Securities Regulation Daily Wrap Up, SHAREHOLDER ACTIVISM NEWS—N.D. Tex.: Exxon lawsuit in doubt after investors withdraw GHG proposal, (Feb 5, 2024)

By Anne Sherry, J.D.



The court says it "struggles to see what the ongoing case or controversy is" now that the challenged shareholder proposal has been withdrawn.

Two activist shareholders have withdrawn a proposal after ExxonMobil sought a district court's blessing to exclude it. The proposal would have had ExxonMobil come up with a more aggressive timetable for reducing greenhouse gas emissions. In an unusual move, ExxonMobil bypassed the SEC's no-action process and instead sued for a declaratory judgment from a Texas federal court. Now that the proposal has been withdrawn, the court appears reluctant to allow the action to proceed (*Exxon Mobil Corporation v. Arjuna Capital, LLC*, February 2, 2024, Pittman, M.).

After the proponents withdrew the shareholder proposal, ExxonMobil withdrew its motion for an expedited briefing schedule. However, the company did not withdraw its complaint.

The court then issued an order requiring ExxonMobil to file a status update by Monday, February 5, detailing what outstanding issues or claims are before the court. "It is the Court's understanding that this action was brought to litigate the very issue that Plaintiff now says is resolved," the order states. "[A]s it stands now, the Court struggles to see what the ongoing case or controversy is in this matter given that the only relief sought from the Court was a declaration that Exxon may exclude" the proposal.

As this story went to press on the afternoon of February 5, ExxonMobil had not yet filed the status report.

Arjuna Capital and Follow This submitted the proposal for consideration at ExxonMobil's upcoming annual meeting. ExxonMobil filed a lawsuit seeking a declaratory judgment, arguing that the proposal is excludable under Exchange Act Rule 14a-8(i)(7) (because it deals with a matter relating to the company's ordinary business operations) and under Rule 14a-8(i)(12) (because it addresses substantially the same subject matter as Follow This's proposals for the 2022 and 2023 meetings, the latter of which had less than 15 percent shareholder support).

The proponents would have had the upper hand if ExxonMobil had proceeded through the SEC's no-action process. Ahead of the 2021 proxy season, ConocoPhillips unsuccessfully sought to exclude a proposal submitted by Follow This. The SEC replied that it could not agree that the proposal was excludable under Rule 14a-8(i)(7) because it "only asks the Company to set emission reduction targets; it does not impose a specific method for doing so." ExxonMobil's lawsuit bypassing the SEC's process, however, raises the risk of creating precedent adverse to the proponents.

The case is No. 24-cv-00069.

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Companies: Exxon Mobil Corp.; Arjuna Capital, LLC

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