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AUG 13 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

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Attorneys for Defendant D-4
Trans-Alaska Pipeline Liability Fund

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
) No. A 89-95 CIV
the EXXON VALDEZ)
) (Consolidated)

ANSWER OF DEFENDANT TRANS-ALASKA PIPELINE
LIABILITY FUND

Re: Case Nos.:

- | | |
|--------------|--------------|
| A 89- 95 CIV | A 89-139 CIV |
| A 89- 96 CIV | A 89-140 CIV |
| A 89- 99 CIV | A 89-141 CIV |
| A 89-102 CIV | A 89-144 CIV |
| A 89-103 CIV | A 89-147 CIV |
| A 89-104 CIV | A 89-149 CIV |
| A 89-107 CIV | A 89-165 CIV |
| A 89-108 CIV | A 89-166 CIV |
| A 89-109 CIV | A 89-173 CIV |
| A 89-110 CIV | A 89-200 CIV |
| A 89-111 CIV | A 89-238 CIV |
| A 89-125 CIV | A 89-239 CIV |
| A 89-126 CIV | A 89-264 CIV |
| A 89-129 CIV | A 89-265 CIV |
| A 89-135 CIV | A 89-270 CIV |
| A 89-136 CIV | A 89-297 CIV |
| A 89-138 CIV | A 89-299 CIV |

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Defendant TRANS-ALASKA PIPELINE LIABILITY FUND (the "FUND"), by and through its undersigned attorneys, and in response to the various class action and individual complaints filed by the Plaintiffs herein, and which have been consolidated pursuant to the Court's Pre-Trial Order No. 1, hereby admits, denies, states, and alleges as follows:

1. Except as may be specifically admitted in this Answer, the Defendant FUND denies each and every allegation contained in each Complaint and Amended Complaint in which the FUND is named as a Defendant.

2. Defendant FUND admits that it was created pursuant to the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1651, et seq., that the FUND resides in this District, and that venue is proper as to the FUND.

3. Defendant FUND admits that the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1651, et. seq., is applicable to factual situations similar to those alleged in the various Complaints and relating to Defendant FUND. However, Defendant FUND is without knowledge or information sufficient to form a belief as to the truth of any allegations in said Complaints that the statute identified constitutes a ground for relief in favor of the identified Plaintiffs and against this Defendant and, therefore, the FUND denies any such allegations.

4. Defendant FUND admits that the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1651, et seq., provides for strict

liability on the part of the FUND and others under certain circumstances specified in that legislation and regulations promulgated thereunder. However, Defendant FUND specifically denies that any satisfactory showing or proof has been made to establish liability on the part of the FUND to any of the Plaintiffs in these consolidated actions.

5. Defendant FUND denies any allegations that damages claimed by Plaintiffs arose from more than one "incident" as that term is defined in the applicable regulations (43 C.F.R. § 29.1(h)), and specifically denies that its total liability to all claimants for damages arising from said "incident" may exceed the statutory maximum of Eighty-Six Million Dollars (\$86,000,000.00) specified in 43 U.S.C. § 1653(c)(3).

6. Defendant FUND specifically denies any allegations regarding non-economic damages to the extent said allegations may pertain to, or be alleged against, this Defendant. Defendant FUND denies any liability for damages not specifically listed in 43 C.F.R. § 29.1(e).

7. Defendant FUND specifically denies any allegations respecting punitive damages to the extent said allegations may pertain to, or be alleged against, this Defendant.

First Affirmative Defense

8. The Complaints filed by the various Plaintiffs fail to state a claim against the FUND upon which relief may be

granted.

Second Affirmative Defense

9. Any liability that Defendant FUND may have to claimants such as the Plaintiffs arises under, and is governed by, the appropriate provisions of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1653(c), et seq., and regulations promulgated thereunder found at 53 Fed. Reg. 3395 (1988) (to be codified at 43 C.F.R. § 29).

10. These regulations specify procedures that should be followed by claimants against the FUND and observed by the FUND in processing, evaluating, and paying such claims.

11. Compliance with the aforesaid claims procedures constitutes an administrative remedy which is Plaintiffs' exclusive remedy against Defendant FUND.

12. Accordingly, Plaintiffs' claims against Defendant FUND in these proceedings are premature, and should be dismissed for failure to exhaust administrative remedies.

Third Affirmative Defense

13. Defendant hereby incorporates each and every allegation of Paragraphs 9 through 12 above, to the same extent as if they were set forth in full herein.

14. Compliance with the aforesaid administrative claims procedures is a condition precedent to any judicial proceeding for recovery against the FUND, which Plaintiffs have failed to

satisfy.

15. Plaintiffs' claims against Defendant FUND are, therefore, premature, and should be dismissed for failure of a condition precedent.

Fourth Affirmative Defense

16. To the extent any Plaintiff may assert a punitive damages claim or a claim for non-economic damages against Defendant FUND, such damages are not authorized by 43 U.S.C. § 1651, et seq., or the regulations promulgated thereunder, and an award of such damages would be unconstitutional and a violation of the FUND's right to due process of law.

Fifth Affirmative Defense

17. 43 U.S.C. § 1653(c)(3) and the regulations promulgated thereunder provide that, if total allowable claims exceed One Hundred Million Dollars (\$100,000,000.00), they shall be reduced proportionately. No affirmative judgment may be entered against Defendant FUND which does not take into consideration all claims, including non-judicial claims, filed against or submitted to the FUND within two (2) years of the Exxon Valdez discharge. To allow entry of judgment for any particular Plaintiff without giving effect to the pro rata reductions mandated by applicable statutes and regulations would expose the FUND to a potential for inconsistent decisions and/or duplicative liabilities and could cause other claimants, including non-judicial claimants, to

receive less than the pro rata share of the FUND's available proceeds to which they are entitled by law.

RESERVATION OF STATUTORY DEFENSES

18. Defendant FUND hereby expressly reserves its right to assert, at such time and to such extent as discovery and factual development establish a basis therefor, any or all of the statutory defenses specified in 43 U.S.C § 1653(c)(2), including, without limitation, that Plaintiffs' damages were caused by the negligence of the United States or other governmental agency and/or by the negligence of the Plaintiffs.

RESERVATION OF AFFIRMATIVE DEFENSES

19. Defendant FUND hereby expressly reserves, and does not waive, its right to assert any and all additional affirmative defenses, at such time and to such extent as discovery and factual development may establish a basis therefor, including, without limitation, comparative and contributory negligence, assumption of risk, failure to mitigate damages, last clear chance, waiver, estoppel, laches, payment, release, res judicata, and intervening cause.

WHEREFORE, having fully answered the Plaintiffs' Complaints, Defendant FUND hereby respectfully prays that the Plaintiffs take nothing by virtue thereof; that the same be dismissed with prejudice; that judgment be issued in favor of Defendant FUND and

against Plaintiffs on all counts of Plaintiffs' Complaints which may apply to Defendant FUND; and that Defendant FUND be awarded its costs and reasonable attorney's fees, and such other, further, and different relief as the Court may deem just and equitable in the premises.

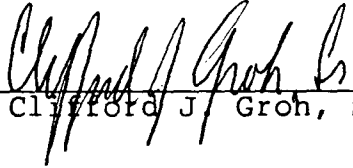
DATED at Anchorage, Alaska, this 15th day of August, 1989.

GROH, EGGERS & PRICE

Attorneys for Defendant

Trans-Alaska Pipeline Liability Fund

By:


Clifford J. Groh, Sr.

By


David A. Devine

SERVICE of the foregoing has been made upon all counsel of record by mail, on the 15~~H~~ day of August, 1989, based upon the Court's Master Service List of July 20, 1989.


David A. Devine

P-928-3

ANSWER OF DEFENDANT
TRANS-ALASKA PIPELINE LIABILITY FUND

Page 7 --

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PIPELINE COMPANY, PHILLIPS ALASKA PIPELINE CORPORATION,
AND UNOCAL PIPELINE COMPANY (D-3, D-9, D-11, D-12, D-19,
D-14, D-20, and D-21, respectively)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re)

THE EXXON VALDEZ)

No. A89-095 Civil
(Consolidated)

This Document Relates to)
Action Nos.:)

A89-117 (P-68 - P-72))

A89-118 (P-68 - P-70))

A89-138 (P-81 - P-94))

A89-145 (P-65 - P-67))

NOTICE OF MOTION OF
DEFENDANTS ALYESKA PIPELINE
SERVICE COMPANY, GEORGE M.
NELSON, AMERADA HESS PIPELINE
CORPORATION, ARCO PIPE LINE
COMPANY, BP PIPELINES (ALASKA)
INC., MOBIL ALASKA PIPELINE
COMPANY, PHILLIPS ALASKA
PIPELINE CORPORATION, and
UNOCAL PIPELINE COMPANY (D-3,
D-9, D-11, D-12, D-19, D-14,
D-20, and D-21, respectively)

TO DISMISS PLAINTIFFS' CLAIMS
OF FRAUD AND MISREPRESENTATION

Defendants ALYESKA PIPELINE SERVICE COMPANY, GEORGE M.

NELSON, AMERADA HESS PIPELINE CORPORATION, ARCO PIPE LINE COMPANY,

NOTICE OF MOTION

1

FILED

AUG 16 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By Deputy

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BP PIPELINES (ALASKA) INC., MOBIL ALASKA PIPELINE COMPANY,
PHILLIPS ALASKA PIPELINE CORPORATION, and UNOCAL PIPELINE COMPANY
(D-3, D-9, D-11, D-12, D-19, D-14, D-20, and D-21, respectively)
hereby move to dismiss, pursuant to Rules 12(b)(6) and 9(b) of the
Federal Rules of Civil Procedure, plaintiffs' claims of fraud and
misrepresentation as follows:

1. Action No. A89-117 (W.B.T.J. Sigler), Complaint,
paragraphs 32(f) and 13(d);
2. Action No. A89-118 (W.B.T.J. Sigler), Complaint,
paragraphs 34(f) and 16(d); and
3. Action No. A89-138 (Chugach), Amended Complaint,
paragraphs 89 through 104, Ninth Claim for Relief and Tenth Claim
for Relief;
4. Action No. A89-145 (Thorne), Complaint, paragraphs 54
through 61, Fifth Cause of Action.

This motion is made upon the grounds that said
allegations of fraud and misrepresentation fail to state a claim
upon which relief may be granted. The motion is based upon
Federal Rules of Civil Procedure, Rule 12(b)(6) and Rule 9(b),

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upon the authorities cited in the concurrently filed Memorandum of Law, and upon the pleadings, records, papers and files herein.

DATED this 15th day of August, 1989.


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BURR, PEASE & KURTZ

ROBERT S. WARREN
GIBSON, DUNN & CRUTCHER

By 

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PIPELINE COMPANY, PHILLIPS
ALASKA PIPELINE CORPORATION, and
UNOCAL PIPELINE COMPANY (D-3,
D-9, D-11, D-12, D-19, D-14,
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*Served by mail
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PIPELINE COMPANY, PHILLIPS ALASKA PIPELINE CORPORATION,
AND UNOCAL PIPELINE COMPANY (D-3, D-9, D-11, D-12, D-19,
D-14, D-20, and D-21, respectively)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re)	
)	
THE EXXON VALDEZ)	No. A89-095 Civil
)	(Consolidated)
)	
This Document Relates to)	MEMORANDUM OF POINTS AND
Action Nos.:)	AUTHORITIES IN SUPPORT OF
)	MOTION TO DISMISS
A89-117 (P-68 - P-72))	PLAINTIFFS' CLAIMS OF FRAUD
)	AND MISREPRESENTATION
A89-118 (P-68 - P-70))	
)	
A89-138 (P-81 - P-94))	
)	
A89-145 (P-65 - P-67))	
)	
)	

Defendants ALYESKA PIPELINE SERVICE COMPANY, GEORGE M.

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BP PIPELINES (ALASKA) INC., MOBIL ALASKA PIPELINE COMPANY,

PHILLIPS ALASKA PIPELINE CORPORATION, and UNOCAL PIPELINE COMPANY (D-3, D-9, D-11, D-12, D-19, D-14, D-20, and D-21, respectively) hereby submit this memorandum of law in support of their motion to dismiss plaintiffs' claims of fraud and misrepresentation.

Four Federal and three State court complaints in the consolidated EXXON VALDEZ litigation raise claims of fraud or negligent misrepresentation on the part of Alyeska and/or its Owner Companies. These counts are based upon broad and unspecified "representations" regarding environmental concerns and response capability, made at unspecified times, by unspecified persons, and without any attempt to define the document (if any) containing the representations or how any such representations produced any particular action on the part of the individuals and businesses who make up the plaintiffs. Because these claims appear to relate back to the very inception of the Trans-Alaska Pipeline, so as to implicate more than a decade, and because these moving defendants are convinced that no viable claim of fraud or misrepresentation of any sort can be pleaded against them, these defendants believe it essential to eliminate these unfounded causes of action from the complaints at the earliest possible date.

It is understood that the Court may be contemplating a succession of meetings to create a viable discovery plan, and moving defendants submit that it is important that the plan not commit a substantial expenditure of time and resources into areas of discovery not pertinent to any viable claim against the defendants.

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To accomplish these goals, but not to delay bringing the actions to the point of being "at issue" so that they may move forward expeditiously, these defendants have filed their motions to dismiss on the same day as they have filed answers to the complaints. Under such circumstances, a "court will view the motion as having preceded the answer and thus as having been interposed in a timely fashion." 5 Wright and Miller, Federal Practice and Procedure, § 1361, at 643 (1969); Beary v. West Publishing Co., 763 F.2d 66, 68 (2d Cir. 1985) cert. denied, 414 U.S. 903 (1985); Kuhlmeier v. Hazelwood School Dist., 578 F. Supp. 1286, 1290 (E.D. Mo. 1984); Contois v. State Mut. Life Assur. Co., 66 F. Supp. 76, 77 (N.D. Ill. 1945) aff'd. 156 F.2d 44 (7th Cir. 1946). /1/

To state a viable claim for fraudulent misrepresentation, a plaintiff must plead and establish a fraudulent misrepresentation of fact, made for the purpose of inducing the particular plaintiff in question justifiably to rely upon the misrepresentation by taking specific action resulting in cognizable damage to the plaintiffs. Thomson v. Wheeler Construction Co., 385 P.2d 111, 113 (Alaska 1963). In Thomson, as again noted in Fleenor v. Church, 681 P.2d 1351, 1358, n.15 (Alaska 1984), the State of Alaska adopted the test set forth in Restatement (Second) of Torts, Section 525:

One who fraudulently makes a misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss

caused to him by his justifiable reliance upon the misrepresentation.

The representation is actionable only by those to whom it is directed:

One who makes a fraudulent misrepresentation is subject to liability to the persons or class of persons whom he intends or has reason to expect to act or to refrain from action in reliance upon the misrepresentation, for pecuniary loss suffered by them through their justifiable reliance in the type of transaction in which he intends or has reason to expect their conduct to be influenced.

Restatement (Second) of Torts, § 531.

In the case of an action for negligent misrepresentation, the plaintiff must plead and establish:

First, the party accused of the misrepresentation must have made the statement "in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest." Second, the representation must supply "false information." Third, there must be "justifiable reliance" on the false information supplied. Finally, the accused party must have failed "to exercise reasonable care or competence in obtaining or communicating the information."

Bubbel v. Wien Air Alaska, Inc., 682 P.2d 374, 380, (Alaska 1984) (footnote omitted), citing Restatement (Second) of Torts, § 552(1).

The complaints filed in this Court state the purported fraud and misrepresentation only in the most general terms, which give no clue to the particular claim made by each particular plaintiff or class of plaintiff against each of the moving defendants. For example, in the Chugach Alaska Corporation case, A89-138, the Ninth Claim for Relief for negligent

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misrepresentation (paragraphs 89-96, pages 31-32) alleges that the defendants negligently misrepresented to plaintiffs and others "that they had sufficient personnel and material means at their disposal to prevent a pollution incident or to prevent or minimize damage if a pollution incident occurred." Paragraph 90, page 31. The Tenth Claim for Relief for fraud (paragraphs 97-104, pages 32-34) makes the same allegations, but with a charge of scienter. In earlier portions of the complaint, it is averred that the defendants "and other oil companies involved in the construction and operation of the Trans-Alaska Pipeline, publicly represented to concerned citizens of the area, including Plaintiffs" that the tanker fleet would be designed to minimize spills and that they would develop an oil spill contingency plan with resources and personnel to fully respond to a major spill. Paragraph 50, page 17.

In the complaints of W.B.T.J. Sigler (A89-117 and A89-118), it is alleged in Paragraphs 32(f) and 34(f), respectively, under the heading "Causes of Action":

Defendants intentionally or negligently misrepresented to Plaintiffs and others, material facts about the safety of the supertankers, and the competency of the crews. Defendants also knew that they were not equipped and they were unprepared to respond to a massive oil spill in Prince William Sound, but failed to warn Plaintiffs or state and federal authorities of these facts. These misrepresentations were made with the intent to induce the Plaintiffs to rely up[on] the adequacy of the Defendants' conduct.

Finally, in the action brought by Gerald E. Thorne, A89-145, the Fifth Cause of Action for "Intentional and Negligent

Misrepresentation and Suppression of Material Facts," Paragraphs 54-61, pages 17-19, alleges that the defendants "intentionally or negligently misrepresented to plaintiffs and others, and/or suppressed material facts about the safety of supertankers . . . , the competency of the crews, their safety procedures, and their ability to respond to, contain, and clean up a massive oil spill in Prince William Sound." Paragraph 55. It is additionally alleged that the defendants were "aware" of inadequate safety features and "knew that they were ill equipped and unprepared to respond to a massive oil spill in Prince William Sound, but failed to warn plaintiffs or state and federal authorities of these facts." Paragraphs 56 and 57, page 18.

Such allegations are wholly insufficient to state a claim for relief sounding in fraud or negligent misrepresentation. In such actions, it is particularly essential that each of the elements be pleaded in a fashion which identifies the alleged fraud so as to give the Court an opportunity to determine whether a viable claim for relief exists. Thus, it is made by Rule 9 especially mandatory that sufficient information be pleaded to identify the specific fraudulent statement and by whom it was made and if in a document, the specific identity of the document so that the full context of the alleged "representation" may be examined. Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985); Hokama v. E.F. Hutton & Co., Inc., 566 F. Supp. 636, 644-646 (C.D. Cal. 1983); McFarland v. Memorex Corp., 493 F. Supp. 631, 635-640 (N.D. Cal. 1980).

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For example, in Semegen, the plaintiffs despite repeated opportunities presented "nothing more than . . . conclusory allegations of fraud, conspiracy to commit securities fraud, and aiding and abetting in securities fraud, punctuated by a handful of neutral facts . . . [with an] absence of specification of any times, dates, places or other details of that alleged fraudulent involvement" Therefore, the "district court correctly dismissed the claims" against the defendants. Semegen v. Weidner, 780 F.2d at 731. /2/

These moving defendants believe that the few plaintiffs who have included claims for fraud and negligent misrepresentation in their complaints not only have not, but also cannot, state any viable claim for relief on such grounds running in favor of the particular plaintiffs represented against any of these moving defendants. In order to avoid encumbering these already complex proceedings with claims for relief which have no legally cognizable basis, it is respectfully submitted that these claims

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should be dismissed before the time when the Court will be adopting its discovery plan in these actions.

DATED this _____ day of August, 1989.

Respectfully submitted,

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D-9, D-11, D-12, D-19, D-14,
D-20, and D-21, respectively)

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1/ For that matter, a motion to dismiss pursuant to Rule 12(b)(6) may be made at any time, particularly where the defense of failure to state a claim upon which relief can be granted has been preserved in the answer, as that defense has been preserved in the answers filed by these moving defendants. See, Bowen v. Pan American World Airways Inc., 474 F. Supp. 563, 567 (S.D. N.Y. 1979).

2/ The failure to plead the specific elements of the fraud was in each of the cited cases a ground for dismissal of the claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The motions were not simply for a more definite statement pursuant to Rule 12(e). See, 5 Wright and Miller, Federal Practice and Procedure, Section 1378 (1969).

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7 Liaison Counsel for Plaintiffs

8 [Names and Addresses of
9 Plaintiffs' Counsel Appear
10 on the Signature Page]

FILED

AUG 10 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Honorable H. Russel Holland

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

13 In re)

14 the EXXON VALDEZ)

No. A89-095 Civil
(Consolidated)

15 This Document Relates)
16 to Action Nos.)

17 A89-110)

18 THE EYAK NATIVE VILLAGE, THE NATIVE)
19 VILLAGE OF CHENEGA BAY, THE NATIVE)
20 VILLAGE OF PORT GRAHAM, THE NATIVE)
21 VILLAGE OF ENGLISH BAY, THE NATIVE)
22 VILLAGE OF TATITLEK, THE MOUNT)
23 MARATHON NATIVE ASSOCIATION, INC.,)
24 THE VALDEZ NATIVE ASSOCIATION, INC.,)
25 THE ALASKA SEA OTTER COMMISSION, THE)
SHOONAQ' TRIBE OF KODIAK, THE NATIVE)
VILLAGE OF LARSEN BAY, THE NATIVE)
VILLAGE OF OLD HARBOR, THE NATIVE)
VILLAGE OF KARLUK, THE NATIVE VILLAGE)
OF PORT LIONS, THE NATIVE VILLAGE OF)
AKHIOK, THE NATIVE VILLAGE OF)
OUZINKIE, AGNES NICHOLS, GILBERT)
OLSEN, HENRY MAKARKA, JOHN M.)
TOTEMOFF, MAGGIE A. TOTEMOFF, WALTER)
MAGANACK, SR., WALTER MAGANACK, JR.,)
JUANITA MELSHEIMER, RONNY LIND, ALLEN)
PANAMAROFF, DAVID ELUSKA, SR., and)
TESHIA HARRIS (P-46 through P-55 and)
P-118 through P-138);)

SUGGESTION OF
ADDITIONAL SUBJECTS
TO BE CONSIDERED AT
THE AUGUST 24, 1989
PRE-TRIAL CONFERENCE

1 vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
and ALYESKA PIPELINE SERVICE CO.
2 (D-1 through D-3);
3 A89-099
CORDOVA DISTRICT FISHERMEN UNITED,
4 INC., PRINCE WILLIAM SOUND AQUACULTURE
CORPORATION, and ELMER J. CHESHER
5 (P-16 through P-18);
vs.
6 EXXON CORPORATION, EXXON SHIPPING CO.,
and ALYESKA PIPELINE SERVICE CO.
7 (D-1 through D-3);
8 A89-297
PRINCE WILLIAM SOUND SEINERS
9 ASSOCIATION, PRINCE WILLIAM SOUND
SETNETTERS ASSOCIATION, FLOYD
10 HUTCHENS, KENNETH MOORE, and MICHELLE
HAHN O'LEARY (P-202 through P-206);
vs.
11 EXXON CORPORATION, EXXON SHIPPING CO.,
12 and ALYESKA PIPELINE SERVICE CO.
(D-1 through D-3);
13 A89-109
14 PHILIP H. MCCRUDDEN and DENNIS BISHOP
(P-43 through P-44);
vs.
15 EXXON SHIPPING CO., TRANS-ALASKA
16 PIPELINE LIABILITY FUND, ALYESKA
PIPELINE SERVICE CO., JOSEPH
17 HAZELWOOD, and GREGORY COUSINS
(D-2 through D-4 and D-7 through D-8);
18 A89-166
19 PHILIP G. MCCRUDDEN (P-145);
vs.
20 EXXON CORPORATION, EXXON SHIPPING CO.,
ALYESKA PIPELINE SERVICE CO.,
21 TRANS-ALASKA PIPELINE LIABILITY FUND,
JOSEPH J. HAZELWOOD, and GREGORY
22 COUSINS (D-1 through D-4 and D-7
through D-8);
23
24 A89-102
25 SAMISH MARITIME, INC., and SCOTT
MCALLISTER (P-19 and P-21);

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vs.
EXXON SHIPPING CO., ALYESKA PIPELINE
SERVICE CO., and TRANS-ALASKA PIPELINE
LIABILITY FUND (D-2 through D-4);

A89-104
MICHAEL MCALLISTER, CHARLOTTE YOAKUM,
LEE JUDSON, LANTZ HUGHES, and THOMAS
S. MCALLISTER (P-24 through P-28);
vs.
EXXON SHIPPING CO., ALYESKA PIPELINE
SERVICE CO., and TRANS-ALASKA PIPELINE
LIABILITY FUND (D-2 through D-4);

A89-265
RANDALL P. BABICH, MICHAEL MCLENAGHAN
and ALBERT CARROLL (P-189 and P-195
through P-196);
vs.
EXXON SHIPPING CO., ALYESKA PIPELINE
SERVICE CO., and TRANS-ALASKA
PIPELINE LIABILITY FUND
(D-2 through D-4);

A89-299
ALBERT CARROLL, AUGUST PEDERSEN, JR.,
A. DOUGLAS PEDERSEN and MIKE
MCLENAGHAN (P-225, P-246 through
P-247 and P-267);
vs.
EXXON SHIPPING CO., ALYESKA PIPELINE
SERVICE CO., and TRANS-ALASKA PIPELINE
LIABILITY FUND (D-2 through D-4).

A89-111
GERALD E. THORNE, GERALD D. THORNE,
and CHARLES M. THORNE
(P-65 through P-67);
vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
ALYESKA PIPELINE SERVICE CO., JOSEPH
HAZELWOOD, GREGORY COUSINS, GEORGE
NELSON, and TRANS-ALASKA PIPELINE
LIABILITY FUND (D-1 through D-4,
D-7 through D-9);

A89-126
KENT HERSCHLEB, JOHN HERSCHLEB, and
ANNE HERSCHLEB (P-74 through P-76);

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vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
ALYESKA PIPELINE SERVICE CO., and
TRANS-ALASKA PIPELINE LIABILITY FUND
(D-1 through D-4);

A89-129
TOM COPELAND (P-77);

vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
EXXON PIPELINE CO., ALYESKA PIPELINE
SERVICE CO., TRANS-ALASKA PIPELINE
LIABILITY FUND, JOSEPH HAZELWOOD, and
GREGORY COUSINS (D-1 through D-4, D-7
through D-8 and D-10);

A89-141
MARC VAN DRIESSCHE (P-112);

vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
and ALYESKA PIPELINE SERVICE CO.
(D-1 through D-3);

A89-096
CRUZAN FISHERIES, INC., STANLEY
NORRIS GROVE, and ANTHONY GROVE
(P-13 through P-15)

vs.
ALYESKA PIPELINE SERVICE CO.,
TRANS-ALASKA PIPELINE LIABILITY FUND,
EXXON CORPORATION, and EXXON SHIPPING
CO. (D-1 through D-4);

A89-103
STEVEN T. OLSEN (P-22);

vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
ALYESKA PIPELINE SERVICE CO., and
TRANS-ALASKA PIPELINE LIABILITY FUND
(D-1 through D-4);

A89-107
GRANT C. BAKER and ROBIN C. BUTLER
(P-40 through P-41);

vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
ALYESKA PIPELINE SERVICE CO., and
TRANS-ALASKA PIPELINE LIABILITY FUND
(D-1 through D-4);

1 A89-125

DALE HOFMANN (P-73);

2 vs.

EXXON CORPORATION, EXXON SHIPPING CO.,
3 ALYESKA PIPELINE SERVICE CO., and
4 TRANS-ALASKA PIPELINE LIABILITY FUND
(D-1 through D-4);

5 A89-108

RICHARD CESARI (P-42);

6 vs.

EXXON CORPORATION, EXXON SHIPPING CO.,
7 ALYESKA PIPELINE SERVICE CO., and
8 TRANS-ALASKA PIPELINE LIABILITY FUND
(D-1 through D-4);

9 A89-173

10 KEITH H. GORDAOFF and GEORGE A.
GORDAOFF (P-146 through P-147);

11 vs.

EXXON CORPORATION, EXXON SHIPPING CO.,
12 JOSEPH HAZELWOOD, GREGORY COUSINS,
13 ALYESKA PIPELINE SERVICE CO., and
TRANS-ALASKA PIPELINE LIABILITY FUND
(D-1 through D-4 and D-7 through D-8);

14 A89-095

SEA HAWK SEAFOODS, INC., SAGAYA
15 CORPORATION, HUNTER CRANZ, RICHARD
16 FEENSTRA, ALASKA WILDERNESS SAILING
SAFARIS, SEAFOOD SALES, INC., and
17 RAPID SYSTEMS PACIFIC, LTD
(P-1, P-3 and P-8 through P-12);

18 vs.

EXXON CORPORATION, EXXON SHIPPING CO.,
19 ALYESKA PIPELINE SERVICE CO.
(D-1 through D-3);

20 A89-165

ALASKAN SPORTFISHING ASSOCIATION,
21 MICHAEL L. STANLEY, JEFF YATES, TONY
22 LEE, ALLAN TYGERT and TOM ELIAS
(P-139 through P-144);

23 vs.

ALYESKA PIPELINE SERVICE CO., AMERADA
24 HESS CORPORATION, ARCO PIPELINE CO.,
BRITISH PETROLEUM PIPELINES, INC.,
EXXON PIPELINE CO., MOBIL ALASKA
25 PIPELINE CO., PHILLIPS PETROLEUM CO.,
TRANS-ALASKA PIPELINE LIABILITY FUND,

1 EXXON CORPORATION, and EXXON)
2 SHIPPING CO. (D-1 through D-4 and)
3 D-10 through D-15).)
4)

5 SUGGESTION OF ADDITIONAL SUBJECTS TO BE CONSIDERED
6 AT THE AUGUST 24, 1989 PRE-TRIAL CONFERENCE

7 Pursuant to this Court's ORDER NO. 10 entered August 2,
8 1989, the undersigned attorneys for the Class Action Plaintiffs
9 in this consolidated action respectfully submit the following
10 suggestions of additional subjects be considered at the August
11 24, 1989 scheduling and planning conference.

12 1. Fed.R.Civ.P. Rule 23(c) motion for authority to
13 maintain class action and for class certification
14 should be scheduled. The Class Action Plaintiffs
15 suggest the following:

16 (a) Class Action Plaintiffs' Opening Brief in Support
17 of Class Certification filed on or before
18 September 22, 1989;

19 (b) Defendants' Opposition to Class Certification
20 should be filed on or before November 3, 1989;

21 (c) identified Class Action Plaintiffs' Reply Brief in
22 Support of Class Certification should be filed on
23 or before December 22, 1989.

24 2. A schedule for discovery on all subjects should be
25 established. Class Action Plaintiffs would suggest the
following:

(a) Interrogatories and Requests for Production of
Documents to be filed on or before September 22,

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1989;

1 (b) Non-party witnesses depositions to begin on or
2 before September 22, 1989;

3 (c) Depositions of all other witnesses to commence
4 after answers to interrogatories are served and
5 requested documents produced and inspected.

6 3. Organization of teams or committees of the Plaintiffs'
7 attorneys to coordinate prosecution of the action.
8 Identified Class Action Plaintiffs suggest that
9 following:

10 (a) Selection of Discovery Committee Co-Chairmen who
11 can then select and organize members of a
12 discovery committee. Two law firms to serve as
13 co-chairmen of a Discovery Committee will be
14 suggested by Class Action Plaintiffs at the
15 hearing.

16 (b) Selection of Law Committee Co-Chairmen who can
17 then select and organize members of a Law
18 Committee. Two law firms to serve as co-chairmen
19 will be suggested by Class Action Plaintiffs at
20 the hearing.

21 (c) Selection of two additional committees:

22 (i) Damages Committee;

23 (ii) Liaison Committee to deal with government
24 agencies and others.

25 (d) Selection of a Case Management Team. Class Action

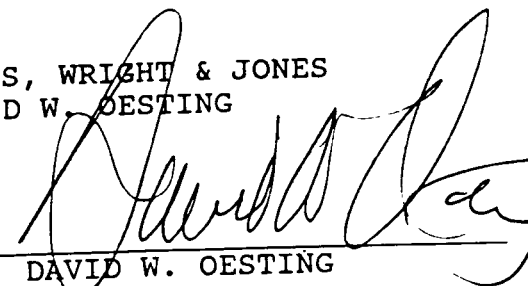
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Plaintiffs suggest that it should not exceed five members whose primary duties will be coordinate the activities of the various committees and other areas where coordination is appropriate, such as dealing with Defendants and coordination of state and federal court actions.

The Class Action Plaintiffs who have filed an Amended and Consolidated Class Action Complaint hereby designate David W. Oesting of the law firm Davis Wright & Jones, Anchorage, Alaska, and Jerry S. Cohen, of the firm of Cohen, Milstein, & Hausfeld, Washington, D.C., as their spokesman at the August 24, 1989 hearing.

Respectfully submitted this 16th day of August.

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By: 
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Liaison Counsel for Plaintiffs

[Names and Addresses of
Plaintiffs' Counsel Appear
on the Signature Page]

Honorable H. Russel Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)

the EXXON VALDEZ)

This Document Relates)
to Action Nos.)

A89-110)

THE EYAK NATIVE VILLAGE, THE NATIVE)
VILLAGE OF CHENEGA BAY, THE NATIVE)
VILLAGE OF PORT GRAHAM, THE NATIVE)
VILLAGE OF ENGLISH BAY, THE NATIVE)
VILLAGE OF TATITLEK, THE MOUNT)
MARATHON NATIVE ASSOCIATION, INC.,)
THE VALDEZ NATIVE ASSOCIATION, INC.,)
THE ALASKA SEA OTTER COMMISSION, THE)
SHOONAQ' TRIBE OF KODIAK, THE NATIVE)
VILLAGE OF LARSEN BAY, THE NATIVE)
VILLAGE OF OLD HARBOR, THE NATIVE)
VILLAGE OF KARLUK, THE NATIVE VILLAGE)
OF PORT LIONS, THE NATIVE VILLAGE OF)
AKHIOK, THE NATIVE VILLAGE OF)
OUZINKIE, AGNES NICHOLS, GILBERT)
OLSEN, HENRY MAKARKA, JOHN M.)
TOTEMOFF, MAGGIE A. TOTEMOFF, WALTER)
MAGANACK, SR., WALTER MAGANACK, JR.,)
JUANITA MELSHEIMER, RONNY LIND, ALLEN)
PANAMAROFF, DAVID ELUSKA, SR., and)
TESHIA HARRIS (P-46 through P-55 and)
P-118 through P-138);)

No. A89-095 Civil
(Consolidated)

AFFIDAVIT OF SERVICE
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vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
and ALYESKA PIPELINE SERVICE CO.
(D-1 through D-3);

A89-099
CORDOVA DISTRICT FISHERMEN UNITED,
INC., PRINCE WILLIAM SOUND AQUACULTURE
CORPORATION, and ELMER J. CHESHER
(P-16 through P-18);

vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
and ALYESKA PIPELINE SERVICE CO.
(D-1 through D-3);

A89-297
PRINCE WILLIAM SOUND SEINERS
ASSOCIATION, PRINCE WILLIAM SOUND
SETNETTERS ASSOCIATION, FLOYD
HUTCHENS, KENNETH MOORE, and MICHELLE
HAHN O'LEARY (P-202 through P-206);

vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
and ALYESKA PIPELINE SERVICE CO.
(D-1 through D-3);

A89-109
PHILIP H. MCCRUDDEN and DENNIS BISHOP
(P-43 through P-44);

vs.
EXXON SHIPPING CO., TRANS-ALASKA
PIPELINE LIABILITY FUND, ALYESKA
PIPELINE SERVICE CO., JOSEPH
HAZELWOOD, and GREGORY COUSINS
(D-2 through D-4 and D-7 through D-8);

A89-166
PHILIP G. MCCRUDDEN (P-145);

vs.
EXXON CORPORATION, EXXON SHIPPING CO.,
ALYESKA PIPELINE SERVICE CO.,
TRANS-ALASKA PIPELINE LIABILITY FUND,
JOSEPH J. HAZELWOOD, and GREGORY
COUSINS (D-1 through D-4 and D-7
through D-8);

A89-102

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1 SAMISH MARITIME, INC., and SCOTT)
2 MCALLISTER (P-19 and P-21);)
3 vs.)
4 EXXON SHIPPING CO., ALYESKA PIPELINE)
5 SERVICE CO., and TRANS-ALASKA PIPELINE)
6 LIABILITY FUND (D-2 through D-4);)
7 A89-104)
8 MICHAEL MCALLISTER, CHARLOTTE YOAKUM,)
9 LEE JUDSON, LANTZ HUGHES, and THOMAS)
10 S. MCALLISTER (P-24 through P-28);)
11 vs.)
12 EXXON SHIPPING CO., ALYESKA PIPELINE)
13 SERVICE CO., and TRANS-ALASKA PIPELINE)
14 LIABILITY FUND (D-2 through D-4);)
15 A89-265)
16 RANDALL P. BABICH, MICHAEL MCLENAGHAN)
17 and ALBERT CARROLL (P-189 and P-195)
18 through P-196);)
19 vs.)
20 EXXON SHIPPING CO., ALYESKA PIPELINE)
21 SERVICE CO., and TRANS-ALASKA)
22 PIPELINE LIABILITY FUND)
23 (D-2 through D-4);)
24 A89-299)
25 ALBERT CARROLL, AUGUST PEDERSEN, JR.,)
A. DOUGLAS PEDERSEN and MIKE)
MCLENAGHAN (P-225, P-246 through)
P-247 and P-267);)
vs.)
EXXON SHIPPING CO., ALYESKA PIPELINE)
SERVICE CO., and TRANS-ALASKA PIPELINE)
LIABILITY FUND (D-2 through D-4).)
A89-111)
GERALD E. THORNE, GERALD D. THORNE,)
and CHARLES M. THORNE)
(P-65 through P-67);)
vs.)
EXXON CORPORATION, EXXON SHIPPING CO.,)
ALYESKA PIPELINE SERVICE CO., JOSEPH)
HAZELWOOD, GREGORY COUSINS, GEORGE)
NELSON, and TRANS-ALASKA PIPELINE)
LIABILITY FUND (D-1 through D-4,)
D-7 through D-9);)

1 A89-126)

2 KENT HERSCHLEB, JOHN HERSCHLEB, and)

3 ANNE HERSCHLEB (P-74 through P-76);)

4 vs.)

5 EXXON CORPORATION, EXXON SHIPPING CO.,)

6 ALYESKA PIPELINE SERVICE CO., and)

7 TRANS-ALASKA PIPELINE LIABILITY FUND)

8 (D-1 through D-4);)

9 A89-129)

10 TOM COPELAND (P-77);)

11 vs.)

12 EXXON CORPORATION, EXXON SHIPPING CO.,)

13 EXXON PIPELINE CO., ALYESKA PIPELINE)

14 SERVICE CO., TRANS-ALASKA PIPELINE)

15 LIABILITY FUND, JOSEPH HAZELWOOD, and)

16 GREGORY COUSINS (D-1 through D-4, D-7)

17 through D-8 and D-10);)

18 A89-141)

19 MARC VAN DRIESSCHE (P-112);)

20 vs.)

21 EXXON CORPORATION, EXXON SHIPPING CO.,)

22 and ALYESKA PIPELINE SERVICE CO.)

23 (D-1 through D-3);)

24 A89-096)

25 CRUZAN FISHERIES, INC., STANLEY)

26 NORRIS GROVE, and ANTHONY GROVE)

27 (P-13 through P-15))

28 vs.)

29 ALYESKA PIPELINE SERVICE CO.,)

30 TRANS-ALASKA PIPELINE LIABILITY FUND,)

31 EXXON CORPORATION, and EXXON SHIPPING)

32 CO. (D-1 through D-4);)

33 A89-103)

34 STEVEN T. OLSEN (P-22);)

35 vs.)

36 EXXON CORPORATION, EXXON SHIPPING CO.,)

37 ALYESKA PIPELINE SERVICE CO., and)

38 TRANS-ALASKA PIPELINE LIABILITY FUND)

39 (D-1 through D-4);)

40 A89-107)

41 GRANT C. BAKER and ROBIN C. BUTLER)

42 (P-40 through P-41);)

43 vs.)

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1 EXXON CORPORATION, EXXON SHIPPING CO.,)
2 ALYESKA PIPELINE SERVICE CO., and)
3 TRANS-ALASKA PIPELINE LIABILITY FUND)
(D-1 through D-4);)
4 A89-125)
DALE HOFMANN (P-73);)
5 vs.)
6 EXXON CORPORATION, EXXON SHIPPING CO.,)
7 ALYESKA PIPELINE SERVICE CO., and)
8 TRANS-ALASKA PIPELINE LIABILITY FUND)
(D-1 through D-4);)
9 A89-108)
RICHARD CESARI (P-42);)
10 vs.)
11 EXXON CORPORATION, EXXON SHIPPING CO.,)
12 ALYESKA PIPELINE SERVICE CO., and)
13 TRANS-ALASKA PIPELINE LIABILITY FUND)
(D-1 through D-4);)
14 A89-173)
15 KEITH H. GORDAOFF and GEORGE A.)
16 GORDAOFF (P-146 through P-147);)
17 vs.)
18 EXXON CORPORATION, EXXON SHIPPING CO.,)
19 JOSEPH HAZELWOOD, GREGORY COUSINS,)
20 ALYESKA PIPELINE SERVICE CO., and)
21 TRANS-ALASKA PIPELINE LIABILITY FUND)
(D-1 through D-4 and D-7 through D-8);)
22 A89-095)
23 SEA HAWK SEAFOODS, INC., SAGAYA)
24 CORPORATION, HUNTER CRANZ, RICHARD)
25 FEENSTRA, ALASKA WILDERNESS SAILING)
SAFARIS, SEAFOOD SALES, INC., and)
RAPID SYSTEMS PACIFIC, LTD)
(P-1, P-3 and P-8 through P-12);)
vs.)
EXXON CORPORATION, EXXON SHIPPING CO.,)
ALYESKA PIPELINE SERVICE CO.)
(D-1 through D-3);)
A89-165)
ALASKAN SPORTFISHING ASSOCIATION,)
MICHAEL L. STANLEY, JEFF YATES, TONY)
LEE, ALLAN TYGERT and TOM ELIAS)
(P-139 through P-144);)
vs.)
ALYESKA PIPELINE SERVICE CO., AMERADA)

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HESS CORPORATION, ARCO PIPELINE CO.,)
BRITISH PETROLEUM PIPELINES, INC.,)
EXXON PIPELINE CO., MOBIL ALASKA)
PIPELINE CO., PHILLIPS PETROLEUM CO.,)
TRANS-ALASKA PIPELINE LIABILITY FUND,)
EXXON CORPORATION, and EXXON)
SHIPPING CO. (D-1 through D-4 and)
D-10 through D-15).)

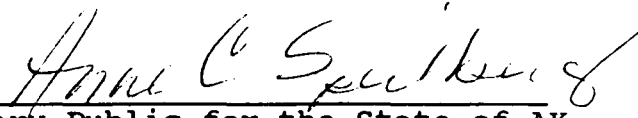
STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

DEBRA PERRAS, being first duly sworn on oath, deposes and says: I am employed by Davis Wright & Jones, and on the 16th day of August, 1989, I placed true and correct copies of the following pleadings in the U.S. Mail, postage prepaid.

Service of this SUGGESTION OF ADDITIONAL SUBJECTS TO BE CONSIDERED AT THE AUGUST 24, 1989, PRE-TRIAL CONFERENCE has been made upon all counsel of record based upon the Court's Master Service List of July 20, 1989.


Debra L. Perras, Legal Secretary

SUBSCRIBED AND SWORN to before me this 16th day of August, 1989.


Notary Public for the State of AK
My Commision Expires: 1-2-91

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