

**THE WHOLE TRUTH**  
**What Exxon *really* paid for the Exxon Valdez Oil Spill**

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**For**  
**The Whole Truth**  
**www.wholetruth.net**

In the wake of the Exxon Valdez Oil Spill two major lawsuits arose. The State of Alaska and the Federal Government joined together and brought criminal and civil suits against Exxon for *damage to the environment*. Exxon pled guilty to three crimes, punishable up to \$3 billion dollars but settled with the governments for a \$25 million dollar criminal fine, \$100 million in restitution to the State and Federal Governments, and a \$900 million dollar civil fine payable over 10 years.

Separate from that suit, a class action composed of 32,677 commercial fishermen, related individuals and businesses, private landowners, Native Alaskans, municipalities, and others sued Exxon for *private economic damages*. This lawsuit is the focus of The Whole Truth campaign and is on appeal to the United States Supreme Court. Even though these lawsuits originated from the same event the suits represent very different interests and require separate remedies.

Exxon is attempting to muddy the waters and commingle the two cases in an effort to shield itself from further punitive damages. In its appeal to the United States Supreme Court, Exxon specifically claims that its “payment of 3.4 billion in fines, penalties, cleanup costs, claims payments, and other expenses, has fully achieved both punishment and deterrence.” Not only is this argument irrelevant for this case but it also disguises the whole truth about what Exxon actually paid for the Exxon Valdez Oil Spill. The true amount of financial liability that Exxon incurred, after factoring in tax credits, insurance payments, and the discount rate as applied to the civil natural resources damages fine, is much closer to \$1,776,000,000 or ROUGLY HALF of what Exxon has claimed. This is the “Whole Truth.”

### **I. Criminal Penalties**

Exxon entered into a criminal plea agreement with the United States for violations of the Clean Water Act, the Rivers and Harbors Act, and the Migratory Bird Treaty Act.<sup>1</sup> Exxon was penalized \$250 million dollars in fines and restitution for its unlawful actions, but was required to pay only \$125 million.

#### **A. Fines**

As a result of its guilty plea, the court imposed fines totaling \$150 million.<sup>2</sup> However, the court remitted \$125 million of the fines due to Exxon’s cooperation with federal investigators and its expenditures of approximately \$2.1 billion for clean up costs. Of the \$25 million in fines that

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<sup>1</sup> Plea Agreement, U.S. v. Exxon Corporation, et al., Case No. A90-115 CR, Para. I.A.

<sup>2</sup> Id., at Para. III.C.

Exxon actually paid, \$12 million went into the North American Wetlands Conservation Fund and \$13 million went into the Victims of Crime Act account.<sup>3</sup>

	<u>Amount Fined</u>	<u>Amount Remitted</u>	<u>Amount Paid</u>
Exxon Shipping Co.:	\$125 million	\$105 million	\$20 million
Exxon Corporation:	\$25 million	\$20 million	\$5 million

## B. Restitution

In addition to fines, the court ordered Exxon Shipping and Exxon Corporation to pay restitution totaling \$100 million dollars.<sup>4</sup> This amount was considered a “remedial and compensatory payment,” of which the State of Alaska received \$50 million and the United States received \$50 million. These monies were to be used exclusively for restoration projects.

The criminal penalties in this case did not close the door to future punitive damage awards in this case or others arising from the oil spill. Specifically, the plea agreement stipulates and the parties agreed that “all payments made under paragraph IV.A. are exclusively remedial, compensatory, and *non-punitive* and are separate and distinct” from the other fines imposed in the plea agreement “and from any other criminal, civil, or administrative penalties that could have been imposed upon the defendants.”<sup>5</sup>

## II. Civil Penalties

### A. Civil Settlement

The United States and the State of Alaska entered into a settlement agreement with Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, and the T/V Exxon Valdez (Exxon) for natural resource damages. Exxon agreed to pay the United States and Alaska up to \$900 million over a period of ten years beginning in December 1991.<sup>6</sup>

The civil settlement payment was as follows:

<u>Payment Scheduled Date</u>	<u>Payment Amount</u>
December 1991	\$90 million
December 1992	\$150 million
September 1993	\$100 million
Sept. 1994 – 2001	\$70 million each year
Total:	\$900 million

The settlement also contained a “reopener” clause that allowed the United States and Alaska to seek up to \$100 million dollars in additional funds by September 1, 2006 to restore one or more

<sup>3</sup> “The *Exxon Valdez* Oil Spill – Final Report, State of Alaska Response,” Ernest Piper on behalf of the Alaska Department of Environmental Conservation, June, 1993: p. 171.

<sup>4</sup> Plea Agreement, Para. IV.A.

<sup>5</sup> Plea Agreement, Para. IV.D. (Emphasis added).

<sup>6</sup> See Agreement and Consent Decree, *United States v. Exxon Corp.*, civil action A91-082, and *State of Alaska v. Exxon Corp.* civil action A91-083.

populations, habitats or species that suffered a substantial loss or decline as a result of the spill.<sup>7</sup> On June 1, 2006, the U.S. Department of Justice and Alaska Attorney General sought that right and requested \$92,400,000 in additional funds for restoration of affected habitat.

### B. Exxon Credit

The civil settlement allowed Exxon to deduct from its 1992 civil settlement payment the amount for the costs of cleanup completed after January 1, 1991.<sup>8</sup> Exxon deducted \$39,913,700 from its 1992 payment.<sup>9</sup> “With Exxon able to deduct its cleanup costs from what it owed the government, essentially, the government was paying for the cleanup.”<sup>10</sup> In addition, when Exxon settled punitive claims with certain seafood processors, Exxon included a provision that would grant it an 11.38% rebate on any punitive damages awarded against the company.<sup>11</sup>

### C. Exxon’s Actual Liability of the \$900 million Civil Settlement

On March 19, 1991 the Congressional Research Service (CRS) presented a report to the House Committee on Merchant Marine and Fisheries concerning the criminal and civil settlements between the United States, Alaska and Exxon.<sup>12</sup> The Committee requested a report on the “present value of the recent settlement of the Exxon Valdez” because the “gross amount received by the United States can differ from the net cost” to Exxon “depending on tax liabilities, and values could differ with choice of discount rate.”<sup>13</sup> The CRS Report concluded that the “undiscounted” cost of the \$1 billion in criminal and civil liability would be smaller than a true \$1,000,000,000.

The CRS Report stated that the “net cost to Exxon will be smaller ... because the civil payments can be deducted from income for purposes of both State and Federal taxes. The Federal tax rate is set at 34 percent; and we add three percentage points to account for State income taxes.”<sup>14</sup> As

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<sup>7</sup> “Exxon Valdez Oil Spill Restoration, Volume I, Restoration Framework,” Exxon Valdez Oil Spill Trustees, April, 1992: p. 6.

<sup>8</sup> “The *Exxon Valdez* Oil Spill – Final Report, State of Alaska Response,” Ernest Piper on behalf of the Alaska Department of Environmental Conservation, June, 1993: p. 172.

<sup>9</sup> “1994 Status Report on the *Exxon Valdez* Oil Spill,” Exxon Valdez Oil Spill Trustee Council: p. 18.

<sup>10</sup> “The *Exxon Valdez* Oil Spill – Final Report, State of Alaska Response,” Ernest Piper on behalf of the Alaska Department of Environmental Conservation, June, 1993: p. 172.

<sup>11</sup> See Brief of Respondents, Exxon Shipping Company and Exxon Mobil Corporation v. Grant Baker et al., On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, No. 07-219, Footnote 10.

<sup>12</sup> The CRS Report was prepared by Bernard A. Gelb, Specialist in Industry Economics, and Jane G. Gravelle, Senior Specialist in Economic Policy.

<sup>13</sup> “The Recently Negotiated Settlement of Civil and Criminal Liabilities Resulting From the Exxon Valdez Oil Spill,” Hearing before the Committee on Merchant Marine and Fisheries, United States House of Representatives, 102<sup>nd</sup> Congress, Congressional Research Service, Library of Congress, Serial No. 102-8, March 20, 1991: p. 1.

<sup>14</sup> The CRS Report notes, at Footnote 1, that the adjustment for state income taxes “was suggested to us by Andy Yood of the American Petroleum Institute, who indicated that an add on

a result, the CRS Report concluded that “the *net cost to Exxon* (net receipt to the Government) will be *\$655 million without discounting*.”<sup>15</sup> If the additional \$100 million reopener clause is factored in, then the net cost to Exxon would be \$716 million.

The CRS Report considered three discount rates, a high, medium and low rate. Applying the medium rate, which corresponds to the average pre-tax return on private capital, *Exxon’s cost net of taxes for the \$1 billion dollars in civil and criminal liability would be between \$456 and \$474 million, less than half of the actual penalties imposed.*

	<u>Net Cost w/out Discount</u>	<u>Net Cost with Mid. Discount</u>
\$1 B civ/crim Penalties	\$655 million	\$456 million
Penalties + Reopener	\$716 million	\$474 million

#### D. Exxon’s Insurance Settlement from Lloyd’s of London

In the class action lawsuit for economic harm, Exxon has not reported the insurance settlement that it received as a result of the Exxon Valdez oil spill. The law firm, Helm, Pletcher, Bowen & Saunders L.L.P, was lead counsel for Exxon in “the jury trial against Lloyd’s of London involving insurance proceeds for the clean up of the Valdez oil spill. The case was tried to a jury just over one year after the first deposition was taken. The jury found in favor of Exxon, and the Court entered a \$410 million verdict on the breach of contract claim. After trial, Lloyd’s agreed to pay over \$780 million to resolve both the breach of contract claim and the pending insurance bad faith claim.”<sup>16</sup> The \$780 million that Exxon received as an insurance payoff was not reported or factored into Exxon’s actual costs incurred.

### III. Exxon’s Trial Exhibit of Actual and Potential Costs Incurred

As part of its civil defense, Exxon submitted an exhibit entitled “Total Actual and Potential Cost of the Exxon Valdez Spill.”<sup>17</sup> The entirety of this exhibit is reproduced in the table below.

<b>Expenditures: Incurred and Fixed</b>		
Type of Expenditure	\$\$ Amount CREDIT	\$\$ Amount COST
Claims Payments		304,000,000
Federal Fines		25,000,000
State and Fed Restitution		100,000,000
State and Fed Settlement		900,000,000
Clean Up Costs		2,097,000,000
Casualty Loss: Vessel, Cargo		46,000,000
Phase IIA Award		287,000,000

of two to three percentage points was a typical rule of thumb to obtain a combined Federal and State income tax rate.”

<sup>15</sup> See CRS Report, p. 2. (Emphasis added).

<sup>16</sup> See [www.helmpletcher.com/practice/litigation.cfm](http://www.helmpletcher.com/practice/litigation.cfm), Practice Areas: Commerical Litigation, published February 12, 2004: p.1.

<sup>17</sup> See Defendant’s Exhibit, State of Alaska v. Exxon Corporation, DX-6399A, Case No. A89-095-CV.

Phase IIB Award		20,000,000
Tax Reduction	1,115,000,000	
Adjustment <sup>18</sup>	218,000,000	
		Subtotal \$2,446,000,000
<b>Expenditures: Potential and Contingent</b>		
Type of Expenditure	\$\$ Amount CREDIT	\$\$ Amount COST
Plaintiffs' State Court Claims		165,000,000
Recoverable Costs		17,000,000
Interest		103,000,000
Plaintiffs' Phase IV Claims		174,000,000
Contingent State/Fed Settlement		100,000,000
Tax Reduction	207,000,000	
		Subtotal \$352,000,000

Total Net Actual and Potential Cost: \$2,798,000,000

When the total cost (2,798,000,000) is reduced by the Lloyd's Insurance Payment (780,000,000) and the Net Cost of Civil Payment With Discount Rate applied,<sup>19</sup> (\$242,000,000),

**THE TRUE TOTAL COST IS 1,776,000,000.<sup>20</sup>**

The Whole Truth is a far cry from the \$3.4 billion that Exxon claims it has paid.

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<sup>18</sup> It is unknown whether the \$39.9 million credit that Exxon received for cleanup costs is considered part of this "adjustment."

<sup>19</sup> Since Exxon already figured in its tax deduction, the correct sum to add here is the difference between the Net Cost with and without the Discount Rate as calculated by the CRS Report.

<sup>20</sup> Exxon has been required to maintain a letter of credit since the \$5 billion jury verdict. While information about the cost to Exxon of maintaining the letter of credit is not publicly available, it is estimated to be in the range of \$15 million (largely dependent on fluctuating financial terms from major lenders).