

StarTribune.com | MINNEAPOLIS - ST. PAUL, MINNESOTA

Exxon should just pay its penance

By **ALEXANDRA KLASS** and **SANDRA ZELLMER**

February 29, 2008

The Supreme Court heard arguments this week in a case with big implications for victims of reckless corporations. At issue is whether Exxon can be made to pay punitive damages to the fishermen whose livelihoods were ruined by the 1989 Exxon Valdez oil spill. Exxon says it already has paid fines to the government under federal maritime and environmental laws and shouldn't have to pay punitive damages, too.

That may be good for Exxon's bottom line, but it's miserable public policy. Punitive damages help deter the kind of bad behavior of which Exxon is plainly guilty. The court should make the company pay up.

On the night of March 24, 1989, the oil tanker Exxon Valdez hit a reef and ran aground in Prince William Sound, Alaska. Out poured 11 million gallons of crude oil, causing one of the largest and most-damaging oil spills in history. Experts say the accident killed more birds and marine mammals than any other U.S. oil spill before or since, and the harm continues to this day, not just to fish and wildlife but also to fishermen and others who made a living from the waters of the sound.

Investigation revealed that the captain of the ship was a relapsed alcoholic who was drinking at sea. More damning, Exxon knew about his drinking but did nothing. Rather than firing him or suspending him while he got sober, rather than demoting him or finding him a desk job, Exxon left him in command, letting him pilot a massive tanker and its dangerous cargo through the sensitive waters of Prince William Sound. On the night of the accident, the captain reportedly put away five double vodkas, then left the bridge, leaving a junior officer to conduct the high-stakes navigation.

The government rightly pursued Exxon for violating the Clean Water Act, forcing it to pay \$3.4 billion in cleanup costs. But the environment wasn't the only victim. Thousands of people lost their livelihoods that night, and they, too, deserve restitution. So they sued, and won big: \$500 million in damages for their actual losses, and \$5 billion in punitive damages to both punish Exxon and discourage future bad behavior. Granted, \$5 billion might seem like an awful lot of discouragement, but Exxon is the biggest company in the world, with 2007 profits of \$39.5 billion.

On appeal, Exxon got the punitive damage award reduced to \$2.5 billion, but now it's asking the Supreme Court to throw that out as well, based on its argument that because it has already paid fines under maritime law and the Clean Water Act, it shouldn't have to pay punitive damages. The Ninth Circuit Court of Appeals rejected that argument because neither law precludes punitive awards. If Congress had wanted the Clean Water Act or maritime law to preempt awards of this sort, it would have said so.

Not only will a hefty punitive damage award help deter future bad behavior by Exxon, it should give pause to anyone else in the industry who might be tempted to cut corners on

safety or ignore grave hazards.

Juries rarely award punitive damages and, when they do, courts conduct exacting reviews to ensure that the awards are based on the facts and the law, not on passion or prejudice. Among other things, punitive damages should be proportionate to the harm caused. In this case, they are. In arguments before the Supreme Court, the lawyer for the fishermen pointed out that because so many people were harmed, the \$500 million in damages for actual losses amounted to about \$15,000 per person. After nearly 20 years, that's not much for having one's livelihood destroyed.

Presumably the \$2.5 billion will make a difference to the people of Prince William Sound. But more than that, it's enough money to help persuade Exxon and others to take greater care in guarding against reckless behavior with potentially catastrophic consequences. That's why the court should let the punitive damages stand.

Alexandra Klass, a professor at the University of Minnesota Law School, and Sandra Zellmer, a professor at the University of Nebraska College of Law, are member scholars at the Center for Progressive Reform (www.progressivereform.org).

© 2008 Star Tribune. All rights reserved.