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N.Y. judge rejects suit against ExxonMobil, in case with Mass. implications

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In a closely watched lawsuit that could have implications for a similar case in Massachusetts, a New York judge on Tuesday rejected allegations by state attorneys that ExxonMobil Corp. misled its investors about the costs of climate change.

The lawsuit, considered a bellwether for a number of similar lawsuits filed around the country, had sought more than \$1.5 billion in restitution for the oil giant's shareholders. It alleged that ExxonMobil falsely told the public it was fully accounting for the costs of expected regulations to reduce carbon emissions, while underestimating those costs in its investment decisions and its assessment of the company's oil and gas assets.

In dismissing the case, Judge Barry Ostrager called New York's lawsuit "hyperbolic," adding that it failed to prove the company "misled any reasonable investor."

"Nothing in this opinion is intended to absolve ExxonMobil from responsibility for contributing to climate change through the emission of greenhouse gases," Ostrager wrote. "But ExxonMobil is in the business of producing energy, and this is a securities fraud case, not a climate change case."

Officials at ExxonMobil called the lawsuit a "baseless investigation."

"We provided our investors with accurate information on the risks of climate change," officials at the Texas-based company said in a statement. "Lawsuits that waste millions of dollars of taxpayer money do nothing to advance meaningful actions that reduce the risks of climate change."

In October, Massachusetts Attorney General Maura Healey filed a similar suit against ExxonMobil, saying it deceived Massachusetts consumers about the role the company's products play in climate change and misled investors about their potential financial risks.

Asked about the implications of the New York ruling on the Massachusetts lawsuit, ExxonMobil officials referred the Globe to the Independent Petroleum Association of America.

"The deck is stacked against Attorney General Healey," said Spencer Walrath, research director at Energy In Depth, a subsidiary of the trade association.

While New York received more than 4 million pages of internal company documents, deposed employees, and took four years to build its case, Massachusetts hasn't received any documents from ExxonMobil, interviewed any of its employees, and has seen its investigation tied up in court for three years, he said.

"Not only is Massachusetts' lawsuit similar to the New York case, in many places it is a near photocopy," Walrath said. "Considering how New York failed to produce any evidence that ExxonMobil misled investors, Attorney General Healey's regurgitation of those same unfounded allegations should fall equally flat."

But Healey's office said its lawsuit is materially different from New York's. Of its four claims, only one uses similar arguments, officials said.

Healey has also argued that ExxonMobil failed to disclose what it knew about the risks of climate change, while deceiving Massachusetts consumers by promoting so-called greenwashing campaigns about their products.

"We were the first state to challenge Exxon's ongoing campaign to mislead Massachusetts consumers and investors about the climate dangers caused by its fossil fuel products, and we will continue our work to hold the company accountable for its misrepresentations," Chloe Gotsis, a spokeswoman for Healey, said in a statement.

In 2016, Healey had issued a "civil investigative demand" seeking information under state consumer protection law, arguing ExxonMobil may have deceived Massachusetts consumers and investors. In response, the company sued Healey in federal and state courts.

Legal scholars agreed there are significant differences between the New York and Massachusetts cases.

"I'm sure that Exxon will stress its victory in New York to the Massachusetts court, but the cases have less in common than meets the eye," said Michael B. Gerrard, director of the Sabin Center for Climate Change Law at Columbia Law School. "The New York and Massachusetts suits were based on different statutes and had much different focuses."

Harold Koh, a professor of international law at Yale Law School, agreed that there are important differences between the cases. He noted that Ostrager confined his ruling to his interpretation of one securities fraud act.

"The decision does not reject Massachusetts's core claim that the fossil fuel companies covered up their knowledge about the role their products have played in warming the planet and lied to the public, as the tobacco companies did," he said.

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