Last week, closing arguments were presented in a potentially important climate change lawsuit, the *People of the State of New York v. Exxon Mobil Corp*. Such climate legal action seems increasingly common, or at least visible. In the US, 21 youths have brought a lawsuit against the federal government and fossil fuel companies for failing to protect their rights to life and liberty, as well as those of future generations. In the Netherlands, an environmental organization won its initial case and appeal, arguing that the government had not done its share to keep the country habitable for its citizens and residents. And a couple months ago, sixteen youths filed a complaint with the United Nations Committee on the Rights of the Child, asserting that five countries — Argentina, Brazil, France, Germany and Turkey — are likewise not protecting their human rights through their failure to curtain emissions.

Despite being a scholar of environmental law, I do not invest much in such climate change litigation. I do support reducing greenhouse gas emissions and recognize the cases' publicity value. But most of them seem unlikely to succeed and, if they do, would accomplish little. However, *New York v. Exxon* might be contrary to those general observations. But first, let me explain my pessimism.

For a lawsuit to succeed, the defendant must have acted (or failed to act) contrary to a legal obligation. Some climate lawsuits point toward greenhouse gas emissions as the act, but everyone — human persons, corporations, governments — emits them. Others cite a country's failure to sufficiently control emissions as the relevant omission. Yet almost all governments, including the ones in the opening first paragraph, do regulate greenhouse gas emissions; the question is a matter of the standard of care. In fact, Germany, France, and the Netherlands have been relatively successful in cutting their emissions and are presently considering even more ambitious targets. And most cases are or resemble torts in that the plaintiffs or complainants assert that defendants' actions have harmed or will harm them. However, emissions are so pervasive that the harm would still occur even if the absence of the defendants' actions. Therefore, the defendants have not caused the harm. The Netherlands case, which has received much attention, revolves around whether its emissions target in 2020 should be 25% less than the 1990 baseline instead of the current 20%. That country contributes merely 0.4% of global emissions, so such a change — even if possible — would have a negligible effect on global emissions, atmospheric concentrations, and any resulting harm to the plaintiffs. It is for these reasons that climate change lawsuits have been largely unsuccessful, and will likely continue so.



The recent exception to my general pessimism concerns not governments but instead corporations and shareholders. Specifically, fossil fuel and related companies have long been accused of deliberately spreading misinformation about the real risks of climate change. Exxon — the world's largest oil company — may have known of climate change in the late 1970s yet did not publicly disclose its evidence and later funded climate change deniers. If so, then it misled not only the public but — more importantly — its shareholders and investors. After all, if anthropogenic climate change were real, then Exxon's prospects would be less bright and its assets and stock would be less valuable. Because this concealment might have violated a New York securities fraud law, that state's attorney general attorney general brought a suit, claiming that

> Exxon provided false and misleading assurances that it is effectively managing the economic risks posed to its business by the increasingly stringent policies and regulations that it expects governments to adopt to address climate change… Instead of managing those risks in the manner it represented to investors, Exxon employed internal practices that were inconsistent with its representations, were undisclosed to investors, and exposed the company to greater risk from climate change regulation than investors were led to believe.

Although I am not an investment law expert, this line of argumentation appears to have greater traction than those regarding past or future harm from climate change itself. *But for* Exxon's actions, shareholders — as represented by the state in New York's Martin Act — would not have invested in stocks and other instruments that may have been overvalued. And even though it does not concern greenhouse gas emissions per se, *New York v. Exxon* could have greater impacts than the cases that do. This is because greenhouse gas emissions are so pervasive throughout the world economy that their longer term trends are determined more by economic activity, innovations, and market signals than by modest regulations and rulings in

particular jurisdictions. The case's success would give fossil fuel firms the incentive to transform into broader energy concerns by, for example, investing more in other, zero-carbon sources. In turn, the prices that consumers see at the gasoline pump and in their energy bill would more closely reflect these various options' true costs. Securities fraud may have less emotional appeal than teenagers arguing that their dreams have been stolen, but it might get more done.

Update (December 12, 2019): New York Loses Climate Change Fraud Case Against Exxon Mobil