

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1988 SCOMM 77: SENATE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991

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

XLVI

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

XLVII

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

XLIII

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

XLIX

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

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

I.

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

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

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

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

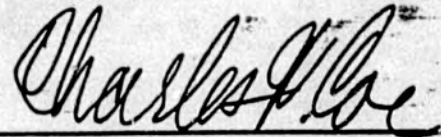
3. An order of the Plaintiffs' costs, interest, and attorney fees; and

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

DATED at Anchorage, Alaska this 26 day of March,

199 91.

CHARLES W. COE



Charles W. Coe

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

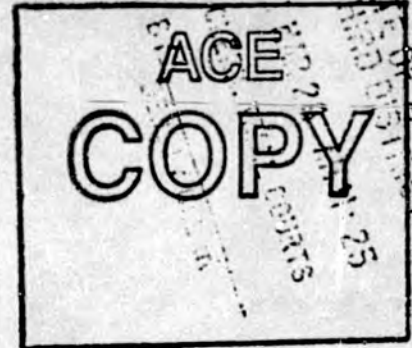
CHUGACH ALASKA CORPORATION, CHUGACH
FOREST PRODUCTS, INC., CHUGACH TIMBER
CORPORATION, CHUGACH DEVELOPMENT
CORPORATION, CHUGACH FISHERIES, INC.
BERING DEVELOPMENT CORPORATION,
CHENEGA CORPORATION, CHN, INC.,
PORT GRAHAM CORPORATION, PORT GRAHAM
DEVELOPMENT CORPORATION, ENGLISH BAY
CORPORATION, THE TATITLEK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

Plaintiffs,

vs

THE STATE OF ALASKA,

Defendant.



Case # 3AN-91-265 Civil

COMPLAINT

PLAINTIFFS, by and through counsel, allege upon informa-
tion and belief as follows:

JURISDICTION AND VENUE

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

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

ACE 1953847

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

CLAIM FOR RELIEF
(Negligence)

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

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

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

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

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

Id. at 23.

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

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

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

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

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

Id. at 34-35.

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

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

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

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

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

Id. at 32.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

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

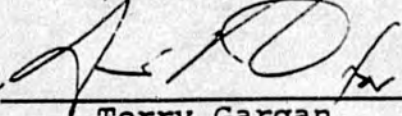
vandalism, looting and physical and other injuries to archaeological sites, properties, artifacts, cemeteries, and gravesites having unique and irreplaceable cultural, historical and other value to Plaintiffs and their Native shareholders; and

(f) the costs and disbursements of this action and such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this _____ day of _____, 1991.

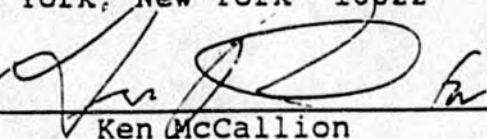
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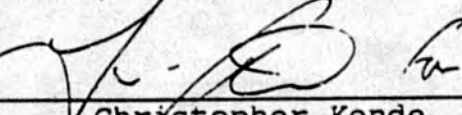
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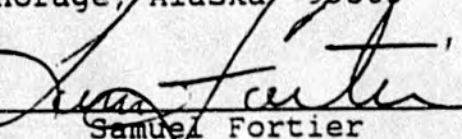
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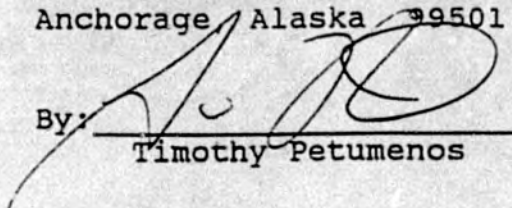
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11

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

ROBERT W. MUSSER,

Plaintiff,

vs.

EXXON CORPORATION, a New
Jersey corporation, EXXON
SHIPPING COMPANY, a
Delaware corporation,
ALYESKA PIPELINE SERVICE CO.,
a Delaware Corporation,
B.P. PIPE LINES (ALASKA) INC.,
MOBIL ALASKA
PIPELINE CO., INC., EXXON
PIPELINE CO., INC., ARCO PIPE
LINE COMPANY; UNION ALASKA
PIPELINE CO. INC., PHILLIPS
ALASKA PIPELINE CO., INC.,
AMERDA HEES PIPELINE CORPORA-
TION; VECO INTERNATIONAL, INC.,
STATE OF ALASKA, DEPARTMENT OF
ENVIRONMENTAL CONSERVATION; and
JOHN DOES I through XX,

Defendants.

Case No.

91-2424

FILED
STATE OF ALASKA
JUDICIAL DISTRICT
ANCHORAGE
MAR 26 PM 1:50
CLERK OF COURT
B. J. JONES

COMPLAINT

SUMMARY

This is a suit for compensatory and punitive damages arising from the EXXON VALDEZ oil spill in coastal waters of Alaska, and from negligent and tortious conduct engaged in by certain defendants both before and after the oil spill. Plaintiff is an Alaskan resident who owns property in Resurrection Bay. The property which plaintiff owns and the

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Anchorage, AK 99516

345-2605

setting in which it is located has been directly damaged by the oil spill and defendants' tortious conduct.

JURISDICTION AND VENUE

Comes now PLAINTIFF Robert W. Musser, Pro Se, and alleges and complains as follows:

1. The claims asserted herein arise out of the March 24, 1989 grounding of the EXXON VALDEZ and the resulting oil spill. Plaintiff's claims herein arise under various Alaska statutes and Alaska common law.

2. Subject matter jurisdiction is proper under AS 22.10.020(a).

3. All defendants either transact business in or have sufficient contacts with the State of Alaska such that they are subject to the personal jurisdiction of this court.

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

5. Defendant, State of Alaska, Department of Environmental conservation is an agency of the State of Alaska. It is subject to suit pursuant to AS 09.50.250..

6. Plaintiff Robert W. Musser, is an Alaska resident who is a land owner in Resurrection Bay, Alaska.

7. Defendant Exxon Corporation ("Exxon Corp.") is a corporation organized under the laws of the State of New

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345-2605

ACE 1287105

Jersey, that maintains its principal place of business in New York, New York. Through its subsidiaries and divisions, Exxon Corp. engages, among other things, in all phases and aspects of petroleum exploration, development, transportation, refining and marketing. It is an owner and/or operator of the EXXON VALDEZ, and it owned or controlled the crude oil cargo carried on the EXXON VALDEZ at the time the vessel discharged a substantial volume of its crude oil cargo into Prince William Sound and the Gulf of Alaska costal waters on or about March 24, 1989.

8. Defendant Exxon Shipping company ("Exxon Shipping"), a Delaware corporation, is a wholly-owned subsidiary of defendant Exxon Corporation. It maintains its principal place of business in Houston, Texas. Exxon Shipping is an owner and/or operator of the EXXON VALDEZ, and it owned or controlled the crude oil cargo carried on the EXXON VALDEZ at the time the vessel discharged a substantial volume of its crude oil cargo into Prince William Sound on or about March 24, 1989.

9. At all material times, Exxon Corp. was the corporate parent of Exxon Shipping, and owned all of Exxon Shipping's stock. Exxon Corp. so dominated and controlled Exxon Shipping as to render it liable for the conduct of Exxon Shipping as more fully described below.

10. Defendants Exxon Corp. and Exxon Shipping are

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345-2605

collectively referred to herein as "the Exxon defendants."

11. Defendant Alyeska Pipeline Service company ("Alyeska") is a Delaware corporation with its principal place of business in Alaska. By and through the Alyeska Owners' committee, Alyeska is owned and controlled by subsidiaries of seven major oil companies, including Exxon, as more fully described below ("the Alyeska Owners"). Alyeska operates the Trans-Alaska Pipeline System ("TAPS") and the shipping terminal facilities at the Port of Valdez, Alaska. Alyeska was formed by its owner companies to act as their agent in the construction, operation and maintenance of TAPS and the terminal facility at the Port of Valdez. Alyeska was responsible and otherwise assumed responsibility to the public, including plaintiff, for formulation an oil spill contingency plan and maintaining adequate personnel and equipment to fulfill the obligations and undertakings of that plan for emergency response to spills in Prince William Sound, including the coordination of cleanup activities.

12. Defendant BP Pipelines (Alaska) Inc. ("BP") is a Delaware corporation with its principal place of business in Cleveland, Ohio. BP is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' committee.

13. Defendant ARCO Pipe Line Company ("ARCO") is a Delaware corporation with its principal place of business in

Independence, Kansas. ARCO is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' committee.

14. Defendant Mobil Alaska Pipeline Company ("Mobil") is a Delaware corporation with its principal place of business in Dallas, Texas. Mobil is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' Committee.

15. Defendant Exxon Pipeline Co., Inc. ("Exxon Pipeline") is a Delaware corporation with its principal place of business in Houston, Texas. Exxon Pipeline is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owner's Committee.

16. Defendant Unocal Pipeline Company ("Unocal") is a Delaware corporation with its principal place of business in Los Angeles, California. Unocal is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' Committee.

17. Defendant Phillips Alaska Pipeline Co., Inc. ("Phillips") is a Delaware corporation with its principal place of business in Bartlesville, Oklahoma. Phillips is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' committee.

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18. Defendant Amerada Hess Pipeline Corporation ("Amerada Hess") is a Delaware corporation with its principal place of business in Woodbridge, New Jersey. Amerada Hess is a co-owner of Alyeska and, at all relevant times, its designated representative sat on the Alyeska Owners' Committee.

19. The Alyeska owners so dominated and controlled Alyeska as to render them liable for the conduct of Alyeska as more fully described below.

20. Defendants Alyeska, BP, ARCO, Exxon Pipeline, Mobil, Unocal, Phillips, and Amerada Hess are collectively referred to herein as "the Alyeska defendants."

21. Defendant, VECO INTERNATIONAL, INC., a Delaware corporation, was contracted by Alyeska, staffed and supervised the clean-up in Resurrection Bay, Alaska.

22. Defendant, State of Alaska, Department of Environmental Conservation is an agency of the State of Alaska. It is subject to suit pursuant to AS 09.50.250..

LEGAL AND FACTUAL ALLEGATIONS

23. On or about March 23, 1989 the vessel EXXON VALDEZ took aboard a load of approximately 53 million gallons of crude oil at the southern terminus of the TAPS at Valdez, Alaska. This oil had been transported through the TAPS

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prior to being loaded onto the EXXON VALDEZ.

24. After the EXXON VALDEZ departed from the terminus, the vessel was negligently, grossly negligently and/or recklessly caused or allowed to collide with a known, chartered, buoyed undersea navigational hazard (Bligh Reef) located in Prince William Sound, on or about March 24, 1989.

25. As a result of the Exxon defendants' negligent, grossly negligent and/or reckless conduct, some of the cargo tanks of the EXXON VALDEZ were ruptured upon its grounding upon bligh Reef and/or upon subsequent efforts to dislodge the vessel.

26. Eleven of the EXXON VALDEZ's tanks were ruptured by either the initial grounding or the subsequent efforts to dislodge the vessel from Bligh Reef, causing the largest oil spill in United States history. Approximately 11 million gallons of crude oil spilled into Prince William Sound from the EXXON VALDEZ.

27. Other negligent, grossly negligent and/or reckless acts and omissions of defendants further contributed to the entry of oil upon and into the waters of Prince William Sound and Gulf of Alaska (Resurrection Bay) and subsurface and surface lands. The acts and omissions include, but are not limited to, manning the EXXON VALDEZ with an inadequate and unqualified crew; failing to respond to the oil spill in a timely manner; failing to maintain sufficient equipment

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and trained personnel to prevent released oil from spreading from the wrecked vessel; failing to maintain in working order vessels necessary to haul cleanup and containment equipment to the area of the spill; and otherwise failing to respond promptly and effectively.

28. Defendants Alyeska and Exxon were required by statute and regulation and ordinary prudence to be in a state of preparedness to implement a contingency plan in the event of an oil spill. Alyeska and Exxon unduly delayed in responding to the oil spill; failed to have proper personnel and equipment on hand; and failed to take prompt and adequate steps to contain and recover the oil after the spill occurred.

29. As a result of the negligent, grossly negligent and/or reckless acts and omissions by defendants, adequate containment and cleanup equipment and personnel did not reach the area of the spill when needed, thereby materially compounding the harm arising from the release of oil.

30. The crude oil released from the EXXON VALDEZ into and upon Prince William Sound and the Gulf of Alaska has polluted and will continue to pollute waters and subsurface and surface lands containing fish, shell fish and other marine life, damaging the ocean ecosystem.

31. After the oil was released, large quantities of crude oil were moved by the prevailing winds and currents to

various parts of Prince William Sound and into the Gulf of Alaska. Eventually, the oil spread along the Kenai Peninsula and the Kenai Fiords National Park, and to the Islands in Resurrection Bay.

FIRST CLAIM FOR RELIEF

Violation of Chapter 3 of Title 46 of the Alaska Statutes

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

33. Oil, including the approximately 11 million gallons of crude oil which was released as a result of the grounding and rupture of the EXXON VALDEZ's oil tanks, is a hazardous substance, as that term is defined in AS 46.03.826(4) (B) and (5) of the Alaska Environmental Conservation Act.

34. The Exxon defendants possessed no permit for the release of the approximately 11 million gallons of crude oil which spilled from the EXXON VALDEZ on March 24, 1989 into and upon the waters and subsurface lands of Prince William' sound and other areas of the State of Alaska.

35. The Exxon defendants owned and/or had control over the oil which was released in and on the waters and subsurface lands of Prince William sound and other areas of the State.

36. Pursuant to AS 46.03.822, the Exxon defendants are

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jointly and severally strictly liable to plaintiff, without regard to fault, for all damages to plaintiff as a result of the March 24, 1989 release of oil from the EXXON VALDEZ, including, but not limited to, injury or loss to real and personal property, loss of revenue, loss of economic benefits, loss of business opportunities and loss of future profits, as provided in AS 46.03.826(2) and (6), in amounts to be proven at trial.

SECOND CLAIM FOR RELIEF

Strict Liability for Ultra Hazardous Activity

37. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above, and further alleges that defendants have absolute and strict liability to plaintiff under 519-524 of the Restatement (Second) of Torts and Alaska law.

38. At all relevant times, the transport of oil through the Prince William Sound area was abnormally dangerous within the meaning of the Restatement (Second) of Torts 520, and Alaska law, because (a) this transport involved a high degree of risk of serious harm to the environment, and to the persons, land, and chattels of others, including plaintiff; (b) this high risk could not and cannot be eliminated even with the exercise of reasonable care; (c) defendants' method of oil transport was

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inappropriate to the Valdez Harbor-Prince William Sound area; (d) this method was not a matter of common usage; (e) and there was a likelihood that the harm resulting from defendants' method of transport would be great.

39. As a direct and proximate result of defendants' undertaking of the above-described ultra hazardous activity, plaintiff has suffered and will continue to suffer financial and economic loss, and irreparable pollution and contamination to the ecosystem, natural resources, and shore line upon which the plaintiff depends for its business, economic opportunity, and future earning capacity, and is entitled to damages and other relief for same regardless of defendants' fault.

THIRD CLAIM FOR RELIEF

Negligence of Exxon Defendants

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

41. At all times relevant, the Exxon defendants owed a duty of care to plaintiff to ensure that reasonable measures would be taken to safely transport and handle crude oil in Prince William Sound.

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42. The Exxon defendants breached that duty by their actions and omissions, including without limitation the following:

(a) The negligent navigation of the EXXON VALDEZ within the privity and knowledge of the Exxon defendants into a known, charted and buoyed navigational hazard (Bligh Reef) outside the designated shipping lanes;

(b) The inadequate manning of the EXXON VALDEZ, including but not limited to the failure of the Exxon defendants to ensure properly against the operation of Exxon vessels and the EXXON VALDEZ by persons impaired by alcohol or other substances, and their failure to ensure properly the continuing qualification of the Master of the EXXON VALDEZ and/or his ability to command and control the vessel in light of his known alcohol abuse problem or to ensure the presence on board the EXXON VALDEZ of another qualified officer licensed to navigate Prince William Sound to replace the Captain (Hazelwood) in the event of his incapacity to command the vessel;

(c) The negligent entrustment by the Exxon defendants of the EXXON VALDEZ to Captain Hazelwood;

(d) The use or allowance of use by the Exxon defendants of unsafe and improper methods of marine transport in transporting petroleum products through the Port of Valdez and Prince William Sound;

(e) The failure by the Exxon defendants to ensure

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properly the suitability of the EXXON VALDEZ for the particular purpose of transporting crude oil in the Prince William Sound;

(f) The failure by the Exxon defendants to prepare adequately for, respond to, contain, and clean up the oil spill from the EXXON VALDEZ; and

(g) The failure by the Exxon defendants, after they had announced their assumption of all cleanup responsibilities subsequently to the oil spill, to take immediate, necessary, and reasonable steps to contain and mitigate the effects thereof.

43. The foregoing actions, among others, constituted negligence within the privity and knowledge of the Exxon defendants.

44. The aforesaid negligent conduct of the Exxon defendants has proximately caused damage to the plaintiff herein, and these damages are continuing.

FOURTH CLAIM FOR RELIEF

Negligence of Alyeska Defendants

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

46. The Alyeska defendants undertook to plan for and to provide sufficient personnel and material to respond promptly to, contain and clean up an oil spill in Prince

William Sound before it caused damage.

47. At all times relevant herein, the Alyeska defendants had the duty and responsibility to plaintiff and to others to prevent oil pollution of the Prince William Sound and other areas of Alaska. They also had duties, responsibilities and authority to prevent oil spilled from tankers transporting crude oil from Port Valdez from causing pollution damage and to clean up and remove all oil in such a way as to prevent or minimize any damage to plaintiff. The Alyeska defendants repeated acknowledgements of these duties and responsibilities, in public records and reports, were critical factors in obtaining agreement by various state and local authorities to the use of the Port of Valdez and Prince William Sound for the transport of oil flowing through TAPS.

48. The Alyeska defendants knew, had reason to know or were reckless in not knowing that a spill of catastrophic proportions could occur in Prince William Sound. Further, the Alyeska defendants knew, had reason to know or were reckless in not knowing of the tide, current, and weather conditions in the Gulf of Alaska and Prince William Sound and the existence of reefs, rocks, and other dangerous conditions and hazards to navigation which they knew, should have known or were reckless in not knowing could result in the grounding of a very large crude carrier like the EXXON VALDEZ. Notwithstanding the foregoing, the Alyeska

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defendants negligently and recklessly failed to act properly, reasonably and effectively to prevent pollution and to clean up spilled oil so as to prevent or minimize the damage to plaintiff in at least the following manners:

(a) The Alyeska defendants negligently, recklessly and improperly failed to have in place the equipment and personnel necessary for responding to a spill in a prompt and effective manner that would prevent or minimize damage to areas of special economic and environmental importance;

(b) The Alyeska defendants negligently, recklessly and improperly failed to provide for prompt and efficient mobilization of public and private employees, entities and resources to combat oil spills and potential pollution and to prevent pollution of those areas of special economic and environmental importance; and

(c) The Alyeska defendants negligently, recklessly and improperly failed to prevent or minimize the effects of pollution.

49. The negligent, reckless and improper acts of the Alyeska defendants described above, caused and contributed to oil pollution damage; aggravated, exacerbated and prolonged the effects of such oil pollution; and proximately caused the damages suffered by plaintiff herein, which are continuing.

FIFTH CLAIM FOR RELIEF

Negligence - State of Alaska

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

51. The State of Alaska, Department of Environmental conservation is responsible under A.S. 46.04.020 for approving, directing or undertaking immediate containment or cleanup activities in the event of an oil spill.

52. The State of Alaska, Department of Environmental Conservation is responsible under A.S. 46.04.030 for reviewing and approving oil discharge contingency plans.

53. The State of Alaska, Department of Environmental Conservation is responsible under A.S. 46.04.060 for inspecting oil terminal facilities and tank vessels.

54. The State of Alaska, Department of Environmental Conservation is responsible under A.S. 46.04.080 for emergency action in the event of a catastrophic oil discharge.

55. The State of Alaska, Department of Environmental conservation is responsible under A.S. 47.09.020 for coordinating, directing or undertaking the containment or cleanup of oil spills.

56. The State of Alaska, Department of Environmental Conservation is responsible under A.S. 46.03.865 for issuing

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an order declaring an emergency when it finds that the discharge of oil or other hazardous substances poses an immediate threat to the public health or welfare or the environment of the state directing a person or persons to take action necessary to meet the emergency.

57. The State of Alaska, Department of Environmental Conservation is responsible under A.S. 46.04.090 for contracting for or establishing and maintaining cleanup personnel, equipment and supplies necessary for cleanup of oil discharge at ports, harbors or other locations.

58. The State of Alaska, Department of Environmental Conservation failed to meet its responsibilities under the above cited statutes on March 24, 1989 and in the days following the grounding of the Exxon Valdez, resulting in damages to the Plaintiff in amounts to be proved at trial.

SIXTH CLAIM FOR RELIEF

Gross Negligence and Recklessness

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

60. Defendants' actions constitute gross negligence and recklessness.

61. As a result of Defendants' gross negligence and recklessness Plaintiff has been damaged in amounts to be determined at trial.

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SEVENTH CLAIM FOR RELIEF

Negligence and Trespass

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

63. The defendant VECO INTERNATIONAL, used Sunny Cove, at Fox Island, in Resurrection Bay, where the Plaintiff's land is located as a staging area and anchorage for spill clean up boats and booms. This was done without consent or protection of shoreline and further damaged the area by doing so.

EIGHTH CLAIM FOR RELIEF

Private Nuisance

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

65. The conduct of defendants herein has resulted in a private nuisance which has injuriously affected the business and personal enjoyment by plaintiff in Prince William Sound and Resurrection Bay, Alaska, for which he is entitled to damages under AS 9.45.230.

66. Plaintiff has suffered injury as previously alleged with damages in amounts to be proven at trial.

NINTH CLAIM FOR RELIEF

Punitive Damages

67. The defendant's actions as alleged herein were willful, wanton, malicious, outrageous and were undertaken in deliberate disregard of, or with reckless indifference to, the rights and interests of plaintiff thereby entitling plaintiff an award of punitive damages.

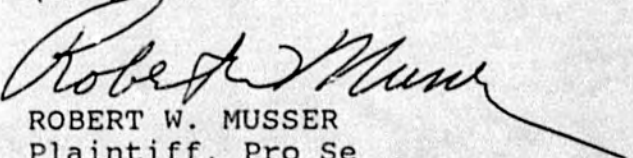
WHEREFORE plaintiff prays for the following relief:

1. A judgement against defendants in an amount in excess of \$100,000.00, the exact amount to be proven at trial.
2. An award of punitive damages as appropriate.
3. An award of fees and costs.
4. An award of prejudgment interest.
5. Such other relief as the court deems just.

PLAINTIFF REQUESTS A JURY TRIAL IN THIS ACTION.

DATED this ____ day of March, 1991.

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STATE OF ALASKA
THIRD JUDICIAL DISTRICT
ANCHORAGE
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Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

CI SEAFOOD INC. and TOKYO)
CHOKUHAN CO. LTD.,)

Plaintiffs,)

vs.)

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

Defendants.)

Case No. 3AN-91- 2440 CIVIL

EXXON VALDEZ OIL SPILL LITIGATION

AMENDED COMPLAINT

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

Amended Complaint

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I

Plaintiffs are corporations engaged in the business of commercial wholesale/resale retail sales of fish caught in Alaskan waters in the Prince William Sound, Kodiak and Cook Inlet areas. Plaintiffs primarily sell the product in the northwest area of the United States and Japan.

II

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

III

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

IV

Defendant Alyeska Pipeline Service Company is a company

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organized under laws outside the State of Alaska but which has its primary place of business in the State of Alaska. Defendant George Nelson is an Alaska resident who acted as president and director of Alyeska Pipeline Service Company in Alaska. Defendant Edward Murphy is an Alaska resident. Defendant State of Alaska works through its employees and agencies, which formulate and monitor oil spill recovery plans in the State of Alaska. All defendants are engaged in substantial and not isolated activities in the State of Alaska.

FACTS

V

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

VI

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

VII

The "Exxon Valdez" passed through the harbor and Valdez Narrows under the command of the harbor pilot, Defendant Edward

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

VIII

Exxon Shipping Company, as the registered owner and operator of the "Exxon Valdez," and Exxon Corporation, as the controlling owner of Exxon Shipping Company, owners and transporters of the cargo of said vessel, knew, should have known or were reckless in not knowing that Hazelwood had an alcohol abuse problem and was incompetent and effectively unable to command or control the vessel. Complaints of Hazelwood's abuse of crew members in an intoxicated state were known to the Exxon Defendants. The negligent, grossly negligent and reckless acts of Hazelwood were all within the privity and knowledge of the Exxon Defendants. Subsequent to Pilot Murphy's departure from the vessel, Captain Hazelwood retired to his cabin, leaving only Gregory Cousins, the third mate, and Robert Kagan, the helmsman, on the bridge. Neither Cousins nor Kagan was qualified to operate the vessel in this area of Prince William Sound without supervision. At all times relevant hereto, Messrs. Cousins and

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Kagan were acting within the scope of their employment and as agents and/or representatives of Defendant Exxon. Additionally, the vessel's navigational equipment was not working properly for the crew on deck, who were not qualified to operate the vessel even if all equipment was in good order.

IX

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

X

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

XI

Upon information and belief, Captain Hazelwood remained in his cabin although the noise and impact should have immediately commanded him to the bridge to prevent further damage to the vessel or its contents.

XII

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

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XIII

Alyeska Pipeline Company, under the direction of George Nelson, and the Exxon Defendants owed a duty to have a proper and adequate emergency containment plan for this area, but failed to put any plan into affect within a reasonable or practical time period to contain the spilled oil. The State of Alaska, through its employees and agencies, monitors the defendants and the pipeline with its oil spill recovery plan.

XIV

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

XV

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

XVI

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

XVII

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

XVIII

Upon information and belief, the damage caused by the spill will have a long-term effect upon the Plaintiffs' trades and businesses, processing work, and business in the fishing industry in Alaska.

COUNT I

NEGLIGENCE OF DEFENDANTS WITH RESPECT TO
FAILURE TO EXERCISE ADEQUATE CLEANUP PROCEDURES

XIX

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

XX

Defendants Alyeska and Exxon had continuously reassured environmentalists and others, including the plaintiffs, at all times prior to the accident that there existed an emergency clean-up plan by which any major oil spill could be successfully contained within five hours of occurrence; yet a day after the spill little had been done to contain it other than an unsuccessful attempt to spray chemical dispersants. Alyeska and Exxon, in the alternative, cite that the State is negligent in its oil spill and recovery system and in preventing them from cleaning up in a timely manner.

XXI

Upon information and belief, Alyeska and Exxon's contingent cleanup plan required them to be on site within five hours of the spill. Eighteen hours after the rupture, however, essentially nothing was in place; instead, it took nearly an

Amended Complaint

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entire day for Alyeska, George Nelson, and Exxon representatives to start placing barrier booms around the slick. By that time, the discharged oil had already become too large to contain and spread from Prince William Sound to Kodiak to Cook Inlet.

XXII

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

XXIII

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

XXIV

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

XXV

Pursuant to state laws, the proper control and total removal of the discharged oil which polluted and damaged the Plaintiffs' property was the responsibility of the Defendants. In regard thereto, Defendants had a duty to Plaintiffs to have adequate resources available to immediately and effectively contain and clean up any oil spill in any area within or without the right-of-way or permit area. If other defendants are correct in their allegations, the State would owe a duty of care, which it breached in failing to properly assist them and in preventing them from cleaning up the area of the spill as they deemed necessary.

XXVI

Amended Complaint

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ACE 1287130

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

XXVII

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

XXVIII

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

XXIX

In addition, Defendants Alyeska, Joseph Hazelwood, and Exxon acted recklessly, in gross negligence, wantonly, and in

willful disregard of the rights, safety, and economic well-being of Plaintiffs in the control and cleanup operations of this spill, as well as the operation of the vessel, for which Plaintiffs are entitled to punitive and exemplary damages against these Defendants.

COUNT II

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

XXX

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

XXXI

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

XXXII

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

XXXIII

Captain Hazelwood and third mate Cousins knew or should

Amended Complaint

-10-

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ACE 1287132

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

XXXIV

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

XXXV

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

XXXVII

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

XXXVII

The negligence of the Exxon Defendants, by and through their employees, in the operation of the "Exxon Valdez"

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

XXXVIII

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

COUNT III

NEGLIGENT PER SE

XXXIX

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

XL

By virtue of the above, Defendants were negligent and negligent per se in that the acts and omissions of their

employees, agents and representatives violated the laws of the State of Alaska and directly and proximately caused the damages suffered by the Plaintiffs.

COUNT V

ALASKA ENVIRONMENTAL CONSERVATION ACT

XLI

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

XLII

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

XLIII

The presence of oil in the Prince William Sound area and its subsequent spreading to large areas of the Sound, Cook Inlet, Kodiak and beyond, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and/or any part of the natural habitat in which they are found.

XLIV

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

XLV

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

XLVI

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

XLVII

The entry of the oil owned by and/or within the control of the Defendants in or upon the waters, surface and/or subsurface lands of the State of Alaska has caused damages to the Plaintiffs for which the Defendants are strictly liable pursuant to Section 46.03.822 of the Alaska Environmental Conservation Act.

XLIX

As a direct and proximate result of the Defendants' acts and omissions, the Plaintiffs incurred the following damages;

1. Damage to all fisheries in the areas where fish were purchased;
2. Economic losses in the past, present and future;

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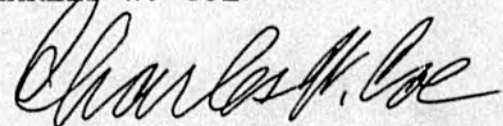
3. Business damages, loss of sales, loss of customers, loss of profits;
4. Outrage and embarrassment;
5. Costs to reestablish a market of sales and suppliers; and
6. Other damages to be proven at trial.

WHEREFORE, Plaintiffs individually pray for judgment against the Defendants jointly and severally as follows:

1. Compensatory damages in a sum to be proven at trial in excess of One Million Dollars (\$1,000,000) per plaintiff;
2. Punitive and exemplary damages in a sum to be awarded at trial in excess of One Million Dollars (\$1,000,000) per plaintiff;
3. An order of the Plaintiffs' costs, interest, and attorneys' fees; and
4. Such other relief as this court deems just and equitable.

DATED at Anchorage, Alaska this 20 day of March, 1991.

CHARLES W. COE



Charles W. Coe

13

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4
5 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

6 THIRD JUDICIAL DISTRICT AT ANCHORAGE

ud in
ATE OF ALASKA, THIRD DISTRICT.

8 DONALD W. JOHNSON and PENNY M. JOHNSON,)
husband and wife,)

9 Plaintiffs,)

10 vs.)

11 EXXON CORPORATION; EXXON SHIPPING)
12 COMPANY; ALYESKA PIPELINE SERVICE)
13 COMPANY; and the STATE OF ALASKA,)

14 Defendants.)

MAR 26 1991

Clerk of the Trial Courts
By _____ Deputy

15 Case No. 91-2463

16 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

17 Plaintiffs, by and through their attorneys, Adolph &
18 Smyth, P.S. and Tugman, Clarke & Ray, state as follows:

19 1. Plaintiffs Donald and Penny Johnson are residents of
20 Kodiak, Alaska, and are engaged in the business of commercial
21 fishing and processing. The Johnsons own the F/V Margaret Lynn
22 and own an interest in the processing ship Ocean Phoenix, which
23 interests are valued collectively in excess of \$1,000,000.00.
24 Collectively, these investments allowed the production of gross
25 income in excess of \$1,000,000.00 per year.

26 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
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1 2. Defendant, Exxon Corporation, is a corporation
2 organized under the laws of the State of New Jersey, with its
3 principal place of business at 1251 Avenue of the Americas, New
4 York, New York 10020. Exxon Corporation is engaged in the
5 business of operating petroleum companies through its
6 subsidiaries and division is the State of Alaska, and is an
7 owner and operator of the vessel known as the Exxon Valdez.

8 3. Defendant, Exxon Shipping Company, a Delaware
9 Corporation and maritime subsidiary of Defendant Exxon
10 Corporation with its principal place of business at 811 Dallas
11 Avenue, Houston, Texas 77002, operates in the State of Alaska,
12 and is an owner and operator of the vessel known as the Exxon
13 Valdez.

14 4. Defendant, Alyeska Pipeline Service Company, is an
15 association of the holders of the Pipeline right-of-way for the
16 Trans-Alaska Pipeline System.

17 5. The State of Alaska is responsible for approval,
18 monitoring, and compliance with its laws regarding
19 transportation of oil. Alyeska Pipeline Service Company
20 ("Alyeska") owns and operates the terminal at Valdez, Alaska,
21 and loaded the Exxon Valdez with North Slope crude oil at the
22 Valdez terminal.

23 SUMMARY OF FACTS

24 6. On or about March 23, 1989, the marine vessel EXXON
25 VALDEZ, vessel number 692966, an oil tanker owned and operated
26 by defendant Exxon Shipping Company, was loaded at Valdez,

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 2
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1 Alaska, with approximately 53 million gallons of crude oil that
2 had been transported through the Trans-Alaska Pipeline.

3 7. The Exxon Valdez passed through the harbor and Valdez
4 Narrows under the command of a harbor pilot. Captain Joseph J.
5 Hazelwood, who at all times relevant hereto was acting within
6 the scope of his employment and as an agent and/or
7 representative of Defendants Exxon, was on the bridge of the
8 ship when the harbor pilot disembarked at the southern end of
9 the Narrows at approximately 12:30 a.m. Friday morning, March
10 24, 1989. Captain Hazelwood was under the influence of alcohol
11 while he was in command of the vessel. Captain Hazelwood
12 retired to his cabin, one flight below the bridge, leaving
13 Gregory Cousins, the third mate, and Robert Kafan, the
14 helmsman, on the bridge. At all times relevant hereto, Messrs.
15 Cousins and Kafan were acting within the scope of their
16 employment and as agents and/or representatives of Defendants
17 Exxon.

18 8. The third mate, who was not certified for commanding
19 the tanker through these waters, steered the vessel through the
20 deep water southbound shipping lane of the channel due to
21 earlier reports that it contained icebergs from a glacier that
22 had broken to the northwest. The ship steered east into the
23 empty northbound lane, and then proceeded on a southwesterly
24 course bound for Long Beach, California. The tanker, however,
25 proceeded three miles east past the alternative channel,
26 outside the traffic lanes and entirely beyond the shipping

channel into a charted area of rocky reefs.

9. The vessel was approximately one quarter mile outside the regular channel for vessels when she first struck Bligh Reef, which ripped along the vessel's starboard side tearing three holes into the starboard tanks and ripping out a portion of the hull. Although the ship was still navigable after the first impact, she was so far east of deep water that when Cousins tried to turn the Exxon Valdez back toward the west, he struck a second part of the shallow reef. The second impact brought the ship aground, stopping the ship's progress completely, further damaging the vessel and its cargo.

10. The scraping impact and grounding of the Exxon Valdez upon Bligh Reef cut open at least eight of the ship's twelve oil tanks which held 53 million gallons of crude oil, causing the largest oil spill in the United States history. To date, approximately 10.1 million gallons of crude oil has been discharged into Prince William Sound, contaminating hundreds of square miles of the Sound's fisheries. The oil spill subsequently spread to encompass at least 3,00 square miles and has migrated 250 miles to the southwest toward Kodiak Island. Another spill, of at least one million gallons, occurred during subsequent attempts to remove additional oil from the damaged tanks.

11. On March 26, 1989, due to the slow pace of any attempted clean-up efforts by Alyeska and the Exxon Defendants and concerned about even further possible damage to the

1 property, marine and wildlife, the State of Alaska declared a
2 disaster emergency.

3 12. Alyeska, Exxon and the State of Alaska recruited
4 employees to participate in containment and clean-up activities
5 from all over Alaska, offering wage rates well in excess of
6 those which processing companies could offer and still remain
7 profitable. As a result, the processors to whom Plaintiffs had
8 committed to sell their product could not maintain an adequate
9 work force to operate at full capacity.

10 13. Alyeska Pipeline Company, Exxon, and the State of
11 Alaska owed a duty to have a proper and adequate emergency
12 containment plan for this area but failed to put any plan into
13 affect within a reasonable or practical time period to contain
14 the spilled oil. The Defendants additionally failed to act in
15 a timely or reasonable manner so as to mitigate the oil spill
16 and resulting effects of the clean-up process.

17 14. Plaintiffs' value in their fishing and processing
18 vessels, equipment, good will and future income has been
19 destroyed or greatly diminished as a result of Defendants'
20 actions.

21 FIRST CAUSE OF ACTION
22 NEGLIGENCE

23 15. Defendants Alyeska, Exxon, and the State of Alaska
24 had continuously reassured environmentalists and others,
25 including specifically Plaintiffs, at all times prior to the
26 accident that there existed an emergency clean-up plan by which

1 any major oil spill could be successfully contained with five
2 hours of occurrence. Yet a full day after the spill little had
3 been done to contain it other than an unsuccessful attempt to
4 spray chemical dispersants.

5 16. Upon information and belief, Alyeska, Exxon, and the
6 State of Alaska's contingency clean-up plan required them to be
7 on site within five hours of the spill. Eighteen hours after
8 the rupture, however, essentially nothing was in place;
9 instead, it took nearly an entire day for Alyeska and Exxon
10 representatives to start placing barrier booms around the
11 slick. By that time, the discharged oil had already become too
12 large to contain.

13 17. Neither Alyeska, Alaska, nor the Exxon Defendants has
14 enough equipment, supplies, manpower or an adequate containment
15 plan to handle a spill of this size. Chemical dispersants,
16 which could cause further harm to the water, proved
17 ineffective. The chemical dispersants could not be used
18 initially because the water was too cold and calm, making the
19 slick too thick for the dispersants to work. The oil remained
20 in the water too long for these dispersants to work since they
21 are most effective only if employed within twenty-four hours
22 after the spill.

23 18. In the exercise of care, Defendants knew or should
24 have known that they lacked adequate equipment, supplies and
25 manpower to effectively contain and clean-up a spill of this
26 magnitude, that their contingency clean-up plan, including the

1 tactics they developed thereunder were extremely limited in
2 their efficiency and use, and that they would be forced to tap
3 the Alaska work force in order to implement their plans.

4 19. The negligence of Defendants Alyeska, Exxon and
5 Alaska in the control and clean-up operations specifically
6 included, but was not limited to, (i) failing to establish and
7 provide for an adequate contingency plan to contain and clean
8 up any discharge of oil; (ii) inadequately planning the
9 ensuing clean-up effort; (iii) inadequately carrying out the
10 ensuing clean-up effort; (iv) unreasonably delaying the
11 ensuing clean-up effort; (v) choosing inadequate tactics in
12 the ensuing clean-up effort; (vi) relying solely upon the
13 Alaska work force to provide the necessary personnel for the
14 ensuing clean-up effort; and (vii) failure to monitor, inspect
15 and approve of an adequate and effective clean up and
16 containment plan.

17 20. As a direct and proximate result of the foregoing
18 negligence, Plaintiffs have suffered damages as set forth in
19 this complaint.

20 21. In addition, Defendants Exxon acted recklessly,
21 grossly negligently, wantonly and in willful disregard of the
22 rights, safety, and economic well-being of Plaintiffs in the
23 control and clean-up operations of this spill, for which
24 Plaintiffs are entitled to punitive and exemplary damages
25 against these Defendants.
26

SECOND CAUSE OF ACTION
GROSS NEGLIGENCE OF EXXON

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

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

24. Captain Hazelwood and third mate Cousins knew or should have known that it was unreasonably dangerous for Hazelwood to leave the bridge and relinquish control of the tanker to Cousins.

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

26. The Exxon Defendants knew or should have known based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times in the same five year period, that Hazelwood did not possess the requisite degree of competence to command the

1 Exxon Valdez with reasonable prudence, skill or care, nor the
2 ability to transfer his duties to an uncertified third mate.

3 27. The Exxon Defendants knew or should have known based
4 on the service in which Exxon Valdez was involved that its
5 single hull construction was not sufficient to allow it to
6 safely engage in the trade for which it was intended.

7 28. The negligence of the Exxon Defendants by and through
8 their employees, in the operation of the Exxon Valdez
9 specifically included, but was not limited to (i) failing to
10 adequately crew the tanker; (ii) failing to adequately pilot
11 and navigate Prince William Sound; (iii) commanding the vessel
12 while under the influence of alcohol per State of Alaska
13 Standards; (iv) failing to monitor the sobriety of their crews
14 in operating the vessel; (v) failing to operate the vessel
15 away from known navigational dangers; (vi) operating the vessel
16 in a dangerous manner; and (vii) failing to utilize a
17 seaworthy vessel. As a direct and proximate result of their
18 own right as well as by and through their agents, servants and
19 employee, they caused Plaintiffs to suffer damages as described
20 above.

21 29. The Exxon Defendants acted recklessly, grossly
22 negligently, wantonly and in willful disregard of the rights,
23 safety, and economic well-being of Plaintiffs in the ownership
24 and operation of the Exxon Valdez for which Plaintiffs are
25 entitled to punitive and exemplary damages against the
26 Defendant.

THIRD CAUSE OF ACTION
ALASKA ENVIRONMENTAL CONSERVATION ACT

30. Oil, including the over 10 million gallons of crude oil which has been released into the Prince William Sound as a result of the grounding and consequent rupture of the Exxon Valdez's oil tanks, is a hazardous substance, as that term is defined in Section 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

31. The presence of oil in the Price William Sound and its subsequent migration presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and/or any part of the natural habitat in which they are found.

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

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

34. Upon information and belief, upon discovery of the

1 entry of the oil in or upon the water, surface or subsurface
2 land of the State of Alaska, defendants delayed and/or failed
3 to begin operations to contain and clean up the hazardous
4 substance within a reasonable period of time.

5 35. The entry of the oil which is owned and/or within the
6 control of the defendants in or upon the waters, surface and/or
7 subsurface lands of the State of Alaska, has caused damages to
8 Plaintiffs as set forth in this complaint for which the
9 defendant are strictly liable pursuant to Section 46.03.822 of
10 the Alaska Environmental Conservation Act.

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

13 1. Compensatory damages for present and future economic
14 loss, emotional suffering, distress, loss of property and
15 property rights in a sum to be proven at trial in excess of
16 FIVE MILLION and No Hundredths Dollars (\$5,000,000).

17 2. Punitive and exemplary damages in a sum to be awarded
18 at trial in excess of Ten Million and No Hundredths Dollars
19 (\$10,000,000.00).

20 3. Judgment awarding Plaintiffs costs, interest and
21 attorney's fees; and

22 4. Other relief as this court deems just and equitable.
23
24
25
26

1 DATED this 26 day of March, 1991 at Anchorage,
2 Alaska.

3 TUGMAN, CLARKE & RAY
4 Attorneys for Plaintiffs

5 By: Charles W. Ray, Jr.
6 Charles W. Ray, Jr.

7 ADOLPH & SMYTH P.S.
8 Of Counsel for Plaintiffs

9 By: Jeffrey A. Smyth
10 Jeffrey A. Smyth

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COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 12
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5 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
6 THIRD JUDICIAL DISTRICT AT ANCHORAGE

7
8 MARK CHANDLER; and CHANDLER FISHERIES,)
9 INC., an Oregon corporation,)
10 Plaintiffs,)
11 vs.)
12 EXXON CORPORATION; EXXON SHIPPING)
13 COMPANY; ALYESKA PIPELINE SERVICE)
14 COMPANY; and the STATE OF ALASKA,)
15 Defendants.)

sd III
STATE OF ALASKA, THIRD DISTRICT
MAR 26 1991
Clerk of the Trial Courts
By _____ Deput

16 Case No. 91-2464

17 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

18 Plaintiffs, by and through their attorneys, Adolph &
19 Smyth, P.S. and Tugman, Clarke & Ray, state as follows:

20 1. Plaintiff Mark Chandler is a resident of Kodiak,
21 Alaska, and is engaged in the business of commercial fishing.
22 Mr. Chandler manages and owns an interest in Chandler
23 Fisheries, Inc., an Oregon corporation, through which he
24 operates his business. Chandler Fisheries owns the F/V Topaz,
25 a trawler, valued in excess of \$780,000.00. The electronic,
26 hydraulic and mechanical equipment and gear utilized on this

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
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1 vessel is valued in excess of \$200,000.00. Collectively, these
2 investments allowed the production of gross income in excess of
3 \$1,300,000.00 per year.

4 2. Defendant, Exxon Corporation, is a corporation
5 organized under the laws of the State of New Jersey, with its
6 principal place of business at 1251 Avenue of the Americas, New
7 York, New York 10020. Exxon Corporation is engaged in the
8 business of operating petroleum companies through its
9 subsidiaries and division is the State of Alaska, and is an
10 owner and operator of the vessel known as the Exxon Valdez.

11 3. Defendant, Exxon Shipping Company, a Delaware
12 Corporation and maritime subsidiary of Defendant Exxon
13 Corporation with its principal place of business at 811 Dallas
14 Avenue, Houston, Texas 77002, operates in the State of Alaska,
15 and is an owner and operator of the vessel known as the Exxon
16 Valdez.

17 4. Defendant, Alyeska Pipeline Service Company, is an
18 association of the holders of the Pipeline right-of-way for the
19 Trans-Alaska Pipeline System.

20 5. The State of Alaska is responsible for approval,
21 monitoring, and compliance with its laws regarding
22 transportation of oil. Alyeska Pipeline Service Company
23 ("Alyeska") owns and operates the terminal at Valdez, Alaska,
24 and loaded the Exxon Valdez with North Slope crude oil at the
25 Valdez terminal.
26

SUMMARY OF FACTS

1 6. On or about March 23, 1989, the marine vessel EXXON
2 VALDEZ, vessel number 692966, an oil tanker owned and operated
3 by defendant Exxon Shipping Company, was loaded at Valdez,
4 Alaska, with approximately 53 million gallons of crude oil that
5 had been transported through the Trans-Alaska Pipeline.

6 7. The Exxon Valdez passed through the harbor and Valdez
7 Narrows under the command of a harbor pilot. Captain Joseph J.
8 Hazelwood, who at all times relevant hereto was acting within
9 the scope of his employment and as an agent and/or
10 representative of Defendants Exxon, was on the bridge of the
11 ship when the harbor pilot disembarked at the southern end of
12 the Narrows at approximately 12:30 a.m. Friday morning, March
13 24, 1989. Captain Hazelwood was under the influence of alcohol
14 while he was in command of the vessel. Captain Hazelwood
15 retired to his cabin, one flight below the bridge, leaving
16 Gregory Cousins, the third mate, and Robert Kafan, the
17 helmsman, on the bridge. At all times relevant hereto, Messrs.
18 Cousins and Kafan were acting within the scope of their
19 employment and as agents and/or representatives of Defendants
20 Exxon.

21 8. The third mate, who was not certified for commanding
22 the tanker through these waters, steered the vessel through the
23 deep water southbound shipping lane of the channel due to
24 earlier reports that it contained icebergs from a glacier that
25 had broken to the northwest. The ship steered east into the
26

1
2 empty northbound lane, and then proceeded on a southwesterly
3 course bound for Long Beach, California. The tanker, however,
4 proceeded three miles east past the alternative channel,
5 outside the traffic lanes and entirely beyond the shipping
6 channel into a charted area of rocky reefs.

7 9. The vessel was approximately one quarter mile outside
8 the regular channel for vessels when she first struck Bligh
9 Reef, which ripped along the vessel's starboard side tearing
10 three holes into the starboard tanks and ripping out a portion
11 of the hull. Although the ship was still navigable after the
12 first impact, she was so far east of deep water that when
13 Cousins tried to turn the Exxon Valdez back toward the west, he
14 struck a second part of the shallow reef. The second impact
15 brought the ship aground, stopping the ship's progress
16 completely, further damaging the vessel and its cargo.

17 10. The scraping impact and grounding of the Exxon Valdez
18 upon Bligh Reef cut open at least eight of the ship's twelve
19 oil tanks which held 53 million gallons of crude oil, causing
20 the largest oil spill in the United States history. To date,
21 approximately 10.1 million gallons of crude oil has been
22 discharged into Prince William Sound, contaminating hundreds of
23 square miles of the Sound's fisheries. The oil spill
24 subsequently spread to encompass at least 3,00 square miles and
25 has migrated 250 miles to the southwest toward Kodiak Island.
26 Another spill, of at least one million gallons, occurred during
subsequent attempts to remove additional oil from the damaged

1
2 tanks.

3 11. On March 26, 1989, due to the slow pace of any
4 attempted clean-up efforts by Alyeska and the Exxon Defendants
5 and concerns about even further possible damage to the
6 property, marine and wildlife, the State of Alaska declared a
7 disaster emergency.

8 12. Alyeska, Exxon and the State of Alaska recruited
9 employees to participate in containment and clean-up activities
10 from all over Alaska, offering wage rates well in excess of
11 those which processing companies could offer and still remain
12 profitable. As a result, the processors to whom Plaintiffs had
13 committed to sell their product could not maintain an adequate
14 work force to operate profitably. The processors eventually
15 went bankrupt, and Plaintiffs no longer have a competitive
16 market within which to sell their product.

17 13. Alyeska Pipeline Company, Exxon, and the State of
18 Alaska owed a duty to have a proper and adequate emergency
19 containment plan for this area but failed to put any plan into
20 affect within a reasonable or practical time period to contain
21 the spilled oil. The Defendants additionally failed to act in
22 a timely or reasonable manner so as to mitigate the oil spill
23 and resulting effects of the clean-up process.

24 14. Plaintiffs' value in their fishing vessels,
25 equipment, good will and future income has been destroyed or
26 greatly diminished as a result of Defendants' actions.

1
2 FIRST CAUSE OF ACTION
3 NEGLIGENCE

4 15. Defendants Alyeska, Exxon, and the State of Alaska
5 had continuously reassured environmentalists and others,
6 including specifically Plaintiffs, at all times prior to the
7 accident that there existed an emergency clean-up plan by which
8 any major oil spill could be successfully contained with five
9 hours of occurrence. Yet a full day after the spill little had
10 been done to contain it other than an unsuccessful attempt to
11 spray chemical dispersants.

12 16. Upon information and belief, Alyeska, Exxon, and the
13 State of Alaska's contingency clean-up plan required them to be
14 on site within five hours of the spill. Eighteen hours after
15 the rupture, however, essentially nothing was in place;
16 instead, it took nearly an entire day for Alyeska and Exxon
17 representatives to start placing barrier booms around the
18 slick. By that time, the discharged oil had already become too
19 large to contain.

20 17. Neither Alyeska, Alaska, nor the Exxon Defendants has
21 enough equipment, supplies, manpower or an adequate containment
22 plan to handle a spill of this size. Chemical dispersants,
23 which could cause further harm to the water, proved
24 ineffective. The chemical dispersants could not be used
25 initially because the water was too cold and calm, making the
26 slick too thick for the dispersants to work. The oil remained
in the water too long for these dispersants to work since they

1
2 are most effective only if employed within twenty-four hours
3 after the spill.

4 18. In the exercise of care, Defendants knew or should
5 have known that they lacked adequate equipment, supplies and
6 manpower to effectively contain and clean-up a spill of this
7 magnitude, that their contingency clean-up plan, including the
8 tactics they developed thereunder were extremely limited in
9 their efficiency and use, and that they would be forced to tap
10 the Alaska work force in order to implement their plans.

11 19. The negligence of Defendants Alyeska, Exxon and
12 Alaska in the control and clean-up operations specifically
13 included, but was not limited to, (i) failing to establish and
14 provide for an adequate contingency plan to contain and clean
15 up any discharge of oil; (ii) inadequately planning the
16 ensuing clean-up effort; (iii) inadequately carrying out the
17 ensuing clean-up effort; (iv) unreasonably delaying the
18 ensuing clean-up effort; (v) choosing inadequate tactics in
19 the ensuing clean-up effort; (vi) relying solely upon the
20 Alaska work force to provide the necessary personnel for the
21 ensuing clean-up effort; and (vii) failure to monitor, inspect
22 and approve of an adequate and effective clean up and
23 containment plan.

24 20. As a direct and proximate result of the foregoing
25 negligence, Plaintiffs have suffered damages as set forth in
26 this complaint.

21. In addition, Defendants Exxon acted recklessly,

1
2 grossly negligently, wantonly and in willful disregard of the
3 rights, safety, and economic well-being of Plaintiffs in the
4 control and clean-up operations of this spill, for which
5 Plaintiffs are entitled to punitive and exemplary damages
6 against these Defendants.

7 SECOND CAUSE OF ACTION
8 GROSS NEGLIGENCE OF EXXON

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

15 23. Captain Hazelwood placed the navigation and direction
16 of the vessel into the charge of the third mate, Gregory
17 Cousins, when it ran aground although Cousins lacked proper
18 certification and guidance to pilot vessels such as the Exxon
19 Valdez through the waters of Prince William Sound.

20 24. Captain Hazelwood and third mate Cousins knew or
21 should have known that it was unreasonably dangerous for
22 Hazelwood to leave the bridge and relinquish control of the
23 tanker to Cousins.

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

1
2 26. The Exxon Defendants knew or should have known based
3 on Hazelwood's previous convictions for drinking and driving,
4 as well as the revocation or suspension of his driver's license
5 three times in the same five year period, that Hazelwood did
6 not possess the requisite degree of competence to command the
7 Exxon Valdez with reasonable prudence, skill or care, nor the
8 ability to transfer his duties to an uncertified third mate.

9 27. The Exxon Defendants knew or should have known based
10 on the service in which Exxon Valdez was involved that its
11 single hull construction was not sufficient to allow it to
12 safely engage in the trade for which it was intended.

13 28. The negligence of the Exxon Defendants by and through
14 their employees, in the operation of the Exxon Valdez
15 specifically included, but was not limited to (i) failing to
16 adequately crew the tanker; (ii) failing to adequately pilot
17 and navigate Prince William Sound; (iii) commanding the vessel
18 while under the influence of alcohol per State of Alaska
19 Standards; (iv) failing to monitor the sobriety of their crews
20 in operating the vessel; (v) failing to operate the vessel
21 away from known navigational dangers; (vi) operating the vessel
22 in a dangerous manner; and (vii) failing to utilize a
23 seaworthy vessel. As a direct and proximate result of their
24 own right as well as by and through their agents, servants and
25 employee, they caused Plaintiffs to suffer damages as described
26 above.

29. The Exxon Defendants acted recklessly, grossly

1
2 negligently, wantonly and in willful disregard of the rights,
3 safety, and economic well-being of Plaintiffs in the ownership
4 and operation of the Exxon Valdez for which Plaintiffs are
5 entitled to punitive and exemplary damages against the
6 Defendant.

7 THIRD CAUSE OF ACTION
8 ALASKA ENVIRONMENTAL CONSERVATION ACT

9 30. Oil, including the over 10 million gallons of crude
10 oil which has been released into the Prince William Sound as a
11 result of the grounding and consequent rupture of the Exxon
12 Valdez's oil tanks, is a hazardous substance, as that term is
13 defined in Section 46.03.826(4)(B) of the Alaska Environmental
14 Conservation Act.

15 31. The presence of oil in the Price William Sound and
16 its subsequent migration presents an imminent and substantial
17 danger to the public health or welfare, including but not
18 limited to fish, animals, vegetation, and/or any part of the
19 natural habitat in which they are found.

20 32. The defendants own and/or have control, pursuant to
21 Section 46.03.826(3) of the Alaska Environmental Conservation
22 Act, over the oil which was loaded on the Exxon Valdez at the
23 Port of Valdez, Alaska, and released in to Prince William
24 Sound.

25 33. Upon information and belief, the entry of the oil in
26 or upon the water, surface or subsurface land of the State of
Alaska was not caused solely as a result of: an act of war, an

1

2 intentional act or a negligent act of a third party, other
3 than a party or its employees in privity with, or employed by,
4 defendants, negligence on the part of the United States
5 government, or an act of God.

6 34. Upon information and belief, upon discovery of the
7 entry of the oil in or upon the water, surface or subsurface
8 land of the State of Alaska, defendants delayed and/or failed
9 to begin operations to contain and clean up the hazardous
10 substance within a reasonable period of time.

11 35. The entry of the oil which is owned and/or within the
12 control of the defendants in or upon the waters, surface and/or
13 subsurface lands of the State of Alaska, has caused damages to
14 Plaintiffs as set forth in this complaint for which the
15 defendant are strictly liable pursuant to Section 46.03.822 of
16 the Alaska Environmental Conservation Act.

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

19 1. Compensatory damages for present and future economic
20 loss, emotional suffering, distress, loss of property and
21 property rights in a sum to be proven at trial in excess of Six
22 Million and No Hundredths Dollars (\$6,000,000.00).

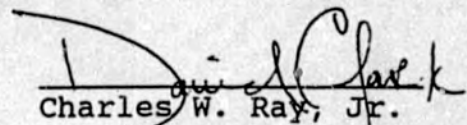
23 2. Punitive and exemplary damages in a sum to be awarded
24 at trial in excess of Ten Million and No Hundredths Dollars
25 (\$10,000,000.00).

26 3. Judgment awarding Plaintiffs costs, interest and
attorney's fees; and

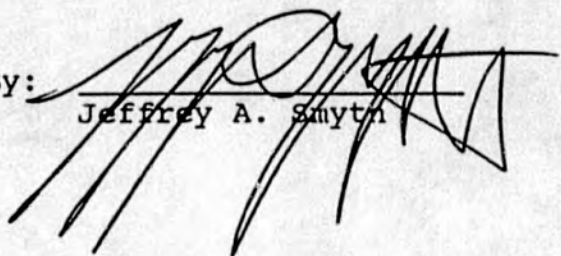
1
2 4. Other relief as this court deems just and equitable.

3
4 DATED this 24 day of March, 1991 at Anchorage,
5 Alaska.

6 TUGMAN, CLARKE & RAY
7 Attorneys for Plaintiffs

8 By: 
9 Charles W. Ray, Jr.

10 ADOLPH & SMYTH P.S.
11 Of Counsel for Plaintiffs

12 By: 
13 Jeffrey A. Smyth

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

DAVID P. HARVILLE; ERIC C. STIRRUP,
KODIAK & WESTERN TRAWLER GROUP, INC.,
an Alaska corporation; KODIAK & WESTERN
TRAWLER WIRE, INC., an Alaska corpor-
ation,

Plaintiffs,

vs.

EXXON CORPORATION, EXXON SHIPPING
COMPANY; ALYESKA PIPELINE SERVICE
COMPANY; and the STATE OF ALASKA,

Defendants.

MAR 26 1991

Clerk of the Trial Courts
By _____ Deput

Case No. 91-2465

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

Plaintiffs, by and through their attorneys, Adolph &
Smyth, P.S. and Tugman, Clarke & Ray, state as follows:

1. Plaintiff David P. Harville is a resident of Kodiak,
Alaska, and is engaged in the business of commercial fishing
and charters. Mr. Harville owned or owns interests in the F/V
LITTLE BEAR, F/V HICKORY WIND, F/V PACIFIC STAR, and F/V TEN
BEARS, valued collectively in excess of \$4,000,000.00. The
electronic, hydraulic, and mechanical equipment and gear

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
c:\wp\exxon\harville.com

ACE 1287174

LAW OFFICES
ADOLPH & SMYTH, P.S.
7100 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 621-7100

1 utilized on these vessels for trawling is valued in excess of
2 \$700,000.00. Mr. Harville owns and manages Kodiak and Western
3 Trawler Group, Inc., an Alaska corporation, which manages the
4 fishing activities of these vessels. He also owned Kodiak and
5 Western Trawler Wire, Inc., an Alaska Corporation, which sold
6 gear for fishing vessels. Collectively, these investments
7 allowed the production of gross income in excess of
8 \$3,500,000.00 per year.

9 2. Plaintiff Eric Stirrup is a resident of Kodiak,
10 Alaska and is engaged in the business of commercial charters.
11 Mr. Stirrup owns an interest in the F/V TEN BEARS referenced
12 above, including the electronic, hydrolic and mechanical
13 equipment and gear associated with it, and accordingly shares
14 in the income generated by that vessel.

15 3. Defendant, Exxon Corporation, is a corporation
16 organized under the laws of the State of New Jersey, with its
17 principal place of business at 1251 Avenue of the Americas, New
18 York, New York 10020. Exxon Corporation is engaged in the
19 business of operating petroleum companies through its
20 subsidiaries and division is the State of Alaska, and is an
21 owner and operator of the vessel known as the Exxon Valdez.

22 4. Defendant, Exxon Shipping Company, a Delaware
23 Corporation and maritime subsidiary of Defendant Exxon
24 Corporation with its principal place of business at 811 Dallas
25 Avenue, Houston, Texas 77002, operates in the State of Alaska,
26 and is an owner and operator of the vessel known as the Exxon

Valdez.

5. Defendant, Alyeska Pipeline Service Company, is an association of the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System.

6. The State of Alaska is responsible for approval, monitoring, and compliance with its laws regarding transportation of oil. Alyeska Pipeline Service Company ("Alyeska") owns and operates the terminal at Valdez, Alaska, and loaded the Exxon Valdez with North Slope crude oil at the Valdez terminal.

SUMMARY OF FACTS

7. On or about March 23, 1989, the marine vessel EXXON VALDEZ, vessel number 692966, an oil tanker owned and operated by defendant Exxon Shipping Company, was loaded at Valdez, Alaska, with approximately 53 million gallons of crude oil that had been transported through the Trans-Alaska Pipeline.

8. The Exxon Valdez passed through the harbor and Valdez Narrows under the command of a harbor pilot. Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of Defendants Exxon, was on the bridge of the ship when the harbor pilot disembarked at the southern end of the Narrows at approximately 12:30 a.m. Friday morning, March 24, 1989. Captain Hazelwood was under the influence of alcohol while he was in command of the vessel. Captain Hazelwood retired to his cabin, one flight below the bridge, leaving

1 Gregory Cousins, the third mate, and Robert Kafan, the
2 helmsman, on the bridge. At all times relevant hereto, Messrs.
3 Cousins and Kafan were acting within the scope of their
4 employment and as agents and/or representatives of Defendants
5 Exxon.

6 9. The third mate, who was not certified for commanding
7 the tanker through these waters, steered the vessel through the
8 deep water southbound shipping lane of the channel due to
9 earlier reports that it contained icebergs from a glacier that
10 had broken to the northwest. The ship steered east into the
11 empty northbound lane, and then proceeded on a southwesterly
12 course bound for Long Beach, California. The tanker, however,
13 proceeded three miles east past the alternative channel,
14 outside the traffic lanes and entirely beyond the shipping
15 channel into a charted area of rocky reefs.

16 10. The vessel was approximately one quarter mile outside
17 the regular channel for vessels when she first struck Bligh
18 Reef, which ripped along the vessel's starboard side tearing
19 three holes into the starboard tanks and ripping out a portion
20 of the hull. Although the ship was still navigable after the
21 first impact, she was so far east of deep water that when
22 Cousins tried to turn the Exxon Valdez back toward the west, he
23 struck a second part of the shallow reef. The second impact
24 brought the ship aground, stopping the ship's progress
25 completely, further damaging the vessel and its cargo.

26 11. The scraping impact and grounding of the Exxon Valdez

upon Bligh Reef cut open at least eight of the ship's twelve oil tanks which held 53 million gallons of crude oil, causing the largest oil spill in the United States history. To date, approximately 10.1 million gallons of crude oil has been discharged into Prince William Sound, contaminating hundreds of square miles of the Sound's fisheries. The oil spill subsequently spread to encompass at least 3,00 square miles and has migrated 250 miles to the southwest toward Kodiak Island. Another spill, of at least one million gallons, occurred during subsequent attempts to remove additional oil from the damaged tanks.

12. On March 26, 1989, due to the slow pace of any attempted clean-up efforts by Alyeska and the Exxon Defendants and concerns about even further possible damage to the property, marine and wildlife, the State of Alaska declared a disaster emergency.

13. Alyeska, Exxon and the State of Alaska recruited employees to participate in containment and clean-up activities from all over Alaska, offering wage rates well in excess of those which processing companies could offer and still remain profitable. As a result, the processors to whom Plaintiffs had committed to sell their product could not maintain an adequate work force to operate profitably. The processors eventually went bankrupt, and Plaintiffs no longer have a competitive market within which to sell their product.

14. Alyeska Pipeline Company, Exxon, and the State of

1 Alaska owed a duty to have a proper and adequate emergency
2 containment plan for this area but failed to put any plan into
3 affect within a reasonable or practical time period to contain
4 the spilled oil. The Defendants additionally failed to act in
5 a timely or reasonable manner so as to mitigate the oil spill
6 and resulting effects of the clean-up process.

7 15. Plaintiffs' value in their fishing vessels,
8 equipment, good will and future income has been destroyed or
9 greatly diminished as a result of Defendants' actions.

10 FIRST CAUSE OF ACTION
11 NEGLIGENCE

12 16. Defendants Alyeska, Exxon, and the State of Alaska
13 had continuously reassured environmentalists and others,
14 including specifically Plaintiffs, at all times prior to the
15 accident that there existed an emergency clean-up plan by which
16 any major oil spill could be successfully contained with five
17 hours of occurrence. Yet a full day after the spill little had
18 been done to contain it other than an unsuccessful attempt to
19 spray chemical dispersants.

20 17. Upon information and belief, Alyeska, Exxon, and the
21 State of Alaska's contingency clean-up plan required them to be
22 on site within five hours of the spill. Eighteen hours after
23 the rupture, however, essentially nothing was in place;
24 instead, it took nearly an entire day for Alyeska and Exxon
25 representatives to start placing barrier booms around the
26 slick. By that time, the discharged oil had already become too

large to contain.

18. Neither Alyeska, Alaska, nor the Exxon Defendants has enough equipment, supplies, manpower or an adequate containment plan to handle a spill of this size. Chemical dispersants, which could cause further harm to the water, proved ineffective. The chemical dispersants could not be used initially because the water was too cold and calm, making the slick too thick for the dispersants to work. The oil remained in the water too long for these dispersants to work since they are most effective only if employed within twenty-four hours after the spill.

19. In the exercise of care, Defendants knew or should have known that they lacked adequate equipment, supplies and manpower to effectively contain and clean-up a spill of this magnitude, that their contingency clean-up plan, including the tactics they developed thereunder were extremely limited in their efficiency and use, and that they would be forced to tap the Alaska work force in order to implement their plans.

20. The negligence of Defendants Alyeska, Exxon and Alaska in the control and clean-up operations specifically included, but was not limited to, (i) failing to establish and provide for an adequate contingency plan to contain and clean up any discharge of oil; (ii) inadequately planning the ensuing clean-up effort; (iii) inadequately carrying out the ensuing clean-up effort; (iv) unreasonably delaying the ensuing clean-up effort; (v) choosing inadequate tactics in