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THE SUPREME COURT OF THE UNITED STATES MODIFIES PUNITIVE DAMAGE AWARD.

The Supreme Court of the United States deferred to the United States Court of Appeals for the Ninth Circuit which held that Exxon may be vicariously liable for punitive damages. The Court also held that the Clean Water Act did not preempt an award of punitive damages and approved a “1:1 ratio” of compensatory to punitive damages to guide lower courts.

Exxon Shipping Company v. Baker
Supreme Court of the United States
128 S.Ct. 2605
(Decided June 25, 2008)

In March of 1989 an oil supertanker, EXXON VALDEZ, grounded on a reef outside the Alaskan Coast, fracturing its hull and spilling millions of gallons of crude oil into Prince William Sound. The wreck was due to a breach of duty of Exxon Shipping Company (“Exxon”) and the ship’s captain, Joseph Hazelwood (“Hazelwood”). The spill damaged the surrounding environment so badly that both the federal and Alaskan government sued, as well as surrounding fishermen, property owners and other private parties. This action consolidated the remaining plaintiffs’ (“Baker”) civil suits against Exxon, Hazelwood, and others. The length and breadth of the issues and law in this case led the district court, and subsequently the United States Supreme Court, to break the trial into three phases.

During the first phase (“Phase I”) of the trial the district court “considered Exxon and Hazelwood’s recklessness and thus their potential for punitive liability.”¹ The evidence admitted by the plaintiff on this issue at trial was fairly damning for both defendants.² On appeal to separate itself from Hazelwood’s acts, Exxon claimed that the trial judge erred while instructing the jury that “a corporation ‘is responsible for the reckless acts of ... employees... in a managerial capacity while acting in the scope of their employment,’” and urged the court not to predicate liability based on his conduct.³ Exxon maintained that because it did not direct, countenance, or participate with its underlings it should be immune from punitive damages.⁴

To support this argument Exxon cited *The Amiable Nancy*, which held that a shipowner was not liable for the marine trespass of the crew that was operating his ship.⁵ Exxon further argued, citing *Lake Shore & M.S. Ry. Co. v. Prentice*, that “[t]hough [a] principle is liable to make compensation for [intentional torts] by his agent, he is not liable to be punished by exemplary damages for an intent in which he did not participate.”⁶ It maintained that, even if the case does not control, *Lake Shore’s* legacy is still alive in Title VII of the Civil Rights Act of 1964.⁷ Baker responded to both the *Amiable Nancy*

¹ Exxon Shipping Co., et al. v. Baker, 128 S.Ct. 2605, 2613 (2008).

² Against Hazelwood, the plaintiffs introduced evidence that he was “down[ing] at least five double vodkas in the waterfront bars of Valdez,” that he was a recovering alcoholic who was in relapse, and that at the time of the spill his blood-alcohol level was around .241, among other things. *Id.* at 2612–14. Plaintiff also introduced evidence that Exxon knew about Hazelwood’s relapse, that Exxon’s officials often drank with Hazelwood, and that Hazelwood was not complying with the company sponsored treatment program. *Id.* at 2612.

³ *Id.* at 2615 (citing App. K to Pet. For Cert. 301a; Brief for Respondents 36–39). The Courts of Appeals have split on this issue. *Id.*

⁴ *Id.*

⁵ *Exxon Shipping*, 128 S.Ct at 2615.

⁶ *Id.* at 2615–16 (citing *Lake Shore & M.S. Ry. Co. v. Prentice*, 147 U.S. 101, 110 (1893)).

⁷ *Id.* at 2616 (noting that Title VII of the Civil Rights Act does not subject employers to punitive damages based on discriminatory conduct of their managerial employees as long as the employer has “maintained and enforced good-faith antidiscrimination policies”).

and *Lake Shore* cases by stating that defendant's reliance on the former case is improper because it cites dictum, and distinguishing the latter case since it dealt with lower level employees such as railroad conductors rather than managing agents like a ship's captain.⁸ Baker also urged the court to conform to the land-based common law of a majority of states which would allow punitive damages for the conduct of managerial agents.⁹ The Supreme Court remained divided on this question, and deferred to the Ninth Circuit's opinion.¹⁰ However, the Supreme Court noted that the determination of this issue does not affect the derivative liability question.¹¹

Moving to the second phase (Phase II) of the trial, the court considered the issue of whether or not the Clean Water Act¹² (CWA) preempts an award of common law punitive damages. The trial court awarded both compensatory and punitive damages. In finding that the CWA did not preempt punitive damages, the court looked to the policy behind the act, which is to protect "the navigable waters of the United States, adjoining shorelines, ... [and] natural resources."¹³ The court also noted that Congress did not intend to remove common law punitive damages because, when it enacted the CWA, it did not directly address the issue.¹⁴

In the third and final phase of trial (Phase III), the trial court heard the issue of punitive damages, specifically investigated the reprehensibility of the defendant's conduct, the magnitude of harm, the defendant's financial condition and any mitigating facts.¹⁵ The trial court eventually awarded punitive damages against both defendants, and, on appeal, Exxon challenged the seemingly exorbitant amount awarded. The appellate court discussed the lengthy history and rationale behind punitive damages, and ultimately provided instructions to the trial court with respect to recalculating the punitive damages award on remand.¹⁶ It explained that a single 1:1 ratio of compensatory to punitive damages "is appropriate in all but the most exceptional of cases, and '[w]hen compensatory damages are substantial, then a lesser ratio ... can reach the outermost limit of what due process can guarantee."¹⁷

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⁸ *Id.*

⁹ *Id.* (discussing that the Restatement advocates this approach).

¹⁰ *Id.*

¹¹ *Exxon Shipping*, 128 S.Ct at 2616.

¹² 33 U.S.C. §§ 1251–1376.

¹³ *Exxon Shipping*, 128 S.Ct at 2618 (citing 33 U.S.C. § 1321(b)).

¹⁴ *Id.* at 2619.

¹⁵ *Id.* (citing App. Brief in Opposition 15a). On this issue the jury awarded plaintiffs damages in an amount exceeding \$5 billion. The circuit court reduced these damages by half.

¹⁶ *Id.* at 2619–2634. The decision to remand based on punitive damages is debatable. Justices Scalia, Thomas, Stevens, Ginsberg and Breyer all have differing opinions about how this issue should be treated. *See id.* at 2634–2641 (Scalia, J., concurring; Stevens, J., Ginsberg, J., and Breyer, J., concurring in part and dissenting in part).

¹⁷ *Id.* at 2634 (citing *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003)).