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## A beginner’s guide to the Supreme Court’s appeals process

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For The Cordova Times

Wondering about the oral arguments held in front of the Supreme Court on Wednesday, Feb. 27, and what might happen beyond? Here is some information prepared on behalf of the Whole Truth campaign.

- What was expected to happen during the oral argument?

Typically, an attorney for each side will have 30 minutes to make a presentation to the Supreme Court. In this case, the court granted Exxon’s request for additional time so each side had 45 minutes to argue. The arguments generally are very interactive and driven by questions posed by the Supreme Court justices.

- Who argued on Exxon’s behalf?

Walter Dellinger. Dellinger is the former acting Solicitor General and currently with the firm O’Melveny and

Myers. He is a seasoned veteran of the Supreme Court bar and is scheduled to argue three cases before the Supreme Court this term.

- Who argued on the plaintiffs' behalf?

Jeffrey Fisher. Fisher is a professor at Stanford Law School. He is a rising star of the Supreme Court bar with victories representing criminal defendants. Fisher will also argue three cases this term.

- What were Exxon's main arguments?

Exxon argued that punitive damages are not an available remedy under maritime law and/or the Clean Water Act.

Exxon claimed that longstanding maritime law precedent protects a company from the reckless acts of a captain at sea as long as the company did not direct or participate in the conduct. Exxon thus asserted that Hazelwood's actions should not be imputed to the company.

In the alternative, Exxon claimed that the Clean Water Act supplants all existing common law, including maritime law in the context of an oil spill. Since the Clean Water Act does not expressly mention punitive damages, Exxon argued that Congress did not intend it to be an available remedy.

Finally, Exxon argued that even if punitive damages are an available remedy, the \$2.5 billion dollar award is excessive.

Exxon claimed that the expenses it incurred to clean up the oil and the other criminal and civil government penalties and fines were adequate to punish the company.

- What were the plaintiffs' main arguments?

The plaintiffs argued that punitive damage awards are proper and permissible under maritime law and/or the Clean Water Act.

Plaintiffs contended that under maritime law and modern tort law a company is liable for the reckless acts of a managerial employee.

Further, plaintiffs argued that regardless of vicarious liability, Exxon was independently reckless when it continued to employ Capt. Joseph Hazelwood despite the known fact that he was a relapsed alcoholic. Therefore under either theory, the plaintiffs maintained that Exxon acted recklessly and is thus liable for punitive damages.

Plaintiffs also argued that in 1989, the Trans-Alaska Pipeline Authorization Act rather than the Clean Water Act governed oil spills of trans-Alaskan oil. However, even if the Clean Water Act is applied, it does not occupy the entire field of remedies with respect to oil spills especially as it pertains to private economic harm.

The Clean Water Act was designed to help government enforce statutory standards to help remedy environmental harm. Tort law remains in place to help redress private economic harm. Thus the plaintiffs contended that punitive damages are available and in this case permissible.

Finally, the plaintiffs disputed Exxon's claim that it was already adequately punished. Plaintiffs argue that after a lengthy trial, the district court reasonably determined that a multibillion-dollar punitive damage award was necessary to achieve punishment. Exxon foreseeably caused catastrophic harm when it placed a relapsed alcoholic in command of a supertanker. Thus the jury had ample reason to reject Exxon's claim and award punitive damages.

- Who was able to attend the oral argument?

The oral argument was open to the public, but seating was limited and on a first-come, first-seated basis. Seating for the first argument began at 9:30 a.m.

- Was the case decided on Feb. 27?

No. The Supreme Court heard the case on Feb. 27 but will not issue an opinion until later. There is no definite schedule or due date for a decision, but all cases argued during the term are resolved before the court recesses at the end of June.

- How does the Supreme Court make a decision?

After the oral argument, the justices meet in private to discuss the case and take a preliminary vote. A justice in the majority is then tasked with drafting an opinion. The draft is privately circulated among the justices until a final draft is agreed upon. This takes some time as the draft bounces around between the justices. At any time before the final decision a justice may change his or her mind.

- Can either party appeal the Supreme Court decision?

No. The decision of the Supreme Court is final. However, a party has 25 days from the entry of judgment or decision to file a petition for rehearing. A rehearing is only granted if a majority of the court agrees to revisit the decision.

- What happens in the event of a tie?

The Supreme Court is composed of nine justices so a tie is rare. However, in this case, Justice Samuel A. Alito Jr. disqualified himself due to a conflict of interest, so there is an even number. If the court is deadlocked, the 9th Circuit Court of Appeal’s punitive damage award of \$2.5 billion remains intact and binding on the parties.

- How will we know when the Supreme Court makes a final decision?

When a final decision is reached, the justice who wrote the opinion announces the decision in a court session. The public information office then releases the full text of the opinion to the public and news media.

*Legal writer Emily Anderson prepared this information for the Whole Truth campaign, whose Website is at [www.wholetruth.net](http://www.wholetruth.net).*

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