

FILED

APR 03 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By \_\_\_\_\_ Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

A 89-102 CIV

CIVIL ACTION NO. \_\_\_\_\_

SAMISH MARITIME, INC., MID-WEST  
FISHERIES, INC., and SCOTT  
McALLISTER

Plaintiffs,

v.

EXXON SHIPPING COMPANY, ALEYSKA  
PIPE LINE SERVICE COMPANY, and  
TRANS-ALASKA PIPELINE LIABILITY  
FUND,

Defendants.

THIS IS A CLASS ACTION  
JURY TRIAL REQUESTED

A 89-102 CIV

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, on behalf of themselves and a class of all others  
similarly situated, allege of their own knowledge or upon informa-  
tion and belief as follows:

JURISDICTION AND VENUE

1. This court has federal question jurisdiction pursuant to  
28 U.S.C. § 1331 and pendent claim jurisdiction; and in the  
alternative, admiralty jurisdiction pursuant to 28 U.S.C. § 1333  
or diversity jurisdiction pursuant to 28 U.S.C. § 1332.

6

1 Plaintiffs' Original Complaint arises under violations of various  
2 federal statutes and state common law. Claims based on state  
3 common law arise from the same nucleus of operative facts as do  
4 the federal claims and are within this Court's pendent jurisdic-  
5 tion.

6 2. On information and belief, each of the defendants may be  
7 found, has an agent, or transacts business within Alaska. The  
8 causes of action alleged herein arose in substantial part within  
9 Alaska. Venue is proper under 28 U.S.C. § 1391(b) & (c).

10 THE PARTIES

11 3. Plaintiff Samish Maritime, Inc. ("Samish"), is a  
12 Washington corporation, with its principal place of business in  
13 Seattle, Washington. Samish is engaged in commercial fishing  
14 operations in the area affected by the oil spill described below.

15 4. Plaintiff Mid-West Fisheries, Inc. ("Mid-West"), is a  
16 Washington corporation, with its principal place of business in  
17 Seattle, Washington. Mid-West is engaged in commercial fishing  
18 operations in the area affected by the oil spill described below.

19 5. Plaintiff Scott McAllister ("McAllister"), is an Alaska  
20 resident, with his principal place of business in Juneau, Alaska.  
21 McAllister is engaged in commercial fishing operations in the area  
22 affected by the oil spill described below.

23 6. Defendant Exxon Shipping Company ("Exxon") is a Delaware  
24 corporation with its principal place of business in Houston,  
25 Texas. Defendant Exxon may be served through its registered  
26 agent.

1           7. Defendant Aleyska Pipe Line Service Company ("Aleyska")  
2 is a Delaware corporation, which may be served through its regis-  
3 tered agent office, 1835 South Bresaw, Anchorage, Alaska 99512.

4           8. Defendant Trans-Alaska Pipe Line Liability fund  
5 ("Liability Fund") is a non-profit corporate entity that can sue  
6 and be sued in its own name, pursuant to 42 U.S.C. § 1653.

7   AN OVERVIEW OF THE CLAIMS

8           9. On approximately March 24, 1989, the Exxon Valdez, a  
9 987-foot tanker owned by Exxon Shipping Company, rammed the Bligh  
10 reef about 25 miles from the City of Valdez, Alaska. The result  
11 was the largest oil spill in American history. Up to 12 million  
12 gallons of crude oil spilled into Alaska's Prince William Sound, a  
13 pristine Pacific waterway and fishing ground. Within one week,  
14 this spill had polluted numerous islands, channels, bays, and was  
15 threatening disaster to commercial fishing fleets and commercial  
16 fish processors operating in the affected area. This marine  
17 environment contained aquatic life, upon which numerous commercial  
18 fishermen and food processors depend for their livelihood and  
19 business profit. That aquatic life has suffered a catastrophe of  
20 enormous proportions. By Saturday, April 1, 1989, the oil spill  
21 threatened 600 miles of coastline that included numerous fishing  
22 communities and commercial fishing areas.

23           10. At the time of the incident, the third mate on the Exxon  
24 Valdez was commanding the ship. He was not qualified to do so.  
25 The captain, Joseph Hazlewood, was below deck. Hours after the  
26 spill occurred, the captain had a blood-alcohol reading above the

1 Coast Guard limits for intoxication. Exxon had hired Hazlewood  
2 and put him in a highly dangerous situation, even though he had a  
3 record of drinking, including suspension for driving while intoxi-  
4 cated. The Exxon Valdez, although only two and a half years old  
5 and one of the two biggest ships in the company's fleet, was built  
6 with only a single hull instead of a double hull, despite the fact  
7 that it traveled some of the most environmentally sensitive areas  
8 in the world.

9 11. Aleyska Pipeline Service Co. shared responsibility with  
10 Exxon for oil spill contingency plans in the area where the spill  
11 occurred. Aleyska has specific responsibility in carrying out  
12 these contingency plans. Long before the wreck of the Exxon  
13 Valdez, Aleyska had consciously let its contingency plan response  
14 capability dwindle to an inadequate state. For example, an  
15 important barge for cleanup was being repaired at the time of the  
16 Exxon Valdez disaster and not available for the cleanup. Aleyska  
17 had apparently not reported this to the state of Alaska.  
18 Aleyska's actions in failing to act promptly to contain the spill  
19 made the disaster even worse. Exxon was also aware that Aleyska's  
20 contingency plans and equipment were not in proper readiness.  
21 Further, Exxon's own cleanup efforts were grossly inadequate,  
22 allowing the oil spill to spread.

23 12. Exxon and Aleyska had a duty to the commercial fishermen  
24 in the area affected by the oil spill to conduct the activities of  
25 transporting oil from the Port of Valdez in a reasonably prudent  
26 manner, so as not to damage the aquatic life or to otherwise

1 injure the economic livelihood of these commercial fishermen.  
2 Exxon and Aleyska were clearly aware of the potential disaster to  
3 the economic livelihood of these commercial fishermen from an oil  
4 spill. The failure of Exxon and Aleyska to act in a reasonable  
5 and prudent manner in transporting the oil, setting up contingency  
6 plans, implementing contingency plans and undertaking prompt and  
7 adequate cleanup, has injured the plaintiffs and the commercial  
8 fishermen in the affected area to their detriment.

9 13. For example, the fishing season was already underway in  
10 the area when the spill occurred. Not only commercial fishing  
11 companies with permits, but also other commercial fishing  
12 companies under contract to carry out essential fishing operations  
13 on the water in the affected area, were harmed to their detriment.  
14 This harm included both the destruction of aquatic life upon which  
15 these commercial fishermen depended for their livelihood, and also  
16 interference with the ability to catch fish which existed. This  
17 diminution reduced the profits that plaintiffs would have realized  
18 from their commercial fishing in the absence of the spill.

19 THE CLASS

20 14. This action is brought as a class action by the named  
21 plaintiffs pursuant to Federal Rule of Civil Procedure 23(b)(3) on  
22 behalf of all similarly situated persons or entities who have been  
23 and continue to be adversely affected by the defendants' tortious  
24 conduct.

25 15. This class represented by the named plaintiffs consists  
26 of all commercial fishermen who fish in the Prince William Sound

1 area and surrounding Alaskan offshore waters affected by the  
2 Exxon Valdez oil spill. This includes all commercial boating  
3 operations which assist in on-water commercial fishing  
4 operations--specifically those operations with fishing permits and  
5 those commercial tender vessel operations and commercial fish  
6 processing operations under contract to assist in commercial  
7 fishing operations.

8 16. Plaintiffs, who are members of this class, have claims  
9 that are typical of the members of the class, have sustained  
10 losses as a result of the conduct of defendants as alleged in this  
11 Complaint, and are committed to prosecuting this action.  
12 Plaintiffs have retained competent counsel experienced in class  
13 action litigation and tort litigation. Plaintiffs will fairly and  
14 adequately protect the interest of the class.

15 17. There is a well-defined community of interest in the  
16 legal and factual questions affecting the members of the class.  
17 The common questions of law and fact predominate over questions  
18 which may affect individual class members. The questions of law  
19 and fact common to the class include, but are not limited to, the  
20 following: (a) Exxon's liability in selecting, training, and  
21 supervising the crews of the Exxon Valdez; (b) Exxon's liability  
22 in causing the Exxon Valdez oil spill; and (c) Exxon's liability  
23 for not properly containing the Exxon Valdez oil spill, once it  
24 occurred; (d) Aleyska's preparation of contingency plans for an  
25 oil spill in the Valdez area; (e) Aleyska's capability to respond  
26 to an oil spill in the Valdez area; (f) Aleyska's failure to act

1 promptly in containing the oil spill; (g) injury to common fishing  
2 areas; and (h) damages to the affected commercial fishing industry  
3 as a whole.

4 18. Plaintiffs know of no difficulty that would be  
5 encountered in the management of this litigation that would  
6 preclude its maintenance as a class action. A class action is  
7 superior to the alternatives, if any, for the fair and efficient  
8 adjudication of this controversy.

9 19. In the absence of this class action, defendants will not  
10 be properly held liable for their wrongdoing.

11 FACTUAL ALLEGATIONS

12 Count I--Common Law Negligence

13 20. Plaintiffs incorporate by reference all previous  
14 paragraphs.

15 21. Exxon has violated the duty owed to plaintiffs to  
16 exercise the ordinary care and diligence exercised by a reasonable  
17 and prudent operator of a supertanker in the Prince William Sound  
18 area and was negligent in the following particulars: (a) failure  
19 to meet applicable federal and state safety and environmental  
20 regulations instituted to protect against the kind of accident the  
21 Exxon Valdez incurred; (b) having unqualified personnel commanding  
22 the Valdez at the time of the incident; (c) knowingly placing a  
23 captain in charge of the Exxon Valdez who was an obvious safety  
24 risk; (d) failing to institute drug testing procedures to prevent  
25 drug and alcohol abuse by the ship's crew; (e) failing to  
26 institute proper screening procedures for the ship's captain and

1 crew; (f) failing to have proper contingency plans in effect for  
2 the oil spill that occurred; (g) knowing that Aleyska did not have  
3 proper contingency plans or capabilities to carry out contingency  
4 plans for containing oil spills; and (h) failing to adequately set  
5 up procedures for protecting the marine environment against the  
6 type of supertanker spill that has occurred; and (i) failing to  
7 promptly clean up and contain the oil spill.

8 22. Aleyska has violated the duty owed to plaintiffs to  
9 exercise ordinary care and diligence in the following particulars:  
10 (a) failure to meet applicable federal and state safety and  
11 environmental regulations instituted to protect against damage  
12 from oil spills; (b) failing to have proper contingency plans in  
13 effect for the oil spill that occurred; (c) failing to have the  
14 capability to carry out adequate contingency plans for containing  
15 the oil spill; and (d) failing to promptly clean up and contain  
16 the oil spill.

17 23. Each and every one of the foregoing acts and omissions,  
18 along with others, taken separately and collectively, constitute a  
19 direct and proximate cause of the damages sustained by plaintiffs,  
20 in an amount exceeding the minimum jurisdictional limits of this  
21 Court.

22 Count II--Gross Negligence

23 24. Plaintiffs incorporate by reference all previous  
24 paragraphs.

25 25. Plaintiffs further alleges that Exxon's and Aleyska's  
26 conduct constitutes gross negligence as that term is understood in



1 law. Exxon's and Aleyska's reckless and conscious indifference to  
2 the rights of the plaintiffs entitles plaintiffs to exemplary and  
3 punitive damages; specifically, Exxon and Aleyska were grossly  
4 negligent and their negligence was committed in a reckless and  
5 consciously indifferent way. Plaintiffs now sue for exemplary and  
6 punitive damages as provided by law in an amount exceed the  
7 minimum jurisdictional limits of this court.

8 Count III-Strict Liability

9 26. Plaintiffs incorporate by reference all previous  
10 paragraphs.

11 27. The oil Exxon spilled was transported through the trans-  
12 Alaska pipeline and was loaded on Exxon's vessel at terminal  
13 facilities of that pipeline.

14 28. The discharge of that oil from Exxon's vessel  
15 proximately caused the plaintiffs' injuries and damages.

16 29. Pursuant to the Trans-Alaska Pipeline Authorization Act,  
17 34 U.S.C. § 1653(c), Exxon is strictly liable for plaintiffs'  
18 damages, along with the Trans-Alaska Pipeline Liability Fund.

19  
20 PRAYER

21 WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully  
22 request that the defendants be summoned to appear, that the  
23 proposed class be certified pursuant to Fed. R. Civ. P. 23(b)(3),  
24 and that, upon  
25  
26

1 full and final trial by jury, plaintiffs recover actual damages,  
2 punitive damage and all other relief to which plaintiffs may show  
3 themselves entitled.

4  
5 Respectfully submitted,

6  
7 Kenneth E. McNeil *by P.S.*

8 Kenneth E. McNeil  
9 Stephen D. Susman  
10 William H. White  
11 Thomas W. Patterson  
12 SUSMAN, GODFREY & MCGOWAN  
13 5100 First Interstate Bank Plaza  
14 1000 Louisiana  
15 Houston, Texas 77002-5096  
16 (713) 651-9366

7 Lynn Lincoln Sarko *by P.S.*

8 Lynn Lincoln Sarko  
9 James P. Rohrback  
10 Alaska Bar No. 8106047  
11 Mark A. Griffin  
12 William C. Smart  
13 KELLER ROHRBACK  
14 1201 Third Avenue  
15 Seattle, Washington 98101-3029  
16 (206) 623-1900

13 Roger F. Holmes *by P.S.*

14 Roger F. Holmes  
15 Alaska Bar No. 7011060  
16 BISS AND HOLMES  
17 705 Christensen Drive  
18 Anchorage, Alaska 99501  
19 (907) 277-8564

13 John G. Young *by P.S.*

14 John G. Young  
15 Alaska Bar No. 8308084  
16 ESSENBURG & STATON  
17 4949 Seafirst Fifth Ave. Plaza  
18 Seattle, Washington 98104  
19 (206) 682-4321

John C. Pharr, Esq.  
Law Offices of John C. Pharr  
733 West Fourth Avenue, Suite 200  
Anchorage, Alaska 99501

FILED

(907) 272-2525

APR 03 1989

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By \_\_\_\_\_ Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

STEVEN T. OLSEN, on behalf of )  
himself and all others )  
similarly situated, )  
 )  
Plaintiff, )

**A89-103 CIV**  
Case No. A89-\_\_\_\_\_ CIV

vs. )

EXXON CORPORATION; EXXON CO., )  
USA; EXXON SHIPPING COMPANY; )  
ALYESKA PIPELINE SERVICE )  
COMPANY; and TRANS-ALASKA )  
PIPELINE LIABILITY FUND, )  
 )  
Defendants. )

CLASS ACTION COMPLAINT

Plaintiff, by his attorneys, brings this action on his own behalf and on behalf of the Class he represents to obtain damages, injunctive relief and costs of suit from the Defendants named herein, and complains and alleges as follows:

JURY TRIAL DEMAND

I

Pursuant to Rule 38 of the Federal Rules of Civil Procedure ("FRCP"), Plaintiffs demand that all issues so triable be tried by jury in this case.

JURISDICTION AND VENUE

II

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, a vessel engaged in the transportation of oil between the terminal facilities of the Trans-Alaska Pipeline System and Long Beach, California, a port under the jurisdiction of the United States.

III

This Complaint is filed and these proceedings are instituted pursuant to 28 U.S.C. §§ 1331 and 1333(1), which provide for original jurisdiction in the district courts of all civil actions arising under the laws of the United States and admiralty or maritime jurisdiction. This Court also has subject matter jurisdiction over this action in accordance with the principles of pendent jurisdiction.

IV

The grounds for relief are: (i) the Trans-Alaska Pipeline Authorization Act, Title II of Pub.L. 93-153, 43

CLASS ACTION COMPLAINT - Page 2  
JCP/ehb/132.1/JCP31060.389

U.S.C. § 1651 et seq.; (ii) Admiralty and Maritime Jurisdiction and The Admiralty Extension Act of 1948, 46 U.S.C. § 740 (1964); (ii) Negligence; (iv) Statutes adopted in Alaska providing for damages due to injury to property and natural resources; (v) common law nuisance; and (vi) negligence per se.

V

Venue is properly laid in this district pursuant to 28 U.S.C. §§ 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 arose in this district.

THE PARTIES

VI

Plaintiff, Steven T. Olsen, a resident of Anchorage, Alaska, is a commercial herring fisherman and the owner of a Prince William Sound Limited Entry Herring Roe Purse Seine Permit #G01E64470P 33694, issued by the State of Alaska, and valued at \$300,000. Plaintiff participates in the Prince William Sound herring roe fishery and has been damaged by the acts and conduct of the defendants as alleged herein.

VII

Defendant, the Trans-Alaska Pipeline Liability Fund ("Fund"), is a non-profit corporate entity established pursuant to the Trans-Alaska Pipeline Authorization Act ("Act"),

CLASS ACTION COMPLAINT - Page 3  
JCP/ehb/132.1/JCP31060.389

43 U.S.C. § 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.

#### VIII

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 Pipeline Company, British Petroleum Pipelines, Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Petroleum Company, and Union Alaska Pipeline Company.

#### IX

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, New York 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 vessel know as the Exxon Valdez.

#### X

Defendant, Exxon Shipping Company, a Delaware corporation and maritime subsidiary of the defendant Exxon Corporation, which its principal place of business at 811

Dallas Avenue, Houston, Texas 77002, is an owner and operator of the vessel known as the Exxon Valdez.

XI

Defendant Exxon Co., USA, is a division of defendant Exxon Corporation, with its principal place of business at 800 Bell Avenue, Houston, Texas 7700. 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 vessel known as the Exxon Valdez.

XII

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, one of the nation's most productive and pristine bodies of water, which is the home of marine mammals, birds and other wildlife, and various commercial fisheries.

XIII

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

XIV

As used herein, the term "Terminal Facilities" refers to the those facilities of the Trans-Alaska Pipeline System, including specifically Port Valdez, at which oil is taken from the pipeline and loaded on vessels or placed in storage for future loading on vessels.

XV

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.

XVI

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

XVII

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

XVIII

On Thursday evening, March 23, 1989, one of Exxon's two biggest vessels, the Exxon Valdez, a 987 foot tanker,

CLASS ACTION COMPLAINT - Page 6  
JCP/ehb/132.1/JCP31060.389



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.

XIX

The vessel's twelve oil tanks were filled to capacity with crude oil which had been shipped from Alaska's North Slope through the Trans-Alaska Pipeline.

XX

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.

XXI

Shortly thereafter, 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.

XXII

Mr. Cousins, who was not certified for commanding the vessel 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 from a glacier that had calved to the northwest.

XXIII

The vessel steered east into the empty northbound lane, and was instructed to proceed on a southwesterly course bound for Long Beach, California. The vessel, however, proceeded three miles east past the alternative channel, outside the traffic lanes and entirely beyond the shipping channel into a charted area of rocky reefs.

XXIV

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

XXV

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

XXVI

Although the vessel was still navigable after the first impact, she was so far east of deep water that when 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 vessel aground, stopping the vessel's progress completely.

XXVII

The scraping impact and grounding of the Exxon Valdez upon Bligh Reef tore open at least eight of the vessel'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 10.1 million gallons of crude oil have been discharged into Prince William Sound, already contaminating at least seven hundred square miles of water.

XXVIII

Nine (9) hours after the vessel rammed 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 Coast Guard regulations pertaining to operating commercial vessels at sea while under the influence of alcohol.

XXIX

Late Sunday, March 26, 1989, critical of the slow pace of any attempted clean-up efforts by Alyeska and the Exxon defendants and concerned about even further possible damage to property, resources and wildlife, Alaska Governor Steven Cowper declared a disaster emergency.

XXX

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 damage to marine life, including all five species of salmon, herring, bottom fish, shrimp and crab, relied upon by plaintiff and the plaintiff Class for economic purposes.

XXXI

Plaintiff and the plaintiff Class were preparing for the herring season, which is followed by harvests of shellfish, halibut and salmon when the spill occurred. The harvesting of herring roe alone earns in excess of \$16 million per year for plaintiff and the plaintiff Class, while the salmon harvest is worth approximately \$75 million a year.

XXXII

By late Monday, March 27, 1989, winds gusting up to seventy miles per hours were moving the slick so that it threatened environmentally sensitive fishing grounds and bird rookeries.

XXXIII

The oil slick has already spread to Smith, Little Smith, Naked and Seal Islands as it moved toward the southern end of Prince William Sound; these islands are home to thousands of water birds and marine mammals, whose contamination by the spreading oil cannot yet be quantified.

XXXIV

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 re-pollution for a protracted time into the future.

CLASS ALLEGATIONS

XXXV

This action is brought by plaintiff on his own behalf and, pursuant to Rule 23, FRCP, on behalf of a class consisting of all persons and entities who were injured or adversely affected by the rupture of defendant Exxon's vessel on March 24, 1989, the subsequent oil spill therefrom, and/or 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

CLASS ACTION COMPLAINT - Page 11  
JCP/ehb/132.1/JCP31060.389

directors, officers, agents, employees and representatives of each.

XXXVI

Plaintiff is 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.

XXXVII

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 provisions 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/or (iii) operating the Exxon Valdez;

(d) whether the Exxon defendants acted recklessly, wantonly, or in willful disregard of the rights and economic well-being of plaintiff and the plaintiff Class in (i) main-

taining, (ii) controlling, and/or (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 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;

(f) whether Alyeska and the Exxon defendants acted recklessly, 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 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;

(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 and its 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 violative of AS 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; and,

(n) whether the Court should order Alyeska and Exxon to provide plaintiff, the plaintiff Class and affected communities with environmental relief.

XXXVIII

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

XXXIX

Plaintiff will fully and adequately protect the interests of the Class. The interests of the Class representative are consistent with those of the members of the Class.



In addition, plaintiff is represented by experienced and able counsel who have represented plaintiff classes throughout the United States.

XL

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 plaintiff Class.

XLI

Given the scope of harm inflicted by defendants and the egregiousness of the misconduct which renders the award of punitive/exemplary 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.

XLII

A substantial claim for punitive/exemplary 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.

CLASS ACTION COMPLAINT - Page 15  
JCP/ehb/132.1/JCP31060.389

XLIII

Certification is appropriate under one or more of the provisions of Rule 23(b), FRCP, 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. § 1653(a)/Strict Liability  
Plaintiffs v. Alyeska

XLIV

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

XLV

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

XLVI

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.

XLVII

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 or plaintiff class.

XLVIII

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, 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 commercial purposes.

XLIX

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

COUNT II

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

L

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

LI

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

LII

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 Pipe-

line and loaded on the Exxon Valdez at the terminal facilities of the pipeline.

LIII

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

LIV

The oil discharged from the Exxon Valdez has damaged and otherwise adversely affected lands, structures, 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 commercial purposes.

LV

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. § 1653(c).

COUNT III

Trans-Alaska Pipeline Authorization Act,  
43 U.S.C. § 1653  
Negligence -- Plaintiffs v. Alyeska and Exxon

LVI

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

CLASS ACTION COMPLAINT - Page 18  
JCP/ehb/132.1/JCP31060.389

LVII

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 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 dispersants.

LVIII

Upon information and belief, Alyeska and Exxon's "contingency clean-up plan" required them to be on site within five hours after 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 had already become too large to contain.

LIX

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

LX

Lack of proper equipment and supplies also hindered effective clean-up operations.

LXI

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.

LXII

The tactics finally chosen by defendants, chemical dispersants which could cause further harm to the water, proved 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.

LXIII

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 period, the oil develops a resistance to chemical treatment.

LXIV

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 conditions to make it impossible to deploy the necessary small boats for this purpose.

LXV

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 plaintiff 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.

LXVI

In the exercise of care, defendants knew or should have known that they lacked adequate equipment and supplies 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".

LXVII

The negligence of defendants Alyeska and Exxon in the control and clean-up operations specifically included, but was not limited to, (i) failing to establish and provide for an adequate contingency plan to contain and clean up any discharge of oil; (ii) inadequately planning the ensuing clean-up effort; (iii) inadequately carrying out the ensuing clean-up effort; (iv) unreasonably delaying the ensuing

clean-up effort; and (vi) possessing inadequate equipment, supplies and personnel for deployment in the ensuing clean-up effort, all of which served to aggravate and compound the damages to plaintiff and the plaintiff Class.

LXVIII

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

LXIX

Defendants Alyeska and Exxon acted recklessly, wantonly and in willful disregard of the rights and economic well-being of plaintiff and the plaintiff Class in the control and clean-up 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. § 1653(c)/Negligence  
Plaintiffs v. Exxon

LXX

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

LXXI

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

CLASS ACTION COMPLAINT - Page 22  
JCP/ehb/132.1/JCP31060.389



revoked three times in that same period, was not in command when the tanker hit the well-marked Bligh Reef.

LXXII

Instead, the third mate, Gregory Cousins, was in command of the tanker when it ran aground, although Cousins lacked proper certification to pilot vessels such as the Exxon Valdez through the waters of Prince William Sound.

LXXIII

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 regulations.

LXXIV

Captain Hazelwood and third mate Cousins knew or should have know that Cousins did not possess the requisite degree of competence to command the Exxon Valdez with reasonable prudence, skill or care.

LXXV

Captain Hazelwood and third mate Cousins knew or should have known 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.

LXXVI

CLASS ACTION COMPLAINT - Page 23  
JCP/ehb/132.1/JCP31060.389

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.

LXXVII

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 was intended.

LXXVIII

The negligence of the Exxon defendants in the ownership and operation of the Exxon Valdez specifically included, but was not limited to, (i) failing to adequately crew the tanker; (ii) failing to adequately pilot and navigate Prince William Sound; and (iii) 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.

LXXIX

The Exxon defendants acted recklessly, wantonly and in willful disregard of the rights and economic well-being of

plaintiff and the plaintiff Class in the ownership and operation of the Exxon Valdez for which plaintiff and the plaintiff Class are entitled to punitive damages.

COUNT V

Maritime Tort -- Plaintiffs v. Alyeska and Exxon

LXXX

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

LXXXI

By virtue of the above, defendants have 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 -- Plaintiffs v. Alyeska and Exxon

LXXXII

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

LXXXIII

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  
Plaintiffs v. Alyeska and Exxon

LXXXIV

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

LXXXV

Oil, including the approximately 10.1 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 AS 46.03.826(4)(B), the Alaska Environmental Conservation Act.

LXXXVI

The presence of oil in the Prince William Sound and its subsequent spreading to at least Smith, Little Smith, Naked and Seal Islands, 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.

LXXXVII

The defendants own and/or have control, pursuant to AS 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.

LXXXVIII

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 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; or
- (d) an act of God.

LXXXIX

Upon information and belief, upon discovery of the entry of 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.

XC

The entry of the oil which is owned and/or within the control of 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 defendants are strictly liable

pursuant to AS 46.03.822 (the Alaska Environmental Conservation) Act.

COUNT VIII

Alaska Statute Section 09.45.230  
Plaintiffs v. Alyeska and Exxon

XCI

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

XCII

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

XCIII

This substantial interference with the use and enjoyment of plaintiff 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 benefit.

XCIV

The substantial interference with plaintiff 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 damages sustained.

XCV

The defendants threaten to continue the acts and omissions complained of herein, and unless temporarily,

CLASS ACTION COMPLAINT - Page 28  
JCP/ehb/132.1/JCP31060.389

preliminarily or permanently restrained and enjoined, will continue to do so, all to plaintiff and the plaintiff Class' irrefutable damage. Plaintiff 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 -- Plaintiffs v. Alyeska and Exxon

XCVI

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

XCVII

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.

XCVIII

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.

XCIX

The substantial interference with plaintiff 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 damages sustained.

C

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

CI

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

CII

The acts and omissions of the defendants violate the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1651, et seq., and Alaska State and local law, including AS 46.03.010 et seq., and AS 09.45.230. In so violating these laws, defendants were negligent per se.

CIII

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 Prince William Sound, violating Coast Guard regulations. In failing to do so, defendants were negligent per se.



CIV

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  
Plaintiffs v. Alyeska and Exxon

CV

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

CVI

On account of the defendants' violations of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1651 et seq., AS 46.03.010 et seq., AS 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, clean up and restore the environment to its condition prior to the rupture and consequent discharge.

CVII

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.

CVIII

The costs of said control, containment, clean-up, restoration and monitoring should be borne by defendants inasmuch as the injuries to plaintiff and the plaintiff Class all resulted from rupture, resulting discharge and ensuing clean-up effort which was caused by defendants' wrongful conduct as alleged herein.

CIX

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 to provide continued monitoring under Court supervision, and to further order that defendants control, contain, clean up and restore the environment and pay all attendant costs therefore.

RELIEF SOUGHT

WHEREFORE, plaintiff and the plaintiff Class pray for relief as follows:

(a) Order this action to proceed as a class action, with plaintiff as the class representative;

(b) 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;

(c) Award attorneys' fees and costs of this action;

(d) 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; and


(e) Award such other and further relief as this Court deems just and proper.

LAW OFFICES OF JOHN C. PHARR  
Attorneys for Plaintiff

By:   
John C. Pharr


By:   
Laurence Keyes

WOLF, POPPER, ROSS, WOLF &  
JONES  
Attorneys for Plaintiff

By:   
Stanley Nemser

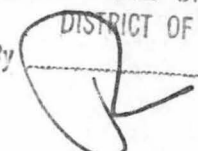
FOREMAN & ARCH  
Attorneys for Plaintiff

By:   
Dale Foreman

By:   
Theresa A. McGuire

FILED

APR 03 1989

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By  Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

A 89-104 CIV

JACK MICELLI, MICHAEL McALLISTER,  
CHARLOTTE YOAKUM, LEE JUDSON, LANTZ  
HUGHES, THOMAS S. McALLISTER, and  
J&A ENTERPRISES, a Washington  
Corporation,  
Plaintiffs,

CIVIL ACTION NO. \_\_\_\_\_

THIS IS A CLASS ACTION  
JURY TRIAL REQUESTED

v.

EXXON SHIPPING COMPANY, ALYESKA  
PIPE LINE SERVICE COMPANY, and  
TRANS-ALASKA PIPELINE LIABILITY  
FUND,

Defendants.

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, on behalf of themselves and a class of all others  
similarly situated, allege of their own knowledge or upon informa-  
tion and belief as follows:

JURISDICTION AND VENUE

1. This court has federal question jurisdiction pursuant to  
28 U.S.C. § 1331 and pendent claim jurisdiction; and in the

1 alternative, admiralty jurisdiction pursuant to 28 U.S.C. § 1333  
2 or diversity jurisdiction pursuant to 28 U.S.C. § 1332.  
3 Plaintiffs' Original Complaint arises under violations of various  
4 federal statutes and state common law. Claims based on state  
5 common law arise from the same nucleus of operative facts as do  
6 the federal claims and are within this Court's pendent jurisdic-  
7 tion.

8 2. On information and belief, each of the defendants may be  
9 found, has an agent, or transacts business within Alaska. The  
10 causes of action alleged herein arose in substantial part within  
11 Alaska. Venue is proper under 28 U.S.C. § 1391(b) & (c).

12 THE PARTIES

13 3. Plaintiff Jack Micelli ("Micelli") is a Washington resi-  
14 dent. Micelli d/b/a Silver Salmon Company is the owner of a  
15 tender vessel. Micelli is engaged in commercial fishing opera-  
16 tions in the area affected by the oil spill described below.

17 4. Plaintiff Michael McAllister ("M. McAllister") is an  
18 Alaska resident. M. McAllister is engaged in commercial fishing  
19 operations in the area affected by the oil spill described below.

20 5. Plaintiff Charlotte Yoakum ("Yoakum"), is an Alaska  
21 resident. Yoakum is engaged in commercial fishing operations in  
22 the area affected by the oil spill described below.

23 6. Plaintiff Lee Judson ("Judson"), is an Alaska resident.  
24 Judson is engaged in commercial fishing operations in the area  
25 affected by the oil spill described below.

26

1           7. Plaintiff Lantz Hughes ("Hughes"), is an Alaska resi-  
2 dent. Hughes is engaged in commercial fishing operations in the  
3 area affected by the oil spill described below.

4           8. Plaintiff Thomas S. McAllister ("T. McAllister") is an  
5 Alaska resident. T. McAllister is engaged in commercial fishing  
6 operations in the area affected by the oil spill described below.

7           9. Plaintiff J&A Enterprises ("J&A"), is Washington  
8 corporation doing business in Seattle. J&A is engaged in commer-  
9 cial fishing operations in the area affected by the oil spill  
10 described below.

11           10. Defendant Exxon Shipping Company ("Exxon") is a Delaware  
12 corporation with its principal place of business in Houston,  
13 Texas. Defendant Exxon may be served through its registered  
14 agent, CT Corporation Systems, 240 Main Street, Suite 800, Juneau,  
15 Alaska 99801.

16           11. Defendant Alyeska Pipe Line Service Company ("Alyeska")  
17 is a Delaware corporation, which may be served through its regis-  
18 tered agent, CT Corporation Systems, 240 Main Street, Suite 800,  
19 Juneau, Alaska 99801.

20           12. Defendant Trans-Alaska Pipe Line Liability Fund  
21 ("Liability Fund") is a non-profit corporate entity that can sue  
22 and be sued in its own name, pursuant to 42 U.S.C. § 1653.  
23 Defendant Liability Fund may be served through its registered  
24 agent, CT Corporation Systems, 240 Main Street, Suite 800, Juneau,  
25 Alaska 99801.

1 AN OVERVIEW OF THE CLAIMS

2 13. On approximately March 24, 1989, the Exxon Valdez, a  
3 987-foot tanker owned by Exxon Shipping Company, rammed the Bligh  
4 reef about 25 miles from the City of Valdez, Alaska. The result  
5 was the largest oil spill in American history. Up to 12 million  
6 gallons of crude oil spilled into Alaska's Prince William Sound, a  
7 pristine Pacific waterway and fishing ground. Within one week,  
8 this spill had polluted numerous islands, channels, bays, and was  
9 threatening disaster to commercial fishing fleets and commercial  
10 fish processors operating in the affected area. This marine  
11 environment contained aquatic life, upon which numerous commercial  
12 fishermen and food processors depend for their livelihood and  
13 business profit. That aquatic life has suffered a catastrophe of  
14 enormous proportions. By Saturday, April 1, 1989, the oil spill  
15 threatened 600 miles of coastline that included numerous fishing  
16 communities and commercial fishing areas.

17 14. At the time of the incident, the third mate on the Exxon  
18 Valdez was commanding the ship. He was not qualified to do so.  
19 The captain, Joseph Hazlewood, was below deck. Hours after the  
20 spill occurred, the captain had a blood-alcohol reading above the  
21 Coast Guard limits for intoxication. Exxon had hired Hazlewood  
22 and put him in a highly dangerous situation, even though he had a  
23 record of drinking, including suspension for driving while intoxi-  
24 cated. The Exxon Valdez, although only two and a half years old  
25 and one of the two biggest ships in the company's fleet, was built  
26

1 with only a single hull instead of a double hull, despite the fact  
2 that it traveled some of the most environmentally sensitive areas  
3 in the world.

4 15. Alyeska Pipeline Service Co. shared responsibility with  
5 Exxon for oil spill contingency plans in the area where the spill  
6 occurred. Alyeska has specific responsibility in carrying out  
7 these contingency plans. Long before the wreck of the Exxon  
8 Valdez, Alyeska had consciously let its contingency plan response  
9 capability dwindle to an inadequate state. For example, an  
10 important barge for cleanup was being repaired at the time of the  
11 Exxon Valdez disaster and not available for the cleanup. Alyeska  
12 had apparently not reported this to the state of Alaska.  
13 Alyeska's actions in failing to act promptly to contain the spill  
14 made the disaster even worse. Exxon was also aware that Alyeska's  
15 contingency plans and equipment were not in proper readiness.  
16 Further, Exxon's own cleanup efforts were grossly inadequate,  
17 allowing the oil spill to spread.

18 16. Exxon and Alyeska had a duty to the commercial fishermen  
19 in the area affected by the oil spill to conduct the activities of  
20 transporting oil from the Port of Valdez in a reasonably prudent  
21 manner, so as not to damage the aquatic life or to otherwise  
22 injure the economic livelihood of these commercial fishermen.  
23 Exxon and Alyeska were clearly aware of the potential disaster to  
24 the economic livelihood of these commercial fishermen from an oil  
25 spill. The failure of Exxon and Alyeska to act in a reasonable  
26



1 and prudent manner in transporting the oil, setting up contingency  
2 plans, implementing contingency plans and undertaking prompt and  
3 adequate cleanup, has injured the plaintiffs and the commercial  
4 fishermen in the affected area to their detriment.

5 17. For example, the fishing season was already underway in  
6 the area when the spill occurred. Not only commercial fishing  
7 companies with permits, but also other commercial fishing  
8 companies under contract to carry out essential fishing operations  
9 on the water in the affected area, were harmed to their detriment.  
10 This harm included both the destruction of aquatic life upon which  
11 these commercial fishermen depended for their livelihood, and also  
12 interference with the ability to catch fish which existed. This  
13 diminution reduced the profits that plaintiffs would have realized  
14 from their commercial fishing in the absence of the spill.

15 THE CLASS

16 18. This action is brought as a class action by the named  
17 plaintiffs pursuant to Federal Rule of Civil Procedure 23(b)(3) on  
18 behalf of all similarly situated persons or entities who have been  
19 and continue to be adversely affected by the defendants' tortious  
20 conduct.

21 19. This class represented by the named plaintiffs consists  
22 of all commercial fishermen who fish in the Prince William Sound  
23 area and surrounding Alaskan offshore waters affected by the Exxon  
24 Valdez oil spill. This includes all commercial vessel and aerial  
25 operations which assist in on-water commercial fishing  
26

1 operations--specifically those operations with fishing permits and  
2 those commercial tender vessel operations and aerial operations  
3 under contract to assist in commercial fishing operations. This  
4 also includes those floating vessel operations that immediately  
5 purchase and process the fish in affected fishing areas.  
6 Furthermore, this includes crew members on the permitted fishing  
7 vessels who receive a percentage of the proceeds of the sale of  
8 fish.

9 20. Plaintiffs, who are members of this class, have claims  
10 that are typical of the members of the class, have sustained  
11 losses as a result of the conduct of defendants as alleged in this  
12 Complaint, and are committed to prosecuting this action.  
13 Plaintiffs have retained competent counsel experienced in class  
14 action litigation and tort litigation. Plaintiffs will fairly and  
15 adequately protect the interest of the class.

16 21. There is a well-defined community of interest in the  
17 legal and factual questions affecting the members of the class.  
18 The common questions of law and fact predominate over questions  
19 which may affect individual class members. The questions of law  
20 and fact common to the class include, but are not limited to, the  
21 following: (a) Exxon's liability in selecting, training, and  
22 supervising the crews of the Exxon Valdez; (b) Exxon's liability  
23 in causing the Exxon Valdez oil spill; and (c) Exxon's liability  
24 for not properly containing the Exxon Valdez oil spill, once it  
25 occurred; (d) Alyeska's preparation of contingency plans for an

1 oil spill in the Valdez area; (e) Alyeska's capability to respond  
2 to an oil spill in the Valdez area; (f) Alyeska's failure to act  
3 promptly in containing the oil spill; (g) injury to common fishing  
4 areas; and (h) damages to the affected commercial fishing industry  
5 as a whole.

6 22. Plaintiffs know of no difficulty that would be  
7 encountered in the management of this litigation that would  
8 preclude its maintenance as a class action. A class action is  
9 superior to the alternatives, if any, for the fair and efficient  
10 adjudication of this controversy.

11 23. In the absence of this class action, defendants will not  
12 be properly held liable for their wrongdoing.

13 FACTUAL ALLEGATIONS

14 Count I--Common Law Negligence

15 24. Plaintiffs incorporate by reference all previous  
16 paragraphs.

17 25. Exxon has violated the duty owed to plaintiffs to  
18 exercise the ordinary care and diligence exercised by a reasonable  
19 and prudent operator of a supertanker in the Prince William Sound  
20 area and was negligent in the following particulars: (a) failure  
21 to meet applicable federal and state safety and environmental  
22 regulations instituted to protect against the kind of accident the  
23 Exxon Valdez incurred; (b) having unqualified personnel commanding  
24 the Valdez at the time of the incident; (c) knowingly placing a  
25 captain in charge of the Exxon Valdez who was an obvious safety  
26

1 risk; (d) failing to institute drug testing procedures to prevent  
2 drug and alcohol abuse by the ship's crew; (e) failing to  
3 institute proper screening procedures for the ship's captain and  
4 crew; (f) failing to have proper contingency plans in effect for  
5 the oil spill that occurred; (g) knowing that Alyeska did not have  
6 proper contingency plans or capabilities to carry out contingency  
7 plans for containing oil spills; and (h) failing to adequately set  
8 up procedures for protecting the marine environment against the  
9 type of supertanker spill that has occurred; and (i) failing to  
10 promptly clean up and contain the oil spill.

11 26. Alyeska has violated the duty owed to plaintiffs to  
12 exercise ordinary care and diligence in the following particulars:

13 (a) failure to meet applicable federal and state safety and  
14 environmental regulations instituted to protect against damage  
15 from oil spills; (b) failing to have proper contingency plans in  
16 effect for the oil spill that occurred; (c) failing to have the  
17 capability to carry out adequate contingency plans for containing  
18 the oil spill; and (d) failing to promptly clean up and contain  
19 the oil spill.

20 27. Each and every one of the foregoing acts and omissions,  
21 along with others, taken separately and collectively, constitute a  
22 direct and proximate cause of the damages sustained by plaintiffs,  
23 in an amount exceeding the minimum jurisdictional limits of this  
24 Court.

25 Count II--Gross Negligence

1           28. Plaintiffs incorporate by reference all previous  
2 paragraphs.

3           29. Plaintiffs further alleges that Exxon's and Alyeska's  
4 conduct constitutes gross negligence as that term is understood in  
5 law. Exxon's and Alyeska's reckless and conscious indifference to  
6 the rights of the plaintiffs entitles plaintiffs to exemplary and  
7 punitive damages; specifically, Exxon and Alyeska were grossly  
8 negligent and their negligence was committed in a reckless and  
9 consciously indifferent way. Plaintiffs now sue for exemplary and  
10 punitive damages as provided by law in an amount exceed the  
11 minimum jurisdictional limits of this court.

12                                   Count III-Strict Liability

13           30. Plaintiffs incorporate by reference all previous  
14 paragraphs.

15           31. The oil Exxon spilled was transported through the trans-  
16 Alaska pipeline and was loaded on Exxon's vessel at terminal  
17 facilities of that pipeline.

18           32. The discharge of that oil from Exxon's vessel  
19 proximately caused the plaintiffs' injuries and damages.

20           33. Pursuant to the Trans-Alaska Pipeline Authorization Act,  
21 34 U.S.C. § 1653(c), Exxon is strictly liable for plaintiffs'  
22 damages, along with the Trans-Alaska Pipeline Liability Fund.

23                                   PRAYER

24           WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully  
25 request that the defendants be summoned to appear, that the  
26

1 proposed class be certified pursuant to Fed. R. Civ. P. 23(b)(3),  
2 and that, upon full and final trial by jury, plaintiffs recover  
3 actual damages, punitive damage and all other relief to which  
4 plaintiffs may show themselves entitled.

5  
6 Respectfully submitted,

7  
8 Kenneth E. McNeil by *mas* Mark A. Griffin  
9 Kenneth E. McNeil Lynn Lincoln Sarko  
10 Stephen D. Susman James P. Rohrback  
11 William H. White Alaska Bar No. 8106047  
12 Thomas W. Paterson Mark A. Griffin  
13 SUSMAN, GODFREY & MCGOWAN Kirk S. Portmann  
14 5100 First Interstate Bank Plaza KELLER ROHRBACK  
15 1000 Louisiana 1201 Third Avenue, Suite 3200  
16 Houston, Texas 77002-5096 Seattle, Washington 98101-3029  
17 (713) 651-9366 (206) 623-1900

18  
19  
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21  
22  
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24  
25  
26  
Roger F. Holmes John G. Young by *mas*  
15 Roger F. Holmes John G. Young  
16 Alaska Bar No. 7011060 Alaska Bar No. 8308084  
17 BISS AND HOLMES ESSENBERG & STATON  
18 705 Christensen Drive 4949 Seafirst Fifth Ave. Plaza  
19 Anchorage, Alaska 99501 Seattle, Washington 98104  
20 (907) 277-8564 (206) 682-4321

Charles W. Ray, Jr.  
TUGMAN and CLARK  
711 H Street, Suite 500  
Anchorage, AK 99501

FILED

APR 03 1989

John T. Hansen  
HANSEN & LEDERMAN  
711 H Street, Suite 600  
Anchorage, AK 99501

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By PRC Deputy

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA AT ANCHORAGE

MARTIN GORESON, JAMES R. GORESON,	)	
JEFFREY A. MOORE, JAMES D. EWING,	)	
DOUG JENSEN, DANIEL LOWELL,	)	
WHITTIER SEAFOODS, INC., CORDOVA	)	
AIR SERVICE, INC., F/V DEW DROP,	)	
INC., and F/V DEBRA LEE, INC.,	)	Case No. A89- <u>106</u> CI
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
EXXON VALDEZ, her engines, tackle,	)	<u>COMPLAINT IN REM TO</u>
gear, equipment, and appurtenances,	)	<u>FORECLOSE MARITIME LIEN</u>
<u>in rem,</u>	)	<u>FOR TORT</u>
	)	
Defendant.	)	
	)	

Plaintiffs, through their lawyers, for their complaint in rem, allege as follows:

I.

JURISDICTION AND PARTIES

1. This is a matter within the admiralty and maritime jurisdiction of this court within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and Rule C

COMPLAINT IN REM TO FORECLOSE MARITIME LIEN FOR TORT  
Page 1 oil/complaint CWR:sb

TUGMAN AND CLARK  
ATTORNEYS AT LAW  
711 "H" STREET, SUITE 500  
ANCHORAGE, ALASKA 99501  
(907) 272-7989

of the Supplemental Rules for Certain Admiralty and Maritime claims, and is based upon general maritime law and 46 U.S.C. Sec. 971 et. seq.

2. Individual plaintiffs are Alaskan residents residing in Seward and Cordova.

3. The corporate plaintiffs all are Alaska corporations doing business in Whittier or Cordova, Alaska. They are current with respect to all corporate taxes, fees and reports, and are authorized to bring this action.

4. EXXON VALDEZ is an oil tanker vessel that on information and belief is registered as a United States vessel, and is owned by Exxon Shipping Company. EXXON VALDEZ is now and will be during the pendency of this action within the jurisdiction of this court.

## II.

### MARITIME LIEN FOR MARITIME TORT

5. On or about 24 March 1989, on or near Bligh Reef in Valdez Arm, Alaska, the EXXON VALDEZ was under the command of an intoxicated, incompetent master, Joseph Hazelwood, who negligently permitted the vessel to ground, holing her hull and permitting not less than 280,000 barrels of crude oil to spill into the waters of Prince William Sound and the Pacific Ocean.

6. Said spill has damaged and will continue to damage plaintiffs in at least the following respects: diminution in the value of their vessels, permits, real



estate and other property; destruction of the marine environment with consequent loss of the fisheries upon which plaintiffs depend; interruption and interference with plaintiffs' business; loss of enjoyment of life; and emotional and mental distress.

7. Plaintiffs' damages are proximately caused by the maritime torts described above for which the defendant vessel is liable in the sum of not less than \$500,000,000 or the value of the vessel, whichever is less.

WHEREFORE, plaintiffs request the following relief:

1. The court issue an in rem warrant of arrest instructing the U.S. Marshal to arrest the EXXON VALDEZ, her engines, tackle, gear, equipment and appurtenances and to detain her in his custody subject to further order of the court.

2. For judgment in rem in favor of plaintiffs against the EXXON VALDEZ foreclosing plaintiffs' maritime lien for maritime tort in the principal sum of \$500,000,000, together with interest, costs, and lawyer's fees, said judgment to have priority over all other liens or claimants.

3. For an order directing the U.S. Marshal to sell EXXON VALDEZ, her engines, tackle, gear, equipment and appurtenances, and all other necessaries pertaining and belonging to the vessel and directing the disbursement of the proceeds in the first instance to plaintiffs to the extent

necessary to satisfy their judgment against the defendant.

4. For such other relief as the facts and law warrant.

DATED this 3d day of April, 1989.

TUGMAN and CLARK  
Lawyers for Plaintiffs

By: Charles W. Ray  
CHARLES W. RAY

HANSEN & LEDERMAN  
Lawyers for Plaintiffs

By: John T. Hansen  
JOHN T. HANSEN

TUGMAN AND CLARK  
ATTORNEYS AT LAW  
711 "H" STREET, SUITE 500  
ANCHORAGE, ALASKA 99501  
(907) 272-7989

Charles W. Ray, Jr.  
TUGMAN and CLARK  
711 H Street, Suite 500  
Anchorage, AK 99501

John T. Hansen  
HANSEN & LEDERMAN  
711 H Street, Suite 600  
Anchorage, AK 99501

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA AT ANCHORAGE

MARTIN GORESON, JAMES R. GORESON, )  
JEFFREY A. MOORE, JAMES D. EWING, )  
DOUG JENSEN, DANIEL LOWELL, )  
WHITTIER SEAFOODS, INC., CORDOVA )  
AIR SERVICE, INC., F/V DEW DROP, )  
INC., and F/V DEBRA LEE, INC., )

Case No. A89- 106 CI

Plaintiffs, )

v. )

EXXON VALDEZ, her engines, tackle, )  
gear, equipment, and appurtenances, )  
in rem, )

VERIFICATION

Defendant. )

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss

CHARLES W. RAY, JR., being duly sworn upon oath,  
deposes and states as follows:

1. I am a member of the law firm of Tugman and  
Clark, one of the firms representing plaintiffs herein.

2. I have read the foregoing complaint and know

VERIFICATION  
Page 1 oil/verif CWR:sb

TUGMAN AND CLARK  
ATTORNEYS AT LAW  
711 "H" STREET, SUITE 500  
ANCHORAGE, ALASKA 99501  
(907) 272-7989

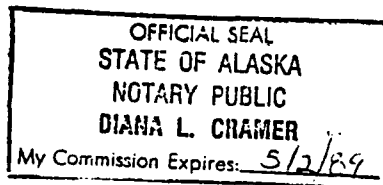
the contents thereof, and the same is true to the best of my knowledge, information and belief. This verification is based upon statements by representatives of the United States Coast Guard, Exxon Shipping Company, Exxon Corporation, Cordova Air Service, Inc., Whittier Seafoods, Inc., and discussions with Mssrs. Jensen, Moore, Ewing, Lowell and Goreson.

DATED this 3d day of April, 1989.

Charles W. Ray, Jr.  
CHARLES W. RAY, JR.

SUBSCRIBED AND SWORN to before me this 3rd day of April, 1989.

Diana L. Cramer  
Notary Public, State of Alaska  
My Commission Expires: 5/2/89



TUGMAN AND CLARK  
ATTORNEYS AT LAW  
711 "H" STREET, SUITE 500  
ANCHORAGE, ALASKA 99501  
(907) 272-7989

VERIFICATION  
Page 2 oil/verif CWR:sb