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Supreme Court Could Limit Damages in Exxon Valdez Case

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The Supreme Court on Wednesday appeared unwilling to toss out the \$2.5 billion punitive damage award against Exxon Mobil Corp. for the massive Exxon Valdez oil spill 19 years ago.

But the justices also seemed to think that \$2.5 billion was too much, pointing toward a possible compromise decision that will give partial victories both to the oil company and the class of 32,000 Alaska fishermen and others involved in the case.

The historic 90 minutes of arguments in *Exxon Shipping v. Baker* represent the culmination of years of litigation seeking compensation for the lingering effects of the 11 million-gallon oil spill on the lives and economy of Prince William Sound. A jury awarded the group \$287 million in compensatory damages and \$5 billion in punitives, but the U.S. Court of Appeals for the 9th Circuit cut the punitive award in half.

Among those in the packed courtroom was a contingent of Alaska fishermen who had waited in line outside the Court in frigid temperatures since 2 a.m.

Arguing for Exxon Mobil, Walter Dellinger of O'Melveny & Myers acknowledged the spill was "one of the worst environmental tragedies in U.S. maritime history." But he said the company had been penalized and deterred enough, pointing to \$400 million already paid for losses to commercial fishing plus other fines and restitutions amounting to \$3.4 billion.

But when Dellinger argued that 200 years of maritime law precedent precluded punitive damages against the company for an accident like the Exxon Valdez, he ran into almost unrelenting skepticism. His main citation, an 1818 case called *Amiable Nancy*, almost turned into a joke when Justice Antonin Scalia shrugged it off as "Amiable whatever it is."

Justice David Souter said that immunizing a shipping company from damages caused by one of its captains might have made sense centuries ago "when the ship was sort of a floating world by itself." With modern communications, however, he suggested it is harder to argue that a boat captain is any different from a division chief of a corporation.

Stanford Law School professor Jeffrey Fisher, who argued for the Alaskan plaintiffs, seemed to have connected with justices more effectively when he argued that tort law, including punitive damages, should apply to maritime cases

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as much as any other.

Fisher argued that Exxon in fact "has not been deterred" by all that has followed from the oil spill. Capt. Joseph Hazelwood is the only person the company fired, he said, while others further up the chain of command received raises and bonuses. In spite of the high numbers Dellinger mentioned, Fisher said his clients have only received \$15,000 apiece.

But Fisher did not seem to win his entire case, with several justices seemingly mindful of the high award against Exxon and searching for a way to limit that number further. When he speculated that the Court had granted review in the case because it wanted to clarify maritime law, Scalia interjected, "That, and \$2.5 billion."

Justice Anthony Kennedy struggled to find a ratio or rule to limit damages, offering at one point the idea of a 2-1 ratio between punitives and compensatories.

Justice Samuel Alito Jr. was missing from the bench Wednesday, having recused in the case since it arrived at the Court last year. In his latest financial disclosure form, Alito reported he owns between \$100,001 and \$250,000 in Exxon Mobil stock.

The argument also may have represented something of an experiment for the Court. Usually each side is given 30 minutes, but the Court expanded that allotment to 45 minutes each, for a total of 90 minutes -- the longest argument involving just two lawyers since 2005.

David Frederick of Kellogg, Huber, Hansen, Todd, Evans & Figel, who watched the arguments and is author of a book on appellate advocacy, said "both sides benefited" from the longer argument time, giving Dellinger and Fisher, as well as the justices themselves, more opportunity to delve into the knotty issues without interruption.

Ironically, the extra time came at the expense of Frederick himself, who had sought argument time on behalf of his client, the state of Alaska. The Court denied his motion.