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Exxon: We Have Paid for Valdez

In the Supreme Court, the oil giant argues against punitive damages for the Alaskan oil spill

By *Marianne Lavelle*

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Walter Meganack, chief of the Alutiiq village of Port Graham, Alaska, had called it the day "the water died." On March 24, 1989, the supertanker Exxon Valdez ran aground and spilled 11 million gallons of crude oil into Prince William Sound. Wind and waves spread oil across 600 miles of coast and 10,000 square miles of marine ecosystem—forever changing the lives of the Native Alaskans and fishermen who relied on the sea. Meganack was among 32,000 of them who took Exxon to court, but he predicted that he would never live to see justice. Indeed, he had already been dead 13 years when his daughter Fran Norman stood last week outside the Supreme Court waiting to hear the final act of Exxon's epic battle to avoid punishment. Norman and several fellow plaintiffs held up a sign with Meganack's words: "We can learn from our beloved elders to not lose hope."



Workers spray oil-covered rocks following the 1989 spill. Spread across 10,000 miles of marine ecosystem, the oil slick killed wildlife and damaged the livelihoods of fishermen.

(Natalie Fobes/Corbis)

Exxon Mobil is fighting a lower court's decision that it should pay \$2.5 billion in punitive damages for the largest oil spill in U.S. waters—a sum that amounts to about three weeks of its net profit. Justice Stephen Breyer asked Exxon's lawyer, Walter Dellinger, how he answered those who note the company's ample resources to pay such a judgment. Dellinger maintained that the \$3.5 billion that Exxon has already spent, including cleanup and state and federal fines for environmental damages, plus the \$15,000-per-person compensation to victims, was punishment enough. "That amount is enough to deter anyone from anything," Dellinger said. "This was a tragic and terrible event, and one for which the company paid dearly."

Maritime law. Whether Exxon will have to pay more will turn on 200-year-old maritime law. Exxon's argument rests on an 1818 case involving a privateer ship called the *Amiable Nancy*,

whose crew illegally plundered a neutral ship. The Supreme Court didn't hold the ship owners liable for the actions of the Amiable Nancy crew, Exxon argues, and neither should it hold the oil giant liable for the actions of Capt. Joseph Hazelwood, the notorious drunk who left the bridge of the Valdez and put the ship in the hands of a third mate on the night of its fateful journey.

Justice David Souter prodded Dellinger over his reliance on a case that dates back to President James Monroe's era. "In those days, when a ship put to sea, the ship was sort of a floating world by itself," Souter said. "Contact with the ship owner was simply gone until the thing came back into port again. That is certainly not the case today, and we know it's not the case in the circumstances here." Indeed, Hazelwood was in satellite phone contact with Exxon immediately after the spill.

But at its heart, the case is about what happened before the spill and whether Exxon could have prevented it. The oil company says that Hazelwood—later fired—violated company policy by leaving the bridge to go to his cabin to do some paperwork. However, the plaintiffs presented evidence that Hazelwood had consumed up to nine double vodkas before boarding ship. A lower court judge said that for three years, Exxon's management knew Hazelwood had resumed drinking after a failed rehab effort. "Over and over again, Exxon did nothing to prevent Captain Hazelwood from drinking and driving," the court said.

Support for the victims is strong in Alaska even though 85 percent of the state's budget revenue comes from the oil and gas industry.

Although there has been great recovery on Prince William Sound, and the surface oil was gone within a few years, there is continuing ecosystem damage from the deeply penetrated petroleum. Scientific evidence has emerged since the original trial in 1994, pointing to the oil spill as the cause for depletion of once bountiful herring, for instance. Steve Smith, a commercial fisherman who is one of the plaintiffs, says that herring made up half of his livelihood before 1989. "Can you just imagine having 50 percent less income?" Smith asked. "This spill continues to haunt us." And Sven Haakanson, a local anthropologist who is executive director of the Alutiiq Museum on Kodiak Island, said it is impossible to quantify how life has changed for the Native Alaskans who were subsistence fishermen. "The elders used to say, 'The tide is out; our table is set,' " says Haakanson. "And now, you go out and you can't eat clams off the beaches. We have no way to say is it safe or not without sending it off to some lab. Our culture is not only devastated but changed, for who knows how long? This damage goes beyond money."

But money is now the question before a Supreme Court that has spent the past decade limiting punitive damages in lawsuits. Some of the justices clearly were grappling with the idea of finding that Exxon could be liable but setting a cap on that liability. Such a decision conceivably could mean more litigation in a case that already has run so long that 6,000 of the original plaintiffs have died. The high court is expected to rule before July.

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