

# *Exxon Shipping Co. v. Baker* What Does It Mean for Business?

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## Background

- The case arises out of the notorious grounding of the Exxon Valdez in 1989.
- A federal jury awarded a class of fishermen \$5 billion in punitive damages to punish Exxon for economic harm; Exxon had already paid nearly \$3.5 billion in fines, cleanup costs, and settlements.
- The Ninth Circuit cut the punitive damages to \$2.5 billion, 5 times the compensatory damages that Exxon paid the fishermen.

# Questions Presented

- The Supreme Court granted review to address three questions:
  - Whether Exxon could be held vicariously liable for punitive damages under maritime law for the captain's misconduct.
  - Whether the Clean Water Act preempts punitive damages awards arising from oil spills into navigable waters.
  - Whether the \$2.5 billion punitive award is excessive under maritime law.
- The Court denied review of the question whether the award was excessive as a matter of due process.

## The Holding

- “[G]iven the need to protect against the possibility (and the disruptive cost to the legal system) of awards that are unpredictable and unnecessary, either for deterrence or for measured retribution, we consider that a 1:1 ratio, which is above the median award, is a fair upper limit in such maritime cases.”

## Four Questions

- Does this decision have applicability outside the maritime context?
- If so, how broad are the exceptions identified by the Court?
- Is 1:1 not only a presumptive maximum, but also a safe harbor?
- What continued relevance (if any) does evidence of the defendant's financial condition have?

# Applicability Beyond The Maritime Context

- Federal common law
- State common law
- The Due Process Clause

## Federal Common Law

- There should be little doubt that the Court expects lower courts administering federal statutes to employ the framework set forth in *Exxon*.
- The Court's reasoning rested on broadly applicable principles – not considerations unique to maritime law.
- The data from which it drew its 1:1 line were not limited to maritime cases (which are few in number).
- The concerns it expressed apply broadly to all punitive awards.



## Federal Common Law (cont.)

- “Our review of punitive damages today, then, considers \* \* \* the desirability of regulating them as a common law remedy for which responsibility lies with this Court as a source of judge-made law in the absence of statute.”
- “[W]e are acting here in the position of a common law court of last review, faced with a perceived defect in a common law remedy.”

## State Common Law

- The decision seems to be a strong signal to state courts (and federal courts sitting in diversity) that they should rein in punitive damages under state common law.
- “[I]f, in the absence of legislation, judicially derived standards leave the door open to outlier punitive-damages awards, it is hard to see how the judiciary can wash its hands of a problem it created.”
- “The real problem” — “the stark unpredictability of punitive awards” — plagues state common-law awards every bit as much as federal ones.

## The Due Process Clause

- The Court stopped short of saying expressly that the 1:1 presumption applies equally to due process review.

## Statements Recognizing That The Case Before The Court Sounded In Maritime Law, Not Due Process

- “Today’s enquiry differs from due process review because the case arises under federal maritime jurisdiction, and we are reviewing a jury award for conformity with maritime law, rather than the outer limit allowed by due process.”
- “Our review of punitive damages today \* \* \* considers not their intersection with the Constitution, but the desirability of regulating them as a common law remedy for which responsibility lies with this Court as a source of judge-made law in the absence of a statute.”

## Reasons For Concluding That The Court Intended To Signal That Lower Courts Should Adopt The 1:1 Presumption In Due Process Cases

- The Court twice quoted its statement in *State Farm* that, when compensatory damages are substantial, a 1:1 ratio may mark the constitutional limit.
- The concerns the Court expressed about fairness and reasonable predictability in the maritime context apply equally, if not with more force, in the context of due process.

## Reasons For Concluding That The Court Intended To Signal That Lower Courts Should Adopt The 1:1 Presumption In Due Process Cases (cont.)

- The language of the opinion seems to echo due process terminology: “unfairness”; “unpredictability”; “common sense of justice”; “commonly held notion of law.”
- “[O]ur explanation of the constitutional limit confirms that the 1:1 ratio is not too low.”
- Note 28: “In this case \* \* \* the constitutional limit may well be 1:1.”

## Exceptions To The 1:1 Presumption

- “intentional or malicious conduct”
- “behavior driven primarily by desire for gain”
- cases in which there was only “modest economic harm”
- cases in which there was a low likelihood that the misconduct would be detected

## Intentional Or Malicious Conduct

- This appears to be a fairly narrow exception.
- There is no suggestion that the court meant that all intentional torts warrant ratios in excess of 1:1.
- Instead, it is likely that the court meant to limit it to cases of actual malice, which it earlier equated with “a specific purpose to cause harm.”



## Behavior Driven Primarily By Desire For Gain

- The key word here is “primarily.”
- If this exception is not construed narrowly, it will entirely swallow the rule.
- Most torts committed by businesses could be said to be motivated by a “desire for gain.”
- But unless this exception is limited to cases in which that profit was the *driving motivation* for the conduct, there is no way that business cases will be “grouped” around a median of 0.65:1.

## Modest Economic Harm

- The news here is mostly good.
- The Court made clear that the absolute amount of compensatory damages is what matters.
- In other words, in a class action or a case involving a broad course of conduct, the fact that the individual damages may be small is irrelevant.
- Similarly, if there is a basis for believing that the damages don't fully compensate for the harm, that doesn't matter so long as they are not "modest" in absolute terms.

## Likelihood That The Harm Would Be Detected

- We can expect more emphasis on this issue in the future.
- There is reason to think, however, that the Court sees this too as a relatively limited exception.
- In *BMW v. Gore*, the likelihood of the harm being detected was comparatively low, yet the Court gave no indication that this exception (which it recognized in that very case) was applicable.

## Is 1:1 A Safe Harbor?

- The short answer is no.
- The Court said that 1:1 “is a fair upper limit”; it did not say or even hint that 1:1 also is a safe harbor.
- Given that the Court considered the conduct to be “reprehensible,” it must see room to require reductions below 1:1 when the conduct is less blameworthy.

## The Role Of Wealth

- Wealth is the dog that did not bark.
- By adopting a presumptive 1:1 limit and repeatedly emphasizing that justice requires imposing similar punishments for similar conduct, the Court removed the defendant's net worth from the equation.
- If Amerada Hess had engaged in the same conduct and caused the same damage, the same 1:1 ratio would have applied notwithstanding that Exxon's wealth is much higher.

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