



U.S. Supreme Court slashes punitive damages in *Exxon Mobil Shipping Company v. Baker*

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Analysis:

On June 25, 2008, the United States Supreme Court slashed a \$2.5 billion punitive damages award against oil giant Exxon Mobil Corp. and its shipping subsidiary for the massive 1989 oil spill in Alaska's Prince William Sound – an incident that sparked a 13-year courtroom battle over money damages. In 1994, after a lengthy trial, the jury ordered Exxon to pay \$5 billion in punitive damages for the economic harm and devastation its misdeeds caused the people and commercial fisheries who fished in the formerly-pristine area.

The federal district court and appeals court upheld the verdict, but Exxon kept fighting, and with the Supreme Court announcing new limits on punitive damages in other cases, ultimately got the verdict cut in half to \$2.5 billion. Exxon then persuaded the Supreme Court to take the case, arguing that the company should be totally insulated from punitive damages because the case arises under maritime law – which, Exxon said, does not permit punitive damages. Exxon also argued that, even if punitive damages are available in maritime cases, the award should be slashed because the punishment – so said Exxon – did not fit the crime.

Public Justice had joined an amicus brief in the case (principally authored by Robert Peck and Jeffrey White of the Center for Constitutional Litigation), urging the Court to reject Exxon's bid to evade

full punishment for the harms caused by the notorious wreck of the Exxon Valdez oil tanker. The Court agreed with Public Justice and other amici that the punitive damages award is not preempted by federal law, but it held that the punitive damages award was excessive, ruling that, in maritime cases, "a numerical 1:1 ratio [of compensatory to punitive damages] is a fair upper limit..."

This is the first time in history that the Supreme Court has imposed a precise numerical limitation on the permissible amount of punitive damages. The ruling will inevitably have a ripple effect in myriad future maritime cases by restricting the ability of judges and juries to punish particularly outrageous misconduct, thereby reducing the deterrent effect of damage awards. But the immediate practical effect of the ruling is cause enough for concern: the decision will reduce the \$2.5 billion punitive damages award against Exxon Mobil to a little over \$500 million, which is only a tiny fraction of the company's total annual net profits.

In fact, according to CNN, the company recently made history by reporting the highest quarterly annual profits *ever* for a U.S. company, boosted in large part by soaring crude prices. Just last year, Exxon Mobil set an annual profit record by earning \$40.61 billion – or nearly \$1,300 per second. That exceeded its previous record of \$39.5 billion in 2006.

In light of the enormous environmental, social, and economic devastation wreaked by the 1989 crash, the reduction of the punitive award to what amounts to a mere slap on Exxon's wrist is deeply troubling.

The bad news

The underlying facts of the case are well-known. The Exxon Valdez oil tanker was piloted by an alcoholic captain known to the company to be experiencing a relapse. The tanker crashed into a reef located in Prince William Sound, which ripped open the ship's hull, releasing 11,000,000 gallons of crude oil into the Sound. The crash resulted in what the U.S. Supreme Court previously called the "most notorious oil spill in recent times." (*United States v. Locke* (2000) 529 U.S. 89, 96.) The devastation to the environment and the wildlife contained within it was unprecedented. The oil spill also disrupted the lives and livelihoods of thousands of people in the area for years, destroying much of the fishing industry and the subsistence activities of Native Alaskans. Although victims of the oil spill have been provided with some compensation for their injuries, the industry and others affected by the oil spill have been forever damaged. Many believe that Exxon Mobil has not adequately been punished for what is viewed in many circles as outrageous misconduct.

The good news

The Supreme Court's decision cutting the punitive damages award is a horribly sad ending to a terrible chapter in American history. But there is some good news. First, because Justice Alito recused himself from the case, the Court deadlocked four-to-four on the question of whether a shipowner can be held vicariously liable for the reckless acts of its "shipmasters." (Exxon argued that it



could not, but the United States Court of Appeals for the Ninth Circuit disagreed.) This split decision means that the Ninth Circuit's favorable ruling on that point remains on the books.

Second, the Supreme Court refused to buy Exxon's argument that the federal Clean Water Act "preempts" – i.e., totally wipes out – the punitive damages claims against the oil company. If the Court had adopted that argument, it not only would have been grim news for Clean Water Act cases, but it also could have restricted the availability of punitive damages in numerous other areas involving similarly worded statutes.

Third, the part of the decision that imposed a 1:1 ratio between compensatory and punitive damages is restricted

to maritime cases, and it seems unlikely that it will have any impact outside that narrow area of the law (despite what some conservative pundits are saying to the contrary). There are at least two reasons for this. First, the Court itself made clear that its ruling is limited to maritime cases, where it has a rare authority to enunciate "federal common law" (i.e., federal judge-made law). The Supreme Court has no such authority with respect to ordinary civil litigation, where the Court's role is limited to considering whether punitive awards imposed under state law violate the U.S. Constitution's due process clause.

An equally powerful reason why the Court's ruling will most likely be restricted to maritime cases is that two of

the Justices who agreed with imposition of a 1:1 compensatory-to-punitive-damages ratio in maritime cases – Justices Scalia and Thomas – have previously written in dissenting opinions in numerous other punitive damages cases that they do not believe that there is *any* constitutional due process limitation on the amount of punitive damages that can be imposed in ordinary (i.e., non-maritime) civil cases. So it is virtually certain that those two Justices, at least, would not support any future efforts to apply a strict 1:1 numerical ratio in other contexts.

In short, even though the Supreme Court's decision is heartbreaking in many respects, it could have been worse. Such are the victories of our times.