

FILED

AUG 29 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
the EXXON VALDEZ)
_____)

No. A89-095 Civil
(Consolidated)

ORDER NO. 12

(Document Retention)

On April 24, 1989, the court entered an unnumbered, interim order with respect to document retention. The order in substance required that defendants preserve all records or other bodies of information of any kind which in any fashion touched upon the grounding of the Exxon Valdez and related matters. Subsequent to the entry of this order, the parties carried on extensive negotiations leading to the court's entry of Pre-Trial Order No. 3 which addressed in detail the matter of document and physical evidence retention for purposes of all of these consoli-

1 dated cases. The latter order specifically excepted from reten-
2 tion requirements certain duplicate records. See Pre-Trial Order
3 No. 3 of June 23, 1989, page 5, paragraph 5.B.

4 In the period between the entry of these two orders,
5 certain back-up tapes, duplicating computer hard disk data, were
6 reused, thereby obliterating previously recorded information
7 which was the subject of the court's April 24, 1989, order.
8 There was technically a violation of the latter order.

9 Plaintiffs have moved to modify Pre-Trial Orders No. 1
10 and No. 3 regarding the stay of discovery and document retention
11 and have moved for sanctions against the Exxon defendants. The
12 motion is opposed.

13 The essence of plaintiffs' argument appears to be that
14 it is theoretically possible for an original record to have been
15 created by Exxon, copied on back-up tapes, erased from original
16 hard disks and then erased from back-up tapes during early June
17 of 1989. Plaintiffs have failed to demonstrate that what they
18 theorize could have happened has in fact happened, and the Exxon
19 defendants deny that any original records have been lost. It is
20 entirely clear to the court that the tapes which were obliterated
21 were bodies of information which Exxon was entitled to obliterate
22 after the entry of the stipulated document and physical evidence
23 retention order which the court entered on June 23, 1989. Accord-
24 ingly, the plaintiffs have no cause for complaint, even though it
25 appears that these records were prematurely obliterated as a con-
26 sequence of a misunderstanding of Exxon's own internal instruc-

1 tions for the retention of these records under the court's
2 April 24, 1989, order.

3 The court is unconvinced that any modification of
4 Pre-Trial Orders No. 1 or No. 3 regarding discovery or document
5 retention is in order at this time. Plaintiffs' motion in this
6 regard is denied, as is the motion for sanctions.

7 DATED at Anchorage, Alaska, this 29 day of August,
8 1989.

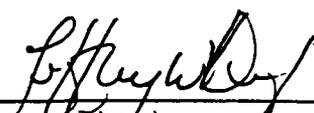
9 
10 United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

AFFIDAVIT OF SERVICE

On the 30th day of August, 1989, service of Order
No. 12 has been made upon all counsel of record based upon
the court's master service list of August 25th, 1989.



Deputy Clerk

FILED
AUG 29 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ALASKA
9

10 In re)
11 the EXXON VALDEZ) No. A89-095 Civil
12 _____) (Consolidated)

13
14
15 ORDER NO. 13

16 (P-65 - P-67 Motion for
17 Reconsideration of Order No. 8;
Case No. A89-145 Civil Remanded)

18 Plaintiffs Thorne, et al., P-65, P-66, and P-67, have
19 moved the court to reconsider its Order No. 8 wherein the court
20 declined to remand Case No. A89-145 to the Alaska Superior Court.
21 The motion for reconsideration is opposed. The court has con-
22 sidered the memoranda on this motion and is satisfied that recon-
23 sideration is in order.

24 Having considered the arguments and authorities of
25 plaintiffs and of defendant Exxon Shipping Company (D-2), the
26 court is satisfied that a remand is in order.

1 As noted in Order No. 8, plaintiffs had originally and
2 inadvertently included as a named defendant the Trans-Alaska
3 Pipeline Liability Fund (D-4). Plaintiffs' complaint contains no
4 claim against this defendant, and a dismissal as to the fund has
5 been entered. As plaintiffs point out on motion for reconsidera-
6 tion, their complaint is not founded upon any federal law, and
7 the strict liability urged by plaintiffs is not, in and of
8 itself, sufficient to support federal question jurisdiction in
9 this court. Again, on the authorities relied upon by plaintiffs,
10 the court has become satisfied that it lacks jurisdiction in this
11 case and that the case appeared subject to removal and was indeed
12 removed only because of the inadvertent inclusion of the fund as
13 a defendant.

14 Accordingly, the case should be remanded, and it is so
15 ordered.

16 DATED at Anchorage, Alaska, this 29 day of August,
17 1989.

18 
19 United States District Judge

20 cc: Clerk, Superior Court,
21 State of Alaska
22 David Oesting
A89-145-Civil

23 **PURSUANT TO THIS COURT'S PRETRIAL ORDER,**
24 D. OESTING **SHALL MAKE SERVICE OF THIS ORDER.**

FILED
AUG 29 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ALASKA
9

10 In re)
11 the EXXON VALDEZ) No. A89-095 Civil
12 _____) (Consolidated)

13
14 ORDER NO. 13

15 (P-65 - P-67 Motion for
16 Reconsideration of Order No. 8;
17 Case No. A89-145 Civil Remanded)

18 Plaintiffs Thorne, et al., P-65, P-66, and P-67, have
19 moved the court to reconsider its Order No. 8 wherein the court
20 declined to remand Case No. A89-145 to the Alaska Superior Court.
21 The motion for reconsideration is opposed. The court has con-
22 sidered the memoranda on this motion and is satisfied that recon-
23 sideration is in order.

24 Having considered the arguments and authorities of
25 plaintiffs and of defendant Exxon Shipping Company (D-2), the
26 court is satisfied that a remand is in order.

1 As noted in Order No. 8, plaintiffs had originally and
2 inadvertently included as a named defendant the Trans-Alaska
3 Pipeline Liability Fund (D-4). Plaintiffs' complaint contains no
4 claim against this defendant, and a dismissal as to the fund has
5 been entered. As plaintiffs point out on motion for reconsidera-
6 tion, their complaint is not founded upon any federal law, and
7 the strict liability urged by plaintiffs is not, in and of
8 itself, sufficient to support federal question jurisdiction in
9 this court. Again, on the authorities relied upon by plaintiffs,
10 the court has become satisfied that it lacks jurisdiction in this
11 case and that the case appeared subject to removal and was indeed
12 removed only because of the inadvertent inclusion of the fund as
13 a defendant.

14 Accordingly, the case should be remanded, and it is so
15 ordered.

16 DATED at Anchorage, Alaska, this 29 day of August,
17 1989.

18 
19 United States District Judge

20 cc: Clerk, Superior Court,
21 State of Alaska
22 David Oesting
23 A89-145-Civil

24 **PURSUANT TO THIS COURT'S PRETRIAL ORDER,**
25 **D. OESTING SHALL MAKE SERVICE OF THIS ORDER.**

Lodged

AUG 16 1989

CHARLES P. FLYNN
BURR, PEASE & KURTZ
810 N Street
Anchorage, Alaska 99501
(907) 276-6100

ROBERT S. WARREN
GIBSON, DUNN & CRUTCHER
601 West Fifth Street
Anchorage, Alaska 99501
(907) 274-2234

FILED
SEP 11 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re)
THE EXXON VALDEZ)

No. A89-095 Civil
(Consolidated)
ORDER NO. 14

This Document Relates to)
Action Nos.:)

~~PROPOSED~~ ORDER DISMISSING
PLAINTIFFS' CLAIMS OF FRAUD
AND MISREPRESENTATION

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

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

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

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

This matter, having come before the undersigned judge and
the Court having reviewed the records and files herein, it is
hereby ordered that defendants ALYESKA PIPELINE SERVICE COMPANY,
GEORGE M. NELSON, AMERADA HESS PIPELINE CORPORATION, ARCO PIPE

BURR, PEASE
& KURTZ
P.C. CORPORATION
810 N. STREET
ANCHORAGE, AK 99501
(907) 276-6100

527

LINE COMPANY, BP PIPELINES (ALASKA) INC., MOBIL ALASKA PIPELINE COMPANY, PHILLIPS ALASKA PIPELINE CORPORATION, and UNOCAL PIPELINE COMPANY (D-3, D-9, D-11, D-12, D-19, D-14, D-20, and D-21, respectively) motion to dismiss the below listed plaintiffs' claims of fraud and negligent misrepresentation are granted and such claims of fraud and misrepresentation are dismissed:

1. Action No. A89-117 (W.B.T.J. Sigler), Complaint, paragraphs 32(f) and 13(d);

2. Action No. A89-118 (W.B.T.J. Sigler), Complaint, paragraphs 34(f) and 16(d); and

3. Action No. A89-138 (Chugach), Amended Complaint, paragraphs 89 through 104, Ninth Claim for Relief and Tenth Claim for Relief;

4. Action No. A89-145 (Thorne), Complaint, paragraphs 54 through 61, Fifth Cause of Action.

Done in open court this 8 day of ~~August~~ ^{Sept}, 1989.


United States District Judge

0730A:8/15/89

D PURSUANT TO THIS COURT'S PRETRIAL ORDER,
C. FLYNN SHALL MAKE SERVICE OF THIS ORDER.
BURR, PEASE & KURTZ

BURR, PEASE
& KURTZ
CORPORATION
REET
AK 99501
276-6100

PROPOSED ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

AFFIDAVIT OF SERVICE

On the 15 day of September, 1989, service of Order
Dismissing Claims of Fraud and Misrepresentation, docket number
527, and retitled as Order No. 14, has been made upon all counsel
of record based upon the court's master service list of August
28th, 1989.



Deputy Clerk

FILED

SEP 11 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Robert L. Richmond
RICHMOND & QUINN
135 Christensen Drive
Anchorage, Alaska 99501
(907) 276-5727

Attorneys for Defendant Gregory T. Cousins (D-8)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re	)	Case No. A89-095 CIV
	)	(Consolidated)
the EXXON VALDEZ,)	
	)	<u>D-8's ANSWER</u>
This Document Relates	)	<u>TO AMENDED COMPLAINT</u>
to Action No. A89-117.)	
)	

COMES NOW defendant Gregory T. Cousins, by and through his counsel, Richmond & Quinn, and for answer to plaintiffs' P68 through P72 complaint admits, denies and alleges as follows.

ANSWER REGARDING

NATURE OF CASE

1

With regard to Paragraph 1 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein, except admits that plaintiffs purport to bring an action as set forth therein.

LAW OFFICES
RICHMOND & QUINN
A PROFESSIONAL CORPORATION
135 CHRISTENSEN DRIVE
ANCHORAGE, AK 99501
(907) 276-5727

538

ANSWER REGARDING
JURISDICTION AND VENUE

2

With regard to Paragraph 2 of Plaintiffs' Complaint, answering defendant admits the allegations contained therein.

3

With regard to Paragraph 3 of Plaintiffs' Complaint, answering defendant responds that only legal conclusions are stated therein and therefore no answer need be given, however to the extent that allegations of culpable conduct are made therein against answering defendant they are denied.

4

With regard to Paragraph 4 of Plaintiffs' Complaint, answering defendant admits that the EXXON VALDEZ oil spill occurred in this district, and admits that this action may be brought in this district; however, answering defendant denies that he resides in and/or does business in this district, and alleges that he is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

ANSWER REGARDING

PARTIES

5 through 9

With regard to Paragraphs 5 through 9 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge

ANSWER
PAGE 2

and information sufficient to form a belief as to the truth of the allegations contained therein.

10

With regard to Paragraph 10 of Plaintiffs' Complaint, answering defendant admits the allegations contained therein.

11

With regard to Paragraph 11 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

ANSWER REGARDING

CLASS ALLEGATIONS

12 through 17

With regard to Paragraphs 12 through 17 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein, except to admit that plaintiffs purport to bring claims on their own behalf and as representatives of a class. Answering defendant specifically denies any allegations which may be construed as alleging culpable conduct on the part of answering defendant.

ANSWER REGARDING
FACTS COMMON TO ALL CLAIMS

18

With regard to Paragraph 18 of Plaintiffs' Complaint, answering defendant admits the allegations contained therein.

19

With regard to Paragraph 19 of Plaintiffs' Complaint, answering defendant admits that the EXXON VALDEZ departed the Port of Valdez, and passed through the Valdez narrows; however, answering defendant denies all other allegations contained therein.

20

With regard to Paragraph 20 of Plaintiffs' Complaint, answering defendant admits that the EXXON VALDEZ struck Bligh Reef on March 24, 1989, and admits that Bligh Reef is depicted on nautical charts; however, answering defendant denies all other allegations contained therein.

21 and 22

With regard to Paragraphs 21 and 22 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

23

With regard to Paragraph 23 of Plaintiffs' Complaint, answering defendant admits that the hull of the EXXON VALDEZ was

ruptured when the vessel struck Bligh Reef, and admits that a quantity of crude oil was released from the vessel; however, answering defendant denies all other allegations contained therein.

24 through 28

With regard to Paragraphs 24 through 28 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

ANSWER REGARDING

DAMAGES

29 and 30

With regard to Paragraphs 29 and 30 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

31

With regard to Paragraph 31 of Plaintiffs' Complaint, answering defendant denies the allegations contained therein insofar as they allege culpable conduct on the part of answering defendant. Answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

ANSWER REGARDING
CAUSES OF ACTION

32

With regard to Paragraph 32 of Plaintiffs' Complaint, answering defendant denies the allegations contained therein insofar as they allege culpable conduct on the part of answering defendant. Answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

GENERAL DENIAL

33

Answering defendant denies each and every allegation of plaintiffs' complaint not specifically admitted herein, and specifically denies any culpable conduct which would result in plaintiffs' recovery of money damages from answering defendant.

AFFIRMATIVE AND ADDITIONAL DEFENSES

By way of further answer and by way of:

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Plaintiffs lack standing to claim or recover damages based on the allegations of the complaint.

THIRD AFFIRMATIVE DEFENSE

Upon information and belief, some or all of the plaintiffs herein have received payments for economic losses allegedly caused by the oil spill. Answering defendant is entitled to a set off in the full amount of all such payments should plaintiffs be awarded damages.

FOURTH AFFIRMATIVE DEFENSE

Upon information and belief, claims by some persons or entities that may be within the purported classes herein have been settled and released or in the alternative, payments received by such persons or entities operate as an accord and satisfaction of claims against answering defendant.

FIFTH AFFIRMATIVE DEFENSE

Some persons or entities that may be within the purported classes herein have been engaged or employed in connection with activities related to containment and cleanup of the oil released from the EXXON VALDEZ and were thereby able to avoid or mitigate damages from the interruption of fishery and other activities. Answering defendant is entitled to a set off in the amount of any such payments against losses, if any, resulting from the interruption of fishery and other activities.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages.

SEVENTH AFFIRMATIVE DEFENSE

To the extent plaintiffs have asserted claims for punitive damages against answering defendant, those claims are unconstitutional under the United States Constitution, including, without limitation, Article I, 8; Amendment V; and Amendment XIV; and the Alaska Constitution, including, without limitation, Article I, 7; and Article I, 12.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' damages were caused in part by the negligence or culpable conduct of other parties not joined as defendants herein.

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

Numerous persons and entities, some of whom purport to represent or may be among the plaintiffs in this action, have filed lawsuits against answering defendant relating to the oil spill. In the event of any judgment or judgments in such other lawsuits against answering defendant and in favor of persons whose claims are encompassed in these actions, such judgment or judgments will be res judicata as to the claims of such persons herein.

ANSWER
PAGE 8

Additionally, to the extent there is a recovery in such other lawsuits encompassing claims made by plaintiffs herein, recovery on the claims herein is barred to the extent that it would represent a multiple recovery for the same injury.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for damages may be barred or reduced by the doctrine of comparative negligence.

TWELFTH AFFIRMATIVE DEFENSE

The nature and amount of liability, if any, for the acts alleged is controlled by statute, including, without limitation, 43 U.S.C. 1653(c) and AS 09.17.010, .060, and .080(d). Plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive scheme of Federal statutes and regulations, including its system of criminal and civil penalties, sanctions and remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent plaintiffs assert claims for punitive damages against answering defendant, such claims are precluded by the Alaska statutory scheme for civil and criminal penalties.

FOURTEENTH AFFIRMATIVE DEFENSE

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

ANSWER
PAGE 9

FIFTEENTH AFFIRMATIVE DEFENSE

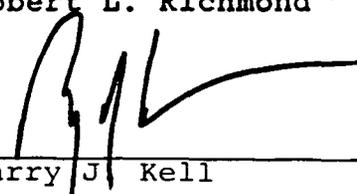
This action should abate because plaintiffs have filed and are currently maintaining a parallel, duplicative action against answering defendant in this Court that is based on the same facts alleged in the complaint herein.

WHEREFORE, having answered plaintiffs' complaint, answering defendant prays that the same be dismissed with prejudice; that he be awarded his costs and attorney's fees incurred in defending this action; and for such other and further relief as the court deems just and equitable.

DATED this 11th day of September, 1989, at Anchorage, Alaska.

RICHMOND & QUINN
Attorneys for Gregory T. Cousins (D-8)

By: 
Robert L. Richmond

By: 
Barry J. Kell

SEP 11 1980

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Robert L. Richmond
RICHMOND & QUINN
135 Christensen Drive
Anchorage, Alaska 99501
(907) 276-5727

Attorneys for Defendant Gregory T. Cousins (D-8)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re	)	Case No. A89-095 CIV
	)	(Consolidated)
the EXXON VALDEZ,)	
	)	<u>D-8's ANSWER</u>
This Document Relates	)	<u>TO AMENDED COMPLAINT</u>
to Action No. A89-118.)	
<hr/>		

COMES NOW defendant Gregory T. Cousins, by and through his counsel, Richmond & Quinn, and for answer to plaintiffs' P68 through P70 complaint admits, denies and alleges as follows.

ANSWER REGARDING

NATURE OF CASE

1

With regard to Paragraph 1 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein, except admits that plaintiffs purport to bring an action as set forth therein.

LAW OFFICES
RICHMOND & QUINN
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135 CHRISTENSEN DRIVE
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(907) 276-5727

ANSWER REGARDING
JURISDICTION AND VENUE

2

With regard to Paragraph 2 of Plaintiffs' Complaint, answering defendant admits the allegations contained therein.

3

With regard to Paragraph 3 of Plaintiffs' Complaint, answering defendant responds that only legal conclusions are stated therein and therefore no answer need be given, however to the extent that allegations of culpable conduct are made therein against answering defendant they are denied.

4

With regard to Paragraph 4 of Plaintiffs' Complaint, answering defendant admits that the EXXON VALDEZ oil spill occurred in this district, and admits that this action may be brought in this district; however, answering defendant denies that he resides in and/or does business in this district, and alleges that he is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

ANSWER REGARDING

PARTIES

5 through 11

With regard to Paragraphs 5 through 11 of Plaintiffs' Complaint, answering defendant alleges he is without knowledge and

ANSWER
PAGE 2

information sufficient to form a belief as to the truth of the allegations contained therein.

12

With regard to Paragraph 12 of Plaintiffs' Complaint, answering defendant admits the allegations contained therein.

13

With regard to Paragraph 13 of Plaintiffs' Complaint, answering defendant alleges he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

ANSWER REGARDING
CLASS ALLEGATIONS

14 through 19

With regard to Paragraphs 14 through 19 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein, except to admit that plaintiffs purport to bring claims on their own behalf and as representatives of a class. Answering defendant specifically denies any allegations which may be construed as alleging culpable conduct on the part of answering defendant.

ANSWER
PAGE 3

ANSWER REGARDING
FACTS COMMON TO ALL CLAIMS

20

With regard to Paragraph 20 of Plaintiffs' Complaint, answering defendant admits the allegations contained therein.

21

With regard to Paragraph 21 of Plaintiffs' Complaint, answering defendant admits that the EXXON VALDEZ departed the Port of Valdez, and passed through the Valdez narrows; however, answering defendant denies all other allegations contained therein.

22

With regard to Paragraph 22 of Plaintiffs' Complaint, answering defendant admits that the EXXON VALDEZ struck Bligh Reef on March 24, 1989, and admits that Bligh Reef is depicted on nautical charts; however, answering defendant denies all other allegations contained therein.

23 and 24

With regard to Paragraphs 23 and 24 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

25

With regard to Paragraph 25 of Plaintiffs' Complaint, answering defendant admits that the hull of the EXXON VALDEZ was

ANSWER
PAGE 4

ruptured when the vessel struck Bligh Reef, and admits that a quantity of crude oil was released from the vessel; however, answering defendant denies all other allegations contained therein.

26 through 30

With regard to Paragraphs 26 through 30 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

ANSWER REGARDING

DAMAGES

31 and 32

With regard to Paragraphs 31 and 32 of Plaintiffs' Complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

33

With regard to Paragraph 33 of Plaintiffs' Complaint, answering defendant denies the allegations contained therein insofar as they allege culpable conduct on the part of answering defendant. Answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

LAW OFFICES
RICHMOND & QUINN
A PROFESSIONAL CORPORATION
135 CHRISTENSEN DRIVE
ANCHORAGE, AK 99501
(907) 276-5727

ANSWER
PAGE 5

ANSWER REGARDING
CAUSES OF ACTION

34

With regard to Paragraph 34 of Plaintiffs' Complaint, answering defendant denies the allegations contained therein insofar as they allege culpable conduct on the part of answering defendant. Answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

GENERAL DENIAL

35

Answering defendant denies each and every allegation of plaintiffs' complaint not specifically admitted herein, and specifically denies any culpable conduct which would result in plaintiffs' recovery of money damages from answering defendant.

AFFIRMATIVE AND ADDITIONAL DEFENSES

By way of further answer and by way of:

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Plaintiffs lack standing to claim or recover damages based on the allegations of the complaint.

THIRD AFFIRMATIVE DEFENSE

Upon information and belief, some or all of the plaintiffs herein have received payments for economic losses allegedly caused by the oil spill. Answering defendant is entitled to a set off in the full amount of all such payments should plaintiffs be awarded damages.

FOURTH AFFIRMATIVE DEFENSE

Upon information and belief, claims by some persons or entities that may be within the purported classes herein have been settled and released or in the alternative, payments received by such persons or entities operate as an accord and satisfaction of claims against answering defendant.

FIFTH AFFIRMATIVE DEFENSE

Some persons or entities that may be within the purported classes herein have been engaged or employed in connection with activities related to containment and cleanup of the oil released from the EXXON VALDEZ and were thereby able to avoid or mitigate damages from the interruption of fishery and other activities. Answering defendant is entitled to a set off in the amount of any such payments against losses, if any, resulting from the interruption of fishery and other activities.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages.

SEVENTH AFFIRMATIVE DEFENSE

To the extent plaintiffs have asserted claims for punitive damages against answering defendant, those claims are unconstitutional under the United States Constitution, including, without limitation, Article I, § 8; Amendment V; and Amendment XIV; and the Alaska Constitution, including, without limitation, Article I, § 7; and Article I, § 12.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' damages were caused in part by the negligence or culpable conduct of other parties not joined as defendants herein.

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

Numerous persons and entities, some of whom purport to represent or may be among the plaintiffs in this action, have filed lawsuits against answering defendant relating to the oil spill. In the event of any judgment or judgments in such other lawsuits against answering defendant and in favor of persons whose claims are encompassed in these actions, such judgment or judgments will be res judicata as to the claims of such persons herein.

ANSWER
PAGE 8

Additionally, to the extent there is a recovery in such other lawsuits encompassing claims made by plaintiffs herein, recovery on the claims herein is barred to the extent that it would represent a multiple recovery for the same injury.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for damages may be barred or reduced by the doctrine of comparative negligence.

TWELFTH AFFIRMATIVE DEFENSE

The nature and amount of liability, if any, for the acts alleged is controlled by statute, including, without limitation, 43 U.S.C. § 1653(c) and AS 09.17.010, .060, and .080(d). Plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive scheme of Federal statutes and regulations, including its system of criminal and civil penalties, sanctions and remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent plaintiffs assert claims for punitive damages against answering defendant, such claims are precluded by the Alaska statutory scheme for civil and criminal penalties.

FOURTEENTH AFFIRMATIVE DEFENSE

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

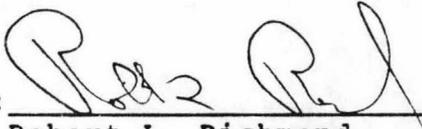
FIFTEENTH AFFIRMATIVE DEFENSE

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

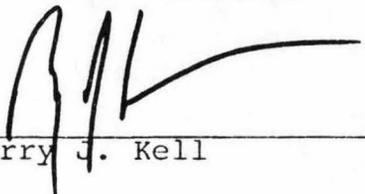
WHEREFORE, having answered plaintiffs' complaint, answering defendant prays that the same be dismissed with prejudice; that he be awarded his costs and attorney's fees incurred in defending this action; and for such other and further relief as the court deems just and equitable.

DATED this 11th day of September, 1989, at Anchorage, Alaska.

RICHMOND & QUINN
Attorneys for Gregory T. Cousins (D-8)

By: 

Robert L. Richmond

By: 

Barry J. Kell

ANSWER
PAGE 10

FILED

SEP 11 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Clerk

Robert L. Richmond
RICHMOND & QUINN
135 Christensen Drive
Anchorage, Alaska 99501
(907) 276-5727

Attorneys for Defendant Gregory T. Cousins (D-8)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re	)	Case No. A89-095 CIV
	)	(Consolidated)
the EXXON VALDEZ,)	
	)	<u>D-8's ANSWER</u>
This Document Relates	)	<u>TO AMENDED COMPLAINT</u>
to Action No. A89-145.)	
_____)	

COMES NOW defendant Gregory T. Cousins, by and through his counsel, Richmond & Quinn, and for answer to plaintiffs' P65 through P67 complaint admits, denies and alleges as follows.

ANSWER REGARDING
NATURE OF CASE

1

With regard to Paragraph 1 of Plaintiffs' Complaint, answering defendant admits that this action purports to be a class action arising out of an oil spill in Prince William Sound, Alaska, on March 24, 1989; however, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

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ANSWER REGARDING
JURISDICTION AND VENUE

2

With regard to Paragraph 2 of Plaintiffs' Complaint, answering defendant admits that this Court has subject matter jurisdiction over this action; however, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

3

With regard to Paragraph 3 of Plaintiffs' Complaint, answering defendant alleges he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

4

With regard to Paragraph 4 of Plaintiffs' Complaint, answering defendant admits that this action may be brought in this district; however, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

ANSWER REGARDING

PARTIES

5 through 9

With regard to Paragraphs 5 through 9 of Plaintiffs' Complaint, answering defendant alleges he is without knowledge and

ANSWER
PAGE 2

information sufficient to form a belief as to the truth of the allegations contained therein.

10

With regard to Paragraph 10 of Plaintiffs' Complaint, answering defendant admits that he is an employee of Exxon Shipping and admits that he was third mate of the EXXON VALDEZ at the time it struck Bligh Reef; however, answering defendant denies the remaining allegations contained therein.

11 through 12

With regard to Paragraphs 11 through 12 of Plaintiffs' Complaint, answering defendant alleges he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

ANSWER REGARDING
CLASS ALLEGATIONS

13 through 19

With regard to Paragraphs 13 through 19 of Plaintiffs' Complaint, answering defendant alleges he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein, except to admit the plaintiffs purport to bring claims on their own half and as representatives of a class. Answering defendant specifically denies any allegations which may be construed as alleging culpable conduct on the part of answering defendant.

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ANSWER
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ANSWER REGARDING
FACTS COMMON TO ALL CLAIMS

20

With regard to Paragraph 20 of Plaintiffs' Complaint, answering defendant admits that a quantity of crude oil that had been transported through the Trans-Alaska Pipeline was loaded onto the EXXON VALDEZ at the Valdez terminal on March 23, 1989, and admits that the EXXON VALDEZ is a single hull tank vessel approximately 987 feet long; however, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

21

With regard to Paragraph 21 of Plaintiffs' Complaint, answering defendant admits that the EXXON VALDEZ departed the Port of Valdez at approximately 9:15 p.m. on March 23, 1989 carrying a quantity of crude oil, admits that the vessel passed through the Valdez Narrows, and admits that Hazelwood ultimately went below deck while Cousins remained on the bridge; however, answering defendant denies the remaining allegations contained therein.

22

With regard to Paragraph 22 of Plaintiffs' Complaint, answering defendant admits that the EXXON VALDEZ struck Bligh Reef on March 24, 1989, admits that Bligh Reef is charted and buoyed, admits that the vessel had obtained Coast Guard permission to leave

ANSWER
PAGE 4

the designated shipping lanes, admits that Hazelwood was not on the bridge at the time the vessel struck Bligh Reef, and admits that Cousins was on the bridge at the time the vessel struck Bligh Reef; however, answering defendant denies the remaining allegations contained therein.

23 through 25

With regard to Paragraphs 23 through 25 of Plaintiffs' Complaint, answering defendant alleges he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

26

With regard to Paragraph 26 of Plaintiffs' Complaint, answering defendant admits that the accident ruptured the hull of the vessel and admits that a quantity of crude oil was discharged into the waters of Prince William Sound; however, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

27 through 32

With regard to Paragraphs 27 through 32 of Plaintiffs' Complaint, answering defendant alleges he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

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ANSWER
PAGE 5

ANSWER REGARDING

DAMAGES TO PLAINTIFFS

33 through 36

With regard to Paragraphs 33 through 36 of Plaintiffs' Complaint, answering defendant alleges he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

37

With regard to Paragraph 37 of Plaintiffs' Complaint, answering defendant denies the allegations contained therein to the extent they allege culpable conduct on the part of answering defendant, and alleges that he is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

ANSWER REGARDING

PUNITIVE AND/OR EXEMPLARY DAMAGES

38

With regard to Paragraph 38 of Plaintiffs' Complaint, answering defendant denies the allegations contained therein to the extent they allege culpable conduct on the part of answering defendant, and alleges that he is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained therein.

ANSWER REGARDING
FIRST CAUSE OF ACTION

39

With regard to Paragraph 39 of Plaintiffs' First Cause of Action, answering defendant realleges and incorporates herein by reference his answers to Paragraphs 1 through 38 of Plaintiffs' Complaint.

40

With regard to Paragraph 40 of Plaintiffs' First Cause of Action, answering defendant denies the allegations contained therein insofar as they allege culpable conduct on the part of answering defendant, and declines to answer the remaining allegations contained therein in that they are directed to others.

ANSWER REGARDING
SECOND CAUSE OF ACTION

41

With regard to Paragraph 41 of Plaintiffs' Second Cause of Action, answering defendant realleges and incorporates herein by reference his answers to Paragraphs 1 through 40 of Plaintiffs' Complaint.

42 and 43

With regard to Paragraphs 42 and 43 of Plaintiffs' Second Cause of Action, answering defendant denies the allegations contained therein insofar as they allege culpable conduct on the

part of answering defendant, and declines to answer the remaining allegations contained therein in that they are directed to others.

ANSWER REGARDING

THIRD CAUSE OF ACTION

44

With regard to Paragraph 44 of Plaintiffs' Third Cause of Action, answering defendant realleges and incorporates herein by reference his answers to Paragraphs 1 through 38 of Plaintiffs' Complaint.

45 through 49

With regard to Paragraphs 45 through 49 of Plaintiffs' Third Cause of Action, answering defendant denies the allegations contained therein insofar as they allege culpable conduct on the part of answering defendant, and declines to answer the remaining allegations contained therein in that they are directed to others.

ANSWER REGARDING

FOURTH CAUSE OF ACTION

50

With regard to Paragraph 50 of Plaintiffs' Fourth Cause of Action, answering defendant realleges and incorporates herein by reference his answers to Paragraphs 1 through 38 of Plaintiffs' Complaint.

51 through 53

With regard to Paragraphs 51 through 53 of Plaintiffs'

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PAGE 8

Fourth Cause of Action, answering defendant denies the allegations contained therein insofar as they allege culpable conduct on the part of answering defendant, and declines to answer the remaining allegations contained therein in that they are directed to others.

ANSWER REGARDING

FIFTH CAUSE OF ACTION

54

With regard to Paragraph 54 of Plaintiffs' Fifth Cause of Action, answering defendant realleges and incorporates herein by reference his answers to Paragraphs 1 through 38 of Plaintiffs' Complaint.

55 through 61

With regard to Paragraphs 55 through 61 of Plaintiffs' Fifth Cause of Action, answering defendant denies the allegations contained therein insofar as they allege culpable conduct on the part of answering defendant, and declines to answer the remaining allegations contained therein in that they are directed to others.

GENERAL DENIAL

62

Answering defendant denies each and every allegation of plaintiffs' complaint not specifically admitted herein, and specifically denies any culpable conduct which would result in plaintiffs' recovery of money damages from answering defendant.

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ANSWER
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AFFIRMATIVE AND ADDITIONAL DEFENSES

By way of further answer and by way of:

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Plaintiffs lack standing to claim or recover damages based on the allegations of the complaint.

THIRD AFFIRMATIVE DEFENSE

Upon information and belief, some or all of the plaintiffs herein have received payments for economic losses allegedly caused by the oil spill. Answering defendant is entitled to a set off in the full amount of all such payments should plaintiffs be awarded damages.

FOURTH AFFIRMATIVE DEFENSE

Upon information and belief, claims by some persons or entities that may be within the purported classes herein have been settled and released or in the alternative, payments received by such persons or entities operate as an accord and satisfaction of claims against answering defendant.

FIFTH AFFIRMATIVE DEFENSE

Some persons or entities that may be within the purported classes herein have been engaged or employed in connection with activities related to containment and cleanup of the oil released

from the EXXON VALDEZ and were thereby able to avoid or mitigate damages from the interruption of fishery and other activities. Answering defendant is entitled to a set off in the amount of any such payments against losses, if any, resulting from the interruption of fishery and other activities.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages.

SEVENTH AFFIRMATIVE DEFENSE

To the extent plaintiffs have asserted claims for punitive damages against answering defendant, those claims are unconstitutional under the United States Constitution, including, without limitation, Article I, § 8; Amendment V; and Amendment XIV; and the Alaska Constitution, including, without limitation, Article I, § 7; and Article I, § 12.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' damages were caused in part by the negligence or culpable conduct of other parties not joined as defendants herein.

NINTH AFFIRMATIVE DEFENSE

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

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PAGE 11

TENTH AFFIRMATIVE DEFENSE

Numerous persons and entities, some of whom purport to represent or may be among the plaintiffs in this action, have filed lawsuits against answering defendant relating to the oil spill. In the event of any judgment or judgments in such other lawsuits against answering defendant and in favor of persons whose claims are encompassed in these actions, such judgment or judgments will be res judicata as to the claims of such persons herein. Additionally, to the extent there is a recovery in such other lawsuits encompassing claims made by plaintiffs herein, recovery on the claims herein is barred to the extent that it would represent a multiple recovery for the same injury.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for damages may be barred or reduced by the doctrine of comparative negligence.

TWELFTH AFFIRMATIVE DEFENSE

The nature and amount of liability, if any, for the acts alleged is controlled by statute, including, without limitation, 43 U.S.C. § 1653(c) and AS 09.17.010, .060, and .080(d). Plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive scheme of Federal statutes and regulations, including its system of criminal and civil penalties, sanctions and remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent plaintiffs assert claims for punitive damages against answering defendant, such claims are precluded by the Alaska statutory scheme for civil and criminal penalties.

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

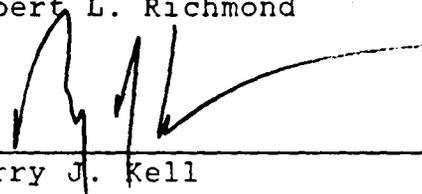
This action should abate because plaintiffs have filed and are currently maintaining a parallel, duplicative action against answering defendant in this Court that is based on the same facts alleged in the complaint herein.

WHEREFORE, having answered plaintiffs' complaint, answering defendant prays that the same be dismissed with prejudice; that he be awarded his costs and attorney's fees incurred in defending this action; and for such other and further relief as the court deems just and equitable.

DATED this 11th day of September, 1989, at Anchorage,
Alaska.

RICHMOND & QUINN
Attorneys for Gregory T. Cousins (D-8)

By: 
Robert L. Richmond

By: 
Barry J. Kell

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ANSWER
PAGE 14

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
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Attorneys for Defendant Gregory T. Cousins (D-8)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re	)	Case No. A89-095 CIV
	)	(Consolidated)
the EXXON VALDEZ,)	
	)	<u>D-8's ANSWER</u>
This Document Relates	)	<u>TO AMENDED COMPLAINT</u>
to Action No. A89-138.)	
)	

COMES NOW defendant Gregory T. Cousins, by and through his counsel, Richmond & Quinn, and for answer of plaintiffs' P81 through P94 amended complaint admits, denies and alleges as follows.

ANSWER REGARDING
JURISDICTION AND VENUE

1

With regard to Paragraph 1 of plaintiffs' complaint, answering defendant admits that the complaint purports to be an action for monetary damages and other relief arising out of a discharge of oil from the M/V EXXON VALDEZ in March, 1989; answering defendant is without knowledge and information sufficient

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to form a belief as to the truth of the remaining allegations contained therein.

2

With regard to Paragraph 2 of plaintiffs' complaint, answering defendant responds that only legal conclusions are stated therein and therefore no answer need be given, however to the extent that allegations of culpable conduct are made therein against answering defendant they are denied.

3

With regard to Paragraph 3 of plaintiffs' complaint, answering defendant responds that only legal conclusions are stated therein and therefore no answer need be given, however to the extent that allegations of culpable conduct are made therein against answering defendant they are denied.

ANSWER REGARDING

PARTIES

4 through 36

With regard to Paragraphs 4 through 46 of plaintiffs' complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

37

With regard to Paragraph 37 of plaintiffs' complaint, answering defendant admits the allegations contained therein.

ANSWER
PAGE 2

38

With regard to Paragraph 38 of plaintiffs' complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

ANSWER REGARDING

COMMON FACTUAL ALLEGATIONS

39

With regard to paragraph 39 of plaintiffs' complaint, answering defendant admits the allegations contained in therein, except denies that the EXXON VALDEZ carried approximately 62 million gallons of crude oil.

40

With regard to paragraph 40 of plaintiffs' complaint, answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

41

With regard to paragraph 41 of plaintiffs' complaint, answering defendant admits the allegations contained therein, except denies that the EXXON VALDEZ was fully laden.

42

With regard to paragraph 42 of plaintiffs' complaint,

ANSWER
PAGE 3

answering defendant admits the allegations contained therein.

43

With regard to paragraph 43 of plaintiffs' complaint, answering defendant admits that Hazelwood departed the bridge after the vessel left the outbound lane, but denies all other allegations contained therein.

44

With regard to paragraph 44 of plaintiffs' complaint, answering defendant admits that at the time the vessel ran aground, defendant Hazelwood was not on the bridge, admits that the vessel ran aground on Bligh Reef, admits that Bligh Reef is charted and buoyed, admits the vessel ran aground on March 24, 1989, admits the vessel ran aground after having left the designated shipping lanes, but denies all other allegations contained therein.

45

With regard to paragraph 45 of plaintiffs' complaint, answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

46

With regard to paragraph 46 of plaintiffs' complaint, answering defendant admits the single hull of the EXXON VALDEZ was breached in several places and that quantities of crude oil were

ANSWER
PAGE 4

discharged into the waters of Prince William Sound thereby polluting the same, but denies all other allegations contained therein.

47

With regard to paragraph 47 of plaintiffs' complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein, except admits that oil spread to the areas identified therein.

48 through 55

With regard to paragraphs 48 through 55 of plaintiffs' complaint, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

ANSWER REGARDING

PUNITIVE AND/OR EXEMPLARY DAMAGES

56

With regard to paragraph 56 of plaintiffs' complaint, answering defendant denies the allegations contained therein insofar as they are directed toward answering defendant.

ANSWER TO

FIRST CLAIM FOR RELIEF

57

With regard to paragraph 57 of plaintiffs' first claim

ANSWER
PAGE 5

for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 46.

58 and 59

With regard to paragraphs 58 and 59 of plaintiffs' first claim for relief, answering defendant denies the allegations contained therein insofar as they are directed toward answering defendant.

ANSWER TO

SECOND CLAIM FOR RELIEF

60

With regard to paragraph 60 of plaintiffs' second claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 49.

61 through 63

With regard to paragraphs 61 through 63 of plaintiffs' second claim for relief, answering defendant declines to answer the allegations contained therein in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

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ANSWER
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ANSWER TO
THIRD CLAIM FOR RELIEF

64

With regard to paragraph 64 of plaintiffs' third claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 53.

65 through 66

With regard to paragraphs 65 through 66 of plaintiffs' third claim for relief, answering defendant denies the allegations contained therein.

ANSWER TO
FOURTH CLAIM FOR RELIEF

67

With regard to paragraph 67 of plaintiffs' fourth claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 56.

68 and 69

With regard to paragraphs 68 and 69 of plaintiffs' fourth claim for relief, answering defendant denies the allegations contained therein.

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ANSWER
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ANSWER TO
FIFTH CLAIM FOR RELIEF

70

With regard to paragraph 70 of plaintiffs' fifth claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 59.

71 through 76

With regard to paragraphs 71 through 76 of plaintiffs' fifth claim for relief, answering defendant declines to answer the allegations contained therein in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

77

With regard to paragraph 77 of plaintiffs' fifth claim for relief, answering defendant denies the allegations contained therein.

78

With regard to paragraph 78 of plaintiffs' fifth claim for relief, answering defendant denies the allegations contained therein.

79 and 80

With regard to paragraphs 79 and 80 of plaintiffs' fifth

ANSWER
PAGE 8

claim for relief, answering defendant declines to answer the allegations contained therein in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

ANSWER TO
SIXTH CLAIM FOR RELIEF

81

With regard to paragraph 81 of plaintiffs' sixth claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 70.

82A

With regard to paragraph 82A of plaintiffs' sixth claim for relief, answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

82B

With regard to paragraph 82B of plaintiffs' sixth claim for relief, answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege

ANSWER
PAGE 9

culpable conduct on the part of answering defendant they are denied.

82C

With regard to paragraph 82C of plaintiffs' sixth claim for relief, answering defendant denies the allegations contained therein, except admits that there was one officer on the deck at the times alleged therein which was in violation of vessel watch procedures.

82D

With regard to paragraph 82D of plaintiffs' sixth claim for relief, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

82E

With regard to paragraph 82E of plaintiffs' sixth claim for relief, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

With regard to whether the matters set forth in paragraphs 82 A through E were within the privity or knowledge of the Exxon defendants, answering defendant declines to answer in that those allegations are directed to others. However, to the extent that those allegations allege culpable conduct on the part of answering defendant they are denied. With regard to whether

ANSWER
PAGE 10

the matters set forth in paragraphs 82 A through E were direct and proximate and/or contributing causes to the alleged casualty and alleged damages to plaintiffs and the classes, answering defendant denies those allegations insofar as they allege culpable conduct on the part of answering defendants.

ANSWER TO

SEVENTH CLAIM FOR RELIEF

83

With regard to paragraph 83 of plaintiffs' seventh claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 70.

84 through 86

With regard to paragraphs 84 through 86 of plaintiffs' seventh claim for relief, answering defendant declines to answer the allegations contained therein in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

ANSWER TO

EIGHTH CLAIM FOR RELIEF

87

With regard to paragraph 87 of plaintiffs' eighth claim for relief, answering defendant realleges and incorporates herein

ANSWER
PAGE 11

by reference his answers to the allegations contained in paragraphs 1 through 74.

88

With regard to paragraph 88 of plaintiffs' eighth claim for relief, answering defendant denies the allegations contained therein insofar as they allege culpable conduct on the part of answering defendant.

ANSWER TO
NINTH CLAIM FOR RELIEF

89

With regard to paragraph 89 of plaintiffs' ninth claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 76.

90 through 96

With regard to paragraphs 90 through 96 of plaintiffs' ninth claim for relief, answering defendant declines to answer the allegations contained therein in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

ANSWER TO
TENTH CLAIM FOR RELIEF

97

With regard to paragraph 97 of plaintiffs' tenth claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 84.

98 through 104

With regard to paragraphs 98 through 104 of plaintiffs' tenth claim for relief, answering defendant declines to answer the allegations contained therein in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

ANSWER TO
ELEVENTH CLAIM FOR RELIEF

105

With regard to paragraph 105 of plaintiffs' eleventh claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 92.

106

With regard to paragraph 106 of plaintiffs' eleventh claim for relief, answering defendant responds that only legal

ANSWER
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conclusions are stated therein and therefore no answer need be given, however to the extent that allegations of culpable conduct are made therein against answering defendant they are denied.

ANSWER TO

TWELFTH CLAIM FOR RELIEF

107

With regard to paragraph 107 of plaintiffs' twelfth claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 26.

108 through 119

With regard to paragraphs 108 through 119 of plaintiffs' twelfth claim for relief, answering defendant declines to answer the allegations contained therein in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

GENERAL DENIAL

120

Answering defendant denies each and every allegation of plaintiffs' complaint not specifically admitted herein, and specifically denies any culpable conduct which would result in plaintiffs' recovery of money damages from answering defendant.

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ANSWER
PAGE 14

AFFIRMATIVE AND ADDITIONAL DEFENSES

By way of further answer and by way of:

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Plaintiffs lack standing to claim or recover damages based on the allegations of the complaint.

THIRD AFFIRMATIVE DEFENSE

Upon information and belief, some or all of the plaintiffs herein have received payments for economic losses allegedly caused by the oil spill. Answering defendant is entitled to a set off in the full amount of all such payments should plaintiffs be awarded damages.

FOURTH AFFIRMATIVE DEFENSE

Upon information and belief, claims by some persons or entities that may be within the purported classes herein have been settled and released or in the alternative, payments received by such persons or entities operate as an accord and satisfaction of claims against answering defendant.

FIFTH AFFIRMATIVE DEFENSE

Some persons or entities that may be within the purported classes herein have been engaged or employed in connection with activities related to containment and cleanup of the oil released

from the EXXON VALDEZ and were thereby able to avoid or mitigate damages from the interruption of fishery and other activities. Answering defendant is entitled to a set off in the amount of such payments against losses, if any, resulting from the interruption of fishery and other activities.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages.

SEVENTH AFFIRMATIVE DEFENSE

To the extent plaintiffs have asserted claims for punitive damages against answering defendant, those claims are unconstitutional under the United States Constitution, including without limitation, Article I, § 8; Amendment V; and Amendment XIV; and the Alaska Constitution, including, without limitation, Article I, § 7; and Article I, § 12.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' damages were caused in part by the negligence or culpable conduct of other parties not joined as defendants herein.

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

Numerous persons and entities, some of whom purport to represent or may be among the plaintiffs in this action, have filed lawsuits against answering defendant relating to the oil spill. In the event of any judgment or judgments in such other lawsuits against answering defendant and in favor of persons whose claims are encompassed in these actions, such judgment or judgments will be res judicata as to the claims of such persons herein. Additionally, to the extent there is a recovery in such other lawsuits encompassing claims made by plaintiffs herein, recovery on the claims herein is barred to the extent that it would represent a multiple recovery for the same injury.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for damages may be barred or reduced by the doctrine of comparative negligence.

TWELFTH AFFIRMATIVE DEFENSE

The nature and amount of liability, if any, for the acts alleged is controlled by statute, including, without limitation, 43 U.S.C. § 1653(c) and AS 09.17.010, .060, and .080(d). Plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive scheme of Federal statutes and regulations, including its system of criminal and civil penalties, sanctions and remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent plaintiffs assert claims for punitive damages against answering defendant, such claims are precluded by the Alaska statutory scheme for civil and criminal penalties.

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

WHEREFORE, having answered plaintiffs' complaint, answering defendant prays that the same be dismissed with prejudice; that he be awarded his costs and attorney's fees incurred in defending this action; and for such other and further

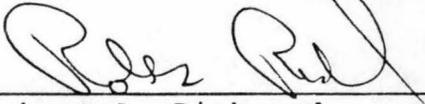
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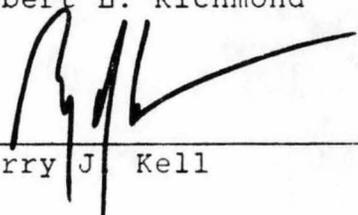
relief as the court deems just and equitable.

DATED this 11th day of September, 1989, at Anchorage,
Alaska.

RICHMOND & QUINN
Attorneys for Gregory T. Cousins (D-8)

By: 

Robert L. Richmond

By: 

Barry J. Kell

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SEP 11 1989

CLERK OF COURT

DISTRICT OF ALASKA

Attorneys for Defendant Gregory T. Cousins (D-8)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re	)	Case No. A89-095 CIV
	)	(Consolidated)
the EXXON VALDEZ,)	
	)	<u>D-8's ANSWER TO AMENDED</u>
This Document Relates	)	<u>AND CONSOLIDATED ACTION</u>
to Action Nos.	)	<u>COMPLAINT</u>
)	
A89-110, A89-099, A89-297,)	
A89-109, A89-166, A89-102,)	
A89-104, A89-265, A89-299,)	
A89-111, A89-126, A89-129,)	
A89-141, A89-096, A89-103,)	
A89-107, A89-125, A89-108,)	
A89-173, A89-095, A89-165.)	

COMES NOW defendant Gregory T. Cousins, by and through his counsel, Richmond & Quinn, and for answer of plaintiffs' complaint admits, denies and alleges as follows.

ANSWER REGARDING
JURISDICTION AND VENUE

1

With regard to paragraph 1 of plaintiffs' complaint, answering defendant admits the allegations contained therein.

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542

With regard to paragraph 2 of plaintiffs' complaint, answering defendant admits the allegations contained in that paragraph.

ANSWER REGARDING

PARTIES

3 through 82

With regard to paragraph 3 through 82 of plaintiffs' complaint, answering defendant admits that each of the individuals or entities named therein has filed a claim growing out of the oil spill from the EXXON VALDEZ, but answering defendant alleges that he is without knowledge and information sufficient to form a belief as of the truth of the other allegations contained in those paragraphs, except to admit specifically as to paragraph 81 that defendant Greg Cousins was the third mate on the EXXON VALDEZ, that he was on watch at the time the vessel ran aground, and that at all relevant times he was an employee and agent of the Exxon defendants and was acting within the scope of his authority. As to all other allegations of culpable conduct set forth in those paragraphs as against answering defendant, such allegations are denied.

ANSWER REGARDING

CLASS ACTION ALLEGATIONS

83 through 94

With regard to paragraphs 83 through 94 of plaintiffs'

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complaint, answering defendant alleges he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein, except to admit that plaintiffs purport to bring claims on their own behalf and as representatives of five classes. Answering defendant specifically denies any allegations which may be construed as alleging culpable conduct on the part of answering defendant.

ANSWER REGARDING

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

95 through 108

With regard to paragraphs 95 through 108 of plaintiffs' complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

109

With regard to paragraph 109 of plaintiffs' complaint, answering defendant admits the allegations contained therein, except denies that the EXXON VALDEZ was fully loaded and denies that it weighs 213,755 deadweight tons.

110

With regard to paragraph 110 of plaintiffs' complaint, answering defendant admits that the EXXON VALDEZ left the terminal at approximately 9:15 p.m. en route to Long Beach, California, but declines to answer the other allegations contained in that

ANSWER
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paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

111

With regard to paragraph 111 of plaintiffs' complaint, answering defendant admits the allegations contained in that paragraph, except to specifically allege that he is without knowledge and information sufficient to form a belief as to those allegations as to what, if anything, Murphy smelled on Hazelwood's breath.

112

With regard to paragraph 112 of plaintiffs' complaint, answering defendant admits the allegations contained therein.

113

With regard to paragraph 113 of plaintiffs' complaint, answering defendant denies the allegations contained therein.

114

With regard to paragraph 114 of plaintiffs' complaint, answering defendant denies the allegations contained therein, except admits that shortly after Murphy left the ship Hazelwood indicated he was going to his cabin.

115

With regard to paragraph 115 of plaintiffs' complaint, answering defendant denies the allegations contained therein,

except admits that Hazelwood charted a course which took the EXXON VALDEZ outside the VTS lane, and admits that Hazelwood ordered the vessel placed on autopilot.

116

With regard to paragraph 116 of plaintiffs' complaint, answering defendant denies the allegations contained therein, except admits that the vessel crossed out of the approved VTS lane, admits that it collided with Bligh Reef, admits that Bligh Reef is clearly identified on nautical charts aboard the vessel, admits that it is marked for nighttime identification by a floating buoy, and admits that it is equipped with a flashing red light and bell.

117

With regard to paragraph 117 of plaintiffs' complaint, answering defendant denies the allegations contained therein, except admits that the vessel struck Bligh Reef early on March 24, 1989 and that it was running at approximately 12 knots.

118

With regard to paragraph 118 of plaintiffs' complaint, answering defendant denies the allegations contained therein.

119

With regard to paragraph 119 of plaintiffs' complaint, answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege culpable

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conduct on the part of answering defendant they are denied.

120

With regard to paragraph 120 of plaintiffs' complaint answering defendant admits the allegations contained therein except to specifically deny that the incidents resulted from acts and omissions carried out with reckless indifference to the interests of plaintiffs and class members.

121

With regard to paragraph 121 of plaintiffs' complaint answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

122

With regard to paragraph 122 of plaintiffs' complaint, answering defendant denies the allegations contained therein, except admits that oil from the spill reached the areas identified therein.

123

With regard to paragraph 123 of plaintiffs' complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

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124

With regard to paragraph 124 of plaintiffs' complaint, answering defendant alleges that he is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

ANSWER TO

FIRST CLAIM FOR RELIEF

125

With regard to paragraph 125 of plaintiffs' first claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 124.

126 through 129

With regard to paragraphs 126 through 129 of plaintiffs' first claim for relief, answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

ANSWER TO

SECOND CLAIM FOR RELIEF

130

With regard to paragraph 130 of plaintiffs' second claim for relief, answering defendant realleges and incorporates herein

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by reference his answers to the allegations contained in paragraphs 1 through 129.

131 through 134

With regard to paragraphs 131 through 134 of plaintiffs' second claim for relief, answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

ANSWER TO
THIRD CLAIM FOR RELIEF

135

With regard to paragraph 135 of plaintiffs' third claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 134.

136 through 137

With regard to paragraphs 136 through 137 of plaintiffs' third claim for relief, answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

ANSWER TO
FOURTH CLAIM FOR RELIEF

138

With regard to paragraph 138 of plaintiffs' fourth claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 137.

139

With regard to paragraph 139 of plaintiffs' fourth claim for relief, answering defendant responds that legal conclusions are stated therein and to that extent no answer need be given. However, to the extent that allegations of culpable conduct are made against answering defendant, those allegations are denied.

140 through 144

With regard to paragraphs 140 through 144 of plaintiffs' fourth claim for relief, answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

145

With regard to paragraph 145 of plaintiffs' fourth claim for relief, answering defendant denies the allegations contained therein.

146

With regard to paragraph 146 of plaintiffs' fourth claim for relief, answering defendant denies the allegations contained therein.

ANSWER TO

FIFTH CLAIM FOR RELIEF

147

With regard to paragraph 147 of plaintiffs' fifth claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs 1 through 147.

148 through 150

With regard to paragraphs 148 through 150 of plaintiffs' fifth claim for relief, answering defendant declines to answer the allegations contained in that paragraph in that they are directed to others. However, to the extent that the allegations stated therein allege culpable conduct on the part of answering defendant they are denied.

ANSWER TO

SIXTH CLAIM FOR RELIEF

151

With regard to paragraph 151 of plaintiffs' sixth claim for relief, answering defendant realleges and incorporates herein by reference his answers to the allegations contained in paragraphs

1 through 150.

152 through 153

With regard to paragraph 152 through 153 of plaintiffs' sixth claim for relief, answering defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

154 through 155

With regard to paragraphs 154 through 155 of plaintiffs' sixth claim for relief, answering defendant denies the allegations contained therein.

GENERAL DENIAL

156

Answering defendant denies each and every allegation of plaintiffs' complaint not specifically admitted herein, and specifically denies any culpable conduct which would result in plaintiffs' recovery of money damages from answering defendant.

AFFIRMATIVE AND ADDITIONAL DEFENSES

By way of further answer and by way of:

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Plaintiffs lack standing to claim or recover damages based on the allegations of the complaint.

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THIRD AFFIRMATIVE DEFENSE

Upon information and belief, some or all of the plaintiffs herein have received payments for economic losses allegedly caused by the oil spill. Answering defendant is entitled to a set off in the full amount of all such payments should plaintiffs be awarded damages.

FOURTH AFFIRMATIVE DEFENSE

Upon information and belief, claims by some persons or entities that may be within the purported classes herein have been settled and released or in the alternative, payments received by such persons or entities operate as an accord and satisfaction of claims against answering defendant.

FIFTH AFFIRMATIVE DEFENSE

Some persons or entities that may be within the purported classes herein have been engaged or employed in connection with activities related to containment and cleanup of the oil released from the EXXON VALDEZ and were thereby able to avoid or mitigate damages from the interruption of fishery and other activities. Answering defendant is entitled to a set off in the amount of any such payments against losses, if any, resulting from the interruption of fishery and other activities.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages.

SEVENTH AFFIRMATIVE DEFENSE

To the extent plaintiffs have asserted claims for punitive damages against answering defendant, those claims are unconstitutional under the United States Constitution, including, without limitation, Article I, § 8; Amendment V; and Amendment XIV; and the Alaska Constitution, including, without limitation, Article I, § 7; and Article I, § 12.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' damages were caused in part by the negligence or culpable conduct of other parties not joined as defendants herein.

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

Numerous persons and entities, some of whom purport to represent or may be among the plaintiffs in this action, have filed lawsuits against answering defendant relating to the oil spill. In the event of any judgment or judgments in such other lawsuits against answering defendant and in favor of persons whose claims are encompassed in these actions, such judgment or judgments will be res judicata as to the claims of such persons herein.

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Additionally, to the extent there is a recovery in such other lawsuits encompassing claims made by plaintiffs herein, recovery on the claims herein is barred to the extent that it would represent a multiple recovery for the same injury.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for damages may be barred or reduced by the doctrine of comparative negligence.

TWELFTH AFFIRMATIVE DEFENSE

The nature and amount of liability, if any, for the acts alleged is controlled by statute, including, without limitation, 43 U.S.C. § 1653(c) and AS 09.17.010, .060, and .080(d). Plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive scheme of Federal statutes and regulations, including its system of criminal and civil penalties, sanctions and remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent plaintiffs assert claims for punitive damages against answering defendant, such claims are precluded by the Alaska statutory scheme for civil and criminal penalties.

FOURTEENTH AFFIRMATIVE DEFENSE

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

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FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' action against answering defendant based on ANILCA, 16 U.S.C. § 3111 et seq., cannot be maintained because there is no private right of action against non-governmental defendants arising from that statute.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' action against answering defendant based on ANILCA, 16 U.S.C. § 3111 et seq., cannot be maintained because plaintiffs have failed to exhaust relevant administrative remedies.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' action against answering defendant based on ANILCA, 16 U.S.C. § 3111 et seq., cannot be maintained because that statute does not create or grant the plaintiffs a property right in any fish or wildlife or other resource of the public lands. ANILCA, 16 U.S.C. § 3111 et seq., provides the exclusive Federal vehicle for Alaskan natives and rural Alaskans to seek protection for Federally recognized subsistence interests allegedly harmed by the oil spill, and therefore all other alleged Federal bases to

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PAGE 15

recover any such losses are barred.

WHEREFORE, having answered plaintiffs' complaint answering defendant prays that the same be dismissed with prejudice; that he be awarded his costs and attorney's fees incurred in defending this action; and for such other and further relief as the court deems just and equitable.

DATED this 11ⁿ day of September, 1989, at Anchorage, Alaska.

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