Exxon Shipping Co. v. Baker: The Supreme Court Tightens the Purse Strings on Corporate Punitive Awards

I. OVERVIEW OF THE CASE

On March 24, 1989, the supertanker EXXON VALDEZ crashed into the Bligh Reef off the coast of Alaska.[1] The EXXON VALDEZ, owned by Exxon Mobil Corp. (Exxon), carried fifty-three million gallons of crude oil, eleven million gallons of which spilled into Prince William Sound.[2] Experts eventually attributed the crash to the tanker's captain, Joseph Hazelwood, whose severe intoxication likely led to his "inexplicable" decision to leave the bridge to "do paperwork" as the ship was passing through difficult waters.[3] In the years following what many have deemed the worst oil spill in United States history,[4] Exxon spent around $2.1 billion in cleanup efforts and hundreds of millions more in voluntary settlements and criminal fines.[5] Nonetheless, others affected by the disaster, including more than 32,000 commercial fishermen, Native Alaskans, and landowners (collectively referred to as Baker), filed civil lawsuits against Hazelwood and Exxon, among others, in the United States District Court for the District of Alaska, seeking compensatory and punitive damages.[6] The district court jury found that Exxon was responsible for Hazelwood's reckless conduct, as it occurred within the

1. Exxon Shipping Co. v. Baker, 128 S. Ct. 2605, 2611 (2008).
2. *Id.* at 2611-13.
3. *Id.* at 2612. Based on blood tests conducted by the Coast Guard eleven hours after the crash, Hazelwood likely had a blood-alcohol level of .241 at the time of the crash, or three times the legal limit for driving in most states. *Id.* at 2613. While navigating through difficult waters, Hazelwood left his post "to do paperwork," and left the third mate in command. Experts testified that no paperwork could have justified that decision, both because two officers should have been on bridge at all times, and because Hazelwood was the only person on the ship licensed to navigate those particular waters. *Id.*
4. *See, e.g.*, Robert Barnes, *Justices Slash Damages for Exxon Oil Spill*, WASH. POST, June 26, 2008, at A1 (calling the spill the worst in North American history).
5. *Exxon*, 128 S. Ct. at 2613.
6. *Id.*

scope of his employment.[7] Therefore, both parties were reckless and potentially liable for punitive damages.[8] The jury awarded the commercial fishermen $287 million in compensatory damages and instituted punitive damages against Hazelwood and Exxon in the amounts of $5000 and $5 billion, respectively.[9] The United States Court of Appeals for the Ninth Circuit upheld the jury's verdict with respect to Exxon's responsibility for Hazelwood's conduct, but reduced Exxon's punitive damages to $2.5 billion.[10]

The United States Supreme Court granted certiorari, and presented the following issues for review: (1) whether Exxon was liable under maritime law for punitive damages arising from Hazelwood's reckless conduct, (2) whether common law punitive damages were preempted by the Clean Water Act (CWA), and (3) whether the punitive damages award was excessive as a matter of law.[11] Because the Supreme Court split equally on the first issue,[12] it left undisturbed the Ninth Circuit's holding that companies are liable for the reckless conduct of their managerial employees.[13] As to the second issue, the Supreme Court *held* that the CWA does not preempt punitive damages in maritime cases, noting that there is "no clear indication of congressional intent to occupy the entire field of pollution remedies."[14] Last, the Court *held* that the punitive damages award against Exxon was excessive as a matter of maritime law, asserting that, because of the high level of unpredictability among the states on this issue, a 1:1 ratio of punitive damages to compensatory damages was an equitable ceiling in maritime cases. *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2633-34 (2008).

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7. *Id.* at 2614.

8. *Id.*

9. *Id.* The Supreme Court used the district court's calculation of the total relevant compensatory damages, which was $507.5 million, or a 1:1 ratio. *Id.* at 2634 (citing *In re* Exxon Valdez, 236 F. Supp. 2d 1043, 1063 (D. Alaska 2002)). Exxon's punitive damages were originally intended to equal the company's average profit from 1989. Lynda V. Mapes, *Supreme Court Drastically Cuts Payouts for Plaintiffs in Exxon Valdez Oil Spill*, SEATTLE TIMES, June 26, 2008, at A1.

10. *Exxon*, 128 S. Ct. at 2614.

11. *Id.*

12. *Id.* at 2615. Justice Alito took no part in the decision of the case. *Id.* at 2634. Justice Alito abstained from participating in the decision because, as of December 31, 2006, he owned at least $100,001 in Exxon stock. Greg Stohr, *Exxon Gets Court Review of $2.5 Billion Valdez Award*, BLOOMBERG.COM, Oct. 29, 2007, http://www.bloomberg.com/apps/news?pid=20601087&sid=atcMF0N8XvPI.

13. *Exxon*, 128 S. Ct. at 2616.

14. *Id.* at 2619.

II. BACKGROUND

The Supreme Court's decision in the noted case is grounded in maritime law. Maritime law is federal common law,[15] but it is also judge-made in many respects.[16] Theories that are well-grounded in land-based common law are not necessarily embraced by maritime decisions.[17] For example, the majority of states have adopted the concept of awarding punitive damages in cases concerning *respondeat superior* (vicarious liability).[18] Unlike compensatory damages, which are awarded to compensate the plaintiff for harm suffered, the modern purpose of punitive damages is to punish a tortfeasor and deter harmful conduct.[19] The Restatement (Second) of Torts clarifies that "[p]unitive damages can properly be awarded against a master or other principal because of an act by an agent if . . . the agent was employed in a managerial capacity and was acting within the scope of employment."[20]

Hiltgen v. Sumrall follows the Restatement's rationale.[21] In *Hiltgen*, the plaintiff's husband was killed when his automobile crashed into the rear of a truck driven by the defendant-employee and owned by the defendant-employer.[22] The plaintiff filed a wrongful death suit, contending that the employer was vicariously liable for her husband's death.[23] The United States Court of Appeals for the Fifth Circuit affirmed the trial court's judgment and, after finding the employer vicariously liable for the employee's negligence, awarded the plaintiff punitive damages.[24] The Fifth Circuit held the employer, whom the employee considered his boss, liable because "it [was] clear that Sumrall's activity was in furtherance of Abston's business."[25]

In land-based common law cases, the Supreme Court has historically been concerned with due process when determining the equity of punitive damages.[26] The Due Process Clause of the Fourteenth

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15. *Id.* at 2616.
16. *Id.* at 2619 (citing Edmonds v. Compagnie Generale Transatlantique, 443 U.S. 256, 259 (1979); Romero v. Int'l Terminal Operating Co., 358 U.S. 354, 360-61 (1959)).
17. *Id.* at 2616.
18. *Id.*
19. *Id.* at 2621.
20. RESTATEMENT (SECOND) OF TORTS § 909(c) (1977).
21. 47 F.3d 695, 705 (5th Cir. 1995) (applying Mississippi law).
22. *Id.* at 698.
23. *Id.*
24. *Id.* at 705.
25. *Id.*
26. *See, e.g.*, Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 18 (1991) ("[U]nlimited jury discretion—or unlimited judicial discretion for that matter—in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities.").

Amendment prohibits a state from imposing "grossly excessive" punishments upon a tortfeasor.[27] This concern stems from the fundamental inequity of depriving an individual of his or her life, liberty, or property through arbitrary coercion, rather than through the appropriate application of the legal system.[28] If an award is grossly excessive, the Supreme Court has reasoned, it does not serve a legitimate purpose; rather, it represents an arbitrary deprivation of property.[29]

The Supreme Court applied this rationale in *BMW of North America, Inc. v. Gore*, in which a BMW owner sued an automobile manufacturer for selling cars as new to unknowing customers although the cars had undergone minor repairs.[30] The jury awarded the plaintiff $4000 in compensatory damages and $4 million in punitive damages on the grounds that BMW's conduct constituted "gross, oppressive or malicious" fraud.[31] The Alabama Supreme Court later reduced the punitive damages to $2 million.[32] Upon review, the United States Supreme Court acknowledged that punitive damages advance a legitimate state interest in punishing wrongful conduct and in deterring tortfeasors from repeating such behavior.[33] The Court further recognized Alabama's legitimate interest in protecting its citizens from deceptive trade practices.[34] However, the Court reasoned, fundamental concepts of equity in the United States Constitution require that a person who is subject to punishment must have received prior notice of the severity of any potential penalty a state may impose.[35] This principle led the Court to set forth three guideposts to help determine whether a punitive award violates the Due Process Clause: (1) the degree of reprehensibility of the defendant's conduct, (2) the ratio of the harm or potential harm suffered by the plaintiff to his other punitive damages award, and (3) the difference between the remedy and the applicable civil penalties.[36] The

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27. BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 562 (1996) (citing TXO Prod. Corp. v. Alliance Res. Corp., 509 U.S. 443, 454 (1993)).

28. *Id.* at 587 (Breyer, J., concurring) (citing Daniels v. Williams, 474 U.S. 327, 331 (1986)).

29. State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 417 (2003) (citing *Haslip*, 499 U.S. at 42 (O'Connor, J., dissenting)).

30. *Gore*, 517 U.S. at 562-63. The manufacturer labeled the car as used if repairs cost more than three percent of the suggested retail price; but if repairs cost less than three percent, the car was sold as new without the dealer even knowing that the manufacturer had made repairs. *Id.* at 563-64.

31. *Id.* at 565.

32. *Id.* at 567.

33. *Id.* at 568 (citing Gertz v. Robert Welch, Inc., 418 U.S. 323, 350 (1974)).

34. *Id.*

35. *Id.* at 574 (citing Miller v. Florida, 482 U.S. 423, 430 (1987)).

36. *Id.* at 575-86.

Court found no evidence that BMW acted in bad faith or with improper motives and therefore held that the manufacturer's conduct was not sufficiently reprehensible to warrant a $2 million punitive award.[37]

Addressing the second guidepost, the Court opined that punitive damages must have a reasonable relationship to compensatory damages.[38] While declining to apply a mathematical ratio to determine the equity of the punitive award, the Court noted that the ratio in this case of $2 million to $4000, or 500:1, "'raise[d] a suspicious judicial eyebrow,'"[39] and therefore was constitutionally impermissible.[40]

Finally, the Court found that the third guidepost, the difference between the sanction and the appropriate statutory penalty, also demonstrated the unfairness of the punitive award.[41] BMW faced civil fines of up to $2000 for its deceptive trade practices in Alabama.[42] Therefore, the Court held that the $2 million punitive award could not "be justified on the ground that it was necessary to deter future misconduct without considering whether less drastic remedies could be expected to achieve [the] goal [of deterrence]."[43]

The Court reiterated its concern regarding excessive punitive damages in *State Farm Mutual Automobile Insurance Co. v. Campbell*.[44] The jury, finding that State Farm acted in bad faith by refusing to settle certain claims and providing clients with harmful, erroneous advice, found the insurance company liable for $2.6 million in compensatory damages and $145 million in punitive damages.[45] The trial court reduced these awards to $1 million and $25 million, respectively.[46] Applying the three guideposts set forth in *Gore*, the Supreme Court rejected this award on due process grounds.[47] Although State Farm's conduct was reprehensible and caused emotional distress to some policyholders, the Court determined that the state could further its legitimate objectives in

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37. *Id.* at 576-80.

38. *Id.* at 581; *see also* Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 23-24 (1991) (refusing to apply a bright-line test, but finding that a 4:1 ratio of punitive-to-compensatory damages approached the outer boundaries of constitutional permissibility).

39. *Gore*, 517 U.S. at 583 (quoting TXO Prod. Corp. v. Alliance Res. Corp., 509 U.S. 443, 481 (1993) (O'Connor, J., dissenting)).

40. *Id.* at 582-83.

41. *Id.* at 584.

42. *Id.*

43. *Id.*

44. 538 U.S. 408, 429 (2003).

45. *Id.* at 413-15.

46. *Id.* at 415.

47. *Id.* at 429 ("The punitive award of $145 million . . . was neither reasonable nor proportionate to the wrong committed, and it was an irrational and arbitrary deprivation of the [defendant's] property . . . .").

deterring such conduct with a more modest punishment.[48] The Court again declined to adopt a bright-line mathematical formula to determine the equity of punitive awards, but found that the 145:1 punitive-to-compensatory damages ratio in this case was excessive.[49] Moreover, the Court narrowed its prior jurisprudence by concluding that awards exceeding a single-digit ratio will rarely satisfy due process concerns.[50] The Court stated that when compensatory damages are substantial, as they were in this case, sizeable punitive damages are less necessary.[51] Last, the Court noted that the maximum civil penalty State Farm fared consisted of a $10,000 fine for fraud, an amount "dwarfed" by the punitive award.[52] According to the Court, this disparity was impermissible under the *Gore* analysis.[53]

The Supreme Court has considered punitive damages with much greater frequency in land-based common law cases than in cases arising under maritime law.[54] The appropriateness of recovering punitive damages from an employer through vicarious liability for the reckless acts of an employee is less settled under maritime law.[55] In *The Amiable Nancy*, a shipowner sought punitive damages from the owners of the vessel, the SCOURGE, after the SCOURGE's crew pillaged the ship, the AMIABLE NANCY.[56] Because the owners of the SCOURGE neither directed nor participated in the looting, the Court declared the SCOURGE's owners were "bound to repair all the real injuries and personal wrongs sustained by the [plaintiffs]," but were not liable for punitive damages.[57] The Court in *Lake Shore & Michigan Southern Railway Co. v. Prentice* relied on the holding in *The Amiable Nancy* to conclude that a principal is liable for an agent's intentional torts, but is not liable for punitive damages stemming from events in which the principal did not participate.[58] These cases, both of which were decided over a century ago, are the most recent Supreme Court precedent used to address the first issue presented in the noted case.[59] The Court has not

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48. *Id.* at 419-20.
49. *Id.* at 426.
50. *Id.* at 425.
51. *Id.* at 426.
52. *Id.* at 428.
53. *Id.*
54. Exxon Shipping Co. v. Baker, 128 S. Ct. 2605, 2619-22 (2008).
55. *Id.* at 2616.
56. 16 U.S. (3 Wheat.) 546, 558 (1818).
57. *Id.* at 558-59.
58. 147 U.S. 101, 108-10 (1893)). *Lake Shore*, however, was not decided under maritime law. Exxon Shipping Co. v. Baker, 128 S. Ct. 2605, 2616 (2008).
59. *Lake Shore*, 147 U.S. at 108-10.

revisited the issue of a shipowner's punitive liability for a shipmaster's conduct.[60]

III. THE COURT'S DECISION

In the noted case, the Court first addressed Exxon's contention that a shipowner should not be held liable for punitive damages based on a shipmaster's recklessness.[61] Exxon's argument rested on two cases, *The Amiable Nancy*, decided almost two centuries ago, and *Lake Shore*, decided over a century ago.[62] In *The Amiable Nancy*, the Court enforced compensatory damages against the SCOURGE's shipowners, whose shipmasters were responsible for sinking the AMIABLE NANCY.[63] However, as a matter of policy, Justice Story refused to enforce punitive damages against the SCOURGE's shipowners because they did not direct or participate in the attack, and had no way of indemnifying themselves for the conduct of their officers.[64] Exxon argued by analogy that it should not face punitive damages, because it did not direct or participate in Hazelwood's reckless conduct.[65] Exxon further contended that its reliance on *The Amiable Nancy* was proper because the Court confirmed the holding of *The Amiable Nancy* in *Lake Shore* by stating that, while a principal is liable for its agent's intentional torts, the principal does not face punitive damages for an incident in which it was not involved.[66] Because maritime law is federal common law, Exxon contended that these cases should serve as precedent.[67]

Conversely, Baker urged the Court to recognize the common law concept of *respondeat superior*, which is set forth in the Restatement and enforced in the vast majority of states.[68] Baker argued that maritime law should be consistent with modern, land-based common law, under which most states allow plaintiffs to recover punitive damages for the negligent or reckless conduct of any employee.[69] The Court, sitting with an even eight members as a result of Justice Alito's recusal, was equally divided on this issue and therefore unable to rule.[70] Justice Souter warned that

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60. *Exxon*, 128 S. Ct. at 2616.
61. *Id.* at 2615.
62. *Id.* at 2615-16.
63. *Id.* at 2615 (citing The Amiable Nancy, 16 U.S. (3 Wheat.) 546, 558 (1818)).
64. *The Amiable Nancy*, 16 U.S. at 558.
65. *Exxon*, 128 S. Ct. at 2615.
66. *Id.* at 2615-16 (citing Lake Shore & Mich. S. Ry. v. Prentice, 147 U.S. 101, 110 (1893)).
67. *Id.* at 2616.
68. *Id.*; RESTATEMENT (SECOND) OF TORTS § 909(c) (1977).
69. *Exxon*, 128 S. Ct. at 2616.
70. *Id.*

although the Court was forced to uphold the Ninth Circuit's decision that a shipowner is liable for the reckless acts of its shipmaster, its decision would not serve as precedent.[71]

Although the Supreme Court did not affirm or reverse the Ninth Circuit on the first issue, it proceeded to address Exxon's contention that the CWA implicitly bars punitive damages.[72] Both the district court and the Ninth Circuit dismissed this claim.[73] The Supreme Court was not persuaded by Exxon's argument, either, and confidently affirmed the lower courts' decisions.[74] In an explanation of its reasoning that appears to highlight the vagueness of Exxon's preemption argument, the Court presented two ways to interpret Exxon's assertion that the CWA's penalties for water pollution preempted the common law punitive damages remedies.[75] First, Exxon could have meant that any claim predicated on an oil spill is preempted unless it is expressly preserved under the relevant CWA provision, 33 U.S.C. § 1321.[76] The Court found this interpretation illogical because CWA § 1321(b) protects the United States' waters, shorelines, and natural resources.[77] This section also maintains that oil companies have obligations "under any provision of law for damages to any publicly owned or privately owned property" as a result of an oil spill.[78] The Court found that the option to file suit under any provision of law meant that common law punitive damages remained a possibility.[79]

The Court's second interpretation of Exxon's preemption argument was that the clause preserving obligations under any provision of law did not expressly mention preserving punitive damages for economic loss.[80] However, the Court reasoned that if this view were adopted, the CWA would exclude other types of damages that Exxon did not claim were preempted, such as compensatory damages for economic loss and physical injury.[81] The Court was equally unpersuaded by this second interpretation, finding that because the statute was designed to protect "water" and "natural resources," there was no reason why it would abolish an oil company's duty to refrain from harming private

71. *Id.*
72. *Id.*
73. *Id.* at 2617.
74. *Id.* at 2618-19.
75. *Id.* at 2618.
76. *Id.*
77. *Id.* at 2618-19 (quoting 33 U.S.C. § 1321(b) (2000)).
78. *Id.*
79. *Id.* at 2619.
80. *Id.*
81. *Id.*

individuals' bodies and livelihoods.[82] The Court found this contention additionally unsound because it would then follow that the CWA preempts punitive damages for economic loss, but not compensatory damages for economic loss.[83] The Court saw nothing in the CWA suggesting a bifurcation of compensatory and punitive damages.[84] Unmoved by Exxon's arguments, the Court found no indication that Congress intended the CWA to occupy the entire field of remedies and preempt common law punitive damages.[85]

The final issue presented in the noted case was whether the Ninth Circuit's award of $2.5 billion in punitive damages against Exxon was excessive under maritime common law.[86] Because this was an issue of first impression for the Supreme Court, the Court saw fit to explain in great detail the history and current view on punitive damages.[87] Punitive damages were traditionally used in instances of extraordinary wrongdoing; today, however, they are used not to compensate the plaintiff, but to deter the defendant from repeating similar harmful conduct.[88] Although the purpose of punitive damages is well-grounded, state regulation varies from a complete bar to a maximum ratio of punitive-to-compensatory damages.[89]

The Court was concerned with this variation in the availability and application of punitive damages, noting that it leads to "stark unpredictability of punitive awards."[90] To highlight this extreme unpredictability, the Court referenced two Alabama cases with similar facts, but strikingly different results.[91] The first was *Gore*, where the jury awarded $4 million in punitive damages against a car manufacturer that frequently sold used cars as new.[92] The second was *Yates v. BMW of North America Inc.*, where, under almost exactly the same set of facts, a different Alabama jury refused to award *any* punitive damages against the *same* car manufacturer for using the *same* fraudulent sales policy.[93]

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82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.* at 2619-27.
88. *Id.* at 2620-21.
89. *Id.* at 2622-23; *see, e.g.*, Distinctive Printing & Packaging Co. v. Cox, 443 N.W.2d 566, 574 (Neb. 1989) (barring recovery of punitive damages); OHIO REV. CODE ANN. § 2315.21(D)(2)(a) (2000) (enacting a 2:1 maximum ratio of punitive-to-compensatory damages).
90. *Exxon*, 128 S. Ct. at 2625.
91. *Id.* at 2626.
92. *Id.*; BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 565 (1996).
93. *Gore*, 517 U.S. at 565-66 (citing Yates v. BMW of N. Am. Inc., 642 So. 2d 937, 938-40 (Ala. 1993)); *Yates*, 642 So. 2d at 938.

This outcome troubled the Court, which noted that there should be guidelines for awarding punitive damages because the legal system is based on notions of fairness and consistency.[94] The issue of excessive punitive damages had previously been adjudicated only with respect to due process standards.[95] The analysis in the noted case differs from prior inquiries because its main concern was not due process limitations under land-based common law, but rather what was equitable under federal maritime common law.[96]

The Court then stated that there are three approaches to consider in standardizing punitive damages in maritime cases.[97] The first is a verbal formulation already in use in many states.[98] This method asks the court, in reviewing a jury's punitive award, to evaluate the reasonableness and equity of the award.[99] Factors used to determine the appropriate penalty include, among others, the degree of heinousness of the crime, the defendant's ability to pay, and the necessity of preventing similar wrongs.[100] The Court, unconvinced that the verbal formulation method would ensure predictability in punitive awards, decided against its adoption.[101] The next option the Court discussed was whether to adopt a cap on punitive awards by restricting payouts in excess of a certain amount.[102] However, because there was no "standard" tort or contract injury, the Court noted that it would be impossible to establish an equitable figure that could serve as a ceiling in multiple areas of law.[103] Accordingly, the Court quickly dismissed this option.[104]

The Court deemed the last option, enacting a ratio or maximum multiple of punitive-to-compensatory damages, the most promising.[105] This alternative was not groundbreaking, as many states had adopted damage ratios, and Congress had enacted analogous legislation providing

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94. *Exxon*, 128 S. Ct. at 2627-29 ("[I]t is inevitable that the specific amount of punitive damages awarded . . . will be arbitrary." (quoting Mathias v. Accor Econ. Lodging, Inc., 347 F.3d 672, 678 (7th Cir. 2003))).

95. *Id.* at 2626.

96. *Id.* The Court therefore made no reference to the three guideposts set forth in *Gore*. *Id.* at 2611-34.

97. *Id.* at 2627.

98. *Id.* at 2627-28.

99. *Id.* at 2627.

100. *Id.* at 2627-28.

101. *Id.* at 2628.

102. *Id.* at 2629.

103. *Id.* The Court was also concerned that keeping the figure equitable would pose a great challenge, whether or not the judicial or legislative branch was responsible for establishing the figure. *Id.* at 2629-30.

104. *Id.* at 2629.

105. *Id.*

treble damages in other legal fields like antitrust and racketeering.[106] The Court also discussed this method as a way of evaluating the equitability of damages in its due process analysis.[107] The Court noted that, as is the case with the availability of punitive damages, states that have adopted a ratio of punitive-to-compensatory damages differ as to what ratio is appropriate.[108] The Court also noted that states that have adopted a 3:1 ratio apply it to cases in which the defendant's conduct was malicious or performed for financial gain.[109] The Court, although dismayed by the defendant's conduct,[110] was unwilling to admit that Hazelwood's intentions were sufficiently malevolent to warrant punitive damages three times the compensatory damages award.[111]

The Court found a 2:1 ratio was equally unappealing.[112] The Court noted that the 2:1 ratio is often used to calculate damages in environmental cases and in patent and trademark cases, as well as to induce private litigation in antitrust disputes because compensatory damages often undercompensate the plaintiff.[113] The Court, noting that these areas of law are "far afield from maritime concerns," was equally unwilling to enact a 2:1 ratio because, it reasoned, plaintiffs need little more impetus to sue in maritime law.[114]

The Court ultimately concluded that an appropriate limit was a 1:1 ratio of punitive-to-compensatory damages.[115] Underlying its decision were several studies conducted over the past two decades, examining judges and juries that granted punitive awards based on minimally to extremely blameworthy conduct.[116] Two of these studies revealed that the median ratio of punitive-to-compensatory damages was less than 1:1, while the third revealed that the median ratio was 1.4:1.[117] These three

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106. *Id.* (citing 15 U.S.C. § 15, 1117 (2000 & Supp. V 2005); 18 U.S.C. § 1964(c) (1970); 35 U.S.C. § 284 (1952)).

107. *Exxon*, 128 S. Ct. at 2626.

108. *Id.* at 2631.

109. *Id.*

110. *Id.* at 2631 n.23.

111. *Id.* at 2632 (noting that Hazelwood's conduct was reckless but profitless).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* at 2632-33.

116. *Id.* at 2624 n.14; *see also* Theodore Eisenberg et al., *Juries, Judges, and Punitive Damages: Empirical Analyses Using the Civil Justice Survey of State Courts 1992, 1996, and 2001 Data*, 3 J. EMPIRICAL LEGAL STUD. 263 (2006) (0.62:1 and 0.66:1 median ratios); Neil Vidmar & Mary R. Rose, *Punitive Damages by Juries in Florida: In Terrorem and in Reality*, 38 HARV. J. LEGIS., 487 (2001) (0.67:1 median ratio); Erik K. Moller et al., *Punitive Damages in Financial Injury Jury Verdicts*, 28 J. LEGAL STUD. (1999) (1:4:1 median ratio).

117. *Exxon*, 128 S. Ct. at 2624.

studies established a median 1:1 ratio.[118] The Court embraced these studies because they were demonstrative of awards in hundreds of judge and jury cases, and they corroborated the Court's own theory that compensatory damages generally should exceed punitive damages.[119] The Court then applied the 1:1 ratio to the facts in the noted case and determined that, based on the district court's calculation of compensatory damages, punitive damages against Exxon should be $507.5 million.[120] Accordingly, the Supreme Court vacated and remanded the Ninth Circuit's punitive award of $2.5 billion.[121]

IV. ANALYSIS

The noted case's holdings constitute a predictable advance on the issue of punitive awards and a consistent application of federal preemption jurisprudence. The Court's decision that the CWA does not preempt awards of common law punitive damages is sound evidence of statutory interpretation. As the Court has stated, Congress does not seek to cavalierly preempt state law.[122] Therefore, the Court correctly observed the irrationality of Exxon's assertion that any tort action for punitive damages predicated on an oil spill is preempted unless it is expressly preserved by CWA § 1321.[123] Exxon's argument fell flat because, in the Court's opinion, if punitive damages for economic harm were preempted, compensatory damages would be preempted as well. Even Exxon was unwilling to make this claim. Additionally, the Court rightly noted a probability that the CWA, which has the goal of protecting "water" and "natural resources," would also protect the bodies and livelihoods of private individuals.[124] The Court correctly concluded that Congress did not have the requisite intent to occupy "the entire field of pollution remedies" in enacting the CWA.[125]

The Court, handcuffed by a tie vote on whether Exxon should be liable under maritime law for punitive damages stemming from the acts of a managerial agent, was forced to abide by the Ninth Circuit's affirmative holding.[126] Exxon's knowledge of Hazelwood's alcoholism

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118. *Id.* at 2633.
119. *Id.* at 2632-33.
120. *Id.* at 2634.
121. *Id.*
122. Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996).
123. *Exxon*, 128 S. Ct. at 2618-19.
124. *Id.* at 2619.
125. *Id.*
126. *Id.* at 2616. Had Justice Alito participated in the decision, it is likely that he would have voted with the conservative bloc of the Court, which may have resulted in a finding that

and, some contend, blatant disregard for the potential consequences,[127] proximately caused this environmental disaster.[128] The Restatement (Second) of Torts section 909, comment b provides that punitive damages may be enforced "to make liable an employer who has recklessly employed or retained a servant or employee who was known to be vicious, if the harm resulted from that characteristic."[129] The Court found that this crash occurred because Hazelwood's blood-alcohol content grossly exceeded the legal limit, a propensity of his that Exxon officials were well aware of, yet took no action against.[130] The result was Hazelwood's "inexplicable" decision to file paperwork instead of navigating the supertanker through treacherous waters and the subsequent crash.[131]

Despite antiquated precedent dating back more than a century stating that a shipowner is not punitively liable for the reckless acts of its shipmaster,[132] here there was no reason *not* to extend *respondeat superior* liability in maritime law and allow recovery of punitive damages from Exxon. If punitive recovery by Baker were barred in the noted case, the $507.5 million compensatory damage award would do little to deter a corporation whose profits exceeded $40 billion in 2007 from repeating this reckless mismanagement.[133] Regardless of Hazelwood's recklessness, Exxon Mobil is the largest company in the world in terms of market value.[134] Exxon made, on average, $507.5 million every four-and-a-half days in 2007.[135] Were it a country, it would have the eighteenth-largest economy in the world.[136] Payment of a compensatory award with no corresponding punitive damages would be a drop in the bucket for Exxon and other corporations with deep pockets. Allowing these corporations to escape punitive liability would provide no meaningful deterrent of future transgressions.

Exxon could not be held liable for punitive damages as a result of Hazelwood's recklessness. David G. Savage, *Justices Slash Exxon Valdez Verdict*, L.A. TIMES, June 26, 2008, at A1.

127. *Exxon*, 128 S. Ct. at 2612.

128. *Id.* at 2614.

129. RESTATEMENT (SECOND) OF TORTS § 909 cmt. b (1977).

130. *Exxon*, 128 S. Ct. at 2612.

131. *Id.*

132. The Amiable Nancy, 16 U.S. (3 Wheat.) 546, 558 (1818).

133. Steven Mufson, *Exxon Mobil's Profit in 2007 Tops $40 Billion*, WASH. POST, Feb. 2, 2008, at D1.

134. *Big Oil Shares Hurt as State Companies Seize Reserves*, L.A. TIMES, June 30, 2008, at C6.

135. Mufson, *supra* note 133.

136. Steven Mufson, *Breaking Own Record, Exxon Sets Highest U.S. Profit Ever*, WASH. POST., Aug. 1, 2008, at D1.

The Court's decision to further restrain punitive awards is also apt, given the jurisprudence that led up to the noted case. The noticeable tightening of punitive awards is evident in the Court's reaction to a 500:1 ratio in *Gore*, which was reiterated in *State Farm*'s holding that punitive damages should be at or near the amount of compensatory damages. It seemed likely that the Court would continue to curb punitive awards given its evident concern about the fairness and unpredictability involved in punitive damage calculations.

The concern that punitive awards are often arbitrary is a rational one. As evidenced in *Gore* and *Yates*, different juries can provide remarkably different punitive awards under almost exactly the same set of facts.[137] This discrepancy contravenes the fundamental belief that a person facing punishment must be notified both that his or her conduct is subject to reprimand and of the severity of the consequences.[138] Punitive awards can, in instances of grossly excessive amounts, represent an arbitrary deprivation of the defendant's right to property under the Due Process Clause.[139] It is inequitable to allow a defendant in one case to avoid punitive liability completely, while a defendant in another case exhibits the same or similar tortious conduct and faces millions of dollars in punitive damages.

In addition, it is unsettling that twelve jurors, most of whom have had little or no experience in the legal arena and know just as little about punitive damages, are empowered to determine what amount will satisfy a state's legitimate interest in deterring tortfeasors from repeating similar conduct. Juries, which are often given wide latitude to discern the appropriate amount of punitive damages, may make these determinations based on incomplete evidence[140] or vague instructions.[141] Further, the fact that a defendant is wealthy may increase the likelihood of jury prejudice, making awards even more unpredictable.[142] Exxon's wealth was relevant in the noted case because the company was one of the largest corporations in the world. The enmity and desire to penalize sternly are

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137. BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 562 (1996); Yates v. BMW of N. Am. Inc., 642 So. 2d 937, 940 (Ala. Civ. App. 1993).

138. *Gore*, 517 U.S. at 574.

139. Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 42 (1991) (O'Connor, J., dissenting).

140. State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 400, 417 (2003) (quoting Honda Motor Co. v. Oberg, 512 U.S. 415, 432 (1994)).

141. *Id.* at 418; *see also Gore*, 517 U.S. at 588 (Breyer, J., concurring) (noting that vague and open-ended standards risk arbitrary results); *Haslip*, 499 U.S. at 43 (O'Connor, J., dissenting) (noting that uncertain instructions encourage inconsistent and unpredictable results).

142. *Honda*, 512 U.S. at 432; *see also* TXO Prod. Corp. v. Alliance Res. Corp, 509 U.S. 443, 464 (1993) ("[T]he emphasis on wealth of the wrongdoer increased the risk that the award may have been influenced by prejudice against large corporations . . . .").

understandable, but should not be allowed to balloon punitive awards. Trial courts can redress the amount of damage if it deems a jury award inequitable.[143] However, even this check on unfair awards results in unpredictability, as shown by *State Farm*, in which the jury award of punitive damages was exponentially reduced by the trial court, only to be reinstated by the Utah Supreme Court.[144] As such, not only are damage awards inconsistent when an award is decided upon by a jury, but even when decided upon by judges, who have undoubtedly had much more experience addressing punitive damages and still often cannot agree on what constitutes an equitable punitive award. In the noted case, the Court correctly decided that the traditional "shock the conscience" approach used to determine the equity of a jury's reward was an inappropriate choice to standardize and curtail punitive awards.

As the Court aptly explained, a hard dollar cap on punitive awards would not work either.[145] Specifically, it would be too difficult to determine a maximum amount that would apply universally to each vastly different area of law.[146] For instance, if the punitive cap was set at $5 million on the grounds that recovery exceeding this amount by a tort or contract claim would be excessive, Exxon would have received an undeserved windfall of hundreds of millions of dollars. Conversely, if the courts set the cap higher to take tortious conduct such as Exxon's into account, a tort victim could receive $100 million in punitive damages as a result of the same misconduct. One could not argue that this award contradicted precedent because the cap had already been set. This method would also result in arbitrary and unpredictable awards and would not advance the Court's goal of preventing inequitable awards.

The Court's decision to adopt a maximum ratio of punitive-to-compensatory damages was the most suitable approach. Its holding leaves no room for capricious jury verdicts based on animosity toward wealthy defendants. Bright-line rules, like the ones established here, put defendants on notice of the punishment they face and preclude the argument that their property is being taken without due process. The only remaining issue is whether a 1:1 ratio is the best method.

The aforementioned studies of jury and bench trials, which seem to be an accurate way of evaluating the appropriate ratio, advance the Court's opinion that awards of compensatory and punitive damages

143. *State Farm*, 538 U.S. at 415.
144. *Id.*
145. Exxon Shipping Co. v. Baker, 128 S. Ct. 2605, 2629 (2008).
146. *Id.*

should be roughly equivalent.[147] Most punitive awards studied were less than the compensatory awards.[148] However, in those cases involving financial injury—as were those injuries suffered by the plaintiffs in *Exxon*—punitive awards were close to 1.5 times the compensatory damages.[149] Therefore, the Court's median ratio is essentially consistent with common law jurisprudence.

Even considering the Court's compliance with precedent, two issues arise. First, maritime law treats certain injuries as "less than fully compensable, or not compensable at all."[150] Compensatory awards are often inadequate under maritime law because plaintiffs often cannot recover for economic loss or emotional distress absent direct physical injury or property damage.[151] Therefore, the need for larger punitive damages to offset lower compensatory damages is greater in maritime cases. This is evident in *Exxon*, where more than 32,000 plaintiffs shared the compensatory damages, resulting in awards of less than $16,000 per individual plaintiff for grave economic loss.[152] Second, the noted case involved an instance of recklessness, yet still commanded the maximum punitive award allowable.[153] Admittedly, this was a case involving widespread damage to thousands of people as a result of outrageously irresponsible conduct, and the effects of the spill are still evident almost two decades later.[154] But what would the award be in instances of malicious conduct or greed—acts which the Court would find more reprehensible than the recklessness displayed in the noted case—that produced similar damage?[155] If, for example, in the future, a shipmaster crashes an oil tanker near shore as a result of a navigation decision aimed at augmenting an oil company's profit, the Court will undoubtedly be more outraged than in a case such as *Exxon*, where greed was not a factor. Yet a sterner punishment would not be available. The

147. *Id.* at 2633.

148. *Id.* at 2632-33.

149. *Id.*

150. *Id.* at 2637 (Stevens, J., concurring in part and dissenting in part).

151. *Id.* at 2636-37 (citing THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 5-15 (4th ed. 2004); Louisiana *ex rel.* Guste v. M/V Testbank, 752 F.2d 1019, 1021 (5th Cir. 1985) (en banc)).

152. *Exxon*, 128 S. Ct. at 2613-14.

153. *Id.* at 2634.

154. James Oliphant, *19 Years Later, Exxon Valdez Case Heads to Closure*, CHI. TRIB., Feb. 27, 2008, at C4.

155. *Exxon*, 128 S. Ct. at 2631; *see also id.* at 2639 (Ginsburg, J., concurring in part and dissenting in part) (noting that a 1:1 ratio was appropriate in the noted case because "Exxon's conduct ranked on the low end of the blameworthiness scale," although a different ratio may be needed in response to malicious acts or those carried out in pursuit of financial gain).

Court could send no more austere a message to other tortfeasors than it sent to Exxon in the noted case.

For this reason, the Court should have enacted a higher ratio or allowed for minimal flexibility in its standard to leave room to address the issues of undercompensation and maliciousness or greed.[156] The Court was uncomfortable with a 2:1 ratio and determined a 1.5:1 ratio would more aptly apply to malevolent, intentional conduct. The Court's adoption of the 1:1 ratio, although correct in principle and capable of constraining future arbitrary and unpredictable punitive awards, will be too low in certain egregious instances to adequately further the Court's objective of deterring tortious conduct. All things considered, Exxon dodged a colossal bullet as a result of the Court's concern regarding the potential for arbitrary and unpredictable punitive damage awards.

V. CONCLUSION

The final installment in Exxon's nineteen-year legal odyssey, resulting from Joseph Hazelwood's inebriation and Exxon's oversights, ended almost as favorably as the oil giant could have hoped. The Supreme Court extended punitive liability to companies as a result of their employees' misconduct in maritime law, subjecting Exxon to damages of $507.5 million.[157] At the same time, consistent with over a decade's worth of prior jurisprudence, the Court further constrained punitive awards by enacting a bright-line, 1:1 maximum ratio of punitive-to-compensatory damages in maritime cases.[158] This decision, rational in principle yet overly constrictive in application, adds predictability to otherwise inconsistent and arbitrary awards of punitive damages. It promotes judicial efficiency, as corporations will likely not need to spend years in litigation seeking reductions of exorbitant punitive awards. The Court's decision also saved Exxon a cool $2 billion, thereby validating Exxon's nineteen-year marathon that outlived more than twenty percent of the original plaintiffs.[159]

Although the Court confined its decision to maritime law,[160] it is likely that this holding will have a noticeable impact in other areas of law given the Court's desire to curb excessive punitive awards.[161] Common

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156. *Id.* at 2640 (Breyer, J., concurring in part and dissenting in part).

157. *Id.* at 2616.

158. *Id.* at 2633.

159. David G. Savage, *Exxon Valdez Litigation Still Afloat*, L.A. TIMES, Oct. 30, 2007, at A1.

160. *Exxon*, 128 S. Ct. at 2639 (Ginsburg, J., concurring in part and dissenting in part).

161. Russell Gold & Jess Bravin, *Exxon Oil-Spill Damages Slashed by Supreme Court*, WALL ST. J., June 26, 2008, at A1.

law defendants are sure to cite *Exxon* as precedent in arguing for a cap on their own punitive liability.[162] Not surprisingly, business organizations such as the U.S. Chamber of Commerce have applauded this constraint as a reflection of the judicial branch's agreement that punitive awards are often inequitable.[163] Other courts' endorsements of this holding are likely to follow.[164]

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162. *Id.*

163. Savage, *supra* note 126.

164. Adam Liptak, *Damages Cut Against Exxon in Valdez Case*, N.Y. TIMES, June 26, 2008, at A1.

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