

## **Exxon Can't Use Texas Court To Investigate Calif. 'Conspiracy'**

By **Michelle Casady**

*Law360 (June 18, 2020, 8:44 PM EDT)* -- Exxon Mobil Corp. can't use Texas courts to dig into what the oil giant claims is a conspiracy among several California counties, cities and government officials pursuing claims that the company is responsible for climate change-related infrastructure damage, a Texas appellate court ruled Thursday.

A three-justice panel of the Second Court of Appeals in Fort Worth wrote that despite its "impulse to safeguard an industry that is vital to Texas' economic well-being," the California parties had too few contacts with Texas to give courts there jurisdiction to allow the pre-suit discovery Exxon is seeking.

Exxon had sought to gather testimony, in anticipation of filing a possible lawsuit, from seven California cities and counties and officials who signed bond offerings, and eight individuals who had a hand in suing Exxon in California.

The Second Court of Appeals in Fort Worth reversed a trial court's ruling and said Texas lacks jurisdiction over the defendant cities, denying Exxon's petition for pre-suit discovery under Texas Rule of Civil Procedure 202.

The panel said that for Texas to have specific jurisdiction over this suit, the California parties' conduct need not have occurred in Texas, but had to be "purposefully directed toward Texas as opposed to a Texas resident." Exxon argued that that burden had been met in the current case because the California parties had made "substantial efforts" to spread their views on climate change in Texas and attempted to suppress "Texas-based speech" by filing pretextual lawsuits against Exxon and other energy companies.

The Second Court of Appeals disagreed.

"Yet even though the California suits and some of the potential defendants' public comments target Exxon's climate-change speech, these out-of-state actions were directed at Exxon, not Texas," the panel wrote. "Without more, the mere fact that the potential defendants directed these statements at Texas-based Exxon and that Exxon might suffer injury here does not establish personal jurisdiction."

In January 2018, according to the opinion, Texas-based Exxon Mobil filed the Rule 202 petition in Tarrant County District Court seeking presuit discovery to determine whether it could bring a lawsuit for constitutional violations and conspiracy against the California parties suing it in California.

Exxon argued that while the cities have sued it over climate-change related damages — such as sea-level rise and flooding — the municipalities still are representing to investors in municipal bond offerings that they can't predict how sea levels will rise or what the other impacts of climate change could be.

In March 2018 a Tarrant County district court judge agreed that the pre-suit discovery could proceed. The California parties filed notice with the Second Court of Appeals that they would appeal that decision in April 2018.

Chief Justice Bonnie Sudderth wrote a concurring opinion urging the Texas Supreme Court to "reconsider the minimum-contacts standard that binds us."

"Doing one's job and abiding by the rules is not always a comfortable path," she wrote. "As intermediate appellate court justices, we are, on occasion, somberly reminded that our job is not to mete out justice, but to apply the law. For me, this is one such occasion."

The parties did not immediately return messages seeking comment Thursday afternoon.

Chief Justice Bonnie Sudderth and Justices Elizabeth Kerr and J. Wade Birdwell sat on the panel for the Second Court of Appeals.

Exxon is represented by Patrick J. Conlon and Daniel E. Bolia of Exxon Mobil Corp., Ralph H. Duggins and Philip A. Vickers of Cantey Hanger LLP, Nina Cortell and Karen S. Precella of Haynes & Boone LLP, and Theodore V. Wells Jr., Daniel J. Toal, Jaren Janghorbani and Justice Anderson of Paul Weiss Rifkind Wharton & Garrison LLP.

The municipalities and government officials are represented by Robert Manley, Richard Kamprath, Benjamin Murray and Alexandra Easley of McKool Smith PC, Pete Marketos and Tyler Bexley of Reese Marketos LLP, Steven K. Hayes of Law Offices of Steven K. Hayes and Marc R. Stanley, Martin Woodward and Scott Kitner of Stanley Law Group.

The case is City of San Francisco et al. v. Exxon Mobil Corp., case number 02-18-00106-cv, in the Second Court of Appeals of Texas.

--Editing by Peter Rozovsky.

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