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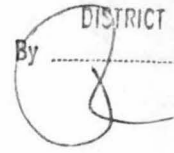
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Attorneys for Plaintiffs

FILED

APR 04 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

THE NORTH PACIFIC RIM, INC., )  
for itself and on behalf of )  
THE EYAK NATIVE VILLAGE, )  
THE NATIVE VILLAGE OF )  
CHENEGA BAY, THE NATIVE )  
VILLAGE OF TATITLEK, )  
ENGLISH BAY VILLAGE, PORT )  
GRAHAM VILLAGE, THE MOUNT )  
MARATHON NATIVE ASSOCIATION, )  
INC., THE VALDEZ NATIVE )  
ASSOCIATION, INC., and the )  
Alaska Native residents of )  
the Chugach Region; EYAK )  
NATIVE VILLAGE; THE EYAK )  
NATIVE VILLAGE TRADITIONAL )  
COUNCIL, on behalf of the )  
Native people of Eyak; THE )  
NATIVE VILLAGE OF CHENEGA )  
BAY; THE NATIVE VILLAGE OF )  
CHENEGA BAY IRA COUNCIL, )  
on behalf of the Native )  
people of Chenega Bay; THE )  
VILLAGE OF PORT GRAHAM; THE )  
VILLAGE OF PORT GRAHAM )  
TRADITIONAL COUNCIL on behalf )  
of the Native people of Port )  
Graham; ENGLISH BAY VILLAGE; )  
THE ENGLISH BAY VILLAGE )  
TRADITIONAL COUNCIL, on behalf )  
of the Native people of )  
English Bay; THE MOUNT )  
MARATHON NATIVE ASSOCIATION, )  
INC.; THE VALDEZ NATIVE )  
ASSOCIATION, INC.; AGNES )

A 89-110 CIV  
Civ No. \_\_\_\_\_

CLASS ACTION FOR DAMAGES  
AND OTHER RELIEF

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VILLAGE OF ENGLISH BAY )  
NANWALEK TRADITIONAL COUNCIL, )  
on behalf of the Native people )  
of English Bay; THE NATIVE )  
VILLAGE OF TATITLEK; THE )  
NATIVE VILLAGE OF TATITLEK )  
IRA COUNCIL, THE MOUNT )  
MARATHON NATIVE ASSOCIATION, )  
INC.; THE VALDEZ NATIVE )  
ASSOCIATION, INC.; THE )  
ALASKA SEA OTTER COMMISSION; )  
THE KODIAK AREA NATIVE )  
ASSOCIATION, INC., for )  
itself and on behalf of the )  
NATIVE VILLAGE OF LARSEN BAY, )  
THE NATIVE VILLAGE OF OLD )  
HARBOR, THE NATIVE VILLAGE OF )  
KARLUK, THE NATIVE VILLAGE OF )  
PORT LIONS, THE NATIVE VILLAGE )  
OF AKHIOK, THE SHOONAQ' TRIBE )  
OF KODIAK, THE NATIVE )  
VILLAGE OF OUZINKIE, and the )  
Alaska Native residents of )  
the Kodiak Region; THE )  
SHOONAQ' TRIBE OF KODIAK; )  
THE SHOONAQ' TRIBE OF )  
KODIAK TRIBAL COUNCIL, on )  
behalf of the Native people of )  
Kodiak; THE NATIVE VILLAGE OF )  
LARSEN BAY; THE NATIVE VILLAGE )  
OF LARSEN BAY TRADITIONAL )  
COUNCIL, on behalf of the )  
Native people of Larsen )  
Bay; THE NATIVE VILLAGE OF )  
OLD HARBOR; THE NATIVE )  
VILLAGE OF OLD HARBOR )  
TRADITIONAL COUNCIL, on )  
behalf of the Native people )  
of Old Harbor; THE NATIVE )  
VILLAGE OF KARLUK, THE NATIVE )  
VILLAGE OF KARLUK I.R.A. )  
COUNCIL, on behalf of the )  
Native people of Karluk; )  
THE NATIVE VILLAGE OF PORT )  
LIONS; THE NATIVE VILLAGE )  
OF PORT LIONS TRADITIONAL )  
COUNCIL, on behalf of the )  
Native people of Port Lions; )  
THE NATIVE VILLAGE OF AKHIOK; )  
THE NATIVE VILLAGE OF AKHIOK )

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TRADITIONAL COUNCIL, on )  
behalf of the Native people )  
of Akhiok; THE NATIVE VILLAGE )  
OF OUZINKIE; THE NATIVE )  
VILLAGE OF OUZINKIE )  
TRADITIONAL COUNCIL, on )  
behalf of the Native people )  
of Ouzinkie; AGNES NICHOLS; )  
GILBERT OLSEN; HENRY )  
MAKARKA; JOHN M. TOTEMOFF; )  
MAGGIE A. TOTEMOFF; WALTER )  
MAGANACK, SR.; WALTER )  
MAGANACK, JR.; JUANITA )  
MELSHEIMER; SVEN HAAKANSON; )  
RONNY LIND; ALLEN PANAMAROFF; )  
DAVID ELUSKA, SR.; and TESHIA )  
HARRIS, on behalf of them- )  
selves and all others )  
similarly situated, )

Plaintiffs,

vs.

EXXON CORPORATION, a New )  
Jersey Corporation; EXXON )  
SHIPPING CO., a Delaware )  
Corporation; EXXON CO., USA, )  
a Texas Corporation; and )  
ALYESKA PIPELINE SERVICE CO., )  
a Delaware Corporation, )

Defendants.

Plaintiffs allege as follows:

Jurisdiction and Venue

1. This is a civil class action brought by Natives and Native associations, on their own behalf and on behalf of a class of all others similarly situated, for monetary damages sustained by plaintiffs and the class to their economic and subsistence interests and for environmental and ecological injury to the area in and around Prince

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William Sound, the Lower Kenai Peninsula, the Kodiak Archipelago, the Alaska Peninsula, the Aleutian Chain, and all other affected areas of Alaska arising out of and directly resulting from the unlawful discharge of oil and other effluent from the vessel EXXON VALDEZ, engaged in the transportation of oil between the terminal facility of the Trans-Alaska Pipeline System in Valdez, Alaska, and Long Beach, California.

2. This action also seeks mandatory and prohibitory injunctive relief to implement measures to further address the damages caused by this incident and to ensure against the recurrence of this or any similar type incident.

3. This Complaint is filed and these proceedings are instituted pursuant to 28 U.S.C. 1331, 1333(1), and 1362, which provide for original jurisdiction in the district courts of all civil actions arising under the laws of the United States, all civil actions by recognized Indian tribes arising under the laws of the United States and all civil actions of admiralty or maritime jurisdiction. This Court also has subject matter jurisdiction over this action in accordance with the principles of pendant jurisdiction.

4. Venue is proper in this District by virtue of 28 U.S.C. 1391 because the claims arose in this District and defendants are doing business in this District.

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### Plaintiffs

5. The named Plaintiffs are as follows:

(a) The North Pacific Rim, Inc. ("TNPR") is a confederation of five Native American tribes and two Native American associations situated within the Chugach Region (as that region is defined in and pursuant to the Alaska Native Claims Settlement Act of 1971, as amended, 43 U.S.C. 1601 et. seq.) including the Eyak Native Village, the Native Village of Chenega Bay, the Native Village of Tatitlek, the Native Village of English Bay, the Native Village of Port Graham, the Mount Marathon Native Association, Inc., and the Valdez Native Association, Inc. TNPR is organized as a non-profit corporation under the laws of the State of Alaska. TNPR's corporate purpose is to protect and advance the cultural, economic, subsistence, health, and social service needs of the Chugach Region Native people and their seven Native tribes and organizations.

(b) Eyak Native Village is a federally recognized Native American tribe situated

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- near Cordova, Alaska, in Prince William Sound.
- (c) The Eyak Native Village Tribal Council is the governing body of the Eyak Native Village.
- (d) The Native Village of Chenega Bay is a federally recognized Native American tribe situated on Evans Island, Alaska, in Prince William Sound.
- (e) The Native Village of Chenega Bay IRA Council is the governing body of the Native Village of Chenega Bay, organized under Section 16 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 476.
- (f) The Native Village of Port Graham and the Native Village of English Bay are two federally recognized Native American tribes situated at the southwestern extremity of the Lower Kenai Peninsula.
- (g) The Native Village of Port Graham Traditional Council is the governing body of the Village of Port Graham.
- (i) The Native Village of English Bay Naŋwalek Traditional Council is the governing body of the Native Village of English Bay.

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- (j) The Native Village of Tatitlek is a federally recognized Native American tribe situated at the Tatitlek Narrows in Prince William Sound.
- (k) The Native Village of Tatitlek IRA Council is the governing body of the Native Village of Tatitlek, organized under Section 16 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 476.
- (l) The Mount Marathon Native Association, Inc. is a non-profit corporation formed under the laws of the State of Alaska to represent the interests of the Native American people of Seward, Alaska, on the southern coast of the Lower Kenai Peninsula.
- (m) The Valdez Native Association, Inc. is a non-profit corporation formed under the laws of the State of Alaska to represent the interests of the Native American people of Valdez, Alaska, in Prince William Sound.
- (n) The Alaska Sea Otter Commission is a non-profit or unincorporated Native Alaskan association formed to foster and conservation, sound management, and Native

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customary and traditional use of the sea otter throughout Alaska.

(o) The Kodiak Area Native Association, Inc. ("KANA") is a confederation of seven Native American tribes situated within the Kodiak Region (as that term is defined in and pursuant to the Alaska Native Claims Settlement Act of 1971, as amended, 43 U.S.C. 1601 et. seq.) including the Native Village of Larsen Bay, the Native Village of Old Harbor, the Native Village of Karluk, the Native Village of Port Lions, the Native Village of Akhiok, the Shoonaq' Tribe of Kodiak, and the Native Village of Ouzinkie. KANA is organized as a non-profit membership corporation under the laws of the State of Alaska. KANA's corporate purpose is to protect and advance the cultural, economic, subsistence, health, and social service needs of the Kodiak Native people and their seven Native tribes.

(p) The Native Village of Larsen Bay, the Native Village of Old Harbor, the Native Village of Karluk, the Native Village of Port Lions, the Native Village of Akhiok, the Native



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- Village of Ouzinkie and the Shoonaq' Tribe of Kodiak are federally recognized Native American tribes situated on the Kodiak Archipelago of Alaska.
- (q) The Native Village of Larsen Bay Traditional Council is the governing body of the Native Village of Larsen Bay.
  - (r) The Native Village of Old Harbor Traditional Council is the governing body of the Native Village of Old Harbor.
  - (s) The Native Village of Karluk I.R.A. Council is the governing body of the Native Village of Karluk, organized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 476.
  - (t) The Native Village of Port Lions Traditional Council is the governing body of the Native Village of Port Lions.
  - (u) The Native Village of Akhiok Traditional Council is the governing body of the Native Village of Akhiok.
  - (v) The Native Village of Ouzinkie Traditional Council is the governing body of the Native Village of Ouzinkie.

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- (w) The Shoonaq' Tribe of Kodiak Tribal Council is the governing body of the Shoonaq' Tribe.
- (x) Agnes Nichols is the President of the Eyak Native Village Traditional Council. Plaintiff Nichols resides in Eyak and depends heavily on subsistence hunting, fishing, and gathering for her daily life needs.
- (y) Gilbert Olsen is a member of the Eyak Native Village Traditional Council. Plaintiff Olsen resides in Eyak and depends heavily on subsistence hunting, fishing, and gathering for his daily life needs. Plaintiff Olsen is also a member of the Alaska Sea Otter Commission.
- (z) Henry Makarka resides in Eyak, Alaska, is a member of the Eyak Native Village and depends heavily on subsistence hunting, fishing, and gathering for his daily life needs.
- (aa) John M. Totemoff is the Chief of the Native Village of Chenega Bay I.R.A. Council. Plaintiff John Totemoff resides in Chenega Bay, Alaska, and depends heavily on subsistence hunting, fishing, and gathering

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for his daily life needs. Plaintiff John Totemoff also engages in the commercial salmon fishery in Prince William Sound.

(bb) Maggie A. Totemoff resides in Chenega Bay and is a member of the Native Village of Chenega Bay. Plaintiff Maggie Totemoff depends heavily on subsistence hunting, fishing, and gathering for her daily life needs.

(cc) Walter Maganack, Sr. and Walter Maganack, Jr. reside in Port Graham, Alaska, and are members of the Native Village of Port Graham. Plaintiff Walter Maganack, Sr. is the President of the Native Village of Port Graham Traditional Council. Plaintiffs Walter Maganack, Sr. and Walter Maganack, Jr. depend heavily on subsistence hunting, fishing, and gathering for their daily life needs, and also engage in the commercial salmon and halibut fishery in the Lower Kenai Peninsula and Lower Cook Inlet areas of Alaska.

(dd) Juanita Melsheimer resides in English Bay, Alaska, and is a member of the Native Village of English Bay. Plaintiff

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Melsheimer depends heavily on subsistence hunting, fishing, and gathering for her daily life needs, and also engages in the commercial salmon fishery in the Lower Kenai Peninsula area.

(ee) Sven Haakanson resides in Old Harbor, Alaska, and is a member of the Native Village of Old Harbor. Plaintiff Haakanson depends heavily on subsistence hunting, fishing, and gathering for his daily life needs, and also engages in the commercial salmon and crab fishery in the affected Area.

(ff) Ronny Lind resides in Karluk, Alaska, and is the President of the Native Village of Karluk I.R.A. Council. Plaintiff Lind depends heavily on subsistence hunting, fishing, and gathering for his daily life needs, and also engages in the commercial salmon fishery in the affected Area.

(gg) Allen Panamaroff resides in Karluk, Alaska, and is a member of the Native Village of Karluk. Plaintiff Panamaroff depends heavily on subsistence hunting, fishing, and gathering for his daily life needs, and also

engages in the commercial salmon fishery in the affected Area.

(hh) David Eluska, Sr. resides in Ahkiok, Alaska, and is the President of the Native Village of Ahkiok Traditional Council. Plaintiff Eluska depends heavily on subsistence hunting, fishing, and gathering for his daily life needs, and also engages in the commercial salmon fishery in the affected Area.

(ii) Teshia Harris resides in Kodiak, Alaska, and is a member of the Shoonaq' Tribe of Kodiak. Plaintiff Harris depends heavily on subsistence hunting, fishing, and gathering for her daily life needs.

6. Plaintiffs and the class they seek to represent are Alaska Natives and Native organizations, including, but not limited to, individuals, Native villages, incorporated and unincorporated Native entities, associations and tribal entities, who are residents of the State of Alaska and who personally and economically rely upon, use and benefit from the land, structures, fish, wildlife and other biotic and natural resources in and around Prince William Sound, the Lower Kenai Peninsula, the Kodiak Archipelago, the Alaska Peninsula, the Aleutian Chain, and all other areas of

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Alaska (herein referred to as "the Area") whose Native residents are affected by the March 24, 1989, discharge of oil from the vessel EXXON VALDEZ. Plaintiffs rely to varying degrees on such species as king salmon, silver salmon, red salmon, pink salmon, chum salmon, white king salmon, black cod, cutthroat trout, steelhead trout, lake trout, rainbow trout, dolly varden, salmon roe, halibut, herring, herring roe, hooligan, smelt, red snapper, codfish, lingcod, gray cod, tomcod, flounder, sole, whitefish, black bass, pollock, pacific ocean perch, red and black seaweed, seaweed with herring roe, kelp, harbor seal, harbor porpoise, sea lion, sea otter, butter clams, littleneck clams, razor clams, cockles, dungeness crab, king crab, tanner crab, shrimp (including tiger and pink shrimp), horse clams, scallops, mussels, sea urchins, chiton, octopus, snails, sea cucumbers, Canada geese, mallards, pintails, goldeneyes, teals, widgeons, swans, brant geese, snow geese, white-fronted geese, black, surf and common scoters, buffleheads, mergansers, loons, deer, and black bear.

7. Plaintiffs are aboriginal residents of the Area with a direct and substantial interest in the environment and ecology of the Area, including among others, its fish, wildlife, and natural resources.

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8. Plaintiffs and the class include rural residents of Alaska who are subsistence users engaged in the customary and traditional uses of wild, renewable resources taken for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation, for the making or selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal or family consumption, for barter or sharing for personal or family consumption, or for customary trade. These individuals have an absolute statutory priority in such subsistence uses over all other competing sport, commercial or other user groups, pursuant to 16 U.S.C. 3114.

#### Defendants

9. Defendant, Exxon Corporation ("Exxon"), 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 is engaged in the business of operating petroleum companies through its subsidiaries and divisions, and is an owner and operator of the vessel EXXON VALDEZ.

10. Defendant, Exxon Shipping Company ("Exxon Shipping"), a Delaware Corporation and maritime subsidiary of defendant Exxon with its principal place of business at

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811 Dallas Avenue, Houston, Texas 77002, is an owner and operator of the vessel EXXON VALDEZ.

11. Defendant, Exxon Co., USA ("Exxon USA"), is a division of defendant Exxon with its principal place of business at 800 Bell Avenue, Houston, Texas 77002. Exxon USA is engaged in the business of producing crude oil and refining, transporting, and marketing petroleum products in the United States, and is an owner and operator of the vessel EXXON VALDEZ.

12. Defendant Alyeska Pipeline Service Company ("Alyeska") is a corporation organized under the laws of the State of Delaware with its principal place of business in the State of Alaska. Alyeska owns and operates the Trans-Alaska Pipeline System, including the terminal at Valdez, Alaska.

#### Class Action Allegations

13. Plaintiffs bring this action on behalf of themselves and a class under Fed. R. Civ. P. Rules 23(b)(1), (b)(2), and (b)(3) consisting of "all Alaska Natives and Native organizations, including but not limited to individuals, Native villages, incorporated and unincorporated Native entities and associations, and tribal entities, who personally and economically rely upon, use or benefit from the land, structures, fish, wildlife, and other biotic and natural resources in and around Prince



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William Sound, the Lower Kenai Peninsula, the Kodiak Archipelago, the Alaska Peninsula, the Aleutian Chain, and all other areas of Alaska affected by the March 24, 1989 discharge of oil from the EXXON VALDEZ."

14. Plaintiffs further bring this action on behalf of themselves and a class consisting of "all Alaska Natives and Native organizations, including but not limited to individuals, Native villages, incorporated and unincorporated Native entities and associations, and tribal entities, who have a direct and substantial interest in the environment and ecology of the Area and who seek to prevent further injury to the environment and the ecology and to restore the Area to its pre-existing state."

15. The class is so broad and numerous that joinder of all members is impracticable. Although its exact number is not known, it is estimated that there are more than five thousand class members.

16. Plaintiffs are members of the class and their claims are typical of the claims of all members.

17. Plaintiffs will fairly and adequately protect the interests of all members of the class and the members of each are coincident and not antagonistic with the remainder of the class.

18. Plaintiffs are represented by counsel experienced with class and complex litigation and in the representation

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of Native American individuals, Native American entities, and Native American tribes.

19. There are questions of law and fact common to the class in relation to their claims against defendants. Those questions predominate over questions affecting only individual members. A class action is superior to other methods for a fair and efficient administration of this controversy. Prosecution of these claims within the procedural device of a class action will reduce the possibility of repetitious litigation, while also producing redress for claims too small to support the expense of individual, complex litigation.

20. Individual adjudications of class member claims, which would as a practical matter be dispositive of the interests of other members not parties to the action, might substantially impair or impede the ability of the absent members to protect their interests, particularly in regard to claims against defendants for punitive damages.

21. Defendants have acted or refused to act on grounds generally applicable to the class thereby making appropriate final injunctive relief with respect to the class as a whole, in particular as it relates to control by defendants of the operation of vessels carrying oil to and from the Trans-Alaska Pipeline and the establishment and implementation of adequate and effective clean-up

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contingency plans and programs and/or the creation of a Fund to preserve and enhance the environment and ecology of the Area.

#### Facts

22. On Thursday evening, March 24, 1989, 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.

23. The vessel was under the command of Captain Joseph J. Hazelwood, who at all relevant times was acting within the scope of his employment and as an agent and representative of defendants. On information and belief Hazelwood was intoxicated at the time the vessel left the Port of Valdez and at the time of the accident.

24. The vessel EXXON VALDEZ was carrying approximately 1.2 million barrels of crude oil which had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline. On information and belief said oil was owned by defendants Exxon Corporation or Exxon Company USA.

25. Sometime in the early hours of Friday, March 24, 1989, Captain Hazelwood retired to his cabin, leaving Gregory Cousins, the third mate, in command. Cousins was not licensed to operate the vessel.

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26. At all relevant times, Mr. Cousins was acting within the scope of his employment and as an agent and/or representative of defendants in connection with the operation of the vessel EXXON VALDEZ.

27. Some time in the early morning hours of Friday, March 24, 1989, the vessel EXXON VALDEZ left the designated deep water southbound shipping lane and shipping channel and entered into a chartered area of rocky reefs.

28. The vessel EXXON VALDEZ was approximately one quarter-mile outside the channel when it first struck the well-marked Bligh Reef. The impact tore three holes into the starboard tanks and ripped out a portion of the hull.

29. While still navigable, the vessel EXXON VALDEZ struck a second part of Bligh Reef and ran aground.

30. As a result of its negligent, grossly negligent, and/or reckless operation, the vessel EXXON VALDEZ was damaged in a manner which permitted and/or caused the discharge of more than 11,000,000 gallons of oil upon and into Prince William Sound and the waters of the Area.

31. Thereafter, defendants were negligent, grossly negligent, and/or reckless by reason of their failure to contain and clean-up the oil and other effluent discharged by their vessel upon and into the waters of Prince William Sound in a timely and effective manner. This failure compounded the damage caused by the discharge of the oil

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from the vessel EXXON VALDEZ. This failure also allowed said discharge of oil to extend beyond Prince William Sound into the Area.

COUNT I

Strict Liability  
43 U.S.C. 1653(a) and (c)

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

33. Defendant Alyeska is the holder of a right-of-way, granted pursuant to Title 43 of United States Code in connection with transportation of oil along or in the vicinity of the Trans-Alaska Pipeline.

34. Injury to plaintiffs and the class resulted in part from activities in connection with the transportation of oil along or in the vicinity of the Trans-Alaska Pipeline and the loading of such oil on a vessel at the Valdez terminal facility of the Pipeline in violation of 43 U.S.C. 1653(a).

35. The damages to plaintiffs and the class were neither caused by an act of war nor by the negligence of the United States, nor any other government entity.

36. Injury to plaintiffs and the class arose also from the discharge of oil after the vessel struck Bligh Reef, in violation of 43 U.S.C. 1653(c).

37. Each striking of Bligh Reef by the vessel EXXON VALDEZ was a separate "incident" within the meaning of the

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statute, and each day that defendants failed to adequately, timely, and appropriately respond to the containment and clean-up of the oil discharged from the vessel was also a separate "incident."

38. As a result of these violations, defendants are strictly liable to plaintiffs and the class for all damages sustained by them and for injury to the environment and ecology of the Area resulting from the discharge and spread of oil from the vessel EXXON VALDEZ in an amount of \$150 million for each such incident.

#### COUNT II

##### Common Law Negligence

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

40. Defendants jointly and severally owed a duty of care to plaintiffs and the class to safeguard the selection of crew members who controlled the operation of oil carrying vessels through Prince William Sound, to supervise the actions of crew members so as to ensure they are not intoxicated when operating such vessels, to assure that only licensed and properly trained crew members operate such vessels, to maintain sea worthy vessels, to properly transport, handle, and prevent the spillage of oil from such vessels, and to properly contain, clean-up, and otherwise take efficacious measures in the event of an oil

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discharge to prevent injury to plaintiffs and the class as well as to the environment and ecology of the Area.

41. Defendants breached their duty of care in each of these respects, including among others, in the following ways:

- (a) Allowing Captain Hazelwood to command the vessel even though he had previously been convicted of charges involving excess drinking and driving twice in the past five years, had his driver's license suspended or revoked three times in that same period, was known to defendants to use and/or abuse alcohol during his employment, and was unfit to command the vessel EXXON VALDEZ with reasonable prudence, skill or care.
- (b) Allowing Gregory Cousins to operate the vessel even though defendants knew or should have known he was not licensed or qualified to operate the vessel.
- (c) Shipping oil on the vessel EXXON VALDEZ even though defendants knew or should have known that single hull construction was not sufficient to allow it to safely engage in the trade for which it was intended.
- (d) Transporting oil by pipeline or by vessel even though defendants knew or should have

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known that their emergency/contingency containment and clean up plan was both inadequate and rendered ineffective by the depletion of necessary personnel and equipment from readily accessible sites, and that there was a lack of adequate equipment, supplies and trained personnel to handle the containment and clean up.

42. As a direct and proximate result of defendants' negligent acts and omissions, plaintiffs and the class and the environment have suffered and will suffer injury as set forth herein.

COUNT III

Admiralty

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

44. By virtue of the above allegations, defendants violated the applicable maritime and admiralty laws of the United States, which violations were a direct and proximate cause of the damages previously set forth herein and suffered by plaintiffs and the class.

COUNT IV

Strict Liability - Ultra Hazardous Activity

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



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46. Defendants, in producing and transporting oil, were engaged in an abnormally dangerous and ultra-hazardous activity and therefore owed to the members of the plaintiff class an absolute duty to conduct their activities in a safe and proper manner.

47. Defendants breached their duty by causing, allowing or contributing to the discharge and dispersion of oil into the Area.

48. As a result of defendants' breach, plaintiffs and the class have suffered or will suffer injury as set forth herein.

49. Defendants are strictly liable to compensate the members of the plaintiff class for said injury.

#### COUNT V

#### Private Nuisance (AS 09.45.230) and Public Nuisance

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

51. Defendants, by causing or allowing the discharge or contributing to the discharge of oil into and upon the waters and subsurface and surface lands in and around the Area and other property utilized by or for the benefit of plaintiffs and the class, created and maintained a private nuisance which has substantially interfered and will continue to interfere with the use and enjoyment of such property, has polluted air, waters and lands utilized by

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plaintiffs and the class, and has caused permanent injury to their way of life and their livelihood.

52. The above acts and omissions of defendants also created a public nuisance through unreasonable interference with the rights of plaintiffs and the class to water and an environment that is free from pollution and contamination by oil.

53. The unreasonable interference with the rights of plaintiffs and the class common to the public resulted in special and distinct harm including, but not limited to, economic and subsistence injury as a result of the pollution.

54. As a direct and proximate result of such acts and omissions, plaintiffs and the class have suffered and will suffer injury as set forth herein.

#### COUNT VI

#### Alaska Statutes

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

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

57. The presence and spread of oil in the Area presents an imminent and substantial danger to the public health or welfare, including but not limited to fish,

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

58. The defendants own and/or have control, pursuant to AS 46.03.826(3) of the oil which was loaded on the vessel EXXON VALDEZ at Valdez, and released into the Area.

59. Defendants' acts in connection with the discharge of the oil from the vessel EXXON VALDEZ and the failure to adequately clean up and contain the spill violated AS 46.03.822 et seq. of the Alaska Environmental Conservation Act.

60. As a direct and proximate result of such acts and omissions, plaintiffs and the class have suffered and will suffer injury as set forth herein.

COUNT VI

Punitive Damages

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

62. Certain acts of defendants as alleged herein were done wantonly, willfully, or with reckless intention.

63. Plaintiffs seek punitive damages from defendants for those acts as specified herein.

COUNT VII

Fraud

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

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65. In connection with the granting of the right-of-way to transport oil from a Trans-Alaska Pipeline port to a port within the jurisdiction of the United States, defendants represented that they had established and had in place adequate contingency/emergency plans and equipment and trained personnel to respond to any oil discharged from one of their vessels operating in and around Prince William Sound before it polluted and damaged the aquatic life, wildlife, public and private property and other natural resources of the area.

66. At the time defendants made those representations, they were in a position to know of the falsity of these statements, or had reason to believe that the statements were not true.

67. Plaintiffs and members of the class as well as others relied upon those representations.

68. During the time when defendants first announced the establishment of their emergency/contingency clean-up plan, until the date of the oil discharged from the vessel EXXON VALDEZ, defendants omitted to state material facts which made their prior statements regarding their contingency/emergency plan untrue, including, but not limited to, a failure to disclose that equipment and trained personnel necessary to operate and implement their contingency/emergency plan was not available.

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69. Because of these misrepresentations and omissions, there was not adequate equipment and personnel to contain and clean-up the oil discharged from the vessel EXXON VALDEZ, as a result of which clean-up efforts pursuant to the contingency/emergency plans not only were ineffectual, but also served to aggravate and compound the damage and injury caused by the spill.

70. As a direct and proximate result of defendants' fraudulent statements and omissions of material facts, plaintiffs and the class have been damaged in the manner previously set forth herein.

71. Defendant acted recklessly, wantonly, and willfully in connection with these statements and omissions.

PRAAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

1. Enter an order certifying the classes requested by plaintiffs;
2. Enter a judgment in favor of plaintiffs and the class, against defendants, jointly and severally, for economic and subsistence damages sustained by them by reason of defendants' unlawful conduct;
3. Enter a judgment awarding plaintiffs and the class punitive damages for defendants' willful, reckless, and wanton acts;

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4. Enter a judgment in favor of plaintiffs and the class against defendants, jointly and severally, for all environmental damages caused by their unlawful conduct, including but not limited to all costs of clean up of the oil discharged from the vessel EXXON VALDEZ and the creation of a fund to monitor the environment and ecology in the Area, to preserve and enhance that environment and ecology after clean up, and to rehabilitate and restore the Area to its pre-existing state prior to said discharge of oil.

5. Enter an Order granting appropriate injunctive relief to ensure that this type of incident will not recur, including but not limited to drug and alcohol testing of all persons responsible for commanding a vessel transporting oil in and through Prince William Sound prior to departure of such vessel, mandatory use of double-hulled tankers or their equivalent for the transport of such oil, and periodic emergency/contingency oil spill plan certifications detailing the equipment, supplies and trained personnel on hand to respond to such situations with periodic drills to enhance the preparedness and responsiveness to such an emergency;

6. Award plaintiffs and the class pre-judgment and post-judgment interest, costs, expenses, and attorneys' fees in this action; and

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


DATED at Anchorage, Alaska this 25th day of April, 1989.

Respectfully submitted,

Attorneys for Plaintiff:

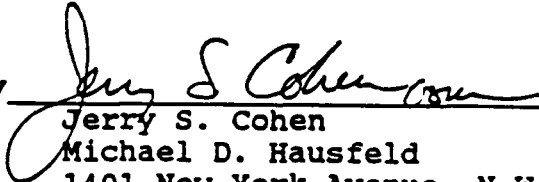
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By

  
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Donald J. Simon  
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COHEN, MILSTEIN & HAUSFELD

By

  
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Comp2.Exx

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TUGMAN and CLARK  
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Anchorage, AK 99501

John T. Hansen  
HANSEN & LEDERMAN  
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FILED

APR 05 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA AT ANCHORAGE

MARTIN GORESON, JAMES R. GORESON, )  
JEFFREY A. MOORE, JAMES D. EWING, )  
DOUG JENSEN, DANIEL LOWELL, )  
WHITTIER SEAFOODS, INC., CORDOVA )  
AIR SERVICE, INC., F/V DEW DROP, )  
INC., and F/V DEBRA LEE, INC., )

Case No. A89- 106 CI

Plaintiffs, )

v. )

EXXON VALDEZ, her engines, tackle, )  
gear, equipment, and appurtenances, )  
in rem, )

NOTICE OF PRE-ARREST  
HEARING

Defendant. )

Notice is hereby given that on the 3rd day of April, 1989, plaintiff in the above-entitled cause applied to the United States District Court for the District of Alaska for an order directing the issuance of a warrant for the in rem arrest of EXXON VALDEZ, Official No. 562 657, her engines, tackle, gear, equipment, and appurtenances, for damages caused from a discharge of oil upon the waters of Alaska by

NOTICE OF ARREST

Page 1 arrest.not CWR:sb

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ATTORNEYS AT LAW  
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ANCHORAGE, ALASKA 99501  
(907) 272-7989

23



EXXON VALDEZ that occurred on or about 24 March 1988.

The pre-arrest hearing shall take place at the hour of 1:30 p.m., on the 7th day of April, 1989, in the United States District Court for the District of Alaska, in Courtroom A146, 222 West 8th Ave. (formerly 701 C Street), Anchorage, Alaska 99501.

DATED this 5th day of April, 1989.

TUGMAN and CLARK  
Attorneys for Plaintiffs

By: Charles W. Ray, Jr.  
CHARLES W. RAY, JR.

HANSEN & LEDERMAN  
Attorneys for Plaintiffs

By: John T. Hansen  
JOHN T. HANSEN

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA AT ANCHORAGE

MARTIN GORESON, JAMES R. GORESON, )  
JEFFREY A. MOORE, JAMES D. EWING, )  
DOUG JENSEN, DANIEL LOWELL, )  
WHITTIER SEAFOODS, INC., CORDOVA )  
AIR SERVICE, INC., F/V DEW DROP, )  
INC., and F/V DEBRA LEE, INC., )

Case No. A89-106 CI

Plaintiffs, )

v. )

EXXON VALDEZ, her engines, tackle, )  
gear, equipment, and appurtenances, )  
in rem, )

CERTIFICATE OF SERVICE

Defendant. )

I, SHERRY BILLINGS, do hereby certify that a true and correct copy of the foregoing NOTICE OF PRE-ARREST HEARING was hereby served by hand upon the following and telephonic notice was also given to each individual on this the 5th day of April, 1989, upon the following:

Steven Mulder, Esq.  
Bogle & Gates

VERIFICATION  
Page 1 oil/verif CWR:sb

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Michael N. White, Esq.  
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Roger F. Holmes, Esq.  
Biss & Holmes

John C. Pharr, Esq.

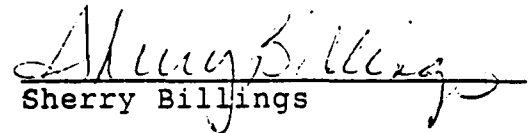
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VERIFICATION  
Page 2 oil/verif CWR:sb

FILED

APR 05 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

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

CAMAROT, SANDBERG & SMITH  
Richard J. Smith  
310 K Street, Suite 500  
Anchorage, Alaska 99501  
(907) 276-6363

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

GERALD E. THORNE, GERALD D.  
THORNE and CHARLES M. THORNE,  
each individually and on behalf  
of a class of persons similarly  
situated,

Plaintiffs,

vs.

EXXON CORPORATION, a New Jersey  
Corporation, EXXON SHIPPING  
COMPANY, a wholly owned  
subsidiary of Exxon Corporation,  
ALYESKA PIPELINE SERVICE COMPANY,  
a Delaware corporation, JOSEPH  
HAZELWOOD, GREGORY COUSINS,  
EDWARD MURPHY, GEORGE M. NELSON,  
and TRANS-ALASKA PIPELINE  
LIABILITY FUND, a nonprofit  
corporate entity,

Defendants.

A 89-111 CIV

Case No.: A-89 \_\_\_\_\_ Civil

CLASS ACTION COMPLAINT

PLAINTIFFS DEMAND A  
TRIAL BY JURY

CLASS ACTION COMPLAINT  
6405g

- 1 -

CAMAROT, SANDBERG  
& SMITH  
310 "K" STREET  
SUITE 500  
ANCHORAGE, AK 99501  
(907) 276-6363

1 Plaintiffs allege on information and belief as follows:

2 NATURE OF CASE

3 1. This is a class action arising out of the massive oil  
4 spill in Prince William Sound, Alaska on March 24, 1989. This  
5 action is brought on behalf of all persons engaged in the  
6 commercial catch and harvesting of fish or other seafood in  
7 Prince William Sound and the surrounding areas who have been  
8 damaged by reason of the oil spill.

9 JURISDICTION AND VENUE

10 2. This Court has jurisdiction over this action pursuant  
11 to 28 U.S.C. § 1331 and principles of pendent and ancillary  
12 jurisdiction.

13 3. The claims arise under 43 U.S.C. § 1653(c), the  
14 federal common law, Alaska Statutes §§ 46.03.822-828 and  
15 09.45.230 and the common law.

16 4. Venue is proper in this district because many of the  
17 acts complained of, the site of the spill, and a substantial  
18 portion of the injuries upon which this action are based and  
19 occurred in this district. Plaintiffs reside in this  
20 district. Many of the defendants reside in and/or do business  
21 in this district.

22 PARTIES

23 5. Plaintiff Gerald E. ("Gerry Sr.") Thorne, Gerald D.  
24 ("Gerry Jr.") Thorne and Charles M. ("Skip") Thorne are  
25 commercial fishermen residing in Cordova, Alaska who harvest

1 fish in and around Prince William Sound and who own limited  
2 entry permits issued by the State of Alaska for the right to  
3 fish there.

4 6. Defendant Exxon Corporation ("Exxon") is a New Jersey  
5 corporation with its executive offices in New York. Exxon is a  
6 member of the Alyeska Pipeline Service Company. Exxon owns and  
7 controls the oil which was transported by the EXXON VALDEZ and  
8 spilled in the sound.

9 7. Defendant Exxon Shipping Company ("Exxon Shipping"), a  
10 wholly owned subsidiary of Exxon, is a Delaware corporation  
11 with its principal place of business in Texas. Exxon Shipping  
12 owns and operates the tanker EXXON VALDEZ.

13 8. Defendant Alyeska Pipeline Service Company ("Alyeska")  
14 is a Delaware corporation with its principal place of business  
15 in Alaska. Alyeska is a consortium of eight oil companies  
16 including Exxon, which owns and operates the Trans-Alaska  
17 Pipeline System ("TAPS") and the shipping terminal facilities  
18 at the Port of Valdez, Alaska. Alyeska was formed by Exxon and  
19 several other major oil companies to act as their agent in the  
20 construction, operation and maintenance of TAPS and the  
21 terminal facility at the Port of Valdez. Alyeska is  
22 responsible for maintaining an oil spill contingency plan for  
23 emergency response to spills in the sound, including  
24 coordination of clean-up.

25

1           9. Defendant Joseph Hazelwood is an employee of Exxon  
2 Shipping and the captain of the tanker EXXON VALDEZ, which ran  
3 aground in Prince William Sound.

4           10. Defendant Gregory Cousins is an employee of Exxon  
5 Shipping, third mate of the tanker EXXON VALDEZ, and was in  
6 command of the ship when it ran aground on Bligh Reef in Prince  
7 William Sound.

8           11. Defendant Trans-Alaska Pipeline Liability Fund  
9 ("TAPLF") is a nonprofit corporate entity established pursuant  
10 to 43 U.S.C. § 1653(c)(4) to assist in compensating persons  
11 damaged by discharges from vessels carrying oil transported  
12 through TAPS.

13           12. Defendant Edward Murphy is a licensed pilot, who  
14 piloted the EXXON VALDEZ from the Port of Valdez to Rocky Point.

15           13. Defendant George M. Nelson is the President of Alyeska  
16 and is responsible for the management of its day-to-day  
17 operations.

#### 18    CLASS ALLEGATIONS

19           14. The named plaintiffs bring these class actions  
20 pursuant to Rule 23(b)(1), (b)(2) and (b)(3) of the Federal  
21 Rules of Civil Procedure on behalf of themselves and on behalf  
22 of a class consisting of all persons engaged in the commercial  
23 catch and harvest of fish and other seafood in Prince William  
24 Sound, Alaska and its vicinity who have been damaged by reason  
25 of the EXXON VALDEZ oil spill.

1           15. The persons engaged in the commercial catch and  
2 harvest of fish and other seafood in Prince William Sound,  
3 Alaska and its vicinity include, long line bottom fishermen,  
4 kelp pounders, salmon seiners, salmon gill netters, herring roe  
5 seiners, bait herring seiners, crabbers, tender operators,  
6 vessel owners and limited entry permit holders.

7           16. Members of the plaintiff class are so numerous that  
8 joinder of all members is impractical. While the exact number  
9 of class members is unknown to plaintiffs at this time and can  
10 only be ascertained through discovery, plaintiffs believe that  
11 there are over 1,500 members of said class.

12           17. There are questions of law and fact common to the  
13 class which predominate over any questions solely affecting  
14 individual members of the plaintiff class. Among the questions  
15 of law and fact common to the plaintiff class are:

16           a. Whether the federal laws, state laws, and the  
17 common law were violated by defendants' acts alleged herein;

18           b. Whether defendants are strictly liable or  
19 breached duties of care owed to the class;

20           c. Whether defendants acted wilfully, recklessly,  
21 negligently, or with gross negligence in causing the spill;

22           d. Whether defendants misrepresented and/or  
23 suppressed material facts concerning their capacity to respond  
24 effectively to a massive oil spill in the sound;



1 e. Whether defendants acted wilfully, recklessly,  
2 negligent, or with gross negligence in failing promptly and  
3 effectively to conduct clean-up operations;

4 f. Whether members of the class have sustained  
5 damage and, if so, what is the proper measure of damages;

6 g. Whether punitive and/or exemplary damages should  
7 be awarded and, if so, in what amount.

8 18. The claims of the named plaintiffs, as asserted  
9 herein, are typical of the claims of the above-described  
10 class. There are no disabling conflicts among members of the  
11 class regarding the subject matter of this litigation.

12 19. The named plaintiffs will fairly and adequately  
13 protect the interest of the class. Plaintiffs have retained  
14 counsel competent and experienced in complex class action  
15 litigation.

16 20. A class action is superior to other available means  
17 for the fair and efficient adjudication of this controversy  
18 since joinder of all members is impractical. Furthermore,  
19 since the damages suffered by individual class members may be  
20 relatively small, the expense and burden of individual  
21 litigation of a case of this magnitude makes it impractical for  
22 plaintiff class members, individually, to redress the wrongs  
23 done to them, and therefore requires concentration of all such  
24 claims in one forum. There will be no significant difficulty  
25

1 in the management of this action as a plaintiff class action.  
2 The members of the class do not have any interest in  
3 individually controlling the prosecution of separate actions  
4 against defendant as opposed to treatment of these claims as a  
5 class action.

6 FACTS COMMON TO ALL CLAIMS

7 21. On March 23, 1989, 1.26 million barrels of oil that  
8 had been transported through the Trans-Alaska Pipeline were  
9 loaded on the EXXON VALDEZ at the terminal facilities owned and  
10 operated by Alyeska at the Port of Valdez, Alaska. The EXXON  
11 VALDEZ is a 987 foot single hull supertanker owned and operated  
12 by Exxon Shipping.

13 22. At 9:30 p.m. on March 23, 1989, the EXXON VALDEZ  
14 departed the Port of Valdez loaded with 1.26 million barrels of  
15 oil. As the ship navigated through the Valdez Narrows shipping  
16 lane in Prince William Sound toward the Gulf of Alaska,  
17 defendant Hazelwood went below deck and improperly placed  
18 control of the vessel with defendant Cousins, who is not  
19 licensed to navigate or operate the vessel through Prince  
20 William Sound.

21 23. At approximately 12:28 a.m. on March 24, 1989 the  
22 tanker ran aground on Bligh Reef, a well-known, charted and  
23 buoyed hazard in Prince William Sound, which is located outside  
24 the designated shipping lanes 22 miles south of Valdez. Prior  
25

1 to striking the reef, the vessel had wandered far outside of  
2 the prescribed shipping lane. When the ship ran aground,  
3 defendant Hazelwood was not on the bridge and defendant  
4 Cousins, who was not certified to navigate in Prince William  
5 Sound, was in command.

6 24. At the time of the accident, defendant Hazelwood was  
7 intoxicated and under the influence of alcohol or other  
8 intoxicants. Tests done on defendant Hazelwood more than ten  
9 hours after the accident showed that he had a blood alcohol  
10 level which, even at that time, significantly exceeded Coast  
11 Guard regulations. Following the accident Hazelwood was  
12 discharged by Exxon and has been charged with criminal offenses  
13 in connection with the accident, including operating a  
14 motorcraft while under the influence of alcohol.

15 25. Exxon Shipping as owner of the EXXON VALDEZ, and Exxon  
16 as the controlling owner of Exxon Shipping, knew or should have  
17 known that defendant Hazelwood had an alcohol abuse problem and  
18 was not competent to command the vessel. Exxon was sued in  
19 1982 by a seaman who had served aboard a vessel commanded by  
20 defendant Hazelwood and who claimed that defendant Hazelwood,  
21 while drunk on board his vessel, had subjected the seaman to  
22 physical abuse. In addition, defendant Hazelwood's driver's  
23 license was revoked or suspended three times over the last five  
24 years for driving while intoxicated, including convictions in

1 1984 and 1988, and following a third incident in which he  
2 refused to take a blood test. Furthermore, Exxon and Exxon  
3 Shipping knew or should have known that only weeks before the  
4 EXXON VALDEZ oil spill, local community groups in Valdez had  
5 expressed concern about crewmen boarding supertankers while  
6 intoxicated.

7 26. Defendant Edward Murphy piloted the EXXON VALDEZ from  
8 the Port of Valdez to Rocky Point, where he departed the  
9 vessel. Defendant Murphy knew or should have known that  
10 defendant Hazelwood was intoxicated and was not competent to  
11 command the vessel. Defendant Murphy also knew or should have  
12 known that there was no one else on the EXXON VALDEZ who was  
13 licensed or otherwise qualified to navigate the vessel in  
14 Prince William Sound.

15 27. The accident ruptured the hull of the vessel, dumping  
16 approximately 10.1 million gallons of oil into the waters of  
17 Prince William Sound.

18 28. At the time the pipeline was completed, Alyeska, Exxon  
19 and other oil companies involved in the project promised  
20 concerned citizens of the area, including those involved in the  
21 commercial fishing industry, that the tanker fleet operating  
22 out of Valdez would be specially designed to minimize spills by  
23 incorporating safety features such as double bottoms. Alyeska  
24 also promised a "state of the art" spill containment team,

1 based in Valdez, fully equipped and prepared to contain and  
2 clean up any oil spill.

3 29. Following the spill, authorized representatives of  
4 Exxon and Exxon Shipping admitted responsibility for the spill  
5 and resulting damage.

6 30. Despite repeated assurances that they were fully  
7 equipped and prepared to contain and clean up any spill in  
8 Prince William Sound, defendants were ill-equipped and totally  
9 unprepared to contain a sizeable spill. Alyeska's "state of  
10 the art" containment team consisted of a single barge loaded  
11 with 7,000 feet of barrier booms. The 7,000 feet of booms  
12 could barely encircle the ship, much less a sizeable oil spill.

13 31. The available equipment was not kept in a state of  
14 readiness and there were no backup barges. When the EXXON  
15 VALDEZ went aground, the one barge had been in dry dock for  
16 almost two weeks, its booms stripped off. Moreover, Alyeska  
17 failed to notify the local authorities that the vessel was out  
18 of service, in violation of an agreement with the State of  
19 Alaska. As a result, Alyeska workers did not arrive at the  
20 tanker for more than 12 hours and it took more than a day for  
21 emergency work to start. Sufficient mechanical equipment  
22 required to contain and clean up the spill was not available  
23 and there were virtually no properly trained personnel to  
24 respond to the disaster.

25



1 begin each year in the early Spring. The sound and surrounding  
2 area are home to several critical herring and salmon spawning  
3 areas. The spill from the EXXON VALDEZ came at the worst  
4 possible time. Springtime hatching of young salmon and  
5 spawning of herring occur in early April. Literally billions  
6 of herring enter the sound at this time to lay eggs on floating  
7 beds of kelp. Millions of salmon fingerlings from hatcheries  
8 in the area are also released into the waters of the sound in  
9 early spring to begin a two-year migration cycle. They will  
10 feed on plankton in the waters of the sound that will be  
11 poisoned by the oil. These fish are only a portion of the rich  
12 web of major species in Prince William Sound, which includes  
13 crab, shrimp, halibut, Pacific cod, sablefish and other bottom  
14 fish.

15 35. In 1988, fishermen caught more than \$150 million worth  
16 of salmon, herring, halibut and shellfish in Prince William  
17 Sound and surrounding areas. Prior to the spill, the estimated  
18 harvest for the 1989 season was 39 million pink salmon, 1.2  
19 million chum salmon, as well as 10,000 tons of herring. The  
20 1988 salmon harvest of 14.9 million fish (valued at \$76  
21 million) had been expected to more than triple. The spill has  
22 now devastated that industry. The spill occurred as Prince  
23 William Sound fishermen were preparing for the herring season,  
24 which is followed by harvest of shellfish and salmon. The oil  
25 spill forced the Alaska Department of Fish and Game to cancel

1 the sablefish season that was to have started on April 1 and a  
2 shrimp fishery already underway was halted. Shellfish fishing  
3 has been shut down because of worries about contamination.  
4 This season's herring fishery has been cancelled. The four  
5 major herring roe fisheries in Prince William Sound, which are  
6 worth millions of dollars, are at risk of being contaminated by  
7 the spill.

8 36. The effects of the spill are expected to damage  
9 seafood resources in the area for many years. The impact on  
10 long-lived species such as salmon and herring will be felt for  
11 years if juvenile fish populations are wiped out. As spring  
12 warmth melts the glaciers, there will be a heavy load of fine  
13 silt and glacial clay dumped into the sound. Oil normally  
14 sticks to glacial clay, thus threatening to contaminate the  
15 sound for many decades. Worse, as fish are a food resource,  
16 the perception of a taint is as good as a taint, and many  
17 buyers have already told fishermen they are not going to buy  
18 seafood from Prince William Sound this year. The taint on the  
19 reputation of seafood from this area may continue even after  
20 the physical effects of the spill have diminished.

21 37. The oil spill will also cause diminution in the  
22 economic value of the limited entry permits and the specialized  
23 fishing equipment utilized to harvest seafood in Prince William  
24 Sound.



1           38. Plaintiffs allege that the massive oil spill by the  
2 EXXON VALDEZ has proximately caused plaintiffs' substantial  
3 damage. Plaintiffs further allege that, because of the  
4 continuing effects of the spill, plaintiffs will continue to  
5 suffer losses. Plaintiffs are currently unable to determine  
6 the precise amount of damages that have been or will be  
7 suffered by the class. The specific amount of damages will be  
8 proved at trial.

9                           PUNITIVE AND/OR EXEMPLARY DAMAGES

10           39. The defendants' conduct as alleged herein was willful,  
11 wanton, malicious and so outrageous as to justify the award of  
12 punitive and/or exemplary damages against them.

13                           FIRST CAUSE OF ACTION

14                           (Trans-Alaska Pipeline Act)

15           40. Paragraphs 1 through 39 are incorporated in this claim  
16 as though fully set forth herein.

17           41. The Trans-Alaska Pipeline Act (hereinafter "TAP"), 43  
18 U.S.C. § 1651 et seq., established the Trans-Alaska Pipeline  
19 Liability Fund (hereinafter "TAPLF"), whose purpose is to as-  
20 sist in compensating persons damaged by discharges from vessels  
21 carrying oil transported through the Trans-Alaska Pipeline.

22           42. As a result of approximately 10.5 million gallons of  
23 oil having been discharged from the EXXON VALDEZ into Prince  
24 William Sound, plaintiffs have suffered substantial damages.

1 43. Defendants are jointly, severally and strictly liable,  
2 without regard to fault, for all damages and costs incurred by  
3 plaintiffs as a result of the discharge of oil from the EXXON  
4 VALDEZ into Prince William Sound.

5 SECOND CAUSE OF ACTION

6 (Federal Common Law of Nuisance)

7 44. Plaintiffs repeat, reallege and incorporate each and  
8 every allegation contained in paragraphs 1 through 39 as though  
9 fully set forth herein.

10 45. Defendants' activities in causing and allowing release  
11 of approximately 10.5 million gallons of oil into Prince  
12 William Sound and the surrounding environment constitutes a  
13 nuisance under applicable federal common law doctrines.

14 46. As a direct and proximate result of the EXXON VALDEZ  
15 disaster, including the above-described conduct of the  
16 defendants, and each of them, plaintiffs have been damaged.

17 THIRD CAUSE OF ACTION

18 (Strict Liability Pursuant to Alaska Statutes  
19 §§ 46.03.822, et seq.)

20 47. Plaintiffs repeat, reallege and incorporate each and  
21 every allegation contained in paragraphs 1 through 39 as though  
22 fully set forth herein.

23 48. Pursuant to Alaska Statutes §§ 46.03.822, et seq.  
24 defendants are jointly, severally and strictly liable, without  
25 regard to fault, for all damages suffered by plaintiffs as a

1 result of the discharge of oil from the EXXON VALDEZ into the  
2 waters of Prince William Sound and the surrounding environment.

3 FOURTH CAUSE OF ACTION

4 (Nuisance)

5 49. Plaintiffs repeat, reallege, and incorporate each and  
6 every allegation contained in paragraphs 1 through 39 as though  
7 fully set forth herein.

8 50. As a direct and proximate result of the EXXON VALDEZ  
9 disaster, including the above-described conduct of the  
10 defendants, and each of them, plaintiffs have suffered  
11 substantial damages.

12 51. Pursuant to Alaska Statutes § 09.45.230, defendants'  
13 activities in causing and allowing release of approximately  
14 10.5 million gallons of oil into the waters of Prince William  
15 Sound and the surrounding environment constitutes a private  
16 nuisance.

17 FIFTH CAUSE OF ACTION

18 (Strict Liability -- Ultra Hazardous and/or  
19 Abnormally Dangerous Activity)

20 52. Plaintiffs repeat, reallege, and incorporate each and  
21 every allegation contained in paragraphs 1 through 39 as though  
22 fully set forth herein.

23 53. As a direct and proximate result of the EXXON VALDEZ  
24 disaster, including the above-described conduct of the  
25 defendants, and each of them, plaintiffs have suffered damages.

1           54. The oil loading and shipping activities engaged in by  
2 defendants are so inherently dangerous and potentially  
3 devastating to Alaska's ecological environment and its fishing  
4 industry that, even when conducted under the best of  
5 circumstances and with the utmost care, these activities are  
6 likely to cause severe contamination and damage.

7           55. The use of single hull supertankers such as the EXXON  
8 VALDEZ to transport huge quantities of oil through Prince  
9 William Sound is so inherently dangerous and potentially  
10 devastating to Alaska's ecological environment and its fishing  
11 industry that, even when conducted under the best of  
12 circumstances and with the utmost care, this activity is likely  
13 to cause severe contamination and damage.

14           56. The above-described inherently dangerous activities  
15 engaged in by defendants directly and proximately caused  
16 substantial damages to plaintiffs.

17           57. Defendants are jointly, severally and strictly liable,  
18 without regard to fault, for transporting oil through Prince  
19 William Sound in supertankers such as the EXXON VALDEZ knowing  
20 that these processes and methods would create conditions which  
21 were inherently, abnormally and/or unreasonably dangerous  
22 and/or ultra hazardous to the environment and to plaintiffs.

23           / / /

24           / / /

25



1       61. The negligent conduct of defendants has proximately  
2 caused the contamination of plaintiffs' fishing environment and  
3 has damaged plaintiffs.

4                               SEVENTH CAUSE OF ACTION

5                               (Intentional and Negligent Misrepresentation  
6                               and Suppression of Material Facts)

7       62. Plaintiffs repeat, reallege and incorporate each and  
8 every allegation contained in paragraphs 1 through 39 as though  
9 fully set forth herein.

10       63. Defendants intentionally or negligently misrepresented  
11 to plaintiffs and others, and/or suppressed material facts  
12 about the safety of the supertankers transporting oil through  
13 the sound, the competency of the crews, their safety  
14 procedures, and their ability to respond to, contain, and clean  
15 up a massive oil spill in Prince William Sound.

16       64. In fact, defendants were aware that their vessels did  
17 not incorporate adequate safety features to prevent a massive  
18 spill, and were manned by crews that were frequently  
19 intoxicated and otherwise not competent to perform the  
20 inherently dangerous task of navigating a supertanker through  
21 Prince William Sound.

22       65. Defendants also knew that they were ill-equipped and  
23 unprepared to respond to a massive oil spill in Prince William  
24 Sound, but failed to warn plaintiffs or state and federal  
25 authorities of these facts.



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WHEREFORE, plaintiffs pray for judgment:

1. Determining that the instant action is a proper class action suit maintainable under Rule 23 of the Federal Rules of Civil Procedure;

2. Against each defendant, and in favor of plaintiffs and all members of the plaintiff class sued for herein:

a. For general and special damages with prejudgment interest according to proof;

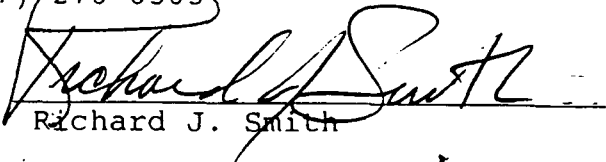
b. For punitive and/or exemplary damages, where permitted, in an appropriate amount;

3. Awarding the plaintiffs and the members of the class the costs of this action, including reasonable and prevailing party attorneys' fees, expert fees and other disbursements; and

4. Such other and further relief as may be just and equitable.

DATED this 5 day of April, 1989.

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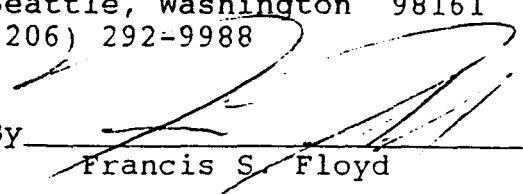
By:   
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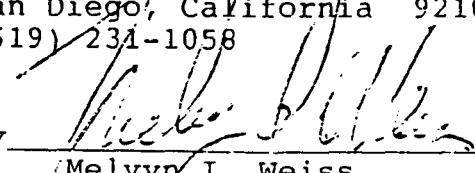
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