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Exxon Oil Spill Case May Get Closure

Almost 20 Years After Valdez Wreck, Justices to Weigh In

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When a federal jury in [Alaska](#) in 1994 ordered [Exxon](#) to pay \$5 billion to thousands of people who had their lives disrupted by the massive Exxon Valdez oil spill, an appeal of the nation's largest punitive damages award was inevitable.

But almost no one could have predicted the incredible round of legal ping-pong that only this month lands at the Supreme Court.

In the time span of the battle -- 14 years after the verdict, nearly two decades since the spill itself -- claimants' lawyers say there is a new statistic to add to the grim legacy of the disaster in Prince William Sound: Nearly 20 percent of the 33,000 fishermen, Native Alaskans, cannery workers and others who triumphed in court that day are dead.

"That's the most upsetting thing, that more than 6,000 people have passed and this still isn't finished," said Mike Webber, a Native Alaskan artistic carver and former fisherman in the Prince William Sound community of Cordova. "Our sound is not healthy, and neither are the people. Everything is still on the surface, just as it was."

"The bottom line," said Tim Joyce, the mayor of Cordova, where half of the town's 2,400 full-time residents are parties to the suit, "is that there is still oil on the beaches. And this lawsuit still isn't finished."

The high court is scheduled to hear arguments on Wednesday on whether punishment is excessive or even permitted under maritime law. The case, *Exxon Shipping v. Baker*, may turn, in the eyes of the justices, on a nearly 200-year-old precedent set when privateer ships sailed the oceans, or on the more recent provisions of the Clean Water Act.

But in Alaska, the lawsuit is seen as a test of justice and corporate responsibility, and its resolution is seen as critical to healing the scars left by an epic event that defines the state's modern history, Gov. Sarah Palin (R) said in an interview.

"Every Alaskan life was affected by this," said Palin, elected in 2006. "When I got in here, that was one of the first orders of business: to find out how in the world can this administration speak on behalf of all Alaskans who have been so adversely affected by this spill."

Exxon officials contend that such sentiments ignore the facts of the case and note that the company already has spent more than \$3.4 billion in compensation for losses, cleanup and fines.



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"This case is about whether further punishment is warranted," Exxon spokesman Tony Cudmore said. "We've spent \$3.5 billion, which is a significant sum of money we think is adequate to deter anyone" from future wrongdoing.

But that figure no longer impresses Palin and others. When the jury awarded \$5 billion in 1994, that represented a year of Exxon profits. An appeals court subsequently reduced the damages to \$2.5 billion -- "about three weeks of Exxon's current net profits," the plaintiffs told the Supreme Court in their brief.

"I'm a capitalist, I'm a conservative Republican, I am pro-development and pro-industry," said Palin, who is herself a former commercial fisherman once party to the suit. "But consider what Exxon has made in terms of profits in all these years. The American judicial system came down with this judgment, and they've appealed and they've appealed and they've appealed."

The award has been reviewed three times by a district judge and twice by the [U.S. Court of Appeals](#) for the 9th Circuit, based in [San Francisco](#), with more than four years elapsing between one appeal and a decision.

"It's a scandal how long it's gone on," said David Lebedoff, a [Minneapolis](#) lawyer and author who wrote a book about the five-month trial that led to the punitive damages award. He blames the 9th Circuit for not moving faster. "It's absolutely inexcusable."

The passage of time is a worry for claimants, and they have responded with public relations and legal tactics unusual for Supreme Court cases. A newly created Web site details the continuing environmental damage to Prince William Sound and a commercial fishing industry that has not fully recovered.

News conferences and a vigil are planned before the arguments. The "ridicule pole" Webber carved from yellow cedar, depicting an Exxon executive with oil flowing from his mouth, is crated and on its way to Washington.

Jeffrey L. Fisher, a [Stanford](#) law professor who will argue the case for plaintiffs, has sent the court a DVD containing photos and footage taken at the time of the spill, video of Exxon executives acknowledging fault and an audiotape of the distress call made by what plaintiffs claim to be a clearly drunk Capt. Joseph Hazelwood reporting that the Exxon Valdez had hit Bligh Reef.

Fisher said it is important to remind the justices of the events of 19 years ago, and that the jury was punishing Exxon for "socially outrageous behavior."

"One of the dangers for us is that outrage dissipates over time, and it is hard to get back to the place where the country was at that time," he said.

Justices have extended the allotted time for oral arguments, and the briefs filed on both sides indicate that the events of the grounding might be explored yet again.

Some things are not in dispute. The Exxon Valdez left port late on the evening of March 23, 1989, loaded with 53 million gallons of crude oil. It strayed out of the shipping lane to avoid ice. Hazelwood instructed the third mate on when to make the turn back into the lane, and then left the bridge of the ship, a violation of regulations. Just after midnight, the crewman ran the nearly 1,000-foot tanker aground on the reef, and 11 million gallons of oil oozed into Prince William Sound.

The oil eventually spread more than 600 miles, an area plaintiffs contend would stretch from [Cape Cod](#), Mass., to Cape Lookout, [N.C.](#)

They also charge that Hazelwood, an alcoholic, was drunk. They argue that he consumed at least five double-vodkas in waterfront bars before boarding the ship. They say Exxon knew that Hazelwood, once treated for his disease, had resumed drinking.

Courts have agreed. "Spilling the oil was an accident, but putting a relapsed alcoholic in charge of a supertanker was not," the appeals court ruled in upholding the punitive damages.

Exxon's lawyer in the case, [Walter Dellinger](#), told the court in his brief that it is "hotly disputed" whether Hazelwood was drunk at the time of the accident, and points out that Hazelwood was acquitted by a state court jury of operating a vessel under the influence.

Whatever misdeeds were committed by Hazelwood, Dellinger argues, they were not the misdeeds of Exxon. "Imposing vicarious punitive liability on a ship owner, without requiring the jury to find that the ship owner directed, countenanced or participated in the conduct, was in conflict with almost 200 years of unbroken maritime law," the brief argues.

The reference is to the court's 1818 decision in *The Amiable Nancy*, in which it held that a ship's owner could not be held responsible for the plundering of its crew when it was miles out at sea.

Exxon also argues that the punishment for discharges of oil and other hazardous substances is governed by the Clean Water Act, and it does not provide for private punitive damages. Alternately, the company says punitive damages should not be allowed because of what Exxon already has paid, or they should at least be reduced.

Not surprisingly, the claimants reject all of those arguments. Exxon itself stipulated that Hazelwood was a "managerial agent" of the company, they argue, and that the jury found that both Hazelwood and the company had acted recklessly. They contend that the Clean Water Act claim is baseless, and that the award is justified.

[Justice Samuel A. Alito Jr.](#) owns Exxon stock and has recused himself from the case. That leaves eight justices to hear it, and an even split would mean that the award stands.

Around Prince William Sound, residents wait for a final judgment on the \$2.5 billion award, which plaintiff lawyers say now stands at about \$4.8 billion because of the interest earned while the suit proceeds.

"I guess it would mean I can relax a little," said Patience Anderson Faulkner, a subsistence Native Alaskan who became a "legal technician" to help people in Cordova with their claims. Her father and brother were claimants who have died.

"It's painful for people to talk about this," said Jennifer Gibbons, executive director of the environmental group Prince William Soundkeeper, "but they want closure."

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