

'A long time to get paid'

Stoll Berne awaits Exxon Valdez ruling

BY ANDY GIEGERICH

BUSINESS JOURNAL STAFF WRITER

Victims of the 1989 Exxon Valdez accident have few better friends than Portland attorney Bob Stoll.

Stoll's firm, Stoll Berne, could soon have the millions of dollars to prove it.

Shortly after the Exxon Valdez oil tanker spilled 9.5 million gallons of oil in Alaska's Prince William Sound, Stoll was enlisted to administrate the ensuing byzantine case. In so doing, he represented such plaintiffs as native Alaskans the fishing industry and environmentalists left jobless or culturally affected by the spill.

Attorneys for the plaintiffs are now seeking \$2.5 billion in punitive damages after the oil soiled fish, wildlife and beaches.

For Stoll and his 19-attorney firm, it's a case that's at turns rewarding and maddening. The high-profile incident garnered worldwide attention.

"There are about 32,000 people who were damaged by this case, and 20 percent of them are dead," said the 65-year-old Stoll. "It's a total outrage in terms of how the system works, or doesn't work. That's the thing that's most troubling about this case.

"Well, that, and the oil is still there."

COURT WILL RULE IN JUNE

Stoll's firm holds Portland's tightest connection to one of the western United States' largest-scale cases ever. Some Davis Wright Tremaine LLP attorneys have also contributed legal brainwork to the lawsuit in spurts because David Oesting, of the firm's Anchorage office, served as one of the trial court's lead litigators.

"It's been a great case, very challenging but very rewarding for the attorneys," said Dave Baca, managing partner of Davis Wright Tremaine's Portland office. "All of those lawyers believe very deeply in the causes of the people up there who lost their livelihood."

The case again hit the radar Feb. 27 when the U.S. Supreme Court heard arguments on it. The high court must essentially decide whether Exxon Corp., which has already poured \$3.5 billion into cleaning the oil-ravaged Prince William Sound, has done enough financial penance.



CATHY CHENEY/PORTLAND BUSINESS JOURNAL

Stoll Berne Principal Bob Stoll has worked for almost two decades on the Exxon Valdez class-action suit.

The court must also rule on more legal issues related to maritime law and the degree to which Exxon is liable for punitive damages.

If the court upholds the full damage amount, Stoll Berne would collect handsomely.

Attorneys would receive a 19 percent contingency fee from all of the case's damages. The amount delivered to each firm would correlate with how much each contributed to the overall case.

A compensation committee for the case determined that Stoll Berne was "among the top five" contributors.

If the full punitive award stays the same, the 90 firms would split \$475 million. The top contributors would receive "a multiplier" of the figure, Stoll said, meaning that it would fare well even considering it has paid between \$5 million and \$6 million out of pocket, over 19 years, to outside vendors and experts.

So how much, specifically, does Stoll expect to earn?

"I really have no idea, because I don't know what the Supreme Court will do," he said. "I will say, though, that 19 years is a very long

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Exxon Mobil spokesman

time to get paid."

Since it's a contingency case, Stoll Berne and the other firms could receive nothing.

"Contingency fee work is a roller-coaster business," said Chuck Tauman, a Portland sole practitioner who's awaiting tobacco company appeals in two cases — Williams v. Philip Morris and Schwarz v. Philip Morris — that could yield as much as \$230 million for the plaintiffs.

"You can go years and years without collecting a fee, then suddenly, if you're successful, you achieve a lot of remuneration," he said. "Of course, it has to be looked at over the context of a whole career."

YEARS OF WAITING

Stoll and other plaintiffs attorneys say the \$2.5 billion award, a number reduced over the years from a \$5 billion judgment in the mid-1990s, is sufficient because of the damage caused by the spill. Exxon had put a known alcoholic in charge of the tanker, failed to properly monitor him and then recovered only 14 percent of the spilled oil, plaintiffs attorneys said.

Plus the National Marine Fisheries Service and the U.S. Geological Survey say sediments remain on Prince William Sound's shore.

Exxon said it took immediate responsibility for the spill, cleaned it up and voluntarily compensated thousands of Alaskans and businesses more than \$3.5 billion, said Tony Cudmore, an Irving, Texas-based Exxon Mobil Corp. spokesman.

"The Valdez oil spill was a tragic accident, one which the corporation deeply regrets," he said. "All claims for compensatory damages have been resolved ... We do not believe further punishment is warranted. The \$3.5 billion we have spent is more than enough to punish anyone for anything."

The company further disputes whether punitive damages are warranted.

"In many cases punitive damages are so crippling to companies that they can't risk them and therefore they settle," Cudmore said. "That is why it is important that companies that have the capability to appeal excessive punitive damages awards do so, so that the courts can resolve the legal issues that remain unsettled."

Cudmore also said the incident's cleanup was declared complete by the state of Alaska and the U.S. Coast Guard in 1992.

"Prince William Sound today is healthy, robust and thriving, a conclusion reached by many scientific studies," he said.

EXXON VALDEZ: BY THE NUMBERS

Number	What it means
19	Years since the Exxon Valdez ran aground in Alaskan waters.
32,000	Approximate number of persons affected by the tanker's oil spill.
6,400	Plaintiffs who are deceased since the legal proceedings began.
11M	Gallons of oil spilled in the accident.
9.5M	Gallons of oil that plaintiffs attorneys say was never cleaned up.
1,000+	Depositions taken in the case.
20M	Documents reviewed and copied.
\$5B	Punitive award Exxon was originally ordered to pay in 1994.
\$2.5B	Punitive award that Exxon is currently ordered to pay pending a decision this spring by the U.S. Supreme Court.
\$3.5B	Amount that Exxon has paid in cleanup costs since the accident.

Sources: Stoll Berne, Bledsoe and Associates, Exxon Mobil Corp.



COURTESY OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

EXXON VALDEZ OIL SPILL: A TIMELINE

March 24, 1989	The Exxon Valdez runs aground in Alaska shortly after midnight.
March 30, 1989	Those harmed by the spill file the first of hundreds of complaints.
Feb. 25, 1994	Class including more than 30,000 members is approved.
June 13-Sept. 16, 1994	U.S. District Court jury determines that Exxon and Capt. Joseph Hazelwood acted recklessly in causing the spill, that the spill caused approximately \$504 million in economic harm to fishing industries and other interests, and that Exxon should pay \$5 billion in punitive damages.
Feb. 12, 1997	Exxon and Hazelwood appeal to the U.S. Court of Appeals for the Ninth Circuit.
Nov. 7, 2001	The appeal is denied, but the court instructs District Court Judge H. Russel Holland to reconsider the award's amount. A year later, he reduces the award to \$4 billion.
Dec. 22, 2006	Exxon and Hazelwood appeal to the U.S. Court of Appeals for the Ninth Circuit.
Aug. 20, 2007	Exxon, seeking to eradicate the entire award, appeals the decision to the U.S. Supreme Court.
Feb. 27, 2008	The court hears the case.
June 2008	The Supreme Court is expected to issue a decision before recessing on June 23.

Sources: Bledsoe and Associates

AN ANTITRUST BACKGROUND

Stoll came to the Exxon case by virtue of his firm's antitrust and securities-related suits. He represented plaintiffs in a famed 1970s sugar antitrust suit that paid his clients millions.

Eventually chosen to lead a trial team that handled cases at the Alaskan state court level, he organized hundreds of suits filed by more than 32,000 Exxon plaintiffs.

Stoll and David Rees, another Stoll Berne attorney, today spend much of their time serving as the plaintiffs' trustees. They hope part of that role will include divvying up a generous punitive damages settlement.

Still, Stoll is wary of the high court's ruling, expected in June.

"It's a very activist court," he said. "It's safe to say if you're a large corporation, you have a

great friend there."

Exxon suffered a blow when Justice Samuel Alito, a company shareholder, recused himself from the case. The plaintiffs would win a 4-4 tie.

However many things can still happen. The court could send the case back to a lower court if it determines there's not enough precedent for punitive damages under maritime law. Or the award could stick and Stoll could tackle other projects.

While he'll be relieved when the high court issues its ruling, the firm won't go overboard celebrating a positive outcome. That's because arguing against deeply lawyered oil companies for two decades takes its toll, Stoll said.

"There are a lot easier ways of making money," he said.