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## **COURT URGED TO REIN IN SKYROCKETING PUNITIVE DAMAGES AWARDS**

***(Exxon Shipping Co. v. Baker, No. 07-219)***

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to review (and ultimately overturn) a federal appeals court decision that upheld a \$2.5 billion punitive damages award against Exxon Mobil, an amount nearly 100 times greater than the largest punitive damages award ever previously affirmed by a federal appeals court. The award was made in litigation arising from the 1989 Alaska oil spill caused by the grounding of the EXXON VALDEZ.

In a brief filed in *Exxon Shipping Co. v. Baker*, WLF argued that federal maritime law traditionally has barred punitive damages awards in cases, as here, in which there was no finding that the defendant's wrongful act was either intentional or reckless. WLF further argued that even if a punitive damages awards is not completely barred, the \$2.5 billion award should be substantially reduced based on common law principles.

"The Supreme Court in the past has expressed reluctance to second-guess punitive damages awards issued under state law, because doing so raises significant federalism concerns," said WLF Chief Counsel Richard Samp after filing WLF's brief. "But such concerns are inapplicable when, as here, the case arises under federal law. In those circumstances, it is incumbent upon the U.S. Supreme Court to step in and impose reasonable federal-common-law limitations on the size of awards," Samp said.

The case arose in the aftermath of the 1989 oil spill in Prince William Sound, Alaska. Exxon subsequently spent \$2.1 billion cleaning up the spill and paid private claims totalling \$300 million. Proceedings commenced against Exxon by state and federal governments were settled in 1991, with Exxon agreeing to pay environmental and natural resources damages of \$900 million. Exxon also paid criminal and restitution fines in the amount of \$125 million. The total liabilities incurred by Exxon to date as a result of the oil spill exceed \$3.4 billion. The jury award in this case threatens to add another \$2.5 billion to that total.

In its brief urging Supreme Court review, WLF argued that punitive damages awards have only two permissible purposes: to punish wrongdoing and to deter future misconduct. WLF argued that by any rational measure, the \$3.4 billion expended by Exxon to date more than adequately serves both of those goals.

WLF argued that the \$125 million paid by Exxon in connection with criminal proceedings represents the considered judgment of elected officials regarding the appropriate level of punishment. WLF argued that there is no principled reason for allowing punitive damages juries to impose much greater sanctions, at the behest of self-interested tort victims and their lawyers, on the theory that the public interest in retribution demands more than the public's official representatives have found appropriate.

In recent years, the U.S. Supreme Court has recognized that the Due Process Clause imposes limitations on the size of punitive damages awards. However, based on its reluctance to interfere with the operation of state courts, the Supreme Court has held that such constitutional limitations do not justify a searching examination of punitive damages awards; rather, the Due Process Clause does no more than impose a ceiling above which state courts may not go in terms of imposing arbitrary punishments on defendants. WLF argued that when, as here, the lawsuit raises issues of federal law (here, federal maritime law), it is incumbent upon the federal courts to undertake a more exacting scrutiny of any punitive damages awards, to ensure that they are no greater than necessary to serve the legitimate goals of punishment and deterrence. WLF argued that the federal courts ought to generate federal common law to address such situations.

WLF argued that federal maritime law prohibits award of *any* punitive damages in cases, as here, in which the injury did not result from the shipowner's recklessness. (The jury's only recklessness finding was that the ship captain was reckless in drinking heavily and leaving the bridge while the EXXON VALDEZ was navigating Prince William Sound. The jury held Exxon vicariously liable for the ship captain's recklessness.) WLF argued alternatively that the \$2.5 billion punitive damages award must be reduced substantially under principles of federal common law because an award of that magnitude is unnecessary to achieve the goals of punishment and deterrence.

WLF is a public interest law and policy center with supporters in all 50 states. It devotes a substantial portion of its resources to promoting tort reform and reining in excessive litigation.

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For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).