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Justices Take Up Battle Over Exxon Valdez

By LINDA GREENHOUSE

WASHINGTON — The Exxon Valdez oil spill, which caused a 3,000-square-mile oil slick and still affects Alaska's fisheries after nearly 19 years, was a "tragedy," Exxon's lawyer told the Supreme Court on Wednesday.

But the company has been punished enough by $3.4 billion in criminal fines, cleanup costs and compensation payments, the lawyer added, arguing that the $2.5 billion in punitive damages approved by a federal appeals court served no additional "public purpose."

Exxon's appeal of the biggest punitive damage award ever upheld in federal court led to a lively Supreme Court argument in which everything was open to dispute, from the significance of a 200-year-old case about robbery on the high seas to the world of modern maritime commerce in which a 1,000-foot tanker like the Exxon Valdez is considered a separate "business unit" in the organization chart of its corporate owner.

With Justice Samuel A. Alito Jr. not participating, a result of his ownership of Exxon Mobil stock, the possibility of a 4-to-4 tie was clearly present. A tie would affirm the appeals court's judgment in favor of a class of 32,000 fishermen and business owners, who stand to receive about $75,000 apiece from the $2.5 billion award. It was abundantly clear to everyone in the crowded courtroom that if the plaintiffs could just hold on to four votes, they would win the case.

Their champion was Justice Ruth Bader Ginsburg, who subjected Exxon's lawyer, Walter Dellinger, to a rapid-fire series of questions about his central arguments. Justice Ginsburg suggested at one point that the jury that heard the case would have been justified in concluding that Exxon was a "grave wrongdoer" itself, not just vicariously through the negligence of the ship's captain, Joseph J. Hazelwood, who company officials left in charge of the ship despite having been informed that he was an alcoholic who had resumed drinking.

One of Exxon's arguments on appeal is that the Supreme Court's precedents foreclose awarding punitive damages against a ship's owner for the misdeeds of the captain. Mr. Dellinger told the justices that the appeals court, the United States Court of Appeals for the Ninth Circuit, "erred in overturning a maritime-law rule that has been settled for 200 years," under which the owner can be liable only for actions that it directed, ratified or participated in.

Justice Ginsburg interrupted. “How was that rule settled?” she asked. “What is the long-settled line of decisions of this court in maritime law that you are relying on?”

As she undoubtedly knew, and as Mr. Dellinger, a former acting solicitor general, was obliged to concede, there was in fact only one, a case from 1818 called the Amiable Nancy, involving a robbery by a sailor on a privateer. Mr. Dellinger also invoked a later 19th-century case that shielded a railroad from liability for the actions of a conductor.

“That was on land,” Justice Ginsburg observed.

The plaintiffs’ lawyer, Jeffrey L. Fisher, a Stanford Law School professor, told the justices that the question of precedent was “more or less an open issue before you today.” Mr. Fisher said that “you have a smattering of a few old cases that lean in different directions.”

The question of whether precedent dictated an outcome for one side or the other in this case, Exxon Shipping Company v. Baker, No. 07-219, appeared to be a draw.

But that was not the only question. Mr. Dellinger got considerably more traction with his argument that federal maritime law simply did not permit an award of this size. The federal courts have considerable discretion to define the contours of maritime law, a fact that led to a more open consideration of policy than is usually the case. It was on this ground that Justice Stephen G. Breyer challenged Mr. Fisher.

“This is a very dramatic accident,” Justice Breyer said. “It involves oil spills, and they cause an enormous amount of trouble. But there are accidents every day, and ships are filled with accidents.”

Given that punitive damages have not been the normal rule in maritime cases, Justice Breyer continued, “then it will be a new world for the shipping industry and for those who work on the ships” if the courts begin to impose them. “What principles do you have to suggest, if any,” the justice asked Mr. Fisher, “for creating a fair system that isn’t just arbitrary?”

Rigorous appellate review, to weed out “passion and prejudice,” would address that problem, Mr. Fisher said. The answer did not appear to reassure justices who seemed sympathetic to Exxon, including Anthony M. Kennedy and Antonin Scalia. At one point, when Mr. Fisher said Exxon should not benefit from a particular argument because the company had not raised it, Justice Scalia said, “They don’t have to make every tiny little argument.”

Chief Justice John G. Roberts Jr. also appeared sympathetic to Exxon. “I don’t see what more a corporation can do” to protect itself from employees who violate explicit company policy, like a no-drinking rule, he told Mr. Fisher.

When the justices agreed in October to hear Exxon's appeal, they limited their review to questions of maritime law and excluded a more general question about the constitutionality of the punitive damage award. Consequently, the eventual decision is not likely to affect punitive damages in nonmaritime cases.