The Impact of the Exxon Valdez Decision on Future Maritime Cases

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Joan M. Bondareff, John Kimball and Duncan C. Smith III of Blank Rome discuss the U.S. Supreme Court’s recent decision in Exxon Shipping Co. v. Baker and its potential impact on future decisions involving punitive damages.

The U.S. Supreme Court’s decision in Exxon Shipping Co. v. Baker, 128 S. Ct. 2605 (2008), unquestionably is a major development in maritime law. But whether the court’s ruling and the several concurring and dissenting opinions issued by the justices will have a significant impact on the law of punitive damages generally remains to be determined.

The court, acting in its capacity as an admiralty court, ruled that, as a matter of maritime law, the ratio between compensatory and punitive damages may not exceed 1-to-1. The court did not decide, however, whether the same outer limit on punitive damages applies as a matter of due process mandated by the Constitution.

SUPREME COURT DECISION

At the end of its 2007-2008 term the Supreme Court let stand the 9th U.S. Circuit Court of Appeals’ ruling that Exxon was liable for punitive damages because of the 1989 oil spill of the Exxon Valdez tanker in Alaska’s Prince William Sound.

Writing for the court, Justice David Souter noted at the outset the court’s 4-4 divide on whether Exxon was liable for punitive damages resulting from the 11-million-gallon oil spill that resulted when Capt. Joseph Hazelwood left the bridge at a critical time in the tanker’s voyage.

Because Justice Samuel Alito recused himself, the court was left with eight justices to decide the case. The 9th Circuit previously had found Exxon liable for Hazelwood’s actions. In re Exxon Valdez, 270 F.3d 1215 (9th Cir. 2001). Since the court split equally, the 9th Circuit’s ruling remained intact.

Justice Souter then addressed the question Exxon raised for the first time on appeal concerning whether the Clean Water Act, 33 U.S.C. § 1251, preempted the jury’s award of punitive damages. The appeals court rejected Exxon’s position and held that the Clean Water Act contained no such preemption.

The final matter before the high court concerned the amount of punitive damages to award. The jury initially awarded $5 billion. After several rulings back and forth between the District Court and 9th Circuit, the appeals court reduced the award to $2.5 billion.

Justice Souter said the high court would consider the assessment of punitive damages ab initio because the spill was a matter of common maritime law over which the court has original jurisdiction. He said the appropriate standard was expressed by Justice Oliver Wendell Holmes: would a “bad man” be deterred by the award?

From this standard he concluded that the appropriate deterrent would be a 1-to-1 ratio of compensatory to punitive damages. Applying this admiralty law standard, the high court reduced the appeals court’s punitive damages award to $507.5 million. This triggered dissents from Justices John Paul Stevens, Ruth Bader Ginsburg and Stephen Breyer, who suggested that Congress, not the court, should be making this decision.

A key unresolved issue is whether the high court’s determination that punitive damages may not exceed compensatory damages will have any effect outside maritime law. Justice
Souter’s opinion clearly was based on the court’s role as an admiralty court, which gives it supreme authority to establish maritime law.

However, the ruling left open the question of whether the Constitution’s due-process clause mandates a 1-to-1 ratio of compensatory to punitive damages. Justice Souter’s inclusion of detailed research and analysis on punitive damages suggests that the limits due process allows should be no different from those permitted under maritime law. His opinion, however, does not expressly say so. Instead, the court’s 1-to-1 ratio is grounded in maritime law.

SUPREME COURT’S ROLE IN DECIDING MARITIME LAW

A key aspect of Justice Souter’s opinion concerns the Supreme Court’s role in deciding maritime law. He wrote:

Our review of punitive damages today, then, considers not their intersection with the Constitution but the desirability of regulating them as a common-law remedy for which responsibility lies with this court as a source of judge-made law in the absence of statute.

This statement and others in the opinion clearly indicate that the high court was acting as an admiralty court for which it has supreme authority under the Constitution.

Justice Stevens also recognized the high court’s power under the Constitution to establish maritime law as shown by his opinion concurring in part and dissenting in part. Justice Stevens wrote:

While I do not question that the court possesses the power to craft the rule it announces today, in my judgment it errs in doing so.

Justice Stevens took the position that Congress, rather than the court, should determine whether there should be limitations on punitive damages in maritime cases. He cited Miles v. Apex Marine Corp., 498 U.S. 19 (1990), in which the court said:

An admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation.

Justice Ginsberg’s opinion echoed this theme as she concurred in part and dissented in part:

The issue, therefore, is whether the court, though competent to act, should nevertheless leave the matter to Congress. The court has explained in its well-stated and comprehensive opinion, why it has taken the lead. While recognizing that the question is close, I share Justice Stevens’ view that Congress is the better equipped decision maker.

Despite the justices’ disagreement on how best to deal with punitive damages, their recognition of the court’s role as an admiralty court with ultimate authority on the Constitution’s separation of powers scheme is most notable.

CONGRESS STRUGGLED WITH LIABILITY ISSUES, PREEMPTION IN THE OIL POLLUTION ACT OF 1990

The Exxon Valdez case was brought under common and state maritime laws. After the spill, Congress enacted comprehensive legislation to address the subject of liability for oil spills. Whether the court will defer to Congress or continue in its role as an admiralty court when a case is brought before it under the Oil Pollution Act of 1990, 33 U.S.C. § 2701, remains to be seen.

Specifically, the Exxon Valdez spill prompted Congress to pass the OPA. Oil spill legislation had been languishing in Congress for years before the spill crisis provided a catalyst for Congress to pass new legislation. One of the more contentious issues federal legislators faced was whether and/or how to preempt state law on liability. Section 1018 of the OPA preserves state authority, stating that nothing shall “affect or be construed or interpreted as preempting” state laws. 33 U.S.C. § 2718.

The OPA sets forth a list of recoverable damages, including removal costs; damage to natural resources and real or personal property; loss of subsistence use of natural resources; loss of government revenues, lost profits and earning capacity; and costs of increased or additional public services occasioned by the unlawful act. See 33 U.S.C. § 2702(b).

Although the Supreme Court since has addressed the issue of preemption for vessel design and construction, it has yet to rule on the preemption of punitive damages. In United States v. Locke, 529 U.S. 89 (2000), the high court ruled that Congress did intend to preempt certain vessel and manning requirements such as those enacted by Washington State.

The circuit courts have begun to address preemption of punitive damages. For example, the 1st Circuit has ruled that punitive damages are not available under the OPA,
however, it seems clear that Congress did not intend to bar
the imposition of additional liability by the states. S. Port
Marine v. Gulf Oil P’ship, 234 F.3d 58 (1st Cir. 2000).

STATE LAWS ON PUNITIVE DAMAGES
MAY SURVIVE THE OPA

Some states have passed legislation allowing or allowing as
a matter of common law, punitive damages for oil spills in
state waters. California, Alabama and Ohio statutes contain
provisions allowing for recovery of punitive damages in cases
involving water pollution. California’s Fish and Game Code
allows punitive damages for criminal or administrative civil
violations of its oil- and petroleum-discharge provisions. Cal.
Fish & Game Code § 13011(a).

Alabama allows punitive damages to be assessed “in a case
where pollution resulted from willful or wanton conduct on
the part of the defendant.” Ala. Code § 22-22-9(m).

Ohio law allows punitive damages “for injury, death or loss
to person or property or for relief in the form of the abatement
of a nuisance, civil penalties, cleanup costs, cost recovery, an
injunction or temporary restraining order, or restitution that
arises, in whole or in part, from contamination or pollution of
the environment or a threat of contamination or pollution of
the environment, including contamination or pollution or a
threat of contamination or pollution from hazardous or toxic

Whether these three state laws signal a trend or will survive
a future OPA preemption challenge remains to be seen.
These cases may prompt the court to review its holding on the
proper amount of punitive damages in a maritime case where
a state legislature has addressed the matter.

DERIVATIVE LIABILITY UNRESOLVED

The court was split on the question of attributing liability
for punitive damages to Exxon for Hazelwood’s negligent acts.
The 9th Circuit had decided that Exxon was liable and, as a
result, its decision remains the law in that circuit.

However, other circuits have ruled that an employer is not
liable for the acts of its employee. In re P&E Boat Rentals, 872
F.2d 642 (5th Cir. 1989) (“We hold simply that punitive dam-
ages may not be imposed against a corporation when one or
more of its employees decides on his own to engage in mali-
cious or outrageous conduct.”); U.S. Steel Corp. v. Furfman,
407 F.2d 1143 (6th Cir. 1969) (“We think the better rule is
that punitive damages are not recoverable against the owner
of a vessel for the act of the master unless it can be shown that
the owner authorized or ratified the acts of the master either
before or after the accident.”).

This matter too is left to be addressed later by a full court.

CONCLUSION

It remains to be seen how the court will apply Justice
Souter’s analysis of punitive damages when the issue returns to
the court as a matter of constitutional due process or pursuant
to a case brought under the OPA. Of key interest will be if
the court continues to assert its role as an admiralty court in
these cases. Until then, the lower courts have been left to
predict as best they can how the court ultimately will resolve
the issue.

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