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by Tim Sloan, AFP/Getty Images

By Joan Biskupic, USA TODAY

WASHINGTON — The Exxon Valdez crash that dumped 11 million gallons of crude oil in Prince William Sound has been vividly re-created after 19 years in submissions to the Supreme Court.

The two sides that will face each other Wednesday are arguing over whether an unprecedented \$2.5 billion punitive damages award should stand. Punitive damages are assessed on top of actual damages to punish and deter misconduct.

In court filings, the two sides dramatically recount, from their dueling vantage points, the events that led to the grounding on Bligh Reef on March 24, 1989, one of the nation's largest environmental disasters. The Alaskans who won the award have filed a DVD of pictures of the oil-thick waters and stained seals

and the voice of Valdez Capt. Joseph Hazelwood reporting the spill.

REVISITING EXXON VALDEZ: Town braces for high court hearing

This latest chapter in the Exxon Valdez saga is likely to have broad consequences for the shipping industry, for people who make their living on the water, for environmentalists and governments at all levels. The Pacific Coast Federation of Fishermen's Associations notes that dangerous substances are routinely hauled today. "The days when ships were primarily loaded with simple cargo of cotton and flour are gone," it says in a "friend of the court" brief.

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Most significantly, the case of *Exxon Shipping Co. v. Baker* comes as justices have limited juries' latitude in recent cases to impose punitive damages. Key questions test when punitive damages can be imposed against a shipowner for the captain's conduct and whether maritime precedent and the federal Clean Water Act limit such jury awards.

Exxon has paid off claims by the Alaskan and the federal government, including under the Clean Water Act, for the environmental damage. This lingering chapter revolves around commercial losses of a class of nearly 33,000 commercial fishermen, business operators and landowners, Native Alaskans and municipalities.

After an 83-day trial in 1994, a jury found Hazelwood and Exxon reckless. Evidence showed that Hazelwood, who had a record of alcohol-related problems and had been drinking before the incident, left his post on the bridge of the vessel as it faced a difficult turn. The jury awarded \$287 million in actual damages and \$5 billion in punitive damages. A federal appeals court cut Exxon's \$5 billion assessment in half, to \$2.5 billion, but upheld the jury's determination that considerable punitive damages were warranted.

In the oil company's appeal, its lawyer Walter Dellinger notes that the \$2.5 billion is "the largest punitive damages award ever upheld by a federal appellate court." He says the jury should not have been able to assess such a fine based on Hazelwood's recklessness.

Dellinger detailed in his brief how the Exxon Valdez hit the reef as another crewmember failed to execute the turn after Hazelwood had left his post. Dellinger downplayed Hazelwood's drinking problem and noted that a separate jury proceeding had acquitted him of operating the vessel under the influence.

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On the key legal point, Dellinger asserted that punitive damages should not have been awarded "because Exxon's payment of \$3.4 billion in fines, penalties, cleanup costs, claims payments and other expenses has fully achieved both punishment and deterrence."

Stanford University law professor Jeffrey Fisher, representing the Alaskans trying to preserve the award, has sought to distinguish the Exxon disaster from any other shipwrecks: "The jury found that the corporation, not just the employee, was reckless in giving command of an oil tanker to a relapsed alcoholic," he said in his brief.

Fisher said the Alaskan plaintiffs won about \$76,000 each in punitive damages — just under five times the average actual damages for their economic harm, an amount Fisher said was proportionate and appropriate. He added that since the jury trial in 1994, about a fifth of the fishermen and landowners involved have died, and hundreds have gone bankrupt.

Justice Samuel Alito, who owns stock in Exxon, is not participating in the case. If the remaining eight justices happen to divide evenly on the dispute, the lower court decision favoring the fishermen and other Alaskans will stand.

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