Exxon Valdez Dispute Spills into U.S. Supreme Court

By J.R. Pegg

WASHINGTON, DC, February 27, 2008 (ENS) - Nearly two decades after one of its tankers crashed into a reef and spilled some 11 million gallons of crude oil into Alaska's Prince William Sound, ExxonMobil urged the U.S. Supreme Court to reverse a lower court's decision that would force the company to pay $2.5 billion in punitive damages to Alaskan fishermen, cannery workers and others impacted by the worst oil spill in U.S. history.

Justices appeared skeptical of Exxon's claim that it is not liable for punitive damages, but sympathetic to the company's view that the $2.5 billion award is excessive.

The hearing is the latest twist in a long-running legal battle brought by some 33,000 victims of the Exxon Valdez oil spill, which had a devastating effect on Alaskan communities and the environment.

The oil tanker slammed into a reef in Prince William Sound just after midnight on March 24, 1989, unleashing an environmental disaster that still plagues the Alaskan coastline.

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The leaking Exxon Valdez remains grounded on Bligh Reef three days after the incident. (Photo courtesy NOAA)

The spill forced the closure of Alaskan fisheries and killed more than 250,000 sea birds, 3,000 otters, 300 harbor seals, 250 bald eagles and 22 whales.

The plaintiffs filed a class action suit against the oil company and in 1994 an Alaska jury awarded them $287 million in compensatory damages and $5 billion in punitive damages.

Exxon appealed the ruling, and in December 2006 the Ninth Circuit Court of Appeals reduced the punitive damages to $2.5 billion, roughly $75,000 per individual plaintiff.

Exxon appealed again, was denied by the Ninth Circuit and then appealed to the Supreme Court.

Some 6,000 of the plaintiffs have died since the class action lawsuit was first filed in 1994.

The case centers on whether Exxon is liable for the actions of the ship's captain, Joseph Hazelwood. Prior to the accident, Hazelwood had maneuvered the vessel out of the shipping lane to avoid ice. He subsequently left other crew members in charge with instructions on when to return the shipping lane - in violation of company rules. Hazelwood also admitted to drinking alcohol prior to the the incident.

Exxon's lawyer told the court that two centuries of maritime law precluded punitive damages against the company for Hazelwood's mistakes.

"If you look at … all of the tradition and maritime law, is that the captain or the pilot, anyone on board the ship, does not implicate in punitive damages, the company, or the shipowner," said

Gombe Stream National Park, Tanzania
Andrew Cohen, NSF

Walter Dellinger, Exxon's lead attorney in the case.

That argument seemed to hold little water with several justices.

Oil from the Exxon Valdez approaches a rocky cliff in Prince William Sound. **(Photo courtesy Exxon Valdez Oil Spill Trustee Council)**

Justice Ruth Bader Ginsburg noted that Dellinger was largely relying on the Supreme Court's decision in an 1818 case known as The Amiable Nancy. In that case the court held that the owners of an American ship could not be held liable for punitive damages stemming from the illegal activities of its crew.

Ginsburg said it was "an exaggeration to call it a long line of settled decisions in maritime law."

Times have changed since the days of The Amiable Nancy, added Justice David Souter.

"In those days, when a ship put to sea, the ship was sort of a floating world by itself," Souter said. "And the contact with the shipowner was simply gone until the thing came back into port again. That is certainly not the case today and we know it's not the case in the circumstances here."

Dellinger also argued that the legalities of the spill relate to the Clean Water Act, which allows for criminal and civil penalties, but not punitive damages.

Punitive damages also are meant to provide a deterrent when someone acts out of "hostility or … out of profit motive," he added.

"That is not true here," Dellinger said, noting that

Exxon has already paid some $3.4 billion in cleanup costs, fines and compensation connected to the spill.

"Exxon gains nothing by what went wrong in this case, and paid dearly for it," Dellinger said.

Stanford law professor Jeffrey Fisher, representing the plaintiffs, said Exxon had failed to show any legal basis for overturning the lower court's decision.

He said punitive damages are clearly allowed under maritime law, arguing that Hazelwood was in charge of a "business unit" of Exxon.

Shortly after the spill, a NOAA scientist measures the depth of oil from the Exxon Valdez on a beach in Prince William Sound. **(Photo courtesy NOAA)**

"He was the person who decided on behalf of Exxon that it was safe to leave port the night of March 23, 1989," Fisher told the justices. "It is perfectly appropriate to expose the corporation to punitive damages based on the reckless acts of such an individual."

But Chief Justice John Roberts appeared sympathetic to Exxon's view, asking how a corporation can protect itself against this kind of punitive damage award.

"It can hire fit and competent people," Fisher responded.

That failed to satisfy Roberts.

"But what more can the corporation do other than say 'here [are] our policies' and try to implement them?" the chief justice asked.

Exxon knew that Hazelwood was an alcoholic, Fisher said, and did nothing about it.

"Up and down the corporation … for three years, upper management was receiving reports that this man was drinking aboard this vessel," Fisher said.

"It was also common knowledge in the organization, and this came out at trial, that the idea of putting a drunken master in charge of a supertanker was a potential for disaster and incalculably raised the chances of a disaster and a catastrophic spill occurring," he added.

"Exxon nonetheless left Captain Hazelwood in command over a three-year span," Fisher told the court.

Furthermore, the $3.4 billion Exxon has paid thus far has done little to change the company's attitude, Fisher said.

"In the wake of the spill … Exxon fired one person - Captain Hazelwood," he said. "Everybody else up, further up the chain of command, who allowed this to happen received bonuses and raises. They have taken no action inside the company to express in any meaningful way that they've been deterred by what happened in this incident and the amount of money they've had to pay."

Several justices seemed to be wrestling with whether the $2.5 billion award is excessive. The court has in recent years moved to limit punitive damage awards.

There appears to be a need for "creating a fair system that isn't just arbitrary," when it comes to awarding punitive damages, said Justice Stephen Breyer.

Justice Anthony Kennedy echoed that view and suggested perhaps limiting awards to double the amount of monetary damages.

That is the ratio in the U.S. general criminal code, said Kennedy, "and it seems to me, if when we're looking for guidance … that this gives us a very valuable instruction."

Such a limit would cut the punitive damages in the Valdez case to about $550 million. Lawyers for the plaintiffs have noted that the $2.5 billion figure is "barely more than three weeks of Exxon's net profits."

Only eight of the nine justices heard today's arguments. Justice Samuel Alito owns Exxon stock and has recused himself from the case. That sets up the possibility of a four-four tie, which would uphold the $2.5 billion award.

A ruling is expected by June.