

FILED

AUG 17 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  
 )  
the EXXON VALDEZ ) (Consolidated)  
 )  
 ) THIS DOCUMENT RELATES  
 ) TO ALL ACTIONS

UNIFIED PLAINTIFFS' MEMORANDUM REGARDING  
PLAINTIFF COUNSEL ORGANIZATION

I

PURPOSE OF MEMORANDUM

This Memorandum is submitted in duplicate original to the Honorable H. Russell Holland and the Honorable Brian C. Shortell in order to assist the Federal and State Courts at the August 24, 1989, joint hearing.

This Memorandum includes as Exhibits a Proposed Agenda (Exhibit 1), Order addressing the Responsibilities of Plaintiffs' Coordinating Committee, Order addressing Attorneys' Time and Expense Records, Scheduling Order and Deposition Guideline Order.

The Memorandum addresses the structure of the coordinating committee proposed by the undersigned counsel. In addition, it outlines the extensive efforts of the undersigned counsel to reach an understanding of other plaintiffs' counsel regarding the need to address this extremely complex litigation professionally and expeditiously.

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II

INTRODUCTION

This Memorandum will briefly address the history and efforts of various counsel to organize these cases, detail our proposal for a nine person Plaintiffs' Coordinating Committee "PCC," its constituency, duties and responsibilities. In addition, it will respectfully propose an agenda for the August 24 hearing, as well as a framework for future action, following closely the Manual for Complex Litigation Second ("Manual").

This Memorandum is submitted by a substantial group of lawyers experienced in handling complex litigation in federal and state courts who represent diverse plaintiff interests in this litigation.<sup>1/</sup> The lawyers in this group represent hundreds of individual fishermen;<sup>2/</sup> over 70% of the fish processing in the presently affected areas of Prince William Sound, Cook Inlet, and Kodiak Island;<sup>3/</sup> numerous boroughs and cities ravaged by the oil spill.<sup>4/</sup>

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<sup>1/</sup>The resumes of the out-of-state lawyers in this group are attached hereto as Exhibit 2.

<sup>2/</sup>The Cowan/Gerry, Smith/Belli, and Hansen-Ray/Ring firms have filed direct, non-class actions and represent in excess of one thousand individual fishermen. Additionally, the Jamin/Stoll firms, representing in excess of 350 individual fishermen, chose to file a class action covering fishermen.

<sup>3/</sup>The Hartig, et al./Byrnes & Keller firms.

<sup>4/</sup>The Jamin/Stoll firms, serving as liaison counsel to the "Oiled Mayors" -- see affidavit of Everett Harris, Esq., attached as Exhibit 3 hereto -- filed a class action on behalf of all the affected municipalities, with Kodiak Island Borough as class representative.

The undersigned united counsel prior to the June 30 state court hearing before the Honorable Brian C. Shortell on this subject, reached agreement on a unified position: that the state and federal courts should establish a nine person Plaintiffs' Coordinating Committee ("PCC"), representative of not only the different substantial economic interests involved in this disaster, but also of both class and non-class plaintiffs. (Second Supplemental Unified Memorandum Re Plaintiff Counsel Organization.)

In contrast, a group of class action only lawyers, self-proclaimed now as the "class action coordinating committee" ("CACC"), has proposed to run this litigation without regard to the interests of those who have filed direct, non-class actions, and without regard to substantial affected interests they do not represent.

### III

#### HISTORY OF ORGANIZING EFFORTS

A few days after the March 24 Exxon Valdez oil spill, a meeting of a number of class action plaintiff counsel<sup>5/</sup> was

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<sup>5/</sup>Although there were apparently 29 firms represented in person or by phone at the meeting, only five were from Alaska, few processors, and no municipalities or the State of Alaska were represented at all. All those counsel purported to bring class actions. Eighteen firms were listed as plaintiff counsel on only five complaints. Because some of these eighteen firms filed other complaints with five others of the twenty-nine firms, counsel on five complaints were directly associated with twenty-three of the twenty-nine firms voting! How major cases such as this are organized, and why organization is attempted at an early stage, is graphically described by the court in In Re: Fine Paper Antitrust Litigation, 98 F.R.D. 48,m at 70-76 (E.D. Pa. 1983), aff'd in part and rev'd in part, 751 F.2d 562

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held in Washington, D.C. to attempt to "organize this case." In Washington, D.C., a slate of one Houston and four east coast firms were represented as a "plaintiffs' coordinating committee" to essentially manage this entire litigation from a class action approach. Two Alaska firms were ultimately permitted to join the "committee." A few days later a proposed "Pretrial Order #1" was submitted to the federal court to obtain its sanction for the selected "coordinating committee." The federal court issued its own Pretrial Order #1, stating it "may be a bit premature" to determine counsel organization, and noting it was "without the presence of some counsel who will be involved in other, recently-filed or soon-to-be-filed cases."

A short time later, essentially this same group, having in the meantime filed class actions in Alaska state court, filed a motion there to be designated the "class action coordinating committee" ("CACC") with powers essentially similar to those previously requested (and denied) by the federal court. These activities resulted in half a dozen motions and briefs in state court from other plaintiff counsel, who were justifiably concerned about having their cases controlled, de facto, by this eastern CACC. Other recurring themes in the objections were that most of the CACC members had little connection with the classes they sought to represent, and that the CACC was not representative of the affected economic interests.

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(3rd Cir. 1987).

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Next, several meetings were held, to which all plaintiff counsel were invited, including the spokesmen for the CACC (who did attend), in an effort to get these issues resolved. The authors of the half-dozen state court briefs subsequently joined together, supported by approximately 25 other plaintiff counsel, in reaching the proposal set forth herein with a nine person Plaintiffs' Coordinating Committee, "PCC."

The CACC group has maintained the position that they alone should organize all aspects of this case. In addition, they have most recently advanced the proposal that their spokesman should coordinate with a spokesman for all other plaintiff counsel, and the two spokesmen<sup>6/</sup> would coordinate the litigation with the Federal and State courts and defense counsel. However, in spite of the admonitions of both the state and federal courts for plaintiffs counsel to reach agreement, and in spite of numerous efforts by the undersigned plaintiffs to seek resolution of this issue, it has not occurred.

The position of the undersigned counsel is strongly supported by additional plaintiffs' counsel as set forth in the signature block of this Memorandum at pp. 20-21.

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<sup>6/</sup>At the state court hearing on June 30 this proposal was expanded slightly to add the state as a third entity, with whom the other two "spokesmen" would coordinate, and those three would then coordinate with the court, and with defense counsel.

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IV

RECOMMENDATION REGARDING

PLAINTIFFS' COORDINATING COMMITTEE

- 1. The Different Major Economic Interests Affected Should Be Represented on the Plaintiffs' Coordinating Committee.

The purpose of any committee sanctioned by the Federal and State courts should be to coordinate activities of counsel whose clients may have different economic interests. Manual at 20.22. While the different plaintiff interests in this case may not necessarily be in conflict, each interest has a legitimate right to know that its position was substantially considered by those coordinating the plaintiffs' overall strategy. This is particularly true with respect to settlements that may occur. Since the PCC, in at least the first instance, may likely be involved in attempting to negotiate, coordinate, and present settlements, each significant economic interest needs to feel confident that its damages will be thoroughly evaluated.

The clearly identifiable economic interests involved in this case are:

- (1) fishermen;
- (2) fish processors;
- (3) subsistence Native Alaskans who have lost fish or other wildlife, or have suffered interference with their way of life;

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- (4) landowners whose property values have declined or who have had to spend money on cleanup;
- (5) other industries affected, especially tourism;
- (6) municipal governments who have had to spend money on cleanup and safety efforts, and who have experienced unusual other expenses, and whose statutory or other recoverable damages are different from others.<sup>7/</sup>

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<sup>7/</sup>Although most of the affected interests have most recently been recognized also by the CACC in its Consolidated Amended Complaint listing five sub-classes, the CACC has not yet recognized the municipalities as an affected interest, perhaps because no one in the CACC represents any city. The municipalities and boroughs affected by the spill have distinct damages not incurred by any other plaintiff group affected, have broader responsibilities than private plaintiffs, and by statute and at common law, may recover damages different from those of private plaintiffs. The State of Alaska has said steadfastly that it could not represent the interests of the municipalities. The cities and boroughs have likewise stated that they needed separate representation.

There are others who have been injured, who may be adequately represented by one of these groups. For instance, fishing permit holders have crews, processors and other businesses also have employees, and all residents of Alaska at least in the affected areas have suffered losses of use and enjoyment: yet each of these groups need not have a separate "seat" on the plaintiffs' coordinating committee as their interest should be otherwise represented. Additionally, landowners and "other businesses affected" (which may largely be in the tourism industry) should also have their interests adequately represented by having a municipality representative as the municipalities have substantial landholdings, derive tax revenues from, and are responsible to its citizens' businesses generally.

The State of Alaska's interests<sup>8/</sup> must also be recognized, although it has indicated it does not want to be part of any PCC other than in some type of liaison role. Furthermore, it is not clear if the State will be added as a third party defendant. The State's substantial interests and resources make its inclusion in at least some aspects of the PCC desirable.

2. Both Class and Non-Class Actions Need to Be Represented.

The Manual is clear that the purpose of a PCC is to coordinate all actions, whether they are class or non-class actions. Non-class actions have unique positions, especially in litigation such as this where there are non-class cases brought by plaintiffs with extremely large individual claims. This does not mean that the PCC must have both a class and non-class representative for each economic interest affected.

For instance, the vast majority of the affected processors have individually hired counsel to pursue their claims on a direct, non-class basis: under these circumstances, it should not be necessary to have on the PCC counsel for a "purported class" comprised of only a few processors as well as non-class counsel representing over 70% of the affected processing capacity. On the other hand, one of the most directly affected and clearly largest groups is that of fishermen, and a very large number of them are individually

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<sup>8/</sup>The municipalities' damages are different from the State, and the State has steadfastly maintained throughout this case that it cannot represent the municipalities here.



represented by a few firms in non-class actions: here, we recommend that the PCC have both non-class and class counsel representing fishermen.

3. There Should Be Geographic Representation.

Within the first few days of the oil spill, many thought the damage was confined to Prince William Sound. The eastern CACC named plaintiffs are almost exclusively from Prince William Sound, and several of the class definitions in their original complaints were limited to economic interests affected in the Sound.

However, it is now clearly recognized that damage is not limited to the Sound: large economic interests on Kodiak Island, on the Kenai Peninsula, and on the eastern shore of the Alaska Peninsula have been severely affected. Without geographic representation persons from these later affected areas may not have confidence in plaintiffs' counsel which will be necessary for the manageable resolution of this litigation.

The PCC counsel set forth in this Memorandum includes the Jamin firm in Kodiak, the Cowan-Bixby firm with offices in Kenai, Seward, Valdez and Cordova. Local counsel serving local clients with the assistance of very experienced outside counsel. (Please see Exhibit 2).

4. PCC Members Should Have Substantial Ties to Their Constituencies.

Law firms with ongoing client relations in our state will be dealing with the consequences of this disaster years

after this litigation is over. It is imperative that the clients have confidence in whatever decisions this committee makes, as the clients are likely to be living with the results of such decisions for years to come. We believe that at least a majority of the seats on the committee must be held, or jointly held, by counsel with ongoing and significant relationships with the clients and economic interests affected.

Few Alaskan lawyers have either the time (due to the generally small size of firms here) or the experience in handling a case of this magnitude. For this reason, many Alaskan firms have associated out-of-state firms with substantial experience in such matters. We proposed, therefore, "joint seats" on the Plaintiffs' Coordinating Committee ("PCC") to be held by both an Alaskan firm with ongoing relationship to the clients and interests represented and, if that firm requests, its out-of-state co-counsel.

A "joint seat" would have no more than one vote, and normally only one of the firms holding such seat would attend or participate in meetings of the committee.<sup>9/</sup> Because Alaska counsel will remain responsible for all actions of outside counsel, such a structure would remain consistent with Alaska Civil Rule 81.

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<sup>9/</sup>The CACC proposes that some of its east coast members effectively have two votes as not only are they on the committee, but later their local counsel were also added with separate "seats" and votes.

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5. PCC Members Need To Be Able To Deal Effectively With the Management of This Litigation.

Members of the PCC must have the confidence of other counsel and must be able to work effectively with the court and counsel so they can lead and coordinate. Manual at 20.222. Leadership is accomplished by building consensus and trust. This cannot be accomplished by turning the management -- or half of the management<sup>10/</sup> -- of this case over to a group who has already alienated a substantial number of plaintiff counsel by trying to set up prematurely a structure consisting of counsel several thousand miles away with little or no contact with the interests involved.

This also means that PCC counsel must be able to communicate easily with each other, defense counsel, and the Federal and State courts. We do not think it is effective if a significant portion of the PCC is four time zones away on the east coast: if this is the case, managing this case will essentially end at 1 or 2 p.m. Alaska time, or begin at 5:30 a.m. Alaska time. This is not a "provincial" view, it is a recognition that there are capable firms in Alaska, and in the western United States, committed to this litigation who can just as effectively serve the needs of all plaintiffs.

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<sup>10/</sup>The CACC proposes that its spokesman, and the spokesman for a separate coordinating committee of all other plaintiff counsel serve as co-lead counsel, thereby giving the CACC half the management of these cases.

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6. The Size Of the PCC Should Not Exceed Nine.

We believe that the committee should be sufficiently large to be representative considering the various litigation approaches (class vs. non-class), the different economic interests, and the geographic areas involved. But such a committee must also be able to conduct its business effectively, whether it be by conference call, or meeting.

Duplication of representation of interests on the committee is not necessary if the committee's task is to coordinate the litigation, and not to control it. Especially if the committee can be composed of persons whose primary motivation is to achieve consensus on issues affecting all plaintiffs. Agreement has been reached among a large number of counsel that there should be a nine member PCC as set forth below.

7. Recommendation: Composition of PCC.

We respectfully recommend the appointment of the following by the Federal and State courts to a Plaintiffs' Coordinating Committee, "PCC". This recommendation follows numerous meetings among many plaintiffs counsel at which consensus was attempted and largely reached:

A. One "joint seat"<sup>11/</sup> for firms with a class action orientation who represent fishermen. While many individual

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<sup>11/</sup>Each seat would be comprised of an Alaskan firm, with-- if it desired--its "national" out-of-state firm so that firms with whom clients regularly dealt would be involved, but also "national" expertise where needed could be provided.

fishermen are individually represented in this litigation, there are many who are not represented presently by any counsel.

B. Three joint seats to be filled by non-class plaintiff counsel representing primarily fishermen. The largest group of plaintiffs directly affected in these cases are fishermen, and hundreds are individually represented in non-class actions by relatively few firms, the Cowan/Gerry, Hansen-Ray/Ring, and Smith/Belli firms.<sup>12/</sup>

C. One joint seat whose client base is processors. Because of the size of their individual claims and lack of numerosity most processors have retained the firms of Byrnes & Keller/Hartig, et al. to represent them in direct non-class actions.

D. One joint seat for municipalities. The affected municipalities and boroughs have designated the Jamin/Stoll firms as their liaison counsel to this litigation, who have filed class actions on behalf of all affected municipalities.<sup>13/</sup>

E. One seat or joint seat for subsistence fishermen and Native Alaskans. The Sonofsky Chambers/Cohen Millstein firms claim to represent this group through class actions they filed.

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<sup>12/</sup>The resumes of all the out-of-state firms identified herein are attached as Exhibit 2.

<sup>13/</sup>Please see footnote 4.

F. One seat or joint seat for other class actions and for other businesses affected This would bring to four the number of PCC seats held by class attorneys (see paragraphs A, D, and E above), with an equal number held by non-class attorneys.

G. State of Alaska would hold the ninth seat on the PCC.

This committee would be representative of the major interests affected, of the different geographic areas affected,<sup>14/</sup> and four seats would be class and four non-class, with the State in a ninth seat. Each of the firms identified has strong and ongoing relationships with the constituency it represents. All of the Alaska firms identified are associated with counsel with substantial experience in complex litigation.<sup>15</sup>

V

DUTIES AND RESPONSIBILITIES OF PCC

1. The PCC should coordinate the efforts of plaintiff counsel so that they are effectively and efficiently utilized. Duplication of effort should be avoided: it is not necessary for all plaintiff counsel to attend court hearings, depositions, or inspect documents. The PCC should assign

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<sup>14/</sup>All firms identified represent substantial plaintiffs from Prince William Sound and the Alaska Peninsula. Additionally, the Cowan/Gerry firms have offices in Kenai, and the Jamin/Stoll firms have offices in Kodiak.

<sup>15/</sup>Please see Exhibit 2.

duties to specific counsel, and it should utilize plaintiff counsel who are not members of the PCC for many assignments. A proposed order, setting forth the Responsibilities of Designated (PCC) Counsel, following the Manual's guidelines, is attached as Exhibit 4.

2. The PCC should establish a committee to regularly review the time and expense reports of plaintiff counsel who intend to later seek payment or approval for same from Federal and State courts. A proposed order regarding Attorneys' Time and Expense Reports, similar to that set forth in the Manual, is attached as Exhibit 5.

3. The PCC should present to all counsel and to the Federal and State courts a means by which expenses incurred for the benefit of all plaintiffs and their counsel may be equitably shared. The costs of conducting discovery and other pre-trial matters may properly be apportioned among all plaintiffs who benefit. Manual at 20.223, 33.22 n. This issue needs to be addressed, but can best be handled after the PCC is established and it has an opportunity to reach agreement with all counsel, and then make a recommendation to the Federal and State courts.

4. Immediately the PCC should recommend for Federal and State courts approval a designated plaintiffs' liaison counsel, with duties as set forth in Exhibit 4. All counsel seem to agree that liaison counsel should be an Anchorage firm, and need not be a member of the PCC.

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5. By August 31 the PCC should appoint a plaintiffs' subcommittee structure to deal with the numerous issues and matters involved: e.g., discovery, damage analysis, briefing, etc. PCC member firms should not dominate the subcommittees, but utilize other plaintiff counsel according to their abilities and interests. Members of the subcommittees should be both class and non-class counsel: there should not be one subcommittee structure for class action counsel, and another for non-class counsel as is now the case. Scheduling Order and Deposition Guideline Order attached hereto as Exhibits 6 and 7, respectively.

6. The PCC should meet with defense counsel to determine if there can be a joint recommendation to the Federal and State courts for the appointment of discovery and/or settlement masters.

## VI

### THE CACC PROPOSAL SHOULD BE REJECTED

The CACC proposal has not been acceptable to the undersigned and a substantial number of other counsel for the following reasons, inter alia:

1. It results in duplication of plaintiff counsel's efforts. The CACC proposes to have its own subcommittee structure (e.g., one for discovery, another for damages, etc.), which, through the CACC spokesman, will coordinate with a similar subcommittee structure of all other counsel. In short, there would unnecessarily be two of everything on the

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plaintiffs' side.

Within the CACC itself there is duplication as both the "national" (eastern) firm and its local counsel have separate seats and separate votes. Other expenses of concern are the hourly rates charged by east versus west coast firms (which ultimately may be charged to the classes), the telephone and travel costs of communicating several thousand miles, particularly when there are capable firms available on this coast.

2. It will be difficult and burdensome on everyone involved in this litigation, including the Federal and State courts and defendants. The CACC proposes its plaintiff organization would coordinate spokesmen with the organization of all other plaintiff counsel, and the two spokesmen would in turn coordinate with defense counsel and the Federal and State courts. Additional burdens would be placed on all concerned simply because of the difference of four time zones between the east coast and Alaska.

3. Under the CACC proposal, for its spokesman to coordinate with a spokesman for all other plaintiffs, effectively 50% of the leadership of plaintiffs' efforts would be controlled primarily by counsel with limited ongoing relationship with the interests involved. In addition, the CACC commitment to this case may be in doubt if classes are not certified.

4. The CACC is not representative of the interests involved in this litigation. It does not have anyone representing the cities and boroughs. In addition, most of the processors have hired non-class counsel to represent their interests.

5. Because of its lack of representation, its premature organization, and lack of relationship with those involved, the CACC lacks the confidence of counsel and plaintiffs to effectively lead this litigation or build a consensus.

## VII

### CONCLUSION

There is an immediate need for the coordination of all plaintiff counsel efforts. This can most effectively and efficiently be done through one "Plaintiff Coordinating Committee," ("PCC") that is representative of all the various interests, both class and non-class, involved in this litigation. The proposal of having one "class action coordinating committee," a separate organization for all other counsel, and the two coordinating between themselves and coordinating with defense counsel and with the State and Federal courts, is unnecessarily cumbersome, and is hardly consistent with efficiency.

The PCC should not be dominated or controlled by any group or faction. There are able Alaska and out-of-state counsel involved in this case. Both can be utilized in the

leadership of this litigation by means of having "joint seats" on the committee. The leadership of this litigation should be entrusted to counsel with strong commitment and ties to the litigation and to the interests or clients affected.

DATED this 17th day of August, 1989.

Respectfully submitted,

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UNIFIED PLAINTIFFS' AGENDA FOR  
JOINT FEDERAL-STATE COURT HEARING

ON

August 24, 1989

I. SELECTION OF A PLAINTIFFS' COORDINATING COMMITTEE

- A. Entry of Order Establishing Duties and Responsibilities  
(Proposed Order Attached To Memorandum As Exhibit 4)
- B. Selection of Liaison Counsel
  - (i) For Plaintiffs
  - (ii) For Defendants

II. PRELIMINARY MATTERS

- A. Joinder of Additional Parties
- B. Amendments to Pleadings
- C. Consolidation or Coordination of All State and Federal Cases for Pretrial Purposes
- D. Time Records (Proposed Order Attached To Memorandum As Exhibit 5)

III. DISCOVERY

- A. Appointment of Special Master
- B. Plaintiffs to Submit First Set of Consolidated Interrogatories, Document Requests, and Requests for Admissions  
  
Proposed: September 10, 1989
- C. Defendants May Submit Interrogatories and Document Requests Limited to Class Action Issues  
  
Proposed: September 10, 1989
- D. Responses Due to Written Discovery Requests (B and C above)  
  
Proposed: October 10, 1989  
  
(Proposed Order Attached To Memorandum As Exhibit 6)

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(Proposed Order Attached To Memorandum As Exhibit 6)

E. Depositions

1. Deposition guidelines to be entered by court

(Proposed Order Attached To Memorandum As Exhibit 7)

2. Depositions to commence

Proposed: November 1, 1989

(Proposed Order Attached To Memorandum As Exhibit 6)

IV. CLASS ACTION MOTIONS

- A. Date by Which Class Motions to Be Filed in State and Federal Courts

Proposed: September 22, 1989

- B. Date by Which Oppositions to Be Filed

Proposed: October 20, 1989

- C. Date by Which Replies to Be Filed

Proposed: November 3, 1989

- D. Date for Oral Argument

Proposed: \_\_\_\_\_, 1989

(Proposed Order Attached To Memorandum As Exhibit 6)

Proposed Orders:

Order No. \_\_\_\_ Order Establishing Coordinating Committee and Responsibilities Thereof (Exhibit 4)

Order No. \_\_\_\_ Order re Time Records (Exhibit 5)

Order No. \_\_\_\_ Scheduling Order (Exhibit 6)

Order No. \_\_\_\_ Deposition Guidelines (Exhibit 7)

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Robert J. Adolph and Jeffrey A. Smyth have a civil trial practice firm in Seattle, Washington. Mr. Adolph and Mr. Smyth have been involved in complex litigation, including major anti-trust and class-action cases for over 15 years. One area Mr. Adolph emphasizes is litigation of natural resources and environmental law. One area Mr. Smyth emphasizes is litigation involving real property and construction law.

In addition, Mr. Adolph and Mr. Smyth represent major financial institutions and major construction companies in the Pacific Northwest. Mr. Adolph and Mr. Smyth have both been previously admitted and practiced in Alaska State Court and Federal District Court.

Presently, ADOLPH & SMYTH is involved in major litigation, in addition to the Exxon Oil Spill, in Alaska through their association with the Anchorage law firm of LOCKE & SHEA.

The following cases are a sampling of Mr. Adolph's and Mr. Smyth's involvement in significant complex litigation:

Sugar Antitrust Litigation, (MDL 201) 1977-79  
- Co-Author, Trial Brief

Member - Amalgamated Sugar Discovery Committee

Corrugated Containers Antitrust Litigation, (MDL 310)  
1978-79  
- Vice Chmn: Class Action Comm.  
- Member: Briefing Committee  
- Member: Discovery Committee  
- Client: Falstaff Brewing Co.

General Brewing v. Olympia Brewing, et al.  
(W.D. Wash. 1979-80)  
- Client: General Brewing Co.

In re Fresh Cherries Antitrust Litigation  
(E.D. Wash. 1979)  
- Client: Jewell Food Stores (Chicago, IL)



In re: Cattle Antitrust Litigation

(E.D. Wash. 1979)

- Client: West Coast Grocery

Falstaff Brewing Co. v. Philip Morris International, Inc

(N.D. Cal. 1979)

- Client: Falstaff Brewing Company (St. Louis, MO)

In re West Coast Bakery Flower Antitrust Litigation

MDL146

In re Folding Cartons Litigation

Community Press v. Gannett Newspapers

General Brewing Co. v. Schlitz Brewing Co.

General Brewing Co. v. Olympia Brewing Co.

BELLI, BELLI, BROWN, MONZIONE, FABBRO & ZAKARIA  
722 Montgomery Street  
San Francisco, California 94111  
(415) 981-1849

For more than fifty years the Belli firm has been involved in representing injured victims. At present there are five offices, with the main office in San Francisco, California, and branches in Carmel, Los Angeles, and Sacramento, California, as well as Washington, D.C.

Mr. Belli and his partners have tried cases throughout the United States and around the world. Mr. Belli has appeared before the world court in the Hague and was granted permission by the Japanese Supreme Court to appear as counsel in a criminal trial in Okinawa, Japan. Mr. Belli has also appeared in military courts throughout Europe and Asia, including the former Republic of South Vietnam.

The firm has a diverse practice, including aviation, construction defect, maritime, product liability, and environmental toxic tort cases. Members of the Belli firm have extensive experience in working on multi-plaintiff cases. The Belli firm has served on numerous committees throughout the United States in class action lawsuits and multi-district litigation, as well as other complex litigation.

Melvin M. Belli, Sr., was a founding member of the Association of Trial Lawyers of America and served as President in 1950-1951. He is a founding member of the International Academy of Trial Lawyers and was a past President of the Barristers Club of San Francisco.

Mr. Belli and his partners have lectured around the country at legal conventions and seminars, including the Belli Seminar which has been ongoing for over forty years. Mr. Belli, Sr., has published more than sixty-two books, including his greatest work Modern Trials which is currently being revised for its third edition.

Melvin Caesar Belli, one of the partners working on the Exxon case, is also an active member of ATLA. Caesar is a past Chairman of the Young Lawyers Section of ATLA in 1988-1989 and is currently a Board member on the San Francisco Trial Lawyers Association.

Partner, Richard E. Brown is currently Vice Chairman of the Aviation Section of ATLA.

RESUME - BELLI, BELLI, BROWN, MONZIONE,  
FABBRO & ZAKARIA

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Partner Paul Monzione has extensive experience in the Toxic Tort area. He is currently involved in multi-plaintiff toxic tort litigation in Massachusetts, Michigan and New Jersey. Mr. Monzione has lectured at various Bar Associations and legal seminars on the subject of toxic tort litigation.

Partner Shamoan Zakaria is licensed to practice in California, Michigan and Pakistan and has extensive experience in the areas of business law and other complex multi-plaintiff litigation.

REPRESENTATIVE CASES THE BELLI FIRM  
HAS BEEN INVOLVED IN DURING THE LAST FEW YEARS:

Pearson v. Salt River: Maricopa County, Arizona.

The firm represented numerous plaintiffs in an action resulting from a flood in Phoenix, Arizona.

Anderson v. City of Vallejo: Solano County, California.

The firm represented approximately seventy plaintiffs arising out of damages incurred in a flood in Vallejo, California.

The Estate of McGrath v. North Jersey District Water Supply Commission, et al.: State Court, New Jersey.

Lead counsel representing more than 1,000 plaintiffs for injuries and property damages arising out of a flood in New Jersey.

The Neptune Society Cases: Sacramento, California.

The firm represented more than 900 plaintiffs in consolidated proceedings in California arising out of the mishandling of over 5,000 cremated remains. The firm was on the plaintiffs' Steering Committee that coordinated the litigation between the individual plaintiffs' lawsuits and a class action.

Sconce/Lamb Cremation Cases: Los Angeles, California.

The firm currently represents, as lead counsel in a class action, plaintiffs in an action arising out of the mishandling of more than 16,000 decedents' remains.

Brennan v Seeno Construction: Contra Costa County, California.

The firm represents over seventy individual plaintiffs in a series of lawsuits for construction defect claims.

Aviation MDL:

KAL Flight 007:

The firm represents over fifty individual plaintiffs in the downing of KAL Flight 007.

Northwest Flight 255, MDL #742:

The firm represents numerous plaintiffs in this MDL consolidated action arising out of the crash of Northwest Airlines Flight No. 255 at Detroit International Airport.

Hoener et al. v. United Airlines: Honolulu, Hawaii.

The firm is lead class counsel and represents plaintiffs in the United Flight 811 accident near Honolulu.

In Re Air Disaster Lokerbie, Scotland, December 21, 1988: MDL 79.

The firm is a member of the plaintiffs' Steering Committee.

Environmental Litigation:

Ironbound Health Rights Advisory Commission v Diamond Shamrock:

The firm represents more than 100 individuals who were exposed to Dioxin in New Jersey.

Allen v. Thomas Solvents: State Court, Michigan.

The firm is lead counsel and represents more than 100 plaintiffs for ground water contamination near Grand Rapids, Michigan.

Allen v. U. S. Radium: State Court, New Jersey.

The firm represents numerous plaintiffs arising out of radium contamination in Orange, New Jersey.

Koppers v Corron: Federal Court, Eastern District, California.

The firm represents more than 120 plaintiffs in a class action involving an explosion in an industrial facility and exposure to a toxic cloud

Other Mass Disaster Litigation:

MGM Grand Hotel Fire: Las Vegas, Nevada.

The firm was a member of the Steering Committee for the multi-district consolidated action arising out of the fire at the MGM Hotel in Las Vegas that resulted in eighty-five deaths and over 1,000 injuries.

RESUME OF  
PETER D. BYRNES

I. EDUCATIONAL BACKGROUND

College of William and Mary, B.A., Economics - 1959

University of Michigan Law School, J.D. - 1962, Order of Coif, Associate Editor of Michigan Law Review

II. BAR MEMBERSHIPS AND ACTIVITIES

A. Bar Memberships

Member of the Bar of the State of Washington - admitted 1962;

Member of the District of Columbia Bar - admitted 1981;

Member of the Bar of the Federal District Courts for the Western and Eastern Districts of Washington, Northern District of California, Ninth Circuit Court of Appeals and United States Supreme Court;

Specially admitted to Federal District Courts for practice in particular cases throughout the United States, including Illinois, California, Indiana, Arizona, Idaho, Hawaii, Alaska and Oregon.

B. Bar Activities - ABA

Active in Antitrust Section of the American Bar Association, including appearances on numerous panels and seminars at annual Section and ABA meetings;

Chairman of a number of special projects for the Sherman Act Committee of the Antitrust Section, including committees to study proposed new legislation;

Past Membership Chairman, Antitrust Section of the ABA;

Past member of the Council, Antitrust Section of the ABA;

Active in Litigation Section of the ABA and past Chairman of the Ninth Circuit Subcommittee of the Committee on the Trial of Antitrust Cases;

Member of Ninth Circuit Committee on Award of Attorneys' Fees in Class Actions.

C. Bar Activities - Washington State, Seattle-King County and Federal Bar Associations

Active on various committees of the Washington State and Seattle-King County Bar Associations;

Past Chairman of Subcommittee of King County Local Administrative Disciplinary Committee;

Past Editor of Section Newsletter of Antitrust Section of Washington State Bar Association and member of the Executive Committee;

Lawyer-Representative to Ninth Circuit Judicial Conference 1983-1985; Chairman, Lawyer-Representative of Washington to Ninth Circuit Judicial Conference 1985-1986;

Appearances on various CLE panels and seminars.

D. Fellow, American College of Trial Lawyers

III. TRIAL AND LITIGATION EXPERIENCE

Engaged in trial practice continuously since 1962, having tried a substantial number of cases in state and federal courts, primarily to juries, as well as cases before federal regulatory agencies. Also handled numerous grand jury investigations, class actions, and regulatory proceedings. Types of cases tried include antitrust, personal injury, products liability, maritime, zoning, tort, commercial, securities fraud, federal tax, airport noise, insurance, contract, condemnation and construction.

Major Class Action Cases Handled Include:

Arizona Dairy Products Litigation (Phoenix) -  
Counsel for defendant Carnation Company and lead counsel for all defendants;

California Tomato Antitrust Litigation (Fresno) -  
Lead counsel for defendant Contadina Foods;

Hawaiian Hotel Litigation (Honolulu) -  
Lead counsel for defendant Amfac, Inc.;

Fertilizer Antitrust Litigation (Spokane) -  
Lead counsel for defendant Phillips Petroleum Company and liaison counsel for all defendants;

Alaska Salmon Antitrust Litigation (Anchorage and Seattle) -  
Lead counsel for defendant New England Fish Company;

RICHARD F. GERRY

LAW FIRM

Casey, Gerry, Casey, Westbrook, Reed & Hughes  
110 Laurel Street  
San Diego, California 92101  
(619) 238-1811

COLLEGE

Columbia University-School of General Studies, B.S.

LAW SCHOOL

Columbia University-School of Law, J.D. Degree, 1956

ADMITTED TO

All California State Courts  
U.S. Supreme Court  
U.S. District Courts, North, Central and Southern  
Districts of California  
U.S. Court of Appeals, Ninth Circuit  
U.S. Court of Claims  
All Courts - Republic of the Marshall Islands  
High Court of the Trust Territory of the Pacific Islands

MEMBER

Association of Trial Lawyers of America (ATLA)  
1957-Current  
President-1981/82  
President Elect-1980/81  
Vice President-1979/80  
National Secretary-1978/79  
Board of Governors-1972/78  
State Committeeman, California-1970/72  
National Board of Trial Advocacy-Founding Board Member  
Western Trial Lawyers Association (WTLA)  
President-1973/74  
Vice President-1972/73  
California Trial Lawyers Association (CTLA)  
Board of Governors-Past Member  
San Diego Trial Lawyers Association (SDTLA)  
Several Offices  
American Board of Trial Advocates (ABOTA)  
President, Northern California Chapter-1964  
International Academy of Trial Lawyers-Fellow  
Melvin M. Belli Society, President-1982/83  
Roscoe Pound/ATLA Foundation, Founding Fellow-Board of  
Trustees, 1983/88  
San Diego County Bar Association  
State Bar of California

LECTURER

Association of Trial Lawyers of America  
ATLA National College of Advocacy  
Western Trial Lawyers Association-Seminars  
California Trial Lawyers Association-Seminars  
San Diego Trial Lawyers Association  
San Francisco Trial Lawyers Association  
American Board of Trial Advocates  
Belli Seminars  
University of San Diego, School of Law  
College of Advocacy  
Various Law Schools  
Many Circuit, State and Local Seminars

PRACTICE

Active Trial Lawyer-34 Years Specializing in Motor  
Vehicle, Aviation, Maritime, Railroad, Product  
Defect, Construction and other personal injury cases.  
Formerly Partner of Belli, Ashe & Gerry, San Francisco

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TOXIC AND MASS DISASTER LITIGATION PARTICIPATION

- 1956-1962 Prepared and participated in trial of lead cases arising out of the Cutter Polio Myelitis Vaccine incident in which 206 persons became infected with polio myelitis.
- 1956-Present Participated in litigation of many aviation disaster and/or multi-district litigation cases. E.g.:
- Prepared and tried all cases arising out of the airplane crash at Toledo, Ohio which killed and injured all members of the Cal Poly football team. Stort v. United States.
  - Mid-air collision over the Grand Canyon in the late 1950's between the United and TWA aircraft.
  - Mid-air collision over Las Vegas in the early 1960's between United and USAF aircraft.
  - Crash in East River, New York of United aircraft.
  - Collision on take-off of KLM and Pan Am aircraft at Teneriffe, Canary Islands.
  - Mid-air crash over San Diego between PSA passenger jet and small plane.
  - And others.
- 1980-Present Represent thousands of Marshall Islanders in personal and property damage claims against USA arising out of atomic testing program conducted in the Marshall Islands from 1948 to 1956.
- 1982-1987 Handled class and non-class cases arising out of wide-spread contamination of ground water in the San Joaquin Valley, California by the pesticide, DBCP.
- 1982-Present Represent thousands of persons who suffered death or injury from exposure to asbestos.
- 1981-1982 Appointed by Congress to Committee to study civil tort acts of new superfund law (CERCLA).
- Lectured extensively in most states in the United States on various aspects of preparation and trial of tort cases in general, and maritime, aviation, toxic and product liability cases in particular.
  - And others.



( CURRICULUM VITAE )

LEONARD M. RING

LEONARD M. RING. Mr. Ring received his J.D. Degree from DePaul University Law School in 1949, and is head of Leonard M. Ring and Associates, P.C. of Chicago, Illinois. Mr. Ring has been involved in many major trials and appeals including a number of publicized MDL and other complex cases. He was Special Trial Attorney for the Metropolitan Sanitary District of Greater Chicago in the District's ten year campaign against the major polluters of Lake Michigan. Mr. Ring was Co-Chair of the Plaintiffs' Legal Committee of the MGM Grand Hotel Fire Litigation involving 85 deaths and more than one thousand injured. Mr. Ring has served and is currently serving on a plaintiffs' class action committee case pending in the Circuit Court of Cook County, and served as counsel for the American Hospital Supply Corporation in defense of shareholders' derivative suits. He is currently counsel for a community of more than one hundred plaintiffs in a groundwater pollution case near Chicago, Illinois. He served as one of the lead counsel retained to defend the key officers and directors of the Continental Illinois National Bank in the derivative shareholders' suit prosecuted by the FDIC and a number of shareholder class actions brought against the Bank after its financial collapse in 1983.

Mr. Ring is also a member of the ABA Mass Tort Commission appointed by President Eugene Thomas to study and propose legislation for the handling of Mass Disaster Litigation.

He has also been counsel for the Illinois State Bar Association in Specific litigation and the Illinois Board of Bar Examiners.

Mr. Ring has published many articles in law reviews and legal publications on substantive tort law and procedure; and, he has authored many chapters for textbooks on such subjects. He is also co-author of Illinois Personal Injury Practice (Callahan, 1988).

He has appeared as a witness before numerous Congressional Committees on tort legislation; and has appeared as a witness before at least twenty state legislatures on "No-Fault" auto insurance, and other bills affecting the tort system.

Mr. Ring is currently Chair of the American Bar Association's Section of Tort and Insurance Practice (TIPS). He served as President of The Association of Trial Lawyers of America (1973-74), the Illinois Trial Lawyers Association, (1966-68), and the Illinois Appellate Lawyers Association (1974-75).

Mr. Ring is a member of the Illinois Supreme Court Committee on Jury Instructions; a Fellow of the American College of Trial Lawyers; International Academy of Trial Lawyers; International Society of Barristers; and the Inner Circle of Advocates.

AUTHOR: Evidentiary Hearings in Constitutional Challenges to Legislation," Trial Diplomacy Journal, Volume 9, Number 2 (Summer 1986); "Dead or Alive: Who Decides?," Trial Diplomacy Journal, Volume 8, Number 4 (Winter 1985/1986); "The Second Bite," Trial Diplomacy Journal, Volume 8, Number 1 (Spring 1985); "Summary Trial--A Preview for Settlement," Trial Diplomacy Journal, Volume 8, Number 2 (Summer 1985); "The Plaintiff: Choosing and Presenting Your Expert," The Brief, Volume 14, Number 4, Page 35 (Summer 1985); "New York Times vs. Sullivan--A Critique of the Critics," Trial Diplomacy Journal, Volume 7, Number 4 (Winter 1984/1985); "Persuasive Opening Statements--The Key to Winning," Matthew Bender & Co., Inc., 1985 Deskbook; "Judge Conducted Voir Dire--Is Justice Lost in the Shuffle?," Trial Diplomacy Journal, Volume 7, Number 3 (Fall 1984); "Cameras in the Courtroom-Revisited," Trial Diplomacy Journal, Volume 7, Number 2 (Summer 1984); "Penalties for Filing Suit," Trial Diplomacy Journal, Volume 7, Number 1 (Spring of 1984); "Voir Dire: Some Thoughtful Notes on the Selection Process," Trial, Vol. 19, No. 7 (July, 1983); "Obtaining Insurance Proceeds Over a Suicide Defense," Forum, Vol. XVI, No. 4 (1981); "The Pros of Oral Argument," Forum, Vol. XVI, No. 3 (1981); "Structural Work Act - Forms - Pleading and Discovery," Ill. Institute for Continuing Legal Education (1976; 1978) "The Scaffold Act: Its Past, Present, Future," Ill. Bar Journal, Vol. 64, No. 12 (August, 1976); "Structural Work Act-The Art of Discovery," Ill. Institute for Continuing Legal Education, (1975); "Legal Ethics of the Trial Lawyer--How They Serve the Client," 12 San Diego Law Review 300 (1976); "No-Fault Automobile Insurance: The American Experience," Gazette, The Law Society of Upper Canada, Vol. VIII, No. 1 (Mar. 1974); "The Fault With 'No Fault'," 49 Notre Dame Lawyer 796 and 24 Law Review Digest 1 (1974); "Insight Into a Successful Constitutional 'No-Fault' Trial," Trial Magazine (March-April, 1972) and International Society of Barristers Quarterly, No. 4, Vol. 9 (1971); "Pleading the Strict Liability Case and Jury Instructions-Products Liability," Ill. Institute for Continuing Legal Education (1971); "No-Fault Auto Insurance, Hoax or Cure," 52 Chicago Bar Record, 451 (1971); "No Fault Automobile Insurance--Legalized Consumer Fraud," Trial Magazine, 34 (November-December, 1971) and New York Legislative Reference, (December, 1971); "Jury Instructions and Forms of Verdict-Third Party Practice," Ill. Institute for Continuing Legal Education (1972; 1978; 1987).

CO-AUTHOR: "American Law: The Victims' Only Hope," The Brief, Volume 14, Number 3, Page 11 (Spring 1985); "Judges Have Rights Too," Chicago Bar Record, Vol. 59, No. 4 (1978); "Civil Procedure," LIT-Chicago-Kent Law Review, Vol. 53, No. 2 (1976).

CONTRIBUTING AUTHOR: "Liability for Injury to Employees (Other Than Under FELA)," 1 Dooley, Modern Tort Law (1977), Illinois Personal Injury Practice, Callaghan & Company, (1987--).

MEMBER: Trustee: Roscoa Pound - American Trial Lawyers Foundation (1974 --); Illinois State Bar Association, Member, Special Committee on Mediation and Arbitration, (1983-84); Court Congestion Committee, 1971, Products Liability Committee, 1971; Special Trial Attorney, Metropolitan Sanitary District of Greater Chicago (1968-78); Illinois Supreme Court Committee on Jury Instructions (1967 --); American Bar Association: Section of Litigation (1977 --); Section of Tort and Insurance Practice, (1967 --; Vice Chair, Committee on Trial Techniques (1981-82); Chairman, Ad Hoc Committee on Trial Advocacy (1980-81), Member, Professional Issues Special Committee of Tort and Insurance Practice Section (1982 --); Vice Chair, Liaison with other Sections and Bar Groups - Special Committee of Tort and Insurance Practice Section (1982 --); Council member (1983 --); and Section Chair 1988/1989. Avery Coonley School: Chairman of the Board (1974-75), President of the Board (1970-71), Trustee (1968 --); Attorneys Congressional Campaign Trust, National Chairman (1975-79); Appellate Lawyers Association, President (1974-75) Board of Directors (1968-70); Lex Legio, DePaul University, President (1976-78); Member - Visiting Committee - College of Law, DePaul University (1982); The Association of Trial Lawyers of America, National President (1973-74), National First Vice President (1972-73), Board of Governors (1968-71), State Committeeman (1964-66); Special Attorney, Illinois Department of Insurance (1965-73); Board of Governors (1968-71), State Committeeman (1964-66); Special Attorney, Illinois Department of Insurance (1965-73); Chicago Bar Association: Board of Managers (1971-73); Negligence Committee (1966-71), Court Congestion Committee 1970-71), Circuit Court of Cook County, Law Division Task Force Committee (1964-67), Civil Practice Committee (1966-72); Special Assistant Attorney General, State of Illinois (1968-72); Illinois Trial Lawyers Association, President (1966-68), Second Vice President (1965-66); Kansas Bar Association, Honorary Life Member (1965); Member, American Judicature Society; Society of Trial Lawyers; The Scribes; American Board of Professional Liability Attorneys; Federal Bar Association; Founder, Trial Lawyers for Public Justice, Member, Board of Directors (1982 --); Member, The Lawyers' Advisory Board - Southern Illinois University Law Journal, (1982); Chairman, Board of Editors of Trial Diplomacy Journal, (1984-86); Member, Editorial Advisory Board, Medical Malpractice Reports, Matthew Bender Publications.

FELLOW: International Society of Barristers; International Academy of Trial Lawyers; American College of Trial Lawyers; and The Inner Circle of Advocates.

# STOLL, STOLL, BERNE & LOKTING

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

209 S.W. OAK STREET

PORTLAND, OREGON 97204

TELEPHONE (503) 227-1601

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NORMAN A. STOLL  
N. ROBERT STOLL  
GARY M. BERNE  
DAVID A. LOKTING

SANDRA L. KOHN  
SUZANNE BONAMICI  
DAVID A. ENGELS  
RICHARD H. BRAUN  
JEAN MESCHKE

## FIRM RESUME

The firm handles major business matters and complex litigation including regional and nationwide class actions. The firm's substantive areas of expertise include securities fraud, tax shelter fraud, RICO, antitrust, and environmental law. Additionally the firm served as class counsel for plaintiffs in litigation against General Motors involving engine design defects.

Set out below is a representative sampling of cases in which the firm, or lawyers with the firm have had a substantial role.

### CLASS ACTION LITIGATION

The firm has served as counsel in many class action cases including:

In re Federal Bank & Trust Co. Securities Litigation, (MDL 537, Civ. No. 82-1114-RE Or 1982) (Lead and trial counsel in nationwide RICO and securities fraud case.)

In re Cement Antitrust Litigation, MDL No. 296 (D. Arizona)

Muller et al v Sambo's Restaurants, Inc. et al, No. CV 80-3757-R (C.D. Calif. 1975) (Lead and trial counsel in nationwide securities fraud case)

In re Sugar Antitrust Litigation, (MDL 201, N.D. CA 1975)  
(Counsel to industrial class for eleven western states.)

In re Melridge Securities Litigation, (Civ. No. CV 87-1426 JU Dist. Or 1988)(Co-lead and liaison counsel, nationwide securities fraud case.)

Gordon et al v. Floating Point Systems Inc, et al, (liaison in consolidated nationwide class action securities cases currently pending U.S. District Court, Oregon)

Grudzinski et al v. Mack et al, (D. Or 1979)(lead counsel, civil rights class action)

Eischen, et al. v. Avia Group International, et al, (Case No. A8703-01691, Mult. County, Or. Cir. Ct. 1987-89) (Lead and trial counsel in nationwide class action involving merger of Avia into Reebok.)

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Brandenberg v. Charapata, (Mult. County Or. Cir. Ct. 1976) (Lead and trial counsel in nursing home class action; Oregon's largest punitive damage award at that time.)

#### MAJOR NON-CLASS COMPLEX LITIGATION

The following are a sample of a few of the major non-class litigation cases in which our firm has acted as trial counsel:

Cleary v. National Distillers and Chemical Co. (Dist. Or. 1969)  
(Antitrust case.)

Brabham, et al. v. Patenta N.V., et al, USDC Or. Civ. No. 83-1248  
(1983-1986) (Multi-plaintiff securities fraud case.)

Armbruster, et al. v. Patenta N.V., et al, USDC W.D. Wa. No. C86-261C  
(1986-1988) (Multi-plaintiff securities fraud case.)

Biomass I v. Pacificorp, (Mult. County Or. Cir. Ct. 1986) (\$350 million contract dispute.)

Smith, et al. v. Ford Industries, Inc., et al., USDC Or. 1972-73)  
(Trial counsel in securities litigation involving takeover of Code-A-Phone Corp. by Ford Industries, Inc.)

The Jeanery v. James Jeans, Inc. USDC Civ. No. 82-6359-E (1984)  
(Antitrust case.)

#### ENVIRONMENTAL LITIGATION

The lawyers associated with the firm have extensive experience in environmental litigation, including:

U.S. v. Atlantic Richfield, 435 F.Supp. 1009 (D. Alaska 1977)

State of Alaska v. Andrus, 429 F.Supp 958 (D. Alaska 1977)

NRDC v. State of Alaska, (1978 D.D.C)

Fairbanks Garden Club v. State of Alaska  
(1976 State court action)

Village of Anaktuvik Pass v. ARCO, (D. Alaska)

EDF v. Magma Copper Co., (D.Arizona)  
(Air pollution suit causing smelter owner to construct \$250 million retrofit to reduce SO2 emissions.)

U.S. v. Oregon, Civ. No. 68-513-MA (D.Or)  
(Columbia river fishing litigation)

AFFIDAVIT OF R. EVERETT HARRIS  
ATTORNEY FOR THE CITY OF CORDOVA

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

R. Everett Harris, being first duly sworn, deposes and says:

1. I am an attorney, duly licensed to practice law in the State of Alaska since February 17, 1960. I am a member of the law firm of JENSEN, HARRIS & ROTH, which has represented the City of Cordova, Alaska, continuously since 1964.

2. The City of Cordova has incurred substantial losses and is continuing to incur costs as a result of the oil spill. We are currently analyzing the long range and short range effects upon Cordova's economy, not only in terms of costs and expenditures, but in lost revenues. This law firm, and the Council of Cordova, have continuously analyzed a key issue: whether or not the City of Cordova can afford to, should, or must become involved in litigation arising from the Exxon Valdez Oil Spill Disaster, in order to carry out the City's public duty to its citizens.

3. I am de facto chairman (without portfolio) of an informal committee of lawyers from communities effected by the oil spill, (we call ourselves the "Oiled Lawyers") who have worked closely with mayors from the effected communities, (a Subcommittee of the Alaska Conference of Mayors which calls itself the "Oiled Mayors") to try to reach uniform agreements with Exxon regarding

reimbursement of costs and expenses incurred from the oil spill, in order to avoid litigation if at all possible. That effort has not been successful. Exxon insists on reserving unto itself the absolute, unfettered, unilateral determination of what it will and will not reimburse, a determination that continually narrows.

4. Thus, at the present time, the City of Cordova is still in the process of determining the manner in which it must, should and can afford to become involved in litigation in order to seek appropriate compensation for the devastating effects of this oil spill, both as to City expenses and lost revenues.

5. Cordova has previously informally designated the Kodiak Island Borough and its counsel, Matthew D. Jamin of Jamin, Ebell, Bolger & Gentry, and Robert Stoll of Stoll, Stoll, Berne & Lokting, to serve as Cordova's liaison to the litigation in both State and Federal court, to keep us informed as to what has been occurring in the actions filed in both courts.

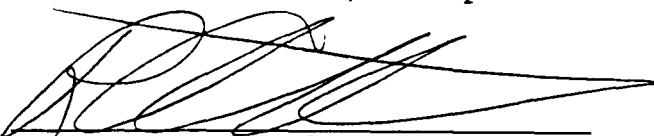
6. As a result of constant re-examination of this issue and information provided to us by Mr. Jamin, and my own investigation, in consultation with the Cordova City Council, Cordova at this time does not seek to be a class action representative, and does not at this juncture plan to itself file a separate action. However, Cordova expects that it is highly likely that litigation will be eventually necessary to obtain redress for Cordova from the effects of the Exxon Valdez Oil Spill.

7. At the present time, though Cordova does not seek to be a class action representative, it does not believe its


interests will be adequately represented by those who currently purport to have established the "Class Action Coordinating Committee" in mid-April of this year.

8. We are aware of the various proposals which have been presented to the court regarding structure for a coordinating and executive committee. I believe that the municipalities must have a representative on any such committee both because their legal claims are different from any other plaintiff besides Kodiak Island Borough, and because their damages are substantially different.

9. Both the Cordova City council and this law firm support the appointment of Kodiak Island Borough's counsel to a position on any coordinating committee and executive committee that is established by the court. Though we feel protected now by the position that Kodiak Island Borough has taken with respect to being a class representative for our interests, we will continue to monitor the litigation through the Jamin and Stoll firms, and will consider a direct action if the need arises, to protect our interests.

  
R. Everett Harris

SUBSCRIBED AND SWORN TO before me this 15 day of August, 1989 at Anchorage, Alaska.

  
NOTARY PUBLIC in and for ALASKA  
My Commission Expires: 1-28-93



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

ORDER NO. \_\_\_\_\_

RESPONSIBILITIES OF DESIGNATED COUNSEL

IT IS ORDERED:

1. Plaintiffs' Coordinating Committee. The following are hereby appointed to the Plaintiffs' Coordinating Committee with joint seats, Lower 48 firm's lead counsel/Alaska firms:

1. Melvin M. Belli, Sr./Smith, Coe, Patterson
2. Peter D. Byrnes/Hartig, Rhodes, Norman, Mahoney & Edwards
3. Richard F. Gerry/Cowan, Bixby & Gerry
4. Leonard M. Ring/Hansen and Lederman Tugman, Clark & Ray
5. N. Robert Stoll/Jamin, Ebell, Bolger and Gentry
6. State of Alaska
- 7.
- 8.
- 9.

2. Responsibilities. Plaintiffs' Coordinating Committee shall be generally responsible for coordinating the activities of plaintiffs during pretrial proceedings and shall:

(a) determine (after such consultation with other co-counsel as may be appropriate) and in briefs, oral argument or such other fashion as may be appropriate, present by a designee to the court and opposing parties the position of the plaintiffs on all matters arising during the pretrial proceedings;

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EXHIBIT 4  
Page/Pages 1 OF 4

(b) coordinate the initiation and conduct of discovery on behalf of plaintiffs consistent with the requirements of Fed. R. Civ. P. 26(g), including the preparation of joint interrogatories, requests for production of documents and requests for admission and the examination of witnesses in depositions;

(c) conduct settlement negotiations on behalf of plaintiffs, but without authority to enter binding agreements except to the extent expressly authorized;

(d) delegate responsibilities for specific tasks to other counsel in a manner to assure that pretrial preparation for the plaintiffs is conducted effectively, efficiently and economically;

(e) monitor the activities of co-counsel to assure that schedules are met and unnecessary expenditures of time and expenses are avoided; and

(f) perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further order of the court.

Counsel for plaintiffs who disagree with plaintiffs' Coordinating Committee (or those acting on behalf of the Committee) or who have individual or divergent positions may present written and oral arguments, conduct examinations of deponents, and otherwise act separately on behalf of their client(s) as appropriate, provided that in doing so they do not repeat arguments, questions, or actions of lead counsel.

ORDER (Responsibilities of Designated Counsel) - 2

EXHIBIT 4  
Page/Pages 2054

3. Plaintiffs' Liaison Counsel. Plaintiffs' Liaison Counsel who shall be named by the Plaintiffs' Coordinating Committee within seven days hereof, shall:

(a) maintain and distribute to co-counsel and to Defendants' Liaison Counsel an up-to-date service list;

(b) receive and, as appropriate, distribute to co-counsel orders from the court (and documents from opposing parties and counsel);

(c) maintain and make available to co-counsel at reasonable hours a complete file of all documents served by or upon each party (except such documents as may be available at a document depository); and

(d) establish and maintain a document depository.

(e) attend all plaintiffs' coordinating committee meetings as a non-voting member and assume such duties as designated by the Committee.

4. Defendants' Liaison Counsel. Defendants' Liaison Counsel who shall be named by defendants within seven days hereof, shall:

(a) maintain and distribute to co-counsel and to Plaintiffs' Liaison Counsel an up-to-date service list;

(b) receive and, as appropriate, distribute to co-counsel orders from the court (and documents from opposing parties and counsel);

(c) maintain and make available to co-counsel at reasonable hours a complete file of all documents served by or

ORDER (Responsibilities of Designated Counsel) - 3

EXHIBIT 4  
Page/Pages 3 of 4

upon each party (except such documents as may be available at a document depository);

(d) establish and maintain a document depository; and

(e) call meetings of co-counsel for the purpose of coordinating discovery, presentations at pretrial conferences, and other pretrial activities.

DATED: \_\_\_\_\_

\_\_\_\_\_  
H. RUSSELL HOLLAND  
United States District Judge

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ORDER (Responsibilities of Designated Counsel) - 4

EXHIBIT 4  
Page/Pages 4 of 4

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

ORDER NO. \_\_\_\_

ATTORNEYS' TIME AND EXPENSE RECORDS

IT IS ORDERED:

1. Maintenance of Contemporaneous Records. All counsel shall keep a daily record of their time spent and expenses incurred in connection with this litigation, indicating with specificity the hours, location, and particular activity (such as "conduct of deposition of A.B."). The failure to maintain such records will be grounds for denying court-awarded attorneys' fees, as will an insufficient description of the activity (such as "research" or "review of correspondence").

2. Plaintiffs' Coordinating Committee shall appoint a committee to review time and expense records filed, and report to Plaintiffs' Coordinating Committee, and to the counsel involved, of any counsel's records which the Committee believes are inappropriate.

3. Filing. By the 15th of each month, each firm which may seek an award (or approval) of a fee by the court shall

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EXHIBIT 5  
Page/Pages 1 OF 2

file with the court and with the Committee appointed by Plaintiffs' Coordinating Committee, a report summarizing, according to each separate activity, the time and expenses spent by its members or associates during the preceding month (and the ordinary billing rates of such attorneys in effect during such month) and the accumulated total of the firm's time, hourly rates and expenses to date. The report so filed shall not be made available to defense counsel.

DATED: \_\_\_\_\_

\_\_\_\_\_  
H. RUSSELL HOLLAND  
United States District Judge

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ORDER (Attorneys' Time and Expense Records) - 2

EXHIBIT 5  
Page/Pages 2 OF 2

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

ORDER NO. \_\_\_\_  
SCHEDULING ORDER

IT IS ORDERED:

I. Class Action Motions

- A. All class action motions shall be filed by September 22, 1989.
- B. All opposition papers to such motions shall be filed by October 20, 1989.
- C. All reply briefs shall be filed by November 3, 1989.
- D. Oral argument shall be scheduled on \_\_\_\_\_, 1989.

II. Discovery

- A. Plaintiffs may submit first consolidated set of interrogatories, document requests and requests for admission on September 10, 1989.
- B. Defendants may submit written interrogatories and document requests limited to class action issues on September 10, 1989.

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C. Responses to the written discovery requests set forth in Paragraphs A and B above shall be served by October 10, 1989.

III. Depositions

A. Depositions may commence on November 1, 1989.

DATED: \_\_\_\_\_

\_\_\_\_\_  
H. RUSSELL HOLLAND  
United States District Judge

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ORDER (Scheduling Order) - 2

EXHIBIT 6  
Page/Pages 2 OF 2



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

ORDER NO. \_\_\_\_

DEPOSITION GUIDELINES

IT IS ORDERED that depositions be conducted in accordance with the following rules:

1. Cooperation. Counsel are expected to cooperate with, and be courteous to, each other and deponents.

2. Stipulations. Unless contrary to an order of the court, the parties (and, when appropriate, a non-party witness) may stipulate in any suitable writing to alter, amend, or modify any practice relating to noticing, conducting, or filing a deposition. Stipulations for the extension of discovery cut-offs set by the court are not, however, valid until approved by the court.

3. Scheduling. Absent extraordinary circumstances, counsel shall consult in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually convenient times and places. (That some counsel may be unavailable shall not, however, in view of the number of attorneys involved in this litigation, be grounds for

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postponing a deposition if another attorney from the same firm or who represents a party with similar interests is able to attend.)

4. Attendance.

(a) Who may be present. Unless otherwise ordered under Fed. R. Civ. P. 26(c), depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purpose of the deposition, the parties or the representative of a party, counsel for the deponent, and potential witnesses. While a deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under the confidentiality Order shall be excluded.

(b) Unnecessary attendance. Unnecessary attendance by counsel is discouraged and may not be compensated in any fee application to the court. Counsel who have only marginal interest in a proposed deposition or who expect their interests to be adequately represented by other counsel may elect not to attend and to conduct, pursuant to paragraph 13(b) of this order, supplemental interrogation of the deponent should a review of the deposition reveal the need for such examination.

5. Conduct.

(a) Examination. Each side should ordinarily designate one attorney to conduct the principal examination of

the deponent, and examination by other attorneys should be limited to matters not previously covered.

(b) Objections. The only objections that should be raised at the deposition are those involving a privilege against disclosure or some matter that may be remedied if presented at the time, such as to the form of the question or the responsiveness of the answer. Objections on other grounds are unnecessary and should generally be avoided. All objections should be concise and must not suggest answers to (or otherwise coach) the deponent. Argumentative interruptions will not be permitted.

(c) Directions not to answer. Directions to the deponent not to answer are improper except on the ground of privilege or to enable a party or deponent to present a motion to the court for termination of the deposition on the ground that it is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress the party or the deponent. When a privilege is claimed, the witness should nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, such as the date of communication who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement.

(d) Private consultation. Private conferences between deponents and their attorneys during the actual taking

ORDER (Deposition Guidelines) - 3

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EXHIBIT 3  
Page/Pages 3 OF 12

of the deposition are improper except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the court for good cause shown, such conferences may however be held during normal recesses and adjournments.

6. Documents.

(a) Production of documents. Witnesses subpoenaed to produce numerous documents should ordinarily be served at least 30 days before the scheduled deposition. Depending upon the quantity of documents to be produced, some time may be needed for inspection of the documents before the interrogation commences.

(b) Confidentiality order. A copy of the Confidentiality Order shall be provided to the deponent before the deposition commences if the deponent is to produce or may be asked about documents which may contain confidential information (Counsel shall comply with the provisions of paragraphs 2(b), 2(c), and 4 of the Confidentiality Order when examining a deponent about confidential information.)

(c) Copies. Extra copies of documents about which counsel expect to examine the deponent should ordinarily be provided to opposing counsel and the deponent. Deponents should be shown a document before being examined about it except when counsel seek to impeach or test the deponent's recollection.

7. Depositions of witnesses who have no knowledge of the facts. An officer, director, or managing agent of a

corporation or a governmental official served with a notice of a deposition or subpoena regarding a matter about which such person has no knowledge may submit to the noticing party a reasonable time before the date noticed an affidavit so stating and identifying a person within the corporation or government entity believed to have such knowledge. Notwithstanding such affidavit, the noticing party may proceed with the deposition, subject to the right of the witness to seek a protective order.

8. Expert witnesses. Leave is granted to depose expert witnesses in addition to or in lieu of discovery through interrogatories. Objection to such depositions may be made by motion.

9. Tape recorded depositions. By indicating in its notice of a deposition that it wishes to record the deposition by tape recording in lieu of stenographic recording (and identifying the person before whom the deposition will be taken), a party shall be deemed to have moved for such an order under Fed. R. Civ. P. 30(b)(4). Unless an objection is filed and served within \_\_\_\_\_ days after such notice is received, the court shall be deemed to have granted the motion pursuant to the following terms and conditions:

(a) Transcript; filing. Subject to the provisions of paragraph 12, the party noticing the stenographic recording of the deposition, may obtain a copy of the tape and transcript upon payment of a pro-rata share of the noticing party's actual

costs, and may prepare and file their own version of the transcript of the tape recording.

10. Videotaped depositions. By indicating in its notice of a deposition that it wishes to record the deposition by videotape (and identifying the proposed videotape operator), a party shall be deemed to have moved for such an order under Fed. R. Civ. P. 30(b)(4). Unless an objection is filed and served within \_\_\_\_\_ days after such notice is received, the court shall be deemed to have granted the motion pursuant to the following terms and conditions:

(a) Stenographic recording. The videotaped deposition shall be simultaneously recorded stenographically by a qualified court reporter. The court reporter shall on camera administer the oath or affirmation to the deponents. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of Fed. R. Civ. P. 30(e) (submission to witness) and 30(f) (filing; exhibits).

(b) Cost. The noticing party shall bear the expense of both the videotaping and the stenographic recording. Any party may at its own expense obtain a copy of the videotape and the stenographic transcript. Requests for taxation of these costs and expenses may be made at the conclusion of the litigation in accordance with applicable law.

(c) Video operator. The operator(s) of the videotape recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of

ORDER (Deposition Guidelines) - 6

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the deposition the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

(d) Attendance. Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and demonstrative materials used during the deposition) will be videotaped.

(e) Standards. The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a trial. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting and the field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Eating and smoking by deponents or counsel during the deposition will not be permitted.

(f) Interruptions. (The videotape shall run continuously throughout the active conduct of the deposition.)

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EXHIBIT

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Page/Pages

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(Videotape recording will be suspended during all "off the record" discussions.<sup>1/</sup>

(g) Examinations; exhibits; re-reading. The provisions of paragraphs 5 and 6 of this order apply to videotaped depositions. Re-reading of questions or answers when needed, will be done on camera by the stenographic court reporter.

(h) Index. The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends, at which objections are made and examination resumes, at which exhibits are identified, and at which any interruption of continuous tape-recording occurs whether for recesses, "off the record" discussions, mechanical failure, or otherwise.

(i) Filing. (The operator shall preserve custody of the original videotape in its original condition until further order of the court.) (Subject to the provisions of paragraph 12 of this order, the original of the tape-recording, together with the operator's log index and a certificate of the operator attesting to the accuracy of the tape, shall be filed with the Clerk.) No part of a videotape deposition shall be

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<sup>1/</sup>If a simultaneous stenographic transcript is being made, many courts prefer that "off the record" discussions be eliminated from the videotape.



released or made available to any member of the public unless authorized by the court.

(j) Objections. Requests for pretrial rulings on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. If the objection involves matters peculiar to the videotaping, a copy of the videotape and equipment for viewing the tape shall also be provided to the court.

(k) Use at trial; purged tapes. A party desiring to offer a videotape deposition at trial shall be responsible for having available appropriate playback equipment and a trained operator. After the designation by all parties of the portions of a videotape to be used at trial, an edited copy of the tape, purged of unnecessary portions (and any portions to which objections have been sustained), (may) (shall) be prepared by the offering party to facilitate continuous playback; but a copy of the edited tape shall be made available to other parties at least \_\_\_\_\_ days before it is used and the unedited original of the tape shall also be available at the trial.

11. Telephonic depositions. By indicating in its notice of a deposition that it wishes to conduct the deposition by telephone, a party shall be deemed to have moved for such an order under Fed. R. Civ. P. 30(b)(7). Unless an objection is filed and served within \_\_\_\_\_ days after such notice is received, the court shall be deemed to have granted the motion.

Other parties may examine the deponent telephonically or in person. However, all persons present with the deponent shall be identified in the deposition and shall not by word, sign, or otherwise coach or suggest answers to the deponent.

12. Waiver of transcription and filing. The parties and deponents are authorized and encouraged to waive transcription and filing of depositions that prove to be of little or no usefulness in the litigation or to agree to defer transcription and filing until the need for using the deposition arises.

13. Use; supplemental depositions.

(a) Use. Depositions may, under the conditions prescribed in Fed. R. Civ. P. 32(a)(1)-(4) or as otherwise permitted by the Federal Rules of Evidence, be used against any party (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this court as part of this litigation) --

- (1) who was present or represented at the deposition,
- (2) who had reasonable notice thereof, or
- (3) who, within 30 days after the filing of the deposition (or, if later, within 60 days after becoming a party in this court in any action which is a part of this litigation), fails to show just cause why

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such deposition should not be usable against such party.

(b) Supplemental depositions. Each party not present or represented at a deposition (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this court) may, within 30 days after the filing of the deposition (or, if later, within 60 days after becoming a party to this court in any action which is a part of this litigation), request permission to conduct a supplemental deposition of the deponent, including the right to take such deposition telephonically and by non-stenographic means. If permitted, the deposition shall be treated as the resumption of the deposition originally noticed; and each deponent shall, at the conclusion of the initial deposition be advised of the opportunity of non-attending parties to request a resumption of such deposition, subject to the right of the deponent to seek a protective order. (Such examination shall not be repetitive of the prior interrogation.)

14. Rulings.

(a) Immediate presentation. Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require a rescheduling of the deposition may be presented by telephone to the court. (If the judge will not be available during the period while the deposition is being conducted, the dispute may be addressed to

ORDER (Deposition Guidelines) - 11

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the Discovery Master, or a Magistrate designated by the Court.)  
The presentation of the issue and the court's ruling will be recorded as part of the deposition.

(b) Extraterritorial jurisdiction. The undersigned will exercise by telephone the authority granted under 28 U.S.C. Sec. 1407(b) to act as district judge in the district in which the deposition is taken.<sup>2/</sup>

DATED: \_\_\_\_\_

\_\_\_\_\_  
H. RUSSELL HOLLAND  
United States District Judge

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<sup>2/</sup>The power to exercise authority over non-party deponents outside the district is available only in multidistrict litigation unless the judge has been given an intracircuit or inter-circuit assignment.

ORDER (Deposition Guidelines) - 12

EXHIBIT 7  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

In re )  
 ) No. A89-095 Civil  
 )  
the EXXON VALDEZ ) (Consolidated)  
 )  
 ) THIS DOCUMENT RELATES  
 ) TO ALL ACTIONS

AFFIDAVIT OF SERVICE BY MAIL OR HAND DELIVERY

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT)

PAMELA S. HILL, being first duly sworn, deposes and states as follows:

1. That she is employed by the law firm of LOCKE & SHEA.

2. That on the 17th day of August, 1989, she mailed or had hand delivered true and correct copies of the UNIFIED PLAINTIFFS' MEMORANDUM REGARDING PLAINTIFF COUNSEL ORGANIZATION (with accompanying Exhibits 1 through 7) including (PROPOSED) COURT ORDER ESTABLISHING COORDINATING COMMITTEE AND RESPONSIBILITIES THEREOF; ORDER REGARDING TIME RECORDS; SCHEDULING ORDER; and ORDER REGARDING DEPOSITION GUIDELINES to all counsel of record based upon the court's Master Service List of July 20, 1989.

Pamela S. Hill  
PAMELA S. HILL

SWORN TO AND SUBSCRIBED TO before me this 17th day of August, 1989.

Alan Macle  
NOTARY PUBLIC IN AND FOR THE  
STATE OF ALASKA  
MY COMMISSION EXPIRES: 12-5-91

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FILED

AUG 17 1989

Richard M. Clinton  
 Bogle & Gates  
 The Bank of California Center  
 900 West 4th Avenue  
 Seattle, Washington 98164  
 (206) 682-5151

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	)	No. A89-095 Civil
	)	
the EXXON VALDEZ	)	(Consolidated)
	)	
	)	D-2'S SUGGESTIONS FOR
	)	THE AUGUST 24, 1989
	)	PRETRIAL CONFERENCE

Re: All Cases

INTRODUCTION

Pursuant to this Court's Pretrial Order No. 10, dated August 2, 1989, Exxon Shipping Company (D-2) ("Exxon Shipping") sets forth suggestions to facilitate the orderly and efficient management of these cases. These suggestions are being made in view of the current status of the consolidated federal and state cases. Approximately 140 cases have been filed in the federal and

EXXON SHIPPING COMPANY'S  
 SUGGESTIONS FOR THE AUGUST 24,  
 1989 PRETRIAL CONFERENCE

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state courts. Hundreds of plaintiffs and plaintiffs' counsel are involved. Many of the cases are duplicates of or similar to other cases. A number of cases purport to represent the same classes of plaintiffs. So far, plaintiffs' counsel have not been able to organize themselves.

Fortunately, both the federal and state courts have each consolidated the cases before a single judge. In addition, the federal and state courts have closely coordinated the litigation through the issuance of similar orders. Most recently the two courts have scheduled a joint pretrial conference. The consolidation and coordination activities of both courts are desirable, efficient and consistent with the Manual for Complex Litigation. These consolidations and coordination activities should continue.

This group of approximately 140 cases is unique in a number of respects. The number of cases and lawyers involved as well as the potential for expensive protracted litigation is unique. This group of cases is the most unique however because of the early settlement opportunities with the resulting savings in court time and litigation expenses. Even before most of these cases were filed, Exxon Shipping established claims offices to make payments on legitimate claims. There are now eight claims offices in operation. Through these claims offices Exxon Shipping has already made payments to claimants of over \$61,000,000. Additional

EXXON SHIPPING COMPANY'S  
SUGGESTIONS FOR THE AUGUST 24,  
1989 PRETRIAL CONFERENCE

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payments have been made to plaintiffs' lawyers and others for claims processing costs and fees. (See the attached Harvin affidavit for further details concerning Exxon Shipping's claims payments.)

Obviously, the pretrial scheduling should be structured to assist and encourage the continued settlement of claims. A successful claims settlement process should greatly reduce the magnitude of this litigation. In order to achieve the goals of efficiently and promptly resolving the litigation, Exxon Shipping makes the suggestions set forth below.

A. Plaintiffs' counsel should be efficiently organized.<sup>1</sup>

The most pressing organizational issue in both the state and federal court oil spill litigation is, in Exxon Shipping's view, the need for the structuring of the various plaintiffs and their counsel into a single representative committee or entity and appropriate subcommittees. This committee or entity should have sufficient authority to interact on plaintiffs' behalf with the

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<sup>1</sup> There are only a few defense counsel and they have been coordinating their efforts. Exxon Shipping does not anticipate any significant coordination problems among defense counsel. However, in order to encourage cooperation by plaintiffs' counsel and defense counsel, Exxon Shipping suggests that the Court enter the attached Joint Cooperation Order.

EXXON SHIPPING COMPANY'S  
SUGGESTIONS FOR THE AUGUST 24,  
1989 PRETRIAL CONFERENCE



courts and other parties to coordinate scheduling and other procedural matters. The composition, powers, and duties of such a committee have been the subject of significant briefing.

Exxon Shipping takes no position on the exact composition, structure, powers and duties of such committee and appropriate subcommittees. However, Exxon Shipping urges the federal and state court to take whatever actions may be appropriate in order to facilitate the formation of a committee of plaintiffs' counsel and the definition of the powers and responsibilities of that committee. The committee of plaintiffs' counsel, in order to be effective, should be in the position to speak for plaintiffs in both the state and federal actions as well as other prospective plaintiffs. The committee should also be efficiently organized in order to avoid duplication of efforts, minimize attorneys' fees, and allow the courts and defense counsel to communicate with the plaintiffs. Finally, the committee should be instructed that it cooperate with and do nothing to impede the on-going settlement process.

- B. After the committee of plaintiffs' counsel becomes organized, a schedule should be fixed for both sides to meet and prepare an initial joint status report, including a proposed schedule for resolution of class certification issues.

With good faith efforts of counsel and the assistance of the state and federal courts, this litigation can and should be streamlined. Exxon Shipping suggests that, after the committee of

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SUGGESTIONS FOR THE AUGUST 24,  
1989 PRETRIAL CONFERENCE

plaintiffs' counsel has been formed, the court fix a date for a meeting of plaintiffs and defense counsel for the purpose of preparing an initial joint status report. The joint status report should consider the following topics:

- (1) scheduling class certification motions and class certification discovery;
- (2) stipulations of fact;
- (3) the utilization of Special Masters;
- (4) a discovery plan;
- (5) document depositories;
- (6) a schedule for anticipated motions;
- (7) additional settlement methodologies; and
- (8) the utilization of alternate dispute resolution procedures both on the merits and as to damage issues.

Careful planning is crucial to the resolution of this litigation. Inadequate planning will very likely result in excessive costs and attorneys' fees, and unnecessary delay. In short, Exxon Shipping submits that all options should be considered and the litigation should be carefully planned to encourage an expeditious and fair resolution of these many cases.

C. Class certification motions should be scheduled.

Many cases in both the state and federal courts allege class actions and seek certification of one or more classes. The various class action complaints contain overlapping and conflicting

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SUGGESTIONS FOR THE AUGUST 24,  
1989 PRETRIAL CONFERENCE

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claims and classes. Other plaintiffs prefer to litigate their claims in individual or direct actions. As Exxon Shipping has not had an opportunity to evaluate fully these important class certification issues, it takes no position on such issues at this time. Nevertheless, Exxon Shipping respectfully suggests that it is essential that the state and federal courts coordinate the class discovery and class certification motion process. Accordingly, a schedule for the class certification issues should be set after the plaintiffs' counsel committee is formed and meets with defense counsel to prepare a joint status report.<sup>2</sup> Moreover, class discovery and certification issues should be resolved before discovery on other issues is entertained.

The Manual for Complex Litigation (Second) § 30.11, pp. 206-208, suggests:

. . . [E]arly class determination enables the parties and the court to know what is really at stake, eliminates unproductive squabbles over the scope of discovery, saves the time and expense that might be wasted on matters not properly involved in the litigation. . .

\* \* \*

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<sup>2</sup> If plaintiffs' counsel are unable to form a committee at this time then the court should consider setting a schedule to resolve the class certification issues. Rulings on the class certification issues will probably simplify the litigation and make it easier for plaintiffs' counsel to organize.

EXXON SHIPPING COMPANY'S  
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. . . [S]ubstantial discovery may be needed to refine the issues and to furnish the factual predicates before an informed determination can be made regarding certification of a class.

\* \* \*

To be able to make a class determination as soon as practicable and, in turn, to facilitate the rapid accumulation of facts bearing on class issues, the court should become involved early in the litigation in developing a schedule for resolving Rule 23 issues. Through pretrial conferences, discovery and scheduling orders, and other management techniques, the court may fairly force the parties to develop the class issues with dispatch.

Exxon Shipping submits that in the joint status report a date should be proposed for filing class certification motions. If the parties cannot agree upon a filing date for class certification motions, the court should set an early date. After the certification motions are filed a determination can then be made regarding class certification discovery and the class certification briefing and hearing schedule.

D. Settlement activities should be encouraged and coordinated.

Like the coordination of pretrial activities, Exxon Shipping submits that the coordinated state-federal approach to the promotion of settlement in these cases is critical to the resolution of the instant complex litigation. The joint participation of Judge Holland of the federal district court and Judge Shortell of the Alaska state court in settlement discussions

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is welcomed. As an alternative, the federal and state courts may wish to appoint a common settlement judge, master or settlement panel. The settlement judge(s) or master(s) should use all possible methods to encourage early settlement in order to avoid expensive protracted litigation.

Prompt, coordinated settlement procedures under the guidance of both the federal and state courts should be a benefit to most parties for the following reasons:

(1) Exxon Shipping already has a track record of paying claims and there should be good prospects of resolving most of the cases through settlement;

(2) Early settlements will provide the plaintiffs and other claimants with money more rapidly than extended litigation;

(3) Aggressive litigation, rather than settlement efforts, at the early stages, is likely to harden positions, create animosity and make settlement of these many cases more difficult;  
and

(4) Early settlement will save millions of dollars of attorneys' fees, expenses and court time.

Exxon Shipping suggests that the state and federal courts coordinate with each other and then assist those litigants whose claims have not been resolved through private negotiations between the parties. Such judicial involvement will, in Exxon Shipping's view, facilitate the efficient management and resolution of many,

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if not most, of plaintiffs' legally viable claims which have not otherwise been resolved by Exxon Shipping's claims settlement procedures.

CONCLUSION

Exxon Shipping submits that, although there are many plaintiffs and many lawyers involved, there are opportunities to expeditiously and efficiently handle this litigation. First, plaintiffs' counsel must become properly organized. Second, after the plaintiffs are organized, the court should encourage the parties to meet and develop plans through a joint status report to efficiently resolve this litigation. Third, a reasonably prompt determination of the class action issues should also expedite the litigation. After these class action issues are resolved a more definitive case management plan can be devised. Finally, there is a unique opportunity to resolve much of the litigation through settlement. Over \$61,000,000 in settlements have already been paid. With the court's assistance this settlement process should continue. On the other hand, hard-nosed litigation tactics and incurring extensive fees and expenses by plaintiffs' counsel will discourage settlement.

DATED this 17th day of August, 1989.

BOGLE & GATES

By Douglas J. Serdahely  
Douglas J. Serdahely  
1031 West 4th Avenue, Suite 600  
Anchorage, Alaska 99501

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SUGGESTIONS FOR THE AUGUST 24,  
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By Richard M. Clinton, for  
Richard M. Clinton  
J. Peter Shapiro  
The Bank of California Center  
900 4th Avenue  
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Attorneys for defendant  
Exxon Shipping Company (D-2)

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EXXON SHIPPING COMPANY'S  
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Suite 1036  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

In re: the EXXON VALDEZ

} No. A89-095 Civil  
} (Consolidated)  
}  
} AFFIDAVIT OF RICHARD T.  
} HARVIN RE CLAIMS  
} PROCESSING BY EXXON  
} SHIPPING COMPANY

STATE OF ALASKA }  
} ss.  
THIRD JUDICIAL DISTRICT }

RICHARD T. HARVIN, being first duly sworn and under oath testifies  
as follows:

1. My name is RICHARD T. HARVIN. I am in charge of Exxon  
Shipping Company's claims handling process for the March 24, 1989 M/V EXXON  
VALDEZ oil spill.

2. Exxon Shipping Company opened claims offices shortly after the  
M/V EXXON VALDEZ oil spill. Currently Exxon has claims offices in Anchorage,  
Cordova, Kodiak, Homer, Seward, Kenai, and Valdez, Alaska and Seattle,  
Washington. Exxon has approximately one hundred and ten (110) claims  
handling people in these offices.

3. As of August 15, 1989, Exxon had made payment on over six  
thousand (6,000) claims. Total claims' payments made as of August 15, 1989  
were over SIXTY ONE MILLION DOLLARS (\$61,000,000.00).



4. In addition to making payment for claims, Exxon also makes certain payments for professional fees incurred in preparing claims' information. The professional fees payments are usually for assistance from lawyers in processing claims. As of August 15, 1989, about two hundred and sixty (260) professional payments were made. The total amount paid for professional fees was over TWO HUNDRED THOUSAND DOLLARS (\$200,000.00).

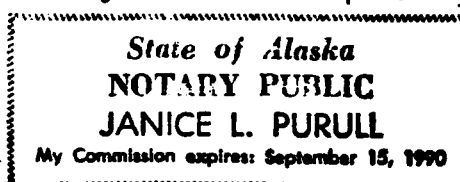
5. Exxon is continuing to process claims. However, some claims are premature for processing. For example, some fishing claims cannot be processed until a determination is made regarding whether or not the fishing season will be open or closed. Some other potential claimants cannot yet determine whether or not they have been or will be damaged by the oil spill. As more data becomes available, Exxon intends to continue processing claims.

6. Exxon anticipates that it will be able to make even greater progress in the claims settlement area after the 1989 fishing season and summer is ended. In the fall more records will be available and more fishermen and others should be available to present claims.

Richard T. Harvin  
RICHARD T. HARVIN

SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of August 1989.

Janice L. Purull  
Notary Public in and for the  
State of Alaska, residing at  
Anchorage, Alaska  
My Commission Expires: 9-15-90



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

Re: All Cases

AFFIDAVIT OF SERVICE

STATE OF ALASKA )  
: ss.  
THIRD JUDICIAL DISTRICT )

Joy C. Steveken, being duly sworn, upon oath, deposes and says: that she is employed as a legal secretary in the offices of Bogle & Gates, 1031 West 4th Street, Suite 600, Anchorage, Alaska 99501; that service of D-2's Suggestions for the August 24, 1989

AFFIDAVIT OF SERVICE

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Pretrial Conference, proposed Pretrial Order--Cooperation and Exchange of Information Among Counsel--and Pretrial Conference Memorandum of Exxon Corporation (D-1) and Exxon Pipeline Company (D-10) has been made upon all counsel of record based upon the Court's Master Service List of July 20, 1989 on 17th day of August, 1989 via U.S. Mail, postage prepaid.

  
Joy C. Steveken

SUBSCRIBED AND SWORN to  
before me this 17th day  
of August, 1989.

  
Notary Public for Alaska  
My Commission Expires: 1/12/1991

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AFFIDAVIT OF SERVICE

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