

NEW YORK

Exxon Misled Investors Over Climate Change, Court Told

Oil company attorney fires back, calling the New York case sad, bizarre and twisted



Theodore Wells, a lawyer representing Exxon, said the New York attorney general's climate-change case 'is like no other securities-fraud case in the history of the country.' PHOTO: MARY ALTAFER/ASSOCIATED PRESS

By Corinne Ramey

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To illustrate how Exxon Mobil Corp. allegedly deceived investors about its climate-change accounting, a lawyer from the New York attorney general's office showed a packed Manhattan courtroom Tuesday a multicolored world map the company presented to shareholders.

In red were countries including the U.S. and Canada where Exxon said it was planning for tougher climate-change regulation, showing the number the company used to calculate the higher cost.

"Investors were led to believe that Exxon applied the costs represented on the map," said Kevin Wallace, a lawyer from the New York attorney general's office.

In reality, Mr. Wallace said, Exxon didn't apply the costs.

The projected costs of climate-change regulation these colors represent are at the core of a case in which the state attorney general has accused the oil giant of defrauding its investors.

On Tuesday, New York state court Justice Barry Ostrager, who will be deciding the case, heard opening statements in what is expected to be a three-week trial.

Last October, after a three-year investigation, the New York attorney general sued Exxon for securities fraud. The office said the oil giant told investors it used one formula to project future costs, but undisclosed internal guidance instructed staffers to make calculations using lower figures.

In his opening remarks, Theodore Wells, a lawyer representing Exxon from firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, called the attorney general's arguments sad, bizarre and twisted. "This is like no other securities-fraud case in the history of the country," he said.

Prosecutors brought the case under the Martin Act, a broad antifraud statute that has more commonly been used to investigate Wall Street. The attorney general's office said the company's misrepresentations caused investors to overvalue its stock, with the estimated damage to shareholders between \$476 million and \$1.6 billion.

Exxon has denied wrongdoing and said reasonable investors wouldn't expect to know such proprietary details. It also contends the prosecution is politically motivated.

In his opening statement, Mr. Wallace said his office isn't telling Exxon how to plan for climate change. The case, he said, is purely about whether the company deceived investors and whether those alleged deceptions mattered to how they valued Exxon as a public company. He presented investor materials and internal documents that he said showed how Exxon told investors one thing about climate-change accounting, while privately using different numbers.

The practice was approved at the top, Mr. Wallace said. One email, from an Exxon planning manager, referenced former Exxon Chief Executive Rex Tillerson and the regulation formulas. "Rex has seemed happy with the difference previously," read the email from the manager, which was displayed in court. A spokeswoman for Mr. Tillerson declined to comment.

Mr. Wells fired back that the company had for years acknowledged that climate change was real and that governments should address the issue. Exxon has sophisticated ways of calculating projected impacts, he said. In some cases, he said, the attorney general had oversimplified and conflated the way the company used different formulas.

He also noted that the attorney general's case is based on cash-flow projections for future projects, not current ones. "You can't have a securities-fraud case that has absolutely nothing to do with the public books and records of the corporation," he said.

At the end of his remarks, Mr. Wells later brought up what he called the elephant in the room: politics. He said climate activists pushed state attorneys general, particularly former New York Attorney General Eric Schneiderman, a Democrat who launched and championed the Exxon investigation, to bring the case. A spokeswoman for Mr. Schneiderman declined to comment.

It was, he said, much like “the Russians trying to interfere with the election.” That pressure left the office with no choice but to bring a meritless complaint, he said.

During the proceedings, climate activists squeezed into the courtroom, some wearing “ExxonKnew” stickers and one with a fake plant, a prop from an earlier rally outside the courthouse, protruding from her handbag.

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