

FILED

MAY 05 1989

**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
the EXXON VALDEZ)
_____)

No. A89-095 Civil
(Consolidated)

ORDER NO. 1

Motion for Permission
to Mail Communication to
Absent Class Members
by P-30 - P-39, et al., Denied

Plaintiffs P-30 through P-39, P-68 through P-72, P-78 through P-111, P-113, and P-139 have moved with respect to all other parties for leave of court to mail a certain communication to unnamed members of the respective classes proposed by these plaintiffs. The moving plaintiffs also seek consideration of their motion on shortened time. The motion for consideration on shortened time is granted.

1 The court has considered the moving plaintiffs' main
2 motion and has concluded that it is more directed at protecting
3 the client solicitation efforts of the moving plaintiffs'
4 counsel, who vie with other counsel for the business of potential
5 class members, than at any serious need for protection of unnamed
6 class members from some potential injury or harm in this litiga-
7 tion.

8 The court declines to become involved--even indirectly
9 --in client choice of representation.

10 The moving plaintiffs complain that those who appar-
11 ently seek to represent unnamed class members have denigrated the
12 use of class action lawsuits. It of course remains to be seen
13 whether any of the plaintiffs' suits will be certified as class
14 actions. If the moving plaintiffs are of a view that other
15 counsel have engaged in unethical conduct, they should take the
16 matter up with the Alaska Bar Association. Otherwise, plain-
17 tiffs' counsel should feel free to comport themselves as they
18 deem professionally appropriate with respect to contacting poten-
19 tial class members. The court perceives no need to involve
20 itself in that process.

21 The motion is denied.

22 DATED at Anchorage, Alaska, this 5 th day of May,
23 1989.

24
25 cc: All cnsl of record by Clerk's office
26 *pl*


United States District Judge

FILED

MAY 05 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

PRE-TRIAL ORDER NO. 2

The court has received a number of letters from counsel for various of the plaintiffs in these consolidated cases on the general subject of pre-trial management of these cases. The letters were copied to other known counsel in the letter-writer's case. Other plaintiffs' counsel have expressed concern about the letter writing. The court has now received a "Response to Pre-Trial Order No. 1" from defendant Alyeska Pipeline Service Company and a "Response to Certain Plaintiffs' Proposed Pre-Trial Order ... " from Exxon.

1 The court has responded to each of the letters which it
2 has received with a form letter, the text of which is attached.
3 the court's Pre-Trial Order No. 1 also admonished counsel against
4 the foregoing practice. Since Pre-Trial Order No. 1 went to all
5 counsel of record in these consolidated cases, the court feels
6 that it has already done what it can and should do with respect
7 to discouraging the practice of ex parte communications between
8 litigants and the court.

9 Although Alyeska has not filed any motion in this
10 regard, Alyeska urges that the court treat plaintiffs' communica-
11 tions as "motions" for entry of the court's Pre-Trial Order
12 No. 1. That suggestion is declined. The court's Pre-Trial Order
13 No. 1 did not proceed from the correspondence received from
14 counsel. Pre-Trial Order No. 1 was entered sua sponte by the
15 court on the basis of its independent evaluation of the immediate
16 pre-trial needs of the subject cases.

17 Exxon, too, objects to ex parte communications. That
18 matter is adequately treated above and by the court's Pre-Trial
19 Order No. 1.

20 Secondly, Exxon requests that all counsel take steps to
21 ensure that communications with the court are served on all
22 parties. One of the purposes of the court's consolidation of
23 these cases and its provision for a "Master Service List" is to
24 accomplish what Exxon here requests.

25 Finally, Exxon requests an opportunity to review,
26 evaluate, and comment upon a proposed pre-trial order submitted

1 by plaintiffs in Case No. A89-099 Civil. As suggested with
2 respect to Alyeska's request, the court has not, and does not,
3 intend to consider plaintiffs' letter or letters as a motion, and
4 the court declines to receive comments on plaintiffs' proposed
5 pre-trial order.

6 DATED at Anchorage, Alaska, this 5 th day of May,
7 1989.

8 
9 United States District Judge

10
11 cc: ✓ All cnsl of record by Clerk's office.
12 *RR*

[DATE]

....

Re: Exxon Valdez Litigation
No. A89-095 Civil (Consolidated)

Gentlemen:

I apologize for the form nature of this letter, but I hope you will understand the circumstances which give rise to the need for handling some matters this way.

I have recently received correspondence from one or more counsel that deals in some fashion with the above-referenced case. I know I have in many cases (where it is feasible) encouraged counsel to handle certain matters informally by a phone call to the case management clerk. So far, that process has generally worked very well. I am afraid, however, that the foregoing has led some to believe that correspondence with my office is an equally acceptable way to do business with the court. Such is not the case. Letters directed to me are often intended to have a procedural--and sometimes substantive--impact on the case. By and large, however, correspondence directed to me never winds up in the official court file and is therefore not a matter of record. As a practical matter, I simply cannot do the court's business by correspondence.

If an informal oral communication to other counsel and the case management clerk will not suffice, the information should be put in the form of either a stipulation, a notice, or a motion. In most instances I believe this can be done simply and without appreciably more work than much of the correspondence I have received thus far, and it will go a long way towards helping us keep things in order as far as the official court file is concerned.

Thank you for your cooperation.

/s/

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Law Office of Mark R. Moderow
880 "N" Street; Suite 203
Anchorage, Alaska 99501
(907) 277-5955

Pomerantz Levy Haudek Block &
Grossman
295 Madison Avenue
New York, NY 10017
(212) 532-4800

Attorneys for Plaintiff

FILED

MAY 05 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By PRR Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

PLAINTIFFS KEITH H. GORDAOFF and GEORGE
A. GORDAOFF, :

on behalf of themselves and all
others similarly situated, :

Plaintiffs, :

- against - :

EXXON CORPORATION; EXXON SHIPPING
COMPANY; EXXON CO., USA; JOSEPH J.
HAZELWOOD; GREGORY COUSINS; ALYESKA
PIPELINE SERVICE COMPANY; TRANS-
ALASKA PIPELINE LIABILITY FUND, :

Defendants. :

CLASS ACTION

CIVIL ACTION No.

A 89-173 CIV

JURY TRIAL

DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs, by their attorneys, brings this action on their own behalf and on behalf of the class defined below to obtain damages, injunctive relief and costs of suit from defendants. Plaintiffs allege upon information and belief (except as to paragraph 7) as follows:

JURY TRIAL DEMAND

1. Pursuant to Fed. R. Civ. P. 38, plaintiffs demand a trial by jury with respect to all issues so triable.

SUMMARY OF ACTION

2. This action arises out of the unlawful discharge of oil from the vessel Exxon Valdez into Prince William Sound and the surrounding waters and shoreline on March 24, 1989 and the subsequent failure to adequately contain and clean up the spill. The action alleges that defendants are jointly and severally liable to plaintiffs and the class for damages arising out of the pollution of Price William Sound and the surrounding waters and land areas. The action further alleges that the vessel Exxon Valdez was an unseaworthy vessel for the transportation of oil, and that defendants were ill-prepared to handle such a foreseeable oil spill and acted in a negligent and wholly inadequate manner in their subsequent attempts to contain and clean up the spill. The action seeks compensatory and punitive damages and injunctive relief on behalf of all operators of tender vessels whose businesses have been injured as a result of the oil spill.

JURISDICTION AND VENUE

3. At the time of the wrongs complained of herein, the vessel Exxon Valdez was engaged in the transportation of oil between the terminal facilities of the Trans-Alaska Pipeline System, in Valdez, Alaska, and Long Beach, California, a port under the jurisdiction of the United States.

4. This action arises under: (a) the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1651, *et seq.* (b) common law strict liability; (c) Admiralty and Maritime Jurisdiction and the Admiralty Extension Act of 1948, 46 U.S.C. § 740; (d) Negligence; (e) The law of the State of Alaska providing for damages due to injury to property and natural resources; and (f) Common law nuisance.

5. This Court has jurisdiction over the claims alleged herein pursuant to 28 U.S.C. §§ 1331 and 1333(1), which provide for original jurisdiction of all civil actions arising under the laws of the United States and admiralty and maritime jurisdiction. This Court also has jurisdiction over the state and common law claims alleged herein under the doctrine of pendent jurisdiction.

6. Venue is properly laid in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), as well as applicable principles of admiralty and maritime law. Defendants transact substantial business in this district and the cause of action arose in this district.

THE PARTIES

7. Plaintiffs Keith H. Gordaoff and George A. Gordaoff are, and at all times relevant hereto have been, owners and operators of a tender vessel which, *inter alia*, transports fish caught by commercial fisherman in the waters off Alaska from the fishing boats to onshore canneries and processors. Plaintiffs also carry supplies from land out to fishing vessels on the water. Plaintiffs have been, and will continue to be, severely injured in their business as a direct result of the pollution of commercial fishing areas by the wrongful discharge of oil as alleged herein.

8. 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. Exxon Corporation is, and at all times relevant hereto has been, engaged in the business, through subsidiaries and divisions, of discovering, shipping, refining and marketing oil and petroleum based products. Exxon Corporation, directly or indirectly, is an owner and operator of the vessel Exxon Valdez.

9. Defendant Exxon Shipping Company is a Delaware Corporation with its principal place of business at 811 Dallas Avenue, Houston, Texas. Exxon Shipping Company is a subsidiary of Exxon Corporation and, directly or indirectly, is an owner and operator of the vessel Exxon Valdez.

10. Defendant Exxon Co., USA is a division of Exxon Corporation with its principal place of business at 800 Bell Avenue, Houston, Texas. Exxon Co., USA is, and at all times relevant hereto has been, engaged in the business of producing, refining,

transporting and marketing petroleum products in the United States. Exxon Co., USA, directly or indirectly, is an owner and operator of the vessel Exxon Valdez.

11. Defendant Exxon Corporation, Exxon Shipping Company and Exxon Co., USA are collectively referred to herein as "Exxon." Exxon is the owner and operator of the vessel Exxon Valdez within the meaning of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1653(c) and the regulations promulgated thereunder by the Secretary of the Interior, 43 C.F.R. § 29.1 *et seq.*

12. Defendant Joseph J. Hazelwood ("Hazelwood") was the Captain of the vessel Exxon Valdez and was on the vessel and responsible for her command at the time of the unlawful discharge of oil complained of herein. Hazelwood, at the time of the oil spill, was an employee of Exxon and, at all times relevant hereto, was acting within the scope of his employment and as an agent and/or representative of Exxon.

13. Defendant Gregory T. Cousins ("Cousins") was the Third Mate of the vessel Exxon Valdez and was on the bridge of the vessel at the time of the unlawful discharge of oil complained of herein. Cousins, at the time of the oil spill, was an employee of Exxon and, at all times relevant hereto, was acting within the scope of his employment and as an agent and/or representative of Exxon.

14. Defendant Alyeska Pipeline Service Company ("Alyeska") is an Association of the holders of the Trans-Alaska Pipeline right-of-way and includes: Amerada Hess Pipeline Company, ARCO Pipe Line Company, BP Pipelines Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio

Pipe Line Company and Union Alaska Pipeline Company. Alyeska owns and operates the Trans-Alaska Pipeline System and the Valdez Marine Terminal oil loading facilities at Valdez, Alaska. Alyeska loaded North Slope crude oil onto the vessel Exxon Valdez at Valdez, Alaska immediately prior to the unlawful discharge of that oil complained of herein.

15. Defendant Trans-Alaska Pipeline Liability Fund ("Fund") is a non-profit corporation established by the Trans-Alaska Pipeline Authorization Act ("Act"), 43 U.S.C. § 1653(c) and 43 C.F.R. § 29.1 *et seq.* The Fund is a resident of the State of Alaska with its principal place of business in Alaska (43 C.F.R. § 29.4(c)) and, pursuant to its enabling legislation and regulations promulgated thereunder by the Secretary of the Interior, the Fund may sue and be sued in its corporate name (43 U.S.C. § 1653(c)(4) and 43 C.F.R. § 29.4(b)). Pursuant to the Act, 43 U.S.C. § 1653(c), the Fund is strictly liable without regard to fault for all damages (up to \$100 million) sustained by plaintiff and members of the class. The Fund is joined as a defendant against which relief is sought only with respect to Count I hereof.

CLASS ACTION ALLEGATIONS

16. This action is brought by plaintiffs in their own behalf and representatively pursuant to Fed. R. Civ. P. 23 on behalf of all other persons who operate tender vessels in the waters adversely affected by the oil spill (the "Class").

17. Members of the Class are so numerous that joinder of its members is impracticable.

18. There exist questions of fact and law common to all members of the Class, including the facts surrounding the operation of the vessel Exxon Valdez at the time of the unlawful discharge of oil, the facts concerning defendants' subsequent efforts to contain and/or clean up the resulting oil spill, the liability of defendants for the spill and subsequent attempts to contain and clean up the spill as alleged herein. These common questions of law and fact predominate over any questions affecting only individual members of the Class.

19. Plaintiffs are members of the Class they seek to represent and their claims are typical of the claims of the Class.

20. Plaintiffs will fully and adequately represent and protect the interests of the Class. The interests of plaintiffs in assessing liability against defendants and obtaining damages (both compensatory and punitive) and injunctive relief as prayed for herein are consistent with the interests of the other members of the Class. Plaintiffs have retained counsel experienced in environmental and class litigation.

21. A class action is superior to other available methods of adjudicating the controversy, including the prosecution of claims which on an individual basis would be too small to justify the expense and such complex litigation. Plaintiffs and their counsel foresee no problems peculiar or unique to this action which would render it unmanageable as a class action.

22. The prosecution of separate actions by individual members of the Class would, as a practical matter, be dispositive of the interests of other members not

parties to the adjudication and could substantially impair or impede their ability to protect their interests. In addition, it is desirable that a claim for punitive damages, as set forth herein, be made against defendants in one unified proceeding so that any recovery can be fairly allocated among members of the Class and defendants are not subjected to possible varying and/or inconsistent degrees of liability in separate actions.

23. Under the circumstances, certification of the proposed Class is appropriate under Fed. R. Civ. P. 23(b)(1), 23(b)(2) and/or 23(b)(3).

SUBSTANTIVE ALLEGATIONS

The Oil Spill

24. The Exxon Valdez is 987 feet long, weighs 211,00 deadweight tons with cargo and bunker fuel and was designed and used for the transportation of oil. Although the vessel was used regularly for the transportation of crude oil through waters containing icebergs and rocky reefs, the vessel did not contain a double hull designed to minimize the possibilities of a rupture of the hull and/or the on-board oil storage tanks in the event of a collision or running aground.

25. Prior to the oil spill complained of herein, the vessel was loaded with approximately 1.2 million barrels of North Slope crude oil delivered to the terminal facilities at Valdez through the Trans-Alaska Pipeline. Upon completion of the loading, the vessel left the port of Valdez on Thursday evening, March 23, 1989. The vessel was bound for Long Beach, California.

26. The Exxon Valdez passed through the harbor and Valdez Narrows under the command of a harbor pilot. At approximately 12:30 a.m., the vessel having reached the southern end of the Narrows, the harbor pilot disembarked and left the ship under the command of Hazelwood.

27. Shortly thereafter, Hazelwood left the bridge of the vessel and retired to his cabin. At this time, only Third Mate Cousins and a helmsman remained on the bridge and directly in charge of the operation of the vessel. Cousins was not certified to operate the tanker in Prince William Sound and the nearby waters.

28. During the time Cousins was directly in charge of the operation of the vessel, the Exxon Valdez left the demarcated deep water shipping channel and entered into an area shown on nautical charts as an area of rocky reefs too shallow for the Exxon Valdez to traverse.

29. While outside the normal shipping channel, the Exxon Valdez struck the well-marked Bligh Reef, which caused at least three holes to be ripped into the starboard oil storage tanks.

30. Hazelwood remained in his cabin even after the vessel struck the rocks even though the noise and vibration of such an impact should have alerted his attention and immediately caused him to report to the bridge.

31. The vessel was still navigable after striking Bligh Reef. In an attempt to remove the vessel from the shallow reef, Cousins turned the vessel toward the West, but struck another shallow and rocky area bringing the ship to a complete halt.

32. As a result of the two impacts, at least eight of the vessel's twelve oil storage tanks were breached causing over 10 million gallons of crude oil to be discharged into Price William Sound. As a result of the oil spill, over a thousand square miles of natural habitat have been polluted and untold numbers of the area's abundant and varied wildlife have been killed or severely injured.

33. Prior to boarding the Exxon Valdez on March 23, 1989, Hazelwood had consumed alcoholic beverages. At the time the vessel left the Valdez Marine Terminal, Hazelwood's blood alcohol level was in excess of United Coast Guard allowable limits for operation of a vessel on navigable waters. Blood and urine samples taken from Hazelwood nine hours after the Exxon Valdez struck the reef indicated that at that time Hazelwood's blood alcohol level was 0.061 (and 0.09 according to the urine sample), well above allowable Coast Guard limits of 0.04.

34. Hazelwood had a history of alcohol abuse which was known to Exxon. Exxon knew that Hazelwood had gone through an alcohol detoxification program prior to placing him in command of the Exxon Valdez, Exxon's largest tanker. In addition, Hazelwood was convicted of operating a motor vehicle while intoxicated in September, 1988, and his license to drive was revoked at that time. Hazelwood also pleaded guilty in 1984 to driving while intoxicated after an automobile accident near Huntington, New York. During the past five years, Hazelwood's motor vehicle license had been suspended on two other occasions as well. Exxon knew, or should have known, of Hazelwood's continued operation of motor vehicles while intoxicated.

35. Exxon was warned of Hazelwood's consumption of alcoholic beverages while on board and in command of Exxon vessels by at least one Exxon employee, Bruce Amero, who had served with Hazelwood on prior voyages and had personal knowledge of his drinking. Although the possession or consumption of alcoholic beverages on board company-operated vessels was a violation of Exxon's work rules, Exxon, even after warnings concerning Hazelwood, continued to permit him to command company vessels.

The Clean Up Efforts

36. It was the responsibility of Alyeska and Exxon to have in place sufficient contingent plans and equipment to respond quickly and effectively to oil spills in the area of Valdez. Although Alyeska had a contingency plan on paper which called for the encirclement of a ruptured oil tanker within five hours with barrier booms designed to contain and stop the spread of the spilled oil, the Exxon Valdez was not encircled for at least thirty-five hours, by which time most of the oil had escaped the immediate area of the stricken tanker and spread to nearby waters and land areas.

37. At the time of the oil spill, Alyeska's only containment barge had been stripped of its oil containment equipment and had been in dry dock undergoing repairs for at least two weeks. Despite the absence of its only oil containment barge, Alyeska had provided no backup barge or other equipment to respond to a possible oil spill. After the spill, the barge was improperly equipped to remove oil remaining on the Exxon Valdez rather than contain the oil which had spilled into Prince William Sound. Valuable clean up time was lost by Alyeska's failure to properly maintain its sole containment barge, its

failure to provide for alternative procedures while the barge was out of service and its failure to properly equip the barge with oil containment barrier booms once it was in a position to be deployed.

38. The response of Exxon and Alyeska to the oil spill once it had occurred was also negligent, grossly negligent and/or reckless in at least the following respects:

a. Neither Alyeska nor Exxon had available within the proximity of Valdez sufficient barrier booms or chemical dispersants to adequately contain and clean up a discharge of oil from tankers the size of the Exxon Valdez, even though such tankers regularly loaded North Slope crude oil at the Valdez Marine Terminal and operated in Prince William Sound and the surrounding waters.

b. Neither Alyeska nor Exxon responded in a timely fashion with respect to testing for the use of chemical dispersants to break up the oil spill. It was at least eighteen hours after the oil spill before Alyeska and Exxon tested the chemical dispersants and then they did so in an inadequate manner by merely tossing buckets of the chemicals from the door of a helicopter.

c. Neither Alyeska nor Exxon had on hand or readily available "skimmer boats" with equipment capable of skimming the spilled oil from the surface of the water. The skimmer boats deployed by Alyeska and Exxon used obsolete equipment which was incapable of handling the thick oil made more viscous by the cold waters of the Sound. Notwithstanding, both Alyeska and Exxon knew, or should have known, that the

cold Alaskan waters would thicken any spilled crude oil and that proper and modern equipment was necessary to adequately skim spilled oil under these circumstances.

39. As a result of the negligent, grossly negligent and/or reckless containment and clean up efforts of Exxon and Alyeska, less than ten percent of the spilled oil has been recovered and containment and/or recovery of any significant quantity of the remaining spilled oil has been rendered more difficult, if not impossible. In addition, the spilled oil has been permitted to extend well beyond the immediate area of the ruptured vessel and to pollute the waters and adjoining land areas beyond Prince William Sound and into the Lower Kenai Peninsula.

COUNT I

Strict Liability 43 U.S.C. §§ 1653(c)

40. Plaintiffs incorporate by reference each of the foregoing allegations.

41. Plaintiffs and members of the Class sustained damages as a result of the discharge of oil from the vessel Exxon Valdez, which oil had been transported through the Trans-Alaska Pipeline and loaded onto the Exxon Valdez at the terminal facilities of the Pipeline in Valdez, Alaska. Such discharge constitutes an "incident" within the meaning of 43 U.S.C. § 1653(c)(3).

42. Plaintiffs and members of the Class sustained further damages as a result of the failures by Exxon and Alyeska to promptly and adequately respond to the oil spill by seeking to contain it and clean it up. Such failures to contain and clean up the

oil spill constituted at least one separate and additional "incident" within the meaning of 43 U.S.C. § 1653(c)(3).

43. Exxon, as owner and operator of the Exxon Valdez, the Trans-Alaska Pipeline Liability Fund and Alyeska are strictly liable to plaintiffs and the Class for such damages, as follows: Exxon is strictly liable for the first \$14 million in damages with respect to each separate incident; the Fund is liable for the next \$86 million in damages with respect to each separate incident; and Exxon and Alyeska are jointly and severally liable for all damages in excess of \$100 million with respect to each separate incident.

COUNT II

Common Law Negligence

44. Plaintiffs incorporate by reference each of the foregoing allegations.

45. Defendants jointly and severally owed a duty of care to plaintiffs and members of the Class with regard to the transportation of crude oil from the Valdez Marine Terminal, including but not limited to: (a) the duty to select crew members to operate oil tankers in a responsible manner and to refrain from selecting members with a history of alcohol abuse and operation of vehicles while intoxicated; (b) the duty to adequately supervise crew members to ensure that they do not operate the vessel while under the influence of alcohol or other intoxicating substances; (c) the duty to adequately supervise crew members to ensure that only properly trained and certified crew members operate, or direct the operation of, the vessel; (d) the duty to maintain seaworthy vessels properly constructed to minimize the possibility of an oil spill in the event of a collision

with known obstacles in or near the shipping lanes customarily used by such vessel; (e) the duty to take all other reasonable steps to prevent the discharge of oil; (f) the duty to have in place adequate contingency plans and the necessary and modern equipment sufficient to contain and clean up any discharge of oil of the magnitude foreseeable given the size of the vessels, including the Exxon Valdez, which use the Valdez Marine Terminal; and (g) the duty to promptly and adequately take steps to contain and clean up any foreseeable discharge of oil.

46. Defendants breached these duties of care in at least the following ways:

a. By allowing Hazelwood to command the vessel despite his known alcohol abuse and prior convictions for operating a motor vehicle while intoxicated and despite prior warnings from other Exxon employees that Hazelwood consumed alcohol while on board and in command of Exxon tankers in violation of Exxon regulations.

b. By allowing Cousins to operate the vessel in Price William Sound even though defendants knew or should have known he was not licensed or qualified to operate the vessel in those waters.

c. By shipping oil on the Exxon Valdez even though defendants knew or should have known that its single hull construction was not sufficient to allow it to safely engage in the trade for which it was intended, including the shipment of crude oil in waters characterized by icebergs and rocky reefs.

d. By transporting oil by pipeline and by vessel even though defendants knew or should have known that their emergency containment and clean up plans were inadequate and rendered ineffective by the lack of sufficient personnel and modern equipment to handle containment and clean up of an oil spill of the magnitude foreseeable given the size of the tankers regularly loaded at the Valdez Marine Terminal.

47. As a direct and proximate result of defendants' negligent acts and omissions, plaintiffs and members of the Class have suffered and will continue to suffer injury as set forth herein.

COUNT III

Strict Liability -- Ultra-Hazardous Activity

48. Plaintiffs incorporate by reference each of the foregoing allegations.

49. Defendants, in producing and transporting oil, were engaged in an abnormally dangerous and ultra-hazardous activity and therefore owed an absolute duty to plaintiffs and members of the Class to conduct their operations in a safe and proper manner.

50. Defendants breached this duty by causing, allowing or contributing to the discharge of oil into Price William Sound and the surrounding waters and land areas.

51. As a result of defendants' breach, plaintiffs and members of the Class have suffered and will continue to suffer damages as set forth herein. Defendants are strictly liable to plaintiffs and the Class for said damages.

COUNT IV

Admiralty

52. Plaintiffs incorporates by reference each of the foregoing allegations.

53. In the manner set forth above, defendants violated applicable maritime and admiralty laws of the United States, which violations were a direct and proximate cause of the damages sustained by plaintiffs and members of the Class as set forth herein.

COUNT V

Private Nuisance (AS 09.45.230) and Public Nuisance

54. Plaintiffs incorporate by reference each of the foregoing allegations.

55. Defendants, by causing the discharge of oil into the waters and adjoining land areas surrounding Prince William Sound, and by failing to act expeditiously and with reasonable care to contain and clean up said discharge, have created and maintained a private nuisance which has damaged, and will continue to damage, plaintiffs and members of the Class.

56. Said acts also created a public nuisance through unreasonable interference with the rights of plaintiffs and members of the Class to water and land areas that are free from pollution and contamination with toxic substances.

57. As a direct result of such private and public nuisance, plaintiffs and members of the Class have suffered, and will continue to suffer, injury as set forth herein.

COUNT VI

Alaska Statutory Law

58. Plaintiffs incorporate by reference each of the foregoing allegations.

59. Oil is a hazardous substance as defined in AS 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

60. Defendants own and/or have control of, pursuant to AS 46.03.826(3), the oil which was loaded onto the vessel Exxon Valdez at the Valdez Marine Terminal and then discharged into Prince William Sound and the surrounding waters and land areas.

61. Defendants acts in connection with the oil spill and subsequent failure to adequately contain and clean up the spill violated AS 46.03.822 *et seq.* of the Alaska Environmental Conservation Act.

62. As a direct and proximate result of such violations, plaintiffs and the Class have suffered and will continue to suffer injury as set forth herein.

COUNT VII

Punitive Damages

63. Plaintiffs incorporate by reference each of the foregoing allegations.

64. Certain acts of defendants as alleged herein were so far removed from reasonable conduct under the circumstances as to constitute wanton, willful or reckless intention. In addition, defendants, major producers and transporters of crude oil, have it within their power, and at all times relevant hereto had such power, to take reasonable steps to prevent such disastrous oil spills and to have in place adequate contingency plans

and sufficient quantities of modern equipment and trained personnel to promptly contain and clean up any spills which might occur. Defendants' failure to take such steps in the circumstances alleged herein was the result of an intentional decision to place company profitability ahead of concerns for the environment and the persons, such as plaintiffs and members of the Class, whose livelihood depends upon an unpolluted environment.

65. As a result of defendants' wanton, wilful and reckless conduct, Prince William Sound and the surrounding waters and land areas have been severely and perhaps irreparably polluted and contaminated in a degree which cannot be measured in terms of mere compensatory damages.

66. Punitive and exemplary damages are appropriate in the circumstances alleged herein to punish Exxon and Alyeska for the wanton, wilful and reckless conduct they have engaged in and to encourage defendants and others in similar positions to take adequate care to prevent and/or clean up any such disasters which may occur.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

1. Order that this action may proceed as a class action on behalf of the Class defined herein, with plaintiffs as the class representatives.
2. Award compensatory and punitive damages to plaintiffs and members of the Class, and against defendants jointly and severally, in amounts to be determined by the finder of fact.

3. Enter an Order granting appropriate injunctive relief to ensure that this type of incident will not recur by requiring Exxon and Alyeska to: (a) institute drug and alcohol testing of all persons responsible for commanding a vessel transporting oil out of the Valdez Marine Terminal or otherwise in or through Prince William Sound prior to the departure of such vessel; (b) use double-hulled tankers or their equivalent for the transport of such oil; (c) institute periodic emergency/contingency oil spill plan certifications detailing the equipment, supplies and trained personnel on hand to respond to future oil spills; and (d) institute periodic drills of such emergency/contingency plans to enhance preparedness and responsiveness.

4. Award plaintiffs and members of the Class attorneys' fees and costs of this action.

5. Grant such other and further relief as this Court may deem just and equitable.

DATED at Anchorage, Alaska this 26th day of April, 1989.

Respectfully submitted,

LAW OFFICES OF MARK R. MODEROW

By



880 "N" Street; Suite 203
Anchorage, Alaska 99501
(907) 277-5955

- and -

POMERANTZ LEVY HAUDEK BLOCK &
GROSSMAN

By Stanley M. Grossman (SM)
295 Madison Avenue
New York, NY 10017
(212) 532-4800

Attorneys for Plaintiffs