

PRODUCTS LIABILITY ADVISORY

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Exxon Shipping Company v. Baker: Chipping Away at Punitive Damages Awards

The United States Supreme Court has issued its latest opinion addressing the excessiveness of punitive damages in the case of Exxon Shipping Company v. Baker.¹ The case arose from the calamitous 1989 *Exxon Valdez* oil spill in Prince William Sound, Alaska, and efforts by over 32,000 Native Alaskans, commercial fishermen and landowners to recover their economic losses.

At trial the jury awarded \$5 billion in punitive damages, an amount equal to the company's annual profits at the time.² On appeal, the Ninth Circuit reduced the punitive damages award against Exxon to \$2.5 billion, which was still the largest such award in history.³ Last month, the Supreme Court, applying maritime law, vacated the \$2.5 billion punitive damages award with instructions to reduce the award to a maximum ratio of 1:1 with compensatory damages, which were calculated to be \$507.5 million. Justice Souter wrote the 5 to 3 majority opinion, with Justices Roberts, Scalia, Thomas and Kennedy joining.

Exxon first asked the Court to disallow the entire punitive damages award, arguing (1) that maritime law does not authorize corporate (i.e., ship owner) liability for punitive damages arising from the reckless acts of managerial agents (i.e., the captain); and (2) that the Clean Water Act (CWA) preempts common law punitive damages remedies in maritime spill cases.⁴ The Court split 4 to 4 on the first question, with Justice Alito not participating, leaving the decision below undisturbed without precedential effect.⁵

As to the preemption question, the Court first criticized the Ninth Circuit for exceeding its discretion in taking up the CWA preemption argument, which was raised for the first time thirteen months after the verdict and, thus, should have been considered waived.⁶ Regarding the merits of the preemption claim, the Court did not buy Exxon's argument that the CWA preempts punitive damages

¹ No. 07-219, 2008 WL 2511219 (U.S. June 25, 2008).

² Id. at *6.

³ Id.

⁴ Id. at *7, *9.

⁵ Id. at *8.

⁶ Id. at *9.

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but *not* compensatory damages for economic loss. (To argue that all damages were preempted would have been inconsistent with Exxon's acknowledgment that it was liable for compensatory damages.) The Court found it "untenable," however, that the CWA would specifically preempt the remedy of punitive, but not compensatory, damages and found nothing in the statutory text to support such a "fragmented scheme."⁷

Exxon next argued, in the alternative, that the punitive award in this case was excessive as a matter of federal maritime common law, and should be reduced. Exxon insisted that the size of the award, and its ratio to compensatory damages, exceeds the bounds justified by the punitive damages goal of deterring reckless behavior.⁸ After offering what it called a "brief account" of the world history of punitive damages, spanning twelve pages and beginning with the year 1763 (before going back even further to ancient times and the Middle Ages), the Court ultimately agreed that the award here was excessive as a matter of maritime common law. The Court held that, under the circumstances presented, including a substantial monetary award, maritime punitive damages should be limited to a 1:1 ratio with compensatory damages. The Court was careful to emphasize that its holding was limited to admiralty law, which is judge-made to a great extent and subject to correction by Congress.⁹

Critics will decry judicial activism, and argue that limitations on punitive damages should be left to Congress. As the Court pointed out, though, federal maritime common law has long been judge-made to the extent Congress has not spoken; maritime law, by its nature, is a mixture of both statutes and judicial standards. Moreover, the Court noted that the absence of statutorily imposed limitations does not imply congressional intent to leave punitive damages unconstrained.

It is important to note that the decision was *not* based on constitutional law. Before Exxon v. Baker, excessiveness challenges focused on constitutional due process challenges.¹⁰ Each of these prior cases involved awards subject to state law, as opposed to the federal common law at issue in Exxon. This line of cases confirmed that the Fourteenth Amendment to the Constitution prohibits the imposition of grossly excessive or arbitrary punishments and requires that such awards be reasonable and proportionate to the wrong committed. In other words, the punishment must fit the crime in order to withstand a due process challenge. Prior guidance from the Court on the due process issue can be summed up as follows: (1) A 4:1 ratio was permissible in some instances;

⁷ Id. at *10.

⁸ Id. at *11.

⁹ Id. at *21.

¹⁰ See, e.g., State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003) (holding that few awards exceeding a single digit ratio will satisfy due-process and reversing and remanding an award with a ratio of 145:1); BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996) (reversing an award with a ratio of 500:1 as constitutionally impermissible); Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 23-24 (1991) (finding an award of more than 4 times the amount of compensatory damages was "close to the line" but did not "cross the line into the area of constitutional impropriety"); see also Philip Morris USA v. Williams, 127 S. Ct. 1057 (2007) (holding that punitive damages cannot be awarded to punish a defendant for injury inflicted on strangers to the litigation, but not addressing the challenge that the award was constitutionally grossly excessive), cert. granted in part, No. 07-1216, 2008 WL 791949 (U.S. June 9, 2008) (to address the Oregon Supreme Court's adherence to its previous decision affirming the \$79.5 million punitive award, on state-law procedural grounds, despite the United States Supreme Court's decision overturning the award on procedural due process grounds).

(2) anything greater than 9:1 would rarely be permissible; and (3) the greater the compensatory damages, the smaller the ratio should be, such that in cases of substantial compensatory awards the acceptable limit may be as low as 1:1. Throughout these earlier cases, however, the Court consistently rejected a rigid benchmark, brightline ratio or other “across the board” mathematical formula for punitive damages.

Exxon is the first case in which the Court was asked to address a standard of excessiveness based on federal common law rather than constitutional due process. The Court explained that the constitutional due process considerations, while applicable, are secondary to the common law limitations. In setting the maritime common law standard, the Court first considered verbal admonitions to the jury and straight monetary caps, which it found ineffective and impractical, before settling on a ratio standard.

The Court explored what would be a reasonable ratio limitation under these circumstances, which included substantial compensatory damages resulting from reckless behavior, but not malice and with no apparent motivation for financial gain. The Court ultimately settled on its 1:1 ratio as the “fair upper limit” in maritime cases, but suggested that a ratio of 0.65:1 is probably where cases such as this one should fall.¹¹ In reaching this conclusion, the Court relied heavily on data showing that the median ratio of punitive to compensatory damages (which it felt reflected what juries across the board think is reasonable) is less than 1:1, meaning that the compensatory award exceeds punitive damages in most cases. Thus the Court suggested that the ratio might be reduced below 1:1 where the behavior falls on the lower end of the scale of blameworthiness, such as mere recklessness as opposed to malice, intent to cause harm or motivation by financial gain.

In what will likely be cited frequently by those opposing limitations on punitive damages, the Court denounced claims that punitive damages are growing larger or more frequent or are producing mass runaway awards, emphasizing that “by most accounts the median ratio of punitive to compensatory awards has remained less than 1:1.”¹² The Court further noted that the data do not substantiate “a marked increase in the percentage of cases with punitive awards over the past several decades.”¹³ On the other hand, the Court opined that “[t]he real problem . . . is the stark unpredictability of punitive awards.”¹⁴ The Court was likewise concerned with the tremendous spread between high and low punitive damages awards, and the imposition of “eccentrically high” punitive awards in the outlier cases.¹⁵

The Exxon decision is precedent only in the context of maritime law. To the extent that the decision is a denouncement of the stark unpredictability of excessive, outlier punitive damages awards, however, it is welcome news for companies defending against such claims. While not precedent, the opinion will certainly be influential in other tort contexts, and it hints at a possible further narrowing of the acceptable ratio range in future due process cases. The Court went so

¹¹ Exxon, 2008 WL 2511219, at *21.

¹² Id. at *15.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at *21 n.28.

far as to suggest in a footnote that the constitutional limit in this case also “may well be 1:1” given the substantial compensatory award. Even Justice Ginsberg questioned in her dissent whether this footnote signals that the Court will ultimately rule that due process sets a 1:1 ceiling on all punitive awards.¹⁶

Similarly, for the first time, the Court has signaled a willingness to assign brightline ratios to punitive damages, at least in some contexts. This may be the first step toward the Court’s future adoption of rigid benchmarks in the name of due process. For all these reasons we believe the case may be predictive of the Court’s direction on future excessiveness decisions, including challenges brought pursuant to due process, as well those brought under federal common law and even state common law.

This advisory was prepared by Victoria Davis Lockard and Anna A. Sumner.

¹⁶ It is interesting to note, however, that mere weeks before it issued the Exxon opinion, the Court limited a grant of certiorari in the Philip Morris USA v. Williams case in such a way that it specifically *avoided* addressing a due process excessiveness challenge to a 97:1 ratio award. See Philip Morris USA v. Williams, 127 S. Ct. 1057 (2007), cert. granted in part, No. 07-1216, 2008 WL 791949 (U.S. June 9, 2008). Moreover, the Court had agreed to hear the excessiveness issue on a prior petition for certiorari, but then ultimately decided the case on the “strangers to the litigation” ground without reaching the due process excessiveness question. See id. Thus, despite two recent opportunities to further refine the limits of an acceptable punitive-to-compensatory-damages ratio, the Court has declined to take up the issue.

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