

FILED

MAY 15 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By PL Deputy

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

ORDER NO. 2

Motion for Order Shortening Time  
re Filing of Answers  
by D-1 through D-6 and D-10

Alyeska Pipeline Service Company, the Exxon Defendants, and the Trans-Alaska Pipeline Liability Fund have moved the court to consider on shortened time their joint motion for extension of time to answer all complaints in all actions.

The motion for an order shortening time is denied. The moving defendants' joint motion for an extension of time within which to answer will be considered by the court in due course. In the meantime,

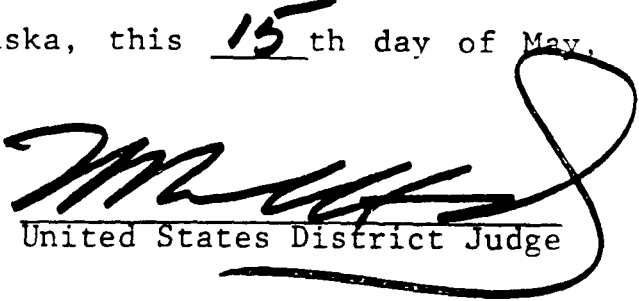
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1 IT IS HEREBY ORDERED: That the time for filing answers  
2 by the above-named defendants (D-1 through D-6 and D-10) shall be  
3 held open, and no application for default will be considered,  
4 until the court has ruled upon said defendants' motion for exten-  
5 sion of time to file answers.

6 Plaintiffs who do not oppose the joint motion for  
7 extension of time within which to answer shall not file notices  
8 of non-opposition. Rather, the court will assume that any plain-  
9 tiff who does not timely respond to this motion is not opposed to  
10 the court granting some relief of the nature sought by the moving  
11 defendants. Those plaintiffs who have heretofore formed informal  
12 associations are encouraged to file consolidated oppositions.  
13 Any plaintiff or group of plaintiffs who has present plans to  
14 file an amended or consolidated complaint shall affirmatively so  
15 advise the court in responding to the instant motion.

16 Counsel for all parties will please take notice that  
17 the undersigned will be out of the District of Alaska between  
18 July 1 and 20, 1989. It is the court's present expectation that  
19 the first pre-trial conference in this case will be scheduled  
20 during the week of August 7, 1989.

21 DATED at Anchorage, Alaska, this 15th day of May,  
22 1989.

23   
24 United States District Judge

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26 **PURSUANT TO THIS COURT'S PRETRIAL ORDER,**  
BOGLE & GATES SHALL MAKE SERVICE OF THIS ORDER.

**FILED**

MAY 15 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By     JLL     Deputy

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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)
_____	)	

ORDER NO. 3

(Document Retention - All Cases)

The parties in Case No. A89-096 Civil have continued their efforts towards a stipulation with regard to the preservation of documents and other evidence. It appears that substantial progress has been made. The court is generally in agreement with the provisions of the partial stipulation between Defendants Exxon (D-1, D-2, and D-5) and Alyeska Pipeline Service Company (D-3) regarding the preservation of evidence, filed May 10, 1989. The parties to Case No. A89-096 Civil have directed the court's attention to several areas in which disagreement remains. Those subjects are discussed below in the hope that, with input from

1 the court, the parties can "fine-tune" both the partial stipula-  
2 tion as well as some modifications of it.

3 A principal matter under discussion between the moving  
4 parties is the question of whether or not an order for the  
5 preservation of documents and other evidence should apply to all  
6 parties and to all of these consolidated cases. Although the  
7 court is disposed to so extend the reach of any such order, it is  
8 disinclined to do so on the basis of discussions among some--but  
9 far less than all--of the parties involved. Accordingly, Exxon  
10 (D-1) shall, in accordance with Pre-Trial Order No. 1, serve this  
11 order on all parties. Any party who has not heretofore stated  
12 its position with respect to an order for the preservation of  
13 documents and other evidence may serve and file an appropriate  
14 memorandum, not exceeding five (5) pages in length, if they have  
15 some disagreement of substance with respect to the partial stipu-  
16 lation which is attached hereto or with respect to the court's  
17 tentative disposition of disputed matters as set out below. A  
18 party who has no serious disagreement with the foregoing should  
19 file nothing. (Notices of non-opposition will only encumber the  
20 court's file to no good purpose.) All such memoranda shall be  
21 served and filed with the court on or before close of business on  
22 May 31, 1989.

### 23 Extension of Order to All Parties

24 Exxon, et al., urge that the order for preservation of  
25 documents and evidence should be extended to all parties. Certain  
26 of the plaintiffs, P-13 through P-15, take a contrary view. The

1 court is persuaded that any such protective order should extend  
2 to all named parties. The court does not perceive that any order  
3 that it enters at this time can extend to non-parties, nor does  
4 it perceive that potential class members can or should be bound  
5 by any such order unless and until there is a certification of a  
6 class action. On the other hand, the court perceives no good  
7 reason why plaintiffs should be excluded from an order requiring  
8 the preservation of documents and other evidence. The fact that  
9 the evidence in the possession of plaintiffs may, by and large,  
10 have to do with issues other than liability as to which defen-  
11 dants will have voluminous records and evidence makes a distinc-  
12 tion where there is no difference. The fact that plaintiffs have  
13 the burden of proof likewise is unpersuasive as regards whether  
14 plaintiffs should be required to preserve records and other  
15 evidence which come into their possession.

16 Subject to hearing from other parties, it is the  
17 court's intention to enter an appropriate order applicable to all  
18 named parties.

19 Use and/or Removal of Equipment

20 It appears that there may be disagreement between the  
21 parties as regards whether defendants may make use of equipment  
22 which has been or may be in the future applied to the Prince  
23 William Sound clean-up effort for other purposes or in other  
24 places. The court perceives no good reason why any defendant or  
25 its contractors should be precluded from application of any  
26 equipment for any purpose for which it is usable anywhere. The

1 court is confident that defendants or their contractors have and  
2 will retain records which are generated in the ordinary course of  
3 business which will demonstrate the acquisition, application, and  
4 disposition of equipment. The court deems such ordinarily and  
5 usually maintained records as being ample. The court would view  
6 any effort to restrict the normal use of equipment, once it was  
7 applied to the Prince William Sound clean-up effort, as totally  
8 unreasonable.

9 Destruction of Certain Materials

10 Any order entered by the court for the preservation of  
11 evidence cannot and will not be so applied as to place a party in  
12 jeopardy in the event of the accidental or inadvertent destruc-  
13 tion of some item.

14 With respect to the intentional destruction of records  
15 or other evidence, the court is of the view that the attached  
16 proposed order needs some additional work. The court is not  
17 clear as to exactly how Paragraphs 3 and 5 are intended to inter-  
18 relate with one another.

19 For the guidance of the parties in clarifying a  
20 proposed order with respect to destruction of documents or other  
21 evidence, the court has the following tentative views:

- 22 (1) Clothing, materials, hand tools, and  
23 other items of nominal value, the util-  
24 ity of which has been expended through  
25 use in the clean-up effort, should be  
26

1 disposed of in the normal course of  
2 business.

3 (2) Any items which are salvageable should  
4 be salvaged in the ordinary course of  
5 business and reapplied as appropriate.

6 (3) The court does not perceive that the  
7 evidentiary value of items described in  
8 (1) and (2), above, is sufficiently  
9 great to justify any significant effort  
10 other than may be undertaken in the  
11 normal course of business to inventory  
12 or otherwise account for items described  
13 in (1) and (2), above.

14 (4) Equipment, vessels, vehicles, and con-  
15 tainers which have more than a nominal  
16 value after they have been used in the  
17 clean-up effort should be subject to  
18 redeployment as suggested above. The  
19 court supposes that plaintiffs may have  
20 a valid interest in documenting the use  
21 of certain of the equipment which may  
22 need to be redeployed at some point.  
23 The court would expect defendants to  
24 cooperate with plaintiffs in photograph-  
25 ing or otherwise recording the use of  
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1 major equipment during the course of the  
2 clean-up effort.

3  
4 Records Not Subject to Discovery

5 The moving plaintiffs appear to suggest that defen-  
6 dants' proposed order would free defendants to destroy records  
7 which would not be discoverable. The court does not understand  
8 defendants' proposal to permit such destruction of records.

9 DATED at Anchorage, Alaska, this 15 th day of May,  
10 1989.

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12   
United States District Judge

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17 **PURSUANT TO THIS COURT'S PRETRIAL ORDER,**

18 **JUDGE EGATES SHALL MAKE SERVICE OF THIS ORDER.**