Keynote Speech

Natural Resources Damages in the Case of Oil Spills

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From 1989 to 1992, as counsel to the State of Alaska in the Exxon Valdez oil spill, I was concerned with the recovery of damages to natural resources. The techniques of measuring and using damages in connection with the restoration of natural resources have since been refined.

There are two primary regimes in the world for dealing with damages from oil spills. First, there is the International Convention on Civil Liability for Oil Pollution Damage and the associated funds administered by the International Maritime Organization (IMO). Second, there is the Oil Pollution Act of 1990 (OPA-90) in the United States.

Under the IMO regime, the measurement as well as the extent of recovery of natural resource damages are unsettled. Four cases are relevant: (1) Antonio Gramsci, (2) Patmos, (3) Haven, and (4) Braer.

In the U.S., natural resources damages are one of six categories of damages that can be recovered in an oil spill case. However, the precise measurement techniques still are evolving and most cases, like the Exxon Valdez, are settled before a court determination.

There are several methods theoretically available to calculate natural resource damages:

(1) Quantification on a per lost organism or per liter of pollution basis

(2) Quantification based upon diminished market value of damaged property

(3) Lost profits

(4) Restoration costs

(5) Lost environmental services

(a) pathway of exposure

(b) baseline level of services

(c) level of services considering pathway of exposure: the difference equals

(6) Travel cost valuation

(7) Hedonic valuation

(8) Contingent valuation to measure non-use values such as option and existence values