



Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

(415) 556-9800

*This summary constitutes no part of the opinion of the court.
It has been prepared by court staff for the convenience of the reader.*

Baker v. Exxon (In re: Exxon Valdez), 97-35191 [caption should include 97-35235/97-35192/97-35193]

Decision Date: 11/07/01

Panel: Chief Judge Schroeder Judge Browning Judge Kleinfeld (author)

The panel affirmed in part and vacated in part a judgment on a jury verdict awarding \$5 billion in punitive damages to a class of plaintiffs whose economic interests were affected by the Exxon Valdez oil spill. The panel noted at the outset that the case was about punitive damages for harm to peoples' pocketbooks and not about harm to the environment, as Alaska had stipulated to a settlement with Exxon regarding environmental harm. The panel noted that the jury was instructed that its damage award could not include environmental harm.

The panel agreed with the district court that as a matter of law punitive damages could be awarded in this case but, following recent Supreme Court law, remanded to the district court to reduce the punitive damage award. In doing so, the panel rejected Exxon's arguments that punitive damages ought to have been barred as a matter of public policy and that the federal Clean Water Act preempted a common law punitive damage award. The panel also rejected Exxon's argument that the district court should have instructed the jury to apply a higher standard of proof -- the clear and convincing standard -- and instead upheld the district court's instruction to the jury to apply the preponderance of the evidence standard. Under that standard, the panel held that the evidence supported a jury verdict that Exxon was liable for the reckless acts of itself and of the captain of the Exxon Valdez, Joseph Hazelwood.

In vacating the amount of the \$5 billion punitive damage award, the panel applied a Supreme Court decision from last term (one that had been pending while this decision was pending before the panel), *Cooper Indus. v. Leatherman Tool*, 121 S.Ct. 1683 (2001). The panel also applied *BMW of North America v. Gore*, 517 U.S. 559 (1996). The panel held that the \$5 billion award was too high when

evaluated as required by the Supreme Court. The panel remanded for the district court to reduce the amount of the punitive damage award by applying the factors set forth by the Supreme Court: (1) the relative reprehensibility of Exxon's conduct; (2) any penalty imposed for similar misconduct; and (3) the ratio of the damage award to the actual harm inflicted on the plaintiffs. The panel wrote that the \$5 billion award here was a more than 17 to 1 ratio to actual harm, as compared with a 4 to 1 ratio that the Supreme Court said was "close to the line" between a "constitutionally acceptable" and "constitutionally unacceptable" jury verdict.

The panel affirmed the district court in the separate appeal brought by Joseph Hazelwood, master of the Valdez, from the jury's verdict that Hazelwood had acted recklessly and that his recklessness caused the grounding that led to the oil spill. The panel held that the district court did not abuse its discretion by admitting into evidence the results of Hazelwood's blood tests and his medical records.

In the cross-appeal brought by the plaintiff class, the panel partially reversed the district court's dismissal of some compensatory damage claims as barred by the rule of *Robins Dry Dock v. Flint*, 275 U.S. 303 (1927). Applying *American Dredging Co. v. Miller*, 510 U.S. 443 (1994), the panel held that Alaska's strong interest in regulating oil pollution and providing remedies for oil spill damage is not preempted by federal or maritime law. The panel remanded for the district court to consider which members of the plaintiff class could establish allowable damages under Alaska law and federal law. Finally, the panel declined to reverse certain other evidentiary and instructions determinations made by the district court.

Lead Counsel for Exxon:

John F. Daum, Esq.	213-669-6000
Douglas J. Serdahely, Esq.	907-277-4900
John F. Clough, III, Esq.	907-790-1912

Lead Counsel for Punitive Damages Class:

Lloyd Benton Miller, Esq.	907-258-6377
David W. Oesting, Esq.	907-276-4488
Brian B. O'Neill, Esq.	612-766-8318
David C. Tarshes, Esq.	206-622-3150