

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 88672  
6940 HOUSE JUDICIARY

QUESTIONS AND ANSWERS REGARDING CSHB 196 (JUDICIARY)

1. DOESN'T EXISTING LAW ALREADY LIMIT THE LIABILITY OF CLEANUP CONTRACTORS?

AS 46.03.823 adopts the common law liability rule of simple negligence. For RACs who had no involvement in the spill itself, that is not a limitation on liability. Additionally, AS 46.03.823 provides that, under a number of poorly defined circumstances, the innocent RAC may be strictly liable for any damage caused during spill cleanup.

2. WHY SHOULD WE LIMIT THE LIABILITY OF OIL SPILL RACS?

Oil spill RACs are responding to an emergency in a crisis atmosphere. As a result, they are particularly vulnerable to lawsuits. Alaska has recognized this by limiting liability to "gross negligence" for people who respond to other kinds of emergencies -- including medical emergencies and disaster emergencies. AS 09.65.090-091.

The threat of lawsuits can deter people from becoming oil spill cleanup contractors, and can cause unnecessary delays by existing contractors in implementing spill response.

3. BUT DOESN'T ALASKA HAVE PLENTY OF OIL SPILL CLEANUP CAPABILITY EVEN UNDER EXISTING LAW?

Yes, a lot of people came forward to help cleanup the Exxon Valdez spill. However, this was after Exxon, one of the largest companies in the world, acknowledged responsibility for cleanup. This is not always the case.

Moreover, there are many areas of the State that do not have

spill cleanup capability. Last year, the legislature significantly increased oil spill cleanup capability requirements. The new law takes effect this June, and in most places in the state, oil terminals and shippers -- particularly small ones -- are expected to be unable to meet those requirements.

We have already seen Alaska's cleanup liability laws threatening the availability of necessary oil spill cleanup services in Prince William Sound. People have been reluctant to join the new Cook Inlet spill coop (CISPRI) because of potential liability. A Juneau contractor testified in the House Resources Committee that it was reconsidering its entry into the field because of liability concerns. The oil industry's new nationwide cleanup corporation -- MSRC -- has made it clear that it is uninterested in locating assets in any state that does not limit oil spill cleanup contractor liability.

Aggravating the problem is the fact that the United States Congress, and the legislatures of California, Hawaii, Washington, Texas, Florida, Virginia and Delaware have already adopted a "gross negligence" standard for oil spill cleanup contractors. A number of other states will be following suit shortly. Being among a shrinking minority of states with unlimited cleanup contractor liability, Alaska will find itself at an even greater competitive disadvantage in attracting necessary resources.

**4. ISN'T HB 196 A SPECIAL-INTEREST BAIL-OUT BILL TO HELP TESORO OBTAIN CLEANUP COVERAGE FROM ALYESKA?**

As a result of existing law, Alyeska has conditioned the availability of cleanup services for Tesoro's transportation of

crude oil through Prince William Sound on financial responsibility terms that Tesoro can't meet. Whether or not Alyeska's demands are reasonable or constitute an overreaction to the problem, the existing liability problem that prompted Alyeska's decision is real. The Alyeska situation presents the most current, dramatic illustration of this larger problem. It is, however, only a symptom of Alaska's unreasonable liability rules for oil spill cleanup contractors -- one that has already spread to other areas of the state, and will spread further as Alaska's new cleanup requirements take effect.

**5. ALYESKA HAS INDICATED THAT IT IS UNSATISFIED WITH CSHB 196 (JUDICIARY). WHY PASS THIS BILL IF IT WON'T FIX THE TESORO/CONOCO/ALYESKA PROBLEM?**

The goal of this legislation is not to "fix" a private dispute. However, the Alyeska/Tesoro situation was precipitated, in substantial part, by an unreasonable liability environment. That is a legitimate legislative concern. CSHB 196 (Judiciary) would define an oil spill RAC's liability in essentially the same way as new federal law, and the laws of our sister coastal states. Whether a particular RAC -- be it Alyeska or anyone else -- chooses to remain unreasonable is not something that should influence this basic public policy decision.

**6. CAN'T WE JUST PROVIDE THAT OIL SPILL RACS CAN BE INDEMNIFIED FOR THEIR SIMPLE NEGLIGENCE?**

Congress, and other states, have considered, and rejected, indemnification as an alternative approach to limited liability. Indemnification has three different problems:

1. When a crisis occurs, there will be no time to negotiate

an indemnification agreement. Indemnification has been used to limit the liability of hazardous chemicals cleanup contractors, since that type of cleanup is normally preceded by months of study and negotiation. However, since oil spill cleanup RACs operate in a different environment, the federal government and other states have realized that the indemnification approach doesn't work here;

2. Indemnification does not prevent a person from being sued. It merely promises that someone might pick up the bill for the lawsuit later. The point of limited liability legislation is to remove the threat of litigation itself; and

3. Under HB 196, the liability for the cleanup contractor's negligence is transferred to the spiller. However, since oil spill cleanup is often done under contract with the state, an indemnification approach would transfer that liability from the RAC to the public. The spiller, rather than the people of Alaska, should pay for the consequences of good faith cleanup actions.

**7. DOES THIS BILL "WEAKEN" ALASKA'S LIABILITY LAWS?**

With respect to the spiller, the bill strengthens Alaska law by making it clear that the spiller is responsible for damages caused by cleanup contractors.

With respect to the cleanup contractor, the legislation strengthens existing law by attaching consequences to the cleanup contractor's failure to substantially comply with a contingency plan which it authored, or which it agreed to follow by contract. Remember that, under existing law, the RAC is neither the holder

of, nor legally responsible for, the contents of the contingency plan. That responsibility falls on the spiller (i.e. the tanker operator). This positive aspect of the legislation was a principal reason why the Prince William Sound Regional Citizens Advisory Committee, and the Citizens Oversight Council, withdrew any objections to the legislation.

**8. TRANSFERRING THE LIABILITY TO THE SPILLER IS FINE, BUT WHAT HAPPENS IF THE SPILLER IS INSOLVENT, OR CAN'T BE FOUND?**

As a result of recent state and federal legislation, the possibility of inadequate compensation from the spiller has been minimized.

First, with respect to tankers, Alaska law subjects both the tanker owner/operator and the owner of the oil to unlimited strict liability for all damages. This will often result in two "deep pockets" in the event of a spill.

Moreover, all major oil handling activities in the state must post substantial financial responsibility under both federal and state law. These financial guarantees are accessible by any injured party, irrespective of the spiller's financial solvency.

Finally, there now exists a state fund to insure the adequacy of state cleanup funds. More importantly, Congress has now created a \$1 billion/incident federal fund which is available to anyone who cannot obtain satisfaction from the responsible parties themselves.

## **Simple Negligence:**

"A person is negligent if he does not use reasonable care. Negligence may result from action or inaction. A person is negligent if he does not act as a reasonably careful person would act under similar circumstances. In this case you [the jury] must decide whether or not defendant used reasonable care under the circumstances."

...Wilson v. State, 669 P.2d 1292, 1295 (Alaska 1983)

## **Gross Negligence:**

"[M]ost courts consider that 'gross negligence' falls short of a reckless disregard of consequences, and differs from ordinary negligence only in degree, and not in kind...[i]t signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and that it is, in other words, merely an extreme departure from the ordinary standard of care."

...Storrs v. Lutheran Hospitals, 661 P.2d 632, 634, n. 1, (Alaska 1983)



# Alaska State Legislature

Please enter into the record my testimony to the RESOURCE  
 committee name  
 committee on H.R. 176, dated 4-1-91  
 bill/subject

SIR  
 FROM LISTENING TO JUNEAU (Tel/Comm 4-10-91)  
 THE LAWYERS WANT TO CRIPPLE OR OUTRIGHT KILL  
 THE OIL INDUSTRY, AND THE OIL INDUSTRY  
 SUPPORT COMPANYS WITH THE INSURANCE LIABILITY  
 BONDING ECT.  
 THE FISH INDUSTRY AND OIL INDUSTRY HAVE  
 WORKED IN THE SAME BODY OF WATER FOR THE  
 LAST 23 YEARS I KNOW OF  
 WHY KILL ONE AND SAVE THE OTHER - WHY CAN'T  
WE HAVE BOTH

Signed: Orin King  
 Testifier  
FISHERMAN / CONSTRUCTION  
 Representing (Optional)  
BOX 8569 NIKISKI ALASKA 99635  
 Address  
(907) 776-8256  
 Phone No.

TELECOPY COVER SHEET

Kenai Peninsula Legislative Information Office

Phone - (907) 262-9364.

Fax - (907) 262-1881.

TO: Ken L.L.O. Please deliver to the Res Committee.

ATTR: Steve Rossman FAX: \_\_\_\_\_ PHONE: \_\_\_\_\_

FROM: \_\_\_\_\_ PHONE: \_\_\_\_\_

INSTRUCTIONS: Testimony on HB 196 hearing 4-10-91

PLEASE NOTE: ALL ODD NUMBERED PAGES WILL BE TRANSMITTED FIRST, THEN THE EVEN NUMBERED.

DATE: 4-11-91 TIME: 12:05 pm  
DISCARD ORIGINALS \_\_\_\_\_ HOLD FOR PICKUP \_\_\_\_\_

NUMBER OF PAGES (not counting the cover sheet): 5

TRANSMITTED BY: -AS



# Alaska State Legislature

Please enter into the record my testimony to the Resources  
 committee name  
 committee on H.B. 196, dated 4-10-91  
 bill/subject

*Here is a copy of our resolution  
 from the North Peninsula Chapter  
 of Commerce.*

*Thank you  
 Marie Becker*

Signed: Marie Becker  
 Testifier  
President North Pen. Chapter of Comm.  
 Representing (Optional)  
P.O. Box 8053 Nikiski, Ak. 99635  
 Address  
907 776 - 8369  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Resources  
 committee name  
 committee on H.B. 196, dated 4-10-89  
 bill/subject

I've watched Tesoro's growth over the years and know how important they are to the peninsula and the state. I'm concerned about environmental protection and think that the Spill Responder should commence actions immediately. I also understand that Tesoro has no other source of crude oil feed to their refinery than through shipping via Buerger Washington from Valdez to Nikiski and that Alaska is demanding \$1 Billion in Insurance or cash that Tesoro can't meet. IF Alaska does not change this requirement they (Tesoro) could be put out of business. I support a law that will treat Spill responders like other emergency responders. Tesoro has always made an effort to keep the area informed of their projects and projects. They have good credibility in our community and have a major impact on the economy here.

I strongly urge the Resources committee to pass this Bill and do everything possible to get it passed this session.

Signed: Masi Beeler  
 Testifier  
Public  
 Representing (Optional)  
P.O. Box 8005  
 Address  
Nikiski, Alaska 99635  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the RESOURCES  
committee name

committee on H.R. 196, dated 4-10-91  
bill/subject

I HAVE LIVED IN ALASKA FOR 24 YEARS. AND HAVE WORKED IN THE ROFINERIES, AS WELL AS OFF SHORE AT PRUDHOE BAY. AS A HAND, DECKMAN, AND SUPERVISOR. I AM RESPONSIBLE FOR UPWARDS OF 40 PEOPLE. TESTO HAS PROVIDED A SOURCE OF LIVING. FOR A GOOD PART OF THOSE PEOPLE AS WELL AS COMMUNITEE SERVICES THAT GO ABOVE & BEYOND ANY THING. EXPANDED. FROM ANY COMPANY. I DO NOT BELIEVE IN THIS BILLION DOLLAR DAILY. I THINK IT SHOULD BE TREATED AS AN EMERGENCY RESPONSE, WITH IT WOULD BE ONE HAVE THE STATE SUBSIDIZE IT I ALSO COMM. FISH. AND. WAS INVOLVED IN THE GRACE BAY SPILL, AND VALDER SPILL AS WELL. I HAVE 3.5 CHILDREN WHO LOVE THE OUT DOORS. I JUST THINK THAT THIS BILLION DOLLARS. FARE AUGHTO BE STOPPED. !!

Signed: [Signature] MICHAEL A. WICKER PROJ. ~  
Testifier

AKCO  
Representing (Optional)

PO. Box 3186 NIKISHKA AK 99645  
Address

736-5305 / 736-8739  
Phone No.

# North Peninsula Chamber of Commerce

P.O. Box 8053

Nikiski, Alaska 99635  
NORTH PENINSULA CHAMBER OF COMMERCE

(907) 776-8389

## RESOLUTION

### A RESOLUTION SUPPORTING OIL SPILL RESPONDER'S LIMITED IMMUNITY

WHEREAS, it is in the interest of the citizens of the State of Alaska and the Kenai Peninsula Borough to ensure that qualified, highly trained oil spill response organizations are in place and ready to respond to all spills; and

WHEREAS, the success of a spill response organization depends upon spill response contractors as well as countless fishermen, subcontractors, and other part-time professionals and specialists who must be prepared on an emergency basis to act swiftly and unhesitatingly in the face of adverse circumstances and often with far less than complete information; and

WHEREAS, these responders will be deterred from performing clean-up activities on behalf of the person or persons actually responsible for the spill if they are unduly exposed to unlimited liability in the course of their response activities;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE NORTH PENINSULA CHAMBER OF COMMERCE:

Section 1: That the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to the best of their abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and

Section 2: That the North Peninsula Chamber of Commerce supports and encourages Alaska State legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death; and



P.O. Box 8053

Nikiski, Alaska 99635

(907) 776

Section 3: That where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damages caused by responder's simple negligence.

ADOPTED BY THE NORTH PENINSULA CHAMBER OF COMMERCE ON THIS  
7<sup>th</sup> DAY OF March, 1991.

Maria Becker  
Maria Becker, President of THE  
NORTH PENINSULA CHAMBER OF COMMERCE



## **WHAT IS THE REGIONAL CITIZENS' ADVISORY COUNCIL (RCAC)?**

The Regional Citizens' Advisory Council (RCAC) was established in response to the Exxon Valdez oil spill to be a regional citizens' oversight organization. Alyeska Pipeline Service Company, the operator of the Trans Alaska Pipeline Terminal at Valdez, worked cooperatively with the citizens affected by the spill to form RCAC. Members include:

### **Communities in the affected area:**

- City of Cordova
- City of Homer
- City of Kodiak
- City of Seldovia
- City of Seward
- City of Valdez (2)
- Kodiak Island Borough
- Kenai Peninsula Borough
- Alaska State Chamber of Commerce
- Chugach Alaska Corporation
- Cordova District Fishermen United
- Kodiak Village Mayors Association
- National Wildlife Federation
- Prince William Sound Aquaculture Corp

## **HOW WAS RCAC ESTABLISHED?**

After the spill, the state required Alyeska to submit an aggressive new prevention and response (contingency) plan. The Alaska Oil Spill Commission had strongly recommended increased citizen involvement.

RCAC emerged from this process, incorporating as a nonprofit to insure independence. The resulting contract with Alyeska requires that it provide an annual budget of \$2 million for "as long as oil flows through the line" and ready access to all its facilities. The federal Oil Pollution Act of 1990 reinforced this action and specified terms.

## WHAT IS THE STRUCTURE OF RCAC?

A sixteen-member board and staff accomplishes its goals primarily through three working committees:

- *Port Operations and Vessel Traffic Systems (POVTS)*
- *Oil Spill Prevention and Response (OSPRC)*
- *Terminal Operations and Environmental Monitoring (TOEM)*

Additionally, a *Scientific Advisory Committee (SAC)*, comprised of scientists and technical experts, reviews research proposals and advises the working committees and the council on technical issues.

The contract specifies that RCAC committees will perform:

- *independent research and monitoring of oil spill prevention and response efforts*
- *tanker safety*
- *environmental effects of terminal operations.*

RCAC uses this information to develop recommendations for environmental safeguards to Alyeska and government regulatory agencies.

## THE RCAC IS INDEPENDENT OF ALYESKA

"The Council is willing to participate in the citizens' advisory process for the public and Alyeska on a permanent basis only on the conditions that it be truly independent from Alyeska and that Alyeska provide the Council with a permanent source of adequate funding." (Alyeska/RCAC contract)

## WHY IS RCAC NEEDED?

A major lesson learned from the Exxon Valdez spill is that oil transportation is a risky business, and the people who bear the burden of

that risk must be involved at all levels of decision making. No substitute exists for local knowledge experience and commitment. Often we have been adversaries working against one another rather than citizens' cooperatively seeking progress and improvements.

## **STATUS AND UPDATE ON COMMITTEE ACTIVITY:**

### **Oil Spill Prevention and Response Committee (OSPRC)**

- Alyeska C-Plan Comments: To date, the OSPRC has provided comments on Appendix A. Scenarios, Appendix D. Training, and Appendix E. Community and Fishing Vessel Involvement. The Council has approved all three sets of these comments.
- State 1991 Response Plan for Exxon Valdez Oil Spill: OSPRC drafted comments on this plan and the council approved them.
- State Oil and Hazardous Materials Substance Discharge Prevention and Contingency Plan Comments: The committee provided comments to DEC on their draft Prevention and Contingency Plan and hired two experts to comment also. DEC requested additional comments and assistance from OSPRC to refine the plan in greater detail due to the caliber of comments and demonstration of commitment.
- Transition Issue Resolution: OSPRC drafted a resolution expressing concern with the 72-hour transition and nearshore response issues for address by the council. This position is being used by RCAC representatives in the Alyeska Contingency Plan Steering Committee and its working groups.
- Alyeska Contingency Plan Steering Committee and Working Groups: OSPRC members are actively involved in the technical working groups under the Steering Committee. Members work with others to improve the contingency plan. OSPRC members sit on the dispersants/burning/bioremediation, oily waste and the nearshore protection, and beach cleanup working group.
- "Safe Spill" Literature Search and RFP: Members of the committee supported a literature search for "Safe Spill," a non-toxic, biodegradable crude oil substitute. Currently, the draft RFP is in the final stages of development and should be forwarded to the council by the March 21-23 meeting.

- **White Papers:** The committee is contracting for white papers and briefings in several key areas and has identified potential experts for papers on small-boat technology, risk assessment, and bioremediation. The ECO risk assessment contract, which analyzes the Alyeska Risk Assessment Document by Technica, is under way. The small-boat technology contract was recently finalized and should be completed by May.

### **Port Operations and Vessel Traffic Systems Committee (POVTS)**

- POVTS reviewed proposed changes in the Vessel Traffic System and a letter has been sent to the Coast Guard requesting information regarding its decision to utilize a dependent surveillance system in Prince William Sound.
- Vessel escort procedures have been reviewed, and letters have been sent to shipping agencies and pilots seeking their views on the desirability of having a tug attached during a portion of the transit. A subcommittee will address this issue. Its members have observed the operation of tractor and conventional tugs in Puget Sound March 1, 2, and 3 and will report its findings to the council.
- POVTS committee commissioned Jim Dickson, safety officer at the Sullom Voe Harbor Authority, Shetland Isles, to develop a document which identified oil spill prevention actions that are appropriate to Alaska and Prince William Sound. RCAC recently received the second draft of his report, and it is being circulated for public review through April 22, 1991.
- POVTS reviewed the proposed Coast Guard regulations pertaining to the requirement for double hulls on tankers drafted a position paper and submitted it to the council for its endorsement and support.

### **Terminal Operations and Environmental Monitoring Committee (TOEM)**

TOEM opened an office in Valdez last month. Current activities include:

- Setting up a series of public meetings in the communities of Prince William Sound to identify the public's environmental concerns about oil industry activities. These meetings will likely take place in late April or early May.

- Soliciting a critical analysis of the design and modeling of Alyeska's air monitoring program in the Valdez area.
- Hiring a consultant to complete an inventory of actual and potential sources of environmental pollution stemming from terminal and tanker operations. These issues will be catalogued in a computerized "matrix" for ready access.
- Drafting a request for proposals for a report on the likely fate and effects of hydrocarbons emitted into the air during tanker loading at the Alyeska terminal. If warranted, the next step would be an actual field study.
- The ultimate task of the committee is to physically monitor effects on the environment caused by oil industry activities in Prince William Sound. This comprehensive environmental monitoring program is a significant scientific undertaking that will require extensive field work over several years. Most of what the committee is doing now is in preparation for this task.

### **Scientific Advisory Committee (SAC)**

- SAC has established request for proposal procedures, completed a biological monitoring and socioeconomic modeling RFP for RCAC approval and has reviewed the OSPRC's "safe spill" RFP.

All committees meetings are open to the public, and in 1991 committees plan to hold their meetings in member communities to keep the public involved and informed.

# Arsonist hustled spill work

By CHARLES WOHLFORTH  
Daily News reporter

How did bankrupt arsonist Jim L. Robinson become an overnight millionaire leasing boats for the Exxon Valdez oil spill cleanup? Partly by supplying bribes and prostitutes to cleanup contracting and logistics officials, and by making a banker his partner, a Daily News investigation suggests.

Robinson is a twice-convicted felon currently out on bail for escape. Before the oil spill he didn't own any boats. But with the help of his friends in business, he collected more than \$3.19 million chartering vessels for the oil-spill cleanup.

A Daily News investigation shows how he may have gotten those breaks:

- A former Robinson employee said he saw Robinson hand an envelope stuffed with \$100 bills to L. Edward Atkinson, who was then logistics chief for Exxon's cleanup contractor, Veco Inc., and

Please see Page A-6, **ROBINSON**

Continued from Page A-1

is now Veco's North Slope operations manager. Atkinson says he never took any money from Robinson.

A tape recording of a phone call between Robinson and fired Exxon contract official Bill Alexander shows Robinson was still giving Alexander money and prostitutes and paying for his auto repairs even after Exxon began investigating the two for kickbacks.

And court documents and witnesses show First Bank of Ketchikan Vice President Richard D. "Butch" Olmstead, a partner with Robinson, quadrupled his own \$20,000 investment in six weeks after arranging First Bank loans to the partnership to buy vessels for the spill. Olmstead's boss at the bank said the loans were proper.

Robinson came out of the oil spill owning a dozen large boats, but when the spill's easy money ran out, he quickly lost his fortune. He filed for business and personal bankruptcy late last month, only 18 months after emerging from an earlier bankruptcy.

Creditors had already seized six of his vessels, and a seventh is detained in Homer by the U.S. Coast Guard as unseaworthy.

One of the vessels, the Red Jacket, was seized by a Seattle shipyard to which Robinson owes \$50,000, and is under detention by the Coast Guard for safety violations. The Red Jacket lost its crewmen on an uncharted Aleutian island under mysterious circumstances in November.

Robinson's business debts total more than \$1 million and Exxon is suing him for \$2.3 million over boat-charter contracts from the oil spill cleanup. Key Bank of Alaska, to which Robinson owes \$255,000, won a court order to seize his bank accounts last month. After serving the order on 11 banks and credit unions in Anchorage, bank officials turned up \$20, according to court documents. Alaska authorities are trying to return Robinson to prison to finish a sentence for arson and face new charges of escape. He is now out on \$10,000 bail awaiting an extradition hearing.

A FRIENDLY BAKKER

Robinson, now 48, arrived in Craig, Alaska, in 1981, within weeks of walking away from an Altona halfway house where he was serving a four-year sentence for arson of an unoccupied structure. His real name was Kenneth Harvey Robertson, but in Craig he renamed himself Jim Leroy Robinson and created a past as a well-to-do property owner in Altona. He married, opened a gas station in Craig, and made friends with local banker Butch Olmstead.

Robinson and Olmstead both moved to Ketchikan in the mid-1980s. Olmstead moved up the bank hierarchy. Robinson opened a new garage. But in 1988 Robinson declared bankruptcy to escape debts from his Craig gas station and his treatment for bladder cancer.

Robinson stayed in bankruptcy until 1989, when he and Olmstead started chartering boats for the oil-spill cleanup.

Robinson's garage sat on pilings on the Ketchikan waterfront next door to the Arctic Bar, where he hung out and did some of his business. Former bartender Phillip Webb said that, when the Exxon Valdez spill hit, the talk of the bar was the money to be made chartering vessels to Exxon. He suggested getting involved in Robinson.

Within a month, Robinson, Olmstead and state ferry worker Barry Manning made an informal partnership agreement to buy boats for the spill, according to affidavits they later signed. Robinson hired Webb as his field innkeeper.

A partnership agreement said Olmstead put in \$20,000, Robinson \$50,000, and Manning \$12,000, with each partner entitled to an equal share of the profits. The rest of the money to buy the boats — at least \$183,000 — came as loans from Ketchikan's First Bank, where Olmstead was a branch manager and vice president. The loans, which the three partners were equally responsible to repay, were arranged by Olmstead.

Olmstead wouldn't comment for this article, but First Bank President William Moran Jr. said the loans were proper. He said Olmstead did not try to hide his involvement in the partnership and was not involved in underwriting the loans.

No law prevents a bank from lending money to its officers as long as they are treated like any other borrower, said Willis Kirkpatrick, director of the state Division of Banking and Securities. Moran would not provide the amounts or terms of the loans.

The first boat the partnership bought was the Double Eagle, a 63-foot wooden vessel. In a deposition last year, Robinson said the boat's purchase price of \$185,000 was paid for with a six-month bank loan. He said Olmstead took care of financing on vessels the partnership bought, although he didn't say specifically that Olmstead arranged the Double Eagle loan.

But Webb said he first met Olmstead the month after oil spill when the banker came to look at the Double Eagle, which was tied up outside the bar. Webb said Robinson told



Jim Robinson in a 1986 photo.

him Olmstead was "surveying" the vessel for a loan. Webb said he later saw Olmstead in Valdez, where he videotaped the Double Eagle. Webb said he assumed that also was related to the loans.

According to Robinson's payroll records, which Webb kept, Webb left for Valdez aboard the Double Eagle on April 29, 1989, and worked there for the next 13 days. For supplies and equipment, he had Olmstead's Gold Mastercard, until its credit limit ran out.

GETTING CONTRACTS

Fishermen and other boat owners all over Alaska were eager to get contracts on the Exxon cleanup. Charter rates were high enough to pay for most boats after a few months' work.

Among the first Robinson boats hired was the Double Eagle. In the first week of May, Webb said, Robinson set up a meeting with Atkinson of Veco, Exxon's main contractor on the cleanup. Atkinson was in charge of logistics in Valdez and prepared vessel contract requests, he told the Daily News in a recent interview. Atkinson now manages North Slope operations for Veco.

The night before the meeting, Robinson and Webb saw Atkinson in the bar at the Westmark Hotel in Valdez, Webb said. They sat with Atkinson for more than two hours, he said, while Robinson offered Atkinson money and women for help with his bills. Atkinson told Robinson to come to his office the next day at noon, Webb said, and bring \$5,000.

Webb said, in interviews and a signed statement, he was present at the meeting about 1 p.m. the next day. Atkinson told them he was talking to someone else from the south about hiring boats, but was keeping his promise to talk to Robinson first. Webb said, Robinson gave Atkinson an unsealed envelope containing a sheet of \$100 bills; Atkinson thumbed through the money and put it in a drawer, Webb said. He said Robinson told him the envelope contained \$5,000.

Atkinson then ordered an assistant to make refitting the Double Eagle a top priority. In one day a team of carpenters and electricians set up the boat to sleep 11 and installed new appliances and a new television and video recorder, Webb said. Atkinson said he remembered that Veco chartered the Double Eagle to act as a berthing vessel for mechanics, and that Veco installed plywood bunks, but he didn't specifically remember any meetings with Robinson and said he wasn't paid off.

"In looking at records, I'm sure you would find paperwork where I had signed to put that on charter," he said. But he said he never took any money or gifts. "I don't come that cheap, and I haven't yet heard a figure mentioned from anybody for anything that would make me consider spending time in jail. And, like I say, I was not offered any money, bribes or anything during the spill."

Exxon is suing Robinson for kickbacks to its Valdez contract manager, Bill Alexander, who worked with Atkinson in a small office on pilings over the Valdez small-boat harbor. Alexander has said the practice of taking gifts from boat owners was commonplace. He refused an interview for this story through his wife, but she said he was only Exxon's scapegoat. Exxon attorney Eric Sanders said

Alexander handed bribes as taking bribes, but Sanders would not say who they were. He said Exxon was unable to substantiate Alexander's allegations, and the company does not know of any bribes paid to Veco officials. After the Daily News asked about Webb's allegations, Exxon searched its documents on the Double Eagle for connections between Robinson and Atkinson and found none, Sanders said. Exxon has never interviewed Webb.

The Double Eagle's contract for the cleanup began May 9, 1989, according to court documents, and ended Sept. 30, 1989, according to Sanders. The charter rate at midsummer was \$3,000 a day for the Double Eagle, according to an Exxon contract filed in Ketchikan court in an unrelated case. At that rate, Robinson would have taken in more than \$10,000 from the Double Eagle alone that summer.

At the meeting where the payment was made, Webb said, Atkinson and Robinson also discussed the charter of an old 160-foot wooden ferry named the Defiance, which had been involved in a business venture with Robinson before, said he bought the boat with Robinson for \$14,000, with the two splitting the purchase price evenly. Atkinson said he entered into the deal after Robinson showed him a 90-day, \$840,000 contract for the vessel.

But the Defiance was in poor shape, and Alquist said he moved it in the middle of the night to avoid the notice of the Coast Guard in Ketchikan. When he arrived in Seward, Coast Guard officials there were waiting and declared the Defiance unfit for habitation. It sat idle for six weeks, never did any spill work, and finally sank unattended at anchor in Resurrection Bay, near Alquist and his brother, Robert Alquist.

But Sanders, the Exxon attorney, said Robinson was paid for having the Defiance on charter for almost 60 days. An Exxon document lists the charter at \$3,000 a day. Atkinson of Veco said the Defiance was unseaworthy and Veco never chartered it. But he said he might have met with Robinson about the vessel.

At one point during the summer of 1989, Robinson had 12 vessels on contract to Exxon for a total of \$24,000 a day, contracts show. Altogether, Exxon and Veco paid Robinson \$3.19 million during 1989, according to tax records.

Olmstead, who put \$20,000 into the partnership, agreed to sell out to Robinson six weeks after the partnership was officially formed — for \$98,500, not including any profits that had already been distributed, according to court documents. Out of that sum came about \$3,000 Olmstead owed on his Gold Mastercard for spill supplies.

Robinson later bought out Manning, too, but kept working to keep his boats on contract through the winter and into the summer of 1990. In late summer of 1989, he made an agreement with Exxon that set his charter rates for the next year at 1989 rates or higher.

EASY COME, EASY GO

By the end of 1989, Robinson's problems were already starting. Exxon had begun investigating the relationship between Robinson and Alexander after receiving tips from unhappy Robinson employees.

Allen Alquist says tape recordings of phone calls between Robinson and Alexander show Robinson was still giving Alexander money and prostitutes and paying for his auto repairs even after Exxon began investigating the two for kickbacks.

They also Alexander checks, and delivered the money promises if blond pros Alexander Anchorage

"I'll get it says," "I'm still coming," "Toll Set says."

Robinson he won't go track on it you know nothing, it create you too much it

Robinson Rodriguez, Ketchikan 1990, said I bar to get bank in Bl en it sayin raw ear.

Robinson 1990, Exxon sued Rol kickbacks.

Without business over the a logging en but he sta in early licensing known to wages.

The ps November equipment the Red unhabitab get water

The Inc Coast Co in Dutch the resp? Seattle I, detained list of as

The Re Unimar Robinson holding c company

The br supplier, Wash, if Jacket, s Robinson of an al Jacket's

Novembe Key E \$255,000 Jan. 4 It won co Robinson Unpaid

wags h Orchard. The 8 been re detentio Robinson it that n L. Jerry

get the officials docking delinqu repair i The I in tax r fillings. Robi-

from a bond. I week. He di the Dal a thre

# Arsonist got a share of spill cleanup work



Jim Robinson in a 1988 photo

Jim Olmstead was "surveying" the vessel for a loan. Webb said he later saw Olmstead in Valdez, where he videotaped the Double Eagle. Webb said he assumed that also was related to the loans.

According to Robinson's payroll records, which Webb kept, Webb left for Valdez aboard the Double Eagle on April 29, 1989, and worked there for the next 43 days. For supplies and equipment, he had Olmstead's Gold Mastercard, until his credit limit ran out.

### GETTING CONTRACTS

Fishermen and other boat owners all over Alaska were eager to get contracts on the Exxon cleanup. Charter rates were high enough to pay for most boats after a few months' work.

Among the first Robinson boats hired was the Double Eagle.

In the first week of May, Webb said, Robinson set up a meeting with Atkinson of Veco, Exxon's main contractor on the cleanup. Atkinson was in charge of logistics in Valdez and prepared vessel contract requests, he told the Daily News in a recent interview. Atkinson now manages North Slope operations for Veco.

The night before the meeting, Robinson and Webb saw Atkinson in the bar at the Westmark Hotel in Valdez, Webb said. They sat with Atkinson for more than two hours, he said, while Robinson offered Atkinson money and women for help with his boats. Atkinson told Robinson to come to his office the next day at noon, Webb said, and to bring \$5,000.

Webb said, in interviews and a signed statement, he was present at the meeting, about 1 p.m. the next day. Atkinson told them he was talking to someone else from southeast Alaska about hiring boats, but was keeping his promise to talk to Robinson first, Webb said. Robinson gave Atkinson an unsealed envelope containing a check of \$100 bills; Atkinson thumbed through the money and put it in a drawer, Webb said. He said Robinson told him the envelope contained \$5,000.

Atkinson then ordered an assistant to make refilling the Double Eagle a top priority. In one day a team of carpenters and electricians set up the boat to sleep 11 and installed new appliances and a new television and video recorder, Webb said.

Atkinson said he remembered that Veco chartered the Double Eagle to act as a berthing vessel for mechanics, and that Veco installed plywood bunks, but he didn't specifically remember any meetings with Robinson and said he wasn't paid off.

"In looking at records, I'm sure you would find paperwork where I had signed to put that on charter," he said. But he said he never took any money or gifts. "I don't come that cheap, and I haven't yet heard a figure mentioned from anybody for anything that would make me consider spending time in jail. And, like I say, I was not offered any money, bribes or anything during the spill."

Exxon is suing Robinson for kickbacks to his Valdez contract manager, Bill Alexander, who worked with Atkinson in a small office on piling over the Valdez small-boat harbor. Alexander has said the practice of taking gifts from boat owners was commonplace. He refused an interview for this story through his wife, but she said he was only Exxon's scopegate.

Exxon attorney Eric Sanders said

Alexander named others as taking bribes, but Sanders would not say who they were. He said Exxon was unable to substantiate Alexander's allegations, and the company does not know of any bribes paid to Veco officials. After the Daily News asked about Webb's allegations, Exxon searched its documents on the Double Eagle for connections between Robinson and Atkinson and found none, Sanders said. Exxon has never interviewed Webb.

The Double Eagle's contract for the cleanup began May 9, 1989, according to court documents, and ended Sept. 30, 1989, according to Sanders. The charter rate at midsummer was \$3,000 a day for the Double Eagle, according to an Exxon contract filed in Ketchikan court in an unrelated case. At that rate, Robinson would have taken in more than \$20,000 from the Double Eagle alone that summer.

At the meeting where the payment was made, Webb said, Atkinson and Robinson also discussed the charter of an old 160-foot wooden ferry named the Defiance.

Allen Almquist, a Ketchikan fisherman who had been involved in a business venture with Robinson before, said he bought the boat with Robinson for \$14,000, with the boat spilling the purchase price evenly. Almquist said he entered into the deal after Robinson showed him a 90-day, \$840,000 contract for the vessel.

But the Defiance was in poor shape, and Almquist said he moved it in the middle of the night to avoid the notice of the Coast Guard in Ketchikan. When he arrived in Seward, Coast Guard officials there were waiting and declared the Defiance unfit for habitation. It sat idle for six weeks, never did any spill work, and finally sank unattended in an anchor in Resurrection Bay, said Almquist and his brother, Robert Almquist.

But Sanders, the Exxon attorney, said Robinson was paid for having the Defiance on charter for almost 60 days. An Exxon document lists the charter at \$3,000 a day. Atkinson of Veco said the Defiance was unusable and Veco never chartered it. But he said he might have met with Robinson about the vessel.

At one point during the summer of 1989, Robinson had 12 vessels on contract to Exxon for a total of \$24,000 a day, contracts show. Altogether, Exxon and Veco paid Robinson \$3.19 million during 1989, according to tax records.

Olmstead, who put \$20,000 into the partnership, agreed to sell out to Robinson — six weeks after the partnership was officially formed — for \$98,500, not including any profits that had already been distributed, according to court documents. Out of that sum came about \$5,000 Olmstead owed on his Gold Mastercard for spill supplies.

Robinson later bought out Manning, too, but kept working to keep his boats on contract through the winter and into the summer of 1990. In late summer of 1989, he made an agreement with Exxon that set his charter rates for the next year at 1989 rates or higher.

### EASY COME, EASY GO

By the end of 1989, Robinson's problems were already starting. Exxon had begun investigating the relationship between Robinson and Alexander after receiving tips from unhappy Robinson employees.

Allen Almquist gave the Daily News a tape recording of Robinson talking on the telephone with Exxon's Alexander. Almquist said he didn't know where the tape came from because he received it in the mail in an unmarked envelope.

Almquist said he recognized both voices on the tape. Exxon attorney Sanders also confirmed they are Alexander and Robinson.

The tape wasn't dated, but on it the two men discuss Exxon's investigation of Alexander. "Between Robinson and Alexander, between frequent absences, discuss the need to be careful and avoid being seen together. Robinson mentions a coast; Sanders said Exxon's investigation found that Robinson attempted to give a coast to Alexander's wife."

Alexander's voice is high and strident when he says, "I don't know what is going to happen, you know? I don't know."

They also discuss money. Robinson asks Alexander if he wants cash or cashier's checks, and how he wants the payment delivered. Alexander finally asks to have the money hand-delivered. Robinson also promises to send Alexander a 20-year-old blind prostitute and says he is having Alexander's truck worked on in Anchorage shops.

"I'll set the bread up for you," Robinson says. "They can't say nothing about a girl coming to your house, can they?" "Tell her to give me a call," Alexander says.

Robinson also tries to assure Alexander he won't get him in any more trouble. "S—, you know, just forget it, there's no track on that deal," Robinson says. "Ah, you know, like I said, I wouldn't do nothing, there's nothing that I would do to create you any problems. It's just you doing too much to, for me."

Robinson's step-daughter, Nikki Rodriguez, who handled finances in his Ketchikan office during part of 1989 and 1990, said he called her that winter and told her to get a \$5,000 cashier's check from the bank in Bill Alexander's name, with a note on it saying it was to sponsor Alexander's race car.

Robinson never did any spill work in 1990. Exxon fired Alexander that April, then waived Robinson's June for paying kickbacks.

Without the Exxon work, Robinson's business soon crumbled. His vessels had jobs over the summer hauling construction and logging equipment between Alaska towns, but started missing payments on his bills in early 1990. He ignored state and licensing regulations and in Homer was known for not paying crewmen their full wages.

The problems came to a head last November. On a trip to get construction equipment in the Aleutian village of Atka, the Red Jacket put two men ashore on uninhabited Segum Island, purportedly to get water. They disappeared.

The incident brought the attention of the Coast Guard, which detained the Red Jacket in Dutch Harbor for safety violations. When the vessel was released, Robinson took it to Seattle for repairs. There it was again detained by the Coast Guard for a laundry list of safety problems.

The Red Jacket went into drydock at the Unimar International shipyard on Lake Union. Unimar stopped work when Robinson's tab reached \$50,000 and is now holding the vessel in drydock, according to company attorney Ruth Nelson.

The boat's Dutch Harbor and Kenai fuel supplier, Orlahore Systems of Bellevue, Wash., filed a \$20,000 lien against the Red Jacket, said vice president Jim Dohler. And Robinson didn't pay \$32,000 for the charter of an airplane that searched for the Red Jacket's missing cargo and crewmen in November, his bankruptcy filing says.

Key Bank, which has loaned Robinson \$255,000 in the last 10 months — including a Jan. 4 loan secured by the Red Jacket — won court orders to seize five other Robinson boats in Seward and Homer. Unpaid crewmen demanding \$25,000 in wages had the 94-foot Keaton seized in Port Orchard, Wash., early this year.

The 40-foot Karen, built in 1977, hasn't been seized by creditors, but is under detention by the Coast Guard because Robinson sent it to sea twice with a hole in it that may have made it unseaworthy, said Lt. Jerry Wilson. He said Robinson couldn't get the boat repaired because Homer harbor officials, who said they are owed \$7,800 in docking fees that are more than a year delinquent, wouldn't allow Robinson to use repair facilities until they were paid.

The IRS is after Robinson, too, for \$28,000 in tax penalties, according to his bankruptcy filing.

Robinson was in Anchorage recently, free from a Seattle jail on a \$10,000 property bond. He is due back in court there next week.

He didn't return several phone calls from the Daily News to his Anchorage office over a three-week period.

many  
it be-  
start  
a won-  
well  
even  
a for  
cases  
fresh-  
out  
own  
a at-  
ship  
loss  
or  
using  
pill's  
t his  
normal  
with  
specy,  
d his  
loner  
they  
was  
which  
inten-  
tina-  
on my-  
then  
a \$2.5  
to the  
a, to  
court  
month,  
and  
fields  
rents.  
turn  
e for  
He it  
trad-  
Alex-  
away  
to he  
mison  
come  
ut in  
'chule-  
to-ain  
riled,  
man-  
stead,  
ed to  
stead  
mison  
from  
at for  
1989,  
tering  
in the  
Are-  
me of  
Webb  
d hill,  
to be  
"sup-  
d and  
le an  
e buy  
divis  
th as  
stead  
Man-  
led to  
of the  
\$5,000  
First  
rang-  
h the  
file to  
cost-  
titan  
said  
volved  
d in-  
nding  
y are  
Willis  
leinn  
id not  
know,  
I say  
vessel.  
d the  
as paid  
he said  
e vessels  
he didn't  
aged the  
lead the  
er came  
was filed  
son told

## RAC Liability: Summary of Recent Legislation

State	No Liability for Negligence	Time Limit for Limited Liability	Liability for Gross Negligence	Liability for Intentional Misconduct	Liability for Personal Injury or Wrongful Death	Liability for Not Following Nat. Contingency Plan or Lawful Authority	Responsible Party Liable for RAC Negligence
HB 196	X		X	X	X	X	X
Federal	X		X§	X	X	X	X
California	X†*	X	X	X	X	X	X
Delaware	X		X	X	X		X
Florida	X		X	X	X#	X	X
Georgia	X		X	X	X	X	X
Hawaii	X		X	X	X#	X	
Miss.	X		X	X	X	X	X
Texas	X		X	X	X#	X	
Virginia	X		X§	X	X	X	X
Wash.	X†		X	X	X#		

† Good faith requirement.

§ Act of God, act of war, and act of third party are defenses.

\* Must be certified by State.

# Personal Injury and wrongful death not specifically mentioned.

HOUSE AMENDMENT TO SENATE BILL NO. 2987

To the Secretary of the Senate:

This is to notify you that the House of Representatives adopted the following amendment(s):

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

8.           SECTION 1. This act may be cited as the Mississippi  
9.   Liability of Persons Responding to Oil Spills Act.
10.           SECTION 2. For the purposes of this act the term:
11.                   (a) "Damages" means damages of any kind for which  
12.   liability may exist under the laws of this state resulting from,  
13.   arising out of, or related to the discharge or threatened  
14.   discharge of oil;
15.                   (b) "Discharge" means any emission (other than natural  
16.   seepage), intentional or unintentional, and includes, but is not  
17.   limited to, spilling, leaking, pumping, pouring, emitting,  
18.   emptying or dumping;
19.                   (c) "Federal on-scene coordinator" means the federal  
20.   official predesignated by the U.S. Environmental Protection Agency  
21.   or the U.S. Coast Guard to coordinate and direct federal responses  
22.   under subpart D, or the official designated by the lead agency to  
23.   coordinate and direct removal under subpart E, of the National  
24.   Contingency Plan;
25.                   (d) "National Contingency Plan" means the National  
26.   Contingency Plan prepared and published under Section 311(d) of  
27.   the Federal Water Pollution Control Act (33 U.S.C. 1321(d)), as

28. amended by the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104  
29. Stat. 484 (1990);

30. (e) "Oil" means oil of any kind or in any form,  
31. including, but not limited to, petroleum, fuel oil, sludge, oil  
32. refuse and oil mixed with wastes other than dredged spoil; but  
33. does not include petroleum, including crude oil or any fraction  
34. thereof, which is specifically listed or designated as a hazardous  
35. substance under subparagraphs (A) through (F) of Section 101(14)  
36. of the Comprehensive Environmental Response, Compensation, and  
37. Liability Act (42 U.S.C. 9601) and which is subject to the  
38. provisions of that act;

39. (f) "Person" means an individual, corporation,  
40. partnership, association, state, municipality, commission, or  
41. political subdivision of a state, or any interstate body;

42. (g) "Removal costs" means the costs of removal that are  
43. incurred after a discharge of oil has occurred or, in any case in  
44. which there is a substantial threat of a discharge of oil, the  
45. costs to prevent, minimize or mitigate oil pollution from such an  
46. incident;

47. (h) "Responsible party" means a responsible party as  
48. defined under Section 1001 of the Oil Pollution Act of 1990, Pub.  
49. L. No. 101-380, 104 Stat. 484 (1990).

50. SECTION 3. (1) Notwithstanding any other provision of law,  
51. a person is not liable for removal costs or damages which result  
52. from actions taken or omitted to be taken in the course of  
53. rendering care, assistance or advice consistent with the National  
54. Contingency Plan or as otherwise directed by the federal on-scene  
55. coordinator or by the state official with responsibility for oil  
56. spill response.

57. (2) Subsection (1) does not apply:

58. (a) To a responsible party;

59. (b) To personal injury or wrongful death; or

60. (c) If the person is grossly negligent or engages in  
61. willful misconduct.

62. (3) A responsible party is liable for any removal costs and  
63. damages that another person is relieved of under subsection (1).

64. (4) Nothing in this section affects the liability of a  
65. responsible party for oil spill response under state law.

66. SECTION 4. The Commission on Environmental Quality shall  
67. promulgate any necessary rules and regulations in order to carry  
68. out the provisions of this act.

69. SECTION 5. This act shall take effect and be in force from  
70. and after its passage.

Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:

1. AN ACT TO LIMIT THE LIABILITY OF PERSONS RESPONDING TO AN OIL
2. SPILL OR THREAT OF AN OIL SPILL IN A MANNER CONSISTENT WITH THE
3. NATIONAL CONTINGENCY PLAN AND THE OIL POLLUTION ACT OF 1990; TO
4. REQUIRE THE COMMISSION ON ENVIRONMENTAL QUALITY TO PROMULGATE
5. RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ACT; AND
6. FOR RELATED PURPOSES.

CHARLES J. JACKSON, JR.  
Clerk of the House of Representatives

By: Senators Bilbo, Hall

To: Environment Prot, Cons  
and Water Res

SENATE BILL NO. 2987  
(As Passed the Senate)

1. AN ACT TO LIMIT THE LIABILITY OF PERSONS RESPONDING TO AN OIL  
2. SPILL OR THREAT OF AN OIL SPILL IN A MANNER CONSISTENT WITH THE  
3. NATIONAL CONTINGENCY PLAN AND THE OIL POLLUTION ACT OF 1990; AND  
4. FOR RELATED PURPOSES.

5. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6. SECTION 1. This act may be cited as the Mississippi  
7. Liability of Persons Responding to Oil Spills Act.

8. SECTION 2. For the purposes of this act the term:

9. (a) "Damages" means damages of any kind for which  
10. liability may exist under the laws of this state resulting from,  
11. arising out of, or related to the discharge of threatened  
12. discharge of oil;

13. (b) "Discharge" means any emission (other than natural  
14. seepage), intentional or unintentional, and includes, but is not  
15. limited to, spilling, leaking, pumping, pouring, emitting,  
16. emptying or dumping;

17. (c) "Federal on-scene coordinator" means the federal  
18. official predesignated by the U.S. Environmental Protection Agency  
19. or the U.S. Coast Guard to coordinate and direct federal responses  
20. under subpart D, or the official designated by the lead agency to  
21. coordinate and direct removal under subpart E, of the National  
22. Contingency Plan;

23. (d) "National Contingency Plan" means the National  
24. Contingency Plan prepared and published under Section 311(d) of  
25. the Federal Water Pollution Control Act (33 U.S.C. 1321(d)), as  
26. amended by the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104  
27. Stat. 484 (1990);

28. (e) "Oil" means oil of any kind or in any form,  
29. including, but not limited to, petroleum, fuel oil, sludge, oil  
30. refuse and oil mixed with wastes other than dredged spoil; but  
31. does not include petroleum, including crude oil or any fraction  
32. thereof, which is specifically listed or designated as a hazardous  
33. substance under subparagraphs (A) through (F) of Section 101(14)  
34. of the Comprehensive Environmental Response, Compensation, and  
35. Liability Act (42 U.S.C. 9601) and which is subject to the  
36. provisions of this act;

37. (f) "Person" means an individual, corporation,  
38. partnership, association, state, municipality, commission, or  
39. political subdivision of a state, or any interstate body;

40. (g) "Removal costs" means the costs of removal that are  
41. incurred after a discharge of oil has occurred or, in any case in  
42. which there is a substantial threat of a discharge of oil, the  
43. costs to prevent, minimize or mitigate oil pollution from such an  
44. incident;

45. (h) "Responsible party" means a responsible party as  
46. defined under Section 1001 of the Oil Pollution Act of 1990, Pub.  
47. L. No. 101-380, 104 Stat. 484 (1990).

48. SECTION 3. (1) Notwithstanding any other provision of law,  
49. a person is not liable for removal costs or damages which result  
50. from actions taken or omitted to be taken in the course of  
51. rendering care, assistance or advice consistent with the National  
52. Contingency Plan or as otherwise directed by the federal on-scene  
53. coordinator or by the state official with responsibility for oil  
54. spill response.

55. (2) Subsection (1) does not apply:

56. (a) To a responsible party;

57. (b) To personal injury or wrongful death; or

58. (c) If the person is grossly negligent or engages in  
59. willful misconduct.

60. (3) A responsible party is liable for any removal costs and  
61. damages that another person is relieved of under subsection (1).

62. (4) Nothing in this section affects the liability of a  
63. responsible party for oil spill response under state law.

64. SECTION 4. This act shall take effect and be in force from  
65. and after its passage.

SENATE BILL 179

By: Senator Coleman of the 1st, Allen of the 2nd and Hammill of the 3rd

AS PASSED

## AN ACT

To amend Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources, so as to provide for limited immunity from liability for persons responding to an oil spill or threat of an oil spill; to provide for definitions; to provide for applicability; to provide for certain liability regarding removal costs and damages; to provide for liability with respect to certain responsible parties; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources, is amended by adding at the end thereof a new article, to be designated Article 7, to read as follows:

## "ARTICLE 7

12-5-500. As used in this article, the term:

(1) 'Damages' means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(2) 'Discharge' means any emission, other than natural seepage, whether intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(3) 'Federal on-scene coordinator' means the federal official designated by the United States Environmental Protection Agency or the United States Coast Guard to coordinate and direct federal responses under subpart D or the official designated by the lead agency to coordinate and direct removal under subpart E of the National Contingency Plan.

(4) 'National Contingency Plan' means the National Contingency Plan prepared and published under Section 311(i) of the Federal Water Pollution Control Act, 31 U.S.C. 1321(d), as amended by the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

(5) 'Oil' means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(6) 'Person' means an individual, corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

(7) 'Removal costs' means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

(8) 'Responsible party' means a responsible party as defined under Section 1001 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

12-5-501. (a) Notwithstanding any other provision of law, a person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by any state official with responsibility for oil spill response.

(b) Subsection (a) of this Code section shall not apply:

- (1) To a responsible party;
- (2) With respect to personal injury or wrongful death;
- (3) If the person is grossly negligent or engages in willful misconduct; or
- (4) To a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.).

(c) A responsible party shall be liable for any removal costs and damages that another person is relieved of under subsection (a) of this Code section.

(d) Nothing in this Code section shall affect the liability of a responsible party for oil spill response under any applicable state law."

Section 2. All laws and parts of laws in conflict with this Act are repealed.

**THE FOLLOWING DOCUMENT(S)  
MAY NOT FILM LEGIBLY BECAUSE OF  
THE POOR QUALITY OF THE ORIGINAL**

A BILL TO BE ENTITLED

AN ACT

relating to the prevention of, and the damage, cleanup, costs, and liability for, all spills in coastal waters of the state; providing for adequate response to spills of oil and other pollutants in coastal waters; levying a coastal protection fee; creating the coastal protection fund; amending licensing requirements for pilots in state waters; making an appropriation; and providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title II, Natural Resources Code, is amended by adding Chapter 40 to read as follows:

CHAPTER 40. OIL SPILL PREVENTION AND RESPONSE ACT OF 1991

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. SHORT TITLE. This chapter may be cited as the Oil Spill Prevention and Response Act of 1991.

Sec. 40.002. POLICY. (a) The legislature finds and declares that the preservation of the Texas coast is a matter of the highest urgency and priority. It is the policy of this state to keep its coastal waters, rivers, lakes, estuaries, marshes, tidal flats, beaches, and public lands as pristine as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests. Spills, discharges, and escapes of crude oil, petroleum, and other such substances resulting from their handling,

SB 14

storage, and transportation, particularly by vessel, threaten the coastal environment of the state, public and private property on the coast, and the well-being of those deriving their livelihood from marine-related activity in coastal waters. The hazards posed by the handling, storage, and transportation of these substances in the coastal waters are contrary to the paramount interests of the state. These state interests outweigh the economic burdens imposed under this chapter.

(b) The legislature intends by this chapter to exercise the police power of the state to protect its coastal waters and adjacent shorelines by conferring upon the Commissioner of the General Land Office the power to:

(1) prevent spills and discharges of oil by requiring and monitoring preventive measures and response planning;

(2) provide for prompt response to abate and contain spills and discharges of oil and ensure the removal and cleanup of pollution from such spills and discharges;

(3) provide for development of a state coastal discharge contingency plan through planning and coordination with the Texas Water Commission to protect coastal waters from all types of spills and discharges; and

(4) administer a fund to provide for funding these activities and to guarantee the prompt payment of certain reasonable claims resulting from spills and discharges of oil.

(c) The legislature declares that it is the intent of this

001001 11:11

002

1/6

1 coastal waters or at any other place where, unless controlled or  
 2 removed, they may drain, seep, run, or otherwise enter coastal  
 3 waters.

4 (8) "Discharge cleanup organization" means any group  
 5 or cooperative, incorporated or unincorporated, of owners or  
 6 operators of vessels or terminal facilities and any other persons  
 7 who may elect to join, organized for the purpose of abating,  
 8 containing, removing, or cleaning up pollution from discharges of  
 9 oil or rescuing and rehabilitating wildlife or other natural  
 10 resources through cooperative efforts and shared equipment,  
 11 personnel, or facilities. Any third-party cleanup contractor,  
 12 industry cooperative, volunteer organization, or local government  
 13 shall be recognized as a discharge cleanup organization, provided  
 14 the commissioner properly certifies the organization.

15 (9) "Federal fund" means the Federal Oil Spill  
 16 Liability Trust Fund.

17 (10) "Fund" means the coastal protection fund.

18 (11) "Harmful quantity" means that quantity of oil the  
 19 discharge of which is determined by the commissioner to be harmful  
 20 to the environment or public health or welfare or may reasonably be  
 21 anticipated to present an imminent and substantial danger to the  
 22 public health or welfare.

23 (12) "Hazardous substance" means any substance, except  
 24 oil, designated as hazardous by the Environmental Protection Agency  
 25 pursuant to the Comprehensive Environmental Response, Compensation,

1 and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and  
 2 designated by the Texas Water Commission.

3 (13) "Marine terminal" means any terminal facility  
 4 used for transferring crude oil to or from vessels.

5 (14) "National contingency plan" means the plan  
 6 prepared and published, as revised from time to time, under the  
 7 Federal Water Pollution Control Act (33 U.S.C. Sec. 1311 et seq.)  
 8 and the Comprehensive Environmental Response, Compensation, and  
 9 Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

10 (15) "Natural resources" means all land, fish,  
 11 shellfish, fowl, wildlife, biota, vegetation, air, water, and other  
 12 similar resources owned, managed, held in trust, regulated, or  
 13 otherwise controlled by the state.

14 (16) "Oil" means oil of any kind or in any form,  
 15 including but not limited to crude oil, petroleum, fuel oil,  
 16 sludge, oil refuse, and oil mixed with wastes other than graded  
 17 soil, but does not include petroleum, including crude oil or any  
 18 fraction thereof, which is specifically listed or designated as a  
 19 hazardous substance under Subparagraphs (A) through (F) of Section  
 20 101(17) of the Comprehensive Environmental Response, Compensation,  
 21 and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which  
 22 is subject to the provisions of that Act, and which is so  
 23 designated by the Texas Water Commission.

24 (17) "Owner" or "operator" means

25 (A) any person owning, operating, or chartering

1 National contingency plan, in responding to the discharge the  
 2 commissioner or the state-designated on-scene coordinator shall to  
 3 the greatest extent practicable act in accordance with the national  
 4 contingency plan and cooperate with the federal on-scene  
 5 coordinator or other federal agency or official exercising  
 6 authority under the national contingency plan.

7 (c) The commissioner or the state-designated on-scene  
 8 coordinator may act independently to the extent no federal on-scene  
 9 coordinator or authorized agency or official of the federal  
 10 government has assumed federal authority to oversee, coordinate,  
 11 and direct response operations.

12 Sec. 40.103. ASSISTANCE AND COMPENSATION. (a) Subject to  
 13 the commissioner's authority under this chapter, any person or  
 14 discharge cleanup organization may assist in abating, containing,  
 15 or removing pollution from any unauthorized discharge of oil. This  
 16 chapter does not affect any rights not inconsistent with this  
 17 chapter that any such person or organization may have against any  
 18 third party whose acts or omissions caused or contributed to the  
 19 unauthorized discharge.

20 (b) Any person or discharge cleanup organization that  
 21 renders assistance in abating, containing, or removing pollution  
 22 from any unauthorized discharge of oil may receive compensation  
 23 from the fund for response costs, provided the commissioner  
 24 approves compensation prior to the assistance being rendered.  
 25 Prior approval for compensation may be provided for in the state

1 coastal discharge contingency plan. The commissioner, on petition  
 2 and for good cause shown, may waive the prior approval  
 3 prerequisite.

4 Sec. 40.101. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS.

5 (a) No action taken by any person or discharge cleanup  
 6 organization to abate, contain, or remove pollution from an  
 7 unauthorized discharge of oil, whether such action is taken  
 8 voluntarily, or pursuant to the national contingency plan or state  
 9 coastal discharge contingency plan, or pursuant to a discharge  
 10 response plan required under this chapter, or pursuant to the  
 11 request of an authorized federal or state official, or pursuant to  
 12 the request of the responsible person, shall be construed as an  
 13 admission of responsibility or liability for the discharge.

14 (b) No person or discharge cleanup organization that  
 15 voluntarily, or pursuant to the national contingency plan or the  
 16 state coastal discharge contingency plan, or pursuant to any  
 17 discharge response plan required under this chapter, or pursuant  
 18 to the request of an authorized federal or state official, or  
 19 pursuant to the request of the responsible person, renders  
 20 assistance or advice in abating, containing, or removing pollution  
 21 from an unauthorized discharge of oil is liable for response costs,  
 22 damages, or civil penalties resulting from acts or omissions  
 23 committed in rendering such assistance or advice, except for acts  
 24 or omissions of gross negligence or willful misconduct.

25 Sec. 40.105. EQUIPMENT AND PERSONNEL. The commissioner may

1 establish and maintain equipment and personnel at places the  
 2 commissioner determines may be necessary to facilitate response  
 3 operations.

4 Sec. 49.106. REFUSAL TO COOPERATE. (a) If a responsible  
 5 person, or a person or discharge cleanup organization under the  
 6 control of a responsible person, participating in operations to  
 7 abate, contain, and remove pollution from any unauthorized  
 8 discharge of oil, reasonably believes that any directions or orders  
 9 given by the commissioner or the commissioner's designee under this  
 10 chapter will unreasonably endanger public safety or natural  
 11 resources or conflict with directions or orders of the federal  
 12 on-scene coordinator, the party may refuse to comply with the  
 13 direction or orders.

14 (b) The party shall state at the time of refusal the reason  
 15 or reasons why the party refuses to comply. The party shall give  
 16 the commissioner written notice of the reason or the reasons for  
 17 the refusal within 48 hours of the refusal.

18 Sec. 49.107. PRESUMPTION OF NATURAL RESOURCES DAMAGES.

19 (a) In any action to recover natural resources damages, the amount  
 20 of damages established by the commissioner in conjunction with  
 21 state-designated natural resources trustees, according to the  
 22 procedures and plans contained in the state coastal discharge  
 23 contingency plan shall create a rebuttable presumption of the  
 24 amount of such damages.

25 (b) The commissioner may establish the rebuttable

1 presumption by submitting to the court a written report of the  
 2 amounts computed or expended according to the state plan. The  
 3 written report shall be admissible in evidence.

4 Sec. 49.108. DERELICT VESSELS AND STRUCTURES. (a) A person  
 5 may not leave, abandon, or maintain any structure or vessel  
 6 involved in an actual or threatened unauthorized discharge of oil  
 7 on public or private lands or at a public or private port or dock,  
 8 in a wrecked, derelict, or substantially dismantled condition,  
 9 without the consent of the commissioner.

10 (b) The commissioner may remove any vessel or structure  
 11 described in Subsection (a) of this section and may recover the  
 12 cost of removal from the owner or operator of the vessel or  
 13 structure.

14 Sec. 49.109. REGISTRATION OF TERMINAL FACILITIES. (a) A  
 15 person may not operate or cause to be operated a terminal facility  
 16 without a discharge prevention and response certificate issued  
 17 pursuant to rules promulgated under this chapter.

18 (b) As a condition precedent to the issuance or renewal  
 19 of a certificate, the commissioner shall require satisfactory  
 20 evidence that:

21 (A) the applicant has implemented a discharge  
 22 prevention and response plan consistent with state and federal  
 23 plans and regulations for prevention of unauthorized discharges of  
 24 oil and abatement, containment, and removal of pollution when such  
 25 discharge occurs; and

except for willful misconduct,  
EQUIPMENT AND PERSONNEL. The commissioner may

1. any action brought by the state, a county, city, or district.  
 2. (h) Except as provided in Section 1431.2 of the Civil  
 3. Code, liability under this section shall be joint and  
 4. several. However, this section does not bar a cause of  
 5. action that a responsible party has or would have, by  
 6. reason of subrogation or otherwise, against any person.

7. (i) This section does not apply to claims for damages  
 8. for personal injury or wrongful death, and does not limit  
 9. the right of any person to bring an action for personal  
 10. injury or wrongful death under any provision or principle  
 11. of law.

12. (j) Any payments made by a responsible party to  
 13. cover liabilities arising from a discharge of oil, whether  
 14. under this division or any other provision of federal, state,  
 15. or local law, shall not be charged against any royalties,  
 16. rents, or net profits owed to the United States, the state,  
 17. or any other public entity.

18. (k) Any action which a private or public individual or  
 19. entity may have against a responsible party under this  
 20. section may be brought directly by the individual or  
 21. entity or by the state on behalf of the individual or entity.  
 22. However, the state shall not pursue any action on behalf  
 23. of a private individual or entity which requests the state  
 24. not to pursue that action.

25. (l) For the purposes of this section, "vessels" means  
 26. vessels as defined in Section 21 of the Harbors and  
 27. Navigation Code.

28. 8670.56.6. (a) (1) Except as provided in subdivisions  
 29. (b) and (d), and subject to subdivision (c), no person,  
 30. including, but not limited to, an oil spill cooperative, its  
 31. agents, subcontractors, or employees, shall be liable  
 32. under this chapter or the laws of the state to any person  
 33. for costs, damages, or other claims or expenses as a result  
 34. of actions taken or omitted in good faith in the course of  
 35. rendering care, assistance, or advice in accordance with  
 36. the National Contingency Plan, the state oil spill  
 37. contingency plan, or at the direction of the administrator,  
 38. onsite coordinator, or the Coast Guard in response to a  
 39. spill or threatened spill of oil.

40. (2) The qualified immunity under this section shall

1. not apply to any oil spill response action which is  
 2. inconsistent with the directions of the Coast Guard, the  
 3. director, or, in the absence of overriding directions of the  
 4. Coast Guard or the director, is inconsistent with  
 5. applicable contingency plans implemented under this  
 6. division.

7. (3) Nothing in this section shall, in any manner or  
 8. respect, affect or impair any cause of action against or any  
 9. liability of any person or persons responsible for the spill,  
 10. for the discharged oil, or for the tanker, barge, terminal,  
 11. pipeline, or facility from which the oil was discharged.  
 12. The responsible person or persons shall remain liable for  
 13. any and all damages arising from the discharge, including  
 14. damages arising from improperly carried out response  
 15. efforts, as otherwise provided by law.

16. (4) The qualified immunity under this section shall  
 17. only apply to response activity during the first 60 days  
 18. after the spill for persons whose primary purpose is the  
 19. business of responding to oil spills and who are regularly  
 20. engaged in the business of responding to oil spills. No  
 21. immunity shall attach to response activity after  
 22. expiration of the first 60 days for the parties described  
 23. herein.

24. (5) The qualified immunity under this section shall  
 25. attach, without the limitation described in paragraph (4),  
 26. to those responding parties that do not "regularly  
 27. engage" in the oil spill response business and to persons  
 28. and entities who are primarily dedicated to the  
 29. preservation and rehabilitation of wildlife. There shall be  
 30. no limitation on the duration of the immunity.

31. (b) Nothing in this section shall, in any manner or  
 32. respect, affect or impair any cause of action against or any  
 33. liability of any party or parties responsible for the spill, or  
 34. the responsible party's agents, employees, and  
 35. subcontractors, for the discharged oil, or for the tanker,  
 36. terminal, pipeline, or marine facility from which the oil  
 37. was discharged.

38. (c) The responsible party or parties shall:

39. (1) Notwithstanding subdivision (b) or (h) of Section  
 40. 8670.56.5, or any other provision of law, be strictly and

1. jointly and severally liable for all damages arising  
 2. pursuant to subdivision (g) of Section 8670.36.5 from the  
 3. response efforts of its agents, employees, subcontractors,  
 4. or an oil spill cooperative of which it is a member or with  
 5. which it has a contract or other arrangement for cleanup  
 6. of its oil spills, unless it would have a defense to the  
 7. original spill.

8. (2) Remain strictly liable for any and all damages  
 9. arising from the response efforts of a person other than  
 10. a person specified in paragraph (1).

11. (d) Nothing in this section shall immunize a  
 12. cooperative or any other person from liability for acts of  
 13. gross negligence or willful misconduct in connection with  
 14. the cleanup of a spill.

15. (e) This section shall not apply to any action for  
 16. personal injury or wrongful death.

17. (f) As used in this section, a "cooperative" means an  
 18. organization of private persons which is established for  
 19. the primary purpose and activity of preventing or  
 20. rendering care, assistance, or advice in response to a spill  
 21. or threatened spills of oil.

22. (g) Except for the responsible party, membership in a  
 23. cooperative shall not, in and of itself, be grounds for  
 24. liability resulting from cleanup activities of the  
 25. cooperative.

26. (h) For purposes of this section, there shall be a  
 27. rebuttable presumption that an act or omission described  
 28. in subdivision (a) was taken in good faith.

29. (i) In any situation in which immunity is granted  
 30. pursuant to subdivision (a) and a responsible party is not  
 31. liable, is not liable for noneconomic damages caused by  
 32. another, or is partially or totally insolvent, the fund  
 33. provided for in Article 7 (commencing with Section  
 34. 8670.46) shall, in accordance with its terms, reimburse  
 35. claims of any injured party for which a person who is  
 36. granted immunity pursuant to this section would  
 37. otherwise be liable.

38. (j) The immunity granted pursuant to subdivision (a)  
 39. shall apply to a cooperative only if that cooperative has  
 40. contracted with the administrator to respond to oil spills

1. in accordance with the state oil spill contingency plan  
 2. and this chapter. The administrator shall enter into  
 3. contract with any cooperative that is qualified and that  
 4. offers to contract, on mutually acceptable terms, in  
 5. accordance with the state oil spill contingency plan and  
 6. this chapter.

7. (j) (1) The immunity granted by this section shall  
 8. only apply to response efforts that are undertaken after  
 9. the administrator certifies that contracts with qualified  
 10. and responsible persons are in place to ensure an  
 11. adequate and expeditious response to any foreseeable oil  
 12. spill that may occur in marine waters for which the  
 13. responsible party (A) cannot be identified or (B) is  
 14. unable or unwilling to respond, contain, and cleanup the  
 15. oil spill in an adequate and timely manner. In negotiating  
 16. these contracts, the administrator shall, to the maximum  
 17. extent practicable, procure the services of persons who  
 18. are willing to respond to oil spills with no, or lesser,  
 19. immunity than that conferred by this section, but, in no  
 20. event, a greater immunity. The administrator shall make  
 21. the certification required by this subdivision on an annual  
 22. basis. Upon certification, the immunity conferred by this  
 23. section shall apply to all response efforts undertaken  
 24. during the calendar year to which the certification  
 25. applies. In the absence of the certification required by  
 26. this subdivision, the immunity conferred by this section  
 27. shall not attach to any response efforts undertaken by any  
 28. person in marine waters.

29. (2) In addition to the authority to negotiate contracts  
 30. described in (1) above, the administrator shall also be  
 31. authorized to negotiate and enter into indemnificatio  
 32. agreements with qualified and financially responsible  
 33. persons to respond to oil spills that may occur in marine  
 34. waters for which the responsible party (A) cannot be  
 35. identified or (B) is unable or unwilling to respond,  
 36. contain, and cleanup the oil spill in an adequate and  
 37. timely manner.

38. (3) The administrator may indemnify response  
 39. contractors for (A) all damages payable by means of  
 40. settlement or judgment that arise from response efforts

1 to which the immunity conferred by this section would  
 2 otherwise apply, and (B) reasonably related legal costs  
 3 and expenses incurred by the responder, provided that  
 4 indemnification shall only apply to response efforts  
 5 undertaken after the expiration of any immunity that  
 6 may exist as the result of the contract negotiations  
 7 authorized in this subdivision. In negotiating these  
 8 contracts, the administrator shall, to the maximum extent  
 9 practicable, procure the services of persons who are  
 10 willing to respond to oil spills with no, or as little, right to  
 11 indemnification as possible. All indemnification shall be  
 12 paid by the administrator from the Oil Spill Response  
 13 Trust Fund.

14 (k) (1) With regard to a person who is regularly  
 15 engaged in the business of responding to oil spills, the  
 16 immunity conferred by this section shall not apply to any  
 17 response efforts by that person that occur later than 60  
 18 days after the first day the person's response efforts  
 19 commence.

20 (2) Notwithstanding the limitation contained in  
 21 paragraph (1), the administrator may, upon making all  
 22 the following findings, extend the period of time, not to  
 23 exceed 30 days, during which the immunity conferred by  
 24 this section applies to response efforts:

25 (A) Due to inadequate or incomplete containment  
 26 and stabilization, there exists a substantial probability  
 27 that the size of the spill will significantly expand and (i)  
 28 threaten previously uncontaminated marine or land  
 29 resources, (ii) threaten already contaminated marine or  
 30 land resources with substantial additional contamination,  
 31 or (iii) otherwise endanger the public safety or welfare.

32 (B) The remaining work is of such a difficult or  
 33 perilous nature that extension of the immunity is clearly  
 34 in the public interest.

35 (C) No other qualified and financially responsible  
 36 contractor is prepared and willing to complete the  
 37 response effort in the absence of the immunity, or a lesser  
 38 immunity, as negotiated by contract.

39 (3) The administrator shall provide five days' notice of  
 40 his or her proposed decision to either extend, or not

1 extend, the immunity conferred by this section.  
 2 Interested parties shall be given an opportunity to  
 3 present oral and written evidence at an informal hearing.  
 4 In making his or her proposed decision, the administrator  
 5 shall specifically seek and consider the advice of the  
 6 relevant Coast Guard representative. The administrator's  
 7 decision to not extend the immunity shall be announced  
 8 at least 10 working days before the expiration of the  
 9 immunity to provide persons an opportunity to terminate  
 10 their response efforts as contemplated by paragraph (4).

11 (4) No person or their agents, subcontractors, or  
 12 employees shall incur any liability under this chapter or  
 13 any other provision of law solely as a result of that  
 14 person's decision to terminate their response efforts  
 15 because of the expiration of the immunity conferred by  
 16 this section. A person's decision to terminate response  
 17 efforts because of the expiration of the immunity  
 18 conferred by this section shall not in any manner impair,  
 19 curtail, limit, or otherwise affect the immunity conferred  
 20 on the person with regard to the person's response efforts  
 21 undertaken during the period of time the immunity  
 22 applied to such response efforts.

23 (5) The immunity granted under this section shall  
 24 attach, without the limitation contained in this  
 25 subdivision, to the response efforts of persons who are not  
 26 regularly engaged in the business of responding to oil  
 27 spills. Persons who are not regularly engaged in the  
 28 business of responding to oil spills includes, but is not  
 29 limited to, (A) persons who are primarily dedicated to  
 30 the preservation and rehabilitation of wildlife and (B)  
 31 persons who derive their livelihood primarily from  
 32 fishing.

33 (1) As used in this section, "response efforts" means  
 34 rendering care, assistance, or advice in accordance with  
 35 the National Contingency Plan, the state oil spill  
 36 contingency plan, or at the direction of the administrator,  
 37 onsite coordinator, or the Coast Guard in response to a  
 38 spill or threatened spill of oil.

Citation  
DE LEGIS 5 (1991)  
1991 Delaware Laws Ch. 5 (S.B. 5)

Rank(R)  
R 1 OF 1

Database Mode  
DE-LEGIS P

DELAWARE 1991 SESSION LAW SERVICE  
FIRST SESSION OF THE 136TH GENERAL ASSEMBLY  
COPR. (C) WEST 1991 No Claim to Orig. Govt. Works

Additions and deletions are not identified in this document.

Ch. 5  
S.B. No. 5  
HAZARDOUS WASTE CLEANUP--LIABILITY OF THIRD PARTIES

AN ACT TO AMEND TITLE 10, DELAWARE CODE, RELATING TO LIMITATION OF LIABILITY FOR OIL AND HAZARDOUS MATERIAL DISCHARGE CLEANUP.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 51, Title 10 of the Delaware Code by adding thereto a new Section to read as follows:

<< DE ST TI 10 s 8135 >>

"s 8135. Limitation on Liability of Third Parties Rendering Assistance in Oil or Hazardous Material Discharge Cleanup.

(a) The provisions of any law, rule or regulation to the contrary notwithstanding, the liability of any person rendering care, assistance, or advice to prevent, minimize or mitigate oil or hazardous material discharge for any removal costs and damage caused by or related to such care, assistance or advice shall be limited to acts or omissions of such person which can be shown to have been the result of gross negligence, reckless, willful, wanton and/or intentional acts of misconduct on the part of such person.

(b) The limit of liability as set forth in Subsection (a) of this Section shall not apply to the actions of any person responsible for the initial discharge.

(c) Any person responsible for the initial discharge is liable for any removal costs and damages that another person is relieved of under Subsection (a) of this Section.

(d) This Section shall not be construed to limit any liability of any person for personal injuries or wrongful death as a result of the acts or omissions of such person."

<< DE ST TI 10 s 8134 >>

Section 2. Amend Chapter 51, Title 10 of the Delaware Code by striking s 8134 in its entirety.

SYNOPSIS

This bill is proposed by the Delaware River and Bay Oversight Committee. The bill would limit liability for removal costs and damages (other than personal injury or wrongful death) of a third party who renders assistance in a cleanup operation to those acts which amount to gross negligence or reckless, wilful, wanton, or intentional misconduct.

Approved January 31, 1991.

DE LEGIS S (1991)  
END OF DOCUMENT



# Oil Reform Alliance

ORA/UFA JOINT POSITION PAPER

ON HB196

by Riki Ott

The Oil Reform Alliance and United Fishermen of Alaska are strongly opposed to the intent of HB196. We think a bill that reduces the state's liability standards for response action contractors (RACs) is both unnecessary and undesirable.

Our biggest concern with HB196 is that it weakens laws passed only last year, laws designed to strengthen oil spill prevention and response incentives. Alaska's current liability standard offers more protection to the public than the federal government's standard of gross negligence. The right of states to set higher standards than the federal government is a key provision of the Oil Pollution Act of 1990 (OPA90) and this right should not be dismissed lightly.

If HB196 is viewed from the perspective of fishermen and communities as victims, the inadequacies of this bill become apparent. HB196 effectively places another hurdle across the path of victims trying to get compensation for damages caused by a catastrophic oil spill. Further, it shifts the liability of spill response from RACs to taxpayers.

It is questionable whether someone can assume another's liability. The spiller retains the right to argue that they are not liable. The burden of proof, under HB196, lies with the "person bringing a claim against the RAC" (CS HB196 pg. 6, lines 19-20). Until the case is settled in a court of law, the victim remains uncompensated.

Arguments in favor of this bill state that Alaska's legal atmosphere and liability exposures that discourage new cleanup contractors from entering the state. But factually, the number of RACs has increased significantly since Exxon Valdez spill. In Alaska, RACs could also get the same cover of protection that they seek in HB196 by indemnification through contingency plans.

FISCAL NOTE

No. 1  
 Bill Version: CSHB 196(O&G)  
 (H) Publish Date: 3/13/91

STATE OF ALASKA  
 1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: DEC  
 Title: Limited Liability for oil spill BRU: Environmental Quality  
response action contractors Component: SPPM  
 Sponsor: House Oil & Gas  
 Requestor: House Oil & Gas COMPONENT SERIAL NO. 

1	0	1	6
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 2600  
 Division: Commissioner's Office Date: March 11, 1991  
 Approved by Commissioner: *Janice Adair*  
 Agency: AD&E Date: 3/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**



# Oil Reform Alliance

ORA/UFA JOINT POSITION PAPER

ON HB196

by Riki Ott

The Oil Reform Alliance and United Fishermen of Alaska are strongly opposed to the intent of HB196. We think a bill that reduces the state's liability standards for response action contractors (RACs) is both unnecessary and undesirable.

Our biggest concern with HB196 is that it weakens laws passed only last year, laws designed to strengthen oil spill prevention and response incentives. Alaska's current liability standard offers more protection to the public than the federal government's standard of gross negligence. The right of states to set higher standards than the federal government is a key provision of the Oil Pollution Act of 1990 (OPA90) and this right should not be dismissed lightly.

If HB196 is viewed from the perspective of fishermen and communities as victims, the inadequacies of this bill become apparent. HB196 effectively places another hurdle across the path of victims trying to get compensation for damages caused by a catastrophic oil spill. Further, it shifts the liability of spill response from RACs to taxpayers.

It is questionable whether someone can assume another's liability. The spiller retains the right to argue that they are not liable. The burden of proof, under HB196, lies with the "person bringing a claim against the RAC" (CS HB196 pg. 6, lines 19-20). Until the case is settled in a court of law, the victim remains uncompensated.

Arguments in favor of this bill state that Alaska's legal atmosphere and liability exposures that discourage new cleanup contractors from entering the state. But factually, the number of RACs has increased significantly since Exxon Valdez spill. In Alaska, RACs could also get the same cover of protection that they seek in HB196 by indemnification through contingency plans.

Tesoro's plea for immunity from Alaska's liability standards does not stem from a problem with existing law; rather, it stems from Alyeska's requirement of a one billion dollar direct action bond from all parties regardless of size. Last session countless hours were spent tailoring HB567 for both large and small operators. If Alyeska restructured its bonding requirement, Tesoro's problems evaporate.

Conoco's testimony of their recent response to a spill with an unknown responsible party is misleading. Conoco implied that "volunteer" response, in cases where the spiller is either unknown or insolvent, would be limited in the future unless RACs were immunized.

However under existing law, if the spiller is unknown or insolvent, the state assumes control of the cleanup - and reimburses RACs for reasonable expenses. It is important to realize that Conoco did respond to a spill with an unknown responsible party under existing law with existing liability standards.

Liability protection for small RACs, such as fishermen or communities, can be achieved through contractual indemnification. The problem with strict liability as perceived by Tesoro, Conoco, and even the community RACs simply does not exist.

Alaska's strict liability standard was watered down in 1989 by the legislature so RACs would be liable for injuries caused by their own response actions only if they were negligent or engaged in intentional misconduct. Under existing law, to show negligence by a RAC, a claimant must show that the acts or omissions of the contractor under the response action contract was not in accordance with generally accepted professional standard and practices at the time their response action services were performed (AS 46.09.823(a)).

Existing law provides ample protection for RACs and marginal protection for the public. To further weaken the state's liability standard would be a grave and regrettable step away from the lessons learned from the Exxon Valdez spill.



UNITED FISHERMEN OF ALASKA

Greg Seider  
Executive Director

211 4th Street, Suite 112  
Juneau, AK 99801

(907) 586-2820  
Within Alaska: 1-800-478-FISH  
Fax# (907) 463 2545

FISCAL NOTE

No. 1

Bill Version: CSHB 196(O&G)

(H) Publish Date: 3/13/91

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: DEC  
 Title: Limited Liability for oil spill BRU: Environmental Quality  
response action contractors Component: SPPM  
 Sponsor: House Oil & Gas  
 Requestor: House Oil & Gas COMPONENT SERIAL NO. 

1	0	1	6
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 2600  
 Division: Commissioner's Office Date: March 11, 1991  
 Approved by Commissioner: *Janice Adair*  
 Agency: AD&G Date: 3/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, CMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO: CSHB 196(JUD)

Revision Date: \_\_\_\_\_  
Title: "An act limiting civil liability for acts or omissions of an oil spill response action contractor..."  
Sponsor: House Special Committee on Oil & Gas  
Requestor: House Judiciary

Department Affected: Legislative Affairs Agency  
BRU: Legislative Council

Component: Council & Subcommittees

..COMPONENT SERIAL NO: 783

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	32.0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>32.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	32.0	0	0	0	0	0
<b>TOTAL</b>	<b>32.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

CSHB 196(JUD) proposes a study be prepared to assess the oil spill response action contractor civil liability and oil spill contingency plan holder status. Funding would be from the Oil and Hazardous Release Response Fund. To perform this study, the Citizens' Oversight Council would need funds for contractual services for legal and other research.

see attached page

Prepared By: Pamela A. Stoops, Director *Pamela Stoops* Michele Brown, Exec. Director *Michele Brown* 465-3850  
Division: Administrative Services Citizens' Oversight Council Phone: 561-2101  
Date: 4/23/91

Approved By: Warren W. Endicott, Executive Director *Warren W. Endicott*  
Agency: Legislative Affairs Agency Date: 4/23/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## CONTINUATION OF FISCAL NOTE: CSHB 196(JUD)

CSHB 196(Jud) limits liability for civil damages for oil spill response action contractors who respond to a release or a threatened release of oil, unless the contractor acts with gross negligence or intentional misconduct. The limited liability is intended to encourage aggressive oil spill response.

In analyzing this bill, the legislature found that there were good public reasons to address the issue of oil spill response action contractor liability. However, the legislature also found that the subject is extremely complex because of the varying public interests and the variations in the types of response action contractors currently operating in Alaska. The legislature wants the study to identify the types of contractors responding to different oil spill discharges so that the legislature could finely tune which response action contractors operating in which scenarios ought to have limited liability for civil damages.

The legislature also intended the study to address the relationships between different response action contractors and the holders of contingency plans. In order to have a strengthened and cohesive oil spill response, it is critical that the contingency plan holder and the response action contractor adhere to a single plan with direction and oversight by state and federal agencies. In analyzing current law, the legislature found that confusion in response may still exist. Accordingly, the legislature has requested that the study include an assessment of whether the present state laws that require oil shippers and owners to hold contingency plans, and that enable oil shippers and owners to contract with response action contractors to carry out contingency plans, are adequate to protect the public in the event of an oil spill.

### CONTRACTUAL

Estimate approximately 2 months or 320 hours of research and report preparation.

Estimate contracting at approximately \$100 per hour on the assumption that the contractor would assume all expenses for the project, including travel, supplies, postage, copying, computer services, etc.

$\$100 \times 320 \text{ hours} = \$32,000$

**I USE COMMITTEE REPORT**

(7)

Date Referred: April 19, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 4-29-91

The JUDICIARY Committee considered:

HB 196

HOUSE BILL NO. 196

LIABILITY OF RESPONSE ACTION CONTRACTORS

"An Act limiting civil liability for acts or omissions of an oil spill response action contractor and establishing strict liability on responsible parties for certain acts or omissions of a response action contractor; amending the definition of 'response action'; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with CS HB 196 (Jud)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Leg. Affairs Agency

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

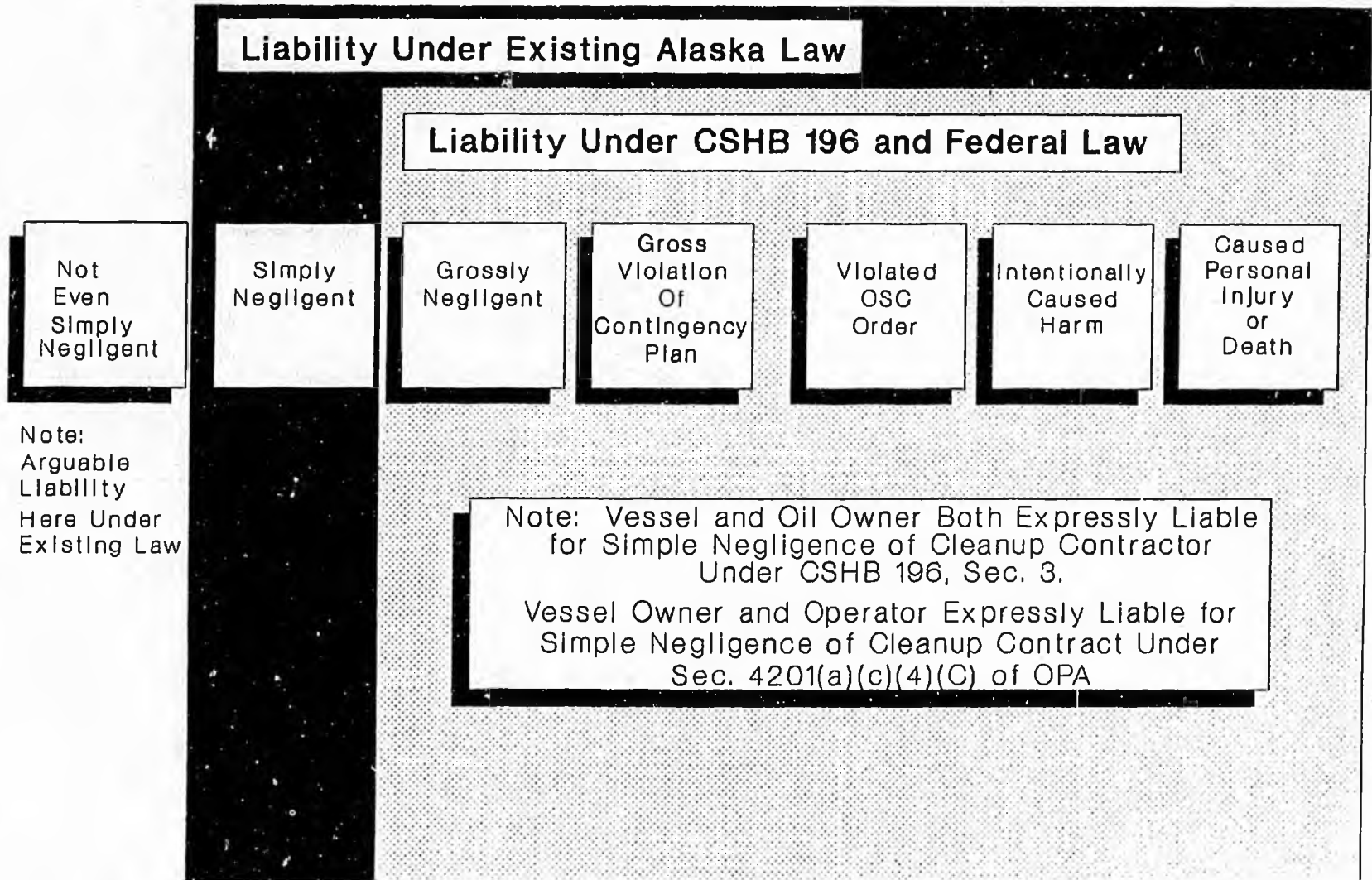
zero fiscal note(s) DEC 3-13-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Tom Martin</i>	<input checked="" type="checkbox"/>				
<i>W. J. ...</i>	<input checked="" type="checkbox"/>	<i>Mark ...</i>		<input checked="" type="checkbox"/>	
		<i>J. Ellis</i>		<input checked="" type="checkbox"/>	
		<i>Thomas ...</i>		<input checked="" type="checkbox"/>	
		<i>... Ouley</i>		<input checked="" type="checkbox"/>	

*... Ouley*  
CHAIRMAN'S SIGNATURE

# CLEANUP CONTRACTOR LIABILITY FOR DAMAGES CAUSED BY CLEANUP OPERATIONS

## CSHB 196 and Federal Law vs. Existing Alaska Law



## **Simple Negligence:**

"A person is negligent if he does not use reasonable care. Negligence may result from action or inaction. A person is negligent if he does not act as a reasonably careful person would act under similar circumstances. In this case you [the jury] must decide whether or not defendant used reasonable care under the circumstances."

...Wilson v. State, 669 P.2d 1292, 1295 (Alaska 1983)

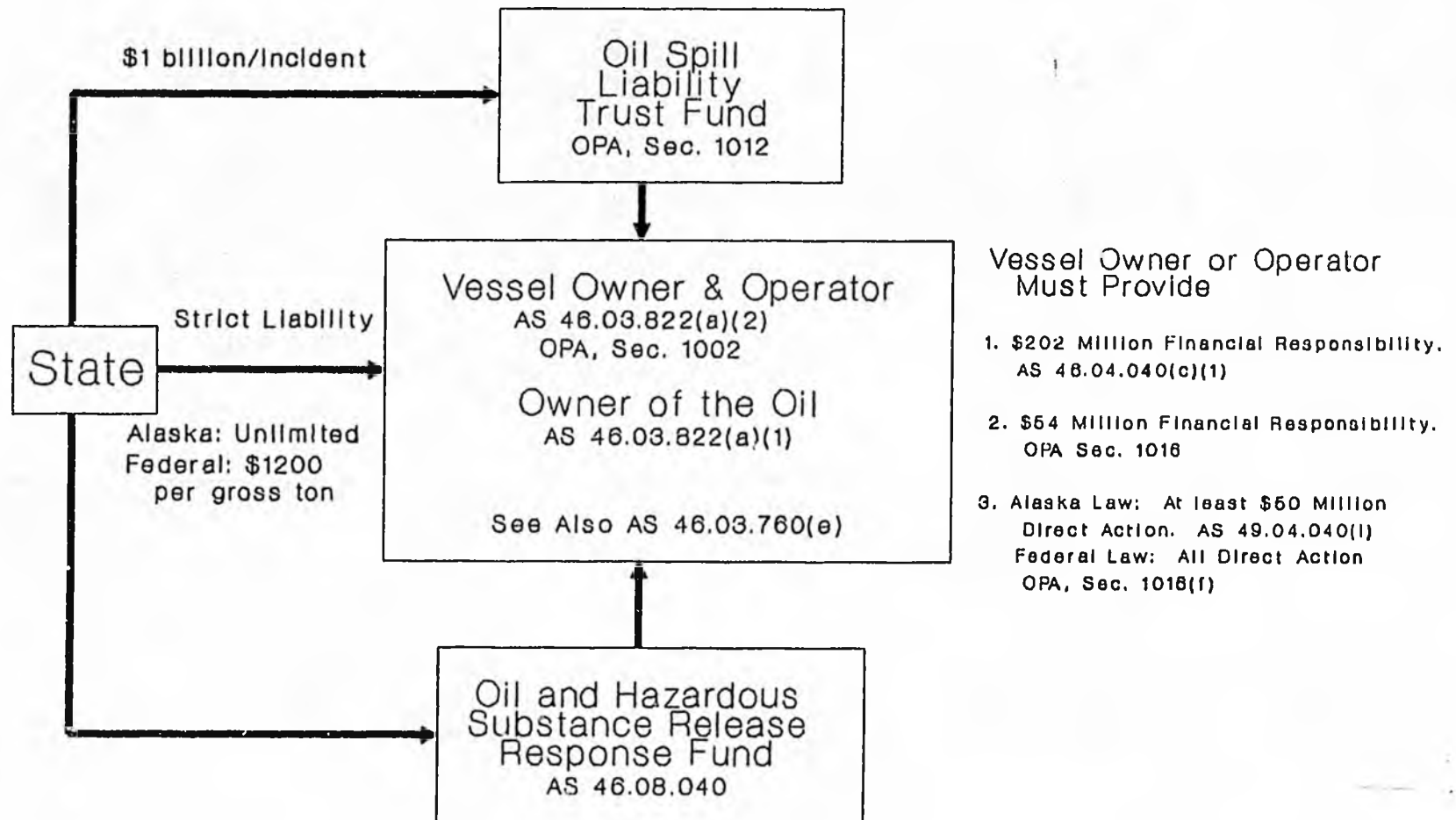
## **Gross Negligence:**

"[M]ost courts consider that 'gross negligence' falls short of a reckless disregard of consequences, and differs from ordinary negligence only in degree, and not in kind...[i]t signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and that it is, in other words, merely an extreme departure from the ordinary standard of care."

...Storrs v. Lutheran Hospitals, 661 P.2d 632, 634, n. 1, (Alaska 1983)

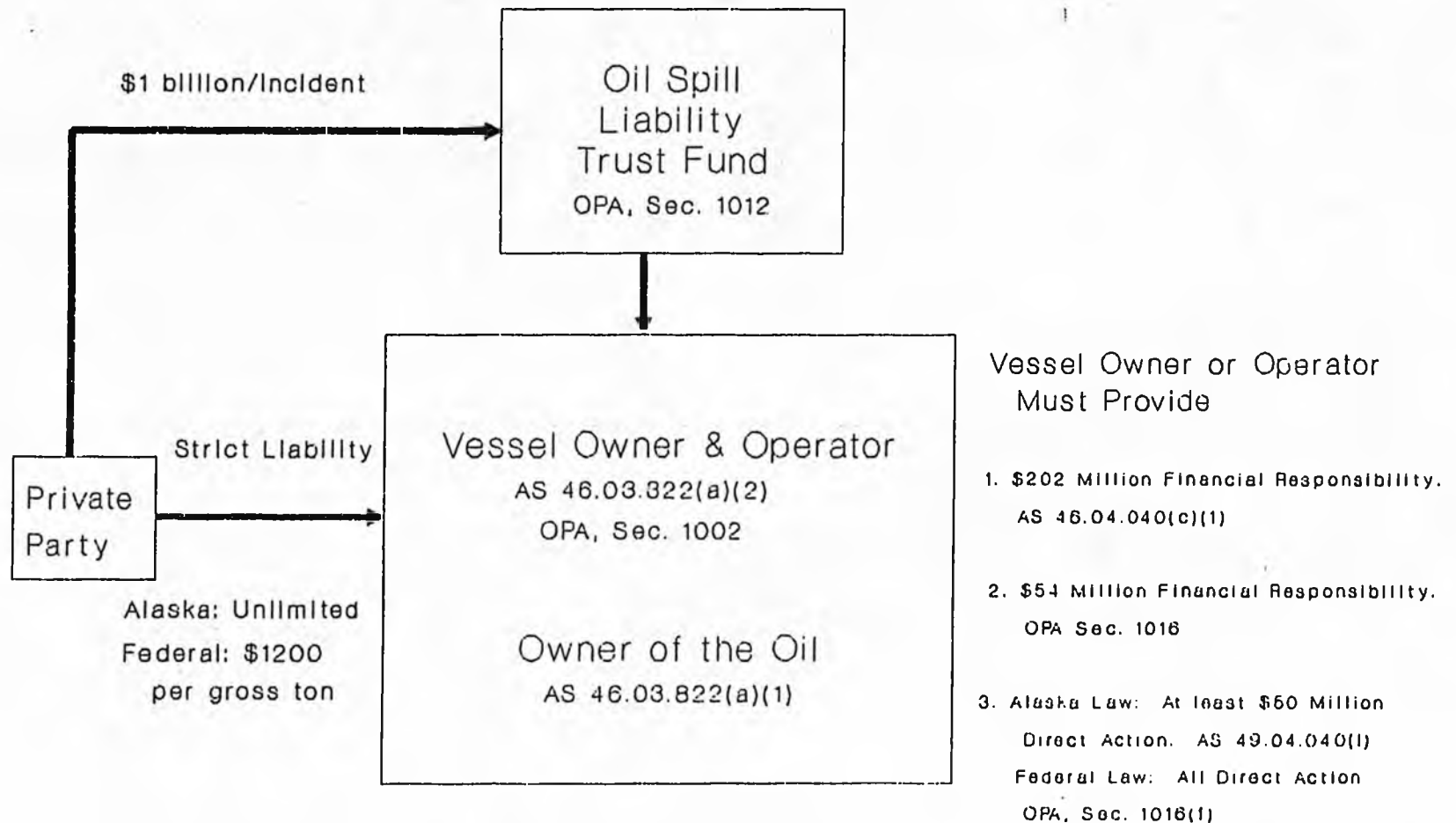
# RECOVERY OF CLEANUP COSTS CRUDE SPILL FROM 90,000 DWT OIL TANKER

## Under Both Existing Law and CSHB 196



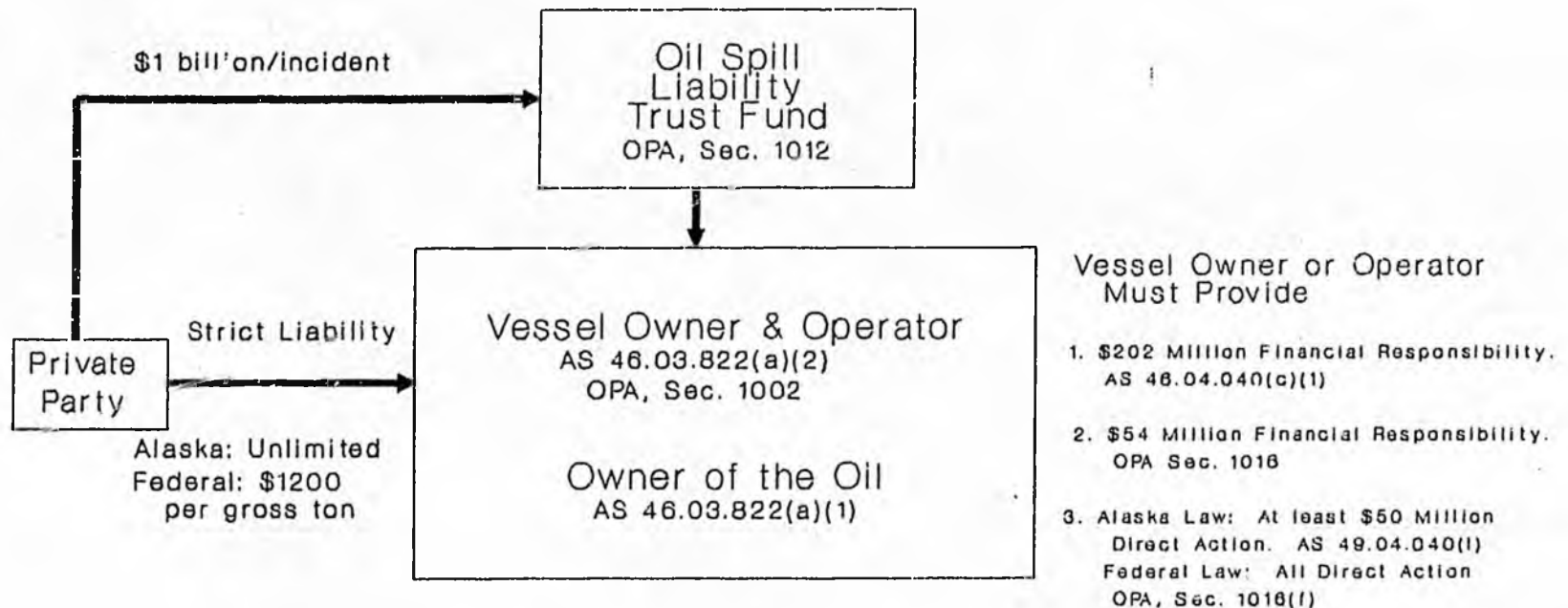
# DAMAGE RECOVERY CRUDE SPILL FROM 90,000 DWT OIL TANKER

Under Both Existing Law and CSHB 196



# DAMAGE RECOVERY FOR CLEANUP CONTRACTOR'S SIMPLE NEGLIGENCE\*

Under CSHB 196



Note: Vessel and Oil Owner Both Expressly Liable for Simple Negligence of Cleanup Contractor Under CSHB 196, Sec. 3.

Vessel Owner and Operator Expressly Liable for Simple Negligence of Cleanup Contractor Under Sec. 4201(a)(c)(4)(C) of OPA.

\*Based on a Crude Spill From 90,000 DWT Oil Tanker

## ENDORSEMENTS OF CLEANUP CONTRACTOR LIMITED LIABILITY

Be it further resolved, that the Pacific Fisheries Legislative Task Force supports and encourages state and federal legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death.

...Pacific Fisheries Legislative Task Force, June 16, 1990 (Sitka)  
Alaska Delegates: Sen. Eliason  
Sen. Zharoff  
Rep. Davidson  
Rep. Navarre

In particular, I support the need for limited immunity for all oil spill responders other than liable parties, to the extent that it may be necessary to encourage such persons to take action promptly. Prompt action after a spill is essential to protect the marine environment of California from oil pollution.

As you know, the Oil Pollution Act of 1990 (P.L. 101-380) was signed by the President on August 18th. That Act provides limited federal immunity for all oil spill responders.

A law that does not address responder's concern about liability exposure, causing them to hesitate in responding to spills, would be counterproductive.

Oil spill response is not an exact science. Decisions often must be made with incomplete and sometimes conflicting information. Moreover, the operational environment is unpredictable. Liability standards must take those factors into account if effective programs are to be put in place.

...United States Coast Guard, August 28, 1990

Because unnecessary impediments to expeditious oil spill response should be minimized, we support the concept of immunizing spill responders by passing through their liability to the spiller, under the following conditions: none of the spiller's original liability is in anyway reduced, and there are adequate assurances that all damages will be paid, and that the injured parties can be made whole.

...The California Sierra Club, April 21, 1990

MORE ENDORSEMENTS OF CLEANUP CONTRACTORS LIMITED LIABILITY

---

Cleanup firms are willing to accept legal responsibility for willful misconduct, personal injury or wrongful death. They need protection from simple negligence because they must make quick decisions under difficult circumstances. Sometimes they may guess wrong. In most cases, they are not acting on their own, but under Coast Guard authority. The federal government, however, is protected in such circumstances from those seeking targets from which to recoup losses. Cleanup groups are not.

...The San Francisco Examiner, June 10, 1990

---

Right now, oil spill teams can be sued just for showing up to fight the damage. for events that occur in the chaos of a recovery effort. For the land that is damaged as a result. And the price tag can run into the billions...

We urgently need your help to pass Good Samaritan liability protection for our efforts. We believe our work deserves the same immunity from lawsuits as a doctor who stops to help a heart attack victim on the street. Indeed, we stop everything to help an injured Earth when she needs it.

...International Bird Rescue Research Center, et al., August 1990

---

Should qualified immunity not be granted to responder as outlined in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

...Ventura County Commercial Fishermen's Association, May 4, 1990

---

# IF SHE'S NOT A GOOD SAMARITAN, JUST WHO IS?

**T**he men and women who respond to an oil spill crisis are willing to accept many dangers. Good Samaritans in every sense of the word, they risk uncertain seas, fire and exposure.

**B**ut there's one risk that's truly unacceptable. A crippling lawsuit against the recovery team itself. Yet, because of an odd quirk in the law, that's a real possibility.

**R**ight now, oil spill teams can be sued just for showing up to fight the damage. For events that occur in the chaos of a recovery effort. For the land that is damaged as a result. And the price tag can run into the billions.

**I**s this reasonable? The Congress of the United States doesn't think so. The California State Senate doesn't think so. In fact, only one group wants to be able to make the people fighting the oil spill pay for the spill itself. The California Trial Lawyers Association.

**T**his powerful special interest group has managed to block the final steps in enacting Good Samaritan protection for oil recovery teams. Why? For the oldest reason of all—they want the fees.

**S**enator Barry Keene and Assemblyman Ted Lempert are working overtime to protect California's coastline. And we have a major interest in their efforts. We are the people who fight oil spills. Some of us do so to protect our fishing grounds. Some to save innocent wildlife. Others, as part of a responsible petroleum industry. We believe that whoever *spills* the oil should be liable for the costs—not the people who clean it up.



**W**e urgently need your help to pass Good Samaritan liability protection for our efforts. We believe our work deserves the same immunity from lawsuits as a doctor who stops to help a heart attack victim on the street. Indeed, we stop everything to help an injured Earth when she needs it.

**P**lease send in the coupons below and tell the California State Assembly to pass SB 2040 authored by Senator Barry Keene. It's the only way to keep some very Good Samaritans on the job.

**J**oin Us In Saying NO To The Trial Lawyers, Yes on SB 2040.

#### CALL US.

We will send a FREE magnet in your name to your State Assembly member.

#### CALL TOLL FREE.

**1-800-325-6000.**  
Ask for Operator 9752.

This is a call from  
Women's Union Service.

#### WRITE US.

Fill out this coupon and send it to us:

**YES!** I support Senator Barry Keene and protection for California's oil spill recovery teams. Please add my name to the list of people who want to say yes to the environment.

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

Return to: International Bird Rescue  
Research Center c/o 1225 8th Street, Suite 580  
Sacramento, CA 95814

#### OR, TELL 'EM YOURSELF.

Please Mr. Speaker:

Don't let the trial lawyers keep oil recovery teams off the beach. Please join the U.S. Congress and the California State Senate by enacting Senate Bill 2040 (Keene).

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

Send to: Hon. Willie L. Brown, Jr., State  
Capitol, Sacramento, CA 95834

SPONSORED BY  
International Bird Rescue Research Center  
Clean Bay • Clean Coastal Waters • Clean Seas  
Vennira County Commercial Fishermen's Association  
Marine Spill Response Corporation

*Ventura County Commercial Fishermen's Association*  
SERVING COMMERCIAL FISHERMEN SINCE 1987

---

V.C.C.F.A. \* 1567 SPINNAKER DRIVE \* STE. 203-199 \* VENTURA, CALIF. 93001  
(805) 985-9705

Honorable George Deukmejian  
Governor of California  
State Capital First Floor  
Sacramento, CA. 95814

May 4, 1990

Dear Governor Deukmejian,

Ventura County Commercial Fishermen's Association (VCCFA) has developed the Fishermen's Oil Response Team (FORT). As you are aware this resource of certified commercial fishermen is designed to be called upon by clean up coordinators during an emergency. FORT would provide additional manpower, vessels, and aircraft as needed to respond within the first hours of an oil spill emergency not days later.

I have received information that California Trial Lawyers Association wishes to change the wording of SB-2040. Instead of providing qualified immunity for spill respondents, they prefer to negotiate indemnification of said respondents.

Please let me know your viewpoint on this important issue. Should qualified immunity not be granted to responders as outline in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

Because of the sensitive Channel Islands and nearby coastal region our association supports FORT's defensive capabilities towards oil spill recovery. I shudder at the thought of a "VALDEZ" type spill encircling the islands while bureaucrats negotiate indemnity clauses.

Your support is welcome. Enclosed is our newsletter and I would appreciate your subscription.

Sincerely,

Brian Janison

# GROSS NEGLIGENCE STANDARD FOR CLEANUP CONTRACTORS



- Enacted



- Passed Both Houses

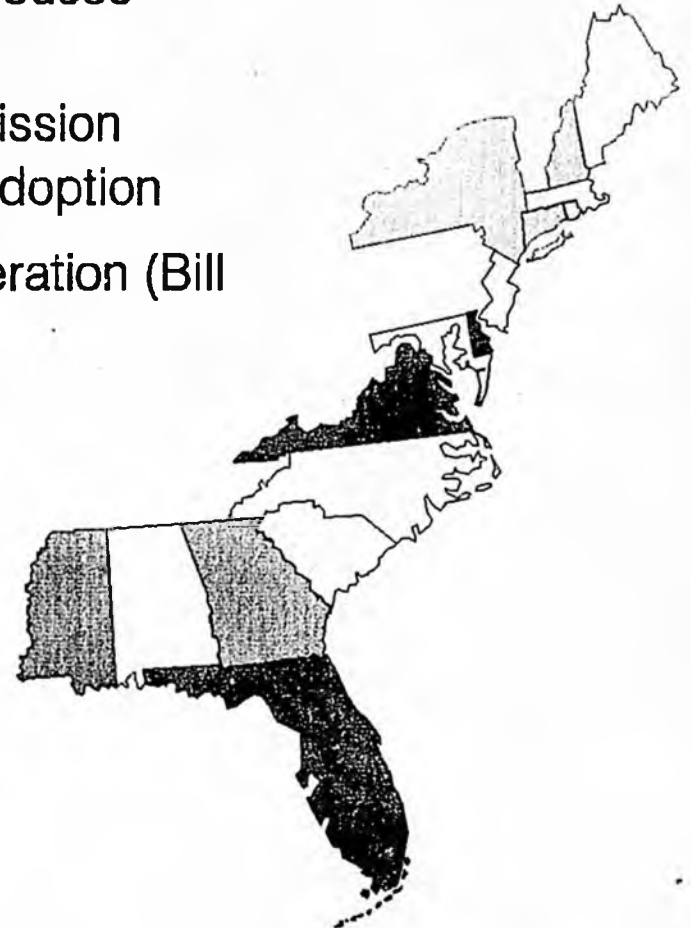
- Special Commission  
Recommends Adoption



- Active Consideration (Bill  
Introduced)



- No Activity



**ATTACHMENT A**  
**Definitions of Liability Standards**

# BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of  
American and English Jurisprudence,  
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors,  
Bankruptcy, Mortgages, Constitutional Law, Interpretation  
of Laws, Rescission and Cancellation of Contracts, Etc.

FIFTH EDITION

By

THE PUBLISHER'S EDITORIAL STAFF

Contributing Authors

JOSEPH R. NOLAN

Associate Justice, Massachusetts Superior Court  
and

M. J. CONNOLLY

Associate Professor of Linguistics  
and Eastern Languages, Boston College

ST. PAUL MINN.  
WEST PUBLISHING CO.  
1979

## NEGLIGENCE

do what a person of ordinary prudence would have done under similar circumstances. *Amoco Chemical Corp. v. Hill*, Del.Super., 318 A.2d 814, 817. Conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm; it is a departure from the conduct expectable of a reasonably prudent person under like circumstances. *Pence v. Ketchum*, La., 326 So.2d 831, 836.

The term refers only to that legal delinquency which results whenever a man fails to exhibit the care which he ought to exhibit, whether it be slight, ordinary, or great. It is characterized chiefly by inadvertence, thoughtlessness, inattention, and the like, while "wantonness" or "recklessness" is characterized by willfulness. The law of negligence is founded on reasonable conduct or reasonable care under all circumstances of particular case. Doctrine of negligence rests on duty of every person to exercise due care in his conduct toward others from which injury may result.

See also Actionable negligence; Active negligence; Cause; Comparative negligence; Concurrent negligence; Fault; Imputed negligence; Invitation; Joint negligence; Laches; Legal negligence; Palsgraph doctrine; Parental liability; Product liability; Reasonable man doctrine; Reckless; Simple negligence; Standard of care; Strict liability; Supervening negligence.

*Actionable negligence.* See Actionable negligence.

*Active negligence.* See Active negligence.

*Collateral negligence.* In the law relating to the responsibility of an employer or principal for the negligent acts or omissions of his employee, the term "collateral" negligence is sometimes used to describe negligence attributable to a contractor employed by the principal and for which the latter is not responsible, though he would be responsible for the same thing if done by his servant. *Weber v. Buffalo Railway Co.*, 20 App.Div. 292, 47 N.Y.S. 7.

*Comparative negligence.* See Comparative negligence.

*Concurrent negligence.* Arises where the injury is proximately caused by the concurrent wrongful acts or omissions of two or more persons acting independently. See also Concurrent negligence.

*Contributory negligence.* The act or omission amounting to want of ordinary care on part of complaining party, which, concurring with defendant's negligence, is proximate cause of injury. *Honaker v. Crutchfield*, 247 Ky. 495, 57 S.W.2d 502. Conduct by a plaintiff which is below the standard to which he is legally required to conform for his own protection and which is a contributing cause which cooperates with the negligence of the defendant in causing the plaintiff's harm. *Li v. Yellow Cab Co. of California*, 13 Cal.3d 804, 119 Cal.Rptr. 858, 864, 532 P.2d 1226.

Conduct for which plaintiff is responsible amounting to a breach of duty which law imposes on persons to protect themselves from injury, and which, concurring and cooperating with actionable negligence for which defendant is responsible, contributes to injury complained of as a proximate cause. *Cowan v. Dean*, 81 S.D. 486, 137 N.W.2d 337, 341.

The defense of contributory negligence has been replaced by the doctrine of comparative negligence (q.v.) in many states. See also *Exceptions and limitations, infra*.

An affirmative defense which must be pleaded and proved by defendant Fed.R.Civil P., Rule 8(c).

Doctrine is also applicable to one who through his own negligence has contributed to material alteration of a negotiable instrument. U.C.C. § 3-406.

*Criminal negligence.* Criminal negligence which will render killing a person manslaughter is the omission on the part of the person to do some act which an ordinarily careful and prudent man would do under like circumstances, or the doing of some act which an ordinarily careful, prudent man under like circumstances would not do by reason of which another person is endangered in life or bodily safety; the word "ordinary" being synonymous with "reasonable" in this connection.

Negligence of such a character, or occurring under such circumstances, as to be punishable as a crime by statute; or (at common law) such a flagrant and reckless disregard of the safety of others, or wilful indifference to the injury liable to follow, as to convert an act otherwise lawful into a crime when it results in personal injury or death.

That species of want of care by which a person may be criminally liable. It varies from jurisdiction to jurisdiction and is called culpable negligence in some. However, it generally refers to conduct which is not intentional and ordinarily not wilful, wanton and reckless.

See Negligent homicide; Negligently; Negligent manslaughter.

*Culpable negligence.* Failure to exercise that degree of care rendered appropriate by the particular circumstances, and which a man of ordinary prudence in the same situation and with equal experience would not have omitted.

*Degrees of negligence.* While there are degrees of care, and failure to exercise proper degree of care is "negligence," most courts hold that there are no degrees (e.g. slight, ordinary, gross) of negligence, except in bailment cases or under automobile guest statutes. *Murray v. De Luxe Motor Stages of Illinois*, Mo.App., 133 S.W.2d 1074, 1078. The prevailing view is that there are no "degrees" of care in negligence, as a matter of law; there are only different amounts of care as a matter of fact. To the extent that the degrees of negligence survive, they are described below.

*Exceptions and limitations.* The general rule in automobile accident cases that contributory negligence bars recovery for the injuries sustained is subject to various exceptions and limitations. Thus the defense of contributory negligence may be inapplicable where defendant's negligence is of a gross or willful character. Moreover, application of the doctrine of contributory negligence is limited by the last clear chance doctrine or similar doctrines, or by comparative negligence statutes.

*Gross negligence.* The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.

Laughlin v.  
neg fact did

ive implying  
ative expres-  
affirmative  
express an  
apparently is  
in the form  
nt facts con-  
tes. Cramer  
62.

near to do a  
d to be done,  
or attention  
And it may  
s to perform  
p. 716, 117

it as synonym-  
word is the  
tia."

is bound to  
o or perform  
form or dis-  
misdoing or  
e.

exists where  
party's own  
state ex rel.  
N.E.2d 471,

band to pro-  
as of life, he  
lure to do so  
apation.

en his parent  
al incapacity,  
y to care for  
essary phys-  
stitutional or  
condition of  
roper care or  
ealth. In re  
805.

glect and in  
App.Div. 321,  
ld.

ing which a  
ry considera-  
ffairs, would  
asonable and

h care as a  
n would use  
oing of some  
ce would not  
or failure to

jurisdiction. *August v. August*, 65 Ga.App. 883, 16 S.E.2d 784, 785.

**Ne exeat regno** /niy éksiyaɾ régnow/. Lat. In English practice, a writ which issues to restrain a person from leaving the kingdom. It was formerly used for political purposes, but is now only resorted to in equity when the defendant is about to leave the kingdom; it is only in cases where the intention of the party to leave can be shown that the writ is granted.

**Ne exeat republica** /niy éksiyaɾ rapáblaka/. Lat. In American practice, a writ similar to that of *ne exeat regno* (q.v.), available to the plaintiff in a civil suit, under some circumstances, when the defendant is about to leave the state.

**Nefas** /niyfás/. Lat. That which is against right or the divine law. A wicked or impious thing or act.

**Nefastus** /nafástas/. Lat. Inauspicious. Applied, in the Roman law, to a day on which it was unlawful to open the courts or administer justice.

**Negatio conclusionis est error in lege** /nagéysh(ly)ow kanklúwz(h)iyowónas ést éhrar in liyjly/. The denial of a conclusion is error in law.

**Negatio destruit negationem, et amba faciunt affirmationem** /nagéysh(ly)ow déstruwaɾ nagéyshlyównam éd émby féyshlyant éfarméysihlyównam/. A negative destroys a negative, and both make an affirmative.

**Negatio duplex est affirmatio** /nagéysh(ly)ow d(y)úwpléks ést éfarméysh(ly)ow/. A double negative is an affirmative.

**Negative**. A denial; a proposition by which something is denied; a statement in the form of denial. Two negatives do not make a good issue.

As to negative Covenant; Easement; Servitude; Statute; and Testimony, see those titles.

**Negative averment**. As opposed to the traverse or simple denial of an affirmative allegation, a negative averment is an allegation of some substantive fact, e.g., that premises are not in repair, which, although negative in form, is really affirmative in substance, and the party alleging the fact of non-repair must prove it. An averment in some of the pleadings in a case in which a negative is asserted. *U. S. v. Eisenminger*, D.C.Del., 16 F.2d 816, 819.

**Negative condition**. One by which it is stipulated that a given thing shall not happen.

**Negative covenant**. A provision in an employment agreement or a contract of sale of a business which prohibits the employee or seller from competing in the same area or market. Such restriction must be reasonable in scope and duration.

**Negative easement**. A right in owner of dominant tenement to restrict owner of servient tenement in exercise of general and natural rights of property. *Fort Dodge, D. M. & S. Ry. v. American Community Stores Corp.*, 256 Iowa 1344, 131 N.W.2d 515, 521. A negative easement is one effect of which is not to authorize doing of act by person entitled to easement, but merely to preclude owner of land subject to easement from doing of an act which, if no easement

existed, he would be entitled to do. *McLaughlin v. Neiger*, Mo.App., 286 S.W.2d 380, 383.

**Negative evidence**. Testimony that an alleged fact did not exist. See *Rebuttal evidence*.

**Negative pregnant**. In pleading, a negative implying also an affirmative. Such a form of negative expression as may imply or carry within it an affirmative. A denial in such form as to imply or express an admission of the substantial fact which apparently is controverted; or a denial which, although in the form of a traverse, really admits the important facts contained in the allegations to which it relates. *Cramer v. Aiken*, 63 App.D.C. 16, 68 F.2d 761, 762.

**Neggildare**. To claim kindred.

**Neglect**. May mean to omit, fail, or forbear to do a thing that can be done, or that is required to be done, but it may also import an absence of care or attention in the doing or omission of a given act. And it may mean a designed refusal or unwillingness to perform one's duty. In *re Perkins*, 234 Mo.App. 716, 117 S.W.2d 686, 692.

The term is used in the law of bailment as synonymous with "negligence." But the latter word is the closer translation of the Latin "*negligentia*."

Failure to pay money which the party is bound to pay without demand. An omission to do or perform some work, duty, or act. Failure to perform or discharge a duty, covering positive official misdoing or official misconduct as well as negligence.

See also *Excusable neglect*; *Negligence*.

**Culpable neglect**. Such neglect which exists where the loss can fairly be ascribed to the party's own carelessness, improvidence, or folly. *State ex rel. Fulton v. Coburn*, 133 Ohio St. 192, 12 N.E.2d 471, 477, 10 O.O. 249.

**Willful neglect**. The neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

**Neglected child**. A child is "neglected" when his parent or custodian, by reason of cruelty, mental incapacity, immorality or depravity, is unfit properly to care for him, or neglects or refuses to provide necessary physical, affectional, medical, surgical, or institutional or hospital care for him, or he is in such condition of want or suffering, or is under such improper care or control as to endanger his morals or health. In *re DuMond*, 196 Misc. 16, 17, 92 N.Y.S.2d 805.

**Neglected minor**. One suffering from neglect and in state of want. *People v. De Pue*, 217 App.Div. 321, 217 N.Y.S. 205, 206. See *Neglected child*.

**Negligence**. The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to

do wha  
done ur  
Corp. v  
which !  
the pro  
harm:  
of a ri  
stance.

The  
which  
care w  
ordina  
inadv  
like, v  
terize  
found  
under  
of ne.  
cise  
which

See  
Caus  
genci  
negli  
doctr  
sona  
Stan  
genc

Act:

Acti

Coll

spor

gen

"co

neg

the

ble,

thir

wa:

Cor

get

Co.

pro

or

der

Co:

am

pl

ne

C:

a

le

a:

w

p

l

t

r

e

:

It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. The element of culpability which characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. But it is something less than the wilful, wanton and reckless conduct which renders a defendant who has injured another liable to the latter even though guilty of contributory negligence, or which renders a defendant in rightful possession of real estate liable to a trespasser whom he has injured. It falls short of being such reckless disregard of probable consequences as is equivalent to a wilful and intentional wrong. Ordinary and gross negligence differ in degree of inattention, while both differ in kind from wilful and intentional conduct which is or ought to be known to have a tendency to injure.

Gross negligence consists of conscious and voluntary act or omission which is likely to result in grave injury when in face of clear and present danger of which alleged tortfeasor is aware. *Glaab v. Caudill*, Fla.App., 236 So.2d 180, 182, 183, 185. That entire want of care which would raise belief that act or omission complained of was result of conscious indifference to rights and welfare of persons affected by it. *Claunch v. Bennett*, Tex.Civ.App., 395 S.W.2d 719, 724; *Snyder v. Jones*, Tex.Civ.App., 392 S.W.2d 504, 505, 507. Indifference to present legal duty and utter forgetfulness of legal obligations, so far as other persons may be affected, and a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence.

**Hazardous negligence.** Such careless or reckless conduct as exposes one to very great danger of injury or to imminent peril.

**Imputed negligence.** Refers to doctrine that places upon one person responsibility for the negligence of another; such responsibility or liability is imputed by reason of some special relationship of the parties, such as parent and child, husband and wife, driver and passenger, owner of vehicle and driver, bailor and bailee, master and servant, joint enterprise, and parent and custodian of a child. *Schmidt v. Martin*, 212 Kan. 373, 510 P.2d 1244, 1246.

Generally the doctrine of imputed negligence, as applied to automobile accidents, visits on one person legal responsibility for the negligent conduct of another. The doctrine applies only in limited classes of cases, as where there is a right to control in the relationship of master and servant, principal and agent, or a joint enterprise. The independent negligence of one person ordinarily is not imputable to another person except where the relation between the persons gives rise to an express or implied agency in the person committing the act of negligence.

**Legal negligence.** See Legal negligence.

**Ordinary negligence.** The omission of that care which a man of common prudence usually takes of his own concerns. *Briggs v. Spaulding*, 141 U.S. 132, 11 S.Ct. 924, 35 L.Ed. 662. Failure to exercise care of an ordinarily prudent person in same situation. A want of that care and prudence that the great majority of mankind exercise under the same or similar circumstances. Wherever distinctions between gross, ordinary and slight negligence are observed, "ordinary negligence" is said to be the want of ordinary care.

Ordinary negligence is based on fact that one ought to have known results of his acts, while "gross negligence" rests on assumption that one knew results of his acts, but was recklessly or wantonly indifferent to results. The distinction between "ordinary negligence" and "gross negligence" is that the former lies in the field of inadvertence and the latter in the field of actual or constructive intent to injure.

**Passive negligence.** Failure to do something that should have been done. It is negligence which permits defects, obstacles, or pitfalls to exist on premises; that is, negligence which causes dangers arising from physical condition of land. *Pachowitz v. Milwaukee & Suburban Transport Corp.*, 56 Wis.2d 383, 202 N.W.2d 268, 275.

Difference between "active" and "passive" negligence is that one is only passively negligent if he merely fails to act in fulfillment of duty of care which law imposes upon him, while one is actively negligent if he participates in some manner in conduct or omission which caused injury. *King v. Timber Structures, Inc. of Cal.*, 240 Cal.App.2d 178, 49 Cal.Rptr. 414, 417.

**Per se negligence.** The unexcused violation of a statute which is applicable is per se or automatic negligence in some states. See also Negligence per se.

**Slight negligence.** A failure to exercise great care. Slight negligence is defined to be only an absence of that degree of care and vigilance which persons of extraordinary prudence and foresight are accustomed to use. *Briggs v. Spaulding*, 141 U.S. 132, 11 S.Ct. 924, 35 L.Ed. 662.

**Subsequent negligence.** Exists where defendant sees plaintiff in a position of danger and fails to exercise due and proper precaution to prevent injury to plaintiff. *Holman v. Brady*, 241 Ala. 487, 3 So.2d 30, 33.

**Wilful, wanton or reckless negligence.** These terms are customarily treated as meaning essentially the same thing. The usual meaning assigned to "wilful," "wanton" or "reckless," according to taste as to the word used, is that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to the consequences, amounting almost to willingness that they shall follow; and it has been said that this is indispensable. See for example *Tyndall v. Rippon*, 5 Del.Super. 458, 61 A.2d 422; *Wolters v. Venhaus*, 350 Ill.App. 322, 112 N.E.2d 747; *Clarke v. Storchak*, 384 Ill. 564, 52 N.E.2d 229, appeal dismissed 322 U.S. 713, 64 S.Ct. 1270, 88 L.Ed. 1555; *Tighe v. Diamond*, 149

Ohio St. 32  
is that "A  
tends to its  
conduct, or  
in a situat  
ent. As a  
all between  
the two ha  
meaning.  
ing in qua  
lack of car  
aggravate  
mistake in  
confusion  
inadverten  
Want  
gence w  
realizatio  
disregard  
probable  
Good, 201

Negligence,  
when one  
person in  
fails to  
proximat  
position  
sentation  
other to  
Vara, 13

An est  
tions, or  
speak, it  
induces  
such oth  
that he  
deny the

Estopp  
into the  
culpable  
and the  
prejudic  
S.W. 2d

Negligence  
gence in  
prescrib

Negligence  
sion, w  
gence w  
ular su  
in viola  
or beca  
comm  
tion or  
guilty  
public  
person  
liabilit

Negligen

Negligence  
ficer's  
12 P 2

gence.  
 sion of that care  
 e usually takes of  
 ding, 141 U.S. 132,  
 to exercise care of  
 same situation. A  
 at the great majori-  
 e same or similar  
 nctions between  
 nce are observed,  
 e the want of ordi-

fact that one ought  
 while "gross negli-  
 ne knew results of  
 tonly indifferent to  
 a "ordinary negli-  
 hat the former lies  
 e latter in the field  
 injure.

to something that  
 ligencc which per-  
 to exist on premis-  
 es dangers arising  
 Pachowitz v. Mil-  
 rp., 56 Wis 2d 383.

d "passive" negli-  
 gly negligent if he  
 duty of care which  
 s actively negligent  
 n conduct or omis-  
 Timber Structures,  
 49 Cal.Rptr. 414.

violation of a stat-  
 or automatic negli-  
 Negligence per se.

ercise great care.  
 only an absence of  
 which persons of  
 ht are accustomed  
 U.S. 132, 11 S.Ct.

ere defendant sees  
 id fails to exercise  
 ent injury to plain-  
 37, 3 So 2d 30, 33.

nce. These terms  
 ng essentially the  
 igned to "wilful,"  
 ; to taste as to the  
 entionally done an  
 in disregard of a  
 ; that he must be  
 ind so great as to  
 would follow. It  
 ous indifference to  
 ost to willingness  
 en said that this is  
 ndall v. Rippon, 5  
 rs v. Venhaus, 350  
 ce v. Storchak, 384  
 322 U.S. 713,  
 e v. Diamond, 149

Ohio St. 520, 80 N.E.2d 122, 37 O.O. 243. The result  
 is that "wilful," "wanton" or "reckless" conduct  
 tends to take on the aspect of highly unreasonable  
 conduct, or an extreme departure from ordinary care,  
 in a situation where a high degree of danger is appar-  
 ent. As a result there is often no clear distinction at  
 all between such conduct and "gross" negligence, and  
 the two have tended to merge and take on the same  
 meaning, of an aggravated form of negligence, differ-  
 ing in quality rather than in degree from ordinary  
 lack of care. It is at least clear, however, that such  
 aggravated negligence must be more than any mere  
 mistake resulting from inexperience, excitement, or  
 confusion, and more than mere thoughtlessness or  
 inadvertence, or simple inattention.

"Wantonness" constituting gross and wanton negli-  
 gence within automobile guest statute indicates a  
 realization of imminence of danger and a reckless  
 disregard, complete indifference, and unconcern of  
 probable consequences of the wrongful act. Mann v.  
 Good, 202 Kan. 631, 451 P.2d 233, 236.

Negligence, estoppel by. An estoppel which occurs  
 when one who is under a legal duty, either to the  
 person injured or to the public, to act with due care,  
 fails to do so, and such failure is the natural and  
 proximate cause of misleading that person to alter his  
 position. An estoppel arises when one by acts, repre-  
 sentations, intentionally or negligently, induces an-  
 other to change his position for the worse. Smith v.  
 Vara, 136 Misc. 500, 241 N.Y.S. 202, 209.

An estoppel arises when one by acts, representa-  
 tions, or admissions, or by silence when he ought to  
 speak, intentionally or through culpable negligence,  
 induces another to believe certain facts to exist and  
 such other rightfully relies and acts on such belief so  
 that he will be prejudiced if the former is permitted to  
 deny the existence of such facts.

Estoppel may exist where a party has led another  
 into the belief of a certain state of facts by conduct of  
 culpable negligence, calculated to have that result,  
 and the other party has acted upon such belief to his  
 prejudice. Scott v. First Nat. Bank, 343 Mo. 77, 119  
 S.W.2d 929, 938.

Negligence in law. "Actionable negligence" or "negli-  
 gence in law" grows out of nonobservance of a duty  
 prescribed by law. See also Negligence per se.

Negligence per se. Conduct, whether of action or omis-  
 sion, which may be declared and treated as negli-  
 gence without any argument or proof as to the particu-  
 lar surrounding circumstances, either because it is  
 in violation of a statute or valid municipal ordinance,  
 or because it is so palpably opposed to the dictates of  
 common prudence that it can be said without hesita-  
 tion or doubt that no careful person would have been  
 guilty of it. As a general rule, the violation of a  
 public duty, enjoined by law for the protection of  
 person or property, so constitutes. See also Strict  
 Liability.

Negligent. See Negligence.

Negligent escape. Where prisoner escapes through of-  
 ficer's negligence. Hershey v. People, 91 Colo. 113,  
 12 P.2d 345, 347.

Negligent homicide. The criminal offense committed  
 by one whose negligence is the direct and proximate  
 cause of another's death. The crime of negligent  
 homicide consists of three component elements: (1)  
 death of human being (2) by instrumentality of motor  
 vehicle (3) operated on highway in negligent manner  
 State v. Colombo, 4 Conn.Cir. 671, 238 A.2d 806, 808  
 See also Homicide (*Vehicular homicide*).

Negligentia negligensh(iy)ə/. Lat. In the civil law,  
 carelessness; inattention; the omission of proper  
 care or forethought. The term is not exactly equiva-  
 lent to our "negligence," inasmuch as it was not any  
*negligentia*, but only a high or gross degree of it, that  
 amounted to *culpa* (actionable or punishable fault).

Negligentia semper habet infortunium comitem neg-  
 ligensh(iy)ə sēmpər hēybəd inforchūwn(i)yəm  
 kōmōdam/. Negligence always has misfortune for a  
 companion.

Negligently. A person acts negligently with respect to  
 a material element of an offense when he should be  
 aware of a substantial and unjustifiable risk that the  
 material element exists or will result from his con-  
 duct. The risk must be of such a nature and degree  
 that the actor's failure to perceive it, considering the  
 nature and purpose of his conduct and the circum-  
 stances known to him, involves a gross deviation  
 from the standard of care that a reasonable person  
 would observe in the actor's situation. Model Penal  
 Code, § 2.02. See also Negligence.

Negligently done. The doing of an act where ordinary  
 care required that it should not have been done at all,  
 or that it should have been done in some other way,  
 and where the doing of the act was not consistent  
 with the exercise of ordinary care under the circum-  
 stances. See Negligence.

Negligent manslaughter. A statutory crime in some  
 jurisdictions consisting of an unlawful and unjustified  
 killing of a person by negligence but without malice.

Negligent offense. One which ensues from a defective  
 discharge of a duty, which defect could have been  
 avoided by the exercise of that care which is usual,  
 under similar circumstances, with prudent persons of  
 the same class. People v. Gaydica, 122 Misc. 31, 203  
 N.Y.S. 243, 258.

Negligent violation of statute. One occasioned by or  
 accompanied with negligent conduct.

Négoci /nəgōws/. Fr. Business; trade; management  
 of affairs.

Negotiability /nəgōwsh(iy)əbīlədiy/. Legal character of  
 being negotiable (q.v.).

Negotiable /nəgōwsh(iy)əbəl/. Legally capable of being  
 transferred by endorsement or delivery. Usually said  
 of checks and notes and sometimes of stocks and  
 bearer bonds. See Commercial paper; Negotiable  
 Instruments; Non-negotiable.

Negotiable bond. Type of bond which may be transfer-  
 red by negotiation from original holder to another.

Negotiable document of title. A document is negotiable  
 if by its terms the goods are to be delivered to  
 "bearer", or to the order of a named party, or, where

for that purpose;

imped as money;

rs of the English  
them, agreed "to  
they make, of gold  
w which money  
every trial of the  
o be lawful, they  
er the great seal,  
or actions.

coinage.

w. less; less than  
ions, the sense of  
remaining wholly  
lutum."

• Jus Latum.

ynas solvat kwáy  
who pays too late.

inference, a min-  
r degree.

ransaction or pro-  
ceedings at a  
s of a company is

ce in court, made

lerk or prothono-  
randa of its pro-  
thorized at corpo-  
rers' meeting.

n the civil law, a

ing to determine  
with the require-  
The outcome will  
be permitted to  
of the defendant  
n. See *Miranda*

to any custodial  
initiated by law  
is taken into cus-  
freedom in any  
warned: 1. That  
That any state-  
evidence against  
e presence of an  
ord an attorney,  
o any questioning

or a waiver of  
trial, no evidence  
used against the  
S. 436, 444, 478,  
Ed.2d 694.

composition, to  
the meaning; as

"miscomputation" or "misaccompting," i.e., false reckoning.

**Misa** /máyzə/. In old English law, the mise or issue in a writ of right; a compact or agreement; a form of compromise.

**Misadventure**. A mischance or accident; a casualty caused by the act of one person inflicting injury upon another. homicide "by misadventure" occurs where a man, doing a lawful act, without any intention of hurt, unfortunately kills another.

**Misallege** /misələj/. To cite falsely as a proof or argument.

**Misapplication**. Improper, illegal, wrongful, or corrupt use of application of funds, property, etc. See also **Misappropriation**.

**Misappropriation**. The act of misappropriating or turning to a wrong purpose; wrong appropriation; a term which does not necessarily mean peculation, although it may mean that. Term may also embrace the taking and use of another's property for sole purpose of capitalizing unfairly on good will and reputation of property owner. *Pocket Books, Inc. v. Dell Pub. Co.*, 49 Misc 2d 252, 267 N.Y.S.2d 269, 272.

**Misbehavior**. Ill conduct; improper or unlawful behavior. So as to support contempt conviction is conduct inappropriate to particular role of actor, be he judge, juror, party, witness, counsel or spectator. *U. S. v. Seale*, C.A.111., 461 F.2d 345, 366.

**Misbranding**. False or misleading labeling. *People v. Rosenbloom*, 119 Cal.App. 759, 2 P.2d 228, 231. Such practices are prohibited by federal and state statutes; e.g. Fair Packaging and Labeling Act.

**Miscarriage** /miskərij/miskærj/. Poor management or administration; mismanagement.

**Miscarriage of justice**. Decision or outcome of legal proceeding that is prejudicial or inconsistent with substantial rights of party.

As used in constitutional standard of reversible error, "miscarriage of justice" means a reasonable probability of more favorable outcome for the defendant. *People v. Lopez*, 251 Cal.App.2d 918, 60 Cal. Rptr. 72, 76. A miscarriage of justice, warranting reversal, should be declared only when the court, after examination of entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to appealing party would have been reached in absence of the error. *People v. Bernhardt*, 222 C.A.2d 567, 35 Cal.Rptr. 401, 419.

Miscarriage of justice from erroneous charge to jury, under statute declaring that no judgment shall be set aside or new trial granted on basis of error which does not result in such miscarriage, results only when an erroneous charge is reasonably calculated to confuse or mislead. *Marley v. Saunders*, Fla., 249 So.2d 30, 35.

**Miscegenation** /mesejənéyshan/misəjə/. Mixture of races; marriage between persons of different races, as between a white person and a Negro.

**Mischarge**. An erroneous charge; a charge, given by a court to a jury, which involves error for which the judgment may be reversed.

**Mischief**. In legislative parlance, the word is sometimes used to signify the evil or danger which a statute is intended to cure or avoid.

In the phrase "malicious mischief," (q v) it imports a wanton or reckless injury to persons or property.

A person is guilty of criminal mischief if he: (a) damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means, or (b) purposely or recklessly tampers with tangible property of another so as to endanger person or property; or (c) purposely or recklessly causes another to suffer pecuniary loss by deception or threat. Model Penal Code, § 220.3.

**Misconduct**. A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. Term "misconduct" when applied to act of attorney, implies dishonest act or attempt to persuade court or jury by use of deceptive or reprehensible methods. *People v. Sigal*, 249 C.A.2d 299, 57 Cal.Rptr. 541, 549. Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces willful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design. *Wilson v. Brown*, La.App., 147 So.2d 27, 29. See also **Wanton misconduct**.

**Misconduct in office**. Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. See also **Malfesance**; **Misfesance**.

**Miscontinuance**. In practice, an improper continuance; want of proper form in a continuance; the same with "discontinuance."

**Miscreant** /miskriənt/. In old English law, an apostate; an unbeliever; one who totally renounced Christianity. 4 Bl.Comm. 44.

**Misdate**. A false or erroneous date affixed to a paper or document.

**Misdelivery**. Delivery of mail, freight, goods, or the like, to person other than authorized or specified recipient. The delivery of property by a carrier or warehouseman to a person not authorized by the owner or person to whom the carrier or warehouseman is bound by his contract to deliver it.

**Misdemeanant** /misdəmiənt/. A person guilty of a misdemeanor; one sentenced to punishment upon conviction of a misdemeanor.

**Misdemeanor** /misdəmiənər/. Offenses lower than felonies and generally those punishable by fine or imprisonment otherwise than in penitentiary. Under federal law, and most state laws, any offense other than a

not fall to  
will not be  
ngful act.  
s' s'irvay  
'or injury'  
libel, a  
ee Libel;  
r libelous  
er, either  
ty. The  
another.  
which a  
ety.  
nt.  
hich oc-  
ectedly,  
the em-  
een and  
ts. Any  
employ-  
definite  
an give  
her the  
disease  
strophic  
iv. 747,  
a broad  
nsating  
th some  
esigned  
scalcu-  
ides an  
ture of  
predis-  
) much  
ea that  
ontinu-  
injury;  
ffering;  
mpair-  
njury"  
al risk  
disfig-  
of the  
Model  
sulting  
ffense,  
action.  
which  
such  
ir, or  
neces-  
rather  
to, on

the one hand, or inflicted, on the other; and which, because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard exists for the measurement of damages, cannot receive reasonable redress in a court of law. Wrongs of a repeated and continuing character, or which occasion damages that are estimated only by conjecture, and not by any accurate standard, are included. The remedy for such is commonly in the nature of injunctive relief. "Irreparable injury" justifying an injunction is that which cannot be adequately compensated in damages or for which damages cannot be compensable in money. *Caffery v. Powell*, 1a.App., 320 So2d 223, 226. Contrast *Reparable injury*, infra.

**Permanent injury.** An injury that, according to every reasonable probability, will continue throughout the remainder of one's life.

**Personal injury.** In a narrow sense, a hurt or damage done to a rpan's person, such as a cut or bruise, a broken limb, or the like, as distinguished from an injury to his property or his reputation. The phrase is chiefly used in this connection with actions of tort for negligence and under worker's compensation statutes. But the term is also used (chiefly in statutes) in a much wider sense, and as including any injury which is an invasion of personal rights, and in this signification it may include such injuries to the person as libel or slander, criminal conversation, malicious prosecution, false imprisonment, and mental suffering. *Gray v. Wallace*, 319 S.W.2d 582.

In worker's compensation acts, "personal injury" means any harm or damage to the health of an employee, however caused, whether by accident, disease, or otherwise, which arises in the course of and out of his employment, and incapacitates him in whole or in part. The occurrence of disability or impairment. Such includes the aggravation of a preexisting injury.

**Private injuries.** Infringements of the private or civil rights belonging to individuals considered as individuals.

**Public injuries.** Breaches and violations of rights and duties which affect the whole community as a community.

**Real injury.** A *real injury* is inflicted by any act by which a person's honor or dignity is affected.

**Relative injuries.** Injures to those rights which a person possesses in relation to the person who is immediately affected by the wrongful act done.

**Reparable injury.** The general principle is that an injury, the damage from which is merely in the nature of pecuniary loss, and can be exactly and fully repaired by compensation in money, is a "reparable injury". Contrast *Irreparable injury*, supra.

**Verbal injury.** See Libel; Slander.

**Injustice.** The withholding or denial of justice. In law, almost invariably applied to the act, fault, or omission of a court, as distinguished from that of an individual. "Fraud" is deception practiced by the party; "injustice" is the fault or error of the court. They are not equivalent words in substance, or in a statute authorizing a new trial on a showing of fraud

or injustice. Fraud is always the result of contrivance and deception; injustice may be done by the negligence, mistake, or omission of the court itself. *Silvey v. U. S.*, 7 Ct.Cl. 305, 324.

**Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere** 'injástam ést, náysay tówdá liyjijy ánspéktá, diy yúwná ælakwá iyjás partík(y)áls prápózadá júwdákériy vél réspóndiriy/. It is unjust to decide or respond as to any particular part of a law without examining the whole of the law.

**In jus vocare** 'in jás vovkériy To call, cite, or summon to court. *In jus vocando*, summoning to court.

**In kind.** Of the same species or category. In the same kind, class, or genus. A loan is returned "in kind" when not the identical article, but one corresponding and equivalent to it, is given to the lender. See **Distribution in kind**; **In genere**; **Like-kind exchange**.

**Inlagare** /inlágériy/. In old English law, to restore to protection of law. To restore a man from the condition of outlawry. Opposed to *utlagare*.

**Inlagation** 'inlágéyshán Restoration to the protection of law Restoration from a condition of outlawry.

**Inlagh** 'inlò A person within the law's protection; contrary to *utlagh*, an outlaw.

**Inland.** Within a country, state or territory; within the interior part of a land mass.

In old English law, inland was used for the demesne (q.v.) of a manor; that part which lay next or most convenient for the lord's mansion-house, as within the view thereof, and which, therefore, he kept in his own hands for support of his family and for hospitality; in distinction from outland or utland, which was the portion let out to tenants.

**Inland bill of exchange.** A bill of which both the drawer and drawee reside within the same state or country. Otherwise called a "domestic bill," and distinguished from a "foreign bill." See **Bill**.

**Inland navigation.** Within the meaning of the legislation of congress upon the subject, this phrase means navigation upon inland waters (q.v.).

**Inland trade.** Trade wholly carried on at home, as distinguished from foreign commerce. See **Commerce**.

**Inland waters.** Such waters as canals, lakes, rivers, watercourses, inlets and bays, within, or partly within, the United States, exclusive of the open sea, though the water in question may open or empty into the ocean. *United States v. Steam Vessels of War*, 106 U.S. 607, 1 S.Ct. 539, 27 L.Ed. 286.

**Inlantal, Inlantale** inlántal, inlántéyliy/. Demesne or inland, opposed to *delantal*, or land tenanted.

**Inlaughe** /inlò/. Sax. In old English law, under the law (*sub lege*), in a frank-pledge, or decennary.

**Inlaw.** To place under the protection of the law

**In law.** In the intendment, contemplation, or inference of the law; implied or inferred by law; existing in law or by force of law. See **In fact**.

ATTACHMENT B  
Marine Spill Response Corporation Announcement

## Marine Spill Response Corporation: A New Weapon for Cleaning Up Oil Spills

On September 6, 1990, PIRO (Petroleum Industry Response Organization) Implementation Inc., an oil spill response planning group created after the 1989 spill in Prince William Sound in Alaska, announced the formation of the Marine Spill Response Corporation (MSRC). When it is fully operational, MSRC will have a response capability larger than any other response organization in the world. The MSRC will be funded by oil companies and others involved in the shipment or receipt of oil by tanker through another newly created organization, the Marine Preservation Association (MPA). However, MSRC will operate completely independently of the MPA and its members. The MSRC will consist of a Washington, D.C., headquarters and five response regions with regional centers located in the New York-New Jersey metropolitan area (Northeast region), Fort Everglades in South Florida (Southeast region), Lake Charles, Louisiana (Gulf region), Port Hueneme, California (Southwest region), and Seattle, Washington (Northwest region).

### Background on the New Spill Response Organization

On March 24, 1989, an oil tanker struck a reef in Alaska's Prince William Sound and caused the largest oil spill in U.S. history. Up to 10,000 workers, scores of vessels

and aircraft and tons of equipment were employed in cleanup efforts through the spring and summer, until the onset of prohibitive weather conditions. Those efforts were resumed in the spring of 1990. Within several weeks of the spill, eight major oil companies, under the auspices of the American Petroleum Institute, created a task force to examine questions and issues raised by such catastrophic tanker spills. The task force studied and evaluated existing prevention and response programs. It concluded that neither the government nor the industry had the equipment or personnel ready to deal with catastrophic spills. It also identified a need for further spill prevention efforts.

Consequently, in June 1989 the task force recommended that the industry undertake a broad new program to expand its ability to prevent, contain and clean up major oil spills. The task force recommended that a response program be operated by a new, independent organization, originally called the Petroleum Industry Response Organization (PIRO), which would be funded voluntarily by participating oil companies.

PIRO was envisioned as a response company capable of providing a best-effort response to a catastrophic spill from a tanker in, or posing a threat to, U.S. coastal waters (out to the 200-mile Exclusive

Economic Zone), harbors and river mouths. Since the seriousness of a spill depends on the type of oil spilled, the specific environmental risks involved and the prevailing weather and tidal conditions—in addition to the actual amount of oil spilled—the task force defined "catastrophic spill" simply as one beyond the capability of local response resources, as determined by the U.S. Coast Guard.

The task force recommended that PIRO have five regional response centers on the East, West and Gulf Coasts, each with several permanent staging areas along its coastline. Each region was to be capable of responding to a spill of up to 218,000 barrels. It envisioned the use of personnel, equipment and supplies from more than one region to respond to larger spills.

The task force also proposed new spill prevention initiatives and improvements in existing tanker safeguards and operating procedures. It also recommended broad-based research and development (R&D) and readiness auditing roles for PIRO.

The task force estimated PIRO's five-year operating, capital and R&D costs at \$275 million.

One month later, in July, 1989 the original eight companies that joined in the task force's initial effort were

joined by a dozen more in forming a PIRO Implementation group and steering committee to begin examining in detail what would be required to fulfill the task force's goals and recommendations.

Retired Vice Admiral John D. Costello, former commander of the U.S. Coast Guard's Pacific Area, was named to direct these efforts.

The detailed work of the steering committee was reflected in the names of its eight working subcommittees: finance and procurement, communications, operations, staff activities, facilities acquisition, legal, insurance and research. Some 75 executives from participating companies looked into the many conceptual, procedural, legal and organizational questions that had to be addressed in the actual formation of the new response organization.

As their detailed study and planning progressed, the original five-year cost estimates were revised upward substantially—initially to \$400 million for the first five years and, most recently, to about \$800 million.

As work proceeded, additional companies became interested in affiliating with PIRO, including non-oil companies such as shippers and facilities that handle oil. Ultimately, this broader interest led to renaming of the new oil spill response organization to the Marine Spill Response Corporation (MSRC).

### Legislative Developments

Planning and development of MSRC were influenced by the oil spill legislation that evolved in Congress through the fall and winter of 1989 and the spring and summer of 1990—and was signed into law by President Bush on August 16, 1990.

This legislation contains several provisions of critical importance to

MSRC. To ensure the most prompt and effective response, the legislation provides limited immunity for oil spill responders—but not for spillers. This national immunity standard ensures that responders will not delay response and cleanup actions while having to wait for advice about the liability exposure they might face. It also protects them from post-spill lawsuits by parties alleging damages, unless the responder acted with gross negligence or willful misconduct. Liability on a simple negligence basis would be assumed in cases of personal injury or wrongful death.

However, the legislation allows states to preempt federal law in this regard. This means that an uneven playing field may face the responder—on one side of a state line he may have reasonable limited immunity, while on the other side he may face possible uninsurable risks. This may pose serious problems in the future.

An additional provision of this legislation makes the President, through the U.S. Coast Guard, responsible for seeing that a spill is promptly cleaned up. Recent history has demonstrated that large-scale operations to clean up oil spills require a single decision-maker to resolve issues expeditiously. The legislation, while clearly putting the responsibility for cleanup on the spiller, also clearly makes the private sector the main source for the nation's cleanup capability, under the watchful, supervising eye of the Coast Guard.

### Organization of MSRC

To assure the independence of MSRC, a second non-profit corporation was created—the Marine Preservation Association (MPA). The companies that participated in PIRO and in the development of MSRC are members of this associa-

tion. MSRC has neither members nor shareholders. Its board of directors is self-perpetuating and wholly independent of MPA or its member companies. MPA will not be involved in the management of MSRC.

Initial capital contributions and dues paid to MPA are based on the quantities of oil handled in the waters in which MSRC will operate. MPA contributions and fees are being used to finance creation of MSRC and to fund its ongoing operations. However, they will not be used to cover expenses that MSRC incurs in responding to spills.

MSRC will maintain a contractual relationship with the members of MPA, obligating MSRC to make its services, manpower and equipment available in the event of a major spill involving a member's vessel or facility. The expenses incurred by MSRC in responding to a spill will be recovered directly from either the member-spiller or his insurer. If costs exceed this compensation, or if a spiller cannot be identified, then cleanup costs will be borne by the newly established Federal Oil Spill Compensation Fund.

All MPA members must meet the spill response capability certification requirements of the new federal law. These requirements could be satisfied by a member's contractual relationship with MSRC.

### MSRC's Response Role

Spills to Which MSRC Will Respond.

MSRC is designed primarily to provide a best-effort response to catastrophic spills of persistent oil in United States offshore and tidal waters, including bays, harbors, and the mouths of rivers. (Persistent oil—for example, crude oil—lingers in the environment. Non-persistent oil

Products like gasoline tend to evaporate or degrade quickly.)

Each of MSRC's five regional response centers (and its associated prepositioned equipment sites within the region) is being designed to manage a spill of up to 218,000 barrels, as originally proposed. If the resources of all five MSRC regions were combined, its capability would be nearly 1.1 million. MSRC is being designed primarily for catastrophic spills of the size of the accident at Prince William Sound, but it will respond to smaller spills when they are beyond the capability of the local spill response infrastructure. The Coast Guard will judge when local response efforts are not sufficient to satisfactorily contain and cleanup the spill.

#### MSRC Headquarters, Regional Centers and Prestaging Areas.

MSRC headquarters will be located in Washington, D.C. and is expected to have 43 employees when fully staffed. These personnel will establish operating policy and provide normal staff support. In addition, the corporation's operational audit and R&D programs will be directed from headquarters.

The regional centers will be in (1) the New York-New Jersey metropolitan area (Northeast region), (2) Port Everglades in South Florida (Southeast region), (3) Lake Charles, Louisiana, near the Texas border (Gulf region), (4) Port Hueneme, California, north of Los Angeles and (5) Seattle, Washington (Northwest region).

The regional centers will be nearly equal in size. Variations will reflect differences in the territory each regional center will be responsible for and in the amount and location of oil tanker traffic and barging.

Despite small differences in size, the regional centers will possess equivalent response capabilities. Together, they will have approximately 350 employees.

Each regional center will have four to six prestaging areas (a total of 23 for all five regions) where equipment and sometimes vessels and personnel will be located.

The general locations of prestaging areas for each region are:

□ Northeast Region: Portland, Maine; Boston, Massachusetts; Narragansett Bay, Rhode Island; Delaware Bay; Chesapeake Bay, Maryland; and Norfolk, Virginia.

□ Southeast Region: Wilmington, North Carolina; Savannah, Georgia; Jacksonville, Florida; Tampa, Florida; and in the U.S. Virgin Islands.

□ Gulf Region: Mobile, Alabama; Venice, Louisiana; Galveston, Texas; and Corpus Christi, Texas.

□ Southwest Region: San Diego, Los Angeles/Long Beach, California; San Francisco, California; and Oahu, Hawaii.

□ Northwest Region: Astoria, Oregon; Bellingham, Washington; Port Angeles, Washington; and Alaska.

The locations of the regional response centers and prestaging areas were selected to ensure the quickest, most effective response to possible spills, taking into account the volumes of oil that are shipped in various areas and the logistical problems of moving equipment from regional centers to a spill. Location of highways, airports, piers, navigable waterways and the availability of office and warehouse space were all factors considered in site-selec-

tion. Each location will have to be surveyed to assure that specific sites meeting MSRC operational requirements actually are available.

According to the API task force report, MSRC should play an appropriate response and cleanup role in Alaska. The definition of this role is not yet received. Primary response capabilities already in existence must be evaluated before it can be determined what else might be required. Discussions with industry and the state have not yet proceeded to the point where MSRC's role can be completely described.

The MSRC will not operate in the Great Lakes and other non-tidal waters. Historically, spills in the Great Lakes have been comparatively smaller and have involved "non-persistent" oil. The Oil Pollution Act of 1990 will require oil shippers on the Great Lakes to show how they could contain and cleanup a worst-case spill, most often through reliance on existing cooperatives and subcontractors.

#### Relationship of MSRC with Existing Co-ops and Subcontractors.

MSRC will coordinate its efforts with an estimated 150 existing oil-spill cooperatives and subcontractors. Over the years, such cooperatives and subcontractors have compiled a solid record of handling non-catastrophic, inshore spills—which account for some 99.9 percent of all spills. MSRC is designed to complement this existing capability—that is, to handle the infrequent, yet potentially devastating, catastrophic spills. Existing cooperatives and subcontractors would continue to handle smaller spills, except in instances in which MSRC's assistance might be required or when the Coast Guard requests MSRC's aid.

MSRC will employ about 350 people in the five regions. Existing cooperatives and subcontractors will also be called on or retained to provide additional manpower and equipment needed to deal with spills.

Identifying qualified subcontractors, arranging contractual agreements, reviewing contractor capabilities and training will be an ongoing function of MSRC's permanent staff.

The synergistic relationship between MSRC and existing, smaller responders is expected to result in joint training exercises, coordinated research, development and sharing of new oil spill response techniques and equipment and frequent exchanges of information and ideas.

**MSRC Equipment.**

MSRC will buy approximately \$300 million worth of equipment. All MSRC equipment will be prepackaged to permit easy movement by air, truck, vessel or rail. This equipment will include vessels and barges, trucks, skimmers, booms, communications equipment, dispersants, wildlife and shoreline rehabilitation equipment and lightering equipment to remove oil from disabled vessels.

Booms are floating mechanical barriers that extend above and below the water surface to contain spilled oil for recovery and to move spilled oil into areas where recovery is easier. Since booms do not work well if currents are too swift and waves too high, deployment in rough weather can be a problem.

Skimmers are vessels that collect spilled oil from the surface of the water. Like booms, skimmers have trouble operating where currents are swift and waves high.

Chemical dispersants sprayed on oil can break it into small droplets, accelerating the removal of volatile hydrocarbons, facilitating the natural "decay" of the oil's components, and minimizing movement of the oil to shorelines. Dispersants can be rapidly and broadly applied by air over large areas and volumes of oil, even in adverse sea conditions.

**MSRC's Research Program.**

MSRC will conduct a five-year, \$35 million research and development program to improve oil spill response technology. This program will be a key element in attempting to improve the corporation's effective future response to oil spills. Proposed research will cover techniques for minimizing oil losses in the event of a spill and keeping them close to the vessel; recovering and treating oil after it begins to spread but before it reaches shore; preventing and reducing shoreline impact, which includes studies on bioremediation; the fate and effects of oil in the environment; reducing the impact of a spill on wildlife; and investigating the health and safety of persons exposed to spills.

**Timetable for MSRC to Become Operational.**

MSRC must be fully operational within 30 months of enactment of the

Oil Pollution Act of 1990, when the act will require shippers and others responsible for oil transportation and handling on offshore and tidal waters to show that they can contain and clean up an oil spill they might cause.

This federal timetable fits MSRC's schedule for implementation. There are myriad steps that must be taken to make a complex, large, wholly new organization operational. A detailed plan has been developed for MSRC, but most of the plan still must be implemented.

Equipment and vessels must be constructed and purchased. Personnel—including (subcontractors) who will actually do much of the work transporting equipment to spill sites, as well as operating it—must be hired and trained. Land and buildings must be purchased or leased to create the regional centers and equipment prestaging areas. Insurance must be procured.

*For more information, contact:  
Steve Duca, Vice President  
Readiness and External Affairs  
Marine Spill Response Corp.  
1220 L Street, N.W., 8th Floor  
Washington, D.C. 20005  
(202) 682-8574*

ATTACHMENT C  
Legislative Research Memorandum 90.200

# Alaska State Legislature

Legislative Research Agency



P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 485-3991  
Fax: (907) 483-3351

March 12, 1990

## MEMORANDUM

TO: Senator Mike Szymanski

FROM: Glenn T. Gray  
Legislative Analyst

RE: Effect of Increased Spill Liabilities on Tanker Operations  
Research Request 90.200

You requested information concerning the effects of 1989 Alaska legislation that increased liability for tankers carrying crude oil to \$500 million. Specifically you want to know: 1) if the increased liability has or is likely to result in higher insurance rates; 2) if there will be a concomitant rise in tanker tariffs; 3) if independent oil tanker companies have had difficulty obtaining insurance; and 4) if the 1989 oil spill legislation caused a reluctance for oil companies to ship crude oil to Cook Inlet.

The first section of this memorandum summarizes the answers to these questions. The next section provides background information about insurance arrangements for the tanker industry. Each of the four questions are then answered in detail under separate sections.

### Summary

Insurance rates and tanker tariffs have increased in the past year; however, it is uncertain whether these increases are a direct result of Alaska's 1989 changes to oil spill liability laws. Many other factors affect insurance rates and tanker tariffs. The Exxon Valdez accident and new oil spill liability laws have had some effect on operating costs for vessel owners although these added costs may not yet be reflected in tariffs. While it is possible that some of the smaller independent tanker companies may have difficulty obtaining insurance, most of the tanker companies likely to transport Alaska oil receive at least \$500 million liability coverage through a protection and indemnity club.<sup>1</sup> One oil company representative revealed several factors that contribute to a general reluctance to ship crude oil to Cook Inlet: uncertainty concerning future oil spill clean-up equipment requirements; possible changes to state and federal oil spill legislation; possible liability for spills after

---

<sup>1</sup>Shell Oil Company requires \$700 million in liability coverage for transport of its oil (French 1990).