

FILED

SEP 25 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

ORDER NO. 17

(Submission of Comments on
Candidates for Discovery Master)

The court has received from counsel a second stipulation and proposed order altering the compliance dates with respect to comments on candidates for appointment to the position of Discovery Master.

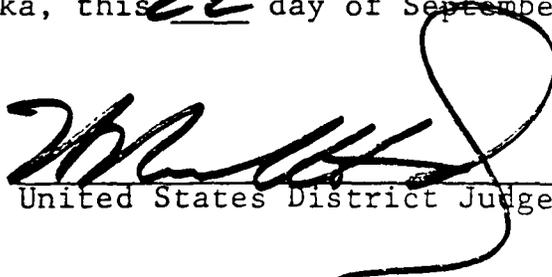
The stipulation is approved. However, the court has some concern that an unacceptable pattern is being set at a very early date in this litigation. The court expects that a great many compliance dates will be established as this litigation goes

602

1 forward, and the court does not expect to be continually con-
2 fronted with multiple stipulations to continue particular compli-
3 ance dates. As the litigation progresses, small amounts of
4 slippage on numerous dates will inevitably jeopardize the entire
5 calendar for development of the case in other areas.

6 At this time, the court urges counsel to be sensitive
7 to this problem. In working out a calendar for the case, the
8 court encourages counsel to budget an adequate amount of time,
9 and the court will then expect counsel to adhere to the agreed-
10 upon schedule except in extraordinary circumstances. Where
11 unforeseen exigencies justify a continuance of a given date, the
12 court will have no objection to the parties stipulating to a
13 brief postponement; but the court will not in the future rou-
14 tinely approve multiple postponements of any given date.

15 DATED at Anchorage, Alaska, this 22 day of September,
16 1989.

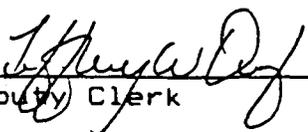
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United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
) No. AB9-095 Civil
the EXXON VALDEZ)
) (Consolidated)
)
_____)
RE: All cases

AFFIDAVIT OF SERVICE

On the 25th day of September, 1989, service of Order No. 17, Submissions of Comment on Candidates for Discovery Master, has been made upon all counsel of record based upon the court's master service list of August 25th, 1989.



Deputy Clerk

(1) Municipal Government Class. The Municipal Government Class consists of all state-chartered cities, boroughs, and other governmental subdivisions existing by virtue and under the authority of the laws of the State of Alaska as governmental entities and who were damaged by the oil spill and defendants' failure to contain, abate, and clean up the oil spill, excepting any such entities who have filed independent, non-class cases prior to class certification. This class does not include Native corporations, villages, tribes, or Native governments, who exist by virtue of federal law, state corporation law, or traditional Native law.

(2) Commercial Fishermen Class. This class consists of all persons and entities engaged in the commercial cultivation, fishing, harvesting, and gathering of fin fish, shell fish, fish roe, other seafood or marine resources who have been injured and suffered damages as a result of the oil spill, excepting those who have filed independent non-class cases prior to the time of class certification. This class and sub-classes of this class which may be designated for various species, harvest areas, and types of permits or activities include without limitation, long-line bottom fishermen, kelp pounders, herring seiners, herring gillnetters, wild roe on kelp harvesters, salmon seiners, salmon gillnetters, setnetters, crabbers, tendermen, and other holders of commercial fishing permits and licenses, their crews and their employees.

(3) Landowner Class. This class consists of all land and

real property owners, whether persons or entities, whose property was damaged by the oil released from the Exxon Valdez, except those land owners who have filed individual non-class cases prior to the time of class certification. This class also includes land and real property owners whose land was, or may still be, threatened by the oil and who suffered injury or damage through efforts, expenditure, or assistance in preventing the spilled oil from actually polluting their property.

(4) Area Business Class. This class consists of all persons and entities, including employees, engaged in any business providing goods in or to the Alaska area whose business or livelihood has been damaged as a result of the oil spill. This class does not include any such persons or entities who filed non-class cases before class certification. This class includes tourism and sport businesses.

Plaintiffs seek certification of these classes under provision of Fed. R. Civ. P. 23(a)(1)-(4), and move for voluntary certification of these classes under Fed. R. Civ. P. 23(b)(3), on all compensatory and punitive damages claim, and for "mandatory" certification under Fed. R. Civ. P. 23(b)(2) on claims for equitable or injunctive relief.

In support of Plaintiffs' Motion for Class Certification, the Court is referred to the accompanying Class Action Plaintiffs' Memorandum in Support of Class Certification.

Respectfully submitted this 22nd day of September, 1989.

P-78, P-79, P-80, P-95, P-96, P-113, P-167 & P-168 CLASS ACTION PLAINTIFFS' MOTION FOR CLASS CERTIFICATION - 3

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& 168

P-78, P-79, P-80, P-95, P-96, P-113, P-167 & P-168 CLASS ACTION
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION - 4

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Document
 Returned:
 Due to incorrect or no case #
 Per Civil Rule 5
 Other: *Please file in correct court*
 Correct # is _____

Date Corrected _____ Your Name _____

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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA

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

Case Nos. A89-135, 136, 139, 144, 238 & 239 Civil

P-78, P-79, P-80, P-95, P-96, P-113, P-167 and P-168 CLASS ACTION
 PLAINTIFFS' MEMORANDUM IN SUPPORT OF
 MOTION FOR CLASS CERTIFICATION

I. INTRODUCTION

The named plaintiffs in the above-named cases respectfully submit this memorandum in support of their motion for certification of certain plaintiff classes pursuant to Federal R. Civ. P. 23.¹ Certification of all compensatory and punitive

¹ The plaintiffs in these cases do not propose certification of any mandatory classes under Federal R. Civ. P. 23(b)(1) or (2). These plaintiffs believe that all class actions should be

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR CLASS
 CERTIFICATION - 1

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damages claims should be pursuant to Fed. R. Civ. P. 23(b)(3). Certification of all injunctive/equitable relief claims should be pursuant to Rule 23(b)(2).

Plaintiffs expressly exclude from the proposed classes those plaintiffs who filed or file non-class direct action lawsuits in this litigation before class certification.

The court will note that in addition to this motion and memorandum for class certification the group of plaintiffs named in the Amended and Consolidated Class Action Complaint, Eyak Native Village et. al. have filed a somewhat similar motion. The Kodiak Island Borough, Wisner et al., Old Harbor and Clarke plaintiffs (collectively for purposes of this memorandum the "KIB" plaintiffs), agree with the Eyak plaintiffs' legal analysis concerning Rule 23(b)(2) and (3) class certification. For that reason it is unnecessary to burden the court with duplicative legal citation and argument concerning Rule 23(b)(2) and (3) certification. Thus, where there is agreement this memorandum refers the court to the legal briefing supplied by the Eyak et al. plaintiffs.

However, the motions differ in four important respects. First, the class definitions differ slightly. The Kodiak Island Borough "municipal government" class includes only those

certified pursuant to Federal R. Civ. P. 23(b)(3) which requires notice to all class members and provides the option for those members to "opt out" of the class.

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR CLASS
CERTIFICATION - 2

governmental entities chartered under state law and does not include Native corporations and tribal governments. Second, the KIB plaintiffs do not seek to include in the classes those plaintiffs who, before class certification, have filed independent non-class complaints. Third, the KIB plaintiffs include the employees of affected area businesses within the "Area Business" class. Fourth, the KIB plaintiffs do not seek certification of a mandatory Rule 23(b)(1) class for punitive damages.

As the Court is aware numerous cases, both class and non-class are pending in both state and federal courts respecting the March 24, 1989 grounding of the Exxon Valdez. The factual issues presented to both courts respecting certification of classes are identical since these plaintiffs seek certification of identical classes in both courts. Moreover, the legal criteria applicable to class certification are identical in both courts. Compare, Alaska R. Civ. P. 23 with Fed. R. Civ. P. 23. See Nolan v. Sea Airmotive, Inc., 627 P.2d 1035, 1041, n.13 (Alaska 1981).

II. STATEMENT OF FACTS

The instant moving plaintiffs refer the Court to the Statement of Facts contained in the Memorandum in Support of Motion for Class Certification filed by plaintiffs Eyak Native Village et. al., Case No. 3AN-89-4110, et al.

III. THE FOUR PROPOSED CLASSES

The instant KIB et al. class action complaints collectively seek to represent the following defined four proposed classes:

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR CLASS
CERTIFICATION - 3

A. Municipal government class.

This class consists of all cities and boroughs, existing by virtue and under the authority of the laws of the State of Alaska as governmental entities, who were damaged by the oil spill and defendants' failure to contain, abate, and cleanup the spill except those (if any) who have filed direct actions before class certification. This class does not include Native corporations, villages, or tribes, who exist by virtue of federal law, state corporation law, or traditional Native law.

B. Commercial fisherman class.

This class consists of all persons and entities engaged in the commercial cultivation, fishing, harvesting, and gathering of finfish, shellfish, fish roe, other seafood or marine resources who have been injured and suffered damage as result of the oil spill, excepting those who have filed independent non-class cases prior to the time of class certification. This class and subclasses of this class which may be designated for various species, harvest areas, and types of permits or activities include without limitation, long-line bottom fishermen, kelp pounders, herring seiners, herring gillnetters, wild roe on kelp harvesters, salmon seiners, salmon gillnetters, setnetters, crabbers, tendermen, and other holders of commercial fishing permits and licenses, their crews and their employees.

C. Landowner class.

This class consists of all land and real property owners,

whether persons or entities, whose property was damaged by the oil released from the Exxon Valdez, except those landowners who have filed individual non-class cases prior to the time of class certification. This class also includes land and real property owners whose land was, or may still be threatened by the oil and who suffered injury or damage through efforts, expenditure, or assistance in preventing the spilled oil from actually polluting their property.

This class may contain members of other classes. For example, a landowner/fisherman may have suffered injury from the oil spill in both capacities.

D. Area business class.

This class consists of all persons and entities, including employees, engaged in any business providing goods in or to the Alaska area whose businesses or livelihoods have been damaged and injured as a result of the oil spill. This class does not include any such persons or entities who file non-class cases before class certification. This class includes tourism and sport businesses.

IV. THE EXXON VALDEZ LITIGATION QUALIFIES FOR CLASS TREATMENT UNDER THE APPLICABLE PROVISIONS OF FEDERAL R. CIV. P. 23..

A. This mass accident/environmental disaster litigation is most appropriate for class certification.

The instant moving plaintiffs refer the court to the memorandum in support of class certification filed by the Eyak Native Village et. al. plaintiffs for thorough briefing on this

point.

B. The members of the four proposed classes are too numerous for practicable joinder as individual plaintiffs.

With respect to the "Commercial Fishermen Class" and the "Area Business Class" the instant moving plaintiffs concur with and refer the court to the memorandum in support of class certification filed by the Eyak Native Village et. al. plaintiffs.

Among the prerequisites for class certification required by Fed. R. Civ. P. 23 is that "the class is so numerous that joinder of all members is impracticable" There is no rule stating a minimum number of members for a certified class. One federal appellate court said "Courts should not be so rigid as to depend on mere numbers as a guideline on the practicability of joinder; a determination of practicability should depend on all circumstances surrounding the case." DeMarco v. Edens, 390 F.2d 836 (2d Cir. 1968).

The "Municipality Class" will consist of at least 22 governmental entities and that number may substantially increase when the effects of the spill finally "play out" and when it becomes known what the defendants' actually intend to do about continued cleanup in 1990. Classes of 25 and fewer have been certified where the court determined that the class mechanism was more efficient than consolidation of numerous lawsuits. This is particularly so when a complex case, such as the Exxon Valdez litigation, involves numerous classes some of which are huge.

(The commercial fishing, landowner, and area business classes will number in the thousands.)

In Philadelphia Electric Co. v. Anaconda American Brass Co., 43 F.R.D. 452 (E.D. Pa. 1968) the court stated "While 25 is a small number compared to the size of other classes being considered, it is a large number when compared to a single unit. I see no necessity for encumbering the judicial process with 25 lawsuits if one will do." Id. at 463 (emphasis added). Accord Basile v. Merrill Lynch, Pierce, Fenner & Smith, 105 F.R.D. 506 (S.D. Ohio 1985) (certifying subclass of 23 securities investors). See also Riordan v. Smith Barney, 113 F.R.D. 60 (N.D. Ill. 1986) (certifying class of 29 investors). In this litigation one lawsuit for municipal governments "will do". This is particularly so given the near identity of the municipality's legal duties and positions.

A subcommittee of the Alaska Conference of Mayors, calling itself the "Oiled Mayors" designated Kodiak Island Borough ("KIB") and its counsel, Matthew D. Jamin and N. Robert Stoll as the mayors' liaison to the Exxon Valdez litigation. KIB's motion for class certification of municipalities is in fact on behalf of the mayors who are members of the Oiled Mayors group. Moreover, as explained below the legal duties, claims, and damages suffered by municipal governments are unique to them. Thus, the requirement of Fed. R. Civ. P. 23(a) is met with respect to numerosity and judicial efficiency of the municipal government class.

The numerosity requirement respecting the "Landowner class" is easily met. The number of members of the class is currently unknown but common sense dictates that the number of affected landowners is very large. The court can take judicial notice that oil spilled from the Exxon Valdez has covered thousands of miles of shoreline owned by numerous private and public parties.

C. Common issues of law and fact satisfy the requirements of Federal R. Civ. P. 23(a)(2).

The instant moving plaintiffs refer the court to the memorandum in support of class certification filed by the Eyak Native Village et. al. plaintiffs for briefing in this point with respect to the commercial fishing, landowner, and area business classes.

1. Issues common to Municipal Government class members.

Members of the municipal government class have issues in common with one another and have rights, responsibilities unique to their status as state chartered governments. Legal and factual issues common and unique to all members of the municipal government class include:

(a) Which statutory causes of action are available to municipal governments alone in Alaska Statutes Titles 29 and 46;

(b) Whether and to what extent can municipal governments recover damages for diversion of municipal employees to the oil spill and containment effort;

(c) Whether and to what extent municipal governments can

recover from lost tax revenues attributable to the oil spill defendants;

(d) Whether and to what extent municipal governments can recover increased infrastructure costs such as costs of social service programs necessary to serve the health (including mental health) needs of their residents caused by the oil spill;

(e) Whether and to what extent the municipal governments have been injured by defendants' fraud and misrepresentation respecting their ability and intent to properly avoid, contain, and cleanup oil spills and releases of Trans-Alaska Pipeline Crude Oil.

Municipal governments have unique powers under Alaska Statutes Title 46 with respect to oil pollution containment and cleanup. For example, AS 46.09.060 states with respect to municipalities:²

Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement this chapter and AS 46.08, are granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section,

² "Municipalities" are defined for the purposes of AS chapter 46 as "an organized borough or an incorporated city outside an organized borough, and includes all classes of boroughs and cities whether home rule or otherwise".
AS 46.03.900(15)

a municipality may exercise its police power within the area of the municipality.

Thus, all municipal government class members have unique powers, including the police power and the taxation power that give rise to unique claims and damages for them as a class.

D. The named plaintiffs/proposed class representatives fulfill the typicality requirement of Federal R. Civ. P. 23(a)(3).

Federal R. Civ. P. 23(a)(3) requires for class certification "the claims or defenses of the representative parties are typical of the claims or defenses of the class". The courts of the Ninth Circuit hold that a representative plaintiff's claim is "typical" if it arises from the same event, practice, or course of conduct that gives rise to the claims of other class members, and is based on the same legal theory. In re Union Oil Securities Litigation, 107 F.R.D. 615 (C.D. Cal. 1985); Weinberger v. Thornton, 114 F.R.D. 594 (S.D. Cal. 1986); In re Activision Securities Litigation, 621 F. Supp. 415 (N.D. Cal. 1986). For each of the proposed classes the named plaintiffs satisfy those requirements.

1. Municipal class representative.

Plaintiff/representative Kodiak Island Borough (KIB) is a municipal corporation organized under the laws of the State of Alaska. Under those laws KIB has legal duties to its inhabitants and residents identical to those of other municipalities incorporated under Alaska law. To the knowledge of these plaintiffs, no other state chartered municipality has filed a case

in this litigation.

KIB's claims arise from the identical course of conduct that resulted in damage to all injured municipalities, i.e., the defendants' failure to man and equip the Exxon Valdez properly, the defendants' failure to operate the Exxon Valdez properly, the defendants' fraud and misrepresentation concerning the existence and effectiveness of their oil spill contingency plans, and the defendants' failure to properly contain, abate, and cleanup the spilled oil. Municipal governments relied especially on the defendants' representations concerning the existence and effectiveness of defendants' oil spill contingency plans. The municipal governments could have made and funded their own contingency plans to protect life, health, and welfare if the defendants had told the truth about their ability to contain a major oil spill.

KIB has asserted numerous legal theories including statutory claims available only to municipalities and intends to assert all legal theories which entitle it and any other municipality to relief. Those theories include public nuisance, and statutory environmental causes of action. Moreover, the Alaska legislature enacted legislation granting municipalities the power to sue to recover costs of oil spill contaminant and cleanup, including administrative costs. See 1989 S.L.A. Ch. 39 § 2.

KIB does not purport to represent a class including Native corporations, villages, and governments. Those entities have

markedly different missions, duties, legal authority, and damages. Thus, KIB fulfills the requirement that its claims be typical of the claims of the class.

2. Landowner class representative.

Plaintiffs KIB, Grothe, and Old Harbor Native Corporation are representative landowners. These plaintiffs represent private, Native, and municipal landowners. They will assert, all claims which entitle landowners to relief.

3. Area business class representative.

Plaintiff The Karluk Lodge Inc. ("Karluk") is a corporation engaged in the lodging, guiding, and recreational fishing business. Karluk suffered lost business both directly and indirectly from the oil spill and oil pollution dispersion. Karluk's claims are typical of the "lost business" claims of businesses not directly involved in the commercial fishing industry. The defendants' course of activities and conduct forming the basis for Karluk's claim are identical to that of other "area businesses" damaged by the oil spill and botched containment effort.

4. Commercial fishing representative.

Plaintiffs Wisner and Dooley are commercial fishermen and residents of Kodiak, Alaska. Plaintiff Dooley is a permit holder in both Prince William Sound and Kodiak. Plaintiff Wisner is a Kodiak area permit holder and a spotter in Prince William Sound and Cook Inlet. The defendants' activities and conduct forming

the basis for Wisner and Dooley's claims are identical to that of all commercial fishermen including permit holders and crew members. Thus, the representative plaintiffs satisfy the typicality requirement of Federal R. Civ. P. 23.

E. Plaintiffs and their counsel are adequate representatives of the proposed classes under Federal R. Civ. P. 23(a)(4).

The test of representative adequacy has two components: (1) the absence of antagonism between the interests of the representative and those of the class, and (2) the ability of the named plaintiffs to prosecute the action vigorously through qualified counsel. Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978); Wienberger v. Jackson, 102 F.R.D. 839 (N.D. Cal. 1984).

The unity and lack of antagonism between the municipal governments and class representative Kodiak Island Borough is manifest by the Oiled Mayor's designation of Kodiak Island Borough as liaison to this litigation. During and after disasters municipal governments are historically non-competitive and their efforts are cooperative and unified. This case is no different; the municipal governments have legal and political duties to their citizenry and stand together as a class to protect the safety, health, and welfare of that citizenry. There is no conflict between Kodiak Island Borough and other "oiled" Alaskan municipal governments.

The second test of "adequate representation" is met.

Counsel for class representative Kodiak Island Borough is experienced, qualified, and dedicated to the interests of the classes. Matthew D. Jamin and his firm Jamin, Ebell, Gentry & Bolger has represented Kodiak Island Borough as well as the other named plaintiffs individually for several years. Mr. Jamin's firm is located in Kodiak and Mr. Jamin is a longtime resident of Kodiak. Mr. Jamin is experienced in major litigation, and has represented the class plaintiffs in the Bristol Bay antitrust litigation. Mr. Jamin's resume is attached as Exhibit 1.

Mr. Jamin's associated counsel, N. Robert Stoll, and his firm Stoll, Stoll, Berne & Lokting are class action practitioners of many years experience. Stoll resume attached as Exhibit 2. Matt Jamin and Robert Stoll have been appointed as liaison counsel to this litigation by the "Oiled Mayors". That group clearly believes that those gentlemen will adequately represent the interests of the "oiled" municipal governments. The Jamin and Stoll firms have also been doing extensive work in this litigation for large numbers of members of the other classes the Jamin firm regularly represents on other matters. Thus, the second test of "adequate representation" is met.

F. A class action is superior to other alternatives for the fair and efficient adjudication of the issues raised by the Exxon Valdez oil spill under Rule 23(b)(3).

The instant moving plaintiffs refer the court to the Eyak Native Village et. al. plaintiffs' memorandum in support of motion

for class certification for briefing on this point.

V. CONCLUSION

The KIB et al. plaintiffs respectfully submit that the court should certify the four proposed classes set forth in their motion and memorandum and certify the plaintiffs as class representatives. All tests for such certification are met under Federal R. Civ. P. 23.

Respectfully submitted this 22nd day of September, 1989.

Matthew C. Jew

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P-167 and P-168

JAMIN, EBELL, BOLGER & GENTRY

The firm has a general practice with an emphasis on litigation with offices in Kodiak and Seattle.

Mr. Matthew D. Jamin was educated at Colgate University and Harvard Law School, where he graduated in 1974. He was a staff attorney from 1974-75 with Alaska Legal Services Corporation in Anchorage. From 1974 through 1982 he served as supervising attorney of the Alaska Legal Services Corporation office in Kodiak, and also a contract attorney with the Alaska Public Defender Agency. His emphasis was on felony criminal litigation and civil litigation. He was co-counsel from 1974 through 1982 of a class of 1800 Alaska Native fishermen from the Bristol Bay area who were plaintiffs in a price fixing case against local salmon packers. Since 1982, Mr. Jamin has been a solo practitioner; in partnership in Jamin & Bolger; and since, 1985, with Jamin, Ebell, Bolger & Gentry. Currently, the firm has 8 lawyers, three of whom are assigned to the Seattle office, and five of whom are resident in Kodiak. Mr. Jamin continues to focus on both civil and criminal litigation. He has also served since 1984 as the United States Magistrate for the District of Alaska (part-time) in Kodiak.

Mr. C. Walter Ebell was educated at Oregon State University, the University of Northern Colorado (M.A.) and Lewis and Clark Law School, where he graduated in 1977. He was a member of the Law Review. Mr. Ebell joined Hartig, Rhodes, Norman & Mahoney in Anchorage in 1978, and then, served between 1979 and 1985 in Kodiak, Alaska. Since 1985 he has been a partner and shareholder in Jamin, Ebell, Bolger & Gentry. Mr. Ebell's focus is on business practice, including the special concerns of ANCSA corporations. He also emphasizes personal injury litigation.

Mr. Joel H. Bolger was educated at the University of Iowa where he graduated from the law school in 1978. After serving from 1978 through 1981 with Alaska Legal Services Corporation, Mr. Bolger served as an Assistant Public Defender in Barrow. From 1982 through 1985, he was a partner in Jamin & Bolger, and since 1985 a partner and shareholder in Jamin, Ebell, Bolger & Gentry. Mr. Bolger serves as counsel to the Cities of Old Harbor and Ouzinkis, and Kodiak Island Borough. His emphasis is on municipal law, and civil and criminal litigation.

Ms. Dianna R. Gentry was educated at Willamette University (B.A. in biology); the University of Oregon (B.S. in nursing, and M.S. in education) and Lewis and Clark Law School in 1978. She was a sole practitioner between 1979 and 1982 in Portland, Oregon, and Of Counsel with Hartig, Rhodes, Norman and Edwards from 1982 through 1985, Since 1985 she has been a partner and shareholder in Jamin, Ebell, Bolger & Gentry. Ms. Gentry limits her practice to cases involving personal injury and death. She is a member of the American Society of Law and Medicine, Inc., and frequently lectures

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to physicians, nurses and attorneys on issues involving medical malpractice.

Mr. Alan L. Schmitt was graduated from the University of Louisville in 1975, and from its law school in 1978. He worked with Kentucky Legal Services Corporation through 1979, and then with Alaska Legal Services Corporation, first as a staff attorney from 1981-82, and then as supervising attorney of its Kodiak office from 1982 through 1987, when he joined Jamin, Ebell, Bolger & Gentry. Mr. Schmitt's primary emphasis is on criminal and civil litigation.

Mr. Duncan S. Fields was graduated from the University of Oregon in 1985, and is an associate with the firm. His primary concern is with issues related to commercial fishing.

Mr. Walter Mason was graduated from the University of Minnesota Law School in 1988. He is an associate in the firm's Seattle office, and focuses primarily on estate planning, probate and appellate matters.

Mr. Michael Araujo was graduated from the University of Maryland and the University of Arizona Law School in 1989. He is a law clerk with the firm and focuses on matters involving commercial fishing and related industries.

000033

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FIRM RESUME

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

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

CLASS ACTION LITIGATION

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

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

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

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

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

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

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

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

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

000028

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

MAJOR NON-CLASS COMPLEX LITIGATION

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

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

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

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

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

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

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

ENVIRONMENTAL LITIGATION

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

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

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

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

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

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

EDF v. Magma Copper Co., (D.Arizona)

(Air pollution suit causing smelter owner to construct \$250 million retrofit to reduce SO2 emissions.)

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

000029

SEP 21 1989

FILED

SEP 25 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Charles P. Flynn, Esq.
BURR, PEASE & KURTZ
810 N Street
Anchorage, AK 99501
907/276-6100

Attorneys for Defendants Alyeska Pipeline Service Company
(D-3), Amerada Hess Corporation (D-11), ARCO Pipe Line
Company (D-12), British Petroleum Pipelines, Inc.
(D-13), Mobil Alaska Pipeline Company (D-14), Phillips
Petroleum Company (D-15), Sohio Alaska Pipeline Company
(D-16), Union Alaska Pipeline Company (D-17), UNOCAL
Pipeline Company (D-21), Phillips Alaska Pipeline Company
(D-20), George M. Nelson (D-9), BP Pipelines (Alaska),
Inc. (D-19) and Sohio Petroleum Company (D-24)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In re) No. A89-095 Civ.
)
the EXXON VALDEZ) (Consolidated)
_____)

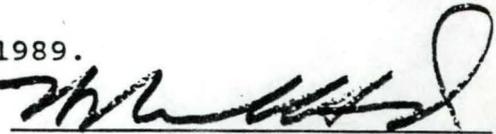
(Re all cases)

ORDER

No. 18 (Order 19 vacated)

IT IS HEREBY ORDERED that Order No. 14 previously
entered by this Court is hereby VACATED pursuant to
Stipulation between the Alyeska defendants and the
Consolidated Plaintiffs.

DATED: September 25, 1989.


H. Russel Holland
U.S. District Court Judge

PURSUANT TO THIS COURT'S PRETRIAL ORDER,
CFLYNN SHALL MAKE SERVICE OF THIS ORDER.

604

FILED

OCT 13 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
the EXXON VALDEZ)
_____)

No. A89-095 Civil
(Consolidated)

ORDER NO. 19

(Order re Absence of Answers
from Certain Defendants)

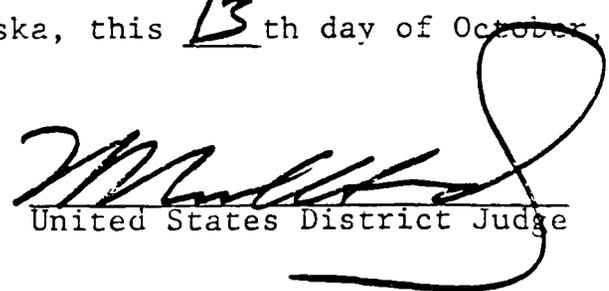
By Order No. 11 and Order No. 15, the court called the parties' attention to the absence of answers on behalf of various purported defendants. As a result of responses to Order No. 11, the court ordered various class actions dismissed without prejudice. In the process, the court omitted listing No. A89-110 Civil, which has likewise been superseded by the consolidated class action complaint heretofore filed. The court's case management clerk shall enter a separate minute order dismissing the latter case without prejudice.

635

1 Attached to this order is a copy of the court's current
2 roster of active plaintiffs and cases. Liaison counsel shall
3 verify this list with plaintiffs' counsel and report any discrep-
4 ancies to the court on or before October 31, 1989.

5 Plaintiffs' counsel have reported to the court concern-
6 ing the status of service of complaints on defendants Hazelwood
7 (D-7) and Murphy (D-18). Counsel for plaintiffs in No. A89-138
8 Civil, No. A89-238 Civil, No. A89-239 Civil, and No. A89-361
9 Civil shall serve and file a further report on the status of ser-
10 vice on defendants Hazelwood and Murphy on or before November 6,
11 1989, unless answers by these defendants are sooner served and
12 filed in the referenced cases. All concerned should be advised
13 that the court will be disinclined to grant continuances with
14 respect to filing answers by these defendants to the end that the
15 absence of counsel for these defendants not expose the court and
16 other parties to delay or the necessity of reviewing matters
17 which are or will shortly be under submission to the court for
18 decision.

19 DATED at Anchorage, Alaska, this 13th day of October,
20 1989.

21 
22 United States District Judge
23
24
25
26

LIST OF PLAINTIFFS BY CASE NUMBER AS OF 10/11/89

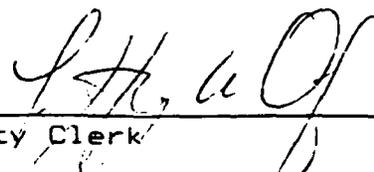
<u>AB9-095</u>	<u>AB9-095</u>	<u>AB9-117</u>	<u>AB9-140</u>	<u>AB9-264</u>
P-1	(Cont)	P-68	(Cont)	(Cont)
P-3	P-112	P-69	P-106	P-183
P-8	P-116	P-70	P-107	P-184
P-9	P-118	P-71	P-108	P-185
P-10	P-120	P-72	P-109	P-186
P-11	P-122		P-111	P-187
P-12	P-124	<u>AB9-118</u>		P-188
P-13	P-126	P-68	<u>AB9-144</u>	
P-14	P-128	P-69	P-113	<u>AB9-270</u>
P-15	P-130	P-70		P-201
P-16	P-132		<u>AB9-147</u>	
P-17	P-135	<u>AB9-135</u>	P-114	<u>AB9-359</u>
P-18	P-136	P-78	P-115	P-268
P-19	P-137	P-79		P-269
P-21	P-138		<u>AB9-149</u>	P-270
P-22	P-139	<u>AB9-136</u>	P-36	P-271
P-24	P-140	P-80	P-37	P-272
P-25	P-141		P-38	P-273
P-26	P-142	<u>AB9-138</u>		P-274
P-27	P-143	P-81	<u>AB9-200</u>	P-275
P-28	P-144	P-82	P-165	P-276
P-40	P-145	P-83	P-166	
P-41	P-146	P-84		<u>AB9-361</u>
P-42	P-147	P-85	<u>AB9-238</u>	P-277
P-43	P-189	P-86	P-78	
P-44	P-195	P-87	P-79	
P-46	P-196	P-88	P-95	
P-48	P-202	P-89	P-96	
P-50	P-203	P-90	P-167	
P-52	P-204	P-91	P-168	
P-54	P-205	P-92		
P-55	P-206	P-93	<u>AB9-239</u>	
P-56	P-225 ✱	P-94	P-80	
P-57	P-246			
P-58	P-247	<u>AB9-139</u>	<u>AB9-264</u>	
P-59	P-267	P-95	P-170	
P-60		P-96	P-171	
P-61	<u>AB9-106</u>		P-172	
P-62	P-30	<u>AB9-140</u>	P-173	
P-64	P-31	P-97	P-174	
P-65	P-32	P-98	P-175	
P-66	P-33	P-99	P-176	
P-67	P-34	P-100	P-177	
P-73	P-35	P-101	P-178	
P-74	P-36	P-102	P-179	
P-75	P-37	P-103	P-180	
P-76	P-38	P-104	P-181	
P-77	P-39	P-105	P-182	

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

AFFIDAVIT OF SERVICE

On the 13th day of October, 1989, service of Order No. 19, Order re Absence of Answers for Certain Defendants, has been made upon all counsel of record based upon the court's master service list of September 27th, 1989.



Deputy Clerk

FILED

OCT 13 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By _____ Deputy

Clifford J. Groh, Esq.
David A. Devine, Esq.
GROH, EGGERS & PRICE
2550 Denali Street
Suite 1700
Anchorage, AK 99503
(907) 272-6474

Attorneys for Defendant D-4
Trans-Alaska Pipeline Liability Fund

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In re)
) No. A 89-95 CIV
the EXXON VALDEZ)
) (Consolidated)

FIRST AMENDED
ANSWER OF DEFENDANT D-4 TRANS-ALASKA PIPELINE
LIABILITY FUND

Re: Case Nos.:

- | | |
|---|----------------------------------|
| A 89- 95 CIV (P- 1 - P-12) | A 89-139 CIV (P- 95 - P- 96) |
| A 89- 96 CIV (P-13 - P-15) | A 89-140 CIV (P- 97 - P-111) |
| A 89- 99 CIV (P-16 - P-18) | A 89-141 CIV (P-112) |
| A 89-102 CIV (P-19 - P-21) | A 89-144 CIV (P-113) |
| A 89-103 CIV (P-22) | A 89-147 CIV (P-114 - P-115) |
| A 89-104 CIV (P-23 - P-29) | A 89-149 CIV (P-36, P-38 & P-39) |
| A 89-106 CIV (P-30 - P-39) | |
| A 89-107 CIV (P-40 - P-41) | A 89-165 CIV (P-139 - P-144) |
| A 89-108 CIV (P-42) | A 89-166 CIV (P-145) |
| A 89-109 CIV (P-43 - P-44) | A 89-173 CIV (P-146 - P-147) |
| A 89-110 CIV (P-45 - P-64
AND P-116 - P-138) | A 89-200 CIV (P-165 - P-166) |
| A 89-111 CIV (P-65 - P-67) | A 89-238 CIV (P-167 - P-168) |
| A 89-125 CIV (P-73) | A 89-239 CIV (P-80) |
| A 89-126 CIV (P-74 - P-76) | A 89-264 CIV (P-170 - P-188) |
| A 89-129 CIV (P-77) | A 89-265 CIV (P-189 - P-200) |
| A 89-135 CIV (P-78 - P-79) | A 89-270 CIV (P-201) |
| A 89-136 CIV (P-80) | A 89-297 CIV (P-202 - P-206) |
| A 89-138 CIV (P-81 - P-94) | A 89-299 CIV (P-207 - P-267) |
- AND RE P-169 (Intervenor VinDiCo)

LAW OFFICES OF
GROH, EGGERS & PRICE
2550 DENALI STREET, 17TH FLOOR
ANCHORAGE, ALASKA 99503
(907) 272-6474

637

Defendant TRANS-ALASKA PIPELINE LIABILITY FUND (the "FUND"), by and through its undersigned attorneys, and in response to the various class action and individual complaints filed by the Plaintiffs herein, and which have been consolidated pursuant to the Court's Pre-Trial Order No. 1, hereby admits, denies, states, and alleges as follows:

1. Except as may be specifically admitted in this Answer, the Defendant FUND denies each and every allegation contained in each Complaint and Amended Complaint in which the FUND is named as a Defendant.

2. Defendant FUND admits that it was created pursuant to the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1651, et seq., that the FUND resides in this District, and that venue is proper as to the FUND.

3. Defendant FUND admits that the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1651, et. seq., is applicable to factual situations similar to those alleged in the various Complaints and relating to Defendant FUND. However, Defendant FUND is without knowledge or information sufficient to form a belief as to the truth of any allegations in said Complaints that the statute identified constitutes a ground for relief in favor of the identified Plaintiffs and against this Defendant and, therefore, the FUND denies any such allegations.

4. Defendant FUND admits that the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1651, et seq., provides for strict

liability on the part of the FUND and others under certain circumstances specified in that legislation and regulations promulgated thereunder. However, Defendant FUND specifically denies that any satisfactory showing or proof has been made to establish liability on the part of the FUND to any of the Plaintiffs in these consolidated actions.

5. Defendant FUND denies any allegations that damages claimed by Plaintiffs arose from more than one "incident" as that term is defined in the applicable regulations (43 C.F.R. § 29.1(h)), and specifically denies that its total liability to all claimants for damages arising from said "incident" may exceed the statutory maximum of Eighty-Six Million Dollars (\$86,000,000.00) specified in 43 U.S.C. § 1653(c)(3).

6. Defendant FUND specifically denies any allegations regarding non-economic damages to the extent said allegations may pertain to, or be alleged against, this Defendant. Defendant FUND denies any liability for damages not specifically listed in 43 C.F.R. § 29.1(e).

7. Defendant FUND specifically denies any allegations respecting punitive damages to the extent said allegations may pertain to, or be alleged against, this Defendant.

First Affirmative Defense

8. The Complaints filed by the various Plaintiffs fail to state a claim against the FUND upon which relief may be

granted.

Second Affirmative Defense

9. Any liability that Defendant FUND may have to claimants such as the Plaintiffs arises under, and is governed by, the appropriate provisions of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1653(c), et seq., and regulations promulgated thereunder found at 53 Fed. Reg. 3395 (1988) (to be codified at 43 C.F.R. § 29).

10. These regulations specify procedures that should be followed by claimants against the FUND and observed by the FUND in processing, evaluating, and paying such claims.

11. Compliance with the aforesaid claims procedures constitutes an administrative remedy which is Plaintiffs' exclusive remedy against Defendant FUND.

12. Accordingly, Plaintiffs' claims against Defendant FUND in these proceedings are premature, and should be dismissed for failure to exhaust administrative remedies.

Third Affirmative Defense

13. Defendant hereby incorporates each and every allegation of Paragraphs 9 through 12 above, to the same extent as if they were set forth in full herein.

14. Compliance with the aforesaid administrative claims procedures is a condition precedent to any judicial proceeding for recovery against the FUND, which Plaintiffs have failed to

satisfy.

15. Plaintiffs' claims against Defendant FUND are, therefore, premature, and should be dismissed for failure of a condition precedent.

Fourth Affirmative Defense

16. To the extent any Plaintiff may assert a punitive damages claim or a claim for non-economic damages against Defendant FUND, such damages are not authorized by 43 U.S.C. § 1651, et seq., or the regulations promulgated thereunder, and an award of such damages would be unconstitutional and a violation of the FUND's right to due process of law.

Fifth Affirmative Defense

17. 43 U.S.C. § 1653(c)(3) and the regulations promulgated thereunder provide that, if total allowable claims exceed One Hundred Million Dollars (\$100,000,000.00), they shall be reduced proportionately. No affirmative judgment may be entered against Defendant FUND which does not take into consideration all claims, including non-judicial claims, filed against or submitted to the FUND within two (2) years of the Exxon Valdez discharge. To allow entry of judgment for any particular Plaintiff without giving effect to the pro rata reductions mandated by applicable statutes and regulations would expose the FUND to a potential for inconsistent decisions and/or duplicative liabilities and could cause other claimants, including non-judicial claimants, to

receive less than the pro rata share of the FUND's available proceeds to which they are entitled by law.

Sixth Affirmative Defense

18. The FUND is entitled to a reduction in any damages that may be awarded against it by virtue of, and to the full extent of, any failure by Plaintiffs, or any of them, to mitigate damages.

Seventh Affirmative Defense

19. Some persons engaged or employed in connection with activities related to containment and clean up of the oil released from the Exxon Valdez were thereby able to avoid or mitigate damage or loss from the interruption of fishery, cannery, and other activities. Payments received by such persons are a setoff or credit against damage or losses, if any, resulting from the interruption of fishery, cannery, and other activities.

Eighth Affirmative Defense

20. Plaintiffs, or some of them, have received payments in full or partial satisfaction of some or all of the claims described in these actions. In the event of any recovery against the FUND herein, the FUND is entitled to a setoff or credit in the full amount of such payments.

LAW OFFICES OF
GROH, EGGERS & PRICE
2550 DENALI STREET, 17TH FLOOR
ANCHORAGE, ALASKA 99503
(907) 272-6474

Ninth Affirmative Defense

21. Plaintiffs, or some of them, have received payments in full satisfaction of the claims described in these actions and have executed releases of such claims. Accordingly, any such payments operate as an accord, satisfaction, and release of such claims against the FUND, and any such releases should bar claims against the FUND.

Tenth Affirmative Defense

22. The FUND has no liability to Plaintiffs for any alleged oil spill incident which occurred or which resulted at the direction, or with the approval, of governmental authorities, including, but not limited to, the United States Coast Guard and the Alaska Department of Environmental Conservation.

Eleventh Affirmative Defense

23. Numerous Plaintiffs have filed, or are putative members of purported classes in, other lawsuits in other courts against Defendants other than the FUND. To the extent there is a recovery in such other lawsuits encompassing claims, damages, or losses alleged by the Plaintiffs herein, recovery on the claims alleged against the FUND herein is barred to the extent that it would represent a multiple recovery for the same injury or loss. In the event of any recovery by the Plaintiffs in such other actions as compensation for the damages, injuries, or

losses alleged herein, the FUND is entitled to a setoff or credit in the full amount of such recovery.

RESERVATION OF STATUTORY DEFENSES

24. Defendant FUND hereby expressly reserves its right to assert, at such time and to such extent as discovery and factual development establish a basis therefor, any or all of the statutory defenses specified in 43 U.S.C § 1653(c)(2), including, without limitation, that Plaintiffs' damages were caused by the negligence of the United States or other governmental agency and/or by the negligence of the Plaintiffs.

RESERVATION OF AFFIRMATIVE DEFENSES

25. Defendant FUND hereby expressly reserves, and does not waive, its right to assert any and all additional affirmative defenses, at such time and to such extent as discovery and factual development may establish a basis therefor, including, without limitation, comparative and contributory negligence, assumption of risk, failure to mitigate damages, last clear chance, waiver, estoppel, laches, payment, release, res judicata, and intervening cause.

WHEREFORE, having fully answered the Plaintiffs' Complaints, Defendant FUND hereby respectfully prays that the Plaintiffs take nothing by virtue thereof; that the same be dismissed with prejudice; that judgment be issued in favor of Defendant FUND and

against Plaintiffs on all counts of Plaintiffs' Complaints which may apply to Defendant FUND; and that Defendant FUND be awarded its costs and reasonable attorney's fees, and such other, further, and different relief as the Court may deem just and equitable in the premises.

DATED at Anchorage, Alaska, this 22th day of September, 1989.

GROH, EGGERS & PRICE

Attorneys for Defendant D-4

Trans-Alaska Pipeline Liability Fund

By: *Clifford J. Groh, Sr.*
Clifford J. Groh, Sr.

By: *David A. Devine*
David A. Devine

SERVICE of the foregoing has been made upon all counsel of record by mail, on the 25 day of September, 1989, based upon the Court's Master Service List of August 25, 1989.

David A. Devine
David A. Devine

P-928-3

1 Section B of Pre-Trial Order No. 1, pages 2 through 4,
2 are modified as follows. The remainder of Section B is not
3 affected.

4
5 All documents filed in these consolidated cases shall
6 have a title page containing the following information and
7 nothing else:

8 (1) The name, address, and telephone number
9 of the attorney presenting the document.

10 Only the name of the principal attorney
11 preparing and presenting the document
12 shall appear on the title page.¹ Local
13 Rule 6(H)(1) to the contrary notwith-
14 standing, this designation of counsel
15 need not identify the party for whom
16 counsel is presenting the document; as
17 this is covered by further requirements
18 hereinafter. The other provisions of
19 Local Rule 6(H)(1) apply.

20 (2) The title of the court shall commence
21 not less than four inches from the top
22 of the page.

23 -----
24 1 A recent filing listed numerous counsel sponsoring the
25 document. With multiple representation of parties and
26 multiple sponsors of a document, this listing needlessly
extends the title page.

1 (3) All documents filed in these consoli-
2 dated cases shall bear the following
3 caption, and no other:²
4

5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF ALASKA
7

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

12 provided, however, that the original
13 complaint of a party shall take the
14 usual form, naming all plaintiffs and
15 all defendants.

16 (4) Below the case caption, each document
17 shall contain a title which:

18 (a) shall identify the document as pertain-
19 ing to "all cases", or shall identify by
20 number only the case or cases to which
21 it pertains;

22 -----
23 ²

24 In presenting their motion for class certification,
25 certain of the plaintiffs presented the court with a filing
26 that contained five-and-a-half pages of case captions. This
practice, which has been adopted by some counsel, is not
helpful, and, over the course of this litigation, would take
up considerable file space.

1 (b) shall identify the party tendering the
2 document by use of the party's letter
3 and number designation assigned to that
4 party by the clerk of court in the doc-
5 keting of the case;

6 (c) shall identify as briefly as possible
7 the nature of the document; and

8 (d) shall identify the party or parties
9 against whom it is directed by use of
10 that party's or parties' letter and
11 number designation assigned by the clerk
12 of court in docketing the case. For
13 example:

14 Case No. A89-096 Civil

15 P-26 through P-32 & P-35 Motion for
16 Protective Order against D-1 and D-2

17 [--or--]

18 Re Case No. A89-XXX Civil

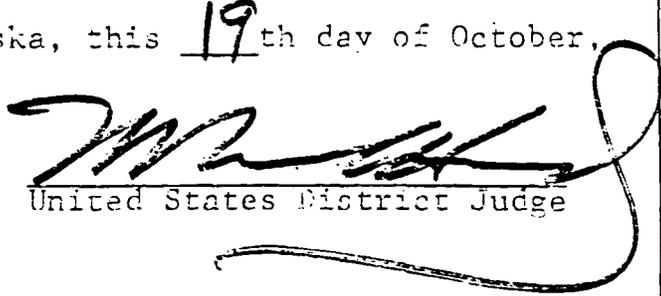
19 All Defendants' Opposition to Motion for
20 Summary Judgment by P-18, P-19, P-20 & P-24

21 (5) All documents presented for filing in
22 this case shall bear the original signa-
23 ture of the attorney presenting the
24 document. It is appropriate, but not
25 necessary that the signature block indi-
26 cate that the signator has presented the

1 document as attorney for certain par-
2 ties; and if this is done, the parties
3 shall be designated by their assigned
4 letter and number designations only.
5 This signature block shall not be fol-
6 lowed by a litany of attorney names or
7 firms who may have appeared in this
8 action for the party or parties in whose
9 behalf the document has been presented.³

10 The cooperation of counsel in the foregoing will be
11 very much appreciated. In the long run, the court and all
12 counsel will profit from the formalities of documents being as
13 simple and direct as possible.

14 DATED at Anchorage, Alaska, this 19th day of October,
15 1989.

16 
17 United States District Judge
18
19
20

21 ³

22 The class action plaintiffs' motion for certification
23 contained five-and-a half pages of names of attorneys who
24 have appeared in connection with the class actions. A
25 number of recently-filed documents have employed this prac-
26 tice. The court can easily ascertain who has appeared for
which party if it needs to. It will suffice in this regard
for the title page of the document to reflect the cases and
parties for whom any document is presented and for the
concluding page of the document to be signed by authorized
counsel for a party or group of parties. The lists of names
add nothing and take up considerable space.

FILED

OCT 23 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Douglas J. Serdahely
Bogle & Gates
1031 West 4th Avenue
Suite 600
Anchorage, Alaska 99501
(907) 276-4557

Attorneys for Defendant
Exxon Shipping Company (D-2)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)	A89-095 Civil
)	(Consolidated)
THE EXXON VALDEZ)	
)	
This Document Relates)	
to Action No.:)	
)	
<u>A89-359</u>)	
Prince William Sound)	
Conservation Alliance)	
)	

ANSWER OF EXXON SHIPPING COMPANY (D-2) TO
COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF, FILED AUGUST 23, 1989

Exxon Shipping Company, for convenience identified in
this answer as "Exxon Shipping," as its answer to the complaint
herein admits, denies and alleges as follows:

ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

BOGLE & GATES

Suit
1031 West 4th Avenue
Anchorage, Alaska 99501
(907) 276-4557

647

As to each and every allegation denied herein for lack of information or belief, alleges that it is without knowledge or information sufficient categorically to admit or deny the said allegation at this time, wherefore it denies each said allegation using the phrase "denies for lack of information or belief."

DEFENSE TO FIRST CLAIM FOR RELIEF

1. Denies the allegations of paragraph 1, except admits that the EXXON VALDEZ ran aground on Bligh Reef shortly after midnight on March 24, 1989; that as a result of the grounding approximately 258,000 barrels of crude oil were discharged into the waters of Prince William Sound; that the spill was the largest in United States waters from a single vessel; and that plaintiffs purport to bring a lawsuit arising from the grounding of the EXXON VALDEZ and the subsequent discharge of crude oil into the waters of Prince William Sound.

2. Answering paragraph 2, admits that plaintiffs seek relief pursuant to the statutes alleged but denies that they are entitled to any relief under said statutes or otherwise.

3-5. Answering the allegations of paragraphs 3 through 5, admits that the Court has jurisdiction to decide plaintiffs' claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 2201-02, and

ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

-2-

BOGLE & GATES

Sr
R. 4th Avenue
Anchorage, AK 99501
(907) 276-4557

that venue is proper in this District pursuant to 28 U.S.C. § 1391(b), but denies that plaintiffs have claims that arise under the statutes alleged.

6-14. Denies for lack of information and belief the allegations of paragraphs 6 through 14, except admits that plaintiffs are non-profit corporations.

15. Denies each and every allegation of paragraph 15, except admits that Exxon Corporation ("Exxon") 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; that the principal business of Exxon is energy, involving exploration for and production of crude oil, natural gas and petroleum products; that Exxon Company, U.S.A. is an unincorporated division of Exxon, with its headquarters at 800 Bell Street, Houston, Texas, and is responsible for Exxon's energy business within the United States; that Exxon is the owner of all the stock of Exxon Shipping; that Exxon Shipping is the registered owner and operator of the EXXON VALDEZ; and that Exxon was owner of the crude oil cargo on board the EXXON VALDEZ on March 24, 1989, some of which was discharged into the waters of Prince William Sound.

BOGLE & GATES

ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

-3-

Su
100
Ave. AK 99501
(907) 276-4557

16. Denies each and every allegation of paragraph 16 except admits that Exxon Shipping is a Delaware corporation with its executive office in Houston, Texas; that Exxon owns all of the stock of Exxon Shipping; and that Exxon Shipping is the registered owner and operator of the vessel EXXON VALDEZ.

17. Denies each and every allegation of paragraph 17, except admits that Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation with its principal place of business in Alaska; that Alyeska is owned by Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, B.P. Pipelines (Alaska), Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation and UNOCAL Pipeline Company; that Alyeska operates the Trans-Alaska Pipeline System; that Alyeska prepared an oil spill contingency plan in 1977, and that the plan and subsequent modifications thereof were approved by the State of Alaska and the federal government; and that Alyeska's approved oil spill contingency plan was in effect for Prince William Sound at the time of the grounding of the EXXON VALDEZ.

18-19. Admits the allegations of paragraphs 18 and 19.

20. Denies the allegations of paragraph 20, except admits that the EXXON VALDEZ struck Bligh Reef shortly after midnight on March 24, 1989; that Bligh Reef is offshore of Bligh

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ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

-4-

Island; and that the grounding punctured eight of the vessel's cargo tanks and three water ballast tanks.

21-22. Denies for lack of information and belief the allegations of paragraphs 21 and 22, except admits that approximately 258,000 barrels of oil were discharged into the waters of Prince William Sound; that the oil was transported by winds, tides, and currents; and that some of the oil was deposited on certain beaches, shoreline, and islands of portions of Prince William Sound and of the Gulf of Alaska.

23. Denies for lack of information and belief the allegations of paragraph 23, except admits that oil has been discharged into the waters of Prince William Sound and onto beaches, shorelines and islands of portions of Prince William Sound and of the Gulf of Alaska; that wildlife habitats have been affected; and that birds and animals have been killed or injured.

24-27. Denies each and every allegation of paragraphs 24 through 27, except admits that at the time of the grounding of the EXXON VALDEZ, there was in effect an oil spill contingency plan prepared by Alyeska and approved by the State of Alaska and the federal government; and that Alyeska's oil spill contingency plan speaks for itself.

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ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

-5-

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28-31. Denies the allegations of paragraphs 28 through 31 as they pertain to Exxon and Exxon Shipping, and denies said allegations for lack of information and belief as they pertain to others, except admits that the Coast Guard in Valdez was notified of the grounding of the EXXON VALDEZ; and that not all oil had been contained or removed from the waters of Prince William Sound by the end of the second day following the spill.

32. Denies each and every allegation of paragraph 32, except admits that crude oil from the EXXON VALDEZ was lightered to the EXXON BATON ROUGE; and that ballast water from the EXXON BATON ROUGE was discharged into Prince William Sound pursuant to explicit authorization from the relevant government officials and in accordance with law.

33-34. Denies the allegations of paragraphs 33 through 34 as they pertain to Exxon and Exxon Shipping, and denies said allegations for lack of information and belief as they pertain to other defendants, except admits that oil was deposited on certain beaches, shoreline and islands of portions of Prince William Sound and the Gulf of Alaska.

35. [There is no paragraph 35 in plaintiffs' Complaint.]

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ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

-6-

Suit
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36. Denies the allegations of paragraph 36 as they pertain to Exxon and Exxon Shipping, and denies said allegations for lack of information and belief as they pertain to others.

37-39. Denies each and every allegation of paragraphs 37 through 39, except admits that Exxon Shipping submitted various plans to the Coast Guard with respect to containment of the oil spill and treatment of affected areas, which plans provide according to their terms; and that those plans and modifications thereof were approved by the Coast Guard.

40-43. Denies the allegations of paragraphs 40 through 43 as they pertain to Exxon and Exxon Shipping, and denies said allegations for lack of information and belief as they pertain to others, except admits that in certain circumstances adverse environmental consequences may result from efforts to remove all oil from beaches and shoreline.

44. Answering paragraph 44, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 43 hereof, as if set out in full.

45-56. Denies each and every allegation of paragraphs 45-56, except admits that the cited sections of the Clean Water Act provide in accordance with their terms.

BOGLE & GATES

ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

57. Denies for lack of information and belief the allegations of paragraph 57.

58-59. Admits the allegations of paragraphs 58 through 59.

60-64. Denies each and every allegation of paragraphs 60 through 64.

65. Denies each and every allegation of paragraph 65, except admits that the Administrator of the Environmental Protection Agency has not filed a civil or criminal action against Exxon Shipping relating to the grounding of the EXXON VALDEZ, and that the State of Alaska has not made a claim against Exxon Shipping based upon the provisions of the Clean Water Act.

66-67. Denies each and every allegation of paragraphs 66 through 67, except admits that on or about April 18, 1989, plaintiffs mailed to Exxon Shipping a copy of the document which is Exhibit 1 to the Complaint.

DEFENSE TO SECOND CLAIM FOR RELIEF

68. Answering paragraph 68, realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 67 hereof, as if set out in full.

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ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

69-73. Denies each and every allegation of paragraphs 69 through 73, except admits that the cited sections of the Resource Conservation and Recovery Act provide in accordance with their terms.

74-75. Admits the allegations of paragraphs 74 and 75.

76. Denies each and every allegation of paragraph 76.

77-78. Denies the allegations of paragraphs 77 through 78 as they pertain to Exxon and Exxon Shipping, and denies said allegations for lack of information and belief as they pertain to others.

79-81. Denies each and every allegation of paragraphs 79 through 81, except admits that on or about April 18, 1989, plaintiffs mailed to Exxon Shipping a copy of the document which is Exhibit 1 to the Complaint.

82-83. Denies for lack of information and belief the allegations of paragraphs 82 through 83, except admits that neither the Administrator of the Environmental Protection Agency nor the State of Alaska has initiated a lawsuit against Exxon Shipping arising from the grounding of the EXXON VALDEZ and based upon CERCLA or RCRA.

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ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

-9-

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GENERAL DENIAL

84. Denies each and every other allegation in plaintiffs' complaint that was not specifically admitted herein.

AFFIRMATIVE AND OTHER DEFENSES

85. The Complaint, and each count thereof, fails to state a claim upon which relief can be granted.

86. Exxon Shipping is informed and believes that plaintiffs lack standing.

87. Plaintiffs' claims are barred by federal law and regulations in that responsibility for supervising containment or clean up of the spill is exclusively that of the United States Coast Guard.

88. Insofar as plaintiffs seek relief related to containment or clean up of the spill, the United States Coast Guard is an indispensable party to this action.

89. Plaintiffs' claims are barred by federal law and regulations in that the natural resources damage assessment process created pursuant to § 311 of the Clean Water Act, 33 U.S.C. § 1321, and §§ 107 and 301 of CERCLA, 42 U.S.C. §§ 9607 and 9651, precludes double recovery for natural resource damages and restoration and provides the exclusive vehicle for assessing and

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ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

-10-

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determining liability for natural resource damages and restoration arising from oil spills, and for developing and implementing a plan to restore the environment.

90. Insofar as plaintiffs seek relief related to natural resource damages or restoration, the Departments of Agriculture, Commerce, and Interior, and the State of Alaska, are indispensable parties to this action.

91. Independent of any legal obligation to do so, Exxon Shipping and Exxon are voluntarily paying claims for alleged economic loss allegedly caused by the oil spill, and have incurred and will continue to incur other expenses in connection with the oil spill. Exxon and Exxon Shipping are entitled to a setoff in the full amount of all such payments in the event that plaintiffs' claims encompass such expenditures.

92. Certain persons were able to avoid or mitigate damage from the interruption of fishery and other activities, because they were engaged or employed in connection with activities related to containment and cleanup of the oil released from the EXXON VALDEZ. Payments received by such persons are a set off against losses, if any, resulting from the interruption

BOGLE & GATES

ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

-11-

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of fishery and other activities. To the extent that persons able to mitigate damages failed to do so, defendants cannot be held liable for avoidable losses.

93. Plaintiffs' claims sound in maritime tort and are subject to applicable admiralty restrictions, including without limitation restrictions on the grant of injunctive relief and on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

94. Numerous persons and entities have filed lawsuits against Exxon Shipping relating to the oil spill, some of whom purport to represent plaintiffs in this action or their members. In the event of any judgment or judgments in such other lawsuits against Exxon Shipping and in favor of persons whose claims are encompassed in this action, such judgment or judgments will be res judicata as to claims of plaintiffs herein.

95. Numerous persons and entities have filed other lawsuits against Exxon Shipping and various other defendants, and to the extent there is a recovery in said other lawsuits encompassing claims made by plaintiffs herein, recovery on the claims herein is barred to the extent that it would represent a multiple recovery for the same injury.

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ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

-12-

96. The amount of liability, if any, for the acts alleged is controlled by statute, including, without limitation, 43 U.S.C. § 1653(c).

97. If punitive damages were to be awarded or civil or criminal penalties assessed in any other lawsuit against Exxon Shipping relating to the oil spill, such award bars imposition of civil penalties in this action.

98. Some or all of plaintiffs' claims are preempted by the comprehensive scheme of federal statutes, regulations and common law, including criminal and civil penalties, sanctions and remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

99. Certain claims asserted by plaintiff are not ripe for adjudication.

100. Certain theories of relief may not be maintained because these theories are based upon the exercise by Exxon Shipping of federal and state constitutional rights to petition the federal and state governments with respect to the passage and enforcement of laws.

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

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ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

-13-

Suit
103,
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should not proceed in the absence of the Fund's joinder as a defendant.

102. Exxon Shipping has acted pursuant to government approval, direction and supervision, and has no liability for any acts undertaken or omissions made with such approval, direction, or supervision.

103. Plaintiffs fail to satisfy the requirements for the injunctive relief they seek.

PRAYER FOR RELIEF

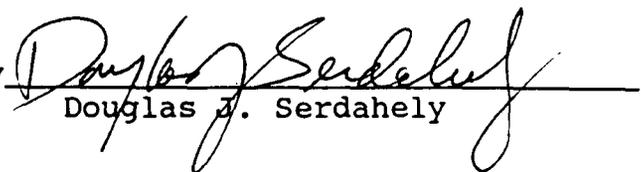
WHEREFORE, Exxon Shipping prays for judgment as follows:

1. That plaintiffs take nothing and be granted no relief, legal or equitable;
2. That Exxon Shipping be awarded its costs in this action, including attorneys' fees; and
3. For such other and further relief as the Court deems just and proper.

Dated at Anchorage, Alaska this 23rd day of October, 1989.

BOGLE & GATES
Attorneys for defendant
Exxon Shipping Company (D-2)

By


Douglas J. Serdahely

ANSWER OF EXXON SHIPPING
COMPANY TO COMPLAINT FILED
AUGUST 23, 1989

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Attorneys for Defendant
Exxon Shipping Company (D-2)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)	A89-095 Civil
)	(Consolidated)
THE EXXON VALDEZ)	
)	
This Document Relates)	
to Action No.:)	
)	
<u>A89-359</u>)	
Prince William Sound)	
Conservation Alliance)	
)	

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

Joy C. Steveken, being duly sworn, upon oath, deposes and says: that she is employed as a legal secretary in the offices of Bogle & Gates, 1031 West 4th Street, Suite 600, Anchorage,

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-1-

Alaska 99501; that the following document: Answer of Exxon Shipping Company (D-2) to Complaint for Declaratory and Injunctive Relief, Filed August 23, 1989 has been made upon all counsel of record based upon the Court's Master Service List of September 27, 1989 on the 23rd day of October, 1989 via U.S. Mail, postage prepaid.

Joy C. Steveken
Joy C. Steveken

SUBSCRIBED AND SWORN to
before me this 23rd day
of October, 1989.

Patricia J. Rintoul
Notary Public for Alaska
My Commission Expires: 5-11-93

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-2-