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**POTENTIAL APPROACH TO SETTLEMENT WITH ALYESKA ASSUMING  
RELEASE OF NATURAL RESOURCE DAMAGE CLAIM PURSUANT TO  
THE EXXON SETTLEMENT AGREEMENT**

**1. Counts in State Complaint involving Alyeska/Owner Companies:**

- a. Count I - Negligent or Intentional Failure to Contain or Clean Up
- b. Count III - Negligent or Intentional Misrepresentation
- c. Count VII - Breach of State Right of Way (ROW) Lease
- d. Count VIII - Public Nuisance
- e. Count IX - Private Nuisance
- f. Count XII - Restoration Costs under AS 46.03.780
- g. Count XV - Civil Penalty Under AS 46.03.760(a)
- h. Count XVI - Emotional Distress
- i. Count XVII - Punitive Damages

Note: Count XII (Restoration Costs) is subject to the release. Whether the nuisance actions are covered by the scope of the release is an open question. No theory under AS 46.03.760(a) (Count XV) was ever developed against Alyeska.

**2. Remaining Damage Claims to Pursue Against Alyeska:**

- a. Past damage assessment, response costs and attorney's fees to the extent that the total amount incurred exceeds the \$72.0 million dollar cap established by the Exxon Settlement Agreement (ESA).
- b. Future response costs and Exxon clean up credit. The State might be able to construct an argument that either or both of these amounts deducted from the amount otherwise available from the settlement monies for restoration should be compensated by Alyeska as effectively unreimbursed expenditures.

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- c. **Future Litigation Costs:** Includes costs of DOL Civil Section, outside counsel and experts not reimbursed by Exxon. Depends on position taken by private plaintiffs and whether or not a quick settlement with Alyeska is obtainable.
- d. **Lost oil revenues from taxes and royalties arising out of TAPS shut down due to failure to contain clean up.**
- e. **Lost fish tax revenues from Fisheries Business Tax, AS 43.75, from Salmon Enhancement Tax, AS 43.76 and Seafood Marketing Assessment, AS 16.51.160.**
- f. **Punitive Damages.** Difficult to assess merits of case given stage of discovery. Best case relates to Alyeska's woeful state of preparedness at time of spill and its lackadaisical response during first days of the spill.

3. **Other Remedies Arguably Available Against Alyeska:**

- a. **Indemnification Responsibility of Alyeska pursuant to Paragraph 13 of State ROW Lease:** Still may be a bargaining chip especially, since indemnification of third party claims was not a part of the ESA.
- b. **Injunctive Relief:** Impose requirements for more clean up or later degree of preparedness. (Note: DEC is currently happy with state of Alyeska's Contingency Plan).