No. 07-219

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

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EXXON SHIPPING CO. and EXXON MOBIL CORP.,

*Petitioners*,

v.

GRANT BAKER, ET AL.,

*Respondents*.

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On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

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**REPLY CONCERNING RESPONDENTS' SUBMISSION WITH RESPECT TO RULE 42.1**

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## REPLY CONCERNING RESPONDENTS' SUBMISSION WITH RESPECT TO RULE 42.1

Exxon's filing with respect to Rule 42.1 asks this Court to do something that, so far as we are aware, neither this Court nor any federal appellate court has ever done: take away all interest accrued under 28 U.S.C. § 1961(a) from the date of an original judgment merely because an award of money damages has been reduced on appeal. The practical effect of granting Exxon's request would be to reduce the punitive award allowed by this Court to $257.5 million in 1996 dollars, or roughly one-half of the $507.5 million this Court held the jury was entitled to award then. *See* Appendix A.

For the following reasons, this Court should decline to take the unprecedented action that Exxon requests.

1. Rule 42.1 does not apply here. Rule 42.1 – like Fed. R. App. P. 37(b) – requires this Court to address the issue of interest when, as in *Briggs v. Pennsylvania R.R. Co.*, 334 U.S. 304 (1948), this Court orders a monetary recovery for the first time in the litigation. *See* Fed. R. App. P. 37(b) advisory committee notes (1967) (noting that the rule is designed to address the situation in *Briggs* in which an appellate court "reverses a judgment notwithstanding the verdict and directs entry of judgment on the verdict" for money). In that rare circumstance, plaintiffs are presumptively entitled to interest beginning when they first become entitled to the money judgment on appeal, but the Rule allows the appellate court to order interest calculated

from the date of the original verdict in its discretion and prompts the appellate court to make that decision.

No corresponding need for this Court's guidance arises, however, in a case such as this in which a district court *already* has found the defendant liable and awarded money damages, and this Court reduces the principal amount. In that situation, interest began accruing from the date of the judgment by operation of law. *See* 28 U.S.C. § 1961(a). And contrary to Exxon's argument (Response at 2), nothing in the plain language of Rule 42.1 requires that the Rule sweep beyond its true function. The text of the rule, stating that it applies when this Court "direct[s] that a judgment for money be entered below," means that it applies when this Court orders that money be awarded in the first instance, not when an existing monetary award has been reduced in amount. At least one federal court of appeals – contrary to Exxon's suggestion (Response at 3) – has interpreted Fed. R. App. P. 37(b) exactly this way, holding that it does not apply when a court of appeals reduces the principal amount of a damages award that included interest. *See Stewart v. Donges,* 20 F.3d 380, 382 (10th Cir. 1994).

2. In the event this Court concludes that Rule 42.1 does apply, Exxon provides no reason to deviate from the uniform rule in the federal appellate courts that interest accrues on a reduced award from the date of the original judgment.

a. As an initial matter, Exxon has waived any right to challenge the district court's determination that respondents are entitled to interest on the punitive damages award. This Court's Rule 14.1 provides that "[o]nly the questions set out in the petition [for certiorari], or fairly included therein, will be considered by the Court." A petitioner's failure to raise an issue in its petition for certiorari therefore "has significant consequences." *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992). Absent the "most exceptional" circumstances, this Court will not disturb a holding made below that none of the questions presented challenge. *Id.* (quotations omitted); *see also Irvine v. California,* 347 U.S. 128, 129 (1954) (plurality opinion) (petitioners may not "smuggl[e] additional questions into a case after we grant certiorari"); EUGENE GRESSMAN, ET AL., SUPREME COURT PRACTICE 463-64 (9th ed. 2007).

Exxon never sought review of the district court's ruling, left undisturbed by the Ninth Circuit, that "[i]nterest on the reduced award of punitive damages shall accrue from September 24, 1996, in accordance with 28 U.S.C. § 1961." Pet. App. 180 n.117. And no exceptional circumstances are present here. Exxon had every opportunity to seek review of the district court's explicit holding. It simply did not. Exxon did not even raise the issue in its merits briefing. It is far too late to contest that unchallenged law of the case. *See The Republic of Colombia*, 195 U.S. 604, 605 (1904) (rejecting defendant's argument that this Court's decision reducing money award altered plaintiff's previously established right to interest on the undisturbed portion of the original judgment).[1]

Instead of advancing some justification for belatedly challenging the district court's award of interest, Exxon claims that "[a]s the case came to this Court, . . . there was no interest included in the judgment" because the Ninth Circuit's May 23, 2007 opinion holding that the punitive award should be reduced to $2.5 billion did not mention interest. Response at 4. Exxon is incorrect. As explained above in section 1, an appellate decision does not trigger Fed. R. App. P. 37(b) – and thus does not bring a plaintiff's prior entitlement to interest into question – when it upholds liability and remits a punitive award.

But even if the Ninth Circuit's opinion did trigger Rule 37(b), the Ninth Circuit's failure to address interest in its opinion did not affect respondents' right to interest. When Rule 37(b) applies, a court of appeals need not address interest until it issues its mandate. (In fact, a court of appeals can even recall its mandate to address the issue. *See Planned Parenthood v. American Coalition of Life Activists,* 518 F.3d 1013, 1021-22 (9th Cir. 2008), *pet'n for cert. filed*, 76 U.S.L.W. 3674 (U.S. June 9, 2008) (No. 07-1546); *Dunn v. Hovic,* 13 F.3d 58, 60 (3d Cir. 1993).) The Ninth Circuit

[1] Exxon did not raise this issue in the Ninth Circuit either. Although Exxon points this Court to its argument in the first Ninth Circuit appeal that it should measure the punitive award for constitutional excessiveness against the present value of the award (including interest) (Response at 4 n.1), Exxon never argued that § 1961(a) did not require that interest run from the date of the original judgment. In any event, Exxon made no argument at all concerning interest in this Court.

did not issue any mandate with respect to its May 23, 2007 decision. Rather, the Ninth Circuit stayed its mandate, at Exxon's request, pending proceedings in this Court. The mandate will issue only after the Ninth Circuit carries out this Court's direction to "remit the punitive damages award" to $507.5 million. *Exxon Shipping Co. v. Baker,* slip op. at 42. Therefore, if this Court elects not to state in its judgment that respondents remain entitled to interest on the remitted award back to the date of the original judgment, the Ninth Circuit may clarify that matter on remand.

b. Even if Exxon had not waived this issue, it would not matter. 28 U.S.C. § 1961(a) provides that interest "shall be allowed on any money judgment in a civil case recovered in a district court." The reason for § 1961(a) is obvious. Once a money judgment is entered, a plaintiff becomes a judgment creditor. If the defendant does not pay the judgment immediately, the plaintiff is entitled 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 Lloyd's of London*, 45 F.3d 288, 290 (9th Cir. 1995); *United States v. Michael Schiavone & Sons, Inc.,* 450 F.2d 875, 876-77 (1st Cir. 1971).

Exxon is wrong in suggesting that punitive damages warrant different treatment than other kinds of money judgments. Based on the plain language of § 1961(a) ("any money judgment"), courts have long agreed that plaintiffs are entitled to recover interest on punitive awards according to the same terms as other kinds of money judgments. *See 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) (per curiam). Interest on punitive awards, like other kinds of awards, is necessary to compensate plaintiffs for the time value of money. *See, e.g., Brown,* 965 F.2d at 51; *Dunn,* 13 F.3d at 60 (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 interest limits the dilution of the punitive sting that results from postponing the day of payment.

The rules do not change where, as here, an appellate court upholds punitive liability but remits the amount of a punitive award. Even assuming that Fed. R. App. P. 37(b) applies in that situation, every federal court of appeals to address the issue has held that plaintiffs are entitled to interest from the date of the original judgment on the portion of the award that is upheld. *See Planned Parenthood,* 518 F.3d at 1021; *Johansen v. Combustion Engineering, Inc.,* 170 F.3d 1320, 1339-40 (11th Cir. 1999); *Dunn*, 13 F.3d at 60-62; *see also Greenway v. Buffalo Hilton Hotel,* 143 F.3d 47, 49, 55 (2d Cir. 1998) (same when district court remitted punitive award); *Maxey v. Freightliner Corp.,* 727 F.2d 350, 351 (5th Cir. 1984) (per curiam) (plaintiff is entitled to interest from original judgment when appellate court reinstates punitive award but remits the amount). In those circumstances, "[t]he initial judgment is viewed as correct" and "ascertained" in a meaningful way under § 1961(a) "to the extent it is permitted to stand." *Johansen,* 170 F.3d at 1339-40. Therefore, "interest on a judgment partially affirmed should be computed from the date of its initial entry." *Id* at 1340; *see also Loughman,* 6 F.3d at 98, 99-100 ("[W]hen the essential legal and evidentiary basis for damages is established, but the amount is recalculated after appeal, post-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 . . . trial and was ascertained from the jury's verdict in that trial.").

This uniform line of authority comports not only with basic notions of fairness but also with the purposes of punitive damages. Punitive damages are designed 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, they are now also to be "pegg[ed] . . . to compensatory damages using a ratio." *Exxon Shipping Co. v. Baker,* slip op. at 33. To ensure that the effect of the punishment and the ratio to compensatory damages stay the same in real dollars, post-judgment interest must be awarded from the date of the initial judgment. Any other result would reduce the punishment, would reward defendants even for unsuccessful portions of appeals, and would introduce arbitrariness into the process by making the extent of the reward depend solely on how long their appeals take to run their course. By rule, money judgments for punitive damages that are affirmed in full accrue interest from the date of the original judgment. Rule 42.1; Fed. R. App. P. 37(a). The portion of a judgment upheld in part should be treated no differently.

Examining how Exxon's argument plays out in this case confirms the soundness of the uniform practice of allowing interest on remitted punitive awards. 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 § 1961(a) – the value in September 1996 of $507.5 million paid in 2008 (absent an award of interest) would be only $257.5 million, thus reducing the ratio of the punitive award to compensatory damages from the 1 to 1 ratio this Court found appropriate to 0.5 to 1. *See* Appendix A. By holding onto money that should have been paid to fishermen, Native Alaskans, and other class members in 1996, Exxon thus would reduce the practical size of the award to a fraction of what this Court held the jury was allowed to impose consistent with maritime law. The purpose of awarding interest is to prevent such an injustice and *de facto* avoidance of punishment.

c. Exxon suggests that this Court's holding in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), undercuts the standard practice of allowing interest on remitted punitive awards. Response at 6. It does not. After *Cooper*, the text of § 1961(a) continues to draw no distinction between different types of money damages in civil cases. Indeed, after the Ninth Circuit on remand reduced the punitive award in *Cooper* itself to $500,000, it ordered that the plaintiffs were entitled to interest from the date of the original judgment. *Leatherman Tool Group, Inc. v. Cooper Industries, Inc.*, 285 F.3d 1146, 1152 (9th Cir. 2002) & No. 98-35147, Dkt. Entry 101 ("the district court is instructed to allow interest from 11/18/97 [date of original judgment] on the award of punitive damages in the amount of $500,000").

In any event, *Cooper* held that the question whether a punitive award is excessive is a question of law. That holding has nothing to do with whether the courts should award post-judgment interest to keep the real value of a judgment constant during an appeal. Indeed, in *Bonjorno*, this Court indicated that the usual rules respecting interest apply to an award of treble damages in an antitrust case, even though such awards – just like the one here – depend on multiplying the underlying harm in order to serve public purposes unconnected to compensating for actual harm. *See* 494 U.S. at 835-40.

It is likewise "settled law" that when civil penalties payable to the United States are reduced as legally excessive, interest on the reduced amount runs from the date of the original judgment. *Michael Schiavone & Sons,* 450 F.2d at 876. And although the matter is governed by a different statute, criminal penalties also carry interest from the date of the original judgment, even if reduced on appeal. *See* 18 U.S.C. § 3612(f)(1) ("The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment."). Punitive awards should be handled the same way.

d. Exxon lastly argues that this Court has "broad discretion" concerning whether to award interest to respondents. Response at 3. Each of the three court of appeals cases Exxon cites for that proposition, however, involved a situation, like *Briggs,* in which the appellate court awarded plaintiffs money that the plaintiffs had not recovered in the district court.[2] The discretion there involved whether to award post-judgment interest even before the right to the judgment had been established for the first time on appeal, not to deny post-judgment interest to an award that had been established in the district court and upheld at least in part on appeal. No court confronting the situation here – in which an appellate court reduces a punitive award the district court had awarded to plaintiffs – has proceeded from the proposition that it had *any* discretion whether to allow interest on the remitted award. In those courts' view, "[t]he law on this issue is clear": 28 U.S.C. § 1961(a) *mandates* the allowance of interest on the valid portion of the award from the date of the original judgment. *Johansen,* 170 F.3d at 1339; *see also Planned Parenthood,* 518 F.3d at 1021 (plaintiffs are "entitled" under § 1961(a) to

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[2] Even under those circumstances, the typical practice is that interest runs on the award from the date of the original judgment. *See, e.g., Northrop Corp. v. Triad Int'l Mktg.,* 842 F.2d 1154, 1156 (9th Cir. 1988) (collecting cases).

interest on remitted punitive awards from date of original judgment because such awards are "meaningfully ascertained" at the time of the original judgment); *Dunn,* 13 F.3d at 62 (plaintiffs are "automatically" entitled to interest under § 1961(a) from date of original judgment). In other words, nothing in the general language of Rule 37(b) dilutes § 1961(a)'s unequivocal command that interest "*shall be allowed on any money judgment* in a civil case recovered in a district court." (Emphasis added.)

But even if this Court had equitable authority to deviate from the mandatory rule in § 1961(a), Exxon's two equitable arguments would still lack merit.

First, Exxon suggests that respondents did not win a sufficient victory in this Court to warrant recovering interest on the remitted punitive award. Response at 7-8. But as every federal court of appeals to address the issue under Rule 37(b) has explained, plaintiffs who defeat a defendant's appellate challenge to punitive liability and who recover a remitted punitive award are fully victorious with respect to *that portion* of the original judgment. *See supra* at 6-7 (citing cases).

Exxon's assertion that this result would "penalize" it for the time it took to achieve the reduction of the award (Response at 6) is absurd. No matter what happens with respect to the statutory interest on the $507.5 million award, Exxon already has earned a net $3.9 billion on that money from 1996 to now, simply by virtue of the differential between its internal rate of return on capital and the statutory interest rate. *See* Appendix C. Put another way, Exxon could have taken $52.4 million at the time of the judgment in 1996 (or roughly one-tenth of the compensatory damages inflicted by its conduct), invested it in its business, and would have had $507.5 million available from that investment today. *See* Appendix B. In terms of the function of punitive damages to punish and deter, therefore, the passage of time has already undercut most of the effect of the punitive award this Court has allowed. Respondents seek only their statutory right to capture a bit of the value that their award has generated while the courts considered Exxon's appeals.

Second, Exxon contends that respondents' post-remand arguments in the district court caused delay in adjudicating this appeal. This contention is frivolous. During the Ninth Circuit's two remands for further consideration in light of this Court's evolving constitutional punitive damages jurisprudence, respondents' arguments that the Constitution allowed punitive damages of "at least $4 billion" (Pltfs. Mem. in Opp. to Renewed Mot. of Exxon for Reduction of Punitive Damages, at 3, 77 (July 17, 2002)), caused no more delay in this case getting to this Court than Exxon's arguments during those same proceedings that the maximum permissible award was $20-25 million (Exxon Mem. in Support of Second Renewed Mot. for Reduction of Punitive Damages, at 1 (Sept. 30, 2003)). In retrospect, respondents' position may have been too high (though this Court denied certiorari on that issue), while Exxon's position was obviously too low. But respondents' arguments were entirely legitimate; the district court agreed with them, as did one of the three judges on the Ninth Circuit panel. *See* Pet. App. 55a-56a (Browning, J., dissenting). The arguments did not slow down this case and do not justify any deviation from the uniform practice of allowing interest on remitted punitive awards – especially given that Exxon already has benefitted enormously from the delay, whatever its causes.

## CONCLUSION

For the foregoing reasons, this Court should note in its judgment that Rule 42.1 does not apply or, in the alternative, that respondents are entitled to interest on the punitive award according to the terms established in the district court.

July 18, 2008

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on the 18th day of July, 2008, I caused to be served a true and correct copy of REPLY CONCERNING RESPONDENTS' SUBMISSION WITH RESPECT TO RULE 42.1 by the method indicated below and addressed as follows:

| | |
|---|---|
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I further certify that all parties required to be served have been served.

DATED this 18th day of July, 2008.

_________________________________
David W. Oesting

## APPENDIX A

**Present Value Calculation: Federal Judgment Rate**

**Objective**

**Calculate the real cost to Exxon of $507.5 million in punitive damages as of the original judgment date, assuming payment of judgment on July 18, 2008, *but no payment of post-judgment interest*.**

**Method**

**Use the federal statutory judgment rate of 5.9% as the discount rate to discount the punitive damages amount of $507.5 million back to the judgment date.**

**Present Value Calculation**

| Year | | Years Interest (1) | Judgment Rate | Beginning Balance | Interest | Ending Balance |
|---|---|---|---|---|---|---|
| 1 | 1996 | 0.27 | 5.9% | $257,541,767 | $4,102,640 | $261,644,408 |
| 2 | 1997 | 1.00 | 5.9% | $261,644,408 | $15,437,020 | $277,081,428 |
| 3 | 1998 | 1.00 | 5.9% | $277,081,428 | $16,347,804 | $293,429,232 |
| 4 | 1999 | 1.00 | 5.9% | $293,429,232 | $17,312,325 | $310,741,557 |
| 5 | 2000 | 1.00 | 5.9% | $310,741,557 | $18,333,752 | $329,075,308 |
| 6 | 2001 | 1.00 | 5.9% | $329,075,308 | $19,415,443 | $348,490,752 |
| 7 | 2002 | 1.00 | 5.9% | $348,490,752 | $20,560,954 | $369,051,706 |
| 8 | 2003 | 1.00 | 5.9% | $369,051,706 | $21,774,051 | $390,825,757 |
| 9 | 2004 | 1.00 | 5.9% | $390,825,757 | $23,058,720 | $413,884,476 |
| 10 | 2005 | 1.00 | 5.9% | $413,884,476 | $24,419,184 | $438,303,660 |
| 11 | 2006 | 1.00 | 5.9% | $438,303,660 | $25,859,916 | $464,163,576 |
| 12 | 2007 | 1.00 | 5.9% | $464,163,576 | $27,385,651 | $491,549,227 |
| 13 | 2008 | 0.55 | 5.9% | $491,549,227 | $15,950,772 | $507,500,000 |
| | **Total Years** | 11.82 | | | | |

**The discounted value of punitive damages as of the date of the original judgment is $257,541,767**

**This figure is 50.7% of the punitive damages amount.**

(1) The first and last years are partial years. For 1996, the start date is September 24, 1996, the date of the district court's judgment, for a partial year factor of .27. For 2008, the end date is July 18, 2008, the date of filing this paper, for a partial year factor of .55.

APPENDIX B

**Present Value Calculation: Exxon Rate of Return on Capital**

**Objective**

**Calculate the real cost to Exxon of $507.5 million in punitive damages as of the original judgment date, assuming payment of judgment on July 18, 2008, *but no payment of post-judgment interest*.**

**Method**

**Use the actual return on capital rates reported by Exxon on a year-by-year basis to discount the punitive damages amount of $507.5 million back to the judgment date.**

**Present Value Calculation**

| Year | | Years Interest (1) | Exxon Return on Capital (2) | Beginning Balance | Interest | Ending Balance |
|---|---|---|---|---|---|---|
| 1 | 1996 | 0.27 | 14.7% | $52,422,957 | $2,080,667 | $54,503,624 |
| 2 | 1997 | 1.00 | 15.5% | $54,503,624 | $8,448,062 | $62,951,686 |
| 3 | 1998 | 1.00 | 10.7% | $62,951,686 | $6,735,830 | $69,687,517 |
| 4 | 1999 | 1.00 | 10.3% | $69,687,517 | $7,177,814 | $76,865,331 |
| 5 | 2000 | 1.00 | 20.6% | $76,865,331 | $15,834,258 | $92,699,589 |
| 6 | 2001 | 1.00 | 17.8% | $92,699,589 | $16,500,527 | $109,200,116 |
| 7 | 2002 | 1.00 | 13.5% | $109,200,116 | $14,742,016 | $123,942,131 |
| 8 | 2003 | 1.00 | 20.9% | $123,942,131 | $25,903,905 | $149,846,037 |
| 9 | 2004 | 1.00 | 23.8% | $149,846,037 | $35,663,357 | $185,509,394 |
| 10 | 2005 | 1.00 | 31.3% | $185,509,394 | $58,064,440 | $243,573,834 |
| 11 | 2006 | 1.00 | 32.2% | $243,573,834 | $78,430,774 | $322,004,608 |
| 12 | 2007 | 1.00 | 31.8% | $322,004,608 | $102,397,465 | $424,402,074 |
| 13 | 2008 | 0.55 | 35.6% | $424,402,074 | $83,097,926 | $507,500,000 |
| | **Total Years** | 11.82 | | | | |

**The discounted value of the award at time the original judgment is $52,422,957**

**This figure is 10.3% of the punitive damages amount.**

(1) The first and last years are partial years. For 1996, the start date is September 24, 1996, the date of the district court's judgment, for a partial year factor of .27. For 2008, the end date is July 18, 2008, the date of filing this paper, for a partial year factor of .55.

(2) Interest compounded annually using Exxon's "Return on Average Capital Employed," derived from publicly available sources, including Exxon's 2007 Summary Annual Report (for 2003-2007) and 2003 Summary Annual Report (for 1999-2003).

## APPENDIX C

**Calculation: Earnings Difference Between Exxon's Rate of Return on Capital and Federal Rate**

**Objective**

**Determine the earnings benefit to Exxon from investing $507.5 million from 1996 to 2008 in lieu of paying punitive damages in 1996, assuming it pays interest at statutory rate. Benefit calculated as difference between Exxon's publicly-reported return on capital rates and the federal statutory judgment rate since the judgment date.**

**Method**

**Compare the difference between the earnings at the return on capital rates reported by Exxon on a year-by-year basis and the federal statutory judgment rate of 5.9% to determine the net additional earnings to Exxon from a delay in payment, without regard to fault or responsibility for delay.**

**Earnings Difference Calculation**

| | | | Exxon Earnings (1) | | At Federal Rate (2) | | Additional Net Earnings to Exxon |
|---|---|---|---|---|---|---|---|
| Year | | Years Interest | Return on Capital | Earnings | Judgment Rate | Interest Amount | |
| 1 | 1996 | 0.27 | 14.7% | $20,142,675 | 5.9% | $8,084,475 | $12,058,200 |
| 2 | 1997 | 1.00 | 15.5% | $81,784,615 | 5.9% | $30,419,484 | $51,365,131 |
| 3 | 1998 | 1.00 | 10.7% | $65,208,720 | 5.9% | $32,214,234 | $32,994,486 |
| 4 | 1999 | 1.00 | 10.3% | $69,487,509 | 5.9% | $34,114,873 | $35,372,636 |
| 5 | 2000 | 1.00 | 20.6% | $153,289,445 | 5.9% | $36,127,651 | $117,161,794 |
| 6 | 2001 | 1.00 | 17.8% | $159,739,507 | 5.9% | $38,259,182 | $121,480,325 |
| 7 | 2002 | 1.00 | 13.5% | $142,715,584 | 5.9% | $40,516,474 | $102,199,110 |
| 8 | 2003 | 1.00 | 20.9% | $250,772,423 | 5.9% | $42,906,946 | $207,865,477 |
| 9 | 2004 | 1.00 | 23.8% | $345,252,434 | 5.9% | $45,438,456 | $299,813,978 |
| 10 | 2005 | 1.00 | 31.3% | $562,114,481 | 5.9% | $48,119,325 | $513,995,157 |
| 11 | 2006 | 1.00 | 32.2% | $759,278,381 | 5.9% | $50,958,365 | $708,320,016 |
| 12 | 2007 | 1.00 | 31.8% | $991,296,876 | 5.9% | $53,964,908 | $937,331,968 |
| 13 | 2008 | 0.55 | 35.6% | $804,460,483 | 5.9% | $31,431,861 | $773,028,622 |
| | **Total Years** | 11.82 | | | **Additional Earnings (3)** | | **$3,912,986,898** |

**The additional net amount earned by Exxon from the delay in payment is $3,912,986,898**

(1) Interest compounded annually on award of $507.5 million using Exxon's "Return on Average Capital Employed," derived from publicly available sources, including Exxon's 2007 Summary Annual Report (for 2003-2007) and 2003 Summary Annual Report (for 1999-2003).
(2) Interest compounded annually on award of $507.5 million using federal statutory rate of 5.9%.
(3) Covers period from September 24, 1996, to July 18, 2008. *See* note 1 to Appendix A.