



# Supreme Court shows no clear consensus on Exxon Valdez

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WASHINGTON – The U.S. Supreme Court appeared Wednesday to favor reducing the \$2.5 billion judgment against Irving-based Exxon Mobil for the 1989 Valdez oil spill, one of the worst environmental disasters in American history.

On its proposal to toss the award, Exxon seemed to get little traction. But several justices seemed open to Exxon attorney Walter Dellinger's argument that punishment "can't be a black hole into which all the limits on punitive damages disappear."

The case involves the obscure domain of federal maritime law, where the Supreme Court has never affirmed an award of punitive damages.

To come up with a number, Justices Anthony Kennedy and David Souter reasoned that the court might look to federal criminal law, which calculates punitive damages by doubling the amount of actual damages.

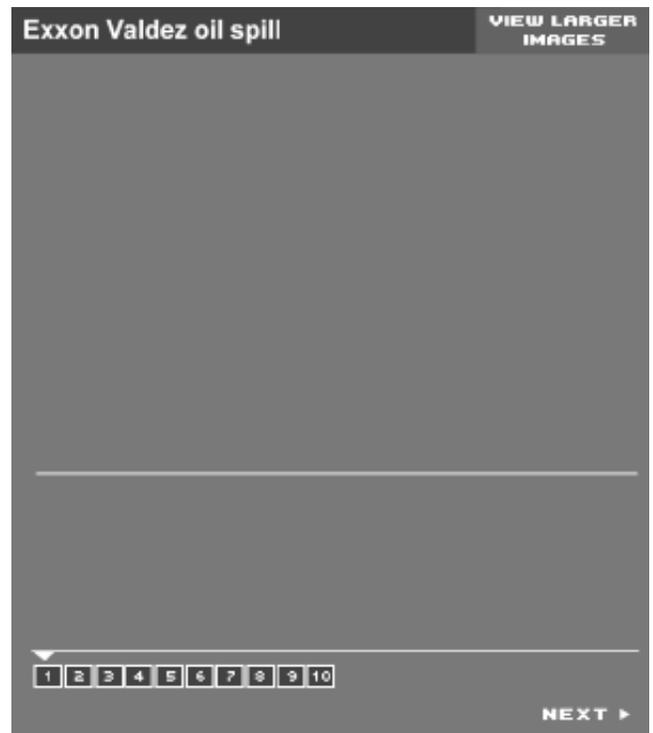
By Exxon's calculation, that could be as low as \$80 million, although the court is unlikely to go that low, according to several experts in tort claims and constitutional law.

A major reduction in punitive damages would disappoint the Alaskan plaintiffs, who descended on Washington this week and have expressed outrage at the amount Exxon has paid, about \$300 million, to compensate them for the damage to their businesses.

Shame pole

One of the fishermen, Alaska native Mike Webber, brought with him a shame pole, a type of totem pole used for public ridicule.

The pole, made of yellow cedar, features the upside-down face of former Exxon chief executive Lee Raymond with oil spewing from his mouth, along with the words of a company spokesman: "We will make you whole."



Several commercial fishermen who attended Wednesday's arguments said the oil spill wiped out herring, a staple of their local industry.



FILE 1989/AP

This red-necked grebe was covered with oil from the spill.

"What we're trying to do here is let the public know that Exxon has not stood up to their promises and justice has not been served," Mr. Webber said.

Exxon's actions "destroyed an entire regional economy and the lives of tens of thousands of Alaskans, at least for a time," said Jeffrey L. Fisher, the attorney for the plaintiffs. "We think it's not too much to ask that some recompensive punishment be paid for the human toll."

The plaintiffs have argued that Exxon, the world's richest corporation, can well afford to pay the \$2.5 billion decided by the Ninth Circuit Court of Appeals in San Francisco, reduced from the federal jury award of \$5 billion. Mr. Fisher said it amounted to three weeks' worth of profit for Exxon.

"Certainly the question of what does it take to deter them is a question they ought to consider," said Michael F. Sturley, a University of Texas law professor who advised Exxon on maritime law. "Whether they approach it the same way that Jeff does, that remains to be seen."

Exxon: We've paid

Exxon argues that its wealth is irrelevant to calculating damages.

The corporation has already paid an amount sufficient to deter any repeat of the calamity, its attorneys argue.

The corporation paid \$900 million in environmental cleanup costs and was assessed a \$125 million criminal fine, later reduced to \$25 million.

It also paid \$300 million to compensate private industry for losses.

In total, the company has spent about \$3.4 billion.

"Exxon gains nothing by what went wrong in this case, and paid dearly for it," Mr. Dellinger told the justices.

The justices have decided a series of cases trying to resolve the constitutional limits on punitive damages, which they have limited to nine times the amount of compensatory damages.

In the Valdez case, the award of \$2.5 billion was about five times the damages.

The Supreme Court's decision may turn on how much the justices think Exxon was at fault for the actions of the ship's captain, said David W. Robertson, a University of Texas law professor who specializes in maritime law.

### Captain's actions

Joseph Hazelwood, the captain, was an alcoholic who had been drinking before the ship left the Port of Valdez. He left the ship's bridge shortly before the accident, a violation of company policy.



FILE 1990

Joseph  
Hazelwood,  
the captain  
of the  
Exxon  
Valdez

Another officer, the third mate, failed to steer the ship properly and ran aground on a reef, spilling 258,000 barrels of oil into Prince William Sound.

"A corporation ought to be liable for punitive damages but only if there is fault at a high enough level," Mr. Robertson said.

"It turns on whether there was enough fault above Hazelwood."

Mr. Fisher argued that it was "common knowledge" at Exxon that Mr. Hazelwood was often drunk and allowed him to remain in charge of a vessel.

"They let a drunk drive a tanker," said Brian O'Neill, an attorney who argued the original case against Exxon in federal court in 1994. "And what happened, they knew was going to happen."

Exxon disputed that its captain was impaired. In any case, Mr. Hazelwood wasn't a managerial employee, Mr. Dellinger argued, so the corporation couldn't be punished for his reckless behavior.

That argument seemed to get a cold reception from the justices.

"Now, where do you draw the line between the CEO and the cabin boy?" Chief Justice John Roberts said.

"I would suspect, just instinctively, that somebody driving one of these huge tankers is a lot closer to the CEO than the cabin boy."

Exxon also argued that the federal Clean Water Act, which sets fines for oil spills but doesn't provide for punitive damages to individuals, restricts punitive damages.

Justice Antonin Scalia suggested that law might be one factor the court would consider.

Between the two laws – maritime and the Clean Water Act – there is no basis to assess punitive damages, Mr. Dellinger argued.

But Carl W. Tobias, an expert on torts and constitutional law at the University of Richmond School of Law, said it was a stretch to apply the water law.

"Congress had no intent in the Clean Water Act to pre-empt tort claims of this sort," Mr. Tobias said.

"They wanted to clean up the water. Part of that could be fines, but that did not displace the common law tort system."

Any award would be divided among the roughly 33,000 plaintiffs, who include fishermen, native Alaskans, landowners, and other businesses.

Mr. Webber, who was 29 when the spill occurred and fished herring, said his income was reduced by 70 percent after the spill.

He sold a fishing boat, once worth \$300,000, for \$100,000, he said.

"A lot of people went bankrupt," Mr. Webber said. "People lost what they worked hard for, their goals and their dreams."

## WHAT'S AT STAKE

A lower court's \$2.5 billion judgment against Exxon Mobil, which would go to 33,000 victims of the 1989 oil spill.

### Exxon Mobil's argument

The Exxon Valdez oil spill was a disaster, but there is no legal basis for awarding punitive damages for the conduct of a ship's captain. If the court decides punitive damages are permissible, the amount should be sharply reduced to accord with rules for calculating punitive damages in other types of cases. The company has already paid enough money in fines and cleanup costs, about \$3.4 billion. "This was not a malicious act," Exxon attorney Walter Dellinger said.

### Plaintiffs' argument

Exxon hasn't been punished for knowing its captain was a relapsed alcoholic who could have an accident at sea. The award was justified because the Clean Water Act addresses environmental damages, not harm to commercial fishermen and other businesses whose livelihoods were wiped out. Since the spill, no ranking Exxon executives have been fired. "It wasn't deterred by knowing what would happen if the tanker ran aground," plaintiffs' attorney Jeffrey L. Fisher said.

## EXXON VALDEZ AT A GLANCE

**What:** The Exxon Valdez tanker ran aground at Alaska's Bligh Reef on March 24, 1989, with 53 million gallons of oil in its hold.

**Damage:** The accident spilled 11 million gallons of crude into the fishing waters of Prince William Sound, making it the worst oil spill in U.S. history. It soiled 1,200 miles of shoreline and killed hundreds of thousands of birds and other marine animals.

**Response:** Exxon has paid \$3.4 billion in cleanup costs, compensatory payments and fines.

**Today:** Prince William Sound's beauty has been restored and its salmon population has rebounded. Sea otters and Harlequin ducks are still below pre-spill numbers. An estimated 85 tons of crude linger, according to a federal study released last year.

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