Admiralty Law

By Paul S. Edelman and James E. Mercante

It has been nearly 20 years since the ill-fated oil tanker Exxon Valdez, ran aground on Bligh Reef in Prince William Sound, Alaska, on March 24, 1989. The ship's hull was split open spilling millions of gallons of crude oil into the pristine waters of the Sound, resulting in an environmental and economic disaster.

The environment was cleaned up, but the litigation against Exxon stalled in the courts for two decades. The jury’s punitive damage award against Exxon and its captain was decided 14 years ago on Sept. 16, 1994, yet the issue was not laid to rest until the U.S. Supreme Court ruled on June 25, 2008, in Exxon Shipping Co. v. Baker, 128 S.Ct. 2605 (2008).

The Supreme Court’s decision is a must-read for an admiralty practitioner, or anyone with an interest, historically or otherwise, in punitive damages. Justice David Souter provides a cogent historical perspective on the development of admiralty law doctrine noting that a great portion of admiralty law is federal judge made “common law.” Indeed, that is precisely what the Supreme Court did. Yet rather than wait for Congress to determine an appropriate test for punitive damages in admiralty cases, the Court decided it was high time to make some law. In doing so, the Court modified the $2.5 billion award approved by the U.S. Court of Appeals for the Ninth Circuit and developed a 1.1 “ratio” of compensatory to punitive damages to guide lower courts in calculating punitive cases with similar conduct at issue. What the Supreme Court did not mention is that Exxon, yes, Exxon, will actually share in the punitive damages award pursuant to a secret deal with claimants it made years ago.

In a rarely expressed nod of approval, the federal district court in Alaska commended in the Supreme Court’s decision for the excellent way it managed this gargantuan litigation. What the district judge did to manage the case was a design-three-phase approach: Phase I was the trial to determine Exxon and the captain’s recklessness and thus their potential exposure to punitive liability; Phase II was the compensatory damage trial for commercial fishermen and native Alaskans; and Phase III, the main event, was the trial to fix the amount of punitive damages for which Exxon and Captain Joseph Hazelwood were each liable.

At the end of Phase I, the jury determined that a corporation (Exxon) is responsible for the reckless acts of an employee who is employed in a managerial capacity (i.e., a ship captain) while acting in the scope of their employment. In Phase II, the compensatory damages were calculated at $517.5 million. In Phase III, the jury found Exxon’s conduct to be reprehensible and also considered Exxon’s financial condition, the magnitude of the harm, and any mitigating facts. The jury awarded the $0.5 billion in punitive damages against Exxon (at the time the largest award of its kind in history), which was subsequently reduced to $2.5 billion on appeal.² The award against Captain Hazelwood (who, by the way, since recent newspaper accounts of his “whereabouts unknown”) is still living on Long Island and working for the past 15 years as a maritime consultant and marine investigator with a New York admiralty law firm) was just $5,000.

The U.S. Supreme Court addressed three important questions: (i) whether a corporate shipowner may be vicariously liable for punitive damages for the actions of a ship captain, a ‘managerial employee’ that contributes to the loss, (ii) whether punitive damages have been barred by federal maritime law (Clean Water Act) precluding oil spill liability having made no provision for them, and (iii) whether the punitive award of $2.5 billion in this case was excessive under maritime law.

Derivative Liability

*And Statutory Preemption. The issue as to whether maritime law allows corporate liability for punitive damages for acts or omissions of managerial agents (i.e., a ship captain), the court was deadlock (4 to 4) and ‘if the judges are divided, the reversal cannot be had, for no order can be made.’⁶ Justice Samuel A. Alito Jr. recused himself because he owned Exxon stock. Thus, the Ninth Circuit’s opinion remained undisturbed in this regard though Justice Souter mentioned that the “disposition here is not precedential on the derivative liability question.”⁵

On the issue of statutory preemption, the Supreme Court upheld the Ninth Circuit’s ruling that the Clean Water Act did not preempt the punitive damage award under maritime “common law.” Exxon Shipping Co. v. Baker, 2008 had pleaded guilty to violations of the Clean Water Act, the Refuse Act of 1899, and the Migratory Bird Treaty Act.⁴

For example, claimants in the fatal Staten Island Ferry crash in New York Harbor recently filed a motion, opposed by the city of New York, seeking punitive damages. The motion was denied from the bench by U.S. District Judge Jack B. Weinstein.⁷

Conclusion

The Supreme Court did not mention a surprising turn of events that disturbed the district judge and warranted the Ninth Circuit’s intervention. Exxon’s secret deal with seafood processors in Alaska that came to be known as the “Seattle Seven.” For example, Durante v. Essex Co., 7 Wall. 107, 112, 19 Lawyers’ Edition 154 (1869).

Miles v. Apex Marine, 498 U.S.19, decided in 1990, involved the death of a crew member whose nondependent mother sued under the Jones Act negligence and unseaworthiness of a vessel. While the decision had nothing to do with punitive

Endnotes:


7. N.Y. Pattern Jury Instr., Civil, No. 2:278 (2007) (“The purpose of punitive damages is not to compensate the plaintiff but to punish the defendant . . . and thereby discourage the defendant . . . from acting in a similar way in the future”).

8. Id. at 2621, citing 4 Restatement §908(2); 1 Schuleter §9.3(A).

9. See In Re City of New York, as Owner and Operator of the M/V Andrew J. Barberi, 03-6049 (July 31, 2008 transcript of proceedings and ruling by Judge Jack B. Weinstein).


11. Id. at 2626.


13. See, e.g., Wartman v. Commodore Cruise Lines, 100 F.3d 943 (2d Cir. 1996) (where a spouse of a cruise line passenger was allowed to pursue nonpecuniary loss of society damages under general maritime law despite a U.S. Supreme Court decision restricting statutory remedies under the Death on the High Seas Act to pecuniary loss.