

SCOMM

77:8

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

THE STATE OF ALASKA, on its own
behalf, and as public trustee and
as parens patriae for the citizens
of the State,

Plaintiff,

vs.

EXXON CORPORATION, a New Jersey
corporation; EXXON PIPELINE
COMPANY, a Delaware corporation;
EXXON SHIPPING COMPANY, a Delaware
corporation; ALYESKA PIPELINE
SERVICE COMPANY, a Delaware
corporation; AMERADA HESS
PIPELINE CORPORATION, a Delaware
corporation; ARCO PIPE LINE
COMPANY, a Delaware corporation;
BP ALASKA PIPELINES, INC., a
Delaware corporation; MOBIL
ALASKA PIPELINE COMPANY, a
Delaware corporation; PHILLIPS
ALASKA PIPELINE CORPORATION,
a Delaware Corporation; UNOCAL
PIPELINE COMPANY, a California
corporation,

Defendants.

Case No. 89-06852

COMPLAINT FOR
COMPENSATORY AND
PUNITIVE DAMAGES,
CIVIL PENALTIES AND
INJUNCTIVE RELIEF

COPY
Original Received

AUG 15 1989

Clerk of the Trial Courts

The plaintiff, by and through its attorneys, State of Alaska Department of Law and Preston, Thorgrimson, Ellis & Holman, on behalf of itself and as public trustee and as parens patriae on behalf of all natural persons residing within the State of Alaska, brings this action and complains and alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action for compensatory and punitive damages, civil penalties and injunctive relief for

losses sustained by plaintiff arising out of, and resulting from, the unlawful and negligent discharges of crude oil and other hazardous substances into Prince William Sound by the T/V EXXON VALDEZ ("EXXON VALDEZ"), and from the intentional and negligent acts of defendants before or after the crude oil and other hazardous substances were discharged into Prince William Sound.

2. Subject matter jurisdiction is proper pursuant to Alaska statutory and common law including AS 22.10.020(a) and AS 09.05.015 and general maritime law.

3. Personal jurisdiction is proper because each defendant either transacts business in or has sufficient contacts with the State for purposes of personal jurisdiction.

4. Venue is properly laid in the Third Judicial District pursuant to AS 22.10.030 and Alaska Civil Rule 3(c) because the claims herein arose in the Third Judicial District and because defendants are present and doing business in this judicial district.

THE PARTIES

5. Plaintiff State of Alaska, (the "State") is a sovereign state of the United States. The State appears on its own behalf as the owner of lands, waters and resources of the State, on behalf of all administrative departments and agencies of the State, and as parens patriae and public trustee for the citizens of the State of all lands, waters and resources within the jurisdictional boundaries of the State. Under the common law and the common use clause of the Alaska

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
4TH FLOOR
4201 EISENLT
ANCHORAGE, ALASKA 99501-4037
(907) 276-1000

Constitution, Article VIII, Section 3, plaintiff is the public trustee of and possesses sovereign interests in State lands, waters and resources. Plaintiff may maintain an action as parens patriae on behalf of its citizens and to protect and defend its sovereign interests. The public trust includes, but is not limited to, State navigable waters, submerged lands, tidelands and beaches. The interests protected by the public trust include, but are not limited to, providing scenic beauty, open space, air quality, food and habitat for birds and marine life, recreational experiences, scientific studies, functioning ecological systems and the various activities and management options enabled thereby. Unless otherwise expressly indicated herein, the term "State" means the State of Alaska in all its above-described capacities.

6. Defendant Exxon Corporation is a corporation organized under the laws of the State of New Jersey, that maintains its principal place of business in New York, New York. Through its subsidiaries and divisions, Exxon Corporation engages, among other things, in all phases and aspects of petroleum exploration, development, transportation, refining and marketing. On information and belief, 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.

7. Defendant Exxon Pipeline Company, a Delaware corporation, is a wholly-owned subsidiary of Exxon

Corporation. It maintains its principal place of business at Houston, Texas. Defendant Exxon Pipeline Company is a party to the Right-of-Way Lease for the Trans-Alaska Pipeline System granted by the State on May 3, 1974 (the "State Right-of-Way Lease").

8. Defendant Exxon Shipping Company, a Delaware corporation, is a wholly-owned subsidiary of defendant Exxon Corporation. It maintains its principal place of business in Houston, Texas. Exxon Shipping Company 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.

9. Upon information and belief, at all material times defendant Exxon Corporation so dominated Exxon Shipping Company and Exxon Pipeline Company as to render Exxon Corporation liable for the conduct of Exxon Shipping Company and Exxon Pipeline Company, more fully described below.

10. Defendant Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation and maintains its principal place of business in Alaska. Alyeska operates the Trans-Alaska Pipeline System ("TAPS") as an agent of the owners or assignees of the TAPS right-of-way lease granted by the State Right-of-Way Lease -- the Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Petroleum

Corporation, BP Alaska Pipelines, Inc. and Unocal Alaska Pipeline Company (collectively the "Owner Companies").

11. Defendant Amerada Hess Pipeline Corporation, a Delaware corporation, is a subsidiary of Amerada Hess Corporation. It maintains its principal place of business in New York, New York. Defendant Amerada Hess Pipeline Corporation is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

12. Defendant ARCO Pipe Line Company, a Delaware corporation, is a wholly-owned subsidiary of Atlantic Richfield Company. It maintains its principal place of business at Independence, Kansas. Defendant ARCO Pipe Line Company is a party to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

13. Defendant Mobil Alaska Pipeline Company, a Delaware corporation, is a wholly-owned subsidiary of Mobil Corporation. It maintains its principal place of business at Dallas, Texas. Defendant Mobil Alaska Pipeline Company is a party to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

14. Defendant Phillips Alaska Pipeline Corporation, a Delaware corporation, is a subsidiary of Phillips Petroleum Corporation. It maintains its principal place of business at Bartlesville, Oklahoma. Defendant Phillips Alaska Pipeline Corporation is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

15. Defendant BP Alaska Pipelines, Inc., a Delaware corporation, is a subsidiary of British Petroleum Company, PLC. Defendant BP Alaska Pipelines, Inc. is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

16. Defendant Unocal Pipeline Company, a California corporation, is a wholly-owned subsidiary of Union Oil Company of California. It maintains its principal place of business at Los Angeles, California. Defendant Unocal Pipeline Company is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

DEFINITIONS

17. "ANS" means crude oil produced on Alaska's North Slope and transported through the Trans-Alaska Pipeline System pipeline to the marine terminal facilities at Valdez, Alaska.

18. A "barrel" of crude oil means 42 United States gallons of crude oil at 60° Fahrenheit.

19. "Economic damages" includes, but is not limited to, one or more of the following:

- a. Injury to the public or private economy of the State, including goodwill, whether or not said injury occurs within the boundaries of the State;
- b. Injury to private businesses, individuals, trade organizations, or any other commercial, scientific, educational,

charitable, cultural, subsistence, or other institution or activity generating direct or indirect economic benefits in the State.

- c. Loss or uncertainty of government revenues, including, but not limited to, revenues from licenses, taxes, royalties, fees or other direct or indirect sources;
- d. Increases or uncertainty in government expenses, including, but not limited to, internal operating, maintenance, overhead and capital costs, and external costs in the provision of services to other public or private individuals or entities.

20. "Environmental damages" includes, but is not limited to, one or more types of damages to use and enjoyment values derived from State lands, waters and resources:

- (1) Use values, including consumptive and nonconsumptive uses;
- (2) Nonuse values, including existence, intrinsic, option, bequest, temporal and quasi-option values;
- (3) Values derived from the existence of management options and the expertise and data to exercise and support same;

- (4) Values associated with the necessity or desirability of restoration, replacement, assessment or monitoring;
- (5) Other ecosystem existence values.

21. The terms "Exxon," "defendant Exxon" and "Exxon defendants" refer collectively to defendants Exxon Corporation, Exxon Pipeline Company and Exxon Shipping Company.

22. The terms "grounding," "spill," and "accident" refer to the grounding and consequent rupture of the hull and oil tanks of the EXXON VALDEZ on March 24, 1989, the second rupture of the hull and the cumulative release of approximately 11 million gallons of crude oil into Prince William Sound. As more fully set forth below, plaintiff alleges that there were at least two separate incidents which caused the discharge of oil into Prince William Sound. Unless stated otherwise, both incidents are included within the meaning of the word "spill" or "accident."

23. "Owner Companies" means the Lessees of the State Right-of-Way Lease or the Assignees of a Lessee's interest in the State Right-Of-Way Lease.

24. The term "pipeline" refers to any pipeline in the Trans-Alaska Pipeline System.

25. The "State lands, waters, and resources" include, but are not limited to, any and all of the interests set forth in (a) below, controlled or influenced by the State

acting pursuant to law in one or more of the capacities set forth in (b) below.

(a) All real and personal property, together with fixtures and improvements thereon, and any other rights, uses, profits, values, authorities, or other interests or duties respecting any of the following land, resource and environmental components:

- (1) Coastal and inland waters and wetlands;
- (2) Tide and submerged lands;
- (3) Plants and animals, and their habitat, including artificially enhanced habitat;
- (4) The surface and subsurface of lands, including minerals and materials;
- (5) Air;
- (6) Aesthetics, scenic quality, and open space;
- (7) Historic, archaeological, cultural, scientific and recreational resources;
- (8) Ecological systems, together with the expertise and data necessary or desirable to control or influence same; or
- (9) Activities dependent upon or connected to any of (1) through (8).

(b) Capacities include any of the following exercised on behalf of public or private parties, whether or not residents of the State:

- (1) Sovereign;
- (2) Proprietor;
- (3) Trustee, including trustee for the public trust;
- (4) Representative, including parens patriae representative; or
- (5) Administrator.

26. "State Right-of-Way Lease" means the lease between the State of Alaska and the Owner Companies dated May 3, 1974, including all stipulations, amendments and other agreements incorporated into or made a part of the lease.

27. The term "terminal facilities" refers to those facilities of the Trans-Alaska Pipeline System, including specifically Port Valdez, at which oil is transferred from the pipeline to vessels or stored for future loading onto vessels.

28. The terms "Trans-Alaska Pipeline System" or "TAPS" refer to the pipeline and terminal facilities used to effect the transfer of ANS crude oil to markets and includes those facilities described in the State Right-Of-Way Lease between the Owner Companies and the State.

29. The term "vessel" or "tanker" refers specifically to the vessel known as the EXXON VALDEZ, which was being used to transport ANS crude oil from the terminal facility at Valdez, Alaska to Long Beach, California, and to other ports in the United States.

BACKGROUND

30. In 1968, the Prudhoe Bay oil field was discovered by Atlantic Richfield Company. It is the largest commercially developed oil field in North America. It is located on State lands and has been developed pursuant to oil and gas leases issued by the State.

31. In the early 1970s, the initial attempts to develop the Prudhoe Bay oil field were delayed, in part, because concerns were expressed about the potential adverse impact of this development on the sensitive terrestrial and marine environments that would be disturbed and through which the crude oil would be transported. The areas through which ANS oil is transported are considered to be among the last true wilderness areas in the United States, and are renowned for their beauty and natural resources. The defendants knew then and know now that many Alaskans, including commercial fishermen, subsistence users, tour operators, hunting and fishing guides, hoteliers, and many others, depend on these areas for their livelihood. Other Alaskans use, and have used, these areas for recreational activities including, among others, boating, sport fishing and sport hunting. Additionally, many Alaskans have long valued these areas for their scenic and pristine qualities and wilderness environments.

32. In order to persuade state and federal agencies to grant the permits, leases and other authorizations the Owner Companies needed to build and operate the TAPS, the

Owner Companies and Exxon defendants represented that they would take all action necessary to ensure that a major oil spill would not occur. They further represented that they would utilize the best available oil spill containment and clean up technology and that, if an oil spill did occur, they would be able to contain and clean up the oil spill.

33. Eventually, pursuant to federal and state legislation, implementing regulations and agreements between the United States, the State, and the Owner Companies, which agreements were entered into in reliance upon the representations of Owner Companies and one or more of the Exxon defendants, the construction and operation of TAPS was authorized.

34. TAPS was completed in 1977, and commercial crude oil production began from Prudhoe Bay in June of 1977.

35. Even after the commencement of TAPS operations, Alaska residents, including state officials and legislators, and others remained concerned about the potential adverse impact of an oil spill on the sensitive land, air and marine environments through which ANS crude oil was being transported. The oil industry (including the Exxon defendants, Alyeska and the Owner Companies) repeatedly assured the State and others that the Owner Companies and Alyeska would take all actions that would ensure an oil spill would not occur and, if it did, that they could and would promptly and completely contain and clean up all spilled oil.

36. Pursuant to state law, administrative regulations and the state and federal Right-of-Way Leases, Alyeska, the Exxon defendants (other than Exxon Shipping Company) and other Owner Companies were required to, and did, prepare and submit an oil spill contingency plan (the "Plan") to the State and federal officials. The Plan was periodically updated.

37. In the Plan, the defendants represented that they had developed, assembled and organized in advance the procedures, protocols, equipment, supplies, and personnel to respond immediately to a major oil spill. The Plan represented that the defendants' oil spill techniques and equipment were "state-of-the-art" and that they were prepared to and could initiate a rapid response to "contain" a spill and to "exclude" a spill from particularly sensitive areas such as hatcheries and spawning grounds. The Plan further represented that Alyeska had a 24-hour task force in Valdez, Alaska, that was fully trained to respond to an oil spill, and that Alyeska could have equipment and personnel on-scene adequate to respond to a major spill in the vicinity of Bligh Island within five hours.

38. Contrary to the representations made by defendants, defendants did not have the best available technology to contain and clean up the oil spill, did not have adequately trained personnel, equipment or supplies available to respond to an oil spill and could not and did not respond adequately to the oil spilled by the EXXON VALDEZ. Defendants

LAW OFFICES OF
PRESTON THORNTON, ELLIS & HOLMAN
414 FLOCH
420 S. STREET
ANCHORAGE, ALASKA 99501-1937
(907) 276-0560

inability to respond to the oil spill was due in large part to defendants' conscious, deliberate, negligent and reckless decision to save money by reducing manpower, training, equipment and maintenance of equipment below those levels which defendants knew, or should have known, were necessary to respond to a major oil spill.

THE GROUNDING

39. On Thursday evening, March 23, 1989, the EXXON VALDEZ, a very large crude oil carrier ("VLCC") and one of Exxon's two largest oil tanker vessels, left the Port of Valdez, Alaska, bound for Long Beach, California.

40. On information and belief, Third Mate Gregory Cousins and other crew members did not have the amount of rest required by statute prior to the EXXON VALDEZ's departure from Port Valdez on the evening of March 23, 1989.

41. Prior to boarding the EXXON VALDEZ on March 23, 1989, Captain Joseph Hazelwood had been drinking alcoholic beverages in Valdez. On information and belief, at the time Captain Hazelwood boarded the vessel, he was intoxicated and in violation of United States Coast Guard ("Coast Guard") regulations and prudent practices concerning the use of alcohol and the physical and mental condition required of captains operating this type of vessel.

42. Under the command of a harbor pilot, the EXXON VALDEZ left the Valdez terminal at approximately 9:15 p.m., March 23, 1989, and passed through the Valdez Narrows. Except for a brief period at the start of the voyage, Captain

Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of defendant Exxon, was not present on the bridge of the EXXON VALDEZ when the harbor pilot was conning the vessel. In preparation for his departure, the harbor pilot requested, however, that Captain Hazelwood return to the bridge, which Captain Hazelwood did.

43. After the departure of the harbor pilot, Captain Hazelwood informed the Coast Guard that he was changing the vessel's course from the deep-water, normal outbound shipping lane. Captain Hazelwood also informed the Coast Guard that he would notify it when the vessel crossed the traffic separation zone. Captain Hazelwood did not inform the Coast Guard when the vessel crossed the traffic separation zone.

44. Captain Hazelwood directed Helmsman Harry Claar to come to a heading of 200°. Captain Hazelwood then told Helmsman Claar to come to a heading of 180° and put on the autopilot. Helmsman Claar carried out these instructions. In violation of Coast Guard regulations, the Coast Guard was not informed of the second course change, which took the EXXON VALDEZ entirely out of the traffic separation system.

45. Captain Hazelwood directed Third Mate Gregory Cousins to bring the vessel back into the shipping lanes by executing a turn at a point which he identified to Cousins on the navigational chart as a certain "38" (fathoms) notation on the chart. After giving this order, Captain Hazelwood

departed the bridge, leaving Mr. Cousins in control of the navigation of the vessel. Mr. Cousins did not have the pilotage endorsement required to pilot a VLCC through Prince William Sound. Cousins was unaware that the autopilot was on when he was left in control of the navigation of the vessel.

46. Following Captain Hazelwood's departure from the bridge, Helmsman Claar was relieved by Helmsman Robert Kagan. At all relevant times, Messrs. Cousins, Claar and Kagan were acting within the scope of their employment, and as agents and/or representatives of defendants Exxon.

47. The EXXON VALDEZ continued past the clearly-marked vessel traffic lanes into an area dangerous to vessels due to reefs and other obstructions, including the well-marked Bligh Reef. After traveling approximately three miles east of the inbound shipping lane, and ignoring until too late the buoy and flashing red light at Bligh Reef, the EXXON VALDEZ struck Bligh Reef shortly after midnight on Friday, March 24, 1989. The grounding punctured the single-hulled vessel and resulted in the rupture of several of the vessel's crude oil cargo tanks. When the EXXON VALDEZ went aground, Captain Hazelwood was not on the bridge of the vessel.

48. After the grounding, Captain Hazelwood and Exxon increased the quantity of the oil spilled into Prince William Sound by their attempts to extricate the vessel from Bligh Reef.

49. Exxon defendants have systematically reduced the crew size of tankers in the Valdez trade for the purpose

of saving money. The crew size of the EXXON VALDEZ was too small for the work responsibilities assigned to the crew. On information and belief, as a result, the crew of the EXXON VALDEZ was overworked, fatigued and not alert on the evening of March 23, 1989.

50. At the time the EXXON VALDEZ struck Bligh Reef, the vessel was incompetently manned within the privity and knowledge of the Exxon defendants, who knew, or had reason to know, that Captain Hazelwood would become intoxicated prior to the vessel's departure. The Exxon defendants had failed to institute adequate and prudent measures to preclude impairment of its officers and crews serving on VLCCs. On information and belief, the vessel was also incompetently manned within the privity and knowledge of the Exxon defendants, who knew, or had reason to know, that Third Mate Cousins would be left in charge of the vessel when he lacked the pilotage endorsement to operate the vessel in Prince William Sound. The Exxon defendants failed to take steps to insure that the EXXON VALDEZ complied with all applicable state and federal laws and regulations relating to the manning of VLCCs in Prince William Sound. On information and belief, the Exxon defendants intentionally or negligently authorized or permitted Captain Hazelwood and the crew of the EXXON VALDEZ to frequently and systematically violate Coast Guard regulations and Exxon policies concerning the manning or operation of the EXXON VALDEZ.

51. 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.

RESPONSE OF DEFENDANTS TO THE OIL SPILL

52. All defendants are responsible for containment and cleanup of the oil spill from the EXXON VALDEZ. By statute, regulation, the provisions of the State Right-of-Way Lease and ordinary prudence, the defendants were required to be prepared to contain and clean up oil spilled by them and to implement the Plan in the event of an oil spill in Prince William Sound. Nonetheless, and contrary to the representations of the defendants, both in their Plan as updated and in other representations to the State and third parties, the defendants both failed to make, and delayed making, an appropriate response to the oil spill from the EXXON VALDEZ. The defendants failed to take prompt and adequate measures to contain the oil spill and to recover oil spilled from the EXXON VALDEZ.

53. Although the Plan does not disclose that Alyeska might surrender its responsibilities for containing and cleaning up an oil spill in Prince William Sound, Alyeska nonetheless withdrew from containing and cleaning up the spill. This withdrawal commenced as early as Friday evening (March 24, 1989) and withdrawal caused delay, uncertainty,

confusion and ineffective and inefficient use of containment and clean up equipment and manpower and contributed to the failure of defendants promptly to protect sensitive areas by booming as required by the Plan.

54. During the crucial first 48 hours after the oil spill, the weather conditions were well-suited to containing and recovering the spilled crude oil. Nonetheless, as a result of the inadequate equipment, insufficient and inadequately trained personnel, confusion over which defendants were responsible for what actions, virtually no oil was recovered in the first 48 hours. The ultimate assignment of containment and clean up responsibility went to Exxon Shipping Company, an entity which, on information and belief, had no substantial knowledge of the Plan.

55. When the spill occurred, the defendants did not provide the personnel, equipment or response they committed to in the Plan. The defendants did not have present at the oil spill site a trained task force capable of an adequate, sustained, state-of-the-art response. The dock and office workers who were part of the Alyeska oil spill response team had no substantial experience or training with oil spills of substantial size, and a full-time oil spill coordinator was no longer stationed in Valdez, Alaska.

56. During the first 24 hours after the oil spill, none of the defendants had the aircraft, spray equipment, fire booms, other equipment and personnel on-site to commence burning of the oil or full scale application of dispersants.

During this crucial time period, defendants only action was to start transporting equipment, supplies and personnel from locations as far as 2,000 miles from the oil spill site.

57. At the time of the oil spill, defendants' equipment and materials were not adequate, not state-of-the-art, not operational, not properly maintained and were not effective. The defendants lacked immediate access to adequate containment booms. Alyeska's containment boom deployment barge which was to be used for such emergencies was unloaded or not fully loaded and out of service. Modern self-inflating containment booms designed to contain oil slicks immediately after an oil spill were unavailable for prompt deployment.

58. The skimmer boats used by the defendants for the oil spill clean up were in poor condition and incapable of recovering the amount of oil represented in the Plan to be recoverable by skimming. A 218,000-gallon capacity tanker barge, designed to carry oil from spill sites, had been replaced by a much smaller, second-hand barge.

59. At the time of the spill, the defendants also lacked available or immediate access to equipment ~~needed~~ to exclude spilled oil from environmentally sensitive areas, as committed to in the Plan. Further, the defendants had no communications equipment capable of permitting effective and prompt deployment and coordination of spill response personnel and equipment.

60. Defendants Alyeska and Exxon's response effort to clean up the oil after the first 48 hours was, and

continues to be, even to the present, insufficient and inadequate. Among other things, defendants have deployed equipment and manpower ineffectively and wastefully. Defendants have failed to clean up and remove all the oil from State lands, waters and resources as required by law.

DAMAGES TO PLAINTIFF

61. As a result of the oil spill from the EXXON VALDEZ, over a thousand square miles of State lands, waters and resources have suffered ~~severe environmental damage~~. A growing number of coastal and inland sounds and bays, beaches, tidelands, tidal pools, wetlands, estuaries and other sensitive elements of the ecosystems have been devastated; thousands of mammals, fowl and fish have been killed or injured; anadromous streams, near shore environments and other fish and wildlife critical habitats have been contaminated; aesthetics and scenic quality have been destroyed or impaired, together with attendant opportunities for recreational experiences; air quality has deteriorated through the escape of evaporating pollutants; commercial fisheries have been sharply curtailed, with adverse biological and economic consequences; the greater ecosystem in the spill area has been deprived of its pristine condition with attendant damage to the condition of, and interrelationship among, living creatures comprising the system; and the management opportunities available through the knowledge and data base generated from prior experience with the ecosystem have been compromised.

62. The State has incurred, and will continue to incur, economic damages in the form of extraordinary expenses directly related to the spill including, without limitation: (i) costs of response to the oil spill, investigation and monitoring of the oil spill; (ii) costs of clean up and removal; (iii) costs of damage assessment studies; (iv) increased direct and indirect costs of providing governmental services to persons or entities adversely effected by the oil spill; and (v) the losses due to ordinary government services curtailed or impaired as a result of diversion of State resources caused by State activities related to the spill.

63. The State has suffered, and will continue to suffer, economic damages in the form of extraordinary losses of revenue relating to the spill, including, without limitation: (i) loss of fish processing tax revenue; (ii) loss of salmon enhancement tax revenue; (iii) loss of oil and gas production tax revenue; (iv) loss of corporate income tax revenue; and (v) loss of oil production royalties.

64. On information and belief, the environmental and economic damages caused by the oil spill to property, trades and business, State revenues, fisheries, marine life, various categories of State lands, waters and resources and the enjoyment thereof within, among others, Prince William Sound, Cook Inlet, Kodiak Island and the Gulf of Alaska, will continue for many years.

65. On information and belief, defendants may curtail or abandon their efforts at cleaning up the beaches

and restoring them to their pre-spill condition. Such curtailment and/or abandonment of the clean up will cause plaintiff irreparable harm because money will not prevent environmental and other damages which will occur to State lands, waters and resources as a result of defendants' termination of clean up work. On information and belief, defendants have not yet commenced restoration work and the State will incur costs of restoration and replacement of impacted State lands, waters and resources.

COUNT I

NEGLIGENT OR INTENTIONAL FAILURE TO CONTAIN
AND CLEAN UP THE OIL SPILL
ALL DEFENDANTS

66. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

67. The containment and removal of the discharged oil which damaged and threatens to further damage State lands, waters and resources and private property was the responsibility of all defendants. Defendants had a duty to plaintiff to have adequate resources available to contain and clean up immediately and effectively the oil spill.

68. Prior to the EXXON VALDEZ oil spill, the defendants had repeatedly represented to the State and others that they had the resources, technology and a plan by which major oil spills could be contained and excluded from environmentally sensitive areas within hours of the occurrence. In the period immediately after the grounding of the EXXON VALDEZ, nothing was done to promptly contain the oil

spill. Nearly an entire day passed after the oil spill before Alyeska and Exxon representatives even started to place booms or clean up the oil spill. More days would pass before defendants took any effective action to implement exclusionary booming of sensitive areas.

69. The delays in responding to the EXXON VALDEZ oil spill were due to the defendants' lack of preparedness in personnel, equipment and materials to engage in an effective clean up of the EXXON VALDEZ oil spill.

70. Defendants knew, or should have known, that they lacked adequate equipment and materials and trained personnel to contain effectively and to clean up a spill of the magnitude of the EXXON VALDEZ oil spill.

71. The defendants either intentionally or negligently failed to control, contain and clean up the oil spill by, among other things, (i) failing to provide adequately for the containment and clean up of any discharge of oil; (ii) inadequately planning the clean up effort stemming from the EXXON VALDEZ oil spill; (iii) possessing inadequate equipment, supplies and personnel for deployment in the ensuing clean up effort; (iv) unreasonably delaying the ensuing clean up effort; (v) failing to adequately carry out the ensuing clean up effort; and (vi) choosing inadequate tactics in the ensuing clean up effort. All these actions and omissions of defendants served to aggravate and compound the environmental and economic damages to plaintiff.

72. As a direct and proximate result of the foregoing and other failures by the defendants to exercise that degree of care expected of a reasonably prudent person acting under the same or similar circumstances, the defendants in their own right, as well as by and through their agents, servants and employees, caused plaintiff to suffer substantial and continuing environmental, economic and other damages to State lands, waters and resources, and other interests in amounts to be proven at trial.

COUNT II

NEGLIGENCE
EXXON DEFENDANTS

73. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

74. Captain Hazelwood was not in control of the navigation of the EXXON VALDEZ when the vessel hit the well-marked Bligh Reef. Instead, Third Mate Cousins was in control of the navigation when the vessel ran aground, even though Third Mate Cousins lacked the proper pilotage endorsement and experience to pilot vessels such as the EXXON VALDEZ through the waters of the Prince William Sound.

75. The Exxon defendants and Captain Hazelwood and Third Mate Cousins knew, or should have known, that Cousins did not possess either the required pilotage endorsement or the requisite degree of competence to command the EXXON VALDEZ with reasonable prudence, skill or care. Acting within the scope of their employment, Captain Hazelwood and Third Mate

LAW OFFICES OF
PRESTON, THORGRIMMON, ELLIS & HOLMAN
4TH FLOOR
420 L STREET
ANCHORAGE, ALASKA 99501-1937
(907) 276-1009

Cousins knew, or should have known, that it was unreasonably dangerous and also a violation of applicable Coast Guard rules and regulations for Hazelwood to leave the bridge and relinquish control of the navigation of the vessel to Cousins.

76. The Exxon defendants knew, or should have known, based on the service in which the EXXON VALDEZ was involved, that its single hull, high tensile steel construction was not sufficient to allow it to safely engage in the trade for which it was intended.

77. The negligence of the Exxon defendants, except Exxon Pipeline Company, in the operation of the EXXON VALDEZ specifically includes, but is not limited to, (i) failing to man the EXXON VALDEZ with sufficient and competent crew members so that the crew would not be overworked and fatigued; (ii) permitting Captain Hazelwood to command the EXXON VALDEZ despite his excessive use of alcohol; (iii) allowing the improper relinquishment of control of the navigation of the EXXON VALDEZ to Third Mate Cousins; (iv) using single hull, high tensile steel construction that was not sufficient to allow the tanker to safely engage in the trade for which it was intended; (v) failing to reduce speed when ice was encountered; and (vi) failing to establish proper monitoring and supervision of Captain Hazelwood in light of his known alcohol problem.

78. As a direct and proximate result of the foregoing failures by the Exxon defendants, except Exxon Pipeline Company, to exercise the degree of care expected of a

reasonably prudent person acting under the same or similar circumstances, the Exxon defendants in their own right as well as by and through their agents, servants and employees, caused plaintiff to suffer substantial environmental and economic damages in amounts to be proven at trial.

COUNT III

INTENTIONAL AND NEGLIGENT MISREPRESENTATION
ALL DEFENDANTS

79. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

80. The defendants negligently or intentionally misrepresented to plaintiff and others that they had sufficient personnel, material, knowledge and techniques at their disposal to prevent a major oil spill or to prevent or minimize environmental or other damages if a major oil spill occurred.

81. Contrary to these representations, the defendants were aware, or were negligent or reckless in not being aware, that they lacked sufficient personnel, equipment, knowledge and techniques to prevent an oil spill or to respond adequately to an oil spill on Prince William Sound before it caused substantial environmental and economic damage. Defendants knew and intentionally disregarded, or were reckless in not knowing, that they were ill-equipped and unprepared to respond to an oil spill such as the EXXON VALDEZ spill. Nonetheless, defendants failed to warn state or federal authorities or the public of their unpreparedness and

LAW OFFICES OF
PRESTON, THORNTON, ELLIS & HOLMAN
4TH FLOOR
420 F STREET
ANCHORAGE, ALASKA 99501-1537
(907) 276-9669

the potential adverse impact of such unpreparedness should a substantial oil spill occur in Prince William Sound.

82. Due to these negligent, reckless or intentional misrepresentations or omissions of material facts, the true dangers posed to plaintiff, the citizens of Alaska and State lands, waters and resources were not disclosed.

83. The misrepresentations and omissions of material fact by the defendants were negligently, recklessly or intentionally made to induce plaintiff and others to refrain from taking action which would have required defendants to be prepared to prevent a major oil spill and, if an oil spill should occur, to contain and clean up the spilled oil.

84. The above-mentioned misrepresentations and omissions resulted in inadequate and ineffectual clean up efforts which aggravated and compounded the environmental and economic damages caused to plaintiff by the oil spill.

85. As a direct and proximate result of the misrepresentations and/or omissions of material facts by defendants, plaintiff has suffered substantial and continuing environmental and economic damages in amounts to be proven at trial.

COUNT IV

NEGLIGENCE PER SE EXXON DEFENDANTS

86. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

87. The acts and omissions of the defendants violated AS 08.62 and regulations enacted pursuant thereto and other state laws and regulations governing the operation of tanker vessels in Prince William Sound. In so violating these laws, defendants were negligent per se.

88. The defendants are liable to plaintiff for all environmental and economic damages resulting from the accident and discharge on account of the violations of the above-mentioned State law.

89. As a direct and proximate result of the defendants' negligent acts and omissions, the defendants have caused plaintiff to suffer substantial and continuing environmental and economic damages in an amount to be proven at trial.

COUNT V

STRICT LIABILITY FOR INHERENTLY DANGEROUS ACTIVITY EXXON DEFENDANTS

90. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

91. The oil transportation, loading and shipping activities engaged in by the Exxon defendants are so inherently dangerous and potentially devastating to the surrounding environment in the State of Alaska, as well as to its residents, citizens and businesses, that even when conducted under the best of circumstances and with utmost care, such activities constitute inherently and abnormally

dangerous activities for which the defendants are strictly liable.

92. The use of single-hulled vessels for transporting ANS crude oil through Prince William Sound constitutes an inherently and abnormally dangerous activity for which defendants are strictly liable.

93. The above-described inherently dangerous activities engaged in by the defendants directly and proximately caused substantial and continuing environmental and economic damages to plaintiff, in amounts to be proven at trial.

COUNT VI

MARITIME TORT EXXON DEFENDANTS

94. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

95. By virtue of the above, the Exxon defendants negligently allowed the vessel to sail in an unseaworthy condition and/or negligently allowed the vessel to be navigated in an unprudent manner, in violation of the general maritime law. The Exxon defendants' negligence resulted in the grounding of the vessel and was a direct and proximate cause of the environmental and economic damages suffered by plaintiff, in amounts to be proven at trial.

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
4TH FLOOR
420 F STREET
ANCHORAGE, ALASKA 99501-1937
(907) 276-1939

COUNT VII

BREACH OF RIGHT-OF-WAY LEASE AND INDEMNIFICATION
OWNER COMPANIES AND ALYESKA

96. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

97. In May, 1974, the State and the defendant Owner Companies or their predecessors in interest entered into the State Right-of-Way Lease. The State Right-Of-Way Lease imposed upon the defendant Owner Companies responsibility for the avoidance of a discharge of oil into or upon the lands, waters and resources of the State, and for the protection of the public and environment from the damages and other effects of any possible oil spill. The Owner Companies' obligations included, without limitation: (i) employment of the best practicable technology available and use of all practicable means to preserve and protect the environment; (ii) prevention of any potential spill of oil or other hazardous substance into or upon the lands, waters and resources of the State; (iii) if such an oil spill occurs, immediate corrective action using the best practicable technology available to abate serious harm or environmental damage; and (iv) restoration of the resources affected by an oil spill.

98. In accordance with State Right-Of-Way Lease, the defendants submitted to the Alaska Department of Natural Resources contingency plans for the prevention, containment and clean up of oil spills, including contingency plans applicable to tanker spills in Prince William Sound.

99. The defendants have breached the State Right-Of-Way Lease because they failed to comply with their obligation to use the best practicable technology and resources available to adequately prevent and to abate the serious harm and environmental damage threatened and caused to State lands, waters and resources as a result of the oil spill.

100. The defendants have breached the State Right-of-Way Lease because they failed to fulfill their obligations under the Lease to respond, contain and clean up the oil spill in conformity with the Plan for Prince William Sound.

101. Under Section 13 of the State Right-of-Way Lease, defendant Owner Companies must indemnify the State for liabilities, damages or injury incurred by the State caused by operation or maintenance of the TAPS.

102. Plaintiff has suffered damages and injury within the meaning of Section 13 of the State Right-of-Way Lease in an amount to be proven at trial.

COUNT VIII

PUBLIC NUISANCE ALL DEFENDANTS

103. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

104. The acts and omissions of the defendants created a public nuisance through unreasonable interference with the rights of plaintiff to State lands, waters and

LAW OFFICES OF
PRESTON, THOMPSON, ELLIS & HOLMAN
4311 FLOORS
420 L STREET
ANCHORAGE, ALASKA 99501-1237
(907) 276-1800

resources that are free from pollution and contamination by crude oil and other hazardous substances.

105. The unreasonable interference with the rights of the State resulted in special and distinct harm to plaintiff, including, but not limited to, damages to the lands, waters and resources of the State and the revenues derived from the use by third parties of natural resources of the State.

106. The substantial interference with plaintiff's interests were caused by the actions and omissions of the defendants for which they are liable to plaintiff for environmental and economic damages sustained in amounts to be proven at trial.

107. The defendants threaten to continue the acts and omissions complained of herein, and unless permanently restrained and enjoined, will continue to do so, all to plaintiff's irreparable damage. Plaintiff's remedy at law for damages is not adequate to compensate them for the continuing injuries suffered by the State.

COUNT IX

PRIVATE NUISANCE UNDER AS 09.45.230 ALL DEFENDANTS

108. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

109. The acts and omissions of the defendants created a private nuisance through substantial interference

with the use and enjoyment of plaintiff's interests in property.

110. The substantial interference with the use and enjoyment of plaintiff's interests in property includes, but is not limited to injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits.

111. Substantial interference with plaintiff's interests was caused by the actions and omissions of the defendants for which they are liable to plaintiff for the damages sustained in amounts to be proven at trial.

112. The defendants threaten to continue the acts and omissions complained of herein, and unless restrained and enjoined, they will continue to do so, all to plaintiff's irreparable damage. Plaintiff's remedy at law for damages is not adequate to compensate them for the continuing injuries suffered by the State.

COUNT X

TRESPASS
EXXON DEFENDANTS

113. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

114. Through the intentional or reckless grounding of the EXXON VALDEZ upon Bligh Reef and the improper transport of crude oil, an ultrahazardous activity for which the Exxon defendants are strictly liable, the Exxon defendants spilled approximately 11 million gallons of crude oil into and upon

the State's lands and properties. Such actions constitute an unauthorized and continuing trespass upon State lands, waters and resources.

115. As a direct and proximate result of the EXXON VALDEZ's trespass upon the lands, waters and resources of the State, and continuing trespass of the EXXON VALDEZ crude oil upon State lands, waters and resources, the State has suffered and will continue to suffer substantial and continuing environmental and economic damages for which the Exxon defendants are liable in such amounts as will be proven at trial.

COUNT XI

STRICT LIABILITY UNDER AS 46.03.822 ;
EXXON DEFENDANTS

116. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

117. 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) of the Alaska Environmental Conservation Act.

118. 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.

119. The release of oil from the EXXON VALDEZ caused the State to incur response costs.

LAW OFFICE OF
PETER J. MORRISON, ELLEN S. MORRISON
415 FLOOM
420 1 STREET
ANCHORAGE, ALASKA 99501-1037
(907) 276-1869

120. Pursuant to AS 46.03.822, the Exxon defendants are jointly and severally strictly liable to plaintiff for all damages to plaintiff, including, but not limited to, injury or loss to real and personal property, loss of revenue, loss of means of producing income, loss of economic benefits, costs of responding, containing and removing the oil, including the cost of monitoring and overseeing the clean up, and all damages to State lands, waters and resources in amounts to be proven at trial.

COUNT XII

AS 46.03.780 LIABILITY FOR RESTORATION
ALL DEFENDANTS

121. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

122. All defendants have violated provisions of AS 46.03, AS 46.04 or AS 46.09 and have failed to perform duties imposed by such statutes, which violations have caused, without limitation, injuries and death to fish, animals and vegetation, degradation and other environmental damages to the lands, waters and resources of the State.

123. Pursuant to AS 46.03.780, defendants are liable to plaintiff for an amount equal to the sum of money required to restock injured land and waters, to replenish damaged and degraded resources and to restore the environment to its condition before the injury.

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
4TH FLOOR
420 F STREET
ANCHORAGE, ALASKA 99501-1937
(907) 276-1965

COUNT XIII

CIVIL DAMAGES UNDER
AS 46.03.760(e)
EXXON DEFENDANTS

124. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

125. The Exxon defendants permitted the discharge of crude oil from the EXXON VALDEZ in violation of AS 46.03.740.

126. Pursuant to AS 46.03.760(e), Exxon defendants are liable to the State for the full amount of damages suffered by the State, including, but not limited to, all direct and indirect costs associated with the abatement, containment and removal of the oil, restoration of the environment to its former condition and all administrative expenses in amounts to be proven at trial.

COUNT XIV

CIVIL PENALTIES UNDER AS 46.03.758(b) (1) and (2)
EXXON DEFENDANTS

127. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

128. Pursuant to AS 46.03.758, Exxon defendants are liable to plaintiff for the penalties in the amounts set forth therein due to the discharge of crude oil from the EXXON VALDEZ and the failure to contain and clean up the discharged oil.

129. The crude oil was discharged from the EXXON VALDEZ because of Exxon defendants' gross negligence. Pursuant to AS 46.03.758(b) (2), the Exxon defendants are

liable to the State for five times the civil penalty established by AS 46.03.758(b)(1) and 18 AAC 75.500 et seq.

130. Following the crude oil discharge from the EXXON VALDEZ, the Exxon defendants failed to take reasonable measures to contain and clean up the discharged oil from the EXXON VALDEZ. Pursuant to AS 46.03.758(b)(2), defendants are liable to the State for five times the civil penalty established by AS 46.03.758(b)(1) and 18 AAC 75.500 et seq.

COUNT XV

AS 46.03.760(a)

ALL DEFENDANTS

131. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

132. Defendants have violated provisions of AS 46.03 (other than AS 46.03.250-46.03.314, AS 46.03.740 and AS 46.03.758 and provisions of AS 46.04 and AS 46.09 and regulations adopted pursuant to those statutes, including, without limitation, at least the following:

- a) AS 46.03.140
- b) AS 46.03.710
- c) AS 46.04.030
- d) AS 46.09.020

133. Pursuant to AS 46.03.760(a), defendants are liable to plaintiff for a civil assessment of not less than \$500, nor more than \$100,000, for each initial violation, plus not more than \$5,000 for each day thereafter for each violation, and for all other damages and costs incurred by plaintiff.

COUNT XVI

NEGLIGENT OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
ALL DEFENDANTS

134. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

135. The actions of defendants in discharging crude oil into the waters of Prince William Sound and failing to take adequate measures to contain and clean up the crude oil caused substantial and abnormal environmental and economic damages to the State and its residents. On information and belief, as a result of the actions of the defendants, many state residents are suffering, and will continue to suffer, emotional distress from having witnessed the destruction of the environment in which they live and work and having their livelihoods threatened and their personal and family lives disrupted. As a result of the defendants' acts and omissions, the State has incurred, and will continue to incur, substantial costs in increased demand for social services, mental health treatment and other community services for the severe emotional distress suffered by the citizens of the State.

136. The severe emotional distress suffered by many state residents was a reasonably foreseeable consequence of the grounding of the EXXON VALDEZ and the failure to properly contain and clean up the spilled crude oil.

137. As a direct and proximate result of the defendants' conduct as described above, plaintiff has suffered

substantial and continuing economic and other damages, in an amount to be proven at trial.

COUNT XVII

PUNITIVE DAMAGES
ALL DEFENDANTS

138. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

139. The acts and omissions of defendants alleged in Counts I, II, III, VI, VII, VIII and X were undertaken in deliberate disregard or with reckless indifference to the rights and interests of plaintiff and entitle plaintiff to punitive damages in an amount to be proven at trial.

RELIEF SOUGHT

WHEREFORE, plaintiff prays that this Court:

1. Award all statutorily authorized civil penalties, compensatory, incidental and punitive damages in amounts to be determined by the finder of fact;
2. Award all compensatory and punitive damages authorized under the common law, including, but not limited to, environmental and economic damages.
3. Award all compensatory and punitive damages authorized under the general maritime law.
4. Order that the defendants be permanently enjoined to remove all spilled oil and to restore the surface and subsurface lands, wildlife, waters, fisheries, shellfish and associated marine resources, air and other State lands,

waters and resources affected directly or indirectly by the spill;

5. Order immediate and continuing environmental monitoring and assessment of the conditions of the air, waters and subsurface and surface lands, fisheries, shellfish and the associated marine resources and other natural resources;

6. For a judgment against defendant Owner Companies for all environmental and economic damages suffered by the State of Alaska by reason of the defendants' breaches of the State Right-of-Way Lease, including, without limitation, the cost of monitoring the clean up of the oil spill, the environmental damages to State lands, waters and resources, damage to the State's economy and lost revenues;

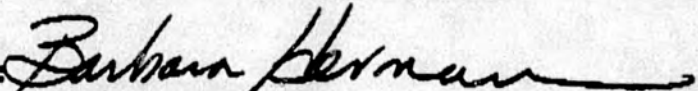
7. For a judgment that the defendant Owner Companies are obligated to reimburse and indemnify the State of Alaska for all environmental and economic damages suffered by the State of Alaska by reason of the defendants' breaches of the State Right-of-Way Lease, including, without limitation, the cost of monitoring the clean up of the oil spill, the environmental damages to State lands, waters and resources, the damage to the State's economy, lost revenues, the costs of all enforcement actions and the costs of all expert studies, consultancies and reports conducted or prepared by or for the State to assess the injury or damages caused by defendants' actions and inactions;

8. Award prejudgment interest, attorneys' fees and the costs of this action; and,

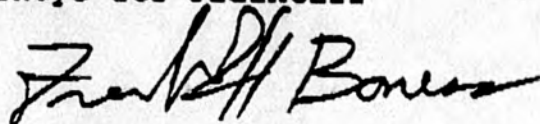
9. Award such other and further relief as this Court deems just and proper.

DATED this 15th day of August, 1989.

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Barbara Herman
Craig Tillery
Assistant Attorneys General
State of Alaska

PRESTON, THORGRIMSON,
ELLIS & HOLMAN
Attorneys for Plaintiff

By: 
Frederick H. Boness
Joseph K. Donohue

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
4TH FLOOR
420 L STREET
ANCHORAGE, ALASKA 99501-1937
(907) 276-1988