

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1987 SCOMM 77: SENATE SPEC. COMM. EXXON VALDEZ OIL SPILL. . 1991

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

STEPOVICH, KENNELLY
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MOLITOR, DOREMUS AND HANLIN

Plaintiff,

vs.

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

Defendant.

Case No. 3AN-91- Civ.

DEMAND FOR TRIAL BY JURY

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

DATED this 31st day of March, 1991.

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

By:

C.R. Kennelly
C.R. KENNELLY

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

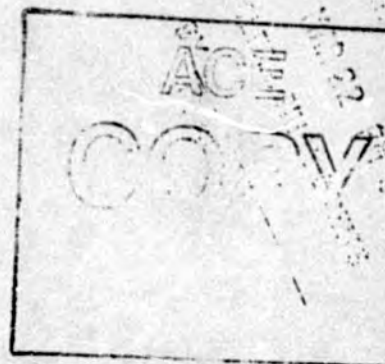
DON MARINO

Plaintiff,

vs.

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

Defendant.



Case No. 3AN-91-2528 Civ.

COMPLAINT

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

COUNT I

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

Don Marino, Stc 220
1057 W. Fireweed, Anchorage, AK 99503
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that time certain property described as follows: Lots 25, 26, 27, 36 of Block 4, Lots 7, 8 of Block 6, Lots 24, 25, 26, 27, 34, 36, 43, 44 of Block 8, Lot 16 of Block 9, Latouche Island Township Subdivision Addition No. 1, Valdez Recording District, was titled in the name of RARE EARTH INC., which was a corporation in the process of dissolution. The assets of the corporation in the dissolution not used to satisfy outstanding obligations of the corporation have now been transferred to DON MARINO as the sole remaining stockholder of the corporation including the title to the above listed lots and any claim that may be had for damages or other relief as a result of the Exxon Valdez oil spill in the Prince William Sound and against any and all Parties or Funds liable for the same, with full right to sue thereon now belongs to Don Marino. Plaintiff has been deprived of the beneficial use and enjoyment of the those Lots. Plaintiff has in addition to the lots described above presently in Rare Earth Inc., held in trust at the time of the EXXON VALDEZ OIL SPILL, a beneficial interest in two (2) Deeds of Trust to the above described property, which have been transferred to DON MARINO retains all rights pertinent to them as to any or all claims due to damage from the EXXON VALDEZ OIL SPILL. Said lots described above are presently in default and being closed upon by DON MARINO as the beneficial owner. The relief sought on the on two Lots is fully described within this Complaint and goes to DON MARINO.

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

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

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

COUNT II

Plaintiff hereby reallege and incorporate paragraphs

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

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

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

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

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

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

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

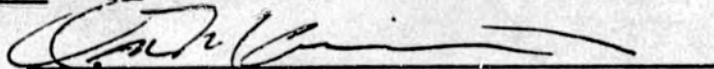
9. Plaintiff seek a permanent injunction compelling the Defendants, STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, to restore the property described above in Count I to its condition prior to the time that the nuisance above-described started. Plaintiff alleges that this nuisance was caused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

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

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

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

DATED this 22⁴⁰ day of March, 1991.


Don Marino, pro se

The Honorable Brian Shortell

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

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

NO. 3AN-91-2344

FIRST AMENDED COMPLAINT

Plaintiffs,

v.

STATE OF ALASKA,

Defendant.

Checked *[Signature]*

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

FIRST AMENDED COMPLAINT - 1
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1 plaintiffs' investigation of the available facts through counsel
2 herein.

3 JURISDICTION AND VENUE

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

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

13 THE PARTIES PLAINTIFF

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

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

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

25 FIRST AMENDED COMPLAINT - 2

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1 Council. Plaintiff McMullen depends heavily on the subsistence
2 way of life and is a representative of Class I.
3

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

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

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

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

FIRST AMENDED COMPLAINT - 3

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

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

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

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

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

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

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

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

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

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

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

FIRST AMENDED COMPLAINT - 5

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ACE 1746629

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

10 **THE PARTY DEFENDANT**

11 19. Defendant is the State of Alaska.

12 **CLASS ACTION ALLEGATIONS**

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

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

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

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

FIRST AMENDED COMPLAINT - 7

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

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

FIRST AMENDED COMPLAINT - 8

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

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

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

FIRST AMENDED COMPLAINT - 9

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ACE 1746033

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

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

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

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

18 b. Whether the defendant was negligent;

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

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

FIRST AMENDED COMPLAINT - 11

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

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

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

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

18 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

19 **A. Prespill Events.**

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

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

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

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

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

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

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

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

FIRST AMENDED COMPLAINT - 13

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

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

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

11 j. use the best available technology;

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

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

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

FIRST AMENDED COMPLAINT - 14

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

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

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

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

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

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

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

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

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

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

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

x. be able to execute the contingency plan;

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

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

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

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

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

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

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

19 32. The initial collision, subsequent grounding of, and
20 later attempts to free the EXXON VALDEZ from Bligh Reef tore open
21 eight of the ship's eleven oil cargo tanks and three saltwater
22 ballast tanks extending the full length of the vessel. As a
23 result of these incidents, approximately 11 million gallons of
24 oil were spilled into the waters of Prince William Sound.
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FIRST AMENDED COMPLAINT - 17

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

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

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

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

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

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

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DAVID WRIGHT TREMAINE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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25 FIRST AMENDED COMPLAINT - 22

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

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

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

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

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

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

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

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

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

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

13 CLAIM FOR RELIEF

14 A. Negligence.

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

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

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

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

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

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

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

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

21 Id. at 23.

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

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

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

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

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

Id. at 34-35.

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

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

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

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

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

Id. at 32.

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

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1 that the injuries of plaintiffs and the members of the plaintiff
2 classes were proximately caused by negligent conduct of the
3 defendant, defendant is liable for damages that plaintiffs and
4 the members of the plaintiff classes have suffered and are
5 continuing to suffer.
6

7 **PRAYER FOR RELIEF**

8 Plaintiffs pray that this court:

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

12 B. Award compensatory damages for harm to property;

13 C. Award compensatory damages for economic losses;

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

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

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

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

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

4 I. Award prejudgment interest; and

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

8 DATED this 26th day of March, 1991.

9 DAVIS WRIGHT TREMAINE

10
11 By

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AND MUNSON
20 By Lloyd Benton Miller
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21 Anchorage, AK 99501
(907) 258-6377
22 Liaison Counsel for plaintiffs

The Honorable Brian Shortell

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

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

Plaintiffs,

v.

STATE OF ALASKA,

Defendant.

NO. SAN 91-2344

COMPLAINT

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

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JURISDICTION AND VENUE

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

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

THE PARTIES PLAINTIFF

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

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

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

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

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

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

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

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

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

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

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

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

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

20 14. Plaintiff THE ALASKA FISHERMAN'S UNION is a labor
21 organization whose members work in canneries in Alaska and in the
22 Area and who reside in the State of Alaska and is a
23 representative of Class V.
24
25

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

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

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

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THE PARTY DEFENDANT

18. Defendant is the State of Alaska.

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

4 **A. Prespill Events.**

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

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

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

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

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

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

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

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

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

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

20 j. use the best available technology;

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

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

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

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

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

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

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

23 q. adopt reasonable procedures for the use of
24 chemicals for oil spill control;
25

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

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

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

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

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

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

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

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

B. The Oil Spill and Post-spill Events.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 C. Effects of the Oil Spill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 CLAIM FOR RELIEF

11 A. Negligence.

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

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

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

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

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

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

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

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

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

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

20 Id. at 23.

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

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

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

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

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

16 Id. at 34-35.

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

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

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

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

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

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

3 Id. at 32.

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

11 **PRAYER FOR RELIEF**

12 Plaintiffs pray that this court:

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

16 B. Award compensatory damages for harm to property;

17 C. Award compensatory damages for economic losses;

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

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

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

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

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

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

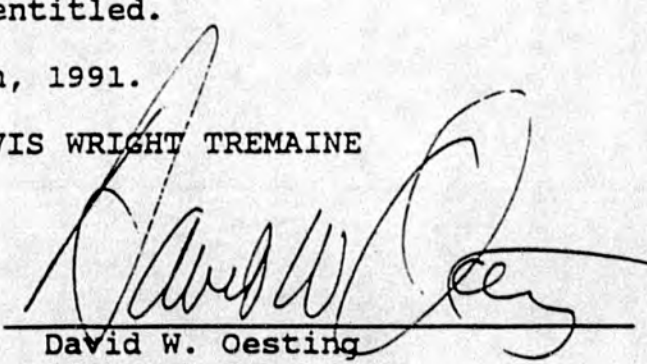
11 I. Award the plaintiffs' attorneys' fees and costs,
12 including expert and scientific fees and other disbursements;

13 J. Award prejudgment interest; and

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

17 DATED this 22nd day of March, 1991.

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19
20
21 By 

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

JERALD D. EIDEM and JACQUELLAN
JILL MAXWELL,

Plaintiffs,

vs.

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

Defendants.

Case No. 3AN-91-2356 Civ.

COMPLAINT

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

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

Dist.

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

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

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

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

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

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

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

13. Both the EXXON CORPORATION and EXXON SHIPPING

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

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

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

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

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

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

18. The negligence of the non-governmental defendants was

so gross as to amount to wanton and reckless misconduct.

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

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

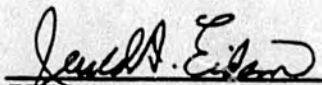
1. For actual damages as proven at trial in an amount in excess of \$50,000.00 each;

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

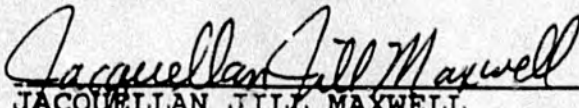
3. For plaintiffs costs, interest and attorney's fees; and

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

DATED this 23 day of March, 1991.



JERALD D. EIDEM
In propria persona



JACQUELLAN JILL MAXWELL
In propria persona

ACE 1826596

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

MICHAEL M. BULLOCK, ALFRED ABOUARD,)
ALCAN ELECTRIC & ENGINEERING CO.,)
DAWAYNE ANDERSON, J.W. ASHFORD AND)
ASSOCIATES, JIM ASHFORD JFA INC., d/b/a)
BARNEY'S LIQUORS, JIM ASHFORD, d/b/a)
ISLAND CANNING, JIM ASHFORD, d/b/a)
KODIAK TOURS, RALH D. BAILEY AND)
FRANCES N. BAILEY, d/b/a THE SMOKEHOUSE,)
JIM S. BELL, BLUE STAR AQUACULTURE,)
GREGORY A. BROWN, CAROLYN M. BUDD,)
BUDD ENTERPRISES, INC., RENE M. BUNDY,)
PAUL F. CONWAY, d/b/a ALASKA EAGLE)
LODGE, LESLIE DYER, d/b/a GREATLAND)
REFRIGERATION, DIANE F. EARL, B. JOAN)
HOOD, ISLAND PLUMBING AND HEATING,)
DENNIS G. JOHNSON, JOHN KINNEY, KODIAK)
SERVICES CO., ALEXANDER LAKTONEN, ELI)
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DONALD C. HANKS, MARY HANKS, ZANE P.)
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LAWSON, MATTHEW WAYNE LAWSON, SIANNA)
LYNN LAWSON, MICHELLE LAWSON, ROBERT)
MORGAN, KEN HINKLE, DONNA HINKLE, MIKE)
POSCIRI, DAVID LONG, RICHARD MORIN,)
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PIRIE INTROUT, LLOYD C. WHEELER,)
LEONARD S. OGLE, MAKE KUKIKOV, SAMUEL)
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VASILY SHARABARIN, LARRY STORY,)
MICHAEL M., HEINE, MARVIN L. BARTLESON)
MANFIELD PARK, DAVID AKIN, MARY LOU)
REDMOND, TONY FROLOV, JOHN ZACKAR,)
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PETER HICKEY, THOMAS CLOCK, JAYSON)
GILES, TIMOTHY MCKITTRICK, GARY HAINES,)
DAVID CHAMP, ROBERT WALKER, JIM)
TUNGATE, BRIAN CAIN,)

Plaintiffs,

vs.

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

Defendant(s).

Case No. 3AN-91-2368 CIVIL

EXXON VALDEZ OIL SPILL LITIGATION

AMENDED COMPLAINT

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

I

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

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

II

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

III

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

IV

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

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

FACTS

VI

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

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VII

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

VIII

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

IX

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

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

XI

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

XII

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

XIII

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

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

XIV

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

XV

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

XVI

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

XVII

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

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XVIII

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

XIX

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

XX

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

COUNT I

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

XXI

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

XXII

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

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

XXIII

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

XXIV

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

XXV

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

XXVI

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

XXVII

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

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

XXVIII

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

XXIX

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

XXX

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

XXXI

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

COUNT II

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

XXXII

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

XXXIII

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

XXXIV

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

XXXV

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

XXXVI

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

XXXVII

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

XXXVIII

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

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XXXIX

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

XL

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

COUNT III

STATE OF ALASKA LIABILITY

XLI

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

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XLII

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

NEGLIGENT PER SE

XLI

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

XLII

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

COUNT V

ALASKA ENVIRONMENTAL CONSERVATION ACT

XLIII

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

XLIV

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

XLV

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

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