

Michael N. White
Frederick H. Boness
PRESTON, THORGRIMSON,
ELLIS & HOLMAN
420 L Street, Suite 400
Anchorage, AK 99501
(907) 276-1969

Louis M. Tarasi, Jr.
TARASI & JOHNSON
510 3rd Avenue
Pittsburg, PA 15219
(412) 391-7135

Attorneys for Plaintiff

FILED

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By *pm* Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

DALE HOFMANN,
on behalf of himself and all
other similarly situated,

Plaintiff

v.

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

Defendants.

: CLASS ACTION

: **A 89 - 125 CIV**

: CIV. NO. 1

: CLASS ACTION COMPLAINT
: FOR DAMAGES, INJUNCTIVE
: AND OTHER RELIEF

: JURY TRIAL DEMANDED

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

Plaintiff, by his attorneys, brings this action on his
own behalf and on behalf of the Class he represents to obtain
damages, injunctive relief and costs of suit from the defendants

named herein, and complains and alleges as follows:

JURY TRIAL DEMAND

1. 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 each member of the putative Class arising out of, and directly resulting from, oil and toxic effluents unlawfully and negligently discharged into navigable waters from the EXXON VALDEZ, a vessel engaged in the transportation of oil between the terminal facilities of the Trans-Alaska Pipeline System and Long Beach, California, a port under the jurisdiction of the United States.

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

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

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(907) 276-1969

The Admiralty Extension Act of 1948, 46 U.S.C. Section 740 (1964); (iii) Negligence; (iv) Statutes adopted in Alaska providing for damages due to injury to property and natural resources; (v) common law nuisance; and, (vi) negligence per se.

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

THE PARTIES

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

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

8. Defendant, Alyeska Pipeline Service Company, is a corporation organized under the laws of the State of Delaware with

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

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

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

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

VALDEZ.

DEFINITIONS

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

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

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

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

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

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

OPERATIVE FACTS

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

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

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

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

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

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

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

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

immediately commanded the Captain to the bridge.

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

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

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

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

declared a disaster emergency.

30. Damages to plaintiff and the plaintiff's Class caused by this discharge of millions of gallons of thick, North Slope crude oil, include but are not limited to damage to marine life, including several species of herring, salmon, ground bottom fish, shrimp and crab, relied upon by plaintiff and the plaintiff's Class for economic purposes.

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

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

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

34. Upon information and belief, the damage caused by the spill to property, trades and businesses, fishing and marine life could last for years. The region's jagged coastline created

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hidden pockets of oil as the slick reached shore, creating opportunities for repollution for a protracted time into the future.

CLASS ALLEGATIONS

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

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

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

Among the questions common to the Class are:

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

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

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

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

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

(f) whether Alyeska and the Exxon defendants acted recklessly, wantonly, or in willful disregard of the rights and economic well-being of plaintiff and the plaintiff's Class in (i) failing to establish and provide for an adequate contingency plan to contain and clean-up any discharge of oil from a vessel; (ii) planning the ensuing clean-up effort; (iii) carrying-out the ensuing clean-up effort; (iv) delaying the ensuing clean-up effort; (v) employing inadequate and improper tactics in the ensuing clean-up effort; and (vi) failing to have available for immediate emergency use adequate and proper supplies, equipment and personnel for the ensuing clean-up effort;

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

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

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

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

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

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

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

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

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

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

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

41. Given the scope of harm inflicted by defendants and the egregiousness of the misconduct which renders the award of punitive/exemplary damages appropriate, the prosecution of separate actions by individual members of the Class would create a risk of adjudication with respect to the individual members of the Class

which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or substantially impair or impede their ability to protect their interests.

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

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

COUNT I

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

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

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

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

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

48. The oil discharged in connection with and resulting from activities along or in the vicinity of the Pipeline right-of-way have damaged and otherwise adversely affected lands, structures, fish, wildlife, biotic and other natural resources relied upon by Alaska Natives, Native Organizations, and others, including specifically plaintiff and plaintiff's Class, for subsistence and economic purposes.

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

COUNT II

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

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

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

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

on the EXXON VALDEZ at the terminal facilities of the pipeline.

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

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

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

COUNT III

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

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

57. Defendants Alyeska and Exxon had continuously reassured environmentalists and others, including specifically plaintiff and the plaintiff's Class, at all times prior to the accident that there existed an emergency clean-up plan by which any major oil spill could be successfully contained within five hours

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of occurrence; yet a day after the spill little had been done to contain it other than an unsuccessful attempt to spray chemical dispersants.

58. Upon information and belief, Alyeska and Exxon's "contingency clean-up plan" required them to be on site within five hours of the spill. Eighteen hours after the rupture, however, essentially nothing was in place; instead, it took nearly an entire day for Alyeska and Exxon representatives to start placing barrier booms -- long bars with heavy plastic skirts -- around the slick. By that time, the discharged oil had already become too large to contain.

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

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

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

62. The tactics finally chosen by defendants, chemical dispersants which could cause further harm to the water, proved ineffective. These chemical dispersants, previously touted as an effective weapon against oil slicks, could not be used initially

because the water was too cold and calm, making the slick too thick for the dispersants to work.

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

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

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

66. In the exercise of care, defendants knew or should have known that they lacked adequate equipment and supplies to effectively contain and clean-up a spill of this magnitude, that

their "contingency clean-up plan", including the tactics they developed thereunder, were extremely limited in their efficiency and use, and that these tactics could only be employed under "ideal environmental conditions".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT V
Maritime Tort -- Plaintiff v. Alyeska and Exxon

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

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

COUNT VI
Common Law Negligence -- Plaintiff v. Alyeska and Exxon

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

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

COUNT VII
Alaska Environmental Conservation Act
Plaintiff v. Alyeska and Exxon

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

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

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

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

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

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

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

(iv) an act of God.

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

90. The entry of the oil which is owned and/or within the control of the defendants in or upon the waters, surface and/or subsurface lands of the State of Alaska, has caused damages to plaintiff and the plaintiff' Class, including but not limited to injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits, for which the defendants are strictly liable pursuant to AS 46.03.822 of the Alaska Environmental Conservation Act.

COUNT VIII

AS 09.45.230

Plaintiff v. Alyeska and Exxon

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

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

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

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

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

COUNT IX

Public Nuisance -- Plaintiff v. Alyeska and Exxon

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

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

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

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

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

COUNT X
Negligence per se -- Plaintiff v. Alyeska and Exxon

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

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

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

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

COUNT XI
Equitable Relief
Plaintiff v. Alyeska and Exxon

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

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

107. In addition, monitoring for the level of contamination of air, soil and water, and monitoring for potential adverse effects from exposure to contaminated air, soil and water, are necessary to protect plaintiff and the plaintiff's Class from

further harm likely to result from defendants' acts and omissions as alleged herein.

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

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

RELIEF SOUGHT

WHEREFORE, plaintiff pray that this Court:

- A. Order this action to proceed as a class action, with plaintiff as the Class representative;
- B. Award compensatory and punitive damages under all counts to plaintiff and all other members of the Class in an amount to be determined by the finder of fact;
- C. Award attorneys' fees and the costs of this action;
- D. Enter declaratory and injunctive relief to abate the nuisance arising out of the defendants' wrongful acts and omissions as alleged herein, and order defendants to pay for ongoing control,

containment, clean-up, restoration and monitoring of oil contamination and adverse effects resulting therefrom under the jurisdiction of this Court; and,

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

Respectfully submitted,

PRESTON, THORGRIMSON,
ELLIS & HOLMAN

By: *M N White*
Michael N. White

TARASI & JOHNSON

By: *L M Tarasi, Jr.*
Louis M. Tarasi, Jr.

Michael N. White
Frederick H. Boness
PRESTON, THORGRIMSON,
ELLIS & HOLMAN
420 L Street, Suite 400
Anchorage, AK 99501
(907) 276-1969

Vance K. Opperman
W. Joseph Bruckner
Andrea J. Kaufman
OPPERMAN & PAGUIN
2200 Washington Square
100 Washington Avenue South
Minneapolis, MN 55041
(612) 339-6900

Attorneys for Plaintiffs

FILED

APR 10 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By  Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KENT HERSCHLEB, JOHN HERSCHLEB,
and ANNE HERSCHLEB on behalf of
themselves and all others
similarly situated,

Plaintiffs,

v.

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

Defendants.

: CLASS ACTION

:
:
:
:
: **A89-126 CIV**

: CIV. NO. _____

:
:
: CLASS ACTION COMPLAINT
: FOR DAMAGES, INJUNCTIVE
: AND OTHER RELIEF

: JURY TRIAL DEMANDED

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

Plaintiffs, by their attorneys, bring this action on their own behalf and on behalf of the Class they represent to obtain damages, injunctive relief and costs of suit from the defendants named herein, and complains and alleges as follows:

JURY TRIAL DEMAND

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

JURISDICTION AND VENUE

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

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

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420 L STREET
ANCHORAGE, ALASKA 99501-1937
(907) 276-1969

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

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

THE PARTIES

6. Plaintiff, Kenneth Herschleb, a resident of Bellingham, Washington, is engaged in the fishing industry, possesses an Area E Salmon gillnet permit, and has been damaged by the acts and conduct of the defendants as alleged herein. Plaintiffs John Herschleb and Anne Herschleb are residents of Girdwood, Alaska, are engaged in commercial fishing, possess Area E Salmon Seine, Herring Seine and herring pound permits, and they have been damaged by the acts and conduct of the defendants as alleged herein.

7. Defendant, the Trans-Alaska Pipeline Liability Fund ("Fund"), is a non-profit corporate entity established pursuant to

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

8. Defendant, Alyeska Pipeline Service Company, is a corporation organized under the laws of the State of Delaware with its principal place of business in Alaska. It operates the Trans-Alaska Pipeline System on behalf of its owners including Amerada Hess Corporation, Arco Pipe Line Company, British Petroleum Pipelines, Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Petroleum Company, and Union Alaska Pipeline Company. These owners are holders of the Pipeline right-of-way or the pipeline affiliates of such holders.

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

10. Defendant, Exxon Co., USA, is a division of defendant Exxon Corporation, with its principal place of business

at 800 Bell Avenue, Houston, TX 77002. Exxon Co., USA, which is engaged in the business of producing crude oil and refining, transporting and marketing petroleum products in the United States, is an owner and operator of the vessel known as the EXXON VALDEZ.

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

DEFINITIONS

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

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

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

loading onto vessels.

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

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

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

OPERATIVE FACTS

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

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

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

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

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

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

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

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

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

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

28. Approximately nine (9) hours after the ship rammed Bligh Reef, Federal investigators submitted Captain Hazelwood to blood and urine alcohol tests from which they determined that he

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had been legally drunk at the time of the accident and in violation of permitted Coast Guard alcohol limits for operating commercial vessels at sea.

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

30. Damages to plaintiffs and the plaintiffs' Class caused by this discharge of millions of gallons of thick, North Slope crude oil, include but are not limited to damage to marine life, including several species of herring, salmon, ground bottom fish, shrimp and crab, relied upon by plaintiffs and the plaintiffs' Class for economic purposes.

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

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

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

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

CLASS ALLEGATIONS

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

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

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

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

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

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

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

(e) whether Alyeska and the Exxon defendants were negligent in (i) failing to establish and provide for an adequate

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

(f) whether Alyeska and the Exxon defendants acted recklessly, wantonly, or in willful disregard of the rights and economic well-being of plaintiffs and the plaintiffs' Class in (i) failing to establish and provide for an adequate contingency plan to contain and clean-up any discharge of oil from a vessel; (ii) planning the ensuing clean-up effort; (iii) carrying-out the ensuing clean-up effort; (iv) delaying the ensuing clean-up effort; (v) employing inadequate and improper tactics in the ensuing clean-up effort; and (vi) failing to have available for immediate emergency use adequate and proper supplies, equipment and personnel for the ensuing clean-up effort;

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

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

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

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

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

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

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

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

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

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

40. Defendants have acted with respect to plaintiffs and the plaintiffs' Class in a manner generally applicable to all of

them, thereby making appropriate final injunctive relief with respect to plaintiffs and the plaintiffs' Class.

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

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

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

COUNT I

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

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

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

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

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

48. The oil discharged in connection with and resulting from activities along or in the vicinity of the Pipeline right-of-way have damaged and otherwise adversely affected lands, structures, fish, wildlife, biotic and other natural resources relied upon by Alaska Natives, Native Organizations, and others, including specifically plaintiffs and plaintiffs' Class, for subsistence and economic purposes.

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

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

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

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

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

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

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

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

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

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

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

58. Upon information and belief, Alyeska and Exxon's "contingency clean-up plan" required them to be on site within five hours of the spill. Eighteen hours after the rupture, however, essentially nothing was in place; instead, it took nearly an entire day for Alyeska and Exxon representatives to start placing barrier booms -- long bars with heavy plastic skirts -- around the slick. By that time, the discharged oil had already become too large to contain.

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

60. Lack of proper equipment and supplies also hindered

effective clean-up operations.

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

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

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

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

65. Pursuant to the Act, the proper control and total removal of the discharged oil which polluted, damaged and threatens

to further pollute and damage aquatic life, wildlife, public and private property was the responsibility of defendants. In regard thereto, defendants had a duty to plaintiffs and the plaintiffs' Class to have adequate resources available to immediately and effectively contain and clean-up any oil spill in any area within or without the right-of-way or permit area granted to them.

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

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

plaintiffs' Class.

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT V
Maritime Tort -- Plaintiffs v. Alyeska and Exxon

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

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

COUNT VI

Common Law Negligence -- Plaintiffs v. Alyeska and Exxon

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

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

COUNT VII

Alaska Environmental Conservation Act
Plaintiffs v. Alyeska and Exxon

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

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

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

87. The defendants own and/or have control, pursuant to Section 46.03.826(3) of the Alaska Environmental Conservation Act,

over the oil which was loaded on the EXXON VALDEZ at the Port of Valdez, Alaska and released into the Prince William Sound.

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

(i) an act of war;

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

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

(iv) an act of God.

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

90. The entry of the oil which is owned and/or within the control of the defendants in or upon the waters, surface and/or subsurface lands of the State of Alaska, has caused damages to plaintiffs and the plaintiffs' Class, including but not limited to injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits, for which the defendants are strictly liable pursuant to AS 46.03.822

of the Alaska Environmental Conservation Act.

COUNT VIII
AS 09.45.230
Plaintiffs v. Alyeska and Exxon

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

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

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

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

95. The defendants threaten to continue the acts and omissions complained of herein, and unless temporarily, preliminarily or permanently restrained and enjoined, will continue to do so, all to plaintiffs and the plaintiffs' Class' irrefutable damage. Plaintiffs and the plaintiffs' Class' remedy at law for damages is not adequate to compensate them for the injuries

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
4TH FLOOR
4201 STREET
ANCHORAGE, ALASKA 99501-1937
(907) 276-1969

threatened to continue.

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

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

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

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

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

100. The defendants threaten to continue the acts and omissions complained of herein, and unless temporarily, preliminarily or permanently restrained and enjoined, will continue to do so, all to plaintiffs' and the plaintiffs' Class' irrefutable damage. Plaintiffs and the plaintiffs' Class' remedy at law for damages is not adequate to compensate them for the injuries threatened to continue.

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
414 FLOOR
4201 STREET
ANCHORAGE, ALASKA 99501 1937
19071276 1969

COUNT X
Negligence per se -- Plaintiffs v. Alyeska and Exxon

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

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

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

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

COUNT XI
Equitable Relief
Plaintiffs v. Alyeska and Exxon

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

106. On account of the defendants' violations of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Section 1651 et seq., AS 46.03.010 et seq., AS 09.45.230, and other applicable

federal and state laws, defendants are liable to plaintiffs and the plaintiffs' Class for civil damages, and should be enjoined to control, contain, clean-up and restore the environment to its condition prior to the rupture and consequent discharge.

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

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

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

RELIEF SOUGHT

WHEREFORE, plaintiffs pray that this Court:

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

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

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

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

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

Respectfully submitted,

PRESTON, THORGRIMSON,
ELLIS & HOLMAN

By: Michael N. White

Michael N. White

OPPERMAN & PAGUIN

By: Vance K. Opperman

Vance K. Opperman