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Exxon Valdez oil-spill victims plead case

JEANNETTE BELLIVEAU

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WASHINGTON, D.C. – More than a dozen Cordova residents led Alaska's campaign against Exxon Mobil Corp. in the nation's capital this week.

On the eve of a U.S. Supreme Court hearing, they attempted to put a human face on the complex arguments at the heart of the Exxon's legal maneuvers to avoid paying \$2.5 billion in punitive damages.

Gov. Sarah Palin led the publicity blitz designed to remind the public of the devastating effects on Prince William Sound of the Exxon Valdez's 1989 grounding on Bligh Reef.

"I am proud to stand with Alaskans to remind the U.S. Supreme Court that more than 32,000 Americans have suffered and are suffering from the devastating effects of the nation's worst oil spill," Palin said.

"The time is now to end the litigation and award the plaintiffs in the case the damages they are entitled to," she said. "This has been justice delayed. We pray though that this is not a case of justice denied."

Cordova fishermen, environmentalists and Alaska Natives from the Sound joined Palin on Tuesday, Feb. 26, at the National Press Club in Washington for a press conference.

They included Rochelle van den Broek, executive director, Cordova District Fishermen United; Jennifer Gibbins, executive director, Prince William Soundkeeper; and Mike Webber, a fisherman, spill victim, woodcarver and environmentalist.

"After nearly 20 years of spin, evasion and litigation, the time has come to hold Exxon accountable and let polluters know that they are not above the law. This is the only way we can protect our nation's waters," said Gibbins, part of the Web-based "The Whole Truth" campaign, designed to raise awareness of Alaska's lingering post-spill problems.

"The subsistence culture that our Native people have practiced for thousands of years was totally disrupted," said Travis Vlasoff of the Native Village of Tatitlek, three miles northeast of Bligh Reef.

"It is very difficult to summarize the damage to the mental health of our communities. I can tell you how our social structure was tied to the practice of subsistence gathering, how the traditional foods were part of our identity as a people, or how our cultural values were based on the sharing of traditional foods and harvesting techniques," Vlasoff said.

Maryland Attorney General Douglas F. Gansler also spoke, noting that Maryland and 33 other states, concerned with 200 million tons of toxic materials shipped annually in coastal waters, have joined a friend of the court brief on behalf of the Exxon plaintiffs.

"Exxon promised to make communities whole, but oil is still present, the fisheries are still damaged, and the economy is still depressed," Gansler said. "Prince William Sound will never be the same again."

Cordova fisherman Derek Blake echoed the same theme.

"Overnight, Cordova went from a thriving village to a devastated community," he said.

Later on Tuesday, the Prince William Sound activists were to lead a candlelight vigil on the Mall.

Others in the contingent of at least 16 who made the 3,200-mile trek from Cordova included commercial fisherman Steve Smith; Riki Ott, author of "Sound Truth and Corporate Myth\$: The Legacy of the Exxon Valdez Oil Spill;" Sylvia Lange, owner of the Reluctant Fisherman Inn; and Robert Heinrich, president of the Native Village of Eyak.

On Wednesday morning, the Supreme Court was scheduled to hear oral arguments in the case of Exxon Shipping Co. v. Baker.

Many Cordova representatives planned to get in line starting at 6 a.m. to attempt to hear the oral arguments in person.

Tuesday's press conference, which attracted an audience of 100, including about 40 Prince William Sound fishermen and sympathetic Alaska Natives from Port Graham near Homer, included the unveiling of a traditional shame totem carved by Webber a year ago at the behest of Heinrich and the Native Village of Eyak.

Chugach Alaska Corp., which represents Alaska Natives from Cordova, Seward, Valdez, Whittier and five smaller villages, paid \$5,000 to have the totem flown out of Cordova to Washington.

Webber, 47, speaking before cameras from CNN and CBS, described being born and raised in Cordova and learning to fish when he was 7 years old.

He explained that his ridicule pole "is designed to get a person to recognize their obligation," and features the upside-down face of Lee Raymond, Exxon CEO at the time of the spill, with dollar signs in his eyes and an oil spill coming out of his mouth.

Raymond's promise in the wake of the spill, "We will make you whole," is lettered on the slick.

Webber's eyes became wet as he fought tears.

"There is a hole in our hearts," he said to the silent journalists and Alaskans, in perhaps the most emotional moment in the press conference.

Gibbins added that Webber's own blood was used to create the red-brown coloring of the carved dollar signs of the shame totem.

It will become apparent when the Supreme Court issues a ruling before it adjourns in early summer whether Webber's shame totem carries enough mojo to preserve the \$2.5 billion punitive damages award levied against Exxon by the San Francisco-based 9th Circuit Court of Appeals in December 2006.

That figure would translate to a bit more than \$75,000 for each of the 32,667 claimants.

According to court observers, despite the fervent hopes of Palin and the Cordova activists who traveled to Washington, the Supreme Court is not influenced by public relations efforts such as "The Whole Truth" campaign spearheaded by Cordova fishing and environmental officials.

Furthermore, these observers note that the court's acceptance of Exxon's appeal indicates that several justices question the reasoning behind the 9th Circuit's decision.

The 9th Circuit, which oversees federal courts in the western United States, is infamous for providing a disproportionate number of cases overturned by the highest court.

Justice Samuel A. Alito Jr. has recused himself from the arguments because he owns Exxon stock, raising the prospect of a tied decision, which would effectively uphold the 9th Circuit's award of \$2.5 billion.

In its appeal, Exxon argues that:

- punitive damages cannot be awarded for violations under the Clean Water Act;
- under longstanding maritime law, it is not liable for the actions of a reckless ship captain acting contrary to company policy;
- the \$2.5 billion award - the highest in U.S. history - is excessive.

In friends of the court briefs, Alaska's Congressional delegation, its Department of Law and representatives of Prince William Sound countered each of Exxon's arguments.

On Wednesday, Walter Dellinger, a former acting solicitor general, was scheduled to present Exxon's arguments to the Supreme Court and answer the justices' questions.

Jeffrey Fisher, a professor at Stanford Law School, was expected to counter in his role representing the oiled fishermen of Alaska. Each attorney was scheduled to receive 45 minutes, a departure from the typical 30 minutes granted to each side.

The Supreme Court cannot increase the amount of punitive damages. It can sustain the \$2.5 billion award, or it can vacate it because such damages cannot be granted under applicable statutory or maritime law or because the award is unconstitutionally excessive.

The 9th Circuit lowered the \$5 billion originally awarded for punitive damages by an Anchorage jury in 1994. The jury's award was ruled unconstitutionally excessive because it was 10 times the \$500 million in actual damages from the oil spill.

The appellate court cut the award by half to arrive at the \$2.5 billion figure. That reduction is not a subject of the Supreme Court's review.

"The oral arguments heard before the Supreme Court this week will mark a turning point in Cordova's history," Cordova Mayor Tim Joyce said Monday.

"I sincerely hope that the Supreme Court will find that Exxon is liable, as other courts have already done, so that oil shippers will always go the extra mile to insure that they never spill oil in Prince William Sound again.

"However, either way it turns out, the waiting and all the appeals will be over."

Anchorage attorney Emily Anderson expressed hope at Tuesday's media event that Alaska's high-profile PR campaign might be one of the few that would actually reach the ears of Supreme Court justices and perhaps touch their hearts.

"The Supreme Court is insulated from public opinion," said Anderson, who is married to Cordova fisherman Blake. "You can't write them letters. But that doesn't mean the justices don't listen to radio, watch TV or surf the Internet."

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To view the oral arguments, visit

http://www.supremecourt.us/oral_arguments/argument_transcripts/07-219.pdf

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