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Attorneys for Defendant  
Exxon Shipping Company  
(D-2)

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re Case No. A89-135

D-2's Answer to P-78 and P-79's  
Complaint Dated April 13, 1989

Defendant Exxon Shipping Company ("Exxon Shipping")  
answers plaintiffs' complaint as follows:

PREFATORY STATEMENT

Exxon Shipping alleges that no answer to plaintiffs'  
prefatory statement is required and, if an answer were  
required, Exxon Shipping lacks knowledge or information  
sufficient to form a belief as to the truth of the allegations

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Answer of Exxon Shipping Company - 1

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in plaintiffs' prefatory statement and, on that basis, denies them.

JURY TRIAL DEMAND

1. While no answer is required to plaintiffs' demand for trial by jury, Exxon Shipping does not waive its right to contest plaintiffs' jury demand.

JURISDICTION AND VENUE

2. Answering paragraph 2, Exxon Shipping admits that certain causes of action that plaintiffs purport to bring are within this Court's admiralty jurisdiction. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 2.

3. Answering paragraph 3, Exxon Shipping admits that plaintiffs purport to bring a civil action as set forth in paragraph 3 of the complaint. Exxon Shipping denies that the Exxon Valdez is now within the jurisdiction of the court, and lacks knowledge or information sufficient to form a belief as to whether the Exxon Valdez will return to this jurisdiction during the pendency of this action and, on that basis, denies the remaining allegations in paragraph 3.

4. Answering paragraph 4, Exxon Shipping admits that plaintiffs purport to bring claims for relief pursuant to grounds set forth in paragraph 4 of the complaint. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 4.

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Answer of Exxon Shipping Company - 2

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5. Answering paragraph 5, Exxon Shipping admits that this action may be brought in this district under 28 U.S.C. § 1391(b) and (c), as well as the applicable principles of admiralty and maritime law. Exxon Shipping further admits that Exxon Corporation (also erroneously sued herein as Exxon Co., USA), Exxon Shipping Company, and Exxon Pipeline Company reside in this district for venue purposes. Except as expressly admitted, Exxon Shipping lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph 5 and, on that basis, denies them.

#### THE PARTIES

6. Answering paragraph 6, Exxon Shipping lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 6 and, on that basis, denies them.

7. Answering paragraph 7, Exxon Shipping admits the allegations in paragraph 7.

8. Answering paragraph 8, Exxon Shipping admits that Alyeska is a Delaware corporation owned by seven companies, consisting of the Amerada Hess Pipeline Corporation, ARCO Pipeline Company, BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company, who are permittees under the Agreement and Grant of Right-Of-Way for the Trans-Alaska Pipeline System. Except as expressly

admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and, on that basis, denies them.

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

10. Answering paragraph 10, Exxon Shipping admits it is a domestic maritime subsidiary of Exxon Corporation, separately incorporated under the laws of the State of Delaware; that its principal place of business is at 800 Bell Street, Houston, TX 77251; and that it is the owner and operator of the Exxon Valdez. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 10.

11. Answering paragraph 11, Exxon Shipping admits that Exxon Company, USA is an unincorporated division of Exxon Corporation responsible for the operation of Exxon Corporation's energy business within the United States; and that its headquarters is at 800 Bell Street, Houston, TX 77251.

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Answer of Exxon Shipping Company - 4

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Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 11.

DEFINITIONS

12-17. Answering paragraphs 12 through 17, Exxon Shipping admits that plaintiffs purport to define certain terms. Except as admitted, Exxon Shipping denies the allegations and further denies that any subsequent use of those terms in the complaint is necessarily accurate or appropriate.

FACTUAL ALLEGATIONS

18. Answering paragraph 18, Exxon Shipping admits that on Thursday evening, March 23, 1989, the Exxon Valdez, which is approximately 987 feet long and weighs 211,469 deadweight tons, left the Port of Valdez, Alaska, the southern terminal facility of the Trans-Alaska Pipeline System, bound for Long Beach, California. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 18.

19. Answering paragraph 19, Exxon Shipping admits that the Exxon Valdez contained approximately 1.2 million barrels of crude oil that had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 19.

20. Answering paragraph 20, Exxon Shipping admits that the Exxon Valdez passed through the Valdez Narrows under the direction of a pilot, and that Captain Hazelwood was on the

bridge when the pilot disembarked in the Valdez Arm at approximately 11:30 p.m. on March 23, 1989. Exxon Shipping further admits that Captain Hazelwood was employed by Exxon Shipping as Master of the Exxon Valdez, and that his duties as Master were within the scope of his employment with Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 20.

21. Answering paragraph 21, Exxon Shipping admits on information and belief that Captain Hazelwood had consumed some alcohol while ashore in Valdez. Exxon Shipping further admits that after the pilot disembarked, Captain Hazelwood left the bridge, leaving Gregory Cousins, the third mate, and Robert Kagan, the helmsman, on the bridge; and that Cousins' duties as third mate and Kagan's duties as helmsman were within the scope of their employment with Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 21.

22. Answering paragraph 22, Exxon Shipping admits that the U.S. Coast Guard gave the Exxon Valdez permission to leave the southbound shipping lane for reasons that include earlier reports that it contained ice that had calved from a glacier to the northwest. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 22.

23. Answering paragraph 23, Exxon Shipping admits that the Exxon Valdez travelled through the northbound lane and

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subsequently struck Bligh Reef, which is depicted on charts. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 23.

24. Answering paragraph 24, Exxon Shipping admits that the Exxon Valdez struck Bligh Reef, which punctured some of the tanks and damaged a portion of the hull. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 24.

25-26. Answering paragraphs 25 and 26, Exxon Shipping denies the allegations in paragraphs 25 and 26.

27. Answering paragraph 27, Exxon Shipping admits that the grounding cut open eight of the Exxon Valdez's eleven cargo tanks, resulted in the release of approximately 11 million gallons of crude oil into Prince William Sound, and became the largest spill in the United States from a single ship. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and, on that basis, denies them.

28. Answering paragraph 28, Exxon Shipping denies the allegations in paragraph 28.

29-30. Answering paragraphs 29 and 30, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 29 and 30 and, on that basis, denies them.

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31. Answering paragraph 31, Exxon Shipping admits that the oil has spread to some areas which are habitats for water birds, sea and land mammals, fish and shellfish. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and, on that basis, denies them.

32. Answering paragraph 32, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and, on that basis, denies them.

CLASS ALLEGATIONS

33-41. Answering paragraphs 33 through 41, Exxon Shipping admits that plaintiffs purport to bring an action on behalf of classes of persons and entities described in the complaint. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 33 through 41 and, on that basis, denies them.

ANSWER TO COUNT I

42. Answering paragraph 42, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 41 as though set forth in full at this place.

43-47. Answering paragraphs 43 through 47, Exxon Shipping is not required to answer the allegations in paragraphs 43 through 47. If an answer were required, Exxon

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Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 43 through 47 and, on that basis, denies them.

ANSWER TO COUNT II

48. Answering paragraph 48, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 48 as though set forth in full at this place.

49. Answering paragraph 49, Exxon Shipping admits that Exxon Shipping is the owner and operator of the Exxon Valdez. Except as expressly admitted, Exxon Shipping denies the allegation in paragraph 49.

50. Answering paragraph 50, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and, on that basis, denies them.

51. Answering paragraph 51, Exxon Shipping admits that the damages, if any, alleged by plaintiffs were not caused by an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and, on that basis, denies them.

52. Answering paragraph 52, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 and, on that basis, denies them.

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53. Answering paragraph 53, Exxon Shipping admits that 43 U.S.C. § 1653(c), to the extent applicable, may impose strict liability for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 and, on that basis, denies them.

ANSWER TO COUNT III

54. Answering paragraph 54, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 53 as though set forth in full at this place.

55-67. Answering paragraphs 55 through 67, Exxon Shipping denies the allegations in paragraphs 55 through 67 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 55 through 67 and, on that basis, denies them.

ANSWER TO COUNT IV

68. Answering paragraph 68, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 67 as though set forth in full at this place.

69. Answering paragraph 69, Exxon Shipping admits that public records purport to show that Captain Hazelwood has been convicted of driving while under the influence of alcohol.

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Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 69.

70-77. Answering paragraphs 70 through 77, Exxon Shipping denies the allegations in paragraphs 70 through 77.

ANSWER TO COUNT V

78. Answering paragraph 78, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 77 as though set forth in full at this place.

79. Answering paragraph 79, Exxon Shipping denies the allegations in paragraph 79 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 and, on that basis, denies them.

ANSWER TO COUNT VI

80. Answering paragraph 80, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 79 as though set forth in full at this place.

81. Answering paragraph 81, Exxon Shipping denies the allegations in paragraph 81 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 and, on that basis, denies them.

ANSWER TO COUNT VII

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82. Answering paragraph 82, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 81 as though set forth in full at this place.

83. Answering paragraph 83, Exxon Shipping admits that hazardous substance is defined in AS 46.03.826(4)(B) to include oil and that approximately 11 million gallons of crude oil were released into Prince William Sound as a result of the grounding of the Exxon Valdez. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 83.

84. Answering paragraph 84, Exxon Shipping admits that the presence of oil in Prince William Sound has caused damage to certain property and to certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 and, on that basis, denies them.

85. Answering paragraph 85, Exxon Shipping admits that Exxon Corporation owned the oil and that Exxon Shipping controlled the oil immediately prior to its release into Prince William Sound. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 85.

86. Answering paragraph 86, Exxon Shipping admits that the initial entry of oil into Prince William Sound and the subsequent movement of the oil was not caused solely by an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge and information sufficient to form a belief as to the

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truth of the allegations in paragraph 86 and, on that basis, denies them.

87. Answering paragraph 87, Exxon Shipping denies the allegations in paragraph 87 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87 and, on that basis, denies them.

88. Answering paragraph 88, Exxon Shipping admits that AS 46.03.822, to the extent applicable, may impose strict liability for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 88 and, on that basis, denies them.

ANSWER TO COUNT VIII

89. Answering paragraph 89, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 88 as though set forth in full at this place.

90-93. Answering paragraphs 90 through 93, Exxon Shipping denies the allegations in paragraphs 90 through 93 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 90 through 93 and, on that basis, denies them.

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Answer of Exxon Shipping Company - 13

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ANSWER TO COUNT IX

94. Answering paragraph 94, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 93 as though set forth in full at this place.

95-98. Answering paragraphs 95 through 98, Exxon Shipping denies the allegations in paragraphs 95 through 98 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 95 through 98 and, on that basis, denies them.

ANSWER TO COUNT X

99. Answering paragraph 99, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 98 as though set forth in full at this place.

100-102. Answering paragraphs 100 through 102, Exxon Shipping denies the allegations in paragraphs 100 through 102 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 100 through 102 and, on that basis, denies them.

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Answer of Exxon Shipping Company - 14

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ANSWER TO COUNT XI

103. Answering paragraph 103, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 102 as though set forth in full at this place.

104-107. Answering paragraphs 104 through 107, Exxon Shipping denies the allegations in paragraphs 104 through 107 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 104 through 107 and, on that basis, denies them.

ANSWER TO COUNT XII

108. Answering paragraph 108, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 107 as though set forth in full at this place.

109-112. Answering paragraphs 109 through 112, Exxon Shipping denies the allegations in paragraphs 109 through 112.

PRAYER FOR RELIEF

113. Exxon Shipping denies that plaintiffs are entitled to the relief they seek.

GENERAL DENIAL

114. Exxon Shipping denies each and every other allegation of plaintiffs' complaint that it has not specifically admitted.

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AFFIRMATIVE AND OTHER DEFENSES

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

2. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiffs in this action. In the event of any recovery in such other lawsuits by persons whose claims therein are encompassed by this action, Exxon Shipping is entitled herein to a set-off in the full amount of such payments.

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

4. Exxon Shipping is entitled to a set-off to the extent of any failure of plaintiffs properly to mitigate damages.

5. Unless otherwise agreed, Exxon Shipping is entitled to a set-off in the amount of any payment received by plaintiffs as a result of the oil spill, the containment or clean up of the oil released from the Exxon Valdez, or other activities or matters related to the oil spill.

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6. Each of plaintiffs' theories of recovery fails to state a claim upon which relief can be granted.

7. Claims by some persons or entities who may be within the purported class have been settled and released, or in the alternative, payments received by such persons or entities operate as an accord and satisfaction of all claims against Exxon Shipping.

8. Exxon Shipping has acted pursuant to government approval, direction, and supervision, and has no liability to plaintiffs for any acts or omissions undertaken with such approval, direction, or supervision.

9. The amount of any liability 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).

10. Claims are barred to the extent they would represent recovery by two or more persons or entities for part or all of the same economic loss, and thus would represent a multiple recovery for the same injury.

11. Plaintiffs lack standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

12. Plaintiffs' claims are based on an alleged maritime tort and therefore are subject to applicable federal admiralty limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

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13. Claims for punitive damages are unconstitutional under the United States Constitution including, without limitation, Article 1, Section 8; Amendment V; and Amendment XIV; and the Alaska Constitution including, without limitation, Article 1, Section 7; and Article 1, Section 12.

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

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

16. Plaintiffs fail to satisfy the requirements for injunctive relief.

17. Plaintiffs' claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties relevant to the oil spill.

18. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article 1, Section 10 of the United States Constitution, and if applied to Exxon Shipping would also violate the due process clauses of the United States and Alaska Constitutions and the contract clause of the United States Constitution.

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19. Exxon Shipping expressly reserves the full six months provided by 46 U.S.C. § 185 within which it may elect to assert its rights under 46 U.S.C. § 183.

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

21. The Fund, established under the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1653(c), may be strictly liable for some or all of the damages alleged by plaintiffs.

22. The damages alleged, if any, were caused, in part, by the actions of others not joined as defendants herein as to whom a right of contribution or indemnity should exist as to Exxon Shipping. Exxon Shipping may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery.

23. Certain theories of relief may not be maintained because those theories are based upon the exercise of the state and federal constitutional right to petition the state and federal governments with respect to the passage and enforcement of laws.

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24. The Court lacks in rem jurisdiction over the vessel EXXON VALDEZ.

25. This action should abate because plaintiffs have filed and are currently maintaining a parallel, duplicative action against Exxon Shipping in this Court that is based on the same facts alleged in the complaint herein.

WHEREFORE, defendant Exxon Shipping prays for judgment against plaintiffs as follows:

1. That plaintiffs take nothing by their complaint;
2. That the complaint be dismissed with prejudice;
3. That Exxon Shipping receive payment for the costs of suit incurred herein, including attorney's fees; and
4. That the court award Exxon Shipping such other and further relief as it may deem just and proper.

DATED this 15<sup>th</sup> day of August, 1989

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Attorneys for Defendant  
Exxon Shipping Company  
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FILED

AUG 15 1989  
UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

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Attorneys for Defendant  
Exxon Shipping Company  
(D-2)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re Case No. A89-139

D-2's Answer to P-95 and P-96's  
Complaint Dated April 18, 1989

Defendant Exxon Shipping Company ("Exxon Shipping")  
answers plaintiffs' complaint as follows:

PREFATORY STATEMENT

Exxon Shipping alleges that no answer to plaintiffs'  
prefatory statement is required and, if an answer were required,  
Exxon Shipping lacks knowledge or information sufficient to form

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ANSWER OF EXXON SHIPPING COMPANY-1

a belief as to the truth of the allegations in plaintiffs' prefatory statement and, on that basis, denies them.

JURY TRIAL DEMAND

1. While no answer is required to plaintiffs' demand for trial by jury, Exxon Shipping does not waive its right to contest plaintiffs' jury demand.

JURISDICTION AND VENUE

2. Answering paragraph 2, Exxon Shipping admits that plaintiffs purport to bring a civil action as set forth in paragraph 2 of the complaint. Exxon Shipping denies that the Exxon Valdez is now within the jurisdiction of the court, and lacks knowledge or information sufficient to form a belief as to the putative class and as to whether the Exxon Valdez will return to this jurisdiction during the pendency of this action. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 2.

3. Answering paragraph 3, Exxon Shipping admits that this court has jurisdiction over this action pursuant to 28 U.S.C. Sections 1331 and 1333(1), and principles of pendent jurisdiction.

4. Answering paragraph 4, Exxon Shipping admits that plaintiffs purport to bring claims for relief pursuant to grounds set forth in paragraph 4 of the complaint. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 4.

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ANSWER OF EXXON SHIPPING COMPANY-2



5. Answering paragraph 5, Exxon Shipping admits that this action may be brought in this district under 28 U.S.C. § 1391(b) and (c), as well as the applicable principles of admiralty and maritime law. Exxon Shipping further admits that the Exxon defendants reside in this district for venue purposes. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and, on that basis, denies them.

THE PARTIES

6. Answering paragraph 6, Exxon Shipping lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 6 and, on that basis, denies them.

7. Answering paragraph 7, Exxon Shipping admits the allegations in paragraph 7.

8. Answering paragraph 8, Exxon Shipping admits that Alyeska is a Delaware corporation owned by seven companies, consisting of 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, who are permittees under the Agreement and Grant of Right-Of-Way for the Trans-Alaska Pipeline System. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a

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ANSWER OF EXXON SHIPPING COMPANY-3

belief as to the truth of the allegations in paragraph 8 and, on that basis, denies them.

9. Answering paragraph 9, Exxon Shipping admits that Exxon Corporation is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, New York 10021; and that the principal business of Exxon Corporation is energy, including exploration for and production of crude oil, natural gas and petroleum products and exploration for and mining and sale of coal. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 9.

10. Answering paragraph 10, Exxon Shipping admits that it is a domestic maritime subsidiary of Exxon Corporation, separately incorporated under the laws of the State of Delaware; that its principal place of business is at 800 Bell Street, Houston, TX 77251; and that it is the owner and operator of the Exxon Valdez. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 10.

11. Answering paragraph 11, Exxon Shipping admits that Exxon Company, USA is an unincorporated division of Exxon Corporation responsible for the operation of Exxon Corporation's energy business within the United States, with its headquarters at 800 Bell Street, Houston, TX 77251. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 11.

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ANSWER OF EXXON SHIPPING COMPANY-4

#### DEFINITIONS

12-17. Answering paragraphs 12 through 17, Exxon Shipping admits that plaintiffs purport to define certain terms. Except as admitted, Exxon Shipping denies the allegations and further denies that any subsequent use of those terms in the complaint is necessarily accurate or appropriate.

#### FACTUAL ALLEGATIONS

18. Answering paragraph 18, Exxon Shipping admits that on Thursday evening, March 23, 1989, the Exxon Valdez, which is approximately 987 feet long and weighs 211,469 deadweight tons, left the Port of Valdez, Alaska, the southern terminal facility of the Trans-Alaska Pipeline System, bound for Long Beach, California. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 18.

19. Answering paragraph 19, Exxon Shipping admits that the Exxon Valdez contained approximately 1.2 million barrels of crude oil that had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 19.

20. Answering paragraph 20, Exxon Shipping admits that the Exxon Valdez passed through the Valdez Narrows under the direction of a pilot, and that Captain Hazelwood was on the bridge when the pilot disembarked in the Valdez Arm at approximately 11:30 p.m. on March 23, 1989. Exxon Shipping

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ANSWER OF EXXON SHIPPING COMPANY-5

further admits that Captain Hazelwood was employed by Exxon Shipping as Master of the Exxon Valdez and his duties as Master were within the scope of his employment with Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 20.

21. Answering paragraph 21, Exxon Shipping admits on information and belief that Captain Hazelwood had consumed some alcohol while ashore in Valdez. Exxon Shipping further admits that after the pilot disembarked, Captain Hazelwood left the bridge, leaving Gregory Cousins, the third mate, and Robert Kagan, the helmsman, on the bridge; and that Cousins' duties as third mate and Kagan's duties as helmsman were within the scope of their employment with Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 21.

22. Answering paragraph 22, Exxon Shipping admits that the U.S. Coast Guard gave the Exxon Valdez permission to leave the southbound shipping lane for reasons that include earlier reports that it contained ice that had calved from a glacier to the northwest. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 22.

23. Answering paragraph 23, Exxon Shipping admits that the Exxon Valdez travelled through the northbound lane and subsequently struck Bligh Reef, which is depicted on charts.

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ANSWER OF EXXON SHIPPING COMPANY-6

Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 23.

24. Answering paragraph 24, Exxon Shipping admits that the Exxon Valdez was outside the channel when it struck Bligh Reef, which punctured some of the tanks and damaged a portion of the hull. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 24.

25-26. Answering paragraphs 25 and 26, Exxon Shipping denies the allegations in paragraphs 25 and 26.

27. Answering paragraph 27, Exxon Shipping admits that the grounding cut open eight of the Exxon Valdez's eleven cargo tanks, resulted in the release of approximately 11 million gallons of crude oil into Prince William Sound, and became the largest spill in the United States from a single ship. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and, on that basis, denies them.

28. Answering paragraph 28, Exxon Shipping denies the allegations in paragraph 28.

29-30. Answering paragraphs 29 and 30, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 29 and 30 and, on that basis, denies them.

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ANSWER OF EXXON SHIPPING COMPANY-7

31. Answering paragraph 31, Exxon Shipping admits that the oil has spread to the Kodiak Archipelago which is a habitat for water birds, sea and land mammals, fish and shellfish. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and, on that basis, denies them.

32. Answering paragraph 32, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and, on that basis, denies them.

#### CLASS ALLEGATIONS

33-41. Answering paragraphs 33 through 41, Exxon Shipping admits that plaintiffs purport to bring an action on behalf of classes of persons and entities described in the complaint. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 33 through 41 and, on that basis, denies them.

#### ANSWER TO COUNT I

42. Answering paragraph 42, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 41 as though set forth in full at this place.

43-47. Answering paragraphs 43 through 47, Exxon Shipping is not required to answer the allegations in paragraphs 43

ANSWER OF EXXON SHIPPING COMPANY-8

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through 47. If an answer were required, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 43 through 47 and, on that basis, denies them.

ANSWER TO COUNT II

48. Answering paragraph 48, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 47 as though set forth in full at this place.

49. Answering paragraph 49, Exxon Shipping admits that Exxon Shipping is the owner and operator of the Exxon Valdez. Except as expressly admitted, Exxon Shipping denies the allegation in paragraph 49.

50. Answering paragraph 50, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and, on that basis, denies them.

51. Answering paragraph 51, Exxon Shipping admits that the damages, if any, alleged by plaintiff were not caused by an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and, on that basis, denies them.

52. Answering paragraph 52, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the

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ANSWER OF EXXON SHIPPING COMPANY-9

truth of the allegations in paragraph 52 and, on that basis, denies them.

53. Answering paragraph 53, Exxon Shipping admits that 43 U.S.C. § 1653(c), to the extent applicable, may impose strict liability for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 and, on that basis, denies them.

ANSWER TO COUNT III

54. Answering paragraph 54, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 53 as though set forth in full at this place.

55-67. Answering paragraphs 55 through 67, Exxon Shipping denies the allegations in paragraphs 55 through 67 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 55 through 67 and, on that basis, denies them.

ANSWER TO COUNT IV

68. Answering paragraph 68, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 67 as though set forth in full at this place.

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ANSWER OF EXXON SHIPPING COMPANY-10

69. Answering paragraph 69, Exxon Shipping admits that public records purport to show that Captain Hazelwood has been convicted of driving while under the influence of alcohol. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 69.

70-77. Answering paragraphs 70 through 77, Exxon Shipping denies the allegations in paragraphs 70 through 77.

ANSWER TO COUNT V

78. Answering paragraph 78, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 77 as though set forth in full at this place.

79. Answering paragraph 79, Exxon Shipping denies the allegations in paragraph 79 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 and, on that basis, denies them.

ANSWER TO COUNT VI

80. Answering paragraph 80, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 79 as though set forth in full at this place.

81. Answering paragraph 81, Exxon Shipping denies the allegations in paragraph 81 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants,

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ANSWER OF EXXON SHIPPING COMPANY-11

Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 and, on that basis, denies them.

ANSWER TO COUNT VII

82. Answering paragraph 82, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 81 as though set forth in full at this place.

83. Answering paragraph 83, Exxon Shipping admits that hazardous substance is defined in AS 46.03.826(4)(B) to include oil and that approximately 11 million gallons of crude oil were released into Prince William Sound as a result of the grounding of the Exxon Valdez. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 83.

84. Answering paragraph 84, Exxon Shipping admits that the presence of oil in Prince William Sound has caused damage to certain property and to certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 and, on that basis, denies them.

85. Answering paragraph 85, Exxon Shipping admits that Exxon Corporation owned the oil and that Exxon Shipping controlled the oil immediately prior to its release into Prince William Sound. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 85.

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ANSWER OF EXXON SHIPPING COMPANY-12

86. Answering paragraph 86, Exxon Shipping admits that the initial entry of oil into Prince William Sound and the subsequent movement of the oil was not caused solely by an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86 and, on that basis, denies them.

87. Answering paragraph 87, Exxon Shipping denies the allegations in paragraph 87 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87 and, on that basis, denies them.

88. Answering paragraph 88, Exxon Shipping admits that AS 46.03.822, to the extent applicable, may impose strict liability for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 88 and, on that basis, denies them.

ANSWER TO COUNT VIII

89. Answering paragraph 89, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 88 as though set forth in full at this place.

90-93. Answering paragraphs 90 through 93, Exxon Shipping denies the allegations in paragraphs 90 through 93 insofar as

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ANSWER OF EXXON SHIPPING COMPANY-13

they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 90 through 93 and, on that basis, denies them.

ANSWER TO COUNT IX

94. Answering paragraph 94, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 93 as though set forth in full at this place.

95-98. Answering paragraphs 95 through 98, Exxon Shipping denies the allegations in paragraphs 95 through 98 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 95 through 98 and, on that basis, denies them.

ANSWER TO COUNT X

99. Answering paragraph 99, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 98 as though set forth in full at this place.

100-102. Answering paragraphs 100 through 102, Exxon Shipping denies the allegations in paragraphs 100 through 102 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks

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ANSWER OF EXXON SHIPPING COMPANY-14

knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 100 through 102 and, on that basis, denies them.

ANSWER TO COUNT XI

103. Answering paragraph 103, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 102 as though set forth in full at this place.

104-107. Answering paragraphs 104 through 107, Exxon Shipping denies the allegations in paragraphs 104 through 107 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 104 through 107 and, on that basis, denies them.

PRAYER FOR RELIEF

108. Exxon Shipping denies that plaintiffs are entitled to the relief they seek.

GENERAL DENIAL

109. Exxon Shipping denies each and every other allegation of plaintiffs' complaint that it has not specifically admitted.

AFFIRMATIVE AND OTHER DEFENSES

1. Independent of any legal obligation to do so, Exxon Shipping and Exxon Corporation are voluntarily paying many claims

ANSWER OF EXXON SHIPPING COMPANY-15

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for economic loss allegedly caused by the oil spill, and incurring other expenses in connection with the oil spill. Exxon Shipping is entitled to a set-off in the full amount of all such payments in the event plaintiffs' claims encompass such expenditures.

2. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiffs in this action. In the event of any recovery in such other lawsuits by persons whose claims therein are encompassed by this action, Exxon Shipping is entitled herein to a set-off in the full amount of such payments.

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

4. Exxon Shipping is entitled to a set-off to the extent of any failure of plaintiffs properly to mitigate damages.

5. Unless otherwise agreed, Exxon Shipping is entitled to a set-off in the amount of any payment received by plaintiffs as a result of the oil spill, the containment or clean up of the oil released from the EXXON VALDEZ, or other activities or matters related to the oil spill.

6. Each of plaintiffs' theories of recovery fails to state a claim upon which relief can be granted.

7. Claims by some persons or entities who may be within the purported class have been settled and released, or in the

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ANSWER OF EXXON SHIPPING COMPANY-16

alternative, payments received by such persons or entities operate as an accord and satisfaction of all claims against Exxon Shipping.

8. Exxon Shipping has acted pursuant to government approval, direction, and supervision, and has no liability to plaintiffs for any acts or omissions undertaken with such approval, direction, or supervision.

9. The amount of any liability 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).

10. Claims are barred to the extent they would represent recovery by two or more persons or entities for part or all of the same economic loss, and thus would represent a multiple recovery for the same injury.

11. Plaintiffs lack standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

12. Plaintiffs' claims are based on an alleged maritime tort and therefore are subject to applicable federal admiralty limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

13. Claims for punitive damages are unconstitutional under the United States Constitution including, without limitation, Article 1, Section 8; Amendment V; and Amendment XIV;

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ANSWER OF EXXON SHIPPING COMPANY-17

and the Alaska Constitution including, without limitation, Article 1, Section 7; and Article 1, Section 12.

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

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

16. Plaintiffs fail to satisfy the requirements for injunctive relief.

17. Plaintiffs' claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties relevant to the oil spill.

18. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article 1, Section 10 of the United States Constitution, and if applied to Exxon Shipping would also violate the due process clauses of the state and federal constitutions and the contract clause of the United States Constitution.

19. Exxon Shipping expressly reserves the full six months provided by 46 U.S.C. § 185 within which it may elect to assert its rights under 46 U.S.C. § 183.

20. Some or all of plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive system

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ANSWER OF EXXON SHIPPING COMPANY-18

of federal statutes and regulations, including its system of criminal and civil penalties, sanctions and compensatory and other remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

21. The Fund, established under the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1653(c), may be strictly liable for some or all of the damages alleged by plaintiff.

22. The damages alleged, if any, were caused, in part, by the actions of others not joined as defendants herein as to whom a right of contribution or indemnity should exist as to Exxon Shipping. Exxon Shipping may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery.

23. Certain theories of relief may not be maintained because those theories are based upon the exercise of the state and federal constitutional right to petition the state and federal governments with respect to the passage and enforcement of laws.

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

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ANSWER OF EXXON SHIPPING COMPANY-19

25. The corporate plaintiff herein lacks the capacity to commence and maintain this action insofar as it has failed to allege and prove that it has paid its Alaska biennial corporate taxes last due and has filed biennial reports for the last reporting period.

WHEREFORE, defendant Exxon Shipping prays for judgment against plaintiffs as follows:

1. That plaintiffs take nothing by their complaint;
2. That the complaint be dismissed with prejudice;
3. That Exxon Shipping receive payment for the costs of suit incurred herein, including attorney's fees; and
4. That the court award Exxon Shipping such other and further relief as it may deem just and proper.

DATED this 15<sup>th</sup> day of August, 1989

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Attorneys for Defendant  
Exxon Shipping Company  
(D-2)

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AUG 15 1989  
UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

Attorneys for defendant  
Exxon Shipping Company (D-2)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re: Case No. A89-200 Civil

D-2's Answer to P-165 through 166's  
First Amended Complaint Dated April 28, 1989

Defendant Exxon Shipping Company ("Exxon Shipping")

answers plaintiffs' First Amended Complaint as follows:

PARTIES

1. Answering paragraph 1, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 1.



2. Answering paragraph 2, Exxon Shipping admits that Exxon Corporation is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, New York 10020, and that Exxon Corporation is doing business in Alaska. Exxon Shipping admits that Exxon Corporation's principal business is energy, including exploration for and production of crude oil, natural gas and petroleum products and exploration for and mining and sale of coal. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 2.

3. Answering paragraph 3, Exxon Shipping admits that it is a domestic maritime subsidiary of defendant Exxon Corporation, separately incorporated in Delaware, and has its principal place of business in Houston, Texas. Exxon Shipping further admits that it is the owner and operator of the EXXON VALDEZ. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 3.

4. Answering paragraph 4, admits the allegations in paragraph 4.

5. Answering paragraph 5, Exxon Shipping admits that Alyeska is a Delaware corporation owned by seven companies, including Amerada Hess Pipeline Corporation, Arco Pipe Line Company, B. P. Pipelines (Alaska), Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company, all

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ANSWER OF DEFENDANT EXXON  
SHIPPING COMPANY - Page 2

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of which are permittees under the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline. Exxon Shipping further admits that Alyeska operates the terminal at Valdez, Alaska, and that Alyeska loaded the EXXON VALDEZ with North Slope crude oil at the Valdez terminal. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 5.

ALLEGED FACTS

6. Answering paragraph 6, Exxon Shipping admits the allegations in paragraph 6.

7. Answering paragraph 7, Exxon Shipping admits that the EXXON VALDEZ passed through the harbor and Valdez Narrows under the direction of a harbor pilot. Exxon Shipping admits that it employed Captain Joseph J. Hazelwood as Master of the EXXON VALDEZ and that his duties as Master were within the scope of his employment by Exxon Shipping. Exxon Shipping admits that Captain Hazelwood was on the bridge just prior to the time the harbor pilot disembarked in the Valdez Arm. Exxon Shipping further admits that Captain Hazelwood left the bridge for his cabin, one flight below the bridge, after the harbor pilot disembarked, leaving Gregory Cousins, the Third Mate, and Robert Kagan, the helmsman, on the bridge. Exxon Shipping admits that it employs Messrs. Cousins and Kagan and that Mr. Cousins' duties as Third Mate on the EXXON VALDEZ, and Mr.

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ANSWER OF DEFENDANT EXXON  
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Kagan's duties as her helmsman, were within the scope of their employment by Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 7.

8. Answering paragraph 8, Exxon Shipping admits that the U.S. Coast Guard gave the EXXON VALDEZ permission to leave the southbound shipping lane for reasons that included earlier reports that it contained ice that had broken from a glacier to the northwest. Exxon Shipping admits that the EXXON VALDEZ travelled through the northbound lane and struck Bligh Reef, which is outside the shipping lanes and is depicted on charts. Exxon Shipping admits that the EXXON VALDEZ was bound for Long Beach, California. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 8.

9. Answering paragraph 9, Exxon Shipping admits that the EXXON VALDEZ struck Bligh Reef, punctured some of her eleven cargo tanks and damaged a portion of her hull. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 9.

10. Answering paragraph 10, Exxon Shipping admits that the grounding cut open eight cargo tanks which held approximately 53 million gallons of crude oil and discharged approximately 11 million gallons of crude oil into Prince William Sound, and became the largest oil spill from a single ship in the United States. Exxon Shipping further admits that the oil spread toward portions of Kodiak Island. Except as

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expressly admitted, Exxon Shipping denies the allegations in paragraph 10.

11. Answering paragraph 11, Exxon shipping admits that on or about March 26, 1989, the Governor of the State of Alaska declared a state of emergency. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 and, on that basis, denies them.

12. Answering paragraph 12, Exxon Shipping denies the allegations in paragraph 12 insofar as they apply to Exxon Shipping and Exxon Corporation. Insofar as the allegations in paragraph 12 apply to Alyeska and the Trans-Alaska Pipeline Liability Fund, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 and, on that basis, denies them.

13. Answering paragraph 13, Exxon Shipping admits that the presence of oil in Prince William Sound has damaged certain property and certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and, on that basis, denies them.

#### FIRST CAUSE OF ACTION

14. Answering paragraph 14, Exxon Shipping admits that it is and/or was at the time of the grounding the owner and operator of the EXXON VALDEZ and the employer of Captain

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ANSWER OF DEFENDANT EXXON  
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Hazelwood, Gregory Cousins and the crew of the vessel. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 14.

15. Answering paragraph 15, Exxon Shipping admits that the companies that own Alyeska are and were permittees under the Agreement and Grant of Right of Way for the Trans-Alaska Pipeline. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 15.

16. Answering paragraph 16, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 16.

17. Answering paragraph 17, Exxon Shipping admits that the damages, if any, were not caused by an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 17.

18. Answering paragraph 18, Exxon Shipping admits that the presence of oil in Prince William Sound has caused damage to certain property and certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 18.

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19. Answering paragraph 19, Exxon Shipping admits that 43 U.S.C. §1653(c)(1) and (3), to the extent applicable, may impose strict liability for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 and, on that basis, denies them.

SECOND CAUSE OF ACTION

20-26. Answering paragraphs 20 through 26, Exxon Shipping denies the allegations in paragraphs 20 through 26 insofar as they apply to Exxon Shipping and Exxon Corporation. Insofar as the allegations in paragraphs 20 through 26 apply to Alyeska and the State of Alaska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 20 through 26 and, on that basis, denies them.

THIRD CAUSE OF ACTION

27. Answering paragraph 27, Exxon Shipping admits that public records purport to show that Captain Hazelwood has been convicted of driving while under the influence of alcohol. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and, on that basis, denies them.

28. Answering paragraph 28, Exxon Shipping admits that Mr. Cousins was on watch when the EXXON VALDEZ ran

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ANSWER OF DEFENDANT EXXON  
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aground. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 28.

29-33. Answering paragraphs 29 through 33, Exxon Shipping denies the allegations in paragraphs 29 through 33.

#### FOURTH CAUSE OF ACTION

34. Answering paragraph 34, Exxon Shipping admits that "hazardous substance" as defined by AS 46.03.826(4)(B) includes oil and that the approximately 11 million gallons of oil were released into Prince William Sound as a result of the grounding. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 34.

35. Answering paragraph 35, Exxon Shipping admits that the presence of oil in Prince William Sound has caused damage to certain property and to certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 35.

36. Answering paragraph 36, Exxon Shipping admits that Exxon Corporation is the owner of the oil and that Exxon Shipping controlled the oil immediately prior to its release. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 and, on that basis, denies them.

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37. Answering paragraph 37, Exxon Shipping admits that the initial entry of oil into Prince William Sound and the subsequent movement of the oil was not caused solely as a result of an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 and, on that basis, denies them.

38. Answering paragraph 38, Exxon Shipping denies the allegations of paragraph 38 insofar as they concern Exxon Shipping and Exxon Corporation. Insofar as the allegations of paragraph 38 concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 and, on that basis, denies them.

39. Answering paragraph 39, Exxon Shipping admits that AS 46.03.822, if applicable, may impose strict liability for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 and, on that basis, denies them.

PRAYER FOR RELIEF

35. Answering plaintiffs' prayer for relief, Exxon Shipping denies plaintiffs' entitlement to the relief they seek.

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ANSWER OF DEFENDANT EXXON  
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GENERAL DENIAL

36. Exxon Shipping denies each and every other allegation in plaintiff's complaint that was not expressly admitted.

AFFIRMATIVE AND OTHER DEFENSES

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

2. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiffs in this action. In the event of any recovery in such other lawsuits by persons whose claims therein are encompassed by this action, Exxon Shipping is entitled herein to a set-off in the full amount of such payments.

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

4. Exxon Shipping is entitled to a set-off to the extent of any failure of plaintiffs properly to mitigate damages.

5. Unless otherwise agreed, Exxon Shipping is entitled to a set-off in the amount of any payment received by

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ANSWER OF DEFENDANT EXXON  
SHIPPING COMPANY - Page 10

Maxwell One

plaintiffs as a result of the oil spill, the containment or clean up of the oil released from the EXXON VALDEZ, or other activities or matters related to the oil spill.

6. Each of plaintiffs' theories of recovery fails to state a claim upon which relief can be granted.

7. Payments received by plaintiffs may operate as an accord and satisfaction of all claims against Exxon Shipping.

8. Exxon Shipping has acted pursuant to government approval, direction and supervision, and has no liability to plaintiffs for any acts or omissions undertaken with such approval, direction, or supervision.

9. The amount of any liability 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).

10. Claims are barred to the extent they would represent recovery by two or more persons or entities for part or all of the same economic loss, and thus would represent a multiple recovery for the same injury.

11. Plaintiffs lack standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

12. Plaintiffs' claims are based on an alleged maritime tort and therefore are subject to applicable federal admiralty limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

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13. Plaintiffs' claims for punitive damages are unconstitutional under the United States Constitution including, without limitation, Article 1, Section 8; Amendment V; and Amendment XIV; and the Alaska Constitution including, without limitation, Article 1, Section 7; and Article 1, Section 12.

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

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

16. Plaintiffs fail to satisfy the requirements for injunctive relief.

17. Plaintiffs' claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties relevant to the oil spill.

18. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article 1, Section 10 of the United States Constitution, and if applied to Exxon Shipping would also violate the due process clauses of the United States and Alaska Constitutions and the contract clause of the United States Constitution.

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19. Exxon Shipping expressly reserves the full six months provided by 46 U.S.C. § 185 within which it may elect to assert its rights under 46 U.S.C. § 183.

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

21. The damages alleged, if any, were caused, in part, by the actions of others not joined as defendants herein as to whom a right of contribution or indemnity should exist as to Exxon Shipping. Exxon Shipping may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery.

22. The Fund, established under the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1653(c), may be strictly liable for some or all of the damages alleged by plaintiffs.

23. Certain theories of relief may not be maintained because those theories are based upon the exercise of the state and federal constitutional right to petition the state and federal governments with respect to the passage and enforcement of laws.

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ANSWER OF DEFENDANT EXXON  
SHIPPING COMPANY - Page 13

Maxwell One

24. This action should abate because plaintiffs have filed and are currently maintaining a parallel, duplicative action against Exxon Shipping in this Court that is based on the same facts alleged in the complaint herein.

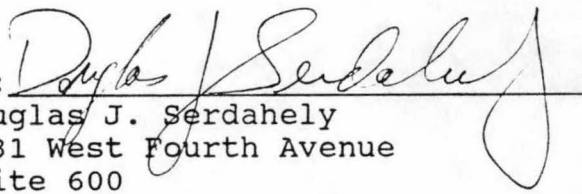
WHEREFORE, defendant Exxon Shipping prays judgment against plaintiffs as follows:

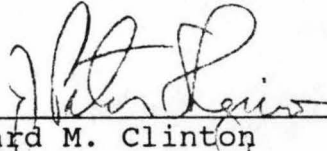
1. That plaintiffs take nothing by their complaint;
2. That the complaint be dismissed with prejudice;
3. That Exxon Shipping receive payment of costs of suit incurred herein, including attorney's fees; and
4. That the Court award such other and further relief as it may deem just and proper.

DATED this 15<sup>th</sup> day of August, 1989.

BOGLE & GATES

Attorneys for Defendant  
Exxon Shipping Company (D-2)

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ANSWER OF DEFENDANT EXXON  
SHIPPING COMPANY - Page 14

Maxwell One

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Attorneys for Defendant  
Exxon Shipping Company (D-2)

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re Case No. A89-095 Civil

D-2's Answer to P-169's  
Complaint Dated May 17, 1989

Defendant Exxon Shipping Company ("Exxon Shipping")  
answers plaintiff's complaint as follows:

COMPLAINT IN INTERVENTION

1. Answering paragraph 1, Exxon Shipping admits  
that certain causes of action that plaintiff purports to bring  
are within the Court's admiralty jurisdiction. Except as

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Answer of Exxon Shipping Company - 1

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expressly admitted, Exxon Shipping denies the allegations in paragraph 1.

2. Answering paragraph 2, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and, on that basis, denies them.

3. Answering paragraph 3, Exxon Shipping denies that the Exxon Valdez is now within the jurisdiction of the court; and Exxon Shipping lacks knowledge or information sufficient to form a belief as to whether the Exxon Valdez will return to this jurisdiction during the pendency of this action and, on that basis, denies the remaining allegations in paragraph 3.

4. Answering paragraph 4, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 and, on that basis, denies them.

5. Answering paragraph 5, Exxon Shipping admits that on March 23, 1989, the Exxon Valdez left the Port of Valdez, Alaska, the southern terminal facility of the Trans-Alaska Pipeline System, bound for Long Beach, California; that Gregory Cousins was the Third Mate and Captain Hazelwood the Master of the Exxon Valdez; and that the Exxon Valdez struck Bligh Reef, which is depicted on charts. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 5.

6. Answering paragraph 6, Exxon Shipping admits that the grounding of the Exxon Valdez damaged its cargo tanks, and resulted in the release of crude oil into Prince William Sound. Exxon Shipping further admits that the Alaska Department of Fish and Game cancelled the 1989 herring fishery in Prince William Sound. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 and, on that basis, denies them.

7. Answering paragraph 7, Exxon Shipping lacks knowledge or information as to the allegations regarding plaintiff's fault, and Exxon Shipping denies the remaining allegations in paragraph 7.

8-9. Answering paragraphs 8 and 9, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 8 through 9 and, on that basis, denies them.

PRAYER FOR RELIEF

10. Exxon Shipping denies that plaintiff is entitled to the relief it seeks.

GENERAL DENIAL

11. Exxon Shipping denies each and every other allegation of plaintiff's complaint that it has not specifically admitted.

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AFFIRMATIVE AND OTHER DEFENSES

1. Independent of any legal obligation to do so, Exxon Shipping and Exxon Corporation are voluntarily paying many claims for economic loss allegedly caused by the oil spill, and incurring other expenses in connection with the oil spill. Exxon Shipping is entitled to a set-off in the full amount of all such payments in the event plaintiff's claims encompass such expenditures.

2. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiff in this action. In the event of any recovery in such other lawsuits by persons whose claims therein are encompassed by this action, Exxon Shipping is entitled herein to a set-off in the full amount of such payments.

3. Some or all of plaintiff's claims for damages may be barred or reduced by the doctrine of comparative negligence.

4. Exxon Shipping is entitled to a set-off to the extent of any failure of plaintiff properly to mitigate damages.

5. Unless otherwise agreed, Exxon Shipping is entitled to a set-off in the amount of any payment received by plaintiff as a result of the oil spill, the containment or clean up of the oil released from the Exxon Valdez, or other activities or matters related to the oil spill.

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Answer of Exxon Shipping Company - 4

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6. Each of plaintiff's theories of recovery fails to state a claim upon which relief can be granted.

7. Exxon Shipping has acted pursuant to government approval, direction, and supervision, and has no liability to plaintiff for any acts or omissions undertaken with such approval, direction, or supervision.

8. The amount of any liability 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).

9. Claims are barred to the extent they would represent recovery by two or more persons or entities for part or all of the same economic loss, and thus would represent a multiple recovery for the same injury.

10. Plaintiff lacks standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

11. Plaintiff's claims are based on an alleged maritime tort and therefore are subject to applicable federal admiralty limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

12. Claims for punitive damages are unconstitutional under the United States Constitution including, without limitation, Article 1, Section 8; Amendment V; and Amendment XIV; and the Alaska Constitution including, without limitation, Article 1, Section 7; and Article 1, Section 12.

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Answer of Exxon Shipping Company - 5

VINDICO.001

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

14. Certain claims asserted by plaintiff are not ripe for adjudication.

15. Plaintiff fails to satisfy the requirements for injunctive relief.

16. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article 1, Section 10 of the United States Constitution, and if applied to Exxon Shipping would also violate the due process clauses of the United States and Alaska Constitutions and the contract clause of the United States Constitution.

17. Exxon Shipping expressly reserves the full six months provided by 46 U.S.C. § 185 within which it may elect to assert its rights under 46 U.S.C. § 183.

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

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Answer of Exxon Shipping Company - 6

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19. The damages alleged, if any, were caused, in part, by the actions of others not joined as defendants herein as to whom a right of contribution or indemnity should exist as to Exxon Shipping. Exxon Shipping may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery.

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

21. This Court lacks in rem jurisdiction over the vessel EXXON VALDEZ.

22. Certain theories of relief may not be maintained because those theories are based upon the exercise of the state and federal constitutional right to petition the state and federal governments with respect to the passage and enforcement of laws.

WHEREFORE, defendant Exxon Shipping prays for judgment against plaintiff as follows:

1. That plaintiff takes nothing by its complaint;
2. That the complaint be dismissed with prejudice;
3. That Exxon Shipping receive payment for the costs of suit incurred herein, including attorney's fees; and

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Answer of Exxon Shipping Company - 7

VINDICO.001

4. That the court award Exxon Shipping such other and further relief as it may deem just and proper.

DATED this 15<sup>th</sup> day of August, 1989

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Attorneys for Defendant  
Exxon Shipping Company (D-2)

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Answer of Exxon Shipping Company - 8

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Attorneys for defendant  
Exxon Shipping Company (D-2)

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re: Case No. A89-200 Civil

D-2's Answer to P-165 through P-166's  
Corrected First Amended Complaint Dated May 17, 1989

Defendant Exxon Shipping Company ("Exxon Shipping")  
answers plaintiffs' Complaint as follows:

PARTIES

1. Answering paragraph 1, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 1.

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Answer of Defendant Exxon  
Shipping Company - Page 1  
Maxwell, Two

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2. Answering paragraph 2, Exxon Shipping admits that Exxon Corporation is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, New York 10020, and that Exxon Corporation is doing business in Alaska. Exxon Shipping admits that Exxon Corporation's principal business is energy, including exploration for and production of crude oil, natural gas and petroleum products and exploration for and mining and sale of coal. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 2.

3. Answering paragraph 3, Exxon Shipping admits that it is a domestic maritime subsidiary of defendant Exxon Corporation, separately incorporated in Delaware, and has its principal place of business in Houston, Texas. Exxon Shipping further admits that it is the owner and operator of the EXXON VALDEZ. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 3.

4. Answering paragraph 4, Exxon Shipping admits that Alyeska is a Delaware corporation owned by seven companies that are permittees under the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 4.

5. Answering paragraph 5, Exxon Shipping admits that Alyeska operates the terminal at Valdez, Alaska, and that Alyeska loaded the EXXON VALDEZ with North Slope crude oil at

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Answer of Defendant Exxon  
Shipping Company - Page 2

Maxwell Two

the Valdez terminal. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and, on that basis, denies them.

SUMMARY OF ALLEGED FACTS

6. Answering paragraph 6, Exxon Shipping admits the allegations in paragraph 6.

7. Answering paragraph 7, Exxon Shipping admits that the EXXON VALDEZ passed through the harbor and Valdez Narrows under the direction of a harbor pilot. Exxon Shipping admits that it employed Captain Joseph J. Hazelwood as Master of the EXXON VALDEZ and that his duties as Master were within the scope of his employment by Exxon Shipping. Exxon Shipping admits that Captain Hazelwood was on the bridge when the harbor pilot disembarked in the Valdez Arm. Exxon Shipping further admits that Captain Hazelwood left the bridge for his cabin, one flight below the bridge, after the harbor pilot disembarked, leaving Gregory Cousins, the Third Mate, and Robert Kagan, the helmsman, on the bridge. Exxon Shipping admits that it employs Messrs. Cousins and Kagan and that Mr. Cousins' duties as Third Mate on the EXXON VALDEZ, and Mr. Kagan's duties as her helmsman, were within the scope of their employment by Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 7.

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8. Answering paragraph 8, Exxon Shipping admits that the U.S. Coast Guard gave the EXXON VALDEZ permission to leave the southbound shipping lane for reasons that included earlier reports that it contained ice that had broken from a glacier to the northwest. Exxon Shipping admits that the EXXON VALDEZ travelled through the northbound lane and struck Bligh Reef, which is outside the shipping lanes and is depicted on charts. Exxon Shipping admits that the EXXON VALDEZ was bound for Long Beach, California. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 8.

9. Answering paragraph 9, Exxon Shipping admits that the EXXON VALDEZ struck Bligh Reef, punctured some of her eleven cargo tanks and damaged a portion of her hull. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 9.

10. Answering paragraph 10, Exxon Shipping admits that the grounding cut open eight cargo tanks which held approximately 53 million gallons of crude oil and discharged approximately 11 million gallons of crude oil into Prince William Sound, and became the largest oil spill from a single ship in the United States. Exxon Shipping further admits that the oil spread toward portions of Kodiak Island. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 10.

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11. Answering paragraph 11, Exxon Shipping admits that on or about March 26, 1989, the Governor of the State of Alaska declared a state of emergency. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 and, on that basis, denies them.

12. Answering paragraph 12, Exxon Shipping denies the allegations in paragraph 12 insofar as they apply to Exxon Shipping and Exxon Corporation. Insofar as the allegations in paragraph 12 apply to Alyeska and the State of Alaska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 and, on that basis, denies them.

13. Answering paragraph 13, Exxon Shipping admits that the presence of oil in Prince William Sound has damaged certain property and certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and, on that basis, denies them.

FIRST CAUSE OF ACTION

14-20. Answering paragraphs 14 through 20, Exxon Shipping denies the allegations in paragraphs 14 through 20 insofar as they apply to Exxon Shipping and Exxon Corporation. Insofar as the allegations in paragraphs 14 through 20 apply to Alyeska and the State of Alaska, Exxon Shipping lacks knowledge

or information sufficient to form a belief as to the truth of the allegations in paragraphs 14 through 20 and, on that basis, denies them.

SECOND CAUSE OF ACTION

21. Answering paragraph 21, Exxon Shipping admits that public records purport to show that Captain Hazelwood has been convicted of driving while under the influence of alcohol. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 and, on that basis, denies them.

22. Answering paragraph 22, Exxon Shipping admits that Mr. Cousins was the officer on watch when the EXXON VALDEZ ran aground. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 22.

23-28. Answering paragraphs 23 through 28, Exxon Shipping denies the allegations in paragraphs 23 through 28.

THIRD CAUSE OF ACTION

29. Answering paragraph 29, Exxon Shipping admits that "hazardous substance" as defined by AS 46.03.826(4)(B) includes oil and that approximately 11 million gallons of oil were released into Prince William Sound as a result of the grounding. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 29.

30. Answering paragraph 30, Exxon Shipping admits that the presence of oil in Prince William Sound has caused

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damage to certain property and to certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 and, on that basis, denies them.

31. Answering paragraph 31, Exxon Shipping admits that Exxon Corporation is the owner of the oil and that Exxon Shipping controlled the oil immediately prior to its release. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and, on that basis, denies them.

32. Answering paragraph 32, Exxon Shipping admits that the initial entry of oil into Prince William Sound and the subsequent movement of the oil was not caused solely as a result of an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and, on that basis, denies them.

33. Answering paragraph 33, Exxon Shipping denies the allegations in paragraph 33 insofar as they apply to Exxon Shipping and Exxon Corporation. Insofar as the allegations in paragraph 33 apply to Alyeska and the State of Alaska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 and, on that basis, denies them.

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34. Answering paragraph 34, Exxon Shipping admits that AS 46.03.822, if applicable, may impose strict liability for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies them.

PRAYER FOR RELIEF

35. Answering plaintiffs' prayer for relief, Exxon Shipping denies plaintiffs' entitlement to the relief they seek.

GENERAL DENIAL

36. Exxon Shipping denies each and every other allegation in plaintiff's complaint that was not expressly admitted.

AFFIRMATIVE AND OTHER DEFENSES

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

2. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiffs in this action. In the event of any

recovery in such other lawsuits by persons whose claims therein are encompassed by this action, Exxon Shipping is entitled herein to a set-off in the full amount of such payments.

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

4. Exxon Shipping is entitled to a set-off to the extent of any failure of plaintiffs properly to mitigate damages.

5. Unless otherwise agreed, Exxon Shipping is entitled to a set-off in the amount of any payment received by plaintiffs as a result of the oil spill, the containment or clean up of the oil released from the EXXON VALDEZ, or other activities or matters related to the oil spill.

6. Each of plaintiffs' theories of recovery fails to state a claim upon which relief can be granted.

7. Payments received by plaintiffs may operate as an accord and satisfaction of all claims against Exxon Shipping.

8. Exxon Shipping has acted pursuant to government approval, direction and supervision, and has no liability to plaintiffs for any acts or omissions undertaken with such approval, direction, or supervision.

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9. The amount of any liability 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).

10. Claims are barred to the extent they would represent recovery by two or more persons or entities for part or all of the same economic loss, and thus would represent a multiple recovery for the same injury.

11. Plaintiffs lack standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

12. Plaintiffs' claims are based on an alleged maritime tort and therefore are subject to applicable federal admiralty limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

13. Plaintiffs' claims for punitive damages are unconstitutional under the United States Constitution including, without limitation, Article 1, Section 8; Amendment V; and Amendment XIV; and the Alaska Constitution including, without limitation, Article 1, Section 7; and Article 1, Section 12.

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

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

16. Plaintiffs fail to satisfy the requirements for injunctive relief.

17. Plaintiffs' claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties relevant to the oil spill.

18. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article 1, Section 10 of the United States Constitution, and if applied to Exxon Shipping would also violate the due process clauses of the United States and Alaska Constitutions and the contract clause of the United States Constitution.

19. Exxon Shipping expressly reserves the full six months provided by 46 U.S.C. § 185 within which it may elect to assert its rights under 46 U.S.C. § 183.

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

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Answer of Defendant Exxon  
Shipping Company - Page 11

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21. The damages alleged, if any, were caused, in part, by the actions of others not joined as defendants herein as to whom a right of contribution or indemnity should exist as to Exxon Shipping. Exxon Shipping may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery.

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

23. Certain theories of relief may not be maintained because those theories are based upon the exercise of the state and federal constitutional right to petition the state and federal governments with respect to the passage and enforcement of laws.

24. This action should abate because plaintiffs have filed and are currently maintaining a parallel, duplicative action against Exxon Shipping in this Court that is based on the same facts alleged in the complaint herein.

WHEREFORE, defendant Exxon Shipping prays judgment against plaintiffs as follows:

1. That plaintiffs take nothing by their complaint;
2. That the complaint be dismissed with prejudice;
3. That Exxon Shipping receive payment of costs of suit incurred herein, including attorney's fees; and

4. That the Court award such other and further relief as it may deem just and proper.

DATED this 15<sup>th</sup> day of August, 1989.

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Exxon Shipping Company  
(D-2)

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re Case No. A89-238

D-2's Answer to P-78 and P-79, P-95  
and P-96, P-167 and P-168's  
Complaint Dated May 30, 1989

Defendant Exxon Shipping Company ("Exxon Shipping")  
answers plaintiffs' complaint as follows:

PREFATORY STATEMENT

Exxon Shipping alleges that no answer to plaintiffs'  
prefatory statement is required and, if an answer is required,  
Exxon Shipping lacks knowledge or information sufficient to

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form a belief as to the truth of the allegations in plaintiffs' prefatory statement and, on that basis, denies them.

#### JURISDICTION

1. Answering paragraph 1, Exxon Shipping admits that plaintiffs purport to bring a civil action as set forth in paragraph 1 of the complaint. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 and, on that basis, denies them.

2. Answering paragraph 2, Exxon Shipping admits that plaintiffs purport to bring claims for relief pursuant to grounds set forth in paragraph 2 of the complaint. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and, on that basis, denies them.

#### THE PARTIES

3. Answering paragraph 3, Exxon Shipping lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 3 and, on that basis, denies them.

4. Answering paragraph 4, Exxon Shipping admits the allegations in paragraph 4.

5. Answering paragraph 5, Exxon Shipping admits that Alyeska is a Delaware corporation owned by seven companies, consisting of 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, who are permittees under the Agreement and Grant of Right-Of-Way for the Trans-Alaska Pipeline System. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and, on that basis, denies them.

6. Answering paragraph 6, Exxon Shipping admits that Exxon Corporation is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, New York 10021; and that the principal business of Exxon Corporation is energy, including exploration for and production of crude oil, natural gas and petroleum products and exploration for and mining and sale of coal. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 6.

7. Answering paragraph 7, Exxon Shipping admits that it is a domestic maritime subsidiary of Exxon Corporation, separately incorporated under the laws of the State of Delaware; that its principal place of business is at 800 Bell Street, Houston, TX 77251; and that it is the owner and operator of the Exxon Valdez. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 7.

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8. Answering paragraph 8, Exxon Shipping admits that Exxon Co., USA is an unincorporated division of Exxon Corporation responsible for the operation of Exxon Corporation's energy business within the United States; and that it has its headquarters at 800 Bell Street, Houston, TX 77251. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 8.

9. Answering paragraph 9, Exxon Shipping admits that Captain Hazelwood was an employee of Exxon Shipping and the Master of the Exxon Valdez. Exxon Shipping further admits that Captain Hazelwood's duties as Master of the Exxon Valdez were within the scope of his employment with Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 9.

10. Answering paragraph 10, Exxon Shipping admits that Edward Murphy piloted the Exxon Valdez from the Port of Valdez to Rocky Point on the night of March 23, 1989. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 and, on that basis, denies them.

#### DEFINITIONS

11-16. Answering paragraphs 11 through 16, Exxon Shipping admits that plaintiffs purport to define certain terms. Except as expressly admitted, Exxon Shipping denies the

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allegations and further denies that any subsequent use of those terms in the complaint is necessarily accurate or appropriate.

FACTUAL ALLEGATIONS

17. Answering paragraph 17, Exxon Shipping admits that on Thursday evening, March 23, 1989, the Exxon Valdez, which is approximately 987 feet long and weighs 211,469 deadweight tons, left the Port of Valdez, Alaska, the southern terminal facility of the Trans-Alaska Pipeline System, bound for Long Beach, California. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 17.

18. Answering paragraph 18, Exxon Shipping admits the Exxon Valdez contained approximately 1.2 million barrels of crude oil that had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 18.

19. Answering paragraph 19, Exxon Shipping admits that the Exxon Valdez passed through the Valdez Narrows under the direction of defendant Murphy; and that Captain Hazelwood was on the bridge when Murphy disembarked in the Valdez Arm at approximately 11:30 p.m. on March 23, 1989. Exxon Shipping further admits that Captain Hazelwood's duties as Master of the Exxon Valdez were within the scope of his employment with Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 19.

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20. Answering paragraph 20, Exxon Shipping admits on information and belief that Captain Hazelwood had consumed some alcohol while ashore in Valdez. Exxon Shipping further admits that after the pilot disembarked, Captain Hazelwood left the bridge, leaving Gregory Cousins, the third mate, and Robert Kagan, the helmsman, on the bridge; and that Cousins' duties as third mate and Kagan's duties as helmsman were within the scope of their employment with Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 20.

21. Answering paragraph 21, Exxon Shipping admits that the U.S. Coast Guard gave the Exxon Valdez permission to leave the southbound shipping lane for reasons that include earlier reports that it contained ice that had calved from a glacier to the northwest. Except as expressly admitted, Exxon Shipping denies the allegations of paragraph 21.

22. Answering paragraph 22, Exxon Shipping admits that the Exxon Valdez travelled through the northbound lane and subsequently struck Bligh Reef, which is depicted on charts. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 22.

23. Answering paragraph 23, Exxon Shipping admits that the Exxon Valdez struck Bligh Reef, which punctured some of the tanks and damaged a portion of the hull. Except as

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expressly admitted, Exxon Shipping denies the allegations in paragraph 23.

24-25. Answering paragraphs 24 and 25, Exxon Shipping denies the allegations in paragraphs 24 and 25.

26. Answering paragraph 26, Exxon Shipping admits that the grounding cut open eight of the Exxon Valdez's eleven cargo tanks; resulted in the release of approximately 11 million gallons of crude oil into the Prince William Sound; and became the largest spill in the United States from a single ship. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 and, on that basis, denies them.

27. Answering paragraph 27, Exxon Shipping denies the allegations in paragraph 27.

28-29. Answering paragraphs 28 and 29, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 28 and 29 and, on that basis, denies them.

30. Answering paragraph 30, Exxon Shipping admits that some of the oil has spread to the Kodiak Archipelago which is a habitat for water birds, sea and land mammals, fish and shellfish. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the

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truth of the allegations in paragraph 30 and, on that basis, denies them.

31. Answering paragraph 31, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and, on that basis, denies them.

#### CLASS ALLEGATIONS

32-40. Answering paragraphs 32 through 40, Exxon Shipping admits that plaintiffs purport to bring an action on behalf of classes of persons and entities described in the complaint. Except as expressly admitted, Exxon Shipping lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 32 through 40 and, on that basis, denies them.

#### ANSWER TO COUNT I

41. Answering paragraph 41, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 40 as though set forth in full at this place.

42-46. Answering paragraphs 42 through 46, Exxon Shipping is not required to answer the allegations in paragraphs 42 through 46. If an answer were required, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegation in paragraphs 42 through 46 and, on that basis, denies them.

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ANSWER TO COUNT II

47. Answering paragraph 47, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 46 as though set forth in full at this place.

48. Answering paragraph 48, Exxon Shipping admits that Exxon Shipping is the owner and operator of the Exxon Valdez. Except as expressly admitted, Exxon Shipping denies the allegation in paragraph 48.

49. Answering paragraph 49, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 and, on that basis, denies them.

50. Answering paragraph 50, Exxon Shipping admits that the damages, if any, alleged by plaintiffs were not caused by an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge or information to form a belief as to the truth of the allegations in paragraph 50 and, on that basis, denies them.

51. Answering paragraph 51, Exxon Shipping lacks knowledge or information to form a belief as to the truth of the allegations in paragraph 51 and, on that basis, denies them.

52. Answering paragraph 52, Exxon Shipping admits that 43 U.S.C. § 1653(c), to the extent applicable, may impose strict liability for certain damages. Except as expressly

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admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 and, on that basis, denies them.

ANSWER TO COUNT III

53. Answering paragraph 53, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 52 as though set forth in full at this place.

54-66. Answering paragraphs 54 through 66, Exxon Shipping denies the allegations in paragraphs 54 through 66 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 54 through 66 and, on that basis, denies them.

ANSWER TO COUNT IV

67. Answering paragraph 67, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 66 as though set forth in full at this place.

68. Answering paragraph 68, Exxon Shipping admits that public records purport to show that Captain Hazelwood has been convicted of driving while under the influence of alcohol. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 68.

69-77. Answering paragraphs 69 through 77, Exxon Shipping denies the allegations in paragraphs 69 through 77.

ANSWER TO COUNT V

78. Answering paragraph 78, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 77 as though set forth in full at this place.

79. Answering paragraph 79, Exxon Shipping denies the allegations in paragraph 79 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 and, on that basis, denies them.

ANSWER TO COUNT VI

80. Answering paragraph 80, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 79 as though set forth in full at this place.

81. Answering paragraph 81, Exxon Shipping denies the allegations in paragraph 81 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 and, on that basis, denies them.

ANSWER TO COUNT VII

82. Answering paragraph 82, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 81 as though set forth in full at this place.

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83. Answering paragraph 83, Exxon Shipping admits that hazardous substance is defined in AS 46.03.826(4)(B) to include oil and that approximately 11 million gallons of crude oil were released into the Prince William Sound as a result of the grounding of the Exxon Valdez. Except as expressly admitted, Exxon Shipping denies the allegations of paragraph 83.

84. Answering paragraph 84, Exxon Shipping admits that the presence of oil in the Prince William Sound has caused damage to certain property and to certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 and, on that basis, denies them.

85. Answering paragraph 85, Exxon Shipping admits that Exxon Corporation owned the oil and that Exxon Shipping controlled the oil immediately prior to its release into the Prince William Sound. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 85.

86. Answering paragraph 86, Exxon Shipping admits that the oil spill and the subsequent movement of the oil was not caused solely by an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86 and, on that basis, denies them.

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87. Answering paragraph 87, Exxon Shipping denies the allegations in paragraph 87 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87 and, on that basis, denies them.

88. Answering paragraph 88, Exxon Shipping admits that AS 46.03.822, to the extent applicable, may impose strict liability for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 88 and, on that basis, denies them.

ANSWER TO COUNT VIII

89. Answering paragraph 89, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 88 as though set forth in full at this place.

90-93. Answering paragraphs 90 through 93, Exxon Shipping denies the allegations in paragraphs 90 through 93 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 90 through 93 and, on that basis, denies them.

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ANSWER TO COUNT IX

94. Answering paragraph 94, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 93 as though set forth in full at this place.

95-98. Answering paragraphs 95 through 98, Exxon Shipping denies the allegations in paragraphs 95 through 98 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 95 through 98 and, on that basis, denies them.

ANSWER TO COUNT X

99. Answering paragraph 99, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 98 as though set forth in full at this place.

100-102. Answering paragraphs 100 through 102, Exxon Shipping denies the allegations in paragraphs 100 through 102 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 100 through 102 and, on that basis, denies them.

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ANSWER TO COUNT XI

103. Answering paragraph 103, Exxon Shipping adopts and incorporates by this reference its responses to paragraphs 1 through 102 as though set forth in full at this place.

104-107. Answering paragraphs 104 through 107, Exxon Shipping denies the allegations in paragraphs 104 through 107 insofar as they concern the Exxon defendants. Insofar as the allegations concern other defendants, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 104 through 107 and, on that basis, denies them.

PRAYER FOR RELIEF

108. Exxon Shipping denies that plaintiffs are entitled to the relief they seek.

GENERAL DENIAL

109. Exxon Shipping denies each and every other allegation of plaintiffs' complaint that it has not specifically admitted.

AFFIRMATIVE AND OTHER DEFENSES

1. Independent of any legal obligation to do so, Exxon Shipping and Exxon Corporation are voluntarily paying many claims for economic loss allegedly caused by the oil spill, and incurring other expenses in connection with the oil spill. Exxon Shipping is entitled to a set-off in the full

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

2. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiffs in this action. In the event of any recovery in such other lawsuits by persons whose claims therein are encompassed by this action, Exxon Shipping is entitled herein to a set-off in the full amount of such payments.

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

4. Exxon Shipping is entitled to a set-off to the extent of any failure of plaintiffs properly to mitigate damages.

5. Unless otherwise agreed, Exxon Shipping is entitled to a set-off in the amount of any payment received by plaintiffs as a result of the oil spill, the containment or clean up of the oil released from the Exxon Valdez, or other activities or matters related to the oil spill.

6. Each of plaintiffs' theories of recovery fails to state a claim upon which relief can be granted.

7. Claims by some persons or entities who may be within the purported class have been settled and released, or in the alternative, payments received by such persons or entities operate as an accord and satisfaction of all claims against Exxon Shipping.

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8. Exxon Shipping has acted pursuant to government approval, direction, and supervision, and has no liability to plaintiffs for any acts or omissions undertaken with such approval, direction, or supervision.

9. Any liability 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).

10. Claims are barred to the extent they would represent recovery by two or more persons or entities for part or all of the same economic loss, and thus would represent a multiple recovery for the same injury.

11. Plaintiffs lack standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

12. Plaintiffs' claims are based on an alleged maritime tort and therefore are subject to applicable federal admiralty limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

13. Claims for punitive damages are unconstitutional under the United States Constitution including, without limitation, Article 1, Section 8; Amendment V; and Amendment XIV; and the Alaska Constitution including, without limitation, Article 1, Section 7; and Article 1, Section 12.

14. If punitive damages were to be awarded or civil or criminal penalties assessed in any other lawsuit against

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Exxon Shipping relating to the oil spill, such award bars imposition of punitive damages in this action.

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

16. Plaintiffs fail to satisfy the requirements for injunctive relief.

17. Plaintiffs' claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties relevant to the oil spill.

18. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article 1, Section 10 of the United States Constitution, and if applied to Exxon Shipping would also violate the due process clauses of the United States and Alaska Constitutions and the contract clause of the United States Constitution.

19. Exxon Shipping expressly reserves the full six months provided by 46 U.S.C. § 185 within which it may elect to assert its rights under 46 U.S.C. § 183.

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

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its scheme relevant to the protection of subsistence interests.

21. The damages alleged, if any, were caused, in part, by the actions of others not joined as defendants herein as to whom a right of contribution or indemnity should exist as to Exxon Shipping. Exxon Shipping may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery.

22. The Fund, established under the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1653(c), may be strictly liable for some or all of the damages alleged by plaintiffs.

23. Certain theories of relief may not be maintained because those theories are based upon the exercise of the state and federal constitutional right to petition the state and federal governments with respect to the passage and enforcement of laws.

24. This action should abate because plaintiffs have filed and is currently maintaining a parallel, duplicative action against Exxon Shipping in this Court that is based on the same facts alleged in the complaint herein.

WHEREFORE, defendant Exxon Shipping prays for judgment against plaintiffs as follows:

1. That plaintiffs take nothing by their complaint;
2. That the complaint be dismissed with prejudice;

3. That Exxon Shipping receive payment for the costs of suit incurred herein, including attorney's fees; and

4. That the court award Exxon Shipping such other and further relief as it may deem just and proper.

DATED this 15<sup>th</sup> day of August, 1989

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Attorneys for defendant  
Exxon Shipping Company (D-2)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Re: Case No. A89-270 Civil

D-2's Answer to P-201's  
Complaint Dated June 30, 1989

Defendant Exxon Shipping Company ("Exxon Shipping")  
answers plaintiff's Complaint as follows:

PREFATORY STATEMENT

Exxon Shipping alleges that no answer to plaintiff's  
prefatory statement is required and, if an answer is required,  
Exxon Shipping lacks knowledge or information sufficient to

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UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

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form a belief as to the truth of the allegations in plaintiff's prefatory statement and, on that basis, denies them.

#### JURY TRIAL DEMAND

1. While no answer is required to plaintiff's demand for trial by jury, Exxon Shipping does not waive its right to contest plaintiff's jury demand.

#### JURISDICTION AND VENUE

2. Answering paragraph 2, Exxon Shipping admits that plaintiff purports to bring a civil action as set forth in paragraph 2 of the complaint. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 2.

3. Answering paragraph 3, Exxon Shipping admits the allegations in paragraph 3.

4. Answering paragraph 4, Exxon Shipping admits that plaintiff purports to bring claims for relief pursuant to grounds set forth in paragraph 4 of the complaint. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 4.

5. Answering paragraph 5, Exxon Shipping admits that this action may be brought in this judicial district pursuant to 28 U.S.C. Sections 1391(b) and (c), as well as the applicable principles of admiralty and maritime law. Exxon Shipping admits that defendants reside in this district for venue purposes and that certain claims for injuries caused by the oil spill arose in this district. Except as expressly

admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and, on that basis denies them.

#### THE PARTIES

6. Answering paragraph 6, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 and, on that basis, denies them.

7. Answering paragraph 7, Exxon Shipping admits the allegations in paragraph 7.

8. Answering paragraph 8, Exxon Shipping admits that Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation owned by seven companies, consisting of the Amerada Hess Pipeline Corporation, ARCO Pipeline Company, BP Pipelines (Alaska), Inc., Exxon Pipeline Company ("Exxon Pipeline"), Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company, all of which are permittees under the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline System. Exxon Shipping further admits that Alyeska operates the Trans-Alaska Pipeline System, including the terminal at Valdez, Alaska, and that Alyeska loaded the EXXON VALDEZ with North Slope crude oil at the Valdez terminal. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as

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to the truth of the allegations in paragraph 8 and, on that basis, denies them.

9. Answering paragraph 9, Exxon Shipping admits that Exxon Corporation is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, NY 10020, and that the principal business of Exxon Corporation is energy, including exploration for and production of crude oil, natural gas and petroleum products and exploration for and mining and sale of coal. Except as expressly admitted, Exxon denies the allegations in paragraph 9.

10. Answering paragraph 10, Exxon Shipping admits that it is a domestic maritime subsidiary of defendant Exxon Corporation, separately incorporated under the laws of the State of Delaware, and that its principal place of business is at 800 Bell Street, Houston TX 77251, and that it is the owner and operator of the EXXON VALDEZ. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 10.

11. Answering paragraph 11, Exxon Shipping admits that Exxon Company, U.S.A. is an unincorporated division of Exxon Corporation responsible for the operation of Exxon Corporation's energy business within the United States, with its headquarters at 800 Bell Street, Houston, TX 77251. Except

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as expressly admitted, Exxon Shipping denies the allegations in paragraph 11.

#### DEFINITIONS

12-18. Answering paragraphs 12 through 18, Exxon Shipping admits that plaintiff purports to define certain terms. Except as admitted, Exxon Shipping denies the allegations in paragraphs 12 through 18 and further denies that any subsequent use of those terms in the Complaint is necessarily accurate or appropriate.

#### FACTUAL ALLEGATIONS

19. Answering paragraph 19, Exxon Shipping admits that on Thursday evening, March 23, 1989, the EXXON VALDEZ left the port of Valdez, Alaska, the southern terminal of the Trans-Alaska Pipeline System, bound for Long Beach, California. Exxon Shipping further admits that the EXXON VALDEZ is approximately 987 feet long, weighs approximately 211,000 deadweight tons and is one of Exxon Shipping's biggest ships. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 19.

20. Answering paragraph 20, Exxon Shipping admits that the oil tanks of the EXXON VALDEZ had been loaded with approximately 1.2 million barrels of crude oil that had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 20.

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Answer of Defendant Exxon Shipping  
Company - Page 5

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21. Answering paragraph 21, Exxon Shipping admits that the EXXON VALDEZ passed through the harbor and Valdez Narrows under the direction of a harbor pilot and that Captain Joseph J. Hazelwood was on the bridge of the ship when the harbor pilot disembarked in the Valdez Arm at approximately 11:30 p.m. March 23, 1989. Exxon Shipping further admits that Captain Hazelwood was employed by Exxon Shipping as Master of the EXXON VALDEZ and his duties as Master were within the scope of his employment by Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 21.

22. Answering paragraph 22, Exxon Shipping admits that after the harbor pilot disembarked, Captain Hazelwood left the bridge for his cabin, one flight below the bridge, leaving Gregory Cousins, the Third Mate, and Robert Kagan, the helmsman, on the bridge. Exxon Shipping admits that Mr. Cousins' duties as Third Mate on the EXXON VALDEZ, and Mr. Kagan's duties as her helmsman, were within the scope of their employment by Exxon Shipping. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 22.

23. Answering paragraph 23, Exxon Shipping admits that the United States Coast Guard gave the EXXON VALDEZ permission to leave the southbound shipping lane for reasons that include earlier reports that it contained icebergs that had broken from a glacier to the northwest. Except as

expressly admitted, Exxon Shipping denies the allegations in paragraph 23.

24. Answering paragraph 24, Exxon Shipping admits that while bound for Long Beach, California, the EXXON VALDEZ travelled through the northbound shipping lane into the vicinity of Bligh Reef, which is outside the shipping lanes and is depicted on charts. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 24.

25. Answering paragraph 25, Exxon Shipping admits that the EXXON VALDEZ struck Bligh Reef, punctured some of her cargo tanks and damaged a portion of her hull. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 25.

26. Answering paragraph 26, Exxon Shipping denies the allegations in paragraph 26.

27. Answering paragraph 27, Exxon Shipping denies the allegations in paragraph 27.

28. Answering paragraph 28, Exxon Shipping admits that the grounding cut open eight of her eleven cargo tanks and discharged approximately 11 million gallons of crude oil into Prince William Sound, and became the largest oil spill from a single ship in the United States. Exxon Shipping admits that the spill spread from Prince William Sound to some portions of the waters and beaches of the Gulf of Alaska and Cook Inlet. Exxon Shipping further admits that the presence of oil in

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Prince William Sound has caused damage to certain property and to certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 and, on that basis, denies them.

29. Answering paragraph 29, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 29 and, on that basis, denies them.

COUNT I

30. Answering paragraph 30, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 29 as though set forth in full at this place.

31-35. Answering paragraphs 31 through 35, Exxon Shipping alleges that no response to the allegations in paragraphs 31 through 35 is required and, if a response is required, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 31 through 35.

COUNT II

36. Answering paragraph 36, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 35 as though set forth in full at this place.

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37. Answering paragraph 37, Exxon Shipping admits that it is the owner and operator of the EXXON VALDEZ. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 37.

38. Answering paragraph 38, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 38.

39. Answering paragraph 39, Exxon Shipping admits that the damages, if any, were not caused by an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis denies the allegations in paragraph 39.

40. Answering paragraph 40, Exxon Shipping admits that the presence of oil in Prince William Sound has caused damage to certain property and certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies them.

41. Answering paragraph 41, Exxon Shipping admits that 43 U.S.C. §1653(c), to the extent applicable, may impose strict liability for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information

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sufficient to form a belief as to the truth of the allegations in paragraph 41 and, on that basis, denies them.

COUNT III

42. Answering paragraph 42, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 41 as though set forth in full at this place.

43-54. Answering paragraphs 43 through 54, Exxon Shipping denies the allegations in paragraphs 43 through 54 insofar as they apply to Exxon Shipping, Exxon Corp. and Exxon Company, U.S.A. Insofar as the allegations in paragraphs 43 through 54 apply to Alyeska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 43 through 54.

COUNT IV

55. Answering paragraph 55, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 54 as though set forth in full at this place.

56. Answering paragraph 56, Exxon Shipping admits that public records purport to show that Captain Hazelwood has been convicted of driving while under the influence of alcohol. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 56.

57-62. Answering paragraphs 57 through 62, Exxon Shipping denies the allegations in paragraphs 57 through 62.

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COUNT V

63. Answering paragraph 63, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 62 as though set forth in full at this place.

64. Answering paragraph 64, Exxon Shipping denies the allegations in paragraph 64 insofar as they apply to Exxon Shipping, Exxon Corp. and Exxon Company, U.S.A. Insofar as the allegations apply to Alyeska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 and, on that basis, denies them.

COUNT VI

65. Answering paragraph 65, Exxon Shipping incorporates and adopts by this reference its response to paragraphs 1 through 64 as though set forth in full at this place.

66. Answering paragraph 66, Exxon Shipping denies the allegations in paragraph 66 insofar as they apply to Exxon Shipping, Exxon Corp. and Exxon Company, U.S.A. Insofar as the allegations in paragraph 66 apply to Alyeska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 66.

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COUNT VII

67. Answering paragraph 67, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 66 as though set forth in full at this place.

68. Answering paragraph 68, Exxon Shipping admits that "hazardous substance" is defined in AS 46.03.826(4)(B) to include oil and that approximately 11 million gallons of crude oil were released into Prince William Sound as a result of the grounding. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 68.

69. Answering paragraph 69, Exxon Shipping admits that the presence of oil in Prince William Sound has caused damage to certain property and to certain animals. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 69 and, on that basis, denies them.

70. Answering paragraph 70, Exxon Shipping admits that Exxon Corporation owned the oil and that Exxon Shipping controlled the oil immediately prior to its release. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 70.

71. Answering paragraph 71, Exxon Shipping admits that the initial entry of oil into Prince William Sound and the subsequent movement of the oil was not caused by an act of war. Except as expressly admitted, Exxon Shipping lacks knowledge or

information sufficient to form a belief as to the truth of the allegations in paragraph 71 and, on that basis, denies them.

72. Answering paragraph 72, Exxon Shipping denies the allegations in paragraph 72 insofar as they apply to Exxon Shipping, Exxon Corp. and Exxon Company, U.S.A. Insofar as the allegations in paragraph 72 apply to Alyeska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies them.

73. Answering paragraph 73, Exxon Shipping admits that AS 46.03.822, if applicable, may impose strict liability for certain damages. Except as expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies them.

#### COUNT VIII

74. Answering paragraph 74, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 73 as though set forth in full at this place.

75-78. Answering paragraphs 75 through 78, Exxon Shipping denies the allegations in paragraphs 75 through 78 insofar as they apply to Exxon Shipping, Exxon Corp. and Exxon Company, U.S.A. Insofar as the allegations in paragraph 75 through 78 apply to Alyeska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the

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allegations and, on that basis, denies the allegations in paragraphs 75 through 78.

COUNT IX

79. Answering paragraph 79, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 78 as though set forth in full at this place.

80-83. Answering paragraphs 80 through 83, Exxon Shipping denies the allegations in paragraphs 80 through 83 insofar as they apply to Exxon Shipping, Exxon Corp. and Exxon Company, U.S.A. Insofar as the allegations in paragraph 80 through 83 apply to Alyeska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 80 through 83.

COUNT X

84. Answering paragraph 84, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 83 as though set forth in full at this place.

85-87. Answering paragraphs 85 through 87, Exxon Shipping denies the allegations in paragraphs 85 through 87 insofar as they apply to Exxon Shipping, Exxon Corp. and Exxon Company, U.S.A. Insofar as the allegations in paragraphs 85 through 87 apply to Alyeska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the

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allegations and, on that basis, denies the allegations in paragraphs 85 through 87.

COUNT XI

88. Answering paragraph 88, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 87 as though set forth in full at this place.

89-90. Answering paragraphs 89 through 90, Exxon Shipping denies the allegations in paragraphs 89 through 90 insofar as they apply to Exxon Shipping, Exxon Corp. and Exxon Company, U.S.A. Insofar as the allegations in paragraphs 89 through 90 apply to Alyeska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 89 through 90.

RELIEF SOUGHT

91. Answering plaintiff's prayer for relief, Exxon Shipping denies the entitlement of plaintiff to the relief it seeks.

GENERAL DENIAL

92. Exxon Shipping denies each and every other allegation in plaintiff's complaint that was not expressly admitted.

AFFIRMATIVE AND OTHER DEFENSES

1. Independent of any legal obligation to do so, Exxon Shipping and Exxon Corporation are voluntarily paying

many claims for economic loss allegedly caused by the oil spill, and incurring other expenses in connection with the oil spill. Exxon Shipping is entitled to a set-off in the full amount of all such payments in the event plaintiff's claims encompass such expenditures.

2. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiff in this action. In the event of any recovery in such other lawsuits by persons whose claims therein are encompassed by this action, Exxon Shipping is entitled herein to a set-off in the full amount of such payments.

3. Some or all of plaintiff's claims for damages may be barred or reduced by the doctrine of comparative negligence.

4. Exxon Shipping is entitled to a set-off to the extent of any failure of plaintiff properly to mitigate damages.

5. Unless otherwise agreed, Exxon Shipping is entitled to a set-off in the amount of any payment received by plaintiff as a result of the oil spill, the containment or clean up of the oil released from the EXXON VALDEZ, or other activities or matters related to the oil spill.

6. Each of plaintiff's theories of recovery fails to state a claim upon which relief can be granted.

7. Payments received by plaintiff may operate as an accord and satisfaction of all claims against Exxon Shipping.

8. Exxon Shipping has acted pursuant to government approval, direction and supervision, and has no liability to plaintiff for any acts or omissions undertaken with such approval, direction, or supervision.

9. The amount of any liability 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).

10. Claims are barred to the extent they would represent recovery by two or more persons or entities for part or all of the same economic loss, and thus would represent a multiple recovery for the same injury.

11. Plaintiff lacks standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

12. Plaintiff's claims are based on an alleged maritime tort and therefore are subject to applicable federal admiralty limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

13. Plaintiff's claims for punitive damages are unconstitutional under the United States Constitution including, without limitation, Article 1, Section 8; Amendment V; and Amendment XIV; and the Alaska Constitution including,

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without limitation, Article 1, Section 7; and Article 1, Section 12.

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

15. Certain claims asserted by plaintiff are not ripe for adjudication.

16. Plaintiff fails to satisfy the requirements for injunctive relief.

17. Plaintiff's claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties relevant to the oil spill.

18. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article 1, Section 10 of the United States Constitution, and if applied to Exxon Shipping would also violate the due process clauses of the United States and Alaska Constitutions and the contract clause of the United States Constitution.

19. Exxon Shipping expressly reserves the full six months provided by 46 U.S.C. § 185 within which it may elect to assert its rights under 46 U.S.C. § 183.

20. Some or all of plaintiff's claims, including claims for punitive damages, are preempted by the comprehensive

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system of federal statutes and regulations, including its system of criminal and civil penalties, sanctions and compensatory and other remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

21. The damages alleged, if any, were caused, in part, by the actions of others not joined as defendants herein as to whom a right of contribution or indemnity should exist as to Exxon Shipping. Exxon Shipping may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery.

22. The Fund, established under the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1653(c), may be strictly liable for some or all of the damages alleged by plaintiffs.

23. Certain theories of relief may not be maintained because those theories are based upon the exercise of the state and federal constitutional right to petition the state and federal governments with respect to the passage and enforcement of laws.

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

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25. The corporate plaintiff herein lacks the capacity to commence and maintain this action insofar as they have failed to allege and prove that they have paid their Alaska biennial corporate taxes last due and have filed biennial reports for the last reporting period.

WHEREFORE, defendant Exxon Shipping prays judgment against plaintiff as follows:

1. That plaintiff take nothing by its complaint;
2. That the complaint be dismissed with prejudice;
3. That Exxon Shipping receive payment of costs of suit incurred herein, including attorney's fees; and
4. That the Court award such other and further relief as it may deem just and proper.

DATED this 15<sup>th</sup> day of August, 1989.

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