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Exxon Corporation

FILED

AUG 15 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

14. In re)
15. The EXXON VALDEZ)
16.)
17.)
18. This Document Relates to)
Action No.:)
19. A89-140)
C.N. BUTCHER, et al.,)
20. (P-97 through P-111))
21. v.)
22. EXXON CORPORATION, et al.,)
(D-1 through D-5 and D-22))
23. _____)

No. A89-095 Civil
(Consolidated)

ANSWER OF EXXON
CORPORATION TO CLASS
ACTION COMPLAINT FILED
MARCH 31, 1989

- 24.
- 25. Exxon Corporation, also erroneously referred to in the
- 26. complaint as Exxon Co., USA and for convenience identified in

1. this answer as "Exxon", as its answer to the complaint herein
2. admits, denies and alleges as follows:

3.
4. As to each and every allegation denied herein for lack
5. of information or belief, Exxon alleges that it is without
6. knowledge or information sufficient categorically to admit or
7. deny the said allegation at this time, wherefore it denies each
8. said allegation using the phrase "denies for lack of information
9. or belief."

10.
11. Defense to Count I

12.
13. 1-4. Denies for lack of information or belief each and
14. every allegation of paragraphs 1 through 4.

15.
16. 5. Admits the allegations of paragraph 5.

17.
18. 6. Denies the allegations of paragraph 6, except
19. admits that Alyeska is a Delaware corporation the stock of which
20. is owned by the Amerada Hess Pipeline Corporation, ARCO Pipe
21. Line Company, BP Pipelines (Alaska) Inc., Exxon Pipeline
22. Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline
23. Corporation, and Unocal Pipeline Company; that the Owners of
24. Alyeska and their predecessors are permittees under the
25. Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline;
26. that Alyeska operates the Trans-Alaska Pipeline System,

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1. including the terminal at Valdez; and that Alyeska loaded the
2. EXXON VALDEZ with North Slope crude oil at the Valdez terminal.

3.
4. 7. Denies each and every allegation of paragraph 7,
5. except admits that Exxon is a corporation organized under the
6. laws of the State of New Jersey with its principal place of
7. business at 1251 Avenue of the Americas, New York, New York
8. 10020, and that the principal business of Exxon is energy,
9. involving exploration for and production of crude oil, natural
10. gas and petroleum products, and exploration for and mining and
11. sale of coal.

12.
13. 8. Denies each and every allegation of paragraph 8,
14. except admits that Exxon Shipping Company ("Exxon Shipping") is
15. a Delaware Corporation with its principal place of business in
16. the State of Texas, that Exxon Shipping operates in Alaska and
17. owns a vessel known as the EXXON VALDEZ, and that Exxon owns all
18. of Exxon Shipping's stock.

19.
20. 9. Denies each and every allegation of paragraph 9,
21. except admits that Exxon Company, USA is an unincorporated divi-
22. sion of Exxon, that its headquarters is at 800 Bell Street,
23. Houston, Texas, and that such division is responsible for the
24. operation of Exxon's energy business within the United States.

25.
26. 10. Admits the allegations of paragraph 10.

1. 11-14. Denies for lack of information or belief each and
2. every allegation of paragraphs 11 through 14, except admits that
3. plaintiffs purport to bring this action on behalf of a class.
4.

5. 15. Denies each and every allegation of paragraph 15,
6. except admits that on March 23, 1989, the EXXON VALDEZ, which is
7. approximately 987 feet long and weighs approximately 211,000
8. deadweight tons, left the southern terminal facility of TAPS, at
9. the port of Valdez, Alaska, bound for Long Beach, California,
10. and that the vessel was owned and operated by Exxon Shipping.
11.

12. 16. Denies each and every allegation of paragraph 16,
13. except admits that the EXXON VALDEZ was loaded with
14. approximately 1.2 million barrels of crude oil which had been
15. shipped from Alaska's North Slope through the Trans-Alaska
16. Pipeline.
17.

18. 17. Denies each and every allegation of paragraph 17,
19. except admits that the EXXON VALDEZ was navigated through the
20. harbor and Valdez Narrows under the direction of pilot William
21. Edward Murphy, who disembarked at the pilot station at the
22. southern end of the Narrows; that Captain Hazelwood was on the
23. bridge of the vessel before pilot Murphy disembarked; and that
24. Captain Hazelwood's duties aboard the vessel were within the
25. scope of his employment by Exxon Shipping.
26.

1. 18. Denies each and every allegation of paragraph 18,
2. except admits that Captain Hazelwood left the bridge shortly
3. before midnight, after Murphy's departure, leaving Gregory Cous-
4. ins, the Third Mate, and Robert Kagan, the Helmsman, on the
5. bridge; and that the performance by Cousins and Kagan of their
6. duties aboard the vessel was within the scope of their
7. employment by Exxon Shipping.

8.
9. 19. Denies each and every allegation of paragraph 19,
10. except admits that the EXXON VALDEZ went into the northbound
11. traffic lane, after receiving Coast Guard permission to leave
12. the normal southbound shipping due in part to reports of the
13. presence of ice from a glacier.

14.
15. 20-21. Denies each and every allegation of paragraphs 20
16. and 21, except admits that the EXXON VALDEZ proceeded in, and to
17. the east of, the northbound shipping lane and subsequently
18. struck Bligh Reef, which reef is depicted on charts, and that
19. the collision ruptured some of the vessel's crude oil tanks.

20.
21. 22-23. Denies each and every allegation of paragraphs 22
22. and 23.

23.
24. 24. Denies each and every allegation of paragraph 24,
25. except admits that the grounding of the EXXON VALDEZ resulted in
26. the rupture of eight of the vessel's cargo tanks and the

1. discharge into Prince William Sound of approximately 258,000
2. barrels of crude oil, the largest United States oil spill from a
3. single vessel; and that before the grounding the vessel was
4. carrying a cargo of approximately 53,000,000 gallons of crude
5. oil.

6.
7. 25. Denies the allegations of paragraph 25, except
8. admits that Alaska Governor Cowper declared a disaster emergency
9. on or about Sunday, March 26, 1989.

10.
11. 26. Denies the allegations of paragraph 26 insofar as
12. they pertain to Exxon and Exxon Shipping Company, and denies
13. said allegations for lack of information or belief insofar as
14. they pertain to other defendants.

15.
16. 27-30. Denies for lack of information or belief each and
17. every allegation of paragraphs 27 through 30.

18.
19. 31. Answering paragraph 31, Exxon realleges and
20. incorporates herein by reference each and every admission,
21. denial and allegation contained in paragraphs 1 through 30
22. hereof, as if set out in full.

23.
24. 32-33. Denies the allegations of paragraphs 32 and 33.

25.
26.

1. 34. Denies for lack of information or belief the
2. allegations of paragraph 34, except admits that the damages
3. alleged by plaintiffs were not caused by an act of war.
4.

5. 35-36. Denies the allegations of paragraphs 35 and 36.
6.

7. Defense to Count II
8.

9. 37. Answering paragraph 37, realleges and
10. incorporates herein by reference each and every admission,
11. denial and allegation contained in paragraphs 1 through 36, as
12. if set out in full.
13.

14. 38. Denies each and every allegation of paragraph 38,
15. except admits that Exxon Shipping owns and operates the EXXON
16. VALDEZ and was the employer of Captain Hazelwood, Gregory
17. Cousins and the crew of the vessel.
18.

19. 39. Denies for lack of information or belief the
20. allegations of paragraph 39.
21.

22. 40. Denies the allegations of paragraph 40, except
23. admits that the damages alleged by plaintiffs were not caused by
24. an act of war.
25.
26.

1. 41. Denies for lack of information or belief the
2. allegations of paragraph 41.

3.
4. 42. Denies the allegations of paragraph 42 insofar as
5. they pertain to Exxon, except admits that 43 U.S.C. § 1653(c),
6. to the extent applicable, may impose strict liability on certain
7. persons with respect to certain damages.

8.
9. Defense to Count III

10.
11. 43. Answering paragraph 43, realleges and
12. incorporates herein by reference each and every admission,
13. denial and allegation contained in paragraphs 1 through 42, as
14. if set out in full.

15.
16. 44-47. Denies the allegations of paragraphs 44 through
17. 47 insofar as they pertain to Exxon and Exxon Shipping Company,
18. and denies said allegations for lack of information or belief
19. insofar as they pertain to Alyeska or other defendants.

20.
21. 48. Denies the allegations of paragraph 48 insofar as
22. they pertain to Exxon and Exxon Shipping Company; denies for
23. lack of information or belief said allegations insofar as they
24. pertain to other defendants; and alleges that the notion of
25. "enough equipment . . . to handle a spill of this size" is too
26. vague to permit an intelligible response.

1. 49. Denies the allegations of paragraph 49.

2.

3. 50. Denies the allegations of paragraph 50, except
4. admits that dispersants cannot now be effectively used to
5. disperse the oil.

6.

7. 51. Denies the allegations of paragraph 51.

8.

9. 52. Denies each and every allegation of paragraph 52
10. insofar as they pertain to Exxon and Exxon Shipping Company; and
11. denies said allegations for lack of information or belief
12. insofar as they pertain to other defendants, except admits that
13. it was the responsibility of certain defendants to make
14. reasonable efforts to attempt to control the spread of the
15. spill.

16.

17. 53. Denies each and every allegation of paragraph 53
18. insofar as they pertain to Exxon and Exxon Shipping Company; and
19. denies said allegations for lack of information or belief
20. insofar as they pertain to Alyeska or other defendants, except
21. admits that Alyeska's oil spill contingency plan, which was
22. approved by government authorities, recognized that it would be
23. impossible totally to contain a catastrophic spill of this
24. magnitude.

25.

26.

1. 54. Denies each and every allegation of paragraph 54
2. insofar as it pertains to Exxon and Exxon Shipping Company; and
3. denies said allegations for lack of information or belief
4. insofar as they pertain to Alyeska or other defendants.

5.
6. 55-56. Denies the allegations contained in paragraphs 55
7. and 56.

8.
9. Defense To Count IV

10.
11. 57. Answering paragraph 57, Exxon realleges and
12. incorporates herein by reference each and every admission,
13. denial and allegation contained in paragraphs 1 through 56
14. hereof, as if set out in full.

15.
16. 58. Denies each and every allegation of paragraph 58,
17. except admits that public records purport to show that Hazelwood
18. had been convicted for driving while under the influence of
19. alcohol.

20.
21. 59. Denies each and every allegation of paragraph 59,
22. except admits that Captain Hazelwood had placed the navigation
23. of the vessel in the charge of Cousins, and that Cousins was
24. directing the navigation of the vessel when it ran aground.

25.
26.

1. 60-65. Denies each and every allegation contained in
2. paragraphs 60 through 65.

3.
4. Defense To Count V

5.
6. 66. Answering paragraph 60, Exxon realleges and
7. incorporates herein by reference each and every admission,
8. denial and allegation contained in paragraphs 1 through 65
9. hereof, as if set out in full.

10.
11. 67. Denies each and every allegation of paragraph 67.

12.
13. Defense To Count VI

14.
15. 68. Answering paragraph 68, Exxon realleges and
16. incorporates herein by reference each and every admission,
17. denial and allegation contained in paragraphs 1 through 67
18. hereof, as if set out in full.

19.
20. 69. Denies each and every allegation of paragraph 69.

21.
22. Defense To Count VII

23.
24. 70. Answering paragraph 70, Exxon realleges and
25. incorporates herein by reference each and every admission,
26.

1. denial and allegation contained in paragraphs 1 through 69
2. hereof, as if set out in full.

3.

4. 71. Admits the allegations of paragraph 71.

5.

6. 72. Denies the allegations of paragraph 72.

7.

8. 73. Denies the allegations of paragraph 73, except
9. admits that Exxon owned the crude oil cargo aboard the EXXON
10. VALDEZ, and that Exxon Shipping controlled said cargo just prior
11. to its release into Prince William Sound.

12.

13. 74. Denies for lack of information or belief the
14. allegations of paragraph 74, except admits that the oil spill
15. was not caused solely by an act of war or an act of God.

16.

17. 75. Denies each and every allegation of paragraph 75.

18.

19. 76. Denies for lack of information or belief the
20. allegations of paragraph 76, except admits that AS 46.03.822, to
21. the extent applicable and not preempted by federal law, may
22. impose strict liability on certain persons for certain types of
23. damages.

24.

25.

26.

1. Defense to Count VIII

2.

3. 77. Answering paragraph 77, realleges and
4. incorporates herein by reference each and every admission,
5. denial and allegation contained in paragraphs 1 through 76, as
6. if set out in full.

7.

8. 78-81. Denies the allegations of paragraphs 78 through
9. 81.

10.

11. Defense to Count IX

12.

13. 82. Answering paragraph 82, realleges and
14. incorporates herein by reference each and every admission,
15. denial and allegation contained in paragraphs 1 through 81, as
16. if set out in full.

17.

18. 83-87. Denies the allegations of paragraphs 83 through
19. 87.

20.

21. General Denial

22.

23. 88. Denies each and every other allegation in plain-
24. tiff's complaint that was not specifically admitted herein.

25.

26.

1. Affirmative and Other Defenses

2.

3. 89. The complaint and each count thereof fails to
4. state claims upon which relief can be granted.

5.

6. 90. Exxon is informed and believes that plaintiffs
7. lack standing to claim or recover damages based on the
8. allegations of the complaint.

9.

10. 91. Independent of any legal obligation to do so,
11. Exxon Shipping and Exxon are voluntarily paying claims for
12. economic loss allegedly caused by the oil spill, and are
13. incurring other expenses in connection with the oil spill.
14. Exxon and Exxon Shipping are entitled to a setoff in the full
15. amount of all such payments in the event that plaintiffs' claims
16. encompass such expenditures.

17.

18. 92. Certain persons engaged or employed in connection
19. with activities related to containment and clean up of the oil
20. released from the EXXON VALDEZ were thereby able to avoid or
21. mitigate damage from the interruption of fishery and other
22. activities. Payments received by such persons are a set off
23. against losses, if any, resulting from the interruption of
24. fishery and other activities.

25.

26.

1. 93. To the extent that plaintiffs were able to
2. mitigate damages and failed to do so, defendants cannot be held
3. liable for such avoidable losses.
4.

5. 94. Plaintiffs' claims for punitive damages are un-
6. constitutional under the United States Constitution, including,
7. without limitation, Article I, Section 8; Amendment V; and
8. Amendment XIV; and the Alaska Constitution, including, without
9. limitation, Article I, Section 7 and Article I, Section 12.
10.

11. 95. The damages alleged in the complaint were caused,
12. in part, by the action of others not joined as defendants herein
13. and as to whom a right of contribution or indemnity should exist
14. as to Exxon. Exxon may seek leave of Court to join such
15. additional persons as third party defendants on the basis of
16. further discovery herein.
17.

18. 96. Plaintiffs' claims sound in maritime tort and are
19. subject to applicable admiralty limits on recovery of damages
20. for remote economic loss unaccompanied by physical injury to
21. person or property.
22.

23. 97. Numerous persons and entities have filed class
24. action lawsuits against Exxon relating to the oil spill, some of
25. whom purport to represent the plaintiffs in this action. In the
26. event of any judgment in such other lawsuits against Exxon and

1. in favor of plaintiffs herein, such judgment will be res
2. judicata as to the claims of plaintiffs herein.

3.
4. 98. Numerous persons and entities have filed other
5. lawsuits against Exxon, and various other defendants, and to the
6. extent there is a recovery in said other lawsuits encompassing
7. claims made by plaintiffs herein, recovery on the claims herein
8. is barred to the extent that it would represent a multiple
9. recovery for the same injury.

10.
11. 99. Some or all of plaintiffs' claims for damages may
12. be barred or reduced by the doctrine of comparative negligence.

13.
14. 100. The amount of liability, if any, for the acts
15. alleged is controlled by statute, including, without limitation,
16. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

17.
18. 101. If punitive damages were to be awarded or civil
19. or criminal penalties assessed in any other lawsuit against
20. Exxon relating to the oil spill, such award bars imposition of
21. punitive damages in this action.

22.
23. 102. Some of plaintiffs' claims, including claims for
24. punitive damages, are preempted by the comprehensive scheme of
25. federal statutes and regulations, including its system of
26. criminal and civil penalties, sanctions and remedies relevant to

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the oil spill, and its scheme relevant to protection of subsistence interests.

103. Plaintiffs' claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties.

104. Plaintiffs' claims for compensatory relief under state law are preempted by federal statutory and common law schemes for compensatory relief.

105. Certain claims asserted by plaintiffs are not ripe for adjudication.

106. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article I, Section 10, and if applied to Exxon would also violate the due process clauses of the United States and Alaska Constitutions, and the contract clause of the United States Constitution.

107. Exxon and Exxon Shipping have acted pursuant to government approval and direction with regard to the containment and clean-up of the oil spill.

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1. 108. Plaintiffs fail to satisfy the requirements for
2. the injunctive relief they seek.

3.
4. 109. The corporate members of the purported class(es)
5. herein lack the capacity to commence and maintain this action
6. insofar as they have failed to allege and prove that they have
7. paid their Alaska biennial corporate taxes last due and have
8. filed biennial reports for the last reporting period.

9.
10. 110. Claims by some persons or entities who may be
11. within the purported class(es) herewith have been settled and
12. released.

13.
14. Prayer

15.
16. WHEREFORE, Exxon prays for judgment as follows:

17.
18. 1. That plaintiffs take nothing and be granted no
19. relief, legal or equitable;

20.
21. 2. That Exxon be awarded its costs in this action;
22. and

23.
24.
25.
26.

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- 24.
- 25.
- 26.

3. For such other and further relief as the Court
deems just and proper.

DATED: August 15, 1989

Respectfully submitted,

CHARLES W. BENDER
PATRICK LYNCH
JOHN F. DAUM
O'MELVENY MYERS

By 
John F. Daum

JOHN F. CLOUGH, III
RANDALL J. WEDDLE
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By 
Randall J. Weddle

Attorneys for Defendant Exxon
Corporation

FILED

AUG 15 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

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- 8. Attorneys for Defendant
- 9. Exxon Corporation

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

13. In re)	
14. The EXXON VALDEZ)	
15. This Document Relates	)	No. A89-095 Civil
16. to Action No.	)	(Consolidated)
17. <u>A89-145</u>	)	ANSWER OF EXXON
Gerald E. Thorne, <u>et al.</u>,	)	CORPORATION TO CLASS
18. (P-65 through P-67)	)	ACTION COMPLAINT FILED
v.	)	APRIL 5, 1989
19. Exxon Corporation, <u>et al.</u> ,)	
(D-1 through D-4; D-7 through D-9)	
20. and D-18))	

21. Exxon Corporation, for convenience identified in this
 22. answer as "Exxon", as its answer to the complaint herein admits,
 23. denies and alleges as follows:

- 24.
- 25.
- 26.

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1. As to each and every allegation denied herein for lack
2. of information or belief, alleges that it is without knowledge
3. or information sufficient categorically to admit or deny the
4. said allegation at this time, wherefore it denies each said
5. allegation using the phrase "denies for lack of information or
6. belief."

7.
8. Defense To First Cause of Action
9.

10. 1. Answering paragraph 1, Exxon is not required to
11. respond to the allegations in paragraph 1, but admits that the
12. action purports to be a class action.
13.

14. 2. Answering paragraph 2, admits that this Court has
15. jurisdiction over the subject matter of this action.
16.

17. 3. Answering paragraph 3, Exxon is not required to
18. respond to the allegations of paragraph 3.
19.

20. 4. Denies for lack of information or belief the
21. allegations of paragraph 4, except admits that this action may
22. be brought in this district and that Exxon does business in this
23. district.
24.
25.
26.

1. 5. Denies for lack of information or belief the
2. allegations of paragraph 5.

3.
4. 6. Denies the allegations of paragraph 6 except
5. admits that Exxon Corporation is a corporation organized under
6. the laws of the state of New Jersey, with its principal place of
7. business in New York at 1251 Avenue of the Americas, New York,
8. New York 10021, and that the principal business of Exxon
9. Corporation is energy, involving exploration for the production
10. of crude oil, natural gas and petroleum products and exploration
11. for the mining and sale of coal; and that Exxon owned the crude
12. oil which was transported on the EXXON VALDEZ and spilled in the
13. Sound.

14.
15. 7. Denies the allegations of paragraph 7, except
16. admits that Exxon Shipping is a Delaware Corporation, that Exxon
17. Corporation owns all of Exxon Shipping's stock, that its
18. principal place of business is Texas and that it is the owner
19. and operator of the EXXON VALDEZ.

20.
21. 8. Denies the allegations of paragraph 8, except
22. admits that Alyeska Pipeline Service Company ("Alyeska") is a
23. Delaware corporation the stock of which is owned by the Amerada
24. Hess Pipeline Corporation, ARCO Pipe Line Company, BP Pipelines
25. (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline
26.

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1. Company, Phillips Alaska Pipeline Corporation, and Unocal
2. Pipeline Company; that the owners of Alyeska are permittees
3. under the Agreement and Grant of Right-of-Way for Trans-Alaska
4. Pipeline; and that Alyeska operates the Trans-Alaska Pipeline
5. System; that Alyeska was formed by its then owners to construct,
6. operate and maintain TAPS; and that Alyeska maintains an oil
7. spill contingency plan.

8.
9. 9. Denies the allegations of paragraph 9, except
10. admits that Joseph Hazelwood was an employee of Exxon Shipping
11. and was the captain of the EXXON VALDEZ.

12.
13. 10. Denies the allegations of paragraph 10, except
14. admits that Gregory Cousins is an employee of Exxon Shipping,
15. was Third Mate on the EXXON VALDEZ, and was the officer on the
16. bridge when the vessel ran aground on Bligh Reef.

17.
18. 11-12. Admits the allegations of paragraphs 11 and 12.

19.
20. 13-19. Denies for lack of information or belief the
21. allegations of paragraphs 13 through 19, except admits that
22. plaintiffs purport to bring this action on behalf of a class.

23.
24. 20. Denies the allegations of paragraph 20, except
25. admits that March 23, 1989, the EXXON VALDEZ, which is a single
26.

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1. hull vessel approximately 987 feet long, and owned by Exxon
2. Shipping, was loaded with approximately 1.2 million barrels of
3. oil at the Port of Valdez terminal facility of the Trans-Alaska
4. Pipeline System, which is operated by Alyeska; and that the oil
5. had been shipped through the Trans-Alaska Pipeline.

6.
7. 21. Denies the allegations of paragraph 21 except
8. admits that the EXXON VALDEZ departed the Port of Valdez loaded
9. with approximately 1.2 million barrels of oil, that the vessel
10. passed through the Valdez Narrows, and that Captain Joseph J.
11. Hazelwood, who was on the bridge of the vessel when the harbor
12. pilot disembarked at Rocky Point, went below deck at around
13. 11:50 P.M., leaving Gregory Cousins, the third mate, as the
14. officer on the bridge.

15.
16. 22. Denies the allegations of paragraph 22, except
17. admits that the U.S. Coast Guard gave the EXXON VALDEZ
18. permission to leave the southbound shipping lane for reasons
19. that included earlier reports that it contained ice that had
20. calved from a glacier to the northwest, that the vessel
21. travelled through the northbound lane and subsequently struck
22. Bligh Reef shortly after midnight, that the vessel was outside
23. the shipping lane when it struck Bligh Reef, that Captain
24. Hazelwood was not on the bridge when the vessel struck Bligh

25.
26.

1. Reef, and that Bligh Reef is depicted on charts and marked by a
2. buoy.

3.

4. 23. Denies the allegations of paragraph 23, except
5. admits that tests reportedly done on Hazelwood more than ten
6. hours after the accident were initially reported as showing a
7. blood alcohol level exceeding Coast Guard regulations; and that
8. Hazelwood has been discharged by Exxon Shipping and has been
9. charged with criminal offenses in connection with the accident.

10.

11. 24. Denies the allegations of paragraph 24, except
12. admits that a seaman who sued Exxon Shipping in 1982 asserted in
13. a deposition that Hazelwood had been drinking on board a vessel,
14. and that public records purport to show that Hazelwood has been
15. convicted for driving while under the influence of alcohol.

16.

17. 25. Denies the allegations of paragraph 25, except
18. admits that William Edward Murphy piloted the EXXON VALDEZ from
19. the Port of Valdez to Rocky Point, where he departed the vessel.

20.

21. 26. Denies the allegations of paragraph 26, except
22. admits the grounding on Bligh Reef punctured eight of the
23. vessel's oil tanks, and that approximately 258,000 barrels of
24. crude oil were spilled into Prince William Sound.

25.

26.

1. 27. Denies the allegations of paragraph 27 insofar as
2. they pertain to Exxon and Exxon Shipping, and denies said
3. allegations for lack of information or belief insofar as they
4. pertain to Alyeska or other defendants; except admits that the
5. owners of Alyeska, as permittees under the Agreement and Grant
6. of Right-of-Way for Trans-Alaska Pipeline, expressed the intent
7. to employ all practicable means and measures to preserve and
8. protect the environment, to balance environmental amenities and
9. values with economic practicalities and technical capabilities,
10. and to construct, operate and maintain TAPS in accordance with
11. sound engineering practice.

12.
13. 28. Denies the allegations of paragraph 28, except
14. admits that following the spill certain officials of Exxon and
15. Exxon Shipping publicly admitted responsibility for any legal
16. obligations to those who suffered damage.

17.
18. 29-32. Denies the allegations of paragraphs 29 through
19. 32 insofar as they pertain to Exxon and Exxon Shipping, and
20. denies said allegations for lack of information or belief
21. insofar as they pertain to Alyeska or other defendants.

22.
23. 33. Denies for lack of information or belief the
24. allegations of paragraph 33, except admits that birds and fish
25. migrate to Prince William Sound, many beginning in the Spring,
26.

1. that the Sound has herring and salmon spawning areas, and that
2. many species of fish life are found in the Sound, including
3. crab, shrimp, halibut, Pacific cod, sablefish and other bottom
4. fish.

5.
6. 34. Denies for lack of information or belief the
7. allegations of paragraph 34, except admits that the spill
8. occurred at a time when some fishers were preparing for the
9. herring season, and that the State of Alaska closed some
10. fisheries following the spill.

11.
12. 35-38. Denies the allegations of paragraphs 35 through
13. 38.

14.
15. 39. Answering paragraph 39, realleges and
16. incorporates herein by reference each and every admission,
17. denial and allegation contained in paragraphs 1 through 38, as
18. if set out in full.

19.
20. 40. Denies the allegations of paragraph 39, except
21. admits that AS 46.03.822, to the extent applicable and not
22. preempted by federal law, may impose strict liability on certain
23. persons with respect to certain damages.

24.
25.
26.

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1. Defense to Second Cause of Action

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41. Answering paragraph 41, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 40, as if set out in full.

42-43. Denies the allegations of paragraphs 42 and 43 insofar as they pertain to Exxon and Exxon Shipping, and denies said allegations for lack of information or belief insofar as they pertain to other defendants.

Defense to Third Cause of Action

44. Answering paragraph 44, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 43, as if set out in full.

45. Denies for lack of information or belief the allegations of paragraph 45.

46-49. Denies the allegations of paragraphs 46 through 49.

1. Defense to Fourth Cause of Action

2.

3. 50. Answering paragraph 50, realleges and
4. incorporates herein by reference each and every admission,
5. denial and allegation contained in paragraphs 1 through 49, as
6. if set out in full.

7.

8. 51. Denies for lack of information or belief the
9. allegations of paragraph 51.

10.

11. 52-53. Denies the allegations of paragraphs 52 and 53
12. insofar as they pertain to Exxon and Exxon Shipping, and denies
13. said allegations for lack of information or belief insofar as
14. they pertain to other defendants.

15.

16. Defense to Fifth Cause of Action

17.

18. 54. Answering paragraph 54, realleges and
19. incorporates herein by reference each and every admission,
20. denial and allegation contained in paragraphs 1 through 53, as
21. if set out in full.

22.

23. 55-61. Denies the allegations of paragraphs 55 through
24. 61 insofar as they pertain to Exxon and Exxon Shipping, and

25.

26.

1. denies said allegations for lack of information or belief
2. insofar as they pertain to other defendants.

3.

4. General Denial

5.

6. 62. Denies each and every other allegation in plain-
7. tiffs' complaint that was not specifically admitted herein.

8.

9. Affirmative and Other Defenses

10.

11. 63. The complaint and each count thereof fails to
12. state claims upon which relief can be granted.

13.

14. 64. Exxon is informed and believes that plaintiffs
15. lack standing to claim or recover damages based on the
16. allegations of the complaint.

17.

18. 65. Independent of any legal obligation to do so,
19. Exxon Shipping and Exxon are voluntarily paying claims for
20. economic loss allegedly caused by the oil spill and are
21. incurring other expenses in connection with the oil spill.
22. Exxon and Exxon Shipping are entitled to a setoff in the full
23. amount of all such payments in the event that plaintiffs' claims
24. encompass such expenditures.

25.

26.

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1. 66. Certain persons engaged or employed in connection
2. with activities related to containment and cleanup of the oil
3. released from the EXXON VALDEZ were thereby able to avoid or
4. mitigate damage from the interruption of fishery and other
5. activities. Payments received by such persons are a setoff
6. against losses, if any, resulting from the interruption of
7. fishery and other activities.

8.
9. 67. To the extent that persons able to mitigate
10. damages failed to do so, defendants cannot be held liable to
11. such persons for avoidable losses.

12.
13. 68. Claims by some persons or entities who may be
14. within the purported class have been settled and released.

15.
16. 69. Plaintiffs' claims for punitive damages are un-
17. constitutional under the United States Constitution, including,
18. without limitation, Article I, Section 8; Amendment V; and
19. Amendment XIV; and the Alaska Constitution, including, without
20. limitation, Article I, Section 7 and Article I, Section 12.

21.
22. 70. The damages alleged in the complaint were caused,
23. in part, by the action of others not joined as defendants herein
24. as to whom a right of contribution or indemnity should exist as
25. to Exxon. Exxon may seek leave of Court to join such additional
26.

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1. persons as third party defendants on the basis of further
2. discovery herein.

3.
4. 71. Plaintiffs' claims sound in maritime tort and are
5. subject to applicable admiralty limits on recovery of damages
6. for remote economic loss unaccompanied by physical injury to
7. person or property.

8.
9. 72. Numerous persons and entities have filed lawsuits
10. against Exxon relating to the oil spill, some of whom purport to
11. represent the plaintiffs in this action. In the event of any
12. judgment or judgments in such other lawsuits against Exxon and
13. in favor of persons whose claims are encompassed in this action,
14. such judgment or judgments will be res judicata as to the claims
15. of such persons herein.

16.
17. 73. Numerous persons and entities have filed other
18. lawsuits against Exxon and various other defendants, and to the
19. extent there is a recovery in said other lawsuits encompassing
20. claims made by plaintiffs herein, recovery on the claims herein
21. is barred to the extent that it would represent a multiple
22. recovery for the same injury.

23.
24. 74. Some or all of plaintiffs' claims for damages may
25. be barred or reduced by the doctrine of comparative negligence.

26.

1. 75. The amount of liability, if any, for the acts
2. alleged is controlled by statute, including, without limitation,
3. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).
4.

5. 76. If punitive damages were to be awarded or civil
6. or criminal penalties assessed in any other lawsuit against
7. Exxon relating to the oil spill, such award bars imposition of
8. punitive damages in this action.
9.

10. 77. Some of plaintiffs' claims, including claims for
11. punitive damages, are preempted by the comprehensive scheme of
12. federal statutes and regulations, including its system of
13. criminal and civil penalties, sanctions and remedies relevant to
14. the oil spill, and its scheme relevant to protection of
15. subsistence interests.
16.

17. 78. Plaintiffs' claims for punitive damages are pre-
18. cluded by the Alaska statutory scheme for civil and criminal
19. penalties.
20.

21. 79. Plaintiffs' claims for compensatory relief under
22. state law are preempted by federal statutory and common law
23. schemes for compensatory relief.
24.
25.
26.

1. 80. Certain claims asserted by plaintiffs are not
2. ripe for adjudication.

3.
4. 81. Those portions of AS 46.03 that were enacted
5. after the oil spill constitute an unlawful bill of attainder
6. violative of Article I, Section 10 of the United States
7. Constitution, and if applied to Exxon would also violate the due
8. process clauses of the United States and Alaska Constitutions,
9. and the contract clause of the United States Constitution.

10.
11. 82. Certain theories of relief may not be maintained
12. because these theories are based upon the exercise by Exxon of
13. federal and state constitutional rights to petition the federal
14. and state governments with respect to the passage and
15. enforcement of laws.

16.
17. 83. Plaintiffs have previously filed an action
18. against Exxon, based on the same facts alleged herein, and said
19. action is pending in this Court and is numbered A89-111. Exxon
20. is entitled to have the within duplicative action abated, or, in
21. the event of any recovery by plaintiffs in such other action as
22. compensation for the damages alleged herein, Exxon is entitled
23. to a setoff in the full amount of said recovery.

24.
25.
26.

1. 84. Exxon and Exxon Shipping have acted pursuant to
2. government approval and direction with regard to the containment
3. and clean-up of the oil spill.
4.

5. 85. The corporate members of the purported class(es)
6. herein lack the capacity to commence and maintain this action
7. insofar as they have failed to allege and prove that they have
8. paid their Alaska biennial corporate taxes last due and have
9. filed biennial reports for the last reporting period.
10.

11. Prayer
12.

13. WHEREFORE, Exxon prays for judgment as follows:
14.

15. 1. That plaintiffs take nothing and be granted no
16. relief, legal or equitable;
17.

18. 2. That Exxon be awarded its costs in this action;
19. and
20.

21.
22.
23.
24.
25.
26.

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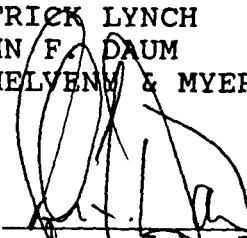
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3. For such other and further relief as the Court
deems just and proper.

DATED: August 15, 1989

Respectfully submitted,

CHARLES W. BENDER
PATRICK LYNCH
JOHN F. DAUM
O'MELVENEY & MYERS

By 
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8. Attorneys for Defendant
9. Exxon Corporation

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

10.	In re)	
11.)	
12.	The EXXON VALDEZ	)	No. A89-095 Civil
13.		)	(Consolidated)
14.	This Document Relates)	
15.	to Action No.)	
16.)	
17.	<u>A89-147</u>	)	ANSWER OF EXXON
18.	Don Kompkoff, <u>et al.</u>,	)	CORPORATION TO
19.	(P-114 and P-115)	)	CLASS ACTION COMPLAINT
20.	v.	)	FILED APRIL 5, 1989
	Exxon Corporation, <u>et al.</u> ,)	
	(D-1 through D-5);)	

21. Exxon Corporation, also erroneously sued herein as
22. Exxon Co., USA, and for convenience identified in this answer as
23. "Exxon", as its answer to the complaint herein admits, denies
24. and alleges as follows:

FILED
AUG 15 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

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1. As to each and every allegation denied herein for lack
2. of information or belief, alleges that it is without knowledge
3. or information sufficient categorically to admit or deny the
4. said allegation at this time, wherefore it denies each said
5. allegation using the phrase "denies for lack of information or
6. belief."

7.
8. Defense To Count I

9.
10. 1. Answering paragraph 1, Exxon is not required to
11. respond to the allegations in paragraph 1.

12.
13. 2. Answering paragraph 2, admits that this Court has
14. jurisdiction over the subject matter of this action but denies
15. all other allegations in paragraph 2.

16.
17. 3. Admits the allegations of paragraph 3, except
18. denies that Exxon Co., U.S.A. is a properly designated defendant
19. or that it is subject to the personal jurisdiction of this
20. Court.

21.
22. 4. Answering paragraph 4, admits that plaintiffs
23. purport to bring claims for relief based on the grounds alleged,
24. but denies that plaintiffs can state a claim for relief based on
25. said grounds.
26.

1. 5. Denies each and every allegation of paragraph 5
2. except admits that his action may be brought in this district
3. under 28 U.S.C. § 1391.
4.

5. 6-9. Denies for lack of information or belief the
6. allegations of paragraphs 6 through 9.
7.

8. 10. Admits the allegations of paragraph 10.
9.

10. 11. Denies the allegations of paragraph 11, except
11. admits that Alyeska Pipeline Service Company ("Alyeska") is a
12. Delaware corporation the stock of which is owned by the Amerada
13. Hess Pipeline Corporation, ARCO Pipe Line Company, BP Pipelines
14. (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline
15. Company, Phillips Alaska Pipeline Corporation, and Unocal
16. Pipeline Company; that the Owners of Alyeska are permittees
17. under the Agreement and Grant of Right-of-Way for Trans-Alaska
18. Pipeline; and that Alyeska operates the Trans-Alaska Pipeline
19. System.
20.

21. 12. Denies the allegations of paragraph 12 except
22. admits that Exxon Corporation is a corporation organized under
23. the laws of the state of New Jersey, with its principal place of
24. business in New York at 1251 Avenue of the Americas, New York,
25. New York 10021, and that the principal business of Exxon
26. Corporation is energy, involving exploration for the production

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1. of crude oil, natural gas and petroleum products and exploration
2. for the mining and sale of coal.

3.

4. 13. Denies the allegations of paragraph 13, except
5. admits that Exxon Company, USA is an unincorporated division of
6. Exxon Corporation responsible for the operation of Exxon
7. Corporation's energy business within the United States, and that
8. its headquarters is at 800 Bell Street, Houston, Texas.

9.

10. 14. Denies the allegations of paragraph 14, except
11. admits that Exxon Shipping is a Delaware Corporation, that Exxon
12. Corporation owns all of Exxon Shipping's stock, that its
13. principal place of business is Texas and that it is the owner
14. and operator of the EXXON VALDEZ.

15.

16. 15-20. Answering paragraphs 15 through 20, admits that
17. plaintiffs purport to define certain terms, but denies the
18. allegations and denies that any subsequent use of those terms in
19. the complaint is necessarily accurate or appropriate.

20.

21. 21. Denies the allegations of paragraph 21, except
22. admits that on Thursday evening, March 23, 1989, the EXXON
23. VALDEZ, which is approximately 987 feet long and weighs
24. approximately 211,000 deadweight tons, left the Port of Valdez,
25. Alaska, the southern terminal facility of the Trans-Alaska
26. Pipeline System, bound for Long Beach, California.

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1. 22. Denies the allegations in paragraph 22, except
2. admits that the EXXON VALDEZ was loaded with approximately 1.2
3. million barrels of crude oil which had been shipped from
4. Alaska's North Slope through the Trans-Alaska Pipeline.
5.

6. 23. Denies the allegations of paragraph 23 except
7. admits that the EXXON VALDEZ passed through the Valdez Narrows
8. under the direction of a harbor pilot, who subsequently
9. disembarked; that Captain Joseph J. Hazelwood was on the bridge
10. of the vessel when the harbor pilot disembarked, and that
11. Captain Hazelwood's duties as Master of the vessel were within
12. the scope of his employment by Exxon Shipping.
13.

14. 24. Denies the allegations of paragraph 24, except
15. admits that Captain Hazelwood left the bridge, leaving Gregory
16. Cousins, the third mate, and Robert Kagan, the helmsman, on the
17. bridge, and that the duties of Cousins as third mate and Kagan
18. as helmsman were within the scope of their employment by Exxon
19. Shipping.
20.

21. 25. Denies the allegations of paragraph 25, except
22. admits that the U.S. Coast Guard gave the EXXON VALDEZ
23. permission to leave the southbound shipping lane for reasons
24. that included earlier reports that it contained ice that had
25. calved from a glacier to the northwest.
26.

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1. 26. Denies the allegations of paragraph 26, except
2. admits that the vessel travelled through the northbound lane and
3. subsequently struck Bligh Reef.

4.
5. 27. Denies the allegations of paragraph 27, except
6. admits that the vessel was outside the channel when it struck
7. Bligh Reef, which punctured some of the tanks and damaged a
8. portion of the hull.

9.
10. 28-29. Denies the allegations of paragraphs 28 and 29.

11.
12. 30. Denies the allegations of paragraph 30, except
13. admits the grounding on Bligh Reef punctured eight of the
14. vessel's oil tanks, causing the largest United States oil spill
15. from a single vessel, and that approximately 258,000 barrels of
16. crude oil were spilled into Prince William Sound.

17.
18. 31. Denies the allegations of paragraph 31.

19.
20. 32. Denies the allegations of paragraph 32 for lack
21. of information or belief, except admits that Alaska Governor
22. Cowper declared a disaster emergency on or about March 26, 1989.

23.
24. 33-37. Denies for lack of information or belief the
25. allegations of paragraphs 33 and 37.

26.

1. 38-46. Denies for lack of information or belief the
2. allegations of paragraphs 38 through 46, except admits that
3. plaintiffs purport to bring an action on behalf of a class of
4. persons and entities described in the complaint.
5.

6. 47. Answering paragraph 47, realleges and
7. incorporates herein by reference each and every admission,
8. denial and allegation contained in paragraphs 1 through 46, as
9. if set out in full.
10.

11. 48-52. Answering paragraphs 48 through 52, Exxon is
12. not required to answer allegations made against Alyeska. If
13. response were required, Exxon denies the allegations in
14. paragraphs 48 through 52.
15.

16. Defense to Count II
17.

18. 53. Answering paragraph 53, realleges and
19. incorporates herein by reference each and every admission,
20. denial and allegation contained in paragraphs 1 through 52, as
21. if set out in full.
22.

23. 54. Denies the allegations of paragraph 54, except
24. admits that Exxon Shipping is the owner and operator of the
25. EXXON VALDEZ.
26.

1. 55. Denies for lack of information or belief the
2. allegations of paragraph 55.

4. 56. Denies the allegations of paragraph 56.

6. 57. Denies for lack of information or belief the
7. allegations of paragraph 57, except admits that the events about
8. which plaintiffs complain caused some damages to sea otters and
9. birds.

11. 58. Denies the allegations of Paragraph 58, except
12. admits that 43 U.S.C. Section 1653(c), to the extent applicable,
13. may impose upon certain entities strict liability for certain
14. damages.

16. Defense to Count III

18. 59. Answering paragraph 59, realleges and
19. incorporates herein by reference each and every admission,
20. denial and allegation contained in paragraphs 1 through 58, as
21. if set out in full.

23. 60. Denies the allegations of paragraph 60 insofar as
24. they pertain to Exxon and Exxon Shipping and denies for lack of
25. information or belief said allegations insofar as they pertain
26. to Alyeska or other defendants.

1. 61. Denies the allegations of paragraph 61 insofar as
2. they pertain to Exxon and Exxon Shipping and denies for lack of
3. information or belief said allegations insofar as they pertain
4. to Alyeska or other defendants.

5.
6. 62. Denies for lack of information or belief the
7. allegations of paragraph 62.

8.
9. 63. Denies the allegations of paragraph 63.

10.
11. 64. Denies the allegations of paragraph 64 insofar as
12. they pertain to Exxon and Exxon Shipping and denies for lack of
13. information or belief said allegations insofar as they pertain
14. to Alyeska or the defendants.

15.
16. 65-68. Denies the allegations of paragraphs 65 through
17. 68.

18.
19. 69-70. Denies the allegations of paragraphs 69 and 70
20. insofar as they pertain to Exxon and Exxon Shipping and denies
21. for lack of information or belief said allegations insofar as
22. they pertain to Alyesha or other defendants.

23.
24. 71-72. Denies the allegations of paragraphs 71 and 72.

25.
26.

1. Defense to Count IV

2.

3. 73. Answering paragraph 73, realleges and
4. incorporates herein by reference each and every admission,
5. denial and allegation contained in paragraphs 1 through 72, as
6. if set out in full.

7.

8. 74. Denies for lack of information or belief the
9. allegations of paragraph 74, except admits that public records
10. purport to show that Captain Hazelwood has been convicted for
11. driving while under the influence of alcohol.

12.

13. 75-82. Denies the allegations of paragraphs 75 through
14. 82.

15.

16. Defense to Count V

17.

18. 83. Answering paragraph 83, realleges and
19. incorporates herein by reference each and every admission,
20. denial and allegation contained in paragraphs 1 through 82, as
21. if set out in full.

22.

23. 84. Denies the allegations of paragraph 84.

24.

25.

26.

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Defense to Count VI

85. Answering paragraph 85, realleges and incorporates herein by reference each and every denial, admission and allegation contained in paragraphs 1 through 84, as if set out in full.

86. Denies the allegations of paragraph 86 insofar as they pertain to Exxon and Exxon Shipping, and denies said allegations for lack of information as belief insofar as they pertain to Alyeska or other defendants.

Defense to Count VII

87. Answering paragraph 87, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 86, as if set out in full.

88. Denies the allegations of paragraph 88, except admits that A.S. 46.03.826(4)(B) defines the term "hazardous substance" as including oil, that approximately 258,000 barrels of crude oil were discharged into the Prince William Sound as a result of the grounding of the EXXON VALDEZ.

89. Denies the allegations of paragraph 89.

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90. Denies the allegations of paragraph 90 except admits that Exxon owned the crude oil and that Exxon Shipping controlled the crude oil immediately prior to its release into the Prince William Sound.

91. Denies for lack of information or belief the allegations in paragraph 91, except admits that the oil spill was not caused solely as a result of an act of war.

92. Denies the allegations of paragraph 92 insofar as they pertain to Exxon and denies said allegations for lack of information and belief insofar as they pertain to other defendants.

93. Denies for lack of information or belief the allegations of paragraph 93, except admits that AS 46.03.822, to the extent applicable and not preempted, may impose strict liability for certain types of damages.

Defense to Count VIII

94. Answering paragraph 94, realleges and incorporates herein by reference each and every denial, admission and allegation contained in paragraphs 1 through 93, as if set out in full.

1. 95-98. Denies the allegations in paragraphs 95 through
2. 98 insofar as they pertain to Exxon and Exxon Shipping, and
3. denies said allegations for lack of information or belief
4. insofar as they pertain to other defendants.

5.
6. Defense to Count IX
7.

8. 99. Answering paragraph 99, realleges and
9. incorporates herein by reference each and every admission,
10. denial and allegation contained in paragraphs 1 through 98, as
11. if set out in full.

12.
13. 100-103. Denies the allegations in paragraphs 100 through
14. 103 insofar as they pertain to Exxon and Exxon Shipping, and
15. denies said allegations for lack of information or belief
16. insofar as they pertain to other defendants.

17.
18. Defense to Count X
19.

20. 104. Answering paragraph 104, realleges and
21. incorporates herein by reference each and every admission,
22. denial and allegation contained in paragraphs 1 through 103, as
23. if set out in full.

24.
25. 105-107. Denies the allegations in paragraphs 105
26. through 107 insofar as they pertain to Exxon and Exxon Shipping

1. and denies said allegations for lack of information or belief
2. insofar as they pertain to other defendants.

3.

4. Defense to Count XI

5.

6. 108. Answering paragraph 108, realleges and
7. incorporates herein by reference each and every admission,
8. denial and allegation contained in paragraphs 1 through 107, as
9. if set out in full.

10.

11. 109-112. Denies the allegations in paragraphs 109 through
12. 112 insofar as they pertain to Exxon and Exxon Shipping and
13. denies said allegations for lack of information or belief
14. insofar as they pertain to other defendants.

15.

16. General Denial

17.

18. 113. Denies each and every other allegation in plain-
19. tiffs' complaint that was not specifically admitted herein.

20.

21. Affirmative and Other Defenses

22.

23. 114. The complaint and each count thereof fails to
24. state claims upon which relief can be granted.

25.

26.

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115. Exxon is informed and believes that plaintiffs lack standing to claim or recover damages based on the allegations of the complaint.

116. Independent of any legal obligation to do so, Exxon Shipping and Exxon are voluntarily paying claims for economic loss allegedly caused by the oil spill, and are incurring other expenses in connection with the oil spill. Exxon and Exxon Shipping are entitled to a setoff in the full amount of all such payments in the event that plaintiffs' claims encompass such expenditures.

117. Certain persons engaged or employed in connection with activities related to containment and cleanup of the oil released from the EXXON VALDEZ were thereby able to avoid or mitigate damage from the interruption of fishery and other activities. Payments received by such persons are a setoff against losses, if any, resulting from the interruption of fishery and other activities.

118. To the extent that persons able to mitigate damages failed to do so, defendants cannot be held liable to such persons for avoidable losses.

119. Claims by some persons or entities who may be within the purported classes have been settled and released.

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1. 120. Plaintiffs' claims for punitive damages are un-
2. constitutional under the United States Constitution, including,
3. without limitation, Article I, Section 8; Amendment V; and
4. Amendment XIV; and the Alaska Constitution, including, without
5. limitation, Article I, Section 7 and Article I, Section 12.
6.

7. 121. The damages alleged in the complaint were caused,
8. in part, by the action of others not joined as defendants herein
9. as to whom a right of contribution or indemnity should exist as
10. to Exxon. Exxon may seek leave of Court to join such additional
11. persons as third party defendants on the basis of further
12. discovery herein.
13.

14. 122. Plaintiffs' claims sound in maritime tort and are
15. subject to applicable admiralty limits on recovery of damages
16. for remote economic loss unaccompanied by physical injury to
17. person or property.
18.

19. 123. Numerous persons and entities have filed lawsuits
20. against Exxon relating to the oil spill, some of whom purport to
21. represent the plaintiffs in this action. In the event of any
22. judgment or judgments in such other lawsuits against Exxon and
23. in favor of persons whose claims are encompassed in this action,
24. such judgment or judgments will be res judicata as to the claims
25. of such persons herein.
26.

1. 124. Numerous persons and entities have filed other
2. lawsuits against Exxon and various other defendants, and to the
3. extent there is a recovery in said other lawsuits encompassing
4. claims made by plaintiffs herein, recovery on the claims herein
5. is barred to the extent that it would represent a multiple
6. recovery for the same injury.

7.
8. 125. Some or all of plaintiffs' claims for damages may
9. be barred or reduced by the doctrine of comparative negligence.

10.
11. 126. The amount of liability, if any, for the acts
12. alleged is controlled by statute, including, without limitation,
13. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

14.
15. 127. If punitive damages were to be awarded or civil
16. or criminal penalties assessed in any other lawsuit against
17. Exxon relating to the oil spill, such award bars imposition of
18. punitive damages in this action.

19.
20. 128. Some of plaintiffs' claims, including claims for
21. punitive damages, are preempted by the comprehensive scheme of
22. federal statutes and regulations, including its system of
23. criminal and civil penalties, sanctions and remedies relevant to
24. the oil spill, and its scheme relevant to protection of
25. subsistence interests.

26.

1. 129. Plaintiffs' claims for punitive damages are pre-
2. cluded by the Alaska statutory scheme for civil and criminal
3. penalties.

4.
5. 130. Plaintiffs' claims for compensatory relief under
6. state law preempted by federal statutory and common law schemes
7. for compensatory relief.

8.
9. 131. Certain claims asserted by plaintiffs are not
10. ripe for adjudication.

11.
12. 132. Those portions of AS 46.03 that were enacted
13. after the oil spill constitute an unlawful bill of attainder
14. violative of Article I, Section 10 of the United States
15. Constitution, and if applied to Exxon or to Exxon Pipeline would
16. also violate the due process clauses of the United States and
17. Alaska Constitutions, and the contract clause of the United
18. States Constitution.

19.
20. 133. Certain theories of relief may not be maintained
21. because these theories are based upon the exercise by Exxon of
22. federal and state constitutional rights to petition the federal
23. and state governments with respect to the passage and
24. enforcement of laws.

25.
26.

1. 134. Plaintiffs fail to satisfy the requirements for
2. the injunctive relief they seek.

3.

4. 135. Exxon and Exxon Shipping have acted pursuant to
5. government approval and direction with regard to containment and
6. clean-up of the oil spill.

7.

8. 136. ANILCA, 16 U.S.C. § 3111, et seq., provides the
9. exclusive federal vehicle for Alaskan Natives and rural Alaskans
10. to seek protection for federally recognized subsistence
11. interests allegedly harmed by the oil spill, and therefore all
12. other alleged federal bases to recover any such losses are
13. barred.

14.

15. Prayer

16.

17. WHEREFORE, Exxon prays for judgment as follows:

18.

19. 1. That plaintiffs take nothing and be granted no
20. relief, legal or equitable;

21.

22. 2. That Exxon be awarded its costs in this action;

23. and

24.

25.

26.

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3. For such other and further relief as the Court
deems just and proper.


DATED: August 15, 1989

Respectfully submitted,

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FILED
AUG 15 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

8. Attorneys for Defendant
9. Exxon Corporation

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

13.	In re)	
14.)	
15.	The EXXON VALDEZ	)	No. A89-095 Civil
16.	This Document Relates	)	(Consolidated)
17.	to Action No.)	
18.	<u>A89-118</u>	)	ANSWER OF EXXON
19.	W.B.T.J. Sigler, <u>et al.</u>,	)	CORPORATION TO CLASS
20.	(P-68 through P-70)	)	ACTION COMPLAINT FILED
	v.	)	APRIL 7, 1989
	Exxon Corporation, <u>et al.</u> ,)	
	(D-1 through D-3; D-7 and D-8))	

21. Exxon Corporation, for convenience identified in this
22. answer as "Exxon", as its answer to the complaint herein admits,
23. denies and alleges as follows:

25. As to each and every allegation denied herein for lack
26. of information or belief, alleges that it is without knowledge

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1. or information sufficient categorically to admit or deny the
2. said allegation at this time, wherefore it denies each said
3. allegation using the phrase "denies for lack of information or
4. belief."

5.
6. Defense To Count I

7.
8. 1. Answering paragraph 1, Exxon is not required to
9. respond to the allegations in paragraph 1, except that it admits
10. that the action purports to be brought on behalf of a class.

11.
12. 2. Answering paragraph 2, admits that this Court has
13. jurisdiction over the subject matter of this action.

14.
15. 3. Answering paragraph 3, admits that plaintiffs
16. purport to bring claims for relief based on the grounds alleged,
17. but denies that plaintiffs can state a claim for relief based on
18. said grounds.

19.
20. 4. Denies each and every allegation of paragraph 4
21. except admits that his action may be brought in this district,
22. and that Exxon does business in this district.

23.
24. 5-7. Denies for lack of information or belief the
25. allegations of paragraphs 5 through 7.

26.

1. 8. Admits the allegations of paragraph 8, except
2. denies that Exxon controls the oil that was transported by the
3. EXXON VALDEZ.

4.
5. 9. Admits the allegations of paragraph 9.

6.
7. 10. Denies the allegations of paragraph 10, except
8. admits that Alyeska Pipeline Service Company ("Alyeska") is a
9. Delaware corporation the stock of which is owned by the Amerada
10. Hess Pipeline Corporation, ARCO Pipe Line Company, BP Pipelines
11. (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline
12. Company, Phillips Alaska Pipeline Corporation, and Unocal
13. Pipeline Company; that Alyeska operates the Trans-Alaska
14. Pipeline System, including the terminal facilities at the Port
15. of Valdez; and that Alyeska is responsible for maintaining an
16. oil spill contingency plan.

17. 11. Denies the allegations of paragraph 11, except
18. admits that Joseph Hazelwood was an employee of Exxon Shipping,
19. and Captain of the EXXON VALDEZ when it ran aground on Bligh
20. Reef.

21.
22. 12. Denies the allegations of paragraph 12, except
23. admits that Gregory Cousins is an employee of Exxon Shipping and
24. was third mate on the EXXON VALDEZ when it ran aground on Bligh
25. Reef.

26.

1. 13. Denies for lack of information or belief each and
2. every allegation of paragraph 13.

3.
4. 14-19. Denies for lack of information or belief the
5. allegations of paragraphs 14 through 19, except admits that
6. plaintiffs purport to bring this action as a class action.

7.
8. 20. Admits the allegations of paragraph 20.

9.
10. 21. Denies the allegations of paragraph 21, except
11. admits that after the vessel navigated through Valdez Narrows,
12. Captain Hazelwood left the bridge, leaving Gregory Cousins, the
13. third mate, as the officer on the bridge.

14.
15. 22. Denies the allegations of paragraph 22, except
16. admits that the vessel struck Bligh Reef shortly after midnight
17. on March 24, 1989, and that said reef is outside the traffic
18. shipping lanes.

19.
20. 23. Denies the allegations of paragraph 23, except
21. admits that tests were done on Hazelwood more than ten hours
22. after the accident, that Hazelwood was subsequently discharged
23. by Exxon Shipping, and that he has been charged with criminal
24. charges in connection with the accident.

25.
26.

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1. 24. Denies the allegations of paragraph 24, except
2. admits that public records purport to show that Hazelwood has
3. been convicted of driving while under the influence of alcohol.
4.

5. 25. Denies the allegations of paragraph 25, except
6. admits that the grounding damaged the vessel, and that
7. approximately 258,000 barrels of crude oil were spilled into
8. Prince William Sound.
9.

10. 26. Denies the allegations of paragraph 26, except
11. admits that certain officials of Exxon and Exxon Shipping
12. Company accepted responsibility for any legal obligations to
13. those who suffered damage.
14.

15. 27-29. Denies the allegations of paragraphs 27-29 for
16. lack of information or belief.
17.

18. 30. Denies the allegations of paragraph 30, except
19. admits that Alyeska was unable totally to contain and clean up
20. the spill.
21.

22. 31. Denies for lack of information or belief the
23. allegations of paragraph 31, except admits that Coastal Alaska
24. is a biologically rich ecosystem and that birds and fish migrate
25. in the area.
26.

1. 32-33. Denies the allegations of paragraphs 32 and 33.

2.
3. 34. Denies the allegations of paragraph 34, except
4. admits that AS 46.03.822, to the extent applicable and not
5. preempted by federal law, may impose strict liability with
6. respect to certain types of damage.

7.
8. General Denial

9.
10. 35. Denies each and every other allegation in plain-
11. tiffs' complaint that was not specifically admitted herein.

12.
13. Affirmative and Other Defenses

14.
15. 36. The complaint fails to state claims upon which
16. relief can be granted.

17.
18. 37. Exxon is informed and believes that plaintiffs
19. lack standing to claim or recover damages based on the
20. allegations of the complaint.

21.
22. 38. Independent of any legal obligation to do so,
23. Exxon Shipping and Exxon are voluntarily paying claims for
24. economic loss allegedly caused by the oil spill, and are
25. incurring other expenses in connection with the oil spill.
26. Exxon and Exxon Shipping are entitled to a setoff in the full

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1. amount of all such payments in the event that plaintiffs' claims
2. encompass such expenditures.

3.
4. 39. Certain persons engaged or employed in connection
5. with activities related to containment and cleanup of the oil
6. released from the EXXON VALDEZ were thereby able to avoid or
7. mitigate damage from the interruption of fishery and other
8. activities. Payments received by such persons are a setoff
9. against losses, if any, resulting from the interruption of
10. fishery and other activities.

11.
12. 40. To the extent that persons able to mitigate
13. damages failed to do so, defendants cannot be held liable to
14. such persons for avoidable losses.

15.
16. 41. Claims by some persons or entities who may be
17. within the purported class have been settled and released.

18.
19. 42. Plaintiffs' claims for punitive damages are un-
20. constitutional under the United States Constitution, including,
21. without limitation, Article I, Section 8; Amendment V; and
22. Amendment XIV; and the Alaska Constitution, including, without
23. limitation, Article I, Section 7 and Article I, Section 12.

24.
25. 43. The damages alleged in the complaint were caused,
26. in part, by the action of others not joined as defendants herein

1. as to whom a right of contribution or indemnity should exist as
2. to Exxon. Exxon may seek leave of Court to join such additional
3. persons as third party defendants on the basis of further
4. discovery herein.

5.
6. 44. Plaintiffs' claims sound in maritime tort and are
7. subject to applicable admiralty limits on recovery of damages
8. for remote economic loss unaccompanied by physical injury to
9. person or property.

10.
11. 45. Numerous persons and entities have filed lawsuits
12. against Exxon relating to the oil spill, some of whom purport to
13. represent the plaintiffs in this action. In the event of any
14. judgment or judgments in such other lawsuits against Exxon and
15. in favor of persons whose claims are encompassed in this action,
16. such judgment or judgments will be res judicata as to the claims
17. of such persons herein.

18.
19. 46. Numerous persons and entities have filed other
20. lawsuits against Exxon and various other defendants, and to the
21. extent there is a recovery in said other lawsuits encompassing
22. claims made by plaintiffs herein, recovery on the claims herein
23. is barred to the extent that it would represent a multiple
24. recovery for the same injury.

25.
26.

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1. 47. Some or all of plaintiffs' claims for damages may
2. be barred or reduced by the doctrine of comparative negligence.

4. 48. The amount of liability, if any, for the acts
5. alleged is controlled by statute, including, without limitation,
6. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

8. 49. If punitive damages were to be awarded or civil
9. or criminal penalties assessed in any other lawsuit against
10. Exxon relating to the oil spill, such award bars imposition of
11. punitive damages in this action.

13. 50. Some of plaintiffs' claims, including claims for
14. punitive damages, are preempted by the comprehensive scheme of
15. federal statutes and regulations, including its system of
16. criminal and civil penalties, sanctions and remedies relevant to
17. the oil spill, and its scheme relevant to protection of
18. subsistence interests.

20. 51. Plaintiffs' claims for punitive damages are pre-
21. cluded by the Alaska statutory scheme for civil and criminal
22. penalties.

24. 52. Plaintiffs' claims for compensatory relief under
25. state law preempted by federal statutory and common law schemes
26. for compensatory relief.

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53. Certain claims asserted by plaintiffs are not ripe for adjudication.

54. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article I, Section 10 of the United States Constitution, and if applied to Exxon would also violate the due process clauses of the United States and Alaska Constitutions, and the contract clause of the United States Constitution.

55. Plaintiffs have filed an identical class action against Exxon, based on the same facts alleged herein, and said prior action is pending in this Court as Action A89-117. Exxon is entitled to have this duplicative action abated, or, in the event of any recovery by plaintiffs in said Action A89-117 as compensation for the damages alleged herein, Exxon is entitled to a setoff in the full amount of such recovery.

56. The Fund established under the Trans-Alaska Pipeline authorization Act, 43 U.S.C. § 1653(c), may be strictly liable for some or all of the damages alleged by plaintiffs. This action should not proceed in the absence of the fund's joinder as a defendant.

1. 57. Exxon and Exxon Shipping have acted pursuant to
2. government approval and direction with regard to containment and
3. clean-up of the oil spill.

4.
5. Prayer

6.
7. WHEREFORE, Exxon prays for judgment as follows:
8.

9. 1. That plaintiffs take nothing and be granted no
10. relief, legal or equitable;

11.
12. 2. That Exxon be awarded its costs in this action;

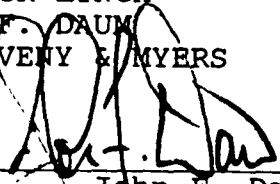
13. and
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1. 3. For such other and further relief as the Court
2. deems just and proper.

3.
4. DATED: August 15, 1989

Respectfully submitted,

5. CHARLES W. BENDER
6. PATRICK LYNCH
7. JOHN F. DAUM
8. O'MELVENY & MYERS

9. By 
John F. Daum

10. JOHN F. CLOUGH, III
11. RANDALL J. WEDDLE
12. FAULKNER, BANFIELD, DOOGAN &
13. HOLMES

14. By 
Randall J. Weddle

15. Attorneys for Defendant Exxon
16. Corporation

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8. Attorneys for Defendant
9. Exxon Corporation

Honorable H. Russell Holland

11. IN THE UNITED STATES DISTRICT COURT
12. FOR THE DISTRICT OF ALASKA

13. In re)
14.)
15. The EXXON VALDEZ) No. A89-095 Civil
16. This Document Relates) (Consolidated)
to Action No.)
17. A89-117) ANSWER OF EXXON
W.B.T.J. Sigler, et al.,) CORPORATION TO CLASS
18. (P-68 through P-72)) ACTION COMPLAINT FILED
v.) APRIL 7, 1989
19. Exxon Corporation, et al.,)
(D-1 through D-3; D-7 and D-8))
20. _____)

21. Exxon Corporation, for convenience identified in this
22. answer as "Exxon", as its answer to the complaint herein admits,
23. denies and alleges as follows:

25. As to each and every allegation denied herein for lack
26. of information or belief, alleges that it is without knowledge

FILED
AUG 15 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

1. or information sufficient categorically to admit or deny the
2. said allegation at this time, wherefore it denies each said
3. allegation using the phrase "denies for lack of information or
4. belief."

5.
6. Defense To Count I

7.
8. 1. Answering paragraph 1, Exxon is not required to
9. respond to the allegations in paragraph 1, except that it admits
10. that the action purports to be brought on behalf of a class.

11.
12. 2. Answering paragraph 2, admits that this Court has
13. jurisdiction over the subject matter of this action.

14.
15. 3. Answering paragraph 3, admits that plaintiffs
16. purport to bring claims for relief based on the grounds alleged,
17. but denies that plaintiffs can state a claim for relief based on
18. said grounds.

19.
20. 4. Denies each and every allegation of paragraph 4
21. except admits that his action may be brought in this district,
22. and that Exxon does business in this district.

23.
24. 5. Denies for lack of information or belief the
25. allegations of paragraph 5.
26.

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6. Admits the allegations of paragraph 6, except denies that Exxon controls the oil that was transported by the EXXON VALDEZ.

7. Admits the allegations of paragraph 7.

8. Denies the allegations of paragraph 8, except admits that Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation the stock of which is owned by the Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company; that Alyeska operates the Trans-Alaska Pipeline System, including the terminal facilities at the Port of Valdez; and that Alyeska is responsible for maintaining an oil spill contingency plan.

9. Denies the allegations of paragraph 9, except admits that Joseph Hazelwood was an employee of Exxon Shipping, and Captain of the EXXON VALDEZ when it ran aground on Bligh Reef.

10. Denies the allegations of paragraph 10, except admits that Gregory Cousins is an employee of Exxon Shipping and was third mate on the EXXON VALDEZ when it ran aground on Bligh Reef.

1. 11. Denies for lack of information or belief each and
2. every allegation of paragraph 11.

3.
4. 12-17. Denies for lack of information or belief the
5. allegations of paragraphs 12 through 17, except admits that
6. plaintiffs purport to bring this action as a class action.

7.
8. 18. Admits the allegations of paragraph 18.

9.
10. 19. Denies the allegations of paragraph 19, except
11. admits that after the vessel navigated through Valdez Narrows,
12. Captain Hazelwood left the bridge, leaving Gregory Cousins, the
13. third mate, as the officer on the bridge.

14.
15. 20. Denies the allegations of paragraph 20, except
16. admits that the vessel struck Bligh Reef shortly after midnight
17. on March 24, 1989, and that said reef is outside the traffic
18. shipping lanes.

19.
20. 21. Denies the allegations of paragraph 21, except
21. admits that tests were done on Hazelwood more than ten hours
22. after the accident, that Hazelwood was subsequently discharged
23. by Exxon Shipping, and that he has been charged with criminal
24. charges in connection with the accident.

25.
26.

1. 22. Denies the allegations of paragraph 22, except
2. admits that public records purport to show that Hazelwood has
3. been convicted of driving while under the influence of alcohol.
4.

5. 23. Denies the allegations of paragraph 23, except
6. admits that the grounding damaged the vessel, and that
7. approximately 258,000 barrels of crude oil were spilled into
8. Prince William Sound.
9.

10. 24. Denies the allegations of paragraph 24, except
11. admits that certain officials of Exxon and Exxon Shipping
12. accepted responsibility for any legal obligations to those who
13. suffered damage.
14.

15. 25-27. Denies the allegations of paragraphs 25-27 for
16. lack of information or belief.
17.

18. 28. Denies the allegations of paragraph 28, except
19. admits that Alyeska was unable totally to contain and clean up
20. the spill.
21.

22. 29. Denies for lack of information or belief the
23. allegations of paragraph 29, except admits that Coastal Alaska
24. is an ecosystem and that birds and fish migrate in the area.
25.

26. 30-31. Denies the allegations of paragraphs 30 and 31.

1. 32. Denies the allegations of paragraph 32, except
2. admits that AS 46.03.822, to the extent applicable and not
3. preempted by federal law, may impose strict liability with
4. respect to certain types of damage.
5.

6. General Denial
7.

8. 33. Denies each and every other allegation in plain-
9. tiffs' complaint that was not specifically admitted herein.
10.

11. Affirmative and Other Defenses
12.

13. 34. The complaint fails to state claims upon which
14. relief can be granted.
15.

16. 35. Exxon is informed and believes that plaintiffs
17. lack standing to claim or recover damages based on the
18. allegations of the complaint.
19.

20. 36. Independent of any legal obligation to do so,
21. Exxon Shipping and Exxon are voluntarily paying claims for
22. economic loss allegedly caused by the oil spill, and are
23. incurring other expenses in connection with the oil spill.
24. Exxon and Exxon Shipping are entitled to a setoff in the full
25. amount of all such payments in the event that plaintiffs' claims
26. encompass such expenditures.

1. 37. Certain persons engaged or employed in connection
2. with activities related to containment and cleanup of the oil
3. released from the EXXON VALDEZ were thereby able to avoid or
4. mitigate damage from the interruption of fishery and other
5. activities. Payments received by such persons are a setoff
6. against losses, if any, resulting from the interruption of
7. fishery and other activities.

8.
9. 38. To the extent that persons able to mitigate
10. damages failed to do so, defendants cannot be held liable to
11. such persons for avoidable losses.

12.
13. 39. Claims by some persons or entities who may be
14. within the purported class have been settled and released.

15.
16. 40. Plaintiffs' claims for punitive damages are un-
17. constitutional under the United States Constitution, including,
18. without limitation, Article I, Section 8; Amendment V; and
19. Amendment XIV; and the Alaska Constitution, including, without
20. limitation, Article I, Section 7 and Article I, Section 12.

21.
22. 41. The damages alleged in the complaint were caused,
23. in part, by the action of others not joined as defendants herein
24. as to whom a right of contribution or indemnity should exist as
25. to Exxon. Exxon may seek leave of Court to join such additional
26.

1. persons as third party defendants on the basis of further
2. discovery herein.

3.
4. 42. Plaintiffs' claims sound in maritime tort and are
5. subject to applicable admiralty limits on recovery of damages
6. for remote economic loss unaccompanied by physical injury to
7. person or property.

8.
9. 43. Numerous persons and entities have filed lawsuits
10. against Exxon relating to the oil spill, some of whom purport to
11. represent the plaintiffs in this action. In the event of any
12. judgment or judgments in such other lawsuits against Exxon and
13. in favor of persons whose claims are encompassed in this action,
14. such judgment or judgments will be res judicata as to the claims
15. of such persons herein.

16.
17. 44. Numerous persons and entities have filed other
18. lawsuits against Exxon and various other defendants, and to the
19. extent there is a recovery in said other lawsuits encompassing
20. claims made by plaintiffs herein, recovery on the claims herein
21. is barred to the extent that it would represent a multiple
22. recovery for the same injury.

23.
24. 45. Some or all of plaintiffs' claims for damages may
25. be barred or reduced by the doctrine of comparative negligence.

26.

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1. 46. The amount of liability, if any, for the acts
2. alleged is controlled by statute, including, without limitation,
3. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

4.
5. 47. If punitive damages were to be awarded or civil
6. or criminal penalties assessed in any other lawsuit against
7. Exxon relating to the oil spill, such award bars imposition of
8. punitive damages in this action.

9.
10. 48. Some of plaintiffs' claims, including claims for
11. punitive damages, are preempted by the comprehensive scheme of
12. federal statutes and regulations, including its system of
13. criminal and civil penalties, sanctions and remedies relevant to
14. the oil spill, and its scheme relevant to protection of
15. subsistence interests.

16.
17. 49. Plaintiffs' claims for punitive damages are pre-
18. cluded by the Alaska statutory scheme for civil and criminal
19. penalties.

20.
21. 50. Plaintiffs' claims for compensatory relief under
22. state law preempted by federal statutory and common law schemes
23. for compensatory relief.

24.
25. 51. Certain claims asserted by plaintiffs are not
26. ripe for adjudication.

1. 52. Those portions of AS 46.03 that were enacted
2. after the oil spill constitute an unlawful bill of attainder
3. violative of Article I, Section 10 of the United States
4. Constitution, and if applied to Exxon or to Exxon Pipeline would
5. also violate the due process clauses of the United States and
6. Alaska Constitutions, and the contract clause of the United
7. States Constitution.
8.

9. 53. The Fund established under the Trans-Alaska
10. Pipeline Authorization Act, 43 U.S.C. § 1653(c), may be strictly
11. liable for some or all of the damages alleged by plaintiffs.
12. This action should not proceed in the absence of the Fund's
13. joinder as a defendant.
14.

15. 54. Exxon has acted pursuant to government approval
16. and direction with regard to containment and clean-up of the oil
17. spill.
18.

19. Prayer
20.

21. WHEREFORE, Exxon prays for judgment as follows:
22.

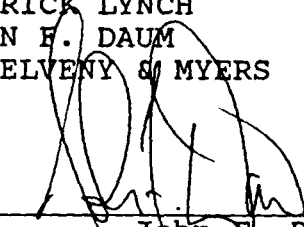
23. 1. That plaintiffs take nothing and be granted no
24. relief, legal or equitable;
25.
26.

1. 2. That Exxon be awarded its costs in this action;
2. and
3.
4. 3. For such other and further relief as the Court
5. deems just and proper.
6.

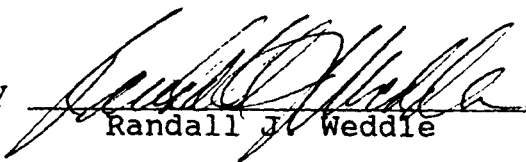
7. DATED: August 15, 1989

Respectfully submitted,

8. CHARLES W. BENDER
9. PATRICK LYNCH
10. JOHN F. DAUM
11. O'MELVENY & MYERS

12. By 
13. John F. Daum

14. JOHN F. CLOUGH, III
15. RANDALL J. WEDDLE
16. FAULKNER, BANFIELD, DOOGAN &
17. HOLMES

18. By 
19. Randall J. Weddle

20. Attorneys for Defendant Exxon
21. Corporation
22.
23.
24.
25.
26.

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- 8.

FILED
AUG 15 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

9. Attorneys for Defendant
10. Exxon Corporation

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

14. In re	)	No. A89-095 Civil
15. The EXXON VALDEZ	)	(Consolidated)
16. This Document Relates to	)	ANSWER OF EXXON
17. Action No.:	)	CORPORATION TO FIRST
18. <u>A89-106</u>	)	AMENDED COMPLAINT
19. MARTIN GORESON, <u>et al.</u>	)	FILED APRIL 7, 1989
20. (P-30 through P-39);)	
21. v.)	
22. EXXON USA, INC., <u>et al.</u>)	
23. (D-1 through D-6).)	

24. Exxon Corporation, also erroneously sued herein as
25. "Exxon USA, Inc.," for convenience identified in this answer as
26.

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1. "Exxon", as its answer to the complaint herein, admits, denies
2. and alleges as follows:

3.
4. As to each and every allegation denied herein for lack
5. of information or belief, Exxon alleges that it is without
6. knowledge or information sufficient categorically to admit or
7. deny the said allegation at this time, wherefore it denies each
8. said allegation using the phrase "denies for lack of information
9. or belief."

10.
11. Defense To First Cause of Action

12.
13. 1-2. Denies each and every allegation of paragraphs 1
14. and 2 except admits that this Court has subject matter jurisdic-
15. tion over this matter and that the matter is within the
16. admiralty and maritime jurisdiction of this Court.

17.
18. 3-4. Denies for lack of information or belief the
19. allegations of paragraphs 3 and 4.

20.
21. 5. Denies each and every allegation of paragraph 5,
22. except admits that Exxon is a New Jersey corporation qualified
23. to do business in Alaska; that Exxon Company, U.S.A.,
24. erroneously designated as "EXXON U.S.A., Inc.," is an
25. unincorporated division of Exxon; and that Exxon Shipping
26.

1. Company ("Exxon Shipping") is a Delaware corporation qualified
2. to do business in Alaska.

3.

4. 6. Denies the allegations of paragraph 6, except
5. admits that Exxon Shipping is the owner of the EXXON VALDEZ.

6.

7. 7. Denies the allegations of paragraph 7, except
8. admits that Exxon owns all of the stock of Exxon Shipping.

9.

10. 8. Denies the allegations of paragraph 8, except
11. admits that the EXXON VALDEZ is registered as a United States
12. vessel and is owned by Exxon Shipping.

13.

14. 9-10. Admits the allegations of paragraphs 9 and 10.

15.

16. 11. Answering paragraph 11, Exxon realleges and
17. incorporates herein by reference each and every admission,
18. denial and allegation contained in paragraphs 1 through 10
19. hereof, as if set out in full.

20.

21. 12. Denies each and every allegation of paragraph 12,
22. except admits that Exxon Shipping owns and operates the EXXON
23. VALDEZ.

24.

25. 13. Denies the allegations of paragraph 13, except
26. admits that on March 24, 1989 the EXXON VALDEZ was en route from

1. the Trans-Alaska Pipeline System terminal at the Port of Valdez,
2. Alaska, to Long Beach, California.

3.
4. 14. Denies each and every allegation of paragraph 14,
5. except admits that Exxon owned the cargo carried by the EXXON
6. VALDEZ.

7.
8. 15. Denies each and every allegation of paragraph 15,
9. except admits that Alyeska operates the terminal facility at the
10. Port of Valdez, and that Alyeska formulated an oil spill contin-
11. gency plan, applicable, in part, to possible oil spills in
12. Prince William Sound.

13.
14. 16. Admits the allegations of paragraph 16.

15.
16. 17. Denies each and every allegation of paragraph 17,
17. except admits that, on March 24, 1989, the EXXON VALDEZ left the
18. south bound channel, in part to avoid ice, and ran aground on
19. Bligh Reef and that, as a result of the grounding, approximately
20. 258,000 barrels of crude oil were discharged into Prince William
21. Sound.

22.
23. 18. Denies for lack of information or belief each and
24. every allegation of paragraph 18.

25.
26. 19. Denies each and every allegation of paragraph 19.

1. 20. Answering paragraph 20, Exxon realleges and
2. incorporates herein by reference each and every admission,
3. denial and allegation contained in paragraphs 1 through 19
4. hereof, as if set out in full.

5.
6. 21-22. Denies the allegations of paragraphs 21 and 22,
7. except admits that Joseph Hazelwood was an employee of Exxon
8. Shipping and that his duties aboard the EXXON VALDEZ were within
9. the scope of his employment.

10.
11. Defense To Second Cause of Action

12.
13. 23. Answering paragraph 23, Exxon realleges and
14. incorporates herein by reference each and every admission,
15. denial and allegation contained in paragraphs 1 through 22
16. hereof, as if set out in full.

17.
18. 24-26. Denies each and every allegation of paragraphs 24
19. through 26.

20.
21. Defense To Third Cause of Action

22.
23. 27. Answering paragraph 27, Exxon realleges and
24. incorporates herein by reference each and every admission,
25. denial and allegation contained in paragraphs 1 through 26
26. hereof, as if set out in full.

1. 28-30. Denies each and every allegation of paragraphs 28
2. through 30 insofar as they pertain to Exxon and Exxon Shipping,
3. and denies said allegations for lack of information or belief
4. insofar as they pertain to other defendants.
5.

6. Defense To Fourth Cause of Action
7.

8. 31. Answering paragraph 31, Exxon realleges and
9. incorporates herein by reference each and every admission,
10. denial and allegation contained in paragraphs 1 through 30
11. hereof, as if set out in full.
12.

13. 32-33. Denies each and every allegation of paragraphs 32
14. and 33.
15.

16. Defense To Fifth Cause of Action
17.

18. 34. Answering paragraph 34, Exxon realleges and
19. incorporates herein by reference each and every admission,
20. denial and allegation contained in paragraphs 1 through 33
21. hereof, as if set out in full.
22.

23. 35. Denies each and every allegation of paragraph 35.
24.
25.
26.

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Defense To Sixth Cause of Action

36. Answering paragraph 36, Exxon realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 35 hereof, as if set out in full.

37. Denies each and every allegation of paragraph 37.

Defense To Seventh Cause of Action

38. Answering paragraph 38, Exxon realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 37 hereof, as if set out in full.

39. Answering paragraph 39, alleges that Exxon is not required to respond to the allegations in said paragraph 39.

Defense To Eighth Cause of Action

40. Answering paragraph 40, Exxon realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 39 hereof as set out in full.

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1. 41-42. Denies the allegations of paragraphs 41 and 42.

2.

3. Defense To Ninth Cause of Action

4.

5. 43. Answering paragraph 43, Exxon realleges and
6. incorporates herein by reference each and every admission,
7. denial and allegation contained in paragraphs 1 through 42
8. hereof, as if set out in full.

9.

10. 44-45. Denies each and every allegation of paragraphs 44
11. and 45.

12.

13. 46. Answering paragraph 46, Exxon is not required to
14. respond to the allegations of paragraph 46.

15.

16. General Denial

17.

18. 47. Denies each and every other allegation in plain-
19. tiffs' complaint that was not specifically admitted herein.

20.

21. Affirmative and Other Defenses

22.

23. 48. The complaint and each count thereof fails to
24. state claims upon which relief can be granted.

25.

26.

1. 49. Exxon is informed and believes that plaintiffs
2. lack standing to claim or recover damages based on the
3. allegations of the complaint.
4.

5. 50. Independent of any legal obligation to do so,
6. Exxon Shipping and Exxon are voluntarily paying claims for
7. economic loss allegedly caused by the oil spill and are
8. incurring other expenses in connection with the oil spill.
9. Exxon and Exxon Shipping are entitled to a setoff in the full
10. amount of all such payments in the event that such plaintiffs'
11. claims encompass such expenditures.
12.

13. 51. Certain persons engaged or employed in connection
14. with activities related to containment and clean up of the oil
15. released from the EXXON VALDEZ were thereby able to avoid or
16. mitigate damage from the interruption of fishery and other
17. activities. Payments received by such persons are a set off
18. against losses, if any, resulting from the interruption of
19. fishery and other activities.
20.

21. 52. To the extent that persons able to mitigate
22. damages failed to do so, defendants cannot be held liable to
23. such persons for avoidable losses.
24.

25. 53. Plaintiffs' claims for punitive damages are un-
26. constitutional under the United States Constitution, including,

1. without limitation, Article I, Section 8; Amendment V; and
2. Amendment XIV; and the Alaska Constitution, including, without
3. limitation, Article I, Section 7 and Article I, Section 12.
4.

5. 54. The damages alleged in the complaint were caused,
6. in part, by the action of others not joined as defendants herein
7. as to whom a right of contribution or indemnity should exist as
8. to Exxon. Exxon may seek leave of Court to join such additional
9. persons as third party defendants on the basis of further
10. discovery herein.
11.

12. 55. Plaintiffs' claims sound in maritime tort and are
13. subject to applicable admiralty limits on recovery of damages
14. for remote economic loss unaccompanied by physical injury to
15. person or property.
16.

17. 56. Numerous persons and entities have filed lawsuits
18. against Exxon relating to the oil spill, some of whom purport to
19. represent the plaintiffs in this action. In the event of any
20. judgment or judgments in such other lawsuits against Exxon and
21. in favor of persons whose claims are encompassed in these
22. actions, such judgment or judgments will be res judicata as to
23. the claims of such persons herein.
24.

25. 57. Numerous persons and entities have filed other
26. lawsuits against Exxon and various other defendants, and to the

1. extent there is a recovery in said other lawsuits encompassing
2. claims made by plaintiffs herein, recovery on the claims herein
3. is barred to the extent that it would represent a multiple
4. recovery for the same injury.

5.
6. 58. Some or all of plaintiffs' claims for damages may
7. be barred or reduced by the doctrine of comparative negligence.

8.
9. 59. The amount of liability, if any, for the acts
10. alleged is controlled by statute, including, without limitation,
11. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

12.
13. 60. If punitive damages were to be awarded or civil
14. or criminal penalties assessed in any other lawsuit against
15. Exxon relating to the oil spill, such award bars imposition of
16. punitive damages in this action.

17.
18. 61. Some of plaintiffs' claims, including claims for
19. punitive damages, are preempted by the comprehensive scheme of
20. federal statutes and regulations, including its system of
21. criminal and civil penalties, sanctions and remedies relevant to
22. the oil spill, and its scheme relevant to the protection of
23. subsistence interests.

1. 62. Plaintiffs' claims for punitive damages are pre-
2. cluded by the Alaska statutory scheme for civil and criminal
3. penalties.

4.
5. 63. Plaintiffs' claims for compensatory relief under
6. state law are preempted by federal statutory and common law
7. schemes for compensatory relief.

8.
9. 64. Certain claims asserted by plaintiffs are not
10. ripe for adjudication.

11.
12. 65. Those portions of AS 46.03 that were enacted
13. after the oil spill constitute an unlawful bill of attainder
14. violative of Article I, Section 10 of the United States
15. Constitution, and if applied to Exxon would also violate the due
16. process clauses of the United States and Alaska Constitutions,
17. and the contract clause of the United States Constitution.

18.
19. 66. Exxon and Exxon Shipping have acted pursuant to
20. government approval and direction with respect to the
21. containment and clean-up of the oil spill.

22.
23. 67. The corporate plaintiffs herein lack the capacity
24. to commence and maintain this action insofar as they have failed
25. to allege and prove that they have paid their Alaska biennial
26.

1. corporate taxes last due and have filed biennial reports for the
2. last reporting period.

3.
4. Prayer

5.
6. WHEREFORE, Exxon prays for judgment as follows:

7.
8. 1. That plaintiffs take nothing and be granted no
9. relief, legal or equitable;

10.
11. 2. That Exxon be awarded its costs in this action;

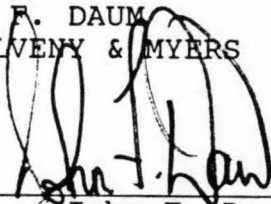
12. and
13.
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26.

1. 3. For such other and further relief as the Court
2. deems just and proper.

3.
4. DATED: August 15, 1989

Respectfully submitted,

5. CHARLES W. BENDER
6. PATRICK LYNCH
7. JOHN F. DAUM
8. O'MELVENY & MYERS

9. By 
John F. Daum

10.
11. JOHN F. CLOUGH, III
12. RANDALL J. WEDDLE
13. FAULKNER, BANFIELD, DOOGAN &
14. HOLMES

15. By 
Randall J. Weddle

16. Attorneys for Defendant Exxon
17. Corporation

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