

No. 07-219

Exxon Shipping Co. and Exxon Mobil Corp., Petitioners,  
v.  
Grant Baker, et al., Respondents.

## Briefs Filed On Behalf Of Respondents

### The Exxon Valdez Oil Spill

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The Respondents in the case currently before the Supreme Court are the 32,677 commercial fishermen, businesses, landowners, Native Alaskans, and others who were harmed by the Exxon Valdez oil spill. At Exxon's request, the federal district court in Anchorage consolidated all of their claims for trial, including claims for punitive damages. After an 83-day, 3-phase trial in 1994, an Alaska federal jury found both Exxon and Captain Hazelwood reckless, and entered a verdict of \$5 billion in punitive damages against Exxon. After 13 years of appeals, the U.S. Court of Appeals for the Ninth Circuit halved that award to \$2.5 billion. Nonetheless, Exxon appealed to the Supreme Court.

The Respondents' brief lays out the facts and law that support the decision of the jury, the district court, and the Ninth Circuit to order Exxon to pay punitive damages. The brief outlines the legal defects in Exxon's argument that 19th Century admiralty law decisions should allow it to escape payment of punitive damages in the 21st Century; takes on Exxon's incredible argument that the Clean Water Act--the nation's premier environmental law--should be interpreted to shield oil polluters from punitive damages; and argues that Exxon's plea for additional "maritime law" restrictions on punitive damages awards is nothing but the result-oriented special pleading of the nation's most notorious corporate polluter.

#### [Brief For Respondents](#)

[Map — "What If – The Exxon Valdez Had Hit Plymouth Rock"](#)

### Summary of Amicus Briefs

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Sixteen separate amicus (friend of the court) briefs were filed by individuals, governmental and private organizations, and Indian tribes, urging the Supreme Court to affirm the \$2.5 billion punitive damages award against Exxon. These briefs reflect a fundamental consensus across all political, professional, and geographic strata of American society that what Exxon did in leaving a relapsed alcoholic in charge of a supertanker was highly reprehensible, and that this case demonstrates why punitive damages must be available and imposed upon the worst corporate and environmental offenders in the country.

Among the public officials and bodies urging the Supreme Court to affirm the punitive judgment are the State of Alaska; the Alaska legislature and four past Alaska governors of the State including former Governor and Secretary of the Interior Walter Hickel; the Alaska congressional delegation led by Senator Ted Stevens; numerous

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Alaska and Pacific Northwest Indian tribes, villages, and organizations; and the Regional Citizen Advisory Committees set up in Prince William Sound and Cook Inlet after the spill as oil industry-funded watchdogs. A bipartisan group of thirty-four other states, led by Maryland and including all West Coast states, also filed a brief endorsing punitive damages for Exxon's reckless conduct.

Prominent individuals from all walks of life filed amicus briefs. Natural scientists led by oceanographer Jean-Michel Cousteau filed a brief detailing the persistent harm to Prince William Sound's sea and birdlife from the oil spill. Social scientists and economists filed a brief detailing the human cost of the spill, much of which Exxon never compensated. Former Coast Guard and merchant marine captains including a former Exxon master filed a brief rejecting Exxon's contention that the out-dated law of 19th Century seafaring should apply in today's world. The leading experts on alcohol abuse in the workplace and an association of substance abuse professionals filed a brief excoriating Exxon for its failure to deal with Captain Hazelwood's drinking problem. The leading admiralty law scholar in the country, Professor Thomas Schoenbaum (whose book even Exxon cites), and the leading trial procedure scholar, former Harvard Law Professor Arthur Miller, filed briefs urging the Court to uphold the judgment.

A long list of Alaska and national environmental groups filed a brief, as did the American Association for Justice. This means that everyone from Ted Stevens and Walter Hickel on the one hand, to the Humane Society and the trial lawyers on the other, are now on record opposing Exxon's efforts to hide behind the Clean Water Act and evade liability for its oil spill.

Exxon argues that the Supreme Court should absolve it of paying punitive damages in order to aid maritime commerce. Fishermen's associations representing thousands of fishing families and small commercial fishing businesses, and a trade association of corporate fish processing and retailing companies have told the Court that they too have commercial interests at stake in preventing oil spills and punishing those who cause them.

In sum, a broad swath of American society -- public state, local and tribal bodies; businesses large and small; ship captains; environmentalists; scientists and scholars have urged the Court not to let Exxon escape punishment for the Exxon Valdez oil spill. Summaries of each amicus brief and links to the briefs are contained below.

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**Briefs of Amici Curiae**


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**Brief Of The State Of Alaska As *Amicus Curiae* In Support Of Respondents**

Interest of *Amicus Curiae*: The State of Alaska was the site of the Exxon Valdez oil spill and most, though by no means all, of the people directly harmed by the spill were Alaska residents. Because the State of Alaska is critically dependent upon maritime commerce as well as the operations of the petroleum industry, the State has an interest in ensuring that the availability of strong remedies under general

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maritime law protects all maritime interests and compensates Alaska's citizens for, and properly deters and punishes, oil spillers.

Summary of the Argument: The punitive damages award in this case is necessary not only to punish and deter but also to serve the classic maritime law purpose of remedying uncompensated harm. The State of Alaska urges the Supreme Court to adopt a rule that recognizes punitive damages for vicarious liability, consistent with maritime law and the vast majority of states. The State also argues that the punitive damage award in this case is not excessive under maritime law, nor is it foreclosed by the Clean Water Act.

[Brief Of The Alaska Legislative Council, On Behalf Of The Alaska State Legislature, And Former Alaska Governors Walter Hickel, Anthony Knowles, Steve Cowper, And William Sheffield As Amici Curiae In Support Of Respondents](#)

Interest of Amici: The Alaska Legislative Council is a permanent committee of the Alaska State Legislature, composed of the President of the Senate, the Speaker of the House of Representatives, and twelve other Representatives and Senators. In addition to current elected Alaska state legislators, *amici* also include the ALC and four past Alaska governors, including former Governor and Secretary of the Interior Walter Hickel.

Summary of the Argument: In general, *amici* draw the Supreme Court's attention to the fact that the construction of the Trans-Alaska Pipeline was based on repeated assurances by the oil industry that the pipeline would be constructed and operated with the highest possible standards of care in order to protect Alaska's natural resources, which form the backbone of the regional economy. In particular, amici highlight that the Trans-Alaska Pipeline Authorization Act of 1973 ("TAPAA") establishes the federal law governing the Exxon Valdez oil spill and that TAPAA expressly preserves the availability of punitive damages for spills of Trans-Alaska Pipeline oil.

[Brief Amicus Curiae Of United States Senator Theodore F. Stevens, United States Senator Lisa Murkowski, And United States Representative Don Young In Support Of Respondents](#)

Interest of Amici: *Amici* are Alaska's entire Congressional delegation. Senator Stevens practiced and published in the area of admiralty law early in his career and entered the United States Senate in 1968. He was involved with the passage of the Clean Water Act from its earliest stages of development. Senator Murkowski, the only member of Congress born in Alaska, is a member of the Senate Energy and Natural Resources Committee. Representative Young is the only licensed mariner in Congress and the current Ranking Member and former Chairman of the House Natural Resources Committee, with jurisdiction over domestic and international fishery issues.

Summary of the Argument: *Amici* argue that the Clean Water Act (CWA) does not preclude punitive damages under federal maritime common law. In particular, neither the Act nor its legislative history evidences Congress's intent to displace punitive



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damages. Congress undertook the framing of the CWA's oil spill provisions with the understanding that courts would apply the statute in concert with existing maritime and common law remedies to enhance liability against polluters, not shield them.

[Brief Of \*Amici Curiae\* National Congress Of American Indians, Alaska Federation Of Natives, Alaska Inter-Tribal Council, Indigenous Peoples' Committee On Marine Mammals, And Additional Alaska Native Organizations, Corporations And Tribes In Support Of Respondents](#)

Interest of *Amici*: On behalf of numerous Native Alaskan organizations, corporations, and tribes, *amici* describe the centuries-old subsistence way of life that continues to prevail across coastal Alaska, the enormity of the impact of the Exxon Valdez disaster on that way of life, and their support for the punitive damages award in light of the severe but uncompensated injury suffered by thousands of Alaska Native people living in coastal villages.

Summary of the Argument: While Exxon asserts that the punitive damage class members were fully compensated for the injuries suffered as a result of the Exxon Valdez spill, Native *amici* explain why that is a “remarkably shallow, and callous, claim.” *Amici* describe the non-economic (but devastating) injuries suffered by Alaska's Native subsistence communities and how those injuries underscore the egregiousness of Exxon's actions and the corresponding appropriateness of the punitive damages award in this case. *Amici* also remind the Court that the non-economic, subsistence injuries highlight the need for deterrence to avoid future devastating damage to Alaska's Native subsistence communities.

[Brief Of \*Amicus Curiae\* Prince William Sound Regional Citizens' Advisory Council And Cook Inlet Regional Citizens' Advisory Council In Support Of Respondents](#)

Interest of *Amicus*: *Amicus* Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) is a non-profit corporation comprised of 18 member organizations. It was created in the months following the Exxon Valdez oil spill, after representatives of Prince William Sound commercial fishing interests approached Alyeska Pipeline Service Company and persuaded it of the need for citizen oversight of the Valdez oil terminal and the tanker operations within Prince William Sound. Alyeska, a corporation primarily owned by several major oil companies producing and shipping oil from Alaska's North Slope, is the operator of the Trans-Alaska Pipeline and the Marine Terminal located in Valdez, Alaska. Similarly, *amicus* Cook Inlet Regional Citizens' Advisory Council was established under the Oil Pollution Act of 1990 to provide citizen oversight for oil industry operations in the Cook Inlet region.

Summary of the Argument: *Amici* argue that punitive damages are essential here as a means of deterring Exxon and other oil companies. Despite advances in vessel monitoring, marine safety and communications, and spill prevention, the conduct that led to the Exxon Valdez oil spill could recur without the threat of punitive damages. Because oil spills can never be completely cleaned up, legal tools like



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punitive damages are needed to ensure that oil and shipping companies use extra care in their operations.

### [Brief Of State Of Maryland And 33 Other States As \*Amici Curiae\* In Support Of Respondents](#)

Interest of *Amici*: Thirty-three states have joined with the State of Maryland, which wrote this brief, to express their interest in ensuring that the common law and overall regulatory scheme governing toxic spills allow for punitive damages in order to deter and punish reckless maritime conduct to the same degree that common law deters and punishes land-based reckless conduct.

Summary of the Argument: *Amici* States argue that the Supreme Court should reject Exxon's test for punitive damages under vicarious liability. Nearly all states follow an approach to vicarious liability for punitive damages that would allow punitive damages in this case. Exxon's proposed test differs markedly from most states' law, is substantially narrower, and is in substance a rule of corporate immunity that would threaten to undermine the States' ability to deter and punish reckless misconduct and to protect their waterways through appropriate state regulations and common law. *Amici* States also urge the Court to reject Exxon's argument that the Clean Water Act preempts punitive damages under federal maritime law.

### [Map of 35 States Supporting Respondents](#)

### [Brief Of Jean-Michel Cousteau And Other Natural And Social Scientists As \*Amici Curiae\* In Support Of Respondents](#)

Interest of *Amici*: *Amici* are a number of natural and social scientists who have studied and devoted much of their professional careers to the understanding of how oceanic ecosystems function and the necessity for their preservation. *Amici* range from Jean-Michel Cousteau, president of the Ocean Futures Society to John Ogden, Ph.D., Director of the Florida Institute of Oceanography, to Donald F. Boesch, Ph.D., President of the University of Maryland Center for Environmental Science, to John Teal, Ph.D., Scientist Emeritus for the Woods Hole Oceanographic Institution.

Summary of the Argument: These scientists explain the long-term devastating impact of the Exxon Valdez oil spill on the Prince William Sound marine ecosystem. In particular, government studies show that the injury to the entire ecosystem and to the human beings whose lives and livelihood have depended upon that ecosystem has been far greater than it was possible to discern at either the time of the spill in 1989 or even at the time of trial in 1994. In fact, almost twenty years after the spill, complete recovery is at minimum decades away, if ever. This scientific research demonstrates that the need for punitive damages to deter future reckless handling of oil is even greater now than initially assumed.

**Briefs Filed On Behalf Of Respondents****Brief *Amici Curiae* Of Sociologists, Psychologists, And Law And Economics Scholars In Support Of Respondents**

Interest of *Amici Curiae*: *Amici* are scholars in the fields of sociology, psychology, and law and economics. Several of the *amici* have conducted extensive empirical research in the Prince William Sound for over a decade. They all have a professional interest in ensuring that the Court is fully informed as to the full impact of the Exxon Valdez oil spill on the neighboring communities and on victims in particular.

Summary of the Argument: *Amici* explain that empirical research conducted over a seventeen-year period by teams of sociologists and psychologists specializing in disaster research reveals that non-economic harms caused by the Exxon Valdez oil spill were – and continue to be – profound. These impacts include high rates of anxiety, depression, and post-traumatic stress disorder among Prince William Sound residents exposed to the spill, and in particular among commercial fishermen. And yet, as a result of the restrictive rules of maritime law, compensatory damages were available for only a small portion of the actual economic harms inflicted by the spill, and for none of the non-economic harms. *Amici* argue that when this uncompensated harm is considered, it becomes clear that an award of punitive damages is not only appropriate but essential in this case to ensure that Exxon and other oil companies are suitably cautious of the natural and human environments impacted by their businesses.

***Amicus Curiae* Brief Of Ship Masters And Expert Mariners Captains Mitchell Stoller, Joseph Ahlstrom, Roger Johnson, John Scott Merrill, And Tom Trosvig In Support Of Respondents**

Interest of *Amici*: Captain Stoller worked for Exxon Shipping Company between 1975 and 1988, where he ended his career as a ship master and pilot. He worked for and with Captain Joseph Hazelwood, and was the master of several vessels that made the same run as the Exxon Valdez through Prince William Sound. Captain Stoller has also written safety manuals on oil spill prevention for major oil and shipping companies, and has served as an advisor to Congress and the U.S. Coast Guard. The other *amici* have similar backgrounds and expertise as ship masters and mariners. Captain Ahlstrom is a Professor of Marine Transportation at the State University of New York, Maritime College, and a well-known expert in the area of marine communications. Captain Johnson is a retired master of large ocean-going vessels carrying hazardous commodities, with 40 years of maritime experience. Captain Merrill, who is currently a ship master for the Alaska Marine Highway System, served in the Coast Guard for 23 years. Captain Trosvig is a retired officer of the United States Coast Guard.

Summary of the Argument: Modern commercial maritime business, navigational technology and ship-to-shore communications, and the hazardous nature of the cargo shipped, are all markedly different today than they were at the time that Exxon's favored maritime case, *The Amiable Nancy*, was decided in 1818. Given the changed nature of the industry, *amici* argue that punitive damages are sometimes necessary



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to punish and deter reckless conduct, and that the award in this case was reasonable and appropriate.

**Brief *Amicus Curiae* Of Experts On Alcohol In The Workplace**

Interest of *Amici*: *Amici* Dr. Paul M. Roman and Dr. William J. Sonnenstuhl are the leading experts on alcohol abuse and treatment in the workplace. They have published extensively and conducted numerous studies to ascertain the causes of workplace problem drinking, and to determine the structure, content and effectiveness of employer alcohol policies and employee assistance programs. *Amicus* the Employee Assistance Professionals Association (EAPA) is the leading membership organization for employee assistance professionals. The EAPA sets and publishes professional standards for employee assistance programs.

Summary of the Argument: At the time of the spill, Exxon did not have an alcohol policy that conformed to industry standards. For safety-sensitive positions, a standard alcohol policy would have included procedures to determine whether an employee was fit for duty, procedures for reporting violations of the alcohol policy, procedures governing enforcement of that policy, and finally, procedures for monitoring employees returning to work after undergoing alcohol or drug treatment. But Exxon's alcohol "policy" consisted only of bare bones rules, which it did not implement or enforce. Exxon's culture of tolerance to on-the-job drinking enabled Captain Hazelwood's alcoholism and allowed for a relapsed alcoholic to be left in charge of a supertanker. *Amici* conclude that Exxon's behavior was reckless and warrants no special rule absolving Exxon or any other shipping company from punishment.

**Brief *Amicus Curiae* Of Professor Thomas J. Schoenbaum In Support Of Respondents**

Interest of *Amicus Curiae*: *Amicus* Schoenbaum is a law professor and attorney who has spent much of his professional life in the practice and study of maritime law. He is the author of numerous books and articles, including ADMIRALTY AND MARITIME LAW (Westgroup ed., 4th ed. 2004), the leading admiralty law text today. This treatise and its previous editions are regularly cited in judicial opinions in maritime cases by federal and state courts, as well as by the Supreme Court.

Summary of the Argument: Professor Schoenbaum first explains why no special rules regarding punitive damages are warranted in maritime law cases. Second, Professor Schoenbaum argues that the rule on vicarious liability for punitive damages adopted in this case by the lower courts is a fair and useful rule for maritime law. There is no reason to create a special rule for vicarious liability limited to the conduct of masters of vessels. Third, neither the Clean Water Act nor any rule of the general maritime law excludes the application of punitive damages in maritime cases. And finally, there is no principled way to impose a judicial limit on punitive damages applicable only to maritime law cases. The size of the award of punitive damages in maritime law cases is appropriately limited by the Due Process Clause of the U.S. Constitution, and the award in this case should be upheld.



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**Brief For *Amicus Curiae* Professor Arthur R. Miller In Support Of Respondents**

Interest of *Amicus Curiae*: *Amicus* Professor Arthur R. Miller is a highly-respected civil procedure scholar, who has written the leading treatise on trial procedure.

Summary of the Argument: Professor Miller addresses whether Exxon waived its ability to argue that the Clean Water Act forecloses punitive damages here. After closely examining the history of this case and the Federal Rules of Civil Procedure, Professor Miller concludes that the Ninth Circuit should never have considered the Clean Water Act preemption argument. He further concludes that it would be bad public policy for the Supreme Court to consider the issue now, because doing so would undermine trial judges' ability to run their courtrooms and manage large cases like this one.

**Brief *Amicus Curiae* Of Trustees For Alaska, Alaska Center For The Environment, Alaska Community Action On Toxics, Alaska Marine Conservation Council, Cook Inletkeeper, Defenders Of Wildlife, Environmental Law & Policy Center, Eyak Preservation Council, Humane Society Of The United States, Izaak Walton League Of America, National Wildlife Federation, Natural Resources Defense Council, Northern Alaska Environmental Center, Prince William Soundkeeper, Waterkeeper Alliance And The Wilderness Society In Support Of Respondents**

Interest of *Amici*: Environmental *amici* include a wide range of Alaska and national environmental organizations dedicated to protecting the nation's wildlife, wild places, and the integrity of the nation's environmental laws, including the Clean Water Act.

Summary of the Argument: Environmental *amici* argue that the Clean Water Act (CWA) does not preempt maritime law remedies for damage to private property and other economic damages caused by oil spills. Rather, the CWA works together with state statutes and common law rights and remedies to provide a complementary and robust legal structure for cleaning up the nation's waters. Indeed, the CWA includes savings clauses that explicitly preserve such private remedies.

***Amicus Curiae* Brief Of The American Association For Justice And Public Justice, P.C. In Support Of Respondents**

Interest of *Amici*: *Amicus* the American Association for Justice is a voluntary national bar association whose trial lawyer members primarily represent individual plaintiffs in civil actions. *Amicus* Public Justice, P.C. is a national public interest law firm that specializes in precedent-setting and socially significant civil litigation and is dedicated to pursuing justice for the victims of corporate and governmental abuses.

Summary of the Argument: *Amici* argue that the Clean Water Act's provision of civil and criminal penalties does not preclude an award of punitive damages in this case. In fact, they argue that this is precisely the case in which an award of punitive damages can serve as a needed supplement to legislatively set criminal penalties.

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Finally, these *amici* argue that maritime law imposes no greater limitation on punitive damages than the constitutional due process limits.

**Brief For The Pacific Coast Federation Of Fishermen's Associations And The Institute For Fisheries Resources, As *Amici Curiae* In Support Of Respondents**

Interest of *Amici*: PCFFA is the largest trade association of working commercial family fishermen on the west coast of the United States. IFR, a separate nonprofit organization dedicated to the protection and restoration of fish resources, also manages PCFFA's sustainable fishery conservation and restoration programs. Because the livelihoods of commercial fishermen and women depend on healthy fisheries, *amici* support federal maritime rules that adequately punish and deter conduct like Exxon's that recklessly endangers fishery resources and their industry.

Summary of the Argument: *Amici* argue that the Court should affirm the punitive damage award against Exxon because the rule applied by the lower courts reflects the realities of ship-to-shore communications in the modern maritime industry, it is consistent with the treatment of other industries in similar circumstances, and its results are fair to all maritime businesses. *Amici* further argue that the Clean Water Act does not bar recovery of punitive damages in this case.

**Brief *Amicus Curiae* Of The National Fisheries Institute In Support Of Respondents**

Interest of *Amicus Curiae*: *Amicus* National Fisheries Institute ("NFI") is the nation's leading seafood industry advocacy organization. NFI's nearly 400 members range from small, family-owned fishing vessels to large, nationally-traded corporations, and include such diverse representatives of business, education and government as Bumble Bee Foods, Gorton's Seafoods, Seattle Fish Co., Kona Bluewater Farms, Chesapeake Fish Co., Trident Seafoods Corp., Outback Steakhouse, Long John Silvers, The University of Florida, The Oregon State University Seafood Lab, the California Fisheries and Seafood Institute, the New York Sea Grant, the North Carolina State Department of Agriculture, the Gulf Oyster Industry Council, the University of Maryland, the Virginia Polytechnic Institute, the Alaska Sea Grant College Program, the Northwest Fisheries Organization, and the U.S. Department of Commerce. In other words, NFI represents members from every link in the commercial seafood chain, from water to table.

Summary of the Argument: *Amicus* NFI reminds the Court that the fishing industry is clearly part of traditional maritime activity, and to assert otherwise would amount to a repudiation of much of maritime history. NFI supports the punitive damages award levied in this case because Exxon's reprehensible conduct put hundreds of maritime businesses into bankruptcy or in dire financial straits. NFI argues that no special punitive damage rule is warranted in maritime law cases. Moreover, failure to affirm the punitive award in this case will result in under-deterrence because traditional maritime law rules permitted Exxon to avoid paying for economic damages that did not otherwise result from direct physical contact with the spilled oil.