

This is the original complaint in the Aguinda case:

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and the Class

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARIA AGUINDA, CARLOS GREFA,	:	
individually and as guardians for	:	CIVIL ACTION NO.
GESICA GREFA;	:	
CATARINA AGUINDA; MERCEDES GREFA;	:	CLASS ACTION
LIDIA AGUINDA;	:	
PATRICIO CHIMBO,	:	
individually and as guardian for	:	JURY TRIAL DEMANDED
his minor children;	:	
ELIAS PIYAGUAJE, individually	:	

and as guardian for :
 LOLA PIYAGUAJE, EDISON PIYAGUAJE, :
 PAULINA PIYAGUAJE, JIMENA PIYAGUAJE: :
 and ELIAS PIYAGUAJE; :
 DELFIN PAYAGUAJO, individually :
 and as guardian for his minor :
 children; :
 JAVIER PIYAGUAJE; :
 HOMER CONDE, individually and as :
 guardian for his minor children; :
 SANTO GUILLERMO RAMIREZ, :
 individually and as guardian for :
 DANILO RAMIREZ; :
 JUANA TANGUILA, individually and :
 as guardian for her minor children; :
 [Additional Plaintiffs Listed in :
 Exhibits "B", "C" and "D" hereto :
 and incorporated herein by :
 reference], :
 individually and on behalf of all :
 others similarly situated, :
 :
 Plaintiffs, :
 :
 v. :
 :
 :
 TEXACO INC. :
 2000 West Chester Avenue :
 White Plains, New York 10650, :
 :
 Defendant. :
 :
 _____ :

COMPLAINT

Plaintiffs, Maria Aguinda, Carlos Grefa, Catarina
 Aguinda, Gesica Grefa, Mercedes Grefa, Lidia Aguinda, Patricio
 Chimbo, Elias Piyaguaje, Lola Piyaguaje, Edison Piyaguaje,
 Paulina Piyaguaje, Jimena Piyaguaje, Elias Piyaguaje, Delfin
 Payaguajo, Javier Piyaguaje, Homer Conde, Santo Guillermo

Ramirez, Danilo Ramirez, Juana Tanguila, individually and pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of all others similarly situated, bring this action to remedy the negligent, reckless, intentional and outrageous acts and omissions of defendant Texaco Inc. in connection with its oil exploration and drilling operations which have caused plaintiffs and the class to suffer property damage, personal injuries, increased risks of cancer and other diseases, and has resulted in the degradation and destruction of the environment in which plaintiffs and their families live. In support thereof, plaintiffs aver as follows:

I.

JURISDICTION AND VENUE

. This Court has jurisdiction over this action under and pursuant to 28 U.S.C. § 1332(a)(2), § 1331 and § 1350. Plaintiffs are citizens of Ecuador. Defendant is a citizen of the states of New York and Delaware. The matter in controversy for each plaintiff and for each member of the class, exclusive of interest and costs, exceeds the sum or value of \$50,000.

. Venue is proper in this district under and pursuant to 28 U.S.C. § 1391(a) and § 1391(b). Defendant has its principal place of business in this judicial district, and continuously and systematically transacts business in this district. A substantial part of the tortious acts and omissions giving rise to this Complaint took place in this judicial district. The policies, procedures and decisions relating to

oil exploration and drilling in Ecuador were set and made in New York.

II.
NATURE OF THE ACTION AND
SUMMARY OF CLAIMS

3. This is a class action brought on behalf of citizens and residents of the Amazon region of Ecuador known as the "Oriente" against Texaco Inc. ("Texaco"). Plaintiffs and the class seek compensatory and punitive damages, and equitable relief, to remedy the pollution and contamination of the plaintiffs' environment and the personal injuries and property damage caused thereby.

4. In 1964, Texaco acquired rights to explore and drill for oil in the Oriente. From approximately 1972 through 1992, Texaco drilled more than 400 oil wells in the region and extracted approximately 220,000 barrels of oil per day.

5. As more fully set forth in the "Factual Background" and "Claims for Relief" sections of this Complaint, Texaco did not use reasonable industry standards of oil extraction in the Oriente, or comply with accepted American, local or international standards of environmental safety and protection. Rather, purely for its own economic gain, Texaco deliberately ignored reasonable and safe practices and treated the pristine Amazon rain forests of the Oriente and its people as a toxic waste dump.

6. Texaco failed to pump unprocessable crude oil and toxic residues back into the wells as is the reasonable and

prudent industry practice. Instead, Texaco disposed of these toxic substances by dumping them in open pits, into the streams, rivers and wetlands, burning them in open pits without any temperature or air pollution controls, and spreading oil on the roads. Texaco designed and constructed oil pipelines without adequate safety features resulting in spills of millions of gallons of crude oil.

7. Texaco's practices of disposing of untreated crude and waste by-products into the environment has contaminated the drinking water, rivers, streams, ground water and air with dangerously high levels of such known toxins as benzene, toluene, xylene, mercury, lead and hydrocarbons, among others. Texaco's acts and omissions have resulted in the discharge of oil into the plaintiffs' environment at a rate in excess of 3,000 gallons per day for 20 years. Many times more oil has been spilled in the Oriente than was spilled in the Exxon Valdez disaster in Alaska.

8. Plaintiffs and the class they seek to represent have suffered severe personal injuries and are at an increased risk of suffering other diseases, including cancers. Their sources of potable water have been contaminated, their properties polluted, their livestock killed or made ill, and their very existence as a people jeopardized.

9. Plaintiffs seek damages under common law theories of negligence (Count I), public and private nuisance (Count II and Count III), strict liability (Count IV), medical monitoring (Count V), trespass (Count VI), and civil conspiracy (Count

VII). Plaintiffs seek damages under the Alien Tort Victims Act, 28 U.S.C. § 1350 (Count VIII). Plaintiffs also seek equitable relief (Count IX).

10. Plaintiffs and the class have no means to redress these wrongs other than through this action in this Honorable Court. Texaco's activities in Ecuador were at all relevant times designed, controlled, conceived and directed by defendant Texaco Inc. through its operations in the United States. Texaco no longer does business in Ecuador.

III.

THE PARTIES

A. Plaintiffs

11. Plaintiffs are citizens and residents of the nation of Ecuador who live in the geographic area adversely affected by defendant Texaco's oil drilling and exploration activities. This region is depicted on the map attached hereto as Exhibit "A" and incorporated herein by reference. Some of the plaintiffs are indigenous to this region. Others have immigrated from other parts of Ecuador, all as more fully set forth below. All plaintiffs have been exposed to toxic substances as a direct result of defendant's tortious conduct and have or will suffer property damage, personal injuries, and increased risks of disease including cancer.

12. Plaintiff, Maria Aguinda, is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156.

She is married with children and suffers from illnesses including body growths directly related to oil contamination. She is also at an increased risk of developing cancer. The only water available to her for drinking is water that she collects from the rain as all the rivers, springs and wetlands in the vicinity of her home have been contaminated with toxic crude oil. Furthermore, she is constantly subjected to chemical poisoning as she must wash her feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging her respiratory system. She is a Quichua Indian.

13. Plaintiff, Carlos Grefa, is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. He is married with children and suffers from illnesses directly related to oil contamination. He is also at an increased risk of developing cancer. The only water available to him for drinking is water that he collects from the rain as all the rivers, springs and wetlands in the vicinity of his home have been contaminated with toxic crude oil. Furthermore, he is constantly subjected to chemical poisoning as he must wash his feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to

the constant spreading of crude oil on the roads, he is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging his respiratory system. He is a Quichua Indian.

14. Plaintiffs, Carlos Grefa and Maria Aguinda also sue as guardians of their minor child Gesica Grefa. Gesica Grefa, is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. She suffers from illnesses including body growths directly related to oil contamination. She is also at an increased risk of developing cancer. The only water available to her for drinking is water that she collects from the rain as all the rivers, springs and wetlands in the vicinity of her home have been contaminated with toxic crude oil. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging her respiratory system. She is a Quichua Indian.

15. Plaintiff, Catarina Aguinda, is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. She suffers from illnesses including body growths directly related to oil contamination. She is also at an increased risk of developing cancer. The only water available to her for drinking is water that she collects from the rain as all the rivers, springs and wetlands in the vicinity of her home have

been contaminated with toxic crude oil. Furthermore, she is constantly subjected to chemical poisoning as she must wash her feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging her respiratory system. She is a Quichua Indian.

16. Plaintiff, Mercedes Grefa is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. She suffers from illnesses including body growths directly related to oil contamination. She is also at an increased risk of developing cancer. The only water available to her for drinking is water that she collects from the rain as all the rivers, springs and wetlands in the vicinity of her home have been contaminated with toxic crude oil. Furthermore, she is constantly subjected to chemical poisoning as she must wash her feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging her respiratory system. She is a Quichua Indian.

17. Plaintiff, Lidia Aguinda is a resident of the

rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. She suffers from illnesses including body growths directly related to oil contamination. She is also at an increased risk of developing cancer. The only water available to her for drinking is water that she collects from the rain as all the rivers, springs and wetlands in the vicinity of her home have been contaminated with toxic crude oil. Furthermore, she is constantly subjected to chemical poisoning as she must wash her feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging her respiratory system. She is a Quichua Indian.

18. Plaintiff, Patricio Chimbo is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. He sues on his own behalf and as guardian of his minor children. He and his family suffer from illnesses including body growths directly related to oil contamination. They are at an increased risk of developing cancer. The only water available to him and his children for drinking is water that he collects from the rain as all the rivers, springs and wetlands in the vicinity of his home have been contaminated with toxic crude oil. He owns a farm from which he derived his living. In the past few years

all his animals have died from drinking the water of the contaminated streams and he has been forced to stop raising cows, goats and chickens. Furthermore, he is constantly subjected to chemical poisoning as he and his wife and his children must wash their feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, he and his family are subjected to inhalation of heavy levels of dust particles covered with oil that are damaging their respiratory system. He, his wife and his family are Quichua Indians.

19. Plaintiffs named above and other plaintiffs named in Exhibit "B" are all similarly situated and all are bringing this Complaint on their behalf and the behalf of all other Quichua Indians similarly situated as well as members of other indigenous communities similarly situated, all residing in the region of Ecuador that comprises the area surrounded on the North by the Ecuadorian frontier with Colombia, on the South by the Parallel at 1.5 degrees south of the Equator, on the West by the Meridian located at 77.5 degrees West of Greenwich England, and on the East by the 76th Meridian West by Greenwich England. For the convenience of the Court and parties, the plaintiffs named in this Complaint who are Quichua and Cofan Indians similarly situated to the plaintiffs are listed in alphabetical order in Exhibit "B" which is incorporated into this Complaint as if set forth fully herein.

20. Plaintiff, Elias Piyaguaje, is a resident of San Pablo de Aguarico in the Province of Sucumbios, in Ecuador Amazonian lands. His land is located in the rain forest in the vicinity of the Aguarico River and the town of Shusufundi. He sues on his own behalf and as guardian for his minor children, Lola who is eighteen years old; Edison, who is fifteen years old; Paulina, who is ten years old; Jimena who is seven years old and Elias who is five months old. Plaintiff Piyaguaje and his family suffer from illnesses caused by oil contamination of their air, ground and water sources. Defendant has contaminated the river from which he and his family derived their sustenance to a degree that has practically eliminated fish from his diet and the diet of his wife and children. All the waters previously used by him and his family for drinking and bathing are contaminated with crude oil and they are forced to drink and bathe only in rain water collected in barrels. Even this rain water, however, has been determined to be contaminated with Polycyclic Aromatic Hydrocarbons a carcinogenic by-product of oil contamination. They are also at an increased risk of developing cancer. He and his family can no longer swim in the rivers, as is the Sekoya's ancient tradition, to cool from the tropical heat during the day or to warm from the coolness of the Amazon nights at sun rise, due to the high levels of oil contamination of the river waters. He and his family's way of life has been dramatically changed due to the oil contamination including their culture, their diet and other ancient traditions. He and his family are Sekoya Indians.

21. Plaintiff, Delfin Payaguajo, is a resident of San Pablo de Aguarico in the Province of Sucumbios, in Ecuador Amazonian lands. His land is located in the rain forest in the vicinity of the Aguarico River and the town of Shusufundi. He sues on his own behalf and as guardian for his minor children. He and his family suffer from illnesses caused by oil contamination of their water sources. Defendant has contaminated the river from which he and his family derived their sustenance to a degree that has practically eliminated fish from his diet and the diet of his family. All the waters previously used by him and his family for drinking and bathing are contaminated with oil crude and they are forced to drink and bathe only in rain water collected in barrels. Even this rain water, however, has been determined to be contaminated with Polycyclic Aromatic Hydrocarbons a carcinogenic by-product of oil contamination. They are also at an increased risk of developing cancer. He and his family can no longer swim in the rivers, as is the Sekoya's ancient tradition, to cool from the tropical heat during the day or to warm from the coolness of the Amazon nights at sun rise, due to the high levels of oil contamination of the river waters. He and his family's way of life has been dramatically changed due to the oil contamination including their culture, their diet and other ancient traditions. He and his family are Sekoya Indians.

22. Plaintiff, Javier Piyaguaje is a resident of San Pablo de Aguarico in the Province of Sucumbios, in Ecuador Amazonian lands. His land is located in the rain forest in the

vicinity of the Aguarico River and the town of Shusufundi. He suffers from illnesses caused by oil contamination of his water sources. Defendant has contaminated the river from which he derived his sustenance to a degree that has practically eliminated fish from his diet. All the waters previously used by him for drinking and bathing are contaminated with crude oil and he is forced to drink and bathe only in rain water collected in barrels. Even this rain water, however, has been determined to be contaminated with Polycyclic Aromatic Hydrocarbons a carcinogenic by-product of oil contamination. He is also at an increased risk of developing cancer. He can no longer swim in the rivers, as is the Sekoya's ancient tradition, to cool from the tropical heat during the day or to warm from the coolness of the Amazon nights at sun rise, due to the high levels of oil contamination of the river waters. His way of life has been dramatically changed due to the oil contamination including his culture, his diet and other ancient traditions. He is a Sekoya Indian.

23. Plaintiffs named above and other plaintiffs named in Exhibit "C" are all similarly situated and all are bringing this Complaint on their own behalf and on behalf of all other Sekoya Indians similarly situated as well as members of other indigenous communities similarly situated, all residing in the region of Ecuador that comprises the area surrounded on the North by the Ecuadorian frontier with Colombia, on the South by the Parallel at 1.5 degrees south of the Equator, on the West by the Meridian located at 77.5 degrees West of Greenwich England,

and on the East by the 76th Meridian West by Greenwich England. For the convenience of the Court and parties, the plaintiffs named in this Complaint who are Sekoya Indians similarly situated to the plaintiffs are listed in alphabetical order in Exhibit "C", which is incorporated into this Complaint as if set forth fully herein.

24. Plaintiff, Homer Conde is a thirty year old resident of land located adjacent to the road South of Coca, Ecuador, near a marking denoting kilometer 128. Homer Conde moved to this land in 1984 with his family. He is bringing this law suit on his behalf and as guardian of his minor children. In 1986, defendant opened an oil well near his home and the lake behind his home which is on his property became contaminated. Conde and his family suffer from illnesses related to drinking and bathing in water contaminated with crude oil. They are also at an increased risk of developing cancer. Defendant has since 1986 ruined all sources of water in the vicinity of plaintiff's home. His cows have suffered spontaneous abortions after drinking the contaminated water of the streams. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, he and his children are subjected to inhalation of heavy levels of dust particles covered with oil that are damaging their respiratory systems. He is an immigrant to this region of the Amazon.

25. Plaintiff, Santo Guillermo Ramirez is a resident of land located adjacent to the road south of Coca, Ecuador, near a marking denoting kilometer 143. He brings this law suit

on his behalf and as guardian of his minor child. His child, Danilo, suffers from body growths directly attributable to the water contamination of the region with oil crude. Santo Guillermo Ramirez also suffers from illnesses related to the contamination of the water of the region with crude oil. All the fish in the stream that passes through his property have died from the oil contamination. They are also at an increased risk of developing cancer. Whenever it rains, the oil that is constantly being discarded by spreading the same on the roads washes on the land owned by Ramirez and his family making it impossible for Danilo, Santo Guillermo or other inhabitants of the region not to be exposed and contaminated daily with toxic crude oil. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, they are subjected to inhalation of heavy levels of dust particles covered with oil that are damaging his respiratory system. Ramirez and his family are immigrants to this region of the Amazon.

26. Plaintiff Juana Tanguila is a resident of the Pimampiro Community located near La Joya de los Sachas, in Sucumbios, Ecuador. Juana moved to Pimampiro twenty years ago with her family. Her husband died five years ago and she is the head of a household composed of herself and her children. She and her children suffer from many illnesses related to the contamination of the river near their home with crude oil including but not limited to: growths on their bodies, fevers, migraine headaches, and corporal pains. They are also at an

increased risk of developing cancer. In addition, her married daughter, Fabiola, who resides with her, suffered a spontaneous abortion after bathing in the river on a day when the oil contamination was particularly heavy. She and her family are limited to drinking rain water that is collected in barrels during the rainy season. During the dry season they are forced to drink the water from the heavily contaminated river. The river water contains high levels of Polycyclic Aromatic Hydrocarbons at levels capable of causing cancers in those who drink the water. She and her family have also attempted to draw water from a small well on the ground to avoid the oil contamination and have reason to believe that the water from this shallow well is also contaminated from the oil spread on the roads and the contamination of the ground water caused by oil spilling from the oil lagoons created by defendant to dispose of unmarketable and toxic crude. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she and her family are subjected to inhalation of heavy levels of dust particles covered with oil that are damaging their respiratory systems. She and her family are immigrants to this region of the Amazon.

27. Plaintiffs named above and other plaintiffs named in Exhibit "D" are all similarly situated and all are bringing this Complaint on their behalf and the behalf of all other immigrants to this region of the Amazon who are similarly situated. All plaintiffs named above and those named in Exhibit "D" as well as all other plaintiff members of the class reside

in the region of Ecuador that comprises the area surrounded on the North by the Ecuadorian frontier with Colombia, on the South by the Parallel at 1.5 degrees south of the Equator, on the West by the Meridian located at 77.5 degrees West of Greenwich England, and on the East by the 76th Meridian West by Greenwich England. For the convenience of the Court and parties, the plaintiffs named in this Complaint who are immigrants to the region are listed in alphabetical order in Exhibit "D" which is incorporated into this Complaint as if set forth fully herein.

B. Defendant

28. Defendant, Texaco Inc. is a Delaware Corporation, with its principal place of business at 2000 West Chester Avenue, White Plains, New York 10650. Texaco is a vertically integrated enterprise engaged in the exploration, extraction, production, transportation, refining, distributing and marketing of oil, natural gas and petroleum products worldwide. Texaco operated oil exploration, drilling and crude transportation activities in the Oriente region of Ecuador, which activities were directed, designed, controlled and conceived by defendant in the United States.

IV.

CLASS ACTION ALLEGATIONS

29. Plaintiffs bring this action individually, and

pursuant to Rule 23(a) and 23 (b)(3), on behalf of the following class:

All individuals who at any time from 1972 to the present reside in the region of Ecuador comprised by the area bounded on the North by Colombia, on the South by the Parallel at 1.5 degrees south of the Equator, on the West by the Meridian located at 77.5 degrees West of Greenwich England and on the East by the 76th Meridian West of Greenwich England.

30. The class is so numerous that joinder of all members is impracticable. Plaintiffs believe there are at least 30,000 members of the class.

31. There are questions of law and fact common to the class.

32. Plaintiffs' claims are typical of the claims of the class. Plaintiffs seek redress for the same conduct which has affected all class members and press legal claims which are the same for all class members.

33. Plaintiffs will fairly and adequately represent the class. Plaintiffs do not have any conflicts of interest with the members of the class and they have retained counsel who are experienced in complex litigation, including class actions, who will vigorously prosecute this action.

34. Common questions of law and fact predominate over any individual issues. Such common questions include, but are not limited to, the following:

a) the policies, procedures and guidelines used by defendant in exploring and drilling for oil;

b) the policies, procedures and guidelines used by defendant in handling and disposing of crude oil and waste by-products of oil exploring and drilling;

c) the technological suitability of defendant's exploration and drilling practices;

d) whether defendant's exploration, drilling and disposal practices were negligent;

e) whether defendant's exploration, drilling and disposal practices constitute intentional malfeasance;

f) the policies, procedures and guidelines used by defendant in transporting oil;

g) whether defendant's conduct in transporting oil was negligent;

h) whether defendant's design, construction and maintenance of oil pipelines in the Oriente was negligent;

i) whether defendant's design, construction and maintenance of oil pipelines in the Oriente constituted intentional malfeasance;

j) whether the region defined in the class definition has been contaminated with crude oil as a result of defendant's activities and the extent of such contamination;

k) whether the region defined in the class definition has been contaminated with by-products, wastes, chemicals and other toxins as a result of defendant's activities, and the extent of such contamination;

l) whether the pollutants which defendant has discharged into the environment are toxic;

- m) whether defendant's conduct constitutes a nuisance;
- n) whether the class should receive medical monitoring;
- o) whether defendant is liable for compensatory damages and the measure of such damages;
- p) whether the defendant's conduct was wanton and outrageous;
- q) whether defendant is liable for punitive damages and the amount of such damages, and
- r) whether the class is entitled to equitable relief.

35. A class action is the superior method for adjudication of this controversy. In the absence of a class action, the courts will be unnecessarily burdened with multiple, duplicative individual actions. Moreover, if a class is not certified, many meritorious claims will go unredressed as the individual class members are not able to prosecute complex litigation against a large, multi-national corporation.

V.

FACTUAL BACKGROUND

36. The region of Ecuador in which plaintiffs and the class reside contains some of the most ecologically diverse tropical rain forests in the world. This region, known as the

Oriente, lies in the Eastern half of Ecuador, on the downward slope of the Andes Mountains.

37. The Oriente rain forests lie at the head waters of the Amazon river system, and are vital to the flood control of the entire river. The rain forests regulate the climate not only of the Oriente region, but indeed, contribute to climate conditions throughout the world. It is well accepted that destruction of the tropical rain forests contributes to global warming, a major environmental problem with potentially disastrous effects for the entire planet.

38. Approximately eight groups of indigenous people live in the Oriente. These people have lived for centuries in the rain forests and depend on them for their livelihoods and their very existence. While of general concern to everyone, Texaco's destruction of the rain forests already has caused physical injury to plaintiffs and the class and continues to threaten their health, way of life, and very survival as a people.

39. In or about 1964, defendant Texaco began oil exploration and drilling activities in the Oriente region of Ecuador. Texaco's activities as described herein have devastated the rain forests of the Oriente and the health of the people who live there.

40. Texaco's activities led to the discovery of many oil fields. Eventually, these fields would, according to Texaco, produce at their peak 220,000 barrels of crude oil per day, from over 400 wells.

41. In 1972, Texaco completed construction of a 500 kilometer oil pipeline which it designed. Texaco also designed and constructed numerous subsidiary pipelines. These pipelines have had repeated ruptures, leaks and discharges of oil causing damage to the plaintiffs and the class.

42. Texaco directly operated oil facilities in Ecuador up to July, 1990. From July 1990 through 1992, Texaco remained involved in the operation of these facilities.

43. Texaco's acts and omissions have inflicted damage on the people and environment of the Oriente of outrageous proportions. In conducting its oil exploration, drilling and transportation activities, Texaco failed to exercise due care, failed to abide by industry standards, failed to follow accepted international rules and standards, and failed to follow its own stated guidelines which it contends were used in Ecuador. Instead, Texaco acted with callous disregard for the health, well being and safety of plaintiffs and the class. For example:

(a) Texaco's exploratory drilling practices generate waste products which contain toxic substances. Rather than contain these wastes, or dispose of them in environmentally sound ways, these wastes were discharged into open pits. The pits would overflow, allowing these toxins to discharge into streams, rivers and groundwater from which plaintiffs and the class obtain drinking water and food;

(b) Texaco also burned off the waste oil products in the open pits or lagoons without sound or prudent temperature or air pollution controls. As the result, the air

plaintiffs and the class breath is contaminated with toxic particles;

(c) Defendant has also placed these wastes in crude "landfills," without proper linings or capping. As a result, the toxins leak and are discharged from these "landfills";

(d) The problems identified in subparagraphs (a) - (c) above in connection with exploratory drilling were repeated and exacerbated with production drilling. Large quantities of toxic wastes are generated and discharged, untreated, into the open pits, burned off in an unsafe manner, or "landfilled";

(e) In addition to the waste products, crude oil itself is highly toxic. Through the negligent, reckless and intentional practices of defendant, crude oil has been repeatedly spilled and discharged in the Oriente. Streams and rivers in the region are black with untreated, discharged crude oil. Aquatic life in the streams has been destroyed;

(f) Defendant intentionally disposed of oil on the roads in the Oriente. Plaintiffs and the class have their bodies and vehicles covered with this oil and are constantly exposed to dust covered with the oil;

(g) The major pipeline designed, constructed, maintained and operated by Texaco has repeatedly ruptured and leaked. The Ecuadorian government estimates that 16.8 million gallons of oil have spilled from the pipeline. That is approximately 6 million gallons more than was spilled in the

Exxon Valdez oil spill. The pipeline was negligently designed and constructed by defendant with an inadequate number of shut-off valves, so that when a rupture occurs, oil will flow unchecked for days. Various secondary pipelines were also constructed without due care in light of the unique topography of the land resulting in the discharge of oil into the environment;

(h) The defendant failed to have equipment for cleaning up oil spills available. Accordingly, no effort was made by defendant to clean up spills from the pipelines;

(i) The defendant never warned plaintiffs and the class of the dangers of exposure to oil and the by-products of oil drilling.

44. The defiling of the Oriente has had grave consequences for plaintiffs and the class. The waste products discharged in open pits typically contain such toxins as arsenic, lead, mercury, benzene, naphthalene and other hydrocarbons. These substances are toxic to animals and humans and are known or suspected carcinogens.

45. These heavy metals, hydrocarbons and other substances bioaccumulate in the environment and in the food chain.

46. Plaintiffs and the class continuously ingest these substances through dermal contact, breathing the polluted air, drinking polluted water and eating fish and other foods contaminated with these substances.

47. Oil discharge is so prevalent that the dirt roads

in the region are covered with oil. Texaco also intentionally dumped oil on the dirt roadways. In the dry season, oil laden dust "storms" further expose the class to these poisons. The plaintiffs and the class members frequently become covered with oil, particularly on their feet and are forced to apply gasoline to their bodies as a solvent to remove the oil. Similarly, vehicles become heavily coated with oily dust so that they can only be cleaned with gasoline.

48. The streams, rivers, lakes and aquifers of the Oriente have become so contaminated with oil and oil by-products that the water is unsuitable for drinking. Testing of the water has revealed the presence of hydrocarbons and other carcinogens at levels many times higher than EPA's recommended safety levels.

49. Recently, testing of rain water has revealed that even the rain water contains dangerous levels of toxic substances attributable to oil exploration and production. As a result, plaintiffs and the class have no source of safe water for drinking, cooking or bathing.

50. Plaintiffs and the class members have been exposed to toxic substances from at least the early 1970's or the length of their lives, whichever is shorter. Plaintiffs have suffered physical injuries, including rashes, skin irritations, cancers, emotional distress and other ailments as a direct result of this exposure.

51. Plaintiffs and the class are at a significantly increased risk of developing cancer as a result of their

exposure to these toxins.

52. The acts and omissions described herein were committed by defendant maliciously, intentionally, and with a flagrant disregard for the rights of plaintiffs and the class, and with actual awareness on the part of the defendant that the acts and omissions would, in reasonable probability, result in great bodily harm to plaintiffs.

VI.

CLAIMS FOR RELIEF

Count I

Negligence

53. Plaintiffs incorporate by reference paragraphs 1 through 52 of this Complaint as fully as if set forth herein.

54. Defendant owed a duty to plaintiff and the class to exercise reasonable care in conducting its oil exploration, oil drilling, pipeline construction and other activities in connection with the extraction of oil from the Oriente.

55. Defendant breached its duty of care by engaging in the negligent activity set forth above and by otherwise failing to employ safe, prudent and technologically current techniques to prevent the discharge of oil and other by-products into the environment.

56. The defendant was negligent in one, some and/or all of the following respects:

(a) In using oil drilling technology inadequate for the tropical region of the Amazon;

(b) In failing to develop proper technology to

prevent the contamination of the pristine and fragile Amazon environment with crude oil and its by-products;

(c) In failing to exercise due care in the exploration and extraction of oil;

(d) In failing to exercise due care in the design and construction of oil pipelines;

(e) In failing to prevent spills, discharges and leaks of oil and its by-products;

(f) In failing to warn the inhabitants of the region of the toxicity of crude oil and its by-products;

(g) In failing to adequately warn the immigrants to the region and the indigenous inhabitants in their respective languages of the toxicity of oil and its by-products;

(h) In failing to take reasonable precautions or exercise reasonable care to publish, adopt and enforce safe methods of disposal of unprocessable crude oil and its by-products;

(i) In failing to reveal to the inhabitants of the region tests conducted by defendant on the toxicity of the products released by defendant into the environment;

(j) In failing to test all chemical products released into the environment for adverse health effects, or to cause said products to be tested;

(k) In concealing from plaintiffs information concerning the effects of such products in humans and animals;

(l) In failing to adequately monitor the health of plaintiffs exposed to toxic crude oil or its by-products.

57. Defendant's breach of duty was wanton, outrageous, reckless and intentional. Defendant made the decision for its own economic gain to dump unprocessed oil into the environment, and thereby to expose plaintiffs and the class to toxic crude oil, and to benzene, toluene, arsenic, lead, mercury, hydrocarbons and other toxins, knowing that such substances were toxic to humans.

58. As a direct and proximate result of defendant's breaches of duty, plaintiffs and the class have suffered injuries to their persons and property. Plaintiffs and the class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count II

Public Nuisance

59. Plaintiffs incorporate by reference paragraphs 1 through 58 of this Complaint as fully as if set forth herein.

60. Defendant's conduct and the resulting contamination of the Oriente environment has created a public nuisance which endangers and will continue for many years to endanger the safety, health and comfort of a large number of persons.

61. Plaintiffs and class members have suffered special and peculiar harm of a kind different from that suffered by others, in that their health already has been injured, their properties already have been damaged and their sources of clean

water and food already have been curtailed.

62. Though it may be liable irrespective of fault, defendant's conduct was unreasonable, wanton, outrageous, reckless and intentional, and plaintiffs and the class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count III

Private Nuisance

63. Plaintiffs incorporate by reference paragraphs 1 through 62 of this Complaint as fully as if set forth herein.

64. Defendant's conduct has caused nontrespassory (as well as trespassory) invasions of plaintiffs' and class members' private use and enjoyment of their land.

65. Defendant's conduct has been unreasonable in that it has caused severe annoyance, harm, inconvenience and damage to plaintiffs' and class members' enjoyment of their private properties.

66. Though it may be liable irrespective of fault, defendant's conduct was unreasonable, wanton, outrageous, reckless and intentional, and plaintiffs and the class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count IV

Strict Liability

67. Plaintiffs incorporate by reference paragraphs 1 through 66 of this Complaint as fully as if set forth herein.

68. The technology used by defendant for extraction

of crude oil from the Oriente was designed, created and used by defendant to maximize its profits. This technology was defective and unreasonably dangerous in the following respects:

(a) The technology lead to the contamination of the waters of the region with toxic crude oil and its by-products without providing adequate warning to plaintiffs and the class in their own languages, of the health hazards associated with the exposure to crude oil and its by-products resulting from defendant's defective and unreasonably dangerous technology.

(b) The technology was defectively designed and unreasonably dangerous in that at all times alternative technology existed for extraction of oil without discarding toxic crude oil and its by-products into the environment, and without creating unreasonable health hazards to plaintiffs and the class.

(c) Defendant was in the business of extracting and selling oil, and defendant by use of unreasonably dangerous technology contaminated the environment, and this contamination is the direct cause of the damages sustained by plaintiffs and the class.

(d) Plaintiffs and the class were unaware of the dangerous propensities of crude oil and its by-products which rendered them unsafe if spilled and discarded into the environment. Plaintiffs and the class were exposed to crude oil and its by-products in manners that were reasonably anticipated by defendant. Defendant intentionally exposed plaintiffs and

the class to crude oil and its by-products by deliberately discarding oil and its by-products into the environment.

69. Plaintiffs and the class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count V

Medical Monitoring

70. Plaintiffs incorporate by reference paragraphs 1 through 69 of this Complaint as fully as if set forth herein.

71. As a result of defendant's negligent and reckless conduct, plaintiffs and the class have been significantly exposed to known hazardous substances.

72. As a result of such exposure, plaintiffs and the class are at an increased risk of contracting latent diseases, including cancers.

73. Early detection and treatment of these diseases is medically necessary and advisable.

74. Plaintiffs and the class are entitled to recover the costs of a medical monitoring program, and to recover punitive damages in amounts to be ascertained at trial.

Count VI

Trespass

75. Plaintiffs incorporate by reference paragraphs 1 through 74 of this Complaint as fully as if set forth herein.

76. Defendant's intentional and reckless acts and omissions have resulted in the discharge of oil and other pollutants onto the real property of the plaintiffs and the

class.

77. Such acts and omissions constitute a trespass upon the properties of plaintiffs and the class.

78. Plaintiffs and the class are entitled to recover compensatory and punitive damages as a result of defendant's trespass in amounts to be ascertained at trial.

Count VII

Civil Conspiracy

79. Plaintiffs incorporate by reference paragraphs 1 through 78 of this Complaint as fully as if set forth herein.

80. Defendant and its subsidiaries, affiliates and others knowingly agreed, contrived, combined, confederated, and conspired among themselves to cause plaintiffs injury, illness and disease by exposing plaintiffs to harmful crude oil. Defendant and its co-conspirators committed the above described wrongs by intentionally dumping, spilling and discharging crude oil and other toxins into the environment and by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with exposure to crude oil and its by-products.

81. In furtherance of said conspiracy, defendant performed the following overt acts, among others, and in addition to the acts and omissions described in Counts I through V which are incorporated herein by reference:

(a) For many years defendant, individually, jointly, and in conspiracy with others, has possessed medical and scientific data, literature, and test reports which clearly

indicated that Amazon crude oil and its by-products were unreasonably dangerous, hazardous, deleterious, carcinogenic, and potentially deadly;

(b) Despite the medical and scientific data, literature, and test reports by and available to defendant, defendant jointly and in conspiracy with others, fraudulently, willfully and maliciously:

(i) withheld, concealed and suppressed said medical and scientific data, literature, and test reports regarding the health risks associated with Amazon crude oil and its by-products, from plaintiffs;

(ii) caused to be released, published and disseminated literature containing information and statements regarding the risks of exposures of plaintiffs to Amazon crude oil and its by products which defendant knew were incorrect, incomplete, outdated, and mislead;

(iii) by the false and fraudulent misrepresentations, omissions, and concealments set forth above, defendant intended to induce plaintiffs to rely upon said false and fraudulent misrepresentations, omissions, and concealments and to continue to expose them to the dangers inherent in exposure by plaintiffs to crude oil and its by-products.

82. Plaintiffs and the class reasonably and in good faith relied upon the false and fraudulent representations, omissions and concealments made by defendant regarding the lack of health risks to humans of oil extraction activities as well as the lack of risk of contaminating the environment with toxic

and harmful products. Plaintiffs and the class have suffered personal injuries and property damages as a result of the tortious conduct which defendant committed in conspiracy with others.

83. As a direct and proximate result of defendant's conspiratorial acts, plaintiffs have suffered damages. Plaintiffs and the class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count VIII

Violation of 28 U.S.C. § 1350

84. Plaintiffs incorporate by reference paragraphs 1 through 83 of this Complaint as fully as if set forth herein.

85. Defendant's acts and omissions of intentionally and tortiously discharging crude oil and other toxins into the environment; in damaging the pristine rain forests of the Oriente; in destroying the streams, rivers, waterways and aquifers, and in threatening the survival of the indigenous people of the Oriente violate the law of nations, international law, worldwide industry standards and practices, as well as the laws of the United States.

86. Defendant's conduct in violation of the law of nations has caused plaintiffs and the class damages in amounts to be ascertained at trial.

Count IX

Equitable Relief

87. Plaintiffs incorporate by reference paragraphs 1 through 86 of this Complaint as fully as if set forth herein.

88. As a result of defendant's conduct, plaintiffs' properties and environment are highly contaminated with toxic substances. Plaintiffs' drinking water supplies have been contaminated with carcinogens, rendering them unsuitable for consumption.

89. In the absence of injunctive relief, plaintiffs will suffer irreparable harm. Plaintiffs do not have an adequate remedy at law.

90. Plaintiffs are entitled to equitable relief to remedy the contamination and spoliation of their properties, water supplies and environment.

DEMAND FOR JURY TRIAL

91. Plaintiffs demand trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request the Court to:

(a) determine that this case may be maintained as a class action pursuant to Rule 23 of the Fed.R.Civ.P.;

(b) enter judgment in favor of plaintiffs and the class and against defendant on all counts of the Complaint;

(c) award plaintiffs and the class compensatory and punitive damages;

(d) grant plaintiffs and the class equitable relief;

(e) award plaintiffs and the class the costs of suit,

and

(f) award plaintiffs and the class such other and further relief as the Court deems just under the circumstances.

DATED: November 3, 1993

Respectfully submitted,

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