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TRANSCRIPT

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Analysis

Justices Consider Exxon's Valdez Damages Challenge

The Supreme Court heard arguments Wednesday in Exxon's appeal of a civil suit that awarded \$2.5 billion in punitive damages to victims of the 1989 Exxon Valdez shipwreck and oil spill in Alaska. The National Law Journal's Marcia Coyle recaps the case.



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JIM LEHRER: Next, today's Supreme Court Exxon Valdez argument. Margaret Warner begins with some background.

MARGARET WARNER: Nineteen years after the Exxon Valdez dumped 11 million gallons of oil into Alaska's Prince William Sound, the legal wrangling over culpability for the disaster continues.

The tanker was captained by Joseph Hazelwood, a relapsed alcoholic who admits he was drinking before the accident. In the early morning hours of March 24, 1989, he radioed the Coast Guard that his ship had run aground on a reef and was leaking oil.

JOSEPH HAZELWOOD, captain, Exxon Valdez: Yes, it's Valdez back. We've -- should be on your radar there. We've fetched up, hard aground north of Goose Island off Bligh Reef, and evidently leaking some oil. And we're going to be here for a while. And if you want, so you're notified. Over.

MARGARET WARNER: Earlier that evening, Hazelwood had steered the tanker out of the Port of Valdez, going outside the shipping lanes to avoid ice. He then turned over the wheel to his third mate and left him alone on the bridge, a violation of company policy.

Shortly after midnight, the crewman grounded the 950-foot tanker on Bligh Reef.

In the weeks after the spill, Exxon vowed to devote its resources to the cleanup.

LAWRENCE RAWL, chairman, Exxon Inc.: In time, when the job is done, I'm confident that it will be evident to every fair-minded person that our employees met this major challenge with a high level of determination and professionalism, one that was worthy of our longstanding reputation for excellent operations.

MARGARET WARNER: But before the oil could be contained, it spread over 10,000 square miles. Hundreds of thousands of birds, seals, fish and other marine mammals were killed.

Over the following years, Exxon paid more than \$3.4 billion in cleanup costs, fines and compensation to federal, state and local authorities. But many Alaskans argued that wasn't enough.

WENDALL JONES, commercial fisherman: They're the ones that didn't monitor their drunken captain. They're the ones that have destroyed our lives and have taken away all of our kids' education. And we can't pay for our homes. Why the hell shouldn't they pay?

MARGARET WARNER: In 1994, a jury awarded \$5 billion in punitive damages to nearly 33,000 commercial fishermen, native Alaskans and coastal residents. That award later was cut in half by other courts.

Still, Exxon continued to appeal, which is the case that was heard at the Supreme Court today.

Determining liability

MARGARET WARNER: And for more on today's arguments, we turn to NewsHour regular Marcia Coyle of the National Law Journal.

Marcia, before we get into today in the courtroom, 19 years. Why has it taken this long? Is that typical for big punitive damage cases?

MARCIA COYLE, National Law Journal: It's not typical. It is unusual, but it's not unprecedented.

This was a huge case with multiple actions at the state and federal level, both civil and criminal. This particular aspect of the case, the punitive damages, Exxon appealed it several times to a federal appellate court.

It went back to the trial judge three times. The award was cut three times.

It's had a huge real-world impact, the lengthy litigation. Roughly 20 percent of the Alaskans who were part of the class seeking these damages have died, including one of the two main lawyers who represented the Alaskans at trial.

MARGARET WARNER: So what did the lawyers for Exxon say, the lawyer for Exxon say in arguing that Exxon should not be liable for this, in terms of paying punitive damages?

MARCIA COYLE: OK, there were really two issues, Margaret, that dominated the arguments today. The first issue, as you pointed out, is Exxon is arguing that it should not be held liable for the actions of the captain here.

Former Solicitor Gen. Walter Dellinger, representing Exxon, told the court there is a long maritime tradition that ship owners are not held liable for the actions of the ship crew unless they directed that action or agreed in what was done.

He also argued that more modern law on the liability of corporations does not hold the corporation liable unless the actor is in a managerial position, a managerial agent. And he said a ship captain just isn't high enough in a corporate hierarchy to be considered a managerial agent.

MARGARET WARNER: And so the lawyers for the plaintiffs, the original plaintiffs, what was their argument?

MARCIA COYLE: The Alaskans were represented by Jeffrey Fisher, who's a law professor at Stanford Law School. And he said the ship captain here was definitely a managerial agent.

He had hiring and firing authority. He managed the budget for the tanker. He made decisions about safety, when to move the tanker, when not to. And also Exxon itself considered the tankers business units, one of 20. And this captain was in charge of it.

MARGARET WARNER: So this is really, though, very much focused on maritime law, is that right, I mean, that's distinct from other kinds of law?

MARCIA COYLE: That's correct. Maritime law is a unique, singular body of law that has a rich and lengthy history. And it's evolved not so much by statute, laws, but it's evolved by court decisions.

Drawing from maritime law

MARGARET WARNER: So how did the justices react to all of this?

MARCIA COYLE: On this first issue, the justices gave Mr. Dellinger for Exxon a very hard time on whether the ship captain was a managerial agent.

Justice Souter noted that the tradition of not holding a ship owner liable evolved back in the days when ships went out to sea for long periods of time, they had no contact with ship owners. Today, modern communications put them in close contact.

Justice Kennedy raised the point, well, you know, I don't see much difference between the ship captain and, say, the CEO of a small unit of a corporation. Maybe he's a managerial agent over some functions, but not others.



Marcia Coyle
National Law Journal

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MARGARET WARNER: So buying the argument made by the Exxon lawyers or by the plaintiffs there?

MARCIA COYLE: That was the Exxon lawyer who was -- they weren't buying the Exxon lawyer's argument.

MARGARET WARNER: ... lawyer's argument. They were grilling the Exxon lawyer?

MARCIA COYLE: That's right. But Justice Scalia said he thought that a ship captain just wasn't high enough in a corporation for the corporation to be held liable for his actions.

There was a second issue in the case, as well, Margaret, and that's the actual amount in money here, whether the \$2.5 billion is within the limits allowed by maritime law.

Presenting electronic evidence

MARGARET WARNER: Now, the clip we ran of the captain making the call, apparently that's included in a rather unusual filing that the plaintiffs made as part of their case.

MARCIA COYLE: Yes. And, actually, it can go as well to the second question.

MARGARET WARNER: Explain that.

MARCIA COYLE: The lawyers for the Alaskans sent the court a DVD. The court doesn't often get electronic evidence or supplements to the briefs that are filed in the case.

And they did it for two reasons. One, they wanted to present a very visual and audio rebuttal to Exxon's view of the facts of what happened with the oil spill.

But, also, they were keenly aware that, after 19 years, outrage dissipates, and they wanted the justices to see what the Alaskans saw after the spill and what the jury saw and heard at the trial.

Potential for split decision

MARGARET WARNER: Now, finally, Justice Alito, who I gather owns several thousand shares of Exxon stock, recused himself. Now, one, did that mean he wasn't even in the courtroom or he didn't participate? And what are the potential implications of this?

MARCIA COYLE: He was not in the courtroom, and that's the standard procedure when a justice recuses himself or herself. It opens the possibility of a 4-4 split, although I think the 4-4 is more likely on the issue on whether Exxon can be held liable for the ship captain's actions.

The second issue on the amount of the punitive damages, the justices seemed to be searching for some kind of rule or standard on how they could limit these types of punitive awards.

Mr. Dellinger for Exxon argued that perhaps Exxon didn't need to even be punished here because it had paid already \$3.4 billion. Mr. Fisher argued, use the same standards you use in non-maritime cases. Look at how reprehensible the conduct was, and other factors.

MARGARET WARNER: And on the points in which there's a 4-4 tie, that goes to the plaintiffs then?

MARCIA COYLE: It will leave the lower court's ruling in place, and that does go to the plaintiffs here.

MARGARET WARNER: Marcia, thank you.

MARCIA COYLE: You're welcome.