

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 04-35182

No. 04-35183

GRANT BAKER, *et al.*, as representative of the
Mandatory Punitive Damages Class,

Plaintiffs-Appellees,

vs.

EXXON CORPORATION, *et al.*,

Defendants-Appellants.

On Remand from the United States Supreme Court

**PLAINTIFFS' MEMORANDUM WITH RESPECT TO POST-JUDGMENT
INTEREST AND COSTS**

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CORPORATE DISCLOSURE STATEMENT

Those few plaintiffs that are corporations have no parent corporation, subsidiaries or affiliates that have issued shares to the public.

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INTRODUCTION

In 1994, a jury awarded plaintiffs \$5 billion in punitive damages for Exxon's reckless conduct related to the Exxon Valdez oil spill. Following two years of further proceedings, the United States District Court for the District of Alaska entered judgment on September 24, 1996 and directed that the jury's award "shall bear interest from and after September 24, 1996, in accordance with 28 U.S.C. § 1961." Amended Judgment in a Civil Case (January 30, 1997) (June 28, 2004 Excerpts of Record at 405).

On December 6, 2002, following a remand from this Court, *see In re: the EXXON VALDEZ*, 270 F.3d 1215 (9th Cir. 2001), the district court reduced the punitive damage award to \$4 billion and again directed that "[i]nterest on the reduced award of punitive damages shall accrue from September 24, 1996, in accordance with 28 U.S.C. § 1961." Order 358 at 52 n.89 (December 6, 2002) (June 28, 2004 Excerpts of Record at 556).

On January 28, 2004, following a second remand from this Court, the district court directed that the punitive damages be set at \$4.5 billion and again directed that "[i]nterest on the reduced award of punitive damages shall accrue from September 24, 1996, in accordance with 28 U.S.C. § 1961." Order 364 at 80 n.117 (January 28, 2004); *In re: the EXXON VALDEZ*, 296 F. Supp. 2d 1071, 1111 n.117 (D. Alaska 2004) (June 28, 2004 Excerpts of Record at 650).

Exxon appealed the 2004 amended judgment to this Court, and then to the U.S. Supreme Court, arguing that maritime law did not allow punitive damages in this case and that, even if punitive damages were allowed, the district court's amended judgment was too high. Exxon ultimately failed to persuade the appellate courts to disallow punitive damages, but it succeeded in obtaining a reduction in the amount.

As directed by the Supreme Court, this Court has now entered an order setting the punitive damages judgment in this case at \$507.5 million. On August 27, 2008, Exxon paid \$383.3 million toward that judgment into the Qualified Settlement Fund previously established by the district court. It withheld from that payment (1) any interest; (2) \$70 million, representing Exxon's alleged cost of securing the earlier judgment amounts; and (3) a rebate of approximately \$55 million, representing approximately 11% of the total award that certain plaintiff-seafood processing companies promised Exxon as part of earlier settlements, *see In re: the EXXON VALDEZ*, 229 F.3d 790 (9th Cir. 2000).

In response to this Court's order directing the parties to brief the issues of interest and costs, plaintiffs submit this memorandum explaining why this Court: (1) should hold that plaintiffs remain entitled to interest on the reduced punitive damages award (at the applicable statutory rate of 5.9%) from the date of the

original punitive damages judgment, September 24, 1996¹; and (2) should order, as it did when it first affirmed the award of punitive damages subject to reduction in the amount, that “each party [is] to bear its own costs,” *In re: the EXXON VALDEZ*, 270 F.3d 1215, 1253 (9th Cir. 2001).

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO POST-JUDGMENT INTEREST CALCULATED FROM THE DATE OF THE ORIGINAL JUDGMENT.

Settled federal law squarely dictates that plaintiffs who obtain a punitive damages judgment and succeed in defending part of that judgment on appeal are entitled to interest on the reduced award from the date of the original judgment. That law controls here.

28 U.S.C. § 1961 provides that annually compounded interest “shall be allowed on any money judgment in a civil case recovered in a district court.” Punitive damages judgments are among the “money judgments” covered by this statute. *See, e.g., Loughman v. Consol-Pennsylvania Coal Co.*, 6 F.3d 88, 99 (3d Cir. 1993); *Brown v. Petrolite Corp.*, 965 F.2d 38, 51 (5th Cir. 1992); *Bank South Leasing, Inc. v. Williams*, 778 F.2d 704, 705-06 (11th Cir. 1985).

¹ Pursuant to 28 U.S.C. § 1961(b) the interest is subject to annual compounding from the date of the original judgment. *See* Interest Computations, Administrative Office of the United States Courts, *available at* <http://www.uscourts.gov/postjud/methods.html> (last visited September 23, 2008).

The reason for this categorical statutory rule is obvious. Once a court enters a money judgment, the plaintiff becomes a judgment creditor. *United States v. Michael Schiavone & Sons, Inc.*, 450 F.2d 875, 876 (1st Cir. 1971). If the defendant does not pay the judgment immediately, the plaintiff has a right to “compensation . . . for the loss of the use of the money” during post-judgment proceedings and appeals. *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 834 (1990); *see also Air Separation, Inc. v. Underwriters at Lloyds*, 45 F.3d 288, 290 (9th Cir. 1995). Interest compensates the plaintiff for that lost time-value of money. *See, e.g., Brown*, 965 F.2d at 51; *Dunn v. HOVIC*, 13 F.3d 58, 60 (3rd Cir. 1993) (Interest “ensure[s] that a [punitive] judgment will be worth the same when it is actually received as when it is awarded.”). *See generally Till v. SCS Credit Corp.*, 541 U.S. 465, 487 & n.1 (2004) (Thomas, J., concurring) (describing time value of money). And in the context of punitive damages, interest also limits the dilution of the punitive sting that results from postponing the day of payment. *See DeLong Equip. Co. v. Washington Mills Electro Minerals Corp.*, 997 F.2d 1340, 1342-43 (11th Cir. 1993) (applying same rationale to antitrust treble damages).

A plaintiff’s statutory entitlement to interest does not disappear when, as here, an appellate court upholds punitive liability but remits a portion of the punitive award. Under these circumstances, this Court, interpreting Fed. R. App.

P. 37(b) as requiring it to address the matter of interest in its mandate, has consistently held that plaintiffs remain “entitled” to interest from the date of the original judgment on the portion of the award that the Court has upheld. *See, e.g., Planned Parenthood of the Columbia/Willamette Inc. v. American Coalition of Life Activists*, 518 F.3d 1013, 1021 (9th Cir. 2008) (“*Planned Parenthood IP*”); *Leatherman Tool Group, Inc. v. Cooper Indus., Inc.*, 285 F.3d 1146 (9th Cir. 2002)²; *Snyder v. Freight, Const., Gen. Drivers, Warehousemen & Helpers, Local No. 287*, 175 F.3d 680, 690 (9th Cir. 1999). All other federal courts of appeals addressing the issue have agreed. *Johansen v. Combustion Eng’g, Inc.*, 170 F.3d 1320, 1339-40 (11th Cir. 1999) (“The law on this issue is clear.”); *Dunn*, 13 F.3d at 60-62 (plaintiffs are “automatically” entitled to such interest); *Greenway v. Buffalo Hilton Hotel*, 143 F.3d 47, 49, 55 (2d Cir. 1998) (same rule when district court remitted punitive award); *Klein v. Grynberg*, 127 F.3d 1109, 1997 WL 643899 (10th Cir. 1997) (unpublished) (reaffirming decision on same issue set

² Like this case, *Leatherman* involved a remand to this Court after the Supreme Court reduced the punitive damages award. 285 F.3d at 1152. This Court concluded that interest should run from the date of the original judgment, not the date of the judgment on remand: “the district court is instructed to allow interest from November 18, 1997 [the date of original judgment] on the award of punitive damages in the amount of \$500,000 that was the subject of the mandate.” Order Recalling and Modifying Mandate (Docket No. 101), *Leatherman Tool Group, Inc. v. Cooper Indus., Inc.*, No. 98-35147 (9th Cir. July 8, 2002) (copy attached as Appendix A).

forth at 1996 U.S. App. LEXIS 42506 (10th Cir. Aug. 6, 1996) (unpublished)); *Morrill v. Becton, Dickinson & Co.*, 747 F.2d 1217, 1225 (8th Cir. 1984); *Maxey v. Freightliner Corp.*, 727 F.2d 350, 351 (5th Cir. 1984); *Malandris v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 703 F.2d 1152, 1181 (10th Cir. 1983); *Ogilvie v. Fotomat Corp.*, 641 F.2d 581, 590 (8th Cir. 1981).³

This Court's *Planned Parenthood II* decision demonstrates the firmness of this rule. There, this Court had reduced the punitive damages award as exceeding the maximum amount allowed under the Constitution, but its mandate (apparently inadvertently) did not instruct the district court concerning post-judgment interest. 518 F.3d at 1015. The district court on remand awarded interest from the date of the original judgment. *Id.* at 1016. When the defendant challenged this award of interest on appeal, this Court explained that its reduction of the amount of punitive damages based on due process review did not alter the evidentiary basis supporting the unremitted portion of the punitive damages award. *Id.* at 1021. Because the basis for the punitive damages award thus was "meaningfully ascertained" in the original judgment, plaintiffs were "entitled" under section 1961(a) to interest on the ultimate punitive award from the original judgment. *Id.*; *see also Johansen,*

³ The same rule, that interest accrues from the date of the original judgment on the remaining portion of a reduced award, applies to compensatory damages as well. *See, e.g., Snyder*, 175 F.3d at 689-90; *Tinsley v. Sea-Land Corp.*, 979 F.2d 1382, 1383 (9th Cir. 1992).

170 F.3d at 1340 (“The initial judgment is viewed as correct to the extent it is permitted to stand”); *Loughman*, 6 F.3d at 98, 100 (“[P]ost-judgment interest accrues from the entry of the first judgment” because “everything to which the plaintiffs are entitled was supported by the evidence at the first trial and was ascertained from the jury’s verdict in that trial.”). Accordingly, the *Planned Parenthood II* Court went so far as to recall its mandate from the first appeal, in order to avoid a serious injustice, and to direct under Fed. R. 37(b) that interest run from the original judgment. *Id.*

Planned Parenthood II and the uniform line of authority of which it forms a part comport not only with basic notions of fairness but also with the purposes of punitive damages. Punitive damages function to punish and to deter reprehensible conduct. They are calculated at trial to determine the appropriate amount of punishment and deterrence at that point in time. In maritime cases such as this, as in other areas of federal law, the Supreme Court requires that they be “pegg[ed] . . . to compensatory damages using a ratio.” *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2629 (2008). To ensure that the effect of the punishment and the ratio to compensatory damages stay the same in real dollars, courts must impose post-judgment interest from the date of the initial judgment. Any other result would alter the ratio, would reward defendants even for unsuccessful portions of appeals,

and would introduce arbitrariness into the process by benefiting defendants solely on the haphazard basis of how long their appeals take to run their course.

Examining how the interest issue plays out in this case illustrates the point. The jury returned its verdict in September 1994, and the district court entered judgment on the verdict in September 1996. Using a discount rate of 5.9% – the judgment interest rate prescribed by section 1961(a) – the value in September 1996 of \$507.5 million to be paid in 2008 would be only \$257.5 million, thus reducing the ratio of the punitive award to compensatory damages (absent an award of interest) from the 1 to 1 ratio that the Supreme Court found appropriate, 128 S. Ct. at 2633, to a ratio of 0.5 to 1. *See* Appendix B (setting forth calculation).

Allowing Exxon to hold onto money that it owed to fishermen, Native Alaskans, and other class members in 1996 without paying interest would reduce the practical size of the award to a fraction of what the Supreme Court and this Court have held the jury was allowed to impose consistent with maritime law. *See Till*, 541 U.S. at 487 & n.1. Section 1961 exists to prevent just such an injustice and to foreclose a *de facto* “windfall” to a defendant found to have committed reprehensible conduct. *DeLong*, 997 F.2d at 1342-43.

