PUNITIVE DAMAGES IN MARITIME TORTS:
EXAMINING SHIPOWNERS’ PUNITIVE DAMAGE LIABILITY
IN THE WAKE OF THE EXXON VALDEZ DECISION

Aaron T. Duff*

I. INTRODUCTION

More than twenty years have passed since the tanker Exxon Valdez struck a reef in Prince William Sound, Alaska, spilling its cargo of crude oil throughout the sound and devastating the ecosystem of the surrounding waters and coastline.1 As a result of the spill, the Exxon Corporation ("Exxon") has been the target of myriad civil and criminal lawsuits arising from the environmental damage wrought by the oil discharge.2 The civil suits comprising the claims of thousands of plaintiffs, were ultimately consolidated into a single suit.3 Exxon was assessed punitive damages in the amount of $5 billion—the largest punitive damage award in United States history.4 The punitive damage award raised three important issues for the Supreme Court's consideration on writ of certiorari: (1) whether the quantum of the punitive damage award was excessive under American admiralty law, (2) whether an award of punitive damages was preempted by the Clean Water Act,5 and (3) whether punitive damages against non-complicit principals for the actions of their agents was appropriate in the realm of maritime torts.6

* J.D., 2008, Seton Hall University School of Law; B.A., 2002, Rollins College. The author would like to thank Gal Davidovitch, Gary Studen, Ashley Ochs, and John J. Roberts for their diligent editing work, Professor D. Michael Risinger for his invaluable guidance and instruction, and Professor J. Patrick Geraghty for inspiring the author’s passion for maritime law.

1 In re The Exxon Valdez (Remand II), 296 F. Supp. 2d 1071, 1078 (D. Alaska 2004).
2 See id. at 1078–79; see also In re The Exxon Valdez (Exxon I), 270 F.3d 1215, 1223–24 (9th Cir. 2001).
3 Remand II, 296 F. Supp. 2d at 1078.
4 See Exxon I, 270 F.3d at 1225.
6 See Exxon Shipping Co. v. Baker, 128 S. Ct. 492, 492 (2008) (granting certiorari on these three issues and denying certiorari on other issues); Exxon Shipping Co.
The Supreme Court granted certiorari to hear the case on October 29, 2007,\(^7\) heard oral argument on February 27, 2008, and finally rendered its decision on June 25, 2008.\(^8\) The Court vacated the punitive damages award, holding that Exxon’s liability for punitive damages should be limited to $507.5 million, a sum equivalent to Exxon’s total compensatory damage liability.\(^9\) The Court’s ruling was based on maritime common law, not on constitutional due process grounds.\(^10\) The Court did not rule on the question of whether a shipowner could be held derivatively liable for punitive damages based on its captain’s misconduct, absent the owner’s complicity.\(^11\) The Justices were evenly split four-to-four on this issue, Justice Alito having recused himself due to a financial conflict of interest.\(^12\) As a result, the Ninth Circuit’s decision to allow such derivative liability was upheld and remained undisturbed but with no precedential effect.\(^13\) Therefore, there currently exists a split in the U.S. circuit courts of appeals as to whether non-complicit shipowners may be held liable for punitive damages based on their captains’ conduct.\(^14\)

In light of this extant controversy, this Comment explores the history of the *Exxon Valdez* litigation and analyzes the development of the doctrine of shipowners’ punitive liability in admiralty. Part II of this Comment details the tragic story of one of the largest maritime oil spills in U.S. history and the subsequent litigation that arose from the catastrophe. Part III traces the evolution of the doctrine of punitive liability in maritime law, examining both Supreme Court and U.S. circuit courts of appeals precedent. Part IV identifies various policy concerns unique to the field of admiralty law militating against the imposition of punitive damages against non-complicit shipowners for the acts of their agents. Finally, Part V concludes that U.S. maritime interests are ill-served by a regime under which non-complicit

---

\(^7\) *Exxon Shipping Co.*, 128 S. Ct. 2605, 2614 (2008). What this Comment will term the “complicity doctrine” in maritime law was coined by the Supreme Court in 1818 and requires that a shipowner commit an independent act or omission that contributed to the damage incurred before that shipowner may be found liable for punitive damages based on his conduct. See The Amiable Nancy, 16 U.S. (3 Wheat.) 546, 558–59 (1818).

\(^8\) *Exxon Valdez*, 128 S. Ct. 2605.

\(^9\) *Id.* at 2634.

\(^10\) *Id.* at 2626.

\(^11\) *Id.* at 2616.

\(^12\) *Id.* at 2611; Robert Barnes, *Justices Assess Financial Damages in Exxon Valdez Case*, WASH. POST, Feb. 28, 2008, at A02.

\(^13\) See *Exxon Valdez*, 128 S. Ct. 2616.

\(^14\) See infra text accompanying notes 80–106.
shipowners may be held liable in punitive damages solely on the basis of the reckless and wanton acts of their captains when the owners have otherwise neither participated in nor countenanced the wrongful conduct. Such a result would expose maritime shippers to potentially catastrophic liability due to the poor judgment of their agents at sea over whom they have little or no day-to-day supervisory power.15

II. FACTS AND PROCEDURAL HISTORY OF THE EXXON VALDEZ LITIGATION

A. Facts

Although tales of the sea chronicling calamitous events typically begin by conjuring up images of "a dark and stormy night,"16 on the evening of March 23, 1989, when the tanker Exxon Valdez left the port of Valdez, Alaska, laden with over 1.2 million barrels of crude oil, only a slight drizzle fell and a light breeze of ten knots swept over Prince William Sound.17 The vessel slipped its last mooring line and departed the dock at 9:21 p.m., proceeding under the direction of a harbor pilot through the Valdez Narrows, which form the entrance to Valdez Harbor.18 After navigating through the narrows, the harbor pilot disembarked and Captain Joseph Hazelwood took command of the Exxon Valdez.19

Upon taking control of the ship, Hazelwood navigated the tanker so as to avoid a large accumulation of ice within the shipping lanes.20 The course that Hazelwood took set the tanker on a direct course for Bligh Reef, a well-recognized, well-marked navigational hazard that easily could have been avoided by a simple course adjust-

---

15 Although the Supreme Court limited punitive liability to a one-to-one ratio between compensatory and punitive damages, as will be shown, such liability may still be sufficient to impede maritime commerce due to such factors as the uninsurability of punitive damages. See infra note 125.
18 Id.
19 Id.
20 Exxon I, 270 F.3d 1215, 1222 (9th Cir. 2001). None of the plaintiffs contended that navigating the vessel outside of the shipping lanes was an imprudent course of action. Id. In fact, due to the presence of the ice in the shipping lanes, Hazelwood's decision was a judicious one. Id.
ment. Although Hazelwood was the only seaman licensed to navigate the vessel through this particular part of Prince William Sound, he left the ship in command of the third mate, Gregory Cousins, and retired to his cabin after setting the autopilot and instructed Cousins to perform the maneuver necessary to avoid the reef. Shortly after midnight on March 24, a scant twelve minutes after Hazelwood left the ship's bridge, the Exxon Valdez allided with Bligh Reef, tearing a hole in the vessel's hull through which approximately eleven million gallons of oil escaped.

The third mate's attempts to turn the ship away from the reef and back toward the traffic lanes had come too late. Cousins had failed to follow Hazelwood's orders in commencing the necessary course correction at the time instructed and, upon realizing his mistake, had insufficient time to steer the ship clear of danger. Although Cousins had completed the necessary requisites for licensure as a captain, his failure to perform the navigational maneuver commanded could be explained as a product of overwork and fatigue. At the time of the allision, Cousins should have already been relieved, but his replacement had not yet arrived. According to Exxon's policies, Cousins should not have been left on the bridge unaccompanied, and Hazelwood's decision to do so might be best explained by an examination of the captain's activities on the day of the accident.

Captain Hazelwood was an alcoholic; he had sought treatment in a rehabilitation program but had relapsed and continued drinking. It was later established that Hazelwood had spent the afternoon of March 23, prior to the ship's departure, drinking at two different bars.

---

21 Id. at 1221-22.
22 Id. at 1222-23.
23 An allision occurs when a ship comes into contact with a fixed object. See BLACK'S LAW DICTIONARY 83 (8th ed. 2004). "Collision" refers to contact between two or more movable vessels. Id. at 281.
24 Exxon I, 270 F.3d at 1223; ALASKA OIL SPILL COMM'N, supra note 17, at 5-14.
26 Id.
27 Id. at 1077; see also Exxon I, 270 F.3d at 1223. Testimony before the National Transportation Safety Board indicated that Cousins may have been awake for eighteen hours prior to the grounding. See ALASKA OIL SPILL COMM'N, supra note 17, at 5-14. Studies show a direct correlation between fatigue and human error and that at least eighty percent of marine accidents are attributable to such error. Id. Cousins's lack of sleep at the time of the accident could have caused fatigue that contributed to the ship's grounding. Id.
28 Exxon I, 270 F.3d at 1223.
29 ALASKA OIL SPILL COMM'N, supra note 17, at 5-14.
30 Remand II, 296 F. Supp. 2d at 1076-77; see also Exxon I, 270 F.3d at 1223.
in Valdez. Testimony at trial alleged that prior to boarding the ship on the night of the accident, Hazelwood had consumed "[approximately] fifteen ounces of eighty proof alcohol." Considering these allegations, it could reasonably be assumed that Hazelwood's excessive consumption of alcohol prior to the vessel's departure influenced his decision to relinquish command of the Exxon Valdez.

B. Procedural History

Prior to the commencement of any litigation against the corporation, Exxon voluntarily settled over $300 million in potential claims with owners of affected property, fishermen, and others. Exxon was subsequently prosecuted by the federal government on charges of violating several criminal environmental-protection statutes. In addition to the criminal prosecution, the State of Alaska and the federal government brought a civil suit against Exxon for environmental injuries caused by the spill, which resulted in a consent decree mandating Exxon pay $900 million to restore afflicted natural resources. Private plaintiffs brought hundreds of civil lawsuits against Exxon in state and federal courts. These suits were ultimately consolidated and a single plaintiff class was certified, comprising commercial fishermen, local property owners, and native Alaskans. The plaintiff class sought punitive damages against both Hazelwood and the Exxon Corporation as his employer. After deliberating for over three

---

31 ALASKA OIL SPILL COMM’N, supra note 17, at 5–14; Remand II, 296 F. Supp. 2d at 1076.
32 Exxon I, 270 F.3d at 1223.
33 Remand II, 296 F. Supp. 2d at 1076. Although Captain Hazelwood was not convicted for the crime of operating a watercraft while intoxicated, there was substantial evidence that Hazelwood took command of the ship while under the influence of alcohol. Id. at 1079; see also Exxon I, 270 F.3d at 1236–37.
34 Exxon I, 270 F.3d at 1223.
36 Exxon I, 270 F.3d at 1223. Exxon had already spent over $2 billion in an effort to remove the oil from Prince William Sound and its adjacent shorelines, as well as from birds and other wildlife that had come into contact with the oil. Id.
37 Id. at 1223–24.
38 Remand II, 296 F. Supp. 2d at 1079–80; see also Exxon I, 270 F.3d at 1225.
weeks, the jury returned a “breath-taking” $5 billion punitive damage award against Exxon.\textsuperscript{40}

In a series of appeals to the United States Court of Appeals for the Ninth Circuit and subsequent remands to the district court, the punitive damages award was eventually reduced to $2.5 billion—a remittitur compelled by Supreme Court precedent regarding the due process limitations on punitive damage verdicts.\textsuperscript{41} Exxon petitioned the court of appeals for rehearing en banc, but the petition was denied over the dissents of Judges Kozinski and Bea.\textsuperscript{42} On August 20, 2007, Exxon petitioned the Supreme Court of the United States for certiorari to resolve the issue of its punitive damage liability.\textsuperscript{43} The Court granted the writ on October 29, 2007, to determine whether punitive damages against Exxon were appropriate under American admiralty law.\textsuperscript{44} In the Court’s June 25, 2008 decision, the Court substantially remitted the punitive damage award but split on the issue of whether Exxon should have been liable for punitive damages based

\textsuperscript{40} Id. at 1082.

\textsuperscript{41} In re The Exxon Valdez (Exxon III), 472 F.3d 600, 607–12, 625 (9th Cir. 2006). In the first appeal (Exxon I), the United States Court of Appeals for the Ninth Circuit remanded for reconsideration in light of the due process limitations on punitive damages announced by the Supreme Court in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), and Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S 424 (2001). Exxon I, 270 F.3d at 1246–47. The district court, though failing to recognize "any principled means by which it c[ould] reduce th[e] award," nevertheless remitted the punitive damage assessment to four billion dollars. In re The Exxon Valdez (Remand I), 236 F. Supp. 2d 1043, 1068 (D. Alaska 2002). Exxon appealed the district court’s remitter, and the court of appeals once again remanded the case to be considered in light of the Supreme Court’s more recent decision in State Farm v. Campbell, 538 U.S. 408 (2003). Sea Hawk Seafoods, Inc. v. Exxon Corp. (Exxon II), No. 30-35166, 2003 U.S. App. LEXIS 18219, at *1–2 (9th Cir. 2003). On remand, the district court construed State Farm to justify a punitive damage award of four and a half billion dollars against Exxon. Remand II, 296 F. Supp. 2d at 1110. Finally, motivated by the desire to conclude this “protracted litigation,” the court of appeals remitted the award to two and a half billion dollars—an amount more “appropriate . . . under the prevailing legal precedent.” Exxon III, 472 F.3d at 625.

\textsuperscript{42} In re The Exxon Valdez (Exxon IV), 490 F.3d 1066, 1068 (9th Cir. 2007). This Comment advocates the same principle that motivated Judge Kozinski to dissent—to wit, that the goal of uniformity in the law regulating maritime commerce militates against finding a non-complicit shipowner liable for the acts and omissions of its captain. See id. at 1071 (Kozinski, J., dissenting). The aim of this Comment is to expand upon, lend support to, and demonstrate the veracity of the Judge’s eloquent and well-reasoned opinion. Judge Bea would have disallowed the punitive damage award for the same reasons as Judge Kozinski, but noted that even were punitive damages appropriate, the size of the award was not justified by Exxon’s conduct. Id. at 1071–72 (Bea, J., dissenting).


\textsuperscript{44} Exxon Shipping Co. v. Baker, 128 S. Ct. 492 (2008).
solely on Captain Hazelwood's conduct. The Court's ruling left intact the Ninth Circuit's decision that permitted punitive damages against non-complicit shipowners and failed to resolve the circuit split regarding the propriety of such damages under maritime law.

II. HISTORY OF SHIPOWNERS' PUNITIVE LIABILITY IN MARITIME TORTS

The question of shipowners' liability for punitive damages in maritime torts, despite holding crucial importance to the maritime shipping industry, has been infrequently addressed by U.S. courts. The earliest Supreme Court decision examining the issue dates from the early nineteenth century and stands as the Court's only precedent squarely addressing the question. In the nearly 200 years since that decision was announced, only seven cases dealing with shipowner liability for punitive damages have reached the U.S. circuit courts of appeals. In addressing the question of the extent of a shipowner's liability for punitive damages, these courts have developed the maritime doctrine of complicity. Under this paradigm, only those shipowners who are otherwise at fault to some degree for their captains' conduct will be amenable to punitive damage liability. As the following subsections will illustrate, only the Ninth Circuit has eschewed the complicity doctrine, much to the potential detriment of the maritime shipping industry. The Supreme Court should have corrected the course of the Ninth Circuit, pulling the court into line with the prevailing complicity doctrine of American admiralty law.

A. Ninth Circuit Jurisprudence

The Ninth Circuit decision to allow vicarious liability to run against Exxon for the acts of its captain was made possible by the court's prior ruling in Protectus Alpha Navigation Co. v. North Pacific Grain Growers, Inc. Protectus Alpha involved the liability of a dock owner for punitive damages arising from the grossly negligent acts of its dock foreman. When a fire broke out on the plaintiff's ship as it was fueling at the defendant's dock facility, the dock foreman, ignoring the efforts of the Coast Guard and firefighters to extinguish the

---

46 Id. at 2616; see infra text accompanying notes 80–106.
47 See infra text accompanying notes 62–65.
48 See infra notes 50, 67, 80, 87, 92, 99, and 108.
49 See Exxon IV, 490 F.3d 1066, 1069–70 (9th Cir. 2007) (Kozinski, J., dissenting).
50 767 F.2d 1379 (9th Cir. 1985); see Exxon I, 270 F.3d 1215, 1235 (9th Cir. 2001).
51 Protectus Alpha, 767 F.2d at 1381.
blaze, ordered the ship cast off from its mooring.\textsuperscript{52} The ship, now inaccessible to the firefighters on land, perished in flames.\textsuperscript{53}

In assessing punitive damages against the dock owner, the Ninth Circuit adopted the Restatement (Second) of Torts standard for imposing punitive damages on principals for the acts of their agents.\textsuperscript{54} Under that rubric, "[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 [his or her] employment."\textsuperscript{55} This test allows punitive damages to be assessed against a principal for the acts of agents engaged in their managerial capacities, regardless of any culpability on the part of the principal.\textsuperscript{56}

In adopting the Restatement standard, the Ninth Circuit reasoned that "no reasonable distinction can be made between the guilt of the [agent] in a managerial capacity acting within the scope of his employment and the guilt of the [principal]."\textsuperscript{57} Applying this reasoning to maritime law, the court noted that punitive damages had long been recognized in admiralty;\textsuperscript{58} however, the court did not address the crucial issue of whether punitive damages may be imposed

\textsuperscript{52} Id.
\textsuperscript{53} Id. at 1381–82.
\textsuperscript{54} Id. at 1386.
\textsuperscript{55} RESTATEMENT (SECOND) OF TORTS § 909(c) (1979). This standard also allows punitive liability for an agent's acts that are either directed or ratified by the principal and for acts of an unfit agent when the principal was reckless in employing him. Id. § 909(a), (b), (d).

A managerial agent is generally defined as one possessing broad discretion to make policy decisions without seeking approval from his principal. See RESTATEMENT (THIRD) OF AGENCY § 7.03 cmt. e (2006) (citations omitted). The question of whether a ship's captain is properly characterized as a managerial employee is open to some debate. Compare Belote v. Maritrans Operating Partners, L.P., No. 97-3993, 1998 U.S. Dist. LEXIS 3571 (E.D. Pa. Mar. 20, 1998) (finding a barge captain to be the shipowner's managerial agent), with In re Silver Fox, Inc., No. A97-168, 1998 U.S. Dist. LEXIS (D. Alaska June 15, 1998) (finding a fishing vessel's captain not a managerial agent for purposes of limiting liability). Because Exxon did not dispute the trial court's decision that Hazelwood was a managerial agent, see In re the Exxon Valdez, No. A-89-0096-CV, 1995 U.S. Dist. LEXIS 12953, at *8 n.8 (D. Alaska Jan. 27, 1995), this Comment assumes that a ship's master is properly classified as a managerial agent, though such agency should not suffice to impute punitive liability in the shipowner-captain context. Such liability should run against a shipowner only if the owner is complicit in the captain's wrongful conduct.

\textsuperscript{56} Protectus Alpha Navigation Co. v. N. Pac. Grain Growers, Inc., 767 F.2d 1379, 1386–87 (9th Cir. 1985).
\textsuperscript{57} Id. at 1386.
\textsuperscript{58} Id. at 1385.
against non-complicit principals under maritime tort law. In failing to do so, the court ignored the important policy implications of its decision. Instead, the court satisfied itself with the dubious contention that its decision better reflected "the reality of modern corporate America."

In its haste to conform to the progressive trend of land-based tort doctrine, the Ninth Circuit completely ignored longstanding Supreme Court precedent concerning a shipowner's punitive liability in maritime tort. The Supreme Court's seminal decision in *The Amiable Nancy* held that a shipowner could not be held liable for punitive damages based on the wrongful conduct of its officers and seamen. *The Amiable Nancy* established the doctrine that a shipowner who "neither directed . . . nor countenanced . . . nor participated in" the wrongful conduct of its officers and crew, though liable to make compensation for the injuries sustained by reason of its employees' conduct, cannot be "bound to the extent of [punitive] damages." This doctrine, requiring some degree of culpability on the part of a shipowner before punitive liability may attach, has been embraced by every other circuit court to address the issue.

Besides ignoring established Supreme Court precedent, the *Protectus Alpha* court also contradicted a previous Ninth Circuit decision regarding the propriety of assessing punitive damages against non-complicit shipowners for the acts of their captains at sea. In *Pacific Packing & Navigation Co. v. Fielding*, a three-judge panel of the Ninth

59 Had the court inquired into the pertinent question of vicarious punitive liability instead of punitive liability in general, it would have discovered that imposition of such liability is disfavored in maritime law. See 1 THOMAS J. Schoenbaum, 1 ADMIRALTy & MARITIME LAW § 5-17 (4th ed. 2004).

60 *Protectus Alpha*, 767 F.2d at 1386. Although the Ninth Circuit panel justified its adoption of the Restatement standard by demonstrating that a majority of courts recognize the availability of punitive damages against a principal for the acts of its agents in the absence of the principal's ratification or approval, the court did not examine whether any of those courts extended the principle to the realm of admiralty law. *Id.* Had the court done so, it would have found no support for such extension from its sister circuits. See *Exxon IV*, 490 F.3d 1066, 1069 n.3 (9th Cir. 2007) (Kozinski, J., dissenting).

61 *See Exxon IV*, 490 F.3d at 1069 n.1 (Kozinski, J., dissenting).


63 *Id.* at 558–59.

64 *Id.* at 559. The controversy arose out of the tortious conduct of the crew of the privateer brig Scourge who were alleged to have "robbed and plundered" the captain and crewmembers of the Haitian schooner *The Amiable Nancy*. *Id.* at 547.

65 *See Exxon IV*, 490 F.3d at 1069–70 (Kozinski, J., dissenting).

66 *Protectus Alpha Navigation Co. v. N. Pac. Grain Growers, Inc.*, 767 F.2d 1379, 1386 (9th Cir. 1985).

67 136 F. 577 (9th Cir. 1905).
Circuit refused to extend punitive liability to a non-complicit shipowner. In that case, a ship’s captain imprisoned the ship’s purser maliciously and without probable cause during the course of a voyage from Dutch Harbor, Alaska, to Seattle, Washington.

The court in *Pacific Packing* was faced with the task of addressing the shipowner’s liability for punitive damages in light of Supreme Court dictum suggesting that an agent who holds executive power in a corporation—such as a president, general manager, or vice president in their place—represents the corporation to such a degree that “any wanton, malicious, or oppressive” act of the agent should be imputed to the corporation itself. Recognizing that this doctrine might be sound as applied to corporate executives, the panel refused to extend such liability to captains of seagoing vessels even though these agents exercise “sole and absolute command of the [owners’] ship[s] and of everybody in [them].” In so holding, the court recognized the vitality of the complicity rule announced in *The Amiable Nancy*.

The *Protectus Alpha* court’s departure from the panel’s reasoning in *Pacific Packing* cannot be viewed simply as a court overruling prior precedent. Under established Ninth Circuit protocol, whenever decisions of two different panels are in conflict, the court is required to hear the case en banc to resolve the split. A three-judge panel may overturn a previous panel’s contrary ruling only “when an intervening Supreme Court decision undermines an existing precedent of the Ninth Circuit, and both cases are closely on point.”

In upholding the *Protectus Alpha* court’s ruling, the court in *Exxon I* held that the Supreme Court’s decision in *Pacific Mutual Life Insurance Co. v. Haslip*, which held that, consistent with due process, punitive damages could be assessed against a non-complicit corporation, sufficiently undermined the prior Ninth Circuit ruling in *Pacific

---

66 Id. at 580.
71 Id. at 580 (quoting *Lake Shore Ry. Co. v. Prentice*, 147 U.S. 101, 114 (1893)).
72 Id.
73 Id.
74 See United States v. Hardesty, 977 F.2d 1347, 1348 (9th Cir. 1992) (en banc) (per curiam).
75 *Exxon I*, 270 F.3d 1215, 1235 (9th Cir. 2001) (quoting United States v. Gay, 967 F.2d 322, 327 (9th Cir. 1992)).
Packing to obviate the need for en banc review. The Exxon I court reached this conclusion despite the fact that Haslip did not implicate admiralty law and concerned constitutional due process rights as opposed to specialized doctrines of maritime law. The court’s finding that Haslip undermined Pacific Packing rested in part on the justification that the “considerations bearing on the constitutional question” addressed in Haslip could not be distinguished from the concerns bearing on the maritime law question with which Pacific Packing was concerned. However, concerns unique to the field of maritime law militate toward a distinctly different outcome than that reached by the Haslip and Exxon I courts.

B. Circuit Split

By ignoring long-recognized principles of maritime law proscribing the imposition of punitive damages against non-complicit shipowners, the Ninth Circuit stands in conflict with all other U.S. circuit courts of appeals that have addressed the question. The first circuit court to rule on the issue was the U.S. Court of Appeals for the Seventh Circuit in The State of Missouri. The court in that case was asked to determine the liability of a shipowner for the ship’s master’s abduction of forty stevedores and subsequent impression of those stevedores into involuntary servitude aboard the vessel.

In assessing the shipowner’s liability, the court found that the master’s tortious conduct was committed in the course of his employment and on behalf of the shipowner. Having so concluded, the court held that the shipowner was answerable for the master’s act, stating that under established admiralty principles “the owners of a vessel are liable for all injuries caused by the misconduct, negligence, or unskillfulness of the master, provided the act be done while acting within the scope of his authority as master.” In recognizing that a principal may be held liable for its agents’ acts under maritime law, the court acknowledged the clear limitation of this liability to compensatory damages. The Seventh Circuit, without even citing The

---

77 Exxon I, 270 F.3d at 1236.
78 Id.
79 Id.
80 76 F. 376 (7th Cir. 1896).
81 A stevedore is a harbor worker who loads and unloads ships. BLACK'S LAW DICTIONARY 1454 (8th ed. 2004).
82 The State of Missouri, 76 F. at 378.
83 Id. at 378–79.
84 Id. at 379.
85 Id. at 380.
Amiable Nancy, held "undoubtedly the damages to be awarded must be compensatory, and not exemplary, where recovery is sought against the master for the unauthorized tort of the servant," indicating how firmly ingrained the maritime doctrine of complicity had become in the seventy-eight years since the Supreme Court's seminal decision.

The issue of a shipowner's punitive liability in maritime tort was not raised for circuit court review until seventy-three years later, when the U.S. Court of Appeals for the Sixth Circuit decided *United States Steel Corp. v. Fuhrman.* That case involved a tragic collision between two vessels in the Straits of Mackinac, which resulted in the deaths of ten crewmen. When the representatives of the deceased crewmen brought suit seeking punitive damages from the U.S. Steel Corporation, the owner of one of the vessels involved in the collision, the court of appeals declined to hold the corporation liable for such damages. The court found the better rule to be "that punitive damages are not recoverable against the owner of a vessel for the act of the master unless it can be shown that the owner authorized or ratified the acts of the master either before or after the accident." When the Ninth Circuit issued its *Protectus Alpha* opinion in 1985, it did not cite to the Sixth Circuit *Fuhrman* decision or the Seventh Circuit *Missouri* ruling, even though those cases were existing circuit court precedents directly on point.

After *Protectus Alpha,* the next case to consider the question of a principal's punitive liability in the realm of maritime torts was *In re P & E Boat Rentals, Inc.* This controversy arose from a fatal collision between two vessels in dense fog on the Mississippi River. In rejecting a claim for punitive damages against Chevron, Inc., which had

---

86 *Id.*
87 407 F.2d 1143 (6th Cir. 1969).
88 *Id.* at 1144.
89 *Id.* at 1148.
90 *Id.* The court also held that punitive damages would be appropriate where the master was unfit for command and the shipowner was reckless in employing him—a holding sanctioned by the Restatement standard adopted in the Ninth Circuit in *Protectus Alpha.* *Id.*; see also *Protectus Alpha Navigation Co. v. N. Pac. Grain Growers, Inc.,* 767 F.2d 1379, 1386 (9th Cir. 1985); *Restatement (Second) of Torts § 909(b)* (1979). Although it is possible that Exxon might have been reckless in employing Captain Hazelwood, knowing he was a relapsed alcoholic, the jury was not required to make such a finding in order to hold Exxon liable. *See Exxon V,* 128 S. Ct. 2605, 2615 n.3 (2008).
91 *See Protectus Alpha Navigation Co.,* 767 F.2d at 1379.
92 872 F.2d 642 (5th Cir. 1989).
93 *Id.* at 644–45.
chartered one of the involved vessels, the U.S. Court of Appeals for the Fifth Circuit rejected the Ninth Circuit decision in *Protectus Alpha* and adopted the rule announced in *Fuhrman* that a shipowner will not be held liable for punitive damages unless the owner authorized or ratified the master's actions. The court reasoned that where an agent "decides on his [or her] own to engage in malicious or outrageous conduct . . ., the [principal] itself cannot be considered the wrongdoer." This theory of liability, the court opined, showed more fidelity to the guidance of the Supreme Court in *The Amiable Nancy* than the doctrine espoused by the Ninth Circuit in *Protectus Alpha*.

Other than the Ninth Circuit in *In re The Exxon Valdez*, the most recent circuit court of appeals to consider whether to assess punitive damages against a shipowner was the U.S. Court of Appeals for the First Circuit in *CEH, Inc. v. F/V Seafarer (ON 675048)*. CEH involved a suit brought by lobstermen for compensatory and punitive damages against a shipowner and his captains for both negligent and willful destruction of the plaintiff's lobster trapping equipment. The court, in reaching its holding, questioned the continued validity of *The Amiable Nancy* complicity doctrine, opining that no discernible reason exists for treating punitive damage liability differently in admiralty law than in land-based civil actions. Still, the court was unwilling to adopt the Restatement (Second) of Torts standard for a principal's punitive liability because "read literally, [this standard]..."
could impose liability in circumstances that do not demonstrate any fault on the part of the principal."

The First Circuit's disinclination to impose punitive liability without any fault on the part of the principal led it to adopt a more restrictive approach. This approach would permit punitive damage awards against a principal for its agent's acts only when the agent is employed in a managerial capacity, the agent acts within the scope of his or her employment, and the principal is in some way culpable for the misconduct. The court in CEH found that the defendant shipowner was complicit enough in his agents' wrongful acts to justify the imposition of punitive damages. Of particular importance to the court was the shipowner's complete failure to provide "any policy directive . . . regarding the operation of [the] vessels in lobster trawl areas," in light of the owner's awareness that the atmosphere in which he hired his captains to work was "characterized . . . by the tension that raged between lobstermen and draggers."

C. The Restatement Standard Applied to the Exxon Valdez Litigation

The Ninth Circuit's decision to abandon the traditional complicity doctrine of punitive liability in maritime law, and to embrace the Restatement standard instead, proved central to the Exxon I jury's determination of the punitive damage question. Following the Ninth Circuit's vicarious liability paradigm set forth in Protectus Alpha, the Exxon I jury was instructed that a "corporation is . . . responsible for the reckless acts of . . . [its] employees who are employed in a managerial capacity while acting in the scope of their employment." In examining the propriety of this instruction, the Exxon I court conceded "that if the jury granted punitive damages on the basis of the vicarious liability instructions discussed above, Exxon's own reckless-

103 Id. at 705.
104 Id. Again, it is manifestly possible that Exxon could have been found culpable for Hazelwood's conduct due to the corporation's alleged awareness of his alcohol abuse. See supra note 90. However, under Ninth Circuit jurisprudence, no such finding was required for the jury to assess punitive damages against the corporation, so long as it found Hazelwood to be a managerial employee working within the scope of his employment at the time of the accident. See Exxon V, 128 S. Ct. 2605, 2614 (2008); Exxon I, 270 F.3d 1215, 1253, 1235 (9th Cir. 2001).
105 CEH, Inc., 70 F.3d at 705.
106 Id. In contrast, at the time of the Exxon Valdez spill, Exxon had a published policy prohibiting performance of duty while intoxicated as well as a policy for not terminating those employees with alcohol problems who seek rehabilitation and treatment. See Exxon I, 270 F.3d at 1238.
107 CEH, Inc., 70 F.3d at 705 (internal quotation marks omitted).
108 Exxon I, 270 F.3d at 1233 (internal quotation marks omitted).
ness[109] would not be essential to the outcome."[110] The court also considered the possibility that instead of basing the punitive damages award on vicarious liability, "the jury may well have granted" punitive damages based on Exxon's negligent hiring practices or failure to supervise Hazelwood.[111]

As the court of appeals recognized, the instructions given the jury could have supported a punitive damages verdict against Exxon regardless of the corporation's reckless conduct.[112] This outcome is irreconcilable with The Amiable Nancy's complicity rule which requires some level of culpability on the part of a shipowner before punitive liability may attach.[113] The Exxon I court, unlike its predecessor in Protectus Alpha, could not ignore the blatant contradiction with The Amiable Nancy's complicity rule that the Ninth Circuit's jurisprudence implicates,[114] and was forced to reconcile its decision with Supreme Court precedent.

In order to reach a conclusion contrary to the clear command of the Supreme Court, the Ninth Circuit distinguished The Amiable Nancy as having "no application to the case at bar"[115] because Exxon could not claim to be in similar standing as the defendant in that

---

109 Under Protectus Alpha, Hazelwood's position as a managerial employee would have been sufficient to impute liability to the corporation under a direct liability theory. See Protectus Alpha Navigation Co. v. N. Pac. Grain Growers, Inc., 767 F.2d 1379, 1386 (9th Cir. 1985) (holding that "no reasonable distinction can be made between the guilt of the employee in a managerial capacity acting within the scope of his employment and the guilt of the corporation"). The Exxon I court affirmed the assignation of punitive liability to the corporation on the basis of Exxon's reckless failure to enforce Exxon's explicit alcohol policies and to supervise Hazelwood. Exxon I, 270 F.3d at 1237–38. The crucial flaw in the court's reasoning is that the jury never actually determined whether Exxon's corporate officers were reckless in failing to supervise Hazelwood or enforce company policy. See infra notes 112–113 and accompanying text. But see infra note 120 and accompanying text.

110 Exxon I, 270 F.3d at 1237.

111 Id. (emphasis added).

112 See id. While the question of whether an award of punitive damages against a corporation, such as Exxon, under a direct liability theory is a matter of some debate, see 1 DAN B. DOBBS, DOBBS LAW OF REMEDIES: DAMAGES—EQUITY—RESTITUTION, PRACTITIONER TREATISE SERIES § 3.11(6), at 495 n.6 (2d ed. 1993), it would not seem reasonable or equitable to condition the availability of punitive damages on the shipowner's choice of his operational enterprise structure. Therefore, holding a corporate principal liable for punitive damages based on nothing more than its captain's wrongful conduct would be just as irreconcilable with The Amiable Nancy's complicity rule, which requires some wrongful conduct on the part of the principal, as holding an individual shipowner liable for such agent's acts.


114 Exxon I, 270 F.3d at 1234.

115 Id.
case. According to the court, the shipowner in The Amiable Nancy, unlike Exxon who gave command of a tanker to a known alcoholic, "neither directed . . . nor countenanced . . . nor . . . participated in the slightest degree in the wrong." The court’s statement, although arguably accurate, does not address the fundamental flaw in Ninth Circuit jurisprudence regarding shipowners’ punitive liability in maritime law: while the jury clearly could have found Exxon to have recklessly employed or failed to supervise Hazelwood—thus justifying the award of punitive damages under the established Amiable Nancy doctrine—the Ninth Circuit’s 1985 decision in Protectus Alpha would sanction the award of punitive damages, regardless of whether or not Exxon had acted recklessly. In order to impose punitive damages under the Ninth Circuit rubric, a plaintiff need only show that an officer of the ship in discharging his managerial duty acted recklessly and caused the injury at issue. This outcome not only contradicts well-settled admiralty jurisprudence but also fails to take into account important policy concerns, particular to the maritime realm, that compel a more restrained approach to a shipowner’s punitive liability.

III. MARITIME POLICY RATIONALES FOR PROSCRIBING PUNITIVE DAMAGES AGAINST NON-COMPLICIT SHIPOWNERS

Both on land and on the water, the principles behind imposing punitive damages on a principal for the acts of its agents are to punish the principal for its conduct and deter similar conduct in the future. Where a principal is not complicit in its agents’ acts and no additional harm is likely to occur; however, imposing punitive damages for the sole purpose of punishment of the principal is pointless and unjust. Therefore, unless a punitive damages award will produce a deterrent effect on the principal’s future conduct, the purposes of such an award are not served. Irrespective of the deter-

---

116 Id.
117 Id. (quoting The Amiable Nancy, 16 U.S. (3 Wheat.) at 559) (internal quotation marks omitted) (omissions in original).
118 See Exxon V, 128 S. Ct. 2605, 2615 n.3 (2008). As the Supreme Court has made clear, when it is not discernable whether a jury’s decision to impose liability rested on a proper or improper ground, the judgment cannot stand. Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 459-60 (1993); Greenbelt Coop. Publ’g Ass’n v. Bresler, 398 U.S. 6, 11 (1970).
119 See DOBBS, supra note 112, § 3.11(1)-(3), at 455, 467-82.
120 See id. § 3.11(6), at 497.
121 See id. The deterrence rationale for imposing punitive damages is much stronger in situations where a financial incentive exists for the defendant to continue in the wrongful course of conduct—especially where the wrongdoer is able pay all
rence benefits of such a system in land-based tort law, admiralty courts have generally declined to impose punitive liability on non-complicit shipowners for the acts of their captains at sea. As the following subsections show, concerns unique to the field of maritime law justify these courts' decisions to proscribe non-complicit shipowners' punitive liability for the acts of its agents.

A. Need to Establish Uniform Admiralty Rules Promoting Maritime Trade

The interests of maritime commerce militate in favor of establishing a uniform national policy prohibiting the imposition of punitive damages on non-complicit shipowners for the acts or omissions of their vessels' masters. From the time of the Union's inception, American lawmakers have recognized that forcing vessels to adapt to varying standards of liability as they move in interstate or international commerce would lead to "intolerable restrictions" on the maritime shipping industry. Toward this aim, the U.S. Constitution created "a system of law coextensive with, and operating uniformly in, the whole country" that would ensure the uniformity and consistency necessary to maintain the vitality of maritime commerce between the states and foreign nations.

Uniformity is necessary to the maritime shipping industry because it enables shippers to calculate their risks, adjust their insurance coverage to their potential exposure, and plan the scale and extent of their operations accordingly. Commercial carriers' potential compensatory damages associated with the wrongful conduct and still realize a profit. Id. at 496-97. Exxon clearly has little incentive to encourage intoxication among its tanker captains—a fact which is demonstrated by Exxon's promulgation of corporate policies prohibiting crewmembers from consuming alcohol prior to performing any of their duties. See Exxon I, 270 F.3d 1215, 1238 (9th Cir. 2001). As there is no significant financial benefit to be derived by Exxon in allowing their tanker captains to command company vessels under the influence of alcohol, any deterrence rationale is extremely attenuated in this case.

---

122 See RESTATEMENT (THIRD) OF AGENCY § 7.03 reporter's note e (2006).
124 The Lottawanna, 88 U.S. (21 Wall.) 558, 575 (1875).
125 Robert Force, The Curse of Miles v. Apex Marine Corp.: The Mischief of Seeking "Uniformity" and "Legislative Intent" in Maritime Personal Injury Cases, 55 LA. L. REV. 745, 765 (1995). Force contends that in the unique setting of maritime personal injury law—where liability is based more on status than on contract principles—uniformity should not be slavishly pursued. Id. at 765-66. Although in the maritime commercial context, courts should properly seek to encourage uniform application of admiralty law. Id.
operations would be severely hampered due to uncertainty if vessels were exposed to varying rules of liability as they moved from port to port.\textsuperscript{126} In addition to the problem of uncertainty, in many jurisdictions punitive damages are not insurable, which virtually guarantees that carriers will have no means to indemnify themselves against potentially catastrophic losses.\textsuperscript{127} For these reasons, a uniform national policy proscribing non-complicit shipowners’ punitive liability would greatly facilitate interstate maritime commerce. As has been recognized by the Supreme Court and every circuit besides the Ninth that has considered the issue of a shipowner’s vicarious liability, maritime industry and trade is best served by precluding awards of punitive damages against non-complicit shipowners for the acts of their captains at sea.\textsuperscript{128} In light of these concerns and the history of the doctrine, the Supreme Court should overrule the Ninth Circuit’s attempt to establish a more liberal punitive damage regime and prescribe a uniform maritime standard of complicity for shipowners’ liability.

The need for uniform application of the law in the realm of maritime shipping is especially pertinent due to the international nature of the industry. Over ninety percent of world trade occurs via the international shipping industry, comprising more than fifty thousand merchant ships registered in over 150 countries and crewed by over one million seamen of virtually every nationality.\textsuperscript{129} This global interconnection requires domestic admiralty courts to consider the law of foreign countries “so as to maintain a common maritime practice among nations.”\textsuperscript{130} Although there is no global consensus, most civil law countries generally disfavor the application of punitive damages

\textsuperscript{126} Id. at 765.

\textsuperscript{127} See Gary S. Franklin, Punitive Damages Insurance: Why Some Courts Take the Smart out of “Smart Money,” 40 U. MIAMI L. REV. 979, 1000–04 (1986); see also The Amiable Nancy, 16 U.S. (3 Wheat.) 546, 558–59 (1818) (due to the fact that public policy has placed responsibility upon shipowners for the conduct of their crew and because of the “nature of the service,” shipowners “can scarcely ever be able to secure to themselves an adequate indemnity in cases of loss”).

\textsuperscript{128} See Exxon IV, 490 F.3d 1066, 1068–69 (9th Cir. 2007) (Kozinski, J., dissenting).


\textsuperscript{130} ROBERT M. JARVIS ET AL., ADMIRALTY: CASES AND MATERIALS 127 (2004). Jarvis explains that the “eclectic and historic” sources of maritime law, derived from ancient legal texts, form the basis for modern international maritime shipping law. Id. Because foreign nations continue to rely on these same generative sources, it is appropriate for American courts to consider the judgments of other nations when determining domestic admiralty policy. Id.
in civil suits. In the great majority of civil law countries, punitive damages are not available in noncriminal proceedings and plaintiffs are limited to compensatory relief. Similarly, international law generally rejects the imposition of punitive damages, although in certain cases of deliberate misconduct, they may be assessed.

The four largest trading partners of the United States—Canada, Mexico, China, and Japan—do not impose punitive liability on innocent principals for the acts of their agents. Canadian courts, although recognizing the availability of punitive damages against a principal for its agents' acts, do not allow assessment of punitive damages based on vicarious fault. Mexican law does not recognize punitive damages in civil suits, only permitting such awards in criminal cases. Although no specific provisions exist in China's legal code dealing with punitive damages, implications from the General Principles of Civil Law and the Contract Law indicate that Chinese courts will grant only compensatory damages. Of the United States's principal trading partners, perhaps none takes a more negative view on punitive damages than Japan. Not only does Japanese law forbid punitive damages but also such awards are proscribed as against public policy, leading Japanese courts to refuse enforcement of foreign judgments that impose punitive penalties.

In addition to U.S. trading partners, those nations owning and operating the world's largest fleets disdain the imposition of punitive damages. In addition to China and Japan, Greece and Germany

---


135 See, e.g., 671122 Ontario Ltd. v. Sagaz Indus. Canada Inc., [2000] 46 O.R.3d 760 (Can.) (imposing vicarious liability for compensatory damages but refusing to extend vicarious liability to punitive damage award because of the principal's lack of knowledge or participation).


comprise the four largest beneficial owner\textsuperscript{139} nations of the worldwide shipping fleet.\textsuperscript{140} These nations own close to half of the vessels employed in the global shipping industry.\textsuperscript{141} Greece, the largest beneficial owner country, does not recognize the availability of punitive damages in civil suits.\textsuperscript{142} Germany, much like Japan, shuns punitive damages as a matter of public policy and has also refused to enforce foreign judgments that include a punitive damage award.\textsuperscript{143} In light of the predominant global aversion to punitive damage awards, the Supreme Court should establish a uniform nationwide consensus rejecting the imposition of non-complicit shipowners' punitive liability. Failure to do so would negatively impact international maritime commerce by requiring vessels to either adapt to varying remedial regimes or discontinue shipping operations in the vast waters of the Ninth Circuit.\textsuperscript{144}

B. Rule B Jurisdiction

Another concern particular to the field of admiralty law is the potential for expansive jurisdiction to which defendants may be exposed by means of quasi-in-rem attachments. A quasi-in-rem (or Rule B) attachment is a procedural mechanism, unique to the law of admiralty, by which a plaintiff may seize a defendant's property, forcing the defendant to choose between forfeiting the property (usually his ship) and defending the claim.\textsuperscript{145} Because most shipowners will refuse to forfeit their vessels, in practice, a plaintiff may use Rule B to obtain jurisdiction over a defendant with no connections to the district in which the court lies, other than the mere fact that his ship happens to be found in the district's territorial waters.\textsuperscript{146} Through means of a quasi-in-rem attachment, a plaintiff may attach a shipowner's vessel wherever that owner's vessel may be found within the na-

\textsuperscript{139} A "beneficial owner" is one who receives the ultimate financial benefit derived from a vessel's operation. J. Bennett Fox, Jr., Vessel Ownership and Terrorism: Requiring Disclosure of Beneficial Ownership Is Not the Answer, 4 LOY. MAR. L.J. 92, 92 n.1 (2005).


\textsuperscript{141} See id.

\textsuperscript{142} See Gotanda, Charting Developments, supra note 131, at 510 n.16.

\textsuperscript{143} Id. at 518.

\textsuperscript{144} See Exxon IV, 490 F.3d 1066, 1071 (9th Cir. 2007) (Kozinski, J., dissenting).


\textsuperscript{146} See FED. R. CIV. P. SUPP. R. B(1).
tion's territorial waters as long as his suit arises under U.S. admiralty jurisdiction. 147

The impact of Rule B is even more significant due to some courts' interpretation of the rule to allow attachment of intangible res. 148 According to this rubric, a plaintiff may seize a shipowner's assets that merely pass through an intermediary financial institution within the district's jurisdiction. 149 If a court in the Ninth Circuit adopted this understanding of Rule B, a shipowner might have its financial assets seized within the Ninth Circuit's waters, regardless of the assets' connection to the asserted wrong, and be forced to litigate under the unforgiving Protectus Alpha punitive damage regime. 150

The potential for forum shopping resulting from the disparity between the circuits created by Protectus Alpha and perpetuated by the Ninth Circuit's Exxon Valdez decision 151 is clearly inimical to the national interests in establishing a "system of law coextensive with, and operating uniformly in, the whole country." 152 The expansive reach of Rule B jurisdiction renders it even more likely that a defendant will be subject to various and contrasting tort regimes in the course of its business. Were the Supreme Court to allow the Ninth Circuit Exxon decision to stand, international shippers with no connection to the Ninth Circuit may find their operations "shipwrecked" 153 by massive punitive damage liability based solely on the presence of their vessels in the circuit's waters or the passage of their assets through a financial institution in the circuit.

C. Limitation of Liability

In the development of maritime law, limitation of liability has been a key concern in shaping admiralty doctrines. 154 To that end,

147 See Jillian L. Benda, No Calm After the Storm: The Rise of the Rule B Attachment Cottage Industry, 31 TUL. MAR. L.J. 95, 99 (2007); see also Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne de Navigation, 605 F.2d 648, 655 (2d Cir. 1979) (holding that "maritime actors must reasonably expect to be sued where their property may be found").

148 See, e.g., Winter Storm Shipping, Ltd. v. TPI, 310 F.3d 263, 276, 278 (2d Cir. 2002), cert. denied, 539 U.S. 927 (2003) (declaring a bank account amenable to Rule B attachment and permitting attachment of an electronic fund transfer).

149 See id. at 278.

150 See id. at 268, 273–74.

151 Exxon IV, 490 F.3d 1066, 1071 (9th Cir. 2007).

152 The Lottawanna, 88 U.S. (21 Wall.) 558, 575 (1875).

153 Exxon IV, 490 F.3d at 1071 (Kozinski, J., dissenting).

154 Jarvis et al., supra note 130, at 299 ("Since medieval times, countries have sought to encourage investment in the maritime industry through laws that limit the financial liability of shipowners in the event of catastrophic loss or damage."); cf. Ex-
both domestic legislation and international conventions have been adopted to insulate shipowners from devastating losses occasioned by their seaborne activities.\textsuperscript{155} Courts have given these policy considerations great weight in formulating federal maritime law.\textsuperscript{156}

Perhaps the most obvious manifestation of disproval of punitive damages in the oil discharge arena is the Oil Pollution Act (OPA),\textsuperscript{157} which provides for the limitation of a shipowner’s liability from damages arising from an oil spill.\textsuperscript{158} This statute, motivated by the Exxon Valdez spill, established a comprehensive federal scheme to deal with the issue of liability for the wrongful discharge of oil.\textsuperscript{159} Congress enacted the statute with the primary objectives of “benefitting the victims of oil pollution and punishing its perpetrators.”\textsuperscript{160} Despite these obvious motivations, courts have interpreted the OPA to preclude an award of punitive damages.\textsuperscript{161} While the OPA clearly could not be retroactively applied to obviate the award of punitive damages in Exxon Valdez, it does reflect the policy that tanker operators should not be amenable to excessive punitive damage awards.

Other statutes have gone even further in insulating shipowners from oppressive civil damage awards. Two frequently invoked statutes in admiralty law clearly manifest Congress’s recognition and acceptance of the complicity doctrine, even in the realm of compensatory damages. The Carriage of Goods by Sea Act (COGSA)\textsuperscript{162} provides that a shipowner is not liable for loss or damage to cargo resulting from the “[a]ct, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the manage-

\textsuperscript{155} See infra text accompanying notes 157–169.

\textsuperscript{156} Cf. Miles v. Apex Marine Corp., 498 U.S. 19, 36 (1991) (The Court refused to allow non-pecuniary damages for the wrongful death of a seaman under general maritime law in light of congressional policy to preclude such recovery under the Jones Act, 46 U.S.C.A. § 688 (2002): “We will not create, under our admiralty powers, a remedy that is disfavored by a clear majority of the States and that goes well beyond the limits of Congress’ ordered system of recovery for seamen’s injury and death.”).


\textsuperscript{158} See id. § 2704.

\textsuperscript{159} Southport Marine, LLC v. Gulf Oil Ltd., 234 F.3d 58, 64 (1st Cir. 2000).

\textsuperscript{160} Id. at 66.

\textsuperscript{161} Id. Although the statute eliminates traditional liability limitations in instances of willful misconduct or gross negligence, it stops short of permitting punitive damages against a shipowner who engages in such conduct. Id.; see Oil Pollution Act, 33 U.S.C. § 2704(c)(1) (1990).

ment of the ship.” Additionally, a shipowner’s total liability for damage to or destruction of cargo is limited to $500 per package. The Limitation of Liability Act (LOLA) allows a shipowner, under certain circumstances, to insulate himself from liability exceeding the value of his ship and its cargo at the time of loss. An owner may limit his liability with regard to all losses occasioned by those acts done “without the privity or knowledge of the owner.” These statutes demonstrate a legislative commitment to allowing shippers the ability to limit their exposure to catastrophic claims, at least to the extent that they are unaware of and uninvolved in the loss.

In addition to domestic policy militating toward limiting liability, international consensus also sanctions the objective of limiting the potential liability of maritime shipping concerns. The Convention on Limitation of Liability for Maritime Claims permits shipowners to limit liability unless “it is proved that the loss resulted from [the owner’s] personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.” Such a regime clearly does not sanction vicarious liability absent complicity of the shipowner. The International Convention on Civil Liability for Oil Pollution Damage (CLC) contains identical language, allowing limitation for losses not caused by the shipowner’s

163 Id. § 30701(4) (2) (a).
164 Id. § 30701(4) (5).
166 Id. § 30505 (a).
167 Id. § 30505 (b). Courts have held that under this standard, where a vessel owner does not exert control over its master’s conduct at sea, the acts of the master are done “without the privity or knowledge of the owner.” See In re Hellenic Inc., 252 F.3d 391, 396 (5th Cir. 2001). Exxon did not invoke LOLA in this litigation; Justice Stevens opined in his dissent that the explanation for the company’s failure to invoke the Act is that Exxon “recognized the futility of attempting to establish that it lacked privity or knowledge of Captain Hazelwood’s drinking.” Exxon V, 128 S. Ct. 2605, 2635–36 (2008) (Stevens, J., concurring in part and dissenting in part) (internal quotation marks omitted). Justice Stevens recognized, however, the alternative explanation that Exxon would not have been able to limit its liability for damages arising from the Valdez spill under the Ninth Circuit’s holding that the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. §§ 1651-1655 (1976), impliedly repealed LOLA with respect to trans-Alaska oil transportation. See id. at 2636 (citing In re The Glacier Bay, 944 F.2d 577, 583 (9th Cir. 1991)). Despite the abrogation of LOLA in this discrete situation, “the Limitation of Liability Act reflects a very strong Federal policy about restricting liability on shipowners . . . intended to encourage . . . the maritime economy.” Transcript of Oral Argument at 64–65, Exxon V, 128 S. Ct. 2605 (No. 07-291), available at http://www.supremecourtus.gov/oral_arguments/argument_transcripts/07-219.pdf.

reckless or intentional personal act or omission.⁶⁶⁹ Most of the world’s major maritime powers have ratified the CLC,⁷⁰⁰ evincing a clear concurrence of opinion that non-complicit shipowners should not be held liable for the potentially enormous environmental damage inherent in oil spills.

IV. CONCLUSION

The wreck of the Exxon Valdez and the subsequent discharge of oil into the pristine Prince William Sound was a truly staggering environmental tragedy, causing widespread destruction of wildlife and disrupting the livelihoods of many Alaskan fishermen.⁷¹⁷ The Exxon Corporation clearly bore a great share of the responsibility for the resulting environmental catastrophe.⁷¹⁸ Realizing its responsibility, Exxon initiated a massive cleanup project, expending over $2 billion to remediate the afflicted ecosystem.⁷¹⁹ In addition to this program, Exxon paid over $800 million to compensate those Alaskans whose lives and businesses were impaired by the accident.⁷²⁰ Despite this substantial compensation, the Exxon Valdez jury took advantage of the Ninth Circuit’s permissive vicarious liability system to award their fellow Alaskans billions of dollars in punitive damages.⁷²¹ In so doing, the jury demonstrated the inherent flaw in the Ninth Circuit’s vicarious punitive damage paradigm, which undermines the uniformity of maritime law and the objective of protecting maritime commerce to which admiralty law strivest.

Under the Ninth Circuit’s misguided formulation, a principal may be subject to harsh punitive liability simply because it unfortunately hired a captain whose acts are construed by a jury after the fact to have been reckless.⁷²² In the perilous world of open-ocean ship-

---

⁷⁰⁰ See Jarvis et al., supra note 130, at 756. Although the United States has not ratified this convention, and thus Exxon could not invoke its protections, the ratification by the world’s major maritime powers indicates acceptance of the general maritime law principle that a shipowner should not be held liable for the acts or omissions of his agents in which the owner did not participate.
⁷¹⁷ Remand II, 296 F. Supp. 2d 1071, 1078 (D. Alaska 2004); see Alaska Oil Spill Comm’n, supra note 17, at 5–14 (characterizing the spill as the biggest U.S. environmental disaster since the Three Mile Island nuclear plant meltdown).
⁷¹⁸ Remand II, 296 F. Supp. 2d at 1077.
⁷²⁰ Remand II, 296 F. Supp. 2d at 1078, 1101 (resulting in $303 million in voluntary settlements and over $500 million in compensatory damage awards).
⁷²¹ Exxon IV, 490 F.3d 1066, 1070 (9th Cir. 2007) (Kozinski, J., dissenting).
⁷²² Id. at 1070–71.
ping, accidents are inevitable due to the fact that "ships sink, collide, and run aground—often because of serious mistakes by captain and crew." To impose punitive liability on shipowners when the accident at issue is unpredictable human error completely ignores one of the core purposes of punitive damages—to deter similar conduct in the future. The U.S. Court of Appeals for the Ninth Circuit, while demonstrating admirable solicitude to victims of tragedy, failed to recognize that no policy goal is furthered by punishing an actor for conduct in which he takes no part, in an effort to deter future accidents that, due to the very nature of his business, cannot be obviated.

Perpetuation of this standard could potentially severely hamper national and international maritime trade. Because of the four-to-four split among the Justices in Exxon Shipping Co. v. Baker, the Court missed an opportunity to determine whether the Restatement standard of derivative liability should be extended to the field of admiralty law. As this Comment argues, such uncertainty on this crucial question is detrimental to the nation's maritime commercial interests. Hopefully, the Court in a future case will correct the aberration in the law of maritime torts illustrated by the Ninth Circuit's Exxon Valdez decision and assure shippers operating throughout the nation's waters that they will not be exposed to harsh punitive damage liability arising from inevitable accidents occurring on the high seas when the owners themselves are not complicit in their agent's wrongful conduct. Until that day, however, maritime shippers will continue to navigate uncertain seas as they conduct the business of supplying the world with necessary fuel, commodities, and consumer goods.

---

177 Id. at 1070.
178 Remand I, 236 F. Supp. 2d 1043, 1077 (D. Alaska 2002) ("[I]t is entirely clear why the Exxon Valdez grounded on Bligh Reef: the cause was pure and simple human frailty."); see also ALASKA OIL SPILL COMM’N, supra note 17, at 5–14 (citing study finding over eighty percent of maritime accidents attributable to human error).
180 In Exxon's case, it is difficult to imagine that any deterrence beyond the $3.1 billion that the corporation spent to remediate the harm caused by the spill and compensate its victims would be necessary to "teach[] Exxon not to do it again." See Exxon I, 270 F.3d 1215, 1223–26 (9th Cir. 2001); PROSSER, supra note 179, at 9.