

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

1989 SCOMM 77: SENATE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991

206

1 the ensuing clean-up effort; (vi) relying solely upon the
2 Alaska work force to provide the necessary personnel for the
3 ensuing clean-up effort; and (vii) failure to monitor, inspect
4 and approve of an adequate and effective clean up and
5 containment plan.

6 21. As a direct and proximate result of the foregoing
7 negligence, Plaintiffs have suffered damages as set forth in
8 this complaint.

9 22. In addition, Defendants Exxon acted recklessly,
10 grossly negligently, wantonly and in willful disregard of the
11 rights, safety, and economic well-being of Plaintiffs in the
12 control and clean-up operations of this spill, for which
13 Plaintiffs are entitled to punitive and exemplary damages
14 against these Defendants.

15 SECOND CAUSE OF ACTION
16 GROSS NEGLIGENCE OF EXXON

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

23 24. Captain Hazelwood placed the navigation and direction
24 of the vessel into the charge of the third mate, Gregory
25 Cousins, when it ran aground although Cousins lacked proper
26 certification and guidance to pilot vessels such as the Exxon

Valdez through the waters of Prince William Sound.

25. 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.

26. 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.

27. 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.

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

29. The negligence of the Exxon Defendants by and through their employees, in the operation of the Exxon Valdez specifically included, but was not limited to (i) failing to adequately crew the tanker; (ii) failing to adequately pilot and navigate Prince William Sound; (iii) commanding the vessel while under the influence of alcohol per 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 their own right as well as by and through their agents, servants and employee, they caused Plaintiffs to suffer damages as described above.

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

THIRD CAUSE OF ACTION
ALASKA ENVIRONMENTAL CONSERVATION ACT

31. 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.

32. 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

1 natural habitat in which they are found.

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

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

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

19 36. The entry of the oil which is owned and/or within the
20 control of the defendants in or upon the waters, surface and/or
21 subsurface lands of the State of Alaska, has caused damages to
22 Plaintiffs as set forth in this complaint for which the
23 defendant are strictly liable pursuant to Section 46.03.822 of
24 the Alaska Environmental Conservation Act.

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

3 1. Compensatory damages for present and future economic
4 loss, emotional suffering, distress, loss of property and
5 property rights in a sum to be proven at trial in excess of
6 Eight Million and No Hundredths Dollars (\$8,000,000.00).

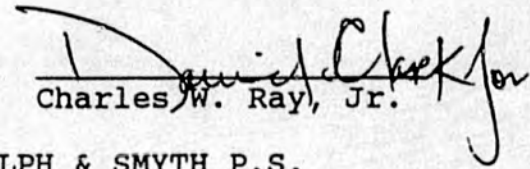
7 2. Punitive and exemplary damages in a sum to be awarded
8 at trial in excess of Ten Million and No Hundredths Dollars
9 (\$10,000,000.00).

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

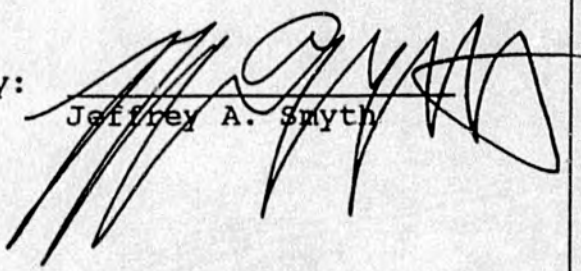
12 4. Other relief as this court deems just and equitable.

13 DATED this _____ day of _____, 1991 at Anchorage,
14 Alaska.

15 TUGMAN, CLARKE & RAY
16 Attorneys for Plaintiffs

17
18 By: 
Charles W. Ray, Jr.

19 ADOLPH & SMYTH P.S.
20 Of Counsel for Plaintiffs

21
22 By: 
Jeffrey A. Smyth

16

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

TODD B. ADAMS, et al.,

Plaintiff(s),

vs.

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

Defendant(s).

RECEIVED

Department of Law

MAR 28 1991
12:40

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

CASE NO. 3AN- 91-2466

SUMMONS

To Defendant: ATTORNEY GENERAL FOR THE STATE OF ALASKA

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 303 K Street, Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to plaintiff's attorney, TUGMAN, CLARK & RAY,

whose address is: 711 N STREET, SUITE 500, ANCHORAGE, AK 99501.

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

☒ This case has been assigned to Superior Court Judge Shantell.

☐ The special procedures set forth in Civil Rule 16.1 have been invoked in this action. See attached Case Characterization Form.

☐ This case has been assigned to District Court Judge _____.

CLERK OF COURT

Date

3/27/91

By:

Deputy Clerk



* The State or a state office or agency named as a defendant has 40 days to file its answer.

ACE 1287193

CIV-100 ANCH (4/87)(st.3)
SUMMONS

Civil Rules 4, 5, 12, 16.1, 55

PL7655758

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

RODD E. ADAMS; et al.,

Plaintiff(s),

vs.

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

Defendant(s).

CASE NO. 3AN-

11-2466

SUMMONS

To Defendant: ATTORNEY GENERAL FOR THE STATE OF ALASKA

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 303 K Street, Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to plaintiff's attorney, TUGMAN, CLARK & RAY, whose address is: 721 K STREET, SUITE 500, ANCHORAGE, AK 99501.

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

- ☒ This case has been assigned to Superior Court Judge Sam Hill.
- ☐ The special procedures set forth in Civil Rule 16.1 have been invoked in this action. See attached Case Characterization Form.
- ☐ This case has been assigned to District Court Judge _____.

CLERK OF COURT

Date 7/91

By: T. Tugman

Deputy Clerk



* The State or a state office or agency named as a defendant has 40 days to file its answer.

ACE 1287194

CIV-100 ANCH (4/87)(st.3)
SUMMONS

Civil Rules 4, 5, 12, 16.1, 55

1. PLAINTIFFS

TODD B. ADAMS, et al. (see attached caption listing plaintiffs)

DEFENDANTS

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

2. NATURE OF SUIT:

A. Place an X on one line only:

☐ Contract ☒ Personal Property ☐ Forfeiture/Penalty
☒ Personal Injury ☐ Civil Rights ☐ Labor
☐ Real Property ☐ Prisoner Petition ☒ Other, explain:

DAMAGES

B. Place an X on one of the following lines if applicable:

☐ Professional malpractice action
☐ Class action
☐ Derivative shareholder suit or security law action
☐ Products liability action
☒ Civil case involving unusually active pretrial discovery and/or motion work
☐ Reapportionment or election-challenge case
☐ Union dispute
☐ Condemnation case

3. ESTIMATED TRIAL TIME: ☐ 10 days or less ☒ More than 10 days

4. RELIEF INJUNCTIVE Yes ☐ No ☐ DEMAND*
REQUESTED: JURY DEMAND ☒ Yes ☐ No \$50000

*If less than \$50,000, state authority for filing in Superior Court.

5. RELATED CASE(S) IF ANY: Case No. _____
Case Name _____
Judge _____

6. PREVIOUS FILING

Has this case ever been previously filed and dismissed without prejudice under Civil Rule 16.1(g) or 41(a)? ☒ Yes ☐ No If yes, state the case name, number and date of dismissal:

3/28/91
Date

Signature of Plaintiff's Attorney
John T. Hansen
HANSEN & LEDERMAN
Print or Type Name

COURT USE ONLY

☐ Copy enclosed w/summons

Note: Plaintiff's attorney must file with the court the original of this form and a copy for each defendant. Attorney must provide photocopies where necessary.

CASE DESCRIPTION

Case No. 3AN-91-2466 Civil ☐ District Court ☒ Superior Court

Check the box below which best describes the case. Mark one box only. If the case involves both personal injury and property damage, check the appropriate box in the personal injury section.

CONTRACT

- ☐ Debt - General (DEB)
☐ Real Estate Matter (REM)
☐ Other Contract (OCT)

PERSONAL INJURY

- ☐ Personal Injury - Auto (PIA)
☒ Personal Injury - Other (PIO)
☐ Wrongful Death (PID)

DOMESTIC RELATIONS

- ☐ Dissolution Without Children (DIS)
☐ Dissolution With Children (DSC)
☐ Divorce Without Children (DIV)
☐ Divorce With Children (DVC)
☐ Domestic Violence (DVI)
☐ URESA - Child Support/Payment (URS)
☐ Other Domestic Relations (ODR)

PROPERTY DAMAGE

- ☐ Property Damage - Auto (PDA)
☐ Property Damage - Other (PDO)

OTHER CIVIL

- ☐ Change of Name (CON)
☐ Forcible Entry & Detainer (FED)
☐ Foreclosure (FOR)
☐ Foreign Judgment (FOJ)
☐ Injunctive Relief (INJ)
☐ Quiet Title (QIT)
☐ Administrative Review (ADR)
☒ Other (OCI). Please describe:

MALPRACTICE

- ☐ Medical Malpractice (MMP)
☐ Legal Malpractice (LMP)
☐ Other Malpractice (OMP)

Damages _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

TODD B. ADAMS, JASON D. ALEXANDER,)
 for himself and his crewmembers,)
 LESLIE P. ALLEN, AL L. ANDERSON and)
 AL L. ANDERSON ENTERPRISES, INC.,)
 PETE ANDERSON, JR., FRANK BABIAK,)
 JACK BOBIE, JR., and his crew)
 members DAVID HALL and BILL REID,)
 LINDA BASSETT, JERRY BLACKLER,)
 THOMAS D. BRANSHAW and his crew)
 members, JAMES N. BUTLER, III,)
 JOHN BUTLER, MARK and GLENDA CARR,)
 and employees, KIP R. CARROLL, JOE)
 S. CHMIEL, THOMAS CONCANNON,)
 CORDOVA AIR SERVICE, INC., MICHAEL)
 E. and LORI E. COWAN, TOM CUMMING,)
 DEBRA LEA, INC., DEW DROP, INC.,)
 JOSEPH A. DITTRICK and F/V MUSTANG)
 SEAFOODS, INC., and employee)
 MICHAEL ESTES, ALAN DRAKE, THOMAS)
 T. ELIASON, WILLIAM K. EVANS, EVE)
 FLYNN for EVE'S HAIR DESIGN, JAMES)
 EWING and his crewmembers, DENNIS)
 SKONBERG, ROGER CARTER and DAVID M.)
 PHILLIPS, KIETH FINDLEY,)
 CHRISTOPHER L. FULTON, KENNETH)
 GILL, JOHN GREGORY, GERALD GUDENAU,)
 ARLOT W. HALL and GEORGE ANCICH,)
 DONALD HANKS, MICHAEL J. HANLEY,)
 LARRY IMM, ERIC HASE, CAROL L.)
 JOHNSON, DICK JOHNSON, ELI J.)
 JOHNSON, ERNEST R. JOHNSON, JAMES)
 E. JOHNSON, WENDELL JONES, CHARLES)
 A. LAMB and his crewmembers,)
 DENNIS LARY and his crewmembers,)
 JANET LEBOLD, JOHN LLOYD LEBOLD,)
 MATTHEW LEWIS, BETTY E. LOWELL,)
 DANIEL LOWELL, RICHARD LOWELL,)
 MICHAEL MAULING, DANIEL P.)
 McCLINN, THOMAS M. MENCEL, LLOYD W.)
 MONTGOMERY, JEFF MOORE, BRIAN J.)
 MURPHY and REBECCA MURPHY, for)
 themselves and their minor sons,)
 THOMAS NAMTVEDT, DOUGLAS PEDERSEN,)
 for himself and his crewmember,)
 MARIUS PEDERSEN and his crewmembers)
 EUGENE CARLSON and ANDREW FOX, H.)
 LLOYD RANSOM and PAMELA HOLMQUIST,)

LAW OFFICES OF
 HANSEN & LEDERMAN
 711 H STREET, SUITE 900
 ANCHORAGE, ALASKA 99501
 (907) 278-4573

ACE 1287197

JAMES V. RAY, CHARMAINE RAYMOND,)
 GARY RAYMOND and RAYMOND ENTER-)
 PRISES, INC., TINY REES, TIM)
 REYNOLDS, RICHARD RUSSELL, ERWIN)
 SAMUELSON, G. GORDON SCOTT and his)
 crewmembers, BRENT SONGER, TAMAR,)
 INC., and its employees, RANDALL C.)
 WARNER, IRENE WEBBER, JAMES R.)
 WEBBER, JR., MICHAEL J. WEBBER,)
 WILLIAM F. WEBBER, SR. and KIMBO)
 CORP., JAMES and ANNE V. WICKERSHAM)
 MICHAEL WICKERSHAM, DUKE M. and)
 JEANNIE WILLIAMS, for themselves)
 and their minor children SHANNON)
 LEE and ADAM DUKE WILLIAMS, GREGORY)
 T. and MICHELLE WILLIAMS, for them-)
 selves and their minor children)
 JENNIFER LYNN and IAN LLEWELYN)
 WILLIAMS, NORMAN SHAWN and CATHLEEN)
 WILLIAMS, for themselves and their)
 minor children SHAWNA KATHLEEN,)
 MORGAN ALLEN and LYDIA MARIA)
 WILLIAMS, RUSSELL B. WILLIAMS, for)
 himself and his employees STEVEN)
 DODSON, JAMES SMITH and CHARLES)
 SMITHSON, SHIRLEY R. WILLIAMS,)
 ZACHERY B. WILLIAMS, PATRICIA A.)
 WRIGHT, ALAN L. YOUNKER, TODD)
 YOUNKER, CHAD YOUNKER, MARTIN)
 GORESON, JAMES R. GORESON, JEFFREY)
 A. MOORE, JAMES D. EWING, DOUG)
 JENSEN, DANIEL LOWELL, WHITTIER)
 SEAFOODS, INC., CORDOVA AIR)
 SERVICE, INC., F/V DEW DROP INC.,)
 F/V DEBRA LEE, INC., SHEILA R.)
 JENSEN, JEFFREY J. JENSEN, ANGELA)
 K. JENSEN, DOUGLAS R. JENSEN,)
 DANIEL and PAMELA STRICKLAND,)

Plaintiffs,)

vs.)

EXXON USA, Inc., a Delaware Corp.)
 EXXON CORPORATION, a Delaware)
 Corporation, EXXON SHIPPING)
 COMPANY, a Delaware Corporation,)
 ALYESKA PIPELINE SERVICE COMPANY,)
 a Delaware Corporation, EXXON)
 VALDEZ, in rem, and the STATE OF)
 ALASKA,)

Case No. 3AN-91-2466 Civ.

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 HANSEN & LEDERMAN
 711 H STREET, SUITE 600
 ANCHORAGE, ALASKA 99501
 (907) 278-4573

ACE 1287198

RECEIVED

Department of Law

KA

MAR 20 1991

12:40

Office of the Attorney General

Anchorage Branch

Anchorage, Alaska

Defendants.)
_____)

FIRST AMENDED COMPLAINT

Plaintiffs, by and through counsel, HANSEN & LEDERMAN and TUGMAN, CLARK & RAY, for their first amended complaint against Defendants, allege as follows:

JURISDICTION AND PARTIES

1. Plaintiffs are residents of Alaska and other states engaged in commercial fishing or other businesses in Alaska and/or are owners of real and personal property situated in that part of Alaska affected by the spill of oil from the EXXON VALDEZ on or about March 24, 1989.

2. The corporate Plaintiffs all are Alaska corporations doing business in Whittier or Cordova, Alaska. They are current with respect to all corporate taxes, fees and reports, and are authorized to bring this action.

3. Upon information and belief, Defendants EXXON U.S.A., Inc., EXXON Corporation and EXXON Shipping Company [hereinafter, collectively, "EXXON"] are corporations organized under the laws of Delaware and licensed to do business in the State of Alaska.

4. Defendants Exxon, or one or more of them, are the owners of the tanker EXXON VALDEZ.

5. Defendants Exxon are wholly owned or controlled, one by another, or are so closely related as to be liable for the wrongful acts of each other, inter se.

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ANCHORAGE, ALASKA 99501
(907) 278-4573

6. The EXXON VALDEZ is an oil tanker vessel that, upon information and belief, is registered as a United States vessel, and is owned by Defendants Exxon. EXXON VALDEZ is now and will be within the jurisdiction of this court during the pendency of this action.

7. Upon information and belief, Defendant Alyeska Pipeline Service Company, Inc. is a corporation organized under the laws of Delaware and licensed to do business in the State of Alaska.

FACTS

8. Plaintiffs reallege and incorporate paragraphs 1 through 7 above as though set forth fully herein.

9. Exxon owns and operates a tanker known as the EXXON VALDEZ.

10. On or about March 24, 1989, the tanker known as the EXXON VALDEZ was en route from the Alyeska Pipeline Service Company Shipping Terminal in Valdez, Alaska to a refinery in Long Beach, California.

11. Exxon owns and controls the oil which was transported by the EXXON VALDEZ.

12. Alyeska Pipeline Service Company controls the loading and transportation of oil from the Port of Valdez and is responsible for prevention, containment and cleanup of oil spills associated with that loading and transportation in Prince William Sound.

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13. The EXXON VALDEZ was carrying approximately 53 million gallons of crude oil.

14. Approximately twenty-five miles from Valdez, the EXXON VALDEZ ran aground the Bligh Reef. At the time the EXXON VALDEZ ran aground it was under the command of an intoxicated, incompetent Master, Joseph Hazelwood. As a result of the tanker running aground it sustained damages and more than eleven million gallons of oil leaked from the tanker into the water, surface and subsurface land of Prince William Sound.

15. Alyeska Pipeline Service Company, Exxon, and the State of Alaska owed a duty to have a proper and adequate emergency containment plan for this area but failed to put any plan into effect within a reasonable or practical time period to contain the spilled oil. The Defendants additionally failed to act in a timely or reasonable manner so as to mitigate the oil spill and resulting damage.

16. Said spill has damaged and will continue to damage Plaintiffs in at least the following respects: diminution in the value of their vessels, permits, real estate and other property; destruction of the marine environment with consequent loss of the fisheries upon which Plaintiffs depend; interruption and interference with Plaintiffs' business; loss of enjoyment of life; and emotional and mental distress.

17. Plaintiffs' damages were proximately caused by the torts described herein for which the defendants are liable in a

sum in excess of \$50,000.00, the exact amount to be proven at trial.

FIRST CAUSE OF ACTION
(NEGLIGENCE - EXXON SHIPPING COMPANY)

18. Plaintiffs reallege and incorporate paragraphs 1 through 17 as though set forth fully herein.

19. At all relevant times hereto Joseph Hazelwood was acting within the scope of his employment with Defendant Exxon.

20. As the employer of Joseph Hazelwood, Exxon is liable to the Plaintiffs for all damages sustained as a consequence of Joseph Hazelwood's negligent and unlawful conduct in amounts to be proved at trial.

SECOND CAUSE OF ACTION
(NEGLIGENCE -- EXXON SHIPPING COMPANY)

21. Plaintiffs reallege and incorporate paragraphs 1 through 20 as though set forth fully herein.

22. Defendant Exxon owed Plaintiffs a duty of care in hiring and supervising its employees to prevent a catastrophe such as the grounding of the EXXON VALDEZ.

23. Defendant Exxon was negligent in the hiring of and supervising of the Captain and the crew of the EXXON VALDEZ.

24. Defendant Exxon is liable to Plaintiffs for all damages they have sustained as a consequence of Exxon negligence as described herein in amounts to be proved at trial.

THIRD CAUSE OF ACTION
(NEGLIGENCE - ALL DEFENDANTS)

25. Plaintiffs reallege and incorporate paragraphs 1 through 25 above as though set forth fully herein.

26. Defendants Alyeska, Exxon, and the State of Alaska had continuously reassured environmentalists and others, including specifically, 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 with five hours of occurrence. Yet a full day after the spill little had been done to contain it other than an unsuccessful attempt to spray chemical dispersants.

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

28. Neither Alyeska, the State of Alaska, nor the Exxon Defendants, had enough equipment, supplies or an adequate containment plan to handle an oil 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

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most effective only if employed within twenty-four hours after a spill.

29. In the exercise of 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 contingency clean-up plan, including the tactics they developed thereunder, were extremely limited in their efficiency and use.

30. The negligence of Defendants Alyeska, Exxon, and the State of Alaska in the control and clean-up operations specifically included, but was not limited to, (1) failing to establish and provide for an adequate contingency plan to contain and clean up any discharge of oil; (2) inadequately planning the ensuing clean-up effort; (3) inadequately carrying out the ensuing clean-up effort; (4) unreasonably delaying the ensuing clean-up effort; (5) choosing inadequate tactics in the ensuing clean-up effort; (6) processing inadequate equipment, supplies, and personnel for deployment to the ensuing clean-up effort; and (7) failure to monitor, inspect, and approve an adequate and effective clean-up and containment plan.

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

32. In addition, the Exxon Defendants and Alyeska acted with reckless, grossly negligent, wanton and willful disregard of

the rights, safety, and economic well being of Plaintiffs in the control and clean-up operations of this spill, for which Plaintiffs are entitled to punitive and exemplary damages against these Defendants.

FOURTH CAUSE OF ACTION
(STRICT LIABILITY)

33. Plaintiffs reallege and incorporate paragraphs 1 through 32 above as if set forth fully herein.

34. Defendants Exxon and Alyeska Pipeline Service Company were engaged in the transportation of oil, a hazardous activity, and are subject to strict liability for all damages resulting from the conduct of that activity.

35. Defendants Exxon and Alyeska Pipeline Service Company are strictly liable to Plaintiffs for all damages they have sustained as a consequence of the oil spilled into Prince William Sound in amounts to be proved at trial.

FIFTH CAUSE OF ACTION
(43 U.S.C §1653(a))

36. Plaintiffs reallege and incorporate paragraphs 1 through 35 above as though set forth fully herein.

37. Defendants Exxon as owner and/or operator of EXXON VALDEZ, are strictly liable, jointly and severally, to Plaintiffs for the damages caused by the discharge of oil described above as provided under 43 U.S.C §1653(a).

SIXTH CAUSE OF ACTION
(43 U.S.C §1652(a))

38. Plaintiffs reallege and incorporate paragraphs 1 through 37 above as though set forth fully herein.

39. Defendant Alyeska Pipeline Service Company, as the holder of the right-of-way granted in accordance with 43 U.S.C §1652, is strictly liable to Plaintiffs for all damages caused by the discharge of oil described above as provided under 43 U.S.C §1652(a).

SEVENTH CAUSE OF ACTION
(GROSS NEGLIGENCE AND RECKLESSNESS)

40. Plaintiffs reallege and incorporate paragraphs 1 through 39 above as though set forth fully herein.

41. Defendants Alyeska and Exxon and each of them were grossly negligent in failing to prevent, contain and clean up the oil spilled into Prince William Sound.

42. Defendants Alyeska and Exxon and each of them are jointly and severally liable to Plaintiffs for all damages they have sustained as a consequence of Defendants' gross negligence and recklessness in amounts to be proved at trial.

EIGHTH CAUSE OF ACTION
(PUNITIVE DAMAGES)

43. The Defendants' actions were committed with malice, indifference and in reckless disregard of the rights of the Plaintiffs.

44. Plaintiffs are entitled to punitive damages in an amount to be determined at trial.

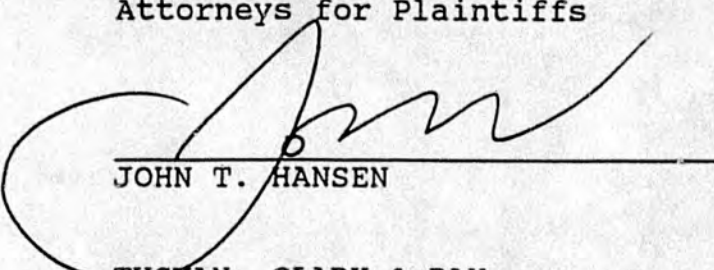
45. Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs, and each of them, pray for the following relief:

1. Special damages in excess of \$50,000 in amount to be determined at trial.
2. General damages in excess of \$50,000 in amount to be determined at trial.
3. Punitive damages in amounts to be proved at trial.
4. Costs and attorneys fees incurred in bringing this action.
5. Such other and further relief as the court deems just in the premises.

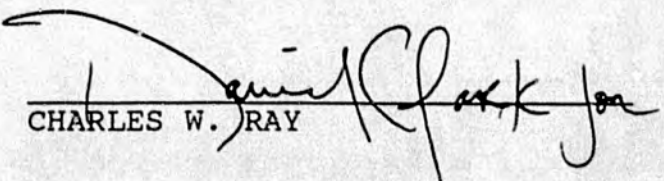
DATED this 26th day of March, 1991 at Anchorage, Alaska.

HANSEN & LEDERMAN
Attorneys for Plaintiffs



JOHN T. HANSEN

TUGMAN, CLARK & RAY
Attorneys for Plaintiffs



CHARLES W. RAY

LAW OFFICES OF
HANSEN & LEDERMAN
711 H STREET, SUITE 900
ANCHORAGE, ALASKA 99501
(907) 278-4573

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

TODD B. ADAMS, JASON D. ALEXANDER,)
for himself and his crewmembers,)
LESLIE P. ALLEN, AL L. ANDERSON and)
AL L. ANDERSON ENTERPRISES, INC.,)
PETE ANDERSON, JR., FRANK BABIAK,)
JACK BOBIE, JR., and his crew)
members DAVID HALL and BILL REID,)
LINDA BASSETT, JERRY BLACKLER,)
THOMAS D. BRANSHAW and his crew)
members, JAMES N. BUTLER, III,)
JOHN BUTLER, MARK and GLENDA CARR,)
and employees, KIP R. CARROLL, JOE)
S. CHMIEL, THOMAS CONCANNON,)
CORDOVA AIR SERVICE, INC., MICHAEL)
E. and LORI E. COWAN, TOM CUMMING,)
DEBRA LEA, INC., DEW DROP, INC.,)
JOSEPH A. DITTRICK and F/V MUSTANG)
SEAFOODS, INC., and employee)
MICHAEL ESTES, ALAN DRAKE, THOMAS)
T. ELIASON, WILLIAM K. EVANS, EVE)
FLYNN for EVE'S HAIR DESIGN, JAMES)
EWING and his crewmembers, DENNIS)
SKONBERG, ROGER CARTER and DAVID M.)
PHILLIPS, KIETH FINDLEY,)
CHRISTOPHER L. FULTON, KENNETH)
GILL, JOHN GREGORY, GERALD GUDENAU,)
ARLOT W. HALL and GEORGE ANCICH,)
DONALD HANKS, MICHAEL J. HANLEY,)
LARRY IMM, ERIC HASE, CAROL L.)
JOHNSON, DICK JOHNSON, ELI J.)
JOHNSON, ERNEST R. JOHNSON, JAMES)
E. JOHNSON, WENDELL JONES, CHARLES)
A. LAMB and his crewmembers,)
DENNIS LARY and his crewmembers,)
JANET LEBOLD, JOHN LLOYD LEBOLD,)
MATTHEW LEWIS, BETTY E. LOWELL,)
DANIEL LOWELL, RICHARD LOWELL,)
MICHAEL MAULDING, DANIEL P.)
McCLINN, THOMAS M. MENCEL, LLOYD W.)
MONTGOMERY, JEFF MOORE, BRIAN J.)
MURPHY and REBECCA MURPHY, for)
themselves and their minor sons,)
THOMAS NAMTVEDT, DOUGLAS PEDERSEN,)
for himself and his crewmember,)
MARIUS PEDERSEN and his crewmembers)
EUGENE CARLSON and ANDREW FOX, H.)
LLOYD RANSOM and PAMELA HOLMQUIST,)

LAW OFFICES OF
HANSEN & LEDERMAN
711 H STREET, SUITE 800
ANCHORAGE, ALASKA 99501
(907) 278-4573

ACE 1287209

JAMES V. RAY, CHARMAINE RAYMOND,)
 GARY RAYMOND and RAYMOND ENTER-)
 PRISES, INC., TINY REES, TIM)
 REYNOLDS, RICHARD RUSSELL, ERWIN)
 SAMUELSON, G. GORDON SCOTT and his)
 crewmembers, BRENT SONGER, TAMAR,)
 INC., and its employees, RANDALL C.)
 WARNER, IRENE WEBBER, JAMES R.)
 WEBBER, JR., MICHAEL J. WEBBER,)
 WILLIAM F. WEBBER, SR. and KIMBO)
 CORP., JAMES and ANNE V. WICKERSHAM)
 MICHAEL WICKERSHAM, DUKE M. and)
 JEANNIE WILLIAMS, for themselves)
 and their minor children SHANNON)
 LEE and ADAM DUKE WILLIAMS, GREGORY)
 T. and MICHELLE WILLIAMS, for them-)
 selves and their minor children)
 JENNIFER LYNN and IAN LLEWELYN)
 WILLIAMS, NORMAN SHAWN and CATHLEEN)
 WILLIAMS, for themselves and their)
 minor children SHAWNA KATHLEEN,)
 MORGAN ALLEN and LYDIA MARIA)
 WILLIAMS, RUSSELL B. WILLIAMS, for)
 himself and his employees STEVEN)
 DODSON, JAMES SMITH and CHARLES)
 SMITHSON, SHIRLEY R. WILLIAMS,)
 ZACHERY B. WILLIAMS, PATRICIA A.)
 WRIGHT, ALAN L. YOUNKER, TODD)
 YOUNKER, CHAD YOUNKER, MARTIN)
 GORESON, JAMES R. GORESON, JEFFREY)
 A. MOORE, JAMES D. EWING, DOUG)
 JENSEN, DANIEL LOWELL, WHITTIER)
 SEAFOODS, INC., CORDOVA AIR)
 SERVICE, INC., F/V DEW DROP INC.,)
 F/V DEBRA LEE, INC., SHEILA R.)
 JENSEN, JEFFREY J. JENSEN, ANGELA)
 K. JENSEN, DOUGLAS R. JENSEN,)
 DANIEL and PAMELA STRICKLAND,)

Plaintiffs,)

vs.)

EXXON USA, Inc., a Delaware Corp.)
 EXXON CORPORATION, a Delaware)
 Corporation, EXXON SHIPPING)
 COMPANY, a Delaware Corporation,)
 ALYESKA PIPELINE SERVICE COMPANY,)
 a Delaware Corporation, EXXON)
 VALDEZ, in rem, and the STATE OF)
 ALASKA,)

Case No. 3AN-91-2466 Civ.

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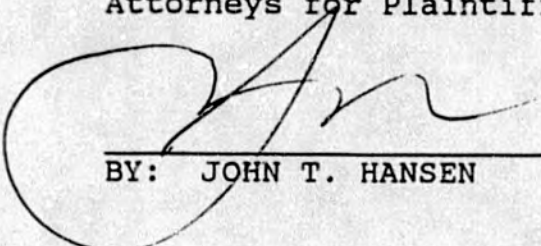
Defendants.)

DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs by and through counsel, HANSEN & LEDERMAN, and hereby demands a trial by jury.

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

HANSEN & LEDERMAN
Attorneys for Plaintiffs


BY: JOHN T. HANSEN

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ACE 1287210

17

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4 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
5 THIRD JUDICIAL DISTRICT AT ANCHORAGE
6

7 JOSEPH WADE BANTA,)
8 Plaintiff,)
9 vs.)
10 EXXON CORPORATION, EXXON)
11 SHIPPING COMPANY; ALYESKA)
12 PIPELINE SERVICE COMPANY,)
13 and the STATE OF ALASKA,)
14 Defendants.)

FILED IN
STATE OF ALASKA, THIRD DISTRICT

MAR 26 1991

Clerk of the Trial Court
By _____ Deputy

14 Case No. 91-2467

15 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

16 Plaintiff, by and through his attorneys, Adolph & Smyth,
17 P.S. and Tugman, Clarke & Ray, states as follows:

18 1. Plaintiff Joseph W. Banta is a residents of Anchorage
19 Alaska, and is engaged in the business of commercial fishing.
20 Since, 1983 he has owned a permit in the Prince William Sound
21 area of Alaska. Prior to the oil spill incident referenced
22 herein below ("Spill"), the permit had a market value in excess
23 of \$150,000.00. Mr. Banta leases the vessel FAST BREAK, and
24 owns specialized herring gillnets and related equipment for use
25 in Prince William Sound valued in excess of \$40,000.00 prior
26

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
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ACE 1287138

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1 to the Spill. Mr. Banta regularly works as a crew member for
2 his father, Robert Banta. Mr. Banta investment in permits,
3 vessels, and equipment and activity as a crew member allows the
4 production of gross income from his fishing enterprise in
5 excess of \$100,000.00 per year.

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

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

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

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

Valdez terminal.

SUMMARY OF FACTS

6. 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.

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

8. The third mate, who was not certified for commanding the tanker through these waters, steered the vessel through the deep water southbound shipping lane of the channel due to earlier reports that it contained icebergs from a glacier that

1 had broken to the northwest. The ship steered east into the
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

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 4
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ACE 1287141

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1 subsequent attempts to remove additional oil from the damaged
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 Pipeline Company, Exxon, and the State of
9 Alaska owed a duty to have a proper and adequate emergency
10 containment plan for this area but failed to put any plan into
11 affect within a reasonable or practical time period to contain
12 the spilled oil. The Defendants additionally failed to act in
13 a timely or reasonable manner so as to mitigate the oil spill
14 and resulting damage.

15 13. Damages to the Plaintiff caused by this discharge of
16 millions of gallons of North Slope crude oil, include but are
17 not limited to damage to marine life, including herring,
18 salmon, ground bottom fish, kelp, shrimp and crab, relied upon
19 by Plaintiffs. Plaintiff's value in his fishing permit,
20 vessel, equipment, good will and future income has been
21 destroyed or greatly diminished as a result of Defendants'
22 actions.

23 FIRST CAUSE OF ACTION
24 NEGLIGENCE

25 14. Defendants Alyeska, Exxon, and the State of Alaska
26 had continuously reassured environmentalists and others,

1 including specifically Plaintiffs, at all times prior to the
2 accident that there existed an emergency clean-up plan by which
3 any major oil spill could be successfully contained with five
4 hours of occurrence. Yet a full day after the spill little had
5 been done to contain it other than an unsuccessful attempt to
6 spray chemical dispersants.

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

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

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

1 that their contingency clean-up plan, including the tactics
2 they developed thereunder were extremely limited in their
3 efficiency and use.

4 18. 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) processing inadequate
13 equipment, supplies and personnel for deployment in the ensuing
14 clean-up effort; and (vii) failure to monitor, inspect and
15 approve of an adequate and effective clean up and containment
16 plan.

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

20 20. 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

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3 SECOND CAUSE OF ACTION
4 GROSS NEGLIGENCE OF EXXON

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

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

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

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

24 25. The Exxon Defendants knew or should have known based
25 on Hazelwood's previous convictions for drinking and driving,
26 as well as the revocation or suspension of his driver's license
three times in the same five year period, that Hazelwood did

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 8
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ACE 1287145

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1 not possess the requisite degree of competence to command the
2 Exxon Valdez with reasonable prudence, skill or care, nor the
3 ability to transfer his duties to an uncertified third mate.

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

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

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

Defendant.

THIRD CAUSE OF ACTION
ALASKA ENVIRONMENTAL CONSERVATION ACT

29. 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.

30. 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.

31. 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.

32. 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.

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 10
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1 33. Upon information and belief, upon discovery of the
2 entry of the oil in or upon the water, surface or subsurface
3 land of the State of Alaska, defendants delayed and/or failed
4 to begin operations to contain and clean up the hazardous
5 substance within a reasonable period of time.

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

12 WHEREFORE plaintiff prays for a judgment against the
13 Defendants jointly and severally as follows:

14 1. Compensatory damages for present and future economic
15 loss, emotional suffering, distress, loss of property and
16 property rights in a sum to be proven at trial in excess of One
17 Million and No Hundredths Dollars (\$1,000,000.00).

18 2. Punitive and exemplary damages in a sum to be awarded
19 at trial in excess of Ten Million and No Hundredths Dollars
20 (\$10,000,000.00).

21 3. Judgment awarding Plaintiff costs, interest and
22 attorney's fees; and

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

1 DATED this 25th day of March, 1991 at Anchorage,
2 Alaska.

3 TUGMAN, CLARKE & RAY
4 Attorneys for Plaintiffs

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

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

9
10 By: Charles W. Ray, Jr. for
Jeffrey A. Smyth

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4 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
5 THIRD JUDICIAL DISTRICT AT ANCHORAGE
6

7 JOSEPH WADE BANTA,
8 Plaintiff,

9 vs.

10 EXXON CORPORATION, EXXON
11 SHIPPING COMPANY; ALYESKA
12 PIPELINE SERVICE COMPANY,
13 and the STATE OF ALASKA,
14 Defendants.

Case No. 91-2467

15 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

16 Plaintiff, by and through his attorneys, Adolph & Smyth,
17 P.S. and Tugman, Clarke & Ray, states as follows:

18 1. Plaintiff Joseph W. Banta is a residents of Anchorage
19 Alaska, and is engaged in the business of commercial fishing.
20 Since, 1983 he has owned a permit in the Prince William Sound
21 area of Alaska. Prior to the oil spill incident referenced
22 herein below ("Spill"), the permit had a market value in excess
23 of \$150,000.00. Mr. Banta leases the vessel FAST BREAK, and
24 owns specialized herring gillnets and related equipment for use
25 in Prince William Sound valued in excess of \$40,000.00 prior
26

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
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Filed in
STATE OF ALASKA, THIRD DISTRICT

MAR 26 1991

Clerk of the Trial Courts
By _____ Deput.

ACE 1287138

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1 to the Spill. Mr. Banta regularly works as a crew member for
2 his father, Robert Banta. Mr. Banta investment in permits,
3 vessels, and equipment and activity as a crew member allows the
4 production of gross income from his fishing enterprise in
5 excess of \$100,000.00 per year.

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

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

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

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

Valdez terminal.

SUMMARY OF FACTS

6. 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.

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

8. The third mate, who was not certified for commanding the tanker through these waters, steered the vessel through the deep water southbound shipping lane of the channel due to earlier reports that it contained icebergs from a glacier that

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 3
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ACE 1287140

1 had broken to the northwest. The ship steered east into the
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

1 subsequent attempts to remove additional oil from the damaged
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 Pipeline Company, Exxon, and the State of
9 Alaska owed a duty to have a proper and adequate emergency
10 containment plan for this area but failed to put any plan into
11 affect within a reasonable or practical time period to contain
12 the spilled oil. The Defendants additionally failed to act in
13 a timely or reasonable manner so as to mitigate the oil spill
14 and resulting damage.

15 13. Damages to the Plaintiff caused by this discharge of
16 millions of gallons of North Slope crude oil, include but are
17 not limited to damage to marine life, including herring,
18 salmon, ground bottom fish, kelp, shrimp and crab, relied upon
19 by Plaintiffs. Plaintiff's value in his fishing permit,
20 vessel, equipment, good will and future income has been
21 destroyed or greatly diminished as a result of Defendants'
22 actions.

23 FIRST CAUSE OF ACTION
24 NEGLIGENCE

25 14. Defendants Alyeska, Exxon, and the State of Alaska
26 had continuously reassured environmentalists and others,

1 including specifically Plaintiffs, at all times prior to the
2 accident that there existed an emergency clean-up plan by which
3 any major oil spill could be successfully contained with five
4 hours of occurrence. Yet a full day after the spill little had
5 been done to contain it other than an unsuccessful attempt to
6 spray chemical dispersants.

7 15. Upon information and belief, Alyeska, Exxon, and the
8 State of Alaska's contingency clean-up plan required them to be
9 on site within five hours of the spill. Eighteen hours after
10 the rupture, however, essentially nothing was in place;
11 instead, it took nearly an entire day for Alyeska and Exxon
12 representatives to

13 start placing barrier booms around the slick. By that time,
14 the discharged oil had already become too large to contain.

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

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

1 that their contingency clean-up plan, including the tactics
2 they developed thereunder were extremely limited in their
3 efficiency and use.

4 18. 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) processing inadequate
13 equipment, supplies and personnel for deployment in the ensuing
14 clean-up effort; and (vii) failure to monitor, inspect and
15 approve of an adequate and effective clean up and containment
16 plan.

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

20 20. 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.
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SECOND CAUSE OF ACTION
GROSS NEGLIGENCE OF EXXON

21. 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.

22. 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.

23. 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.

24. 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.

25. 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

1 not possess the requisite degree of competence to command the
2 Exxon Valdez with reasonable prudence, skill or care, nor the
3 ability to transfer his duties to an uncertified third mate.

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

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

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

Defendant.

THIRD CAUSE OF ACTION
ALASKA ENVIRONMENTAL CONSERVATION ACT

29. 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.

30. 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.

31. 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.

32. 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.

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 10
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ACE 1287147

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701 FIFTH AVENUE
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(206) 621-7100

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

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

12 WHEREFORE plaintiff prays for a judgment against the
13 Defendants jointly and severally as follows:

14 1. Compensatory damages for present and future economic
15 loss, emotional suffering, distress, loss of property and
16 property rights in a sum to be proven at trial in excess of One
17 Million and No Hundredths Dollars (\$1,000,000.00).

18 2. Punitive and exemplary damages in a sum to be awarded
19 at trial in excess of Ten Million and No Hundredths Dollars
20 (\$10,000,000.00).

21 3. Judgment awarding Plaintiff costs, interest and
22 attorney's fees; and

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

1 DATED this 25th day of March, 1991 at Anchorage,
2 Alaska.

3 TUGMAN, CLARKE & RAY
4 Attorneys for Plaintiffs

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

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

10 By: Charles W. Ray, Jr. for
11 Jeffrey A. Smyth
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4 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
5 THIRD JUDICIAL DISTRICT AT ANCHORAGE
6

7 JOSEPH WADE BANTA,
8 Plaintiff,

9 vs.

10 EXXON CORPORATION, EXXON
11 SHIPPING COMPANY; ALYESKA
12 PIPELINE SERVICE COMPANY,
13 and the STATE OF ALASKA,
14 Defendants.

Filed in
STATE OF ALASKA, THIRD DISTRICT

MAR 26 1991

Clerk of the Trial Courts
By _____ Deput

15 Case No. 91-2467

16 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

17 Plaintiff, by and through his attorneys, Adolph & Smyth,
18 P.S. and Tugman, Clarke & Ray, states as follows:

19 1. Plaintiff Joseph W. Banta is a residents of Anchorage
20 Alaska, and is engaged in the business of commercial fishing.
21 Since, 1983 he has owned a permit in the Prince William Sound
22 area of Alaska. Prior to the oil spill incident referenced
23 herein below ("Spill"), the permit had a market value in excess
24 of \$150,000.00. Mr. Banta leases the vessel FAST BREAK, and
25 owns specialized herring gillnets and related equipment for use
26 in Prince William Sound valued in excess of \$40,000.00 prior

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 1
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ACE 1297138

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1 to the Spill. Mr. Banta regularly works as a crew member for
2 his father, Robert Banta. Mr. Banta investment in permits,
3 vessels, and equipment and activity as a crew member allows the
4 production of gross income from his fishing enterprise in
5 excess of \$100,000.00 per year.

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

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

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

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

Valdez terminal.

SUMMARY OF FACTS

6. 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.

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

8. The third mate, who was not certified for commanding the tanker through these waters, steered the vessel through the deep water southbound shipping lane of the channel due to earlier reports that it contained icebergs from a glacier that

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 3
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ACE 1287140

1 had broken to the northwest. The ship steered east into the
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

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 4
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1 subsequent attempts to remove additional oil from the damaged
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 Pipeline Company, Exxon, and the State of
9 Alaska owed a duty to have a proper and adequate emergency
10 containment plan for this area but failed to put any plan into
11 affect within a reasonable or practical time period to contain
12 the spilled oil. The Defendants additionally failed to act in
13 a timely or reasonable manner so as to mitigate the oil spill
14 and resulting damage.

15 13. Damages to the Plaintiff caused by this discharge of
16 millions of gallons of North Slope crude oil, include but are
17 not limited to damage to marine life, including herring,
18 salmon, ground bottom fish, kelp, shrimp and crab, relied upon
19 by Plaintiffs. Plaintiff's value in his fishing permit,
20 vessel, equipment, good will and future income has been
21 destroyed or greatly diminished as a result of Defendants'
22 actions.

23 **FIRST CAUSE OF ACTION**
NEGLIGENCE

24 14. Defendants Alyeska, Exxon, and the State of Alaska
25 had continuously reassured environmentalists and others,
26

1 including specifically Plaintiffs, at all times prior to the
2 accident that there existed an emergency clean-up plan by which
3 any major oil spill could be successfully contained with five
4 hours of occurrence. Yet a full day after the spill little had
5 been done to contain it other than an unsuccessful attempt to
6 spray chemical dispersants.

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

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

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

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 6
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ACE 1287143

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1 that their contingency clean-up plan, including the tactics
2 they developed thereunder were extremely limited in their
3 efficiency and use.

4 18. 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) processing inadequate
13 equipment, supplies and personnel for deployment in the ensuing
14 clean-up effort; and (vii) failure to monitor, inspect and
15 approve of an adequate and effective clean up and containment
16 plan.

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

20 20. 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.
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SECOND CAUSE OF ACTION
GROSS NEGLIGENCE OF EXXON

21. 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.

22. 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.

23. 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.

24. 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.

25. 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

1 not possess the requisite degree of competence to command the
2 Exxon Valdez with reasonable prudence, skill or care, nor the
3 ability to transfer his duties to an uncertified third mate.

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

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

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

1 Defendant.

2 THIRD CAUSE OF ACTION
3 ALASKA ENVIRONMENTAL CONSERVATION ACT

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

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

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

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

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES - 10
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1 33. Upon information and belief, upon discovery of the
2 entry of the oil in or upon the water, surface or subsurface
3 land of the State of Alaska, defendants delayed and/or failed
4 to begin operations to contain and clean up the hazardous
5 substance within a reasonable period of time.

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

12 WHEREFORE plaintiff prays for a judgment against the
13 Defendants jointly and severally as follows:

14 1. Compensatory damages for present and future economic
15 loss, emotional suffering, distress, loss of property and
16 property rights in a sum to be proven at trial in excess of One
17 Million and No Hundredths Dollars (\$1,000,000.00).

18 2. Punitive and exemplary damages in a sum to be awarded
19 at trial in excess of Ten Million and No Hundredths Dollars
20 (\$10,000,000.00).

21 3. Judgment awarding Plaintiff costs, interest and
22 attorney's fees; and

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

1 DATED this 25th day of March, 1991 at Anchorage,
2 Alaska.

3
4 TUGMAN, CLARKE & RAY
Attorneys for Plaintiffs

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

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

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

JS-44
(Rev. 07/86)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law except as provided by local rules of court. This form approved by the Judicial Conference of the United States in September 1974 is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

TRANS-ALASKA PIPELINE LIABILITY FUND

DEFENDANTS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF 3rd J.D.
(EXCEPT IN U.S. PLAINTIFF CASES) AlaskaCOUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Clifford J. Groh, Esq. (907) 272-6474
GROH, EGGERS & PRICE
2550 Denali Street - Suite 1700
Anchorage, AK 99503ATTORNEYS (IF KNOWN)
Wavley Shea, Esq. (271-5071)
UNITED STATES ATTORNEY
U. S. Department of Justice-U.S. Attorney's Off
Room C 252 - Box 9
Anchorage, AK 99513

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☒ 1 | ☐ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS NECESSARY

Trans-Alaska Pipeline Authorization Act, 43 U.S.C. §§ 1651, et seq.
Reimbursement for claims paid under TAPAA.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Motor Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 161 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders Suits ☐ 180 Other Contract ☐ 195 Consumer Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employees Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	☐ 362 Personal Injury—Med Malpractice ☐ 365 Personal Injury—Product Liability ☐ 368 Assault Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Food & Drug ☐ 630 Consumer Lease ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 730 Labor/Management Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Legislation ☐ 791 Emp't. Ret. Inv. Security Act	☐ 422 Appeal ☐ 28 USC 158 ☐ 423 Withdrawal ☐ 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patents ☐ 840 Trademarks SOCIAL SECURITY ☐ 861 HRA (1306) ☐ 862 Black Lung (923) ☐ 863 DIWC (406(g)) ☐ 864 DIWW (406(g)) ☐ 865 S&D Title XVI ☐ 865 RSI (408(g)) FEDERAL TAX SUITS ☐ 870 Taxes U.S. Plaintiff or Defendant ☐ 871 IRS—Third Party ☐ 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Bonds and Securities ☐ 450 Commerce/K.C. Rates/etc. ☐ 460 Discrimination ☐ 470 Recreational and Cultural Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Consumer Challenge 12 USC 3410 ☐ 891 Agricultural Acts ☐ 892 Bank/and Supervision Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☒ 990 Other Statutory Actions

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (Specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

PRESENTLY UNKNOWN

Check YES only if demanded in complaint:

JURY DEMAND:

☐ YES ☒ NOVIII. RELATED CASE(S) (See instructions):
IF ANY In re Exxon ValdezJUDGE HollandDOCKET NUMBER A 89-95 CIVDATE
March 22, 1991

SIGNATURE OF ATTORNEY OF RECORD

Clifford J. Groh

UNITED STATES DISTRICT COURT

ACE 1287058

11:25 AM
JWB

United States District Court

DISTRICT OF ALASKA

TRANS-ALASKA PIPELINE LIABILITY
FUND, a corporation

V.

UNITED STATES OF AMERICA

SUMMONS IN A CIVIL ACTION

CASE NUMBER: A 91- CIV

A 91-097 CIV

TO: (Name and Address of Defendant)

UNITED STATES OF AMERICA
c/o United States Attorney
Anchorage Federal Bldg. - Room C 252
222 West Seventh Avenue
Anchorage, AK 99513

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

GROH, EGGERS & PRICE
2550 Denali Street
Suite 1700
Anchorage, AK 99503

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

MAR 22 1991

Phyllis Rhodes

CLERK

DATE

M. GROHOL

BY DEPUTY CLERK

cc Barbara Hargan
as D.C. H. JWB

ACE 1287057

Rec'd 3.4.9
3-25-91
11:05 AM
JWB

Clifford J. Groh, Sr.
David A. Devine
GROH, EGGERS & PRICE
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Alan N. Braverman
John E. Arbab
WILMER, CUTLER & PICKERING
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Washington, DC 20037
(202) 663-6000

Attorneys for Plaintiff
Trans-Alaska Pipeline Liability Fund

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

TRANS-ALASKA PIPELINE
LIABILITY FUND, a corporation

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

A'91-097 CIV

Civil Action No. _____

COMPLAINT

- 2 -

COMPLAINTNature of the Case

1. The Trans-Alaska Pipeline Liability Fund (the "Fund"), by and through its attorneys, brings this action to obtain reimbursement for payments made by the Fund to claimants who may have incurred damages as a result of the spill of crude oil from the tanker EXXON VALDEZ on or about March 24, 1989. The claim set forth below is asserted for protective purposes in order to preserve the Fund's rights to reimbursement.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1333.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

Parties

4. The Fund is a non-profit corporate entity established by Congress in the Trans-Alaska Pipeline Authorization Act ("TAPAA"), 43 U.S.C. §§ 1651 et seq. The Fund is authorized to sue and be sued in its own name, 43 U.S.C. § 1653(c)(4), and is administered in accordance with the provisions

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- 3 -

of TAPAA and the regulations promulgated thereunder, 43 C.F.R. Part 29. Pursuant to the TAPAA regulations, 43 C.F.R. § 29.4(c), the Fund is a resident of, and has its principal place of business in, the state of Alaska.

5. The United States includes all departments and agencies thereof that had responsibility for aspects of the EXXON VALDEZ spill, and is made a party defendant to the action.

Fund's Claim for Reimbursement

6. The Fund realleges and incorporates by reference the allegations set forth in paragraphs 1 through 5.

7. On March 23, 1989 approximately 50 million gallons of Alaska North Slope crude oil was loaded aboard the tanker EXXON VALDEZ at the Trans-Alaska Pipeline Terminal in Valdez, Alaska. On the night of March 23-24, 1989 the tanker EXXON VALDEZ, while on her outward journey from the port of Valdez, ran aground on Bligh Reef in Prince William Sound and discharged approximately 11 million gallons of her cargo of crude oil into and upon the waters and adjacent shorelines of Prince William Sound, the Gulf of Alaska, and elsewhere. All of the bodies of water into which the oil was discharged are navigable waters of the United States.

8. In accordance with the provisions of TAPAA and the regulations promulgated thereunder, the Fund is strictly liable to pay valid claims under TAPAA arising out of the EXXON VALDEZ

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(907) 272-6474

- 4 -

spill (as "spill" is defined in the TAPAA regulations), in an amount not to exceed \$86 million (where, as on information and belief is the case here, an owner/operator has paid \$14 million in claims allowable under TAPAA).

9. Whenever the Fund shall have paid any such claim(s), the Fund is entitled to obtain reimbursement from others under TAPAA and such other rights as may be conferred by law. Under TAPAA, 43 U.S.C. § 1653(c)(8), and the applicable regulations, the Fund may obtain reimbursement for any such claim(s) paid where the damages involved were caused by the unseaworthiness of the vessel or by negligence. Reimbursement is available from any person or entity that would be liable to the claimant, under applicable state or federal law, for amounts paid by the Fund.

10. Numerous claims for damages have been filed with the Fund pursuant to TAPAA and this Court's Order No. 35 (December 14, 1990), and may be filed until the expiration of the limitations period. On information and belief, such claimants may have claims assertable against the United States as a result of, inter alia, action or inaction by the United States (acting through the Department of Transportation, the United States Coast Guard and other of its agencies, departments, and instrumentalities) in connection with the EXXON VALDEZ spill, which claims arise under applicable state and federal law including, inter alia, common law negligence, general maritime

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- 5 -

law, and/or the Suits in Admiralty Act, 46 U.S.C. app. § 741 et seq.

11. Numerous actions have been filed in this Court and elsewhere alleging that the discharge of crude oil from the tanker EXXON VALDEZ and/or the failure to remediate the spill was caused by the unseaworthiness of the vessel and/or negligence. In a Plea Agreement executed on March 13, 1991, Exxon Shipping Company agreed to plead guilty to an offense that requires, as an essential element, proof of negligence beyond a reasonable doubt. Thus, on information and belief and for purposes of 43 U.S.C. § 1643(c)(8), the discharge of crude from the EXXON VALDEZ on March 23-24, 1991 resulted from negligence and/or the discharge resulted from the unseaworthiness of the EXXON VALDEZ.

12. Accordingly, to the extent that the Fund pays claims under TAPAA to discharge its statutory liability under TAPAA, the Fund may be entitled to reimbursement from the United States (among others) for such payments.

WHEREFORE, the Fund prays that judgment be entered against the United States granting the Fund damages in the amount of payments made to claimants as described in this Complaint,

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ANCHORAGE, ALASKA 99503
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ACE 1287063

- 6 -

with interest; and for such other relief as the Court deems just and proper.

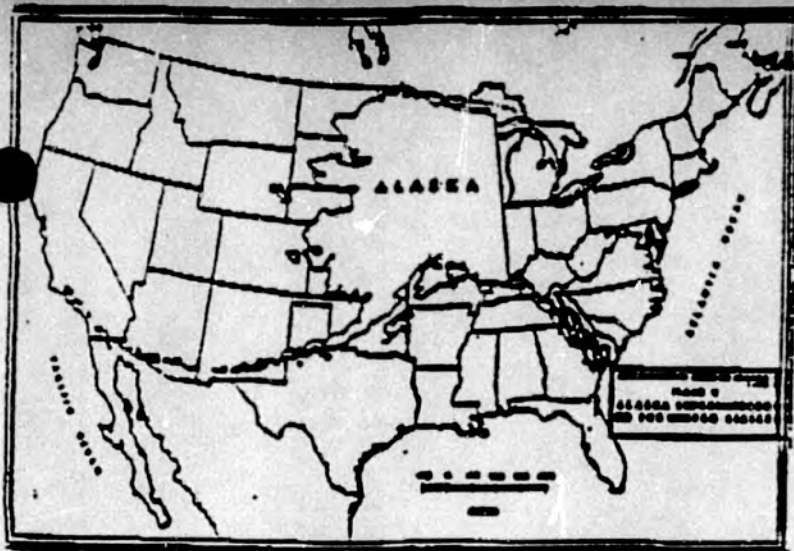
Clifford J. Groh, Sr.

Clifford J. Groh, Sr.
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The Trans-Alaska Pipeline
Liability Fund

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**U.S. Department of Justice****WEVLEY WM. SHEA****United States Attorney
District of Alaska at Anchorage**222 West 7th Avenue, #9
Anchorage, Alaska 99513Phone: (907) 271-5071
(FTS) 868-5071FAX: (907) 271-3224
(FTS) 868-3224**FACSIMILE TRANSMISSION**DATE: 3-26-91

TO:

Barbara Herron
Office of Atty Gen

FAX NUMBER:

278-7022

SENDER'S NAME:

Nickale Carter

SUBJECT MATTER:

Trans-Alaska Pipeline Liability Fund

INSTRUCTIONS:

THERE ARE 8 PAGES ATTACHED. IF ALL PAGES ARE NOT RECEIVED,
PLEASE NOTIFY SENDER, IMMEDIATELY.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Our Fax Number: (907) 278-7022

FAX TRANSMITTAL LETTER

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Charlie Cole

LOCATION: JNO

FAX NUMBER: 463-5295

TOTAL NUMBER OF PAGES 7 INCLUDING COVER LETTER.

COMMENTS: _____

DATE SENT: 03.26.91

TIME: 3:34

FROM: B. Heppner
Assistant Attorney General - Anchorage

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL:

bonita nipper or Mary Deaver at (907) 269-5274.

WALTER J. HICKEL, GOVERNOR

REPLY TO:

☒ 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☐ P.O. BOX K — STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

FILED

MAR 22 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By 222 Deputy

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Attorneys for Plaintiff
Trans-Alaska Pipeline Liability Fund

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

TRANS-ALASKA PIPELINE
LIABILITY FUND, a corporation

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

191 - 097 CIV

Civil Action No. _____

COMPLAINT

ACE 1477965 B

LAW OFFICES OF
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COMPLAINT

Nature of the Case

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with interest; and for such other relief as the Court deems just and proper.

Clifford J. Groh, Sr.

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PRESTON
THORGRIMSON
SHIDLER
GATES & ELLIS

ATTORNEYS AT LAW

SUITE 400
420 L STREET
ANCHORAGE, AK 99501-1937
TELEPHONE: (907) 276-1969
FACSIMILE: (907) 276-1365

MEMORANDUM

ACE
COPY

TO: Barbara Herman and Joe Donohue
FROM: Martha J. Dawson *ms*
RE: Complaints Filed
DATE: March 26, 1991

Attached is the complaint by the TAPS Fund against the USA, filed last Friday in Federal Court. We know that an additional nine suits were filed yesterday in Federal Court, but we do not know any of the parties. These suits have not yet been "logged in" by the court clerk and they refuse to let us even look at them until this is completed [which may not be until tomorrow]. We have a similar problem with the suits filed in State Court. Until they are logged in, we can't see them either. We will continue to monitor the situations in both courts closely and will obtain copies of each complaint filed as soon as possible.

ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK PRODUCT
ALASKA/CIVIL EXXON

ACE 1477965A

SCOMM

77:59



Alaska State Legislature

SENATOR RICHARD I. ELIASON

President of the Senate

P.O. Box V
Juneau, Alaska 99811
(907) 465-3755

QUESTIONS FOR ATTORNEY GENERAL CHARLES COLE
FROM THE SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT

APRIL 10, 1991

1. There has been some concern expressed over the State's filing of a claim against the oil spill liability fund established under the Trans-Alaska Pipeline Authorization Act, as our claim will reduce the amount that other claimants will be able to receive under this fund. Evidently Judge Holland had asked that the state and federal governments not file TAPL fund claims since they had other recourse. The press reported that the federal government has agreed to withdraw its claim if the proposed Exxon settlement is approved and if the fund promises to drop its claims against the government.

Why did you choose to file this claim on behalf of the state, and would you withdraw the state's claim if the settlement is approved or under any other conditions?

2. You mentioned in a House hearing that if the settlement is not approved and the state litigates under state law, the expenditure of money recovered might be dedicated to restoration work under the "public trust doctrine."

Would you please elaborate on that?

3. What affect, if any, do you believe the release of the scientific report by the federal government to the federal court will have? Does the release of that report make any difference in your willingness to release any of the state's data?

4. What is your response to the letter from Congressman George Miller to the federal court which states that Alyeska is being "let off the hook" by the settlement? Governor Hickel has issued a press release which states that the State will still pursue civil charges against Alyeska, but Miller's letter speaks to the criminal charges that he feels should be pursued. Please explain why criminal charges will not be pursued against Alyeska.

(This revised version of the March 29 list has been prepared for the committee's April 11 meeting with the Attorney General. In this version, the questions to which the AG responded at the previous meeting have simply been deleted).

SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT
SECOND LIST OF QUESTIONS FOR THE ATTORNEY GENERAL
(Submitted March 29, 1991)

General Settlement Questions:

7. The State gives up its right in the settlement to ever go after Exxon for the State's lost revenue from lost oil and gas taxes and royalties, corporate taxes, State's portion of salmon enhancement taxes, etc. How much did the State figure those to be worth (as it had already sued for all of those under the State suit it now gives up), and what were our chances of proving and recovering those? Will these particular claims be pursued against Alyeska?
8. What was the State's potential recovery/claim under the "dollars per gallon" state law (AS 46.03.758-759)? Please provide a copy of the letter from the State to Exxon, dated approximately April of 1989, requesting early settlement of that claim.
9. Please provide a copy of the reimbursement contract signed by Exxon with the State after the spill.
10. What will the Department of Law be seeking in appropriations to defend against third party lawsuits for FY 92 through FY 95? Please estimate and compare legal fees that will have to be paid by the State with and without the settlement.
11. What are specific examples of types of things that might be eligible for funding under the re-opener clause? How likely is it that anything would ever trigger the receipt of that money?

Questions regarding third party lawsuits:

13. What third party suits have been filed? (Please provide list of them). What is the total estimated dollar amount of the third party claims against the State resulting from the oil spill and clean-up? Are any of the plaintiffs seeking punitive damages?
14. Since the \$72 million is recovered under the CWA it can

only be reimbursement for funds already expended, and the \$50 million must be spent for restoration. With the remainder of the settlement money going to the Trust, there is no money to help the State pay for any third party liability or legal fees. Won't there ultimately be a net loss of millions of dollars to the State treasury?

15. Paragraphs 29 and 30 on page 23 of the Decree, do not appear to be specifically limited to lawsuits related to the oil spill. Was this a drafting error? If not changed, how likely is a court to interpret these paragraphs as applying only to lawsuits related to this spill?
16. How are third party suits affected by this settlement? Does the State have a responsibility to protect interests of groups of Alaskan citizens? If third parties need the State's help wouldn't they be affected by the Decree, even though the Decree says it does not affect third parties?
17. The MOA also prevents any of the three parties involved from ever challenging the authority of the others to enter into this agreement. If the Legislature disapproved of the Decree, and the Governor chose to go ahead with it anyway, would the Legislature as a part of "the State" be precluded from ever challenging the authority of the parties to enter into the agreement? Are the claims of municipalities, which are political subdivisions of the State, barred by the State's release of its claims?

Questions about how money can be spent:

TRUST FUND PORTION:

24. Please provide a list of specific examples of the kinds of expenditures that would be possible and likely with the use of the Trust Fund.
25. Could federal employees already working in Alaska (or elsewhere) and currently being paid out of the regular federal budget, end up being paid instead out of this fund?
26. What are "natural resource services"? (one of the things that fund money can be spent on). Please give specific examples of things that would qualify.
27. If assets are purchased or built with trust fund money, who will own them? How would those properties or facilities be administered, etc.?
28. Will all operating costs, travel, staff, per diem, etc. of the Trustees and the Trust come out of the Trust?

29. What mechanism will ensure public accountability? There appears to be no required budget review, annual oversight by elected officials, appropriation process, or audits of the trustees' expenditures.
30. Is there a limit on how much can be spent to reimburse Exxon for whatever clean-up work they do between the effective date of the Consent Decree and the date of final approval of the Consent Decree?

\$72 MILLION PORTION:

31. If the \$72 million to be paid to the State is over a five-year period, when does that start? Will the five payments be of equal amounts? Any interest charged on payments to bring the total up to a real level of \$72 million in today's dollars? Is there any requirement that the 470 Fund specifically be reimbursed?

SCOMM

77:60

The Coastal Coalition

Box 2424, Cordova, Alaska 99574
907-424-5509 FAX 907-424-5248

April 15, 1991

To: Senate Special Committee on the Exxon Settlement

Fr: Rick Steiner

Re: Revision to testimony given via teleconference on April 13

Friends,

Last Saturday in testimony before your committee I stated that, although the settlement was inadequate in light of the criminal negligence and natural resource damages involved, we should probably accept it in order to get on to the urgent needs of restoration. I also stated that to the extent that these monies were applied toward the acquisition of threatened habitat and scenic/recreational resources, I thought that our objectives for environmental recovery could be accomplished. We can't really directly restore most of the damaged resources, but we can protect the ecosystem from further stress in order to allow it to heal on its own. This is also the professed policy of the State of Alaska (see attached). The Governor's public statements, both before and after his election, strongly supported the notion of protecting the impacted region from further damage by purchasing timber rights from willing sellers, and establishing a sort of trans-jurisdictional marine conservation area within Prince William Sound.

However, the next day during the House's field hearing here in Cordova, statements by two of the State's Trustees left me doubting the administration's commitment to using the bulk of funds recovered from Exxon for a comprehensive program to acquire threatened resources. Attorney General Cole and Commissioner Rosier stated that they were not interested in the protection of large tracts of upland habitat, and that acquisitions should be limited to some buffer strips, etc.. This came as quite a shock to me and, I'm sure, many Cordovans who had been led to believe that this administration was seriously committed to the comprehensive protection of this region from further damage, particularly by timber harvesting.

The entire basis of my recommendation that the settlement be accepted was that the money was urgently needed this year in order to acquire and protect several immediately threatened resources of high value along the coastline of Prince William Sound, the southern Kenai Peninsula, Kachemak Bay, and Afognak Island. In light of the administration's lack of resolve toward this end, I no longer sense any urgency whatsoever toward resolving our litigation with Exxon. The main reason to settle now was so that the many immediately threatened resources within the region could be protected. This no longer seems to be the administration's intention. This saddens me very deeply because had the State and Federal governments been so committed, this settlement could have been made to work. It could have greatly aided the recovery of the impacted environment. But without this sort of resolve, I am quite certain that most of the money will just be wasted on meaningless initiatives, and we will have lost all ability to recover appropriate damages from Exxon and Alyeska. Unless we can get a commitment that assures the proper use of these monies, I regrettably urge you not to approve the settlement.

FROM: Prince William Sound and Gulf of Alaska;
Draft 1991 Restoration Work Plan, Note
(Signed by State & Feds).

4. Protection of Strategic Fish and Wildlife Habitats and Recreation Sites

Lead Agencies: Alaska Department of Fish and Game, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Department of Agriculture

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Need and Objectives:

The marine and intertidal habitats where most oil spill injuries occurred are ecologically linked to adjacent uplands. The water quality in streams and estuaries where salmon spawn depends on the adjacent uplands. Eagles nest and roost in large trees along the coasts and streams, and marbled murrelets nest in association with forested uplands. Harlequin ducks nest in riparian habitats and feed in the streams as well as in nearby intertidal and estuarine areas. Common and thick-billed murres and other seabirds nest on off-shore islands.

Tourism and recreation activities, such as sport fishing and camping, also depend on the quality and accessibility of shorelines and uplands. The diversity, productivity, and uses of intertidal and estuarine habitats, and of freshwater streams along the coast depend on the ecological integrity of the adjacent uplands. Continued productivity in the undamaged parts of the regional ecosystem, including strategic marine, intertidal, and estuarine habitats and adjacent uplands, may be necessary for the recovery of biological communities that were injured.

During the public scoping process the governments received many restoration suggestions that involved the protection and prime fish and wildlife habitats, recreation sites, and adjacent uplands. Suggested approaches to this protection included land acquisition and changes in management practices.

Land-use activities may occur in the oil spill area in 1991 or 1992. These activities may impact important habitats and recreation sites or slow the recovery of spill-injured resources.

The objective of this project is to identify and protect strategic wildlife and fisheries habitats and recreation sites and to prevent further potential environmental damages to resources injured by the Exxon Valdez oil spill. This project will be preceded by a technical support project to identify and evaluate potential properties which if publicly owned will contribute to this objective. Where acquisition of property

rights is determined to be appropriate, they will be acquired on a willing buyer/willing seller basis. Primary considerations in deciding which properties should be acquired during this project will include (1) the nature and immediacy of changes in use that may further affect resources injured by the oil spill and (2) the prospect that failure to act will foreclose restoration opportunities.

The Trustees have developed the following preliminary sequence of steps for use in identifying and protecting strategic fish and wildlife habitats and recreation sites:

1. Identification of key upland habitats that are linked to the recovery of injured resources or services by scientific data or other relevant information.

2. Characterization and evaluation of potential impacts from changed land use in relation to their effects on recovery of the ecosystem and its components; comparative evaluation of recovery strategies not involving acquisition of property rights (e.g., redesignation of land use classification), including an assessment of protection afforded by existing law, regulations, and other alternatives.

3. Evaluation of cost-effective strategies to achieve restoration objectives for key upland habitats, identified through steps one and two above. This would include evaluation of other restoration alternatives for these resource injuries.

4. Willing seller/buyer negotiations with private landowners for property rights.

5. Incorporation of acquired property rights into public management.

Habitat and recreation site acquisition proposals that meet the appropriate evaluation factors for restoration (see section 2) will be identified and assigned by priority for implementation in accordance with this preliminary five-step process and applicable State and Federal laws and regulations.

The geographic scope of the 1991 project will be the oil spill area. Subsequent to this initial effort, the

Trustees will continue to survey potential acquisitions, including acquisitions outside the spill area. Estimated Cost: To be determined

C. Funding for the 1991 Restoration Work Plan

Although it is expected that the responsible parties will pay for the costs of the damage assessment and restoration program, there is no certainty about the final amount and when such funds will be forthcoming. It is possible, therefore, that funds to carry out the 1991 Restoration Work Plan, including the proposed planning and implementation activities, will have to be advanced by the State and Federal governments. To date, those funds have not been committed or secured by either government.

D. References

The documents listed below provide additional information on damage assessment and restoration. They are available from the Oil Spill Public Information Center, The Simpson Building, 645 G Street, Anchorage, Alaska, 99501.

1. "The 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill, Volume I Assessment and Restoration Plan Appendices A, B, C."
2. "State/Federal Natural Resource Damage Assessment Plan for the Exxon Valdez Oil Spill," August 1989.
3. "Restoration Planning following the Exxon Valdez Oil Spill: August 1990 Progress Report."
4. "Restoration following the Exxon Valdez Oil Spill: Proceedings of the Public Symposium," July 1990.

Dated: February 26, 1991.

Lajuan S. Wilcher,

Assistant Administrator, Office of Water, U.S. Environmental Protection Agency.

Dated: February 25, 1991.

Charles E. Cole,

Attorney General, State of Alaska.

(PR Doc. 91-5014 Filed 2-28-91; 8:45 am)

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