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Exxon Mobil appeals \$2.5 bln Valdez oil spill award

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By James Vicini and Chris Baltimore

WASHINGTON (Reuters) - Exxon Mobil Corp urged the U.S. Supreme Court on Wednesday to overturn the \$2.5 billion in punitive damages for the 1989 Exxon Valdez oil spill off Alaska, arguing it should not be punished for the mistakes of the ship's captain.

But the lawyer for about 33,000 commercial fishermen and others harmed by the nation's worst tanker spill replied that Exxon Mobil for three years had overlooked numerous reports that Captain Joseph Hazelwood had a drinking problem.

The 90 minutes of arguments before the high court occurred just several weeks after the huge Texas-based oil company reported the highest-ever quarterly profit for a U.S. company of \$11.7 billion.

Exxon Mobil's lawyer, Walter Dellinger, told the high court the company already has paid \$3.4 billion for the spill and cannot be held liable for additional punitive damages under federal maritime law.

"Exxon gained nothing by what went wrong in this case and paid dearly for it," said Dellinger, who argued that the company had no malicious intent or improper profit motive.

A key issue in the case is whether the company can be held liable for the mistakes of Hazelwood, who violated company rules when the Exxon Valdez ran aground in Alaska's Prince William Sound in March 1989, spilling about 11 million gallons of crude oil.

The spill spread oil on more than 1,200 miles of coastline, closed fisheries and killed thousands of marine mammals and hundreds of thousands of sea birds.

The justices closely questioned both sides and gave no firm indication of how they would rule -- although in past cases they generally have imposed limits on huge awards of punitive damages imposed on corporate defendants.

Dellinger argued that Exxon Mobil cannot be punished for Hazelwood's actions because he was not a managerial employee who set company policy, like a chief executive would.

But Jeffrey Fisher, representing the plaintiffs, replied that Hazelwood was in charge of an Exxon shipping business unit and that it was perfectly appropriate to make the company pay punitive damages for the reckless acts of such an individual.

UPPER MANAGEMENT AWARE OF DRINKING

"We showed 33 instances in the record of Exxon employees drinking with Hazelwood or learning that he drank. Up and down the corporation, ... for three years, upper management was receiving reports that this

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man was drinking aboard the vessel," Fisher said.

While Exxon had a policy against operating tankers while under the influence, Fisher said that the company failed to enforce it in Hazelwood's case.

Fisher said Exxon only fired one person -- Hazelwood -- and only reassigned the third mate who actually steered the tanker. But everyone else higher up in the company "received bonuses and raises," he said.

Justice Ruth Bader Ginsburg seemed supportive of Fisher's argument. "The jury could have found that Exxon knew that this captain had a severe alcohol problem; and yet they let him stay on voyage after voyage and did nothing about it," she said.

Chief Justice John Roberts appeared more supportive of the company's arguments and asked: "Where do you draw the line between the CEO (chief executive officer) and the cabin boy?"

Justice Antonin Scalia said he doubted that a captain was high enough a position to justify holding the entire company liable. "The janitor has authority over an aspect of the corporation," he said. "Surely, that can't be the test."

Justice Stephen Breyer expressed concern of a "new world for the shipping industry" if punitive damages can be assessed against the company for the failures of responsibility by the ship's captain.

Dellinger said the U.S. appeals court that upheld the award incorrectly ruled that Exxon Mobil could be held liable for the \$2.5 billion simply because Hazelwood left the ship's deck shortly before the ship plowed into Bligh Reef.

A decision is expected by the end of June.

Justice Samuel Alito, who owns Exxon Mobil stock, recused himself from the case. Alito's recusal means that only eight court members heard the case. Should the justices end up being split by a 4-4 vote, then the appeals court's ruling against Exxon Mobil would be simply affirmed.

(Editing by Gerald E. McCormick and Dave Zimmerman)

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