plaintiffs for all damages sustained as a consequence of Joseph Hazelwood's negligent and unlawful conduct in amounts to be proved at trial.

SECOND CAUSE OF ACTION
(NEGLIGENCE -- EXXON SHIPPING COMPANY)

21. Plaintiffs reallege and incorporate paragraphs 1 through 20 as though set forth fully herein.

22. Defendant Exxon owed Plaintiffs a duty of care in hiring and supervising its employees to prevent a catastrophe such as the grounding of the EXXON VALDEZ.

23. Defendant Exxon was negligent in the hiring of and supervising of the Captain and the crew of the EXXON VALDEZ.

24. Defendant Exxon is liable to Plaintiffs for all damages they have sustained as a consequence of Exxon negligence as described herein in amounts to be proved at trial.

THIRD CAUSE OF ACTION
(NEGLIGENCE - ALL DEFENDANTS)

25. Plaintiffs reallege and incorporate paragraphs 1 through 25 above as though set forth fully herein.

26. Defendants Alyeska, Exxon, and the State of Alaska had continuously reassured environmentalists and others, including specifically, Plaintiffs, at all times prior to the accident that there existed an emergency clean-up plan by which any major oil spill could be successfully contained with five hours of occurrence. Yet a full day after the spill little had been done to contain it other than an unsuccessful attempt to spray chemical dispersants.

27. Upon information and belief, Alyeska, Exxon, and the State of Alaska's contingency clean-up plan required them to be on site within five hours of the spill. Eighteen hours after the rupture, however, essentially nothing was in place; instead, it took nearly an entire day for Alyeska and Exxon representatives to start placing barrier booms around the slick. By that time, the discharged oil had already become too large to contain.

28. Neither Alyeska, the State of Alaska, nor the Exxon Defendants, had enough equipment, supplies or an adequate containment plan to handle an oil spill of this size. Chemical dispersants, which could cause further harm to the water, proved ineffective. The chemical dispersants could not be used initially because the water was too cold and calm, making the slick too thick for the dispersants to work. The oil remained in the water too long for these dispersants to work since they are

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ANCHORAGE, ALASKA 99501
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most effective only if employed within twenty-four hours after a spill.

29. In the exercise of care, Defendants knew or should have known that they lacked adequate equipment and supplies to effectively contain and clean up a spill of this magnitude, that their contingency clean-up plan, including the tactics they developed thereunder, were extremely limited in their efficiency and use.

30. The negligence of Defendants Alyeska, Exxon, and the State of Alaska in the control and clean-up operations specifically included, but was not limited to, (1) failing to establish and provide for an adequate contingency plan to contain and clean up any discharge of oil; (2) inadequately planning the ensuing clean-up effort; (3) inadequately carrying out the ensuing clean-up effort; (4) unreasonably delaying the ensuing clean-up effort; (5) choosing inadequate tactics in the ensuing clean-up effort; (6) processing inadequate equipment, supplies, and personnel for deployment to the ensuing clean-up effort; and (7) failure to monitor, inspect, and approve an adequate and effective clean-up and containment plan.

31. As a direct and proximate result of the foregoing negligence, Plaintiffs have suffered damages as set forth in this Complaint.

32. In addition, the Exxon Defendants and Alyeska acted with reckless, grossly negligent, wanton and willful disregard of

the rights, safety, and economic well being of Plaintiffs in the control and clean-up operations of this spill, for which Plaintiffs are entitled to punitive and exemplary damages against these Defendants.

FOURTH CAUSE OF ACTION
(STRICT LIABILITY)

33. Plaintiffs reallege and incorporate paragraphs 1 through 32 above as if set forth fully herein.

34. Defendants Exxon and Alyeska Pipeline Service Company were engaged in the transportation of oil, a hazardous activity, and are subject to strict liability for all damages resulting from the conduct of that activity.

35. Defendants Exxon and Alyeska Pipeline Service Company are strictly liable to Plaintiffs for all damages they have sustained as a consequence of the oil spilled into Prince William Sound in amounts to be proved at trial.

FIFTH CAUSE OF ACTION
(43 U.S.C §1653(a))

36. Plaintiffs reallege and incorporate paragraphs 1 through 35 above as though set forth fully herein.

37. Defendants Exxon as owner and/or operator of EXXON VALDEZ, are strictly liable, jointly and severally, to Plaintiffs for the damages caused by the discharge of oil described above as provided under 43 U.S.C §1653(a).

SIXTH CAUSE OF ACTION
(43 U.S.C §1652(a))

38. Plaintiffs reallege and incorporate paragraphs 1 through 37 above as though set forth fully herein.

39. Defendant Alyeska Pipeline Service Company, as the holder of the right-of-way granted in accordance with 43 U.S.C §1652, is strictly liable to Plaintiffs for all damages caused by the discharge of oil described above as provided under 43 U.S.C §1652(a).

SEVENTH CAUSE OF ACTION
(GROSS NEGLIGENCE AND RECKLESSNESS)

40. Plaintiffs reallege and incorporate paragraphs 1 through 39 above as though set forth fully herein.

41. Defendants Alyeska and Exxon and each of them were grossly negligent in failing to prevent, contain and clean up the oil spilled into Prince William Sound.

42. Defendants Alyeska and Exxon and each of them are jointly and severally liable to Plaintiffs for all damages they have sustained as a consequence of Defendants' gross negligence and recklessness in amounts to be proved at trial.

EIGHTH CAUSE OF ACTION
(PUNITIVE DAMAGES)

43. The Defendants' actions were committed with malice, indifference and in reckless disregard of the rights of the Plaintiffs.

44. Plaintiffs are entitled to punitive damages in an amount to be determined at trial.

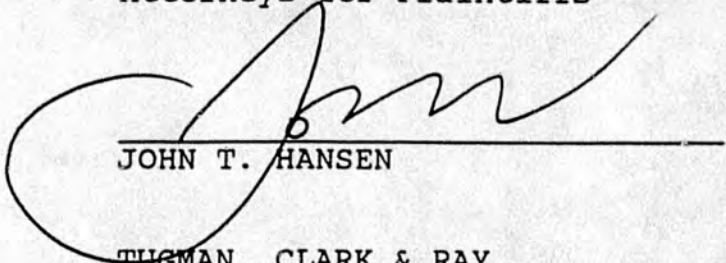
45. Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs, and each of them, pray for the following relief:

1. Special damages in excess of \$50,000 in amount to be determined at trial.
2. General damages in excess of \$50,000 in amount to be determined at trial.
3. Punitive damages in amounts to be proved at trial.
4. Costs and attorneys fees incurred in bringing this action.
5. Such other and further relief as the court deems just in the premises.

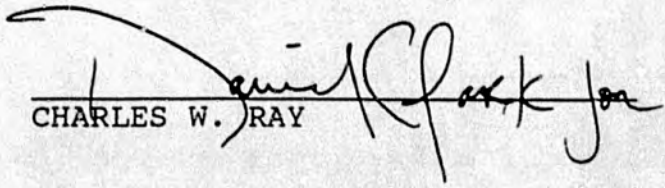
DATED this 26th day of March, 1991 at Anchorage, Alaska.

HANSEN & LEDERMAN
Attorneys for Plaintiffs



JOHN T. HANSEN

TUGMAN, CLARK & RAY
Attorneys for Plaintiffs



CHARLES W. RAY

LAW OFFICES OF
HANSEN & LEDERMAN
711 H STREET, SUITE 900
ANCHORAGE, ALASKA 99501
(907) 278-4573

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

TODD B. ADAMS, JASON D. ALEXANDER,)
 for himself and his crewmembers,)
 LESLIE P. ALLEN, AL L. ANDERSON and)
 AL L. ANDERSON ENTERPRISES, INC.,)
 PETE ANDERSON, JR., FRANK BABIAK,)
 JACK BOBIE, JR., and his crew)
 members DAVID HALL and BILL REID,)
 LINDA BASSETT, JERRY BLACKLER,)
 THOMAS D. BRANSHAW and his crew)
 members, JAMES N. BUTLER, III,)
 JOHN BUTLER, MARK and GLENDA CARR,)
 and employees, KIP R. CARROLL, JOE)
 S. CHMIEL, THOMAS CONCANNON,)
 CORDOVA AIR SERVICE, INC., MICHAEL)
 E. and LORI E. COWAN, TOM CUMMING,)
 DEBRA LEA, INC., DEW DROP, INC.,)
 JOSEPH A. DITTRICK and F/V MUSTANG)
 SEAFOODS, INC., and employee)
 MICHAEL ESTES, ALAN DRAKE, THOMAS)
 T. ELIASON, WILLIAM K. EVANS, EVE)
 FLYNN for EVE'S HAIR DESIGN, JAMES)
 EWING and his crewmembers, DENNIS)
 SKONBERG, ROGER CARTER and DAVID M.)
 PHILLIPS, KIETH FINDLEY,)
 CHRISTOPHER L. FULTON, KENNETH)
 GILL, JOHN GREGORY, GERALD GUDENAU,)
 ARLOT W. HALL and GEORGE ANCICH,)
 DONALD HANKS, MICHAEL J. HANLEY,)
 LARRY IMM, ERIC HASE, CAROL L.)
 JOHNSON, DICK JOHNSON, ELI J.)
 JOHNSON, ERNEST R. JOHNSON, JAMES)
 E. JOHNSON, WENDELL JONES, CHARLES)
 A. LAMB and his crewmembers,)
 DENNIS LARY and his crewmembers,)
 JANET LEBOLD, JOHN LLOYD LEBOLD,)
 MATTHEW LEWIS, BETTY E. LOWELL,)
 DANIEL LOWELL, RICHARD LOWELL,)
 MICHAEL MAULDING, DANIEL P.)
 McCLINN, THOMAS M. MENCEL, LLOYD W.)
 MONTGOMERY, JEFF MOORE, BRIAN J.)
 MURPHY and REBECCA MURPHY, for)
 themselves and their minor sons,)
 THOMAS NAMTVEDT, DOUGLAS PEDERSEN,)
 for himself and his crewmember,)
 MARIUS PEDERSEN and his crewmembers)
 EUGENE CARLSON and ANDREW FOX, H.)
 LLOYD RANSOM and PAMELA HOLMQUIST,)

LAW OFFICES OF
 HANSEN & LEDERMAN
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 ANCHORAGE, ALASKA 99501
 (907) 278-4573

ACE 1287209

JAMES V. RAY, CHARMAINE RAYMOND,)
 GARY RAYMOND and RAYMOND ENTER-)
 PRISES, INC., TINY REES, TIM)
 REYNOLDS, RICHARD RUSSELL, ERWIN)
 SAMUELSON, G. GORDON SCOTT and his)
 crewmembers, BRENT SONGER, TAMAR,)
 INC., and its employees, RANDALL C.)
 WARNER, IRENE WEBBER, JAMES R.)
 WEBBER, JR., MICHAEL J. WEBBER,)
 WILLIAM F. WEBBER, SR. and KIMBO)
 CORP., JAMES and ANNE V. WICKERSHAM)
 MICHAEL WICKERSHAM, DUKE M. and)
 JEANNIE WILLIAMS, for themselves)
 and their minor children SHANNON)
 LEE and ADAM DUKE WILLIAMS, GREGORY)
 T. and MICHELLE WILLIAMS, for them-)
 selves and their minor children)
 JENNIFER LYNN and IAN LLEWELYN)
 WILLIAMS, NORMAN SHAWN and CATHLEEN)
 WILLIAMS, for themselves and their)
 minor children SHAWNA KATHLEEN,)
 MORGAN ALLEN and LYDIA MARIA)
 WILLIAMS, RUSSELL B. WILLIAMS, for)
 himself and his employees STEVEN)
 DODSON, JAMES SMITH and CHARLES)
 SMITHSON, SHIRLEY R. WILLIAMS,)
 ZACHERY B. WILLIAMS, PATRICIA A.)
 WRIGHT, ALAN L. YOUNKER, TODD)
 YOUNKER, CHAD YOUNKER, MARTIN)
 GORESON, JAMES R. GORESON, JEFFREY)
 A. MOORE, JAMES D. EWING, DOUG)
 JENSEN, DANIEL LOWELL, WHITTIER)
 SEAFOODS, INC., CORDOVA AIR)
 SERVICE, INC., F/V DEW DROP INC.,)
 F/V DEBRA LEE, INC., SHEILA R.)
 JENSEN, JEFFREY J. JENSEN, ANGELA)
 K. JENSEN, DOUGLAS R. JENSEN,)
 DANIEL and PAMELA STRICKLAND,)

Plaintiffs,)

vs.)

EXXON USA, Inc., a Delaware Corp.)
 EXXON CORPORATION, a Delaware)
 Corporation, EXXON SHIPPING)
 COMPANY, a Delaware Corporation,)
 ALYESKA PIPELINE SERVICE COMPANY,)
 a Delaware Corporation, EXXON)
 VALDEZ, in rem, and the STATE OF)
 ALASKA,)

Case No. 3AN-91-2466 Civ.

LAW OFFICES OF
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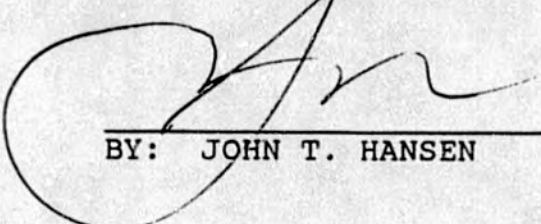
Defendants.)
_____)

DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs by and through counsel, HANSEN &
LEDERMAN, and hereby demands a trial by jury.

DATED this 26th day of March, 1991 at Anchorage, Alaska.

HANSEN & LEDERMAN
Attorneys for Plaintiffs


BY: _____
JOHN T. HANSEN

LAW OFFICES OF
HANSEN & LEDERMAN
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(907) 278-4573

ACE 1287210

17

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3
4 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
5 THIRD JUDICIAL DISTRICT AT ANCHORAGE
6

7 JOSEPH WADE BANTA,)
8 Plaintiff,)
9 vs.)
10 EXXON CORPORATION, EXXON)
11 SHIPPING COMPANY; ALYESKA)
12 PIPELINE SERVICE COMPANY,)
13 and the STATE OF ALASKA,)
14 Defendants.)

Filed in
STATE OF ALASKA, THIRD DISTRICT

MAR 26 1991

Clerk of the Trial Court
By _____ Deputy

Case No. 91-2467

15 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

16 Plaintiff, by and through his attorneys, Adolph & Smyth,
17 P.S. and Tugman, Clarke & Ray, states as follows:

18 1. Plaintiff Joseph W. Banta is a residents of Anchorage
19 Alaska, and is engaged in the business of commercial fishing.
20 Since, 1983 he has owned a permit in the Prince William Sound
21 area of Alaska. Prior to the oil spill incident referenced
22 herein below ("Spill"), the permit had a market value in excess
23 of \$150,000.00. Mr. Banta leases the vessel FAST BREAK, and
24 owns specialized herring gillnets and related equipment for use
25 in Prince William Sound valued in excess of \$40,000.00 prior
26

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
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ACE 1287138

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701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104
12081 621-7100

1 to the Spill. Mr. Banta regularly works as a crew member for
2 his father, Robert Banta. Mr. Banta investment in permits,
3 vessels, and equipment and activity as a crew member allows the
4 production of gross income from his fishing enterprise in
5 excess of \$100,000.00 per year.

6 2. Defendant, Exxon Corporation, is a corporation
7 organized under the laws of the State of New Jersey, with its
8 principal place of business at 1251 Avenue of the Americas, New
9 York, New York 10020. Exxon Corporation is engaged in the
10 business of operating petroleum companies through its
11 subsidiaries and division is the State of Alaska, and is an
12 owner and operator of the vessel known as the Exxon Valdez.

13 3. Defendant, Exxon Shipping Company, a Delaware
14 Corporation and maritime subsidiary of Defendant Exxon
15 Corporation with its principal place of business at 811 Dallas
16 Avenue, Houston, Texas 77002, operates in the State of Alaska,
17 and is an owner and operator of the vessel known as the Exxon
18 Valdez.

19 4. Defendant, Alyeska Pipeline Service Company, is an
20 association of the holders of the Pipeline right-of-way for the
21 Trans-Alaska Pipeline System.

22 5. The State of Alaska is responsible for approval,
23 monitoring, and compliance with its laws regarding
24 transportation of oil. Alyeska Pipeline Service Company
25 ("Alyeska") owns and operates the terminal at Valdez, Alaska,
26 and loaded the Exxon Valdez with North Slope crude oil at the

Valdez terminal.

SUMMARY OF FACTS

6. On or about March 23, 1989, the marine vessel EXXON VALDEZ, vessel number 692966, an oil tanker owned and operated by defendant Exxon Shipping Company, was loaded at Valdez, Alaska, with approximately 53 million gallons of crude oil that had been transported through the Trans-Alaska Pipeline.

7. The Exxon Valdez passed through the harbor and Valdez Narrows under the command of a harbor pilot. Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of Defendants Exxon, was on the bridge of the ship when the harbor pilot disembarked at the southern end of the Narrows at approximately 12:30 a.m. Friday morning, March 24, 1989. Captain Hazelwood was under the influence of alcohol while he was in command of the vessel. Captain Hazelwood retired to his cabin, one flight below the bridge, leaving Gregory Cousins, the third mate, and Robert Kafan, the helmsman, on the bridge. At all times relevant hereto, Messrs. Cousins and Kafan were acting within the scope of their employment and as agents and/or representatives of Defendants Exxon.

8. The third mate, who was not certified for commanding the tanker through these waters, steered the vessel through the deep water southbound shipping lane of the channel due to earlier reports that it contained icebergs from a glacier that

1 had broken to the northwest. The ship steered east into the
2 empty northbound lane, and then proceeded on a southwesterly
3 course bound for Long Beach, California. The tanker, however,
4 proceeded three miles east past the alternative channel,
5 outside the traffic lanes and entirely beyond the shipping
6 channel into a charted area of rocky reefs.

7 9. The vessel was approximately one quarter mile outside
8 the regular channel for vessels when she first struck Bligh
9 Reef, which ripped along the vessel's starboard side tearing
10 three holes into the starboard tanks and ripping out a portion
11 of the hull. Although the ship was still navigable after the
12 first impact, she was so far east of deep water that when
13 Cousins tried to turn the Exxon Valdez back toward the west, he
14 struck a second part of the shallow reef. The second impact
15 brought the ship aground, stopping the ship's progress
16 completely, further damaging the vessel and its cargo.

17 10. The scraping impact and grounding of the Exxon Valdez
18 upon Bligh Reef cut open at least eight of the ship's twelve
19 oil tanks which held 53 million gallons of crude oil, causing
20 the largest oil spill in the United States history. To date,
21 approximately 10.1 million gallons of crude oil has been
22 discharged into Prince William Sound, contaminating hundreds of
23 square miles of the Sound's fisheries. The oil spill
24 subsequently spread to encompass at least 3,00 square miles and
25 has migrated 250 miles to the southwest toward Kodiak Island.
26 Another spill, of at least one million gallons, occurred during

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 4
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ACE 1287141

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1 subsequent attempts to remove additional oil from the damaged
2 tanks.

3 11. On March 26, 1989, due to the slow pace of any
4 attempted clean-up efforts by Alyeska and the Exxon Defendants
5 and concerns about even further possible damage to the
6 property, marine and wildlife, the State of Alaska declared a
7 disaster emergency.

8 12. Alyeska Pipeline Company, Exxon, and the State of
9 Alaska owed a duty to have a proper and adequate emergency
10 containment plan for this area but failed to put any plan into
11 affect within a reasonable or practical time period to contain
12 the spilled oil. The Defendants additionally failed to act in
13 a timely or reasonable manner so as to mitigate the oil spill
14 and resulting damage.

15 13. Damages to the Plaintiff caused by this discharge of
16 millions of gallons of North Slope crude oil, include but are
17 not limited to damage to marine life, including herring,
18 salmon, ground bottom fish, kelp, shrimp and crab, relied upon
19 by Plaintiffs. Plaintiff's value in his fishing permit,
20 vessel, equipment, good will and future income has been
21 destroyed or greatly diminished as a result of Defendants'
22 actions.

23 FIRST CAUSE OF ACTION
24 NEGLIGENCE

25 14. Defendants Alyeska, Exxon, and the State of Alaska
26 had continuously reassured environmentalists and others,

1 including specifically Plaintiffs, at all times prior to the
2 accident that there existed an emergency clean-up plan by which
3 any major oil spill could be successfully contained with five
4 hours of occurrence. Yet a full day after the spill little had
5 been done to contain it other than an unsuccessful attempt to
6 spray chemical dispersants.

7 15. Upon information and belief, Alyeska, Exxon, and the
8 State of Alaska's contingency clean-up plan required them to be
9 on site within five hours of the spill. Eighteen hours after
10 the rupture, however, essentially nothing was in place;
11 instead, it took nearly an entire day for Alyeska and Exxon
12 representatives to
13 start placing barrier booms around the slick. By that time,
14 the discharged oil had already become too large to contain.

15 16. Neither Alyeska, Alaska, nor the Exxon Defendants has
16 enough equipment, supplies, or an adequate containment plan to
17 handle a spill of this size. Chemical dispersants, which could
18 cause further harm to the water, proved ineffective. The
19 chemical dispersants could not be used initially because the
20 water was too cold and calm, making the slick too thick for the
21 dispersants to work. The oil remained in the water too long
22 for these dispersants to work since they are most effective
23 only if employed within twenty-four hours after the spill.

24 17. In the exercise of care, Defendants knew or should
25 have known that they lacked adequate equipment and supplies to
26 effectively contain and clean-up a spill of this magnitude,

1 that their contingency clean-up plan, including the tactics
2 they developed thereunder were extremely limited in their
3 efficiency and use.

4 18. The negligence of Defendants Alyeska, Exxon and
5 Alaska in the control and clean-up operations specifically
6 included, but was not limited to, (i) failing to establish and
7 provide for an adequate contingency plan to contain and clean
8 up any discharge of oil; (ii) inadequately planning the
9 ensuing clean-up effort; (iii) inadequately carrying out the
10 ensuing clean-up effort; (iv) unreasonably delaying the
11 ensuing clean-up effort; (v) choosing inadequate tactics in
12 the ensuing clean-up effort; (vi) processing inadequate
13 equipment, supplies and personnel for deployment in the ensuing
14 clean-up effort; and (vii) failure to monitor, inspect and
15 approve of an adequate and effective clean up and containment
16 plan.

17 19. As a direct and proximate result of the foregoing
18 negligence, Plaintiffs have suffered damages as set forth in
19 this complaint.

20 20. In addition, Defendants Exxon acted recklessly,
21 grossly negligently, wantonly and in willful disregard of the
22 rights, safety, and economic well-being of Plaintiffs in the
23 control and clean-up operations of this spill, for which
24 Plaintiffs are entitled to punitive and exemplary damages
25 against these Defendants.
26

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3 SECOND CAUSE OF ACTION
4 GROSS NEGLIGENCE OF EXXON

5 21. The captain of the Exxon Valdez, Joseph J. Hazelwood,
6 who upon information and belief had previously been convicted
7 of charges involving drinking and driving twice in the past
8 five years and had his driver's license suspended or revoked
9 three times in that same period, was under the influence of
10 alcohol while in command of the vessel.

11 22. Captain Hazelwood placed the navigation and direction
12 of the vessel into the charge of the third mate, Gregory
13 Cousins, when it ran aground although Cousins lacked proper
14 certification and guidance to pilot vessels such as the Exxon
15 Valdez through the waters of Prince William Sound.

16 23. Captain Hazelwood and third mate Cousins knew or
17 should have known that it was unreasonably dangerous for
18 Hazelwood to leave the bridge and relinquish control of the
19 tanker to Cousins.

20 24. Captain Hazelwood and third mate Cousins knew or
21 should have known that cousins did not possess the requisite
22 degree of competence to command the Exxon Valdez with
23 reasonable prudence, skill or care.

24 25. The Exxon Defendants knew or should have known based
25 on Hazelwood's previous convictions for drinking and driving,
26 as well as the revocation or suspension of his driver's license
three times in the same five year period, that Hazelwood did

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 8
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ACE 1287145

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1 not possess the requisite degree of competence to command the
2 Exxon Valdez with reasonable prudence, skill or care, nor the
3 ability to transfer his duties to an uncertified third mate.

4 26. The Exxon Defendants knew or should have known based
5 on the service in which Exxon Valdez was involved that its
6 single hull construction was not sufficient to allow it to
7 safely engage in the trade for which it was intended.

8 27. The negligence of the Exxon Defendants by and through
9 their employees, in the operation of the Exxon Valdez
10 specifically included, but was not limited to (i) failing to
11 adequately crew the tanker; (ii) failing to adequately pilot
12 and navigate Prince William Sound; (iii) commanding the vessel
13 while under the influence of alcohol per State of Alaska
14 Standards; (iv) failing to monitor the sobriety of their crews
15 in operating the vessel; (v) failing to operate the vessel
16 away from known navigational dangers; (vi) operating the vessel
17 in a dangerous manner; and (vii) failing to utilize a
18 seaworthy vessel. As a direct and proximate result of their
19 own right as well as by and through their agents, servants and
20 employee, they caused Plaintiffs to suffer damages as described
21 above.

22 28. The Exxon Defendants acted recklessly, grossly
23 negligently, wantonly and in willful disregard of the rights,
24 safety, and economic well-being of Plaintiffs in the ownership
25 and operation of the Exxon Valdez for which Plaintiffs are
26 entitled to punitive and exemplary damages against the

Defendant.

THIRD CAUSE OF ACTION
ALASKA ENVIRONMENTAL CONSERVATION ACT

29. Oil, including the over 10 million gallons of crude oil which has been released into the Prince William Sound as a result of the grounding and consequent rupture of the Exxon Valdez's oil tanks, is a hazardous substance, as that term is defined in Section 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

30. The presence of oil in the Price William Sound and its subsequent migration presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and/or any part of the natural habitat in which they are found.

31. The defendants own and/or have control, pursuant to Section 46.03.826(3) of the Alaska Environmental Conservation Act, over the oil which was loaded on the Exxon Valdez at the Port of Valdez, Alaska, and released in to Prince William Sound.

32. Upon information and belief, the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska was not caused solely as a result of: an act of war, an intentional acto or a negligent act of a third party, other than a party or its employees in privity with, or employed by, defendants, negligence on the part of the United States government, or an act of God.

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 10
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ACE 1287147

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1 33. Upon information and belief, upon discovery of the
2 entry of the oil in or upon the water, surface or subsurface
3 land of the State of Alaska, defendants delayed and/or failed
4 to begin operations to contain and clean up the hazardous
5 substance within a reasonable period of time.

6 34. The entry of the oil which is owned and/or within the
7 control of the defendants in or upon the waters, surface and/or
8 subsurface lands of the State of Alaska, has caused damages to
9 Plaintiffs as set forth in this complaint for which the
10 defendant are strictly liable pursuant to Section 46.03.822 of
11 the Alaska Environmental Conservation Act.

12 WHEREFORE plaintiff prays for a judgment against the
13 Defendants jointly and severally as follows:

14 1. Compensatory damages for present and future economic
15 loss, emotional suffering, distress, loss of property and
16 property rights in a sum to be proven at trial in excess of One
17 Million and No Hundredths Dollars (\$1,000,000.00).

18 2. Punitive and exemplary damages in a sum to be awarded
19 at trial in excess of Ten Million and No Hundredths Dollars
20 (\$10,000,000.00).

21 3. Judgment awarding Plaintiff costs, interest and
22 attorney's fees; and

23 4. Other relief as this court deems just and equitable.
24
25
26

1 DATED this 25th day of March, 1991 at Anchorage,
2 Alaska.

3 TUGMAN, CLARKE & RAY
4 Attorneys for Plaintiffs

5
6 By: Charles W. Ray, Jr.
Charles W. Ray, Jr.

7 ADOLPH & SMYTH P.S.
8 Of Counsel for Plaintiffs

9
10 By: Charles W. Ray, Jr. for
Jeffrey A. Smyth

1
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4 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
5 THIRD JUDICIAL DISTRICT AT ANCHORAGE
6

7 JOSEPH WADE BANTA,
8 Plaintiff,

9 vs.

10 EXXON CORPORATION, EXXON
11 SHIPPING COMPANY; ALYESKA
12 PIPELINE SERVICE COMPANY,
13 and the STATE OF ALASKA,
14 Defendants.

15 Case No. 91-2467

16 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

17 Plaintiff, by and through his attorneys, Adolph & Smyth,
18 P.S. and Tugman, Clarke & Ray, states as follows:

19 1. Plaintiff Joseph W. Banta is a residents of Anchorage
20 Alaska, and is engaged in the business of commercial fishing.
21 Since, 1983 he has owned a permit in the Prince William Sound
22 area of Alaska. Prior to the oil spill incident referenced
23 herein below ("Spill"), the permit had a market value in excess
24 of \$150,000.00. Mr. Banta leases the vessel FAST BREAK, and
25 owns specialized herring gillnets and related equipment for use
26 in Prince William Sound valued in excess of \$40,000.00 prior

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
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Filed in
STATE OF ALASKA, THIRD DISTRICT

MAR 26 1991

Clerk of the Trial Courts
By _____ Deput.

ACE 1287138

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SEATTLE, WASHINGTON 98104
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1 to the Spill. Mr. Banta regularly works as a crew member for
2 his father, Robert Banta. Mr. Banta investment in permits,
3 vessels, and equipment and activity as a crew member allows the
4 production of gross income from his fishing enterprise in
5 excess of \$100,000.00 per year.

6 2. Defendant, Exxon Corporation, is a corporation
7 organized under the laws of the State of New Jersey, with its
8 principal place of business at 1251 Avenue of the Americas, New
9 York, New York 10020. Exxon Corporation is engaged in the
10 business of operating petroleum companies through its
11 subsidiaries and division is the State of Alaska, and is an
12 owner and operator of the vessel known as the Exxon Valdez.

13 3. Defendant, Exxon Shipping Company, a Delaware
14 Corporation and maritime subsidiary of Defendant Exxon
15 Corporation with its principal place of business at 811 Dallas
16 Avenue, Houston, Texas 77002, operates in the State of Alaska,
17 and is an owner and operator of the vessel known as the Exxon
18 Valdez.

19 4. Defendant, Alyeska Pipeline Service Company, is an
20 association of the holders of the Pipeline right-of-way for the
21 Trans-Alaska Pipeline System.

22 5. The State of Alaska is responsible for approval,
23 monitoring, and compliance with its laws regarding
24 transportation of oil. Alyeska Pipeline Service Company
25 ("Alyeska") owns and operates the terminal at Valdez, Alaska,
26 and loaded the Exxon Valdez with North Slope crude oil at the

Valdez terminal.

SUMMARY OF FACTS

6. On or about March 23, 1989, the marine vessel EXXON VALDEZ, vessel number 692966, an oil tanker owned and operated by defendant Exxon Shipping Company, was loaded at Valdez, Alaska, with approximately 53 million gallons of crude oil that had been transported through the Trans-Alaska Pipeline.

7. The Exxon Valdez passed through the harbor and Valdez Narrows under the command of a harbor pilot. Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of Defendants Exxon, was on the bridge of the ship when the harbor pilot disembarked at the southern end of the Narrows at approximately 12:30 a.m. Friday morning, March 24, 1989. Captain Hazelwood was under the influence of alcohol while he was in command of the vessel. Captain Hazelwood retired to his cabin, one flight below the bridge, leaving Gregory Cousins, the third mate, and Robert Kafan, the helmsman, on the bridge. At all times relevant hereto, Messrs. Cousins and Kafan were acting within the scope of their employment and as agents and/or representatives of Defendants Exxon.

8. The third mate, who was not certified for commanding the tanker through these waters, steered the vessel through the deep water southbound shipping lane of the channel due to earlier reports that it contained icebergs from a glacier that

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1 had broken to the northwest. The ship steered east into the
2 empty northbound lane, and then proceeded on a southwesterly
3 course bound for Long Beach, California. The tanker, however,
4 proceeded three miles east past the alternative channel,
5 outside the traffic lanes and entirely beyond the shipping
6 channel into a charted area of rocky reefs.

7 9. The vessel was approximately one quarter mile outside
8 the regular channel for vessels when she first struck Bligh
9 Reef, which ripped along the vessel's starboard side tearing
10 three holes into the starboard tanks and ripping out a portion
11 of the hull. Although the ship was still navigable after the
12 first impact, she was so far east of deep water that when
13 Cousins tried to turn the Exxon Valdez back toward the west, he
14 struck a second part of the shallow reef. The second impact
15 brought the ship aground, stopping the ship's progress
16 completely, further damaging the vessel and its cargo.

17 10. The scraping impact and grounding of the Exxon Valdez
18 upon Bligh Reef cut open at least eight of the ship's twelve
19 oil tanks which held 53 million gallons of crude oil, causing
20 the largest oil spill in the United States history. To date,
21 approximately 10.1 million gallons of crude oil has been
22 discharged into Prince William Sound, contaminating hundreds of
23 square miles of the Sound's fisheries. The oil spill
24 subsequently spread to encompass at least 3,00 square miles and
25 has migrated 250 miles to the southwest toward Kodiak Island.
26 Another spill, of at least one million gallons, occurred during

1 subsequent attempts to remove additional oil from the damaged
2 tanks.

3 11. On March 26, 1989, due to the slow pace of any
4 attempted clean-up efforts by Alyeska and the Exxon Defendants
5 and concerns about even further possible damage to the
6 property, marine and wildlife, the State of Alaska declared a
7 disaster emergency.

8 12. Alyeska Pipeline Company, Exxon, and the State of
9 Alaska owed a duty to have a proper and adequate emergency
10 containment plan for this area but failed to put any plan into
11 affect within a reasonable or practical time period to contain
12 the spilled oil. The Defendants additionally failed to act in
13 a timely or reasonable manner so as to mitigate the oil spill
14 and resulting damage.

15 13. Damages to the Plaintiff caused by this discharge of
16 millions of gallons of North Slope crude oil, include but are
17 not limited to damage to marine life, including herring,
18 salmon, ground bottom fish, kelp, shrimp and crab, relied upon
19 by Plaintiffs. Plaintiff's value in his fishing permit,
20 vessel, equipment, good will and future income has been
21 destroyed or greatly diminished as a result of Defendants'
22 actions.

23 FIRST CAUSE OF ACTION
24 NEGLIGENCE

25 14. Defendants Alyeska, Exxon, and the State of Alaska
26 had continuously reassured environmentalists and others,

1 including specifically Plaintiffs, at all times prior to the
2 accident that there existed an emergency clean-up plan by which
3 any major oil spill could be successfully contained with five
4 hours of occurrence. Yet a full day after the spill little had
5 been done to contain it other than an unsuccessful attempt to
6 spray chemical dispersants.

7 15. Upon information and belief, Alyeska, Exxon, and the
8 State of Alaska's contingency clean-up plan required them to be
9 on site within five hours of the spill. Eighteen hours after
10 the rupture, however, essentially nothing was in place;
11 instead, it took nearly an entire day for Alyeska and Exxon
12 representatives to

13 start placing barrier booms around the slick. By that time,
14 the discharged oil had already become too large to contain.

15 16. Neither Alyeska, Alaska, nor the Exxon Defendants has
16 enough equipment, supplies, or an adequate containment plan to
17 handle a spill of this size. Chemical dispersants, which could
18 cause further harm to the water, proved ineffective. The
19 chemical dispersants could not be used initially because the
20 water was too cold and calm, making the slick too thick for the
21 dispersants to work. The oil remained in the water too long
22 for these dispersants to work since they are most effective
23 only if employed within twenty-four hours after the spill.

24 17. In the exercise of care, Defendants knew or should
25 have known that they lacked adequate equipment and supplies to
26 effectively contain and clean-up a spill of this magnitude,

1 that their contingency clean-up plan, including the tactics
2 they developed thereunder were extremely limited in their
3 efficiency and use.

4 18. The negligence of Defendants Alyeska, Exxon and
5 Alaska in the control and clean-up operations specifically
6 included, but was not limited to, (i) failing to establish and
7 provide for an adequate contingency plan to contain and clean
8 up any discharge of oil; (ii) inadequately planning the
9 ensuing clean-up effort; (iii) inadequately carrying out the
10 ensuing clean-up effort; (iv) unreasonably delaying the
11 ensuing clean-up effort; (v) choosing inadequate tactics in
12 the ensuing clean-up effort; (vi) processing inadequate
13 equipment, supplies and personnel for deployment in the ensuing
14 clean-up effort; and (vii) failure to monitor, inspect and
15 approve of an adequate and effective clean up and containment
16 plan.

17 19. As a direct and proximate result of the foregoing
18 negligence, Plaintiffs have suffered damages as set forth in
19 this complaint.

20 20. In addition, Defendants Exxon acted recklessly,
21 grossly negligently, wantonly and in willful disregard of the
22 rights, safety, and economic well-being of Plaintiffs in the
23 control and clean-up operations of this spill, for which
24 Plaintiffs are entitled to punitive and exemplary damages
25 against these Defendants.
26

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3 SECOND CAUSE OF ACTION
4 GROSS NEGLIGENCE OF EXXON

5 21. The captain of the Exxon Valdez, Joseph J. Hazelwood,
6 who upon information and belief had previously been convicted
7 of charges involving drinking and driving twice in the past
8 five years and had his driver's license suspended or revoked
9 three times in that same period, was under the influence of
10 alcohol while in command of the vessel.

11 22. Captain Hazelwood placed the navigation and direction
12 of the vessel into the charge of the third mate, Gregory
13 Cousins, when it ran aground although Cousins lacked proper
14 certification and guidance to pilot vessels such as the Exxon
15 Valdez through the waters of Prince William Sound.

16 23. Captain Hazelwood and third mate Cousins knew or
17 should have known that it was unreasonably dangerous for
18 Hazelwood to leave the bridge and relinquish control of the
19 tanker to Cousins.

20 24. Captain Hazelwood and third mate Cousins knew or
21 should have known that cousins did not possess the requisite
22 degree of competence to command the Exxon Valdez with
23 reasonable prudence, skill or care.

24 25. The Exxon Defendants knew or should have known based
25 on Hazelwood's previous convictions for drinking and driving,
26 as well as the revocation or suspension of his driver's license
three times in the same five year period, that Hazelwood did

1 not possess the requisite degree of competence to command the
2 Exxon Valdez with reasonable prudence, skill or care, nor the
3 ability to transfer his duties to an uncertified third mate.

4 26. The Exxon Defendants knew or should have known based
5 on the service in which Exxon Valdez was involved that its
6 single hull construction was not sufficient to allow it to
7 safely engage in the trade for which it was intended.

8 27. The negligence of the Exxon Defendants by and through
9 their employees, in the operation of the Exxon Valdez
10 specifically included, but was not limited to (i) failing to
11 adequately crew the tanker; (ii) failing to adequately pilot
12 and navigate Prince William Sound; (iii) commanding the vessel
13 while under the influence of alcohol per State of Alaska
14 Standards; (iv) failing to monitor the sobriety of their crews
15 in operating the vessel; (v) failing to operate the vessel
16 away from known navigational dangers; (vi) operating the vessel
17 in a dangerous manner; and (vii) failing to utilize a
18 seaworthy vessel. As a direct and proximate result of their
19 own right as well as by and through their agents, servants and
20 employee, they caused Plaintiffs to suffer damages as described
21 above.

22 28. The Exxon Defendants acted recklessly, grossly
23 negligently, wantonly and in willful disregard of the rights,
24 safety, and economic well-being of Plaintiffs in the ownership
25 and operation of the Exxon Valdez for which Plaintiffs are
26 entitled to punitive and exemplary damages against the

Defendant.

THIRD CAUSE OF ACTION
ALASKA ENVIRONMENTAL CONSERVATION ACT

29. Oil, including the over 10 million gallons of crude oil which has been released into the Prince William Sound as a result of the grounding and consequent rupture of the Exxon Valdez's oil tanks, is a hazardous substance, as that term is defined in Section 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

30. The presence of oil in the Price William Sound and its subsequent migration presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and/or any part of the natural habitat in which they are found.

31. The defendants own and/or have control, pursuant to Section 46.03.826(3) of the Alaska Environmental Conservation Act, over the oil which was loaded on the Exxon Valdez at the Port of Valdez, Alaska, and released in to Prince William Sound.

32. Upon information and belief, the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska was not caused solely as a result of: an act of war, an intentional acto or a negligent act of a third party, other than a party or its employees in privity with, or employed by, defendants, negligence on the part of the United States government, or an act of God.

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 10
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1 33. Upon information and belief, upon discovery of the
2 entry of the oil in or upon the water, surface or subsurface
3 land of the State of Alaska, defendants delayed and/or failed
4 to begin operations to contain and clean up the hazardous
5 substance within a reasonable period of time.

6 34. The entry of the oil which is owned and/or within the
7 control of the defendants in or upon the waters, surface and/or
8 subsurface lands of the State of Alaska, has caused damages to
9 Plaintiffs as set forth in this complaint for which the
10 defendant are strictly liable pursuant to Section 46.03.822 of
11 the Alaska Environmental Conservation Act.

12 WHEREFORE plaintiff prays for a judgment against the
13 Defendants jointly and severally as follows:

14 1. Compensatory damages for present and future economic
15 loss, emotional suffering, distress, loss of property and
16 property rights in a sum to be proven at trial in excess of One
17 Million and No Hundredths Dollars (\$1,000,000.00).

18 2. Punitive and exemplary damages in a sum to be awarded
19 at trial in excess of Ten Million and No Hundredths Dollars
20 (\$10,000,000.00).

21 3. Judgment awarding Plaintiff costs, interest and
22 attorney's fees; and

23 4. Other relief as this court deems just and equitable.
24
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26

1 DATED this 25th day of March, 1991 at Anchorage,
2 Alaska.

3 TUGMAN, CLARKE & RAY
4 Attorneys for Plaintiffs

5
6 By: Charles W. Ray, Jr.
7 Charles W. Ray, Jr.

8 ADOLPH & SMYTH P.S.
9 Of Counsel for Plaintiffs

10 By: Charles W. Ray, Jr. for
11 Jeffrey A. Smyth
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4 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
5 THIRD JUDICIAL DISTRICT AT ANCHORAGE
6

7 JOSEPH WADE BANTA,
8 Plaintiff,

9 vs.

10 EXXON CORPORATION, EXXON
11 SHIPPING COMPANY; ALYESKA
12 PIPELINE SERVICE COMPANY,
13 and the STATE OF ALASKA,
14 Defendants.

Filed in
STATE OF ALASKA, THIRD DISTRICT

MAR 26 1991

Clerk of the Trial Courts
By _____ Deput

15 Case No. 91-2467

16 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

17 Plaintiff, by and through his attorneys, Adolph & Smyth,
18 P.S. and Tugman, Clarke & Ray, states as follows:

19 1. Plaintiff Joseph W. Banta is a residents of Anchorage
20 Alaska, and is engaged in the business of commercial fishing.
21 Since, 1983 he has owned a permit in the Prince William Sound
22 area of Alaska. Prior to the oil spill incident referenced
23 herein below ("Spill"), the permit had a market value in excess
24 of \$150,000.00. Mr. Banta leases the vessel FAST BREAK, and
25 owns specialized herring gillnets and related equipment for use
26 in Prince William Sound valued in excess of \$40,000.00 prior

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
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1 to the Spill. Mr. Banta regularly works as a crew member for
2 his father, Robert Banta. Mr. Banta investment in permits,
3 vessels, and equipment and activity as a crew member allows the
4 production of gross income from his fishing enterprise in
5 excess of \$100,000.00 per year.

6 2. Defendant, Exxon Corporation, is a corporation
7 organized under the laws of the State of New Jersey, with its
8 principal place of business at 1251 Avenue of the Americas, New
9 York, New York 10020. Exxon Corporation is engaged in the
10 business of operating petroleum companies through its
11 subsidiaries and division is the State of Alaska, and is an
12 owner and operator of the vessel known as the Exxon Valdez.

13 3. Defendant, Exxon Shipping Company, a Delaware
14 Corporation and maritime subsidiary of Defendant Exxon
15 Corporation with its principal place of business at 811 Dallas
16 Avenue, Houston, Texas 77002, operates in the State of Alaska,
17 and is an owner and operator of the vessel known as the Exxon
18 Valdez.

19 4. Defendant, Alyeska Pipeline Service Company, is an
20 association of the holders of the Pipeline right-of-way for the
21 Trans-Alaska Pipeline System.

22 5. The State of Alaska is responsible for approval,
23 monitoring, and compliance with its laws regarding
24 transportation of oil. Alyeska Pipeline Service Company
25 ("Alyeska") owns and operates the terminal at Valdez, Alaska,
26 and loaded the Exxon Valdez with North Slope crude oil at the

Valdez terminal.

SUMMARY OF FACTS

6. On or about March 23, 1989, the marine vessel EXXON VALDEZ, vessel number 692966, an oil tanker owned and operated by defendant Exxon Shipping Company, was loaded at Valdez, Alaska, with approximately 53 million gallons of crude oil that had been transported through the Trans-Alaska Pipeline.

7. The Exxon Valdez passed through the harbor and Valdez Narrows under the command of a harbor pilot. Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of Defendants Exxon, was on the bridge of the ship when the harbor pilot disembarked at the southern end of the Narrows at approximately 12:30 a.m. Friday morning, March 24, 1989. Captain Hazelwood was under the influence of alcohol while he was in command of the vessel. Captain Hazelwood retired to his cabin, one flight below the bridge, leaving Gregory Cousins, the third mate, and Robert Kafan, the helmsman, on the bridge. At all times relevant hereto, Messrs. Cousins and Kafan were acting within the scope of their employment and as agents and/or representatives of Defendants Exxon.

8. The third mate, who was not certified for commanding the tanker through these waters, steered the vessel through the deep water southbound shipping lane of the channel due to earlier reports that it contained icebergs from a glacier that

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1 had broken to the northwest. The ship steered east into the
2 empty northbound lane, and then proceeded on a southwesterly
3 course bound for Long Beach, California. The tanker, however,
4 proceeded three miles east past the alternative channel,
5 outside the traffic lanes and entirely beyond the shipping
6 channel into a charted area of rocky reefs.

7 9. The vessel was approximately one quarter mile outside
8 the regular channel for vessels when she first struck Bligh
9 Reef, which ripped along the vessel's starboard side tearing
10 three holes into the starboard tanks and ripping out a portion
11 of the hull. Although the ship was still navigable after the
12 first impact, she was so far east of deep water that when
13 Cousins tried to turn the Exxon Valdez back toward the west, he
14 struck a second part of the shallow reef. The second impact
15 brought the ship aground, stopping the ship's progress
16 completely, further damaging the vessel and its cargo.

17 10. The scraping impact and grounding of the Exxon Valdez
18 upon Bligh Reef cut open at least eight of the ship's twelve
19 oil tanks which held 53 million gallons of crude oil, causing
20 the largest oil spill in the United States history. To date,
21 approximately 10.1 million gallons of crude oil has been
22 discharged into Prince William Sound, contaminating hundreds of
23 square miles of the Sound's fisheries. The oil spill
24 subsequently spread to encompass at least 3,00 square miles and
25 has migrated 250 miles to the southwest toward Kodiak Island.
26 Another spill, of at least one million gallons, occurred during

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1 subsequent attempts to remove additional oil from the damaged
2 tanks.

3 11. On March 26, 1989, due to the slow pace of any
4 attempted clean-up efforts by Alyeska and the Exxon Defendants
5 and concerns about even further possible damage to the
6 property, marine and wildlife, the State of Alaska declared a
7 disaster emergency.

8 12. Alyeska Pipeline Company, Exxon, and the State of
9 Alaska owed a duty to have a proper and adequate emergency
10 containment plan for this area but failed to put any plan into
11 affect within a reasonable or practical time period to contain
12 the spilled oil. The Defendants additionally failed to act in
13 a timely or reasonable manner so as to mitigate the oil spill
14 and resulting damage.

15 13. Damages to the Plaintiff caused by this discharge of
16 millions of gallons of North Slope crude oil, include but are
17 not limited to damage to marine life, including herring,
18 salmon, ground bottom fish, kelp, shrimp and crab, relied upon
19 by Plaintiffs. Plaintiff's value in his fishing permit,
20 vessel, equipment, good will and future income has been
21 destroyed or greatly diminished as a result of Defendants'
22 actions.

23 **FIRST CAUSE OF ACTION**
24 **NEGLIGENCE**

25 14. Defendants Alyeska, Exxon, and the State of Alaska
26 had continuously reassured environmentalists and others,

1 including specifically Plaintiffs, at all times prior to the
2 accident that there existed an emergency clean-up plan by which
3 any major oil spill could be successfully contained with five
4 hours of occurrence. Yet a full day after the spill little had
5 been done to contain it other than an unsuccessful attempt to
6 spray chemical dispersants.

7 15. Upon information and belief, Alyeska, Exxon, and the
8 State of Alaska's contingency clean-up plan required them to be
9 on site within five hours of the spill. Eighteen hours after
10 the rupture, however, essentially nothing was in place;
11 instead, it took nearly an entire day for Alyeska and Exxon
12 representatives to
13 start placing barrier booms around the slick. By that time,
14 the discharged oil had already become too large to contain.

15 16. Neither Alyeska, Alaska, nor the Exxon Defendants has
16 enough equipment, supplies, or an adequate containment plan to
17 handle a spill of this size. Chemical dispersants, which could
18 cause further harm to the water, proved ineffective. The
19 chemical dispersants could not be used initially because the
20 water was too cold and calm, making the slick too thick for the
21 dispersants to work. The oil remained in the water too long
22 for these dispersants to work since they are most effective
23 only if employed within twenty-four hours after the spill.

24 17. In the exercise of care, Defendants knew or should
25 have known that they lacked adequate equipment and supplies to
26 effectively contain and clean-up a spill of this magnitude,

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 6
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1 that their contingency clean-up plan, including the tactics
2 they developed thereunder were extremely limited in their
3 efficiency and use.

4 18. The negligence of Defendants Alyeska, Exxon and
5 Alaska in the control and clean-up operations specifically
6 included, but was not limited to, (i) failing to establish and
7 provide for an adequate contingency plan to contain and clean
8 up any discharge of oil; (ii) inadequately planning the
9 ensuing clean-up effort; (iii) inadequately carrying out the
10 ensuing clean-up effort; (iv) unreasonably delaying the
11 ensuing clean-up effort; (v) choosing inadequate tactics in
12 the ensuing clean-up effort; (vi) processing inadequate
13 equipment, supplies and personnel for deployment in the ensuing
14 clean-up effort; and (vii) failure to monitor, inspect and
15 approve of an adequate and effective clean up and containment
16 plan.

17 19. As a direct and proximate result of the foregoing
18 negligence, Plaintiffs have suffered damages as set forth in
19 this complaint.

20 20. In addition, Defendants Exxon acted recklessly,
21 grossly negligently, wantonly and in willful disregard of the
22 rights, safety, and economic well-being of Plaintiffs in the
23 control and clean-up operations of this spill, for which
24 Plaintiffs are entitled to punitive and exemplary damages
25 against these Defendants.
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SECOND CAUSE OF ACTION
GROSS NEGLIGENCE OF EXXON

21. The captain of the Exxon Valdez, Joseph J. Hazelwood, who upon information and belief had previously been convicted of charges involving drinking and driving twice in the past five years and had his driver's license suspended or revoked three times in that same period, was under the influence of alcohol while in command of the vessel.

22. Captain Hazelwood placed the navigation and direction of the vessel into the charge of the third mate, Gregory Cousins, when it ran aground although Cousins lacked proper certification and guidance to pilot vessels such as the Exxon Valdez through the waters of Prince William Sound.

23. Captain Hazelwood and third mate Cousins knew or should have known that it was unreasonably dangerous for Hazelwood to leave the bridge and relinquish control of the tanker to Cousins.

24. Captain Hazelwood and third mate Cousins knew or should have known that cousins did not possess the requisite degree of competence to command the Exxon Valdez with reasonable prudence, skill or care.

25. The Exxon Defendants knew or should have known based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times in the same five year period, that Hazelwood did

1 not possess the requisite degree of competence to command the
2 Exxon Valdez with reasonable prudence, skill or care, nor the
3 ability to transfer his duties to an uncertified third mate.

4 26. The Exxon Defendants knew or should have known based
5 on the service in which Exxon Valdez was involved that its
6 single hull construction was not sufficient to allow it to
7 safely engage in the trade for which it was intended.

8 27. The negligence of the Exxon Defendants by and through
9 their employees, in the operation of the Exxon Valdez
10 specifically included, but was not limited to (i) failing to
11 adequately crew the tanker; (ii) failing to adequately pilot
12 and navigate Prince William Sound; (iii) commanding the vessel
13 while under the influence of alcohol per State of Alaska
14 Standards; (iv) failing to monitor the sobriety of their crews
15 in operating the vessel; (v) failing to operate the vessel
16 away from known navigational dangers; (vi) operating the vessel
17 in a dangerous manner; and (vii) failing to utilize a
18 seaworthy vessel. As a direct and proximate result of their
19 own right as well as by and through their agents, servants and
20 employee, they caused Plaintiffs to suffer damages as described
21 above.

22 28. The Exxon Defendants acted recklessly, grossly
23 negligently, wantonly and in willful disregard of the rights,
24 safety, and economic well-being of Plaintiffs in the ownership
25 and operation of the Exxon Valdez for which Plaintiffs are
26 entitled to punitive and exemplary damages against the

1 Defendant.

2 THIRD CAUSE OF ACTION
3 ALASKA ENVIRONMENTAL CONSERVATION ACT

4 29. Oil, including the over 10 million gallons of crude
5 oil which has been released into the Prince William Sound as a
6 result of the grounding and consequent rupture of the Exxon
7 Valdez's oil tanks, is a hazardous substance, as that term is
8 defined in Section 46.03.826(4)(B) of the Alaska Environmental
9 Conservation Act.

10 30. The presence of oil in the Price William Sound and
11 its subsequent migration presents an imminent and substantial
12 danger to the public health or welfare, including but not
13 limited to fish, animals, vegetation, and/or any part of the
14 natural habitat in which they are found.

15 31. The defendants own and/or have control, pursuant to
16 Section 46.03.826(3) of the Alaska Environmental Conservation
17 Act, over the oil which was loaded on the Exxon Valdez at the
18 Port of Valdez, Alaska, and released in to Prince William
19 Sound.

20 32. Upon information and belief, the entry of the oil in
21 or upon the water, surface or subsurface land of the State of
22 Alaska was not caused solely as a result of: an act of war, an
23 intentional act or a negligent act of a third party, other
24 than a party or its employees in privity with, or employed by,
25 defendants, negligence on the part of the United States
26 government, or an act of God.

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 10
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1 33. Upon information and belief, upon discovery of the
2 entry of the oil in or upon the water, surface or subsurface
3 land of the State of Alaska, defendants delayed and/or failed
4 to begin operations to contain and clean up the hazardous
5 substance within a reasonable period of time.

6 34. The entry of the oil which is owned and/or within the
7 control of the defendants in or upon the waters, surface and/or
8 subsurface lands of the State of Alaska, has caused damages to
9 Plaintiffs as set forth in this complaint for which the
10 defendant are strictly liable pursuant to Section 46.03.822 of
11 the Alaska Environmental Conservation Act.

12 WHEREFORE plaintiff prays for a judgment against the
13 Defendants jointly and severally as follows:

14 1. Compensatory damages for present and future economic
15 loss, emotional suffering, distress, loss of property and
16 property rights in a sum to be proven at trial in excess of One
17 Million and No Hundredths Dollars (\$1,000,000.00).

18 2. Punitive and exemplary damages in a sum to be awarded
19 at trial in excess of Ten Million and No Hundredths Dollars
20 (\$10,000,000.00).

21 3. Judgment awarding Plaintiff costs, interest and
22 attorney's fees; and

23 4. Other relief as this court deems just and equitable.
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26

1 DATED this 25th day of March, 1991 at Anchorage,
2 Alaska.

3
4 TUGMAN, CLARKE & RAY
Attorneys for Plaintiffs

5
6 By: Charles W. Ray, Jr.
Charles W. Ray, Jr.

7
8 ADOLPH & SMYTH P.S.
Of Counsel for Plaintiffs

9
10 By: Jeffrey A. Smyth for
Jeffrey A. Smyth

JS-44
(Rev. 07/86)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law except as provided by local rules of court. This form approved by the Judicial Conference of the United States in September 1974 is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

TRANS-ALASKA PIPELINE LIABILITY FUND

DEFENDANTS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF 3rd J.D.
(EXCEPT IN U.S. PLAINTIFF CASES) AlaskaCOUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Clifford J. Groh, Esq. (907) 272-6474
GROH, EGGERS & PRICE
2550 Denali Street - Suite 1700
Anchorage, AK 99503ATTORNEYS (IF KNOWN)
Wavley Shea, Esq. (271-5071)
UNITED STATES ATTORNEY
U. S. Department of Justice-U.S. Attorney's Off
Room C 252 - Box 9
Anchorage, AK 99513

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☒ 1 | ☐ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS NECESSARY. Trans-Alaska Pipeline Authorization Act, 43 U.S.C. §§ 1651, et seq.
Reimbursement for claims paid under TAPAA.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Motor Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 161 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders Suits ☐ 180 Other Contract ☐ 196 Consumer Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employees Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	☐ 362 Personal Injury—Med Malpractice ☐ 365 Personal Injury—Product Liability ☐ 368 Assault Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Food & Drug ☐ 630 Consumer Lease ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 730 Labor/Management Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Legislation ☐ 791 Emp't. Ret. Inv. Security Act	☐ 422 Appeal ☐ 28 USC 158 ☐ 423 Withdrawal ☐ 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patents ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HRA (1306) ☐ 862 Black Lung (923) ☐ 863 DIWC (406(g)) ☐ 864 DIWW (406(g)) ☐ 865 S&D Title XVI ☐ 865 RSI (408(g)) FEDERAL TAX SUITS ☐ 870 Taxes U.S. Plaintiff or Defendant ☐ 871 IRS—Third Party ☐ 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Bonds and Securities ☐ 450 Commerce/K.C. Rates/etc. ☐ 460 Discrimination ☐ 470 Recreational and Cultural Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Consumer Challenge 12 USC 3410 ☐ 891 Agricultural Acts ☐ 892 Bank/and Supervision Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☒ 990 Other Statutory Actions
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Easement ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentences ☐ 530 Habeas Corpus ☐ 540 Mandamus & Other ☐ 550 Civil Rights			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (Specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

PRESENTLY UNKNOWN

Check YES only if demanded in complaint:

JURY DEMAND:

☐ YES ☒ NOVIII. RELATED CASE(S) (See instructions):
IF ANY In re Exxon ValdezJUDGE HollandDOCKET NUMBER A 89-95 CIVDATE
March 22, 1991

SIGNATURE OF ATTORNEY OF RECORD

Clifford J. Groh

UNITED STATES DISTRICT COURT

ACE 1287058

11:25 AM
JWB

United States District Court

DISTRICT OF ALASKA

TRANS-ALASKA PIPELINE LIABILITY
FUND, a corporation

V.

UNITED STATES OF AMERICA

SUMMONS IN A CIVIL ACTION

CASE NUMBER: A 91- CIV

A 91-097 CIV

TO: (Name and Address of Defendant)

UNITED STATES OF AMERICA
c/o United States Attorney
Anchorage Federal Bldg. - Room C 252
222 West Seventh Avenue
Anchorage, AK 99513

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

GROH, EGGERS & PRICE
2550 Denali Street
Suite 1700
Anchorage, AK 99503

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

MAR 22 1991

Phyllis Rhodes

CLERK

DATE

M. GROHOL

BY DEPUTY CLERK

cc Barbara Hargan
as D.C. H. JWB

ACE 1287057

Rec'd 3.4.9
3-25-91
11:05 AM
JWB

Clifford J. Groh, Sr.
David A. Devine
GROH, EGGERS & PRICE
2550 Denali Street
Suite 1700
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A. Stephen Hut, Jr.
Alan N. Braverman
John E. Arbab
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2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

Attorneys for Plaintiff
Trans-Alaska Pipeline Liability Fund

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

TRANS-ALASKA PIPELINE
LIABILITY FUND, a corporation

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

A'91-097 CIV

Civil Action No. _____

COMPLAINT

- 2 -

COMPLAINTNature of the Case

1. The Trans-Alaska Pipeline Liability Fund (the "Fund"), by and through its attorneys, brings this action to obtain reimbursement for payments made by the Fund to claimants who may have incurred damages as a result of the spill of crude oil from the tanker EXXON VALDEZ on or about March 24, 1989. The claim set forth below is asserted for protective purposes in order to preserve the Fund's rights to reimbursement.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1333.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

Parties

4. The Fund is a non-profit corporate entity established by Congress in the Trans-Alaska Pipeline Authorization Act ("TAPAA"), 43 U.S.C. §§ 1651 et seq. The Fund is authorized to sue and be sued in its own name, 43 U.S.C. § 1653(c)(4), and is administered in accordance with the provisions

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(907) 272-8474

- 3 -

of TAPAA and the regulations promulgated thereunder, 43 C.F.R. Part 29. Pursuant to the TAPAA regulations, 43 C.F.R. § 29.4(c), the Fund is a resident of, and has its principal place of business in, the state of Alaska.

5. The United States includes all departments and agencies thereof that had responsibility for aspects of the EXXON VALDEZ spill, and is made a party defendant to the action.

Fund's Claim for Reimbursement

6. The Fund realleges and incorporates by reference the allegations set forth in paragraphs 1 through 5.

7. On March 23, 1989 approximately 50 million gallons of Alaska North Slope crude oil was loaded aboard the tanker EXXON VALDEZ at the Trans-Alaska Pipeline Terminal in Valdez, Alaska. On the night of March 23-24, 1989 the tanker EXXON VALDEZ, while on her outward journey from the port of Valdez, ran aground on Bligh Reef in Prince William Sound and discharged approximately 11 million gallons of her cargo of crude oil into and upon the waters and adjacent shorelines of Prince William Sound, the Gulf of Alaska, and elsewhere. All of the bodies of water into which the oil was discharged are navigable waters of the United States.

8. In accordance with the provisions of TAPAA and the regulations promulgated thereunder, the Fund is strictly liable to pay valid claims under TAPAA arising out of the EXXON VALDEZ

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ACE 1287061

- 4 -

spill (as "spill" is defined in the TAPAA regulations), in an amount not to exceed \$86 million (where, as on information and belief is the case here, an owner/operator has paid \$14 million in claims allowable under TAPAA).

9. Whenever the Fund shall have paid any such claim(s), the Fund is entitled to obtain reimbursement from others under TAPAA and such other rights as may be conferred by law. Under TAPAA, 43 U.S.C. § 1653(c)(8), and the applicable regulations, the Fund may obtain reimbursement for any such claim(s) paid where the damages involved were caused by the unseaworthiness of the vessel or by negligence. Reimbursement is available from any person or entity that would be liable to the claimant, under applicable state or federal law, for amounts paid by the Fund.

10. Numerous claims for damages have been filed with the Fund pursuant to TAPAA and this Court's Order No. 35 (December 14, 1990), and may be filed until the expiration of the limitations period. On information and belief, such claimants may have claims assertable against the United States as a result of, inter alia, action or inaction by the United States (acting through the Department of Transportation, the United States Coast Guard and other of its agencies, departments, and instrumentalities) in connection with the EXXON VALDEZ spill, which claims arise under applicable state and federal law including, inter alia, common law negligence, general maritime

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- 5 -

law, and/or the Suits in Admiralty Act, 46 U.S.C. app. § 741 et seq.

11. Numerous actions have been filed in this Court and elsewhere alleging that the discharge of crude oil from the tanker EXXON VALDEZ and/or the failure to remediate the spill was caused by the unseaworthiness of the vessel and/or negligence. In a Plea Agreement executed on March 13, 1991, Exxon Shipping Company agreed to plead guilty to an offense that requires, as an essential element, proof of negligence beyond a reasonable doubt. Thus, on information and belief and for purposes of 43 U.S.C. § 1643(c)(8), the discharge of crude from the EXXON VALDEZ on March 23-24, 1991 resulted from negligence and/or the discharge resulted from the unseaworthiness of the EXXON VALDEZ.

12. Accordingly, to the extent that the Fund pays claims under TAPAA to discharge its statutory liability under TAPAA, the Fund may be entitled to reimbursement from the United States (among others) for such payments.

WHEREFORE, the Fund prays that judgment be entered against the United States granting the Fund damages in the amount of payments made to claimants as described in this Complaint,

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ANCHORAGE, ALASKA 99503
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ACE 1287063

- 6 -

with interest; and for such other relief as the Court deems just and proper.

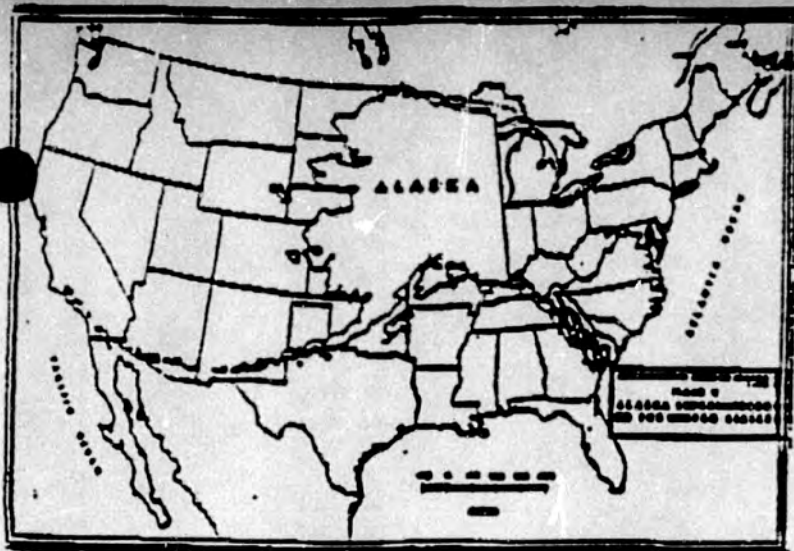
Clifford J. Groh, Sr.

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Liability Fund

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**U.S. Department of Justice****WEVLEY WM. SHEA****United States Attorney
District of Alaska at Anchorage**222 West 7th Avenue, #9
Anchorage, Alaska 99513Phone: (907) 271-5071
(FTS) 868-5071FAX: (907) 271-3224
(FTS) 868-3224**FACSIMILE TRANSMISSION**DATE: 3-26-91

TO:

Barbara Herron
Office of Atty Gen

FAX NUMBER:

278-7022

SENDER'S NAME:

Nickale Carter

SUBJECT MATTER:

Trans-Alaska Pipeline Liability Fund

INSTRUCTIONS:

THERE ARE 8 PAGES ATTACHED. IF ALL PAGES ARE NOT RECEIVED,
PLEASE NOTIFY SENDER, IMMEDIATELY.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Our Fax Number: (907) 278-7022

FAX TRANSMITTAL LETTER

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Charlie Cole

LOCATION: JNO

FAX NUMBER: 463-5295

TOTAL NUMBER OF PAGES 7 INCLUDING COVER LETTER.

COMMENTS: _____

DATE SENT: 03.26.91 TIME: 3:34

FROM: B. Heppner
Assistant Attorney General - Anchorage

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL:

bonita nipper or Mary Deaver at (907) 269-5274.

WALTER J. HICKEL, GOVERNOR

REPLY TO:

☒ 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☐ P.O. BOX K — STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

FILED

MAR 22 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By 222 Deputy

Clifford J. Groh, Sr.
David A. Devine
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Anchorage, AK 99503
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Attorneys for Plaintiff
Trans-Alaska Pipeline Liability Fund

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

TRANS-ALASKA PIPELINE
LIABILITY FUND, a corporation

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

191 - 097 CIV

Civil Action No. _____

COMPLAINT

ACE 1477965 B

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COMPLAINT

Nature of the Case

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law, and/or the Suits in Admiralty Act, 46 U.S.C. app. § 741 et seq.

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ANCHORAGE, ALASKA 99503
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with interest; and for such other relief as the Court deems just and proper.

Clifford J. Groh, Sr.

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PRESTON
THORGRIMSON
SHIDLER
GATES & ELLIS

ATTORNEYS AT LAW

SUITE 400
420 L STREET
ANCHORAGE, AK 99501-1937
TELEPHONE: (907) 276-1969
FACSIMILE: (907) 276-1365

MEMORANDUM

ACE
COPY

TO: Barbara Herman and Joe Donohue
FROM: Martha J. Dawson *ms*
RE: Complaints Filed
DATE: March 26, 1991

Attached is the complaint by the TAPS Fund against the USA, filed last Friday in Federal Court. We know that an additional nine suits were filed yesterday in Federal Court, but we do not know any of the parties. These suits have not yet been "logged in" by the court clerk and they refuse to let us even look at them until this is completed [which may not be until tomorrow]. We have a similar problem with the suits filed in State Court. Until they are logged in, we can't see them either. We will continue to monitor the situations in both courts closely and will obtain copies of each complaint filed as soon as possible.

ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK PRODUCT
ALASKA/CIVIL EXXON

ACE 1477965A