

David R. Millen
3845 Helvetia Drive
Anchorage, AK 99508
(907) 561-2271

FILED

David Danielson
G. Val Tollefson
Arthur W. Harrigan
DANIELSON HARRIGAN SMITH
& TOLLEFSON
4400 First Interstate Center
Seattle, WA 98104
(206) 623-1700

APR 14 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By PLR Deputy

Paul M. Bernstein
Ronald Litowitz
Steve W. Berman
BERNSTEIN LITOWITZ BERGER
& GROSSMANN
4400 First Interstate Center
Seattle, WA 98104
(206) 682-2424

Attorneys for the Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA AT ANCHORAGE

TOM COPELAND, on behalf of himself)
and similarly situated persons,)
)
Plaintiff,)
)
v.)

A 89 - 129 CIV
Case No.
A89- _____ Civil

EXXON CORPORATION, a New Jersey)
corporation, EXXON SHIPPING)
CORPORATION, a Delaware)
corporation, EXXON PIPELINE)
COMPANY, a Delaware corporation,)
ALYESKA PIPELINE SERVICE CO.,)
a Delaware corporation,)
THE TRANS-ALASKA PIPELINE)
LIABILITY FUND, a non-profit)
Washington State corporation,)
JOSEPH HAZELWOOD, and GREGORY)
COUSINS,)
)
Defendants.)

CLASS ACTION COMPLAINT

CLASS ACTION COMPLAINT - 1

David R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

Plaintiff, by his undersigned attorneys, alleges upon personal knowledge as to his own acts and upon information and belief and the investigation of counsel as to all other matters, as follows:

NATURE OF THE ACTION

1. This is a class action for injunctive relief and for monetary damages for losses sustained by each member of the putative class. Said damages arise from and are the direct result of oil and other toxic substances discharged into the waters of Prince William Sound in Alaska by the EXXON VALDEZ, a tanker vessel engaged in the transport of crude oil between the Alyeska Pipeline Service Company oil terminal at the Port of Valdez in Alaska and various ports in the contiguous United States.

2. The grounds for relief can be summarized as follows:
(i) the Trans-Alaska Pipeline Authorization Act, Title II of Public Law 93-153, 43 U.S.C. Sections 1651 et seq.,
(ii) strict liability, (iii) negligence, (iv) nuisance, (v) gross negligence, (vi) intentional and negligent misrepresentation, (vii) violation of the Alaska Environmental Conservation Act, and (viii) constructive trust.

3. Plaintiff also seeks injunctive relief imposing the following requirements on defendants prior to resumption of full-scale transportation of oil from the Port of Valdez:

(a) develop contingency plans adequate to respond to a 250,000-barrel oil spill and to comply with all applicable state and federal statutes and regulations, and (b) obtain and properly maintain at Valdez sufficient equipment, supplies, and personnel to implement such contingency plans.

4. Plaintiff also seeks a constructive trust, to be funded by damages against the defendants and administered by a court-appointed trustee to rehabilitate the wildlife and environment of Prince William Sound and other areas adversely affected by the oil spilled from the EXXON VALDEZ.

JURISDICTION AND VENUE

5. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. Section 1331 inasmuch as the subject matter of this action arises under the laws of the United States, in particular 43 U.S.C. Sections 1651 and 1653. This court has pendant jurisdiction over the common law claims alleged herein.

6. Venue is proper under 28 U.S.C. Section 1391(c) inasmuch as all defendants do business in this district. Venue is also proper under 28 U.S.C. Section 1391(b) inasmuch as the claim arose in this district.

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PARTIES

7. Plaintiff Tom Copeland is a commercial fisherman who has fished in Prince William Sound for the past 27 years. He is the holder of a herring pound permit, a salmon drift gillnet permit, a purse seine permit, and a halibut longline permit, all issued by the State of Alaska.

8. Defendant Exxon Corporation ("Exxon") is a New Jersey corporation with its principal place of business at 1251 Avenue of the Americas, New York, New York. Exxon is one of the world's largest oil refining companies and is engaged in the business of exploring for and producing crude oil and natural gas, manufacturing petroleum products, and transporting and selling crude oil and natural gas. As part of its oil business, Exxon is a member of the Alyeska Pipeline Service Company consortium described herein, and has been actively involved in transporting oil from the Port of Valdez for eventual resale to customers of Exxon. Exxon had total revenues in the previous year in the billions of dollars. Exxon is an owner and operator of the tanker vessel known as the EXXON VALDEZ.

9. Defendant Exxon Shipping Corporation ("Exxon Shipping") is a Delaware corporation and a wholly owned maritime subsidiary of Exxon. Exxon Shipping on behalf of Exxon operates vessels used by Exxon to transport oil from the Port of Valdez to its refineries and other ~~oil-related~~

facilities on the West Coast of the United States and other locations. Exxon Shipping is an owner and operator of the tanker vessel known as the EXXON VALDEZ.

10. Defendant Exxon Pipeline Company ("Exxon Pipeline") is a Delaware corporation and is a substantial shareholder in defendant Alyeska Pipeline Service Company. It may also be an owner and operator of the tanker vessel EXXON VALDEZ.

11. Exxon, Exxon Shipping, and Exxon Pipeline are collectively referred to herein as the Exxon defendants.

12. Defendant Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation owned by a consortium of some of the world's largest oil companies. This consortium consists of holders of the right-of-way for the Trans-Alaska Pipeline System and includes the following: Amerada Hess Corporation, Arco Pipeline Company (owner of 21 percent interest), British Petroleum Pipeline, Inc. (formerly Sohio Alaska Pipeline Company, owner of 50 percent interest), Exxon Pipeline Company (owner of 20 percent interest), Mobile Alaska Pipeline Company, Phillips Petroleum Company, BP Exploration Company, Trans-Alaska Pipeline Liability Fund, Exxon Corporation, Exxon Co, USA, and Exxon Shipping Corporation. Alyeska owns and operates the Trans-Alaska Pipeline System, including the terminal at Valdez, Alaska, but in reality Alyeska is merely a shell corporation controlled and owned by the consortium, including the Exxon defendants. Alyeska acted at all times as an agent for the members of the consortium,

avid R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

including the Exxon defendants. Alyeska loaded the EXXON VALDEZ with North Slope crude oil at the Valdez terminal prior to the vessel's departure on or about March 23, 1989.

13. Defendant Trans-Alaska Pipeline Liability Fund ("Pipeline Fund") is a non-profit Washington State corporation established pursuant to the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Section 1653(c)(4). The Pipeline Fund is administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary of the Interior. By statute, it may be sued in its own name. Pursuant to Section 1653, the owner of oil transported from the Valdez terminal is required to contribute to the Pipeline Fund at the time oil is loaded onto a vessel a fee of five cents per barrel until \$100 million is in the Fund. The Fund was created for the purpose of providing compensation for damages to persons or entities injured by an oil spill.

14. Defendant Joseph Hazelwood was at all relevant times an employee of one of the Exxon defendants and was the master of the EXXON VALDEZ. At the time of the grounding of the EXXON VALDEZ on March 24, 1989, he was supposed to be in actual command of the vessel and piloting it through the waters of Prince William Sound. Hazelwood has been discharged from his employment by the Exxon defendants.

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15. Defendant Gregory Cousins is and was at all relevant times an employee of one of the Exxon defendants, and was at the time of the grounding serving as the third mate of the EXXON VALDEZ. At the time of the grounding, and for a period of time immediately before the grounding, Cousins was in actual command of the vessel.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

16. Plaintiff's claim is brought pursuant to Rules 23(a) and 23(b), Federal Rules of Civil Procedure, on behalf of all persons and entities who are engaged in the commercial harvesting and processing of fish and other seafoods in Prince William Sound, the Gulf of Alaska, and other waters, and who have been or will be injured or adversely affected by the oil spilled from the EXXON VALDEZ. This class includes all persons and entities engaged in the commercial harvest of seafood, including longline bottom fishermen, kelp pounders, salmon seiners, salmon gillnetters, and other holders of fishing permits; owners and charterers of fishing vessels; and owners, charterers, and operators of tendering vessels and the people who work on them. Excluded from the class are all persons who seek to make tort claims based upon bodily injuries as a result of the spill; all persons involved in businesses unrelated to the harvesting, processing, and distribution of seafoods who claim business losses as a result of the spill; and the defendants, their respective parent

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

corporations, subsidiaries, and divisions, and the directors, officers, agents, employees, and representatives of each.

17. The members of the class are so numerous that joinder of all members is impracticable. There are thousands of people and entities directly involved in the fishing industry in Prince William Sound and elsewhere that who have been or will be damaged by the oil spill. There are thousands of Alaska residents and others who have benefitted from the pristine environment of Prince William Sound and other Alaska waters whose use and enjoyment of these areas has been or will be severely diminished.

18. Plaintiff will fairly and adequately protect the interests of the members of the class. He has retained competent counsel experienced in the prosecution of complex class action litigation, mass tort litigation, and litigation involving marine oil pollution and the operation and navigation of vessels. He is a member of the class and does not have interests antagonistic to or in conflict with the class.

19. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, inasmuch as members of the class are so numerous and their membership so widespread that joinder of all members is impracticable. There are numerous questions of law and fact herein that are common to the class and that predominate

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

over any questions affecting individual members of the class, including

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

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

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

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

(e) whether Alyeska and the Exxon defendants were negligent in (i) failing to establish and provide for an adequate contingency plan to contain and clean up a discharge of oil of this magnitude from a grounded vessel; (ii) planning the containment, exclusion, and clean up of oil spilled from the EXXON VALDEZ; (iii) carrying out the containment, exclusion, and clean up of oil spilled from the EXXON VALDEZ; (iv) delaying the containment, exclusion, and clean up of oil spilled from the EXXON VALDEZ; (v) employing inadequate and/or improper tactics, methods, and materials in the containment, exclusion, and clean up of the oil spilled from the EXXON VALDEZ; (vi) failing to have available for immediate emergency

use adequate and proper supplies, materials, equipment, and personnel for the containment, exclusion, and clean up of the oil spilled from the EXXON VALDEZ;

(f) whether Alyeska and the Exxon defendants acted recklessly, wantonly, or in willful disregard of the rights and economic well-being of the plaintiff and the plaintiff class in (i) failing to establish and provide for an adequate contingency plan to contain and clean up a discharge of oil of this magnitude from a grounded vessel; (ii) planning the containment, exclusion, and clean up of oil spilled from the EXXON VALDEZ; (iii) carrying out the containment, exclusion, and clean up of oil spilled from the EXXON VALDEZ; (iv) delaying the containment, exclusion, and clean up of oil spilled from the EXXON VALDEZ; (v) employing inadequate and/or improper tactics, methods, and materials in the containment, exclusion, and clean up of the oil spilled from the EXXON VALDEZ; (vi) failing to have available for immediate emergency use adequate and proper supplies, materials, equipment, and personnel for the containment, exclusion, and clean up of the oil spilled from the EXXON VALDEZ;

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

(h) whether the conduct of Alyeska and the Exxon defendants as set forth herein warrants the imposition of punitive damages;

(i) the extent and nature of the impact of the discharge of oil and toxic effluent upon the waters and marine life of Prince William Sound and the Gulf of Alaska and contiguous waters;

(j) the measures necessary to eliminate or reduce present and future contamination and pollution;

(k) whether the acts and omissions of Alyeska and the Exxon defendants violated Alaska Statute 46.03.822 and other applicable state laws;

(l) whether and to what extent liability should be imposed on the individual defendants Hazelwood and Cousins;

(m) whether injunctive relief is appropriate; and

(n) whether a constructive trust should be created, funded by damages against defendants and administered by a trustee appointed by the court, to restore the wildlife and environment of Prince William Sound, the Gulf of Alaska, and all other waters adversely affected by the spill.

OPERATIVE FACTS COMMON TO ALL CLAIMS

A. Background

20. In the late 1960's and early 1970's, the major oil companies headquartered in the United States began to plan for the development of oil fields located on the North Slope of Alaska. The oil located in this region was recognized as one of the largest untapped oil resources in the world. The Exxon

David R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

defendants were each involved in planning the exploration and drilling associated with extracting this oil.

21. In response to the plans to develop and transport North Slope oil, residents of Alaska, the governments of Alaska and the United States, various environmental groups, and others expressed concern over the potential adverse impact of this development on the unique wilderness and wildlife areas of Alaska. These concerns related not only to the environmental impact on the land but also to the impact on the waters through which this oil would be transported.

22. Eventually, pursuant to legislation enacted by Congress and by the Alaska legislature, an oil pipeline was authorized to carry oil from the North Slope of Alaska to the Port of Valdez.

23. A consortium of the world's largest and wealthiest oil companies formed Alyeska to build and operate this pipeline and the oil terminal at Valdez. This pipeline began operating in 1977.

24. After the opening of the pipeline, Alaska residents including state officials and legislators remained concerned about the potential adverse impact of an oil spill on both the land and marine environment. The areas through which North Slope oil is transported are considered to be among the last true wilderness areas in the United States, and are renowned for their beauty and abundant wildlife. It was well known to the defendants that many Alaskans depended on these resources

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

for their livelihood. Among these are commercial fishermen of many kinds, tour operators, hunting and fishing guides, hoteliers, and many others. Other Alaskans depended on these areas for subsistence harvests of fish and game. Concern about the adverse affect of a spill on these sensitive and unique areas led to an attempt by the Alaska state legislature to enact stiff penalties for oil spills.

25. In response to proposed legislation, the oil industry (including the Exxon defendants and Alyeska) assured the legislature that such laws were not necessary. For example, in 1977 an Exxon official told an Alaska state house committee that Exxon had worked diligently to minimize oil spills, to develop more effective clean-up capacity, and to develop oil spill contingency plans, all funded by the industry. Exxon assured Alaska legislators that there was no need for legislation with stiff penalties. Based on these and other assurances, the proposed legislation was not passed.

26. In the late 1970's, the Alaska State legislature passed legislation that would have required oil tankers to be "double-hulled." The purpose of this legislation was to minimize the likelihood of a spill. This legislation was successfully attacked by the oil companies. Most if not all of the tankers used to transport oil from the Port of Valdez are single-hulled. The oil companies resisted building double-hulled tankers in large part due to the added costs involved and the impact of such costs on their profits. A

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

double-hulled tanker costs approximately ten percent more than a single-hulled tanker.

27. As part of Alaska law governing the operation of the Trans-Alaska Pipeline, the Exxon defendants and Alyeska were required to and did file an oil spill contingency plan with the State of Alaska. AS 46.04.030. In this plan, the Exxon defendants Alyeska represented that they had access to sufficient resources to protect environmentally sensitive areas and to contain, exclude, and clean up any potential oil discharges within a short time. The oil discharge contingency plan represented that Alyeska and the Exxon defendants had the best technology available to contain, exclude, and clean up such a spill. In the plan, which consists of more than 250 pages, Alyeska and the Exxon defendants represented, among other things, that they could promptly encircle an oil spill, had trained personnel on hand to respond to a spill, and had the proper technology to contain and clean up a spill. The contingency plan also represented that Alyeska and the Exxon defendants could "exclude" a spill from more than ninety sensitive sites, including fish hatcheries and spawning grounds known by the defendants to be extremely sensitive to an oil spill.

28. Exxon has realized huge profits from the Trans-Alaska pipeline. Although Exxon has not made its profits public, a recent study estimated that the oil industry has made an estimated after-tax profit on sales from pipeline oil

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

of \$42 billion. Despite these enormous profits, the oil companies including the Exxon defendants, operating through Alyeska, refused to build double-hulled tankers and to maintain full-time emergency spill response crews with adequate and appropriate supplies and equipment.

29. All of the above created a climate in which the defendants knew there was a substantial risk of disaster in the event of a significant oil spill.

B. The Oil Spill

30. On Thursday, March 23, 1989, the EXXON VALDEZ was berthed at the Alyeska terminal at Valdez and had been fully loaded by Alyeska with approximately 53 million gallons of North Slope crude oil. The 987-foot tanker was one of the Exxon defendants' largest tankers.

31. The EXXON VALDEZ departed the terminal during the hours of darkness on March 23 en route to Long Beach, California. At all relevant times, defendant Hazelwood was master of the vessel with ultimate authority for her operation and navigation. In that capacity, he was acting within the scope of his employment and as an agent and/or representative of the Exxon defendants. The Exxon defendants were aware that Hazelwood had previously gone through an Exxon alcohol detoxification program and had a history of alcohol abuse, including convictions and license suspensions for drunk driving and accusations of alcohol abuse while in command of tanker vessels for the Exxon defendants.

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

32. From the time it departed the terminal until it reached the marine pilot station near Rocky Point south of Valdez Narrows, the vessel carried a mandatory state-licensed marine pilot charged with navigating the vessel safely through Port Valdez and the Narrows. Defendant Hazelwood was on the bridge of the vessel and in command when the state marine pilot disembarked near Rocky Point at approximately 12:30 a.m. Friday, March 24, 1989. A 1986 order of the Coast Guard required that a licensed pilot remain in control of the vessel until it passed Bligh Reef and entered the more open waters of southeastern Prince William Sound. After the departure of the state pilot, defendant Hazelwood was the only person aboard the vessel who was licensed by the United States Coast Guard to pilot the vessel through the waters of Prince William Sound. He was therefore responsible for piloting the vessel past Bligh Reef.

33. Shortly after the state marine pilot's departure, defendant Hazelwood retired to his cabin, one flight below the bridge, leaving only defendant Cousins, the third mate, and Robert Kafan, the helmsman, on the bridge. At all relevant times, Cousins and Kafan were acting within the scope of their employment and as agents and/or representatives of the Exxon defendants. Neither defendant Cousins nor helmsman Kafan was certified to pilot the vessel in Prince William Sound.

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David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

34. Defendant Cousins sought and received Coast Guard permission to leave the normal deep-water southbound lane of the Prince William Sound Vessel Traffic System due to earlier reports of icebergs that had broken from a glacier to the northwest. The Coast Guard gave the vessel permission to move from the southbound lane into the northbound lane of the Vessel Traffic System. Vessels such as the EXXON VALDEZ are required by law to remain within the Vessel Traffic System unless deviation from the System is specifically authorized by the Coast Guard. The Vessel Traffic System is clearly marked on nautical charts required to be carried aboard the EXXON VALDEZ.

35. Under defendant Cousins' command, the vessel changed course to the south, toward the northbound traffic lane. Instead of coming onto a course inside the northbound lane, however, the vessel continued across and out of the northbound lane.

36. After crossing through and out of the northbound lane, the vessel continued toward a shallow, rocky reef known as Bligh Reef, located approximately two nautical miles from the nearest edge of the northbound traffic lane. Bligh Reef is a well-known hazard to navigation in that area of Prince William Sound. It appears on nautical charts required to be carried aboard the EXXON VALDEZ. It is marked for the benefit of mariners by a floating buoy, which is equipped with a flashing light and a bell, and which is visible on radar

required to be installed on the EXXON VALDEZ. The vessel was fully loaded with crude oil and was at a critical stage of its passage. Defendant Cousins was unqualified to pilot the vessel in this or any other area of Prince William Sound. The vessel had not been authorized by the Coast Guard to leave the northbound lane and enter into waters outside the Vessel Traffic System, and there was no reason for the vessel to do so. There was no mechanical or electronic failure aboard the vessel.

37. The vessel first scraped the rocks in the area of Bligh Reef, then became hard aground, all at a distance of at least two nautical miles from the nearest vessel traffic lane.

38. Although the vessel was still navigable after the first scraping impact, she was so far south and east of the deep water of the Vessel Traffic System that when defendant Cousins tried to turn the vessel back toward the traffic lanes he could not prevent the vessel from striking the shallow reef a second time. This second impact stopped the vessel's progress completely.

39. The vessel's allision with Bligh Reef tore several holes into her starboard cargo tanks and caused additional damage the nature and extent of which is not now known to plaintiff.

40. The scraping impact and grounding of the EXXON VALDEZ upon Bligh Reef opened several of the ship's oil cargo tanks, causing the discharge of more than 10 million gallons

of crude oil into Prince William Sound. It is believed to be the largest oil spill ever in the United States. The oil has been carried by wind, tide, and current throughout the southwestern portion of Prince William Sound and into the Gulf of Alaska. It has coated hundreds of miles of Alaska's shoreline and threatens shorelines in the Gulf of Alaska and in contiguous waters such as Resurrection Bay, English Bay, Kachemak Bay, Cook Inlet, and the waters around Kodiak Island. It has been spread across thousands of square miles of inland and ocean waters, killing and threatening to kill untold numbers of animals and organisms including birds, marine mammals, fish, shellfish, mollusks, and plankton.

41. Prior to the departure of the EXXON VALDEZ, defendant Hazelwood was observed consuming alcoholic beverages at various establishments in Valdez. An alcohol detection test administered nine hours after the tanker ran aground showed Hazelwood's blood alcohol to be 0.061 percent, well above the acceptable level established by Coast Guard regulations. This test suggests that Hazelwood's blood alcohol level was much higher at the time of the vessel's departure and subsequent grounding.

42. The Exxon defendants knew that Hazelwood had a history of problems involving alcohol abuse, including accusations of alcohol abuse aboard the vessel while under navigation, and were aware that local community groups just

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

weeks before the spill, local community groups had expressed concern about crewmen boarding tankers while intoxicated.

43. Following the spill, authorized representatives of Exxon and Exxon Shipping admitted responsibility for the spill and resulting damage.

C. Clean-up Efforts

44. Alyeska and the Exxon defendants are responsible for containing the spill from the EXXON VALDEZ. Alyeska first appeared on the scene of the spill without any containment equipment. Alyeska's containment boom deployment barge was out of service, severely impairing Alyeska's ability to respond quickly to the spill. Alyeska had failed to notify state officials that its barge was out of service, despite representing in its contingency plan that it would do so.

45. In its contingency plan, Alyeska had represented that it had developed and organized in advance the procedures, protocols, equipment, supplies, and personnel to respond immediately to an oil spill. It represented that its oil spill techniques and equipment were "state-of-the-art." It represented that it was prepared to initiate a rapid response to "contain" a spill and to "exclude" a spill from particularly sensitive areas such as hatcheries and spawning grounds. It further represented that it had a 24-hour task force in Valdez that was fully trained to respond to a spill.

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

avid R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

46. When the spill actually occurred, it became clear that Alyeska did not have a trained task force capable of an adequate, sustained, state-of-the-art response. In fact, in an effort to save costs, Alyeska in 1981 had disbanded an around-the-clock spill response team in Prince William Sound.

47. Over the past few years, Alyeska has cut back its spill response program in the following respects:

(a) a full-time professionally trained response team was gradually eliminated, replaced by dock and office workers with no experience or training with oil spills of significant size;

(b) a chartered 218,000-gallon capacity tanker barge, designed to carry oil from spill sites, was replaced by a much smaller, second-hand barge that was too badly damaged to be used in response to the EXXON VALDEZ spill;

(c) modern self-inflating containment booms designed to contain oil slicks immediately after a spill were unavailable for more than 24 hours; and

(d) a full-time oil spill coordinator, whom Alyeska promised to keep in Valdez, was no longer stationed there.

48. At the time of the spill, neither Alyeska nor the Exxon defendants had immediate access to adequate containment booms or chemical dispersants.

49. The skimmer boats eventually used by Alyeska and the Exxon defendants were in poor condition and incapable of recovering the amount of oil represented in the contingency plan to be recoverable by skimming.

50. At the time of the spill, neither Alyeska nor the Exxon defendants had available or immediately accessible the equipment needed to exclude spilled oil from environmentally sensitive areas.

51. Neither Alyeska nor the Exxon defendants had communications equipment capable of permitting effective and prompt deployment and coordination of spill response personnel and equipment.

52. Alyeska's equipment was not in state-of-the-art condition, but was in fact in poor condition, had been improperly maintained, and was largely inoperative.

53. Late on Sunday, March 26, 1989, critical of the slow and inadequate response of Alyeska and the Exxon defendants, and concerned about even further environmental damage, Alaska Governor Steve Cowper declared a disaster emergency.

D. Damages to Plaintiff and the Class

54. When the spill occurred, plaintiff and many members of the plaintiff class were preparing for the herring season, which is normally followed by harvests of shellfish and salmon. The harvesting of herring roe alone earns approximately \$16 million per year for plaintiff and members of the plaintiff class, while the salmon harvest is worth approximately \$75 million per year. State authorities have cancelled the herring fishery in Prince William Sound as a direct result of the oil spill from the EXXON VALDEZ.

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

55. The oil slick from the EXXON VALDEZ has heavily contaminated the waters and shorelines of southwestern Prince William Sound, damaging or threatening fish hatcheries in the area and resulting in the death of unknown numbers of birds, marine mammals, fish, shellfish, and other marine life. The spilled oil threatens to contaminate other areas of the Sound as wind, tides, and currents further disperse the slick.

56. The oil slick has been carried into the Gulf of Alaska, and has contaminated or threatens to contaminate its rich fishing grounds and its shorelines. Among the threatened areas are Resurrection Bay and the community of Seward, the Kenai Fjords National Park, the communities of English Bay and Seldovia, Kachemak Bay and the community of Homer, Cook Inlet, and the waters and shorelines in the vicinity of Kodiak Island.

57. Prince William Sound and the coastal areas of the Gulf of Alaska are crossroads for huge migrations of fish and birds, many of which begin each year in the early spring. The Sound and Gulf provide hundreds of critical herring and salmon spawning areas, as well as homes for other important stocks of fish, shellfish, and mollusks. The spill from the EXXON VALDEZ occurred at the worst possible time for herring and salmon in Prince William Sound, because early April is the time when salmon hatch and herring spawn. Literally billions of herring enter the Sound at this time to lay eggs on floating beds of kelp. Millions of salmon fingerlings from

avid R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

hatcheries in the area are released at this time to begin their multi-year migration and spawning cycle. They will swim in contaminated water and feed on plankton poisoned by the spilled oil. These species are only part of the region's rich commercial fishery stocks, which also include crab, shrimp, halibut, Pacific cod, sablefish, and other bottom fish.

58. In 1988, fishermen caught more than \$150 million worth of salmon, herring, halibut, and shellfish in Prince William Sound and surrounding areas. Prior to the spill, the estimated harvest for the 1989 season was 39 million pink salmon and 1.2 million chum salmon, in addition to 10,000 tons of herring. The 1988 salmon harvest of 14.9 million fish (valued at \$76 million) had been expected to more than triple. The spill has devastated the seafood industry. The spill occurred as Prince William Sound fishermen were preparing for the herring season and for the subsequent shellfish and salmon harvests. The oil spill forced the Alaska Department of Fish and Game to cancel the sablefish season that was to have started on April 1, 1989. A shrimp fishery already under way was halted. Shellfish harvesting has been shut down because of worries about contamination. This season's herring fishery has been cancelled. The four major herring roe fisheries in Prince William Sound, which are worth millions of dollars, are at risk of being contaminated by the spill. Many salmon fishermen have been forced to cancel fishing plans without waiting for state closures because of fear that oily water

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

will contaminate their multi-thousand-dollar nets and render them useless.

59. The spill is expected to damage seafood resources in the area for many years. The impact on long-lived anadromous species such as salmon and herring will be felt for years if juvenile and spawning-age populations are wiped out before and after their migrations in the open ocean. As spring warmth melts glaciers, a heavy load of fine silt and glacial clay will be dumped into the Sound. Oil normally clings to glacial clay, thus threatening to contaminate the Sound for many decades. Worse, because fish are a food resource, public perception of contamination is as harmful as actual contamination. Many buyers have already told fishermen and processors that they will not buy seafood from Prince William Sound this year for fear it will be tainted. The same may happen with respect to fisheries in other areas affected by the spill. The damage to the excellent reputation of seafood from these areas may continue long after the physical effects of the spill have diminished.

60. The oil spill will also diminish the economic value of the limited entry permits and specialized fishing boats and gear owned by many members of the class; it will also diminish the value of tender vessels. Even though the fisheries may recover over a period of years, the immediate loss of income and the restrictions on participating in other fisheries will force many members of the class out of business and out of the

avid R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

fishing industry permanently. Many will be forced to leave Alaska to find work elsewhere.

61. Upon information and belief, the damage caused by the spill to marine resources and property -- and the resulting damage to the people dependent on the fishing industry -- could last for many years. Particularly in the relatively protected waters of Prince William Sound, with its many islands, bays, inlets, coves, and estuaries, heavy accumulations of oil and tar may prolong pollution and contamination far into the future.

PUNITIVE DAMAGES

62. The conduct of defendants alleged herein was willful, wanton, malicious, outrageous, and so reckless as to justify the award of punitive damages.

FIRST CLAIM FOR RELIEF

(Against Exxon, Exxon Shipping, Exxon Pipeline,
and the Trans-Alaska Pipeline Fund for
strict liability under 43 U.S.C. 1653(c))

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

64. The Exxon defendants are owners and/or operators of the EXXON VALDEZ and as such are strictly liable under 43 U.S.C. Section 1653 for any damages sustained by any person as a result of oil discharged from the vessel. Such liability is strict without regard to the fault of the Exxon defendants.

65. The damages to plaintiff and the class were caused neither by an act of war nor by the negligence of the United States, of any other governmental agency, or of plaintiff and the plaintiff class.

66. By virtue of the oil spilled from the EXXON VALDEZ, plaintiff and members of the class have been damaged in an amount to be proved at trial. Such damages include but are not limited to lost profits from commercial fishing and related enterprises (both present and future profits), and damages to the wildlife and environment in Prince William Sound and other waters affected by the spill. The spilled oil has damaged lands, structures, wildlife, and biotic and other natural resources relied upon by Native and non-Native Alaskans and others, specifically including plaintiff and the class, for their livelihood, subsistence, and recreational pursuits.

67. The Exxon defendants and the Pipeline Fund are strictly liable to plaintiff and the class for all damages sustained as a result of the spill.

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David R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

SECOND CLAIM FOR RELIEF

(Against Alyeska for strict liability
under 43 U.S.C. 1653(a))

68. Plaintiff realleges and incorporates here by reference each and every allegation previously set forth.

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

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

71. On information and belief, the damages to plaintiff and the class were caused neither by an act of war nor by the negligence of the United States, of any other governmental agency, or of plaintiff and the plaintiff class.

72. The oil discharged from the EXXON VALDEZ in connection with and resulting from activities along or in the vicinity of the Pipeline right-of-way has damaged and otherwise adversely affected lands, structures, fish, wildlife, and biotic and other natural resources relied upon by Native and non-Native Alaskans and others, including specifically plaintiff and the class, for their livelihood, subsistence, and recreational pursuits.

73. Defendant Alyeska is strictly liable to plaintiff and the class for all damages sustained as a result of the discharges of oil from the EXXON VALDEZ.

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THIRD CLAIM FOR RELIEF

(Against Alyeska and the Exxon defendants
under 43 U.S.C. 1653(a) and (c))

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

75. Alyeska and the Exxon defendants had continuously reassured state officials, state residents, environmentalists, and others, specifically including plaintiff and the class, at all times prior to the spill that a contingency plan had been developed and was in place respond promptly and successfully to contain, exclude, and clean up a major oil spill. This contingency plan was nominally filed by Alyeska, but given the consortium's exclusive control of Alyeska, the plan is the product of and is binding on the Exxon defendants as well as the other members of the consortium. Alyeska is, in reality, wholly capitalized and controlled by the consortium, including the Exxon defendants. With respect to the preparation and filing of the plan, and with respect to responding in accordance with the plan, Alyeska was acting at all times as an agent or alter ego of the Exxon defendants.

76. Upon information and belief, Alyeska's and Exxon's contingency plan required them to be on site within five hours of the spill. Eighteen hours after the grounding, however, essentially nothing was in place. Instead, it took nearly an entire day for Alyeska and Exxon representatives to start

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

placing containment booms around the slick. By that time, the discharged oil already covered an area too large to contain. Days after the spill little had been done to respond other than unsuccessful attempts to burn the oil and to apply chemical dispersants.

77. The delays were due in part to repairs being performed on the barge required to deploy booms around the vessel.

78. Lack of proper equipment and supplies also hindered a prompt and effective response.

79. Upon information and belief, Alyeska and the Exxon defendants had a full-time trained oil spill response team at Valdez to implement the contingency plan. At the time of the spill, however, this team did not exist and neither Alyeska nor the Exxon defendants had sufficient trained personnel to handle the spill in compliance with the contingency plan.

80. Moreover, neither Alyeska nor the Exxon defendants had enough equipment in Valdez to respond properly to a spill of this size, even though these defendants have represented for years that they were adequately equipped to do so.

81. One of the tactics in the contingency plan was application of chemical dispersants, which had been touted by these defendants as effective in responding to a spill. In responding to this spill, however, chemical dispersants were ineffective because the water was too cold and calm, making the slick too thick for dispersants to take effect.

82. Upon information and belief, Alyeska tested these dispersants and knew or should have known that they (a) did not work well on North Slope crude oil, and (b) were not effective in calm or cold waters.

83. Upon information and belief, the oil has now been in the water too long for these dispersants to work, because they are most effective only if employed within 24 hours after a spill. Beyond that time, oil develops a resistance to chemical treatment.

84. Another element of Alyeska's and Exxon's contingency plan was to burn the surface oil with a substance similar to Napalm. However, said defendants' delay in responding and the shortage of containment equipment allowed weather conditions to distribute the oil over too large an area for small boats and containment booms to corral the oil into a concentrated area for this purpose.

85. Pursuant to the Trans-Alaska Pipeline Authorization Act, the proper control and removal of the discharged oil was and is the responsibility of Alyeska and the Exxon defendants. Said defendants had a duty to plaintiff and the plaintiff class to have adequate resources available immediately and effectively to contain, exclude, and clean up any oil spill in any area within or without the right-of-way or permit area granted to them.

86. In the exercise of care, said defendants knew or should have known that they lacked adequate equipment,

supplies, and personnel to contain, exclude, and clean up a spill of this magnitude; that their contingency plan, including the tactics developed and set forth therein, were extremely limited in their efficiency and effectiveness; that their contingency plan did not deal adequately with a spill involving such complicating factors as the grounding of a tanker; and that the procedures and resources outlined in the plan could only be employed in "ideal environmental conditions."

87. The negligence of Alyeska and the Exxon defendants in the containment, exclusion, and clean up of this spill included but was not limited to (i) failing to establish and provide for an adequate contingency plan for a spill of this magnitude from a grounded tanker; (ii) inadequately planning the response effort after the spill; (iii) inadequately carrying out the response effort after the spill; (iv) unreasonably delaying the response effort after the spill; (v) failing to provide sufficient equipment, supplies, and trained personnel, both before and after the spill; (vi) failing to mobilize fishermen and fishing boats in a timely and effective manner to assist in the response effort; (vii) failing to communicate and cooperate candidly and fully with federal, state, and local officials in connection with the response effort. All of these acts and omissions constitute negligence that aggravated and compounded the damages to the plaintiff and the class.

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

88. As a direct and proximate result of the foregoing negligence, plaintiff and the class have suffered damages.

89. Alyeska and the Exxon defendants acted recklessly, wantonly, and in willful disregard of the rights and economic well-being of plaintiff and the class, for which plaintiff and the class are entitled to punitive damages.

FOURTH CLAIM FOR RELIEF

(Against the Exxon defendants under
43 U.S.C. 1653(c): negligence)

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

91. The Exxon defendants knew that defendant Hazelwood, master of the EXXON VALDEZ when it ran aground, had a history of alcohol abuse, including suspensions of his driver's licence for driving while intoxicated, and including accusations that he operated Exxon vessels while under the influence of alcohol. The Exxon defendants knew that Hazelwood had participated in an Exxon-sponsored alcohol detoxification program while employed by the Exxon defendants. Nonetheless, the Exxon defendants allowed Hazelwood to command the EXXON VALDEZ.

92. Hazelwood was the master of the vessel on March 24, 1989, when it ran aground on Bligh Reef. However, Hazelwood was under the influence of alcohol and had relinquished control of the vessel to defendant Cousins, the third mate,

David R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

who was not licensed to pilot the vessel past Bligh Reef or anywhere else in Prince William Sound.

93. Hazelwood and Cousins knew or should have known that it was not only unreasonably dangerous for Hazelwood to leave the bridge and relinquish control to Cousins while in the vicinity of Bligh Reef, but that it was also a violation of a standing order of the Coast Guard requiring a licensed pilot to navigate the vessel past and beyond Bligh Reef.

94. Hazelwood and Cousins knew or should have known that Cousins did not have a license to pilot the vessel past and beyond Bligh Reef.

95. The Exxon defendants knew, or should have known, that the vessel's single-hull construction was not sufficient to allow it to engage safely in the trade for which it was intended.

96. The negligence of the Exxon defendants in the ownership and operation of the EXXON VALDEZ specifically included, but was not limited to, (a) failing to ensure that the vessel was properly crewed, (b) failing to ensure that the vessel complied with all applicable pilotage rules and regulations, and (c) failing to ensure that the vessel was seaworthy for the intended trade upon departure from the Port of Valdez. As a direct and proximate result of the foregoing negligent acts and omissions, the Exxon defendants, in their own right as well as by and through their agents, servants,

vid R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

and employees, caused plaintiff and the class to suffer damages as described herein in amounts to be proved at trial.

97. The Exxon defendants acted recklessly, wantonly, and in willful disregard of the rights and economic well-being of plaintiff and the class, for which the plaintiff and the class are entitled to punitive damages.

FIFTH CLAIM FOR RELIEF

(For strict liability under common law against all defendants)

98. Plaintiff realleges and incorporates by reference each and every allegation previously set forth.

99. The transportation of crude oil involves the care and handling of an ultra-hazardous substance that is abnormally dangerous and involves a high degree of risk of serious harm to the environment and to the businesses of plaintiff and the class. The richness and diversity of the seafood, wildlife, and recreational resources in Prince William Sound contributes to the abnormally hazardous nature of carrying crude oil through its waters by vessel.

100. The defendants knew that the harm that could result from the spillage of oil in the environmentally unique and sensitive area of Prince William Sound was particularly great.

101. The defendants knew and recklessly disregarded the fact that they could not eliminate or effectively reduce the harm that was certain to be caused by a spill of this

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

magnitude. As previously set forth, Alyeska and the Exxon defendants failed to take adequate steps to reduce the risk of a spill or to minimize the harm once the spill had occurred.

102. By virtue of the foregoing, all defendants are strictly liable for damages caused by the oil spill.

103. By virtue of the foregoing, plaintiff and the class have been damaged in an amount to be proved at trial.

SIXTH CLAIM FOR RELIEF

(Common law negligence, against all defendants)

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

105. By virtue of the acts and omissions set forth above, all defendants were negligent under the common law and are liable to plaintiff and the class for all for all damages proximately caused by said negligence.

SEVENTH CLAIM FOR RELIEF

(Against Alyeska and the Exxon defendants for violations of the Alaska Environmental Conservation Act)

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

107. The oil spilled by the EXXON VALDEZ is a hazardous substance within the meaning of AS 46.03.826(4)(B).

David R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

108. The oil spilled by the EXXON VALDEZ and its subsequent spreading through Prince William Sound and into the Gulf of Alaska presents an imminent and substantial danger to the public health and/or welfare.

109. Pursuant to AS 46.03.826(3), Alyeska and the Exxon defendants own and/or control the oil spilled from the EXXON VALDEZ.

110. Upon information and belief, the entry of said oil in or upon the water and/or the surface or subsurface land of the State of Alaska was not caused solely by (a) an act of war, (b) an intentional or negligent act of a third party other than one or more of the defendants and/or their privies, (c) negligence on the part of the governments of the United States or the State of Alaska, of (d) an act of God.

111. Upon discovery that the said oil had entered into or upon the water and/or surface or subsurface land of the State of Alaska, Alyeska and the Exxon defendants delayed and/or failed to begin operations to contain, exclude, and clean up the hazardous substance within a reasonable period of time.

112. The entry of the said oil in or upon the waters and/or surface or subsurface lands of the State of Alaska has caused damages to the plaintiff and the class as outline above, in amounts to be proved at trial, for which Alyeska and the Exxon defendants are strictly liable under AS 46.03.822.

David R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

EIGHTH CLAIM FOR RELIEF

(Against Alyeska and the Exxon defendants for private nuisance under AS 9.45.230)

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

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

115. The said interference includes, but is not limited to, injury to or loss of personal and real property, loss of income, loss of means of producing income, and loss of economic benefits.

116. The said interference was caused by the acts and omissions of Alyeska and the Exxon defendants for which they are liable to plaintiff and the plaintiff class for the damages sustained as alleged herein.

117. The said defendants threaten to continue the acts and omissions complained of herein. Unless temporarily, preliminary, or permanently restrained and enjoined, the said defendants will continue to do so, all to the irrefutable and irreparable damage of plaintiff and the class. No remedy at law that is available to plaintiff and the class is adequate to compensate them for the injuries threatened to continue.

David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

NINTH CLAIM FOR RELIEF

(Against all defendants for public nuisance)

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

119. The acts and omissions of all of the defendants in connection with spill of oil from the EXXON VALDEZ created a public nuisance by interfering substantially and unreasonably with the rights of plaintiff and the class to water and lands that are free from contamination and pollution by oil.

120. The said substantial and unreasonable interference with the interests of plaintiff and the class caused damages to plaintiff and the class for which all defendants are liable.

121. Alyeska and the Exxon defendants threaten to continue the acts and omissions complained of herein. Unless they are temporarily, preliminarily, or permanently restrained and enjoined, they will continue to do so, all to the irrefutable and irremediable damage of the plaintiff and the class. No remedy at law that is available to the plaintiff and the class will compensate them adequately for the injuries threatened to continue.

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David R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

TENTH CLAIM FOR RELIEF

(Against all defendants, negligence per se)

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

123. The acts and omissions of the defendants violated one or more of the following statutes: 43 U.S.C. Sections 1651 et seq. (the Trans-Alaska Pipeline Authorization Act), AS 46.03.010 et seq., AS 46.04.030, AS 9.45.230, and AS 5.25.060(b). In committing these violations, the defendants were negligent per se.

124. Defendant Hazelwood violated Alaska statutes and regulations making it illegal to operate a vessel while under the influence of alcohol. The Exxon defendants and defendants Hazelwood and Cousins violated a Coast Guard order applicable to pilotage of the EXXON VALDEZ in Prince William Sound. In committing these violations, the said defendants were negligent per se.

125. The defendants are liable to plaintiff and the class for all damages resulting from the spill on account of their violations of the above-cited federal and state laws.

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Avid R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

ELEVENTH CLAIM FOR RELIEF

(Against Alyeska and the Exxon defendants
for misrepresentation)

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

127. Alyeska and the Exxon defendants were required by AS 46.04.030 to prepare a contingency plan detailing their response to oil spills. The said defendants prepared and submitted to state officials a 250-page plan in which they represented to the State of Alaska and its residents their ability to respond to oil spills. In the plan, the said defendants represented that they had access to sufficient resources to protect environmentally sensitive areas and to contain, exclude, and clean up oil spills from a vessel. They further represented that they would respond to such a spill with the best available technology.

128. In the plan, the said defendants represented, among other things, that they could respond effectively to a spill within five hours. The said defendants further represented that they had trained crews available at Valdez, with sufficient equipment and materials on hand to respond effectively to a spill.

129. These representations and others in the plan were false and misleading. In fact, the said defendants were not in a position to respond to the spill from the EXXON VALDEZ in the manner represented in the plan.

130. Plaintiff and the class justifiably relied on the representations in the contingency plan. Indeed, when the City of Valdez twice offered to develop a back-up spill response capability, complete with skimmer boats and containment booms, the said defendants represented that such back-up facilities were unnecessary and a waste of public money. These statements were further misrepresentations by these defendants.

131. As a result of these misrepresentations, plaintiff and the class have been damaged in an amount to be proved at trial.

TWELFTH CLAIM FOR RELIEF

(Against all defendants, for a constructive trust
for benefit of wildlife and the environment)

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

133. The oil spilled by the EXXON VALDEZ has caused and will continue to cause extensive damage to the wildlife and environment of Prince William Sound and other waters adversely affected by the spill.

134. Plaintiff and the class obtain their livelihoods, subsistence, enjoyment, and other benefits from the areas adversely affected by the spill.

135. The destruction and degradation of the said

David R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

wildlife and environment is the direct result of the acts and omissions of the defendants described herein.

136. For the said destruction and degradation of the wildlife and environment, plaintiff and the class seek damages against all defendants to be placed into a constructive trust, to be administered by a trustee appointed by the court, for the sole purpose of restoring and rehabilitating the wildlife and environment destroyed and degraded by the spilled oil.

THIRTEENTH CLAIM FOR RELIEF

(For injunctive relief against
Alyeska and the Exxon defendants)

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

138. Plaintiff and the members of the class are likely to succeed on the merits of their claims. They will be irreparably injured by the damage resulting from the Valdez spill. It may be impossible to restore completely the fish and wildlife in Prince William Sound and other areas adversely affected by the spill. Upon information and belief, Alyeska the Exxon defendants, and the other operators of tankers into and out of the Port of Valdez are not capable of responding adequately to contain, exclude, and clean up another significant spill, let alone a major spill like that from the EXXON VALDEZ.

David R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

139. Alyeska and the Exxon defendants seek to resume the normal flow of tanker traffic to and from the Port of Valdez. There is no indication that Alyeska will have in place an adequate contingency plan, with sufficient resources to implement such a plan, prior to resuming normal tanker operations in Prince William Sound and the Port of Valdez.

140. The situation outlined above creates an unacceptable risk to the livelihood and other interests of the plaintiff and the class and to the environmental well-being of Prince William Sound and other areas that would be affected by another spill. Another spill would be catastrophic on top of the damage from the oil spilled by the EXXON VALDEZ. A spill of any significant size would cause irreparable harm to plaintiff and the class for which they would have no adequate remedy at law.

141. Plaintiff and the class seek an injunction prohibiting the normal operation of tanker traffic to and from the Alyeska terminal until

- (a) a contingency plan has been submitted to and approved by state officials under the supervision of the court, and
- (b) Alyeska demonstrates to the satisfaction of the court its ability to respond with adequate personnel, supplies, and equipment to comply in all respects with the said plan.

David R. Millen
ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

WHEREFORE plaintiff prays that this court

1. order this action to proceed as a class action, with plaintiff as the class representative;

2. award compensatory and punitive damages to the plaintiff and the class in an amount to be proved at trial;


3. award damages for destruction and degradation of wildlife and the environment, to be placed into a constructive trust to be administered by a court-appointed trustee for the purpose of restoring wildlife and the environment;

4. award injunctive relief in a form to be determined after a hearing on a motion for a preliminary injunction or otherwise, but which in substance restricts the flow of tanker traffic to and from the Port of Valdez until the court is satisfied that Alyeska is prepared for and can respond effectively to significant oil spills in the future;

5. award attorneys' fees and the costs of this litigation; and

6. award such other and further relief as the court deems just and proper.

DATED this 13th day of April, 1989.



DAVID R. MILLEN

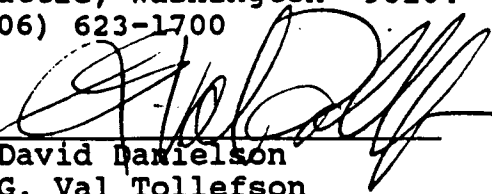
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avid R. Millen

ATTORNEY
3845 HELVETIA DRIVE
ANCHORAGE, ALASKA 99508
(907) 561-2271

DANIELSON HARRIGAN SMITH
& TOLLEFSON
4400 First Interstate Center
Seattle, Washington 98104
(206) 623-1700

By 
David Danielson
G. Val Tollefson
Arthur W. Harrigan

BERNSTEIN LITOWITZ BERGER
& GROSSMANN
4400 First Interstate Center
Seattle, Washington 98104
(206) 682-2424

By 
Paul M. Bernstein
Steve W. Berman

Attorneys for Plaintiffs

A:\EXXON