

FILED

JUN 09 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By PLK 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. 5

(P-139 through P-144; Consolidation Confirmed)

Plaintiffs Alaska Sport Fishing Association, et al., P-139 through P-144, have filed a partial objection to their consolidation with other cases stemming from the grounding of the Exxon Valdez. Moving plaintiffs do not object to consolidation for purposes of discovery with respect to liability. Plaintiffs' primary concern is whether their case would be tried as a part of some consolidated proceeding.

The claims of the moving plaintiffs, Alaska Sport Fishing Association, et al., P-139 through P-144, shall remain

1 consolidated with the other Exxon Valdez cases. This consolida-  
2 tion is primarily for pre-trial purposes. The court will, at a  
3 later, more appropriate time, address the question of whether the  
4 subject case should be consolidated with others for purposes of  
5 trial. Plaintiffs' options under Rule 42, Federal Rules of Civil  
6 Procedure, are preserved.

7 DATED at Anchorage, Alaska, this 7 th day of June,  
8 1989.

9   
10 United States District Judge

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

16 **BLEDSON SHALL MAKE SERVICE OF THIS ORDER.**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

JUN 09 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By PR Deputy

In re )  
the EXXON VALDEZ )

No. A89-095 Civil  
(Consolidated)

ERRATA TO

MEMORANDUM OF P-1 THROUGH P-21, P-23 THROUGH P-29, P-40  
THROUGH P-62, P-64 THROUGH P-67, P-73 THROUGH P-77, P-81  
THROUGH P-94, P-97 THROUGH P-112, P-114 THROUGH P-164  
REGARDING DOCUMENT AND PHYSICAL RETENTION ORDER PROPOSED  
BY D-1 THROUGH D-6 AND D-10 THROUGH D-17 -- ALL CASES

PLEASE TAKE NOTICE that Plaintiffs are filing herewith an Errata to the Memorandum regarding the proposed document retention order, filed with this Court on June 8, 1989. Specifically, at page 2 of Exhibit A, Plaintiff's proposed paragraph 5(b)(4) was incorrectly typed. Attached hereto is a corrected page 2 that should be substituted into Exhibit A.

Respectfully submitted this 9th day of June, 1989.

BIRCH HORTON BITTNER & CHEROT

By: *Timothy Petumenos*  
Timothy Petumenos

BIRCH, HORTON,  
BITTNER AND CHEROT  
ATTORNEYS AT LAW  
1127 WEST SEVENTH AVENUE  
ANCHORAGE, ALASKA 99501  
TELEPHONE (907) 276-1550

(b) Documents Which Need Not Be Preserved.

Documents specifically excluded from paragraph 5(a) above are (1) interim drafts of writings prepared subsequent to June 1, 1989; (2) telephone message slips and electronically recorded or transmitted messages, provided that at least one copy of the original telephone logbooks and the electronically recorded or transmitted messages (whether in "hard copy" form or by electronic storage) be preserved; (3) exact duplicates of any documents, provided that one copy of such be preserved and provided further that any modification of and/or handwriting upon such duplicate transforms such "duplicate" into a original writing which must be preserved; and (4) documents (other than notes or memorandum of witness interviews) prepared subsequent to June 1, 1989, by parties' counsel or their assistants, which have not been transmitted beyond counsel's office.

(c) Use and/or Removal of Equipment. Equipment

used and/or to be used by defendants and/or their contractors in oil spill cleanup activities may be removed from the Prince William Sound area and Alaska and/or may be used for any other normal business purpose anywhere else without consent of other parties or authorization of this Court, provided, however, that defendants and/or their contractors shall retain records which are generated

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FILED

JUN 20 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	)	
	)	
the EXXON VALDEZ	)	No. A89-095 Civil
	)	(Consolidated)
_____	)	

ORDER NO. 6

(Motion of D-1 through D-6 & D-10  
for Extension of Time to Answer)

Defendants Alyeska Pipeline Service Company, the Exxon Defendants, and the Trans-Alaska Pipeline Liability Fund have moved for an extension of time within which to answer all of the complaints consolidated herein. The class action plaintiffs, who have informally associated with one another for responding to this motion, have filed what is in substance a qualified non-opposition. Those responding are plaintiffs in No. A89-095 Civil, No. A89-096 Civil, No. A89-099 Civil, No. A89-102 Civil

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1 through No. A89-104 Civil, No. A89-107 Civil through No. A89-111  
2 Civil, No. A89-125 Civil, No. A89-126 Civil, No. A89-129 Civil,  
3 No. A89-141 Civil, No. A89-145 Civil, and No. A89-166 Civil.  
4 Other plaintiffs have not responded. Having considered the  
5 foregoing,

6 IT IS HEREBY ORDERED: That any plaintiff who feels  
7 constrained to file an amended complaint may serve and file an  
8 amended complaint on or before July 15, 1989. Between that date  
9 and August 15, 1989, no plaintiff in any suit filed on or before  
10 July 15, 1989, will be permitted to amend.

11 On or before August 15, 1989, all defendants shall  
12 answer all complaints in these consolidated cases (whether origi-  
13 nal or amended) which shall have been served and filed on or  
14 before July 15, 1989. Answers with respect to any new complaints  
15 filed herein after July 15, 1989, shall be filed on August 15,  
16 1989, or as provided for in the Federal Rules of Civil Procedure,  
17 whichever shall be later.

18 In consideration of the foregoing, the court now con-  
19 templates that the initial pre-trial conference in this case will  
20 be convened on August 24, 1989 at 8:30 a.m.

21 By way of explanation of the foregoing, the court is  
22 disinclined to conduct even a first preliminary pre-trial confer-  
23 ence in this case without the benefit of having the consolidated  
24 cases at issue. Accordingly, discrete dates for amendments and  
25 for the filing of answers have been established.

1           While the court has encouraged plaintiffs to consider  
2 consolidating their pleadings, the court is a bit alarmed by a  
3 comment of the moving defendants in their reply memorandum. The  
4 court has no notion of the source of these defendants' observa-  
5 tion that they are apprehensive of receiving a complaint of "50,  
6 150, or several hundred pages in length". Reply Memorandum at 3.  
7 If any of the opposing plaintiffs have in mind filing an encyclo-  
8 pedic, amended, class action complaint, they would be well  
9 advised to stand with their present pleadings. The court will  
10 receive with appreciation consolidated complaints which simplify  
11 the pleadings. The court will strike any grossly expanded or  
12 convoluted complaint proffered by any plaintiff. If plaintiffs  
13 are unable to simplify and streamline their pleadings, the  
14 present pleadings should be left as they are.

15           Finally, plaintiffs who have responded to defendants'  
16 motion for additional time to answer should not make the mistake  
17 of supposing that any consolidation of their pleadings will  
18 assure them of any "primary" or other favored position in any  
19 committee or other organizational structure which may be put in  
20 place for the development of this case.

21           DATED at Anchorage, Alaska, this 20 th day of June,  
22 1989.

23   
24 United States District Judge

25  
26 **PURSUANT TO THIS COURT'S PRETRIAL ORDER,**  
**Mr. BOGLE** SHALL MAKE SERVICE OF THIS ORDER.

ORDER NO. 6 (Motion of D-1 through D-6  
& D-10 for Extension of Time to Answer)

Page 3 of 3



1 these cases seem to call upon the court to remand the entire case  
2 to state court. Defendants do not object to a disposition as to  
3 the State of Alaska and its agency so long as the remainder of  
4 the case is held in federal court.

5 This court does not perceive that it can divide a  
6 single case in two through the process of a remand. Since it  
7 appears uncontested at this juncture that the court does have  
8 federal question jurisdiction in this case, it must retain the  
9 case. However, it seems equally clear that the Eleventh Amend-  
10 ment to the United States Constitution and cases decided there-  
11 under preclude this court from addressing a tort claim case  
12 brought against a state. Plaintiffs' claims against the State of  
13 Alaska are essentially tort claims. This court is without juris-  
14 diction as to them. Plaintiffs' complaints in No. A89-140 Civil  
15 and No. A89-149 Civil, are dismissed as to the State of Alaska  
16 and the State Department of Environmental Conservation.

17 DATED at Anchorage, Alaska, this 20 th day of June,  
18 1989.

19   
20 United States District Judge

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

24 **ALL AAG - 200 SHALL MAKE SERVICE OF THIS ORDER.**  
25 **HERMAN**

FILED

JUN 20 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By PRK Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

ORDER NO. 8

(P-65 Motion to Remand  
Case No. A89-145 Civil)

Plaintiff Gerald E. Thorne and his co-plaintiffs have moved to remand case No. A89-145 Civil, which had been Alaska Superior Court case No. 3CO-89-0029 Civil, for the reason that plaintiff inadvertently styled his case so as to include the Trans-Alaska Pipeline Liability Fund (D-4); whereas the body of the complaint contains no claim against said defendant. The Fund indicated that it did not oppose a remand so long as the Fund was dismissed out of the case. Such a dismissal was entered. The court thereafter entered its Order No. 4, calling upon the other parties to show cause why the case should not be remanded to the

1 Superior Court for the State of Alaska. D-1 and D-2, Exxon Cor-  
2 poration and Exxon Shipping Company, have responded. Upon their  
3 showing, it appears that there may well yet be a federal issue  
4 raised by Mr. Thorne and his co-plaintiffs. The responding  
5 defendants have no objection to remand if any possible federal  
6 claims are renounced by the plaintiffs.

7 With the matter in its present posture, plaintiffs'  
8 motion to remand must be denied. If, at some subsequent date, it  
9 shall appear that there are no federal issues in this case, the  
10 court will entertain a further motion to remand. The instant  
11 motion to remand is denied.

12 DATED at Anchorage, Alaska, this 20 th day of June,  
13 1989.

14   
15 United States District Judge  
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19 **PURSUANT TO THIS COURT'S PRETRIAL ORDER,**  
20 **Mr. DAVIS SHALL MAKE SERVICE OF THIS ORDER.**  
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**FILED**

JUN 23 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By PRR Deputy

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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)
_____	)	

PRE-TRIAL ORDER NO. 3

(Document & Physical Evidence Retention  
--All Cases)

The court has heretofore considered the presentations of the parties on the subject of the preservation of documents and physical evidence for use by the parties in this consolidated litigation. Concurrent herewith, the court has entered its Order No. 9 resolving the outstanding disagreements between the parties.



1 IT IS HEREBY ORDERED:

2 1. Interim Document Retention Order Superseded. This  
3 court's interim document retention order in Case No. A89-096  
4 Civil, issued April 24, 1989, is hereby superseded by the instant  
5 order, which shall take effect immediately.

6 2. Application of Order to All Named Parties. This  
7 order shall apply to all named parties to this consolidated liti-  
8 gation, including parties to cases filed after the date hereof  
9 which will be consolidated by virtue of this court's Pre-Trial  
10 Order No. 1. A copy of this order shall forthwith be delivered  
11 or mailed by the Clerk of Court to counsel in any such subse-  
12 quently filed cases.

13 3. Application to Class Members in the Even of Certi-  
14 fication. In the event that this matter is certified as a class  
15 action, the court will, as a part of the certification process,  
16 determine if and to what extent this order shall apply to class  
17 members. Prior to any such certification, however, this order  
18 shall not apply to persons or entities who or which are not named  
19 parties herein.

20 4. "Document" Defined. As used in this order,  
21 "document" shall mean and include: any writing, field notes,  
22 drawing, film, videotape, chart, photograph, phono or tape  
23 record, mechanical or electronic sound recording or transcript  
24 thereof, retrievable data (whether carded, taped, coded, electro-  
25 statically or electromagnetically recorded, or otherwise), or  
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1 other data compilation from which information can be obtained,  
2 and any other form of tangible preservation of information.

3 5. Preservation of Documents and Physical Evidence  
4 Generally.

5 A. Documents and Physical Evidence To Be Preserved.

6 During the pendency of this litigation, each of the named parties  
7 herein, and their respective officers, agents, servants, em-  
8 ployees and attorneys, shall retain and neither destroy nor  
9 permit the destruction of any document or physical evidence  
10 within the party's possession, control, or custody that relates,  
11 refers, or pertains to, or which may lead to evidence relevant  
12 to:

13 (1) (a) the terms, development, or amend-  
14 ment since 1977 of any marine oil  
15 spill contingency plan of any party  
16 pertaining to waters in and around  
17 the United States, and the imple-  
18 mentation of any such plan, since  
19 January 1, 1983, in response to  
20 spills greater than 5,000 barrels;

21 (b) any Prince William Sound oil spill  
22 contingency plan and its develop-  
23 ment, amendment, review, analysis,  
24 approval, disapproval, comments and  
25  
26

1                   communications in regard thereto,  
2                   and implementation at any time;

3           (2)   (a)   the T/V Exxon Valdez, its crew and  
4                   maintenance generally from the date  
5                   it was placed in service;

6                   (b)   cargo and operations information  
7                   regarding the loading and voyage of  
8                   the T/V Exxon Valdez to Valdez on  
9                   or about and after March 23, 1989;

10          (3)   the oil spill in Prince William Sound  
11                   which is the subject of this litigation  
12                   (hereinafter "the oil spill");

13          (4)   the efforts by any person, entity, or  
14                   agency to clean up, contain, disperse,  
15                   burn, and/or monitor the oil spill, and  
16                   any review, analysis, testing, observa-  
17                   tion, approval, and disapproval of such  
18                   efforts;

19          (5)   any investigation by any person, entity,  
20                   or agency (including any law enforcement  
21                   agency) into the circumstances, effects,  
22                   and/or causes of the oil spill;

23          (6)   any claims or damages alleged to result,  
24                   directly or indirectly, from the oil  
25                   spill or its aftermath;

- 1 (7) the selection, training, and supervision  
2 of, and rules, regulations, and operat-  
3 ing procedures for, crews and vessels  
4 transporting oil through or on Prince  
5 William Sound since January 1, 1989; and  
6 (8) any policies relating to alcohol and  
7 drug abuse and enforcement of such poli-  
8 cies on vessels transporting oil through  
9 or on Prince William Sound since  
10 January 1, 1977.

11 A party's above duty to "retain" documents and physical  
12 evidence is conditioned by the terms of Paragraph 5.E., infra.

13 B. Documents Which Need Not Be Preserved. Documents  
14 specifically excluded from Paragraph 5.A., above, are:

- 15 (1) interim drafts of writings prepared  
16 subsequent to June 1, 1989;  
17 (2) telephone message slips and electronic-  
18 ally recorded or transmitted messages,  
19 provided that at least one copy of the  
20 original telephone logbooks and the  
21 electronically recorded or transmitted  
22 messages (whether in "hard copy" form or  
23 by electronic storage) be preserved;  
24 (3) exact duplicates of any documents, pro-  
25 vided that one copy of such be pre-  
26

1 served, and, provided further, that any  
2 modification of and/or handwriting upon  
3 such duplicate transforms such "dupli-  
4 cate" into an original writing which  
5 must also be preserved; and

6 (4) documents (other than notes or memoranda  
7 of witness interviews) prepared subse-  
8 quent to June 1, 1989, by the parties'  
9 counsel or their assistants which have  
10 not been transmitted beyond counsel's  
11 office.

12 C. Use and/or Removal of Equipment. Equipment used  
13 and/or to be used by defendants and/or their contractors in oil  
14 spill cleanup activities may be removed from the Prince William  
15 Sound area and Alaska and/or may be used for any other normal  
16 business purpose anywhere else without consent of other parties  
17 or authorization of this court; provided, however, that defen-  
18 dants and/or their contractors shall retain records which are  
19 generated in the ordinary course of business which will demon-  
20 strate the acquisition, application, and disposition of such  
21 equipment.

22 D. Physical Evidence Which Need Not Be Preserved.  
23 Physical evidence specifically excluded from Paragraph 5.A.,  
24 above, includes the following, which may be handled as indicated:  
25  
26

- 1 (1) Clothing, materials, hand tools, and  
2 other items of nominal value, the util-  
3 ity of which has been expended through  
4 use in the cleanup effort, may be dis-  
5 posed of in the normal course of  
6 business.
- 7 (2) Any equipment, vessels, vehicles, or  
8 items that are salvageable may be  
9 salvaged in the ordinary course of  
10 business and redeployed or reapplied  
11 elsewhere as appropriate; provided,  
12 however, that defendants shall retain,  
13 and shall request their independent  
14 contractors to retain, records which are  
15 generated in the ordinary course of  
16 business which will demonstrate the  
17 acquisition, application, and disposi-  
18 tion of such equipment, vessels,  
19 vehicles, or items. The defendants are  
20 to cooperate with plaintiffs in photo-  
21 graphing or otherwise recording the use  
22 of particularly identified pieces of  
23 major equipment during the course of the  
24 cleanup effort.

1           E. Transfer of "Original" Documents and Physical  
2 Evidence. During the pendency of this litigation, each of the  
3 parties herein, and their respective officers, agents, servants,  
4 employees, and attorneys, may relinquish custody or control of  
5 any document subject to this order to any governmental body or  
6 agency upon retaining an identical and legible copy of any docu-  
7 ment transferred. Except as otherwise provided in Paragraphs  
8 5.C. and 5.D., above, any party transferring any item of physical  
9 evidence subject to this order to any governmental body or agency  
10 shall prepare a complete accounting of the transfer of any  
11 physical evidence, including: an identification of the evidence  
12 transferred, the name and address of the person or entity to whom  
13 the evidence was transferred, the name and address of the person  
14 who transferred the evidence, the date of the transfer, and the  
15 address of the location(s) to which the evidence was transferred.  
16 Copies of transferred documents and the accountings for trans-  
17 ferred items of physical evidence shall be maintained by the  
18 named parties or their counsel. The foregoing obligations shall  
19 not apply to the State of Alaska to the extent that the State of  
20 Alaska transfers documents or items of physical evidence between  
21 or within agencies of the State of Alaska.

22           A party shall not be deemed to have failed to "retain"  
23 documents or physical evidence if the same are temporarily placed  
24 in the custody of the party's attorneys, or expert witnesses  
25 retained by the party or its attorneys, or others who are under  
26

1 the direct supervision and control of the party or the party's  
2 attorneys; provided, however, that if documents are to be removed  
3 or sent from the premises where they are usually kept, an identi-  
4 cal and legible copy of any such documents shall be made and  
5 retained.

6           6. Permissible Destruction of Otherwise Preservable  
7 Evidence Prior to Termination of Litigation. Counsel are to  
8 confer to resolve questions as to the scope of this order regard-  
9 ing the preservation of documents or physical evidence which need  
10 not be preserved and as to an earlier date for permissible  
11 destruction of particular categories of documents or physical  
12 evidence. If counsel are unable to agree, any party may apply to  
13 the court for clarification or relief from this order upon  
14 reasonable notice. A party which, within sixty (60) days after  
15 receipt by counsel of record of written notice from another party  
16 that specified documents or things will be destroyed or altered,  
17 fails to indicate to counsel of record its written objection to  
18 such destruction or alteration, shall be deemed to have agreed to  
19 such destruction or alteration.

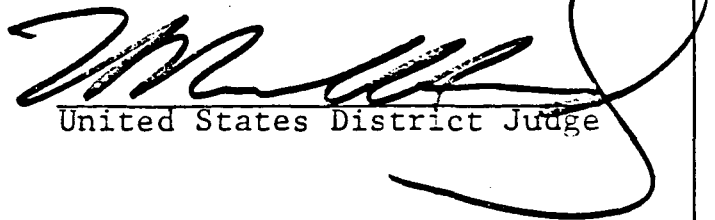
20           7. Modification. Any party may seek a modification  
21 of this order from the court after counsel for the parties have  
22 consulted in good faith regarding any such proposed modification.

23           8. Reservation of Objections. The documents and  
24 physical evidence preservation provisions of this order do not  
25 create any presumption as to the discoverability or admissibility  
26



1 at or before trial of documents and items required to be pre-  
2 served under this order, nor do they preclude any party from  
3 asserting any objections he/she/it may have as to the discover-  
4 ability, admissibility at or before trial, and/or privileged  
5 nature of such documents and items.

6 DATED at Anchorage, Alaska, this 23th day of June,  
7 1989.

8   
9 United States District Judge

10  
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12  
13 **PURSUANT TO THIS COURT'S PRETRIAL ORDER,**  
14 PRESTON SHALL MAKE SERVICE OF THIS ORDER.



- 1           1. The prospective application of a docu-  
2           ment and evidence retention order to  
3           potential class members in the event of  
4           class certification;
- 5           2. The treatment of attorney work-product  
6           documents; and
- 7           3. The definition of the term "retain" as  
8           used in a proposed order submitted by  
9           the parties.

10           With respect to Item 1, application of document and  
11           evidence retention procedures to class members, the court is  
12           persuaded that the class action plaintiffs have the better of the  
13           argument. In the event that there is not a class certification,  
14           individual plaintiffs will become subject to the document and  
15           evidence retention procedures as they file their separate  
16           actions. This is as it should be. Named class action plaintiffs  
17           are now subject to the document and evidence retention procedure  
18           which the court is approving. Since even the procedure proposed  
19           by defendants would not become operative as to class members  
20           until class certification, it is not entirely clear to the court  
21           what would be gained by determining today what document and  
22           evidence procedures will have application to non-party class  
23           members at some future date. The court deems it quite probable  
24           that if there is a class certification, it would enter some order  
25           requiring document and evidence retention by class members; but  
26           the court perceives that it would likely need to make some

1 adjustments, depending upon the nature of the class or classes.  
2 It would appear to the court virtually as easy, and potentially  
3 more efficient, to address the document and evidence retention  
4 issue as to class members in the course of class certification or  
5 immediately thereafter once the makeup of the class or classes is  
6 determined.

7 With respect to Item 2, the court is also of a view  
8 that the class action plaintiffs' position is the better one.  
9 There would appear to be no serious disagreement but that notes  
10 and/or transcripts of witness statements taken by counsel should  
11 be retained. The defendants argue that their dealings between  
12 counsel will be chilled if they are required to retain communica-  
13 tions which leave individual lawyer's offices. The court is not  
14 persuaded. Indeed, the court finds it inconceivable that respec-  
15 tive counsel would do other than retain a copy of communications  
16 which have been reduced to any kind of physical form and trans-  
17 mitted out of one's office. It is totally inconsistent with  
18 normal business practice for attorneys not to keep a record of  
19 such communications.

20 The foregoing discussion says nothing about the rele-  
21 vancy or discoverability of attorney work product. The court is  
22 and will be extremely reluctant to permit any party to have  
23 access to the work product of other counsel. Such is no reason,  
24 however, for counsel in this case to depart from what the court  
25 perceives to be the normal practice of retaining office copies of  
26 communications which go to third parties, whether house counsel,

1 outside counsel, or others. The suggestion of the class action  
2 plaintiffs appears to the court to be a reasonable compromise of  
3 this disagreement for it is in keeping with the court's percep-  
4 tion of customary and generally accepted law office practice.

5 Thirdly, Alyeska Pipeline Service Company, et al., (D-3  
6 and D-11 through D-17, D-19 through D-21, and D-24) raise a third  
7 point having to do with interpretation of the term "retain" as  
8 used in the proposed order. The thrust of the Alyeska parties'  
9 concern is that the term "retain" as used in Paragraph 5.A. of  
10 the proposed document and physical evidence retention order might  
11 be construed to preclude a temporary change of custody of records  
12 from a party to someone else (potentially a non-party).

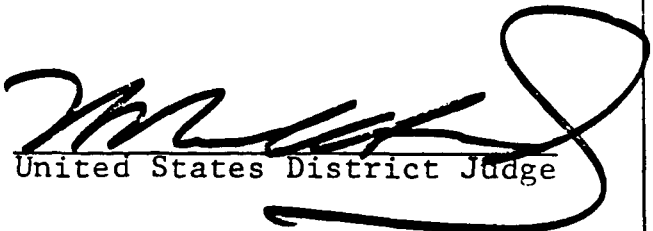
13 Alyeska's concern is not unreasonable. The commonly  
14 accepted meanings of the term "retain" are generally inconsistent  
15 with a change of custody, even though one may have the right to  
16 recall the item in question. See Webster's Third New Interna-  
17 tional Dictionary (Unabridged) (1981).

18 For purposes of the document and physical evidence  
19 retention order, a party's obligation to "retain" documents or  
20 other physical evidence shall be deemed modified by the provi-  
21 sions of Paragraph 5.E. of the court's order for document and  
22 physical evidence retention, which is identified as Pre-Trial  
23 Order No. 3. The latter paragraph permits a party to relinquish  
24 custody or control of documents in certain circumstances and  
25 under certain conditions. Seemingly, however, Alyeska would have  
26 the court extend the provisions of Paragraph 5.E. to non-parties.

1 The court deems such an extension of its order to be unnecessary.  
2 In the first place, the court does not perceive any reason why  
3 non-government third parties cannot satisfy their legitimate  
4 needs and interests by use of copies or by means of viewing  
5 physical evidence as to which the defendants retain custody and  
6 control. However, lest there be any misunderstanding on this  
7 point, the court does not perceive that a party will have failed  
8 to "retain" documents or other physical evidence which may from  
9 time to time be placed in the hands of the parties' attorneys,  
10 experts, or others who are under the direct supervision and con-  
11 trol of a party or its attorneys. It is those whose connection  
12 with this litigation is more indirect or tangential whom the  
13 court would expect to use and be satisfied with copies of docu-  
14 ments.

15 In accordance herewith, the court has concurrent  
16 herewith entered its Pre-Trial Order No. 3.

17 DATED at Anchorage, Alaska, this 23th day of June,  
18 1989.

19   
20 United States District Judge

21  
22  
23 <sup>per</sup> PURSUANT TO THIS COURT'S PRETRIAL ORDER,  
24 PRESTON SHALL MAKE SERVICE OF THIS ORDER.  
25  
26

G. Kent Edwards  
Michael W. Dundy  
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& EDWARDS  
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Attorneys for Plaintiffs  
Seafood Processors

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

A89=95-Civ.  
(Consolidated)

ICICLE SEAFOODS, INC., an Alaska )  
corporation; ASTORIA WAREHOUSING, )  
INC., an Oregon corporation; )  
PETER PAN SEAFOODS, INC., a )  
Washington corporation; PENINSULA )  
SALMON, INC., a Washington )  
corporation; SEVEN SEAS )  
CORPORATION, a Washington )  
corporation; OCEAN BEAUTY )  
SEAFOODS, INC., a Washington )  
corporation; OCEAN BEAUTY NORTH- )  
WEST, INC., a Delaware )  
corporation; WASHINGTON FISH & )  
OYSTER COMPANY, a Washington )  
corporation; KING CRAB, INC., an )  
Alaska corporation; ST. ELIAS )  
INVESTMENT COMPANY, INC., an )  
Alaska corporation; OCEAN BEAUTY )  
ALASKA, INC., an Alaska )  
corporation; PORTLAND FISH GROUP, )  
INC., an Oregon corporation; )  
TRIDENT SEAFOODS CORPORATION, a )  
Washington corporation; WARDS )  
COVE PACKING COMPANY, an Alaska )

A89-264 CIV.  
CIVIL ACTION NO.

COMPLAINT FOR DAMAGES

(Jury Demand to Be Filed  
as a Separate Pleading  
Pursuant to Local  
Rule 4(G))

\*Applications for admission pro hac vice pending.

COMPLAINT - 1

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FILED

JUN 23 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
Deputy

corporation; ALASKA BOAT COMPANY, )  
a Washington corporation; NORTH )  
PACIFIC PROCESSORS, INC., a )  
Washington corporation; ALEUTIAN )  
DRAGON FISHERIES, a general )  
partnership; NORTH COAST SEAFOOD )  
PROCESSORS, INC., an Alaska )  
corporation and general partner; )  
ELECTRO ENDS, INC., a California )  
corporation and general partner, )

Plaintiffs, )

v. )

ALYESKA PIPELINE SERVICE COMPANY; )  
TRANS-ALASKA PIPELINE LIABILITY )  
FUND; EXXON CORPORATION; EXXON )  
CO., USA; and EXXON SHIPPING )  
COMPANY, )

Defendants. )

SUMMARY

1. This is a suit for compensatory and punitive damages arising from the oil spill in Prince William Sound and from negligent and tortious conduct engaged in by certain defendants both before and after the oil spill. Plaintiffs are seafood processors that have a processing presence, either floating or shore-based, located in, among other places, Prince William Sound, as well as other areas, the fisheries of which have been directly damaged by the oil spill and defendants' tortious conduct. Plaintiffs process, among other things, salmon, herring, herring roe, black cod, halibut, crab, shrimp, surimi, sujiko, ikura, pollock and other species of bottom fish. It is estimated that plaintiffs, together, process approximately 70

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percent of the seafood that would have been harvested in and around Prince William Sound in 1989 but for the oil spill and defendants' tortious conduct.

2. This suit is filed in plaintiffs' individual capacities. Plaintiffs do not seek to proceed as a class action and hereby give notice that they do not wish to participate in and hereby opt-out of any class for which any other pending or later filed action purportedly seeks certification.

#### JURISDICTION AND VENUE

3. This civil action arises from, among other things, oil and other toxic effluents unlawfully and negligently discharged from the M/V EXXON VALDEZ, a vessel engaged in the transportation of oil between the terminal facilities of the Trans-Alaska Pipeline System and a port under the jurisdiction of the United States. This action also arises from certain defendants' negligent and tortious conduct both before and after the oil spill.

4. This complaint is filed and these proceedings are instituted pursuant to 28 U.S.C. §1331, which provides for original jurisdiction in the district courts of all civil actions arising under the laws of the United States. This court also has subject matter jurisdiction over this action as part of its pendent jurisdiction.

5. Venue is properly laid in this district pursuant to 28 U.S.C. §1391(b). Defendants reside in this district for venue

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purposes and the causes of action alleged herein arose in this district.

PARTIES

6. Plaintiff Icicle Seafoods. Plaintiff Icicle Seafoods, Inc. ("Icicle"), owns and operates shore-based and floating seafood processing facilities in, among other places, Prince William Sound, Homer, Seward, and Petersburg, Alaska. Icicle is an Alaska corporation that maintains its principal place of business in Seattle, Washington. This action also is brought by Icicle on behalf of its wholly-owned subsidiaries. Icicle also owns a 50 percent interest in plaintiff Astoria Warehousing, Inc. ("Astoria"), an Oregon corporation that maintains its principal place of business in Astoria, Oregon.

7. Plaintiff Peter Pan Seafoods. Plaintiff Peter Pan Seafoods, Inc. ("Peter Pan"), owns, operates and charters shore-based and floating seafood processing facilities in, among other places, Prince William Sound, King Cove, Port Moller, Dillingham, and Valdez, Alaska. Peter Pan is a Washington corporation that maintains its principal place of business in Seattle, Washington. Peter Pan also owns a 50 percent interest in plaintiff Astoria. This action also is brought by Peter Pan on behalf of its wholly-owned subsidiaries.

8. Plaintiff Peninsula Salmon. Plaintiff Peninsula Salmon, Inc., is a Washington corporation that maintains its principal place of business in Seattle. It sells supplies and gear to tender and fishing vessels.

9. Plaintiff Seven Seas. Plaintiff Seven Seas Corporation is a Washington corporation that maintains its principal place of business in Seattle. It owns and operates the floating processor P/V BLUE WAVE.

10. Plaintiff Ocean Beauty Seafoods. Plaintiff Ocean Beauty Seafoods, Inc. ("Ocean Beauty"), is a Washington corporation that maintains its principal place of business in Seattle, Washington. This action also is brought by Ocean Beauty on behalf of its wholly-owned subsidiaries. Plaintiff Ocean Beauty Northwest, Inc., is a Delaware corporation that maintains its principal place of business in Seattle, Washington. Plaintiff Washington Fish & Oyster Company ("Washington Fish") is a Washington corporation that maintains its principal place of business in Seattle, Washington. Washington Fish and its operating divisions process and market fresh, frozen and canned seafood products. Plaintiff King Crab, Inc. ("King Crab"), is an Alaska corporation that maintains its principal place of business in Kodiak, Alaska. King Crab and its operating divisions operate floating and shore-based seafood processing facilities in Kodiak and Bristol Bay. Plaintiff St. Elias Investment Company, Inc. ("St. Elias"), is an Alaska corporation that maintains its principal place of business in Cordova, Alaska. St. Elias owns and operates a cannery and a fresh and frozen seafood processing facility in Cordova. Plaintiff Ocean Beauty Alaska, Inc. ("Ocean Beauty-Alaska"), is an Alaska corporation that maintains

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its principal place of business in Seattle. Ocean Beauty-Alaska, among other things, operates a seafood processing facility in Petersburg, Alaska. Plaintiff Portland Fish Group, Inc. ("Portland Fish Group"), is an Oregon corporation that maintains its principal place of business in Portland, Oregon. This action also is brought by Portland Fish Group on behalf of its wholly-owned subsidiaries.

11. Plaintiff Trident Seafoods. Plaintiff Trident Seafoods Corporation ("TSC") is a Washington corporation that maintains its principal place of business in Seattle. TSC owns and operates both floating and shore-based seafood processing facilities in Prince William Sound and Akutan, Sandpoint, and Naknek, Alaska. This action also is brought by TSC on behalf of its wholly-owned subsidiaries.

12. Plaintiff Wards Cove Packing. Plaintiff Wards Cove Packing Company ("Wards Cove") is an Alaska corporation that maintains its principal place of business in Seattle. Wards Cove owns and operates seafood processing and/or storage facilities in, among other places, Ketchikan, Excursion Inlet, Kenai, Kodiak, Ekuk, Naknek and South Naknek, Alaska. Plaintiff Alaska Boat Company is a Washington corporation that maintains its principal place of business in Seattle. Alaska Boat owns and operates a fleet of tender vessels.

13. Plaintiff North Pacific Processors. Plaintiff North Pacific Processors, Inc. ("North Pacific"), is a Washington

corporation that maintains its principal place of business in Seattle. North Pacific owns and operates seafood processing facilities in Cordova, Kodiak, Kenai, Pederson Point, and South Naknek.

14. Plaintiff Aleutian Dragon. Plaintiff Aleutian Dragon Fisheries is a general partnership comprised of plaintiffs North Coast Seafood Processors, Inc. ("North Coast"), and Electro Ends, Inc. ("Electro"). North Coast is an Alaska corporation that maintains its principal place of business in Seattle. Electro Ends is a California corporation that maintains its principal place of business in Los Angeles. Aleutian Dragon Fisheries owns and operates a shore-based seafood processing facility in Chignik. North Coast owns and operates two floating processing facilities, the M/V POLAR BEAR and the M/V POLAR QUEEN.

15. Defendant Trans-Alaska Pipeline Liability Fund. Defendant Trans-Alaska Pipeline Liability Fund ("Fund") is a non-profit corporate entity established pursuant to the Trans-Alaska Pipeline Authorization Act ("Act"), 43 U.S.C. §1653(c)(4) (hereinafter "TAPA"). The Fund is a resident of the state of Alaska with its principal place of business in Alaska.

16. Defendant Alyeska. Defendant Alyeska Pipeline Service Company ("Alyeska") is an association of the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System ("TAPS") that includes, among others, the Fund, Exxon



Corporation, Exxon Company, U.S.A., and Exxon Shipping Company. Alyeska owns and operates TAPS, including the terminal at Valdez, Alaska. Alyeska loaded the EXXON VALDEZ with North Slope crude oil at the Valdez terminal. Alyeska was formed by Exxon and its other members to act as their agent in the construction, operation and maintenance of TAPS and the Valdez terminal facility. Alyeska also assumed and had a statutory duty to plaintiffs and others to formulate an oil spill contingency plan and maintain adequate personnel and equipment to implement the plan, including the coordination of clean-up activities.

17. Defendant Exxon. Defendant, Exxon Corporation, is a New Jersey corporation that maintains its principal place of business in New York, New York. Exxon Corporation is engaged in, among other things, the business of operating petroleum companies through its subsidiaries and divisions. Exxon Corporation is an owner and/or operator of the EXXON VALDEZ and it owned and/or controlled the North Slope crude oil cargo it was carrying on March 23-24, 1989. Defendant, Exxon Shipping Company is a Delaware Corporation and a subsidiary of defendant Exxon Corporation that maintains its principal place of business in Houston, Texas. Exxon Shipping Company is an owner and/or operator of the EXXON VALDEZ and it owned and/or controlled the North Slope crude oil cargo it was carrying on March 23-24, 1989. Defendant, Exxon Company, U.S.A., is a division or subsidiary of defendant Exxon Corporation that maintains its principal place of

business in Houston, Texas. Exxon Company, U.S.A., is engaged in the business of producing crude oil and refining, transporting and marketing petroleum products in the United States. It is an owner and/or operator of the EXXON VALDEZ and it owned or controlled the North Slope crude oil cargo it was carrying on March 23-24, 1989. Upon information and belief, at all material times, defendants Exxon Corporation and Exxon Company, U.S.A., so dominated Exxon Shipping Company as to render them liable for the conduct of Exxon Shipping Company as more fully described below. Hereinafter Exxon Corporation, Exxon Shipping Company and Exxon Company, U.S.A., are referred to both collectively and individually as "Exxon."

#### FACTS

18. On Thursday evening, March 23, 1989, the EXXON VALDEZ, a 987-foot very large crude carrier ("VLCC") loaded with a cargo of North Slope crude oil left the Port of Valdez, Alaska, the southern terminal facility of TAPS bound for Long Beach, California. The VALDEZ's oil tanks were filled with approximately 1.45 million barrels of crude oil which had been shipped through the Trans-Alaska Pipeline.

19. The Exxon Valdez passed through the harbor and Valdez Narrows under the command of a harbor pilot. Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of defendant Exxon, was on the bridge of the

vessel when the harbor pilot disembarked at the southern end of the Narrows at approximately 11:20 p.m. Thursday evening, March 23, 1989.

20. Shortly thereafter, Captain Hazelwood left the bridge, leaving only Gregory Cousins, the third mate, and Robert Cagan, the helmsman, on the bridge. At all times relevant hereto, Messrs. Cousins and Cagan were acting within the scope of their employment and as agents and/or representatives of defendant Exxon.

21. Mr. Cousins, who was not certified to pilot a VLCC like the EXXON VALDEZ through Prince William Sound, following the directions of Hazelwood, changed course from the normal deep-water outbound shipping lane to the inbound lane of the designated channel. The ship steered east into the empty inbound lane, but then continued three miles east past the alternative channel, outside the traffic lanes and well beyond the shipping channel into a charted area of rocky reefs.

22. The vessel was miles outside the channel when she first struck the well-marked Bligh Reef, which ripped along the starboard side with a jarring impact, tearing several holes into the starboard tanks and ripping out a portion of the hull. Defendant Exxon further aggravated the damage to the vessel and the magnitude of the subsequent oil spill during its efforts to extricate the vessel from the reef. When the vessel ran aground, Hazelwood was not on the bridge and Cousins, who was not

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certified to pilot in Prince William Sound, was in control of the vessel.

23. At the time of the grounding, the vessel was incompetently manned within the privity and knowledge of the Exxon defendants who knew or had reason to know that Hazelwood had consumed alcoholic beverages prior to sailing. The Exxon defendants failed to institute adequate and prudent measures to preclude alcohol impairment of the officers and crew serving on board its VLCC's.

24. The scraping impact and grounding of the EXXON VALDEZ upon Bligh Reed and Exxon's subsequent maneuvering of the vessel tore open the majority of the ship's twelve oil tanks, causing one of the largest oil spills in United States history. In excess of 10 million gallons of crude oil was discharged into Prince William Sound and has now spread to Cook Inlet, Kodiak and other areas. Hundreds of square miles of the Sound's and surrounding area's abundant fisheries and wildlife have been devastated.

25. Defendants Alyeska and Exxon were required by statute and regulation and ordinary prudence to be in a state of preparedness to implement a contingency plan in the event of an oil spill. Alyeska and Exxon unduly delayed in responding to the oil spill, they failed to have proper equipment on hand, and they failed to take prompt and adequate steps to contain and recover the oil after the spill occurred. Specifically, said defendants

failed to act promptly; they failed to deploy the required number of skimmers and amount of boom material within specified time periods; they failed to have a full-time oil spill coordinator on hand; self-inflating booms were unavailable for an extended period of time; they failed to have an experienced clean-up crew on hand; they failed to promptly mobilize a clean-up effort; they failed to promptly boom the leading edge of the spill or the tanker; they deployed partially inoperable skimmers; and they failed to implement the use of dispersants and other appropriate clean-up technologies and methods.

FIRST CLAIM: TAPA §1653(a) - STRICT LIABILITY  
(Against Defendant Alyeska)

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

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

28. Some or all of the damages to plaintiffs were in connection with or resulting from activities along or in the vicinity of the Pipeline right-of-way.

29. The oil discharged in connection with or resulting from activities along or in the vicinity of the Pipeline right-of-way have damaged and otherwise adversely affected lands, structures, fish, wildlife, or biotic and other natural resources relied upon by plaintiffs for economic purposes.

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30. Pursuant to 43 U.S.C. §1653(a), defendant Alyeska is strictly liable to plaintiffs for all damages sustained up to \$50 million.

SECOND CLAIM: TAPA §1653(c) - STRICT LIABILITY  
(Against Defendants Exxon and The Fund)

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

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

33. Plaintiffs sustained damages as a result of discharges of oil from the EXXON VALDEZ that had been transported through the Trans-Alaska Pipeline and loaded at its terminal facilities.

34. The oil discharged from the EXXON VALDEZ has damaged and otherwise adversely affected real and personal property and natural resources relied upon and used by plaintiffs for economic purposes.

35. Pursuant to 43 U.S.C. §1653(c), defendants Exxon and the Fund are strictly liable to plaintiffs for all damages arising out of or directly resulting from the discharges of oil from the EXXON VALDEZ up to \$100 million.

THIRD CLAIM: TAPA - NEGLIGENCE  
(Against Defendants Alyeska and Exxon)

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

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37. Defendants Alyeska and Exxon continuously reassured environmentalists and others, including plaintiffs, that there existed an emergency clean-up plan such that any major oil spill could be promptly and successfully contained. Yet, little was done to effectively contain the oil spill.

38. Upon information and belief, Alyeska and Exxon's "contingency clean-up plan" required them to be on site with certain specified skimmers and boom containment equipment within hours of the spill. Eighteen hours after the rupture, however, essentially nothing was in place; instead, it took nearly an entire day for Alyeska and Exxon representatives to start placing barrier booms around the slick, and even then, there were inadequate quantities and they were ineffectively employed. Lack of other proper equipment, supplies, and trained personnel also hindered effective clean-up operations. Neither Alyeska nor Exxon had enough equipment or trained personnel, even though these defendants had represented for years that their oil-spill crews were prepared.

39. Pursuant to TAPA, the proper control and total removal of the discharged oil which polluted, damaged and threatens to further pollute and damage aquatic life, wildlife, public and private property were the responsibility of defendants. Pursuant to the Act and the regulations implementing the Act, defendants owed plaintiffs a duty to act prudently and to have adequate resources available to promptly and effectively

contain and clean-up an oil spill within reasonable geographic proximity to the right-of-way or permit area granted to them and the terminal facilities. The grounding of the EXXON VALDEZ occurred as the vessel was working its way through the Valdez Narrows, within 30 miles of the terminal facility, and was within reasonable geographic proximity of the right-of-way and the terminal facility.

40. In the exercise of reasonable care, defendants knew or should have known that (i) they lacked adequate equipment, supplies, and personnel to effectively contain and clean up a spill of the magnitude likely to be encountered in the event a single hull VLCC grounded in the Valdez Narrows; (ii) their "contingency clean-up plan," including the tactics they developed thereunder, were extremely limited in their efficiency and use; and (iii) that these tactics could only be employed under ideal environmental and climatological conditions.

41. The negligence of defendants Alyeska and Exxon in the control and clean-up operations specifically included, but was not limited to, (i) failing to establish and provide for an adequate contingency plan to contain and clean up a discharge of oil; (ii) inadequately planning the ensuing clean-up effort; (iii) unreasonably delaying the ensuing clean-up effort; (iv) choosing inadequate tactics in the ensuing clean-up effort; and (v) possessing inadequate equipment, supplies and personnel for deployment in the ensuing clean-up effort, all of which served to aggravate and compound the damages sustained by plaintiffs.



42. The captain of the EXXON VALDEZ, Joseph J. Hazelwood, who upon information and belief had previously been convicted of charges involving drinking and driving twice in the past five years and had had his driver's license suspended or revoked three times, was not in command when the vessel hit the well-marked, charted Bligh Reef. Instead, the third mate, Gregory Cousins, was in command when the vessel ran aground although Cousins lacked proper certification to pilot the vessel in Prince William Sound.

43. Captain Hazelwood and third mate Cousins, both of whom were acting within the scope of their employment, knew or should have known that it was not only unreasonably dangerous for Hazelwood to leave the bridge and relinquish control of the vessel to Cousins, but also a violation of applicable Coast Guard rules and regulations. Captain Hazelwood and third mate Cousins also knew or should have known that Cousins did not possess the requisite degree of competence to command the vessel with reasonable prudence, skill or care. Before the vessel left port, the Exxon defendants knew or should have known, based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times in the same five-year period, and his consumption of alcoholic beverages that day, that Hazelwood also did not possess the requisite degree of competence to command the EXXON VALDEZ with reasonable prudence, skill or care.

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322-2000

44. The negligence of the Exxon defendants in the ownership and operation of the EXXON VALDEZ specifically included, but was not limited to, (i) failing to adequately and prudently crew the tanker; (ii) failing to adequately and prudently pilot and navigate Prince William Sound; and (iii) failing to utilize a seaworthy vessel.

45. As a direct and proximate result of the foregoing negligence, defendants Alyeska and Exxon, in their own right as well as by and through their agents, servants and employees, caused plaintiffs to suffer substantial damages. Said defendants acted recklessly, wantonly and in willful disregard of the rights and economic well-being of plaintiffs such that plaintiffs are entitled to punitive damages.

FOURTH CLAIM: COMMON LAW NEGLIGENCE  
(Against Defendants Alyeska and Exxon)

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

47. By virtue of the above, defendants failed to exercise that degree of care expected of a reasonably prudent person acting under the same or similar circumstances and were negligent. Defendants' negligent acts and omissions proximately caused the damages suffered by plaintiffs.

FIFTH CLAIM: ALASKA CONSERVATION ACT - STRICT LIABILITY  
(Against Defendants Exxon and Alyeska)

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

49. The crude oil released as a result of the grounding and consequent rupture of the EXXON VALDEZ'S oil tanks is a hazardous substance, as that term is defined in Section 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

50. The oil discharged presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and other parts of the natural habitat.

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

52. The discharge of oil has caused damages to plaintiffs, including but not limited to, injury or loss of use of real and personal property, loss of income, loss of means of producing income and loss of economic benefits, for which the defendants are strictly liable pursuant to Section 46.03.822 of the Alaska Environmental Conservation Act.

SIXTH CLAIM: PRIVATE NUISANCE  
(Against Defendants Alyeska and Exxon)

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

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

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substantial interference includes, but is not limited to, inter alia, injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits.

55. The substantial interference with plaintiffs' interests were caused by the actions and omissions of the defendants for which they are liable to plaintiffs for the damages sustained pursuant to AS §09.45.230.

SEVENTH CLAIM: PUBLIC NUISANCE  
(Against Defendants Alyeska and Exxon)

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

57. The acts and omissions of the defendants created a public nuisance through unreasonable interference with the special rights and status of plaintiffs to harvest and process fish and other marine resources from the waters and subsurface lands. The unreasonable interference with the rights of plaintiffs are different in both kind and degree from any injury suffered by the general public from the nuisance.

58. The substantial interference with plaintiffs' interests were caused by the actions and omissions of the defendants for which they are liable to plaintiffs for the damages sustained.

EIGHTH CLAIM: INHERENTLY DANGEROUS ACTIVITY  
(Against Defendants Alyeska and Exxon)

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

60. The oil loading and shipping activities engaged in by defendants are so inherently dangerous and potentially devastating to the marine ecological environment and persons such as plaintiffs who depend upon that ecosystem for their livelihood that even when conducted under the best of circumstances and with utmost care, they constitute inherently or abnormally dangerous activities for which defendants are strictly liable.

61. Defendants' inherently dangerous activities have proximately caused plaintiffs to incur substantial and continuing damages.

NINTH CLAIM: TORTIOUS INTERFERENCE  
WITH CONTRACTUAL EXPECTANCY  
(Against Defendant Exxon Only)

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

63. Certain plaintiffs had contractual relationships and/or a reasonable expectation of entering into contractual relationships with tender operators and others. With full knowledge of plaintiffs' contractual relationships and expectancies, defendant Exxon -- without any privilege to do so -- has induced tender operators and others to breach and not perform their contractual obligations to plaintiffs and/or to not enter into contractual relationships with plaintiffs. Certain plaintiffs have suffered and continue to suffer substantial damages as a proximate result of defendant Exxon's tortious interference with their contractual expectancies.

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RELIEF SOUGHT

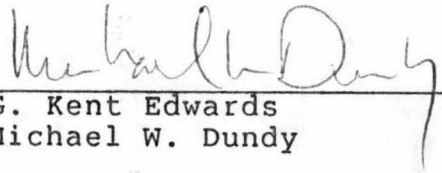
WHEREFORE, plaintiffs pray for the following relief:

- a. An award to plaintiffs of compensatory and punitive damages under all counts in an amount to be determined at trial;
- b. An award to plaintiffs of attorneys' fees and costs;
- c. An award to plaintiffs of prejudgment and post-judgment interest; and
- d. An award to plaintiffs of such other and further relief as this court deems just and proper.


DATED this 23rd day of June, 1989.

Respectfully submitted,

HARTIG, RHODES, NORMAN,  
MAHONEY & EDWARDS  
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By   
G. Kent Edwards  
Michael W. Dundy

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By   
Peter D. Byrnes\*  
Bradley S. Keller\*

\*Applications for admission pro hac vice pending.

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CERTIFICATE OF SERVICE

Service of the foregoing COMPLAINT FOR DAMAGES has been made upon all counsel of record based upon the Court's Master Service List of June 19, 1989.

DATED this 23 day of June, 1989.

Michael L. Dwyer

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Seattle, WA 98104  
622-2000

FILED

JUN 27 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By           lll           Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

RANDALL P. BABICH, LINDSEY  
NOMBALAIS, STEFAN F. BABICH, THOMAS  
NOLAN, DEBORAH NOLAN, JAY R.  
MORGAN, MICHAEL McLENAGHAN, ALBERT  
CARROLL, MICHAEL R. DAWSON, JAN  
BJOLSTAD, JOHN H. KROETCH, and  
ALVIN N. McLENAGHAN,

Plaintiffs,

v.

EXXON SHIPPING COMPANY, ALYESKA  
PIPE LINE SERVICE COMPANY, and  
TRANS-ALASKA PIPELINE LIABILITY  
FUND,

Defendants.

) CIVIL ACTION NO.

) THIS IS A CLASS ACTION  
) JURY TRIAL REQUESTED

) A89-95-Civ  
) (Consolidated)

) A89-265 CIV

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, on behalf of themselves and a class of all others  
similarly situated, allege of their own knowledge or upon informa-  
tion and belief as follows:

JURISDICTION AND VENUE

1. This court has federal question jurisdiction pursuant to  
28 U.S.C. § 1331 and pendent claim jurisdiction; and in the

1 or diversity jurisdiction pursuant to 28 U.S.C. § 1332.  
2 Plaintiffs' Original Complaint arises under violations of various  
3 federal statutes and state common law. Claims based on state  
4 common law arise from the same nucleus of operative facts as do  
5 the federal claims and are within this Court's pendent jurisdic-  
6 tion.

7 2. On information and belief, each of the defendants may be  
8 found, has an agent, or transacts business within Alaska. The  
9 causes of action alleged herein arose in substantial part within  
10 Alaska. Venue is proper under 28 U.S.C. § 1391(b) & (c).

11 THE PARTIES

12 3. Plaintiff Randall P. Babich ("R. Babich") is a  
13 Washington resident. R. Babich is engaged in commercial fishing  
14 operations as the holder of a limited entry permit issued by the  
15 State of Alaska to harvest salmon in the area (including Kodiak  
16 Island) affected by the oil spill described below.

17 4. Plaintiff Lindsey Nombalais ("Nombalais") is a  
18 Washington resident. Nombalais is engaged in commercial fishing  
19 operations in the area affected by the oil spill described below.

20 5. Plaintiff Stefan F. Babich ("S. Babich") is a Washington  
21 resident. S. Babich is engaged in commercial fishing operations  
22 in the area affected by the oil spill described below.

23 6. Plaintiff Thomas Nolan ("T. Nolan") is a Washington  
24 resident. T. Nolan is engaged in commercial fishing operations in  
25 the area affected by the oil spill described below.

26 7. Plaintiff Deborah Nolan ("D. Nolan") is a Washington



1 resident. D. Nolan is engaged in commercial fishing operations in  
2 the area affected by the oil spill described below.

3 8. Plaintiff Jay R. Morgan ("J. Morgan") is a Washington  
4 resident. J. Morgan is engaged in commercial fishing operations  
5 in the area affected by the oil spill described below.

6 9. Plaintiff Michael McLenaghan ("M. McLenaghan") is a  
7 Washington resident. M. McLenaghan is engaged in commercial  
8 fishing operations as the holder of a limited entry permit issued  
9 by the State of Alaska to harvest herring in the area affected by  
10 the oil spill described below.

11 10. Plaintiff Albert Carroll ("Carroll") is a Washington  
12 resident. Carroll is engaged in commercial fishing operations in  
13 the area affected by the oil spill described below.

14 11. Plaintiff Michael R. Dawson ("Dawson") is a Washington  
15 resident. Dawson is engaged in commercial fishing operations in  
16 the area affected by the oil spill described below.

17 12. Plaintiff Jan Bjolstad ("Bjolstad") is a Washington  
18 resident. Bjolstad is engaged in commercial fishing operations in  
19 the area affected by the oil spill described below.

20 13. Plaintiff John H. Kroetch ("Kroetch") is a Washington  
21 resident. Kroetch is engaged in commercial fishing operations in  
22 the area affected by the oil spill described below.

23 14. Plaintiff Alvin N. McLenaghan ("A. McLenaghan") is a  
24 Washington resident. McLenaghan is engaged in commercial fishing  
25 operations in the area affected by the oil spill described below.

26 15. Defendant Exxon Shipping Company ("Exxon") is a Delaware

1 corporation with its principal place of business in Houston,  
2 Texas. Defendant Exxon may be served through its registered  
3 agent.

4 16. Defendant Alyeska Pipe Line Service Company ("Alyeska")  
5 is a Delaware corporation, which may be served through its regis-  
6 tered agent office, 1835 South Bresaw, Anchorage, Alaska 99512.

7 17. Defendant Trans-Alaska Pipe Line Liability fund  
8 ("Liability Fund") is a non-profit corporate entity that can sue  
9 and be sued in its own name, pursuant to 43 U.S.C. § 1653.

10 AN OVERVIEW OF THE CLAIMS

11 18. On approximately March 24, 1989, the Exxon Valdez, a  
12 987-foot tanker owned by Exxon Shipping Company, rammed the Bligh  
13 reef about 25 miles from the City of Valdez, Alaska. The result  
14 was the largest oil spill in American history. Up to 12 million  
15 gallons of crude oil spilled into Alaska's Prince William Sound, a  
16 pristine Pacific waterway and fishing ground. Within one week,  
17 this spill had polluted numerous islands, channels, bays, and was  
18 threatening disaster to commercial fishing fleets and commercial  
19 fish processors operating in the affected area. This marine  
20 environment contained aquatic life, upon which numerous commercial  
21 fishermen and food processors depend for their livelihood and  
22 business profit. That aquatic life has suffered a catastrophe of  
23 enormous proportions. By Saturday, April 1, 1989, the oil spill  
24 threatened 600 miles of coastline that included numerous fishing  
25 communities and commercial fishing areas.

26 19. At the time of the incident, the third mate on the Exxon



1 Valdez was commanding the ship. He was not qualified to do so.  
2 The captain, Joseph Hazlewood, was below deck. Hours after the  
3 spill occurred, the captain had a blood-alcohol reading above the  
4 Coast Guard limits for intoxication. Exxon had hired Hazlewood  
5 and put him in a highly dangerous situation, even though he had a  
6 record of drinking, including suspension for driving while intoxi-  
7 cated. The Exxon Valdez, although only two and a half years old  
8 and one of the two biggest ships in the company's fleet, was built  
9 with only a single hull instead of a double hull, despite the fact  
10 that it traveled some of the most environmentally sensitive areas  
11 in the world.

12 20. Alyeska Pipeline Service Co. shared responsibility with  
13 Exxon for oil spill contingency plans in the area where the spill  
14 occurred. Alyeska has specific responsibility in carrying out  
15 these contingency plans. Long before the wreck of the Exxon  
16 Valdez, Alyeska had consciously let its contingency plan response  
17 capability dwindle to an inadequate state. For example, an  
18 important barge for cleanup was being repaired at the time of the  
19 Exxon Valdez disaster and not available for the cleanup. Alyeska  
20 had apparently not reported this to the state of Alaska.  
21 Alyeska's actions in failing to act promptly to contain the spill  
22 made the disaster even worse. Exxon was also aware that Alyeska's  
23 contingency plans and equipment were not in proper readiness.  
24 Further, Exxon's own cleanup efforts were grossly inadequate,  
25 allowing the oil spill to spread.

26 21. Exxon and Alyeska had a duty to the commercial fishermen

1 in the area affected by the oil spill to conduct the activities of  
2 transporting oil from the Port of Valdez in a reasonably prudent  
3 manner, so as not to damage the aquatic life or to otherwise  
4 injure the economic livelihood of these commercial fishermen.  
5 Exxon and Alyeska were clearly aware of the potential disaster to  
6 the economic livelihood of these commercial fishermen from an oil  
7 spill. The failure of Exxon and Alyeska to act in a reasonable  
8 and prudent manner in transporting the oil, setting up contingency  
9 plans, implementing contingency plans and undertaking prompt and  
10 adequate cleanup, has injured the plaintiffs and the commercial  
11 fishermen in the affected area to their detriment.

12 22. For example, the fishing season was already underway in  
13 the area when the spill occurred. Not only commercial fishing  
14 companies with permits, but also other commercial fishing  
15 companies under contract to carry out essential fishing operations  
16 on the water in the affected area, were harmed to their detriment.  
17 This harm included both the destruction of aquatic life upon which  
18 these commercial fishermen depended for their livelihood, and also  
19 interference with the ability to catch fish which existed. This  
20 diminution reduced the profits that plaintiffs would have realized  
21 from their commercial fishing in the absence of the spill.

22 THE CLASS

23 23. This action is brought as a class action by the named  
24 plaintiffs pursuant to Federal Rule of Civil Procedure 23(b)(3) on  
25 behalf of all similarly situated persons or entities who have been  
26 and continue to be adversely affected by the defendants' tortious

1 conduct.

2 24. This class represented by the named plaintiffs consists  
3 of all commercial fishermen who fish in the Prince William Sound  
4 area and surrounding Alaskan offshore waters affected by the Exxon  
5 Valdez oil spill. This includes all commercial boating operations  
6 which assist in on-water commercial fishing operations--  
7 specifically those operations with fishing permits and those  
8 commercial tender vessel operations and commercial fish processing  
9 operations under contract to assist in commercial fishing opera-  
10 tions.

11 25. Plaintiffs, who are members of this class, have claims  
12 that are typical of the members of the class, have sustained  
13 losses as a result of the conduct of defendants as alleged in this  
14 Complaint, and are committed to prosecuting this action.  
15 Plaintiffs have retained competent counsel experienced in class  
16 action litigation and tort litigation. Plaintiffs will fairly and  
17 adequately protect the interest of the class.

18 26. There is a well-defined community of interest in the  
19 legal and factual questions affecting the members of the class.  
20 The common questions of law and fact predominate over questions  
21 which may affect individual class members. The questions of law  
22 and fact common to the class include, but are not limited to, the  
23 following: (a) Exxon's liability in selecting, training, and  
24 supervising the crews of the Exxon Valdez; (b) Exxon's liability  
25 in causing the Exxon Valdez oil spill; and (c) Exxon's liability  
26 for not properly containing the Exxon Valdez oil spill, once it

1 occurred; (d) Alyeska's preparation of contingency plans for an  
2 oil spill in the Valdez area; (e) Alyeska's capability to respond  
3 to an oil spill in the Valdez area; (f) Alyeska's failure to act  
4 promptly in containing the oil spill; (g) injury to common fishing  
5 areas; and (h) damages to the affected commercial fishing industry  
6 as a whole.

7 27. Plaintiffs know of no difficulty that would be  
8 encountered in the management of this litigation that would  
9 preclude its maintenance as a class action. A class action is  
10 superior to the alternatives, if any, for the fair and efficient  
11 adjudication of this controversy.

12 28. In the absence of this class action, defendants will not  
13 be properly held liable for their wrongdoing.

14 FACTUAL ALLEGATIONS

15 Count I--Common Law Negligence

16 29. Plaintiffs incorporate by reference all previous  
17 paragraphs.

18 30. Exxon has violated the duty owed to plaintiffs to  
19 exercise the ordinary care and diligence exercised by a reasonable  
20 and prudent operator of a supertanker in the Prince William Sound  
21 area and was negligent in the following particulars: (a) failure  
22 to meet applicable federal and state safety and environmental  
23 regulations instituted to protect against the kind of accident the  
24 Exxon Valdez incurred; (b) having unqualified personnel commanding  
25 the Valdez at the time of the incident; (c) knowingly placing a  
26 captain in charge of the Exxon Valdez who was an obvious safety

1 risk; (d) failing to institute drug testing procedures to prevent  
2 drug and alcohol abuse by the ship's crew; (e) failing to  
3 institute proper screening procedures for the ship's captain and  
4 crew; (f) failing to have proper contingency plans in effect for  
5 the oil spill that occurred; (g) knowing that Alyeska did not have  
6 proper contingency plans or capabilities to carry out contingency  
7 plans for containing oil spills; and (h) failing to adequately set  
8 up procedures for protecting the marine environment against the  
9 type of supertanker spill that has occurred; and (i) failing to  
10 promptly clean up and contain the oil spill.

11 31. Alyeska has violated the duty owed to plaintiffs to  
12 exercise ordinary care and diligence in the following particulars:  
13 (a) failure to meet applicable federal and state safety and  
14 environmental regulations instituted to protect against damage  
15 from oil spills; (b) failing to have proper contingency plans in  
16 effect for the oil spill that occurred; (c) failing to have the  
17 capability to carry out adequate contingency plans for containing  
18 the oil spill; and (d) failing to promptly clean up and contain  
19 the oil spill.

20 32. Each and every one of the foregoing acts and omissions,  
21 along with others, taken separately and collectively, constitute a  
22 direct and proximate cause of the damages sustained by plaintiffs,  
23 in an amount exceeding the minimum jurisdictional limits of this  
24 Court.

25 Count II--Gross Negligence

26 33. Plaintiffs incorporate by reference all previous

1 33. Plaintiffs incorporate by reference all previous  
2 paragraphs.

3 34. Plaintiffs further alleges that Exxon's and Alyeska's  
4 conduct constitutes gross negligence as that term is understood in  
5 law. Exxon's and Alyeska's reckless and conscious indifference to  
6 the rights of the plaintiffs entitles plaintiffs to exemplary and  
7 punitive damages; specifically, Exxon and Alyeska were grossly  
8 negligent and their negligence was committed in a reckless and  
9 consciously indifferent way. Plaintiffs now sue for exemplary and  
10 punitive damages as provided by law in an amount exceed the  
11 minimum jurisdictional limits of this court.

12 Count III-Strict Liability

13 35. Plaintiffs incorporate by reference all previous  
14 paragraphs.

15 36. The oil Exxon spilled was transported through the trans-  
16 Alaska pipeline and was loaded on Exxon's vessel at terminal  
17 facilities of that pipeline.

18 37. The discharge of that oil from Exxon's vessel  
19 proximately caused the plaintiffs' injuries and damages.

20 38. Pursuant to the Trans-Alaska Pipeline Authorization Act,  
21 34 U.S.C. § 1653(c), Exxon is strictly liable for plaintiffs'  
22 damages, along with the Trans-Alaska Pipeline Liability Fund.

23  
24 PRAYER

25 WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully  
26 request that the defendants be summoned to appear, that the

1 proposed class be certified pursuant to Fed. R. Civ. P. 23(b)(3),  
2 and that, upon full and final trial by jury, plaintiffs recover  
3 actual damages, punitive damage and all other relief to which  
4 plaintiffs may show themselves entitled.

5  
6 Respectfully submitted,

7  
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FILED

JUN 29 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By PRR Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

In re )  
 )  
the EXXON VALDEZ )  
 )  
\_\_\_\_\_ )

No. A89-095 Civil  
(Consolidated)

MASTER SERVICE LIST

AMENDED - June 29, 1989

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

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

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

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

344



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CAUSE:		PLAINTIFFS	DEFENDANTS
89-095	P-1	SEA HAWK SEAFOODS, INC.,	D-1 EXXON CORP., A New Jersey corp.,
	P-2	COOK INLET PROCESSORS, INC.,	D-2 EXXON SHIPPING CO., a Delaware corp.,
	P-3	SAGAYA CORP.,	D-3 ALYESKA PIPELINE SERVICE CO., a Delaware corp.,
	P-4	McMURREN, WILLIAM,	D-4 TRANS-ALASKA PIPELINE LIABILITY FUND,
	P-5	McMURREN, PATRICK L.,	D-5 EXXON CO., USA,
	P-6	KING, WILLIAM W.,	D-6 EXXON VALDEZ, her engines, tackle, gear, equipment and appurtenances, <u>in rem</u> ,
	P-7	NORRIS, GEORGE C.,	D-7 HAZELWOOD, JOSEPH, an individual,
	P-8	CRANZ, HUNTER,	D-8 COUSINS, GREGORY, an individual,
	P-9	FEENSTRA, RICHARD,	D-9 NELSON, GEORGE
	P-10	WILDERNESS SAILING SAFARIS,	D-10 EXXON PIPELINE CO., a Delaware corp.,
	P-11	SEAFOOD SALES, INC.,	D-11 AMERADA HESS CORP.,
	P-12	RAPID SYSTEMS PACIFIC, LTD.	D-12 ARCO PIPE LINE CO.,
89-096	P-13	CRUZAN FISHERIES, INC.,	D-13 BRITISH PETROLEUM PIPELINES, INC.,
	P-14	GROVE, STANLEY NORRIS,	D-14 MOBIL ALASKA PIPELINE CO.,
	P-15	GROVE, ANTHONY,	D-15 PHILLIPS PETROLEUM CO.,
89-099	P-16	CORDOVA DISTRICT FISHERMAN UNITED, INC., an Alaska corp.,	D-16 SOHIO ALASKA PIPELINE CO.,
	P-17	PRINCE WILLIAM SOUND AQUA-CULTURE CORP., an Alaska non-profit corp.,	D-17 UNION ALASKA PIPELINE CO.,

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

FOR ATTORNEYS SEE ATTACHED SERVICE LIST

ATTORNEYS

89-102	P-18	CHESHER, ELMER J.,	D-18	MURPHY, EDWARD,
	P-19	SAMISH MARITIME, INC., ..A89-190	D-19	BP PIPELINES (ALASKA), INC.,
	P-20	MID-WEST FISHERIES, INC., ..A89-190	D-20	PHILLIPS ALASKA PIPELINE CORP.,
	P-21	MCALLISTER, THOMAS SCOTT, ..A89-190	D-21	UNOCAL PIPELINE CO.
89-103	P-22	OLSEN, STEVEN T.,	D-22	ALASKA, -STATE-OF #316
89-104	P-23	MICHELLI, JACK, ..A89-190	D-23	ALASKA, -STATE-OF, -DEPT, -OF-ENVIRONMENTAL CONSERVATION #316
	P-24	McALLISTER, MICHAEL, ..A89-190	D-24	SOHIO PETROLEUM CO.
	P-25	YOAKUM, CHARLOTTE, ..A89-190		
	P-26	JUDSON, LEE, ..A89-190		
	P-27	HUGHES, LANTZ, ..A89-190		
	P-28	<del>McALLISTER, THOMAS S.,</del> see P-21		
	P-29	J & A ENTERPRISES, a Washington Corp., ..A89-190		
89-106	P-30	GORESON, MARTIN,		
	P-31	GORESON, JAMES R.,		
	P-32	MOORE, JEFFREY A.,		
	P-33	EWING, JAMES D.,		
	P-34	JENSEN, DOUG,		
	P-35	LOWELL, DANIEL,		
	P-36	WHITTIER SEAFOODS, INC., ....A89-149		
	P-37	CORDOVA AIR SERVICE, INC.		
	P-38	DEW DROP, F/V .....A89-149		

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

DATE	NR.	PLAINTIFFS	PROCEEDINGS	DEFENDANTS
	P-39	DEBRA LEE, F/V,....A89-149		
89-107.....	P-40	BAKER, GRANT C.,		
	P-41	BUTLER, ROBIN,		
89-108.....	P-42	CESARI, RICHARD,		
89-109.....	P-43	McCRUDDEN, PHILIP H.,...A89-199-		
	P-44	BISHOP, DENNIS,...A89-199		
89-110..... 230)	P-45	NORTH PACIFIC RIM, INC., ...A89-174		
	P-46	EYAK NATIVE VILLAGE, ...A89-174		
	P-47	EYAK NATIVE VILLAGE TRADITIONAL COUNCIL, ... A89-174		
	P-48	NATIVE VILLAGE OF CHENEGA BAY, ...A89-174		
	P-49	NATIVE VILLAGE OF CHENEGA BAY IRA COUNCIL, ...A89-174		
	P-50	<del>VILLAGE OF PORT GRAHAM</del> , THE NATIVE VILLAGE OF PORT GRAHAM, ...A89-174		
	P-51	<del>THE VILLAGE OF PORT GRAHAM</del> NATIVE VILLAGE OF PORT GRAHAM TRADITIONAL COUNCIL, ...A89-174		
	P-52	<del>ENGLISH BAY VILLAGE</del> , THE NATIVE VILLAGE OF ENGLISH BAY, ...A89-174		
	P-53	<del>ENGLISH BAY VILLAGE TRADITIONAL COUNCIL</del> , THE NATIVE VILLAGE OF ENGLISH BAY NANWALEK COUNCIL, TRADITIONAL COUNCIL, ...A89-174		
	P-54	MOUNT MARATHON NATIVE ASSOC., INC., ...A89-174		
	P-55	VALDEZ NATIVE ASSOC., INC., ...A89-174		
	P-56	NICHOLS, AGNES, ...A89-174		
	P-57	OLSEN, GILBERT, ...A89-174		
	P-58	MAKARKA, HENRY, ... A89-174		
	P-59	TOTEMOFF, JOHN M., ...A89-174		
	P-60	TOTEMOFF, MAGGIE A., ...A89-174		
	P-61	MAGANACK, WALTER SR., ...A89-174		
	P-62	MAGANACK, WALTER JR., ... A89-174		
	<del>P-63</del>	<del>KVASNIKOFF, VINCENT, ...A89-174</del>		
	P-64	MELSHEIMER, JUANITA, ...A89-174		
89-111.....	P-65	THORNE, GERALD E., .....A89-145		
	P-66	THORNE, GERALD D., .....A89-145		
	P-67	THORNE, CHARLES M., .....A89-145		
9-117.....	P-68	SIGLER, W.B.T.J., .....A89-118		
	P-69	PIDGEON, STEPHEN, .....A89-118		
	P-70	FERGUSON, DONALD A., ....A89-118		
	P-71	WHITSON, JUDY FAYE,		
	P-72	LAY, MARLENE SHARON,		
9-125.....	P-73	HOFMANN, DALE,		
9-126.....	P-74	HERSCHLEB, KENT,		
	P-75	HERSCHLEB, JOHN,		
	P-76	HERSCHLEB, ANNE,		
9-129.....	P-77	COPELAND, TOM, .....A89-189		
9-135.....	P-78	WISNER, HUGH R., ...A89-238		
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CIVIL DOCKET CONTINUATION SHEET

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**PURSUANT TO THIS COURT'S PRETRIAL ORDER,**  
*PLC* ✓ BISS & HOLMES SHALL MAKE SERVICE OF THIS ORDER.





repair work is undertaken. The vessel is expected to be available for such inspection from approximately July 17, 1989 until August 1, 1989 when repair work is expected to commence.

In order to enable all interested parties to conduct any reasonable inspection or testing of the vessel, parties are requested to complete and return within the next ten (10) days, the form attached hereto as Exhibit A and to indicate thereon: (1) whether they are interested in conducting any such inspection; (2) the amount of time needed to perform such inspection; (3) for security purposes, the names and addresses of all persons who will be conducting such inspection; and (4) a description of any procedures any party wishes to employ in connection with inspection including any logistic requirements associated with such procedure. For the convenience of all parties, defendant Exxon Shipping further requests that all inspecting parties, counsel and experts communicate and coordinate with one another in an attempt to minimize the total number of persons involved and to expedite the inspection process.

Once defendant Exxon Shipping has received responses from all interested parties, Exxon Shipping will circulate a proposed inspection schedule. Further coordination will be conducted through direct communications between all counsel.

BOGLE & GATES

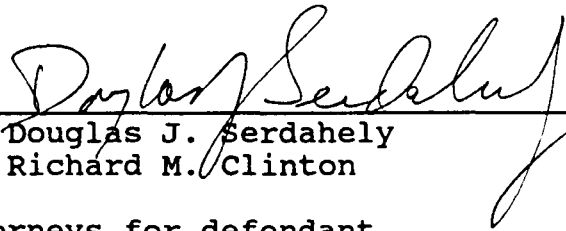
Sut  
105 h Avenue  
Anchorage, AK 99501  
(907) 276-4557

NOTICE TO INSPECT VESSEL  
DJS\DOCS\NOT02.PLD

-2-

Dated at Anchorage, Alaska this 29<sup>th</sup> day of June, 1989.

BOGLE & GATES

By   
Douglas J. Serdahely  
Richard M. Clinton

Attorneys for defendant  
Exxon Shipping Company

BOGLE & GATES

Suite 105  
105 North Avenue  
Anchorage, AK 99501  
(907) 276-4557

NOTICE TO INSPECT VESSEL  
DJS\DOCS\NOT02.PLD

-3-

In Re Valdez Oil Spill Litigation

Request for Inspection of the EXXON VALDEZ

1. Plaintiffs' Counsel: \_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Representing

2. Persons in Inspection Party:

(1) _____	(2) _____
Name	Name
_____	_____
Title	Title
_____	_____
Address	Address
(3) _____	(4) _____
Name	Name
_____	_____
Title	Title
_____	_____
Address	Address

3. Estimated number of days needed for inspection: \_\_\_\_\_

4. Please attach a description of any procedures intended to be employed in the course of such inspection and any logistic requirements associated with such procedure (e.g., power required, space requirements, etc.).

Return completed form to: Richard M. Clinton  
Bogle & Gates  
2300 Bank of California Center  
Seattle, Washington 98164

Douglas J. Serdahely, Esq.  
Bogle & Gates  
1031 West 4th Avenue, Suite 600  
Anchorage, Alaska 99501  
(907) 276-4557

Richard M. Clinton, Esq.  
Bogle & Gates  
The Bank of California Center  
900 West 4th Avenue  
Seattle, Washington 98164  
(206) 682-5151

Attorneys for defendant  
Exxon Shipping Company

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re: ALL CASES

AFFIDAVIT OF SERVICE

STATE OF ALASKA )  
: ss.  
THIRD JUDICIAL DISTRICT )

Joy C. Steveken, being duly sworn, upon oath, deposes and says: that she is employed as a legal secretary in the offices of Bogle & Gates, 1031 West 4th Street, Suite 600, Anchorage, Alaska

AFFIDAVIT OF SERVICE  
DJS\DOCS\JCSAFF.FED

-1-

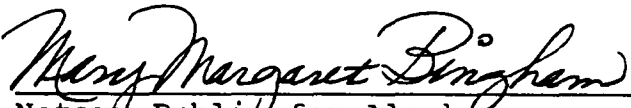
BOGLE & GATES

Suit  
1031 West 4th Avenue  
Anchorage, AK 99501  
(907) 276-4557

99501; that service of Defendant Exxon Shipping Company's (D-2) Notice to Parties of Opportunity to Inspect Vessel has been made upon all counsel of record based upon the Court's Master Service List of June 19, 1989 on 29th day of June, 1989 via hand-delivery and U.S. Mail, postage prepaid.

  
Joy C. Steveken  
Joy C. Steveken

SUBSCRIBED AND SWORN to  
before me this 29th day  
of June, 1989.

  
Mary Margaret Bingham  
Notary Public for Alaska  
My Commission Expires: 1/12/1991

BOGLE & GATES

AFFIDAVIT OF SERVICE  
DJS\DOCS\JCSAFF.FED

-2-

VENUE  
99501

6/27

Mark S. Bledsoe, Esq.  
BLEDSOE & KNUTSON  
2525 Blueberry Road, Suite 206  
Anchorage, Alaska 99503  
(907) 272-5200

Richard A. Jameson, Esq.  
ADLER, JAMESON & CLARAVAL  
255 E. Fireweed Lane  
Anchorage, Alaska 99503

FILED

JUN 30 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By PER Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

SELDOVIA NATIVE ASSN, INC., )  
for itself and on behalf of )  
its shareholders, native )  
people and native residents, )

Plaintiff, )

vs. )

ALYESKA PIPELINE SERVICE )  
COMPANY, Amerada Hess )  
Corporation, Arco Pipeline )  
Company, British Petroleum )  
Pipelines, Inc., Exxon )  
Pipeline Company, Mobil Alaska )  
Pipeline Company, Phillips )  
Petroleum Company, Sohio )  
Petroleum Company, Union )  
Alaska Pipeline Company, )  
TRANS-ALASKA PIPELINE )  
LIABILITY FUND, EXXON )  
CORPORATION, EXXON CO., )  
USA and EXXON SHIPPING )  
COMPANY, )

Defendants. )

Civil Action No.  
**A 89-270 CIV**  
(A89-095) CIV

JURY TRIAL DEMANDED

CIVIL COMPLAINT

Plaintiff, by its attorneys, bring this action on its own behalf and on behalf of its shareholders, native people, and residents of Seldovia, Alaska to allow an order that Seldovia Native Association may do a clean-up of certain lands at Exxon's expense, injunctive relief, damages, and costs of suit from the defendants named herein, and complains and alleges as follows:

JURY TRIAL DEMAND

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

## JURISDICTION AND VENUE

2. This is a civil action for injunctive relief and monetary damages for losses sustained by the plaintiff, its shareholders, Native people, and Native residents arising from injuries sustained to their economic, subsistence, environmental and ecological interests, including clean-up costs, directly resulting from oil and toxic effluents unlawfully and negligently discharged into navigable waters from the Exxon Valdez, a vessel engaged in the transportation of oil between the terminal facilities of the Trans-Alaska Pipeline System and Long Beach, California, a port under the jurisdiction of the United States.

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

4. The grounds for relief are: (i) the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93-153, 43 U.S.C. Section 1651 et seq.; (ii) Admiralty and Maritime Jurisdiction and The Admiralty Extension Act of 1948, 46 U.S.C. Section 740 (1964); (iii) Negligence; (iv) Statutes adopted in Alaska providing for damages due to injury to property and natural resources; (v) common



law nuisance; (vi) negligence per se.; (vii) maritime negligence; and, (viii) unseaworthiness.

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

#### THE PARTIES

6. (a) Plaintiff, Seldovia Native Association, Inc., is an Alaska Native Village Corporation, incorporated under the laws of the State of Alaska, pursuant to the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S. 1601, et seq. Plaintiff's shareholders are primarily Native Alaskans whose history, culture, values, and family life arose in, and are tied to, the vicinity of the Native village of Seldovia. Plaintiff owns approximately 67,000 acres of land in that vicinity, including or adjacent to 60 to 80 miles of shoreline damaged by the Exxon Valdez oil spill, which is used by its shareholders, the Native people, and the Native residents of Seldovia for subsistence, cultural, and commercial purposes.

(b) Plaintiff possesses rights, pursuant to ANCSA, to handle property, funds, and other rights and assets for and on behalf of the Native people and the village of Seldovia. Accordingly, plaintiff's corporate purposes include protection and

advancement of the cultural, economic, subsistence, health and social service needs of its native people, shareholders, tribal entities, village, and organizations (referred to herein as "Its Natives").

(c) Plaintiff is a representative body for the aboriginal residents of the area with direct and substantial interests in the environment and ecology of the area including among others the fish, wildlife, lands, waters and material resources of the area.

(d) Plaintiff and its Natives personally and economically rely upon, use and benefit from the land, waters, structures, fish, wildlife and other biotic and natural resources in and around the area of 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. The Native people of Seldovia, including shareholders of Seldovia Native Association, 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.

(e) The Native people of Seldovia, including shareholders of Seldovia Native Association, 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.

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

8. Defendant, Alyeska Pipeline Service Company, is an association of the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System that includes: Amerada Hess Corporation, Arco Pipeline Company, British Petroleum Pipelines, Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Petroleum Company, Trans-Alaska Pipeline Liability Fund, Exxon Corporation, Exxon USA, and Exxon Shipping Company. Alyeska Pipeline Service Company ("Alyeska") owns and operates the Trans-Alaska Pipeline System, including the terminal at Valdez, Alaska, and loaded the Exxon Valdez with North Slope crude oil at the Valdez terminal.

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

10. Defendant, Exxon Shipping Company, a Delaware Corporation and maritime subsidiary of defendant Exxon Corporation with its principal place of business at 811 Dallas Avenue, Houston, TX 77002, is an owner and operator of the vessel known as the Exxon Valdez.

11. Defendant, Exxon Co., USA, is a division of defendant Exxon Corporation with its principal place of business at 800 Bell Avenue, Houston, TX 77002. Exxon Co., USA, which is engaged in the

business of producing crude oil and refining, transporting and marketing petroleum products in the United States, is an owner and operator of the vessel known as the Exxon Valdez.

#### DEFINITIONS

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

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

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

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

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

17. As used herein, the term "Vessel" refers a ship or tanker, including specifically the vessel known as the Exxon Valdez, being used as a means of transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States, which is carrying oil that has been transported through the Trans-Alaska Pipeline System.

18. As used herein "economic damages" includes all subsistence, business, and commercial losses, including lost opportunities to harvest resources, lost wages, profits, loss in real property values, damages to personal and real property, devaluation of business, loss of prospective business interests, relocation and evacuation costs, and all other damage cognizable in law; other than claims for personal injury.

---

#### OPERATIVE FACTS

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

20. The tanker's twelve oil tanks were filled to capacity with approximately 1.2 million barrels of crude oil which had been

shipped from Alaska's North Slope through the Trans-Alaska Pipeline.

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

22. Shortly thereafter, Captain Hazelwood retired to his cabin, one flight below the bridge, leaving only Gregory Cousins, the third mate, and Robert Kafan, the helmsman, on the bridge. At all time relevant hereto, Messrs. Cousins and Kafan were acting within the scope of their employment and as agents and/or representatives of defendant Exxon.

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

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

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

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

27. Although the ship was still navigable after the first impact, she was so far east of deep water than when Cousins tried to turn the Exxon Valdez back toward the West it struck a second part of the shallow reef. This second impact brought the ship aground, stopping the ship's progress completely.

28. The scraping impact and grounding of the Exxon Valdez upon Bligh Reef cut open at least eight of the ship's twelve oil tanks which held 53 million gallons ~~of crude oil~~, causing--upon information and belief--the largest oil spill in United States history. Approximately 11,000,000 gallons of crude oil was discharged into Prince William Sound. The spill contaminated hundreds of square miles of the Sound, the Gulf of Alaska, Cook Inlet, and the beaches and submerged lands of those areas. The spill thereby destroyed or contaminated the fisheries, wildlife and habitats thereof and thereby injured the uses dependant on such areas, fisheries, wildlife, and habitats.



29. Upon information and belief, the damage caused by the spill to fishing and marine life could last for years. The region's jagged coastline created hidden pockets of oil as the slick reached shore, creating opportunities for repollution for a protracted time into the future. This damage will impact on the quality of life and economic interests plaintiff and its Natives causing them and the environment irreparable harm unless the relief called for in this complaint is granted. Failure to promptly and adequately clean the plaintiff's beaches shall result in immediate and irreparable damages including, inter alia, the diminution in value of plaintiff's real property and its people's ability to engage in a subsistence way of living.

COUNT I

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

30. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

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

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

33. Upon information and belief, the damages to plaintiff and its Natives were neither caused by an act of war nor by the

negligence of the United States, any other government entity, or plaintiff and its Natives.

34. The oil discharges in connection with and resulting from activities along or in the vicinity of the Pipeline right-of-way have damages and otherwise adversely affected lands, structures, fish, wildlife, biotic and other natural resources upon which the plaintiff and its Natives rely, thereby causing economic damages.

35. Defendant Alyeska is strictly liable to plaintiff and its Natives for economic damages as the result of the discharges of oil from the Exxon Valdez pursuant to the Act, 43 U.S.C. Section 1653(a).

COUNT II

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

36. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

37. The Exxon defendants are now, and were at all times relevant hereto, the owners and operators of the Exxon Valdez.

38. The damages to plaintiff and its Natives arose as the result of discharges of oil from the Exxon Valdez that had been transported through the Trans-Alaska Pipeline and loaded on the Exxon Valdez at the terminal facilities of the pipeline.

39. Upon information and belief, the damages to plaintiff and its Natives were neither caused by an act of war nor by the

negligence of the United States, any other governmental agency, or plaintiff and its Natives.

40. The oil discharged from the Exxon Valdez has damaged and otherwise adversely affected lands, structures, fish, wildlife, biotic and other natural resources relied upon by the plaintiff and its Natives, for recreational purposes.

41. Defendants Exxon and the Fund are strictly liable to plaintiff and its Natives for all economic damages sustained as the result of the discharges of oil from the Exxon Valdez pursuant to the Act, 43 U.S.C. Section 1653(c).

### COUNT III

Trans-Alaska Pipeline Authorization Act,  
43 U.S.C. Sections 1653(a) and (c)  
Negligence -- Plaintiffs v. Alyeska v. Exxon

42. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

43. Defendants Alyeska and Exxon had continuously reassured environmentalists and others, including specifically plaintiffs and the its Natives, at all times prior to the accident that there existed an emergency clean-up plan by which any major oil spill could be successfully contained within five hours of occurrence; yet a day after the spill little had been done to contain it.

44. Upon information and belief, Alyeska and Exxon's "contingency clean-up plan" required them to be on site within five hours of the spill. Eighteen hours after the rupture, however, essentially nothing was in place; instead, it took nearly an entire

day for Alyeska and Exxon representatives to start placing barrier booms--long bars with heavy plastic skirts--around the slick. By that time, the discharged oil had already become too large to contain.

45. The delays were in part due to repairs being performed on the barge required to pull the booms around the Exxon Valdez.

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

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

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

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

50. Defendants' other "contingency clean-up plan" was to burn the surface oil with a substance similar to Napalm, basically

changing the water pollution into air pollution; however, defendants' delay ultimately allowed changed weather conditions to make it impossible to deploy the necessary small boats used to try to corral the oil into a concentrated area for this purpose. All other attempts by defendants to mitigate their damages have been ineffective.

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

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

53. The negligence of defendants Alyeska and Exxon in the control and clean-up operations specifically included, but was not limited to, (i) failing to establish and provide for an adequate contingency plan to contain and clean-up any discharge of oil;

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

54. As a direct and proximate result of the foregoing negligence, plaintiff and its Natives have suffered the economic damages claimed in this Complaint.

COUNT IV

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

55. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

56. The captain of the Exxon Valdez, Joseph J. Hazelwood, who upon information and belief had previously been convicted of charges involving drinking and driving twice in the past five years and had his driver's license suspended or revoked three times in that same period, was not in command when the tanker hit the well-marked Bligh Reef.

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



58. The owners of the Exxon Valdez, Captain Hazelwood and third-mate Cousins knew or should have known that Cousins did not possess the requisite degree of competence to command the Exxon Valdez with reasonable prudence, skill or care.

59. The Exxon defendants knew or should have known based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times in the same five year period, that Hazelwood did not possess the requisite degree of competence to command the Exxon Valdez with reasonable prudence, skill or care.

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

61. The negligence of the Exxon defendants in the ownership and operation of the Exxon Valdez specifically included, but was not limited to, (i) failing to adequately crew the tanker; (ii) failing to adequately pilot and navigate Prince William Sound; and (iii) failing to have a double hull, and (iv) failing to use due care under the circumstances. As a direct and proximate result of the foregoing negligence, the Exxon defendants, in their own right as well as by and through their agents, servants and employees, caused plaintiff and its Natives to suffer damages as described above.

62. The aforementioned conduct also rendered the vessel unseaworthy and the breach of the same entitles plaintiff and its Natives to the economic damages as described above.

COUNT V

Maritime Damages--Plaintiffs v. Alyeska v. Exxon

63. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

64. By virtue of the defendants negligence and the unseaworthiness of the vessel, defendants violated the general maritime and admiralty laws of the United States, which violations were a direct and proximate cause of the damages suffered by plaintiff and its Natives.

COUNT VI

Common Law Negligence--  
Plaintiffs v. Alyeska and Exxon

65. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

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

COUNT VII

Alaska Environmental Conservation Act  
Plaintiffs v. Alyeska and Exxon

67. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.



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

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

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

71. Upon information and belief, the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska was not caused solely as a result of:

(i) an act of war;

(ii) an intentional act or a negligent act of a third party, other than a party or its employees in privity with, or employed by, defendants;

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

(iv) an act of God.

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

73. The entry of the oil which is owned and/or within the control of the defendants in or upon the waters, surface and/or subsurface lands of the State of Alaska, has caused damages to plaintiff and its Natives, for which the defendants are strictly liable pursuant to Section 46.03.822 of the Alaska Environmental Conservation Act.

COUNT VIII

Alaska Stat. Section 09.45.230  
Plaintiffs v. Alyeska and Exxon

74. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

75. The acts and omissions of the defendants created a private nuisance through substantial interference with the use and enjoyment of plaintiff and its Natives' interests in the environment.

76. This substantial interference has impaired the use and enjoyment of plaintiff and its Natives interests in their personal and real property, their interests as beneficiaries in the use of

public property including submerged lands and coasts and their interests in the natural environment.

77. The substantial interference with plaintiff and its Native's interests were caused by the actions and omissions of the defendants for which they are liable to plaintiff and its Natives for the damages sustained.

78. The defendants threaten to continue the acts and omissions complained of herein, and unless temporarily, preliminarily or permanently restrained and enjoined, will continue to do so, all to plaintiff and its Natives irrefutable damage. Plaintiff and its Natives remedy at law for damages is not adequate to compensate them for the injuries threatened to continue.

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

79. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

80. The acts and omissions of the defendants created a public nuisance through unreasonable interference with the rights of plaintiff and its Natives to lands and water that are free from pollution and contamination by oil.

81. The unreasonable interference with the rights of plaintiff and its Natives common to the public resulted in special and distinct harm to plaintiff and its Natives including, but not

limited to, inter alia, loss of subsistence opportunities, economic interests and cultural values as a result of the pollution.

82. The substantial interference with plaintiff and its Natives interests were caused by the actions and omissions of the defendants for which they are liable to plaintiff and its Natives for the damages sustained.

83. The defendants threaten to continue the acts and omissions complained of herein, and unless temporarily, preliminarily or permanently restrained and enjoined, will continue to do so, all to plaintiff and its Natives irrefutable damage. Plaintiff and its Natives remedy at law for damages is not adequate to compensate them for the injuries threatened to continue.

COUNT X

Negligence per se--  
Plaintiffs v. Alyeska and Exxon

84. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

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

86. The Exxon defendants also failed to obtain the necessary certification from the Coast Guard for Gregory Cousins to pilot vessels such as the Exxon Valdez through the waters of the Prince

William Sound, violating Coast Guard regulations. In failing to do so, defendants were negligent per se.

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

COUNT XI  
Punitive Damages

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

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

90. Plaintiff and its Natives seek punitive damages from defendants for those acts as specified herein.

RELIEF SOUGHT

WHEREFORE, plaintiffs pray that this Court:

A. Order Exxon and other named defendants to initiate a proper and workmanlike procedure within ten (10) days hereof to clean the Seldovia beaches, and that upon default of which the named plaintiff may perform the same at Exxon's expense;

B. Award all compensatory damages under all counts to plaintiff and its Natives in an amount to be determined by the finder of fact;

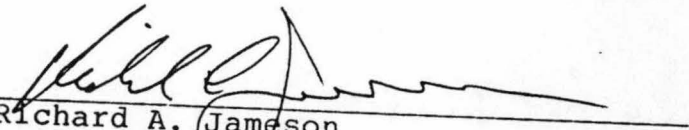
C. An award of punitive damages for plaintiff and its Natives;

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

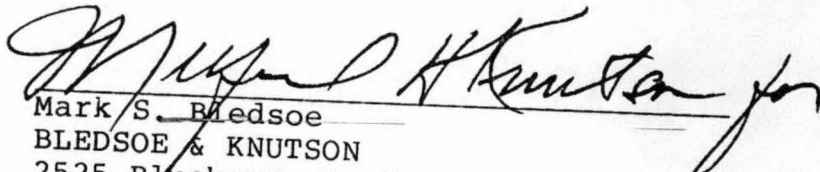
E. Award such other and further relief as this Court deems just and proper.

DATED this 30th day of June, 1989, at Anchorage, Alaska.

Respectfully submitted,

  
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