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Exxon Valdez Spill Reaches U.S. Supreme Court After 19 Years

By Greg Stohr

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Feb. 27 (Bloomberg) -- For almost two decades, victims of the 1989 Valdez oil spill in Alaska have pursued Exxon Mobil Corp. for billions of dollars in punitive damages. Today at the U.S. Supreme Court, they will get an indication whether those efforts have been in vain.

The justices will consider Exxon Mobil's bid to overturn, or at least reduce, the \$2.5 billion punitive-damage award for the Prince William Sound tanker spill, the largest in U.S. history. Exxon Mobil and its allies say the world's biggest oil company has already paid enough -- \$3.4 billion in cleanup costs, fines and other spill-related expenses.

"If Exxon is not deterred by the huge liability they've already incurred, the public-relations hit they took and all the other consequences of their actions, adding punitive damages is not going to have any effect," said Andrew Frey, who filed a brief backing Exxon Mobil on behalf of the American Petroleum Institute and four other trade groups.

Those arguments ring hollow among Alaskans who say that the local wildlife and economy still haven't recovered and that Exxon Mobil should be punished for putting the Valdez in the hands of a captain with a drinking problem.

The award would go to a group that originally consisted of 33,000 commercial fishermen, seafood processors, landowners, native Alaskans and small businesses. The victims sued in 1989, won a \$5 billion punitive-damage award in 1994, then saw the case spend the next 14 years bouncing up and down the court system.

"After 19 years, nobody is counting on the money," said Jennifer Gibbins, executive director of Prince William Soundkeeper, which works to protect water quality. "This is about justice."

Political Leaders

Alaska's top political leaders, including its Republican governor and U.S. senators, are backing the victims, as are 34 states. The Bush administration, taking a low profile, didn't file a Supreme Court brief even though the dispute involves the meaning of the U.S. Clean Water Act.

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Unlike similar cases the court has considered, the fight doesn't involve the constitutional limits on punitive awards. Exxon Mobil instead says the award violates federal maritime law, a largely judge-made set of principles governing the rights and duties of commercial vessels.

Exxon Mobil, arguing against any punitive award, contends that Congress laid out the criminal and civil penalties for oil spills in the Clean Water Act and that courts can't use maritime law to impose additional punishment against tanker owners.

'Carefully Calibrated'

"Congress enacted a carefully calibrated scheme of fines and civil penalties, natural-resource damages and cleanup costs, but did not provide for punitive damages," argues Exxon Mobil's attorney, Walter Dellinger.

Alternatively, Exxon Mobil argues that maritime law doesn't permit "vicarious" punitive damages -- those that punish a company for the misconduct of its employees. A victory on that issue could mean a new trial in the case.

The company also contends that, even if punitive damages are permissible, the Valdez award is too large. Should the company pay the full award, plus more than \$2 billion in accrued interest, it would be the largest-ever punitive-damage payment.

The suit accuses Exxon of ignoring repeated warnings that ship captain Joseph Hazelwood had a drinking problem. The 83-day trial included evidence he was drunk the night the vessel crashed into a reef.

Wildlife Damage

Damage estimates vary. Up to 2,800 sea otters and 250,000 seabirds died in the days after the spill, according to a 2003 study published in Science magazine. Harbor seals, killer whales and other wildlife also died, and the herring fishery in the village of Cordova closed.

Given that, the victims say the award is a relative pittance for Exxon Mobil. The company in 2007 broke its own record for annual profit by a U.S. corporation with \$40.6 billion. Its annual sales exceed the gross domestic products of all but 20 of the world's nations.

Exxon Mobil has "never paid anything in punishment for allowing a drinking alcoholic to captain a supertanker in one of America's most pristine and resource-rich environments," says Jeffrey Fisher, who will argue for the victims.

Exxon, based in Irving, Texas, has obtained a letter of credit and set aside \$5.4 billion to cover payments.

The company could be hurt by the likely absence of Justice Samuel Alito, perhaps the court's most business-friendly member. Alito, who said on his 2007 financial disclosure report that he owned Exxon stock, didn't participate in the decision to hear the case.

Punitive Award

The original \$5 billion award was on top of \$287 million in compensatory damages. Judges later cut the punitive portion to \$4 billion, then raised it back to \$4.5 billion. In 2006 the 9th U.S. Circuit Court of Appeals reduced the sum to \$2.5 billion, saying that was all the Constitution would permit.

"We need to be able to get on with our lives up there in Alaska, one way or the other," the state's governor, Sarah Palin, said in a Bloomberg Television interview. "Nineteen years later, it's due."

The case is Exxon Shipping Co. v. Baker, 07-219.

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