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Attorney for Defendant
Exxon Corporation (D-1)

FILED
JUL 16 1990
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By ____________ Deputy

BANKSTON & McCOLLUM
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
1800 ENSERCH CENTER
550 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-1711

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

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

RE: CASE NO. A90-241

ANSWER OF EXXON CORPORATION (D-1) TO COMPLAINT
FILED MAY 23, 1990

Exxon Corporation, also erroneously referred to in the complaint as Exxon Co., U.S.A. and, 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, Exxon alleges that it is without knowledge or information sufficient categorically to admit or deny that said allegation at this time, wherefore it denies each

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said allegation using the phrase "denies for lack of information or belief."

1. Denies for lack of information and belief each and every allegation of paragraph 1, except admits the grounding of the EXXON VALDEZ resulted in the discharge into Prince William Sound of approximately 258,000 barrels of crude oil.

2-4. Denies each and every allegation of Paragraphs 2 through 4.

Affirmative and Other Defenses

5. The complaint and each count thereof fails to state claims upon which relief can be granted.

6. Exxon is informed and believes that plaintiff lacks standing to claim or recover damages based on the allegations of the complaint.

7. Independent of any legal obligation to do so, Exxon Shipping and Exxon are voluntarily paying many claims for economic loss allegedly caused by the oil spill, and are incurring other expenses in connection with the oil spill. Exxon and Exxon Shipping are entitled to a setoff in the full

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amount of all such payments in the event that plaintiff's claims encompass such expenditures.

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

9. To the extent that persons able to mitigate damages failed to do so, defendants cannot be held liable to such persons for avoidable losses.

10. Plaintiff's claims for punitive damages are unconstitutional under the United States Constitution, including, without limitation, Article I, Section 8; Amendment V; and Amendment XIV; and the Alaska Constitution, including, without limitation, Article I, Section 7 and Article I, Section 12.

11. The damages alleged in the complaint were caused, in part, by the action of others not joined as defendants herein as to whom a right of contribution or indemnity should exist as

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to Exxon. Exxon may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery herein.

12. Plaintiff's claims sound in maritime tort and are subject to applicable admiralty limits, including limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

13. Numerous persons and entities have filed class action lawsuits against Exxon relating to the oil spill, some of whom purport to represent the plaintiff in this action. In the event of any judgment in such other lawsuits against Exxon and in favor of plaintiff herein, such judgment will be res judicata as to the claims of plaintiff herein.

14. 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 plaintiff herein, recovery on the claims herein is barred to the extent that it would represent a multiple recovery for the same injury.

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15. Some or all of plaintiff's claims for damages may be barred or reduced by the doctrine of comparative negligence or comparative fault.

16. The amount of liability, if any, for the acts alleged is controlled by statute, including, without limitation, 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

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

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

19. Plaintiff's claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties.

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20. Plaintiff's claims for compensatory relief under state law are preempted by federal statutory and common law schemes for compensatory relief.

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

22. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article I, Section 10 of the United States Constitution and Article I, Section 15 of the Alaska Constitution, and if applied to Exxon would also violate the due process clauses and contract clauses of the United States and Alaska Constitutions.

23. 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 plaintiff. This action should not proceed in the absence of the Fund's joinder as a defendant.

24. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiff in this action. In the event of any recovery in such other lawsuits by persons whose claims are encompassed in this

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action, Exxon is entitled to a setoff in the full amount of such payments.

25. Exxon and Exxon Shipping have acted pursuant to government approval and direction with regard to the containment and clean-up of the oil spill.

26. Plaintiff fails to satisfy the requirements for the injunctive relief she seeks.

27. 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.

Prayer

WHEREFORE, Exxon prays for judgment as follows:

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

2. That Exxon be awarded its costs in this action; and

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

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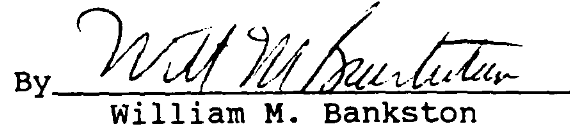
DATED: July 16, 1990

Respectfully submitted,

CHARLES W. BENDER
PATRICK LYNCH
JOHN F. DAUM
O'MELVENY & MYERS

and

WILLIAM M. BANKSTON
BANKSTON & McCOLLUM

By 
William M. Bankston

Attorneys for Defendant
Exxon Corporation (D-1)

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Attorney for Defendant
Exxon Corporation (D-1)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

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

RE: CASE NO. A90-241

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, LINDSEY L. GALIN, being first duly sworn, deposes and states as follow:

1. That I am employed by the firm of Faulkner, Banfield, Doogan & Holmes;

2. Pursuant to Pretrial Order No. 9, on July 16th, 1990, I mailed true and correct copies of the **ANSWER OF EXXON CORPORATION (D-1), TO COMPLAINT FILED MAY 23, 1990,** to Lloyd Benton Miller, Esq., 900 W. 5th Ave., Suite 700, Anchorage, Alaska, 99501, Liaison Counsel for Plaintiffs and Douglas J.

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ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

1. Serdahely, Esq., Bogle & Gates, 1031 W. 4th Ave., Suite 600,
2. Anchorage, Alaska, 99501, Liaison Counsel for Defendants.
3. 3. Further, I have mailed courtesy copies to plaintiffs'
4. lead counsel, Jerry S. Cohen, Cohen, Milstein & Hausfield, 1401
5. New York Ave., N.W., Suite 600, Washington, D.C., 20005, David
6. Oesting, Esq., 550 W. 7th Ave., Suite 1450, Anchorage, Alaska,
7. 99501, and to C. R. Kennelly, Stepovich, Kennelly & Stepovich,
8. 704 W. 2nd Avenue, Suite 1, Anchorage, Alaska, 99501.
9.
10. By: *Lindsey L. Galin*
11. Lindsey L. Galin
12.
13. SUBSCRIBED AND SWORN to before me this *16th* day of July, 1990.
14. *Carole A. King*
15. Notary Public in and for Alaska
My Commission Expires: *5/20/92*
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Douglas J. Serdahely
Bogle & Gates
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Attorneys for defendant
Exxon Shipping Company (D-2)

FILED

JUL 16 1990

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)

RE: A90-211

D-2'S ANSWER TO P-280 AND P-281'S COMPLAINT DATED APRIL 17, 1990

Defendant Exxon Shipping Company ("Exxon Shipping") (D-2) answers plaintiffs' (P-280 and P-281) complaint as follows:

1. Answering paragraph 1, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 1.

2. Answering paragraph 2, Exxon Shipping admits that Exxon Corporation ("Exxon Corp."), is a New Jersey corporation with its principal place of business at 1251 Avenue of the Americas,

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New York, New York 10020 and that the principal business of Exxon Corp. is energy, including exploration for and production of crude oil, natural gas and petroleum products. Exxon Shipping admits that Exxon Shipping is a domestic maritime subsidiary of Exxon Corp., separately incorporated in Delaware, with its executive offices at 800 Bell Street, Houston, Texas 77002 and that Exxon Shipping is engaged in the business, among others, of maritime transportation of crude oil. Exxon Shipping admits that Exxon Corp. and Exxon Shipping are doing business in the State of Alaska. Exxon Shipping admits that Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation owned by seven companies, which are permittees under the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline System ("TAPS"). Exxon Shipping admits that plaintiffs purport to refer to Exxon Corp. and Exxon Shipping as "Exxon," but denies that any subsequent use of such reference is necessarily accurate or appropriate. Exxon Shipping denies the remaining allegations in paragraph 2.

3-7. Answering paragraphs 3 through 7, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 3 through 7.

8. Answering paragraph 8, Exxon Shipping admits that on March 24, 1989 the tanker Exxon Valdez, which is owned and operated by Exxon Shipping, left the southern terminal facility of TAPS, at

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the port of Valdez, Alaska, bound for Long Beach, California; that the Exxon Valdez carried a cargo of approximately 1.2 million barrels of crude oil; that the oil was shipped from Alaska's North Slope through the Trans-Alaska Pipeline; that Exxon Corp. was the owner of the oil; that the United States Coast Guard gave the vessel permission to leave the southbound shipping lane for reasons that included the reported presence of ice; that the vessel travelled through the northbound shipping lane and ran aground on Bligh Reef; that the grounding of the EXXON VALDEZ resulted in the rupture of eight of the vessel's eleven cargo tanks; that approximately 11 million gallons of crude oil were discharged into the waters of Prince William Sound as a result of the grounding; and that Nuka Bay is a bay in the Kenai Peninsula southwest of Prince William Sound. Except as expressly admitted, Exxon Shipping denies the allegations in paragraph 8.

9. Answering paragraph 9, Exxon Shipping denies the allegations in paragraph 9.

10. Answering paragraph 10, Exxon Shipping admits that the oil spilled in Prince William Sound spread to waters and beaches of Prince William Sound and the Gulf of Alaska. Exxon Shipping further admits that Alyeska had an oil spill contingency plan, which was in effect on March 24, 1989 and which had been duly approved by the State of Alaska and that Alyeska had certain responsibilities thereunder. Except as expressly admitted, Exxon

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Shipping denies the allegations in paragraph 10 insofar as they apply to Exxon Corp. and Exxon Shipping, and insofar as the allegations in paragraph 10 apply to Alyeska, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies such allegations in paragraph 10.

11-12. Answering paragraphs 11 and 12, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraphs 11 and 12.

FIRST CAUSE OF ACTION

13. Answering paragraph 13, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 12 as though set forth in full at this place.

14. Answering paragraph 14, Exxon Shipping denies the allegations in paragraph 14.

SECOND CAUSE OF ACTION

15. Answering paragraph 15, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 14 as though set forth in full at this place.

16. Answering paragraph 16, Exxon Shipping denies the allegations in paragraph 16.

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THIRD CAUSE OF ACTION

17. Answering paragraph 17, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 16 as though set forth in full at this place.

18. Answering paragraph 18, Exxon Shipping denies the allegations in paragraph 18.

FOURTH CAUSE OF ACTION

19. Answering paragraph 19, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 18 as though set forth in full at this place.

20. Answering paragraph 20, Exxon Shipping denies the allegations in paragraph 20.

FIFTH CAUSE OF ACTION

21. Answering paragraph 21, Exxon Shipping adopts and incorporates by this reference its response to paragraphs 1 through 20 as though set forth in full at this place.

22. Answering paragraph 22, Exxon Shipping denies the allegations in paragraph 22.

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PRAYER FOR RELIEF

23. Answering plaintiffs' prayer for relief, Exxon Shipping denies plaintiffs' entitlement to the relief they seek.

GENERAL DENIAL

24. Exxon Shipping denies each and every other allegation in plaintiffs' complaint that was not specifically admitted.

AFFIRMATIVE AND OTHER DEFENSES

1. Independent of any legal obligation to do so, Exxon Shipping and Exxon Corp. have paid and continue to pay many claims for economic loss allegedly caused by the oil spill, and incurred and continue to incur other expenses in connection with the oil spill. Exxon Shipping is entitled to a set-off in the full amount of all such payments in the event plaintiffs' claims encompass such expenditures.

2. 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 plaintiffs' claims in this action, Exxon Shipping is entitled herein to a set-off in the full amount of such payments.

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

4. Exxon Shipping is entitled to a set-off to the extent of any failure of plaintiffs properly to mitigate damages.

5. Unless otherwise agreed, Exxon Shipping 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.

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

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

8. The amount of any liability for the acts alleged is controlled by statute including, without limitation, 43 U.S.C. § 1653(c), and AS 09.17.010, AS 09.17.060 and AS 09.17.080(d).

9. 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.

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

11. Plaintiffs' claims are based on an alleged maritime tort and therefore are subject to applicable admiralty restrictions, including without limitation, restrictions on granting of injunctive relief and on damages for remote economic loss unaccompanied by physical injury to person or property.

12. 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 I, Section 7; and Article I, Section 12.

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

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

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

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

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17. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article 1, Section 10 of the United States Constitution, and Article I, Section 15 of the Alaska Constitution, and if applied to Exxon Shipping would also violate the due process clauses and contract clauses of the United States and Alaska Constitutions.

18. Some or all of plaintiffs' claims, including claims for punitive damages, are preempted by the comprehensive system 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.

19. 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 Exxon Shipping. Exxon Shipping may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery.

20. 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.

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

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

WHEREFORE, defendant Exxon Shipping prays for judgment against plaintiffs as follows:

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

2. That the complaint be dismissed with prejudice;

3. That Exxon Shipping be awarded its costs in this action, including attorney's fees; and

4. That the court award Exxon Shipping such other and further relief as it may deem just and proper.

DATED at Anchorage, Alaska this 16th day of July, 1990.

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

By: Douglas J. Serdahely

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Attorneys for Defendant
Exxon Shipping Company (D-2)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

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

RE: A90-211

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

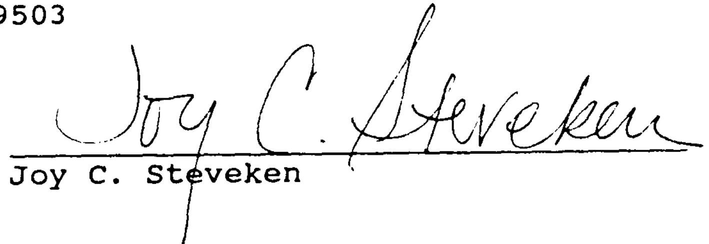
Joy C. Steveken, being duly sworn, upon oath, deposes and says: that she is employed as a legal secretary in the offices of Bogle & Gates, 1031 West 4th Street, Suite 600, Anchorage, Alaska 99501; that she has hand served D-2's Answer to P-280 and P-281's Complaint Dated April 17, 1990 upon Lloyd Benton Miller, Sonosky, Chambers, Sachse & Miller, 900 West Fifth Avenue, Suite 700, Anchorage, Alaska 99501 as plaintiffs' liaison counsel pursuant to Pretrial Order No. 9, Liaison Counsel, section (2),

dated December 22, 1989, and courtesy copies sent, on July 16, 1990 via hand delivery or U.S. Mail, postage prepaid, to the following attorneys:

David W. Oesting, Esq.
Davis, Wright & Tremaine
550 West Seventh Avenue, Suite 1450
Anchorage, Alaska 99501

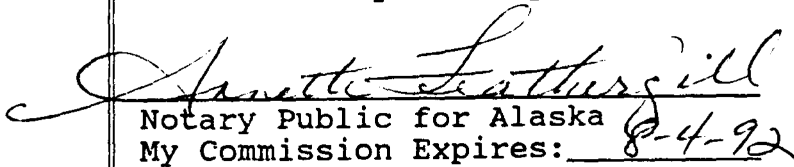
Jerry S. Cohen, Esq.
Cohen, Milstein, Hausfeld & Toll
1401 New York Avenue, N.W., Suite 600
Washington, D.C. 20005

A. Lee Petersen, Esq.
Law Offices of A. Lee Petersen, P.C.
1113 West Fireweed Lane, Suite 201
Anchorage, Alaska 99503



Joy C. Steveken

SUBSCRIBED AND SWORN to before me
this 16th day of July, 1990.



Notary Public for Alaska
My Commission Expires: 8-4-92

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Attorneys for defendant
Exxon Shipping Company (D-2)

FILED

JUL 16 1990

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	Case No. A89-095 Civil (Consolidated)

RE: A90-241

D-2's ANSWER TO P-282'S COMPLAINT DATED MAY 4, 1990

Defendant Exxon Shipping Company ("Exxon Shipping") (D-2) answers plaintiff's (P-282) complaint as follows:

1. Answering paragraph 1, Exxon Shipping admits that the grounding of the Exxon Valdez on March 24, 1989, resulted in the discharge of crude oil into the waters of Prince William Sound and that the oil spread to certain areas within the Sound, including Latouche Island. Exxon Shipping further admits that plaintiff's property is located in Prince William Sound within the Third Judicial District in the State of Alaska. Except as

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expressly admitted, Exxon Shipping lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies the allegations in paragraph 1.

2-4. Answering paragraphs 2 through 4, Exxon Shipping denies that plaintiff is entitled to the relief she seeks, and further denies the remaining allegations in paragraphs 2 through 4.

PRAYER FOR RELIEF

5. Answering plaintiff's prayer for relief, Exxon Shipping denies plaintiff's entitlement to the relief she seeks.

GENERAL DENIAL

6. Exxon Shipping denies each and every other allegation in plaintiff's complaint that was not specifically admitted.

AFFIRMATIVE AND OTHER DEFENSES

1. Independent of any legal obligation to do so, Exxon Shipping and Exxon Corporation have paid and continue to pay many claims for economic loss allegedly caused by the oil spill, and incurred and continue to incur other expenses in connection with the oil spill. Exxon Shipping is entitled to a set-off in the full amount of all such payments in the event plaintiff's claims encompass such expenditures.

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2. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiff in this action. In the event of any recovery in such other lawsuits by persons whose claims therein are encompassed by plaintiff's claims in this action, Exxon Shipping is entitled herein to a set-off in the full amount of such payments.

3. Some or all of plaintiff's claims for damages may be barred or reduced by the doctrine of comparative negligence or comparative fault.

4. Exxon Shipping is entitled to a set-off to the extent of any failure of plaintiff properly to mitigate damages.

5. Unless otherwise agreed, Exxon Shipping is entitled to a set-off in the amount of any payment received by plaintiff 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.

6. Each of plaintiff's theories of recovery fails to state a claim upon which relief can be granted.

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

8. The amount of any liability for the acts alleged is controlled by statute including, without limitation, 43 U.S.C. § 1653(c), and AS 09.17.010, AS 09.17.060 and AS 09.17.080(d).

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9. Plaintiff's 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.

10. Plaintiff lacks standing to assert certain theories of recovery or to claim or recover damages based on the allegations of the complaint.

11. Plaintiff's claims are based on an alleged maritime tort and therefore are subject to applicable admiralty restrictions, including without limitation, restrictions on granting of injunctive relief and on damages for remote economic loss unaccompanied by physical injury to person or property.

12. Plaintiff's 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 I, Section 7; and Article I, Section 12.

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

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

15. Plaintiff fails to satisfy the requirements for injunctive relief.

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16. Plaintiff's claims for punitive damages are precluded by the Alaska common law and statutory scheme for civil and criminal penalties relevant to the oil spill.

17. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article 1, Section 10 of the United States Constitution, and Article I, Section 15 of the Alaska Constitution, and if applied to Exxon Shipping would also violate the due process clauses and contract clauses of the United States and Alaska Constitutions.

18. Some or all of plaintiff's claims, including claims for punitive damages, are preempted by the comprehensive system 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.

19. 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 Exxon Shipping. Exxon Shipping may seek leave of Court to join such additional persons as third party defendants on the basis of further discovery.

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20. 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 plaintiff. This action should not proceed in the absence of the Fund's joinder as a defendant.

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

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

WHEREFORE, defendant Exxon Shipping prays for judgment against plaintiff as follows:

1. That plaintiff take nothing by her complaint and be granted no relief, legal or equitable;

2. That the complaint be dismissed with prejudice;

3. That Exxon Shipping be awarded its costs in this action, including attorney's fees; and

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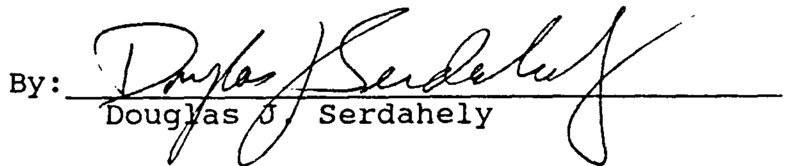
4. That the court award Exxon Shipping such other and further relief as it may deem just and proper.

DATED at Anchorage, Alaska this 16th day of July, 1990.

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



By: Douglas J. Serdahely

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(907) 276-4557

Douglas J. Serdahely
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Anchorage, Alaska 99501
(907) 276-4557

Attorneys for Defendant
Exxon Shipping Company (D-2)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

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

RE: A90-241

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

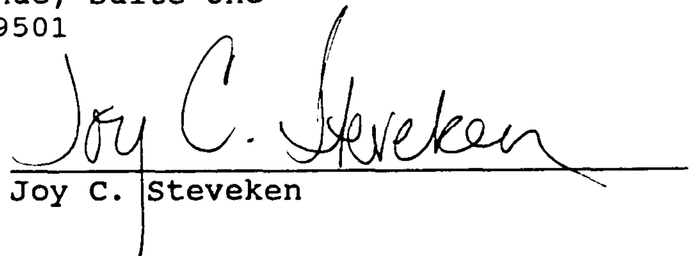
Joy C. Steveken, being duly sworn, upon oath, deposes and says: that she is employed as a legal secretary in the offices of Bogle & Gates, 1031 West 4th Street, Suite 600, Anchorage, Alaska 99501; that she has hand served D-2's Answer to P-282's Complaint Dated May 4, 1990 upon Lloyd Benton Miller, Sonosky, Chambers, Sachse & Miller, 900 West Fifth Avenue, Suite 700, Anchorage, Alaska 99501 as plaintiffs' liaison counsel pursuant

to Pretrial Order No. 9, Liaison Counsel, section (2), dated December 22, 1989, and courtesy copies sent, on July 16, 1990 via hand delivery or U.S. Mail, postage prepaid, to the following attorneys:

David W. Oesting, Esq.
Davis, Wright & Tremaine
550 West Seventh Avenue, Suite 1450
Anchorage, Alaska 99501

Jerry S. Cohen, Esq.
Cohen, Milstein, Hausfeld & Toll
1401 New York Avenue, N.W., Suite 600
Washington, D.C. 20005

C. R. (Neil) Kennelly, Esq.
Stepovich, Kennelly & Stepovich
704 West Second Avenue, Suite One
Anchorage, Alaska 99501



Joy C. Steveken

SUBSCRIBED AND SWORN to before me
this 16th day of July, 1990.

Notary Public for Alaska
My Commission Expires: 8-4-92

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CHARLES W. BENDER
PATRICK LYNCH
JOHN F. DAUM
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400 South Hope Street, 15th Floor
Los Angeles, California 90071-2899
(213) 669-6000

Attorney for Defendant
Exxon Corporation (D-1)

FILED
JUL 16 1990
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By ______________ Deputy

BANKSTON & McCOLLUM
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
1800 ENSERCH CENTER
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

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

RE: CASE NO. A90-211

ANSWER OF EXXON CORPORATION (D-1), TO COMPLAINT FILED APRIL 17, 1990

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, Exxon 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 Cause of Action

1. Denies for lack of information or belief each and every allegation of paragraph 1.

2. Denies each and every allegation of paragraph 2, 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, New York 10020, and that the principal business of Exxon is energy, involving exploration for and production of crude oil, natural gas and petroleum products, and exploration for and mining and sale of coal; that Exxon Shipping Company ("Exxon Shipping") is a Delaware Corporation with its principal place of buisness in the State of Texas; that Exxon owns all of Exxon Shipping's stock; that Alyeska Pipeline Service Co. ("Alyeska") is a Delaware Corporation, 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 the owners of Alyeska are permittees

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under the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline and that Alyeska operates the Trans-Alaska Pipeline System, and that Exxon and Exxon Shipping are doing business in the State of Alaska.

3-7. Denies for lack of information or belief each and every allegation of paragraphs 3 and 7.

8. Denies each and every allegation of paragraph 8, except admits that on March 23, 1989, the EXXON VALDEZ, which left the southern terminal facility of TAPS, at the port of Valdez, Alaska, bound for Long Beach, California; that the EXXON VALDEZ carried a cargo of approximately 1.2 million barrels of crude oil; that the oil was shipped from Alaska's North Slope through the Trans-Alaska Pipeline; that Exxon was the owner of the oil; that the United States Coast Guard gave the vessel permission to leave the southbound shipping lane for reasons that included the reported presence of ice; that the vessel travelled through the northbound shipping lane and ran aground on Bligh Reef; that the grounding of the EXXON VALDEZ resulted in the rupture of eight of the vessel's eleven cargo tanks; that approximately 258,000 barrels of crude oil were spilled into the waters of Prince William Sound; and that Nuka Bay is a bay in the Kenai Peninsula.

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9. Denies each and every allegation contained in paragraph 9.

10. Denies each and every allegation of paragraph 10, except admits that Alyeska prepared an oil spill contingency plan and had certain responsibilities thereunder; that the plan in force on March 24, 1989, was duly approved by the State of Alaska; and that oil was carried by winds and tides onto portions of the shoreline and islands of Prince William Sound.

11-12. Denies for lack of information or belief each and every allegation of paragraphs 11 through 12.

13. Answering paragraph 13, Exxon realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 12 hereof, as if set out in full.

14. Denies each and every allegation of paragraphs 14.

Defense To Second Cause of Action

15. Answering paragraph 15, Exxon realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 14 hereof, as if set out in full.

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16. Denies each and every allegation of paragraphs 16.

Defense To Third Cause of Action

17. Answering paragraph 17, Exxon realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 16 hereof, as if set out in full.

18. Denies each and every allegation of paragraph 18.

Defense To Fourth Cause of Action

19. Answering paragraph 19, Exxon realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 18 hereof, as if set out in full.

20. Denies each and every allegation of paragraph 20.

Defense To Fifth Cause of Action

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21. Answering paragraph 21, Exxon realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraphs 1 through 20 hereof, as if set out in full.

22. Denies each and every allegation of paragraph 22.

General Denial

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

Affirmative and Other Defenses

24. The complaint and each count thereof fails to state claims upon which relief can be granted.

25. Exxon is informed and believes that plaintiffs lack standing to claim or recover damages based on the allegations of the complaint.

26. Independent of any legal obligation to do so, Exxon Shipping and Exxon are paying many claims for economic loss allegedly caused by the oil spill, and are incurring other

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expenses in connection with the oil spill. Exxon and Exxon Shipping are entitled to a setoff in the full amount of all such payments in the event that plaintiffs' claims encompass such expenditures.

27. Certain persons engaged or employed in connection with activities related to containment and clean up of the oil released from the EXXON VALDEZ were thereby able to avoid or mitigate damage from the interruption of fishery and other activities. Payments received by such persons are a setoff against losses, if any, resulting from the interruption of fishery and other activities.

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28. To the extent that persons able to mitigate damages failed to do so, defendants cannot be held liable to such persons for avoidable losses.

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

30. The damages alleged in the complaint were caused, in part, by the action of others not joined as defendants herein

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

31. Plaintiffs' claims sound in maritime tort and are subject to applicable admiralty limits, including limits on recovery of damages for remote economic loss unaccompanied by physical injury to person or property.

32. Numerous persons and entities have filed class action lawsuits against Exxon relating to the oil spill, some of whom purport to represent the plaintiffs in this action. In the event of any judgment in such other lawsuits against Exxon and in favor of plaintiffs herein, such judgment will be res judicata as to the claims of plaintiffs herein.

33. 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.

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

35. The amount of liability, if any, for the acts alleged is controlled by statute, including, without limitation, 43 U.S.C. § 1653(c) and AS 09.17.010, .060 and .080(d).

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

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

38. Plaintiffs' claims for punitive damages are precluded by the Alaska statutory scheme for civil and criminal penalties.

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39. Plaintiff's claims for compensatory relief under state law are preempted by federal statutory and common law schemes for compensatory relief.

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

41. Those portions of AS 46.03 that were enacted after the oil spill constitute an unlawful bill of attainder violative of Article I, Section 10 of the United States Constitution and Article I, Section 15 of the Alaska Constitution, and if applied to Exxon would also violate the due process clauses and contract clauses of the United States and Alaska Constitutions.

42. 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.

43. Numerous persons and entities have filed lawsuits relating to the oil spill, some of whom purport to represent the plaintiff in this action. In the event of any recovery in such other lawsuits by persons whose claims are encompassed in this

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action, Exxon is entitled to a setoff in the full amount of su payments.

44. Exxon and Exxon Shipping have acted pursuant to government approval and direction with regard to the containme and clean-up of the oil spill.

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

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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.

DATED: July 16, 1990

Respectfully submitted,

CHARLES W. BENDER
PATRICK LYNCH
JOHN F. DAUM
O'MELVENY & MYERS

and

WILLIAM M. BANKSTON
BANKSTON & McCOLLUM

By______________________
William M. Bankston

Attorneys for Defendant
Exxon Corporation (D-1)

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Attorney for Defendant
Exxon Corporation (D-1)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

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

RE: CASE NO. A90-211

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, LINDSEY L. GALIN, being first duly sworn, deposes and states as follow:

1. That I am employed by the firm of Faulkner, Banfield, Doogan & Holmes;

2. Pursuant to Pretrial Order No. 9, on July 16th, 1990, I mailed true and correct copies of the **ANSWER OF EXXON CORPORATION (D-1), TO COMPLAINT FILED APRIL 17, 1990,** to Lloyd

FAULKNER, BANFIELD, DOOGAN & HOLMES
550 WEST SEVENTH AVE., SUITE 1000
ANCHORAGE, ALASKA 99501-3510
TELEPHONE (907) 274-0666

Benton Miller, Esq., 900 W. 5th Ave., Suite 700, Anchorage, Alaska, 99501, Liaison Counsel for Plaintiffs and Douglas J. Serdahely, Esq., Bogle & Gates, 1031 W. 4th Ave., Suite 600, Anchorage, Alaska, 99501, Liaison Counsel for Defendants.

3. Further, I have mailed courtesy copies to plaintiffs' lead counsel, Jerry S. Cohen, Cohen, Milstein & Hausfield, 1401 New York Ave., N.W., Suite 600, Washington, D.C., 20005, David Oesting, Esq., 550 W. 7th Ave., Suite 1450, Anchorage, Alaska, 99501, and to A. Lee Petersen, 1113 West Fireweed Lane, Suite 201, Anchorage, Alaska, 99503.

By: Lindsey L. Galin
Lindsey L. Galin

SUBSCRIBED AND SWORN to before me this 16th day of July, 1990.

Carole R. King

Notary Public in and for Alaska
My Commission Expires: 5/20/92

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James D. Gilmore
GILMORE & FELDMAN
310 K Street, Suite 308
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(907) 279-4506

Counsel for Defendant Edward Murphy (D-18)

FILED
JUL 23 1990
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	Case No. A89-095 Civil (consolidated)

Re: Chugach v. Exxon
Case No. A89-138
(P-81 through P-94 against D-1 through D-3, D-5, D-8, D-10, D-12, D-14, D-17 through D-20 and other defendants not yet assigned party numbers)

ANSWER TO AMENDED COMPLAINT

Defendant Ed Murphy, in answer to plaintiffs' amended complaint, states:

JURISDICTION AND VENUE

1. Defendant lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraphs 1 through 3 of plaintiffs' amended complaint.

PARTIES

4. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraphs 4 through 37 of plaintiffs' amended complaint.

38. Defendant Murphy admits each and every allegation contained in paragraph 38 of plaintiffs' amended complaint.

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965

COMMON FACTUAL ALLEGATIONS

39. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraph 39 of plaintiffs' amended complaint.

40. Defendant Murphy admits each and every allegation contained in paragraph 40 of plaintiffs' amended complaint.

41. Defendant Murphy admits each and every allegation contained in paragraph 41 of plaintiffs' amended complaint.

42. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraphs 42 through 48 of plaintiffs' amended complaint.

49. Defendant Murphy denies each and every allegation contained in paragraph 49 of plaintiffs' amended complaint.

50. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraphs 50 through 55 of plaintiffs' amended complaint.

PUNITIVE AND/OR EXEMPLARY DAMAGES

56. Defendant Murphy denies each and every allegation contained in paragraph 56 of plaintiffs' amended complaint to the extent said allegations pertains to him.

FIRST CLAIM FOR RELIEF

(All Defendants)

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PUBLIC NUISANCE

57. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 46 to plaintiffs' amended complaint.

58. Defendant Murphy denies each and every allegation contained in paragraphs 58 and 59 of the first claim for relief of plaintiffs' amended complaint.

SECOND CLAIM FOR RELIEF

(Exxon Defendants and Alyeska Defendants)

STRICT LIABILITY [AS §§ 46.03.822-828]

60. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 49 of plaintiffs' amended complaint.

61. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraphs 61 through 63 of plaintiffs' amended complaint.

THIRD CLAIM FOR RELIEF

(All Defendants)

PRIVATE NUISANCE [AS § 09.45.230]

64. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 53 of plaintiffs' amended complaint.

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65. Defendant Murphy denies each and every allegation contained in paragraphs 65 and 66 of the third claim for relief of plaintiffs' amended complaint.

FOURTH CLAIM FOR RELIEF

(All Defendants)

INHERENTLY DANGEROUS ACTIVITY

67. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 56 to plaintiffs' amended complaint.

68. Defendant Murphy denies each and every allegation contained in paragraphs 68 and 69 of the fourth claim for relief of plaintiffs' amended complaint.

FIFTH CLAIM FOR RELIEF

NEGLIGENCE OF THE EXXON DEFENDANTS,

HAZELWOOD, COUSINS AND MURPHY

70. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 59 of plaintiff's amended complaint.

71. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraphs 71 through 78 of the fifth claim for relief of plaintiffs' amended complaint.

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79. Defendant Murphy denies each and every allegation contained in paragraphs 79 and 80 of the fifth claim for relief of plaintiffs' amended complaint.

SIXTH CLAIM FOR RELIEF

(Exxon)

UNSEAWORTHINESS

81. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 70 of plaintiffs' amended complaint.

82. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraph 82 of the sixth claim for relief of plaintiffs' amended complaint.

SEVENTH CLAIM FOR RELIEF

NEGLIGENCE OF ALYESKA DEFENDANTS

83. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 70 of plaintiffs' amended complaint.

84. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraphs 84 through 86 of the seventh claim for relief of plaintiffs' amended complaint.

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EIGHTH CLAIM FOR RELIEF

TRESPASS

(All Defendants)

87. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 74 of plaintiffs' amended complaint.

88. Defendant Murphy denies each and every allegation contained in paragraph 88 of plaintiffs' amended complaint.

NINTH CLAIM FOR RELIEF

(Exxon Defendants and Alyeska Defendants)

NEGLIGENT MISREPRESENTATION

89. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 76 to plaintiffs' amended complaint.

90. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraphs 90 through 96 of the ninth claim for relief of plaintiffs' amended complaint.

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TENTH CLAIM FOR RELIEF

(Exxon Defendants and Alyeska Defendants)

FRAUD

97. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 84 of plaintiffs' amended complaint.

98. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraphs 98 through 104 of the tenth claim for relief of plaintiffs' amended complaint.

ELEVENTH CLAIM FOR RELIEF

(All Defendants)

105. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 92 of plaintiffs' amended complaint.

106. Defendant Murphy denies each and every allegation contained in paragraph 106 of the eleventh claim for relief of plaintiffs' amended complaint.

TWELFTH CLAIM FOR RELIEF

(Exxon)

PUBLIC NUISANCE

107. Defendant Murphy restates and incorporates by reference herein each and every answer made to paragraphs 1 through 26 of plaintiffs' amended complaint.

108. Defendant Murphy lacks knowledge or information sufficient to form a belief concerning each and every allegation contained in paragraphs 108 through 119 of the twelfth claim for relief of plaintiffs' amended complaint.

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By way of further answer and affirmative defense, Defendant Murphy states:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' complaint fails to state a claim against defendant Murphy for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs lack standing to claim or recovery the damages upon which the allegations of the complaint are based.

THIRD AFFIRMATIVE DEFENSE

If any of the plaintiffs have received payment for economic losses allegedly caused by the spill, answering defendant Murphy is entitled to a set-off in the full amount of all such payments.

FOURTH AFFIRMATIVE DEFENSE

Claims by some of the persons or entities listed as plaintiffs in the complaint may have been settled or released, or in the alternative, payments may have been received by such persons or entities which may operate as an accord in satisfaction of the claims against answering defendant Murphy.

FIFTH AFFIRMATIVE DEFENSE

Defendant Murphy is entitled to a set-off in the amount of any payments made for employment by entities or persons listed as plaintiffs in this complaint for clean-up of oil released by the Exxon Valdez, and to the extent that said monies mitigate plaintiffs' damages, defendant Murphy is entitled to a set-off for said sums.

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SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for punitive damages against defendant Murphy are barred by the State and Federal Constitutions, and by State and Federal statutes and regulations.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' damages were caused in part, or in whole, by the negligence or conduct of other parties and, accordingly, plaintiffs' claim against defendant Murphy is barred.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims in maritime tort are subject to applicable admiralty limits of recovery on damages for remote economic loss unaccompanied by physical injury to person or property.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for damages may be barred or reduced by the doctrine of comparative negligence.

ELEVENTH AFFIRMATIVE DEFENSE

The funds established under the Trans-Alaska Pipeline Authority Act, 43 USC 1653(c), may be strictly liable for some of the damages alleged by plaintiffs.

TWELFTH AFFIRMATIVE DEFENSE

Corporate plaintiffs herein may lack capacity to commence and maintain this action since they have failed to allege and prove

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that they have paid their Alaska corporate taxes last due and have filed bi-annual reports for the last reporting period.

THIRTEENTH AFFIRMATIVE DEFENSE

Wherefore, having fully answered plaintiffs' amended complaint, and having asserted affirmative defenses thereto, defendant Murphy requests that said amended complaint be dismissed, that plaintiffs take nothing thereby, and that defendant Murphy be awarded his costs and disbursements herein together with a reasonable amount for attorney's fees.

DATED this 20 day of July, 1990, at Anchorage, Alaska.

GILMORE & FELDMAN
Counsel for Defendant Murphy

By: James D. Gilmore
James D. Gilmore

CERTIFICATE OF SERVICE
I HEREBY CERTIFY that on this 23rd day of July, 1990, a true and correct copy of the foregoing was delivered by mail to all counsel of record based upon the Court's Master Service List of June 26, 1990:

GILMORE & FELDMAN
By: Debi Thomas

Gilmore & Feldman
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99501-2095
(907) 279-4506

FILED

JUL 25 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By ____________ Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In Re:	)	
	)	
EXXON VALDEZ	)	No. A89-095 Civil
______________________	)	(Consolidated)

MASTER SERVICE LIST

AMENDED - July 24, 1990

This master service list will be distributed to liaison counsel whenever it is amended; and liaison counsel shall be responsible for employing the current master service list.

Proof of service of all documents upon the parties to these consolidated cases shall be by affidavit or certification that:

> Service of (TITLE OF DOCUMENT) has been made upon all counsel of record based upon the court's Master Service List of (DATE).

Counsel shall find listed on Exhibit A, attached hereto, the appropriate plaintiff and defendant number designation to be used when filing documents with the court.

cc: L. Miller, D. Serdahely, D. Ruskin

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89	095	1	03	30	89	3	890	1,000	7X09	02020	P5789	8

CAUSE: PLAINTIFFS — DEFENDANTS

Cause	Plaintiffs		Defendants	
89-095	P-1	SEA HAWK SEAFOODS, INC.,	D-1	EXXON CORP., A New Jersey corp.,
	~~P-2 COOK INLET PROCESSORS, INC.~~		D-2	EXXON SHIPPING CO., a Delaware corp.
	P-3	SAGAYA CORP.,	D-3	ALYESKA PIPELINE SERVICE CO., a Dela
	~~P-4 McMURREN, WILLIAM~~	#560	D-4	TRANS-ALASKA PIPELINE LIABILITY FUND
	~~P-5 McMURREN, PATRICK L.~~	#560	~~D-5 EXXON CO., USA,~~	#560
	~~P-6 KING, WILLIAM W.~~	#560	D-6	EXXON VALDEZ, her engines, tackle, ge equipment and appurtenances, in rem,
	~~P-7 NORRIS, GEORGE G.~~	#560		
	P-8	CRANZ, HUNTER,	D-7	HAZELWOOD, JOSEPH, an individual,
	P-9	FEENSTRA, RICHARD,	D-8	COUSINS, GREGORY, an individual,
	P-10	AK WILDERNESS SAILING SAFARIS,	D-9	NELSON, GEORGE
	P-11	SEAFOOD SALES, INC.,	D-10	EXXON PIPELINE CO., a Delaware corp.,
9-095	P-12	RAPID SYSTEMS PACIFIC, LTD.	D-11	AMERADA HESS CORP.,
~~9-096~~	P-13	CRUZAN FISHERIES, INC.,	D-12	ARCO PIPE LINE CO.,
	P-14	GROVE, STANLEY NORRIS,	~~D-13 BRITISH PETROLEUM PIPELINES, INC.,~~	#5
	P-15	GROVE, ANTHONY,	D-14	MOBIL ALASKA PIPELINE CO.,
~~89-099~~ 9-095	P-16	CORDOVA DISTRICT FISHERMAN UNITED, INC., an Alaska corp.,	~~D-15 PHILLIPS PETROLEUM CO.,~~	#530
			D-16	SOHIO ALASKA PIPELINE CO.,
	P-17	PRINCE WILLIAM SOUND AQUA-CULTURE CORP., an Alaska non-profit corp.,	~~D-17 UNION ALASKA PIPELINE CO.,~~	#530

CAUSE
(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

FOR ATTORNEYS SEE ATTACHED SERVICE LIST

ATTORNEYS

Cause	Plaintiffs		Defendants	
	P-18	CHESHIER, ELMER J.,	D-18	MURPHY, EDWARD,
~~9-102~~	P-19	SAMISH MARITIME, INC., ~~A89-190~~ 560	D-19	BP PIPELINES (ALASKA), INC.,
9-095	~~P-20 MID-WEST FISHERIES, INC~~	#560 ~~A89-190~~ #560	D-20	PHILLIPS ALASKA PIPELINE CORP.,
	P-21	MCALLISTER, SCOTT	D-21	UNOCAL PIPELINE CO.
~~9-103~~ 9-095	P-22	OLSEN, STEVEN T.,	D-22	~~ALASKA, STATE OF~~ #316
~~9-104~~	~~P-23 MICHELLI, JACK, A89-190~~	#560	D-23	~~ALASKA, STATE OF, DEPT. OF ENVIRONMI CONSERVATION~~ #316
9-095	P-24	McALLISTER, MICHAEL, ~~A89-190~~ #560		
	P-25	YOAKUM, CHARLOTTE, ~~A89-190~~ #560	~~D-24 SOHIO PETROLEUM CO.~~	#530
	P-26	JUDSON, LEE, ~~A89-190~~ #560	D-25	EXXON TRANSPORTATION CO.
	P-27	HUGHES, LANTZ, ~~A89-190~~ #560	D-5	EXXON COMPANY, U.S.A. DKT #933
	P-28	McALLISTER, THOMAS S.		
	~~P-29 J & A ENTERPRISES, a Washington Corp., A89-190~~	#560		
9-106	P-30	GORESON, MARTIN,		
	P-31	GORESON, JAMES R.,		
	P-32	MOORE, JEFFREY A.,		
	P-33	EWING, JAMES D.,		
	P-34	JENSEN, DOUG,		
	P-35	LOWELL, DANIEL,		
	P-36	WHITTIER SEAFOODS, INC., ...A89-149		
	P-37	CORDOVA AIR SERVICE, INC.		
	P-38	DEW DROP, F/V A89-149		

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD / D
				JS-5
				JS-6

PLAINTIFFS | DEFENDANTS

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~~A89-108.~~.....		P-42	CESARI, RICHARD,
~~A89-109.~~.....		P-43	McCRUDDEN, PHILIP H.,...~~A89-199~~ # 277
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#619	619	~~P-47---EYAK NATIVE VILLAGE TRADITIONAL COUNCIL~~, ... ~~A89-174~~ # 230	
		P-48	NATIVE VILLAGE OF CHENEGA BAY, ...~~A89-174~~ # 230
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		P-50	~~VILLAGE OF PORT GRAHAM~~, THE NATIVE VILLAGE OF PORT GRAHAM,...~~A89-174~~ # 230
	#619	~~P-51---THE VILLAGE OF PORT GRAHAM NATIVE VILLAGE OF PORT GRAHAM TRADITIONAL COUNCIL~~,...~~A89-174~~ # 230	
		P-52	~~ENGLISH BAY VILLAGE~~, THE NATIVE VILLAGE OF ENGLISH BAY,...~~A89-174~~ # 230
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		P-55	VALDEZ NATIVE ASSOC., INC.,...~~A89-174~~ # 230
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		~~P-63---KVASNIKOFF, VINCENT,~~ ...~~A89-174~~ # 230	
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		P-82	CHUGACH FOREST PRODUCTS, INC., an Alaska corp....~~A89-198~~ # 290
		P-83	CHUGACH DEVELOPMENT CORP., an Alaska corp.,...~~A89-198~~ # 290
		P-84	CHUGACH FISHERIES, INC., an Alaska corp., ...~~A89-198~~ # 290
		P-85	CHUGACH TIMBER CORP., an Alaska corp., ...~~A89-198~~ # 290
		P-86	BERING DEVELOPMENT CORP., an Alaska corp., ~~A89-198~~ # 290
		P-87	TATITLEK CORP., an Alaska Native village corp....~~A89-198~~ # 290

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		P-89 CHN, INC., an Alaska corp.,...~~A89-198~~ #290
		P-90 EYAK CORP., an Alaska Native corp.,...~~A89-198~~ #290
		P-91 EYAK DEVELOPMENT INC., an Alaska corp.,...~~A89-198~~ #290
		P-92 EYAK TIMBER INC., an Alaska corp.,...~~A89-198~~ #290
		P-93 PORT GRAHAM CORP., an Alaska Native Village corp.,...~~A89-198~~ #290
		P-94 PORT GRAHAM DEVELOPMENT CORP., an Alaska corp.,...~~A89-198~~ #290
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		P-98 STARITEIM, SCOTT,
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		P-100 KINCAID, SUSAN,
		P-101 PHATLEY, LESLIE,
		P-102 DEHLIN, RICHARD,
		P-103 TOTEMOFF, JERRY,
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		P-105 WILLIAMSON, RICHARD,
		P-106 MILLARD, GARF,
		P-107 LANG, NORMAN,
		P-108 LAKOSH, THOMAS,
		P-109 DAY, PATRICIA,
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		P-118 THE ALASKA SEA OTTER COMMISSION
		~~P-119--THE KODIAK AREA NATIVE ASSOC., INC.,~~ #619
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		~~P-123--THE NATIVE VILLAGE OF LARSEN BAY TRADITIONAL COUNCIL,~~ #619
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		P-136 PANAMAROFF, ALLEN,
		P-137 ELUSKA, DAVID SR.,
		P-138 HARRIS, TESHIA,
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A89095		P-140 STANLEY, MICHAEL L.,
		P-141 YATES, JEFF,
		P-142 LEE, TONY,
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		~~P-153 NELSON, RAY,~~ "
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		~~P-156 GORMAN, KEVIN,~~ "
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		~~P-158 SLOBODEN, JACK R.,~~ "
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		~~P-161 GRAY, WILLIAM S.,~~ "
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		P-172 PETER PAN SEAFOODS, INC.,
		P-173 PENINSULA SALMON, INC.,
		P-174 SEVEN SEAS CORP.,
		P-175 OCEAN BEAUTY SEAFOODS, INC.,
		P-176 OCEAN BEAUTY NORTHWEST, INC.,
		P-177 WASHINGTON FISH & OYSTER CO.,
		P-178 KING CRAB, INC.,
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		~~P-191 BABICH, STEFAN F.,~~ "
		~~P-192 NOLAN, THOMAS,~~ "
		~~P-193 NOLAN, DEBORAH,~~ "
		~~P-194 MORGAN, JAY R.,~~ "
		P-195 McLENAGHAN, MICHAEL,
		P-196 CARROLL, ALBERT,
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		~~P-212 ANDERSON, RODNEY~~ "
		~~P-213 ANDRIESEN, ANDY~~ "
		~~P-214 BECK, MARK~~ "
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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 EXXON VALDEZ OIL SPILL LITIGATION	Case No. A89-095 Civil (Consolidated)

Re: Case Nos. A89-095, A89-117, A89-118, A89-140, A89-149, A89-238, A89-264, A89-446

AMICUS MEMORANDUM OF THE STATE OF ALASKA OPPOSING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

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Defendant Alyeska Pipeline Service Company and six of its owner company defendants (hereinafter referred to collectively as "Alyeska") have moved for judgment on the pleadings against selected private plaintiffs on the grounds that those plaintiffs' claims are preempted by federal maritime law. The State of Alaska's amicus brief is filed in response to Court Order No. 25, dated June 22, 1990. It is the State's view that Alyeska mischaracterizes the role Alaska law[1] may play in protecting against and remedying injuries caused by oil pollution.[2] This mischaracterization of the State's police powers leads the movants to the erroneous conclusion that the State may not afford relief to certain persons and entities who have suffered economic, but not physical damages as a result of the Exxon Valdez oil spill.

The spillage of oil in Alaska waters is a matter of grave state concern. Where the interest of a state in regulating an

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[1] Alyeska does not identify the Alaska law it seeks to have declared unconstitutional. However, the State understands the motion to be targeted at the economic damage provisions of the Alaska Environmental Conservation Act, AS 46.03.822, and the common law proximate cause rule announced in the case of Mattingly v. Sheldon Jackson College, 743 P.2d 356 (Alaska 1987), to the extent these laws provide relief to ceratin private plaintiffs. The State does not take a position at this time as to whether particular plaintiffs targeted by the Alyeska motion have claims under Alaska law.

[2] The State will not address in this brief the various rules adopted by the federal courts regarding proximate cause, and will refer in general to these rules as the admiralty rule of proximate cause, or the Robins rule. The State agrees with the Joint Plaintiffs that there is in fact no "uniform" admiralty rule of proximate cause, and that the rule applied by the Supreme Court in the 1927 Robins Dry Dock and Repair Co. v. Flint, 275 U.S. 303 (1927), to a time charter breach of contract issue, no longer binds even the federal courts. Joint Pl. Mem. at 23-30.

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issue is particularly strong, and where national policy does not require the implementation of a nationally "uniform" law on the subject, state law may clearly be applied as a matter of traditional admiralty choice of law analysis. Further, and of most importance, Congress has expressly provided that local liability rules, including local rules of proximate cause, may be applied to remedy the injuries caused by marine oil pollution. See, infra, discussion of the Trans-Alaska Pipeline Authorization Act ("TAPAA") at, e.g., 43 U.S.C. § 1653, and the Clean Water Act at, e.g., 33 U.S.C. § 1321.

ARGUMENT

I. ALASKA'S MARINE OIL POLLUTION LAWS MAY BE ENFORCED TO BENEFIT PARTIES WHO WOULD BE DENIED PROTECTION BY LESS PROTECTIVE GENERAL MARITIME LAW RULES.

Article III, Section 2 of the Constitution grants the federal courts jurisdiction over admiralty matters. This jurisdictional clause has also been construed to empower the federal courts to adopt substantive rules of admiralty law. Romero v. International Terminal Operating Co., 358 U.S. 354, 373-74 (1959). Thus, it is clear that when a plaintiff opts to seek relief under general maritime law for an injury, principles devised by the federal courts will apply to resolve the grievance. See, e.g., Pruitt v. Allied Chemical Corp., 523 F.Supp. 975, 980-81 (E.D. Va. 1981). Alyeska argues that the rules which would be applied by a federal court in a general maritime law cause of action by the targeted plaintiffs serve to preempt rules of state law which are applicable to state law causes of action. However, where an issue is of particular local concern, and where a

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"uniform" maritime law on the subject is not required, state law may be applied despite the existence of a different maritime rule on the subject.[3]

A. Admiralty Analysis Permits the Application of State Law to Issues Which do not Require Resolution Under a "Uniform" National Rule, and Which Are of Particularly Strong State Interest.

The Supreme Court has repeatedly stated that state law will be applied in admiralty cases where a "uniform" federal rule on the subject is not required. In such cases, state laws which "modify" or "supplement" federal rules are readily applied. Just v. Chambers, 312 U.S. 383, 387-88 (1940). In addition, and of most relevance here, state laws are applied where the state's interest in the subject matter is so significant that the national interest does not require the enforcement of only one "uniform" rule. Kossick v. United Fruit Co., 365 U.S. 731, 739 (1961); Romero v. International Terminal Operating Co., 358 U.S. 354, 373-74 (1959).

Under this latter rule, the decision whether to apply the state rule despite the existence of a divergent federal rule on the subject is one of balancing the state and federal interests. Kossick, 365 U.S. at 739. In Kossick the Court explained:

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[3] In its reply brief, Alyeska admits that state law may apply to an issue that is "peculiarly a matter of state and local concern." Aly. R. Mem. at 35. However, Alyeska concludes this rule is inapplicable here, where the state concern is also one of "intense national interest." Id. There is in fact no rule of admiralty which would deny the states the power to address local problems of such importance that they attract public attention. It is notable that the "intense national interest" in resolving the problem of oil pollution has resulted in a Congressional policy that permits states to tailor their laws to meet local needs and concerns. See discussion of federal oil pollution statutes, infra.

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> the fact that maritime law is - in a special sense at least - federal law, and therefore supreme by virtue of Article VI of the Constitution, carries with it the implication that wherever a maritime interest is involved, no matter how slight or marginal, it must displace a local interest, no matter how pressing or significant. But the process is surely rather one of accommodation, entirely familiar in many areas of overlapping state and federal concern, or a process somewhat analogous to the normal conflict of laws situation where two sovereignties assert divergent interests in a transaction as to which both have some concern.

Id. at 739 (emphasis added). The Kossick Court had to decide whether to apply the state statute of frauds rule, which would have held unenforceable an oral promise by an employer to pay for an employee's injuries, or the opposite federal statute of frauds rule, which would have resulted in enforcement of the promise. 365 U.S. at 733-34. Applying the above "balancing of interests" analysis the Court concluded that a contract between a seaman and his employer was not "peculiarly a matter of state and local concern," and that the oral promise should be enforced. Id. at 741.

The Court similarly explained in Romero that, as a matter of federalism, state laws may apply in maritime areas not required to be addressed by a "uniform" national rule. The Court also explained that state laws had frequently been applied in the admiralty context:

> [T]o claim that all enforced rights pertaining to matters maritime are rooted in federal law is a destructive oversimplification of the highly intricate interplay of the states and the national government in their regulation of maritime commerce. It is true that state law must yield to the needs of a federal maritime law when this court finds inroads on a harmonious system. But this limitation still leaves the States a wide scope. State created

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liens are enforced in admiralty. State remedies for wrongful death and state statutes providing for the survival of actions, both historically absent from the relief offered by admiralty, have been upheld when applied to maritime causes of action . . . . State rules for the partition and sale of ships, state laws governing the specific performance of arbitration agreements, state laws regulating the effect of the breach of warranty under contracts of maritime insurance -- all of these laws and others have been accepted as rules of decision in admiralty cases, even, at times, when they conflicted with a rule of maritime law which did not require uniformity . . . . Here, as is so often true in our federal system, allocations of jurisdiction have been carefully wrought to correspond to the realities of power and interest and national policy.

358 U.S. at 373-75 (footnotes omitted and emphasis added), quoted in Askew v. American Waterways Operators, Inc., 411 U.S. 325, 338 (1973); see also East River Steamship Corp. v. Transamerica Delaval, 476 U.S. 858, 864 n.2. Thus, the Supreme Court has often approved of the application of state substantive law to "admiralty issues" in the face of divergent federal rules.[4]

[4] The Court has upheld the enforcement of local vessel emissions control regulations even though the applicable Coast Guard rules would have permitted the plaintiff's emissions level, Huron Portland Cement Co. v. Detroit, 362 U.S. 440, 446 (1960); allowed the survival of a state tort action against a deceased party, even though the federal rule would have prohibited the action upon the parties death, Just v. Chambers, 312 U.S. 383, 387-89 (1941); allowed state law to govern wrongful death claims arising out of accidents occurring on state waters even though the state rule was contrary to the federal "rule of non-liability," Western Fuel Co. v. Garcia, 257 U.S. 233, 242 (1921); and allowed the application of a very strict state employer liability statute in a wrongful death case even though maritime standards applicable to non-fatal employer torts was less protective. Hess v. United States, 361 U.S. 314, 320 (1960), and Harlan, J., dissenting at 323; see also Baer, Admiralty Law and the Supreme Court, 6-10 at 202 (3rd ed. 1979) (Hess allowed the application of a higher standard of care than permitted by maritime law).

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B. The Courts Have Repeatedly Recognized that States Have the Power to Adopt Environmental Protection Measures Which Affect Maritime Issues.

Environmental protection has as a matter of national policy been left largely to the states, with the federal government setting minimum standards but not regulatory ceilings. See, e.g., Chevron U.S.A., Inc. v. Hammond, 726 F.2d 483, 489 (9th Cir. 1984) (Clean Water Act sets minimum, but not maximum water pollution standards), cert. denied, 471 U.S. 1140 (1985). The courts have had no difficulty finding that in areas of environmental protection, states generally have a strong enough interest to have their laws applied even though the case falls within the federal courts' admiralty jurisdiction.

In Askew v. American Waterways Operators, Inc., the strength of the State of Florida's interest in protecting its shores from oil pollution played a significant role in the court's decision. 411 U.S. at 328-35. There the Court ruled that Florida's strict liability remedy for state clean-up damages was not preempted by any rule of admiralty law. At the time that case was decided, the Clean Water Act established a rule permitting the federal government, but not states, to recover clean up expenses. Id. at 335. The Court commented at length on the dangers posed to state resources by tankers of growing size, id. at 334-35, n.5, and explained the important state interests involved:

> We find no constitutional or statutory impediment to permitting Florida, in the present setting of this by case, to establish any "requirement of liability" concerning the impact of oil spillages on Florida's interests or concerns. To rule [otherwise] is to allow federal admiralty jurisdiction to swallow most of the police power of

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the States over oil spillage -an insidious form of pollution of vast concern to every coastal city or port and to all the estuaries on which the life of the ocean and the lives of the coastal people are greatly dependent.

. . .

. . . The damage to state interests already caused by oil spills, and the risk of ever-increasing damage by reason of the size of modern tankers underlie the concern of coastal States.

. . .

. . . So far as liability without fault for damages to state and private interests is concerned, the police power has been held adequate for that purpose.

Id. at 328-29, 335. The Court concluded that the Florida oil spill liability scheme did not involve one of those "isolated instances where 'state law must yield to the needs of a uniform maritime law,'" and was therefore valid.[5] Id. at 338, 344. See also Huron Portland Cement Co. v. Detroit, 362 U.S. 440, 446 (1960) (local vessel emissions controls not preempted by less stringent federal emission regulations); Standard Dredging Corp. v. Murphy, 319 U.S. 306, 309 (1943) (uniformity only required in "certain aspects of maritime law"); see also Manchester v. Massachusetts, 139 U.S. 240, 266 (1891) (admiralty clause does not prevent states from

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[5] This litigation presents the Court with an even more compelling reason to permit the application of state law than did Askew. In Askew, the Court declined to apply the Clean Water Act to the exclusion of Florida law. Had it not so declined, it would have effected a "uniform" maritime law for oil pollution liability. In enacting TAPAA to regulate only spills of North Slope Crude Oil, and the less comprehensive Clean Water Act for spills in general, Congress validated the Askew Court's understanding that there was no national policy requiring one uniform law to govern oil pollution, and has thus precluded any court from establishing a uniform national oil pollution liability regime. See discussion of TAPAA, infra.

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individually regulating to protect their coastal fishery resources).

The lower courts have followed suit in applying state laws to issues involving natural resources. In Chevron, the Ninth Circuit upheld an Alaska law prohibiting the discharge by vessels of oily ballast water into state waters even though applicable federal law would have permitted the discharge. 726 F.2d at 489-93. The Court started with the well-established premise that state law preemption under the supremacy clause is not "lightly to be presumed" since Congress, if it desires, can react to a court decision by making clear that state law has preempted in the particular area. Id. at 488; accord Portland Pipeline Corp. v. Environmental Improvement Commission, 307 A.2d 1, 10 (Me. 1973), app. dismissed, 414 U.S. 1035 (1973). The court then explained:

> The subject of environmental regulation . . . has long been regarded by the court as particularly suited to local regulation.
>
> . . .
>
> Congress has indicated emphatically that there is no compelling need for uniformity in the regulation of pollutant discharges and that there is a positive value in encouraging the development of local pollution control standards stricter than the federal minimums.
>
> . . .
>
> [T]here is no . . . dominant national interest in uniformity in the area of coastal environmental regulation. Here, in fact, the local community [Alaska] is more likely competent than the federal government to tailor environmental regulation to the ecological sensitivities of a particular area.

726 F.2d at 483, 488-93. Accord Commonwealth of Puerto Rico v. S.S. Zoe Colocotroni, 628 F.2d 652, 672 (1980) (state strict

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liability scheme for natural resource damages cognizable in admiralty), cert. denied, 450 U.S. 912 (1981).

In Pruitt v. Allied Chemical Corp, 523 F.Supp. 975 (E.D. Va. 1981), the court did not even consider preempting state laws establishing liability for water pollution. There fishermen, seafood processors, and others brought both state law and general maritime law claims against a company responsible for chemically contaminating Chesapeake Bay. The admiralty law claims were decided with reference to Robins and subsequent cases, while the state law claims were decided solely with reference to more permissive state proximate cause rules. Id. at 978-82. The Pruitt court implicitly decided that the Robins rule, whatever its importance in other areas of the law such as maritime contract, was not a required, uniform rule for purposes of regulating water pollution.

Alyeska cites State of Louisiana ex Rel. Guste v. M/V Testabank, 752 F.2d 1019 (5th Cir. 1985), cert. denied 477 U.S. 903 (1986), for the proposition that more permissive state laws are preempted by Robins in the area of water pollution regulation. The Testabank court sat, at Judge Wisdom's request, to redetermine whether Robins still had applicability for purposes of general maritime claims. Id. at 1021. After a thorough analysis, and with vigorous dissent, the court decided that the general principles announced in Robins remained applicable in the Fifth Circuit[6] for

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[6] The court indicated that other circuits might decide not to follow the Robins if the states in those circuits did not. It noted: "Jurisprudence developed in the Gulf states informs our decisions. It supports the Robins rule." 752 F.2d

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1 purposes of federal law claims. The court then briefly stated that
2 general maritime law would apply to the plaintiffs' claims to the
3 exclusion of Louisiana law. Id. at 1031. However, this statement
4 was of no effect, and the plaintiffs had little incentive to argue
5 against it. As the court explained, the Gulf States of the Fifth
6 Circuit also followed the Robins rule, and the application of state
7 law would have therefore been of no help to plaintiffs not
8 protected by general maritime law. Id. at 1028.[7] The court had no
9 occasion to consider whether the interests of a state in protecting
10 its coastal environment would be deferred to were the state to
11 decide that the protections of the Robins rule were inadequate.
12 Nor, of course, did the court decide what effect TAPAA and the oil
13 spill liability provisions of the Clean Water Act might have had
14 upon its conclusion. See discussion of TAPAA and the Clean Water
15 Act, infra.

16 It is thus clear that the need for a "uniform" admiralty
17 law has given way where states exceed federal standards to protect
18 their natural resources. This strong local interest is premised
19 upon the fact that the states themselves have been injured. The
20 interest is similarly local where the lives and businesses of

21

22 at 1027.

23 [7] The court explained, "Jurisprudence developed in the [Fifth Circuit's] Gulf States informs our maritime decisions.
24 Courts [in these states] . . . have consistently denied recovery for economic losses negligently inflicted where there
25 was no physical damage to a proprietary interest." Id. at 1027. Louisiana, under whose laws the plaintiffs also brought
26 claims, similarly afforded no relief to plaintiffs who suffered from only economic injuries. Id at 1028; 30 La. Rev. Stat. § 2001-37.

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private parties are impacted due to the environmental nuisance. Alaska law therefore applies to the parties' state law claims. While courts have at times had difficulty in determining which sovereign has the most compelling interest in regulating a particular activity, they have had no such difficulty where the states have attempted to protect their natural resources from destruction.

C. Congress has Recognized that Marine Oil Pollution is of Great Concern to the Affected States, and that it Need Not be Addressed by One "Uniform" National Law.

The most compelling evidence that oil pollution is an issue of grave local concern to the coastal states, and that these states should as a matter of national policy be permitted to implement locally tailored, rather than uniform regulatory schemes, comes from Congressional expressions to this effect. National legislation, including TAPAA and the Clean Water Act, provides that Alaska law should be applied to the state law claims of the plaintiffs targeted by Alyeska's motion under the above analysis. TAPAA is particularly clear on this subject. These statutes are discussed infra at Section II.

Not only has Congress authorized the implementation of "non-uniform" state laws, but it has made federal laws themselves "non-uniform," depending upon whether the spill is of North Slope or other oil. Given its determination that the transportation of oil through Prince William Sound in large tankers presented greater than normal environmental risks, it imposed an especially tough standard of liability on spillers of this oil.

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II. CONGRESSIONAL POLICY PERMITS, RATHER THAN PREEMPTS, NON-UNIFORM STATE REGULATION OF OIL POLLUTION LIABILITY.

TAPAA and the Clean Water Act both expressly state Congress' intention that state police powers to adopt their own oil spill compensation schemes be preserved. TAPAA, 43 U.S.C. § 1653(c)(9); Clean Water Act, 33 U.S.C. § 1321(o)(1), (2). TAPAA in particular states that, for purposes of North Slope Crude Oil spills, states and private plaintiffs should be permitted to invoke a federal statutory strict liability damages remedy. 43 U.S.C. § 1653(c)(1), (3). TAPAA further states Congress' intentions that states nonetheless be permitted to adopt their own liability standards. It reads: "This subsection [governing liability for damages caused by oil pollution] shall not be interpreted to preempt the field of strict liability or to preclude any state from imposing additional requirements." 43 U.S.C. § 1653(c)(9). The Clean Water Act contains similar language.[8] The statutes make clear that Congress has seen the subject of oil pollution as being especially important to the locally-affected states.

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[8] The Clean Water Act's oil spill liability provisions contain two statements of non-preemption. 33 U.S.C. § 1321(o)(1), (2), discussed more fully at Section II B infra. This Congressional design of deference to local concerns, and divergent federal oil spill remedies depending upon whether the spilled oil is North Slope crude oil or not, undermines Alyeska's argument that national policy requires a single, nationwide scheme for addressing the injuries caused by oil pollution.

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A. TAPAA Establishes the Proximate Cause and Other Liability Rules Against Which State Law Must Be Measured When Deciding Whether State Law Has Been Preempted.

In deciding whether Alyeska is correct that Alaska law is preempted by federal law because of an impermissible conflict, one must first identify the allegedly preemptive federal law. While Robins and subsequent case law may identify the applicable rule to be applied to federal maritime law actions relating to oil spills, TAPAA establishes the federal statutory law. Even by Alyeska's admission, this statutory law establishes the proximate cause and other liability rules to be applied to federal claims arising out of spills of North Slope crude oil. Aly. R. Br. at 48. It must thus be determined what preemptive effect Congress intended for these federal rules to have. If Congress intended to permit the concurrent application of state law to effectuate national policy, its intention cannot be circumvented by attaching a preemptive affect to common law rules adopted by the federal courts.[9]

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[9] The conclusion that statutory law may preempt federal common law is neither new nor novel. In the case at bar Congress has made clear its intentions that statutory, rather than pre-existing common law rules of proximate cause be applied in the area of North Slope Crude Oil pollution, at least for the first $100,000,000 of liability. See discussion of TAPAA, infra. However, even where Congress' intentions have not been made so clear, and Congress has not adopted a rule on the same exact issue addressed by federal common law, the latter has been rather readily preempted. As the Supreme Court noted in Milwaukee v. Illinois and Michigan, 451 U.S. 304, 317 and n.9 (1981):

> Since states are represented in Congress but not in the federal courts, the very concerns about displacing state law which counsel against finding pre-emption of state law in the

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Congress has made clear that TAPAA supplies the federal law against which allegedly preempted state law must be measured. That statute authorizes recovery for "all damages . . . sustained by any person or entity . . . as the result of discharges of oil from [a] vessel" carrying North Slope crude oil. 43 U.S.C. § 1653(c)(1) (emphasis added). The wording of this statute is broad. Congress' statement that a party responsible for an oil spill pay for "all" damages requires that the proximate cause rule to be applied to the statute be similarly compensatory in spirit.

> absence of clear intent actually suggest a willingness to find congressional displacement of federal common law (citation omitted).

The Court found that, even though Congress did not actually address the issue of nuisance remedies, the Clean Water Act's "'comprehensive program for controlling and abating water pollution . . . strongly suggest[s] that there is no room for the courts to improve on that program with federal common law.'" Id. at 319 (citations omitted); see also East River S.S. Corp. v. Delaval, 476 U.S. 858, 864 (1986) ("absent a relevant statute, the general maritime law, as developed by the judiciary, applies") (citation omitted); International Paper Co. v. Ouellette, 479 U.S. 481, 485-88 (1987) (Clean Water Act preempts federal common law of nuisance for water pollution, but not remedies under law of state which is affected by pollution).

The Milwaukee rule is equally applicable where Congress has addressed an area formerly regulated by general maritime law. Conner v. Aerovox, Inc.,730 F.2d 835, 842 (1st Cir. 1984), cert. denied, 470 U.S. 1050 (1985). In Conner the court explained that general maritime law will be displaced where Congress has "occupied the field," or where Congress has "spoken directly to a question." Id. at 837.

Here Congress has directly addressed the issue of oil pollution liability in TAPAA. See discussion of TAPAA section 43 U.S.C. 1653(c), infra. Thus, the general maritime rule of proximate cause, and any alleged preemptive effect it may have had, have been displaced.

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This is further evidenced by the TAPAA legislative history. Representative Udall explained the broad compensatory spirit which led to TAPAA's liability provisions:

> It is admittedly forcing a tougher liability standard on Alaskan oil than exists for other oil, but the House has consistently maintained that the environmental risks of transporting this oil were greater. The oil companies have, in turn, consistently promised that both the pipeline and the sea leg were safe. We are doing no more than holding them to this promise.

119 Cong. Rec. 36606, November 12, 1973. Thus, it cannot be said that Congress intended for large numbers of injured parties to bear the costs of the industry's actions just because their losses are not accompanied by "physical" injury. Congress intended to hold those who spill oil fully responsible for all injuries they cause. It was not Congress' intention to protect defendants from liability for real and legitimately grieved injuries.

TAPAA adopts a proximate cause rule holding responsible parties liable for "all damages" caused "as a result" of a spill. It is clear that Congress did not intend as a prerequisite to recovery for foreseeable economic damages that a party first suffer direct personal or property damage.

The Department of the Interior has followed Congress' mandate that it adopt regulations to implement TAPAA.[10] In doing so, the Department of the Interior has aptly declined to attach any

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[10] 43 U.S.C. 1653(c)(4) states that the Trans-Alaska Pipeline Liability Fund, against which injured parties would file their strict liability claims above $14,000,000, and up to $100,000,000, "shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary [of the Interior]."

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"physical injury," or "physical injury for non-fishermen" requirement to the statutes damages provision. Instead, the Department has sought to enforce this provision by borrowing from the Outer Continental Shelf Resources Management Act's offshore platform spill liability provisions. Department regulations have been adopted to read:

> "Damage" or "Damages" means <u>any economic loss arising out of or directly resulting from an [oil spill] incident, including, but not limited to</u>:
>
> . . .
>
> (2) injury or destruction of real or personal property;
> (3) loss of use of real or personal property;
>
> . . .
>
> (6) loss of profits or impairment of earning capacity <u>due to injury or to destruction of</u> real or personal property <u>or natural resources</u>, including loss of hunting, fishing and gathering opportunities.

40 C.F.R. 29.1 (emphasis added); <u>see</u> <u>also</u> Outer Continental Shelf Resource Management Act, 33 U.S.C. § 1813.

Thus, the common law proximate cause rule taken by Alyeska from <u>Robins</u> and post-TAPAA Circuit Court cases does not dictate the meaning Congress intended to be ascribed to TAPAA.

B. <u>Both TAPAA and the Clean Water Act Express Congress' Intention that State Liability Laws Be Permitted to Apply to Injuries Caused by Oil Pollution</u>.

Congress has opted not to preempt state oil spill liability laws.[11] It has addressed the subject of water pollution

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[11] Under traditional preemption analysis courts "start with the assumption that the historic police powers of the State were not to be superseded by a Federal Act unless that was the <u>clear and manifest</u> purpose of Congress." <u>Jones v. Rath</u>

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and polluter liability in a number of acts, and has in each instance expressed its intention to preserve to the coastal states the right to use their own police powers to remedy the effects of such pollution. See Clean Water Act, 33 U.S.C. § 1321; TAPAA, 43 U.S.C. § 1653(c); and CERCLA, 42 U.S.C. § 9607, 9651(c).

In TAPAA Congress enacted a comprehensive liability system to address injuries caused by oil pollution. Nonetheless, Congress clearly stated its intention that this liability scheme should not displace spill liability laws of states which found that local concerns dictated schemes providing for greater relief. See 43 U.S.C. § 1653(c)(9), set forth supra.

The state law savings clause of TAPAA was intended to clearly emphasize the point that state liability schemes were not to be preempted by any federal law. During the Senate debates on the TAPAA, Senators Stevens and Jackson discussed the effect the TAPAA liability scheme would have on Alaska's power to protect its citizens and natural resources from the ill effects of oil pollution. Senator Stevens advised his Senate peers as follows:

> The State clearly recognizes its obligation to provide, from the perspective of the people who live with the pipeline, its own standards to protect the

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Packing Co., 430 U.S. 519, 525 (1977) (emphasis added and citation omitted); see also California v. ARC America Corp., 109 S. Ct. 1661, 1667 (1989) ("[o]rdinarily, state causes of action are not preempted solely because they impose liability over and above that authorized by federal law"). Preemption will not be implied where there exists "any doubt" as to Congress' preemptive intent. Chevron U.S.A., Inc. v. Hammond, 726 F.2d 483, 488 (9th Cir. 1984), cert. denied, 471 U.S. 1140 (1985). This presumption of non-preemption need not even be resorted to in this case, as Congress has expressly disclaimed any preemptive intent.

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> otherwise for the proper progress of this project in the public interest.
>
> In addition to the state law that already covers various areas of concern with regard to the pipeline and its related activities [which included AS 46.03.822, the state oil spill damage liability statute], the state intends to consider and enact laws and standards compatible with federal standards to protect its public resources . . . . All of these measures, Mr. President, are contemplated within the traditional police powers of the states, and within the jurisdictional power given Alaska in this instance as the landlord respecting pipeline activities.

119 Cong. Rec. 36813-14 (daily ed. Nov. 13, 1973) (floor consideration of TAPAA). Senator Jackson responded:

> Let me assure the gentleman from Alaska that the bill in no way limits the exercise of the state responsibility he suggested . . . As you will note in [43 U.S.C. § 1653(c)(9)], a stated disclaimer of preemption is made, and made there only to emphasize the point even in that comprehensive liability section.

Id. at 36814 (emphasis added).

Statements in both the House and Senate demonstrate that Congress was quite aware of the broad Alaska liability provisions that it was preserving. In comparing Alaska law to the TAPAA bill in 1973, Representative Railsback explained, "The Alaska legislature has recently passed a bill which imposes strict liability without regard to fault, for any damage caused by oil spills in water or on the land." 119 Cong. Rec. S-22658 (August 2, 1973) (emphasis added). The Senate was similarly advised, and also understood the Alaska law, AS 46.03.822,[12] to provide liability for

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[12] AS 46.03.822 stated in relevant part in 1973 that strict liability will be imposed "for damages to persons or property ... resulting from an unpermitted release of ..." crude oil. AS 46.03.822(a). Damages included "loss of income, loss of the

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"any damage caused by oil spills." Report of Senate Committee on Public Works, 119 Cong. Rec. S-22795, 22850 (July 9, 1973).

Also advised of the Alaska law was Alyeska, whose General Counsel testified to Congress that while he had reservations about being subject to a federal statutory remedy, his company had no reservations about being subject to AS 46.03.822.[13]

Congress and the courts also have explicitly recognized the legitimacy of state-imposed liability for oil spills in the context of the Clean Water Act, 33 U.S.C. §§ 1251-1376 ("CWA"). The Act modifies the traditional constraints of maritime law concerning oil spills and establishes a statutory strict liability scheme for discharges of oil. 33 U.S.C. § 1321. Although the CWA does not address liability for damages to private parties, it does contain two provisions that clarify the effect of the CWA on other

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means of producing income, or the loss of an economic benefit...." AS 46.03.824.

[13] Alyeska President J.D. Knodell, asked to comment about applicable standards of liability by Senator Dellenback, deferred to his General Counsel, who testified:

> [T]here is a state law in Alaska, which imposes strict liability for a spill of hazardous substances including oil, and, so we, of course, will be subject to liability under that statute. In was enacted by recent [sic] state legislature . . . and it does require, impose, that kind of liability and it will impose it, of course, throughout the whole line, as a matter of law.

Testimony on S. 1081 before the Senate Committee on Environment and Public Works, Subcommittee on Public Works, 99th Cong., 2nd Sess., May 1, 1973. Then, in response to a question asking whether he were indicating a preference to "see the Alaska law apply . . . rather than any federal law," he responded, "I think that is correct. We would like to be governed by the laws of Alaska with respect to liability of third persons." Id.

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laws concerning such liability. First, the statute states that:

> Nothing in this section [1321] shall affect or modify in any way the obligations of any owner or operator of any vessel . . . to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil.

33 U.S.C. § 1321(o)(1). The statute then limits its preemptive effect on potential state laws imposing liability for oil spills:

> Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State.

33 U.S.C. § 1321(o)(2).

In Askew, the Supreme Court recognized the important state concerns subject to injury from oil spills, and stated that essentially identical non-preemption language in the CWA's predecessor statute, the Water Quality Improvement Act of 1970, "left the states free to impose 'liability' in damages for losses suffered both by the State's and by private interests." 411 U.S. at 329, 335-36. The Court found that "state police powers" provided a sound basis for imposing strict liability for oil spill-related damages to state and private interests. Id. at 336. The absence of coverage by federal admiralty law did not preclude states from legislating in this area. Id. As recognized in Askew, admiralty broadly recognizes the authority of the states to fix liability for oil spills occurring within state waters, as long as state law does not directly counter congressional purposes. Accord Zoe Colocotroni, 628 F.2d at 672 (it is within broad police powers

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of states to provide themselves with remedies in strict liability for "environmental damages" caused by oil pollution).

Congress' clear understanding in adopting the TAPAA and Clean Water Act non-preemption clauses was that state law would apply, and that it had been applying with full force in the area of marine oil pollution liability. As a matter of fact, Congress was advised by the industry that the latter was subject to a state law providing economic damages. The language and context of those statutes indicate that Congress expected for any state oil spill liability laws to be written on a clean slate, free of any lurking federal common law rules that would limit the permissible scope of state law. Given that these statutes were enacted in an area of traditional state involvement, Congress felt secure that their statement of non-preemptive intent left for the states a full scope of opportunities for devising state laws.

Once Congress has disclaimed its intent to preempt, it is well established that state law may "impose liability over and above that authorized by federal law." ARC America Corp., 109 S.Ct. at 1667 (citations omitted).[14] Similarly, where the state remedy applies, it may properly result in liability even though the comparable federal admiralty law would not have resulted in liability. See Askew, 411 U.S. at 336 (state may recover clean-up costs and actual damages under state statute where clean-up

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[14] See also Hess, 361 U.S. at 319 (where state law applies to admiralty action, state duties apply to the exclusion of "admiralty's standards of duty"); Chevron, 726 F.2d at 488 (Alaska law regulating discharge by vessels of oily ballast water not preempted by more permissive federal regulations which would have allowed discharges).

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costs permitted only to the federal government under federal statute); Just, 312 U.S. at 388-91.

Thus, the issue of federal preemption of state oil pollution statutes and state common law must be viewed quite differently from the way it has been presented by Alyeska. The issue presented cannot be answered by superimposing sixty year-old federal maritime common law over state statutes without acknowledging the existence of federal legislation directly on point, and without recognizing the interests states have in protecting their shores and keeping residents safe from oil pollution. Upon consideration of TAPAA and comparable federal legislation on the subject of pollution of coastal waters, the conclusion is inescapable that the Congress expressly intended and legislated the right of coastal states to create and enforce state remedies against polluters of state waters.

C. Accepting Alyeska's Interpretation of TAPAA Arguendo, the Required Conclusion is Still that TAPAA's Non-Preemption Clause Preserves Alaska's Right to Adopt its Own Rules of Proximate Cause.

Alyeska submits to this Court certain independent propositions regarding the proper interpretation of TAPAA which, if taken together to their logical conclusion, necessarily result in a finding that state liability rules, and in particular, state rules of proximate cause may be enforced in this litigation. Alyeska's propositions will be assumed arguendo here.

One of Alyeska's propositions is that Congress intended to adopt the Robins rule as part of TAPAA's liability scheme. Aly. R. Mem. at 48. Subsection (c) of TAPAA section 1653 states that

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responsible parties are strictly liable for "all damages" caused by a vessel spill. See 43 U.S.C. § 1653(c)(1), (2), & (9). It is argued that Congress could not have meant to hold responsible parties liable for "all damages." Under this view then, Congress fashioned an express rule in TAPAA for all issues of liability except proximate cause. Thus, it is concluded, Congress' silence on this issue indicates its satisfaction with the "pre-existing" proximate cause rule of Robins, and its intent that this rule be incorporated into TAPAA. Aly. R. Mem. at 48.

The other proposition (which is disputed by the State as well) is that Congress, in declaring its non-preemptive intent in TAPAA, only saved from preemption a narrow category of state liability rules which do not include state rules governing proximate cause. Aly. R. Mem. at 44. TAPAA states in its savings clause that "this subsection [1653(c)]" does not preempt state law. 43 U.S.C. § 1653(c)(9). Thus, Alyeska concludes that the savings clause was only intended to save from preemption laws on those subjects actually addressed in the TAPAA liability subsection. Other federal laws would still have a preemptive effect in the area of oil spill liability.

When these two propositions are presented together, an admission is made that state proximate cause rules apply in this litigation. The reasoning must flow as follows: Congress meant to adopt the Robins proximate cause rule as part of TAPAA subsection (c)'s liability scheme. Aly. R. Mem. at 48. It was Congress' intent that the liability scheme of subsection (c) not preempt state law. Aly. R. Mem. at 44. Thus, it must be admitted that the

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Robins proximate cause rule, like other TAPAA rules of liability, was intended to have no preemptive effect.

All parties agree that it was Congress' intention to either expressly or implicitly adopt a proximate cause rule to fulfill TAPAA's remedial provisions. It did so by necessity, as a statutory tort scheme cannot operate without some proximate cause rule defining the scope of actors to be held liable. Further, as is demonstrated above, regardless of which rule Congress may have picked, it is a rule from which Congress expressly authorized states to depart - specifically in TAPAA, and more generally in the CWA's preemption disclaimer. Alaska's rules of proximate cause must therefore be permitted to apply in this case.

CONCLUSION

Both the Trans Alaska Pipeline Authorization Act and the Clean Water Act expressly disclaim federal preemption by authorizing states to adopt their own standards of liability applicable to those who pollute Alaska's waters. TAPAA makes this particularly explicit by first adopting a comprehensive liability scheme, and then noting that none of the scheme's components, including its proximate cause rule, would preempt state law. TAPAA and the CWA also compel the conclusions under admiralty choice of law analysis that, as a matter of national policy, a "uniform" law in this area is not desirable, and that state interests justify the application of state law. Finally, even if one disregards federal legislation on the subject of oil pollution, the federal maritime case law clearly recognizes that where there is a strong state interest in the matter being regulated, the courts should be

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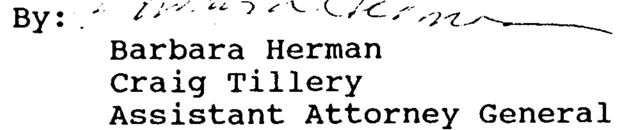
reluctant to find federal preemption. That principle is applicable in this litigation and precludes preemption. Each of these analyses require, independently, that Defendants' Motion for Judgment on the Pleadings be denied.

DATED at Anchorage, Alaska this 30th day of July, 1990.

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Barbara Herman
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PRESTON, THORGRIMSON,
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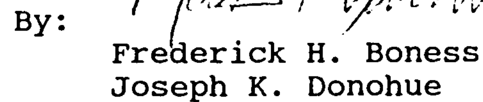
By: 
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Attorneys for State of Alaska

The Honorable H. Russel Holland

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

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

Re: Case Nos. A89-095, A89-117,
A89-118, A89-140,
A89-149, A89-238,
A89-264, A89-446

AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT)
)ss.
FOR THE DISTRICT OF ALASKA)

TINA D. MORTON, being first duly sworn, upon oath, states as follows: I am a legal secretary with the law firm of Preston Thorgrimson Shidler Gates & Ellis; on the 30th day of July, 1990, I caused a true and correct copy and a floppy disk of AMICUS MEMORANDUM OF THE STATE OF ALASKA OPPOSING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS to be served

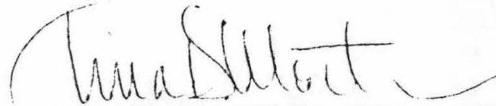
..., ALASKA 99501-1937
TELEPHONE: (907) 276-1969

by hand-delivery on Douglas J. Serdahely, Bogle & Gates, 1031 West 4th Avenue, Suite 600, Anchorage, Alaska 99501. A true and correct copy of the foregoing document was simultaneously hand-delivered to:

Charles P. Flynn
Burr, Pease & Kurtz
810 N Street
Anchorage, Alaska 99501

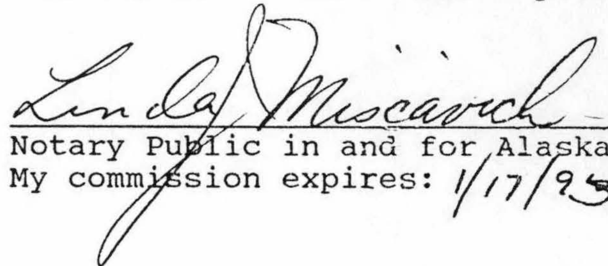
Lloyd Benton Miller
Sonosky, Chambers, Sachse & Miller
900 West 5th Avenue
Suite 700
Anchorage, Alaska 99501

DATED this 30th day of July, 1990.



Tina D. Morton

SUBSCRIBED AND SWORN TO before me this 30th day of July, 1990.



Notary Public in and for Alaska
My commission expires: 1/17/93

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FILED

JUL 31 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By .... Deputy

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Attorney for P145, Philip G. McCrudden

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In Re: the EXXON VALDEZ	Case No. A89-095 Civil (Consolidated)
THIS DOCUMENT RELATES TO: ALL CASES	

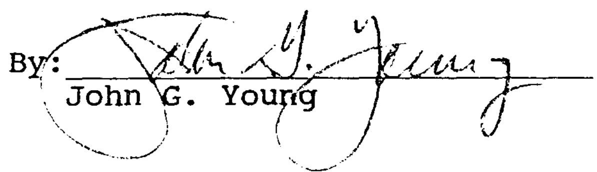
ORDER AND STIPULATION FOR SUBSTITUTION OF COUNSEL

John G. Young (a member of the Alaska Bar) of the Law Firm of Weinstein, Hacker, Matthews & Young hereby substitutes as counsel for Plaintiff, P145 Philip G. McCrudden, in the place and stead of the Law Firm of Kasmar and Slone, which respectfully requests leave to withdraw as counsel for the aforementioned Plaintiff. This Order and Stipulation is submitted pursuant to Local District Court Rule 3F(3).

Counsel are requested to amend their service list accordingly.

WEINSTEIN, HACKER, MATTHEWS
& YOUNG

DATED: June 25, 1990

By: 
John G. Young

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By ________________ Deputy

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907/276-6100

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

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

Re Case Nos. A89-095, A89-117, A89-118,
A89-140, A89-149, A89-238, A89-264, A89-446

MOTION FOR LEAVE TO FILE RESPONSE TO **AMICUS** BRIEF AND SUPPORTING THE ALYESKA DEFENDANTS' (D-3, D-9, D-11, D-12, D-14, D-19 through D-21) MOTION FOR JUDGMENT ON THE PLEADINGS

Alyeska Pipeline Service Company (D-3), George M. Nelson (D-9), Amerada Hess Pipeline Corporation (D-11), ARCO Pipe Line Company (D-12), Mobil Alaska Pipeline Company (D-14), BP Pipelines (Alaska), Inc. (D-19), Phillips Alaska Pipeline Corporation (D-20) and Unocal Pipeline Company (D-21) (the "Alyeska defendants") move for leave to file a response to the new points and authorities raised by the State of Alaska in its amicus brief filed on July 30, 1990. This motion is supported by the memorandum submitted herewith.

373-45
PF/lsf

DATED: August 3, 1990.

BURR, PEASE & KURTZ
Attorneys for Alyeska Defendants
(D-3, D-9, D-11, D-12, D-14, D-19,
D-20, D-21)

By
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Anchorage, AK 99501
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

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

Re Case Nos. A89-095, A89-117, A89-118,
A89-140, A89-149, A89-238, A89-264, A89-446

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE
TO FILE A RESPONSE TO **AMICUS** BRIEF AND
SUPPORTING THE ALYESKA DEFENDANTS'
(D-3, D-9, D-11, D-12, D-14, D-19 through D-21)
MOTION FOR JUDGMENT ON THE PLEADINGS

The Alyeska defendants moved in this Court (and concurrently in the state court proceedings) for Judgment on the Pleadings as to certain plaintiffs' claims, and raising the issue of the applicability of the Robbins Dry Dock rule to these proceedings. That motion was fully briefed, including a twenty-five-page opposition brief filed in the state court by the State of Alaska, and has been set for oral argument before both courts on September 13, 1990. After all briefs were filed, the State of Alabama moved on May 9, 1990 for leave to file an **amicus** statement. (Alabama's two-page statement was

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appended to its request). This Court, in response to that motion, allowed the State of Alabama to file a thirty-page amicus brief on or before July 30, 1990, and (apparently in the belief that the State of Alaska had not previously filed papers addressed to this motion) invited Alaska to file a similar amicus brief. The State of Alabama has filed no additional papers, apparently relying on its previously-lodged statement of position, but the State of Alaska has taken the opportunity to file a lengthy memorandum which raises several new issues which were not addressed in its original filing in the state court. The State had the opportunity to make these arguments in its original filing, but chose not to do so, instead advancing them now, when there is no formal opportunity for Alyeska to respond. As the proponent of the motion, simple fairness suggests that it have an opportunity to respond to all the arguments opposing its motion.

Since the court solicited an additional brief from Alaska, the same considerations of fairness which earlier led the Court to limit the plaintiffs to those briefs contemplated by the rules should now lead it to allow Alyeska, as the moving party, to file a responsive memorandum, limited to the arguments advanced by the State of Alaska, and not exceeding twenty pages in length.

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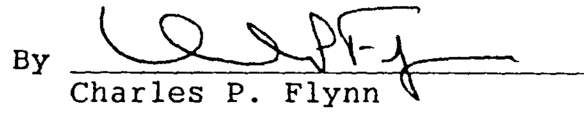
) 276-6100

DATED: August 3, 1990.

BURR, PEASE & KURTZ
Attorneys for Alyeska Defendants
(D-3, D-9, D-11, D-12, D-14, D-19,
D-20, D-21)

By 
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FOR THE DISTRICT OF ALASKA

In re	)	No. A89-095 Civ.
	)	
the EXXON VALDEZ	)	(Consolidated)
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Re Case Nos. A89-095, A89-117, A89-118,
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AFFIDAVIT OF SERVICE ON BEHALF OF
DEFENDANTS D-3, D-9, D-11 through D-12,
D-14, D-19 through D-21

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Linda S. Foley, an employee of Burr, Pease and Kurtz, 810 N Street, Anchorage, Alaska, being first duly sworn, states that on August 3, 1990, service of a Motion for Leave to File Response to Amicus Brief and Supporting the Alyeska Defendants' (D-3, D-9, D-11, D-12, D-14, D-19 through D-21) Motion for Judgment on the Pleadings, Memorandum in Support of Motion for Leave to File a Response to Amicus Brief and Supporting the Alyeska Defendants' (D-3, D-9, D-11, D-12,

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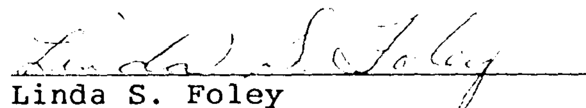
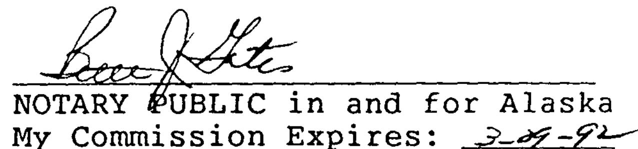
D-14, D-19 through D-21) Motion for Judgment on the Pleadings and a (Proposed) Order has been made upon the counsel of record as follows: Robert L. Richmond, James D. Gilmore, Dick L. Madson, Clifford J. Groh, Daniel W. Krasner, John E. Hoffman, Jr. and George N. Hayes **(by regular mail)**; Frederick H. Boness, Lloyd Benton Miller, David W. Oesting and Douglas J. Serdahely **(by hand-delivery)**; and to Jerry S. Cohen, Melvyn I. Weiss and Jeffrey A. Smyth **(by Express Mail)** based upon the court's Master Service List of July 24, 1990 at the addresses given on that list.



Linda S. Foley

SUBSCRIBED and SWORN to before me this 3rd day of August, 1990.



NOTARY PUBLIC in and for Alaska
My Commission Expires: 3-29-92

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