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

HUGH R. WISNER and LARRY L. DOOLEY,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

EXXON CORPORATION; EXXON CO., USA;
EXXON SHIPPING COMPANY; ALYESKA
PIPELINE SERVICE COMPANY; AMERADA
HESS CORPORATION; ARCO PIPE LINE
COMPANY; BRITISH PETROLEUM
PIPELINES, INC.; EXXON PIPELINE
COMPANY; MOBIL ALASKA PIPELINE
COMPANY; PHILLIPS PETROLEUM
COMPANY; SOHIO ALASKA PIPELINE COMPANY;
UNION ALASKA PIPELINE COMPANY; and
TRANS-ALASKA PIPELINE LIABILITY
FUND; and JOSEPH J. HAZELWOOD, in
personam, and the EXXON VALDEZ,
O/N 692966, her engines, tackle,
apparel, gear, equipment, and
appurtenances, in rem,
Defendants.

) IN ADMIRALTY
) CLASS ACTION

) CIVIL ACTION NO.
) A 89 - 135 CIV

) COMPLAINT
) JURY TRIAL DEMANDED

) THIS ACTION RELATES
) TO: Cruzan Fisheries,
) Inc., et al. v. Exxon
) Corporation, et al.

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CLASS ACTION COMPLAINT

Plaintiffs, by their attorneys, brings this action on their own behalf and on behalf of the Class they represent to obtain damages, injunctive relief and costs of suit from the defendants named herein, and complains and alleges as follows:

JURY TRIAL DEMAND

1. Pursuant to Rule 38 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), plaintiffs demand that all issues so triable be tried by a jury in this case.

JURISDICTION AND VENUE

2. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and is an admiralty and maritime claim within the meaning of Rule 9(h).

3. This is a civil action for injunctive relief and monetary damages for losses sustained by each member of the putative Class arising out of, and directly resulting from, oil and toxic effluents unlawfully and negligently discharged into navigable waters from the Exxon Valdez, O/N 692966, a vessel engaged in the transportation of oil between the terminal facilities of the Trans-Alaska Pipeline System at Valdez, Alaska and Long Beach, California, a port under the jurisdiction of the United States. The defendant vessel is now or during the pendency

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of process hereunder will be within this district and within the jurisdiction of this Court.

4. The grounds for relief are:

(a) the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93-153, 43 U.S.C. Section 1651 et sec.;

(b) Admiralty and Maritime Jurisdiction and The Admiralty Extension Act of 1948, 46 U.S.C. Section 740 (1964);

(c) Negligence;

(d) Statutes adopted in Alaska providing for damages due to injury to property and natural resources;

(e) common law nuisance; and,

(f) negligence per se.

5. Venue is proper in this district pursuant to 28 U.S.C. Sections 1391(b) and (c), as well as the applicable principles of admiralty and maritime law. Defendants reside in this district for venue purposes and the cause of action

THE PARTIES

6. Plaintiffs, Hugh R. Wisner and Larry L. Dooley, residents of Kodiak, Alaska are engaged in the fishing industry and have been damaged by the acts and conduct of the defendants as alleged herein.

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7. Defendant, The Trans-Alaska Pipeline Liability Fund ("Fund"), is a non-profit corporate entity established pursuant to the Trans-Alaska Pipeline Authorization Act ("Act"), 43 U.S.C. Section 1653(c)(4). The Fund, which is administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary of the United States Department of the Interior, is a resident of the state of Alaska with its principal place of business in Alaska.

8. Defendant, Alyeska Pipeline Service Company, is an association of the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline system that includes: Amerada Hess Corporation, Arco Pipe Line Company, British Petroleum Pipelines, Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Alaska Pipeline Company, and Union Alaska Pipeline Company.

9. Defendant, Exxon Corporation, is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, NY 10020. Exxon Corporation, which is engaged in the business of operating petroleum companies through its subsidiaries and divisions, is an owner and operator of the Exxon Valdez.

10. Defendant, Exxon Shipping Company, a Delaware Corporation and maritime subsidiary of defendant Exxon

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Corporation, with its principal place of business at 811 Dallas Avenue, Houston, Texas 77002, is an owner and operator of the Exxon Valdez.

11. Defendant, Exxon Co. , USA, is a division of defendant Exxon Corporation, with its principal place of business at 800 Bell Avenue, Houston, TX 77002. Exxon Co., USA, which is engaged in the business of producing crude oil and refining, transporting and marketing petroleum products in the United States, is an owner and operator of the Exxon Valdez.

DEFINITIONS

12. As used herein, the terms "rupture", "spill", and "accident" refer to the rupture of the hull and oil tanks of the Exxon Valdez on March 24, 1989 and the consequent release of more than ten million gallons of crude oil into Prince William Sound, Alaska, one of the nation's most productive and pristine sounds containing sensitive estuaries, which is home to whales, sea otters, seals, salmon, herring, other fish, and numerous types of commercial fisheries.

13. As used herein, the terms "Exxon", "defendant Exxon" and "the Exxon defendants" refer collectively to defendants Exxon Corporation, Exxon Shipping Company, and Exxon USA.

14. As used herein, the term "Terminal Facilities" refers to those facilities of the Trans-Alaska Pipeline System,

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including specifically the port of Valdez, Alaska, at which oil is taken from the pipeline and loaded on vessels or placed in storage for future loading onto vessels.

15. As used herein, the terms "Trans-Alaska Pipeline System" or "System" refer to any pipeline or terminal facilities constructed by the holders of the Pipeline right-of-way under the authority of the Act.

16. As used herein, the term "Pipeline" refers to any Pipeline in the Trans-Alaska Pipeline System.

17. As used herein, the term "Vessel" refers to a ship or tanker, including specifically the vessel known as the Exxon Valdez, being used as a means of transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States, which is carrying oil that has been transported through the Trans-Alaska Pipeline System.

OPERATIVE FACTS

18. On Thursday evening, March 23, 1989, the Exxon Valdez, a 987 foot tanker, weighing 211,000 deadweight tons with cargo and bunker fuel, left the Port of Valdez, Alaska, the southern terminal facility of the Trans-Alaska Pipeline System, bound for Long Beach, California.

19. The tanker's twelve oil tanks were filled to capacity with approximately 1.2 million barrels of crude oil which

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had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline.

20. The Exxon Valdez passed through the harbor and Valdez Narrows under the command of a harbor pilot. Captain Joseph J. Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of defendant Exxon, was on the bridge of the ship when the harbor pilot disembarked at the southern end of the Narrows at approximately 12:30 a.m. Friday morning, March 24, 1989.

21. Upon information and belief, Captain Hazelwood had consumed substantial alcohol and was incapable of commanding and piloting the Exxon Valdez or any other ship. Shortly after the pilot disembarked, Captain Hazelwood retired to his cabin, one flight below the bridge, leaving only Gregory Cousins, the third mate, and Robert Kafan, the helmsman, on the bridge. At all times relevant hereto, Messrs. Cousins and Kafan were acting within the scope of their employment and as agents and/or representatives of defendant Exxon.

22. Mr. Cousins, who was not certified to command the tanker through these waters, sought and received Coast Guard permission to leave the normal deep-water southbound shipping lane of the channel due to earlier reports that it contained icebergs.

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The vessel was instructed to proceed into the northbound channel and continue on a southwesterly course bound for Long Beach, California.

23. The vessel steered east into the empty northbound lane and proceeded three miles east past the alternative channel, outside the shipping lanes, into a charted area of rocky reefs.

24. The vessel was outside the channel when she first struck the well-marked Bligh Reef, which ripped along the starboard side with jarring impact, tearing three holes into the starboard tanks and ripping out a portion of the hull.

25. Upon information and belief, Captain Hazelwood remained in his cabin, although the noise and impact should have immediately commanded the Captain to the bridge.

26. Although the ship was still navigable after the first impact, she was so far east of deep water that when Mr. Cousins tried to turn the Exxon Valdez back toward the West it struck a second part of the shallow reef. This second impact brought the ship aground, stopping the ship's progress completely.

27. The scraping impact and grounding of the Exxon Valdez upon Bligh Reef cut open at least eight of the ship's twelve oil tanks which held 53 million gallons of crude oil, causing--upon information and belief--the largest oil spill in United States history. To date, approximately 11.0 million

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gallons of crude oil has been discharged into Prince William Sound, contaminating abundant wildlife as well as shoreline real and personal property.

28. Nine (9) hours after the vessel grounded on Bligh Reef, Federal investigators submitted Captain Hazelwood to blood and urine alcohol tests from which they determined that he had been legally drunk at the time of the accident and in violation of permitted Coast Guard alcohol limits for operating commercial vessels at sea.

29. Damages to plaintiffs and the plaintiff Class caused by this discharge of millions of gallons of thick, North Slope crude oil, include but are not limited to damage to marine life, including herring, salmon, ground bottom fish, shrimp and crab, relied upon by plaintiffs and the plaintiff Class for economic purposes, as well as damage to real property, and personal property (including but not limited to boats and ships fouled by the oil).

30. The harvesting of herring roe alone earns approximately \$16 million per year for plaintiffs and the plaintiff Class, while the salmon harvest is worth approximately \$75 million a year.

31. The oil slick has spread to Smith, Little Smith, Naked and Seal Islands as it moves toward the southern end of

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Prince William Sound and to other areas in the Gulf of Alaska; these locations are home to thousands of water birds and sea mammals and fish and shellfish, whose contamination by the spreading oil cannot yet be quantified.

32. Upon information and belief, the damage caused by the spill to property, trades and businesses, fishing and marine life could last for years. The region's jagged coastline created hidden pockets of oil as the slick reached shore, creating opportunities for repollution for a protracted time into the future.

CLASS ALLEGATIONS

33. This action is brought by plaintiffs on their own behalf and, pursuant to Rule 23, Fed. R. Civ. P., on behalf of a Class consisting of all persons and entities who were injured or adversely affected by the rupture of defendant Exxon's oil tanker on March 24, 1989, the subsequent oil spill therefrom, and the ensuing clean-up effort. Excluded from the Class are all persons currently seeking to make tort claims based exclusively on bodily injury as a result of the rupture, spill, the conduct of the emergency response, and clean-up activities; as well as the defendants, their respective parent corporations, affiliates, subsidiaries, divisions and the directors, officers, agents, employees and representatives of each.

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34. Plaintiffs are unable to state precisely the size of the Class, but members of the Class number in at least the thousands. The Class is sufficiently numerous that joinder of all of its members is impracticable.

35. There exist questions of law and fact common to the Class with respect to the rupture and resultant spill, the cause thereof, and the ensuing clean-up efforts which predominate over any questions affecting only individual members of the Class.

Among the questions common to the Class are:

(a) whether Alyeska, the Exxon defendants and the Fund are strictly liable pursuant to the revisions of the Trans-Alaska pipeline authorization act;

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

(c) whether the Exxon defendants were negligent in (i) maintaining, (ii) controlling, and (iii) operating the Exxon Valdez;

(d) whether the Exxon defendants acted recklessly, and wantonly, or in willful disregard of the rights and economic well-being of plaintiffs and the plaintiff Class in (i) maintaining, (ii) controlling, and (iii) operating the Exxon Valdez;

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(e) whether Alyeska and the Exxon defendants were negligent in (i) failing to establish and provide for an adequate contingency plan to contain and clean-up any discharge of oil from a vessel; (ii) planning the ensuing clean-up effort; (iii) carrying-out the ensuing clean-up effort; (iv) delaying the ensuing clean-up effort; (v) employing inadequate or improper tactics in the ensuing clean-up effort; and (vii) failing to have available for immediate emergency use adequate and proper supplies, equipment and personnel for the ensuing clean-up effort;

(f) whether Alyeska and the Exxon defendants acted recklessly, and wantonly, or in willful disregard of the rights and economic well-being of plaintiffs and the plaintiff Class in (i) failing to establish and provide for an adequate contingency plan to contain and clean-up any discharge of oil from a vessel; (ii) planning the ensuing clean-up effort; (iii) carrying-out the ensuing clean-up effort; (iv) delaying the ensuing clean-up effort; (v) employing inadequate and improper tactics in the ensuing clean-up effort; and (vi) failing to have available for immediate emergency use adequate and proper supplies, equipment and personnel for the ensuing clean-up effort;

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

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(h) whether the conduct of Alyeska and the Exxon defendants as set forth herein is such as to warrant the imposition of punitive damages;

(i) the impact of the discharged oil and toxic effluents upon Prince William Sound, the Gulf of Alaska and their marine life;

(j) the measures necessary to ameliorate present and future pollution;

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

(l) whether equitable relief should be granted against Alyeska and/or Exxon;

(m) whether the Court should order an ongoing environmental and/or monitoring program;

(n) whether the court should order Alyeska and the Exxon defendants to provide plaintiffs, the plaintiff Class and affected communities with environmental relief;

(o) whether the Exxon Valdez was unseaworthy at the time of the grounding; and

(p) whether the owners of the Exxon Valdez had privity and knowledge of the unseaworthy condition of the vessel.

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36. The claims of the representative plaintiffs are typical of the claims of the Class.

37. Plaintiffs will fully and adequately protect the interests of the Class. The interests of the Class representative is consistent with those of the members of the Class. In addition, plaintiffs are represented by experienced and able counsel which have represented plaintiff Classes throughout the United States.

38. Defendants have acted with respect to plaintiffs and the plaintiff Class in a manner generally applicable to all of them, thereby making appropriate final injunctive relief with respect to plaintiffs and the plaintiff Class.

39. Given the scope of harm inflicted by defendants and the egregiousness of the misconduct which renders the award of punitive damages appropriate, the prosecution of separate actions by individual members of the Class would create a risk of adjudication with respect to the individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or substantially impair or impede their ability to protect their interests.

40. A substantial claim for punitive damages exists on behalf of all of the members of the plaintiff Class, In order to

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achieve maximum judicial economy and fairness to litigants, a Class action is desirable to assure that an award of punitive damages is made in a single proceeding and fairly and uniformly allocated among all of the members of the Class.

41. Certification is appropriate under one or more of the provisions of Rule 23(b), Fed.E.Civ.P. , including Rule 23(b) (1) (B), 23(b) (2) and/or 23(b) (3).

COUNT I

Trans-Alaska Pipeline Authorization Act

43 U.S.C. Section 1653(a)

Strict Liability

Plaintiffs v. Alyeska

42. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

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

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

45. Upon information and belief, the damages to plaintiffs and the plaintiff Class were neither caused by an act

of war nor by the negligence of the United States, any other government entity, or plaintiffs and the plaintiff Class.

46. The oil discharged in connection with and resulting from activities along or in the vicinity of the Pipeline right-of-way have damaged and otherwise adversely affected lands, structures, personal property, fish, wildlife, biotic and other natural resources relied upon by Alaska Natives, Native Organizations, and others, including specifically plaintiffs and plaintiff Class, for subsistence and economic purposes.

47. Defendant Alyeska is strictly liable to plaintiffs and the plaintiff Class for all damages sustained as the result of the discharges of oil from the Exxon Valdez up to a maximum of \$50 million pursuant to the Act, 43 U.S.C Section 1653(a).

COUNT II

Trans-Alaska Pipeline Authorization Act,
43 U.S.C. Section 1653(c)/Strict Liability
Plaintiffs v. Exxon and The Fund

48. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

49. The Exxon defendants are now, and were at all times relevant hereto, the owners and operators of the Exxon Valdez.

50. The damages to plaintiffs and the plaintiff Class arose as the result of discharges of oil from the Exxon Valdez

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that had been transported through the Trans-Alaska Pipeline and loaded on the Exxon Valdez at the terminal facilities of the pipeline.

51. Upon information and belief, the damages to plaintiffs and the plaintiff Class were neither caused by an act of war nor by the negligence of the United States, any other governmental agency, or plaintiffs and the plaintiff Class.

52. The oil discharged from the Exxon Valdez has damaged and otherwise adversely affected lands, structures, personal property, fish, wildlife, biotic and other natural resources relied upon by Alaska Natives, Native Organizations, and others, including specifically plaintiffs and the plaintiff Class, for subsistence and economic purposes.

53. Defendants Exxon and the Fund are strictly liable to plaintiffs and the plaintiff Class for all damages sustained as the result of the discharges of oil from the Exxon Valdez up to a maximum of \$100 million pursuant to the Act, 43 U.S.C. Section 1653(c).

COUNT III

Trans-Alaska Pipeline Authorization Act,

43 U.S.C. Section 1653

Negligence -- Plaintiffs v. Alyeska and Exxon

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54. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

55. Defendants Alyeska and Exxon had continuously reassured environmentalists and others, including specifically plaintiffs and the plaintiff Class, at all times prior to the accident that there existed an emergency clean-up plan by which any major oil spill could be successfully contained within five hours of occurrence; yet a day after the spill little had been done to contain it other than an unsuccessful attempt to spray chemical dispersant.

56. Upon information and belief, Alyeska and Exxon's "contingency clean-up plan" required them to be on site within five hours of the spill. Eighteen hours after the rupture, however, essentially nothing was in place; instead, it took nearly an entire day for Alyeska and Exxon representatives to start placing barrier booms--long bars with heavy plastic skirts--around the slick. By that time, the discharged oil had already become too large to contain.

57. The delays were in part due to repairs being performed on the barge required to pull the booms around the Exxon Valdez.

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58. Lack of proper equipment and supplies, and lack of sufficient properly trained personnel also hindered effective clean-up operations.

59. Moreover, neither Alyeska nor Exxon had enough equipment to handle a spill of this size, even though these defendants have represented for years that their oil-spill crews were prepared for such a spill.

60. The tactics finally chosen by defendants, chemical dispersant which could cause further harm to the water, environment, wildlife, and property were ineffective. These chemical dispersant, previously touted as an effective weapon against oil slicks, could not be used initially because the water was too cold and calm, making the slick too thick for the dispersant to work.

61. Upon information and belief, the oil has now been in the water too long for these dispersant to work since they are most effective only if employed within twenty-four hours after a spill. Beyond that time period, the oil develops a resistance to chemical treatment.

62. Defendants' other "contingency clean-up plan" was to burn the surface oil with a substance similar to Napalm, basically changing the water pollution into air pollution; however, defendants' delay ultimately allowed changed weather

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conditions to make it impossible to deploy the necessary small boats used to try to corral the oil into a concentrated area for this purpose.

63. Pursuant to the Act, the proper control and total removal of the discharged oil which polluted, damaged and threatens to further pollute and damage aquatic life, wildlife, public and private property was the responsibility of defendants. In regard thereto, defendants had a duty to plaintiffs and the plaintiff Class to have adequate resources available to immediately and effectively contain and clean-up any oil spill in any area within or without the right-of-way or permit area granted to them.

64. In the exercise of care, defendants knew or should have known that they lacked adequate equipment, supplies and personnel to effectively contain and clean-up a spill of this magnitude, that their "contingency clean-up plan", including the tactics they developed thereunder, were extremely limited in their efficiency and use, and that these tactics could only be employed under "ideal environmental conditions" if at all.

65. The negligence of defendants Alyeska and Exxon in the control and clean-up operations specifically included, but was not limited to:

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- (a) failing to establish and provide for an adequate contingency plan to contain and clean-up any discharge of oil;
- (b) inadequately planning the ensuing clean-up effort;
- (c) inadequately carrying-out the ensuing clean-up effort;
- (d) unreasonably delaying the ensuing clean-up effort;
- (e) choosing inadequate tactics in the ensuing clean-up effort; and
- (f) possessing inadequate equipment, supplies and personnel for deployment in the ensuing clean-up, all of which served to aggravate and compound the damages to plaintiffs and the plaintiff Class.

66. As a direct and proximate result of the foregoing negligence, plaintiffs and the plaintiff Class have suffered damages.

67. Defendants Alyeska and Exxon acted recklessly, and wantonly and in willful disregard of the rights and economic well-being of plaintiffs and the plaintiff Class in the control and clean-up operations of this spill, for which plaintiffs and the plaintiff Class are entitled to punitive damages.

COUNT IV

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Trans-Alaska Pipeline Authorization Act,

43 U.S.C. Section 1653(c)/Negligence

Plaintiffs v. Exxon

68. Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

69. The captain of the Exxon Valdez, Joseph J. Hazelwood, who, upon information and belief twice previously had been convicted of charges involving drinking and driving in the past five years and had his driver's license suspended or revoked three times in that same period, was not in command when the tanker hit the well-marked Bligh Reef.

70. Instead, the third-mate, Gregory Cousins, was in command of the tanker when it ran aground, although Cousins lacked proper certification and did not have adequate training, experience, or competence to pilot vessels such as the Exxon Valdez through the waters of Prince William Sound.

71. Captain Hazelwood and third-mate Cousins knew or should have known that it was not only unreasonably dangerous for Hazelwood to leave the bridge and relinquish control of the tanker to Cousins, but also a violation of applicable Coast Guard rules and regulation.

72. Hazelwood and third-mate Cousins knew or should have known that Cousins did not possess the requisite degree of

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competence to command the Exxon Valdez with reasonable prudence, skill or care.

73. Captain Hazelwood and third-mate Cousins knew or should have know that it was not only unreasonably dangerous for Hazelwood to be intoxicated while commanding a commercial vessel, but also a violation of applicable Coast Guard rules and regulations.

74. The Exxon defendants knew or should have known based on Hazelwood's previous convictions for drinking and driving, as well as the revocation or suspension of his driver's license three times in the same five year period, that Hazelwood did not possess the requisite degree of competence to command the Exxon Valdez with reasonable prudence, skill or care.

75. The Exxon defendants knew or should have known based on the service in which the Exxon Valdez was involved that its single hull construction was not sufficient to allow it to safely engage in the trade for which it as intended.

76. The negligence of the Exxon defendants in the ownership and operation of the Exxon Valdez specifically included, but was not limited to, (a) failing to adequately crew the tanker; (b) failing to adequately pilot and navigate Prince William Sound; and (c) failing to utilize a seaworthy vessel. As a direct and proximate result of the foregoing negligence, the Exxon

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defendants, in their own right as well as by and through their agents, servants and employees, caused plaintiffs and the plaintiff Class to suffer damages as described above.

77. The Exxon defendants acted recklessly, and wantonly and in willful disregard of the rights and economic well-being of plaintiffs and the plaintiff Class in the ownership and operation of the Exxon Valdez for which plaintiffs and the plaintiff Class are entitled to punitive damages.

COUNT V

Maritime Tort--Plaintiffs v. Alyeska and Exxon

78. Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

79. By virtue of the above, defendants negligently violated the general maritime and admiralty laws of the United States, which violations were a direct and proximate cause of the damages suffered by plaintiffs and the plaintiff Class.

COUNT VI

Common Law Negligence--Plaintiffs v. Alyeska and Exxon

80. Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

81. By virtue of the above, defendants were negligent, which negligent acts and omissions directly and proximately caused the damages suffered by plaintiffs and the plaintiff Class.

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COUNT VII

Alaska Environmental Conservation Act

Plaintiffs v. Alyeska and Exxon

82. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

83. Oil, including the approximately 11 million gallons of crude oil which has been released into the Prince William Sound as a result of the grounding and consequent rupture of the Exxon Valdez's oil tanks, is a hazardous substance, as that term is defined in Section 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

84. The presence of oil in the Prince William Sound and its subsequent spreading to least Smith, Little Smith, Naked and Seal Islands, and to the Gulf of Alaska, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and/or any part of the natural habitat in which they are found.

85. The defendants own and/or have control, pursuant to Section 46.03.826(3) of the Alaska Environmental Conservation Act, over the oil which was loaded on the Exxon Valdez at the Port of Valdez, Alaska and released into the Prince William Sound.

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86. Upon information and belief, the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska was not caused solely as a result of;

(a) an act of war;

(b) an intentional act or a negligent act of a third party, other than a party or its employees in privity with, or employed by, defendants;

(c) negligence on the part of the United States government or the State of Alaska;

(d) an act of God.

87. Upon information and belief, upon discovery of the entry of the oil in or upon the water, surface or subsurface land of the State of Alaska, defendants delayed and/or failed to begin operations to contain and clean-up the hazardous substance within a reasonable period of time.

88. The entry of the oil which is owned and/or within the control of the defendants in or upon the waters, surface and/or subsurface lands of the State of Alaska, has caused damages to plaintiffs and the plaintiff Class, including but not limited to injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits, for which the defendants are strictly liable pursuant to Section 46.03.822 of the Alaska Environmental Conservation Act.

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COUNT VIII

Alaska Stat. Section 09.25.230

Plaintiffs v. Alyeska and Exxon

89. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

90. The acts and omissions of the defendants created a private nuisance through substantial interference with the use and enjoyment of plaintiffs and the plaintiff Class' interests in property.

91. This substantial interference with the use and enjoyment of plaintiffs and the plaintiff Class' interests in property includes, but is not limited to, inter alia. injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits.

92. The substantial interference with plaintiffs and the plaintiff Class' interests were caused by the actions and omissions of the defendants for which they are liable to plaintiffs and the plaintiff Class for the damages sustained.

93. The defendants threaten to continue the acts and omissions complained of herein, and unless temporarily, preliminarily or permanently restrained and enjoined, will continue to do so, all to plaintiffs and the plaintiff Class' irrefutable damage. Plaintiffs and the plaintiff Class' remedy at

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law for damages is not adequate to compensate them for the injuries threatened to continue.

COUNT IX

Public Nuisance--Plaintiffs v. Alyeska and Exxon

94. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

95. The acts and omissions of the defendants created a public nuisance through unreasonable interference with the rights of plaintiffs and the plaintiff Class to water that is free from pollution and contamination by oil.

96. The unreasonable interference with the rights of plaintiffs and the plaintiff Class common to the public resulted in special and distinct harm to plaintiffs and the plaintiff Class including, but not limited to, inter alia. loss of business as a result of the pollution.

97. The substantial interference with plaintiffs and the plaintiff Class' interests were caused by the actions and omissions of the defendants for which they are liable to plaintiffs and the plaintiff Class for the damages sustained.

98. The defendants threaten to continue the acts and omissions complained of herein, and unless temporarily, preliminarily or permanently restrained and enjoined, will continue to do so, all to plaintiffs and the plaintiff Class'

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irrefutable damage. Plaintiffs and the plaintiff Class' remedy at law for damages is not adequate to compensate them for the injuries threatened to continue.

COUNT X

Negligence per se--Plaintiffs v. Alyeska and Exxon

99. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

100. The acts and omissions of the defendants violate The Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Section 1651, et seq., and Alaska State and local law, including Alaska Statutes Section 46.03.101, et seq. and Alaska Stat. Section 09.45.230. In so violating these laws, defendants were negligent per se.

101. The Exxon defendants also failed to obtain the necessary certification from the Coast Guard for Gregory Cousins to pilot vessels such as the Exxon Valdez through the waters of the Prince William Sound, violating Coast Guard regulations. In failing to do so, defendants were negligent per se.

102. The defendants are liable to plaintiffs and the plaintiff Class for all damages resulting from the accident and discharge on account of their violations of the above-mentioned federal and state laws and certification requirements.

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COUNT XI

Equitable Relief--Plaintiffs v. Alyeska and Exxon

103. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

104. On account of the defendants' violations of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Section 1651 et sec. Alaska Statutes Section 46.03.010 et seq. Alaska Statutes Section 09.45.230, and other applicable federal and state laws, defendants are liable to plaintiffs and the plaintiff Class for civil damages, and should be enjoined to control, contain, clean-up and restore the environment to its condition prior to the rupture and consequent discharge.

105. In addition, monitoring for the level of contamination of air, soil and water, and monitoring for potential adverse effects from exposure to contaminated air, soil and water, are necessary to protect plaintiffs and the plaintiff Class from further harm likely to result from defendants' acts and omissions as alleged herein.

106. The costs of said control, containment, clean-up, restoration and monitoring should be borne by defendants inasmuch as the injuries to plaintiffs and the plaintiff Class all resulted from the rupture, resulting discharge and ensuing clean-up effort

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which was caused by defendants' wrongful conduct as alleged herein.

107. Plaintiffs and the Class members therefore seek equitable relief in the form of a mandatory injunction ordering appropriate and qualified governmental or neutral private agencies to provide continual monitoring under Court supervision, and to further order that defendants control, contain, clean-up and restore the environment and pay all attendant costs therefor.

COUNT XII

Unseaworthiness -- Plaintiffs v. Exxon Valdez

108. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth above.

109. At all times relevant herein, the Exxon Valdez was unseaworthy within the privity and knowledge of her owners.

110. On or about March 24, 1989, the Exxon Valdez was unseaworthy due to the following conditions:

- (a) incompetent master;
- (b) improperly licensed third mate in command;
- (c) inadequate crew;
- (d) inadequate and improperly operated navigational equipment; and
- (e) inadequate and improper construction of the hull.

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111. As a direct and proximate result of the unseaworthiness of the Exxon Valdez, the Exxon Valdez is liable to plaintiffs and the plaintiff Class for all damages resulting from the accident and discharge.

112. Plaintiffs and the plaintiff Class have a maritime lien against the Exxon Valdez as a result of the damages described above and bring this action to foreclose their lien.

RELIEF SOUGHT

WHEREFORE, plaintiffs pray that this Court:

1. Order this action to proceed as a Class action, with plaintiffs as the Class representative;
2. Award compensatory and punitive damages under all counts to plaintiffs and all other members of the Class in an amount to be determined by the finder of fact against the in personam defendants;
3. Award attorney fees and the costs of this action;
4. Enter declaratory and injunctive relief to abate the nuisance arising out of the defendants' wrongful acts and omissions as alleged herein, and order defendants to pay for ongoing control, containment, clean-up, restoration and monitoring of oil contamination and adverse effects resulting therefrom under the jurisdiction of this Court;

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5. Issue an interim warrant of arrest instructing the United States Marshal to seize the Exxon Valdez, her engines, tackle, gear, equipment, and appurtenance, and to detain same in his custody subject to further order of this Court;

6. Award compensatory and punitive damages under all counts to plaintiffs and all of the members of the class in an amount to be determined by the finder of fact against the in rem defendant, Exxon Valdez, foreclosing their maritime lien;

7. Issue an order directing the sale of the Exxon Valdez, her engines, tackle, gear, equipment, and appurtenance, and all other necessaries thereunder appertaining and belonging, and directing the disbursement of the sale proceeds in the first instance to plaintiffs and all other members of the Class and to the extent necessary to satisfy the judgment against defendants; and

8. Award such other and further relief as this Court deems just and proper.

9. Plaintiffs respectfully demand trial by jury.

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DATED this 13th day of April, 1989, at Kodiak, Alaska.

N. ROBERT STOLL
GARY M. BERNE
RICHARD H. BRAUN
STOLL, STOLL, BERNE & LOKTING, P.C.

MATTHEW D. JAMIN
C. WALTER EBELL
JAMIN, EBELL, BOLGER & GENTRY

Attorneys for Plaintiffs

By: C. Walter Ebell for
Matthew D. Jamin

Verification

STATE OF ALASKA,)
) ss.
THIRD JUDICIAL DISTRICT,)

I, HUGH R. WISNER, being first duly sworn, on oath, depose and say that I am a plaintiff in the above-entitled action; and I have read the above complaint and acknowledge that it is true to the best of my knowledge and belief.

Hugh R. Wisner
Hugh R. Wisner

Subscribed and sworn to before me this 13 day of April, 1989.

Caroline G. Jamin
Notary Public for Alaska
My Commission Expires: 5-31-92

01P.001

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