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Justices Assess Financial Damages in Exxon Valdez Case

Supreme Court May Reduce Billions Awarded Over Environmental Debacle in Prince William Sound

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The Supreme Court yesterday pondered one of those questions that seem designed for brilliant legal minds: How much money would be an adequate punishment for a company responsible for one of the nation's most horrific environmental disasters, the [Exxon Valdez](#) oil spill off the coast of [Alaska](#)?

A jury in the state said \$5 billion. An appeals court said \$2.5 billion. And [Exxon](#)'s answer yesterday was nothing at all, because the company has already paid plenty for the tragedy in [Prince William Sound](#) nearly 20 years ago.

Justices explored just about every possible alternative through intense questioning during an hour and a half of arguments before a packed courtroom. By the end, it seemed that several held the view that the company could be found liable for punitive damages, but perhaps not for as much money as even the appeals court had found.

There were several unusual aspects to yesterday's arguments in a case that has bounced through the legal system for 14 years.

[Justice Samuel A. Alito Jr.](#) is recused because of his Exxon stockholdings, so even a 4 to 4 tie on the court would affirm the lower court's decisions that punitive damages are owed to nearly 33,000 fishermen, native Alaskans, businessmen and others consolidated into the single suit against Exxon.

And, as Justice [David H. Souter](#) noted, the court for a decade has struggled with determining whether punitive damages awarded by state courts were excessive. Now, he suggested, it is the Supreme Court's turn to "come up with a number."

Exxon has acknowledged that the captain of the Exxon Valdez, Joseph Hazelwood, was drunk at the time of the March 24, 1989, accident, and the corporation has paid about \$3.4 billion in fines, compensation and cleanup costs.

But in his opening arguments, Exxon's attorney before the court, [Walter E. Dellinger](#), said punitive damages -- awarded to punish the company and deter future wrongdoing -- are unnecessary and improper under "maritime law rule that has been settled for 200 years."

But he did not get far, coming under fire immediately from Justice [Ruth Bader Ginsburg](#).



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"It's rather, I think, an exaggeration to call it a long line of settled decisions in maritime law," Ginsburg said, adding that the 1818 decision in *The Amiable Nancy* that Dellinger relied upon did not touch on punitive damages.

Ginsburg was no more impressed with Dellinger's alternative argument, that it was wrong for the jury to conclude that because Hazelwood was reckless, so was Exxon and, thus, it is liable for punitive damages.

Perhaps the jury was reacting to testimony that Exxon knew Hazelwood was a lapsed alcoholic but allowed him on "voyage after voyage," Ginsburg said. "The jury could have found: Never mind the captain. Exxon, itself, is a grave wrongdoer because it allowed the tanker to be operated by a captain who was certainly not fit."

But [Chief Justice John G. Roberts Jr.](#) and Justice [Anthony M. Kennedy](#) were more sympathetic to that argument, wondering whether Hazelwood was senior enough in the corporate structure for his actions to open the entire company to what Dellinger called "vicarious liability."

Roberts said Hazelwood violated Exxon corporate policy that night both by drinking and by his actions on the ship. "So what can a corporation do to protect itself against punitive damages awards such as this?" Roberts asked Jeffrey L. Fisher, a lawyer and [Stanford](#) law professor representing the plaintiffs.

Fisher replied that Exxon had a "paper" policy but did not follow it. Despite years of evidence that Hazelwood was drinking again, Fisher said, Exxon kept him in place, "putting a drunken master in charge of a supertanker."

Ginsburg was the only justice active in the questioning who did not raise the issue of whether the punitive award is excessive. Souter wondered if a fair formula might be to double compensatory damages, which the [U.S. Court of Appeals](#) for the Ninth Circuit found to be around \$500 million. Justice [Antonin Scalia](#) said the court might look to the amount of civil penalties available under the Clean Water Act. Justice [Stephen G. Breyer](#) wondered about principles for "creating a fair system that isn't just arbitrary."

The two attorneys reacted to the discussion with appeals that sounded as if they were intended for a jury.

Dellinger welcomed a discussion of lower awards, but returned to his argument that punitive damages should be to punish a company for wrongdoing related to profit or intentional harm.

"That is not true here," he said. "Exxon gains nothing by what went wrong in this case, and paid dearly for it."

But Fisher said Exxon had not learned a lesson from the disaster; Hazelwood was fired, and "everybody else . . . further up the chain of command who allowed this to happen received bonuses and raises."

Fisher closed: "What you have today are 32,000 plaintiffs standing before this court, each of whom have received only \$15,000 for having their lives and livelihood destroyed, and haven't received a dime of emotional distress damages."

The case is *Exxon Shipping Co. v. Baker*.

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