

1 Timothy M. Lynch
LYNCH, CROSBY & Sisson
2 A Professional Corporation
550 West 7th Avenue, Suite 1100
3 Anchorage, Alaska 99501
Telephone: (907) 276-3222

4 Robert L. Lief
Elizabeth J. Cabraser
5 Daniel C. Girard
LIEFF, CABRASER & HEIMANN
6 One Market Plaza
Steuart Street Tower, 12th Floor
7 San Francisco, California 94105
Telephone: (415) 777-5800

8 Daniel Woo
9 C. Dean Little
LeSOURD & PATTEN, P.S.
10 2400 Columbia Center
701 Fifth Avenue
11 Seattle, Washington 98104-7005
Telephone: (206) 624-1040

12 Attorneys for Individual and
13 Representative Plaintiff

14 IN THE UNITED STATES DISTRICT COURT

15 FOR THE DISTRICT OF ALASKA

16 In re: the EXXON VALDEZ)

No. A89-095 Civil
(Consolidated)

17 This Pleading Relates to:)

18 PHILIP G. McCrudden, on behalf)
of Himself and All Others)
19 Similarly Situated,)

20 Plaintiffs,)

No. A 8 9 - 1 6 6 CIV

21 vs.)

CLASS ACTION COMPLAINT
FOR DAMAGES AND EQUITABLE
RELIEF

22 EXXON CORPORATION, a New Jersey)
Corporation; EXXON CO. USA, a)
Delaware Corporation; EXXON)
23 SHIPPING COMPANY, a Delaware)
Corporation; ALYESKA PIPELINE)
SERVICE CO., an Alaska)
24 Corporation; TRANS-ALASKA)
PIPELINE LIABILITY FUND, a)
25 corporation; JOSEPH J. HAZELWOOD)
an individual, and GREGORY ,)
26 COUSINS, an individual,)

DEMAND FOR JURY TRIAL

27 Defendants.)

28 -1-

Class Action Complaint for Damages and Equitable Relief

FILED

MAY 03 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By me Deputy

1 Individual and Representative plaintiff PHILIP G.
2 McCRUDDEN, on behalf of himself and all other similarly situated
3 salmon fishers and their crews, alleges:

4 JURISDICTION AND VENUE

5 1. This Court has subject matter jurisdiction over all
6 claims asserted in this civil class action under 28 U.S.C.
7 Section 1331 (federal question); 28 U.S.C. Section 1333(1)
8 (admiralty and maritime jurisdiction); 28 U.S.C. Section 1332
9 (diversity jurisdiction); and the principles of ancillary and
10 pendent jurisdiction. All claims asserted herein arise out of
11 the March 24, 1989 grounding of the Exxon Valdez and the
12 resulting oil spill. Plaintiff's claims arise under various
13 federal statutes, Alaska statutes, and the common law. The
14 named plaintiff and defendants are of diverse citizenship, and
15 the matter in controversy with respect to the claims of
16 plaintiff, and of each class member, exceeds the sum of TEN
THOUSAND DOLLARS (\$10,000.00), exclusive of interest and costs.

17 2. Venue is proper in this district since the grounding
18 of the Exxon tanker "Exxon Valdez" and the resulting oil spill
19 which is the subject matter of this class action occurred within
20 the District of Alaska and because the District of Alaska is the
21 designated forum for the In Re The EXXON VALDEZ complex
22 litigation in which this class action is consolidated pursuant
23 to Pre-Trial Order No. 1, filed on April 25, 1989 therein.
24 Venue is proper in this district by virtue of 28 U.S.C.
25 Section 1391, because the March 24, 1989 Exxon Valdez grounding
26 occurred in this district, the claims asserted herein arose in
27 this district, and defendants were and are doing business in
28 this district.

PARTIES

1
2 3. Individual and representative plaintiff PHILIP G.
3 McCRUDDEN is a current resident of Seattle, Washington, and a
4 citizen of the State of Washington, who formerly resided in the
5 State of Alaska for many years, and who is actively engaged in
6 the business and livelihood of salmon fishing in the waters
7 affected by the oil spill resulting from the grounding of the
8 Exxon Valdez. He brings this action as a class action on behalf
9 of himself, and of all other salmon fishers and their crews who
10 were and are similarly affected, to obtain compensatory and
11 punitive damages for himself and this class, according to proof,
12 and all other necessary and appropriate injunctive and equitable
13 relief.

14 4. Defendant TRANS-ALASKA PIPELINE LIABILITY FUND
15 ("Fund"), is a non-profit corporate entity established pursuant
16 to the Trans-Alaska Pipeline Authorization Act ("Act"),
17 43 U.S.C. Section 1653 (c)(4). The Fund, which is administered
18 by the holders of the Trans-Alaska Pipeline right-of-way under
19 regulations prescribed by the Secretary of the United States
20 Department of the Interior, is a resident of the State of Alaska
21 with its principal place of business in Alaska.

22 5. Defendant ALYESKA PIPELINE SERVICE COMPANY
23 ("ALYESKA"), an Alaska corporation, is an association of the
24 holders of the Pipeline right-of-way for the Trans-Alaska
25 Pipeline System that includes: Amerada Hess Corporation, Arco
26 Pipeline Company, British Petroleum Pipelines, Inc., Exxon
27 Pipeline Company, Mobil Alaska Pipeline Company, Phillips
28 Petroleum Company, Sohio Petroleum Company, Trans-Alaska
Pipeline Liability Fund, Exxon Corporation, Exxon USA, and Exxon

Shipping Company. ALYESKA owns and operates the Trans-Alaska Pipeline System, including the terminal at Valdez, Alaska, and loaded the Exxon Valdez with North Slope crude oil at the Valdez terminal and is responsible for operations and monitoring the transportation of oil in the Prince William Sound area.

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

7. Defendant EXXON SHIPPING COMPANY, a Delaware Corporation and maritime subsidiary of defendant EXXON CORPORATION with its principal place of business at 811 Dallas Avenue, Houston, Texas 77002, operates in the State of Alaska, and is an owner and operator of the vessel known as the Exxon Valdez.

8. Defendant EXXON CO., USA, a Delaware corporation, is a division of defendant EXXON CORPORATION with its principal place of business at 800 Bell Avenue, Houston, Texas 77002. EXXON CO., USA, is engaged in the business of producing crude oil and refining in the State of Alaska, transporting and marketing petroleum products in the United States, and is an owner and operator of the vessel known as the Exxon Valdez.

9. Defendants JOSEPH J. HAZELWOOD and GREGORY COUSINS are individuals who were employed by defendants EXXON CORPORATION, EXXON CO., USA, and/or EXXON SHIPPING COMPANY (collectively, the "EXXON defendants"), to operate the vessel Exxon Valdez, and who

1 were charged with operating and/or were operating said vessel
2 when the March 24, 1989 grounding of the Exxon Valdez occurred.

3 CLASS ACTION ALLEGATIONS

4 10. This action is brought as a class action under the
5 provisions of Rule 23 of the Federal Rules of Civil Procedure.
6 Individual and representative plaintiff PHILIP G. McCRUDDEN
7 brings this action on his own behalf, and on behalf of a
8 proposed plaintiff class defined as and consisting of all salmon
9 fishers and their crews whose fishing activities, property
10 rights, income, earning capacities, and/or livelihood were
11 damaged and may continue to be damaged due to the March 24, 1989
12 grounding of the Exxon Valdez and the resulting oil spill.

13 11. This action has been brought and may properly be
14 maintained as a class action pursuant to the applicable
15 provisions of Rule 23 because:

16 a. The proposed plaintiff class, as described and
17 defined in this Complaint, consists of approximately two
18 thousand (2,000) members, and is so numerous that it is imprac-
19 ticable to bring all members of the class before the court. Its
20 members may readily be identified and notice given by use of
21 public records. The salmon fishers hold gill net permits, seine
22 permits, and/or set net permits for salmon fishing. In the
23 Prince William Sound area ("Area E"), there are approximately
24 530 gill net permits and 100 crew members, 250 seine permits and
25 750 crew members, and 31 set net permits and 31 crew members,
26 for a total of approximately 811 permits and 881 crew members.
27 Additional permit holders and crews fish the adjacent areas that
28 have been polluted or are threatened with pollution by the spill

1 resulting in a total class population of approximately 2,000
2 members of the salmon fishing permitholder (fisher) and crew
3 class, in fulfillment of the numerosity and impracticality of
4 joinder requirements of F.R.Civ.P. 23(a)(1);

5 b. The questions and issues of law and fact raised
6 herein are common to the class which predominate over those
7 questions affecting only the individual members in satisfaction
8 of the commonality and predominance requirements of F.R.Civ.P.
9 23(a)(2) and 23(b)(3);

10 c. The common issues of law and fact which unite the
11 class and compel class treatment include, but are not limited
12 to, questions concerning:

13 (1) Whether the federal statutes, Alaska
14 statutes, and the common law were violated by the acts
15 and omissions of defendants as alleged in this
16 Complaint;

17 (2) Whether defendants acted willfully,
18 recklessly, with gross negligence, or negligently in
19 causing and/or failing to timely and effectively clean
20 up the oil spill resulting from the grounding of the
21 Exxon Valdez;

22 (3) Whether defendants have strict liability,
23 regardless of fault, for the damages and injuries
24 resulting from the oil spill;

25 (4) Whether defendants breached duties of care
26 owed to plaintiff and the members of the class;

27 (5) Whether defendants misrepresented and/or
28 omitted important facts regarding their capacity to

respond to and ameliorate an oil spill disaster in an effective manner;

(6) Whether, as a result of the determination of the foregoing liability questions, plaintiffs are entitled to damages for economic injury, property damages, bodily injury, emotional distress, punitive damages, and/or injunctive and equitable relief; and

(7) If so, what is the appropriate measure of and means of calculating such monetary damages and affording such non-monetary relief.

d. There is a community of interest in obtaining appropriate injunctive or other equitable relief to stop the spread of the oil slick to further areas of the Prince William Sound, to prevent the recurrence of a similar disaster, and to obtain adequate compensation for the damages, lost wages, injuries, emotional distress, pain and suffering, property damage, and damage to livelihood and ecology, which defendants' actions have inflicted upon the class.

e. As an active salmon fisher and permit holder, the individual and representative plaintiff is a member of the class described and defined in this Complaint, and his claims are typical of the claims of the class.

f. The individual and representative plaintiff will fairly and adequately protect the interests of the class, has no interests which conflict with the class, and has retained attorneys experienced in the prosecution of complex tort and class action litigation to represent the plaintiff class herein.

1 g. Without class certification, the prosecution of
2 separate actions by individual members of the plaintiff class
3 would create a risk of

4 (1) Inconsistent or varying adjudications with
5 respect to individual members of the class which
6 would establish incompatible standards of conduct
7 for defendants; or

8 (2) Adjudications with respect to the individual
9 members which would, as a practical matter, be
10 dispositive of the interests of the other members
11 not parties to the adjudication, or would
12 substantially impair or impede their ability to
13 protect their interests.

14 h. Defendants have acted or refused to act on
15 grounds generally applicable to the class, thereby making
16 appropriate final injunctive relief or corresponding declaratory
17 relief with respect to the class as a whole; and

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

23 **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

24 12. On the evening of March 23, 1989, the Exxon Valdez,
25 owned and operated by the above-named EXXON defendants as a 987
26 foot tanker, weighing 211,000 deadweight tons with an oil cargo
27 and bunker fuel, left the Port of Valdez, Alaska in Prince
28 William Sound, the southern terminal facility of the
Trans-Alaska Pipeline System, bound for Long Beach, California.

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

5 14. The Exxon Valdez passed through the harbor and Valdez
6 Narrows under the command of a harbor pilot. Defendant Captain
7 JOSEPH J. HAZELWOOD, the officer in charge of the ship, who at
8 all times relevant hereto was acting within the scope of his
9 employment and as an agent and/or representative of defendants
10 EXXON, was on the bridge of the ship when the harbor pilot
11 disembarked at the southern end of the Narrows at approximately
12 12:30 a.m. Friday morning, March 24, 1989. Captain HAZELWOOD
13 was under the influence of alcohol while he was in command of
14 the vessel.

15 15. After passage through the harbor, Captain HAZELWOOD
16 retired to his cabin, one flight below the bridge, leaving only
17 defendant GREGORY COUSINS, the third mate, and Robert Kafan, the
18 helmsman, on the bridge. At all times relevant hereto,
19 defendant GREGORY COUSINS, and Kafan, were acting within the
20 scope of their employment and as agents and/or representatives
21 of defendants EXXON.

22 16. Defendant GREGORY COUSINS, who was not certified for
23 commanding the tanker through these waters, steered the vessel
24 through the deep-water southbound shipping lane of the channel
25 due to earlier reports that it contained icebergs from a glacier
26 that had broken to the northwest.

27 17. The vessel steered east into the empty northbound
28 lane, and then proceeded on a southwesterly course bound for
Long Beach, California. The vessel, however, proceeded three

1 miles east past the alternative channel, outside the traffic
2 lanes and entirely beyond the shipping channel into a charted
3 area of rocky reefs.

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

9 19. Plaintiff is informed and believes that defendant
10 HAZELWOOD remained in his cabin, although the noise and impact
11 would or should have immediately commended him to the bridge to
12 prevent, and further damage to the vessel or its contents.

13 20. Although the ship was still navigable after the first
14 impact, she was so far east of deep water that when defendant
15 COUSINS tried to turn the Exxon Valdez back toward the west he
16 struck a second part of the shallow reef. The second impact
17 brought the ship aground, stopping the ship's progress
18 completely further damaging the vessel and its cargo.

19 21. The scraping impact and grounding of the Exxon Valdez
20 upon Bligh Reef cut open at least eight of the ship's twelve oil
21 tanks which held 53 million gallons of crude oil, causing the
22 largest oil spill in United States history. To date, over
23 11 million gallons of crude oil have been discharged into Prince
24 William Sound, contaminating at least one hundred square miles
25 of the Sound's fishery, on which the class members depend for
26 their livelihood.

27 22. On late Sunday, March 26, 1989, due to the slow pace
28 of any attempted clean-up efforts by ALYESKA and the EXXON
defendants, and concerned about even further possible damage to

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

3 23. Defendants TRANS-ALASKA PIPELINE FUND, ALYESKA
4 PIPELINE COMPANY, and the EXXON defendants owed a duty to have
5 developed a proper and adequate emergency containment plan for
6 this area, but failed to develop or put any such plan into
7 effect within a reasonable or practical time period to contain
8 the spilled oil. On information and belief, in or about 1981,
9 these defendants disbanded a 20-member emergency team which
10 formerly stood ready, on a round-the-clock basis, to respond to
11 oil spills in Valdez harbor and the Prince William Sound. The
12 team was disbanded because these defendants deemed it
13 "unnecessary" and "a waste."

14 24. By late Monday, March 27, 1989, winds pushed the slick
15 toward environmentally sensitive fisheries and over a large area
16 of Prince William Sound.

17 25. The oil slick has already spread to Smith, Little
18 Smith, Naked, Seal Islands, and Seward, and as it moves into and
19 out of the southern end of Prince William Sound, has spread down
20 the Kenai peninsula to near Homer. The full extent of
21 contamination and damages by the spreading oil cannot yet be
22 quantified, but is estimated to have devastating effects to all
23 salmon fisheries utilized by the plaintiff and the class.

24 26. Damages to plaintiff and the proposed salmon fishers'
25 and crews' class caused by this discharge of millions of gallons
26 of Northern Slope crude oil include, but are not limited to,
27 damage to the ecosystem of marine life, including all species of
28 salmon, relied upon by plaintiff and the class for economic
purposes.

1 27. Plaintiff is informed and believes that the damage
2 caused by the spill will permanently effect the trade, business,
3 earning capacities and livelihood of the fisher participants
4 (salmon permit holders and their crews) in the salmon fishing
5 industry of Alaska as well as marine life in the Prince William
6 Sound area. The environment of this area, the vocation of
7 salmon fishing, and a way of life which thrived in a symbiotic
8 relationship between the two, have been irreparably altered and
9 damaged by the spill.

10 **FIRST CLAIM FOR RELIEF:**

11 **STRICT LIABILITY OF ALYESKA**
12 **(Trans-Alaska Pipeline Authorization Act)**

13 28. Plaintiff realleges and incorporates herein by
14 reference each and every allegation set forth above, and further
15 alleges against defendant ALYESKA:

16 29. ALYESKA is now, and was at all times relevant hereto,
17 the holder of the Pipeline right-of-way granted pursuant to the
18 Trans-Alaska Pipeline Act.

19 30. The damages to plaintiff and the class arose in
20 connection with and resulted from activities along or in the
21 vicinity of the Trans-Alaska Pipeline right-of-way.

22 31. Upon information and belief, the damages to plaintiff
23 and the class were neither caused by an act of war nor by the
24 negligence of the United States, other government entity, or by
25 plaintiff or the class.

26 32. The oil discharged in connection with and resulting
27 from activities along or in the vicinity of the Pipeline
28 right-of-way have damaged, injured and destroyed affected lands,
structures, fish, wildlife, biotic and other natural resources
relied upon by the plaintiff and the class for subsistence and

1 economic purposes, and has caused loss of profits and impairment
2 of earning capacity on the part of plaintiff and the class,
3 whose members depended on these natural resources for their
4 livelihood.

5 33. Defendant ALYESKA is strictly liable to plaintiff and
6 the class for all damages sustained as the result of the
7 discharges of oil from the Exxon Valdez pursuant to the
8 Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Sections
9 1651, et seq.; 43 U.S.C. Section 1653(a), (b), and (c).

10 SECOND CLAIM FOR RELIEF

11 STRICT LIABILITY OF THE EXXON DEFENDANTS
12 (Trans-Alaska Pipeline Authorization Act)

13 34. Plaintiff realleges and incorporates herein by
14 reference each and every allegation set forth above, and further
15 alleges against the EXXON defendants:

16 35. The EXXON defendants are now, and were at all times
17 relevant hereto, the owners and operators of the Exxon Valdez
18 and the employers of defendant JOSEPH J. HAZELWOOD, defendant
19 GREGORY COUSINS, and the crew of the vessel.

20 36. The damages to plaintiff and the plaintiff class arose
21 as the result of discharges of oil from the Exxon Valdez that
22 had been transported through the Trans-Alaska Pipeline and
23 loaded on the Exxon Valdez at the terminal facilities of the
24 pipeline.

25 37. Upon information and belief, the damages to plaintiff
26 and the class were neither caused by an act of war nor by the
27 negligence of the United States, other government entity, or by
28 plaintiff or the class.

38. The oil discharged from the Exxon Valdez has damaged
the salmon fisheries of Prince William Sound and other natural

1 resources relied upon by the plaintiff and the class for
2 economic purposes, as set forth in paragraph 32 of this
3 Complaint.

4 39. Defendants EXXON and the Fund are strictly liable to
5 plaintiff and the class for all damages sustained as the result
6 of the discharges of oil from the Exxon Valdez pursuant to
7 43 U.S.C. Section 1653(a), (b), and (c).

8 THIRD CLAIM FOR RELIEF:

9 NEGLIGENCE OF THE ALYESKA AND THE EXXON DEFENDANTS

10 40. Plaintiff realleges and incorporates herein by
11 reference each and every allegation set forth above, and further
12 alleges against ALYESKA and the EXXON defendants:

13 41. Defendants ALYESKA and EXXON had continuously
14 reassured environmentalists and others, including plaintiff and
15 the class, at all times prior to the accident, that there
16 existed an emergency clean-up plan by which any major oil spill
17 could be successfully contained within five hours of occurrence;
18 yet a day after the spill little had been done to contain it
19 other than an unsuccessful attempt to spray chemical
20 dispersants.

21 42. Upon information and belief, ALYESKA, EXXON, and the
22 State of Alaska's contingency clean-up plan required ALYESKA and
23 EXXON to be on site within five hours of the spill. Eighteen
24 hours after the grounding of the Exxon Valdez, however,
25 essentially nothing was in place; instead, it took nearly an
26 entire day for ALYESKA and EXXON representatives to start
27 placing barrier booms -- long bars with heavy plastic skirts --
28 around the slick. By that time, the discharged oil had already
become too large to contain.

1 43. The delays were in part due to repairs being performed
2 on the barge required to put the booms around the Exxon Valdez.

3 44. Lack of proper equipment and supplies also hindered
4 effective clean-up operations.

5 45. Moreover, neither ALYESKA nor EXXON had enough
6 equipment or an adequate containment plan to handle a spill of
7 this size.

8 46. The tactics finally chosen by defendants, chemical
9 dispersants which could cause further harm to the water, have
10 proven ineffective. The chemical dispersants could not be used
11 initially because the water was too cold and calm, making the
12 slick too thick for the dispersants to work.

13 47. Upon information and belief, the oil has now been in
14 the water too long for these dispersants to work since they are
15 most effective only if employed within twenty-four hours after a
16 spill.

17 48. Defendants' other contingency clean-up plan was to
18 burn the surface oil with a substance similar to Napalm,
19 basically changing the water pollution into air pollution;
20 however, defendants' delay ultimately allowed changed weather
21 conditions to make it impossible to deploy the necessary small
22 boats used to try to corral the oil into a concentrated area for
23 this purpose.

24 49. Pursuant to federal and Alaska law, the proper control
25 and total removal of the discharged oil which polluted, damaged
26 and threatens to further pollute and damage aquatic life,
27 wildlife, public and private property was the responsibility of
28 the defendants. In regard thereto, defendants had a duty to
plaintiff and the class to have adequate resources available to

1 immediately and effectively contain and clean-up any oil spill
2 in any area within or without the right-of-way or permit area.

3 50. Defendants knew, or should have known, in the exercise
4 of due care, that they lacked adequate equipment and supplies to
5 effectively contain and clean-up a spill of this magnitude, that
6 their contingency clean-up plan, including the tactics they
7 developed thereunder, were extremely limited in their efficiency
8 and use.

9 51. The negligence of ALYESKA and the EXXON defendants in
10 the control and clean-up operations specifically included, but
11 was not limited to, (i) failure to establish and provide for an
12 adequate contingency plan to contain and clean-up any discharge
13 of oil; (ii) inadequate planning of the ensuing clean-up effort;
14 (iii) inadequate carrying-out of the ensuing clean-up effort;
15 (iv) unreasonable delay in the ensuing clean-up effort, (v) the
16 choice of inadequate tactics in the ensuing clean-up effort;
17 (vi) inadequate deployment of equipment, supplies and personnel
18 in the ensuing clean-up effort; and (vii) failure to monitor,
19 inspect and approve of an adequate and effective clean up and
20 containment plan.

21 52. As a direct and proximate result of the foregoing
22 negligence, plaintiff and the class have suffered injuries and
23 damages as set forth in this Complaint.

24 53. In addition, defendants ALYESKA and the EXXON
25 defendants acted recklessly, with gross negligence, wantonly,
26 and in willful disregard of the rights, safety, and economic
27 well-being of plaintiff and the class in the control and
28 clean-up operations of the Exxon Valdez' oil spill, for which
plaintiff and the class are entitled to punitive and exemplary

1 damages against these defendants, in an amount, according to
2 proof, which is sufficient to punish these defendants and to
3 deter them and others from similar callous disregard of the
4 safety and well-being of the environments and residents of the
5 areas in which they conduct the potentially destructive business
6 of oil transport.

7 FOURTH CLAIM FOR RELIEF:

8 NEGLIGENCE OF THE EXXON DEFENDANTS AND THEIR EMPLOYEES

9 54. Plaintiff realleges and incorporates herein by
10 reference each and every allegation set forth above, and further
11 alleges against the EXXON defendants and defendants JOSEPH J.
12 HAZELWOOD and GREGORY COUSINS:

13 55. The captain of the Exxon Valdez, JOSEPH J. HAZELWOOD
14 ("Hazelwood") who upon information and belief, had previously
15 been convicted of charges involving drinking and driving twice
16 in the past five years and had his driver's license suspended or
17 revoked three times in that same period, was under the influence
18 of alcohol while in command of the Exxon Valdez, and showed
19 impermissible alcohol levels in tests taken shortly after the
20 grounding incident.

21 56. Defendant HAZELWOOD had placed the navigation and
22 direction of the vessel into the charge of the third mate,
23 GREGORY COUSINS, when it ran aground, although defendant COUSINS
24 lacked proper certification and guidance to pilot vessels such
25 as the Exxon Valdez through the waters of the Prince William
26 Sound.

27 57. Captain HAZELWOOD and third mate COUSINS knew or
28 should have known that it was not only unreasonably dangerous
for HAZELWOOD to leave the bridge and relinquish control of the

1 tanker to COUSINS, but was also a violation of applicable Coast
2 Guard rules and regulations.

3 58. Captain HAZELWOOD and third mate COUSINS knew or
4 should have known that COUSINS did not possess the requisite
5 degree of competence to command the Exxon Valdez with reasonable
6 prudence, skill or care.

7 59. The EXXON defendants knew or should have known, based
8 on HAZELWOOD's previous convictions for drinking and driving, as
9 well as the revocation or suspension of his driver's license
10 three times in the same five year period, and testimony in
11 depositions taken in another legal action against Exxon in or
12 about late 1988, that HAZELWOOD did not possess the requisite
13 degree of competence to command the Exxon Valdez with reasonable
14 prudence, skill or care, nor the ability to delegate his duties
15 to an uncertified third mate.

16 60. The EXXON defendants knew or should have known, based
17 on the nature of the service in which the Exxon Valdez was
18 involved, that its single hull construction was not sufficient
19 to allow it to safely engage in the crude oil transport trade
20 for which it was intended.

21 61. The negligence of the EXXON defendants (by and through
22 their employees), in the operation of the Exxon Valdez
23 specifically included, but was not limited to (i) failing to
24 adequately crew the tanker; (ii) failing to adequately pilot and
25 navigate Prince William Sound; (iii) commanding the vessel while
26 under the influence of alcohol per Coast Guard and State of
27 Alaska standards, (iv) failing to monitor the sobriety of their
28 crews in operating the vessel, (v) failing to operate the vessel
away from known navigational dangers, (vi) operating the vessel

1 in a dangerous manner, and (vii) failing to utilize a seaworthy
2 vessel. As a direct and proximate result of the foregoing
3 negligence, the EXXON defendants, in their own right as well as
4 by and through their agents, servants and employees, including
5 defendants HAZELWOOD and COUSINS, caused plaintiff and the lass
6 to suffer damages as described above and in paragraph 87 of this
7 Complaint.

8 62. The EXXON defendants acted recklessly, grossly
9 negligent, wantonly and in willful disregard of the rights,
10 safety, and economic well-being of plaintiff and the class in
11 the ownership and operation of the Exxon Valdez for which
12 plaintiff and the class are entitled to punitive and exemplary
13 damages against these defendants as set forth in paragraph 53 of
14 this Complaint.

15 **FOURTH CLAIM FOR RELIEF:**

16 **MARITIME LIABILITY**

17 63. Plaintiff realleges and incorporates herein by
18 reference each and every allegation set forth above, and further
19 alleges against the EXXON defendants:

20 64. By virtue of the above, EXXON defendants violated the
21 general maritime and admiralty laws of the United States and the
22 State of Alaska, which violations were a direct and proximate
23 cause of the damages and injuries suffered by plaintiff and the
24 class, in that the vessel Exxon Valdez was not seaworthy and was
operated in a negligent and/or reckless manner.

25 **SIXTH CLAIM FOR RELIEF:**

26 **NEGLIGENCE PER SE**

27 65. Plaintiff realleges and incorporates herein by

reference each and every allegation set forth above and further alleges, against all defendants:

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

67. The presence of oil in the Prince William Sound and its subsequent spreading to Smith, Little Smith, Naked, Seal Islands, and Seward, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetations, and/or any part of the natural habitat in which they are found.

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

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

70. Upon information and belief, upon discovery of the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska, defendants delayed and/or failed to

1 begin operations to contain and clean-up the hazardous substance
2 within a reasonable period of time.

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

9 EIGHTH CLAIM FOR RELIEF

10 INJUNCTIVE RELIEF PURSUANT TO ALASKA STATUTES 09.45.230

11 72. Plaintiff realleges and incorporates herein by
12 reference each and every allegation set forth above, and further
13 alleges against all defendants:

14 73. The acts and omissions of the defendants created a
15 private nuisance through substantial interference with the use
16 and enjoyment of plaintiff's and the class members' interests in
17 property.

18 74. This substantial interference with the use and
19 enjoyment of plaintiff's and the class members' interests in
20 property includes, but is not limited to, inter alia, injury to
21 and loss of real and personal property, loss of income, loss of
22 means of producing income, and loss of economic benefits.

23 75. The substantial interference with plaintiff's and the
24 class members' interests was caused by the actions and omissions
25 of the defendants, for which they are liable to plaintiff and
26 the class for the damages sustained.

27 76. The defendants threaten to continue the acts and
28 omissions complained of herein, and unless temporarily,
preliminary or permanently restrained and enjoined, will

1 continue to do so. Plaintiff's and the class members' remedies
2 at law for damages is not adequate to compensate them for the
3 injuries threatened to continue; therefore, plaintiff and the
4 class should be granted all appropriate and necessary injunctive
5 and equitable relief against the defendants to require them, by
6 all available means, to protect those areas of Prince William
7 Sound not currently affected, and to rehabilitate those areas
8 already damaged.

9 NINTH CLAIM FOR RELIEF

10 NUISANCE

11 77. Plaintiff realleges and incorporates herein by
12 reference each and every allegation set forth above, and further
13 alleges against all defendants:

14 78. The acts and omissions of the defendants created a
15 public nuisance through unreasonable interference with the
16 rights of plaintiff and the class to water that is free from
17 pollution and contamination by oil.

18 79. The unreasonable interference with the rights of
19 plaintiff and the class common to the public resulted in special
20 and distinct harm to plaintiff and the class including, but not
21 limited to, loss of business, property, and livelihood as a
22 result of the pollution.

23 80. The substantial interference with these interests were
24 caused by the acts and omissions of the defendants for which
25 they are liable to plaintiff and the class for damages
26 sustained.

27 81. The defendants threaten to continue the acts and
28 omissions complained of herein, and unless temporarily,
preliminarily, or permanently restrained and enjoined, will

1 continue to do so, all to the irreparable injury of plaintiff
2 and the class, where remedies at law for damages is not adequate
3 to compensate them for the injuries threatened to continue.

4 TENTH CLAIM FOR RELIEF

5 STRICT LIABILITY FOR ULTRAHAZARDOUS ACTIVITY

6 82. Plaintiff realleges and incorporates herein by
7 reference each and every allegation set forth above, and further
8 alleges against all defendants:

9 83. At all times relevant to this Complaint, the transport
10 of oil through the Prince William Sound area was abnormally
11 dangerous within the meaning of Restatement (Second) of Torts
12 Section 520, and applicable state law, in that a) this transport
13 involved a high degree risk of serious harm to the environment,
14 and to the persons, land, and chattel of others, including
15 plaintiff and the class; b) that this high risk could not and
16 cannot be eliminated even with the exercise of reasonable care;
17 c) that defendants' method of oil transport is inappropriate to
18 the Valdez Harbor-Prince William Sound area; d) that this method
19 is not a matter of common usage; e) that there was and is a
20 likelihood that the harm resulting from defendants' method of
21 transport would and will be great; and f) that the value of
22 defendants' transport to the community of which plaintiff and
23 the class are members was and is outweighed by its dangerous
24 attributes and disastrous results.

25 84. As a direct and proximate result of defendants'
26 undertaking of the above-described ultrahazardous activity,
27 plaintiff and the class have been injured in their physical,
28 mental, and emotional health, have suffered great financial and
economic loss, and irreparable pollution and contamination to

1 the ecosystem and natural resources upon which they depend for
2 their business, livelihood, and earning capacities, and are
3 entitled to damages from defendants for same regardless of
4 defendants' fault.

5 ELEVENTH CLAIM FOR RELIEF

6 CLEAN WATER ACT OF 1977

7 [33 U.S.C. Sections 1251, et seq.]

8 85. Plaintiff realleges and incorporates herein by
9 reference each and every allegation set forth above, and further
10 alleges against all defendants:

11 86. The above-described acts and omissions of defendants,
12 and each of them, constitute violations of the provisions of the
13 Clean Water Act of 1977, 33 U.S.C. Sections 1251, et seq.
14 Plaintiff and the class are entitled to sue for relief
15 thereunder pursuant to 33 U.S.C. Section 1365. As a direct and
16 proximate result of the acts and omissions of defendants as
17 described in this Complaint, plaintiff and the class, as commer-
18 cial salmon fishers and their crews, have suffered damages to
19 their particular economic interests, including the loss of
20 profits and impairment of earning capacity, deriving from their
21 rights to take and harvest salmon from the waters affected by
22 the Exxon Valdez oil spill, and the oil spill's pollution of
23 these waters.

24 DAMAGES

25 87. As a direct and proximate result of the defendants'
26 acts and omissions, plaintiff and the class incurred the
27 following damages:

1 1. Damage to all salmon fisheries in the Prince William
2 Sound areas including permanent and/or long term damage to the
3 habitat and ecology surrounding the Prince William Sound
4 fishery;

5 2. Economic losses, including losses to business,
6 property, income, and earning capacities, in the present and
7 future;

8 3. Emotional pain and suffering, distress, and anxiety at
9 the loss and prospective losses of economic livelihood,
10 professions and a way of life;

11 4. Loss of the value of property and property rights;

12 5. Outrage;

13 6. Costs for clean-up and protection of property,
14 property rights and equipment; and

15 7. Other damages to be proven at trial.

16 WHEREFORE, plaintiff, on behalf of himself and the
17 proposed plaintiff class of salmon fishers and their crews,
18 prays for judgment against the defendants, jointly and
severally, as follows:

19 1. An order certifying the proposed class under the
20 appropriate provisions of F.R.Civ.P. 23(a), 23(b)(1), 23(b)(2),
21 and/or 23(b)(3), to permit them to proceed as a class against
22 the defendants;

23 2. Compensatory damages in an amount to be proven at
24 trial or under expedited alternative procedures adopted by the
25 court;

26 3. Punitive and exemplary damages according to proof, in
27 an amount sufficient to punish defendants, and to deter them and
28 others from engaging in similar wrongdoing;

1 4. An order enjoining defendants to contain and clean-up
2 the oil spilled from the Exxon Valdez, and to prevent its spread
3 to other areas of and near the Prince William Sound;

4 5. Award to plaintiffs of their costs, interest, and
5 attorney fees; and

6 6. Any and all other and further relief as this court
7 deems just and equitable.

8
9 Dated: May 1, 1989.

LYNCH, CROSBY & SISSON, P.C.

LIEFF, CABRASER & HEIMANN

LeSOURD & PATTEN, P.S.

12
13 By: 
14 Timothy M. Lynch

15 Attorneys for Individual and
16 Representative Plaintiff

17
18 DEMAND FOR JURY TRIAL

19 Plaintiff hereby demands a jury trial for himself and
20 the class on all claims so triable.

21 Dated: May 1, 1989.

LYNCH, CROSBY & SISSON, P.C.

LIEFF, CABRASER & HEIMANN

22 LeSOURD & PATTEN, P.S.

23
24 By: 
25 Timothy M. Lynch

26 Attorneys for Individual and
27 Representative Plaintiff

FILED

MAY 04 1989

**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

By PLR Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

| | | |
|------------------|---|-------------------|
| In re |) | |
| |) | |
| the EXXON VALDEZ |) | No. A89-095 Civil |
| |) | |
| _____ |) | (Consolidated) |

MASTER SERVICE LIST

AMENDED - MAY 4, 1989

This master service list will be distributed to all counsel whenever it is amended; and counsel shall be responsible for employing the current master service list.

Proof of service of all documents upon the parties to these consolidated cases shall be by affidavit or certification that:

Service of (TITLE OF DOCUMENT) has been made upon all counsel of record based upon the court's Master Service List of (DATE).

Counsel shall find listed on Exhibit A, attached hereto, the appropriate plaintiff and defendant number designation to be used when filing documents with the court.

COUNSEL FOR PLAINTIFFS'

P-1 thru P-12, P-16 thru P-18

✓A. William Saupe
ASHBURN & MASON
1130 W. Sixth Ave., Ste. 100
Anchorage, Ak 99501
907-276-4331

P-22

✓John Pharr
733 W. 4th Avenue., Ste. 200
Anchorage, Ak 99501
907-272-2525

P-30 thru P-39

✓John T. Hansen
HANSEN & LEDERMAN
711 H Street, Ste. 600
Anchorage, Ak 99501
907-258-4573

P-45 thru P-62, P-64,
P-116 thru P-138

✓Lloyd Benton Miller
SONOSKY, CHAMBERS, SACHSE & MILLER
900 W. 5th Avenue, Ste. 700
Anchorage, Ak 99501
907-258-6377

P-68

✓W.B.T.J. Sigler
P.O. Box 92629
Anchorage, Ak 99509
(no phone #)

P-13 thru P-15, P-40 thru P-42
P-73 thru P-76, P-114, P-115

✓Michael White
PRESTON, THORGRIMSON, ELLIS & HOLMAN
420 L Street
Anchorage, Ak 99501
907-276-1969

P-19 thru P-21, P-23 thru P-29

✓Roger Holmes
BISS & HOLMES
705 Christensen Drive
Anchorage, Ak 99501
907-277-8564

P-43 and P-44

✓Timothy Petumenos
BIRCH, HORTON, BITTNER & CHEROT
1127 W. 7th Avenue
Anchorage, Ak 99501
907-276-1550

P-65 thru P-67

✓Richard J. Smith
CAMAROT, SANDBERG & SMITH
310 K Street, Ste. 500
Anchorage, Ak 99501
907-276-6363

P-69

✓Stephen Pidgeon
943 W. 19th Avenue
Anchorage, Ak 99503
907-278-4394

P-70

✓Donald Ferguson
3605 Arctic Blvd, #419
Anchorage, Ak 99503
907-562-2937

P-72

✓Marlene Sharon Lay
5817 S. Tahiti Loop
Anchorage, Ak
907-562-2937

P-78 thru P-80, P-95, P-96, P-113

✓Matthew D. Jamin
JAMIN, EBELL, BOLGER & GENTRY
323 Carolyn Street
Kodiak, Ak 99615
907-486-6024

P-97 thru P-111

✓Edward Reasor
6731 W. Dimond Blvd.
Anchorage, Ak 99502
907-243-6071

P-139 thru P-144

✓Mark S. Bledsoe
BLEDSOE & KNUTSON
2525 Blueberry Road, Ste. 206
Anchorage, Ak 99503
907-272-5200

P-71

✓Judy Faye Whitson
5641 E. 99th Avenue
Anchorage, Ak 99516
907-346-3438

P-77

✓David R. Millen
3845 Helvetia Drive
Anchorage, Ak 99508
907-561-2271

P-81 thru P-94

✓Samuel Fortier
FORTIER & MIKKO
600 W. International Airport Rd.
Ste., 201
Anchorage, Ak 99518
907-563-6449

P-112

✓Randall Cavanaugh
5808 Cordova Street, #4
Anchorage, Ak 99518
907-563-4429

P-145

✓Timothy Lynch
LYNCH, CROSBY & SISSON
550 W. 7th Avenue, Ste 1100
Anchorage, Ak 99501
907-276-3222

COUNSEL FOR DEFENDANTS'

D-1, D-2, D-5

✓ Douglas Serdahely
BOGLE & GATES
1031 W. 4th Avenue, Ste. 600
Anchorage, Ak 99501
907-276-4557

D-4

✓ Clifford Groh, Sr.
GROH, EGGERS & PRICE
2550 Denali Street, 17th Floor
Anchorage, Ak 99503
907-272-6474

D-3

✓ Charles Flynn
BURR, PEASE & KURTZ
810 N Street
Anchorage, Ak 99501
907-276-6100

D-23

✓ Stephen Hutchings
Assistant Attorney General
1031 W. 4th Avenue, Ste. 200
Anchorage, Ak 99501
907-276-3550

CAUSE: PLAINTIFFS DEFENDANTS

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SEA HAWK SEAFOODS, INC.,
COOK INLET PROCESSORS, INC.,
SAGAYA CORP.,
McMURREN, WILLIAM,
McMURREN, PATRICK L.,
KING, WILLIAM W.,
NORRIS, GEORGE C.,
CRANZ, HUNTER,
FEENSTRA, RICHARD,
WILDERNESS SAILING SAFARIS,
SEAFOOD SALES, INC.,
RAPID SYSTEMS PACIFIC, LTD.
CRUZAN FISHERIES, INC.,
GROVE, STANLEY NORRIS,
GROVE, ANTHONY,
CORDOVA DISTRICT FISHERMAN
UNITED, INC., an Alaska corp.,
PRINCE WILLIAM SOUND AQUA-
CULTURE CORP., an Alaska
non-profit corp.,

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D-17

EXXON CORP., A New Jersey corp.,
EXXON SHIPPING CO., a Delaware corp.,
ALYESKA PIPELINE SERVICE CO., a Delaware corp.,
TRANS-ALASKA PIPELINE LIABILITY FUND,
EXXON CO., USA,
EXXON VALDEZ, her engines, tackle, gear,
equipment and appurtenances, in rem,
HAZELWOOD, JOSEPH, an individual,
COUSINS, GREGORY, an individual,
NELSON, GEORGE
EXXON PIPELINE CO., a Delaware corp.,
AMERADA HESS CORP.,
ARCO PIPE LINE CO.,
BRITISH PETROLEUM PIPELINES, INC.,
MOBIL ALASKA PIPELINE CO.,
PHILLIPS PETROLEUM CO.,
SOHIO ALASKA PIPELINE CO.,
UNION ALASKA PIPELINE CO.,

CAUSE
(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE
IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

ATTORNEYS

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- CHESHER, ELMER J.,
SAMISH MARITIME, INC.,
MID-WEST FISHERIES, INC.,
MCALLISTER, SCOTT,
OLSEN, STEVEN T.,
MICHELLI, JACK,
McALLISTER, MICHAEL,
YOAKUM, CHARLOTTE,
JUDSON, LEE,
HUGHES, LANTZ,
McALLISTER, THOMAS S.,
J & A ENTERPRISES, a Washington
Corp.,
GORESON, MARTIN,
GORESON, JAMES R.,
MOORE, JEFFREY A.,
EWING, JAMES D.,
JENSEN, DOUG,
LOWELL, DANIEL,
WHITTIER SEAFOODS, INC.,
CORDOVA AIR SERVICE, INC.,
DEW DROP, F/V
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- MURPHY, EDWARD,
BP PIPELINES (ALASKA), INC.,
PHILLIPS ALASKA PIPELINE CORP.,
UNOCAL PIPELINE CO.
ALASKA, STATE OF
ALASKA, STATE OF, DEPT. OF ENVIRONMENTAL
CONSERVATION
SOHIO PETROLEUM CO.

Exhibit A

| | | | | | |
|---|------------------|----------------|-------------|-------------------|-------------|
| <input type="checkbox"/> CHECK HERE CASE WAS FILED IN FORMA PAUPERIS | FILING FEES PAID | | | STATISTICAL CARDS | |
| | DATE | RECEIPT NUMBER | C.D. NUMBER | CARD | DATE MAILED |
| | | | | JS-5 | |
| | | | | JS-6 | |

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| | | P-39 DEBRA LEE, F/V, | | |
| | | P-40 BAKER, GRANT C., | | |
| | | P-41 BUTLER, ROBIN, | | |
| | | P-42 CESARI, RICHARD, | | |
| | | P-43 McCRUDDEN, PHILIP H., | | |
| | | P-44 BISHOP, DENNIS, | | |
| | | P-45 NORTH PACIFIC RIM, INC., | | |
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| | | P-47 EYAK NATIVE VILLAGE TRADITIONAL COUNCIL, | | |
| | | P-48 NATIVE VILLAGE OF CHENEGA BAY, | | |
| | | P-49 NATIVE VILLAGE OF CHENEGA BAY IRA COUNCIL, | | |
| | | P-50 VILLAGE OF PORT GRAHAM , THE NATIVE VILLAGE OF PORT GRAHAM, | | |
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| | | P-55 VALDEZ NATIVE ASSOC., INC., | | |
| | | P-56 NICHOLS, AGNES, | | |
| | | P-57 OLSEN, GILBERT, | | |
| | | P-58 MAKARKA, HENRY, | | |
| | | P-59 TOTEMOFF, JOHN M., | | |
| | | P-60 TOTEMOFF, MAGGIE A., | | |
| | | P-61 MAGANACK, WALTER SR., | | |
| | | P-62 MAGANACK, WALTER JR., | | |
| | | P-63 KVASNIKOFF, VINCENT, | | |
| | | P-64 MELSHEIMER, JUANITA, | | |
| | | P-65 THORNE, GERALD E., | | |
| | | P-66 THORNE, GERALD D., | | |
| | | P-67 THORNE, CHARLES M., | | |
| | | P-68 SIGLER, W.B.T.J., | | |
| | | P-69 PIDGEON, STEPHEN, | | |
| | | P-70 FERGUSON, DONALD A., | | |
| | | P-71 WHITSON, JUDY FAYE, | | |
| | | P-72 LAY, MARLENE SHARON, | | |
| | | P-73 HOFMANN, DALE, | | |
| | | P-74 HERSCHLEB, KENT, | | |
| | | P-75 HERSCHLEB, JOHN, | | |
| | | P-76 HERSCHLEB, ANNE, | | |
| | | P-77 COPELAND, TOM, | | |
| | | P-78 WISNER, HUGH R., | | |
| | | P-79 DOOLEY, LARRY L., | | |
| | | P-80 KODIAK ISLAND BOROUGH, | | |
| | | P-81 CHUGACH ALASKA CORP., | | |
| | | P-82 CHUGACH FOREST PRODUCTS, INC., an Alaska corp. | | |
| | | P-83 CHUGACH DEVELOPMENT CORP., an Alaska corp., | | |
| | | P-84 CHUGACH FISHERIES, INC., an Alaska corp., | | |
| | | P-85 CHUGACH TIMBER CORP., an Alaska corp., | | |
| | | P-86 BERING DEVELOPMENT CORP., an Alaska corp., | | |
| | | P-87 TATITLEK CORP., an Alaska Native village corp. | | |

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| | | P-89 CHN, INC., an Alaska corp., | | |
| | | P-90 EYAK CORP., an Alaska Native corp., | | |
| | | P-91 EYAK DEVELOPMENT INC., an Alaska corp., | | |
| | | P-92 EYAK TIMBER INC., an Alaska corp., | | |
| | | P-93 PORT GRAHAM CORP., an Alaska Native Village corp., | | |
| | | P-94 PORT GRAHAM DEVELOPMENT CORP., an Alaska corp., | | |
| | | P-95 OLD HARBOR NATIVE CORP., | | |
| | | P-96 GROTHE, LENHART J., | | |
| | | P-97 BUTCHER, C.N., | | |
| | | P-98 STARITEIM, SCOTT, | | |
| | | P-99 BENNETT, ROSS, | | |
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| | | P-101 PHATLEY, LESLIE, | | |
| | | P-102 DEHLIN, RICHARD, | | |
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| | | P-104 TOTEMOFF, MELVIN, | | |
| | | P-105 WILLIAMSON, RICHARD, | | |
| | | P-106 MILLARD, GARF, | | |
| | | P-107 LANG, NORMAN, | | |
| | | P-108 LAKOSH, THOMAS, | | |
| | | P-109 DAY, PATRICIA, | | |
| | | P-110 KELLAR, BOB, | | |
| | | P-111 MCGUIRE, DENNIS, | | |
| | | P-112 DRIESSCHE, MARC VAN, | | |
| | | P-113 CLARKE, ED, | | |
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| | | P-115 TIEDMAN, FREDERICK M., SR., | | |
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| | | P-120 THE SHOONAQ' TRIBE OF KODIAK, | | |
| | | P-121 THE SHOONAQ' TRIBE OF KODIAK TRIBAL COUNCIL, | | |
| | | P-122 THE NATIVE VILLAGE OF LARSEN BAY, | | |
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| | | P-124 THE NATIVE VILLAGE OF OLD HARBOR, | | |
| | | P-125 THE NATIVE VILLAGE OF OLD HARBOR TRADITIONAL COUNCIL, | | |
| | | P-126 THE NATIVE VILLAGE OF KARLUK, | | |
| | | P-127 THE NATIVE VILLAGE OF KARLUK I.R.A. COUNCIL, | | |
| | | P-128 THE NATIVE VILLAGE OF PORT LIONS, | | |
| | | P-129 THE NATIVE VILLAGE OF PORT LIONS TRADITIONAL COUNCIL, | | |
| | | P-130 THE NATIVE VILLAGE OF AKHIOK, | | |
| | | P-131 THE NATIVE VILLAGE OF AKHIOK TRADITIONAL COUNCIL, | | |

CIVIL DOCKET CONTINUATION SHEET

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| | | P-134 HAAKANSON, SVEN, | |
| | | P-135 LIND, RONNY, | |
| | | P-136 PANAMAROFF, ALLEN, | |
| | | P-137 ELUSKA, DAVID SR., | |
| | | P-138 HARRIS, TESHIA, | |
| | | P-139 ALASKAN SPORT FISHING ASSOC., | |
| | | P-140 STANLEY, MICHAEL L., | |
| | | P-141 YATES, JEFF, | |
| | | P-142 LEE, TONY, | |
| | | P-143 TYGERT, ALLAN, | |
| | | P-144 ELIAS, TOM, | |
| | | P-145 McCRUDDEN, PHILIP G. | |