

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

1986 SCOMM 77: SENATE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991

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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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April 25, 1991

Hon. Max Gruenberg, Chairman
House Special Committee on the
Exxon Valdez Oil Spill Claims Settlement
House of Representatives
P. O. Box V
Juneau, AK 99811

Dear Mr. Chairman:

This will confirm my remarks to you earlier this afternoon that Governor Hickel's position continues to be that the State will terminate the Agreement among the United States, the State of Alaska and Exxon Corporation, et al. if the Alaska Legislature does not approve the Agreement as written.

It will also confirm my view that action by the Legislature to approve the Agreement is inappropriate until Exxon decides whether to terminate it because of Judge Holland's rejection yesterday of the criminal plea agreement.

Very truly yours,

Charles E. Cole
Attorney General

CEC:pml

cc: ✓ Hon. Richard I. Eliason, President, Alaska State Senate
Assistant Attorney General Richard Stewart, U.S.
Department of Justice
J. G. Clarke, Senior Vice President, Exxon Corporation

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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

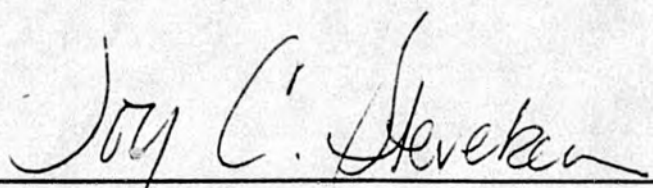
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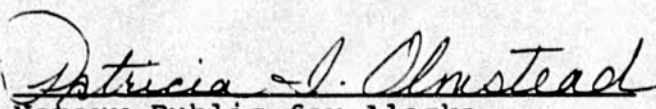
ACE 1014100

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
CLOUGH & ASSOCIATES
431 Franklin Street
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 Turom, 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**

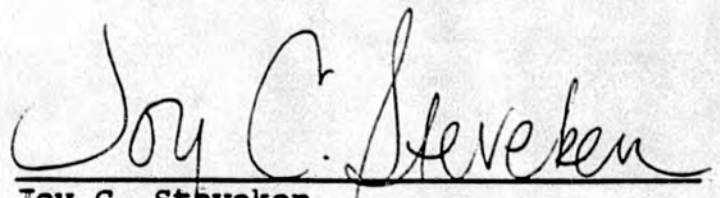
BOGLE & GATES

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

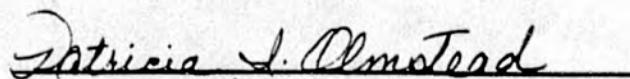
ACE 1014106

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

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

AFFIDAVIT OF SERVICE

-2-

ACE 1014107

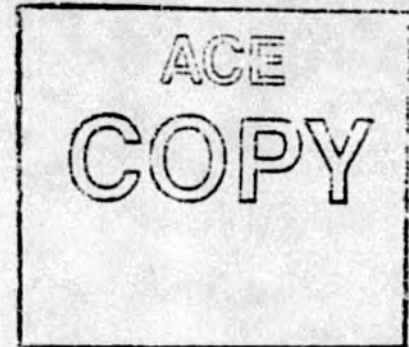
SONOSKY, CHAMBERS, SACHSE & MILLER
900 WEST FIFTH AVENUE
SUITE 700
ANCHORAGE, ALASKA 99501
(907) 258-6377

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)

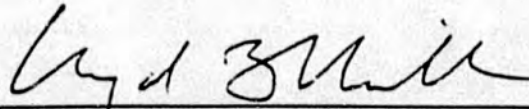
CLASS ACTION PLAINTIFFS' MOTION FOR
TECHNICAL CORRECTION OF PRETRIAL ORDER NO. 22

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

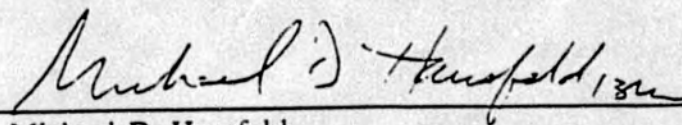
By:


Lloyd Benton Miller
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(907) 258-6377

SONOSKY, CHAMBERS, SACHSE & MILLER
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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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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

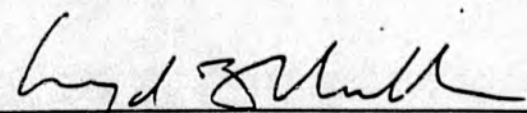
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ANCHORAGE, ALASKA 99501
(907) 258-6377

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.

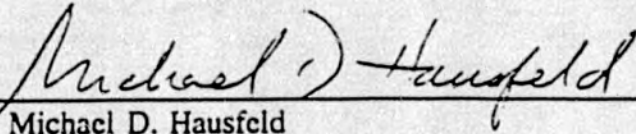
SONOSKY, CHAMBERS, SACHSE, MILLER & MUNSON

By: 

Lloyd Benton Miller
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COHEN, MILSTEIN, HAUSFELD & TOLL

By:



Michael D. Hausfeld
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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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(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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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

#	CASE NAME	CASE NO.
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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
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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>Bird 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 as 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.

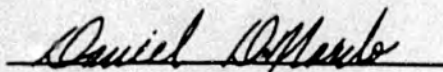
DAMAGES

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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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

STEPOVICH, KENNELLY
& STEPOVICH, P.C.
ATTORNEYS AT LAW
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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

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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.

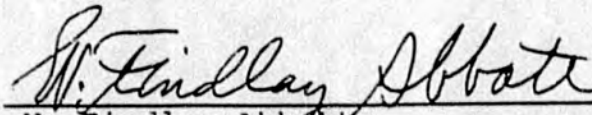
30. Many of Plaintiff's future plans and hopes for business and self-employment, which relied upon the pure and pristine reputation of the North Pacific shore have been damaged forever.

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

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