



## **Exxon's Day of Valdez Reckoning May Never Arrive: Ann Woolner**

Commentary by Ann Woolner

Feb. 29 (Bloomberg) -- To whomever wonders why Americans lose faith in the U.S. legal system, I offer this exhibit: Exxon v. Baker.

It has been almost 19 years since the Exxon Valdez supertanker ran aground, spilled 11 million gallons of crude oil and wreaked devastation on Alaska's pristine waters, rugged coastline, fishing industry and abundant wildlife.

More than 13 years have slid by since a jury mostly blamed the company's recklessness and said Exxon Mobil Corp. should pay \$5 billion to Alaskans as punishment.

Since then, the case has bounced around the system until a court of appeals ordered the award sliced in half. Still, the company balked at paying the seemingly final sum, \$2.5 billion, and kept appealing.

This week the U.S. Supreme Court entertained arguments that Exxon should pay far less -- or nothing at all.

Lawyers for death row inmates should study at the feet of those who have managed to put off Exxon's day of reckoning.

George H.W. Bush had been president not yet three months when the supertanker's spill fouled 1,300 miles of shoreline and killed hundreds of thousands of sea birds, otters and seals.

Mikhail Gorbachev hadn't yet become president of the still intact Soviet Union. Apartheid was the law in South Africa. The Berlin Wall divided east from west.

While history marched forward, Exxon kept this matter from moving, unless you count backwards.

### Normal Rules

Normal rules haven't applied to this case. The company gets to argue a defense it conjured up more than a year after it lost at trial, a delay that should have shut the argument down immediately.

Plus, Exxon is still trying to squirm out from under the jury's 1994 finding that it should be punished.

Exxon says the company can't be held responsible for the actions of a mere tanker captain -- though the company previously acknowledged Captain Joseph Hazelwood was a manager who headed up a unit worth hundreds of millions of dollars, the Exxon Valdez.

If you think that still puts him too far down the chain to make the company responsible for his actions, you could still find Exxon liable for putting Hazelwood, a relapsed alcoholic known to drink on the job, in charge of a supertanker.

``We showed 33 instances in the record of Exxon employees drinking with Hazelwood or learning that he drank," Stanford University law professor Jeffrey Fisher argued to the court this week on behalf of the Alaskans who sued.

### Drinking Reports

``Up and down the corporation," he said, ``for three years, upper management was receiving reports that this man was drinking aboard the vessel."

There were reports he was acting erratically, speaking abusively, falling asleep during his performance review.

No less an executive than the president of Exxon Shipping Co. unit had been told of Hazelwood's drinking, according to evidence at trial.

Of course, the company did have a policy against pilots drinking before or after boarding.

“I don't see what more a corporation can do,” Chief Justice John Roberts said during this week's argument.

Here's what the corporation could have done: enforced its policy and fired Hazelwood. Or at least keep him off the bridge of a supertanker.

Instead, Exxon allowed him to pilot a 1,000-foot, 210,000-ton tanker carrying almost 1.3 million barrels of crude oil around icebergs in one of the world's purest and most sensitive environments.

#### Inviting Catastrophe

The company knew a spill would spell catastrophe for the environment and to the commercial fishing that sustained the local population. It knew it had neither the equipment nor capacity to clean it up, as Fisher pointed out to the justices this week.

Time dissipates outrage, and sometimes that is good. Emotions can rush judgment, railroad the innocent and demand punishment beyond reason.

But time also robs the event of its full meaning. What are a few otters, after all? Hasn't Exxon paid enough for Hazelwood's drinking, for his poor judgment?

If the point is to deter Exxon in the future, the company has already dished out \$3.4 billion in fines, cleanup and payments to victims, Exxon lawyer Walter Dellinger told the justices.

“That clearly obviates the need for deterrence,” said Dellinger, a Duke University law professor and a partner in Washington's O'Melveny & Myers.

#### A Fraction

And yet, the company already acknowledged in a lower court that even the original \$5 billion award wouldn't hurt much. Last year it made a \$40.6 billion profit.

Nineteen years is a long time, in some ways. Since the Exxon Valdez ran aground, one fifth of the Alaskans who brought the suit have died. Others have been bankrupted.

That isn't enough time, according to a National Marine Fisheries Survey, to rid Prince William Sound of thousands of gallons of spilled oil or to restore marine life to pre-spill levels.

It is more than enough time to make Exxon pay.

(Ann Woolner is a Bloomberg news columnist. The opinions expressed are her own.)

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