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Exxon asks high court to void Valdez spill damages

Justices may say today whether they'll hear case involving jury's \$2.5 billion award

By PATTY REINERT

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WASHINGTON Since the Exxon Valdez plowed into an Alaskan reef in 1989, pouring 11 million gallons of crude oil into the clear waters of Prince William Sound, Texas-based Exxon Mobil Corp. has paid \$3.1 billion in fines, cleanup costs and environmental restoration, as well as \$300 million in settlements with thousands of Alaskan fishermen, cannery workers and landowners.

But Exxon has fought for nearly two decades to avoid paying billions more in punitive damages. The company contends it should not be punished for the negligence of Joseph Hazelwood, the Exxon Valdez captain who turned over the wheel to an underling and abandoned the bridge shortly after drinking heavily at a portside bar. Soon after, the ship ran aground on Bligh Reef.

Exxon already got an Alaskan jury's \$5 billion punitive damages award reduced by half. Now it is asking the U.S. Supreme Court to erase it altogether. The high court discussed Exxon's case in private last week and will announce as early as today whether it will accept it.

The case, Exxon Shipping Co., et al. v. Grant Baker, et al., is being watched around the world. Oil companies and their insurers are urging the justices to weigh in so they can better assess their risks in the event of another major accident or spill.

But if the court decides to hear Exxon's case, which would require the vote of at least four of the nine justices, those harmed by the spill are asking it to also accept their case. It seeks reinstatement of the original \$5 billion verdict, which would make the most expensive shipping accident in history even more expensive.

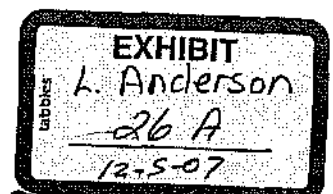
An 'emotional event'

Asked about the case last week, Tony Cudmore, a spokesman at Exxon's Irving headquarters, directed the Chronicle to a previous company statement, saying: "We acknowledge that the Exxon Valdez oil spill was a very emotional event for many in Alaska, and to some, those feelings remain strong even today. As we have said many times, the Valdez oil spill was a tragic accident, one which the corporation deeply regrets, and one for which the corporation has paid significantly."

The case "is about whether further punishment of Exxon is warranted," it added. Even the reduced \$2.5 billion award is higher than any punitive award ever affirmed by a federal appeals court, Exxon attorney Walter Dellinger of Washington said. In fact, he wrote to the high court, the amount is "larger than the total of all punitive damages awards affirmed by all federal appellate courts in our history."

The high court should take Exxon's case, he said, to resolve conflicts among lower courts about whether punitive damages should be available at all in maritime cases, and if so, in what amount.

Punishing award



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David Oesting, the Anchorage attorney for those harmed by the oil spill, argues that the original \$5 billion award, meant to punish Exxon and deter it and other oil companies from similar misconduct in the future, is reasonable, representing Exxon's profits for 1994, when the jury returned the verdict. The reduced \$2.5 billion award amounts to barely more than three weeks of Exxon's current net profits, he told the court.

Oesting said the jury deciding the award did so after hearing testimony on Exxon's "alcoholic culture," which allowed raucous partying aboard supertankers and in ports, and evidence that top executives were aware for three years before the accident that Hazelwood, an alcoholic, had resumed drinking.

"Unlike any other shipowner of which we are aware, Exxon placed a relapsed alcoholic who it knew was drinking aboard its ships, in command of an enormous vessel carrying toxic cargo across treacherous and resource-rich waters," he wrote.

Dellinger said the evidence at trial was highly disputed. In separate criminal proceedings, he noted, an Alaskan jury convicted Hazelwood of negligently spilling oil and acquitted him of the more serious charge of operating the vessel while impaired by alcohol.

The same jury that awarded \$5 billion in punitives against Exxon also awarded \$5,000 to punish the captain.

patty.reinert@chron.com