

Exxon v. Baker: The United States Supreme Court Limits Punitive Damage Awards Under Maritime Law

Breaking Developments In London Market Law 06/25/08

On 25 June 2008, the United States Supreme Court issued its opinion in *Exxon Shipping Co. v. Baker*, concerning the limits of punitive damages which may be assessed under federal maritime law. The Court held that under federal general maritime law governing maritime cases, an award of punitive damages may not be greater than a 1:1 ratio as compared with compensatory damages. The Supreme Court reduced the prior \$2.5 billion punitive damages award to \$500 million.

The Facts

On 24 March 1989, the 900 foot supertanker, “Exxon Valdez,” ran aground on the treacherous Bligh Reef, spilling some 11 million gallons of crude oil into picturesque Prince William Sound. The captain had recently completed a rehabilitation program for alcoholism, but there was evidence that Exxon management knew that he had relapsed. After receiving clearance to deviate from his course leaving Valdez, Alaska, the captain left the deck to do “paperwork,” leaving his third mate to maneuver the tanker around several islands and past the fateful reef. The third mate failed to execute the turn, and the resulting environmental devastation has been well-documented. Coast Guard investigators estimated the captain’s blood-alcohol content to be .241 at the time of the grounding.

Exxon spent approximately \$2.1 billion remediating the environmental damages. Groups of Native Alaskans, commercial fishermen and landowners also sued. The Court converted the case into a class action, with approximately 32,000 claimants. The jury awarded approximately \$507.5 million in “relevant compensatory damages.” The jury then initially awarded \$5 billion in punitive damages against Exxon. After several appeals to the Ninth Circuit, the award was reduced to \$2.5 billion. Exxon appealed, arguing that (1) maritime law does not impose punitive damages on ship-owners for the independent acts of managerial employees within the scope of their employment; (2) punitive damages are preempted by the Clean Water Act; and (3) the punitive damage award was excessive under federal maritime common law.

The Court's Holding

The Supreme Court was split evenly on the issue whether punitive damages can be assessed against a ship-owner based on the independent acts of its managerial employees under federal maritime common law. The Ninth Circuit's decision (answering the question in the affirmative), therefore stands, and the Supreme Court's "split" creates no precedent. The Court swiftly rejected Exxon's argument that penalties for spills under the Clean Water Act preempted an award of punitive damages, then turned to the heart of the case: whether the punitive damage award was excessive.

The Court surveyed the history of punitive damages in Anglo-American jurisprudence, and concluded that "the consensus today is that punitives are aimed not at compensation but principally at retribution and deterring harmful conduct." The Court noted that the median punitive damage award in United States courts is in an approximately 1:1 ratio with compensatory damages. However, the Court was troubled by outlying cases: "The real problem, it seems, is the stark unpredictability of punitive awards." The Court reasoned that "a penalty should be reasonably predictable in its severity," and similar conduct should result in similar punitive damage awards. The Court then discussed three possible methods of increasing predictability.

First, the Court rejected balancing tests, which require judges to weigh various factors such as degree of reprehensibility and profitability of the wrongful behavior. Such tests currently form the basis for the Court's constitutional limits on punitive damage awards. The Court concluded that these multi-factored tests do not provide "the best insurance against unpredictable outliers." The Court then declined to impose a "hard dollar cap" on punitive damages. Such a rule would outlaw punitive damages in excess of a specified sum, regardless of the case. The Court concluded that an approach between these two extremes was required.

The Court determined that the best way to eliminate outlying punitive damage cases was "by pegging punitive to compensatory damages using a ratio." The Court then determined that a 1:1 ratio, which represents the median punitive damage award, is best suited for maritime cases such as *Exxon* – "a case of reckless action, profitless to the tortfeasor, resulting in substantial recovery for substantial injury."

What This Means for London Market Insurers

First, marine insurance cases fall within the ambit of the federal maritime common law. Because Exxon announces a rule of federal maritime common law, it appears that the 1:1 ratio between punitive and compensatory damages applies to marine insurance cases. This issue will be litigated over the coming months and years, and will bear close watching.

Second, although the Court was careful to state that the rule in *Exxon* was limited to maritime common law cases, the Court's reasoning and some of its language suggests that it may begin imposing stricter constitutional limits on punitive damages in cases across the board. Currently, the constitutional boundaries applicable to non-maritime punitive damage awards rely on a multi-factor balancing test of the kind rejected by *Exxon*. The Court's imposition of a strict 1:1

ratio may reflect frustration with the seeming inability of such amorphous tests to curtail excessive outlying punitive awards. Nor is the problem of “unpredictability” limited to the maritime context. *Exxon* may, therefore, signal a shift toward greater controls on punitive damages for all cases in the future.

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