

ExxonMobil Strikes Back: Energy Companies Take a More Proactive Approach to Activist ESG Shareholders

Blog Post | Energy Legal Blog®

February 02, 2024 | 3 minute read

ExxonMobil has filed proceedings in the US District Court for the Northern District of Texas against two shareholders, alleging that proposals seeking an increased pace for reductions in emissions amount to “intrusion” into ExxonMobil’s ordinary business operations and should not be put to a shareholder vote.

What Is the Dispute About?

In its case against Arjuna Capital LLC and Follow This, a Dutch investor activist group, Exxon is seeking to exclude from upcoming proxy voting a proposal to accelerate reduced emissions targets tabled and supported by the two investors. The resolution requests medium-term emissions reduction targets, including emissions emanating from use of Exxon’s products (known as “Scope 3” emissions).

Similar proposals were put to a vote in 2022 and 2023 but were rejected by a majority of shareholders. ExxonMobil argues that this new proposal does not seek to “*improve ExxonMobil’s economic performance or create shareholder value* » but rather is an attempt to “*micromanage*” ExxonMobil’s ordinary business and does not meet the required regulatory thresholds for voting. It is further alleged that the proxy voting process has become a target for abuse by activist shareholders.

Why Is It Noteworthy?

A formal route already exists in the US for excluding shareholder proposals from voting. This is via the Securities and Exchange Commission which, under

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US securities law, permits companies to exclude certain proposals from shareholder votes. A number of contentious climate and environmental proposals have been included in shareholder ballots in recent years. Similar resolutions have also been tabled and voted upon in recent shareholder meetings at oil & gas supermajors outside of the US, including at Shell and BP.

This case marks a new approach in dealing with climate activists and sees ExxonMobil requesting declaratory relief directly from the US courts in support of its decision to exclude the proposal. It is believed to be the first time that ExxonMobil has taken this route.

Comment

Although a US case, it will be watched closely by other energy companies in a number of jurisdictions. If successful, it may provide further guidance on the SEC's interpretation of the relevant rules for those in the US and, more generally, could represent a new willingness by corporates to take proactive steps against climate activists rather than simply adopt defensive strategies.

The case follows a number of setbacks for climate campaigners in England and Wales. In July 2023, the English Court dismissed ClientEarth's derivative claim against Shell Plc^[1], a case in which Shell was also awarded its costs. ClientEarth was also unsuccessful in a recent judicial review claim against the Financial Conduct Authority, intended to seek a declaration that a decision to approve Ithaca Energy Plc's prospectus was unlawful on a number of climate-related grounds (Ithaca Energy Plc joined the proceedings as an interested party).^[2] In November 2023, Shell also began legal action against Greenpeace in the English Court after members of the environmental group boarded a Shell FPSO vessel near the Canary Islands.

These cases suggest an increased willingness on the part of energy companies to use litigation as a means of protecting their position (see also the Bracewell update on the challenge in 2022 by Friends of the Earth against UK Export Finance, in which a TOTAL subsidiary acted as an interested party: [Challenging Policy on Climate Change Grounds](#)).

A further judicial review challenge launched by Greenpeace regarding the UK Government's decision to proceed with the 33rd offshore oil and gas licensing round was rejected by the English Court in October 2023.^[3] That case concerned the subject of Scope 3 emissions, as does the eagerly awaited UK Supreme Court judgment in *R (on the application of Finch on behalf of the Weald Action Group) v. Surrey County Council*, which is expected in early 2024.

Update

Arjuna Capital LLC and Follow This, the entities which pushed the resolution, announced on Friday 2 February 2024 that they would withdraw the proposal following ExxonMobil's commencement of proceedings. The decision to withdraw in these circumstances may have important consequences for climate activists looking to take similar steps in future, as well as providing an interesting example for other energy companies in similar positions. It is understood that ExxonMobil intends to continue with the case, although it has dropped its request for proceedings to be dealt with on an expedited basis.

ExxonMobil Corp. v. Arjuna Capital LLC et al., case number 4:24-cv-00069, in the US District Court for the Northern District of Texas.

[1] *ClientEarth v Shell Plc & Ors* [2023] EWHC 1897 (Ch)

[2] *ClientEarth v Financial Conduct Authority and Ithaca Energy Plc (as an interested party)* [2023] EWHC 3301 (Admin)

[3] *R (on the application of Greenpeace Limited) v. Secretary of State for Energy Security and Net Zero & Anr* [2023] EWHC 2608 (Admin)