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PUNITIVE DAMAGES AWARD OVERTURNED IN EXXON VALDEZ OIL SPILL

(In re: the Exxon Valdez)

The U.S. Court of Appeals for the Ninth Circuit in San Francisco this week overturned the \$5 billion punitive damages award imposed against Exxon Corporation as a result of the oil spill that occurred when the Exxon Valdez ran aground in Prince William Sound, Alaska in 1989.

The decision was a victory for the Washington Legal Foundation (WLF), which had filed a brief in *In re: the Exxon Valdez*, a class action lawsuit filed in the aftermath of the spill, asking that the award be overturned. WLF successfully argued that the unprecedented punitive damage award in this case could not be justified based on either of the purposes served by punitive damages awards: deterrence and punishment.

The appeals court noted that the oil spill has already cost Exxon \$3.5 billion in cleanup expenses, payment of private claims, and fines; the court agreed with WLF that such costs are, by themselves, more than sufficient to prompt Exxon and other oil companies to take all prudent measures to prevent repetition of the spill. The court also agreed that an additional \$5 billion far exceeds the maximum permissible punishment for Exxon's negligent conduct, given that Exxon has already paid the largest criminal fine in the history of American environmental regulation (\$125 million).

WLF had also argued that runaway juries should not be permitted to enrich plaintiffs' lawyers and a few lucky litigants at the expense of corporate America and the consuming public.

The Exxon Valdez is owned by a subsidiary of Exxon and, on the night of March 24, 1989, was captained by Joseph Hazelwood. Contrary to Exxon's written policy concerning ship operations, Captain Hazelwood left the ship's bridge while the ship was attempting to avoid ice floes as it departed Prince William Sound. Navigational errors by the Exxon Valdez's second-in-command led to the ship's running aground and the discharge of 258,00 barrels of oil. Exxon immediately took responsibility for the cleanup, paying \$2.1 billion in clean-up costs and \$300 million in private claims. In 1991, Exxon settled proceedings commenced by state and federal governments, by paying \$900 million

to cover environmental and natural resources damages and a \$125 million criminal fine -- bringing Exxon's spill-related costs to \$3.5 billion.

In its brief filed with the Ninth Circuit, WLF argued that the \$5 billion punitive damage award -- which was, at the time, far and away the largest award of its kind in U.S. history -- violated Exxon's constitutional rights to due process of law. WLF argued that the size of the award could only be explained as an unprincipled effort by an Alaskan jury to enrich local residents and their lawyers at the expense of an out-of-state corporation known to have deep pockets.

WLF noted that the law permits punitive damage awards to be no larger than necessary to accomplish the twin purposes of such awards -- deterrence and punishment. WLF argued that deterrence is fully served so long as a defendant is not permitted to profit from its improper conduct (e.g., a fine greater than any savings derived by reducing safety-related expenditures to a level below that which is reasonably prudent). WLF argued that given the \$3.5 billion paid by Exxon to date, it cannot seriously be argued that Exxon profited from the Exxon Valdez episode. Any additional payments by Exxon would result in overdeterrence, WLF argued (i.e., Exxon and similarly situated companies will be induced to spend more on safety measures than can reasonably be justified, leading to inefficient allocation of resources).

The appeals court largely agreed with WLF's arguments. It remanded the case for a redetermination by the district court of the appropriate level of punitive damages, if any. The court directed that the redetermination take into account that Exxon has already paid far more than the maximum penalty prescribed by Congress for grossly negligent oil spills, that Exxon did not purposely spill any oil, and that the initial punitive damage award vastly exceeded (in violation of principles set forth by the Supreme Court) the amount of economic harm actually suffered by the plaintiffs.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to promoting the free enterprise system and civil justice reform, including efforts to rein in overly expansive theories of tort liability and excessive punitive damage awards. WLF filed its brief in this case with the pro bono assistance of Arvin Maskin, Konrad L. Cailteux, and John H. Bae of the New York law firm of Weil, Gotshal & Manges.

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