

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

- 1. CHARLES W. BENDER
PATRICK LYNCH
- 2. JOHN F. DAUM
O'MELVENY & MYERS
- 3. 400 South Hope Street
Los Angeles, California 90071-2899
- 4. (213) 669-6000
- 5. JOHN F. CLOUGH, III
RANDALL J. WEDDLE
- 6. FAULKNER, BANFIELD, DOOGAN & HOLMES
550 W. 7th Avenue, Suite 1000
- 7. Anchorage, Alaska 99501-3510
(907) 274-0666

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)
 to Action No.)
 16. A89-264)
 17. ICICLE SEAFOODS, INC., et al.,)
 (P-170 through P-188);)
 18. v.)
 19.)
 20. ALYESKA PIPELINE SERVICE COMPANY)
et al., (D-1 through D-5))

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

No. A89-095 Civil
(Consolidated)
ANSWER OF EXXON
CORPORATION TO
COMPLAINT FILED
JUNE 23, 1989

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

433

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 Claim

9.

10. 1. Denies for lack of information or belief each and
11. every allegation in paragraph 1, except admits that plaintiffs'
12. suit is for compensatory and punitive damages allegedly arising
13. from the oil spill in Prince William Sound.

14.

15. 2. Answering paragraph 2, Exxon is not required to
16. respond to said paragraph.

17.

18. 3. Denies the allegations of paragraph 3, except
19. admits that the action arises out of the oil spill resulting
20. from the grounding of the EXXON VALDEZ.

21.

22. 4. Answering paragraph 4, admits that this Court has
23. subject matter jurisdiction over the claims alleged in the
24. complaint.

25.

26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 5. Answering paragraph 5, admits that this action
2. may be maintained in this judicial district, but denies that
3. Exxon Company, U.S.A. is an entity subject to suit or that it
4. can be deemed to reside in this district for venue purposes.
5.

6. 6-14. Denies for lack of information or belief each and
7. every allegation in paragraphs 6 through 14.
8.

9. 15. Admits the allegations of paragraph 15.
10.

11. 16. Denies the allegations of paragraph 16, except
12. admits that Alyeska Pipeline Service Company ("Alyeska") is a
13. Delaware corporation, the stock of which is owned by Amerada
14. Hess Pipeline Corporation, ARCO Pipe Line Company, BP Pipelines
15. (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline
16. Company, Phillips Alaska Pipeline Corporation, and Unocal
17. Pipeline Company; that the Owners of Alyeska are permittees
18. under the Agreement and Grant of Right-of-Way for Trans-Alaska
19. Pipeline; that Alyeska was formed by its then owners to
20. construct, operate and maintain the Trans-Alaska Pipeline
21. System, including the terminal facility at Valdez; that Alyeska
22. operates the Trans-Alaska Pipeline System, including the
23. terminal facility at Valdez; and that Alyeska formulated an oil
24. spill contingency plan and has certain responsibilities in
25. connection therewith.
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 17. Denies each and every allegation of paragraph 17,
2. except admits that Exxon Corporation is a corporation organized
3. under the laws of the State of New Jersey, with its principal
4. place of business in New York at 1251 Avenue of the Americas,
5. New York, NY 10021, and that the principal business of Exxon
6. Corporation is energy, involving exploration for and production
7. of crude oil, natural gas and petroleum products and exploration
8. for and mining and sale of coal; that Exxon Shipping Company
9. ("Exxon Shipping") is a Delaware corporation, the stock of which
10. is owned by Exxon, with its principal place of business in
11. Texas; that Exxon Shipping is the owner and operator of the
12. EXXON VALDEZ and that Exxon Shipping controlled the North Slope
13. crude oil cargo that the EXXON VALDEZ was carrying on March
14. 23-24, 1989, just prior to the discharge of crude oil into
15. Prince William Sound; that Exxon Company, USA is an
16. unincorporated division of Exxon, responsible for the operation
17. of Exxon's energy business within the United States, and that
18. its headquarters is at 800 Bell Street, Houston, Texas.

19.
20. 18. Denies the allegations of paragraph 18, except
21. admits that the EXXON VALDEZ, a 987-foot vessel, left the Port
22. of Valdez, Alaska, the southern terminal facility of the
23. Trans-Alaska Pipeline, on the evening of March 23, 1989, and
24. that the vessel was loaded with a cargo of North Slope crude
25. oil, and that it was bound for Long Beach, California.

26.

1. 19. Denies the allegations of paragraph 19, except
2. admits that the EXXON VALDEZ passed through the harbor and
3. Valdez Narrows while being navigated under the direction of a
4. harbor pilot, that Captain Joseph J. Hazelwood was on the bridge
5. of the vessel when the harbor pilot disembarked at the southern
6. end of the Narrows shortly after 11:20 p.m. Thursday evening,
7. March 23, 1989; and that Hazelwood's duties aboard the vessel
8. were within the scope of his employment by Exxon Shipping.
9.

10. 20. Denies the allegations of paragraph 20, except
11. admits that Captain Hazelwood left the bridge at approximately
12. 11:50 p.m. on Thursday evening, March 23, 1989, leaving Gregory
13. Cousins, the Third Mate, and Robert Kagan, the Helmsman, on the
14. bridge; and that the duties of Cousins and Kagan aboard the
15. vessel were within the scope of their employment by Exxon
16. Shipping.
17.

18. 21. Denies the allegations of paragraph 21, except
19. admits that the United States Coast Guard gave the EXXON VALDEZ
20. permission to leave the southbound shipping lane for reasons
21. including the reported presence of ice, and that the vessel
22. travelled through the northbound shipping lane and subsequently
23. out of that lane into the vicinity of Bligh Reef.
24.

25. 22. Denies the allegations of paragraph 22, except
26. admits that the vessel struck Bligh Reef, rupturing eight of its

1. crude oil cargo tanks, and that Captain Hazelwood was not on the
2. bridge when the vessel struck Bligh Reef.

3.

4. 23. Denies the allegations of paragraph 23.

5.

6. 24. Denies the allegations of paragraph 24, except
7. admits that eight of the vessel's oil tanks were punctured,
8. causing one of the largest United States oil spills from a
9. single vessel, and that approximately 258,000 barrels of crude
10. oil were discharged into Prince William Sound, and that some of
11. the oil has now spread to Cook Inlet, Kodiak and other areas.

12.

13. 25. Denies the allegations of paragraph 25 insofar as
14. they pertain to Exxon and Exxon Shipping and denies for lack of
15. information or belief the allegations of paragraph 24 insofar as
16. they pertain to Alyeska or other defendants, except admits that
17. Alyeska had formulated an oil spill contingency plan in
18. accordance with statutory and regulatory requirements.

19.

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

24.

25. 27-30. Denies the allegations of paragraphs 27 through

26. 30.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. Defense To Second Claim

2.
3. 31. Answering paragraph 31, realleges and
4. incorporates herein by reference each and every admission,
5. denial and allegation contained in paragraphs 1 through 30, as
6. if set out in full.

7.
8. 32. Denies the allegations of paragraph 32, except
9. admits that Exxon Shipping is the owner and operator of the
10. EXXON VALDEZ.

11.
12. 33-34. Denies for lack of information or belief the
13. allegations of paragraphs 33 and 34.

14.
15. 35. Denies the allegations of paragraph 35 insofar as
16. they pertain to Exxon, and denies said allegations for lack of
17. information or belief insofar as they apply to other defendants,
18. except admits that 43 U.S.C. §1653(c), to the extent applicable,
19. may make some persons strictly liable for certain types of
20. damages.

21.
22. Defense To Third Claim

23.
24. 36. Answering paragraph 36, reallages and
25. incorporates herein by reference each and every admission,
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. denial and allegation contained in paragraphs 1 through 35, as
2. if set out in full.

3.

4. 37-38. Denies the allegations of paragraphs 37 and 38
5. insofar as they pertain to Exxon and Exxon Shipping, and denies
6. for lack of information or belief the allegations of paragraphs
7. 37 and 38 insofar as they pertain to Alyeska or other
8. defendants.

9.

10. 39. Denies the allegations of paragraph 39 insofar as
11. they pertain to Exxon and Exxon Shipping, and denies for lack of
12. information or belief said allegations insofar as they apply to
13. other defendants.

14.

15. 40-41. Denies the allegations of paragraphs 40 and 41
16. insofar as they pertain to Exxon and Exxon Shipping, and denies
17. for lack of information or belief the allegations of
18. paragraphs 40 and 41 insofar as they pertain to Alyeska or other
19. defendants.

20.

21. 42. Denies the allegations of paragraph 42, except
22. admits that public records purport to show that Joseph J.
23. Hazelwood had previously been convicted of driving while under
24. the influence of alcohol.

25.

26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 43-45. Denies the allegations of paragraphs 43 through
2. 45.

3.
4. Defense To Fourth Claim

5.
6. 46. Answering paragraph 46, realleges and
7. incorporates herein by reference each and every admission,
8. denial and allegation contained in paragraph 1 through 45, as if
9. set out in full.

10.
11. 47. Denies the allegations of paragraph 47 insofar as
12. they pertain to Exxon and Exxon Shipping, and denies said
13. allegations for lack of information or belief insofar as they
14. pertain to Alyeska or other defendants.

15.
16. Defense To Fifth Claim

17.
18. 48. Answering paragraph 48, realleges and
19. incorporates herein by reference each and every admission,
20. denial and allegation in paragraphs 1 through 47, as if set out
21. in full.

22.
23. 49. Denies the allegations of paragraph 49, except
24. admits that AS 46.03.826(4)(B) defines the term hazardous
25. substance as including oil.

26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 50. Denies the allegations of paragraph 50, except
2. admits that the presence of oil in Prince William Sound has
3. caused damage to some animals.
4.

5. 51. Denies the allegations of paragraph 51, except
6. admits that Exxon owned the crude oil which was loaded on the
7. EXXON VALDEZ and released into Prince William Sound, and that
8. Exxon Shipping had control over said crude oil just prior to its
9. release into Prince William Sound.
10.

11. 52. Denies for lack of information or belief the
12. allegations of paragraph 52, except admits that AS 46.03.822, to
13. the extent applicable and not preempted, may make some persons
14. strictly liable to some persons for some damages.
15.

16. Defense To Sixth Claim
17.

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

23. 54-55. Denies the allegations of paragraphs 54 and 55
24. insofar as they pertain to Exxon and Exxon Shipping, and denies
25. said allegations for lack of information or belief insofar as
26. they pertain to Alyeska.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. Defense To Seventh Claim

2.
3. 56. Answering paragraph 56, realleges and
4. incorporates herein by reference each and every admission,
5. denial and allegation set forth in paragraphs 1 through 55, as
6. if set out in full.

7.
8. 57-58. Denies the allegations of paragraphs 57 and 58
9. insofar as they pertain to Exxon and Exxon Shipping, and denies
10. said allegations for lack of information or belief insofar as
11. they pertain to Alyeska.

12.
13. Defense To Eighth Claim

14.
15. 59. Answering paragraph 59, realleges and
16. incorporates herein by reference each and every admission,
17. denial and allegation in paragraphs 1 through 58, as if set out
18. in full.

19.
20. 60-61. Denies the allegations of paragraphs 60 and 61.

21.
22. Defense To Ninth Claim

23.
24. 62. Answering paragraph 62, realleges and
25. incorporates herein by reference each and every admission,
26.

1. denial and allegation set forth in paragraphs 1 through 61, as
2. if set out in full.

3.
4. 63. Denies the allegations of paragraph 63.

5.
6. General Denial

7.
8. 64. Denies each and every other allegation in plain-
9. tiff's complaint that was not specifically admitted herein.

10.
11. Affirmative and Other Defenses

12.
13. 65. The complaint and each count thereof fails to
14. state claims upon which relief can be granted.

15.
16. 66 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. 67. 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. are encompassed in such expenditures.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 68. 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. 69. 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. 70. Plaintiffs' claims for punitive damages are un-
14. constitutional under the United States Constitution, including,
15. without limitation, Article I, Section 8; Amendment V; and
16. Amendment XIV; and the Alaska Constitution, including, without
17. limitation, Article I, Section 7 and Article I, Section 12.

18.
19. 71. The damages alleged in the complaint were caused,
20. in part, by the action of others not joined as defendants herein
21. as to whom a right of contribution or indemnity should exist as
22. to Exxon. Exxon may seek leave of Court to join such additional
23. persons as third party defendants on the basis of further
24. discovery herein.

25.
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

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

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

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

21. 75. Some or all of plaintiffs' claims for damages may
22. be barred or reduced by the doctrine of comparative negligence.
23.

24. 76. The amount of liability, if any, for the acts
25. alleged is controlled by statute, including, without limitation,
26. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 77. If punitive damages were to be awarded or civil
2. or criminal penalties assessed in any other lawsuit against
3. Exxon relating to the oil spill, such award bars imposition of
4. punitive damages in this action.

5.
6. 78. Some of plaintiffs' claims, including claims for
7. punitive damages, are preempted by the comprehensive scheme of
8. federal statutes and regulations, including its system of
9. criminal and civil penalties, sanctions and remedies relevant to
10. the oil spill, and its scheme relevant to protection of
11. subsistence interests.

12.
13. 79. Plaintiffs' claims for punitive damages are pre-
14. cluded by the Alaska statutory scheme for civil and criminal
15. penalties.

16.
17. 80. Plaintiffs' claims for compensatory relief under
18. state law are preempted by federal statutory and common law
19. schemes for compensatory relief.

20.
21. 81. Certain claims asserted by plaintiffs are not
22. ripe for adjudication.

23.
24. 82. Those portions of AS 46.03 that were enacted
25. after the oil spill constitute an unlawful bill of attainder
26. violative of Article I, Section 10 of the United States

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. Constitution, and if applied to Exxon would also violate the due
2. process clauses of the United States and Alaska Constitutions,
3. and the contract clause of the United States Constitution.
4.

5. 83. Certain theories of relief may not be maintained
6. because these theories are based upon the exercise by Exxon of
7. federal and state constitutional rights to petition the federal
8. and state governments with respect to the passage and
9. enforcement of laws.
10.

11. 84. Exxon and Exxon Shipping have acted pursuant to
12. government approval and direction with respect to the
13. containment and clean-up of the oil spill.
14.

15. 85. The corporate plaintiffs herein lack the capacity
16. to commence and maintain this action insofar as they have failed
17. to allege and prove that they have paid their Alaska biennial
18. corporate taxes last due and have filed biennial reports for the
19. last reporting period.
20.

21. Prayer
22.

23. WHEREFORE, Exxon prays for judgment as follows:
24.

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

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

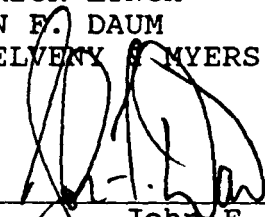
1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.

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

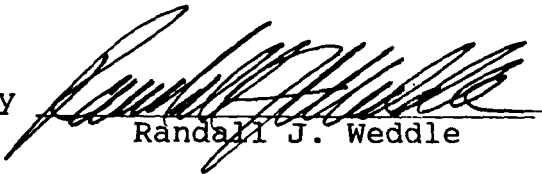
DATED: August 15, 1989

Respectfully submitted,

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

By 
John F. Daum

JOHN F. CLOUGH, III
RANDALL J. WEDDLE
FAULKNER, BANFIELD, DOOGAN &
HOLMES

By 
Randall J. Weddle

Attorneys for Defendant Exxon
Corporation

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CHARLES W. BENDER
PATRICK LYNCH
JOHN F. DAUM
O'MELVENY & MYERS
400 South Hope Street
Los Angeles, California 90071-2899
(213) 669-6000

JOHN F. CLOUGH, III
RANDALL J. WEDDLE
FAULKNER, BANFIELD, DOOGAN & HOLMES
550 W. 7th Avenue, Suite 1000
Anchorage, Alaska 99501-3510
(907)274-0666

Attorneys for Defendants
Exxon Corporation and
Exxon Pipeline Company

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)	
)	
The EXXON VALDEZ	)	No. A89-095 Civil
	)	(Consolidated)
This Document Relates)	
to Action No.)	
)	
<u>A89-270</u>)	
Seldovia Native Ass'n,	)	ANSWER OF EXXON
<u>et al.</u> , (P-201);	)	CORPORATION AND EXXON
	)	PIPELINE COMPANY TO
v.	)	CLASS ACTION COMPLAINT
Alyeska Pipeline Service Company,	)	FILED JUNE 30, 1989
<u>et al.</u> , (D-1 through D-5; D-10)	
<u>through D-15; D-17 and D-24)</u>)	

Exxon Corporation, also erroneously sued herein as Exxon Co., USA, and for convenience identified in this answer as "Exxon", and Exxon Pipeline Company, for convenience identified in this answer as "Exxon Pipeline", as their answer to the complaint herein admit, deny and allege as follows:

FILED

AUG 15 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

434

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.

1. As to each and every allegation denied herein for lack of information or belief, allege that they are without knowledge or information sufficient categorically to admit or deny the said allegation at this time, wherefore they deny each said allegation using the phrase "deny for lack of information or belief."

Defense To Count I

2. Answering paragraph 2, Exxon and Exxon Pipeline are not required to respond to the allegations in paragraph 2.

3. Admit the allegations of paragraph 3.

4. Answering paragraph 4, admit that plaintiffs purport to bring claims for relief based on the grounds alleged, but deny that plaintiffs can state a claim for relief based on said grounds.

5. Deny each and every allegation of paragraph 5, except admit that this action may be brought in this district under 28 U.S.C. §1391.

6. Deny for lack of information or belief the allegations in paragraph 6.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

7. Admit the allegations in paragraph 7.

8. Deny the allegations of paragraph 8, except admit that 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; and that the owners of Alyeska are permittees under the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline; that Alyeska operates the Trans-Alaska Pipeline System, including the terminal at Valdez; and that Alyeska loaded the EXXON VALDEZ with North Slope crude oil at the Valdez Terminal.

9. Deny the allegations of paragraph 9 except admit that Exxon Corporation is a corporation organized under the laws of the state of New Jersey, with its principal place of business in New York at 1251 Avenue of the Americas, New York, New York 10021, and that the principal business of Exxon Corporation is energy, involving exploration for the production of crude oil, natural gas and petroleum products and exploration for the mining and sale of coal.

10. Deny the allegations of paragraph 10, except admit that Exxon Shipping is a Delaware Corporation, that Exxon Corporation owns all of Exxon Shipping's stock, that its

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. principal place of business is Texas and that it is the owner
2. and operator of the EXXON VALDEZ.

3.
4. 11. Deny the allegations of paragraph 11, except
5. admit 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 tha
8. its headquarters is at 800 Bell Street, Houston, Texas.

9.
10. 12-18. Answering paragraphs 12 through 18, admit that
11. plaintiffs purport to define certain terms, but deny the
12. allegations and deny that any subsequent use of those terms in
13. the complaint is necessarily accurate or appropriate.

14.
15. 19. Deny the allegations of paragraph 19, except
16. admit that on Thursday evening, March 23, 1989, the EXXON
17. VALDEZ, which is approximately 987 feet long and weighs
18. approximately 211,000 deadweight tons, left the Port of Valdez,
19. Alaska, the southern terminal facility of the Trans-Alaska
20. Pipeline System, bound for Long Beach, California.

21.
22. 20. Deny the allegations in paragraph 20, except
23. admit that the EXXON VALDEZ was loaded with approximately 1.2
24. million barrels of crude oil which had been shipped from
25. Alaska's North Slope through the Trans-Alaska Pipeline.

26.

1. 21. Deny the allegations of paragraph 21, except
2. admit that the EXXON VALDEZ passed through the Valdez Narrows
3. under the direction of a harbor pilot, who subsequently
4. disembarked; that Captain Joseph J. Hazelwood was on the bridge
5. of the vessel when the harbor pilot disembarked, and that
6. Captain Hazelwood's duties as Master of the vessel were within
7. the scope of his employment by Exxon Shipping.
8.

9. 22. Deny the allegations of paragraph 22, except
10. admit that Captain Hazelwood left the bridge, leaving Gregory
11. Cousins, the third mate, and Robert Kagan, the helmsman, on the
12. bridge, and that the duties of Cousins as third mate and Kagan
13. as helmsman were within the scope of their employment by Exxon
14. Shipping.
15.

16. 23. Deny the allegations of paragraph 23, except
17. admit that the U.S. Coast Guard gave the EXXON VALDEZ permission
18. to leave the southbound shipping lane for reasons that included
19. earlier reports that it contained ice that had calved from a
20. glacier to the northwest.
21.

22. 24. Deny the allegations of paragraph 24, except
23. admit that the vessel travelled through the northbound lane and
24. subsequently struck Bligh Reef.
25.
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 25. Deny the allegations of paragraph 25, except
2. admit that the vessel was outside the channel when it struck
3. Bligh Reef, which punctured some of the tanks and damaged a
4. portion of the hull.

5.
6. 26-27. Deny the allegations of paragraphs 26 and 27.

7.
8. 28. Deny the allegations of paragraph 28, except
9. admit that the vessel was loaded with approximately 53,000,000
10. gallons of crude oil, that the grounding on Bligh Reef puncture
11. eight of the vessel's oil tanks, causing the largest United
12. States oil spill from a single vessel, and that approximately
13. 258,000 barrels of crude oil were spilled into Prince William
14. Sound.

15.
16. 29. Deny the allegations of paragraph 29.

17.
18. 30. Answering paragraph 30, reallege and incorporate
19. herein by reference each and every admission, denial and
20. allegation contained in paragraphs 1 through 29, as if set out
21. in full.

22.
23. 31-35. Answering paragraphs 31 through 35, Exxon and
24. Exxon Pipeline are not required to answer allegations made
25. against Alyeska. If response were required, Exxon and Exxon
26. Shipping deny the allegations in paragraphs 31 through 35.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. Defense to Count II

2.

3. 36. Answering paragraph 36, reallege and incorporate
4. herein by reference each and every admission, denial and
5. allegation contained in paragraphs 1 through 35, as if set out
6. in full.

7.

8. 37. Deny the allegations of paragraph 37, except
9. admit that Exxon Shipping is the owner and operator of the EXXON
10. VALDEZ.

11.

12. 38. Deny for lack of information or belief the
13. allegations of paragraph 38.

14.

15. 39. Deny the allegations of paragraph 39, except
16. admit that damages to plaintiffs, if any, were not caused by an
17. act of war.

18.

19. 40. Deny for lack of information or belief the
20. allegations of paragraph 40, except admit that the events about
21. which plaintiffs complain caused some damages to sea otters and
22. birds.

23.

24. 41. Deny the allegations of Paragraph 41, except
25. admit that 43 U.S.C. Section 1653(c), to the extent applicable,

26.

1. may make some persons strictly liable to some persons for some
2. damages.

3.

4. Defense to Count III

5.

6. 42. Answering paragraph 42, reallege and incorporate
7. herein by reference each and every admission, denial and
8. allegation contained in paragraphs 1 through 41, as if set out
9. in full.

10.

11. 43. Deny the allegations of paragraph 43 insofar as
12. they pertain to Exxon, Exxon Shipping and Exxon Pipeline and
13. deny for lack of information or belief said allegations insofar
14. as they pertain to Alyeska or other defendants.

15.

16. 44. Deny the allegations of paragraph 44 insofar as
17. they pertain to Exxon, Exxon Shipping and Exxon Pipeline and
18. deny for lack of information or belief said allegations insofar
19. as they pertain to other defendants.

20.

21. 45. Deny for lack of information or belief the
22. allegations of paragraph 45.

23.

24. 46. Deny the allegations of paragraph 46.

25.

26.

1 47. Deny the allegations of paragraph 47 insofar as
2 they pertain to Exxon, Exxon Shipping and Exxon Pipeline and
3 deny for lack of information or belief said allegations insofar
4 as they pertain to other defendants, and further allege that the
5 words "enough equipment to handle a spill of this size" are too
6 vague to permit an intelligible response.

7
8 48-52. Deny the allegations of paragraphs 48 through
9 52.

10
11 53. Deny the allegations of paragraph 53 insofar as
12 they pertain to Exxon, Exxon Shipping and Exxon Pipeline and
13 deny for lack of information or belief said allegations insofar
14 as they pertain to other defendants.

15
16 54. Deny the allegations of paragraph 54.

17
18 Defense to Count IV

19
20 55. Answering paragraph 55, reallege and incorporate
21 herein by reference each and every admission, denial and
22 allegation contained in paragraphs 1 through 54, as if set out
23 in full.

24
25 56. Deny for lack of information or belief the
26 allegations of paragraph 56, except admit that public records

1. purport to show that Captain Hazelwood has been convicted for
2. driving while under the influence of alcohol.
3.

4. 57-62. Deny the allegations of paragraphs 57 through
5. 62.
6.

7. Defense to Count V
8.

9. 63. Answering paragraph 63, reallege and incorporate
10. herein by reference each and every admission, denial and
11. allegation contained in paragraphs 1 through 62, as if set out
12. in full.
13.

14. 64. Deny the allegations of paragraph 64.
15.

16. Defense to Count VI
17.

18. 65. Answering paragraph 65, reallege and incorporate
19. herein by reference each and every denial, admission and
20. allegation contained in paragraphs 1 through 64, as if set out
21. in full.
22.

23. 66. Deny the allegations of paragraph 66.
24.
25.
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. Defense to Count VII

2.
3. 67. Answering paragraph 67, reallege and incorporate
4. herein by reference each and every admission, denial and
5. allegation contained in paragraphs 1 through 66, as if set out
6. in full.

7.
8. 68. Deny the allegations of paragraph 68, except
9. admit that A.S. 46.03.826(4)(B) defines oil to be a hazardous
10. substance and that approximately 258,000 barrels of crude oil
11. were discharged into the Prince William Sound as a result of the
12. grounding of the EXXON VALDEZ.

13.
14. 69. Deny the allegations of paragraph 69.

15.
16. 70. Deny the allegations of paragraph 70, except
17. admit that Exxon owned the crude oil and that Exxon Shipping
18. controlled the crude oil immediately prior to its release into
19. the Prince William Sound.

20.
21. 71. Deny for lack of information or belief the
22. allegations in paragraph 71, except admit that the oil spill was
23. not caused solely as a result of an act of war.

24.
25. 72. Deny the allegations of paragraph 72.

1. 73. Deny for lack of information or belief the
2. allegations of paragraph 73, except admit that AS 46.03.822, is
3. applicable and not preempted, may make some persons strictly
4. liable to some persons for some damages.

5.
6. Defense to Count VIII
7.

8. 74. Answering paragraph 74, reallege and incorporate
9. herein by reference each and every denial, admission and
10. allegation contained in paragraphs 1 through 73, as if set out
11. in full.

12.
13. 75-78. Deny the allegations in paragraphs 75 through
14. 78 insofar as they pertain to Exxon, Exxon Shipping and Exxon
15. Pipeline, and deny said allegations for lack of information or
16. belief insofar as they pertain to other defendants.

17.
18. Defense to Count IX
19.

20. 79. Answering paragraph 79, reallege and incorporate
21. herein by reference each and every admission, denial and
22. allegation contained in paragraphs 1 through 78, as if set out
23. in full.

24.
25. 80-83. Deny the allegations in paragraphs 80 through
26. 83 insofar as they pertain to Exxon, Exxon Shipping and Exxon

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. Pipeline, and deny said allegations for lack of information
2. belief insofar as they pertain to other defendants.

3.
4. Defense to Count X

5.
6. 84. Answering paragraph 84, reallege and incorporat
7. herein by reference each and every admission, denial and
8. allegation contained in paragraphs 1 through 83, as if set out
9. in full.

10.
11. 85-87. Deny the allegations in paragraphs 85 through 8
12. insofar as they pertain to Exxon, Exxon Shipping and Exxon
13. Pipeline, and deny said allegations for lack of information or
14. belief insofar as they pertain to other defendants.

15.
16. Defense to Count XI

17.
18. 88. Answering paragraph 88, reallege and incorporate
19. herein by reference each and every admission, denial and
20. allegation contained in paragraphs 1 through 87, as if set out
21. in full.

22.
23. 89-90. Deny the allegations in paragraphs 89 and 90.

24.
25.
26.

1. General Denial

2.

3. 91. Deny each and every other allegation in plain-
4. tiffs' complaint that was not specifically admitted herein.

5.

6. Affirmative and Other Defenses

7.

8. 92. The complaint and each count thereof fails to
9. state claims upon which relief can be granted.

10.

11. 93. Exxon and Exxon Pipeline are informed and believe
12. that plaintiffs lack standing to claim or recover damages based
13. on the allegations of the complaint.

14.

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

22.

23. 95. Certain persons engaged or employed in connection
24. with activities related to containment and cleanup of the oil
25. released from the EXXON VALDEZ were thereby able to avoid or
26. mitigate damage from the interruption of fishery and other

1. activities. Payments received by such persons are a setoff
2. against losses, if any, resulting from the interruption of
3. fishery and other activities.

4.
5. 96. To the extent that persons able to mitigate
6. damages failed to do so, defendants cannot be held liable to
7. such persons for avoidable losses.

8.
9. 97. Claims by some persons or entities who may be
10. within the purported classes have been settled and released.

11.
12. 98. Plaintiffs' claims for punitive damages are un-
13. constitutional under the United States Constitution, including,
14. without limitation, Article I, Section 8; Amendment V; and
15. Amendment XIV; and the Alaska Constitution, including, without
16. limitation, Article I, Section 7 and Article I, Section 12.

17.
18. 99. The damages alleged in the complaint were caused,
19. in part, by the action of others not joined as defendants herein
20. as to whom a right of contribution or indemnity should exist as
21. to Exxon and Exxon Pipeline. Exxon and Exxon Pipeline may seek
22. leave of Court to join such additional persons as third party
23. defendants on the basis of further discovery herein.

24.
25. 100. Plaintiffs' claims sound in maritime tort and are
26. subject to applicable admiralty limits on recovery of damages

1. for remote economic loss unaccompanied by physical injury to
2. person or property.

3.
4. 101. Numerous persons and entities have filed lawsuit
5. against Exxon and Exxon Pipeline relating to the oil spill, some
6. of whom purport to represent the plaintiffs in this action. In
7. the event of any judgment or judgments in such other lawsuits
8. against Exxon or Exxon Pipeline and in favor of persons whose
9. claims are encompassed in this action, such judgment or judg-
10. ments will be res judicata as to the claims of such persons
11. herein.

12.
13. 102. Numerous persons and entities have filed other
14. lawsuits against Exxon, Exxon Pipeline and various other defen-
15. dants, and to the extent there is a recovery in said other law-
16. suits encompassing claims made by plaintiffs herein, recovery on
17. the claims herein is barred to the extent that it would repre-
18. sent a multiple recovery for the same injury.

19.
20. 103. Some or all of plaintiffs' claims for damages may
21. be barred or reduced by the doctrine of comparative negligence.

22.
23. 104. The amount of liability, if any, for the acts
24. alleged is controlled by statute, including, without limitation,
25. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

26.

1. 105. If punitive damages were to be awarded or civil
2. or criminal penalties assessed in any other lawsuit against
3. Exxon or Exxon Pipeline relating to the oil spill, such award
4. bars imposition of punitive damages in this action.

5.
6. 106. Some or all of plaintiffs' claims, including
7. claims for punitive damages, are preempted by the comprehensive
8. scheme of federal statutes and regulations, including its system
9. of criminal and civil penalties, sanctions and remedies relevant
10. to the oil spill, and its scheme relevant to protection of
11. subsistence interests.

12.
13. 107. Plaintiffs' claims for punitive damages are pre-
14. cluded by the Alaska statutory scheme for civil and criminal
15. penalties.

16.
17. 108. Plaintiffs' claims for compensatory relief under
18. state law preempted by federal statutory and common law schemes
19. for compensatory relief.

20.
21. 109. Certain claims asserted by plaintiffs are not
22. ripe for adjudication.

23.
24. 110. Those portions of AS 46.03 that were enacted
25. after the oil spill constitute an unlawful bill of attainder
26. violative of Article I, Section 10 of the United States

1 Constitution, and if applied to Exxon or to Exxon Pipeline would
2 also violate the due process clauses of the United States and
3 Alaska Constitutions, and the contract clause of the United
4 States Constitution.
5

6 111. Certain theories of relief may not be maintained
7 because these theories are based upon the exercise by Exxon and
8 Exxon Pipeline of federal and state constitutional rights to
9 petition the federal and state governments with respect to the
10 passage and enforcement of laws.
11

12 112. Plaintiffs fail to satisfy the requirements for
13 the injunctive relief they seek.
14

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

19 114. ANILCA, 16 U.S.C. § 3111, et seq., provides the
20 exclusive federal vehicle for Alaskan Natives and rural Alaskans
21 to seek protection for federally recognized subsistence
22 interests harmed by the oil spill, and therefore all other
23 alleged federal bases to recover such losses are barred.
24

25 115. The corporate plaintiff herein lacks the capacity
26 to commence and maintain this action insofar as it has failed to

1. allege and prove that it has paid its Alaska biennial corporate
2. taxes last due and has filed biennial reports for the last
3. reporting period.

4.
5. Prayer

6.
7. WHEREFORE, Exxon and Exxon Pipeline pray for judgment
8. as follows:

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

12.
13. 2. That Exxon and Exxon Pipeline be awarded their
14. costs in this action; and

15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.

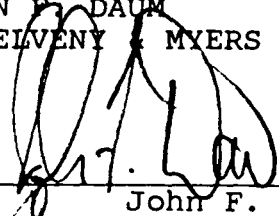
FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

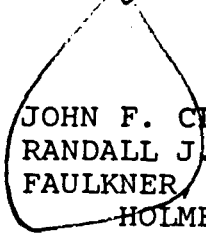
1. 3. For such other and further relief as the Court
2. deems just and proper.
3.

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 Defendants
17. Exxon Corporation and Exxon
18. Pipeline Company
19.
20.
21.
22.
23.
24.
25.
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

FAULKNER, BANFIELD, DOOGAN & HOLMES
50 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

- 1. CHARLES W. BENDER
PATRICK LYNCH
- 2. JOHN F. DAUM
O'MELVENY & MYERS
- 3. 400 South Hope Street
Los Angeles, California 90071-2899
- 4. (213) 669-6000
- 5. JOHN F. CLOUGH, III
RANDALL J. WEDDLE
- 6. FAULKNER, BANFIELD, DOOGAN & HOLMES
550 W. 7th Avenue, Suite 1000
- 7. Anchorage, Alaska 99501-3510
(907)274-0666

- 8. Attorneys for Defendants
- 9. Exxon Corporation and
Exxon Pipeline Company

- 10.
- 11. Honorable H. Russell Holland
- 12. IN THE UNITED STATES DISTRICT COURT
- 13. FOR THE DISTRICT OF ALASKA

- 14. In re)
- 15.)
- 16. The EXXON VALDEZ) No. A89-095 Civil
(Consolidated)
- 17. This Document Relates)
- 18. to Action Nos.)
- 19.)
- 20. A89-110)
- 21. THE EYAK NATIVE VILLAGE, et al.,) ANSWER OF EXXON
P-118 through P-138);) CORPORATION AND EXXON
v.) PIPELINE COMPANY
22. EXXON CORPORATION, etal.,) TO AMENDED AND
(D-1 through D-3);) CONSOLIDATED CLASS
23.) ACTION COMPLAINT
A89-099) FILED JULY 17, 1989
24. CORDOVA DISTRICT FISHERMEN UNITED)
INC., etal.,)
(P-16 through P-18);)
25. v.)
26. EXXON CORPORATION, et al.,)
(D-1 through D-3);)

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

H/435

1. A89-297
PRINCE WILLIAM SOUND SEINERS
2. ASSOCIATION, et al.,
3. (P-202 through P-206);
4. vs.
5. EXXON CORPORATION, et al.,
6. D-1 through D-3);
7. A89-109
8. PHILIP H. MCCRUDDEN et al.,
9. (P-43 through P-44);
10. vs.
11. EXXON SHIPPING CO., et al.,
12. D-2 through D-4 and D-7 through D-8);
13. A89-166
14. PHILIP G. MCCRUDDEN (P-145);
15. vs.
16. EXXON CORPORATION, et al.,
17. (D-1 through D-4 and D-7 through D-8
18. A89-102
19. SAMISH MARITIME, INC., et al.,
20. (P-19 and P-21);
21. vs.
22. EXXON SHIPPING CO., et al.,
23. (D-2 through D-4);
24. A89-104
25. MICHAEL MCALLISTER, et al.,
26. (P-24 through P-28);
27. vs.
28. EXXON SHIPPING CO., et al.,
29. (D-2 through D-4);
30. A89-265
31. RANDALL P. BABICH, et al.,
32. (P-189 and P-195 through P-196)
33. vs.
34. EXXON SHIPPING CO., et al.,
35. (D-2 through D-4);
36. A89-299
37. ALBERT CARROLL, et al.,
38. (P-225, P-246 through P-247 and P-267);
39. vs.
40. EXXON SHIPPING CO., et al.,
41. (D-2 through D-4);
- 42.

1. A89-111
GERALD E. THORNE, et al.,
P-65 through P-67);
vs.
3. EXXON CORPORATION, et al.,
(D-1 through D-4, D-7 through D-9);
4. A89-126
KENT HERSCHLEB, et al.,
(P-74 through P-76);
vs.
6. EXXON CORPORATION, et al.,
D-1 through D-4);
7. A89-129
TOM COPELAND (P-77);
vs.
9. EXXON CORPORATION, et al.,
(D-1 through D-4, D-7 through D-8
and D-10);
10. A89-141
MARC VAN DRIESSCHE (P-112);
vs.
12. EXXON CORPORATION, et al.,
(D-1 through D-3);
13. A89-096
CRUZAN FISHERIES, INC., et al.,
(P-13 through P-15)
vs.
15. ALYESKA PIPELINE SERVICE CO., et al.,
(D-1 through D-4);
16. A89-103
STEVEN T. OLSEN (p-22);
vs.
18. EXXON CORPORATION, et al.,
D-1 through D-4);
19. A89-107
GRANT C. BAKER et al.,
(P-40 through P-41),
vs.
21. EXXON CORPORATION, et al.,
D-1 through D-4);
22. A89-125
DALE HOFMAN (P-73);
vs.
24. EXXON CORPORATION, et al.,
D-1 through D-4);
25. A89-125
DALE HOFMAN (P-73);
vs.
26. EXXON CORPORATION, et al.,
D-1 through D-4);

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

- 1)
2. A89-108)
3. RICHARD CESARI (P-42);)
4. vs.)
5. EXXON CORPORATION, et al.,)
6. D-1 through D-4);)
7.)
8. A89-173)
9. KEITH H. GORDAOFF et al.,)
10. (P-146 through P-147);)
11. vs.)
12. EXXON CORPORATION, et al.,)
13. D-1 through D-4 and D-7 through D-8);)
14.)
15. A89-095)
16. SEA HAWK SEAFOODS, INC., et al.,)
17. P-1, P-3 and P-8 through P-12);)
18. vs.)
19. EXXON CORPORATION, et al)
20. (D-1 through D-3);)
21.)
22. A89-165)
23. ALASKAN SPORTFISHING ASSOCIATION,)
24. et al.,)
25. (P-139 through P-144);)
26. vs.)
27. ALYESKA PIPELINE SERVICE CO., et al.,)
28. (D-1 through D-4 and D-10 through)
29. D-15).)
30.)
31.)
32.)
33.)
34.)
35.)
36.)
37.)
38.)
39.)
40.)
41.)
42.)
43.)
44.)
45.)
46.)
47.)
48.)
49.)
50.)
51.)
52.)
53.)
54.)
55.)
56.)
57.)
58.)
59.)
60.)
61.)
62.)
63.)
64.)
65.)
66.)
67.)
68.)
69.)
70.)
71.)
72.)
73.)
74.)
75.)
76.)
77.)
78.)
79.)
80.)
81.)
82.)
83.)
84.)
85.)
86.)
87.)
88.)
89.)
90.)
91.)
92.)
93.)
94.)
95.)
96.)
97.)
98.)
99.)
100.)

18. Exxon Corporation, for convenience identified in this
19. answer as "Exxon", and Exxon Pipeline Company, for convenience
20. identified in this answer as "Exxon Pipeline", as their answer
21. to the complaint herein admit, deny and allege as follows:
22.

23. As to each and every allegation denied herein for lack
24. of information or belief, Exxon and Exxon Pipeline allege that
25. they are without knowledge or information sufficient
26. categorically to admit or deny the said allegation at this time,

1. wherefore they deny each said allegation using the phrase "deny
2. for lack of information or belief."
3.

4. Defense To First Claim for Relief
5.

6. 1. Admit the allegations of paragraph 1, except deny
7. for lack of information or belief that the court has subject
8. matter jurisdiction under 28 U.S.C. § 1362.
9.

10. 2. Answering the allegations of paragraph 2, admit
11. that this civil action may be brought in this judicial district
12. under 28 U.S.C. § 1391, that the grounding of the EXXON VALDEZ
13. and subsequent oil spill occurred in this district, and that
14. these and other defendants were and are doing business in this
15. district; but deny for lack of information or belief that
16. defendant Nelson is doing business in this district, and deny
17. for lack of information or belief that defendants Joseph
18. Hazelwood and Gregory Cousins are present and doing business in
19. this district.
20.

21. 3-64. Deny for lack of information or belief each and
22. every allegation contained in paragraphs 3 through 64.
23.

24. 65. Deny each and every allegation of paragraph 65,
25. except admit that Exxon is a corporation organized under the
26. laws of the State of New Jersey with its principal place of

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1 business at 1251 Avenue of the Americas, New York, NY 10020,
2 and that the principal business of Exxon is energy, involving
3 exploration for and production of crude oil, natural gas and
4 petroleum products, and exploration for and mining and sale of
5 coal; and admit that Exxon Company, U.S.A. is an unincorporated
6 division of Exxon which is responsible for the operation of
7 Exxon's energy business within the United States; admit that
8 Exxon owns all of Exxon Shipping Company's stock; and admit that
9 Exxon was owner of the crude oil cargo on board the EXXON VALDEZ
10 on March 24, 1989, some of which was discharged into the waters
11 of Prince William Sound.

12
13 66. Deny each and every allegation of paragraph 66
14 except admit that Exxon Shipping Company ("Exxon Shipping") is a
15 Delaware Corporation with its executive office in Houston,
16 Texas, and that Exxon Shipping is the registered owner and
17 operator of the vessel EXXON VALDEZ, and that Exxon owns all the
18 stock of Exxon Shipping.

19
20 67. Deny each and every allegation of paragraph 67.

21
22 68. Answering paragraph 68, Exxon and Exxon Pipeline
23 admit that plaintiffs purport to define certain terms, but deny
24 the allegations and deny that any subsequent use of those terms
25 in the Amended and Consolidated Class Action Complaint is
26 necessarily accurate or appropriate.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 69. Deny each and every allegation of paragraph 69,
2. except admit that Alyeska Pipeline Service Company ("Alyeska"
3. is a Delaware Corporation with its principal place of business
4. in Alaska; that Alyeska is owned by Amerada Hess Pipeline
5. Corporation, ARCO Pipe Line Company, B.P. Pipelines (Alaska),
6. Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company,
7. Phillips Alaska Pipeline Corporation and Unocal Pipeline
8. Company; that Alyeska was formed by its then owners to
9. construct, operate and maintain the Trans-Alaska Pipeline
10. System, including the terminal facility at Valdez; that Alyeska
11. operates the Trans-Alaska Pipeline System, including the
12. terminal facility at the Port of Valdez; and that Alyeska
13. formulated an oil spill contingency plan and had certain respon-
14. sibilities in connection therewith.

15.
16. 70-76. Admit the allegations of paragraphs 70 through
17. 76.

18.
19. 77. Deny the allegations of paragraph 77.

20.
21. 78. Admit the allegations of paragraph 78.

22.
23. 79. Answering paragraph 79, Exxon and Exxon Pipeline
24. admit that plaintiffs purport to define certain terms, but deny
25. the allegation and further deny that any subsequent use of those
26.

1. terms in the Amended and Consolidated Class Action Complaint is
2. necessarily accurate or appropriate.

3.
4. 80. Deny the allegations of paragraph 80, except
5. admit that Joseph Hazelwood was the Master of the EXXON VALDEZ,
6. and that Hazelwood was an employee of Exxon Shipping and that
7. his duties as Master of said vessel were within the scope of his
8. employment.

9.
10. 81. Deny the allegations of paragraph 81, except
11. admit that Gregory Cousins was the Third Mate on the EXXON
12. VALDEZ and the officer on the bridge when the vessel ran
13. aground, and that at such time Cousins was an employee of Exxon
14. Shipping and that his duties as Third Mate on the EXXON VALDEZ
15. were within the scope of his employment.

16.
17. 82. Admit the allegations of paragraph 82.

18.
19. 83-94. Deny for lack of information and belief each and
20. every allegation in paragraphs 83 through 94, except admit that
21. plaintiffs purport to bring this action on their own behalf and
22. seek to represent five classes consisting of others purportedly
23. similarly situated and that plaintiffs purport to define as
24. class members those persons for and on whose behalf this action
25. is purportedly brought.

26.

1 95. Deny each and every allegation of paragraph 95,
2. except admit that in early 1969 Atlantic Richfield Company,
3. Humble Oil and Refining Company and British Petroleum Company
4. proposed to build a pipeline to transport oil from Prudhoe Bay
5. on the North Slope of Alaska to a marine terminal at Valdez and
6. that when Alyeska was formed in August 1970 its then owners
7. proposed to implement such a project.

8.
9. 96. Deny the allegations of paragraph 96, except
10. admit that there was debate about the environmental risks
11. associated with the project.

12.
13. 97. Deny the allegations of paragraph 97, except
14. admit that the owners of Alyeska favored the Port of Valdez for
15. locating the southern terminal for TAPS, and that some fishermen
16. and inhabitants of Prince William Sound expressed concern about
17. the environmental impact of a major oil spill in the region.

18.
19. 98. Answering paragraph 98, admit that portions of
20. Prince William Sound are within the boundaries of the Chugach
21. National Forest and the Nellie Juan-College Fjord Wilderness
22. study area; but deny the remainder of the allegations of said
23. paragraph 98 for lack of information or belief.

24.
25. 99. Deny the allegations of paragraph 99, except
26. admit: that on March 26, 1970, the Wilderness Society, the

1. Friends of the Earth and the Environmental Defense Fund filed a
2. complaint for declaratory and injunctive relief against the
3. Secretary of the Interior, alleging that permits for the
4. proposed Trans-Alaska Pipeline System would violate the
5. right-of-way width restriction of Section 28 of the Mineral
6. Leasing Act of 1920; that on April 28, 1970, the District Court
7. for the District of Columbia issued a preliminary injunction
8. enjoining issuance of a permit for the project; that on April
9. 24, 1971, the Cordova Fishermen's Union filed an action against
10. the Secretary of the Interior in the District Court for the
11. District of Columbia, also asserting that issuance of a permit
12. would violate the Mineral Leasing Act of 1920 and the National
13. Environmental Protection Act; that on February 9, 1973, the
14. Court of Appeals for the District of Columbia held that a grant
15. of right-of-way by the Secretary of the Interior would violate
16. the width limitations of Section 28 of the Mineral Lands Leasing
17. Act of 1920, and that as a result of this legal impediment, the
18. owners of Alyeska sought legislation from Congress authorizing
19. the TAPS project.

20.
21. 100. Deny the allegations of paragraph 100, except
22. admit that during the legal and legislative processes which
23. culminated in authorization for the TAPS project, various
24. concerns were expressed by opponents of the project, some of
25. whom expressed environmental concerns.

26.

1. 101. Deny the allegations of paragraph 101, except
2. admit that the owners of Alyeska, as permittees under the
3. Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline,
4. expressed the intent to employ all practicable means and
5. measures to preserve and protect the environment, to balance
6. environmental amenities and values with economic practicalities
7. and technical capabilities, and to construct, operate and
8. maintain TAPS in accordance with sound engineering practice.
9.

10. 102. Deny the allegations of paragraph 102, except
11. admit that in passing the TAPS Authorization Act, Congress
12. expressly declared that the early development and delivery of
13. oil and gas from Alaska's North Slope to domestic markets was in
14. the national interest because of growing domestic shortages and
15. increasing dependence upon insecure foreign sources and that the
16. earliest possible construction of a Trans-Alaska Oil Pipeline
17. from the North Slope of Alaska to Port Valdez would make the
18. extensive proven and potential reserves of low-sulfur oil
19. available for domestic use and would best serve the national
20. interest; that the TAPS Authorization Act was signed into law on
21. November 16, 1973, 43 U.S.C. §§ 1651, et seq., directing the
22. Secretary of the Interior and other appropriate federal officers
23. and agencies to issue and take all necessary actions to
24. administer and enforce rights-of-way, permits, leases and other
25. authorizations necessary for the Trans-Alaska Oil Pipeline
26. System; and that the Secretary of the Interior granted the

1. owners of Alyeska a permit for the TAPS project, pursuant to the
2. Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline,
3. entered into on January 23, 1974.
4.

5. 103. Deny for lack of information or belief the
6. allegations of paragraph 103, except admit that the Trans-Alaska
7. Pipeline System began operating in 1977 and that it was operated
8. by Alyeska, and that at some times certain groups or individuals
9. have expressed concern about environmental risks associated with
10. certain aspects of TAPS.

11.
12. 104. Deny the allegations of paragraph 104.
13.

14. 105. Deny for lack of information or belief the
15. allegations of paragraph 105, except admit that Alyeska prepared
16. an oil spill contingency plan in 1977 and that the plan and
17. subsequent modifications thereof were approved by the State of
18. Alaska and the federal government.

19.
20. 106. Deny the allegations of paragraph 106, except
21. admit that Alyeska's current oil spill contingency plan does
22. address what steps might be taken to respond to a hypothetical
23. scenario of a 200,000-barrel oil spill resulting from a failure
24. of tanker crude oil tanks approximately 30 miles from the Valdez
25. Terminal, occurring at 6:00 a.m. on June 22, with weather
26. conditions conducive to cleanup and containment, including sea

1. state less than five feet, currents less than 1.6 knots, waves
2. less than two feet and visibility equal to or greater than two
3. miles.

4.
5. 107. Answering the allegations of paragraph 107, deny
6. said allegations as they pertain to Exxon and Exxon Pipeline and
7. deny said allegations for lack of information or belief as they
8. pertain to other defendants.

9.
10. 108. Answering the allegations of paragraph 108, deny
11. said allegations as they pertain to Exxon and Exxon Pipeline,
12. and deny said allegations for lack of information or belief as
13. they pertain to other defendants.

14.
15. 109. Admit the allegations of paragraph 109, except
16. deny that the vessel was fully loaded and deny that it weighs
17. 213,755 deadweight tons.

18.
19. 110. Deny the allegations of paragraph 110, except
20. admit that the EXXON VALDEZ left the terminal at approximately
21. 9:15 p.m. on March 23, 1989, bound for Long Beach, California
22. and that the vessel was under the command of Captain Hazelwood.

23.
24. 111. Deny for lack of information or belief the
25. allegations of paragraph 111, except admit that from the time it
26. left the terminal until the vessel reached the pilot's station

1. near Rocky Point, the EXXON VALDEZ was navigated under the
2. direction of William Edward Murphy, a state-licensed marine
3. pilot.

4.
5. 112. Deny for lack of information or belief the
6. allegations of paragraph 112, except admit that Captain
7. Hazelwood left the bridge approximately 20 minutes after the
8. vessel got underway, and that Captain Hazelwood returned to the
9. bridge several minutes before Pilot Murphy debarked near Rocky
10. Point at 11:24 p.m.

11.
12. 113. Deny for lack of information or belief the
13. allegations of paragraph 113.

14.
15. 114. Deny for lack of information or belief the
16. allegations of paragraph 114, except admit that Captain
17. Hazelwood left the bridge and went to his cabin shortly after
18. 11:50 p.m.

19.
20. 115. Deny for lack of information or belief the alle-
21. gations of paragraph 115, except admit that the VTS lanes are
22. depicted on nautical charts which were aboard the EXXON VALDEZ.

23.
24. 116. Deny for lack of information or belief the
25. allegations of paragraph 116, except admit that the EXXON VALDEZ
26. left the normal southbound shipping lane due to the reported

1. presence of ice; that it left that lane and went across the
2. northbound shipping lane; that there was a delay in bringing the
3. vessel back into the vessel traffic lane; that Bligh Reef is a
4. navigational hazard, approximately one mile from the nearest VTS
5. lane and is depicted on charts which were aboard the EXXON
6. VALDEZ, and that a buoy off Bligh Reef was equipped with a
7. flashing red light and bell.

8.
9. 117. Deny for lack of information or belief the
10. allegations of paragraph 117, except admit that the EXXON VALDEZ
11. struck Bligh Reef shortly after midnight on March 24, 1989, and
12. that the vessel was running at a speed of approximately 12
13. knots.

14.
15. 118-119. Deny for lack of information or belief the
16. allegations of paragraphs 118 and 119, except admit that after
17. the vessel had run aground, Captain Hazelwood gave various
18. rudder orders and forward and stop engine commands for a period
19. of approximately 12 minutes.

20.
21. 120. Deny the allegations of paragraph 120, except
22. admit that approximately 258,000 barrels of crude oil were
23. spilled into the waters of Prince William Sound, and admit that
24. eight of the vessel's oil cargo tanks and three saltwater
25. ballast tanks were ruptured.

26.

1. 121. Answering the allegations of paragraph 121, deny
2. each and every one of said allegations insofar as they pertain
3. to Exxon and Exxon Pipeline, and deny said allegations for lack
4. of information or belief insofar as they pertain to other defen-
5. dants; except admit that not all of the crude oil spilled from
6. the vessel was contained or removed from the water within two
7. days; and admit that the EXXON BATON ROUGE, after receiving
8. Coast Guard authorization, pumped its ballast water into Prince
9. William Sound in preparation for lightering crude oil from the
10. EXXON VALDEZ.

11.
12. 122. Deny for lack of information or belief the
13. allegations of paragraph 122, except admit that the oil spill
14. spread across and out of Prince William Sound and into areas of
15. the Kenai Peninsula, Cook Inlet, the Kodiak Archipelago and the
16. Alaska Peninsula.

17.
18. 123. Deny for lack of information or belief each and
19. every allegation of paragraph 123, except admit that at least
20. ten million gallons of crude oil were spilled from the EXXON
21. VALDEZ into the water surrounding the EXXON VALDEZ, that
22. prevailing winds and currents spread the oil spill, that the
23. spill spread to some shoreline and beach areas, that some sea
24. otters and birds were killed or damaged by the oil spill, that
25. the State of Alaska closed or restricted fishing for certain
26. varieties of sea food in some areas; and that the number of fish

1. harvested in the Area was reduced by said state-ordered
2. closures.

3.
4. 124. Deny for lack of information or belief each and
5. every allegation of paragraph 124, except admit that certain
6. commercial fishers have been damaged.

7.
8. 125. Answering paragraph 125, reallege and incorporate
9. herein by reference each and every admission, denial and allega-
10. tion contained in paragraphs 1 through 124 hereof, as if set out
11. in full.

12.
13. 126. Deny for lack of information or belief the
14. allegations of paragraph 126.

15.
16. 127. Deny the allegations of paragraph 127, except
17. admit that Exxon Shipping was the owner and operator of the
18. vessels EXXON VALDEZ and EXXON BATON ROUGE at the time of the
19. incidents described in the complaint.

20.
21. 128. Deny the allegations of paragraph 128, except
22. admit that 43 U.S.C. § 1653(c), to the extent applicable, may
23. impose strict liability on certain persons for certain damages.

24.
25. 129. Answering paragraph 129, Exxon and Exxon Pipeline
26. are not required to respond to said paragraph 129.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1 Defense To Second Claim for Relief

2.
3. 130. Answering paragraph 130, reallege and incorporate
4. herein by reference each and every admission, denial and allega-
5. tion contained in paragraphs 1 through 129 hereof, as if set out
6. in full.

7.
8. 131. Deny for lack of information or belief the
9. allegations of paragraph 131.

10.
11. 132-34. Deny each and every allegation of paragraphs 132
12. through 134, except admit that Exxon Shipping is the owner and
13. operator of the vessel EXXON VALDEZ.

14.
15. Defense To Third Claim for Relief

16.
17. 135. Answering paragraph 135, reallege and incorporate
18. herein by reference each and every admission, denial and allega-
19. tion contained in paragraphs 1 through 134 hereof, as if set out
20. in full.

21.
22. 136. Deny each and every allegation in paragraph 136,
23. except admit that the vessel was not equipped or required to be
24. equipped with containment booms and that immediately prior to
25. and at the time of the casualty, the vessel was being operated
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. with only one deck officer in violation of the vessel's own
2. instructions.

3.

4. 137. Deny each and every allegation contained in para-
5. graph 137.

6.

7. Defense To Fourth Claim for Relief

8.

9. 138. Answering paragraph 138, reallege and incorporate
10. herein by reference each and every admission, denial and allega-
11. tion contained in paragraphs 1 through 137 hereof, as if set out
12. in full.

13.

14. 139-146. Deny each and every allegation of paragraphs 139
15. through 146.

16.

17. Defense To Fifth Claim for Relief

18.

19. 147. Answering paragraph 147, reallege and incorporate
20. herein by reference each and every admission, denial and allega-
21. tion contained in paragraphs 1 through 146 hereof, as if set out
22. in full.

23.

24. 148-150. Deny each and every allegation of paragraphs 148
25. through 150 insofar as they pertain to Exxon and Exxon Pipeline,
26.

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

3.

4. Defense To Sixth Claim for Relief

5.

6. 151. Answering paragraph 151, reallege and incorporate
7. herein by reference each and every admission, denial and allega-
8. tion contained in paragraphs 1 through 150 hereof, as if set out
9. in full.

10.

11. 152-153. Deny for lack of information or belief each and
12. every allegation of paragraphs 152 and 153.

13.

14. 154-155. Deny each and every allegation of paragraphs 154
15. and 155 insofar as they pertain to Exxon and Exxon Pipeline, and
16. deny each and every one of said allegations for lack of infor-
17. mation or belief insofar as they pertain to other defendants.

18.

19. General Denial

20.

21. 156. Deny each and every other allegation in plain-
22. tiffs' complaint that was not specifically admitted herein.

23.

24.

25.

26.

1. Affirmative and Other Defenses
2.

3. 157. The complaint and each count thereof fails to
4. state claims upon which relief can be granted.
5.

6. 158. Exxon and Exxon Pipeline are informed and believe
7. that plaintiffs lack standing to claim or recover damages based
8. on the allegations of the complaint.
9.

10. 159. 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, Exxon Shipping and Exxon Pipeline are entitled to a
15. setoff in the full amount of all such payments in the event that
16. plaintiffs' claims encompass such expenditures.
17.

18. 160. 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. 170. To the extent that persons able to mitigate
2. damages failed to do so, defendants cannot be held liable to
3. such persons for avoidable losses.
4.

5. 171. Claims by some persons or entities who may be
6. within the purported classes have been settled and released.
7.

8. 172. Plaintiffs' claims for punitive damages are un-
9. constitutional under the United States Constitution, including,
10. without limitation, Article I, Section 8; Amendment V; and
11. Amendment XIV; and the Alaska Constitution, including, without
12. limitation, Article I, Section 7 and Article I, Section 12.
13.

14. 173. The damages alleged in the complaint were caused,
15. in part, by the action of others not joined as defendants herein
16. as to whom a right of contribution or indemnity should exist as
17. to Exxon and Exxon Pipeline. Exxon and Exxon Pipeline may seek
18. leave of Court to join such additional persons as third party
19. defendants on the basis of further discovery herein.
20.

21. 174. Plaintiffs' claims sound in maritime tort and are
22. subject to applicable admiralty limits on recovery of damages
23. for remote economic loss unaccompanied by physical injury to
24. person or property.
25.
26.

1 175. Numerous persons and entities have filed lawsuits
2 against Exxon and Exxon Pipeline relating to the oil spill, some
3 of whom purport to represent the plaintiffs in this action. In
4 the event of any judgment or judgments in such other lawsuits
5 against Exxon or Exxon Pipeline and in favor of persons whose
6 claims are encompassed in these actions, such judgment or judg-
7 ments will be res judicata as to the claims of such persons
8 herein.

9
10 176. Numerous persons and entities have filed other
11 lawsuits against Exxon, Exxon Pipeline and various other defen-
12 dants, and to the extent there is a recovery in said other law-
13 suits encompassing claims made by plaintiffs herein, recovery on
14 the claims herein is barred to the extent that it would repre-
15 sent a multiple recovery for the same injury.

16
17 177. Some of the plaintiffs herein have filed state
18 court actions which have been removed to this Court, and said
19 plaintiffs have also filed separate actions in this court, with
20 the result that the same persons are plaintiffs in two separate,
21 overlapping actions in this court. There is such duplication
22 between Actions A89-111 and A89-145, A89-129 and A89-189, and
23 A89-166 and A89-271. In each such instance of duplicate actions
24 by the same plaintiffs pending in this Court, one of the actions
25 should be dismissed.

26

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.

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

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

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

181. Some or all of plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive scheme of federal statutes and regulations, including its system of criminal and civil penalties, sanctions and remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

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

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

1. 184. 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. 185. Certain theories of relief may not be maintained
10. because these theories are based upon the exercise by Exxon and
11. Exxon Pipeline of federal and state constitutional rights to
12. petition the federal and state governments with respect to the
13. passage and enforcement of laws.

14.
15. 186. Plaintiffs' claims based upon 16 U.S.C. § 3111 et
16. seq. cannot be maintained because there is no private right of
17. action against nongovernmental defendants arising from said
18. statute.

19.
20. 187. Plaintiffs' claims based upon 16 U.S.C. § 3111 et
21. seq. cannot be maintained because plaintiffs have failed to ex-
22. haust administrative remedies.

23.
24. 188. Plaintiffs' claims based on 16 U.S.C. § 3111 et
25. seq. cannot be maintained because that statute does not create
26.

1 or grant to plaintiffs property rights in any fish or wildlife
2 or other resource of the public lands.

3.
4. 189. ANILCA, 16 U.S.C. § 3111 et seq., provides the
5. exclusive federal vehicle for Alaskan natives and rural Alaskans
6. to seek protection for federally recognized subsistence
7. interests allegedly harmed by the oil spill, and therefore all
8. other alleged federal claims to recover any such losses are
9. barred.

10.
11. 190. Exxon and Exxon Shipping have acted pursuant to
12. government approval and direction with regard to the containment
13. and clean-up of the oil spill.

14.
15. 191. Plaintiffs fail to satisfy the requirements for
16. the injunctive relief they seek.

17.
18. 192. The corporate plaintiffs herein lack the capacity
19. to commence and maintain this action insofar as they have failed
20. to allege and prove that they have paid their Alaska biennial
21. corporate taxes last due and have filed biennial reports for the
22. last reporting period.

1. Prayer

2.
3. WHEREFORE, Exxon and Exxon Pipeline pray for judgment
4. as follows:

5.
6. 1. That plaintiffs take nothing and be granted no
7. relief, legal or equitable;

8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.
FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.


2. That Exxon and Exxon Pipeline be awarded their costs in this action; and

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

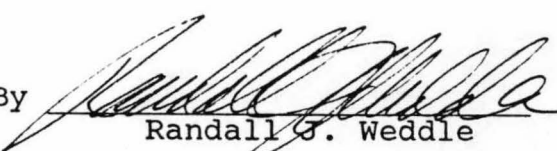
DATED: August 15, 1989

Respectfully submitted,

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

By 
John F. Daum

JOHN F. CLOUGH, III
RANDALL J. WEDDLE
FAULKNER, BANFIELD, DOOGAN & HOLMES

By 
Randall J. Weddle

Attorneys for Defendants
Exxon Corporation and Exxon
Pipeline Company

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. CHARLES W. BENDER
2. PATRICK LYNCH
3. JOHN F. DAUM
4. O'MELVENY & MYERS
5. 400 South Hope Street
6. Los Angeles, California 90071-2899
7. (213) 669-6000

8. JOHN F. CLOUGH, III
9. RANDALL J. WEDDLE
10. FAULKNER, BANFIELD, DOOGAN & HOLMES
11. 550 W. 7th Avenue, Suite 1000
12. Anchorage, Alaska 99501-3510
13. (907)274-0666

14. Attorneys for Defendants
15. Exxon Corporation and
16. Exxon Pipeline Company

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

16. In re) NO. A-89-095
17. The EXXON VALDEZ) Civil
18. This Document Relates) (Consolidated)
19. to Action No.:)
20. A89-138)
21. CHUGACH ALASKA CORPORATION, et al.,)
22. (P-81 through P-94);)
23. v.) ANSWER OF EXXON
24. EXXON CORPORATION, et al.,) CORPORATION AND
25. (D-1 through D-3; D-5, D-7 and D-8;) EXXON PIPELINE
26. D-10 through D-12; D-14; D-17 through) COMPANY TO
D-20; D-25) AMENDED COMPLAINT
FILED JULY 17,
1989

FILED

AUG 15 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

M/434

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. Exxon Corporation, also erroneously sued herein as
2. Exxon Co., USA, and for convenience identified in this answer as
3. "Exxon", and Exxon Pipeline Company, for convenience identified
4. in this answer as "Exxon Pipeline," as their answer to the
5. complaint herein admit, deny and allege as follows:
6.

7. As to each and every allegation denied herein for lack
8. of information or belief, allege that they are without knowledge
9. or information sufficient categorically to admit or deny the
10. said allegation at this time, wherefore they deny each said
11. allegation using the phrase "deny for lack of information or
12. belief."
13.

14. Defense To First Claim for Relief
15.

16. 1. Deny for lack of information or belief the
17. allegations of paragraph 1, except admit that plaintiffs' claims
18. arise out of the oil spill by the EXXON VALDEZ.
19.

20. 2. Answering paragraph 2, admit that this court has
21. subject matter jurisdiction over this action.
22.

23. 3. Answering the allegations of paragraph 3, admit
24. that this civil action may be brought in this judicial district.
25.
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 4-21. Deny for lack of information or belief each and
2. every allegation contained in paragraphs 4 through 21.

3.
4. 22. Deny each and every allegation of paragraph 22
5. except admit that Exxon Shipping Company ("Exxon Shipping") is a
6. Delaware Corporation with its executive office in Houston,
7. Texas, that Exxon Shipping is the registered owner and operator
8. of the vessel EXXON VALDEZ, and that Exxon owns all of the stock
9. of Exxon Shipping.

10.
11. 23-24. Deny each and every allegation of paragraphs 23
12. and 24, except admit that Exxon is a corporation organized under
13. the laws of the State of New Jersey with its principal place of
14. business at 1251 Avenue of the Americas, New York, NY 10020,
15. and that the principal business of Exxon is energy, involving
16. exploration for and production of crude oil, natural gas and
17. petroleum products, and exploration for and mining and sale of
18. coal; admit that Exxon Company, U.S.A. is an unincorporated
19. division of Exxon which is responsible for the operation of
20. Exxon's energy business within the United States; admit that
21. Exxon owns all of Exxon Shipping Company's stock; and admit that
22. Exxon was owner of the crude oil cargo on board the EXXON VALDEZ
23. on March 24, 1989, some of which was discharged into the waters
24. of Prince William Sound.

25. 25. Deny each and every allegation of paragraph 25.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 26. Answering paragraph 26, Exxon and Exxon Pipeline
2. are not required to respond to the allegations of said
3. paragraph.
4.

5. 27. Deny each and every allegation of paragraph 27,
6. except admit that Alyeska Pipeline Service Company ("Alyeska")
7. is a Delaware Corporation with its principal place of business
8. in Alaska; that Alyeska is owned by Amerada Hess Pipeline
9. Corporation, ARCO Pipe Line Company, B.P. Pipelines (Alaska),
10. Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company,
11. Phillips Alaska Pipeline Corporation and Unocal Pipeline
12. Company; that Alyeska was formed by its then owners to
13. construct, operate and maintain the Trans-Alaska Pipeline
14. System, including the terminal facility at Valdez; that Alyeska
15. operates the Trans-Alaska Pipeline System, including the
16. terminal facility at the Port of Valdez; and that Alyeska
17. formulated an oil spill contingency plan and had certain respon-
18. sibilities in connection therewith.
19.

20. 28-31. Admit the allegations of paragraphs 28 through
21. 31.
22.

23. 32. Admit the allegations of paragraph 32 if said
24. allegations are construed as referring to Unocal Pipeline
25. Company.
26.

1. 33-34. Admit the allegations of paragraphs 33 and 34.

2.

3. 35. Answering paragraph 35, Exxon and Exxon Pipeline
4. are not required to respond to the allegations of said
5. paragraph.

6.

7. 36. Deny the allegations of paragraph 36, except
8. admit that Joseph Hazelwood was the Master of the EXXON VALDEZ,
9. and that Hazelwood was an employee of Exxon Shipping and that
10. his duties as Master of said vessel were within the scope of his
11. employment.

12.

13. 37. Deny the allegations of paragraph 37, except
14. admit that Gregory Cousins was the Third Mate on the EXXON
15. VALDEZ and the officer on the bridge when the vessel ran
16. aground, and that at such time Cousins was an employee of Exxon
17. Shipping and that his duties as Third Mate on the EXXON VALDEZ
18. were within the scope of his employment.

19.

20. 38. Deny the allegations of paragraph 38, except
21. admit that William Edward Murphy is a licensed pilot who piloted
22. the EXXON VALDEZ from the Port of Valdez to Rocky Point on the
23. night of March 23, 1989.

24.

25.

26.

1. 39. Admit the allegations of paragraph 39, except
2. deny that the EXXON VALDEZ was loaded with approximately 62
3. million gallons of crude oil.
4.

5. 40. Deny the allegations of paragraph 40, except
6. admit that the terminal is a facility of the Trans-Alaska
7. Pipeline.
8.

9. 41. Deny the allegations of paragraph 41, except
10. admit that the EXXON VALDEZ left the terminal at approximately
11. 9:15 p.m. on March 23, 1989; that from the time it left the
12. terminal until the vessel reached the pilot's station near Rocky
13. Point, the EXXON VALDEZ was navigated under the direction of
14. William Edward Murphy, a licensed marine pilot; that the vessel
15. successfully navigated the Valdez Narrows and entered Prince
16. William Sound; and that after navigating the Valdez Narrows
17. Murphy departed the vessel.
18.

19. 42. Deny the allegations of paragraph 42, except
20. admit that the vessel, under Hazelwood's command, received
21. United States Coast Guard permission to leave the southbound
22. shipping lane and to go into the northbound shipping lane.
23.

24. 43. Deny the allegations of paragraph 43, except
25. admit that Captain Hazelwood left the bridge and went to his
26.

1. cabin shortly after 11:50 p.m., and left Cousins as the officer
2. on the bridge.

3.

4. 44. Deny for lack of information or belief the
5. allegations of paragraph 44, except admit that the EXXON VALDEZ
6. struck Bligh Reef shortly after midnight on March 24, 1989, that
7. Bligh Reef is depicted on charts and is marked by a buoy, and
8. that at the time of impact Hazelwood was not on the bridge and
9. Cousins was the officer then on the bridge.

10.

11. 45. Deny the allegations of paragraph 45.

12.

13. 46. Deny the allegations of paragraph 46, except
14. admit that approximately 258,000 barrels of crude oil were
15. spilled into the waters of Prince William Sound, that the hull
16. of the EXXON VALDEZ was ruptured in several places, and that the
17. crude oil spilled as a result thereof was known by defendants to
18. be capable of floating for periods of time depending upon sea
19. conditions.

20.

21. 47. Deny for lack of information or belief the
22. allegations of paragraph 47, except admit that the oil has
23. spread to other areas in Prince William Sound, the Lower Kenai
24. Peninsula, Kodiak and the Gulf of Alaska.

25.

26. 48-49. Deny the allegations of paragraphs 48 and 49.

1. 50. Deny the allegations of paragraph 50 insofar as
2. they pertain to Exxon, Exxon Pipeline and Exxon Shipping, and
3. deny said allegations for lack of information or belief insofar
4. as they pertain to other defendants, except admit 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. 51-53. Answering the allegations of paragraphs 51
14. through 53, deny said allegations as they pertain to Exxon,
15. Exxon Pipeline and Exxon Shipping, and deny said allegations for
16. lack of information or belief as they pertain to other
17. defendants.

18.
19. 54-55. Answering the allegations of paragraphs 54 and
20. 55, deny said allegations for lack of information or belief.

21.
22. 56. Deny the allegations of paragraph 56.

23.
24. 57. Answering paragraph 57, reallege and incorporate
25. herein by reference each and every admission, denial and
26.

1. allegation contained in paragraphs 1 through 56 hereof, as if
2. set out in full.

3.
4. 58. Deny the allegations of paragraph 58 insofar as
5. they apply to Exxon. Exxon Shipping and Exxon Pipeline, and
6. deny said allegations for lack of information or belief insofar
7. as they apply to other defendants.

8.
9. 59. Deny for lack of information or belief the
10. allegations of paragraph 59.

11.
12. Defense To Second Claim for Relief

13.
14. 60. Answering paragraph 60, reallege and incorporate
15. herein by reference each and every admission, denial and
16. allegation contained in paragraphs 1 through 59 hereof, as if
17. set out in full.

18.
19. 61. Deny each and every allegation of paragraph 61,
20. except admit that AS 46.03.826(4) defines the term "hazardous
21. substance" as including oil.

22.
23. 62. Deny the allegations of paragraph 62 except admit
24. that Exxon owned the crude oil cargo of the EXXON VALDEZ and
25. that Exxon Shipping had control of said crude oil just prior to
26. its discharge into Prince William Sound.

1. 63. Deny the allegations of paragraph 63 except admit
2. that AS 46.03.822-828, if applicable and not preempted by
3. federal law, may impose strict liability for certain damages
4. proximately caused by the oil spill.

5.
6. Defense To Third Claim for Relief

7.
8. 64. Answering paragraph 64, reallege and incorporate
9. herein by reference each and every admission, denial and
10. allegation contained in paragraphs 1 through 63 hereof, as if
11. set out in full.

12.
13. 65. Deny for lack of information or belief each and
14. every allegation contained in paragraph 65.

15.
16. 66. Deny the allegations of paragraph 66 insofar as
17. they pertain to Exxon, Exxon Shipping and Exxon Pipeline, and
18. deny said allegations for lack of information or belief insofar
19. as they pertain to other defendants.

20.
21. Defense To Fourth Claim for Relief

22.
23. 67. Answering paragraph 67, reallege and incorporate
24. herein by reference each and every admission, denial and allega-
25. tion contained in paragraphs 1 through 66 hereof, as if set out
26. in full.

1. 68-69. Deny each and every allegation of paragraphs 68
2. and 69.

3.
4. Defense To Fifth Claim for Relief

5.
6. 70. Answering paragraph 70, reallege and incorporate
7. herein by reference each and every admission, denial and
8. allegation contained in paragraphs 1 through 69 hereof, as if
9. set out in full.

10.
11. 71-80. Deny each and every allegation of paragraphs 71
12. through 80 insofar as they pertain to Exxon, Exxon Shipping and
13. Exxon Pipeline, and deny said allegations for lack of
14. information or belief insofar as they pertain to other
15. defendants.

16.
17. Defense To Sixth Claim for Relief

18.
19. 81. Answering paragraph 81, reallege and incorporate
20. herein by reference each and every admission, denial and
21. allegation contained in paragraphs 1 through 80 hereof, as if
22. set out in full.

23.
24. 82. Deny the allegations of paragraph 82.

25.
26. Defense to Seventh Claim for Relief

1. 83. Answering paragraph 83, reallege and incorporate
2. herein by reference each and every admission, denial and
3. allegation contained in paragraphs 1 through 82, as if set out
4. in full.

5.
6. 84-86. Answering paragraphs 84 through 86, Exxon and
7. Exxon Pipeline are not required to respond to said paragraphs,
8. and otherwise deny said allegations in paragraphs 84 through 86
9. for lack of information or belief.

10.
11. Defense To Eighth Claim for Relief

12.
13. 87. Answering paragraph 87, reallege and incorporate
14. herein by reference each and every admission, denial and
15. allegation contained in paragraphs 1 through 86 hereof, as if
16. set out in full.

17.
18. 88. Deny each and every allegation of paragraph 88
19. insofar as they pertain to Exxon, Exxon Shipping and Exxon
20. Pipeline, and deny said allegations for lack of information or
21. belief insofar as they pertain to other defendants.

22.
23. Defense To Ninth Claim for Relief

24.
25. 89. Answering paragraph 89, reallege and incorporate
26. herein by reference each and every admission, denial and

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. allegation contained in paragraphs 1 through 88 hereof, as if
2. set out in full.

3.
4. 90-96. Deny each and every allegation of paragraphs 90
5. through 96 insofar as they pertain to Exxon, Exxon Shipping and
6. Exxon Pipeline, and deny said allegations for lack of
7. information or belief insofar as they pertain to other
8. defendants.

9.
10. Defense To Tenth Claim for Relief

11.
12. 97. Answering paragraph 97, reallege and incorporate
13. herein by reference each and every admission, denial and
14. allegation contained in paragraphs 1 through 96 hereof, as if
15. set out in full.

16.
17. 98-104. Deny each and every allegation of paragraphs 98
18. through 104 insofar as they pertain to Exxon, Exxon Pipeline and
19. Exxon Shipping, and deny said allegations for lack of
20. information or belief insofar as they pertain to other
21. defendants.

22.
23. Defense to Eleventh Claim for Relief

24.
25. 105. Answering paragraph 105, reallege and incorporate
26. herein by reference each and every admission, denial and

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. allegation of paragraphs 1 through 104, as if set out in full.

2.

3. 106. Answering paragraph 106, Exxon and Exxon Pipeline
4. are not required to respond to said paragraph, and in any event
5. deny that plaintiffs are entitled to seek recovery for the
6. benefit of Native Alaskans based on public trust or parens
7. patriae doctrines.

8.

9. Defense to Twelfth Claim for Relief

10.

11. 107. Answering paragraph 107, reallege and incorporate
12. herein by reference each and every admission, denial and
13. allegation of paragraphs 1 through 106, as if set out in full.

14.

15. 108. Deny the allegations of paragraph 108, except
16. admit that the EXXON BATON ROUGE is a crude carrier owned and
17. operated by Exxon Shipping, that it was built by Avondale
18. Shipyard and that it is 34,266 gross registered tons.

19.

20. 109. Deny the allegations of paragraph 109, except
21. admit that on or about March 24, 1989 after receiving Coast
22. Guard authorization to do so, the EXXON BATON ROUGE pumped
23. ballast water into Prince William Sound while proceeding towards
24. the EXXON VALDEZ to lighten said vessel.

25.

26.

1. 110-113. Deny the allegations of paragraphs 110 through
2. 113.

3.

4. 114. Deny the allegations of paragraph 114, except
5. admit that Exxon Shipping had control of the ballast water
6. carried on the EXXON BATON ROUGE just prior to its discharge
7. into the waters of Prince William Sound.

8.

9. 115-119. Deny the allegations of paragraphs 115 through
10. 119.

11.

12. General Denial

13.

14. 120. Deny each and every other allegation in plain-
15. tiffs' complaint that was not specifically admitted herein.

16.

17. Affirmative and Other Defenses

18.

19. 121. The complaint and each count thereof fails to
20. state claims upon which relief can be granted.

21.

22. 122. Exxon and Exxon Pipeline are informed and believe
23. that plaintiffs lack standing to claim or recover damages based
24. on the allegations of the complaint.

25.

26.

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

8.
9. 124. Certain persons engaged or employed in connection
10. with activities related to containment and clean up of the oil
11. released from the EXXON VALDEZ were thereby able to avoid or
12. mitigate damage from the interruption of fishery and other
13. activities. Payments received by such persons are a set off
14. against losses, if any, resulting from the interruption of
15. fishery and other activities.

16.
17. 125. To the extent that persons able to mitigate
18. damages failed to do so, defendants cannot be held liable to
19. such persons for avoidable losses.

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

26.

1. 127. The damages alleged in the complaint were caused,
2. in part, by the action of others not joined as defendants herein
3. as to whom a right of contribution or indemnity should exist as
4. to Exxon and Exxon Pipeline. Exxon and Exxon Pipeline may seek
5. leave of Court to join such additional persons as third party
6. defendants on the basis of further discovery herein.

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

12.
13. 129. Numerous persons and entities have filed lawsuits
14. against Exxon and Exxon Pipeline relating to the oil spill, some
15. of whom purport to represent the plaintiffs in this action. In
16. the event of any judgment or judgments in such other lawsuits
17. against Exxon or Exxon Pipeline and in favor of persons whose
18. claims are encompassed in these actions, such judgment or judg-
19. ments will be res judicata as to the claims of such persons
20. herein.

21.
22. 130. Numerous persons and entities have filed other
23. lawsuits against Exxon, Exxon Pipeline and various other defen-
24. dants, and to the extent there is a recovery in said other law-
25. suits encompassing claims made by plaintiffs herein, recovery on
26.

1. the claims herein is barred to the extent that it would repre-
2. sent a multiple recovery for the same injury.

3.
4. 131. Some or all of plaintiffs' claims for damages may
5. be barred or reduced by the doctrine of comparative negligence.

6.
7. 132. The amount of liability, if any, for the acts
8. alleged is controlled by statute, including, without limitation,
9. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

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

15.
16. 134. Plaintiffs' claims, including claims for punitive
17. damages, are preempted by the comprehensive scheme of federal
18. statutes and regulations, including its criminal and civil
19. penalties, sanctions and remedies relevant to the oil spill, and
20. its scheme relevant to protection of subsistence interests.

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

25.
26.

1. 136. Plaintiff's claims for compensatory relief under
2. state law are preempted by federal statutory and common law
3. schemes for compensatory relief.
4.

5. 137. Certain claims asserted by plaintiffs are not
6. ripe for adjudication.
7.

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

16. 139. Certain theories of relief may not be maintained
17. because these theories are based upon the exercise by Exxon and
18. Exxon Pipeline of federal and state constitutional rights to
19. petition the federal and state governments with respect to the
20. passage and enforcement of laws.
21.

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

1. 141. 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. 142. Plaintiffs fail to satisfy the requirements for
6. the injunctive relief they seek.

7.
8. 143. 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 claims to recover for any such losses are
13. barred.

14.
15. 144. The corporate plaintiffs herein lack the capacity
16. to commence and maintain this action insofar as they have failed
17. to allege and prove that they have paid their Alaska biennial
18. corporate taxes last due and have filed biennial reports for the
19. last reporting period.

20.
21. Prayer

22.
23. WHEREFORE, Exxon and Exxon Pipeline pray for judgment
24. as follows:

25.
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.

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

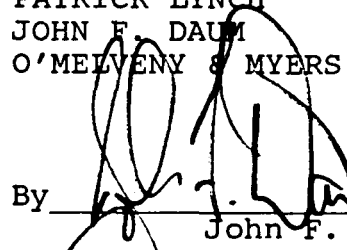
2. That Exxon and Exxon Pipeline be awarded their costs in this action; and

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

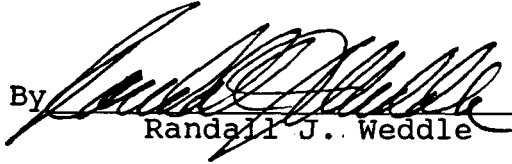
DATED: August 15, 1989

Respectfully submitted,

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

By  _____
John F. Daum

JOHN F. CLOUGH, III
RANDALL J. WEDDLE
FAULKNER, BANFIELD, DOOGAN &
HOLMES

By  _____
Randall J. Weddle

Attorneys for Defendants
Exxon Corporation and Exxon
Pipeline Company

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

- 1. CHARLES W. BENDER
PATRICK LYNCH
- 2. JOHN F. DAUM
O'MELVENY & MYERS
- 3. 400 South Hope Street
Los Angeles, California 90071-2899
- 4. (213) 669-6000
- 5. JOHN F. CLOUGH, III
RANDALL J. WEDDLE
- 6. FAULKNER, BANFIELD, DOOGAN & HOLMES
550 W. 7th Avenue, Suite 1000
- 7. Anchorage, Alaska 99501-3510
(907) 274-0666

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.)	
14.	The EXXON VALDEZ	)	No. A89-095 Civil
15.		)	(Consolidated)
15.	This Document Relates)	
16.	to)	
16.)	
17.	Complaint in Intervention filed by	)	ANSWER OF EXXON
17.	VinDiCo (P-169), with allegations	)	CORPORATION TO
18.	against Exxon Corporation and	)	COMPLAINT IN
18.	other defendants (D-1, D-2, D-5)	)	INTERVENTION FILED
19.		)	JUNE 29, 1989

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

24.
25. As to each and every allegation denied herein for lack
26. of information or belief, alleges that it is without knowledge

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. 1. Admits the allegations of paragraph 1.

7.

8. 2. Denies for lack of information or belief the
9. allegations of paragraph 2.

10.

11. 3. Denies the allegations of paragraph 3.

12.

13. 4. Denies for lack of information or belief the
14. allegations of paragraph 4.

15.

16. 5. Denies the allegations of paragraph 5, except
17. admits that on March 24, 1989, the EXXON VALDEZ was outbound
18. from the terminal facility of the Trans-Alaska Pipeline System
19. at Valdez, bound for Long Beach, California; that Captain
20. Hazelwood was the Master of the vessel; that the vessel hit
21. Bligh Reef, a charted navigation hazard in Prince William Sound
22. and that Third Mate Gregory Cousins was the officer on the
23. bridge at that time.

24.

25. 6. Denies the allegations of paragraph 6, except
26. admits that the collision punctured some of the tanks and

1. damaged a portion of the hull of the EXXON VALDEZ, discharging
2. crude oil into Prince William Sound; and that thereafter the
3. State of Alaska closed the Prince William Sound herring fishery.

4.
5. 7. Denies the allegations of paragraph 7.

6.
7. 8-9. Denies for lack of information or belief each and
8. every allegation in paragraphs 8 and 9.

9.
10. General Denial

11.
12. 10. Denies each and every other allegation in the
13. complaint in intervention that was not specifically admitted
14. herein.

15.
16. Affirmative and Other Defenses

17.
18. 11. The complaint in intervention fails to state
19. claims upon which relief can be granted.

20.
21. 12. Exxon is informed and believes that applicant for
22. intervention lacks standing to claim or recover damages based on
23. the allegations of the complaint in intervention.

24.
25. 13. Independent of any legal obligation to do so,
26. Exxon Shipping and Exxon are voluntarily paying claims for

1. economic loss allegedly caused by the oil spill, and are
2. incurring other expenses in connection with the oil spill.
3. Exxon and Exxon Shipping are entitled to a setoff in the full
4. amount of all such payments in the event that applicants' claims
5. encompass such expenditures.

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

14.
15. 15. To the extent that applicant for intervention was
16. able to mitigate damages and failed to do so, defendants cannot
17. be held liable for such avoidable losses.

18.
19. 16. The damages alleged in the complaint were caused,
20. in part, by the action of others not joined as defendants herein
21. as to whom a right of contribution or indemnity should exist as
22. to Exxon. Exxon may seek leave of Court to join such additional
23. persons as third party defendants on the basis of further
24. discovery herein.

25.
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 17. The claim of applicant in intervention sounds in
2. maritime tort and is subject to applicable admiralty limits on
3. recovery of damages for remote economic loss unaccompanied by
4. physical injury to person or property.
5.

6. 18. Numerous persons and entities have filed lawsuits
7. against Exxon relating to the oil spill, some of whom may
8. purport to represent the claimant in this action. In the event
9. of any judgment or judgments in such other lawsuits against
10. Exxon and in favor of complainant in intervention in this
11. action, such judgment or judgments will be res judicata as to
12. the claim of complainant in intervention herein.
13.

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

21. 20. Exxon and Exxon Shipping have acted pursuant to
22. government approval and direction with regard to containment and
23. clean-up of the oil spill.
24.

25. 21. The Fund established under the Trans-Alaska
26. Pipeline Authorization Act, 43 U.S.C. § 1653(c), may be strictly

1. liable for some or all of the damages alleged by plaintiffs.
2. This action should not proceed in the absence of the Fund's
3. joinder as a defendant.

4.
5. Prayer

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

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

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

13. and
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.

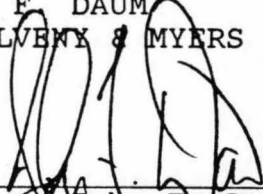
1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.

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
FAULKNER, BANFIELD, DOOGAN &
HOLMES

By 
Randall J. Weddle

Attorneys for Defendant Exxon
Corporation

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.

Charles W. Bender
Patrick Lynch
John F. Daum
O'Melveny & Myers
400 South Hope Street
Los Angeles, California 90071-2899
(213) 669-6000

John F. Clough, III
Randall J. Weddle
Faulkner, Banfield, Doogan & Holmes
550 West Seventh Avenue
Suite 1000
Anchorage, Alaska 99501
(907) 274-0666

Attorneys for Defendants Exxon Corporation,

Honorable H. Russell Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re) No.: A89-095 Civil
) (Consolidated)
The EXXON VALDEZ)
) ANSWER OF EXXON CORPORATION
This Document Relates to) TO COMPLAINT FILED
Action No.:) APRIL 20, 1989
)
A89-149)
WHITTIER SEAFOODS, INC., et al.)
(P-36, P-38 and P-39))
)
v.)
)
EXXON CORPORATION, et al.)
(D-1 through D-4 and D-23))
_____)

Exxon Corporation (for convenience, identified in this answer as "Exxon"), as its answer to the complaint herein, admits, denies and alleges as follows:

FILED
AUG 15 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
Denny

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

7.
8. Defense To First Cause of Action

9.
10. 1-3. Denies for lack of information or belief each and
11. every allegation of paragraphs 1 through 3.

12.
13. 4. Denies each and every allegation of paragraph 4,
14. except admits that Exxon is a New Jersey corporation qualified
15. to do business in Alaska and is subject to the jurisdiction of
16. this Court.

17.
18. 5. Denies each and every allegation of paragraph 5,
19. except admits that Exxon Shipping Company ("Exxon Shipping") is
20. a Delaware corporation qualified to do business in Alaska and is
21. subject to the jurisdiction of this Court.

22.
23. 6. Admits the allegations of paragraph 6.

24.
25. 7. Denies for lack of information or belief each and
26. every allegation of paragraph 7, except admits that the

1. Department of Environmental Conservation is an agency of the
2. State of Alaska.

3.

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

8.

9. 9. Admits the allegations of paragraph 9.

10.

11. 10. Denies the allegations of paragraph 10, except
12. admits that on March 24, 1989 the EXXON VALDEZ was en route from
13. the Trans-Alaska Pipeline System terminal at the Port of Valdez,
14. Alaska, to Long Beach, California.

15.

16. 11. Denies each and every allegation of paragraph 11,
17. except admits that Exxon owned the cargo carried by the EXXON
18. VALDEZ.

19.

20. 12. Denies each and every allegation of paragraph 12,
21. except admits that Alyeska operates the terminal facility at the
22. Port of Valdez, and that Alyeska formulated an oil spill contin-
23. gency plan, applicable, in part, to possible oil spills in
24. Prince William Sound.

25.

26. 13. Admits the allegations of paragraph 13.

1. 14. Denies each and every allegation of paragraph 14,
2. except admits that, on March 24, 1989, the EXXON VALDEZ left the
3. south bound channel, in part to avoid ice, and ran aground on
4. Bligh Reef and that, as a result of the grounding, approximately
5. 258,000 barrels of crude oil were discharged into Prince William
6. Sound.

7.
8. 15. Denies each and every allegation of paragraph 15,
9. except admits that Hazelwood was employed by Exxon Shipping as
10. the captain of the vessel, and that his duties aboard the vessel
11. were within the scope of his employment.

12.
13. 16. Admits the allegations of paragraph 16.

14.
15. 17. Denies each and every allegation of paragraph 17,
16. except admits that Hazelwood was not on the bridge of the vessel
17. when the vessel first struck Bligh Reef.

18.
19. 18. Denies for lack of information or belief each and
20. every allegation of paragraph 18, except admits that the State
21. closed some fisheries.

22.
23. 19. Denies for lack of information or belief each and
24. every allegation of paragraph 19.

25.
26.

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. 21-23. Denies each and every allegation of paragraphs 21
7. through 23, except admits that Hazelwood was an employee of
8. Exxon Shipping.

9.
10. Defense To Second Cause of Action

11.
12. 24. Answering paragraph 24, Exxon realleges and
13. incorporates herein by reference each and every admission,
14. denial and allegation contained in paragraphs 1 through 23
15. hereof, as if set out in full.

16.
17. 25-27. Denies each and every allegation of paragraphs 25
18. through 27.

19.
20. Defense To Third Cause of Action

21.
22. 28. Answering paragraph 28, Exxon realleges and
23. incorporates herein by reference each and every admission,
24. denial and allegation contained in paragraphs 1 through 27
25. hereof, as if set out in full.

26.

1. 29-31. Denies each and every allegation of paragraphs 29
2. through 31 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. 32. Answering paragraph 32, Exxon realleges and
9. incorporates herein by reference each and every admission,
10. denial and allegation contained in paragraphs 1 through 31
11. hereof, as if set out in full.
12.

13. 33-34. Denies each and every allegation of paragraphs 33
14. and 34.
15.

16. Defense To Fifth Cause of Action
17.

18. 35. Answering paragraph 35, Exxon realleges and
19. incorporates herein by reference each and every admission,
20. denial and allegation contained in paragraphs 1 through 34
21. hereof, as if set out in full.
22.

23. 36. Denies each and every allegation of paragraph 36.
24.
25.
26.

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. Defense To Sixth Cause of Action

2.

3. 37. Answering paragraph 37, Exxon realleges and
4. incorporates herein by reference each and every admission,
5. denial and allegation contained in paragraphs 1 through 36
6. hereof, as if set out in full.

7.

8. 38. Denies each and every allegation of paragraph 38.

9.

10. Defense To Seventh Cause of Action

11.

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

16.

17. 40. Answering paragraph 40, Exxon is not required to
18. respond to the allegations of paragraph 40.

19.

20. Defense To Eighth Cause of Action

21.

22. 41. Answering paragraph 41, Exxon realleges and
23. incorporates herein by reference each and every admission,
24. denial and allegation contained in paragraphs 1 through 40
25. hereof as set out in full.

26.

1. 42-49. Answering paragraphs 42 through 49, Exxon is not
2. required to respond to the allegations of paragraphs 42 through
3. 49.

4.
5. Defense To Ninth Cause of Action

6.
7. 50. Answering paragraph 50, Exxon realleges and
8. incorporates herein by reference each and every admission,
9. denial and allegation contained in paragraphs 1 through 49
10. hereof, as if set out in full.

11.
12. 51-52. Denies the allegations of paragraphs 51 and 52
13. insofar as they pertain to Exxon and Exxon Shipping, and denies
14. said allegations for lack of information or belief insofar as
15. they pertain to other defendants.

16.
17. Defense To Tenth Cause of Action

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

23.
24. 54. Denies each and every allegation of paragraph 54.
25.
26.

1. General Denial

2.

3. 55. Denies each and every other allegation in plain-
4. tiffs' complaint that was not specifically admitted herein.

5.

6. Affirmative and Other Defenses

7.

8. 56. The complaint and each count thereof fails to
9. state claims upon which relief can be granted.

10.

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

14.

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

22.

23. 59. Certain persons engaged or employed in connection
24. with activities related to containment and clean up of the oil
25. released from the EXXON VALDEZ were thereby able to avoid or
26. mitigate damage from the interruption of fishery and other

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. activities. Payments received by such persons are a set off
2. against losses, if any, resulting from the interruption of
3. fishery and other activities.

4.
5. 60. To the extent that persons able to mitigate
6. damages failed to do so, defendants cannot be held liable to
7. such persons for avoidable losses.

8.
9. 61. Claims by some persons or entities who may be
10. designated as JOHN DOE plaintiffs may have been settled and
11. released.

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

18.
19. 63. The damages alleged in the complaint were caused,
20. in part, by the action of others not joined as defendants herein
21. as to whom a right of contribution or indemnity should exist as
22. to Exxon and Exxon Shipping. Exxon may seek leave of Court to
23. join such additional persons as third party defendants on the
24. basis of further discovery herein.

25.
26.

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

5.
6. 65. Numerous persons and entities have filed lawsuits
7. against Exxon relating to the oil spill, some of whom purport to
8. represent the plaintiffs in this action. In the event of any
9. judgment or judgments in such other lawsuits against Exxon and
10. in favor of persons whose claims are encompassed in these
11. actions, such judgment or judgments will be res judicata as to
12. the claims of such persons herein.

13.
14. 66. Numerous persons and entities have filed other
15. lawsuits against Exxon and various other defendants, and to the
16. extent there is a recovery in said other lawsuits encompassing
17. claims made by plaintiffs herein, recovery on the claims herein
18. is barred to the extent that it would represent a multiple
19. recovery for the same injury.

20.
21. 67. Some or all of plaintiffs' claims for damages may
22. be barred or reduced by the doctrine of comparative negligence.

23.
24. 68. The amount of liability, if any, for the acts
25. alleged is controlled by statute, including, without limitation,
26. 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. 69. If punitive damages were to be awarded or civil
2. or criminal penalties assessed in any other lawsuit against
3. Exxon relating to the oil spill, such award bars imposition of
4. punitive damages in this action.

5.
6. 70. Some of plaintiffs' claims, including claims for
7. punitive damages, are preempted by the comprehensive scheme of
8. federal statutes and regulations, including its system of
9. criminal and civil penalties, sanctions and remedies relevant to
10. the oil spill, and its scheme relevant to protection of
11. subsistence interests.

12.
13. 71. Plaintiffs' claims for punitive damages are pre-
14. cluded by the Alaska statutory scheme for civil and criminal
15. penalties.

16.
17. 72. Plaintiffs' claims for compensatory relief under
18. state law are preempted by federal statutory and common law
19. schemes for compensatory relief.

20.
21. 73. Certain claims asserted by plaintiffs are not
22. ripe for adjudication.

23.
24. 74. Those portions of AS 46.03 that were enacted
25. after the oil spill constitute an unlawful bill of attainder
26. violative of Article I, Section 10 of the United States

1. Constitution, and if applied to Exxon or to Exxon Pipeline would
2. also violate the due process clauses of the United States and
3. Alaska Constitutions, and the contract clause of the United
4. States Constitution.

5.
6. 75. Plaintiffs have previously filed an action
7. against Exxon and Exxon Shipping, based upon the same facts
8. alleged herein, and said action is pending in this Court as
9. Action No. A89-106. Exxon and Exxon Shipping are entitled to
10. have this action abated, or, in the event damages are recovered
11. in Action A89-106 as compensation for the injuries claimed
12. herein, Exxon and Exxon Shipping are entitled to a setoff in the
13. full amount of such recovery.

14.
15. 76. Exxon and Exxon Shipping have acted pursuant to
16. government approval and direction with respect to the
17. containment and clean-up of the oil spill.

18.
19. 77. The corporate plaintiffs herein lack the capacity
20. to commence and maintain this action insofar as they have failed
21. to allege and prove that they have paid their Alaska biennial
22. corporate taxes last due and have filed biennial reports for the
23. last reporting period.

24.
25.
26.

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.

Prayer

WHEREFORE, Exxon prays for judgment as follows:

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

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

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

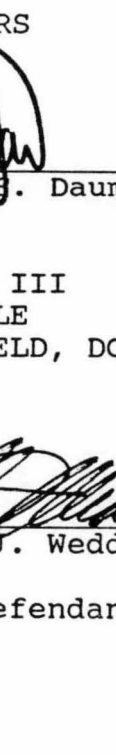
DATED: August 15, 1989

Respectfully submitted,

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

By 
John F. Daum

JOHN F. CLOUGH, III
RANDALL J. WEDDLE
FAULKNER, BANFIELD, DOOGAN &
HOLMES

By 
Randall J. Weddle

Attorneys for Defendant Exxon Corporation