Haynes and Boone in Law360: ExxonMobil Sinks ERISA Climate Change Class Action

By Mark Trachtenberg, Nina Cortell | February 7, 2019

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Haynes Boone was mentioned in a *Law360* article about ExxonMobil Corp. executives defeating a proposed Employee Retirement Income Security Act class action.

A Texas federal judge ruled Monday that the workers' claims failed the U.S. Supreme Court's test for stock-drop suits. Haynes Boone Partners Mark Trachtenberg, Nina Cortell and Daniel Gold represented Exxon and a group of its current and former executives in the case.

Here is an excerpt:

U.S. District Judge Keith Ellison's memorandum and order tanked allegations that Exxon's corporate officers breached their fiduciary duty under ERISA [Employee Retirement Income Security Act of 1974] by keeping workers' retirement savings invested in company stock in 2016 despite knowing that a forthcoming disclosure about climate change's impact on carbon prices would send share prices plummeting.

To move forward with this type of fiduciary-breach claim, workers must suggest an action the company could have taken to protect their savings, and a judge must find that a prudent fiduciary would view that action as guaranteed to help the retirement plan rather than harm it.

The workers suggested that Exxon executives should have stopped company representatives from making remarks about "the company's uniquely strong financial position" in 2015 and 2016, according to the memorandum and order.

These remarks allegedly contributed to the overvaluation of the company's stock price, which was gearing up for a fall due to the forthcoming disclosure and falling oil prices, the workers argued. If the representatives had stayed silent, the company's stocks may have faced a less steep fall, the workers claimed.

Judge Ellison disagreed. He said that if the representatives had stayed silent, the stocks might have fallen even sooner.

Exxon and a group of its current and former executives are represented by Mark Trachtenberg and Nina Cortell of Haynes Boone LLP and Daniel J. Kramer, Theodore V. Wells Jr., Daniel J. Toal, Gregory F. Laufer and Jonathan H. Hurwitz of Paul Weiss Rifkind Wharton & Garrison LLP.

To read the full *Law360* article, click here. (Subscription required)

Law360 selected Cortell, Trachtenberg and Gold as "Legal Lions" for their involvement in the case. To read the article, click here. (Subscription required)