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SUPREME COURT RULES ON AVAILABILITY OF PUNITIVE DAMAGES UNDER FEDERAL MARITIME LAW

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On June 25, 2008, in *Exxon Shipping Co. v. Baker,* the Supreme Court of the United States decided a number of federal maritime legal issues in a case of first impression. Even though this case has been a focus of media attention for years, a little background and review is necessary to understand what the Supreme Court decision says—and what issues it did not resolve.

In 1989, the supertanker Exxon Valdez grounded off the Alaska coast, causing millions of gallons of crude oil to spill into Prince William Sound. Exxon spent approximately $2.1 billion in cleanup costs, pleaded guilty to criminal violations and paid associated fines, settled a civil action brought by the United States and Alaska for at least $900 million, and paid another $303 million in voluntary payments of private parties. Other civil cases were consolidated into a single trial, and was subsequently subject to this appeal after verdict. The overwhelming majority of these claimants sought to recover economic losses from Exxon.

Given the large number of claimants, the trial was conducted in phases. In Phase I, the jury found Hazelwood reckless as the vessel's master. Hazelwood had long abused alcohol and evidence was presented that Exxon knew Hazelwood continued to abuse alcohol, but nevertheless allowed Hazelwood to continue to work as a supertanker master. The trial court also found Exxon's conduct was reckless, on the theory that a corporation is responsible for the reckless acts of employees acting in a managerial capacity in the scope of their employment. The trial court further found Exxon potentially liable for punitive damages arising from the reckless acts of its managerial agents.

In Phase II, the jury awarded $287 million in compensatory damages to some plaintiffs. Exxon settled with other plaintiffs for $22.6 million in compensatory damages. In Phase III, the jury awarded $5,000 in punitive damages against Hazelwood and $5 billion against Exxon. The Ninth Circuit upheld the Phase I jury instruction on corporate liability and reduced the punitive damage award against Exxon to $2.5 billion.

Exxon sought to reduce or eliminate the punitive damage award by asking the Supreme Court to consider three issues: (1) whether maritime law allows corporate liability for punitive damages on the basis of managerial agents; (2) whether the Clean Water Act, 33 U.S.C. Sec.

1251, et seq. (a federal statute) pre-empted an award of punitive damages in maritime spill cases; and (3) whether $2.5 billion awarded against Exxon by the Ninth Circuit was excessive as a matter of maritime common law.

With respect to the first issue, the Justices were split 4-4 so the Ninth Circuit's opinion that corporations can be held liable for the reckless acts of managerial agents remains intact. (Justice Alito did not participate in any way in this opinion since he owned Exxon stock.) The Court noted that other Circuits have reached contrary results and the decision does not reconcile this split between the different approaches.

With respect to the second issue, the Justices were unanimous in finding no clear congressional intent that the Clean Water Act preempts an award of punitive damages for private claims.

With respect to the third issue, the Justices were split 5-3 in favor of reducing Exxon's punitive damages to slightly more than $500 million on the basis of maritime common law. In reaching this decision, the Court took the opportunity to review the history of punitive damages, and concluded that "punitives are aimed not at compensation but principally at retribution and deterring harmful conduct." The majority also found that the degree of relative wrongdoing should have some effect on the amount of punitives and regarded Exxon's conduct as not so reprehensible so as to support a "significant" award of punitive damages. With this analysis in mind, the majority ultimately concluded that a 1 to 1 ratio between compensatory and punitive damages would be justifiable "to protect against the possibility (and the disruptive cost to the legal system) of awards that are unpredictable and unnecessary, either for deterrence or for measured retribution..." Therefore, because approximately $507 million in compensatory damages were awarded, the Supreme Court remanded this decision so that an award of punitive damages against Exxon could be adjusted to roughly the same amount—effectively reducing Exxon's punitive damage award by $2 billion.

Justices Stevens, Ginsberg and Stevens dissented on this last issue, arguing that the Ninth Circuit's award of $2.5 billion should remain intact and that any restriction on the amount of punitive damages should be left to Congress. Justice Stevens, in particular, criticized the 1:1 ratio because under federal maritime law, compensatory damages are sometimes limited or excluded altogether. For example, a vessel owner is allowed to limit its liability for property damage under the Limitation of Liability Act, 46 U.S.C. Sec. 183. In some instances, maritime law bars the recovery of negligent infliction of purely emotional distress and for purely "economic losses . . . absent direct physical damage to property or a proprietary interest." In Justice Steven's view, a 1:1 ratio for punitive damages could be unfair because many injuries are not compensable under federal maritime law.

Justice Ginsburg took special exception to the 1:1 ratio because of what was left unsaid about the nature and extent of Exxon's conduct in the majority's opinion. If it is true that the 1:1 ratio is appropriate because "Exxon's conduct ranked on the low end of the blameworthiness scale", then what ratio should be assigned for malicious corporate conduct? Does the 1:1 ratio represent the upper limit for punitive damage awards? Such value judgments, in the minority's view, are better left to Congress.

Because of the 4-4 vote on the application of vicarious liability for vessel owners and operators, the Supreme Court has allowed a circuit split on this issue to continue. In reducing the punitive damage award to $2.5 billion, the Ninth Circuit elected to follow its own precedent of allowing punitive damages against a ship owner for the actions of its captain in *Protectus Alpha Navigation v. North Pacific Grain.* The Fifth Circuit, in *P & E Boat Rentals*, and the Sixth Circuit, in *U.S. Steel Corp. v. Fuhrman,* followed an 1818 Supreme Court decision named *The Amiable Nancy* to insulate vessel owners and operators from liability for punitive damages based solely on the fault of the captain and crew. Since the Supreme Court did not decide this issue, different courts are likely to produce conflicting results in the future and Cozen O'Connor will continue to report on any significant developments on the trial or appellate level.

For any questions, comments or suggestions regarding this or any future Maritime Alert, please contact:

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