

MARK R. DAVIS
Assistant U.S. Attorney
District of Alaska
Rm. C-253 Federal Building
222 West 7th Avenue, #9
Anchorage, Alaska 99513
Phone: 907-271-5071

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No. A90-015-1CR
)	No. A90-015-2CR
Plaintiff,)	
)	
v.)	
)	BILL OF PARTICULARS
EXXON CORPORATION AND)	
EXXON SHIPPING COMPANY,)	
)	
Defendants.)	

Comes now the United States of America, by its attorneys, and files the following bill of particulars in compliance with the Court's orders dated July 20 and July 24, 1990.

Introduction

Exxon Shipping Company (Exxon Shipping), a co-defendant in this case, is a wholly owned corporate subsidiary of Exxon Corporation (Exxon). The facts in this case reveal that Exxon controlled and benefitted from the activities of Exxon Shipping and that Exxon Shipping was acting as the agent of Exxon at the time of the Valdez oil

spill. Accordingly, Exxon is liable for the conduct of Exxon Shipping and its officers and employees that resulted in criminal violations.

Moreover, the facts indicate that Exxon was the person who, for all intents and purposes, owned and operated the Exxon Valdez, and as such is liable for criminal conduct involved in the Exxon Valdez oil spill. Specifically, the facts reveal that through its creation and operation of Exxon Shipping, Exxon was much more than just a "parent" corporation whose oil happened to be transported by a subsidiary corporation. Until July 1, 1982, Exxon operated its domestic ships through a Marine Department, an internal department of Exxon USA, a division of Exxon. If the Exxon Valdez oil spill had occurred before that date, while the ship was operated by the Marine Department, Exxon would clearly be responsible for any violations of law. On July 1, 1982, the Marine Department's assets were transferred to Exxon Shipping to enable Exxon to reduce its federal tax liability.

Notwithstanding this paper transaction, Exxon chose to directly control virtually all of the subsidiary's policy determinations and operating structure in order to achieve its goals. In fact, Exxon's control was so pervasive, that, for example, it paid cash bonuses to the managers of Exxon Shipping without the knowledge or approval of the chief executive officer of Exxon Shipping. Exxon treated Exxon

Shipping as if it was another internal department of Exxon. In these circumstances, Exxon is liable for the conduct of Exxon Shipping and its officers and employees which resulted in the criminal violations charged in the indictment.

COUNT ONE

Request 1:1

1. The agent of Exxon that negligently caused the discharge of pollutants from the Exxon Valdez was Exxon Shipping through the cumulative conduct of its officers and employees, subagents of Exxon, including, but not limited to, the following persons:

- a. Joseph J. Hazelwood, Master
- b. Gregory T. Cousins, Third Mate
- c. Robert M. Kagan, Able Seaman
- d. Frank J. Iarossi, President
- e. Daniel J. Paul, Human Resources Manager
- f. Benjamin C. Graves, Administrative Manager
- g. John Tompkins, Gulf Coast Fleet Manager
- h. Dwight Koops, Gulf Coast Fleet Manager
- i. William Sheehy, Port Captain
- j. Harvey Borgen, West Coast Fleet Manager
- k. Paul Myers, Ship Group Coordinator
- l. Joseph McDermott, Fleet Manning Coordinator
- m. David K. Walker, Labor Relations Coordinator

The conduct of Hazelwood, Cousins, and Kagan is described in the government's voluntary particulars of April

18, 1990. The cumulative conduct of Iarossi, Paul, Graves, Tompkins, Koops, Sheehy, Borgen, and Myers was their failure to adequately assess and monitor Hazelwood's fitness to serve as master of a tanker from 1985 through March 24, 1989. The cumulative conduct of Paul, McDermott, and Walker was their action in assigning Kagan to serve as an able seaman, despite their awareness of evidence that Kagan was not competent to serve in that capacity.

2. The central facts that form the basis of the charge that Exxon Shipping was an agent of Exxon with respect to all counts of the indictment are as follows:

The Exxon Valdez Spill

a. On March 24, 1989, the Exxon Valdez, a tanker displaying the Exxon logo and purchased with loans underwritten by Exxon, carrying oil owned by Exxon which had been transported from the North Slope of Alaska through a pipeline partly owned by Exxon, bound for an Exxon-owned refinery, and destined to be distributed and marketed by Exxon, ran aground on Bligh Reef in Prince William Sound, spilling in excess of ten million gallons of oil. On April 3, 1989, William D. Stevens, a Vice-president of Exxon and President of Exxon USA, a division of Exxon, stated:

But, I think those of us in the management of Exxon do and must fully accept that it was our ship, its our oil in the water, and it was our employees who were involved. We take full responsibility not only for

what happened but for dealing with the consequences of what happened.

Overall Characteristics of the Relationship
Between Exxon and Exxon Shipping

b. Exxon is a vertically integrated natural-resources company whose "principal business is energy, involving exploration for, and production of, crude oil and natural gas, manufacturing of petroleum products, and transportation and sale of crude oil, natural gas and petroleum products" (Exxon Corporation 1989 Annual Report, inside cover page). Exxon, including its affiliates and subsidiaries, has more than 100,000 employees operating in 79 countries. Exxon Shipping is a wholly owned subsidiary of Exxon that provides domestic marine transportation for Exxon. Exxon Shipping has about 1000 employees.

Exxon's Internal Reorganization of Its
Domestic Marine-Transportation Function

c. Until July 1, 1982, Exxon conducted its domestic marine transportation by means of an internal administrative unit, the Marine Department. The Exxon Marine Department operated as an integral part of Exxon's vertically integrated petroleum business.

On July 1, 1982, Exxon, for the purpose of reducing its federal tax liability by taking advantage of certain foreign tax credits, transferred the operations of its Marine Department and the Exxon assets used therein to

Exxon Shipping, a previously inactive, wholly owned subsidiary without any assets. Exxon Shipping had been formed in March 1973, in the mistaken belief that it would allow Exxon-owned United States flag vessels to obtain subsidies for the carriage of Russian grain. Exxon Shipping was an empty, inactive subsidiary until the activities, personnel, and assets of the Marine Department were transferred to it in July 1982.

Prior to that date, the Marine Department, as an administrative unit of Exxon, was fully subject to Exxon's policy direction and operational control. Following Exxon's transfer of the Marine Division's assets to Exxon Shipping, the operating relationship between Exxon and its marine-transportation unit remained unchanged: the Marine Department, now under the title of Exxon Shipping, remained fully subject to Exxon's policy direction and operational control. Exxon Shipping remained in the same offices that housed the Marine Department in the Exxon USA headquarters building. Exxon Shipping's employees were the same as the Marine Department's. An Exxon Shipping manager stated in response to a question about whether the day-to-day operations of the Marine Department changed after it became Exxon Shipping: "Not really. Changed the letterhead. That was about it, I guess." Many of the employees of Exxon Shipping, whose conduct will be in issue in this case, had previously worked for Exxon Corporation.

d. Exxon selected the officers of its now-activated subsidiary, it named an Exxon Senior Vice President, who until then had been the Executive-in-Charge of the Marine Department, as the Exxon official responsible in overseeing the activities of Exxon Shipping. The structure of Exxon Shipping was identical to the structure of the Marine Department, with one exception: Exxon Shipping had a Board of Directors. This difference, however, was purely formal. However, under Exxon's system of operational control, Exxon Shipping's Board of Directors could take no significant action without first obtaining Exxon's approval.

As of July 1, 1982, and at all other times material to the indictment, Exxon conducted its domestic marine transportation by means of Exxon Shipping. Just as was true of the Exxon Marine Department, Exxon Shipping had no function other than to operate as an integral part of Exxon's vertically integrated petroleum business.

The Business Activities of Exxon Shipping

e. Exxon Shipping never conducted an independent business. Exxon Shipping existed as an active entity only to serve Exxon's need for domestic marine transportation and was run solely for the benefit of Exxon. Exxon Shipping transferred all the revenues it earned to Exxon after first getting Exxon's approval for declaring a dividend. In every operating fashion, Exxon treated Exxon Shipping's business as Exxon's own, as though it were still the Marine

Department.

Exxon Shipping was responsible for meeting all of Exxon's domestic requirements for marine transportation. Exxon Shipping's capacity, at Exxon's direction, increased when Exxon's requirements increased, and decreased when Exxon's requirements declined. Exxon Shipping billed Exxon for marine transportation at market rates, just as the Exxon Marine Department had used market rates for billing purposes. Exxon required the use of market rates by the Marine Department and by Exxon Shipping, because of tax considerations applicable to Exxon. Before entering into a shipping contract with another Exxon affiliate, Exxon Shipping was required to obtain the endorsement of Exxon officials.

Exxon Shipping, like the Exxon Marine Department, used a small percentage of its shipping capacity for the transportation of oil for third parties. Exxon Shipping, like the Marine Department, transported such third-party oil in order to use its excess shipping capacity.

f. Exxon Shipping obtained Exxon's approval for Exxon Shipping's plans and strategy for providing coverage of Exxon's shipping requirements. In particular, Exxon Shipping obtained Exxon's approval for setting the size of the domestic fleet; for chartering ships from other companies; for purchasing ships; for constructing ships; for selling or otherwise disposing of ships; for converting a

ship to a different kind of shipping function; and even for extending existing charters.

The Exxon Valdez, for example, was an Exxon project. To meet Exxon's transportation requirements, Exxon Shipping, after consultation with Exxon personnel, proposed that the construction of two large vessels be considered. After Exxon approved the proposal, Exxon Shipping began preliminary development. The final decision to build the vessels, the Exxon Valdez and the Exxon Long Beach, was made by Exxon. Exxon approved the construction contract and determined and provided the financing. Upon delivery, Exxon announced that the two ships were "the largest in Exxon's U.S. flag fleet" (Exxon Corporation 1986 Annual Report, p. 13).

g. Exxon Shipping depended on Exxon for the financing essential to Exxon Shipping's business. For its largest capital investments, Exxon Shipping obtained funds from sources outside of Exxon, but depended on Exxon's unconditional loan guarantees to obtain those funds at a favorable rate. For its smaller capital expenditures, Exxon Shipping acquired the funds directly from Exxon. Exxon also provided Exxon Shipping with insurance coverage.

h. Exxon Shipping depended on Exxon for essential administrative support services, including such services as accounting, financial, banking, corporate planning, computer and telecommunications, employee relations, public affairs,

medical, purchasing, tax, legal, and risk management. The operations of Exxon Shipping were subject to audit by Exxon. Exxon personnel acted on behalf of Exxon Shipping with respect to purchasing and disposal of vehicles. Exxon Shipping could not even purchase a car except in accordance with specific Exxon automobile guidelines.

Exxon had provided these services to its Marine Department and simply continued to provide them to Exxon Shipping. Exxon's provision of these services thus reflected the continuation of Exxon's system of management control.

Exxon allocated the costs of these services against Exxon Shipping's budget as it saw fit, in the same manner and proportion as it had allocated overhead costs against the budget of the Marine Department. Exxon Shipping sometimes complained about the costs it was being charged, but it never succeeded in changing Exxon's billing. For example, Exxon Shipping objected to the allocation for medical services, because it was billed for all its employees on a per capita basis even though its seagoing employees were not covered. Exxon Shipping never won this argument.

Exxon's System of Policy Direction and Control

i. Exxon has an established system of policy direction and control over its entire business enterprise. This system is outlined in Exxon's manuals: the Exxon System of

Management Control--Basic Standards and the Exxon Capital Budget Manual. These documents were binding on each Exxon division and affiliate, including Exxon Shipping.

In accordance with Exxon's system of management control, Exxon Shipping was required, among other things, to adopt policies that were consistent with Exxon's policies; to adopt a Delegation of Authority Guide, approved by Exxon, covering all areas of Exxon Shipping's business activity; and, as part of Exxon's capital-budget process, to prepare capital and related budgets and expenditure forecasts for review and approval by Exxon.

Exxon Shipping's Policy Manual

j. Upon its activation in 1982, Exxon Shipping adopted existing Exxon policies. In 1984, Exxon Shipping issued a separate Policy Manual, after first submitting it for Exxon's review and approval. This Manual contained a number of policies specifically required by Exxon. One was the policy on conflict of interest, which, for purposes of determining the existence of conflicts, included Exxon affiliates within its scope. Exxon Shipping obtained Exxon's approval before applying this policy to particular cases. The Policy Manual also contained the Exxon Marine Gratuity and Hospitality Policy, an Exxon policy establishing uniform guidelines for all Exxon marine affiliates worldwide.

Exxon Shipping's Policy Manual also contained

Exxon's alcoholism policy. When Exxon revised this policy to include drugs in 1987, all Exxon affiliates were required to adopt it, and Exxon Shipping did so. After the Exxon Valdez spill, Exxon revised this policy further: "We revised the procedures concerning any employee substance abuse to require random testing of employees in designated safety-sensitive positions, such as . . . tanker officers . . ." (Exxon Corporation 1989 Annual Report, p. 3). Exxon imposed the revised policy on all Exxon divisions and affiliates, including Exxon Shipping.

Exxon Shipping's Delegation of Authority Guide

k. On its first day as an active entity, Exxon Shipping adopted the Exxon Marine Department's Delegation of Authority Guide, with the difference that Exxon Shipping's Board of Directors became the highest authority specified in the Guide. In situations where the Guide gave the Board of Directors such authority, however, the Board was required, before acting, to obtain approval from Exxon.

Exxon Shipping subsequently issued its own Delegation of Authority Guide. Before doing so, Exxon Shipping submitted the Guide to Exxon for approval, which Exxon gave. At various times thereafter, Exxon Shipping revised its Guide. Exxon Shipping obtained Exxon's approval for each such revision.

The Exxon System of Management Control--Basic Standards sets forth requirements that Exxon Shipping's

Delegation of Authority Guide was required to meet. For each action or type of transaction, Exxon Shipping's Guide was required to specify, consistently with Exxon guidelines, the requirements for final approval of each such action. The Guide was also required to specify the officials and functions whose endorsement, evaluation, and consultation were required before the final approval of each such action.

1. Exxon Shipping's Delegation of Authority Guide complied with Exxon's requirements. For each of Exxon Shipping's activities, the Guide specified the level of final approval and the levels of prior review. For many actions, the Guide placed "final" approval in Exxon Shipping's Board of Directors. Before approving any such action, however, the Board was required to obtain approval from Exxon.

For every category of action in the Guide, Exxon Shipping was required to obtain prior review by Exxon. Thus, depending on the type of action, Exxon Shipping was required to review its proposed action with one or more of the following Exxon officials and functions: Controller Advisor, Audit Advisor, Legal Department, Tax Advisor, Treasurer Advisor, Financial Coordinator, Systems Coordinator, External Affairs Consultant, Public Affairs Advisor, Insurance Advisor, Credit Advisor, Risk Management Service, Risk President.

Budget and Operations Reviews

m. Exxon Shipping was required to establish a system for business planning, performance monitoring, and stewardship, consistent with Exxon's requirements. Twice each year, as the Exxon Marine Department had done, Exxon Shipping was required to make a full-scale presentation on its business activities to Exxon.

In the spring of each year, Exxon Shipping, just like other Exxon components, made a Financial and Operating presentation to Exxon. In this presentation, Exxon Shipping reported on its performance during the previous year and whether it had met the projections and forecasts in this company plan. In the fall of each year, Exxon Shipping, just like other Exxon departments, made a Planning and Budget presentation to Exxon. In this presentation, Exxon Shipping submitted its proposed budget for approval and its company plan for integration into the company plan of the Exxon division to which Exxon Shipping directly reported.

Each year, Exxon Shipping was required to obtain Exxon's approval of Exxon Shipping's capital budget. It was also required to obtain Exxon's approval for modifications in the capital budget during the year.

Lawsuits

n. Exxon Shipping was involved in various lawsuits and legal disputes. Thus, Exxon Shipping's Board of Directors authorized suit for defective repairs on a ship; approved settlements in several suits brought by employees or their

heirs for injury or wrongful death; approved settlements in ship-casualty cases; authorized the initiation of criminal prosecution for theft by an employee and fraud by a contractor; and authorized settlement of disputes about repair work on the Exxon Valdez and the Exxon Long Beach. In each case, Exxon Shipping's Delegation of Authority Guide required the company to obtain Exxon's prior approval.

Personnel

o. Exxon established a unified salary system for the entire Exxon organization, including Exxon Shipping. Thus, the salary of every Exxon Shipping shoreside employee, including the officers and managers, is set by Exxon. Exxon Shipping had no authority to depart from Exxon's salary system in any way.

The salaries of the ship employees were outside Exxon's unified salary system. As to the seamen, Exxon Shipping engaged in collective bargaining with their union. Even for its bargaining positions, however, Exxon Shipping obtained Exxon's review and approval. For the fleet officers, Exxon Shipping obtained Exxon's approval of a specific compensation program.

p. Each year, Exxon approved the slate of officers of Exxon Shipping before the officers were elected by Exxon Shipping's Board of Directors. Exxon also selected or approved the managers of Exxon Shipping. Exxon did not permit Exxon Shipping to hire its managers from outside the

Exxon organization.

In accordance with Exxon's management-development program, Exxon assigned and transferred management personnel between Exxon Shipping and other Exxon entities.

q. Exxon has an established management-incentive program under which Exxon, at its discretion, pays cash bonuses and awards stock options in Exxon stock to the top executives of Exxon components, including Exxon Shipping. As part of this program, the President of Exxon Shipping rank-ordered its management personnel each year. Exxon then gave, each year, cash bonuses and stock options in Exxon stock to some of these Exxon Shipping personnel. Exxon never informed the President of Exxon Shipping of the amounts of these annual bonuses and stock options.

r. Exxon Shipping employees participated in Exxon's employee-benefit program, which also affected the rights of Exxon Shipping employees in such matters as retirement, leaves of absence, and vacations. Employees kept their Exxon benefits when they were transferred into or out of Exxon Shipping. At various times, Exxon Shipping recommended severance allowances for certain of its employees. These allowances had to be approved by Exxon.

Restructuring of Exxon Shipping in 1986

s. Exxon carried out a major administrative reorganization in 1986. As part of this process, Exxon directed the restructuring of Exxon Shipping. As a result,

the organizational structure of Exxon Shipping was changed, and its Board of Directors was reduced to one member.

Vessel Operation and Safety .

t. Exxon created a Navigation and Bridge Organization Manual, which Exxon required all of its marine affiliates to utilize. Exxon imposed this Manual on Exxon Shipping and required that it be maintained on each vessel operated by Exxon Shipping. Thus, Exxon determined the rules for the actual operation of Exxon Shipping's vessels.

Exxon Shipping's fleet officers received operational training provided by Exxon, and Exxon Shipping managers attended safety meetings with Exxon personnel.

How the Exxon-Exxon Shipping Relationship was Understood Internally

u. In a letter to all Exxon Shipping employees dated February 17, 1983, the President of Exxon Shipping reviewed its successful performance in reducing Exxon's unit-transportation costs in 1982 and passed on the appreciation of senior Exxon officials. The President of Exxon Shipping continued:

While Exxon Shipping had a very good year in 1982 and is looking forward to further improvement in 1983, the same cannot be said for the other major segments of Exxon. . . . Since 1983 does not offer Exxon . . . any improvement in demand or in oil prices, every organization within Exxon has been asked to do its

utmost to further improve productivity and to further reduce operating costs.

We find ourselves in somewhat of a paradox. The Shipping Company's performance is at record levels while most of Exxon is encountering very difficult times. While our performance is sincerely appreciated, we are being asked to tighten our collective belts and "do more with less." But the operating environment of Exxon Shipping Company cannot be separated from that of Exxon. We need to respond to the difficult period ahead for Exxon by each doing our utmost to improve productivity and reduce operating costs.

Some of the steps necessary to reduce costs will impact policies which we have come to enjoy. One such policy is first-class air travel. While it is a distinct pleasure to ride "up front," it is a pleasure which Exxon can ill afford at this particular time. So . . . Exxon Shipping Company employees will revert to tourist class for all Company-paid air travel. This is a change which most other organizations within Exxon have already implemented. We can do no less.

. . . I trust you will recognize the need for each of us to do our best to help Exxon through this difficult period. With or without first-class air travel, I'd rather work for Exxon than any other company. I hope you feel the same way and will join me

in doing all we can to help. (Emphasis Added).

3. The employees of Exxon who negligently caused or contributed to the discharge of pollutants from the Exxon Valdez included:

a. Dr. C. Hunter Montgomery and Dr. Wrendell Nealy of the Exxon USA Medical Department, and any other individuals employed in that department, the names of whom are not known to the government, who were responsible for assessing the fitness for duty of Joseph Hazelwood from 1985 through March 24, 1989.

b. W. J. Davis of the Exxon USA Law Department, and any other individuals employed in that department, the names of whom are not known to the government, who were advised in 1985 of Joseph Hazelwood's history of alcohol abuse, and who were responsible for providing Exxon Shipping with such advice as was prudent in light of that fact.

c. Any and all individuals, the names of whom are not known to the government, who were responsible for formulating and implementing policies regarding employee alcohol abuse for Exxon USA and its affiliates from 1985 through March 24, 1989.

Request 1:2

The policies promulgated by Exxon that permitted employees suffering from alcohol abuse problems to hold safety-sensitive positions were the following:

a. "Alcoholism policy" dated January 11, 1977 in memorandum from Roy L. Trusty, Secretary, Exxon USA to officers and managers of departments, divisions, regions, and refineries of Exxon Company, USA, and subsequently adopted by Exxon Shipping Company on September 28, 1984.

b. "Exxon USA Policy Statement on Employee Alcohol and Drug Use" dated February 17, 1987, adopted by Exxon Shipping on March 11, 1987.

Requests 1:3 and 1:4

The individuals to which each of these requests refers are identified in the government's answer to Request 1:1, at paragraph 3(a). Those individuals were responsible for evaluating and monitoring Joseph Hazelwood's fitness for duty, and their negligent failure to do so was a proximate cause of the discharge of oil from the Exxon Valdez in violation of the Clean Water Act.

Requests 1:5 and 1:6

The individuals to which each of these requests refers are identified in the government's answer to Request 1:1, at paragraph 3(b). Those individuals were advised in a memorandum dated May 29, 1985 from Ben C. Graves, Administrative Manager, Exxon Shipping, that Joseph Hazelwood had admitted to returning to vessels in port in an intoxicated state on several occasions, and that shipmates of Hazelwood's reported that he had violated company alcohol

policy on at least several occasions. Those individuals in the Exxon USA law department were responsible for giving Exxon Shipping such advice as would ensure that Hazelwood would not be assigned to command tankers so long as there was a risk that he continued to abuse alcohol. Their negligent failure to do so was a proximate cause of the discharge of oil from the Exxon Valdez in violation of the Clean Water Act.

Request 1:7

The facts supporting this allegation are set forth in the government's answer to Request 1:1, at paragraph 2.

Request 1:8

1. Exxon Shipping acted for the benefit of Exxon by transporting Exxon's oil at it's direction, and by performing such associated managerial activity as was necessary to accomplish that goal. The scope of this benefit is more fully set forth in the government's answer to Request 1:1, at paragraph 2.

2. Exxon Shipping while operating an oil shipping business for the benefit of Exxon, and while transporting Exxon's oil for the benefit of Exxon on March 24, 1989, negligently discharged pollutants into waters of the United States without a permit.

Request 1:9

The facts responsive to this request are set forth in the government's answer to Request 1:1, at paragraph 2.

COUNT TWO

Requests 2:1 through 2:3

Exxon's liability for Count Two rests upon the same facts as are set forth in the government's particulars with respect to Count One, except that the government will not rely upon evidence of negligence to prove Exxon's liability for the discharge of refuse into navigable waters.

COUNT THREE

Requests 3:1 through 3:3

Exxon's liability for Count Three rests upon the same facts as are set forth in the government's particulars with respect to Count One, except that the government will not rely upon evidence of negligence to show that the death of thousands of birds resulted from the Exxon Valdez spill.

COUNT FOUR

Requests 4:1 through 4:4

1. The government is not aware of the identity of any individual employee of Exxon who willfully and knowingly violated the cited regulation. Exxon Shipping, acting as Exxon's agent, and its officers and employees, acting as subagents, violated the regulation by knowingly and willfully failing to ensure that Joseph Hazelwood, Gregory Cousins, and Robert Kagan were competent to man the wheelhouse of the Exxon Valdez at the time that they did so on March 23 and 24, 1989. The facts responsive to this request are set forth in the government's answer to Request

1:1, at paragraph 1.

2. The central facts that form the basis of the charge that Exxon Shipping was the agent of Exxon are set forth in the government's response to Request 1:1, at paragraph 2.

Request 4:5

Under the Ports and Waterways Safety Act, the owner of a vessel is obligated to ensure that the wheelhouse is constantly manned by competent persons. For purposes of this statute, Exxon was an "owner" of the Exxon Valdez. Exxon was therefore responsible for assuring the proper manning of that vessel.

Prior to 1982, Exxon itself owned and operated the vessels that carried crude oil recovered from the Alaska North Slope. In 1982, for federal tax reasons having nothing to do with the competent operation of its vessels, Exxon shifted formal ownership of the vessels to its previously dormant, wholly owned subsidiary. As discussed in the government's particulars with respect to Request 1:1, at paragraph 2, the formal shift of Exxon vessels resulted in no substantive change in Exxon's policy direction and operational authority with respect to the vessels carrying Exxon's Alaskan oil. For example:

Exxon still provided all financing for the acquisition and construction of the vessels.

Exxon still approved the collective bargaining

agreement pursuant to which the vessels were staffed.

Exxon still provided insurance coverage for the vessels.

Exxon still selected and determined the compensation of the individuals who were responsible for the day-to-day management of the vessels.

Exxon still determined the rules for the actual operation of the vessels through Exxon's promulgation and imposition of the bridge and navigation manual applicable to and required by Exxon to be maintained on the bridge of each vessel.

Exxon still received the benefits of the successful operation of the vessels through the transfer to Exxon of all revenues earned through the vessels' operations.

Exxon still determined the drug and alcohol policies applicable to those operating the vessels.

Congress imposed criminal liability on a vessel's owners for failure to ensure that the vessel's wheelhouse was properly manned for the purpose of influencing the behavior of those exercising the policy direction and operational authority necessary to ensure statutory compliance. For this purpose, Exxon's mere shift of formal ownership of a vessel to a wholly owned and dominated subsidiary without also shifting substantive authority over the policy and operating decisions concerning the vessel

does not divest Exxon of its statutory obligations of ownership. To construe the statutory term "owner" otherwise would allow a criminal environmental statute to be circumvented by a corporate lawyer's manipulation of pure form.

Because Exxon retained all substantive attributes of ownership relevant to the statutory purpose, Exxon remained an "owner" of the Exxon Valdez for purposes of the Ports and Waterways Safety Act without regard to the transfer of formal attributes of ownership to a wholly owned subsidiary.

Request 4:6

Joseph Hazelwood, the master of the Exxon Valdez was an employee of Exxon Shipping and was acting for Exxon Shipping's benefit while commanding the vessel on March 23 and 24, 1989; therefore, he was Exxon Shipping's agent. Because Exxon Shipping was an agent of Exxon, Hazelwood was Exxon's subagent.

Request 4:7

The facts responsive to this request are set forth in the government's answer to Request 1:1, at paragraph 2.

COUNT FIVE

Requests 5:1 through 5:3, and 5:5

1. The government is not aware of the identity of any individual employee of Exxon who willfully and knowingly violated the cited regulation. Exxon Shipping, acting as Exxon's agent, violated the regulation by knowingly and

willfully assigning Robert Kagan to serve aboard the tank vessel Exxon Valdez as an able seaman, knowing him to be physically and mentally incapable of performing the duties of an able seaman. The facts responsive to this request are set forth in the government's answer to request 1:1, at paragraph 1.

2. The central facts that form the basis of the charge that Exxon Shipping was the agent of Exxon are set forth in the government's response to Request 1:1, at paragraph 2.

Request 6: Theories of Exxon's Liability

a. Agency

Under controlling law, a principal is criminally liable for the criminal acts of its agent committed within the scope of the agency. Agency is established by proof that one person or corporation was acting under the control of and for the benefit of another. Prior to the 1982 transfer of Exxon's domestic-shipping function from an administrative unit of Exxon to Exxon Shipping, the Exxon employees operating the Marine Department were agents of Exxon. Thereafter, Exxon Shipping and its employees became the agents and subagents, respectively, of Exxon. As was the Marine Department, Exxon Shipping was operated for the exclusive purpose of carrying out Exxon's vertically integrated energy business. As was the Marine Department, Exxon Shipping was subject to the policy direction and

operational control of Exxon.

Exxon Shipping functioned as an integral element of Exxon's complex international web of activities whose sole function was to enhance the profitability of the entire group. The comment to Section 14M of the Restatement (Second) of Agency states that "a corporation does not become the agent of another corporation merely because the other has stock control." It is the intricate commercial relationship between Exxon and Exxon Shipping, together with Exxon's pervasive exercise of operational and policy authority over Exxon Shipping, that establish Exxon Shipping as the agent of Exxon. Not all subsidiaries are the common-law agents of their parents. The exercise of the rights given shareholders by the corporation statute of the subsidiary's jurisdiction of incorporation -- the right to elect directors, to approve specified actions by the corporation, and to receive the assets of the corporation on dissolution -- does not necessarily establish an agency relationship. The law of agency characterizes the relationship and responsibilities of two parties to a relationship: a principal who sets the policies and goals of the relationship and an agent who carries out those policies and goals for the benefit of the principal. Agency is established between parent and subsidiary corporations when, as in Exxon's conduct of its vertically integrated energy business, the parent corporation chooses to directly

control virtually all of the subsidiary's policy determinations and operating structure in order to achieve the parent's goals. Of course, a parent corporation is entitled to dominate and control in every material respect the management of a wholly-owned subsidiary if it so chooses. But when a parent does so, it assumes the liabilities of a principal. By so doing with respect to Exxon Shipping, Exxon established its subsidiary as its agent and bears responsibility for its agent's criminal activities.

b. Direct Statutory Liability

Congress' goal in enacting criminal environmental legislation was to deter conduct so detrimental to the public good that it warranted the imposition of criminal rather than merely civil sanctions. Under the indictment, Exxon was charged with the violation of five such statutes. Each statute makes criminal certain activity by any "person." Because of the extent to which Exxon Shipping was a part of Exxon's integrated enterprise subject to Exxon's control, Exxon, in addition to Exxon Shipping, was a statutory "person" with respect to each of the federal criminal environmental statutes under which it is charged.

Exxon carried out its criminal activities through its wholly owned subsidiary, Exxon Shipping. The form in which Exxon chose to carry out its activities, however, is irrelevant to the goal of these statutes. By imposing the

criminal sanction, Congress sought to deter specified behavior by the "person" exercising policy direction and operational authority over the activities the statutes sought to influence. Exxon exercised that direction and authority with respect to the activities charged in the indictment. That Exxon chose to place the formal locus of those activities in a subsidiary is irrelevant for purposes of the criminal statutes' application to Exxon. While the result of operating through the formal means of a subsidiary is to subject the subsidiary independently to the criminal statutes, the utilization of a parent-subsidiary structure cannot shield Exxon from criminal liability. Because Exxon exercised the policy and operational authority the statutes seek to influence, Exxon remains a "person" under each of the statutes regardless of the formal existence of its subsidiary.

Exxon operates a vertically integrated international energy company composed of a network of divisions and wholly- or partly-owned subsidiaries. Exxon conducts its Alaskan activities itself, through an internal administrative unit. Prior to 1982, Exxon also transported its Alaskan oil itself, through another internal administrative unit, the Marine Department. Had the Valdez oil spill occurred prior to 1982, there is no question that Exxon would be the "person" whose behavior Congress sought to influence by the enactment of a criminal environmental

statutes for whose violation the grand jury indicted Exxon.

The only thing that changed after 1982 was that Exxon chose to place the activities it previously carried out itself, through its Marine Department, into a 9-year-old, previously dormant corporation. Exxon did so for reasons that had nothing whatever to do with the conduct or administration of its domestic shipping activities. Nothing of policy or operational significance changed as a result of the 1982 transfer. Shifting the operations of the Marine Department from Exxon itself to a previously dormant subsidiary occurred simply in order to reduce Exxon's federal income taxes.

The purely formal transfer to activities from Exxon to its wholly owned subsidiary as a result simply of corporate tax considerations does not insulate Exxon from criminal liability when its policy making and operational role with respect to the transferred activities was left unchanged. To construe federal environmental criminal statutes to relieve a parent of responsibility for criminal activities merely by shifting the formal locus of those activities to a subsidiary while nonetheless retaining policy making and operational authority would be to render the statutes a nullity. If criminal liability could be avoided by changing the form but not the substance of the activities of a vertically integrated enterprise, the effect would be to give every corporate lawyer a foolproof immunity

kit. Whenever such an enterprise sought future immunity from potentially criminal activity, the lawyer could simply place the activity in a wholly subservient subsidiary corporation through which the parent company could maintain the same substantive control. It is difficult to imagine a statutory construction of the term "person" more at odds with the congressional goal of deterring environmentally harmful conduct.

Because Exxon exercised policy direction and operational authority over the activities of Exxon Shipping, it is the "person" responsible for such activities within the meaning of the statutes under which Exxon was indicted.

c. Direct Criminal Liability

Finally, as set forth in greater detail in the government's voluntary particulars of April 18, 1990 and in the government's response to Request 1:1, Exxon is directly liable for the offenses charged in Counts One, Two, and Three of the indictment, through the failure of its own employees in its medical, legal, and policy-formulating departments to ensure that the Exxon Valdez was commanded by a fit master.

Conclusion

The government respectfully reserves the right to supplement this bill of particulars as additional facts become known to the government.

DATED this 31 day of July, 1990, at
Anchorage, Alaska.



MARK R. DAVIS
Assistant United States

Attorney

CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
U.S. Department of Justice

ERIC W. NAGLE
Trial Attorney
Environmental Crimes Section

MARK B. HARMON
Trial Attorney
Environmental Crimes

MARK R. DAVIS
Acting U.S. Attorney
District of Alaska
Rm. C-253 Federal Building
222 West 7th Avenue, #9
Anchorage, Alaska 99513
Phone: 907-271-5071

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No. A90-015-1CR
)	No. A90-015-2CR
Plaintiff,)	
)	CERTIFICATE OF SERVICE
)	
v.)	
)	
EXXON CORPORATION AND)	
EXXON SHIPPING COMPANY,)	
)	
Defendants.)	

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the District of Alaska and is a person of such age and discretion as to be competent to serve papers.

That on July 31, 1990, she served a copy of the attached

BILL OF PARTICULARS; STIPULATION TO PERMIT
FILING OF BILL OF PARTICULARS ON
JULY 31, 1990

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the

place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Anchorage, Alaska.

Addressee(s):

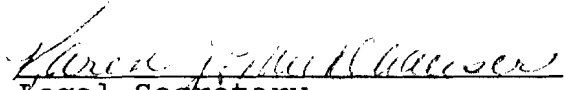
John F. Clough, III, Esq.
Clough & Associates
431 Franklin St., Suite 202
Juneau, Alaska 99801

Warren Christopher, Esq.
J. W. Bender, Esq.
Patrick Lynch, Esq.
O'Melveny & Myers
400 South Hope Street
Suite 106
Los Angeles, CA 90071

Robert C. Bundy, Esq.
Douglas J. Serdahely, Esq.
Bogle & Gates
1031 West 4th Avenue
Suite 600
Anchorage, Alaska 99501

James F. Neal, Esq.
James F. Sanders, Esq.
Neal & Harwell
2000 One Nashville Place
150 Fourth Avenue North
Nashville, TN 37219

Charles W. Matthews, Esq.
1839 Exxon Building
800 Bell Street
Houston, Texas 77002-4266


Legal Secretary