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JAN 28 2004

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By PD Deputy

in re
the EXXON VALDEZ

Case Number A89-0095CV (HRH)

THIS DOCUMENT RELATED TO ALL CASES

AMENDED PARTIAL JUDGMENT IN A CIVIL CASE

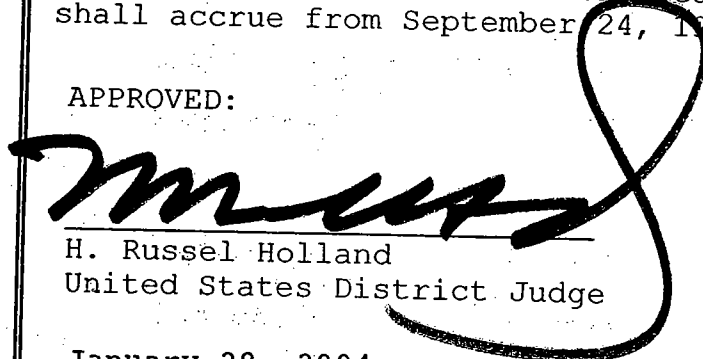
 JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

XX DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

THAT punitive damages are awarded for the plaintiffs and against the defendants Exxon Mobil Corporation (D-1) and Exxon Shipping Company (D-2), jointly and severally, in the amount of \$4.5 billion. Interest on the reduced award of punitive damages shall accrue from September 24, 1996, in accordance with 28:1961.

APPROVED:



H. Russel Holland
United States District Judge

January 28, 2004

Date

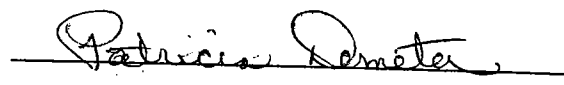
Michael D. Hall

Clerk

A89-0095--CV (HRH)

- D. RUSKIN
- D. SERDAHELY
- L. MILLER

0&J 11463



(By) Deputy Clerk

MAILED ON 1/28/04

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BY PD

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By PD Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
)
the EXXON VALDEZ)
)
_____)
This Order Relates to)
ALL CASES)
_____)

No. A89-0095-CV (HRH)

ORDER No. 364

Second Renewed Motion for Reduction
of Punitive Damages Award

Preface

On December 6, 2002, the court granted Exxon Mobil Corporation's (D-1) and Exxon Shipping Company's (D-2), hereinafter referred to as "Exxon", renewed motion for reduction or remittitur and reduced a jury verdict awarding plaintiffs \$5 billion in punitive damages to \$4 billion.¹ The court concluded that application of the BMW guideposts supported the \$5 billion award but, based on plaintiffs' alternative suggestion, reduced the award to \$4 billion because the Ninth Circuit in earlier proceedings

¹ Order No. 358, Clerk's Docket No. 7564. Order No. 358 was published as In re Exxon Valdez, 236 F. Supp. 2d 1043 (D. Alaska 2002).

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hereinafter described in detail had mandated that the award be reduced on remand. After final judgment was entered on the \$4 billion award,² both Exxon and plaintiffs timely appealed.³

On April 7, 2003, before any briefing on the appeals in this case, the Supreme Court decided State Farm Mutual Automobile Ins. Co. v. Campbell, ___ U.S. ___, 123 S. Ct. 1513 (2003).⁴ In State Farm, the United States Supreme Court revisited the due process issue as to punitive damages in the context of an insurance bad faith case. On August 18, 2003, the Ninth Circuit Court of Appeals vacated the \$4 billion punitive damages judgment and remanded the case to this court to reconsider the punitive damages award in light of State Farm.⁵ Upon remand, this court called for supplemental briefing from the parties to aid in its reconsideration.⁶ Exxon submitted its supplemental briefing in the form of a second renewed motion for reduction or remittitur of punitive damages.⁷ This motion is opposed by plaintiffs.⁸ Oral argument on the second renewed motion for reduction or remittitur of punitive damages was heard on December 3, 2003.

² Order No. 359 (granting Motion for Rule 54(b) Determination) (Jan. 27, 2003), Clerk's Docket No. 7589; Judgment, Clerk's Docket No. 7566.

³ Clerk's Docket Nos. 7605 and 7609A.

⁴ State Farm will also be published as 538 U.S. 408.

⁵ See Order, Clerk's Docket No. 7737.

⁶ Order re Further Proceedings on Punitive Damages Award (Aug. 26, 2003), Clerk's Docket No. 7714.

⁷ Clerk's Docket No. 7753.

⁸ Clerk's Docket No. 7767.

After considering the parties' briefing and hearing oral argument, the court has determined it most practical, for purposes of reevaluating the punitive damages award, to vacate Order No. 358 in its entirety.⁹ State Farm adds no new, free-standing factor to the constitutional analysis of punitive damages that the court might "tie onto" its previous order. It is the court's view that State Farm, while bringing the BMW guideposts into sharper focus, does not change the analysis.¹⁰ In fact, there are aspects of the due process evaluation of punitive damages awards which have not changed at all as a result of State Farm. As a consequence, although the court is vacating Order No. 358, where the court perceives no need or necessity of further exposition of the facts or its view of the law, the court will simply replicate what it has previously said in Order No. 358.

Facts

Terrible things have happened in Alaska on Good Friday. On Good Friday, March 27, 1964, the strongest earthquake ever recorded in North America literally relocated the seabed of most of Prince William Sound and the Kenai Peninsula. On Good Friday,

⁹ Vacating Order No. 358 impliedly leaves Exxon's Renewed Motion for Reduction of Punitive Damages Award, Clerk's Docket No. 7487, unresolved. In light of Exxon's Second Renewed Motion for the Reduction of Punitive Damages, the motion at Clerk's Docket No. 7487 is denied as moot.

¹⁰ By so stating, the court does not mean that it has adopted plaintiffs' suggestion that State Farm breaks no new ground and is limited to the facts of that case. There is new guidance from the Supreme Court; however, there is still no "bright-line" rule as to what is or is not unconstitutional as regards punitive damages. State Farm, 123 S. Ct. at 1524. The three BMW guideposts still apply.

March 24, 1989, the oil tanker Exxon Valdez was run aground on Bligh Reef in Prince William Sound, Alaska.

On March 24, 1989, Exxon's co-defendant, Joseph Hazelwood, was in command of the Exxon Valdez. He was assisted by a third mate and a helmsman. Captain Hazelwood was a skilled mariner, but he was an alcoholic. Worse yet, he was a relapsed alcoholic; and, before departing Valdez, Alaska, on March 23, 1989, he had, more probably than not, consumed sufficient alcohol to incapacitate a non-alcoholic. As the Exxon Valdez exited Valdez Arm, Captain Hazelwood assumed command of the vessel from a harbor pilot and made arrangements to divert the vessel from the normal shipping lanes in order to avoid considerable ice which had calved off Columbia Glacier. That diversion from the standard shipping lanes took the vessel directly toward Bligh Reef. The captain gave the third mate explicit, accurate orders which, if carried out by the third mate, would have returned the vessel to the shipping lanes without danger of grounding on Bligh Reef. The third mate, who had completed the requirements for a captain's license, was, more probably than not, overworked and excessively tired at the time in question. He neglected to commence a turn of the vessel at the point where, and the time when, he had been directed to do so. At that critical time, Captain Hazelwood had left the bridge to attend to paperwork. When the third mate realized that he had proceeded too far in the direction of Bligh Reef, he commenced a turn, but it was too late.

Like so many great tragedies, this one occurred when three or more unfortunate acts and/or omissions took place in close

proximity to one another, and but for any one of them, the grounding would likely not have occurred. Joe Hazelwood was under the influence of alcohol. Instead of staying on the bridge to verify that his orders were carried out, he tended to paperwork below. The third mate, being overworked and tired, neglected to carry out the orders which he had been given. The grounding might still have been avoided but for several other converging circumstances: the captain had put the vessel on an automated system for increasing its speed prior to completing the maneuver around the ice in the shipping lane; and the third mate, upon realizing his oversight, did not turn the vessel as sharply as he might have.

It has never been established that there was any design, mechanical, or other fault in the Exxon Valdez. It responded to its human masters as intended and expected. Thus it is entirely clear why the Exxon Valdez grounded on Bligh Reef: the cause was pure and simple human frailty.

Defendant Exxon Shipping owned the Exxon Valdez. Exxon employed Captain Hazelwood, and kept him employed knowing that he had an alcohol problem. The captain had supposedly been rehabilitated, but Exxon knew better before March 24, 1989. Hazelwood had sought treatment for alcohol abuse in 1985 but had "fallen off the wagon" by the spring of 1986. Exxon knew that Hazelwood had relapsed and that he was drinking while on board ship. Exxon officials heard multiple reports of Hazelwood's relapse, and Hazelwood was being watched by other Exxon officers. Yet, Exxon continued to allow Hazelwood to command a supertanker carrying a

hazardous cargo. Because Exxon did nothing despite its knowledge that Hazelwood was once again drinking, Captain Hazelwood was the person in charge of a vessel as long as three football fields and carrying 53 million gallons of crude oil. Exxon officials knew that it was dangerous to have a captain with an alcohol problem commanding a supertanker. Exxon officials also knew that oil and fisheries could not mix with one another. Exxon officials knew that carrying huge volumes of crude oil through Prince William Sound was a dangerous business, yet they knowingly permitted a relapsed alcoholic to direct the operation of the Exxon Valdez through Prince William Sound.

Captain Hazelwood came to the bridge immediately after the grounding. He timely reported to the United States Coast Guard:

Exxon Valdez [calling Valdez Traffic Control].
We should be on your radar there. We've
fetched up hard aground north of Goose Island
off Bligh Reef and evidently leaking some oil
and we're gonna be here for a while....^[11]

Despite the fact that he was aware of oil boiling up through the seawater on both sides of the vessel, Captain Hazelwood attempted to extract the vessel from the reef.¹² Had he succeeded in backing the vessel off the reef or driving it across the reef, the Exxon Valdez would probably have foundered, risking the loss of the entire

¹¹ Plaintiffs' Exhibit 92A, Excerpts of Record, Vol. II - Trial Exhibits, attached to Plaintiffs' Opposition, Clerk's Docket No. 7501.

¹² Transcript of Trial Testimony of Joseph J. Hazelwood at 439, Excerpts of Record, Vol. I - Trial Transcript, attached to Plaintiffs' Opposition, Clerk's Docket No. 7501.

cargo and the lives of those aboard. However, the vessel was really hard aground. It could wiggle but not be moved off Bligh Reef.

The best available estimate of the crude oil lost from the Exxon Valdez into Prince William Sound is about 11 million gallons.¹³ In the days following the grounding, about 42 million gallons of crude oil were lightered off the Exxon Valdez by other tankers. This process was very dangerous. The lightering process was necessarily taking place in a pool of crude oil. A spark from static electricity or other mechanical or electrical sources might have set fire to the crude oil.

The crude oil lost from the Exxon Valdez spread far and wide around Prince William Sound, mostly in a westerly direction. Counter-currents which pass through the sound in a westerly direction (the primary North Pacific currents flow from west to east) took the crude oil past numerous islands, spreading to the coast of the Kenai Peninsula, Cook Inlet, and Kodiak Island. As the oil spread, it disrupted the lives and livelihoods of those in its path, including the 32,677 punitive damages class members. Commercial fisheries throughout this area were totally disrupted, with entire fisheries being closed for the 1989 season. As a

¹³ Throughout these proceedings, plaintiff W. Findlay Abbott has contended that far more than 11 million gallons of crude oil were actually spilled from the Exxon Valdez into Prince William Sound. The court has repeatedly rejected these contentions for lack of any substantial evidence to support Mr. Abbott's contentions. For example, his qui tam action, United States ex rel. Abbott v. Exxon Corp., No. A96-0041-CV, was dismissed by this court and that dismissal was affirmed by the Ninth Circuit Court of Appeals, 182 F.3d 930 (Table) (1999 WL 313320) (9th Cir. 1999). There is no reliable evidence in the record that a larger spill was covered up by Exxon.

result, commercial fishermen not only suffered economic losses but also the emotional distress that comes from having one's means of making a living destroyed. A high percentage of commercial fishermen suffered from severe depression, post-traumatic stress disorder, generalized anxiety disorder, or a combination of all three.¹⁴ Subsistence fishing by residents of Prince William Sound and Lower Cook Inlet villages was also disrupted. The disruption to subsistence fishing deeply affected Native Alaskans, for whom subsistence fishing is not merely a way to feed their families but an important part of their culture. Research indicated that Native Alaskans also experienced great emotional distress following the spill.¹⁵ Shore-based businesses dependent upon the fishing industry were also disrupted as were the resources of cities such as Cordova.

In keeping with its legal obligations, Exxon undertook a massive cleanup effort.¹⁶ Approximately \$2.1 billion was ultimately spent in efforts to remove the spilled crude oil from the waters and beaches of Prince William Sound, Lower Cook Inlet, and Kodiak Island. Also in accordance with its legal obligations attendant to

¹⁴ J. Steven Picou and Duane A. Gill, "The Exxon Valdez Disaster as Localized Environmental Catastrophe: Dissimilarities to Risk Society Theory" in Risk in the Modern Age: Social Theory, Science and Environmental Decisionmaking, Maurie J. Cohen, ed. (2000) at 160-62, pertinent part attached as Exhibit 6 to Declaration of David W. Oesting, which is appended to Plaintiffs' Opposition, Clerk's Docket No. 7501.

¹⁵ Id. at 160-61.

¹⁶ See 33 U.S.C. § 1321, which imposes a duty upon an owner or operator of a vessel that spills oil to clean up its discharge.

spilling crude oil,¹⁷ Exxon undertook a voluntary claims program, ultimately paying out \$303 million, principally to fishermen whose livelihood was disrupted for the year 1989 and ensuing years up to 1994.

Proceedings

Litigation over the grounding was soon commenced. The civil suits came first, but developed slowly because of their number and complexity. Both the United States Government and the State of Alaska sued Exxon for environmental damage. That litigation was expeditiously settled by means of consent decrees under which Exxon agreed to pay to the governments, for environmental damage, \$900 million over a period of ten years.¹⁸ The decrees contain an "opener" provision, allowing the governments to make additional claims of up to \$100 million for environmental damage not known when the settlements were reached.¹⁹

Captain Hazelwood was prosecuted by the State of Alaska for operating a watercraft while intoxicated, reckless endangerment, negligent discharge of oil, and three felony counts of criminal mischief. That litigation became involved in legal complexities which led to multiple appeals. Some nine years after the grounding,

¹⁷ AS 46.03.822.

¹⁸ United States v. Exxon Corp., No. A91-0082-CV (Clerk's Docket No. 46 at 7-8), and Alaska v. Exxon Corp., No. A91-0083-CV (Clerk's Docket No. 26 at 7-8).

¹⁹ See Consent Decree and Agreement at 18-19, Clerk's Docket No. 46 in United States v. Exxon Corp., No. A91-0082-CV, and Clerk's Docket No. 26 in Alaska v. Exxon Corp., No. A91-0083-CV.

a single misdemeanor conviction for negligent discharge of oil was affirmed on appeal.²⁰

Exxon was prosecuted by the federal government for various environmental crimes: violating the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1319(c)(1); violating the Refuse Act, 33 U.S.C. §§ 407 and 411; violating the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 and 707(a); violating the Ports and Waterways Safety Act, 33 U.S.C. § 1232(b)(1); and violating the Dangerous Cargo Act, 46 U.S.C. § 3718(b). Exxon Corporation pled guilty to one count of violating the Migratory Bird Treaty Act. Exxon Shipping pled guilty to one count each of violating the Clean Water Act, the Refuse Act, and the Migratory Bird Treaty Act. They were jointly fined \$25 million and were ordered to pay restitution in the amount of \$100 million.²¹

The civil cases (involving thousands of plaintiffs) were ultimately (but with a few exceptions) consolidated into this case. Municipal claims and some Native corporation claims were tried in state court.²² In the consolidated cases, there was never any

²⁰ State v. Hazelwood, 946 P.2d 875 (Alaska 1997); State v. Hazelwood, 866 P.2d 827 (Alaska 1993); and Hazelwood v. State, 962 P.2d 196 (Alaska Ct. App. 1998).

²¹ See Judgments at Clerk's Docket Nos. 235 and 236 in United States v. Exxon Corp., No. A90-0015-CR.

²² More or less simultaneously with the trial in this case, a state court civil trial involving several Native corporations was conducted. The jury awarded the corporations almost \$6 million in damages. Chenega Corp. v. Exxon Corp., 991 P.2d 769, 774 (Alaska 1999). The trial court offset pretrial settlements and payments against the jury award. Id. at 775. Because the pretrial payments exceeded the jury award, final judgments were entered by which the

(continued...)

dispute as to Exxon's liability for compensatory damages. Only the amount of the plaintiffs' economic losses was controverted. As a consequence of procedural orders in this case and the excellent, cooperative approach taken by counsel for all parties, an effective and efficient trial protocol for the plaintiffs' claims was developed. As the time for trial grew near, this court became convinced of the necessity of creating a single, punitive damages claims class. On April 14, 1994, the court granted conditional final approval of a mandatory punitive damages class, consisting

of all persons or entities who possess or have asserted claims for punitive damages against Exxon and/or Exxon Shipping which arise from or relate in any way to the grounding of the EXXON VALDEZ or the resulting oil spill.^[23]

By agreement with the parties, trial as regards Exxon's and Captain Hazelwood's liability for punitive damages was commenced on May 2, 1994. In this Phase I of the trial, the jury found Exxon and Captain Hazelwood to be liable for punitive damages.

Phase II of the trial dealt with compensatory damages for plaintiffs' economic losses. In Phase IIA, the jury returned a verdict in favor of the fishermen in the amount of \$287 million. Phase IIB, a separate aspect of the compensatory claims having to

²² (...continued)
corporations "took nothing" from Exxon. Id. Recently, a stragglng case involving six Alaska communities was tried in state court to a defense verdict. The cities were unsuccessful in their efforts to recover from Exxon for alleged additional expenses incurred by them as a consequence of the oil spill.

²³ Order No. 204 (granting conditional final approval and certifying mandatory punitive damages class) at 2, Clerk's Docket No. 4856.

