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Exxon Valdez appeal heads for Supreme Court hearing Wednesday

By ERIKA BOLSTEAD
Anchorage Daily News
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WASHINGTON - Nearly 19 years after an Exxon oil tanker rammmed an underwater reef in Prince William Sound, the U.S. Supreme Court will hear the final lawsuit lingering from the environmental disaster.



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Two captains connected by history: Caption Joe Hazelwood ran the Exxon Valdez onto Bligh Reef, a maritime hazard named by Captain James Cook.

Wednesday, the court will consider Exxon Mobil's appeal, a 14-year effort that, if successful, would overturn a \$2.5 billion punitive damages award considered by many to be the largest verdict ever against a U.S. corporation.

The case is superlative in many ways, most notably for the environmental havoc caused by 11 million gallons of crude oil in Prince William Sound. An estimated 85 tons of crude have yet to be removed, according to a federal study released last year.

But it also is notable for how it pits nearly everyone in Alaska against the world's biggest oil company - a company so profitable that its \$40.6 billion in profits last year broke all records for a publicly traded company.

Former governors, the current governor, supertanker captains, environmentalists, state lawmakers, Alaska Natives and experts in

maritime law have all joined sides with the 33,000 plaintiffs whose lawyers will ask the nation's highest court to uphold the \$2.5 billion verdict.

"I've said this before, but this seems to be a case of justice delayed being justice denied," Gov. Sarah Palin said. "Nineteen years later after the spill, the ongoing tragedy is that there has not been this closure. And truly we need to see closure in this case."

Exxon has been appealing the verdict since 1994, when a jury in Anchorage returned a \$5 billion punitive damages award against the company. In 2006, the 9th U.S. Circuit Court of Appeals cut the award to \$2.5 billion; Exxon appealed to the Supreme Court, which agreed last year to hear the case.

The court will consider three very specific areas of law



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Erik Hill / Anchorage Daily News
The Exxon Valdez is refloated and towed away from Bligh Reef Wednesday, April 5, 1989. The tugs towed the damaged ship toward Naked Island for preliminary repairs.

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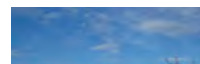
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The court will consider three very specific areas of law, including whether the company can be punished under maritime law for the actions of its ship captain, Joseph Hazelwood. Prosecutors said Hazelwood was drunk when the ship ran aground on March 24, 1989, but he denied it and was acquitted of the charge in criminal court.

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The court also will consider whether punitive damages should be allowed when the company already has been punished under provisions of the federal Clean Water Act. And if so, whether the verdict's size is allowable under the limits of maritime law.

A RULING FROM 1818

The company's arguments will be based on a 1818 court decision, which holds that ship owners shouldn't be punished for the actions of their agents at sea. The company also intends to argue that the punishment for oil spills is already covered in federal law, including the Clean Water Act.

For Exxon and its allies, which include the U.S. Chamber of Commerce and the American Petroleum Institute, the case is an opportunity to press for the Supreme Court to scale back massive punitive damage awards.

A \$2.5 billion award is "far more than reasonably necessary to punish and deter," wrote lawyers with the American Petroleum Institute, in a friend-of-the court brief filed on Exxon's behalf.

Exxon has long maintained that it took full responsibility for the spill and that the punitive damages are excessive and duplicate the fines it paid the state and federal government.

"It is our view that the Supreme Court has an important opportunity to provide guidance to the lower courts in relation to the application of punitive damages," said Exxon spokesman Tony Cudmore. "Punitive damages are unwarranted in this case. This is a very important case and a very important area of law for the Supreme Court to have an opportunity to consider."

'RECKLESS BEHAVIOR'

What also is important is that the Supreme Court consider what happened to Alaskans, said Andrew Wills, a former herring fisherman who now runs a bookshop and bed and breakfast in Homer. The lucrative herring fisheries sputtered out in the years following the spill, and they never came back, Wills said.

"We had a beautiful paradise and a very special job and it just disappeared," he said. "We lost everything, but they've seen record profits. Justice has so not been done. It's very discouraging and stressful."

But many fishermen also say that in the years the case has dragged out, the case has become about far more than the destruction of fishing grounds in the pristine Sound where they once made their living. It's about holding big corporations accountable for their actions, said Frank Mullen, a Cook Inlet drift fishermen who also works as a financial adviser.

"If you just put the old analogy of David and Goliath to work here, if Goliath has no incentive to be nice, the Davids of the world would be long gone," Mullen said. "Goliath has no heart and soul and is motivated purely by profits," Mullen said. "Every time you pick up the paper, Exxon is doing battle with the state of Alaska. They're masterful at playing that game. ... Meanwhile, a group of fishermen and other Alaskans are simply saying, 'Let's get on with our lives.' The whole thing just doesn't make sense to the average onlooker."

The Exxon plaintiffs were joined by Thomas Schoenbaum, a law professor and expert in maritime law, who filed a friend-of-the court brief. Schoenbaum, who is affiliated with George Washington University in the United States and International Christian University in Japan, argues that the sheer scale of the Exxon Valdez oil spill makes it a textbook case for punitive damages.

"Punitive damages are good policy for environmental disasters like this," Schoenbaum said.

"They shouldn't be used for ordinary negligence, but when there's severe reckless behavior, it's good deterrence against conduct that's liable to cause environmental disaster. When the risk is great, the care should be correspondingly greater."

EXXON: WE PAID ENOUGH

Exxon counters that the consequences were deterrent enough.

"We took immediate responsibility for the spill, cleaned it up and voluntarily compensated thousands of Alaskans and businesses affected by the spill," Cudmore said. "We have paid \$3.5 billion in clean-up payments, settlements, compensation and fines. This is more than enough to deter anyone for anything."

On Wednesday, Exxon will be represented by Walter Dellinger, who argued nine cases in front of the Supreme Court when he served as acting U.S. Solicitor General in the mid-1990s.

The plaintiffs will be represented by Jeffrey Fisher, a Stanford University professor with experience arguing complicated appeals in front of the Supreme Court. Fisher also served as a law clerk to



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Justice John Paul Stevens.

For all the time the case has languished in the courts, it is a fairly straightforward matter, said David Oesting of Anchorage, the lead attorney for the plaintiffs.

"This was a drunk driving case, and the owner of the car knew the guy was drunk when they put him behind the wheel," Oesting said. "What the hell would you expect? And they did it repeatedly. That's what this case is all about."

A DIVIDED COURT?

On Wednesday, just eight of the nine justices will hear the case. Judge Samuel Alito, who owns Exxon stock, recused himself, which legal observers see as a good omen for the Exxon plaintiffs. Without Alito, many predict that the justices could split 4-4, which would let the \$2.5 billion award stand

Yet few Alaskans or legal observers are optimistic the outcome will benefit anyone but Exxon, said state Rep. Les Gara, D-Anchorage. The current Supreme Court is simply too business friendly, said Gara, who after the spill helped prosecute Exxon for the state.

"This is a very political Supreme Court and they're salivating at the chance to make it harder to collect damages," Gara said. "These are justices who were selected based on their pro-corporate positions. The best I think you could hope for is a 4-4 split."

Regardless, Alaskans have made preparations for a post-verdict world in Alaska, said U.S. Sen. Lisa Murkowski, who signed onto a friend-of-the-court brief with fellow Alaska Sen. Ted Stevens and U.S. Rep. Don Young. Murkowski has sponsored legislation that would give plaintiffs a financial break if they do indeed receive a windfall from the Exxon settlement. If passed, it would allow people put up to \$100,000 away tax free in retirement accounts.

It's time for the case to come to an end, Murkowski said.

"This is what has just kind of eaten at Alaskans for so many years," Murkowski said. "It's not as if it's a company that has an inability to pay. It's not as if this is a company where the amount of damages would really hobble their ability to operate in the future. For many, many Alaskans, myself included, the time has expired. Nineteen years and no final resolution is very difficult to deal with."

Find Erika Bolstad online at adn.com/contact/ebolstad or call her in Washington, D.C., at 202-383-6104.

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I say that as a State we should all stand up and fight for our own Justice and make it hard for Exxon to do anymore business here in Alaska, until the right retrobutions have been paid. It's always nice to see Stevens, Young and Murkowski jump on the bandwagon to show Alaska they are the "it" people though. Their compassion is at most - humorous.

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