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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KODIAK ISLAND BOROUGH, on behalf of
itself and all others similarly
situated,

Plaintiff,

v.

EXXON CORPORATION; EXXON CO., USA;
EXXON SHIPPING COMPANY, INC.; 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,

Defendants.

FILED

APR 18 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By.....Deputy

CLASS ACTION

CIVIL ACTION NO.

A 89 - 136 CIV

COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, by its attorneys, brings this action on its 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."), plaintiff demands that all issues so triable be tried by a jury in this case.

JURISDICTION AND VENUE

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

3. This complaint is filed pursuant to 28 U.S.C. Sections 1331 and 1333(1), which provide for original jurisdiction

COMPLAINT - 2

in the district courts of all civil actions arising under the laws of the United States and admiralty and maritime jurisdiction. This Court also has subject matter jurisdiction over this action in accordance with pendent jurisdiction.

4. The grounds for relief are:

(a) the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Section 1651, et seq.;

(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.

THE PARTIES

6. Plaintiff Kodiak Island Borough is a political subdivision incorporated under the laws of the State of Alaska, and a land owner and has been damaged by the acts and conduct of the defendants as alleged herein.

COMPLAINT - 3

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, Inc., a Delaware Corporation and maritime subsidiary of defendant Exxon

COMPLAINT - 4

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,

COMPLAINT - 5

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 dead weight 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

COMPLAINT - 6

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.

COMPLAINT - 7

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

COMPLAINT - 8

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

30. Plaintiff and the plaintiff Class have incurred substantial expenses in attempting to minimize the effect of the oil spill and will incur additional expenses to clean up the oil spill.

31. The oil slick has spread to Kodiak Island Archipelago as it moves toward other areas in the Gulf of Alaska; these islands are home to thousands of water birds and sea

COMPLAINT - 9

and land 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 plaintiff on its own behalf and, pursuant to Rule 23, Fed. R. Civ. P., on behalf of a Class consisting of all municipalities, 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 cleanup 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 cleanup activities; as well as the defendants, their respective parent corporations, affiliates, subsidiaries, divisions and the directors, officers, agents, employees and representatives of each.

34. Plaintiff is unable to state precisely the size of the Class, but members of the Class number in at least the

COMPLAINT - 10

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 cleanup 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 plaintiff and the plaintiff Class in (i) maintaining, (ii) controlling, and (iii) operating the Exxon Valdez;

(e) whether Alyeska and the Exxon defendants were negligent in (i) failing to establish and provide for an adequate contingency plan to contain and cleanup any discharge of oil fm a

COMPLAINT - 11

vessel; (ii) planning the ensuing cleanup effort; (iii) carrying-out the ensuing cleanup effort; (iv) delaying the ensuing cleanup effort; (v) employing inadequate or improper tactics in the ensuing cleanup effort; and (vii) failing to have available for immediate emergency use adequate and proper supplies, equipment and personnel for the ensuing cleanup effort;

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

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

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

COMPLAINT - 12

(i) the impact of the discharged oil and toxic effluents upon Prince William Sound, the Kodiak Island Archipelago, 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 plaintiff, 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.

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

37. Plaintiff will fully and adequately protect the interests of the Class. The interests of the Class representative

COMPLAINT - 13

is consistent with those of the members of the Class. In addition, plaintiff is represented by experienced and able counsel which have represented plaintiff Classes throughout the United States.

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

COMPLAINT - 14

41. Certification is appropriate under one or more of the provisions of Rule 23(b), Fed. R. 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

Plaintiff v. Alyeska

42. Plaintiff realleges and incorporates 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 plaintiff 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 plaintiff 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 plaintiff 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,

COMPLAINT - 15 .

structures, personal property, fish, wildlife, biotic and other natural resources relied upon by Alaska Natives, Native Organizations, and others, including specifically plaintiff and plaintiff Class, for subsistence and economic purposes.

47. Defendant Alyeska is strictly liable to plaintiff 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

Plaintiff v. Exxon and The Fund

48. Plaintiff realleges and incorporates 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 plaintiff and the plaintiff Class arose as the result of discharges of oil from the Exxon Valdez 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 plaintiff and the plaintiff Class were neither caused by an act of

COMPLAINT - 16

war nor by the negligence of the United States, any other governmental agency, or plaintiff 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 plaintiff and the plaintiff Class, for subsistence and economic purposes.

53. Defendants Exxon and the Fund are strictly liable to plaintiff 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--Plaintiff v. Alyeska and Exxon

54. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

55. Defendants Alyeska and Exxon had continuously reassured environmentalists and others, including specifically plaintiff and the plaintiff Class, at all times prior to the accident that there existed an emergency cleanup plan by which any

COMPLAINT - 17

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 cleanup 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.

58. Lack of proper equipment and supplies, and lack of sufficient properly trained personnel also hindered effective cleanup 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.

COMPLAINT - 18

60. The tactics finally chosen by defendants, chemical dispersants which could cause further harm to the water, environment, wildlife, and property were ineffective. These chemical dispersants, 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 dispersants to work.

61. Upon information and belief, the oil has now been in the water too long for these dispersants 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 cleanup 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 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.

COMPLAINT - 19

In regard thereto, defendants had a duty to plaintiff and the plaintiff Class to have adequate resources available to immediately and effectively contain and cleanup 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 cleanup a spill of this magnitude, that their "contingency cleanup 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 cleanup operations specifically included, but was not limited to:

- (a) failing to establish and provide for an adequate contingency plan to contain and cleanup any discharge of oil;
- (b) inadequately planning the ensuing cleanup effort;
- (c) inadequately carrying-out the ensuing cleanup effort;
- (d) unreasonably delaying the ensuing cleanup effort;
- (e) choosing inadequate tactics in the ensuing cleanup effort; and

COMPLAINT - 20

(f) possessing inadequate equipment, supplies and personnel for deployment in the ensuing cleanup, all of which served to aggravate and compound the damages to plaintiff and the plaintiff Class.

66. As a direct and proximate result of the foregoing negligence, plaintiff 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 plaintiff and the plaintiff Class in the control and cleanup operations of this spill, for which plaintiff and the plaintiff Class are entitled to punitive damages.

COUNT IV

Trans-Alaska Pipeline Authorization Act,

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

Plaintiff v. Exxon

68. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

69. The captain of the Exxon Valdez, Joseph J. Hazelwood, who, upon information and belief had been convicted twice previously of charges involving drinking and driving in the past five years and had his driver's license suspended or revoked

COMPLAINT - 21

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 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

COMPLAINT - 22

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 defendants, in their own right as well as by and through their agents, servants and employees, caused plaintiff 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 plaintiff and the plaintiff Class in the ownership and operation

COMPLAINT - 23

of the Exxon Valdez for which plaintiff and the plaintiff-Class are entitled to punitive damages.

COUNT V

Maritime Tort--Plaintiff v. Alyeska and Exxon

78. Plaintiff realleges and incorporates 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 plaintiff and the plaintiff Class.

COUNT VI

Common Law Negligence--Plaintiff v. Alyeska and Exxon

80. Plaintiff realleges and incorporates 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 plaintiff and the plaintiff Class.

COUNT VII

Alaska Environmental Conservation Act

Plaintiff v. Alyeska and Exxon

82. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

COMPLAINT - 24

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 the Kodiak Island Archipelago, and to other areas in 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.

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;

COMPLAINT - 25

(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 cleanup 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 plaintiff 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.

COUNT VIII

Alaska Stat. Section 09.25.230

Plaintiff v. Alyeska and Exxon

89. Plaintiff realleges and incorporates 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

COMPLAINT - 26

enjoyment of plaintiff's and the plaintiff Class' interests in property.

91. This substantial interference with the use and enjoyment of plaintiff's 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 plaintiff's and the plaintiff Class' interests were caused by the actions and omissions of the defendants for which they are liable to plaintiff 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 plaintiff's and the plaintiff Class' irrefutable damage. Plaintiff's and the plaintiff Class' remedy at law for damages is not adequate to compensate them for the injuries threatened to continue.

COUNT IX

Public Nuisance--Plaintiff v. Alyeska and Exxon

94. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

COMPLAINT - 27

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

96. The unreasonable interference with the rights of plaintiff and the plaintiff Class common to the public resulted in special and distinct harm to plaintiff 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 plaintiff and the plaintiff Class' interests was caused by the actions and omissions of the defendants for which they are liable to plaintiff 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 plaintiff's and the plaintiff Class' irrefutable damage. Plaintiff's and the plaintiff Class' remedy at law for damages is not adequate to compensate them for the injuries threatened to continue.

COMPLAINT - 28

COUNT X

Negligence per se--Plaintiff v. Alyeska and Exxon

99. Plaintiff realleges and incorporates 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 Stat. 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 plaintiff 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.

COUNT XI

Equitable Relief--Plaintiff v. Alyeska and Exxon

103. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

COMPLAINT - 29

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104. On account of the defendants' violations of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. Section 1651 et seq. Alaska Stat. Section 46.03.010 et seq. Alaska Stat. Section 09.45.230, and other applicable federal and state laws, defendants are liable to plaintiff and the plaintiff Class for civil damages, and should be enjoined to control, contain, cleanup 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 plaintiff 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, cleanup, restoration and monitoring should be borne by defendants inasmuch as the injuries to plaintiff and the plaintiff Class all resulted from the rupture, resulting discharge and ensuing cleanup effort which was caused by defendants' wrongful conduct as alleged herein.

107. Plaintiff and the Class members therefore seek equitable relief in the form of a mandatory injunction ordering appropriate and qualified governmental or neutral private agencies

COMPLAINT - 30

to provide continual monitoring under Court supervision, and to further order that defendants control, contain, cleanup and restore the environment and pay all attendant costs therefor.

RELIEF SOUGHT

WHEREFORE, plaintiff pray that this Court:

1. Order this action to proceed as a Class action, with plaintiff as the Class representative;
2. Award compensatory and punitive damages under all counts to plaintiff and all other members of the Class in an amount to be determined by the finder of fact against the 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, cleanup, restoration and monitoring of oil contamination and adverse effects resulting therefrom under the jurisdiction of this Court;
5. Award such other and further relief as this Court deems just and proper.
6. Plaintiff respectfully demands trial by jury.

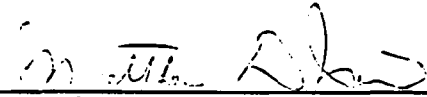
COMPLAINT - 31

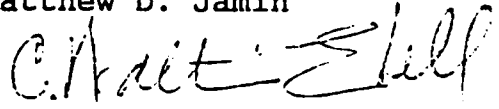
DATED this 16th day of April, 1989, at Kodiak, Alaska.

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COMPLAINT - 32

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FILED

APR 19 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By  Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

CHUGACH ALASKA CORPORATION, an Alaska)
Native regional corporation; CHUGACH)
FOREST PRODUCTS, INC., an Alaska corpo-)
ration; CHUGACH DEVELOPMENT CORPORATION,)
an Alaska corporation; CHUGACH FISHERIES,)
INC., an Alaska corporation; CHUGACH)
TIMBER CORPORATION, an Alaska corporation;)
BERING DEVELOPMENT CORPORATION, an Alaska)
corporation; THE TATITLEK CORPORATION, an)
Alaska Native village corporation; CHENEGA)
CORPORATION, an Alaska Native village)
corporation; CHN, Inc., an Alaska corpo-)
ration; THE EYAK CORPORATION, an Alaska)
Native village corporation; EYAK)
DEVELOPMENT INC., an Alaska corporation;)
EYAK TIMBER INC., an Alaska corporation;)
PORT GRAHAM CORPORATION, an Alaska)
Native village corporation; PORT GRAHAM)
DEVELOPMENT CORPORATION, an Alaska)
corporation;)

Plaintiffs,

v.

EXXON CORPORATION, a New Jersey)
corporation; EXXON CO., USA, a Texas)
corporation; EXXON SHIPPING CO., a)
Delaware corporation; ALYESKA PIPELINE)
SERVICE CO., a Delaware corporation;)
JOSEPH HAZELWOOD; GREGORY COUSINS and)
EDWARD MURPHY,)

Defendants.)

A 89 - 138 - CIV

No. A89 ____ Civ.

COMPLAINT

JURY TRIAL DEMANDED

PLAINTIFFS, by and through counsel, allege upon information and belief as follows, reserving unto themselves the additional right to seek recourse against the Trans-Alaska Pipeline Liability Fund established pursuant to 43 U.S.C. §1653 et seq in the event claims made pursuant to the regulations issued thereunder are not satisfied:

JURISDICTION AND VENUE

1. This is an action for monetary damages and other relief arising out of the massive discharge of oil from the M/V EXXON VALDEZ upon and into the waters, surface and subsurface lands of the area in and around Prince William Sound, the Lower Kenai Peninsula and the Gulf of Alaska. Plaintiffs are Native regional and village corporations incorporated under the laws of the state of Alaska pursuant to the Alaskan Native Claims Settlement Act, 43 U.S.C. §1601 et seq, as amended, ("ANCSA").

2. This is a case of admiralty and maritime jurisdiction, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This action is also within the Court's federal question jurisdiction pursuant to 28 USC §1331, diversity jurisdiction pursuant to 28 U.S.C. §1332 and jurisdiction over actions brought by Indian tribes pursuant to 28 USC §1362. This Court has jurisdiction over state law claims pursuant to the doctrine of pendent jurisdiction.

3. Venue is proper in this district pursuant to 28 U.S.C. §1339 because the claims arose in this district and the Defendants are doing business in this district.

PARTIES

4. CHUGACH ALASKA CORPORATION ("CAC") is an Alaska Native regional corporation incorporated under the laws of the State of Alaska pursuant to ANCSA. CAC's shareholders are primarily Native Alaskans whose history, culture, values and family life arose in and are tied to the Chugach Region, as defined in ANCSA (hereafter "Natives" or "Native Alaskans"). CAC holds, pursuant to ANCSA, the right, title, or interest in the surface and/or subsurface estates of approximately one million acres of land in Alaska, including lands in the area in and around Prince William Sound, the Gulf of Alaska, and the Lower Kenai Peninsula damaged by the EXXON VALDEZ oil spill.

5. CHUGACH FOREST PRODUCTS, INC. ("Chugach Forest") is a corporation organized under the laws of the State of Alaska and is a wholly owned subsidiary of CAC. Chugach Forest is engaged in the processing and marketing of timber, including timber from the area in and around Prince William Sound and the Lower Kenai Peninsula damaged by the EXXON VALDEZ oil spill, and in manufacturing relating to wood and other forest products.

6. CHUGACH TIMBER CORPORATION ("Chugach Timber"), is a corporation organized under the laws of the State of Alaska, is

a wholly owned subsidiary of Chugach Forest and is engaged in the business of harvesting and marketing timber situated on lands owned by CAC and others throughout the coastal area of South Central Alaska damaged by the EXXON VALDEZ oil spill.

7. CHUGACH DEVELOPMENT CORPORATION ("Chugach Development") is a corporation organized under the laws of the State of Alaska, and is a wholly owned subsidiary of CAC. Chugach Development is involved in developing business opportunities relating to the lands owned by CAC damaged by the EXXON VALDEZ oil spill.

8. CHUGACH FISHERIES, INC. ("Chugach Fisheries") is a corporation organized under the laws of the State of Alaska, and is a wholly owned subsidiary of CAC. Chugach Fisheries is engaged in the seafood industry, including the processing, canning and marketing of seafood taken from the waters in and around Prince William Sound, the Gulf of Alaska, Kodiak and the Lower Kenai Peninsula polluted by the EXXON VALDEZ oil spill.

9. BERING DEVELOPMENT CORPORATION ("BDC"), a corporation organized under the laws of the State of Alaska, is a wholly owned subsidiary of CAC and Chugach Development, each of which owns 50% of BDC's stock. BDC is engaged in the business of the commercial exploitation of coal and other minerals and resources on, in, and under the lands held by CAC damaged by the EXXON VALDEZ oil spill.

10. THE TATITLEK CORPORATION ("Tatitlek") is a Native village corporation organized under the laws of the State of Alaska pursuant to ANCSA. Tatitlek holds, pursuant to ANCSA, the entitlement, right, title or interest in the surface estate of approximately 137,248 acres of land in Alaska, including lands in the area in and around Prince William Sound damaged by the EXXON VALDEZ oil spill. Tatitlek shareholders are primarily Native residents (as the term is used in §6(a) of ANCSA) of Tatitlek or descendants or heirs thereof (hereafter also referred to as "Natives" or "Native Alaskans").

11. CHENEGA CORPORATION ("Chenega") is a Native village corporation organized under the laws of the State of Alaska pursuant to ANCSA. Chenega holds, pursuant to ANCSA, the entitlement, right, title or interest in the surface estate of approximately 76,093 acres of land in Alaska, including lands in the area in and around Prince William Sound damaged by the EXXON VALDEZ oil spill. Chenega's shareholders are primarily Native residents (as that term is used in §6(a) of ANCSA) of Chenega Village now relocated to Chenega Bay (hereafter also referred to as "Natives" or "Native Alaskans").

12. CHN, INC. ("CHN") is a corporation organized under the laws of the State of Alaska and is a wholly owned subsidiary of Chenega. CHN holds timber harvesting rights to, and is engaged in the sale of timber from the area in and around Prince William Sound damaged by the EXXON VALDEZ oil spill.

13. THE EYAK CORPORATION ("Eyak") is a Native village corporation organized under the laws of the State of Alaska pursuant to ANCSA. Eyak holds, pursuant to ANCSA, the right, title or interest in the surface estate of approximately 148,730 acres of land in Alaska, including lands in the area in and around Prince William Sound damaged by the EXXON VALDEZ oil spill. Eyak shareholders are primarily Native residents (as the term is used in §6(a) of ANCSA) of Eyak or descendants or heirs thereof (hereafter also referred to as "Natives" or "Native Alaskans").

14. EYAK DEVELOPMENT, INC. ("Eyak Development") is a corporation organized and existing under laws of the State of Alaska and is a wholly owned subsidiary of Eyak. Eyak Development is principally engaged in two businesses: (i) operating a marina and warehousing storage facility in Prince William Sound and (ii) owning and operating a trailer court in Cordova, which activities have been damaged by the EXXON VALDEZ oil spill.

15. EYAK TIMBER, INC. ("Eyak Timber") is a corporation organized and existing under the laws of the State of Alaska and is a wholly owned subsidiary of Eyak. Eyak Timber is engaged in the business of harvesting and marketing timber situated on lands owned by Eyak and others throughout the coastal area of South Central Alaska damaged by the EXXON VALDEZ oil spill.

16. PORT GRAHAM CORPORATION ("Port Graham") is a Native village corporation organized under the laws of the State of Alaska pursuant to ANCSA. Port Graham holds, pursuant to ANCSA, the

entitlement, right, title or interest in the surface estate of approximately 111,642 acres of land in Alaska, including lands in and around the Gulf of Alaska, the Kenai Fjords National Park and Cook Inlet damaged by the EXXON VALDEZ oil spill. Port Graham owns a fish processing facility in the Village of Port Graham and is also engaged in the harvesting and marketing of timber. Port Graham shareholders are primarily Native residents (as the term is used in §6(a) of ANCSA) of Port Graham (hereafter also referred to as "Natives" or "Native Alaskans").

17. PORT GRAHAM DEVELOPMENT CORPORATION ("PGDC") is a corporation organized and existing under the laws of the State of Alaska. PGDC is engaged in a retail store business and a fuel sale business. Its customers include the residents of Port Graham as well as the seasonal commercial fishing fleet, processors, employees, tourists and visitors to Port Graham. PGDC's businesses have been damaged by the EXXON VALDEZ oil spill.

18. The Native regional corporation, Native village corporations and their subsidiaries referred to in paragraphs 4 through 17 have paid their biennial corporation tax last due and have filed their biennial reports for the last reporting period and are in all ways capable of bringing and maintaining this action.

19. Pursuant to ANCSA, CAC and the Native village corporations named above own, hold, use and develop their lands and resources for the exclusive and express purposes of improving and promoting the social and economic well-being of their Native

shareholders, and of protecting the traditional values, customs and rights of said shareholders who rely upon, use and benefit from the lands and natural resources in and around Prince William Sound, the Gulf of Alaska and the Lower Kenai Peninsula.

20. Further, pursuant to ANCSA, CAC and the Native village corporations named above, are the owners in trust and custodians of the Natives' aboriginal and subsistence hunting and fishing rights appurtenant to the lands they own within the Chugach Region. Specifically, the lands and natural resources owned and controlled by the plaintiff corporations are used by Native Alaskans in the exercise of their absolute priority, pursuant to 16 U.S.C. §3114, to subsistence use of the wild, renewable resources taken for personal or family consumption, such as food, lodging, resources, clothing and tools, or for making and selling handicraft articles out of byproducts from natural resources taken for consumption ("Subsistence Rights"). The lands and natural resources so held in trust by the plaintiff corporations for Native Alaskans in the exercise of their Subsistence Rights have been damaged and impaired by the EXXON VALDEZ oil spill.

21. CAC and the Native village corporations named above, either directly or through wholly owned subsidiaries, are also engaged in the business management of the lands and natural resources they own and in various businesses related to the natural resources of the area damaged by the oil spill from the EXXON VALDEZ. These activities include, but are not limited to, the

following: (i) processing of seafood taken from waters in and around Prince William Sound, the Lower Kenai Peninsula, Kodiak and the Gulf of Alaska; (ii) ownership and/or operation of fish processing facilities for the canning and/or preservation of seafood taken from the waters in and around Prince William Sound, the Lower Kenai Peninsula, Kodiak and the Gulf of Alaska; (iii) marketing of frozen and canned seafood in the Pacific Northwest; (iv) sale, lease and/or logging of timber situated on the lands they own or lease; (v) commercial exploitation of other forest and wood products; (vi) potential oil and gas exploration and development; and (vii) other income generating activities (including, but not limited to, the promotion of tourism), all for the social and economic benefit of their Native shareholders.

22. Defendant EXXON SHIPPING CO. ("Exxon Shipping") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 811 Dallas Avenue, Houston, Texas 77022. Exxon Shipping was and is wholly controlled by Exxon Corporation and Exxon, USA as more fully described in paragraphs 23 and 24. Exxon Shipping is the registered owner and operator of the M/V EXXON VALDEZ.

23. Defendant EXXON CORPORATION ("Exxon") is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 1251 Avenue of the Americas, New York, New York 10020. Exxon is a multi-national corporation engaged, inter alia, in the business of transporting

petroleum products from Port Valdez, Alaska to various points. At all material times, Exxon was the corporate parent of Defendant Exxon Shipping and, along with Exxon Co. USA, so dominated and controlled Exxon Shipping as to render it liable for the conduct of Exxon Shipping as more fully described below. Exxon owns and/or controls the cargo which was on board the EXXON VALDEZ on March 24, 1989, and which was discharged into the waters described above.

24. Defendant EXXON CO., USA ("Exxon USA") is a subsidiary of Defendant Exxon with its principal place of business at 800 Bell Avenue, Houston, Texas 77002. Exxon USA is engaged in the business of producing crude oil and refining, transporting and marketing petroleum products in the United States. At all material times, Exxon USA, along with Defendant Exxon, so dominated and controlled Exxon Shipping, so as to render it liable for the conduct of Exxon Shipping as more fully described below. Exxon USA owns and/or controls the cargo which was on board the EXXON VALDEZ on March 24, 1989, and which was discharged into the waters described above. Defendants Exxon Shipping, Exxon and Exxon USA shall hereinafter be referred to collectively as "the Exxon Defendants".

25. Defendant ALYESKA PIPELINE SERVICE COMPANY ("Alyeska") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of Alaska. Alyeska is owned and controlled by a group of oil companies, including Exxon, and owns and operates the Trans-

Alaska Pipeline System ("TAPS") and the shipping terminal facilities at the Port of Valdez, Alaska. Alyeska was formed by Exxon and several other major oil companies to act as their agent in the construction, operation and maintenance of TAPS and the terminal facility at the Port of Valdez. Alyeska was responsible and otherwise assumed responsibility to the public, including plaintiffs, for formulating an oil spill contingency plan and maintaining adequate personnel and equipment to fulfill the obligations of that plan for emergency response to spills in Prince William Sound, including the coordination of clean up activities.

26. Defendant JOSEPH HAZELWOOD ("Hazelwood") was the Master of the M/V EXXON VALDEZ. At all times relevant herein, Hazelwood was an employee and/or agent of the Exxon Defendants and was acting within the scope of his authority.

27. Defendant GREGORY COUSINS ("Cousins") was the Third Mate on the M/V EXXON VALDEZ and the officer on watch when the ship ran aground. At all times relevant herein, Cousins was an employee and/or agent of the Exxon defendants and was acting within the scope of his authority.

28. Defendant EDWARD MURPHY ("Murphy") is a licensed pilot who piloted the EXXON VALDEZ from the Port of Valdez to Rocky Point on the night of March 23-24, 1989.

COMMON FACTUAL ALLEGATIONS

29. The M/V EXXON VALDEZ ("EXXON VALDEZ") is a 987 foot very large crude carrier ("VLCC") of 211,469 deadweight tons (dwt) built in 1986 by the National Steel and Shipbuilding Co. of San Diego, California and owned and is operated by Exxon Shipping. On or about March 23, 1989, the EXXON VALDEZ loaded at Valdez, Alaska approximately 62 million gallons of crude oil that had been transported through the Trans-Alaska Pipeline.

30. The oil terminal in Valdez, Alaska, at which the EXXON VALDEZ was loaded, is owned by defendant Alyeska. The terminal is a facility of the Trans-Alaska Pipeline.

31. At approximately 9:30 p.m. on March 23, 1989, the fully laden EXXON VALDEZ, under Hazelwood's command, departed the Port of Valdez. Defendant Edward Murphy, a licensed pilot, was on board the vessel, piloting her out of the harbor. The EXXON VALDEZ entered Prince William Sound and successfully navigated the Valdez Narrows. After navigating the Valdez Narrows, the Captain of the EXXON VALDEZ allowed Valdez Harbor Pilot Murphy to depart the tanker and Murphy so departed.

32. Shortly after the harbor pilot departed, the EXXON VALDEZ, under Hazelwood's command and with the knowledge and consent of the Exxon Defendants and the United States Coast Guard, changed course from the outbound lane to the inbound lane of the designated shipping lanes located approximately 22 miles south of Valdez.

33. Subsequent to the vessel leaving the outbound shipping lane and entering the inbound lane, Hazelwood departed the bridge leaving the direction and control of the EXXON VALDEZ to Cousins, who was not certified to pilot a VLCC like the EXXON VALDEZ in the waters of Prince William Sound. Said lack of certification was within the privity and knowledge of the Exxon Defendants.

34. At approximately 12:04 a.m. on March 24, 1989, the vessel, having entirely left the designated shipping lanes and having been under the control of the unqualified Cousins, all within the privity and knowledge of the Exxon Defendants, ran aground on Bligh Reef, a well-known, charted and buoyed hazard in Prince William Sound. When the vessel ran aground, Hazelwood was not on the bridge and Cousins, who was not certificated to pilot in Prince William Sound, was in control of the vessel.

35. At the time of the grounding, the vessel was incompetently manned within the privity and knowledge of the Exxon Defendants who knew or had reason to know that officers and crew members, including Hazelwood, from the EXXON VALDEZ and other Exxon vessels, imbibed alcoholic beverages prior to sailing. The Exxon Defendants failed to institute adequate measures to preclude alcohol impairment of such officers and crew members. Indeed, blood tests conducted on the captain after the accident showed that he had a blood alcohol level which, even twelve hours later, significantly exceeded Coast Guard regulations. This impairment

and the Exxon Defendants' failure to institute adequate measures to preclude alcohol impairment of the officers and crew serving on board its vessels transporting oil from the Trans-Atlantic pipeline, caused and contributed to the stranding of the EXXON VALDEZ and the subsequent discharge of its cargo of crude oil into the waters of Prince William Sound.

36. By reason of the aforesaid, the single hull of the EXXON VALDEZ was breached in several places and enormous quantities of crude oil were discharged into the waters of Prince William Sound, thereby polluting the same and the places to which it was carried by the forces of wind and current. Said cargo of crude oil laden on board the EXXON VALDEZ was known by Defendants herein to be capable of floating a long period of time and polluting the sea and causing widespread ecological and economic harm wherever deposited on shore by force of wind and current and was, accordingly, a dangerous and/or potentially harmful substance.

37. As a result of the said grounding and consequent escape and continuous leakage of the vessel's crude oil cargo into the waters of Prince William Sound, said waters, together with the shores of islands within Prince William Sound and along the Lower Kenai Peninsula, Kodiak and the Gulf of Alaska owned, occupied or used by Plaintiffs, their Native shareholders and public and private fisheries and other public and private institutions and enterprises were, and continue to be, damaged or threatened by

serious oil pollution to the detriment of Plaintiffs and many of their Native shareholders, inhabitants and local authorities.

38. Exxon Shipping, as the registered owner and operator of the EXXON VALDEZ, and Exxon and Exxon USA as the controlling owners of Exxon Shipping and owners and transporters of the cargo of said vessel, knew, should have known or were reckless in not knowing that Hazelwood had an alcohol abuse problem and was incompetent and effectively unable to command or control the vessel. Complaints of Hazelwood's abuse of crewmembers in an intoxicated state were known to the Exxon Defendants. The Exxon Defendants also had knowledge of the ingestion by other officers of alcoholic beverages prior to the sailing of other vessels from the Port of Valdez. Only weeks before the EXXON VALDEZ oil spill, local community groups in Valdez had publicly expressed concern to Defendants and others that officers and crew were boarding tankers while intoxicated. The negligent, grossly negligent and reckless acts of Hazelwood were all within the privity and knowledge of the Exxon Defendants.

39. Defendant Murphy, who had piloted the EXXON VALDEZ to Rocky Point, knew, should have known or was reckless in not knowing that Hazelwood was intoxicated and was not competent or otherwise able to command or control the vessel. Murphy knew, should have known or was reckless in not knowing that no other officer or crew member on board the EXXON VALDEZ was qualified to navigate the vessel in Prince William Sound. Notwithstanding the

foregoing, Murphy negligently and recklessly departed the EXXON VALDEZ and permitted Hazelwood to assume direction and control of the vessel upon his departure.

40. The Exxon defendants and Alyeska, and other oil companies involved in the construction and operation of the Trans-Alaska Pipeline, publicly represented to concerned citizens of the area, including Plaintiffs and their Native shareholders, that the tanker fleet operating out of Valdez would be designed to minimize oil spills by exceeding or meeting all applicable government standards relating to the design and construction of similar vessels. The Exxon defendants and Alyeska also promised and represented that they would develop an oil spill contingency plan and maintain sufficient resources in personnel and equipment to fully respond to, contain and/or clean up a major oil spill resulting from operations relating to the Trans-Alaska Pipeline or the marine transportation from Valdez through Prince William Sound of oil transported through the pipeline.

41. Despite repeated assurances by the Exxon Defendants and Alyeska that they were fully equipped and prepared to contain and clean up a spill in Prince William Sound, said Defendants were, in fact, ill equipped and unprepared to contain or mitigate the effects of a large spill.

42. The limited equipment available at the time of the spill was not kept in a state of readiness. When the EXXON VALDEZ went aground, Alyeska and the Exxon Defendants failed to take

necessary and immediate measures to contain and mitigate the effects of the oil spill and contributed to and otherwise exacerbated the damages caused and threatened thereby through inaction during the first critical 72 hours when much of the damage might have been avoided through prompt and effective response. Alyeska did not provide any personnel for more than 12 hours, and there were virtually no properly trained personnel to respond to the disaster. Moreover, there was insufficient mechanical equipment available to contain the spill.

43. Although Alyeska and the Exxon Defendants knew, should have known or were reckless in not knowing of the potential devastation resulting from a major spill in Prince William Sound and of its reasonable likelihood, Alyeska, over the past few years, with the knowledge and consent of the Exxon Defendants, actually decreased its containment and spill response capability in at least the following respects:

(a) A full time professionally trained crew was gradually eliminated and replaced by dock workers and office workers with no experience or training in dealing with oil spills;

(b) A barge designed to take oil from spill sites was replaced by a much smaller, second-hand, barge, which was too damaged to be used in the EXXON VALDEZ spill;

(c) Modern, self-inflating booms designed to contain oil slicks immediately after a spill, were unavailable for more than 24 hours; and

(d) Alyeska promised to keep a full time oil spill coordinator in Valdez, but at the time of the spill, no such coordinator was stationed there.

44. Alyeska had earlier been offered assistance and cooperation from Plaintiff CAC to develop adequate means for an effective response to a catastrophic spill in Prince William Sound, including the establishment of various storage facilities along the Sound, the availability of personnel and specialized equipment, and other means which, if available, could have contained or minimized the damage caused by the EXXON VALDEZ oil spill. Alyeska negligently or recklessly rejected such assistance and cooperation and misleadingly and falsely represented that it had the capacity of providing an adequate response without the help of CAC and others.

45. As a result of the reductions and cutbacks described above and the unreasonable refusal of Alyeska to accept proposals from CAC and others regarding the establishment of adequate spill response capability, Alyeska was completely unprepared to respond to, contain, and clean up the spill from the EXXON VALDEZ.

PUNITIVE AND/OR EXEMPLARY DAMAGES

46. The Defendants' conduct as alleged herein was willful, wanton, malicious and so outrageous as to justify the award of punitive and/or exemplary damages against them.

FIRST CLAIM FOR RELIEF

(All Defendants)

PUBLIC NUISANCE

47. Plaintiffs reallege paragraphs 1 through 46 of this complaint and all allegations contained therein.

48. By causing and allowing a discharge of approximately 10.5 million gallons of crude oil into Prince William Sound and its environs, Defendants' conduct constitutes a nuisance under applicable common law principles.

49. As a direct and proximate result of the discharge of oil from the M/V EXXON VALDEZ into Prince William Sound and its environs, Plaintiffs have sustained damages which are continuing.

SECOND CLAIM FOR RELIEF

(Exxon Defendants and Alyeska)

STRICT LIABILITY [AS §§ 46.03.822-828]

50. Plaintiffs reallege paragraphs 1 through 49 of this complaint and all allegations contained therein.

51. The oil, which was discharged into the waters of Prince William Sound and its environs as a result of the grounding of the EXXON VALDEZ presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, and other parts of the natural habitat, and is a hazardous substance as defined in AS §§ 46.03.826(4)(A) and (B).

52. The Exxon defendants and Alyeska own and/or have control of, pursuant to AS §§ 46.03.826(3), the oil which was loaded on the EXXON VALDEZ and discharged into the waters of Prince William Sound.

53. Pursuant to AS §§ 46.03.822-828, the Exxon defendants and Alyeska are jointly, severally and strictly liable, without regard to fault, for causing the discharge of a hazardous substance into Prince William Sound and its environs and for all damages proximately caused to Plaintiffs as a result thereof, which damages are continuing.

THIRD CLAIM FOR RELIEF

(All Defendants)

PRIVATE NUISANCE [AS § 09.45.230]

54. Plaintiffs reallege paragraphs 1 through 53 of this complaint and all allegations contained therein.

55. As a direct and proximate result of the discharge of oil from the EXXON VALDEZ into the waters of Prince William Sound and its environs, including the above-described conduct of the Defendants, Plaintiffs have suffered substantial and continuing damages.

56. Pursuant to Alaska Statute § 09.45.230, Defendants' activities in causing and allowing the release of enormous quantities of oil into the waters of Prince William Sound constitutes a private nuisance.

FOURTH CLAIM FOR RELIEF

(All Defendants)

INHERENTLY DANGEROUS ACTIVITY

57. Plaintiffs reallege paragraphs 1 through 56 of this complaint and all allegations contained therein.

58. Under principles of common law, the oil loading and shipping activities engaged in by Defendants are so inherently dangerous and potentially devastating to the ecological environment, Plaintiffs, their Native shareholders and Alaska's residents, citizens, and businesses, that, even when conducted under the best of circumstances and with utmost care, they constitute inherently or abnormally dangerous activities for which the Defendants are strictly liable.

59. The above-described inherently dangerous activities engaged in by Defendants directly and proximately caused substantial and continuing damages to Plaintiffs.

FIFTH CLAIM FOR RELIEF

NEGLIGENCE OF THE EXXON DEFENDANTS, HAZELWOOD, COUSINS AND MURPHY

60. Plaintiffs reallege paragraphs 1 through 59 of this complaint and all allegations contained therein.

61. At all times relevant, the Exxon Defendants owed a duty of care to Plaintiffs to ensure that reasonable measures would

be taken to safely transport and handle crude oil in Prince William Sound.

62. The Exxon Defendants breached that duty by their actions and omissions, including, without limitation, the following:

(a) The negligent navigation of the EXXON VALDEZ within the privity and knowledge of the Exxon Defendants into a known, charted and buoyed hazard outside the designated shipping lanes;

(b) The failure of the Exxon Defendants to ensure properly against the operation of Exxon vessels and the EXXON VALDEZ by persons impaired by alcohol or other substances, and their failure to ensure properly the continuing qualification of the master of the EXXON VALDEZ and/or his ability to command and control the vessel in light of his known alcohol abuse problem or to ensure the presence on board the EXXON VALDEZ of another qualified officer with an endorsement on his Coast Guard license to navigate Prince William Sound to replace Hazelwood in the event of his incapacity to command the vessel.

(c) The negligent entrustment by the Exxon Defendants of the command of the EXXON VALDEZ to Hazelwood;

(d) The use or allowance of use by the Exxon Defendants of unsafe and improper methods of marine transport in transporting petroleum products through the Port of Valdez and Prince William Sound;

(e) The failure by the Exxon Defendants to ensure properly the suitability of the EXXON VALDEZ for the particular purpose of transporting crude oil in the Prince William Sound;

(f) The failure by the Exxon Defendants to prepare adequately for or respond to, contain and clean up the oil spill from the EXXON VALDEZ; and

(g) The failure by the Exxon Defendants to take immediate, necessary or reasonable steps subsequent to the oil spill to contain and mitigate the effects thereof.

63. The foregoing actions, among others, constituted negligence within the privity and knowledge of the Exxon Defendants.

64. The aforesaid negligent conduct of the Exxon Defendants has proximately caused damage to the Plaintiffs herein, and these damages are continuing.

65. Defendant Hazelwood, individually, had a duty of care to Plaintiffs to ensure that reasonable measures would be taken to safely transport and handle crude oil in Prince William Sound. Hazelwood breached such duty by his actions and omissions, as described above.

66. The negligent and reckless conduct of Hazelwood proximately caused damages to Plaintiffs which are continuing.

67. Defendant Cousins, individually, had a duty of care to Plaintiffs to ensure that reasonable measures would be taken to safely transport and handle crude oil in Prince William Sound.

Cousins breached such duty by his actions and omissions, as described above.

68. The negligent and reckless conduct of Cousins proximately caused damages to Plaintiffs which are continuing.

69. Defendant Murphy, individually, had a duty of care to Plaintiffs to ensure that reasonable measures would be taken to safely transport and handle crude oil in Prince William Sound. Murphy breached such duty by his actions and omissions as described above, including his failure to advise the Exxon Defendants, the United States Coast Guard and/or others of the master's incapacity to command the vessel upon his relinquishment of pilotage of the vessel.

70. The negligent and reckless conduct of Murphy proximately caused damages to Plaintiffs which are continuing.

SIXTH CLAIM FOR RELIEF

NEGLIGENCE OF DEFENDANT ALYESKA

71. Plaintiffs reallege paragraphs 1 through 70 of this complaint and all allegations contained therein.

72. At all times relevant herein, Defendant Alyeska had the duty and responsibility to Plaintiffs herein, and to others, to prevent oil pollution of the Prince William Sound. Alyeska also had duties, responsibilities and authority to prevent oil spilled from tankers transporting crude oil from Port Valdez from causing pollution damage and to clean up and remove all oil in such a way

as to prevent or minimize any damage to Plaintiffs herein. This duty and responsibility, which have been repeatedly acknowledged by Alyeska in public records and reports, were critical factors in obtaining agreement by various state and local authorities to the use of the Port of Valdez and Prince William Sound for the transport of oil flowing through the Trans-Alaska Pipeline.

73. Alyeska knew, had reason to know or was reckless in not knowing that a spill of catastrophic proportions could occur in Prince William Sound. Further, Alyeska knew, had reason to know or was reckless in not knowing of the tide, current, and weather conditions in the Gulf of Alaska and Prince William Sound and the existence of reefs, rocks, and other dangerous conditions and hazards to navigation which it knew, should have known or was reckless in not knowing could result in the grounding of a VLCC like the EXXON VALDEZ. Notwithstanding the foregoing, Alyeska negligently and recklessly failed to act properly, reasonably and effectively to prevent pollution and to clean up spilled oil so as to prevent or minimize the damage to Plaintiffs in at least the following manner:

(a) Alyeska negligently, recklessly and improperly failed to establish a tested and effective oil spill contingency plan with procedures for the prompt and efficient mobilization of public and private entities and resources to combat oil spills and potential pollution and to prevent pollution of those areas of

special economic, social, cultural, historical, tribal, ancestral and environmental importance;

(b) Alyeska negligently, recklessly and improperly failed to implement the provisions of its oil spill contingency plan which provided for prompt and efficient mobilization of public and private employees and resources to combat oil spills and potential pollution and to prevent pollution of those areas of special economic and environmental importance;

(c) Alyeska negligently, recklessly and improperly failed to use dispersants properly in order to prevent or minimize the effects of pollution;

(d) Alyeska negligently, recklessly and improperly failed to use booming devices in such a manner so as to protect harbors, bays, estuaries, rivers, inlets, beaches, and other areas of the coast from oil pollution;

(e) Alyeska negligently, recklessly and improperly refused to accept and utilize resources, including, without limitation, oil pollution and clean-up experts, offered and provided by others;

(f) Alyeska negligently, recklessly and improperly failed to instruct and control the activities of its agents and employees in undertaking, supervising or coordinating pollution prevention and clean-up operations;

(g) Alyeska negligently, recklessly and improperly failed to instruct and control the activities of others in

undertaking, supervising or coordinating pollution prevention and clean up operations.

74. The negligent, reckless and improper acts of Defendant Alyeska, described above, caused and contributed to oil pollution damage, aggravated, exacerbated, and prolonged the effects of such oil pollution, and proximately caused the damages suffered by Plaintiffs herein which are continuing.

SEVENTH CLAIM FOR RELIEF

(All Defendants)

TRESPASS

75. Plaintiffs reallege paragraphs 1 through 74 of this complaint and all allegations contained therein.

76. Defendants' conduct, described above, constituted a trespass in that oil was allowed or caused to be discharged as a result of Defendants' acts and omissions and entered into and upon waters, the surface and subsurface of lands owned or leased by Plaintiffs in and around Prince William Sound, the Gulf of Alaska, Kodiak and the Lower Kenai Peninsula, which trespass is continuing, causing injury to Plaintiffs' property rights in such waters, surface and subsurface of lands and the marine and wildlife resources contained thereon and therein.

EIGHTH CLAIM FOR RELIEF

(Exxon Defendants and Alyeska)

NEGLIGENT MISREPRESENTATION

77. Plaintiffs reallege paragraphs 1 through 76 of this complaint and all allegations contained therein.

78. Defendants negligently misrepresented to Plaintiffs and others that they had sufficient personnel and material means at their disposal to prevent a pollution incident or to prevent or minimize damage if a pollution incident occurred.

79. In fact, Defendants were aware, or were negligent or reckless in not being aware, that they lacked sufficient means in personnel and equipment to prevent pollution or adequately respond to an oil spill in Prince William Sound before it caused damage. Defendants knew or were reckless in not knowing that they were ill equipped and unprepared to respond to a massive oil spill such as that from the EXXON VALDEZ, but failed to warn Plaintiffs or state and federal authorities of these facts.

80. Because of these negligent and reckless misrepresentations or omissions of material facts, the true dangers posed to Plaintiffs and the environment of Prince William Sound were not disclosed. Accordingly, adequate protective measures were not taken by others to prevent the disaster which has now occurred.

81. The misrepresentations and omission of material facts by Defendants were negligently made to induce Plaintiffs and others to refrain from action in reliance upon Defendants' conduct.

82. Because of these misrepresentations and omissions, Plaintiffs and others in a position to act in connection with an oil spill, refrained from taking action to protect the environment from contamination and from taking appropriate legal action.

83. The above-mentioned misrepresentations and omissions resulted in inadequate and ineffectual clean-up efforts which aggravated and compounded the damage caused to Plaintiffs by the oil spill.

84. As a direct and proximate result of the misrepresentations and/or omission of material facts by Defendants, Plaintiffs have suffered substantial damages which are continuing.

NINTH CLAIM FOR RELIEF

(Exxon Defendants and Alyeska)

FRAUD

85. Plaintiffs reallege paragraphs 1 through 84 of this complaint and all allegations contained therein.

86. In connection with, among other things, the granting of the right-of-way to transport oil from the Port of Valdez to other ports within the jurisdiction of the United States, Defendants fraudulently misrepresented to Plaintiffs and others that they had sufficient personnel, equipment and other material available to prevent a pollution incident or prevent or minimize damage if a pollution incident occurred.

87. At the time Defendants made such representations, they knew or were reckless in not knowing that the statements so made were false.

88. During the time when Defendants first announced the promulgation of their contingency clean-up plan until the date oil spilled from the EXXON VALDEZ into the waters of Prince William Sound, Defendants intentionally, knowingly and/or recklessly omitted to state material facts which made their prior statements untrue regarding their capability of responding to or mitigating an oil spill.

89. In reliance on Defendants' intentional, knowing and reckless misrepresentations and omissions cited above, adequate protective measures were not taken by Plaintiffs and others to prevent or minimize the damage which might be caused by a major pollution incident in Prince William Sound. Further, Plaintiffs and others in a position to act in connection with an oil spill refrained from taking action to protect the environment from contamination and from taking appropriate legal action.

90. Because of these misrepresentations and omissions, there was not adequate personnel and equipment to contain and/or clean up the oil discharged from the EXXON VALDEZ, which inadequacy not only prevented the mitigation of damage, but aggravated and compounded such damage and injury to Plaintiffs and others.

91. As a direct and proximate result of Defendants' fraudulent statements and omissions of material facts, Plaintiffs have suffered substantial damages, which are continuing.

92. Further, Defendants acted recklessly, wantonly and willfully in connection with these statements and omissions.

TENTH CLAIM FOR RELIEF

(All Defendants)

93. Plaintiffs reallege paragraphs 1 through 92 of this Complaint and all allegations contained therein.

94. If, and only if, the Native Alaskans as defined herein are not able or fail to recover, for any reason, for the damages to their Subsistence Rights in any action or actions arising from the EXXON VALDEZ oil spill, brought individually or on their behalf as a class, plaintiffs seek recovery herein for such damages for the benefit of such Native Alaskans based on the Public Trust and parens patriae doctrines.

JURY DEMAND

Plaintiffs demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, each Plaintiff prays for judgment as against each Defendant and in favor of each Plaintiff for:

(a) damage for physical harm to each Plaintiff's property and its direct and indirect economic losses, including,

but not limited to, loss of profits, loss of use, loss of benefits, lost opportunities, diminution in value, loss of productivity and such other damages as may be proved at trial;

(b) damages due to the inability of each Plaintiff to preserve, protect and develop the resources on, in and under the lands owned by each of them in furtherance of each Plaintiff's duties and obligations under ANCSA to preserve, protect, and promote the social, cultural and economic well being of each plaintiff's Native shareholders and to protect their Subsistence Rights.

(c) damages to the Subsistence Rights of each Plaintiff's Native shareholders only to the extent not recovered in any related action brought individually or on behalf of a class of Native Alaskans.

(d) environmental damages including, but not limited to, all costs of the clean up and the creation of a fund to monitor the environment and ecology in the impacted area and to restore it to its pre-spill state;

(e) injunctive relief requiring the Defendants, jointly and severally, to repair and/or restore each Plaintiff's property to its pre-spill state;

(f) punitive and/or exemplary damages, where permitted, in an amount commensurate with the willful, wanton and reckless conduct of the Defendants;

(g) each plaintiff's costs of this action, including but not limited to, reasonable attorneys' fees, experts fees and other disbursements;

(h) pre-judgment interest, compounded annually through the date of judgment;

(i) such other and further relief as this Court deems just.

RESPECTFULLY SUBMITTED this 18th day of April, 1989.

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