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Alaska, Venezuela share oil concerns

ELSTUN LAUESEN
COMMENT

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Can you guess who this is? A plaintiff seeks damages from an oil company but claims the federal courts system is so politically compromised he wants international arbitration.

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Are we describing one of the 36,000 Exxon Valdez Oil Spill (EVOS) plaintiffs involved in "Exxon V Baker?" It sure sounds like it, since a punitive award levied against Exxon by a jury years ago has been slashed and now is in jeopardy. In an amicus brief filed with the Supreme Court in Baker, New York University Professor Arthur Miller, who has spent 50 years studying civil procedures of federal court systems, asserts that the 9th Circuit Court abused its discretion to accommodate Exxon. Thus, the 9th Circuit bypassed the rules of procedure and trial established by the District Court.

Besides halving the damage award, the Circuit Court allowed Exxon to use an argument not presented at the district level, which was that liability provisions of the Clean Water Act trump the common law damages awarded by the jury. Hence, Exxon is now allowed to argue, the damage award should be thrown out. Now the case has moved to the Supreme Court where, thanks to Exxon stock-owning Justice Alito's recusal, bookmakers are calling it a toss-up as to whether the oil giant will ever be punished.

The mystery plaintiff mentioned at the beginning of this column is none other than Exxon itself in its legal battle with the government of Venezuela.

Since the early 1990s, well before Hugo Chavez, the goal of Venezuela and the national oil company PDVSA -- Petróleos de Venezuela S.A, has been to achieve "self-determination" over the country's oil fields. Most Venezuelans want Venezuela to control its oil fields; Chavezianistas and their conservative opposition disagree over tactics.

Last year the Chavez administration offered new lease terms to foreign oil companies. The lease terms limit foreign companies to a minority interest in partnership with PDVSA. Most of the companies, including Chevron, agreed to the new terms. Exxon and Conoco Phillips choose not to accept losses in exchange for production agreements.

Alaskans can understand Venezuela's desire for self-determination. Consider the battle with Exxon over the development of Point Thomson, for example. For over two decades, Exxon, in effect, warehoused this rich field, even as Prudhoe Bay production declined. Alaskans want production managed for state economic stability; Exxon manages our fields for the company's internal global strategic considerations. Is Exxon's sudden interest in the development of the Point Thomson fields driven by its near-term production losses in Venezuela? Venezuela also understands what Alaskans are learning from the gas line debate with Conoco Phillips: It does little good to own resources if you don't have some control over the means of production. Alaskans want an open-pipeline system to encourage competition from independent producers.

Exxon is challenging Venezuela in a court of international arbitration because they see the

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Venezuelan court system as stacked against them. The company has also gone to courts in countries where the assets of PDVSA are managed such as England, Netherlands and the United States and has moved to freeze \$12 billion of PDVSA assets pending the results of arbitration.

This seems like a good strategy for the EVOS plaintiffs as well.

Imagine plaintiff attorneys applying for international arbitration, just like Exxon did, and for the same reason: The federal courts are stacked against them. Plaintiff attorneys could then move to freeze Exxon's assets around the globe; \$12 billion seems like a nice round number.

In a European court of arbitration the EVOS plaintiffs might stand a chance to finally gain justice.

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2 Wednesday, March 5, 2008 - 8:19am | **clarity**

Really?
 This article appears to be more about, "what is good for the goose is good for the gander." If Exxon can file this type of brief, then so should the plaintiffs. (outside of a stacked-deck country)

1 Wednesday, March 5, 2008 - 4:59am | **blue_gold907**

There
 is not comparison to Alaska and Venezuela, a country run by a socialist kook.

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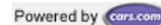
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