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UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By \_\_\_\_\_ Deputy

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

RICHARD CESARI, on behalf of  
himself and all others similarly  
situated,  
Plaintiffs

v.

EXXON CORPORATION, a New Jersey  
Corporation; EXXON CO., USA;  
EXXON SHIPPING COMPANY, a Delaware  
Corporation; ALYESKA PIPELINE  
SERVICE COMPANY, a Delaware  
Corporation; and TRANS-ALASKA  
PIPELINE LIABILITY FUND,  
Defendants.

CLASS ACTION

A 89-108 CIV

CIV. NO. \_\_\_\_\_

CLASS ACTION COMPLAINT  
FOR DAMAGES, INJUNCTIVE  
AND OTHER RELIEF

JURY TRIAL DEMANDED

THIS ACTION RELATES TO:  
Cruzan Fisheries, Inc.,  
et al. v Exxon  
Corporation, et al.  
Case No. A89-096

Plaintiff, by his attorneys, brings this action on his  
own behalf and on behalf of the Class he represents to obtain  
damages, injunctive relief and costs of suit from the defendants  
named herein, and complains and alleges as follows:

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JURY TRIAL DEMAND

1. Pursuant to Rule 38 of the Federal Rules of Civil Procedure ("Fed.R.Civ.P"), plaintiffs demand that all issues so triable be tried by a jury in this case.

JURISDICTION AND VENUE

2. This is a civil action for injunctive relief and monetary damages for losses sustained by each member of the putative Class arising out of, and directly resulting from, oil and toxic effluents unlawfully and negligently discharged into navigable waters from the EXXON VALDEZ, a vessel engaged in the transportation of oil between the terminal facilities of the Trans-Alaska Pipeline System and Long Beach, California, a port under the jurisdiction of the United States.

3. This Complaint is filed and these proceedings are instituted pursuant to 28 U.S.C. Sections 1331 and 1333(1), which provide for original jurisdiction in the district courts of all civil actions arising under the laws of the United States and admiralty or maritime jurisdiction. This Court also has subject matter jurisdiction over this action in accordance with the principles of pendent jurisdiction.

4. The grounds for relief are: (i) the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93-153, 43 U.S.C., Section 1651 et seq.; (ii) Admiralty and Maritime Jurisdiction and The Admiralty Extension Act of 1948, 46 U.S.C. Section 740 (1964);

(iii) Negligence; (iv) Statutes adopted in Alaska providing for damages due to injury to property and natural resources; (v) common law nuisance; and, (vi) negligence per se.

5. Venue is properly laid in this district pursuant to 28 U.S.C. Sections 1391(b) and (c), as well as the applicable principles of admiralty and maritime law. Defendants reside in this district for venue purposes and the cause of action arose in this district.

#### THE PARTIES

6. Plaintiff, Richard Cesari, a resident of Seattle, Washington, is engaged in the fishing industry, and has been damaged by the acts and conduct of the defendants as alleged herein.

7. Defendant, the Trans-Alaska Pipeline Liability Fund ("Fund"), is a non-profit corporate entity established pursuant to the Trans-Alaska Pipeline Authorization Act ("Act"), 43 U.S.C. Section 1653(c)(4). The Fund, which is administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary of the United States Department of the Interior, is a resident of the State of Alaska with its principal place of business in Alaska.

8. Defendant, Alyeska Pipeline Service Company, is a corporation organized under the laws of the State of Delaware with its principal place of business in Alaska. It operates the Trans-

Alaska Pipeline System on behalf of its owners including Amerada Hess Corporation, Arco Pipe Line Company, British Petroleum Pipelines, Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Petroleum Company, and Union Alaska Pipeline Company. These owners are holders of the Pipeline right-of-way or the pipeline affiliates of such holders.

9. 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, NY 10020. Exxon Corporation, which is engaged in the business of operating petroleum companies through its subsidiaries and divisions, is an owner and operator of the vessel known as the EXXON VALDEZ.

10. Defendant, Exxon Co., USA, is a division of defendant Exxon Corporation, with its principal place of business at 800 Bell Avenue, Houston, TX 77002. Exxon Co., USA, which is engaged in the business of producing crude oil and refining, transporting and marketing petroleum products in the United States, is an owner and operator of the vessel known as the EXXON VALDEZ.

11. 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, TX 77002, is an owner and operator of the vessel known as the EXXON VALDEZ.

## DEFINITIONS

12. As used herein, the terms "rupture", "spill", and "accident" refer to the rupture of the hull and oil tanks of the EXXON VALDEZ on March 24, 1989 and the consequent release of more than ten million gallons of crude oil into Prince William Sound, one of the nation's most productive and pristine sounds containing sensitive estuaries, which is home to whales, sea otters, seals and numerous types of commercial fisheries.

13. As used herein, the terms "Exxon", "defendant Exxon" and "the Exxon defendants" refer collectively to defendants Exxon Corporation, Exxon Shipping Company, and Exxon Co., USA.

14. As used herein, the term "Terminal Facilities" refers to those facilities of the Trans-Alaska Pipeline System, including specifically Port Valdez, at which oil is taken from the pipeline and loaded on vessels or placed in storage for future loading onto vessels.

15. As used herein, the terms "Trans-Alaska Pipeline System" or "System" refer to any pipeline or terminal facilities constructed by the holders of the Pipeline right-of-way under the authority of the Act.

16. As used herein, the term "Pipeline" refers to any pipeline in the Trans-Alaska Pipeline System.

17. As used herein, the term "Vessel" refers to a ship or tanker, including specifically the vessel known as the EXXON

VALDEZ, being used as a means of transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States, which is carrying oil that has been transported through the Trans-Alaska Pipeline System.

OPERATIVE FACTS

18. On Thursday evening, March 23, 1989, one of Exxon's two biggest ships, the EXXON VALDEZ, a 987 foot tanker, weighing 211,000 deadweight tons with cargo and bunker fuel, left the Port of Valdez, Alaska, the southern terminal facility of the Trans-Alaska Pipeline System, bound for Long Beach, California.

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

20. The EXXON VALDEZ passed through the harbor and Valdez Narrows under the command of a harbor pilot. Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of defendant Exxon, was on the bridge of the ship when the harbor pilot disembarked at the southern end of the Narrows at approximately 12:30 a.m. Friday morning, March 24, 1989.

21. Shortly thereafter, Captain Hazelwood retired to his cabin, one flight below the bridge, leaving only Gregory Cousins, the third-mate, and Robert Kafan, the helmsman, on the bridge. At

all times relevant hereto, Messrs. Cousins and Kafan were acting within the scope of their employment and as agents and/or representatives of defendant Exxon.

22. Mr. Cousins, who was not certified for commanding the tanker through these waters, sought and received Coast Guard permission to leave the normal deep-water southbound shipping lane of the channel due to earlier reports that it contained icebergs from a glacier that had broken to the northwest.

23. The ship steered east into the empty northbound lane, and was instructed to proceed on a southwesterly course bound for Long Beach, California. The tanker, however, proceeded three miles east past the alternative channel, outside the traffic lanes and entirely beyond the shipping channel into an area of well chartered rocky reefs.

24. The vessel was approximately one quarter-mile outside the channel when she first struck the well-marked Bligh Reef, which ripped along the starboard side with jarring impact, tearing three holes into the starboard tanks and ripping out a portion of the hull.

25. Upon information and belief, Captain Hazelwood remained in his cabin, although the noise and impact should have immediately commanded the Captain to the bridge.

26. Although the ship was still navigable after the first impact, she was so far east of deep water that when Cousins tried

to turn the EXXON VALDEZ back toward the West it struck a second part of the shallow reef. This second impact brought the ship aground, stopping the ship's progress completely.

27. The scraping impact and grounding of the EXXON VALDEZ upon Bligh Reef cut open at least eight of the ship's thirteen oil tanks which held 53 million gallons of crude oil, causing -- upon information and belief -- the largest oil spill in United States history. To date, approximately 10.1 million gallons of crude oil has been discharged into Prince William Sound, already contaminating at least one thousand square miles of the Sound including vital fisheries and wild life habitats.

28. Approximately nine (9) hours after the ship rammed Bligh Reef, Federal investigators submitted Captain Hazelwood to blood and urine alcohol tests from which they determined that he had been legally drunk at the time of the accident and in violation of permitted Coast Guard alcohol limits for operating commercial vessels at sea.

29. Late Sunday, March 26, 1989, critical of the slow pace of any attempted clean-up efforts by Alyeska and the Exxon defendants and concerned about even further possible damage to property, marine and wildlife, Alaska Governor Steve Cowper declared a disaster emergency.

30. Damages to plaintiff and the plaintiff Class caused by this discharge of millions of gallons of thick, North Slope crude



oil, include but are not limited to damage to marine life, including several species of herring, salmon, ground bottom fish, shrimp and crab, relied upon by plaintiff and the plaintiff Class for economic purposes.

31. Plaintiff is preparing for the bottomfish season and other members of the plaintiff Class are preparing for the herring salmon and/or shellfish seasons. The harvesting of herring roe alone earns approximately \$16 million per year for plaintiff and the plaintiff Class, while the salmon harvest is worth approximately \$75 million a year.

32. By late Monday, March 27, 1989, winds gusting up to seventy miles per hour were pushing the slick toward environmentally sensitive fisheries and bird rookeries.

33. The oil slick has already spread to Smith, Little Smith, Naked and Seal Islands, Knight Island and Green Island as it moved toward the southern end of Prince William Sound; these islands are home to thousands of water birds and sea mammals, whose contamination by the spreading oil cannot yet be quantified.

34. Upon information and belief, the damage caused by the spill to property, trades and businesses, fishing and marine life could last for years. The region's jagged coastline created hidden pockets of oil as the slick reached shore, creating opportunities for repollution for a protracted time into the future.

CLASS ALLEGATIONS

35. This action is brought by plaintiff on his own behalf and, pursuant to Rule 23, Fed.R.Civ.P., on behalf of a class consisting of all persons and entities who were injured or adversely affected by the rupture of defendant Exxon's oil tanker on March 24, 1989, the subsequent oil spill therefrom, and/or the ensuing clean-up effort. Excluded from the Class are all persons currently seeking to make tort claims based exclusively on bodily injury as a result of the rupture, spill, the conduct of the emergency response, and clean-up activities; as well as the defendants, their respective parent corporations, affiliates, subsidiaries, divisions and the directors, officers, agents, employees and representatives of each.

36. Plaintiff is unable to state precisely the size of the Class, but members of the Class number in at least the thousands. The Class is sufficiently numerous that joinder of all of its members is impracticable.

37. There exist questions of law and fact common to the Class with respect to the rupture and resultant spill, the cause thereof, and the ensuing clean-up efforts which predominate over any questions affecting only individual members of the Class. Among the questions common to the Class are:

(a) whether Alyeska, the Exxon defendants and the Fund are strictly liable pursuant to the provisions of the Trans-Alaska

Pipeline Authorization Act;

(b) whether Alyeska and the Exxon defendants are liable in negligence pursuant to the provisions of the Trans-Alaska Pipeline Authorization Act;

(c) whether the Exxon defendants were negligent in (i) maintaining, (ii) controlling, and/or (iii) operating the EXXON VALDEZ;

(d) whether the Exxon defendants acted recklessly, wantonly, or in willful disregard of the rights and economic well-being of plaintiff and the plaintiff Class in (i) maintaining, (ii) controlling, and/or (iii) operating the EXXON VALDEZ;

(e) whether Alyeska and the Exxon defendants were negligent in (i) failing to establish and provide for an adequate contingency plan to contain and clean-up any discharge of oil from a vessel; (ii) planning the ensuing clean-up effort; (iii) carrying-out the ensuing clean-up effort; (iv) delaying the ensuing clean-up effort; (v) employing inadequate and improper tactics in the ensuing clean-up effort; and (vi) failing to have available for immediate emergency use adequate and proper supplies, equipment and personnel for the ensuing clean-up effort;

(f) whether Alyeska and the Exxon defendants acted recklessly, wantonly, or in willful disregard of the rights and economic well-being of plaintiff and the plaintiff Class in (i) failing to establish and provide for an adequate contingency plan

to contain and clean-up any discharge of oil from a vessel; (ii) planning the ensuing clean-up effort; (iii) carrying-out the ensuing clean-up effort; (iv) delaying the ensuing clean-up effort; (v) employing inadequate and improper tactics in the ensuing clean-up effort; and (vi) failing to have available for immediate emergency use adequate and proper supplies, equipment and personnel for the ensuing clean-up effort;

(g) whether Alyeska and the Exxon defendants were negligent per se because of violations of applicable federal and state laws;

(h) whether the conduct of Alyeska and the Exxon defendants as set forth herein is such as to warrant the imposition of punitive damages;

(i) the impact of the discharged oil and toxic effluents upon Prince William Sound and its marine life;

(j) the measures necessary to ameliorate present and future pollution;

(k) whether the acts and omissions of Alyeska and the Exxon defendants were violative of AS 46.03.822 and other applicable state laws;

(l) whether equitable relief should be granted against Alyeska and/or Exxon;

(m) whether the Court should order an ongoing environmental and/or monitoring program; and,

(n) whether the Court should order Alyeska and Exxon to provide plaintiff, the plaintiff Class and affected communities with environmental relief.

38. The claims of the representative plaintiff are typical of the claims of the Class.

39. Plaintiff will fully and adequately protect the interests of the Class. The interests of the Class representative are consistent with those of the members of the Class. In addition, plaintiff is represented by experienced and able counsel who have represented plaintiff classes throughout the United States.

40. Defendants have acted with respect to plaintiff and the plaintiff Class in a manner generally applicable to all of them, thereby making appropriate final injunctive relief with respect to plaintiff and the plaintiff Class.

41. Given the scope of harm inflicted by defendants and the egregiousness of the misconduct which renders the award of punitive/exemplary damages appropriate, the prosecution of separate actions by individual members of the Class would create a risk of adjudication with respect to the individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or substantially impair or impede their ability to protect their interests.

42. A substantial claim for punitive/exemplary damages exists on behalf of all of the members of the plaintiff Class. In order to achieve maximum judicial economy and fairness to litigants, a class action is desirable to assure that an award of punitive damages is made in a single proceeding and fairly and uniformly allocated among all of the members of the Class.

43. Certification is appropriate under one or more of the provisions of Rule 23(b), Fed.R.Civ.P., including Rule 23(b)(1)(B), 23(b)(2) and/or 23(b)(3).

COUNT I  
Trans-Alaska Pipeline Authorization Act,  
43 U.S.C. Section 1653(a)/Strict Liability  
Plaintiffs v. Alyeska

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

45. Alyeska is now, and was at all times relevant hereto, the holder of the Pipeline right-of-way granted pursuant to the Act.

46. The damages to plaintiff and the plaintiff Class arose in connection with and resulted from activities along or in the vicinity of the Trans-Alaska Pipeline right-of-way.

47. Upon information and belief, the damages to plaintiff and the plaintiff Class were neither caused by an act of war nor by the negligence of the United States, any other government entity, or plaintiff and the plaintiff Class.

48. The oil discharged in connection with and resulting from activities along or in the vicinity of the Pipeline right-of-way

have damaged and otherwise adversely affected lands, structures, fish, wildlife, biotic and other natural resources relied upon by Alaska Natives, Native Organizations, and others, including specifically plaintiff and plaintiff Class, for subsistence and economic purposes.

49. Defendant Alyeska is strictly liable to plaintiff and the plaintiff Class for all damages sustained as the result of the discharges of oil from the EXXON VALDEZ up to a maximum of \$50 million pursuant to the Act, 43 U.S.C. Section 1653(a).

COUNT II  
Trans-Alaska Pipeline Authorization Act,  
43 U.S.C. Section 1653(c)/Strict Liability  
Plaintiffs v. Exxon and The Fund

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

51. The Exxon defendants are now, and were at all times relevant hereto, the owners and operators of the EXXON VALDEZ.

52. The damages to plaintiff and the plaintiff Class arose as the result of discharges of oil from the EXXON VALDEZ that had been transported through the Trans-Alaska Pipeline and loaded on the EXXON VALDEZ at the terminal facilities of the pipeline.

53. Upon information and belief, the damages to plaintiff and the plaintiff Class were neither caused by an act of war nor by the negligence of the United States, any other governmental agency, or plaintiffs and the plaintiff Class.

54. The oil discharged from the EXXON VALDEZ has damaged and otherwise adversely affected lands, structures, fish, wildlife, biotic and other natural resources relied upon by Alaska Natives, Native Organizations, and others, including specifically plaintiff and the plaintiff Class, for subsistence and economic purposes.

55. Defendants Exxon and the Fund are strictly liable to plaintiff and the plaintiff Class for all damages sustained as a result of the discharges of oil from the EXXON VALDEZ up to a maximum of \$100 million pursuant to the Act, 43 U.S.C. Section 1653(c) for each incident.

COUNT III  
Trans-Alaska Pipeline Authorization Act,  
43 U.S.C. Section 1653  
Negligence -- Plaintiffs v. Alyeska and Exxon

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

57. Defendants Alyeska and Exxon had continuously reassured environmentalists and others, including specifically plaintiff and the plaintiff Class, at all times prior to the accident that there existed an emergency clean-up plan by which any major oil spill could be successfully contained within five hours of occurrence; yet a day after the spill little had been done to contain it other than an unsuccessful attempt to spray chemical dispersants.

58. Upon information and belief, Alyeska and Exxon's "contingency clean-up plan" required them to be on site within five hours of the spill. Eighteen hours after the rupture, however,



essentially nothing was in place; instead, it took nearly an entire day for Alyeska and Exxon representatives to start placing barrier booms -- long bars with heavy plastic skirts -- around the slick. By that time, the discharged oil had already become too large to contain.

59. The delays were in part due to repairs being performed on the barge required to pull the booms around the EXXON VALDEZ.

60. Lack of proper equipment and supplies also hindered effective clean-up operations.

61. Moreover, neither Alyeska nor Exxon had enough equipment to handle a spill of this size, even though these defendants have represented for years that their oil-spill crews were prepared for such a spill.

62. The tactics finally chosen by defendants, chemical dispersants which could cause further harm to the water, proved ineffective. These chemical dispersants, previously touted as an effective weapon against oil slicks, could not be used initially because the water was too cold and calm, making the slick too thick for the dispersants to work.

63. Upon information and belief, the oil has now been in the water too long for these dispersants to work since they are most effective only if employed within twenty-four hours after a spill. Beyond that time period, the oil develops a resistance to chemical treatment.

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

65. Pursuant to the Act, the proper control and total removal of the discharged oil which polluted, damaged and threatens to further pollute and damage aquatic life, wildlife, public and private property was the responsibility of defendants. In regard thereto, defendants had a duty to plaintiff and the plaintiff Class to have adequate resources available to immediately and effectively contain and clean-up any oil spill in any area within or without the right-of-way or permit area granted to them.

66. In the exercise of care, defendants knew or should have known that they lacked adequate equipment and supplies to effectively contain and clean-up a spill of this magnitude, that their "contingency clean-up plan", including the tactics they developed thereunder, were extremely limited in their efficiency and use, and that these tactics could only be employed under "ideal environmental conditions".

67. The negligence of defendants Alyeska and Exxon in the control and clean-up operations specifically included, but was not limited to, (i) failing to establish and provide for an adequate

contingency plan to contain and clean-up any discharge of oil; (ii) inadequately planning the ensuing clean-up effort; (iii) inadequately carrying-out the ensuing clean-up effort; (iv) unreasonably delaying the ensuing clean-up effort; (v) choosing inadequate tactics in the ensuing clean-up effort; and (vi) possessing inadequate equipment, supplies and personnel for deployment in the ensuing clean-up effort, all of which served to aggravate and compound the damages to plaintiff and the plaintiff Class.

68. As a direct and proximate result of the foregoing negligence, plaintiff and the plaintiff Class have suffered damages.

69. Defendants Alyeska and Exxon acted recklessly, wantonly and in willful disregard of the rights and economic well-being of plaintiff and the plaintiff Class in the control and clean-up operations of this spill, for which plaintiff and the plaintiff Class are entitled to punitive damages.

COUNT IV  
Trans-Alaska Pipeline Authorization Act,  
43 U.S.C. Section 1653 (c)/Negligence  
Plaintiffs v. Exxon

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

71. The captain of the EXXON VALDEZ, Joseph J. Hazelwood, who upon information and belief had previously been convicted of charges involving drinking and driving twice in the past five years

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and had his driver's license suspended or revoked three times in that same period, was not in command when the tanker hit the well-marked Bligh Reef.

72. Instead, the third-mate, Gregory Cousins, was in command of the tanker when it ran aground, although Cousins lacked proper certification to pilot vessels such as the EXXON VALDEZ through the waters of Prince William Sound.

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

74. Captain Hazelwood and third-mate Cousins knew or should have known that Cousins did not possess the requisite degree of competence to command the EXXON VALDEZ with reasonable prudence, skill or care.

75. Captain Hazelwood and third-mate Cousins knew or should have known that it was not only unreasonably dangerous for Hazelwood to be intoxicated while commanding a commercial vessel, but also a violation of applicable Coast Guard rules and regulations.

76. The Exxon defendants knew or should have known based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times

in the same five year period, that Hazelwood did not possess the requisite degree of competence to command the EXXON VALDEZ with reasonable prudence, skill or care.

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

78. The negligence of the Exxon defendants in the ownership and operation of the EXXON VALDEZ specifically included, but was not limited to, (i) failing to adequately crew the tanker; (ii) failing to adequately pilot and navigate Prince William Sound; and (iii) failing to utilize a seaworthy vessel. As a direct and proximate result of the foregoing negligence, the Exxon defendants, in their own right as well as by and through their agents, servants and employees, caused plaintiff and the plaintiff Class to suffer damages as described above.

79. The Exxon defendants acted recklessly, wantonly and in willful disregard of the rights and economic well-being of plaintiff and the plaintiff Class in the ownership and operation of the EXXON VALDEZ for which plaintiff and the plaintiff Class are entitled to punitive damages.

COUNT V

Maritime Tort -- Plaintiffs v. Alyeska and Exxon

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

81. By virtue of the above, defendants violated the general maritime and admiralty laws of the United States, which violations were a direct and proximate cause of the damages suffered by plaintiff and the plaintiff Class.

COUNT VI

Common Law Negligence -- Plaintiffs v. Alyeska and Exxon

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

83. By virtue of the above, defendants were negligent, which negligent acts and omissions directly and proximately caused the damages suffered by plaintiff and the plaintiff Class.

COUNT VII

Alaska Environmental Conservation Act  
Plaintiffs v. Alyeska and Exxon

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

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

86. The presence of oil in the Prince William Sound and its subsequent spreading to at least Smith, Little Smith, Naked and Seal Islands, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish,

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

87. 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.

88. 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:

(i) an act of war;

(ii) 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;

(iii) negligence on the part of the United States government or the State of Alaska; or,

(iv) an act of God.

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

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

plaintiff and the plaintiff Class, including but not limited to injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits, for which the defendants are strictly liable pursuant to AS 46.03.822 of the Alaska Environmental Conservation Act.

COUNT VIII  
AS 09.45.230  
Plaintiffs v. Alyeska and Exxon

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

92. The acts and omissions of the defendants created a private nuisance through substantial interference with the use and enjoyment of plaintiff and the plaintiff Class' interests in property.

93. This substantial interference with the use and enjoyment of plaintiff and the plaintiff Class' interests in property includes, but is not limited to, inter alia, injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits.

94. The substantial interference with plaintiff and the plaintiff Class' interests was caused by the actions and omissions of the defendants for which they are liable to plaintiff and the plaintiff Class for the damages sustained.

95. The defendants threaten to continue the acts and omissions complained of herein, and unless temporarily,



preliminarily or permanently restrained and enjoined, will continue to do so, all to plaintiff and the plaintiff Class' irrefutable damage. Plaintiff and the plaintiff Class' remedy at law for damages is not adequate to compensate them for the injuries threatened to continue.

COUNT IX  
Public Nuisance -- Plaintiffs v. Alyeska and Exxon

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

97. The acts and omissions of the defendants created a public nuisance through unreasonable interference with the rights of plaintiff and the plaintiff Class to water that is free from pollution and contamination by oil.

98. The unreasonable interference with the rights of plaintiff and the plaintiff Class common to the public resulted in special and distinct harm to plaintiff and the plaintiff Class including, but not limited to, inter alia, loss of business as a result of the pollution.

99. The substantial interference with plaintiff and the plaintiff Class' interests was caused by the actions and omissions of the defendants for which they are liable to plaintiff and the plaintiff Class for the damages sustained.

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

to do so, all to plaintiff and the plaintiff Class' irrefutable damage. Plaintiff and the plaintiff Class' remedy at law for damages is not adequate to compensate them for the injuries threatened to continue.

COUNT X

Negligence per se -- Plaintiffs v. Alyeska and Exxon

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

102. The acts and omissions of the defendants violate the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Section 1651, et seq., and Alaska state and local law, including Alaska Stat. Section 46.03.010, et seq., and Alaska Stat. Section 09.45.230. In so violating these laws, defendants were negligent per se.

103. The Exxon defendants also failed to obtain the necessary certification from the Coast Guard for Gregory Cousins to pilot vessels such as the EXXON VALDEZ through the waters of the Prince William Sound, violating Coast Guard regulations. In failing to do so, defendants were negligent per se.

104. The defendants are liable to plaintiff and the plaintiff Class for all damages resulting from the accident and discharge on account of their violations of the above-mentioned certification requirements, Federal and State laws.

COUNT XI

Equitable Relief  
Plaintiffs v. Alyeska and Exxon

105. Plaintiffs reallege and incorporate herein by reference

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each and every allegation set forth above.

106. On account of the defendants' violations of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Section 1651 et seq., AS 46.03.010 et seq., Alaska Stat. Section 09.45.230, and other applicable federal and state laws, defendants are liable to plaintiff and the plaintiff Class for civil damages, and should be enjoined to control, contain, clean-up and restore the environment to its condition prior to the rupture and consequent discharge.

107. In addition, monitoring for the level of contamination of air, soil and water, and monitoring for potential adverse effects from exposure to contaminated air, soil and water, are necessary to protect plaintiff and the plaintiff Class from further harm likely to result from defendants' acts and omissions as alleged herein.

108. The costs of said control, containment, clean-up, restoration and monitoring should be borne by defendants inasmuch as the injuries to plaintiff and the plaintiff Class all resulted from the rupture, resulting discharge and ensuing clean-up effort which was caused by defendants' wrongful conduct as alleged herein.

109. Plaintiff and the Class members therefore seek equitable relief in the form of a mandatory injunction ordering appropriate and qualified governmental or neutral private agencies to provide continued monitoring under Court supervision, and to further order that defendants control, contain, clean-up and restore the

environment and pay all attendant costs therefor.

RELIEF SOUGHT

WHEREFORE, plaintiffs pray that this Court:

A. Order this action to proceed as a class action, with plaintiff as the Class representative;

B. Award compensatory and punitive damages under all counts to plaintiff and all other members of the Class in an amount to be determined by the finder of fact;

C. Award attorneys' fees and the costs of this action;

D. Enter declaratory and injunctive relief to abate the nuisance arising out of the defendants' wrongful acts and omissions as alleged herein, and order defendants to pay for ongoing control, containment, clean-up, restoration and monitoring of oil contamination and adverse effects resulting therefrom under the jurisdiction of this Court; and,

E. Award such other and further relief as this Court deems just and proper.

Respectfully submitted,  
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**FILED**

APR 04 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By    jll    Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

PHILIP H. McCRUDDEN and )  
DENNIS BISHOP, individually )  
and on behalf of all others )  
similarly situated, )

Plaintiffs, )

vs. )

EXXON SHIPPING COMPANY, a )  
Delaware corporation, TRANS- )  
ALASKA PIPELINE LIABILITY )  
FUND, a corporation; )  
ALYESKA PIPELINE SERVICE CO., )  
an Alaska corporation, )  
JOSEPH HAZELWOOD, an )  
individual, GREGORY COUSINS, )  
an individual, and JOHN DOE, )  
an unidentified corporation )  
or individual, )

Defendants. )

No.    A 89-109    CIV

COMPLAINT FOR DAMAGES -  
CLASS ACTION

JURY TRIAL DEMANDED

COMES NOW the plaintiffs, individually and as class  
representatives, and for their claim of relief allege as follows:

## I. JURISDICTION

1.1 This court has jurisdiction over the subject matter of this action pursuant to 25 U.S.C. §1331, 43 U.S.C. §1652 et seq., and the principles of pendent and ancillary jurisdiction.

1.2 Venue lies in this district pursuant to 28 U.S.C. §1391(b). The actions of the defendants as alleged herein occurred in this district.

## II. DEFENDANTS

2.1 Reallegations. Plaintiffs reallege paragraph 1.1 and 1.2 of this complaint, and all allegations contained therein.

2.2 Plaintiffs. Plaintiffs Philip H. McCrudden, a resident of Seattle, Washington, and Dennis Bishop, a resident of Homer, Alaska, are individuals engaged in the commercial herring fishing industry in and around the geographic area know as Prince William Sound, Alaska.

2.3 Defendant Exxon Shipping Company. Defendant Exxon Shipping Company is a Delaware corporation doing business in alaska, is the owner and operator of the marine vessel EXXON VALDEZ, and is subject to the jurisdiction of this Court.

2.4 Defendant Trans-Alaska Pipeline Liability Fund. Defendant Trans-Alaska Pipeline Liability Fund is a non-profit corporation created pursuant to 43 U.S.C. §1653(c)(4), and is subject to the jurisdiction of this Court.

2.5 Defendant Alyeska Pipeline Service Co. Defendant Alyeska Pipeline Service Co. is an Alaskan corporation, doing business in Alaska, and is subject to the jurisdiction of this Court.

2.6 Defendant Joseph Hazelwood. Defendant Joseph Hazelwood was the officer in command of the marine vessel EXXON VALDEZ. His residence is unknown.

2.7 Defendant Gregory Cousins. Defendant Gregory Cousins was Third Mate on the marine vessel EXXON VALDEZ on March 23 and March 24, 1989. His residence is unknown. Upon information and belief, Gregory Cousins was at the helm of the marine vessel EXXON VALDEZ when she ran aground on March 24, 1989.

2.8 Defendant John Doe. Defendant John Doe is an individual or corporation who owned or was on board the marine vessel EXXON VALDEZ on March 23, 1989.

### III. CLASS ACTION ALLEGATIONS

3.1 Reallegations. Plaintiffs reallege paragraphs 1.1 through 2.5 of this complaint, and all allegations contained therein.

3.2 Representation of Class. Pursuant to Federal Rules of Civil Procedure 23, plaintiffs allege that this action is brought on behalf of themselves and all other persons, corporations, and/or other legal entities similarly situated. The class which the plaintiffs seek to represent is composed of

persons, corporations, and/or other legal entities engaged in the commercial herring fishing industry in and around the geographic area known as Prince William Sound, Alaska. The class is estimated to consist of more than 350 persons, corporations, and/or other legal entities. Of this class, approximately 125 persons are "Pounders". The "Pounders" are persons, corporations, and/or legal entities engaged in the harvesting of herring roe on kelp. The persons, corporations, and/or other legal entities are so numerous that joinder of all members is impracticable. Certification of a class is appropriate pursuant to Federal Rules of Civil Procedure 23(b)(3).

3.3 Basis for Representation. The basis upon which plaintiffs claim to be adequate representatives of the class is set forth as follows:

- a. No Conflict of Interest. There is no perceptible conflict of interest between plaintiffs and any other member of the proposed class. Each plaintiff is engaged in the commercial herring fishing industry in and around Prince William Sound, Alaska.
- b. Damages Sustained. The plaintiffs presenting this claim have incurred substantial monetary damages as a result of the actions of defendants.
- c. Unacceptable Alternatives. There are no acceptable alternatives to class action treatment of these claims. The size of the class is too large to



permit practical and efficient handling of the claims on other than a class basis.

d. Common Questions of Law and/or Facts. There are questions of law and/or fact common to all members of the class, as described herein. These common questions of law and fact predominate over any questions affecting individual members.

e. Experienced Counsel. Plaintiffs' retained counsel are experienced in federal litigation practice in the districts of the 9th Circuit.

3.4 Effective Adjudication. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. The magnitude of the punitive class members' individual damages, the nature of the controversy, and the available source of recovery is such that the class members' claims cannot be effectively pursued on an individual basis.

#### IV. COMMON FACTUAL ALLEGATIONS

4.1 Reallegations. Plaintiffs reallege paragraphs 1.1 through 3.4 of this complaint, and all allegations contained therein.

4.2 Vessel Loaded. On or about March 23, 1989, the marine vessel EXXON VALDEZ, vessel number 692966, an oil tanker owned and operated by defendant Exxon Shipping Company, was loaded at Valdez, Alaska with approximately 53 million gallons of crude

oil that had been transported through the Trans-Alaska Pipeline.

4.3 Oil Terminal. The oil terminal in Valdez, Alaska, at which the EXXON VALDEZ was loaded is owned by defendant Alyeska Pipeline Service Co. The terminal is a facility of the Trans-Alaska Pipeline.

4.4 Commander of Vessel. The EXXON VALDEZ was under the command of Captain Joseph Hazelwood. Mr. Hazelwood at all times relevant herein was an agent of defendant Exxon Shipping Company and was acting within the scope of his authority.

4.5 Departure from Valdez. Subsequent to departure from the oil terminal at Valdez, Alaska, the EXXON VALDEZ entered Prince William Sound and successfully navigated the Valdez Inlet, an inlet in Prince William Sound. After navigating the Valdez Inlet, the Captain of the EXXON VALDEZ allowed the Valdez Harbor Pilot to depart the tanker.

4.6 Absence of Commander. Subsequent to the departure of the Valdez Harbor Pilot, Captain Hazelwood turned over command of the bridge of the EXXON VALDEZ to a Third Mate Gregory Cousins. At all times relevant herein, Third Mate Cousins was an agent of defendant Exxon Shipping Co. and was acting within the scope of his authority. Upon information and belief, Third Mate Cousins was not licensed to operate a vessel of the type as the EXXON VALDEZ in the waters of Prince William Sound without the direct supervision of Captain Hazelwood.

4.7 Collision with Reef. Approximately twenty-five (25) miles south of Valdez, the EXXON VALDEZ ran aground on Bligh Reef, in Prince William Sound. Upon information and belief, at the time the EXXON VALDEZ ran aground, Captain Hazelwood was not present in the tanker's bridge, and Third Mate Cousins was in command of the bridge of the EXXON VALDEZ.

4.8 Discharge of Oil. As a result of running aground on Bligh Reef, several crude oil holding compartments of the EXXON VALDEZ were breached. More than ten (10) million gallons of crude oil were discharged into the waters of Prince William Sound.

4.9 Failure to Mitigate. Subsequent to the discharge of the crude oil into the waters of Prince William Sound, the EXXON VALDEZ, the Exxon Shipping Company, and the Alyeska Pipeline Service Company failed to take necessary and immediate measures to contain and mitigate the oil spill.

4.10 Magnitude of Damage. The oil spill from the EXXON VALDEZ is the largest oil spill in the history of the United States. As a result of the oil spill, the natural herring population indigenous to Prince William Sound, the commercial herring fishing industry, and the members of the class on whose behalf this action is commenced, have been irreparably damaged. Said damages sustained by the class include, without limitation, the loss in earnings occasioned as a result of the oil spill, the impaired earning capacity as a result of the oil spill, and the

diminishment of value of the herring fishing licenses possessed by members of the class.

FIRST CAUSE OF ACTION

V. STRICT LIABILITY [43 USC §1653]

5.1 Reallegations. Plaintiffs reallege paragraphs 1.1 through 4.10 of this complaint, and all allegations contained therein.

5.2 Strict Liability. Pursuant to 43 U.S.C. §1653(c)(1), defendant Exxon Shipping Company, as the owner and operator of the EXXON VALDEZ, and defendant Trans-Alaska Pipeline Liability Fund are strictly liable without regard to fault for all damages sustained by any person or entity, public or private, Exxon Shipping Company is liable for the first \$14,000,000.00 of allowed claims. Defendant Trans-Alaska Pipeline Liability Fund is liable for the balance of the claims allowed, to the value in said fund.

5.3 Entitlement. Plaintiffs, and the members of the class on whose behalf this complaint is made, are entitled to share proportionately for their damages with other allowed claimants in the fund above-described in paragraph 5.3, pursuant to the distribution contemplated by 43 U.S.C §1653(c)(3).

SECOND CAUSE OF ACTION

VI. STRICT LIABILITY [AS 46.03.822]

6.1 Reallegations. Plaintiffs reallege paragraphs 1.1 through 5.4 of this complaint, and all allegations contained therein.

6.2 Hazardous Substance. The oil which has been discharged into the waters of Prince William Sound as a result of the grounding of the EXXON VALDEZ is a hazardous substance as defined in AS 46.03.826(4)(B).

6.3 Ownership and Control. Defendants Exxon Shipping Company and defendant Alyeska Pipeline Service Co. own and/or have control, pursuant to AS 46.03.826(3), of the oil which was loaded on the EXXON VALDEZ and discharged into the waters of Prince William Sound.

6.4 Strict Liability. Pursuant to AS 46.03.822 and AS 46.03.824, defendants Exxon Shipping Company and Alyeska Pipeline Service Co. are strictly liable without regard to fault for all damages sustained by any person or entity, public or private, including but not limited to injury to or loss of persons or property, real and personal, loss of income, loss of the means of producing income, and the loss of economic benefits.

6.5 Entitlement. Plaintiffs, and the members of the class on whose behalf this complaint is made, are entitled to share proportionately for their damages with other allowed claimants, pursuant to AS 46.03.822, AS 46.03.824, and AS 46.04.040(i).

THIRD CAUSE OF ACTION

VII. NEGLIGENCE OF EXXON SHIPPING COMPANY

7.1 Reallegations. Plaintiffs reallege paragraphs 1.1 through 6.4 of this complaint, and all allegations contained therein.

7.2 Breach of Duty. At all times relevant herein, defendant Exxon Shipping company had a duty to ensure that reasonable measures would be taken to safely transport crude oil in Prince William Sound. The Exxon Shipping Company breached that duty by its actions and failure to take actions, including, without limitation, the following:

- a. Failure to adequately supervise the commander of the EXXON VALDEZ;
- b. Failure to properly investigate the qualifications of the commander of the EXXON VALDEZ;
- c. Negligent entrustment of the EXXON VALDEZ to Captain Hazelwood;
- d. Failure to properly inspect the suitability of the EXXON VALDEZ for the particular purpose of transporting crude oil in Prince William Sound;
- e. Failure to available on the EXXON VALDEZ proper equipment and supplies to contain and mitigate the effects of the oil spill; and

- f. Failure to take immediate necessary steps subsequent to the oil spill to contain and mitigate the effects of the oil spill.

The actions of, and failure to take actions by, defendant Exxon Shipping Company constitute negligence.

7.3 Breach of Duty of Captain Hazelwood. At all times relevant herein, Captain Hazelwood, individually and as an agent of Exxon Shipping Company, had a duty to ensure that reasonable measures would be taken to safely transport crude oil in Prince William Sound. Captain Hazelwood breached that duty by his actions and failure to take actions, including, without limitation, the following:

- a. Failure to remain on the bridge of the EXXON VALDEZ while navigating Prince William Sound.
- b. Negligent entrustment of the bridge of the EXXON VALDEZ to an unlicensed individual, Third Mate Cousins.

The actions of, and failure to take actions by, Captain Hazelwood constitute negligence. The negligence of Captain Hazelwood is imputed to defendant Exxon Shipping Company.

7.4 Breach of Duty of Third Mate Cousins. At all times relevant herein, Third Mate Cousins, individually and as an agent of Exxon Shipping Company, had a duty to ensure that reasonable measures would be taken to safely transport crude oil in Prince William Sound. Third Mate Cousins breached that duty by his

actions and failure to take actions, including, without limitation, the following:

- a. Failure to safely navigate the waters of Prince William Sound.
- b. Commanding the bridge of the EXXON VALDEZ while navigating waters for which he was unlicensed.

The actions of, and failure to take actions by Third Mate Cousins constitute negligence. The negligence of Third Mate Cousins is imputed to defendant Exxon Shipping Company.

7.5 Damages. The negligence of the Exxon Shipping Company and its agents resulted in the oil spill from the EXXON VALDEZ. As the direct and proximate result of the negligence of the Exxon Shipping Company and its agents, the plaintiffs and the class members have been damaged, for which they are entitled to recover in an amount to be proven at trial.

#### FOURTH CAUSE OF ACTION

##### VIII. NEGLIGENCE OF ALYESKA PIPELINE SERVICE COMPANY

8.1 Reallegations. Plaintiffs reallege paragraphs 1.1 through 7.5 of this complaint, and all allegations contained therein.

8.2 Duty. At all times relevant herein, defendant Alyeska Pipeline Service Company had a duty to ensure that in the event an oil spill occurred in Prince William Sound, immediate necessary measures would be taken to contain and mitigate the



effects of that oil spill. As part of that duty, defendant Alyeska Pipeline Service Co. had the duty to ensure the following without limitation:

- a. That adequate equipment was available to contain and mitigate oil spills.
- b. That employees of Alyeska Pipeline Service Co. had adequate training to implement measures to contain and mitigate oil spills; and
- c. That a comprehensive plan existed for the containment and mitigation of oil spills.

8.3 Breach of Duty. Subsequent to the oil spill from the EXXON VALDEZ, defendant Alyeska Pipeline Service Co. did not take immediate necessary actions to contain and mitigate the effects of the oil spill. The failure of defendant Alyeska Pipeline Service Co. to implement those immediate necessary measures constitutes negligence.

8.4 Damages. As a result of the negligence of defendant Alyeska Pipeline Service Co., the plaintiffs and the class members have been damaged, for which they are entitled to recover in an amount to be proven at trial.

#### IX. PUNITIVE DAMAGES

9.1 - Reallegations. Plaintiffs reallege paragraphs 1.1 through 8.4 of this complaint, and all allegations contained therein.

9.2 Punitive Damages. The actions of defendants Exxon Shipping Company and Alyeska Pipeline Service Co. described herein were so oppressive, outrageous, and vexatious as to entitle the plaintiffs and the class members to recover punitive and exemplary damages from said defendants.

X. JURY DEMAND

10.1 Reallegations. Plaintiffs reallege paragraphs 1.1 through 9.2 of this complaint, and all allegations contained therein.

10.2 Jury Demand. Pursuant to Federal Rules of Civil Procedure 38(b), plaintiffs hereby respectfully demand a jury trial.

XI. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:


11.1 That the court certify the action as a class action.

11.2 That the Court award the class members damages against the defendants jointly and severally, together with punitive and exemplary damages, pre-judgment and post-judgment interest at the highest allowable rate, and costs and reasonable attorneys fees.


11.3 For such other and further relief as the Court deems just and equitable.

DATED this 4 day of April, 1989.

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