The Exxon Valdez ruling: the Supreme Court once again defends big business

Ed Hightower
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On June 25, the next-to-last day of the current term, the United States Supreme Court slashed the punitive damages judgment for the 1989 Exxon Valdez oil spill, which devastated Alaska's Prince William Sound. The award was reduced from $2.5 billion to only $507.5 million—an amount equivalent to a few days' profit for the giant oil company..

Exxon Mobil Corporation paid more than $1 billion to settle state and federal claims for environmental damages. The company went to trial in 1994, however, against a class action suit by over 32,000 individuals and small businesses devastated by the accident, predominantly commercial fishermen, native Alaskans and local landowners, who claimed that Exxon's reckless conduct caused the accident.

Exxon conceded fault, and the compensatory damages for the class were set at $507.5 million. The trial then proceeded on the issue of punitive damages only.

The evidence showed that on March 23, 1989, the tanker left port carrying 53 million US gallons of crude oil from the Trans-Alaska pipeline. Its captain, Joseph Hazlewood, had recently completed an alcohol rehabilitation program. His superiors knew about Hazlewood's problem, learned that he had relapsed recently, and even drank with him.

Witnesses testified that before leaving port Hazlewood consumed five double-vodka drinks, an amount that would have rendered any non-alcoholic unconscious. When tested by the Coast Guard 11 hours after the accident Hazlewood still had a blood-alcohol level of .061, meaning that during the wreck his level was about three times the legal limit for driving a car.

As the ship approached a well-known reef, Hazlewood set the autopilot, increased speed and turned the ship over to a subordinate unlicensed to perform the maneuver necessary to avoid running aground. The Exxon Valdez hit the reef, spilling crude oil into Prince William Sound. Hazlewood then tried to "rock" the ship free, a procedure that spewed more oil and risked killing the crew.

The result was the largest oil spill in US history: 11 million gallons covering 11,000 square miles, including 1,300 miles of pristine shoreline. The spill devastated the local economy as well as the environment. Estimated losses in the sport fishing industry alone were almost $600 million over the two years following the accident. Within days an estimated 250,000 seabirds perished, along with thousands of otters and seals. Despite billions of dollars in cleanup, the environmental effects of the spill still linger. Much of the oil seeped below the surface of affected beaches, decaying at a rate of about three to four percent per year. Animals that dig in the sand for their food continue to be contaminated.

After hearing this evidence, the jury awarded the 32,000 plaintiffs a total of $5 billion in punitive damages. In 2007 the United States Court of Appeals for the Ninth Circuit reduced the amount to $2.5 billion. The Supreme Court decision reduces the award to $507.5 million, effectively fashioning a rule under federal maritime law that limits punitive damages to the amount of compensatory damages awarded, a so-called one-to-one ratio.

The punitive award must be viewed in light of Exxon Mobil's enormous profits. The jury's original $5 billion award amounts to less than the company's profits for 1990 alone. In just the final quarter of 2007 Exxon made nearly $12 billion in profits, for an annual total of $40.61 billion. The Supreme Court's reduced award represents a mere 1.25% of Exxon Mobil's 2007 profits.

The ruling in *Exxon Shipping Company v. Baker* is the latest in a series of blatantly pro-business decisions by the Roberts Court, overturning jury verdicts based on established state-law principles. Others just this term include *Stoneridge Investment v. Scientific-Atlanta*, limiting shareholders' ability to sue for corporate fraud, and *Riegel v. Medtronics*, which eliminated the rights of injured patients to sue the manufacturers of faulty medical devices.

The *Exxon* decision, authored by associate Justice David Souter, a member of the so-called liberal bloc, is the high court's latest response to the hue and cry of big business over the size of some punitive awards, assessed by local juries to deter and punish corporate wrongdoing. Through a number of decisions, the Supreme Court effectively overruled its 1989 decision in *BFI v. Kelco Disposal*, where a punitive award 120 times larger than compensatory damages, $6 million to $51,146, was upheld.

In *Pacific Mutual Life Insurance Company v. Haslip* (1991), the court upheld a large punitive damage award, but suggested for the first time that such awards could violate the Due Process clause of the Fourteenth Amendment, resurrecting the rationale of early twentieth-century cases that struck down reformist labor laws because they interfered with the "substantive due process" rights of big businesses to make profits.

Next, *State Farm Mutual Insurance Co. v. Campbell* (2003) fashioned from whole cloth a supposed constitutional rule that in cases with substantial compensatory damages, a ratio of punitive to compensatory damages should not exceed nine-to-one. This rule circumscribed the court's oft-repeated dictum from previous cases that no "mathematical bright line" could determine the constitutionality of a punitive award.

In *Exxon* the court has come full circle, at least as regards maritime law cases involving catastrophic damages, by limiting the ratio to one-to-one.

Souter's opinion admits that big business allegations that punitive damages have "run wild" are untrue. The opinion cites a study of punitive awards showing the median ratio of punitive to compensatory damages to be 0.62:1 and the mean to be only 2.90:1.

Punitive damages are awarded in less than one percent of all civil actions. First, a jury must be sufficiently outraged by the conduct to award them, then the trial judge and appellate court may reduce them. Under such circumstances, punitive damages wind up being assessed in only the most egregious cases.

Dissents by associate justices John Paul Stevens, Ruth Bader Ginsburg and Stephen Breyer agreed that Exxon's behavior was so repugnant that traditional punitive damages doctrine was preferable. They made much of the fact that the majority decided on the need for the 1:1 ratio after citing the evidence that punitive damages were not in fact out of control.

The essence of this ruling is that it drastically reduces the power of punitive damages to deter the most harmful conduct of big business and makes it much more difficult for plaintiffs' lawyers to finance costly and protracted litigation like the *Exxon Valdez* case. The court has taken what was once considered a big club for plaintiffs and their attorneys and whittled it into a toothpick.