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AUG 23 1989

CHARLES W. BENDER
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400 South Hope Street
Los Angeles, California 90071-2899
(213) 669-6000

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)

ANSWER OF DEFENDANT D-1
TO COMPLAINT FILED AUGUST 23,
1989 BY Ps 268 THROUGH 276

This Document Relates
to Action No.:

A89-359

DANKSON, MCCOLLUM & FOSSEY
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
550 WEST SEVENTH AVENUE, SUITE 1800
ANCHORAGE, ALASKA 99501
(907) 276-1711

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

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 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 is a corporation organized under the laws of the State of New Jersey with its principal place of business at 1251 Avenue of the Americas, New York, NY 10020; 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 Company; that Exxon Shipping Company 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.

16. Denies each and every allegation of paragraph 16, except admits that Exxon Shipping Company ("Exxon Shipping") is a Delaware corporation with its executive office in Houston, Texas; that Exxon owns all of the stock of Exxon Shipping Company; 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

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.

28-31. Denies the allegations of paragraphs 28 through 31 as they pertain to Exxon, 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 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.]

36. Denies the allegations of paragraph 36 as they pertain to Exxon, 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 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.

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

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

60. Denies each and every allegation of paragraph 60.

61. Denies each and every allegation of paragraph 61, except admits that the discharge of oil from the EXXON VALDEZ was not a discharge authorized under the sections referenced in §301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

62-64. Denies each and every allegation of paragraphs 62 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 relating to the grounding of the EXXON VALDEZ, and that the State of Alaska has not made a claim against Exxon 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 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.

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 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 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 arising from the grounding of the EXXON VALDEZ and based upon CERCLA or RCRA.

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 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 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 the 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 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 is 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 clean up 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 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 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 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 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.

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 proceeding against Exxon 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 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 should not proceed in the absence of the Fund's joinder as a defendant.

102. Defendants have acted pursuant to government approval, direction, and supervision, and have 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

WHEREFORE, Exxon prays for judgment as follows:

1. That plaintiffs take nothing and be granted no relief, legal or equitable;

2. That Exxon be awarded its costs in this action, including a reasonable attorney fee; and

3. For such other and further relief as the Court deems just and proper.

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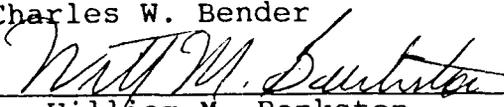
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DATED: October 23, 1989

O'MELVENY & MYERS
Charles W. Bender

By


William M. Bankston

BANKSTON, McCOLLUM & FOSSEY, P.C.
Attorneys for Defendant D-1

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OCT 23 1989

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

Douglas J. Serdahely
Liaison Counsel for Defendants
and Co-Member of Defendants'
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(907) 276-4557

Charles P. Flynn
Co-Member of Defendants'
Coordinating Committee
Burr, Pease & Kurtz
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Anchorage, Alaska 99501
(907) 276-6100

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
)
the EXXON VALDEZ)
)
_____)

Case No. A89-095 Civil
(Consolidated)

RE: ALL CASES

ALL DEFENDANTS' STATEMENT REGARDING PROPOSED
CLASS DISCOVERY AND BRIEFING SCHEDULE

Paragraph IV of this Court's Pretrial Order No. 4
contemplates, in defendants' view, the submission of the parties'
joint proposed briefing schedule for the disposition of motions

STATEMENT REGARDING PROPOSED
CLASS DISCOVERY AND
BRIEFING SCHEDULE

BOGLE & GATES

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

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to certify class actions and related class action discovery schedule. In the event that the parties are unable to reach agreement on a joint proposal, however, defendants believe that paragraph IV of this Order impliedly incorporates the same briefing schedule for the filing of additional responsive and reply memoranda, as is set forth in paragraph III of the Order.

Although some preliminary discussions have been held between the parties' representatives, no agreement on a joint proposal has yet been reached. In this regard, defendants have been advised by plaintiffs' class counsel that class plaintiffs will file plaintiffs' initial proposal for a class action discovery and motions briefing schedule on October 23, 1989. Notwithstanding such filing, however, defendants and plaintiffs have agreed that after defendants have reviewed plaintiffs' proposal, a conference will be held during the week of October 23 to discuss plaintiffs' proposal and to attempt to reach an agreement on a joint proposal regarding class action discovery and a motions briefing schedule.

If plaintiffs and defendants reach agreement, the parties' joint proposal will be filed with the Court. If, however, the parties cannot reach agreement on some or all aspects of such a joint proposal, defendants will file their responsive

BOGLE & GATES

STATEMENT REGARDING PROPOSED
CLASS DISCOVERY AND
BRIEFING SCHEDULE

pleading on November 2, 1989. Plaintiffs would then have an opportunity to file any reply memoranda, responding to defendants' submission, on November 7, 1989.

Dated at Anchorage, Alaska this 2nd day of October, 1989.

BOGLE & GATES

By Douglas J. Serdahely
Douglas J. Serdahely

Liaison Counsel for Defendants
and Co-Member of Defendants'
Coordinating Committee

BURR, PEASE & KURTZ

By Charles P. Flynn
Charles P. Flynn

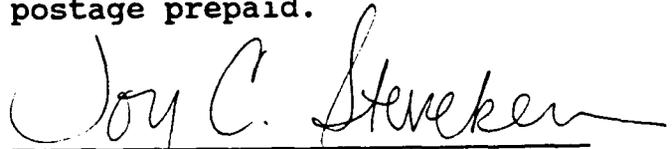
Co-Member of Defendants'
Coordinating Committee

BOGLE & GATES

STATEMENT REGARDING PROPOSED
CLASS DISCOVERY AND
BRIEFING SCHEDULE

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Alaska 99501; that the following document: All Defendants' Statement Regarding Proposed Class Discovery and Briefing Schedule 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

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


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

BORG E & GATES

SU:
103, 4th Avenue
Anchorage, AK 99501
(907) 276-4557

AFFIDAVIT OF SERVICE

-2-

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OCT 30 1989
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

PRE-TRIAL ORDER NO. 6

Amendment to Pre-Trial Order No. 4
--Joint Discovery Plan

By Section III of the court's Pre-Trial Order No. 4, the court called upon the parties to submit, on or before October 23, 1989, an agreed, joint discovery plan if the parties were able to reach agreement. The parties have not yet reached agreement on a plan, but it is also apparent that they have not reached a point of impasse either. Accordingly, plaintiffs and defendants have requested additional time to continue their efforts towards a proposed, joint discovery plan.

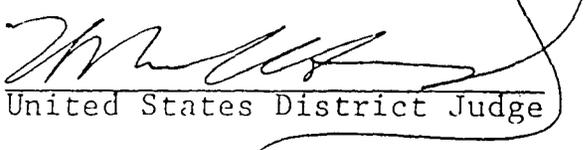
The respective liaison counsel have proposed that the time for filing the joint proposed discovery plan be postponed until November 20, 1989, and that responsive and reply memoranda

"
"
"

1 concerning disputed aspects of the plan be served and filed on
2 December 11 and 18, 1989, respectively. This revised schedule is
3 approved.

4 The court has one area of concern. The court and the
5 parties are attempting to move forward with planning for discov-
6 ery simultaneous with the ongoing planning for the formal organi-
7 zation of the case and the adoption of a management plan for the
8 overall development of the case. The court has the impression
9 that liaison counsel (who have not been formally recognized by
10 the court as yet) are dealing with one another as though
11 Mr. Miller were acting as liaison counsel for all of the consoli-
12 dated plaintiffs. While the court has in substance accepted
13 Mr. Miller as pro tempore liaison counsel, the court has received
14 the environmental plaintiffs' "Response to Pre-Trial Order
15 No. 4", October 23, 1989, which causes the court to question
16 whether all of the plaintiffs are working together towards the
17 development of a single discovery plan. It is the court's inten-
18 tion that there be one, all-inclusive discovery plan. The exten-
19 sion of time hereinabove approved must be used to incorporate the
20 needs of all plaintiffs if all have not heretofore been involved
21 in the discussions.

22 DATED at Anchorage, Alaska, this 27th day of October,
23 1989.

24 
25 United States District Judge
26

FILED

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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)
_____)	

PRE-TRIAL ORDER NO. 7

Amendment to Pre-Trial Order No. 4
--Motions for Class Certification

By Section IV of the court's Pre-Trial Order No. 4, the court addressed the subject of motions for class certification. In the court's brief discussion of such motions, the court (perhaps improvidently) addressed the subject of discovery; and, rather than set out a discrete calendar for the presentation of these motions, such schedule was left for recommendations from counsel.

Pre-Trial Order No. 4 was entered on August 25, 1989. Motions for certification of class actions were filed on September 22 and 25, 1989. On October 23, 1989, the class

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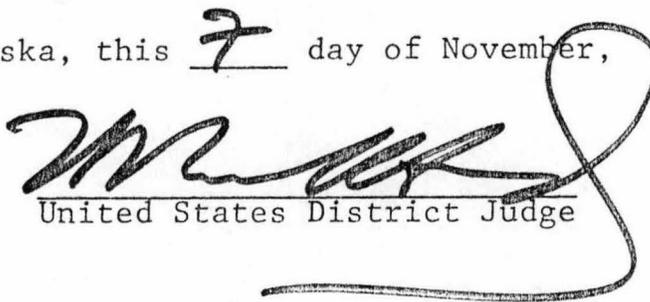
1 plaintiffs filed a proposed schedule for disposition of class
2 action motions. That filing suggested a schedule which would
3 extend the process for development of these motions into February
4 of 1990. To be candid, the court was shocked and dismayed at the
5 duration of this proposed calendar. When Pre-Trial Order No. 4
6 was entered, the court envisioned having the class action motions
7 out of the way by November at the latest.

8 Most recently, the court has received a stipulation,
9 approved by plaintiffs and defendants, which contemplates the
10 completion of filings as to a proposed schedule for handling the
11 class action motions on December 1, 1989. It is apparent from
12 the stipulation that the parties are endeavoring to reach an
13 agreed schedule which would obviate the necessity of filing any
14 opposition or replies in connection with the class plaintiffs'
15 October 23, 1989, proposed schedule. The court's curiosity is
16 piqued as to what is transpiring here, for there are aspects of
17 the discussions concerning a calendar for these motions which the
18 parties do not wish to have conveyed to the court unless the
19 negotiations for an agreed schedule fail. The court assumes,
20 without knowing, that something of more substance than a calendar
21 for dealing with the class action motions must be in the works.

22 Accordingly, the parties' stipulation for extension of
23 time to respond to class action plaintiffs' proposed schedule for
24 disposition of motions for class certification is approved.
25 Counsel will please not request any further continuance as to
26 this matter.

1 The matter of formal organization of plaintiffs' coun-
2 sel and defense counsel is still open. The court does not intend
3 to take any action on the proposed organization plans until the
4 matter of class certification is resolved. Counsel for plain-
5 tiffs should be advised, however, that the court has substantial
6 reservations to the consolidated plaintiffs' proposed pre-trial
7 order for the organization of plaintiffs' counsel. The plan
8 appears to be top-heavy and deficient as regards incorporation of
9 counsel for environmental plaintiffs.

10 DATED at Anchorage, Alaska, this 7 day of November,
11 1989.

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13 United States District Judge
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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

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3 Richard A. Bersin
4 Sandrin B. Rasmussen
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6 Seattle, Washington 98101-3115

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

10 THE COPPER RIVER FISHERMEN'S)
COOPERATIVE, an Alaska)
11 corporation,)

12 Plaintiff,)

13 vs.)

14 EXXON CORPORATION, a New Jersey)
corporation; EXXON SHIPPING)
15 COMPANY, a Delaware corporation;)
16 ALYESKA PIPELINE SERVICE COMPANY,)
a Delaware corporation; and)
17 TRANS-ALASKA PIPELINE LIABILITY)
FUND, a nonprofit Alaska)
corporation,)

18 Defendants.)
19

NO. A 89 - 446 CIV

COMPLAINT FOR DAMAGES

(Jury Trial Demanded)

A 89 - 095 CIV

20 Plaintiff The Copper River Fishermen's Cooperative ("CRFC")
21 alleges as follows:

22 NATURE OF ACTION

23 1. CRFC brings this civil action to recover compensatory and
24 punitive damages against the above-named defendants arising from the
25 oil spill in Prince William Sound on or about March 24, 1989, caused

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1 and aggravated by defendants' negligent and tortious conduct both
2 before and after the oil spill.

3 2. CRFC files this action on its own behalf and does not seek
4 to participate in any class action. CRFC hereby opts out of any
5 class for which any other pending or subsequently filed action
6 purportedly seeks certification.

7 JURISDICTION AND VENUE

8 3. This civil action arises from the unlawful discharge of
9 oil and other toxic effluents from the EXXON VALDEZ, a vessel
10 engaged in the transportation of oil loaded at the terminal facili-
11 ties of the Trans-Alaska Pipeline System ("TAPS") to a port under
12 the jurisdiction of the United States. CRFC asserts claims herein
13 arising under the Trans-Alaska Pipeline Authorization Act, 43 U.S.C.
14 § 1651, et seq. and other applicable law for damages caused by the
15 grounding of the EXXON VALDEZ and the resulting oil spill, and by
16 defendants' negligent and tortious conduct.

17 4. This court has original jurisdiction over the subject
18 matter of this civil action under 28 U.S.C. § 1331 which provides
19 for original jurisdiction in the district courts of all civil
20 actions arising under the laws of the United States. This court
21 also has subject matter jurisdiction over claims arising under state
22 law in accordance with the principles of pendent jurisdiction.

23 5. Pursuant to 28 U.S.C. §§ 1391(b) and (c), venue is proper in
24 this district because the claims asserted herein arose in this dis-
25 trict and defendants were and are doing business in this district.

1 PARTIES

2 6. Plaintiff. Plaintiff CRFC is an Alaska cooperative
3 corporation organized and operated under Alaska Stat. § 10.15, et
4 seq., and having its principal place of business in Cordova, Alaska,
5 where it owns and operates a fish processing plant and fishermen's
6 storage facilities. CRFC is engaged in the business of marketing,
7 selling, harvesting, processing, freezing, packing, shipping,
8 hauling, storing, handling and utilizing fish products and fish by-
9 products caught or otherwise obtained by its members, and certain
10 nonmembers of the cooperative, in Prince William Sound and other
11 waters off the coast of Alaska. CRFC has paid all fees and taxes,
12 obtained all licenses and filed all biennial and other reports
13 required by the State of Alaska.

14 7. Defendants Exxon.

15 (a) Defendant Exxon Corporation is a corporation orga-
16 nized under the laws of the State of New Jersey, having its princi-
17 pal place of business at 1251 Avenue of the Americas, New York, New
18 York 10020, which is engaged in the business of operating petroleum
19 companies through subsidiaries and divisions. Exxon Corporation is
20 an owner and operator of the vessel EXXON VALDEZ and it owned and/or
21 controlled the North Slope crude oil cargo carried aboard the EXXON
22 VALDEZ on March 23-24, 1989.

23 (b) Defendant Exxon Shipping Company is a Delaware
24 corporation and maritime subsidiary or division of Exxon Corpora-
25 tion, having its principal place of business at 811 Dallas Avenue,

1 Houston, Texas 77002, which is engaged in the transportation of
2 petroleum products. Exxon Shipping Company is an owner and operator
3 of the vessel EXXON VALDEZ, and it owned and/or controlled the North
4 Slope crude oil cargo it was carrying on March 23-24, 1989.

5 (c) Upon information and belief, Exxon Corporation so
6 dominated Exxon Shipping Company at all times material hereto that
7 it is liable for the conduct of Exxon Shipping Company as more fully
8 described below. Consequently, this Complaint shall refer to
9 defendants Exxon Corporation and Exxon Shipping Company, individual-
10 ly and collectively, as "Exxon", and in some cases as "Exxon defen-
11 dants".

12 8. Defendant Alyeska. Defendant Alyeska Service Company
13 ("Alyeska") is a Delaware corporation, having its principal place of
14 business in Alaska, and is an association of holders of the pipeline
15 right-of-way for TAPS that includes, among others, the Exxon defen-
16 dants herein. Alyeska was formed by Exxon and its other members to
17 act as their agent in the construction, operation and maintenance of
18 TAPS. Thus, Alyeska owns and operates TAPS, including the terminal
19 at Valdez, Alaska. By virtue of its ownership and operation of
20 TAPS, Alyeska owed a statutory duty and otherwise assumed responsi-
21 bility to CRFC and others to formulate an oil-spill contingency
22 plan, and to maintain adequate personnel and equipment to implement
23 the plan, including the coordination of cleanup activities in the
24 event of an oil spill.

25 9. The TAPS Fund. Defendant The Trans-Alaska Pipeline

1 Liability Fund (the "TAPS Fund") is a nonprofit corporation estab-
2 lished pursuant to the Trans-Alaska Pipeline Authorization Act, 43
3 U.S.C. § 1653(c)(4). The TAPS Fund, which is administered by the
4 holders of the Trans-Alaska Pipeline right-of-way under regulations
5 prescribed by the Secretary of the United States Department of the
6 Interior, is a resident of the State of Alaska with its principal
7 place of business in Alaska.

8 FACTUAL BACKGROUND

9 10. On Thursday evening, March 23, 1989, one of Exxon's two
10 largest ships, the EXXON VALDEZ, a single hull, 987-foot tanker
11 weighing approximately 211,000 deadweight tons with cargo and bunker
12 fuel, left the Port of Valdez, Alaska, the southern terminal facili-
13 ty of TAPS, bound for Longbeach, California. The EXXON VALDEZ
14 carried approximately 1.2 million barrels of North Slope crude oil
15 which had been loaded aboard at the TAPS facility by Alyeska. The
16 EXXON VALDEZ passed through the harbor and Valdez Narrows under the
17 command of a harbor pilot.

18 11. The Master of the EXXON VALDEZ, Captain Joseph J. Hazel-
19 wood, who was acting within the scope of his employment and as an
20 agent and/or representative of Exxon at all times material hereto,
21 was on the bridge of the vessel when the harbor pilot disembarked at
22 the southern end of the Narrows late in the evening of Thursday,
23 March 23, 1989, or in the early morning hours of Friday, March 24,
24 1989.

25 12. Upon information and belief, Caption Hazelwood had twice,

1 in the past five years, been convicted of driving while under the
2 influence of alcohol and, three times in the same period, had his
3 driver's license suspended or revoked. At the time the EXXON VALDEZ
4 left the Port of Valdez on March 23, 1989, and at the time of the
5 grounding of the tanker on Bligh Reef, Captain Hazelwood was intoxi-
6 cated.

7 13. Exxon knew or had reason to know of Captain Hazelwood's
8 previous drunk driving convictions, the suspension/revocations of
9 his license and his consumption of alcoholic beverages on the day
10 the EXXON VALDEZ set sail. Nevertheless, Exxon failed to institute
11 adequate and prudent measures to preclude operation of the EXXON
12 VALDEZ by officers and/or crew impaired by the use of alcohol.

13 14. Shortly after the harbor pilot disembarked from the EXXON
14 VALDEZ, Captain Hazelwood left the bridge of the vessel, retiring to
15 his cabin, leaving Third Mate Gregory Cousins in command and in the
16 company of Helmsman Robert Kafan on the bridge. At all times
17 material hereto, Cousins and Kafan were acting within the scope of
18 their employment and as agents and/or representatives of Exxon.
19 Cousins, within the privity and knowledge of Exxon, was not certi-
20 fied to command the piloting of the EXXON VALDEZ through the waters
21 of the shipping channel of Prince William Sound.

22 15. Due to reports that the normal deep-water outbound ship-
23 ping lane of the channel in which the EXXON VALDEZ was navigating
24 contained icebergs from a glacier that had broken earlier, Cousins
25 changed course pursuant to Captain Hazelwood's previous instructions

1 into the in-bound traffic lane of the shipping channel and then
2 continued to steer the EXXON VALDEZ three miles east, past the
3 alternative channel, outside all traffic lanes of the shipping
4 channels and into a charted area of rocky reefs.

5 16. Approximately one nautical mile outside the shipping
6 channel, the EXXON VALDEZ struck the well-marked Bligh Reef, ripping
7 holes in some of the starboard cargo tanks and tearing out a portion
8 of the hull, spilling oil into Prince William Sound. While still
9 navigable, Cousins attempted to turn the EXXON VALDEZ back toward
10 the navigable shipping channel, but he struck the reef a second time
11 and ran the tanker hard aground. Exxon further damaged the EXXON
12 VALDEZ during its efforts to extricate the vessel from the reef,
13 causing additional damage to the hull and spilling more oil into the
14 Sound.

15 17. At the time of the grounding of the EXXON VALDEZ, Exxon
16 knew or had reason to know that the tanker was incompetently manned.

17 18. Exxon and Alyeska unduly delayed in responding to the oil
18 spill, failing to implement a timely or satisfactory contingency
19 plan as required by statute, regulation and ordinary prudence.
20 Exxon and Alyeska also failed to provide adequate personnel, equip-
21 ment and supplies for oil spill cleanup at the time of the grounding
22 of the EXXON VALDEZ, failed to take prompt and adequate steps to
23 contain and recover the oil after the spill occurred, and failed to
24 mobilize a prompt and satisfactory cleanup effort.

25 19. The impact and grounding of the EXXON VALDEZ on Bligh

1 Reef, and the subsequent extrication efforts by Exxon, tore open the
2 majority of the vessel's oil tanks, causing approximately 10.1 mil-
3 lion gallons of crude oil to be discharged into Prince William
4 Sound. Due to the negligent and tortious conduct of Exxon and
5 Alyeska after the oil was discharged in to the Sound, the spill has
6 been allowed to spread to the Kenai Peninsula, Cook Inlet, the
7 Kodiak Archipelago, the Alaska Peninsula and other areas, contami-
8 nating hundreds of square miles of Alaska's waters, subsurface
9 ground, and surface lands which support the state's fishing industry
10 and CRFC's business.

11 DAMAGES/INJURIES TO CRFC

12 20. CRFC has sustained substantial damages to its 1989 herring
13 and salmon production and other economic losses as a direct and
14 proximate result of the EXXON VALDEZ oil spill. CRFC's claims for
15 lost herring production include without limitation damages to its
16 businesses of custom processing seine caught sac-roe herring,
17 purchasing and processing of gillnet caught sac-roe herring, pur-
18 chasing and processing of roe-on-wild kelp, and custom processing of
19 roe-on-pounded kelp. CRFC's claims for loss of salmon production
20 include substantial damages to its business of processing, marketing
21 and selling red, king, chum, pink and silver salmon. CRFC has also
22 been damaged in its business of processing, marketing and selling
23 black cod, halibut and other species of fish harvested or fished in
24 the area of Prince William Sound and other waters off the coast of
25 Alaska. CRFC's damages are continuing in nature, will continue to
occur in future years, and will be determined with specificity at

1 the time of trial.

2 PUNITIVE DAMAGES

3 21. The conduct of Exxon and Alyeska alleged herein was
4 willful, wanton, malicious, outrageous and was undertaken in delib-
5 erate disregard of, or with reckless indifference to, the rights and
6 interests of CRFC and others, for which CRFC is entitled to recover
7 punitive damages under the First through Twelfth Causes of Action
8 set forth below.

9 FIRST CAUSE OF ACTION:
10 STRICT LIABILITY CLAIMS AGAINST EXXON
11 AND TAPS FUND PURSUANT TO 43 U.S.C. § 1653(c)

12 22. Exxon is, and at all times material hereto was the owner
13 and operator of the EXXON VALDEZ.

14 23. The oil discharged from the EXXON VALDEZ into Prince
15 William Sound as a result of the EXXON VALDEZ oil spill had been
16 transported through the Trans-Alaska Pipeline to the southern
17 terminal facility of TAPS at Valdez, where it was loaded aboard the
18 tanker.

19 24. The oil was discharged from the EXXON VALDEZ into Prince
20 William Sound, damaging and otherwise adversely affecting the lands,
21 structures, fish, wildlife, biotic and other natural resources which
22 support Alaska's fishing industry and upon which CRFC relies for
23 subsistence and economic purposes.

24 25. CRFC's damages have been incurred and continue to be
25 sustained as a direct and proximate result of the oil discharged by
the EXXON VALDEZ into Prince William Sound.

1 (b) the negligence of the United States or other governmental
2 agency; or (c) the negligence of CRFC.

3 33. Pursuant to 43 U.S.C. § 1653(a), Alyeska is strictly
4 liable to CRFC for all damages arising or resulting from the dis-
5 charge of oil from the EXXON VALDEZ, up to a maximum amount of
6 \$100 million for each incident.

7 **THIRD CAUSE OF ACTION:**
8 **NEGLIGENCE CLAIM AGAINST**
9 **EXXON PURSUANT TO 43 U.S.C. § 1653(c)**

10 34. CRFC realleges and incorporates by reference the allega-
11 tions of paragraphs 1-33 above.

12 35. Before the EXXON VALDEZ left the Port of Valdez, Exxon
13 knew or should have known that Captain Hazelwood and Cousins did not
14 possess the requisite degree of competence and skill necessary to
15 command the EXXON VALDEZ with reasonable prudence or care. In a
16 state of intoxication, Captain Hazelwood left the bridge, relin-
17 quishing control of the vessel to Cousins in violation of Coast
18 Guard regulations and contrary to the reasonable care that would
19 have been exercised by the ordinary prudent person.

20 36. The negligence of Exxon and its employees, Captain Hazel-
21 wood and Cousins, included without limitation the following actions
22 and omissions: (a) failing to prudently and adequately crew the
23 EXXON VALDEZ; (b) allowing the EXXON VALDEZ to set sail with an
24 incompetent crew in command; (c) failing to prudently and adequately
25 pilot and navigate the EXXON VALDEZ through the shipping channel
waters of Prince William Sound; (d) navigating the EXXON VALDEZ into

1 a known charted and buoyed hazard outside the designated shipping
2 lanes; (e) failing to ensure against the operation of the EXXON
3 VALDEZ by persons impaired by alcohol; (f) failing to ensure that
4 the personnel in command of the EXXON VALDEZ were qualified to
5 navigate Prince William Sound; (g) negligently entrusting the
6 command of the EXXON VALDEZ to Captain Hazelwood and/or Cousins; and
7 (h) transporting petroleum products using unsafe and improper
8 methods and equipment.

9 37. As a direct and proximate result of Exxon's failure to
10 exercise that degree of care expected by a reasonably prudent person
11 acting under the same or similar circumstances, Exxon caused CRFC to
12 suffer substantial damages which CRFC is entitled to recover from
13 Exxon. Exxon's tortious conduct also created an unreasonably
14 dangerous situation in wanton and reckless disregard of the economic
15 well-being of CRFC, entitling CRFC to recover punitive damages from
16 Exxon in addition to compensatory damages.

17 **FOURTH CAUSE OF ACTION:**
18 **NEGLIGENCE CLAIMS AGAINST EXXON**
19 **AND ALYESKA PURSUANT TO 43 U.S.C. § 1653 (a) and (c)**

20 38. CRFC realleges and incorporates by reference the allega-
21 tions of paragraphs 1-37 above.

22 39. Exxon and Alyeska owed duties and otherwise assumed
23 responsibilities to CRFC, and others whose business is dependent on
24 the fishing industry in Alaska, to have an adequate contingency plan
25 in place in the event of an oil spill and to have adequate resources
available to implement that plan so that they might promptly and

1 effectively contain and clean up any oil spill caused by them or
2 related to the right-of-way permit for TAPS.

3 40. Exxon and Alyeska continuously reassured environmentalists
4 and the public, including CRFC, that an emergency cleanup plan
5 existed which could be implemented promptly and would contain
6 effectively and clean up any major oil spill.

7 41. In the exercise of care, Exxon and Alyeska knew or should
8 have known that they lacked an effective contingency plan, as well
9 as adequate personnel, equipment and supplies to contain and clean
10 up an oil spill of this magnitude.

11 42. Exxon and Alyeska negligently breached their duties of oil
12 spill control and cleanup operations by, among other things,
13 (a) failing to establish and provide for an adequate contingency
14 plan to contain and clean up the discharged oil; (b) failing to
15 respond promptly upon notice of the occurrence of the oil spill;
16 (c) inadequately planning the cleanup effort; (d) failing to contain
17 and remove the oil while the weather remained calm; (e) inadequately
18 performing the cleanup effort; (f) unreasonably delaying the cleanup
19 effort; (g) choosing inappropriate tactics or methods of cleanup;
20 and (h) having inadequate personnel, equipment and supplies for
21 deployment of the cleanup effort. As a result of such actions and
22 omissions, the oil spread across and out of Prince William Sound and
23 into other areas, significantly worsening the environmental contami-
24 nation which occurred.

5 43. As a direct and proximate result of the failure of Exxon

1 and Alyeska to exercise that degree of care expected by a reasonably
2 prudent person acting under the same or similar circumstances, Exxon
3 and Alyeska caused CRFC to suffer substantial damages which CRFC is
4 entitled to recover from Exxon and Alyeska. Exxon's tortious
5 conduct also created an unreasonably dangerous situation in wanton
6 and reckless disregard of the economic well-being of CRFC, entitling
7 CRFC to recover punitive damages from Exxon in addition to compensa-
8 tory damages.

9 **FIFTH CAUSE OF ACTION: STRICT LIABILITY**
10 **CLAIMS AGAINST EXXON AND ALYESKA UNDER ALASKA**
11 **ENVIRONMENTAL CONSERVATION ACT, ALASKA STAT. § 46.03**

12 44. CRFC realleges and incorporates by reference the allega-
13 tions of paragraphs 1-43 above.

14 45. The North Slope crude oil, which was loaded by Alyeska
15 aboard the EXXON VALDEZ and discharged into Prince William Sound as
16 a result of the impact and grounding of the tanker on Bligh Reef by
17 Exxon and its subsequent extrication efforts, constitutes a hazard-
18 ous substance under the Alaska Environmental Conservation Act,
19 Alaska Stat. § 46.03.826(4)(B) and (5). Exxon and Alyeska are "per-
20 sons" within the meaning of Alaska Stat. § 46.03.900(17). Exxon and
21 Alyeska own and/or control the oil cargo of the EXXON VALDEZ within
22 the meaning of Alaska Stat. § 46.03.826(3). As a result of the
23 incident described in this Complaint, the oil was discharged into or
24 upon the waters, surface or subsurface lands of the State of Alaska
25 pursuant to Alaska Stat. § 46.03.826(7).

46. The oil discharged from the EXXON VALDEZ into Prince

1 William Sound created and continues to present an imminent and
2 substantial danger to the public health and welfare, including
3 without limitation fish, wildlife, vegetation and the natural
4 habitat.

5 47. Discharge of the oil into Prince William Sound has caused
6 substantial damages to CRFC, including without limitation loss of
7 income, loss of means of producing income and loss of economic
8 benefits, for which Exxon and Alyeska, jointly and severally, are
9 strictly liable pursuant to the Alaska Environmental Conservation
10 Act, Alaska Stat. §§ 46.03.822, .824, and .826.

11 **SIXTH CAUSE OF ACTION:**
12 **CLAIMS AGAINST EXXON AND ALYESKA FOR**
ENGAGING IN INHERENTLY DANGEROUS ACTIVITY

13 48. CRFC realleges and incorporates by reference the allega-
14 tions of paragraphs 1-47 above.

15 49. The loading of oil by Alyeska and the shipping of oil by
16 Exxon are so inherently dangerous and potentially devastating to the
17 marine environment and persons/entities dependent upon that ecosys-
18 tem for their livelihood, that even when conducted with the utmost
19 care, such actions constitute inherently and abnormally dangerous
20 activities for which Exxon and Alyeska are strictly liable under
21 §§ 519-524 of the Restatement (Second) of Torts and Alaska state
22 law.

23 50. The inherently dangerous activities engaged in by Exxon
24 and Alyeska have proximately caused CRFC to suffer substantial and
25 continuing damages.

1 for which they are liable to CRFC for the damages sustained.

2 **NINTH CAUSE OF ACTION:**
3 **COMMON LAW NEGLIGENCE CLAIMS AGAINST EXXON AND ALYESKA**

4 57. CRFC realleges and incorporates by reference the allega-
5 tions of paragraphs 1-56 above.

6 58. By virtue of the acts and omissions of Exxon and Alyeska
7 alleged above, Exxon and Alyeska failed to exercise that degree of
8 care expected of a reasonably prudent person acting under the same
9 or similar circumstances and were negligent.

10 59. As a direct and proximate result of the negligent conduct
11 of Exxon and Alyeska, CRFC has suffered and continues to suffer
12 substantial damages for which Exxon and Alyeska are liable.

13 **TENTH CAUSE OF ACTION:**
14 **CLAIMS FOR NEGLIGENCE PER SE AGAINST EXXON AND ALYESKA**

15 60. CRFC realleges and incorporates by reference the allega-
16 tions of paragraphs 1-59 above.

17 61. The acts and omissions of Exxon and Alyeska violate Alaska
18 Stat. § 46.03, et seq., and Alaska Stat. § 09.45.230 and, in so
19 violating these laws, Exxon and Alyeska were negligent per se.

20 62. The acts and omissions of Exxon and Alyeska have proxi-
21 mately caused CRFC to suffer substantial damages, including without
22 limitation loss of income, loss of means of producing income and
23 loss of economic benefits.

24 63. Violations of the Alaska Statutes set forth above render
25 Exxon and Alyeska liable to CRFC for all damages proximately caused
by the discharge of oil into Prince William Sound.

1 69. In reliance upon the intentional, knowing and reckless
2 misrepresentations and omissions of material facts, CRFC and others
3 engaged in the Alaska fishing industry did not take adequate preven-
4 tative measures to protect the environment or minimize the damage
5 which might be caused by a major oil spill in Prince William Sound.
6 Further, even though CRFC was in a position to act to protect the
7 environment and/or mitigate the contamination that might be caused
8 by a major oil spill, CRFC refrained from taking such action.

9 70. Exxon and Alyeska made the fraudulent and/or negligent
10 misrepresentations and omissions of material facts to induce CRFC,
11 among others, to refrain from taking such preventative action.

12 71. As a direct and proximate result of the fraudulent and/or
13 negligent misrepresentations and omissions of material facts by
14 Exxon and Alyeska, the oil spill occurred and the cleanup efforts
15 were inadequate and ineffectual, which aggravated the pollution
16 caused by the spill and caused CRFC to suffer substantial damages
17 which are continuing, and for which Exxon and Alyeska are liable.

18- **TWELFTH CAUSE OF ACTION:**
19 **CLAIMS AGAINST EXXON AND ALYESKA FOR**
 TORTIOUS INTERFERENCE WITH CONTRACTUAL EXPECTANCIES

20 72. CRFC realleges and incorporates by reference the allega-
21 tions of paragraphs 1-71 above.

22 73. CRFC had contractual relationships and/or reasonable
23 expectations of entering into contractual relationships with others
24 engaged in the fishing industry in Alaska. Exxon and Alyeska, which
25 knew or should have known of CRFC's contractual relationships and

1 expectancies, and without privilege, have induced those persons or
2 entities with whom CRFC had contractual relationships and/or expect-
3 tancies to breach their contractual obligations to CRFC and/or to
4 refuse to enter into contractual relationships with CRFC.

5 74. CRFC has suffered and continues to suffer substantial
6 damages as a proximate result of the tortious interference with
7 CRFC's contractual relationships and expectancies by Exxon and
8 Alyeska for which they are liable.

9 REQUEST FOR RELIEF

10 WHEREFORE, plaintiff The Copper River Fishermen's Cooperative
11 requests the following relief against all defendants:

12 (a) Judgment in favor of CRFC for compensatory and
13 punitive damages under the First through Twelfth Causes of Action
14 above, in an amount to be determined at the time of trial;

15 (b) Judgment in favor of CRFC for prejudgment and post-
16 judgment interest until paid;

17 (c) Judgment in favor of CRFC for its attorneys' fees,
18 costs and disbursements expended in this action; and

19 (d) Such other relief as the court deems just and equita-
20 ble.

1 DATED this 3rd day of November, 1989.

2 Respectfully Submitted,

3 LYNCH, CROSBY & SISSON
4 550 West Seventh Avenue, #1100
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6 (907) 276-3222

7 By Kenneth M. Rosenstein
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17 Attorneys for Plaintiff

18 * Applications for admission pro hac vice pending.

19 P\1029180.009\004z

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

THE COPPER RIVER FISHERMEN'S)
COOPERATIVE, an Alaska)
corporation,)

Plaintiff,)

vs.)

EXXON CORPORATION, a New Jersey)
corpotation; EXXON SHIPPING)
COMPANY, a Delaware corporation;)
ALYESKA PIPELINE SERVICE COMPANY,)
a Delaware corporation; and)
TRANS-ALASKA PIPELINE LIABILITY)
FUND, a nonprofit Alaska)
corporation,)

Defendant.)

Case No. _____ Civil

AFFIDAVIT OF SERVICE BY MAIL

STATE OF ALASKA)

) ss.

THIRD JUDICIAL DISTRICT)

SHELLEY J. GAREY, being first duly sworn, upon oath,
deposes and states:

That I am a secretary in the offices of LYNCH, CROSBY &
SISSON, attorneys for Plaintiff, The Copper River Fishermen's

AFFIDAVIT OF SERVICE BY MAIL - 1
47:sjg

LAW OFFICES
LYNCH, CROSBY & SISSON
A PROFESSIONAL CORPORATION
550 WEST 7TH AVENUE, SUITE 1100
ANCHORAGE, ALASKA 99501
(907) 276-3222
FAX: (907) 257-9498

Cooperative in the above-captioned matter. That on the 7th day of November, 1989 I caused to be mailed a true and correct copy of APPLICATION OF NONRESIDENT ATTORNEYS FOR PERMISSION TO APPEAR AND PARTICIPATE IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA, ORDER GRANTING NONRESIDENT ATTORNEYS PERMISSION TO APPEAR AND PARTICIPATE, SUMMONS IN A CIVIL ACTION, COMPLAINT FOR DAMAGES and DEMAND FOR JURY TRIAL to:

all counsel of record based upon the court's Master Service list dated November 3, 1989

by placing the same in a properly addressed, sealed and stamped envelope, and depositing it in the mails of the United States of America.

Shelley J. Garey
Shelley J. Garey

SUBSCRIBED AND SWORN TO before me this 7th day of November, 1989.

Carolyn J. Woodstock
NOTARY PUBLIC in and for Alaska
My Commission Expires: 9/20/93

LAW OFFICES
LYNCH, CROSBY & SISSON
A PROFESSIONAL CORPORATION
550 WEST 71 ANCHOR ALASKA 99501
(907) 276-3222
FAX: (907) 257-9498

JURISDICTION AND VENUE

1. Answering paragraph 1, Joseph Hazelwood admits that plaintiffs purport to bring a civil action as set forth in paragraph 1 of plaintiffs' Complaint. Except as expressly admitted defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 1.

2. Answering paragraph 2, Joseph Hazelwood admits that this action may be brought under 28 U.S.C. 1332. Except as expressly admitted defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 2.

3. Answering paragraph 3, Joseph Hazelwood admits that the grounding of the EXXON VALDEZ and the resulting oil spill occurred in this district. Except as expressly admitted, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 and therefore denies the allegations in paragraph 3.

PARTIES PLAINTIFF

4 - 21. Answering paragraphs 4 through 21, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraphs 4 through 21.

PARTIES DEFENDANT

22 - 35. Answering paragraphs 22 through 35, defendant lacks knowledge or information sufficient to form a

belief as to the truth of the allegations and therefore denies the allegations in paragraphs 22 through 35.

36. Answering paragraph 36, defendant Joseph Hazelwood admits that he was employed by Exxon Shipping as the Master of the M/V EXXON VALDEZ and as Master was acting within the scope of his employment by Exxon Shipping. Except as expressly admitted, Joseph Hazelwood denies the allegations in paragraph 36.

37. Answering paragraph 37, defendant Joseph Hazelwood admits Gregory Cousins was the Third Mate of the M/V EXXON VALDEZ. Except as expressly admitted defendant Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 37.

38. Answering paragraph 38, defendant Joseph Hazelwood admits Edward Murphy is a licensed pilot who acted in that capacity on the EXXON VALDEZ from the port of Valdez to Rocky Point on the night of March 23-24, 1989.

FACTUAL ALLEGATIONS

39. Answering paragraph 39, defendant Joseph Hazelwood admits that the EXXON VALDEZ is a 987 foot vessel of approximately 213,000 dead weight tons and that on March 23, 1989 the EXXON VALDEZ loaded crude oil that had been transported through the Trans-Alaska Pipeline. Except as expressly admitted defendant denies the allegations in paragraph 39.

40. Answering paragraph 40, defendant Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 40.

41. Answering paragraph 41, defendant Joseph Hazelwood admits that at approximately 9:15 p.m. on March 23, 1989 the EXXON VALDEZ departed the port of Valdez with pilot Edward Murphy on board acting in the capacity as pilot. Pilot Murphy departed the vessel near Rocky Point. Except as expressly admitted defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 42.

42. Answering paragraph 42, defendant admits that shortly after Pilot Murphy departed Joseph Hazelwood ordered a course change for the EXXON VALDEZ and did so with the Coast Guard's permission. Except as expressly admitted defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 42.

43. Answering paragraph 43, defendant Joseph Hazelwood denies the allegations in paragraph 43.

44. Answering paragraph 44, defendant Joseph Hazelwood admits that the EXXON VALDEZ ran aground on Bligh Reef on March 23, 1989. Defendant admits that Bligh Reef is depicted on charts. Defendant denies the remaining allegations in paragraph 44.

45. Answering paragraph 45, defendant Joseph Hazelwood denies the allegations of paragraph 45.

46. Answering paragraph 46, defendant Joseph Hazelwood admits that some oil was spilled into the Prince William Sound. Except as expressly admitted defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 46.

47. Answering paragraph 47, defendant Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 47.

48. Answering paragraph 48, defendant Joseph Hazelwood denies the allegations in paragraph 48.

49. Answering paragraph 49, defendant Joseph Hazelwood does not believe he is required to answer paragraph 49. Insofar as an answer should be required, defendant denies the allegations in paragraph 49.

50 - 55. Answering paragraphs 50 through 55, defendant Joseph Hazelwood does not believe he is required to answer paragraphs 50 through 55. Insofar as an answer should be required, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraphs 50 through 55.

PUNITIVE AND/OR EXEMPLARY DAMAGES

56. Answering paragraph 56, to the extent that paragraph 56 applies to Joseph Hazelwood, defendant Joseph Hazelwood denies the allegations contained therein. To the extent that paragraph 56 does not apply to him, defendant believes that no response is necessary. Insofar as an answer should be required, defendant denies the allegations in paragraph 56.

FIRST CLAIM FOR RELIEF

PUBLIC NUISANCE

57. Answering paragraph 57, Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 56 as though fully set forth at this place.

58. Answering paragraph 58, defendant Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 58.

59. Answering paragraph 59, defendant Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 59.

SECOND CLAIM FOR RELIEF

STRICT LIABILITY

(Exxon Defendants and Alyeska Defendants)

60. Answering paragraph 60, Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 59 as though fully set forth at this place.

61 - 63. Answering paragraphs 61 through 63, defendant Joseph Hazelwood does not believe he is required to answer paragraphs 61 through 63. Insofar as such answer is required, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraphs 61 through 63.

THIRD CLAIM FOR RELIEF

PRIVATE NUISANCE

64. Answering paragraph 64, Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 63 as though fully set forth at this place.

65 - 66. Answering paragraphs 65 and 66, defendant Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraphs 65 and 66.

FOURTH CLAIM FOR RELIEF

INHERENTLY DANGEROUS ACTIVITY

67. Answering paragraph 67, Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 66 as though fully set forth at this place.

68. Answering paragraph 68, defendant Joseph Hazelwood denies the allegations contained in paragraph 68.

69. Answering paragraph 69, defendant Joseph Hazelwood denies the allegations contained in paragraph 69.

NEGLIGENCE

70. Answering paragraph 67, Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 69 as though fully set forth at this place.

71. Answering paragraph 71, defendant Joseph Hazelwood does not believe he is required to answer paragraph 71. Insofar as such answer is required, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 71.

72. Answering paragraph 72, defendant does not believe that he is required to answer paragraph 72 and if he is required to respond, Joseph Hazelwood lacks knowledge or information sufficient to form a belief and therefore denies the allegations in paragraph 72.

(a) Answering paragraph 72(a), defendant Joseph Hazelwood denies the allegations in paragraph 72(a) insofar as they pertain to him. Insofar as the allegations pertain to the other defendants, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 72(a).

(b) Answering paragraph 72(b), defendant Joseph Hazelwood denies the allegations in paragraph 72(b) insofar as they pertain to him. Insofar as the allegations pertain to the

other defendants, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 72(b).

(c) Answering paragraph 72(c), defendant Joseph Hazelwood denies these allegations.

(d) Answering paragraph 72(d), defendant Joseph Hazelwood denies the allegations in paragraph 72(d) insofar as they pertain to him. Insofar as the allegations pertain to the other defendants, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 72(d).

(e) Answering paragraph 72(e), defendant Joseph Hazelwood denies the allegations in paragraph 72(e) insofar as they pertain to him. Insofar as the allegations pertain to the other defendants, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 72(e).

(f) Answering paragraph 72(f), defendant Joseph Hazelwood denies these allegations.

(g) Answering paragraph 72(g), defendant Joseph Hazelwood denies these allegations.

73. Answering paragraph 73, defendant Joseph Hazelwood does not believe he is required to answer paragraph 73. Insofar as such answer is required, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 73.

74. Answering paragraph 74, defendant Joseph Hazelwood does not believe he is required to answer paragraph 74. Insofar as such answer is required, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 74.

75. Answering paragraph 75, defendant Joseph Hazelwood denies the allegations in paragraph 75.

76. Answering paragraph 76, defendant Joseph Hazelwood denies the allegations in paragraph 76.

77. Answering paragraph 77, defendant Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 77.

78. Answering paragraph 78, defendant Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 78.

79. Answering paragraph 79, defendant Joseph Hazelwood denies the allegations in paragraph 79

80. Answering paragraph 80, defendant Joseph Hazelwood denies the allegations in paragraph 80.

SIXTH CLAIM FOR RELIEF

UNSEAWORTHINESS

81. Answering paragraph 81, Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 80 as though fully set forth at this place.

82. Answering paragraph 82, defendant Joseph Hazelwood denies generally the allegation that the EXXON VALDEZ was unseaworthy and specifically answers as follows:

A(i) Answering paragraph 82(A)(i), defendant Joseph Hazelwood denies the allegations in paragraph 82(a)(i).

(ii) Answering paragraph 82(A)(ii), defendant Joseph Hazelwood denies the allegations in paragraph 82(A)(ii).

(iii) Answering paragraph 82(A)(iii), defendant Joseph Hazelwood denies the allegations in paragraph 82(A)(iii).

B. Answering paragraph 82(B), defendant Joseph Hazelwood admits that the vessel was not equipped with a containment boom. Except as expressly admitted defendant lacks knowledge or information sufficient to form a belief as to the

truth of the allegations and therefore denies the allegations in paragraph 82(B).

C. Answering paragraph 82(C), defendant Joseph Hazelwood denies the allegations in paragraph 82(C).

D. Answering paragraph 82(D), defendant Joseph Hazelwood denies the allegations in paragraph 82(D).

E. Answering paragraph 82(E), defendant Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 82(E).

SEVENTH CLAIM FOR RELIEF

NEGLIGENCE

(Alyeska Defendants).

83. Answering paragraph 83, Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 82 as though fully set forth at this place.

84 - 86 Answering paragraphs 84 through 86, defendant Joseph Hazelwood does not believe he is required to answer paragraphs 84 through 86. Insofar as such answer is required, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraphs 84 through 86.

EIGHTH CLAIM FOR RELIEF

TRESPASS

87. Answering paragraph 87, Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 86 as though fully set forth at this place.

88. Answering paragraph 88, defendant Joseph Hazelwood denies the allegations insofar as they pertain to him. Insofar as the allegations pertain to any other defendants, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 88.

NINTH CLAIM FOR RELIEF

NEGLIGENT MISREPRESENTATION

89. Answering paragraph 89, Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 88 as though fully set forth at this place.

90. Answering paragraph 90, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations against the other defendants. To the extent that paragraph 90 applies to him, defendant denies the allegations contained therein.

91. Answering paragraph 91, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations against the other defendants. To the extent that paragraph 91 applies to him, defendant denies the allegations contained therein.

92. Answering paragraph 92, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations against the other defendants. To the extent that paragraph 92 applies to him, defendant denies the allegations contained therein.

93. Answering paragraph 93, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations against the other defendants. To the extent that paragraph 93 applies to him, defendant denies the allegations contained therein.

94. Answering paragraph 94, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations against the other defendants. To the extent that paragraph 94 applies to him, defendant denies the allegations contained therein.

95. Answering paragraph 95, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations against the other defendants. To the extent that paragraph 95 applies to him, defendant denies the allegations contained therein.

96. Answering paragraph 96, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations against the other defendants. To the extent that paragraph 96 applies to him, defendant denies the allegations contained therein.

TENTH CLAIM FOR RELIEF

FRAUD

97. Answering paragraph 97, Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 96 as though fully set forth at this place.

98 - 104. Answering paragraphs 98 through 104, defendant Joseph Hazelwood does not believe he is required to

answer paragraphs 98 through 104. Insofar as such answer is required, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraphs 98 through 104.

ELEVENTH CLAIM FOR RELIEF

105. Answering paragraph 105, defendant Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 104 as though fully set forth at this place.

106. Answering paragraph 106, defendant Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraph 106.

TWELFTH CLAIM FOR RELIEF

PUBLIC NUISANCE

107. Answering paragraph 107, defendant Joseph Hazelwood repeats and re-alleges his answers to paragraphs 1 through 106 as though fully set forth at this place.

108 - 112. Answering paragraphs 108 through 112, defendant Joseph Hazelwood does not believe he is required to answer paragraphs 108 through 112. Insofar as such answer is required, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraphs 108 through 112.

STRICT LIABILITY [A.S. 46.03.822-828]

113 - 115. Answering paragraphs 113 through 115, defendant Joseph Hazelwood does not believe he is required to answer paragraphs 113 through 115. Insofar as such answer is

required, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraphs 113 through 115.

PRIVATE NUISANCE

116 - 117. Answering paragraphs 116 and 117, defendant Joseph Hazelwood does not believe he is required to answer paragraphs 116 through 117. Insofar as such answer is required, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations in paragraphs 116 through 117.

INHERENTLY DANGEROUS ACTIVITY

118 - 119. Answering paragraphs 118 and 119, defendant Joseph Hazelwood does not believe he is required to answer paragraphs 118 through 119. Insofar as such answer is required, defendant denies the allegations in paragraphs 118 through 119.

PRAYER FOR RELIEF

WHEREOF, defendant Joseph Hazelwood denies that plaintiffs are entitled to the relief they request.

AFFIRMATIVE AND OTHER DEFENSES

1. Some or all of plaintiffs' claims for damages may be barred or reduced by the doctrine of comparative negligence.
2. Each of plaintiffs' theories of recovery fails to state a claim upon which relief can be granted.
3. Plaintiffs' claims are barred to the extent they would represent recovery by two or more persons or entities for

part or all of the same economic loss, and thus would represent a multiple recovery for the same injury.

4. Plaintiffs lack standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

5. Plaintiffs claims for punitive damages are unconstitutional under the United States Constitution including, without limitation, Article 1, Section 8; Amendment V; and Amendment XIV; and the Alaska Constitution including, without limitation, Article 1, Section 7; and Article 1, Section 12.

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

7. Certain claims asserted by plaintiffs are not ripe for adjudication.

8. Plaintiffs' claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties relevant to the oil spill.

9. Some or all of plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive system of federal statutes and regulations, including its system of criminal and civil penalties, sanctions and compensatory and other remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

10. The damages alleged, if any, were caused, in part, by the actions of others not joined as defendants herein

as to whom a right of contribution or indemnity should exist as to Joseph Hazelwood. Joseph Hazelwood may seek leave of court to join such additional persons as third party defendants on the basis of further discovery.

11. 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 should not proceed in the absence of the Fund's joinder as a defendant.

12. Certain theories of relief may not be maintained because those theories are based upon the exercise of the state and federal constitutional right to petition the state and federal governments with respect to the passage and enforcement of laws.

13. The court lacks personal jurisdiction over the defendant Joseph Hazelwood.

14. Any injury or loss suffered by plaintiffs were caused by the negligence or wilful conduct of persons or entities of whom Joseph Hazelwood had no control and for whose acts Joseph Hazelwood is not liable or responsible.

15. At all relevant times Joseph Hazelwood has acted pursuant to government approval, direction, and supervision and has no liability to plaintiffs for any acts or alleged omissions undertaken with such approval, direction or supervision.

16. The amount of any liability for the acts alleged in the complaint is controlled by statute including without

limitation, 43 U.S.C. § 1653(c) and Alaska Statute 09.17.010, .060 and .080(d).

17. Plaintiffs' claims are based on an alleged maritime tort and therefore are subject to applicable federal admiralty limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

18. At all relevant times, Joseph Hazelwood acted as an agent for a disclosed principal, Exxon Shipping Company, which at all relevant times was known to plaintiffs.

19. Joseph Hazelwood is entitled to a set-off to the extent of any failure of plaintiffs properly to mitigate damages.

20. Upon information and belief Exxon Shipping and Exxon Corporation is paying many claims for economic loss allegedly caused by the oil spill, and incurring other expenses in connection with the oil spill. Joseph Hazelwood is entitled to a set-off in the full amount of all such payments in the event the plaintiffs' claims encompass such expenditures.

21. Numerous persons and entities have filed lawsuits relating to the oil spill. In the event of any recovery in such other lawsuits by persons whose claims therein are encompassed by this action, Joseph Hazelwood is entitled to a set-off in the full amount of such payments.

22. Joseph Hazelwood is entitled to a set-off in the amount of any payment received by plaintiffs as a result of the oil spill, the containment or clean up of the oil released from

the Exxon Valdez, or other activities or matters related to the oil spill.

23. This action should abate because plaintiffs have filed and are currently maintaining a parallel duplicative action against Joseph Hazelwood in state court that is based on the same facts alleged in the Complaint herein.

WHEREFORE, defendant Joseph Hazelwood prays for judgment against plaintiffs as follows:

1. That plaintiffs take nothing by their complaint.
2. That the complaint be dismissed with prejudice.
3. That Joseph Hazelwood receive payment of costs of suit incurred herein, including attorney's fees; and,
4. That the court award such other and further relief as it may deem just and proper.

DATED this 30th day of October, 1989, at Fairbanks, Alaska.

LAW OFFICES OF DICK L. MADSON
Attorneys for Joseph Hazelwood

By:


KENNETH L. COVELL

Service of the foregoing has been made November 1, 1989, upon all counsel of record based upon the court's Master Service List of 09/27/89.

By: *Kimberlee R. Vanderhoof*
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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

This Document Relates To:
P43-44; P145; P65-67; P77;
and P146-147

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In Re:)
)
THE EXXON VALDEZ,)
) A89-095 CIV (Consolidated)
RE: A89-095 CIV

ANSWER OF DEFENDANT D-7

Defendant Joseph Hazelwood answers plaintiffs' Amended
and Consolidated Class Action Complaint as follows:

PREFATORY STATEMENT

Joseph Hazelwood alleges that no answer to plaintiffs'
prefatory statement is required and, if an answer were required,
Joseph Hazelwood lacks knowledge or information sufficient to
form a belief as to the truth of the allegations in plaintiffs'
prefatory statement and, on that basis denies them.

JURISDICTION AND VENUE

1. Answering paragraph 1, Joseph Hazelwood lacks knowledge or information regarding certain Alleged Tribal entities sufficient to form a belief as to the truth of the allegations that this court has subject matter jurisdiction over the purported claims asserted in the above-captioned matter pursuant to 28 U.S.C. §1362 and, therefore, denies the allegations. Joseph Hazelwood admits the remaining allegations in paragraph 1.

2. Answering paragraph 2, Joseph Hazelwood admits that the grounding of the EXXON VALDEZ and the resulting oil spill occurred in this district. Except as expressly admitted, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 and, therefore, denies them.

THE PARTIES PLAINTIFF

3.-64. Answering paragraphs 3 through 64, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraphs 3 through 64.

THE PARTIES DEFENDANT

65.-79. Answering paragraph 65 through 79, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraphs 65 through

79.

80. Answering paragraph 80, Joseph Hazelwood admits that he was employed by Exxon Shipping as the Master of the EXXON VALDEZ and as Master was acting within the scope of his employment by Exxon Shipping. Except as expressly admitted, Joseph Hazelwood denies the allegations in paragraph 80.

81. Answering paragraph 81, Joseph Hazelwood admits that Gregory Cousins was the Third Mate on the EXXON VALDEZ. Except as expressly admitted, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 and, therefore, denies them.

82. Answering paragraph 82, Joseph Hazelwood admits the allegations in paragraph 82.

CLASS ACTION ALLEGATIONS

83-94. Answering paragraphs 83 through 94, Joseph Hazelwood admits that plaintiffs purport to bring class actions as set forth in paragraphs 83 through 94. Except as expressly admitted, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 83 through 94 and, therefore, denies them.

FACTUAL ALLEGATIONS

A. Pre-Spill Events

95-108. Answering paragraphs 95 through 108 Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and,

therefore, denies the allegations in paragraphs 95 through 108.

B. The Oil Spill

109. Answering Paragraph 109, Joseph Hazelwood admits that on the evening of Thursday, March 23, 1989, the EXXON VALDEZ was berthed at the Valdez terminal having been loaded with approximately 53,000,000 gallons of TAPS crude oil. Upon information and belief Joseph Hazelwood further admits that the EXXON VALDEZ is an approximately two-year old single hull tanker, measuring approximately 987 feet in length and 166 feet in beam, weighing approximately 213,000 deadweight tons and having 11 cargo tanks. Except as expressly admitted, Joseph Hazelwood denies the allegations in paragraph 109.

110. Answering paragraph 110, Joseph Hazelwood admits that the EXXON VALDEZ left the terminal at approximately 9:15 p.m. enroute to Long Beach, California and that he was Master of the vessel. Except as expressly admitted, Joseph Hazelwood denies the allegations in paragraph 110.

111. Answering paragraph 111, Joseph Hazelwood admits that from the time it left the terminal until it reached the pilot station in the vicinity of Rocky Point, the EXXON VALDEZ was navigated by Edward Murphy, a state licensed marine pilot. Except as expressly admitted, Joseph Hazelwood denies the allegations in paragraph 111.

112. Answering paragraph 112, Joseph Hazelwood admits that he left the bridge at some time after the vessel got underway and that he returned to the bridge before Pilot

Murphy disembarked near Rocky Point. Except as expressly admitted, Joseph Hazelwood denies the allegations of paragraph 112.

113-114. Answering paragraph 113 through 114, Joseph Hazelwood denies the allegations in paragraph 113 through 114.

115. Answering paragraph 115, Joseph Hazelwood admits that the vessel Traffic System (VTS) lanes are depicted on nautical charts which were aboard the EXXON VALDEZ. Except as expressly admitted, Joseph Hazelwood denies the allegations of paragraph 115.

116. Answering paragraph 116, Joseph Hazelwood admits that Bligh Reef is depicted on charts on board the EXXON VALDEZ, and the buoy off Bligh Reef was equipped with a flashing red light and a bell. Except as expressly admitted, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 116 and, therefore, denies them.

117. Answering paragraph 117, Joseph Hazelwood admits that the EXXON VALDEZ ran aground on Bligh Reef on March 24, 1989. Except as expressly admitted, Joseph Hazelwood denies the allegations of paragraph 117.

118. Answering paragraph 118, Joseph Hazelwood denies the allegations in paragraph 118.

119. Answering paragraph 119, Joseph Hazelwood denies the allegations in paragraph 119.

120. Answering paragraph 120, Joseph Hazelwood admits that the EXXON VALDEZ as a result of puncture of oil tanks

eventually spilled approximately 258,000 barrels of oil into the waters of Prince William Sound. Except as expressly admitted, Joseph Hazelwood denies the allegations of paragraph 120.

C. Response and Cleanup Efforts By the Alyeska Defendants and the Exxon Defendants.

121-122. Answering paragraph 121 through 122, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraphs 121 through 122.

D. Effects of the Oil Spill

123. Answering paragraph 123, Joseph Hazelwood admits that approximately 11 million gallons of crude oil were spilled into the water surrounding the EXXON VALDEZ. Except as expressly admitted, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 123 and, therefore, denies them.

E. Alleged Damage and Injury to the Plaintiffs and Plaintiff Classes.

124. Answering paragraph 124, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraph 124.

FIRST CLAIM FOR RELIEF

125. Answering paragraph 125, Joseph Hazelwood repeats and realleges his answers to paragraph 1 through

124 as if fully set forth herein.

126-127. Answering paragraph 126 through 127, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraph 126 through 127.

128. Answering paragraph 128, Joseph Hazelwood is not required to respond to the allegations against the Exxon defendants and if an answer is required, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraph 128.

129. Answering paragraph 129, Joseph Hazelwood is not required to respond to the allegations against the defendant TAPS Fund and if an answer is required Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations contained in paragraph 129.

SECOND CLAIM FOR RELIEF

130. Answering paragraph 130, Joseph Hazelwood repeats and realleges his answers contained in paragraphs 1 through 129 as if set forth in full herein.

131-132. Answering paragraphs 131 through 132 Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraph 131 through 132.

133-134. Answering paragraphs 133 through 134, Joseph Hazelwood is not required to respond to the allegations against the Exxon defendants and if an answer is required Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraph 133 through 134.

THIRD CLAIM FOR RELIEF

135. Answering paragraph 135, Joseph Hazelwood repeats and realleges his answers contained in paragraphs 1 through 134 as if set forth in full herein.

136.(a)(b)(c)(d) Answering paragraph 136, (a)(b)(c)(d) Joseph Hazelwood admits that the EXXON VALDE~~X~~ was not equipped with containment booms. Except as expressly admitted Joseph Hazelwood denies the allegations in 136, (a)(b)(c)(d).

136.(e). Answering paragraph 136(e), Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraph 136(e).

137. Answering paragraph 137, Joseph Hazelwood is not required to respond to allegations against the Exxon defendants and if an answer is required, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraph 137.

FOURTH CLAIM FOR RELIEF

138. Answering paragraph 138, Joseph Hazelwood

repeats and realleges his answers contained in paragraph 1 through 137 as if set forth in full herein.

139. Answering paragraph 139, Joseph Hazelwood is not required to respond to the allegations against the "Exxon defendants" and if an answer is required, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations contained in paragraph 139.

140-141. Answering paragraphs 140 through 141, Joseph Hazelwood is not required to respond to the allegations against the "Exxon defendants" and if an answer is required Joseph Hazelwood denies the allegations contained in paragraphs 140 through 141.

142. Answering paragraph 142, Joseph Hazelwood is not required to respond to the allegations against the "Exxon defendants" and if an answer is required Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations contained in paragraph 142.

143-144. Answering paragraphs 143 through 144, Joseph Hazelwood denies the allegations contained in paragraphs 143 through 144.

145-146. Answering paragraphs 145 through 146, Joseph Hazelwood is not required to respond to the allegations against defendant Cousins and if an answer is required, Joseph Hazelwood denies the allegations contained in paragraphs 145 through 146.

FIFTH CLAIM FOR RELIEF

147. Answering paragraph 147, Joseph Hazelwood repeats and realleges his answers contained in paragraphs 1 through 146 as if set forth in full herein.

148-150. Answering paragraphs 148 through 150, Joseph Hazelwood is not required to respond to allegations against the "Alyeska defendants" and if an answer is required, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations contained in paragraphs 148 through 150.

SIXTH CLAIM FOR RELIEF

151. Answering paragraph 151, Joseph Hazelwood repeats and realleges his answers contained in paragraph 151 as if set forth in full herein.

152-153. Answering paragraph 152 through 153, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the allegations and, therefore, denies the allegations in paragraph 152 through 153.

154-155. Answering paragraph 154 through 155, Joseph Hazelwood denies the allegations in paragraph 154 insofar as they apply to Joseph Hazelwood. Insofar as the allegations in paragraph 154 through 155 apply to any other defendants, Joseph Hazelwood lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations in paragraph 154 through 155.

PRAYER FOR RELIEF

156. Joseph Hazelwood denies that the plaintiffs are

entitled to the relief they seek.

GENERAL DENIAL

157. Joseph Hazelwood denies each and every other allegation in plaintiffs' complaint that was not specifically admitted herein.

AFFIRMATIVE AND OTHER DEFENSES

1. Some or all of plaintiffs' claims for damages may be barred or reduced by the doctrine of comparative negligence.

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

3. Plaintiffs' lack standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

4. The damages alleged, if any, were caused, in part, by the actions of others not joined as defendants herein as to whom a right of contribution or indemnity should exist as to Joseph Hazelwood. Joseph Hazelwood may seek leave of court to join such additional persons as third party defendants on the basis of further discovery.

5. Plaintiffs' claim for punitive damages are unconstitutional under the United States Constitution including, without limitation, Article 1, Section 8, Amendment V; and Amendment XIV; and the Alaska Constitution including without limitation, Article 1, Section 7; and Article 1, Section 12.

6. Plaintiffs' claims are based on an alleged maritime tort and therefore are subject to applicable

federal admiralty limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

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

8. Plaintiffs' claims are barred to the extent they would represent recovery by two or more persons or entities for part or all of the same economic loss, and thus would represent a multiple recovery for the same injury.

9. Certain claims asserted by plaintiffs are not ripe for adjudication.

10. Plaintiffs fail to satisfy the requirements for injunctive relief.

11. Plaintiffs' claims for punitive damage, are precluded by the Alaska statutory scheme for civil and criminal penalties relevant to the oil spill.

12. Some or all of plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive system of federal statutes and regulations, including its system of criminal and civil penalties, sanctions and compensatory and other remedies relevant to the oil spill, and its scheme relevant to the protection of subsistence interests.

13. 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.

14. This action should abate because plaintiffs have filed and are currently maintaining a parallel, duplicative action against Joseph Hazelwood in State court that is based on the same facts alleged in the complaint herein.

15. At all relevant times, Joseph Hazelwood acted as an agent for a disclosed principal, Exxon Shipping Company, which at all relevant times was known to plaintiffs.

16. Upon information and belief claims by some persons or entities who may be within the purported classes have been settled and released, or in the alternative, payments received by such persons or entities operate as an accord and satisfaction of all claims arising from the grounding of the EXXON VALDEZ.

17. Joseph Hazelwood is entitled to a set-off to the extent of any failure of plaintiffs properly to mitigate damages.

18. Upon information and belief, Exxon Shipping and Exxon Corporation is paying many claims for economic loss allegedly caused by the oil spill. Joseph Hazelwood is entitled to a set-off in the full amount of all such payments in the event the plaintiffs' claims encompass such expenditures.

19. Upon information and belief numerous persons and entities have filed lawsuits relating to the oil spill,

some of whom purport to represent the plaintiffs in this action. In the event of any recovery in such other lawsuits by persons whose claims therein are encompassed by this action, Joseph Hazelwood is entitled to a set-off in the full amount of such payments.

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

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

22. Plaintiffs' action based on ANILCA, 16 U.S.C. § 3111, et seq., cannot be maintained because that statute does not create or grant to plaintiffs a property right in any fish or wildlife or other resource of the public lands.

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

24. The amount of any liability for the acts alleged is controlled by statute.

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

biennial reports for the last reporting period.

26. The court lacks personal jurisdiction over the defendant Joseph Hazelwood.

27. The complaint should be dismissed because of insufficiency of service of process.

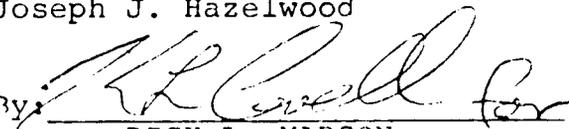
WHEREFORE, defendant Joseph Hazelwood prays judgment against plaintiffs as follows:

1. That plaintiffs take nothing by their complaint;
2. That the complaint be dismissed with prejudice;
3. That Joseph Hazelwood receive payment of costs of suit incurred herein, including attorney's fees; and,
4. That the court award such other and further relief as it may deem just and proper.

DATED: October 18, 1989.

RESPECTFULLY SUBMITTED,

LAW OFFICE OF DICK L. MADSON
Attorney for Defendant
Joseph J. Hazelwood

By:  for
DICK L. MADSON

CHALOS, ENGLISH & BROWN, P.C.,
Attorneys for Defendant
Joseph J. Hazelwood

By: MICHAEL G. CHALOS, Esq.

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