

In The Matter Of:
People of the State of NY v.
Exxon Mobil Corporation

November 7, 2019

1 NEW YORK STATE SUPREME COURT
NEW YORK COUNTY : CIVIL TERM : PART 61

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3 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
4 JAMES, Attorney General of the State of New York,

4 Plaintiff,

5 -against-

6 EXXON MOBIL CORPORATION,

7 Defendant.

8 -----X

8 Index No. 452044/18

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10 New York Supreme Court
11 60 Centre Street
12 New York, New York 10007
13 November 7, 2019

13 B E F O R E: HON. BARRY R. OSTRAGER
14 Supreme Court Justice

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2 A P P E A R A N C E S: (Continued)

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THE COURT: Good morning. Well, we're going to begin the summations. Mr. Wells, you have an hour.

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MR. WELLS: Thank you, your Honor. May it please the Court. The evidence has proven that what I told you on my opening statement is true. That this case is meritless. That each and every allegation in the complaint is not true and not connected to the reality of the truth. And that ExxonMobil has done nothing wrong. Absolutely nothing wrong.

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Each and every ExxonMobil employee who testified in this case took the stand, took the oath and said very clearly they deny each and every allegation of the complaint and that they had conducted themselves in an honest and good faith fashion. They told you bluntly they did nothing wrong.

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Now, I told you in my opening that this case was like no securities case ever brought in the history of this country. Think about it. We have been arguing for two weeks about GHG cost assumptions in cash flow models used to evaluate unfunded projects. Projects that were just a concept in somebody's mind.

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The evidence is undisputed that those GHG cost assumptions in the cash flow models had absolutely no effect on the companies financial books and records. No impact.

1 Undisputed. The evidence is also unchallenged that the GHG
2 cost assumptions in the cash flow models had no material
3 impact on the decisionmaking process.

4 We also have been arguing for two weeks about a
5 particular sentence on page 18 of Managing the Risk that
6 begins with the phrase perhaps most importantly, and there
7 is no dispute that the sentence states clearly that GHG
8 costs are only applied "where appropriate". That cannot be
9 read out of the sentence. Mr. Colton took the stand and
10 said that he inserted the where appropriately language
11 because he did not want to make any representation to the
12 readers of the document that GHG costs would be applied in
13 any particular situation. He also said he used the words
14 best assurance or best assessment in the summary sentence
15 which was connected to the "where appropriate" sentence. He
16 didn't use where appropriately twice because he said he was
17 taught by his English teacher try not to use the same phrase
18 twice. So he used best assessment. But that is -- that is
19 the testimony. And to the extent we engage any type of
20 textual analysis of the relevant sentences, the "where
21 appropriate" language and the best assurance language are
22 qualifiers that I submit both as a matter of fact and as a
23 matter of law can never constitute a misleading material
24 statement because no representation or promise has been
25 made.

1 We also learned that there was no impact on the
2 price of the company stock. No impact. And what that shows
3 is that nothing happened and that nobody cared. And the
4 reason nobody cared is because nothing happened.

5 We were entertained by the New York AG's two expert
6 witnesses. I say entertained, because Dr. Bartov was
7 entertaining. Somewhat like a skit on Saturday Night Live
8 or something the way he conducted himself. But the two
9 expert witnesses produced by the State. And they had to
10 produce expert witnesses because they had no fact witnesses
11 to support their theory. No fact witnesses. So they had to
12 turn to expert testimony. But the two experts were not
13 credible and they added no value to support the government's
14 theory of the case.

15 There is no dispute that we are arguing in this
16 case about GHG cost assumptions in the year 2040. A
17 document written in 2014. So we're arguing about something
18 that was going to take place supposedly 26 years later.
19 There is no dispute that everybody agrees nobody knows what
20 the right number is. It's a totally speculative number.
21 Nobody can do any type of economic analysis or valuation
22 based on that number. That's what the case that they
23 brought is about. I mean, the case is almost -- it's a
24 joke. But it's a cruel joke, your Honor, because the
25 reputations of a lot of good people have been hurt and

1 disparaged by the bringing of the complaint.

2 The ExxonMobil witnesses are primarily engineers
3 and scientists. That's what the company is made of. And
4 those persons, they come to work every day for one purpose.
5 To try to bring energy to the world and to this country and
6 try to make sure that all of us when we get up in the
7 morning we have light, in the winter we have heat. And just
8 because there is a serious problem relating to climate
9 change, and we acknowledge that that problem is real and
10 must be addressed, it does not give a regulator the right to
11 bring a meritless case that hurts people's reputations.

12 Let me comment just briefly, and I will return to
13 it in more detail later, on the government's core theory.
14 The government's core theory is that ExxonMobil investors
15 released some representative sample. Read the Managing the
16 Risk report, and that they got to page 18 of the report and
17 they read that GHG costs were going to be used on the
18 expense side to evaluate new projects, and that those
19 readers, those investors were misled into believing that the
20 proxy cost of \$80 per ton in 2040 was going to be used as
21 the GHG costs in the models for 2040. Basically that the
22 two concepts were one in the same. That's their core
23 theory.

24 Now, the way the system works historically is the
25 regulator makes an allegation. They have a theory of the

1 case. And then they produce evidence to support the theory.
2 That's how it's suppose to work. It's worked that way in
3 our country for over 200 years. You have a theory, but you
4 must produce evidence to support the theory. The regulators
5 cannot be witnesses. Their assertions are not to be
6 presumed. They have to produce hard evidence to support the
7 assertions. The problem is they have produced no witness in
8 two weeks of trial who has taken that stand and said either
9 that he or she is an investor in Exxon stock or he or she is
10 a representative of those investors, like a portfolio
11 manager from a Morgan Stanley or J.P. Morgan who says I buy
12 ExxonMobil stock on behalf of my clients every day. And I
13 read that manager risk report. And you know what, I got to
14 page 18. When I got to page 18, I thought GHG and proxy
15 were one in the same. They produced no such witness.

16 As we sit here now at the end of the case nobody in
17 this courtroom, in all due respect including your Honor, has
18 a clue if any person who is an investor in ExxonMobil stock
19 actually read the report and got to page 18 and thought that
20 there was a misleading statement. I'm not saying they have
21 got to bring hundreds of investors into the courtroom, but
22 they have got to bring somebody. I don't know what the
23 quantum is, but I know it's not zero. They got to put
24 somebody on that witness stand who says what the regulators
25 say happened happened. That somebody read it. They were

1 misled by what was on page 18. They thought the two
2 concepts were identical and it had some significance to them
3 in terms of how they made investment decisions. In terms of
4 the mix of information before them. That witness did not
5 testify in this case.

6 Now, the New York AG understood, let me be clear,
7 they understood they had to put some quantum evidence before
8 your Honor to meet that threshold. And they called their
9 first witness, Natasha Lamb. She was suppose to be the most
10 important witness in the case. She was going to lay the
11 foundation to say I am an investor. I read the report. I
12 was misled. I -- I believe the two concepts were identical.
13 Then your Honor could infer that perhaps others in the
14 community also were in the same position.

15 Now, Ms. Lamb on direct, she did her intended job.
16 She said she read the report. She said she thought the two
17 concepts were identical. But even she said it meant nothing
18 to her. She didn't care. She said she was concerned about
19 big picture issues. Nonetheless, she did provide at least
20 testimony that she read the report and that she thought the
21 two concepts were identical. But then on cross examination
22 she blew up. She blew up and my young partner,
23 Mr. Anderson, destroyed her because he brought out the
24 truth. And the truth was Ms. Lamb is not an investor.
25 She's not an investor. She said she is not an investor in

1 ExxonMobil stock. She said with respect to her company, her
2 company has never recommended that any of its clients buy
3 ExxonMobil stock.

4 She then went on to say candidly when forced that
5 she has a huge bias against ExxonMobil. I interpreted it as
6 a hatred of ExxonMobil. She had written an article talking
7 about the day of reckoning that ExxonMobil is about to
8 confront. And she said this trial, our trial in the article
9 is part of the day of reckoning.

10 Now that is a witness. Not only that it's not
11 credible, but she cannot provide that building block
12 testimony where she is the investor or the representative of
13 investors to the effect that she read the report on page 18
14 and she was misled because she thought the concepts were the
15 same. She cannot provide that building block, that
16 essential building block.

17 Who was the second witness? Mr. Garland was the
18 second witness. Mr. Garland was from the New York
19 Comptroller's Office. He said he had nothing to do with
20 investment decisions. But more importantly, he said he
21 never read Managing the Risk. Never read the report. So I
22 submit that somebody who has never read the report cannot be
23 a witness to give the Court evidence to support the
24 assertion that people reading the report came away believing
25 that they were misled, and that the concepts were one in the

1 same in terms of proxy costs and GHG.

2 Now, at that point I'll be candid. I said well,
3 maybe some of the other third-party witnesses are going to
4 provide that link, that necessary foundation testimony. But
5 what the New York AG did, after Ms. Lamb was really
6 destroyed on the stand, they didn't call any more of their
7 third-party witnesses. They are suppose to call Mr. Fohr.
8 They were suppose to call Sister Pat. All of these people
9 disappeared. They were on the list, but they just
10 disappeared, and we never heard from any of them.

11 So, I'm going to return as I talk to you today
12 constantly to this theme that the theory of the case has not
13 been supported by the evidence. And that the comments of
14 the New York AG attorneys cannot be substituted for the lack
15 of proof that was their obligation to put into the record.

16 Now let me tell you how I am going to proceed this
17 morning. First I am going to talk about what I call the key
18 background facts of the case. Most of the key background
19 facts are not in dispute. And I'm going to move through
20 that section very quickly, given that I only have 60 minutes
21 today.

22 After I go through the key background facts, I am
23 going to talk for a few minutes about the appropriate legal
24 standard. The key legal principles that should guide, I
25 submit your Honor's analysis, of whether or not the

1 government has made its case. Then I'm going to do a fairly
2 intensive, deep dive into the evidence that shows that the
3 government has not sustained its burden in proving that a
4 material misstatement was made. Finally, I'm going to end
5 talking about some of the miscellaneous arguments that are
6 in the case.

7 Now, let me start with the key background facts.
8 As I said, I'm going to move through this quickly in the
9 interest of time, because most of these facts are not in
10 dispute. ExxonMobil took climate risk seriously. Former
11 CEO Tillerson developed a robust program for addressing
12 climate risk in good faith and for good business reasons.
13 No dispute. ExxonMobil developed two internal metrics for
14 measuring the impact of climate risk: proxy costs and GHG
15 costs. No dispute. ExxonMobil used these two metrics for
16 years without publicizing them and had no reason to deceive
17 investors about them. ExxonMobil has no incentive to cheat
18 itself by underestimating the potential impact of climate
19 risk. But I emphasize that the GHG metric was put in place
20 in 2007, seven years before any disclosure was made. It was
21 not put in place for the public. It was not put in place to
22 satisfy any -- anybody except the corporations good business
23 interests.

24 Okay. So they had no incentive to put in place a
25 secrete system that wasn't based on sound business rationale

1 and honest rationale. And it was a rationale to take into
2 consideration the real fact that increasing climate change
3 regulations might be passed and the company should start to
4 measure them. He said, "We need to start putting in place a
5 system, a process by which we would actually deliberately
6 think about this every year and begin to help our
7 organization and cause our organization to always think
8 about it at their level." Those are the words he gave on
9 the stand and they are the words of a responsible executive.

10 We used the demonstratives with a number of
11 witnesses. And the Court knows that we had proxy costs to
12 measure the demand. How GHG regulations might depress the
13 demand for fossil fuels. And we had the GHG costs on the
14 expense side to try to measure the cost of particular
15 projects and particular locations. And we used as the
16 example the CO2 emissions coming from three smokestacks in a
17 hypothetical refinery in Brooklyn.

18 Most importantly, in their opening statement
19 Mr. Wallace stated in fact internally Exxon has two separate
20 cost assumptions. There is no dispute he said it in his
21 opening and he said it the next day when you asked him if he
22 concedes that we had the two metrics okay. So, there is no
23 dispute that a robust system was put in place to manage the
24 risk.

25 The proxy costs impacts ExxonMobil's price

1 assumption. Multiple witnesses took your Honor through the
2 fact that the proxy costs impacted the demand projections.
3 That they go into the Energy Outlook. That the Energy
4 Outlook talks about measures both demand and supply. Based
5 on that Exxon develops its price assumptions, its price
6 bases, and all of that is used for planning and budgeting.
7 And that the proxy costs are embedded in the price
8 assumptions in every cash flow model that evaluates an
9 unfunded project has at the beginning in the revenue line
10 the price which has embedded in it the proxy costs.

11 Now, I have reason to believe that perhaps the New
12 York Attorney again does not accept that proposition. It's
13 interesting because when Mr. Tillerson and Mr. Rosenthal,
14 the comptroller, were on the stand, they did not challenge
15 that the proxy costs were embedded in price assumptions.
16 Yet after both of them, the CEO and the comptroller were off
17 the stand, they then for the first time with Mr. Colton took
18 the stand. Tried to suggest well, maybe it's hard to figure
19 to what extent the proxy costs were really in the price
20 assumptions. And they followed that line of examination
21 with Mr. Eizember.

22 I will only say this. I think the evidence is
23 overwhelming that the proxy costs is embedded in the price
24 assumptions. And I think it's telling that when the CEO and
25 the comptroller were on the stand, they did not question

1 him.

2 Mr. Rosenthal stated that the proxy costs
3 influences the price basis. He said, "So the proxy costs is
4 what feeds into the demand model, which then when you add
5 supply, comes out with what that crude oil price is going to
6 be in a particular year, that becomes our price bases. So
7 that price bases directly reflects the proxy cost of carbon
8 as it is pushing down demand."

9 You heard from Todd Onderdonk. He showed you the
10 actual computer models. He showed you model where you could
11 see the \$80 in 2040 actually being inserted into the model
12 (pointing). Okay. So there is no question that what we
13 said to the public we were doing we actually did. This is
14 not a case where we said one thing to the public externally
15 and just ignored it internally. We did what we said. And
16 we showed you the model so you could see it. And you even
17 asked Mr. Onderdonk a question, this is your question, "Is
18 this model representative of models that were used by the
19 Energy Outlook group at Exxon during the relevant period of
20 time represented by this demonstrative? Yes. Every year."

21 We used a demonstrative to demonstrate for your
22 Honor that all of the cash flow models in valuating unfunded
23 projects used both the proxy costs and the GHG cost. The
24 proxy costs were embedded in the price bases, which is the
25 most important element in evaluating a new project, because

1 its price basis times quantity. And it was also used, GHG
2 cost, was in the line item to evaluate the expenses for new
3 projects. But there has been this allegation at times that
4 we had two sets of books. ExxonMobil did not have two sets
5 of books. ExxonMobil had two distinct metrics that were
6 used for a different purpose, but in evaluating new projects
7 it used both metrics. And that is not disputed. That the
8 price basis proxy costs in the top line, GHG costs in the
9 expense line.

10 What did Mr. Tillerson say in trial. "The proxy
11 cost is used in the top line. The revenue line and the GHG
12 cost is used as a line item in the expense line.

13 "ANSWER: The GHG cost appears as a line item in
14 the expense line "where appropriate"."

15 "Where appropriate".

16 "But both metrics are used for purposes of
17 evaluating new projects, right?

18 "ANSWER: Yes."

19 Again, the internal cash flow spreadsheets do not
20 impact the financial books and records nor do the cost
21 assumptions impact the decisionmaking process.

22 Now, this is a very important slide, because I want
23 to make sure your Honor appreciates why ExxonMobil decided
24 to disclose that it used GHG costs in the expense line after
25 not having disclosed that to the public for seven years.

1 They started doing it in 2007, because it made good business
2 sense. They disclosed it for the first time in Managing the
3 Risk in March of 2014. March.

4 There was an e-mail, okay, correspondence between
5 Mr. Rosenthal and Natasha Lamb. She was one of the proxy
6 proponents. She asked Mr. Rosenthal a question. Do you do
7 anything else beyond the proxy costs? So this is -- this is
8 the e-mails, Exhibit JX-982. And Mr. Rosenthal is actually
9 responding to Ms. Lamb's e-mail. She has asked the question
10 as opposed to a price line carbon. That's the question.
11 And he responds, "We would propose expanding on our Ceres
12 response to further explain why our proxy cost of carbon is
13 not the only factor we consider in assessing investment
14 opportunities." So, Mr. Rosenthal is telling Ms. Lamb that
15 is not the only factor, and that's why Mr. Rosenthal puts it
16 in the report because Ms. Lamb asked about it.

17 It's ironic Ms. Lamb took the stand and said I was
18 confused. I thought they were both the same. That was
19 false testimony. She was the one who asked, do you do
20 anything beyond proxy costs, and he said we do, and we have
21 another factor, and that's why he gave it to her. Okay.
22 What did Mr. Rosenthal say.

23 "QUESTION: What do you mean by the yellow
24 sentence?

25 "What I meant by that was we would expand the

1 discussion that in addition to the proxy cost of carbon, we
2 would talk about other factors that we consider in assessing
3 investment opportunities. And what I was saying there was
4 we were going to include a discussion on the expense side of
5 the cash flows.

6 "QUESTION: And then after you told her that you
7 would propose expanding and explaining that the proxy cost
8 of carbon was not the only factor, you produced Managing the
9 Risks, is that right?

10 "ANSWER: Yes, we did.

11 "QUESTION: And in that document for the first time
12 in March of 2014, ExxonMobil discussed they used the GHG
13 costs on the expense side, is that right?

14 "ANSWER: Yes. I mean, that's how we got here."

15 We did not get to the point where Managing the
16 Risks had for the first time a disclosure that they used GHG
17 cost assumptions on the expense side. We didn't get there
18 because somebody was in a scheme to defraud. We got there
19 because they had good faith discussions with Ms. Lamb. She
20 asked, do you use something different. He said yes, we have
21 another metric. And he put it in there. That's how it came
22 about.

23 When you are analyzing the document and how we got
24 here, I think it's important that your Honor realize we got
25 here because Ms. Lamb asked do you have something else, and

1 the company in good faith said yes. So we told her about
2 it.

3 Now, the shareholder proposal negotiations were
4 done in good faith. "David Rosenthal was forthright during
5 his negotiations with you? Yes, I believe so. As far as
6 you know, he acted in good faith? I believe so. Did he
7 live up to his end of the deal that he struck with you to
8 withdraw the proposal? He did." That's important, because
9 I want your Honor to understand as you're analyzing the
10 facts, we dealt with the proxy proponents in good faith and
11 we delivered on what we said we would do. This is not some
12 situation where we snooked somebody. Even Ms. Lamb, who as
13 I said has animosity against ExxonMobil admitted
14 Mr. Rosenthal dealt in good faith.

15 (Continue on next page.)
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1 MR. WELLS: Final point in this section, what is
2 the case about? The case is about what happened in 2030 and
3 2040. Those are the only two data points in the case. The
4 reason being that the only information ExxonMobil ever
5 disclosed, ever disclosed about the proxy cost numbers was
6 that with respect to OECD countries in 2030 it would use
7 \$40, in 2040 \$80, and they used lower numbers in the
8 non-OECD countries.

9 It is interesting, on cross-examination of
10 Mr. Colton the other day, Mr. Wallace said during the cross
11 in confronting Mr. Colton, the case of the Attorney General
12 is is that the representations to the investors were in
13 alignment in 2030 and 2040. That's -- that's on the record.
14 Those are the only dates that are at issue. So our case
15 doesn't concern what happens in the near term. So what that
16 means and it's based on the evidence, nobody has any data
17 from 2015 all the way to 2029 and between 2031 and 2039.
18 Just two data points in the case. That's what the whole
19 case is about, that's why the whole case is so ridiculous.
20 Nobody can do anything in terms of valuation or economic
21 analysis with just two data points.

22 Now, what are the key legal principles? I'm going
23 to have to move, your Honor, because my time is getting
24 short.

25 The key position, the key legal principal is set

1 forth in the New York Court of Appeals decision in Rachmani.
2 Okay. If there's a substantial likelihood that disclosure
3 admitted fact would have been viewed by the reasonable
4 investor as having significantly altered in the total amount
5 of information made available, they cite that as key
6 principal in Page 33 of their pretrial memorandum.
7 ExxonMobil agrees. We cite it in your pretrial memorandum
8 on Page 28. That's the standard. Rachmani.

9 Other key legal principles, Rachmani says, you can
10 look to Federal law to determine materiality. There are not
11 a lot of cases under the Martin Act, so you're permitted,
12 actually instructed by Rachmani, you can look to Federal
13 law.

14 2. Materiality is a mixed question of law and
15 fact. Okay. You have to make, I submit, findings,
16 extensive findings because this is not like a contract
17 interpretation where you just go into chambers and you look
18 at it the four corners of the document. That's not how I
19 submit it's supposed to work. You're supposed to look at
20 the totality of all of the evidence and apply it against the
21 Rachmani standard, and so it's a mixed question of law and
22 facts and you are expected to make extensive factual
23 findings.

24 Finally, a material misstatement must assume actual
25 significance in the deliberations of the reasonable

1 shareholder. Focus is on the mind of a reasonable
2 shareholder and does what's being contested, does it have
3 actual significance?

4 Now, why do we say the theory of fraud is not
5 materially misleading? The New York AG would have you
6 believe that a reasonable investor would assume GHG costs
7 are the same as proxy costs, would then ignore the "where
8 appropriate" language, would believe that all internal
9 projections for capital investments would formulaically
10 include GHG costs of 80 a ton, that they would consider
11 ExxonMobil's use of GHG cost assumptions of 80 a ton in 2040
12 to significantly alter the total mix of information, and
13 that they would make different investment decisions if they
14 new GHG costs were set on a number lower than 80 a ton in
15 2040.

16 I submit no witness and there's no document that
17 supports that any investor would make all those decisions,
18 but let's assume hypothetically that some party -- somebody
19 had. I still submit that that would not constitute a
20 material misstatement because it wouldn't be reasonable. It
21 has to be reasonable assumptions.

22 Now, I've got eight items listed on this board and
23 I'm going to try, in the time I have, to walk you through
24 each of these factors. I believe each factor shows that the
25 Government has failed to show that there was a material

1 misstatement. The first is "where appropriate." Because
2 that means there was no representation of when, how or
3 whether GHG costs would be applied.

4 Now, what's the evidence about that? First, it's
5 in the sentence. It's not just "where appropriate" it's
6 also in the other sentence, what was it, "best assessment."
7 But it's a qualified sentence. That's the core point and no
8 reasonable investor could not read a qualified sentence as
9 being materially misleading.

10 Now, the statement "where appropriate" it lacks
11 sufficient specificity to guarantee a particular outcome.
12 Under the caselaw, we'll -- we will put this in our brief,
13 an alleged misstatement is material only if it is
14 sufficiently specific and concrete and if the tentative and
15 the generic statements that emphasize the complex evolving
16 regulatory environment faced by a corporation cannot be
17 material, but that's just a fancy way of saying, if you
18 don't make a representation that a reader can rely on and
19 put significance on that as a matter of law and as a matter
20 of fact it cannot be a material misleading statement.

21 Now, you saw Mr. Colton's email where he added the
22 words "where appropriate" and he also added the phrase to
23 the summary sentence our "best assessment."

24 Mr. Colton told you on the stand, why did you
25 insert the words "where appropriate" he asked the question.

1 He said, I thought it was particularly important to put in
2 these words "where appropriate" because a lot of judgment
3 was involved. I didn't want to make any representation as
4 to exactly how we would do this. I don't want to say how we
5 were going to do it or when we were going to do it or even
6 where we were going to do it. I think he meant whether.

7 Your Honor, if you took Managing the Risks and you
8 substituted the word GHG cost and put in proxy cost the
9 sentence would still be qualified by the phrase "where
10 appropriate," and so whatever anybody may have thought it
11 still was a qualified sentence that the corporation would
12 only use those costs where it deemed appropriate and that
13 cannot serve as a basis for misleading material statement.
14 No investor testified to being misled about how GHG costs
15 were applied.

16 I went through in the beginning in my introductory
17 comments but Lamb and Garland. They were only third-party
18 witnesses. Lamb is not an investor. Garland never read
19 Managing the Risks.

20 Now, this line is entitled New York AG's incredibly
21 shrinking case. If you read the complaint there are 14
22 investment entities identified in the complaint and during
23 the trial we heard from about another -- about a number of
24 other entities, but none of those entities, except for
25 three, gave any testimony. We didn't hear from HSBC. We

1 didn't hear from JP Morgan, we didn't here from Morgan
2 Stanley, we didn't hear from Citigroup, we didn't hear
3 from State Street, Goldman Sachs. That's what I mean when I
4 say it's like no other securities case, no securities case
5 ever brought in the history of the country. Usually there's
6 a portfolio manager or somebody who is a representative to
7 say they were mislead, somebody didn't give them all the
8 facts. In this case all these people disappeared. The only
9 people we were left with was Ms. Lamb for Arjuna Capital,
10 Mr. Gallagher from New York City Comptroller's Office, who
11 didn't read the report, and Mr. Read from Wells Fargo, who
12 testified by video, and I submit he was one of the best
13 witnesses for ExxonMobil. He was our witness. He wasn't
14 their witness.

15 Then they talked about this big letter PX194, the
16 letter September 9, 2013 from Ceres. They talked about all
17 these people who were signatories to the letter and how they
18 represented three trillion dollars worth of stock. You
19 didn't hear from anybody on that letter except for
20 Mr. Garland from the New York Comptroller's Office. He
21 didn't sign it, but somebody from his office signs it.
22 Nobody came. Nobody took the witness stand and that should
23 tell you something. They can't get a witness to say they
24 read the report, they got to Page 178 and they were
25 confused. They can't find a witness and he can say it all

1 he wants, but he's not a witness. They have an obligation
2 to give your Honor proof from the witness stand or in the
3 documents that somebody read the document and was confused,
4 was misled.

5 Miss Lamb, she says, you know, this is her
6 statement about the Day of Reckoning. I'm going to move on
7 because I'm not going to finish.

8 Let me say, number 3, the GHG cost assumptions did
9 not impact ExxonMobil's books and records under GAAP or
10 management's decision-making. I'm going to skip that, your
11 Honor, in the interest of time, but Mr. Tillerson, he said,
12 yes, no impact, wouldn't appear anywhere. He said with
13 respect to the GHG on the discounted -- on the cash flow
14 models it had no impact.

15 Let me go forward. GHG cost disclosures Managing
16 the Risks did not affect ExxonMobil stock price. That
17 confirms no one cared and it also confirms no one -- it
18 didn't happen.

19 Mr. Ferrell, he testified yesterday clearly there's
20 no increase in Exxon stock on the date. There's no
21 inflation that's -- if we did something wrong, there ought
22 to be inflation in the stock. There's no increase in the
23 stock and NYAG does not contest the absence of price
24 inflation. Okay. They didn't ask their expert to evaluate
25 whether there was price inflation. That's why I said they

1 have just gotten away from how we've been trying security
2 fraud cases in this city for 40 years. Okay? They have
3 just gone off and just ignored how it's done.

4 This is an important slide because an event study,
5 that's the goal standard, that's the methodology everyone
6 uses in security fraud cases. They paid a half million
7 dollars to an expert to do an event study and then a week
8 before trial they wrote a letter to the Court, when you
9 asked about bifurcation, and they said they abandoned their
10 event study with respect to materiality. They wrote to the
11 Court on October the 15th. The studies conducted by the
12 experts for both parties may have relevance, but they are
13 not the mechanism to which the OAG will establish that
14 element. They just walked away from their big study for
15 purposes of materiality they walked away because it was a
16 lousy study and it didn't show materiality.

17 Okay. Dr. Bartov's claim disclosures are not
18 valid. Two of them did not meet the scientific threshold
19 with respect to the LA Times article. I submit that has no
20 -- The Times article. I just ask you to read. It's not
21 about our case. It's about an investigation that California
22 says was going to open concerning climate science,
23 concerning this Exxon news. This is an internal accounting
24 case. There are two cases. You can't point to a news
25 article about a scientific investigation and now try to use

1 that to show something about a different subject. You
2 haven't heard a word about climate science in this case in
3 two weeks because it's not in the case. So they can't use
4 that article to try to buttress their case.

5 Number 5. Equity research analyst not consider --
6 did not consider GHG cost disclosures in Managing the Risk
7 material. You heard from Dr. Zenner. He told you he read
8 500 analyst reports. He reviewed these reports and none of
9 them referenced proxy cost, GHG cost, the complaint, anybody
10 being misled by Exxon. It didn't exist. Okay. Again, the
11 only people who it mattered to are the people who are
12 sitting at AG table.

13 Analyst were not interested in ExxonMobil's proxy
14 cost disclosures. Mr. Read said, did your evaluation of
15 ExxonMobil include a premium because the company was ahead
16 of the curve on carbon pricing?

17 "ANSWER: No.

18 Did the fact that ExxonMobil was ahead of the curve
19 on carbon pricing have any impact on your assessment of the
20 company?

21 "ANSWER: No."

22 Number 6. ExxonMobil provided conceptual
23 information about GHG costs and reasonable investors did not
24 expect to receive granular information. This is a very
25 important point, your Honor.

1 Okay. Mr. Colton said, it was never our intention
2 to get detailed numbers year by year to give people exactly
3 the numbers we used to do our proprietary internal
4 evaluations. It was really all about concepts, how we would
5 think about things.

6 He went on to say, is it correct that -- I asked
7 him a question, is it correct that no one with those two
8 data points in the out-years for the developed countries 60
9 in 2030 or 80 in 2040 could engage in any type of a granular
10 economic analysis with respect to the financial health of
11 ExxonMobil? He said, it would not be possible.

12 Okay. But if you go -- if you read and I urge you
13 to read Managing the Risks starting at Page 16 because
14 that's the relevant section where the contested sentence is.
15 It is clear that the only thing being divulged here, if you
16 read it sentence by sentence, is a concept. There was no
17 intent and nobody thought that document was supposed to be
18 used to convey economic information or let somebody use it
19 for economic information. That assertion only comes from
20 the New York AG. It is not supported by any witness.

21 The first sentence in that section, Section 6, it
22 says, we do not publish the economic bases upon which we
23 evaluate investments. Think about it. That's the opening
24 paragraph in the section. He says, we're not telling you
25 how we evaluate investments. Yet, the New York AG says,

1 people could read later into the document, Page 17 and 18,
2 and think now they're being given enough information to
3 engage in investment decisions, evaluative decisions.
4 That's an argument that is totally unconnected to what's
5 going on in the document. They just made it up. There's no
6 witness who has said it.

7 Okay. Remember shareholder proposals themselves,
8 that resulted in all this, expressly said, omitted
9 proprietary information. That's in both proposals. Nobody
10 expected any kind of economic data. Ms. Lamb, what does she
11 say?

12 "QUESTION: You were asking more about the big
13 picture approach, the handing the risks associated with
14 climate change?

15 "ANSWER: That's correct.

16 QUESTION: And you weren't asking about the
17 specific assumptions that were used because as you testified
18 earlier, it is a guess. No one knows what the right number
19 is, right?

20 "ANSWER: That's correct."

21 Mr. Read, he said we would not expect anybody to
22 disclose proprietary information. Okay.

23 Number 7. The 80 ton proxy cost assumption was
24 necessarily speculative. No investor claimed to know
25 whether it was a right number or how it could affect

1 valuation. Think about it. We are having an argument in a
2 major security fraud case about a number in 2040 that
3 everybody agrees is speculative and nobody knows if it's
4 right or wrong. In their opening statement, just from the
5 NY AG's opening statement he said nobody knows. Okay? What
6 cost would be imposed in 2030 or 2040. Okay? What did
7 Mr. Colton say? We're talking about something in the year
8 2040 as a best estimate of what might happen and it's just
9 that. What really happens in that year is something nobody
10 can know sitting here today. Ms. Lamb says, you don't know
11 what the carbon price in 2040 should be, do you? Nobody
12 knows.

13 Richard Auter, the accountant, he testified he
14 wouldn't even let ExxonMobil use those GHG cost assumptions
15 for purposes of impairment analysis because they were
16 speculative. They were speculative. And now they're
17 telling you they want to build an entire securities fraud
18 case around a speculative number in the year 2040.

19 Okay. If you just read the Energy Outlook, you'll
20 see with respect to the \$80 per ton number it's based on
21 uncertainty, it's an assumption. It's about potential
22 policies that might be adopted one day. It's not based on
23 any hard policy. I urge you to read JX912 at Page 36.

24 Final point. Reasonable investors had no access to
25 and could not have been misled by anything in ExxonMobil's

1 internal cash flow spreadsheets.

2 Their own expert, Mr. Boukouzis, he said, members
3 of the investment community didn't have access to that
4 information. Nobody in the investment community had any
5 access to anything in the blue. They just had one data
6 point of \$60 in 2030 and a second data point of \$80 in 2040.
7 That's all they had.

8 They failed to satisfy the legal standard. We
9 submit that the evidence has not shown it is substantially
10 likely that a reasonable investor would have viewed the use
11 of a number lower than 80 in 2040 as significantly altering
12 the total mix of information.

13 Their case is about something that is illogical.
14 It does not make sense. Nobody expected that document to
15 convey any type of granular information that would permit
16 economic analysis. We are arguing about something that is
17 trivial and insignificant.

18 Now, let me talk about quickly, I have ten minutes
19 left they tell me, about they raise this issue of the
20 alignment and they keep talking about this particular
21 document where there's a sentence about there being some
22 confusion in Managing the Risks and Energy and Climate.

23 First, their argument is not tied to the evidence
24 from the witnesses. In terms of why alignment took place,
25 four witnesses testified that the reason the alignment took

1 place was because there was an assumption that in the year
2 2030, it was a partial alignment only began in 2030, that
3 countries would adopt a single tax on producers. Four
4 witnesses. No witness supported NYAG's interpretation that
5 the alignment was motivated by concerns that Managing the
6 Risks might have been unclear.

7 3. 4. If ExxonMobil believed it's disclosures
8 were potentially unclear, it would have just amended the
9 disclosures, not changed its entire global planning
10 guidance, that was what Mr. Colton said. Mr. Colton said,
11 look, I don't recall that being discussed at the Management
12 Committee meeting, but I tell you if someone had raised, he
13 said, I would have recalled that because I just edited the
14 doggone thing to make sure it was clear and what he said I
15 would have just gone on the website and changed and taken,
16 you know, an hour. You wouldn't reorganize your whole
17 management plan.

18 This is what he said. He said, I would have
19 remembered it, but he also say we wouldn't talk about
20 changing our business practice. What we would do if
21 anything had to be changed, we would change the web
22 document.

23 Mr. Shores. I think this is very important because
24 it hadn't been read in until yesterday at the end of court.
25 Because they hadn't read it. That part hadn't been read it,

1 but he was asked specifically if he recalled talking about
2 those talking points, that's what the sentence is. It is
3 not on the slide.

4 "QUESTION: Did you have any discussion with the
5 Management Committee about the contents of the notes with
6 respect to the first bullet points, number 1 and number two.
7 Did you convey those points to them?

8 "ANSWER: I don't recall.

9 "QUESTION: Did you convey the points in the first
10 bullet point, numbers one and number two, with Mr. Colton
11 when you reviewed it with him?

12 "ANSWER: I don't recall."

13 That's very important. It did not come in until
14 the end of the day yesterday.

15 Mr. Bailes. He also testified that the reason they
16 did it was because how they saw the world going in the year
17 2030. Again, it was only a partial alignment.

18 With respect to Alberta. A lot of talk about
19 Alberta.

20 At the end of the day, what the evidence showed is
21 that people focus like a laser on the issue of what should
22 be the right cost in Alberta. They had meetings, they had
23 conferences. They tried to figure out what the local
24 officials in Alberta were going to do. They did everything
25 that you would want a corporation to do. They drilled down

1 on the GHG issue and they made a decision that they would
2 use the local specifics and they would not escalate the
3 local specifics because they believe that the politicians in
4 Alberta were not going to escalate them; and Mr. Hoy said
5 that what they did was not inconsistent with what was in the
6 data guide. So this whole Alberta thing is a big nothing.

7 They keep showing this email. They did it on
8 opening statement about write-downs. What Ms. Bannister
9 explained and so did Mr. Tillerson, that write-down email
10 has nothing to do with the financial GAAP records of the
11 company. It's an internal metric how you classify
12 resources. It is apples and oranges. Nothing to do with
13 finances.

14 Okay. Mr. Tillerson, he said, that classification
15 system for resources is not connected to the financial books
16 and records, right? That's correct.

17 Disclosure about impairments. They talked about
18 impairments. Very quickly. Mobil Bay was not impaired in
19 2015. They say we shouldn't have impairment. Only person
20 says that is Mr. Bartov. Okay. First, we never stated in
21 Managing Risks that we would impair anything. We never made
22 such a statement to the public. They claim that we avoided
23 taking impairment about meaning GHG costs. Only person who
24 said it was Mr. Bartov, Dr. Bartov. He's not credible. The
25 testimony from the ExxonMobil's outside auditor confirmed

1 there was no trigger and no impairment was required for
2 Mobil Bay in 2015. In any event, will the impairment loss
3 would not have been material.

4 Mr. Auter testified.

5 "QUESTION: Used an outside accountant from
6 Pricewaterhouse in 2015. Did ExxonMobil identify any
7 impairment triggers?

8 "ANSWER: No. Not that I'm aware of.

9 "QUESTION: And did PwC take any exception to
10 ExxonMobil's position that there was no trigger or the
11 assumptions that were used to reach that conclusion?

12 "ANSWER: No."

13 Then you can go to our 10-K. Our 10-K that you
14 know -- just go to the 10-K. The results of this assessment
15 confirm the absence of a trigger event and indicate that the
16 future undiscounted cash flows associated with these assets
17 substantially exceed the carrying value of the assets. And
18 you know there was an SEC investigation and they closed the
19 investigation. I mean, there's nothing. We were in the
20 case for two weeks. You didn't even hear the word Mobil
21 Bay. Suddenly Mr. Bartov pops up and you probably didn't
22 even know what he was talking about. I mean it came out of
23 the blue.

24 Conclusion. I want to end with the statement
25 Mr. Tillerson made on the stand. What he said about how he

1 felt about this case. He said, "I feel badly for the men
2 and women of the ExxonMobil Corporation, the ones who work
3 hard to put all these things together to inform the
4 management because they're being accused of fraud as well,
5 and it is not fair to them. They -- these are
6 professionals. They're very diligent. They take pride in
7 their work. They take care your word seriously and they
8 have always operated at the highest levels of integrity and
9 that's who I feel badly for." That's why I say, your Honor,
10 at one level we can laugh about how ridiculous the case is
11 and how it's a joke, but it's a serious case. I've been in
12 this case, the subpoena was served November 4, 2015. I was
13 retained the next day, November 5, 2014.

14 I have lived with this case, I've watched the three
15 year investigation where they changed from theory to theory
16 to theory. I mean it was like, you know, somebody in Moby
17 Dick going after the great white whale. They were trying to
18 get ExxonMobil. We started with climate science. We went
19 to another theory. Went to stranded assets. We ended up
20 with this theory. And then we did something that a lot of
21 corporations don't do. We did. We said put up or shut up.
22 We said we will try this case, we will not settle this case
23 because we have not done anything wrong.

24 All we ask from your Honor is one thing, that you
25 fairly and objectively look at the evidence, you use the

1 power of your pen to speak the truth and to speak what the
2 evidence showed in this case and we will await your decision
3 and we have confidence that you will conclude, based on your
4 review of the evidence, that the New York AG has not
5 sustained its burden of proof on each and every count.

6 Thank you.

7 THE COURT: Thank you. All right. We will take a
8 15 minute break and then we will we will have the summation
9 of the New York Attorney General.

10 (Recess taken.)

11 (Continued on next page.)
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1 THE COURT: All right. Mr. Zweig.

2 MR. ZWEIG: Thank you very much, your Honor. At
3 the end of the day this case is about two things. And those
4 two things are quite simply the elements of The Martin Act.
5 Falsity and materiality.

6 As to falsity, the question is whether Exxon's
7 statements and omissions had a tendency to deceive or
8 mislead investors. And for materiality, the question is
9 whether there is substantial likelihood that a reasonable
10 investor would have considered the statements or omissions
11 significant in light of the total mix of information.

12 Falsity and materiality are the only elements of
13 liability under The Martin Act.

14 THE COURT: I don't mean to interrupt you, but
15 there are three other claims that the Attorney General
16 advances in its complaint. Are you going to address those
17 claims as well?

18 MR. ZWEIG: Your Honor, for purposes of this
19 presentation, I'll be focussing on The Martin Act.

20 THE COURT: Is that a concession that there is no
21 common law fraud?

22 MR. ZWEIG: Yes, your Honor.

23 THE COURT: All right.

24 MR. ZWEIG: Again, your Honor, no showing of intent
25 to defraud under The Martin Act is required. Under the law

1 falsity and materiality are what we have to prove by a
2 preponderance of the evidence, and that's what we have shown
3 at this trial. As we explained in our opening, the evidence
4 for those elements and the appropriateness of the relief
5 we're seeking is actually pretty straightforward and it
6 relies almost entirely on facts that aren't even in dispute.

7 THE COURT: Are you conceding that the second --
8 the second and third counts of the complaint are also out of
9 this case?

10 MR. ZWEIG: Your Honor, for purposes of this
11 presentation, focussing on The Martin Act, the elements of
12 Executive Law -- Executive Law 6312 overlap, but we are
13 conceding that the -- that the common law fraud and
14 equitable fraud claims we're not conceding those.

15 THE COURT: And what about the fraud claim?

16 MR. ZWEIG: Not advancing that at this time, your
17 Honor.

18 THE COURT: I'm sorry?

19 MR. ZWEIG: Not advancing the actual common law
20 fraud claim at this time, your Honor. I believe that's
21 count four.

22 THE COURT: If you're not advancing it at this
23 time, does that mean it's out of the case?

24 MR. ZWEIG: Yes, your Honor. I'm sorry if I worded
25 that in a confusing way, your Honor.

1 THE COURT: And the second count of the complaint,
2 is that in the complaint? Is that in the case or out of the
3 case?

4 MR. ZWEIG: It is, your Honor. And the Executive
5 Law 6312 claim, the elements, as we understand, overlap with
6 The Martin Act. So, I was using a bit of shorthand.

7 THE COURT: So, we're dealing with counts one and
8 two of the complaint and we're stipulating that counts three
9 and four are out of the case?

10 MR. ZWEIG: Yes, your Honor.

11 THE COURT: Okay. I didn't mean to interrupt you.

12 MR. ZWEIG: No. That's quite all right, your
13 Honor. Let's start by briefly running through the
14 undisputed timeline of facts. First, Exxon used two sets of
15 carbon cost assumptions for years. Exxon spent a lot of
16 time at trial establishing that fact, but it was never in
17 dispute. In projecting demand for oil and gas, Exxon used
18 costs reaching \$60 per ton in developed countries by 2030
19 and \$80 per ton by 2040. But in projecting costs associated
20 with its own emissions from its investments and operations,
21 which total about 120 million tons of CO2 equivalent every
22 year, Exxon applied much lower costs or no costs at all.
23 And meanwhile the figures that Exxon was quoting publically
24 were \$60 per ton in 2030 and \$80 per ton in 2040.

25 In 2010 Exxon's corporate Greenhouse Gas manager

1 Bob Bailes wrote internally that he thought that Exxon's
2 publically stated costs were more realistic than the lower
3 costs in Exxon's internal corporate plan dataguide than it
4 used for its projections of the costs from its own
5 emissions.

6 Then in 2011 Mr. Bailes proposed harmonizing those
7 costs. Indeed, Exxon's planning manager, Tom Eizember
8 responded by acknowledging that using the lower cost
9 internally was not conservative from the perspective of
10 projects that increase emissions. But still for years the
11 costs were not aligned.

12 Next the representations by Exxon that are the
13 focus of our case started in late 2013, when Exxon received
14 numerous shareholder inquiries about how the company was
15 Managing the Risks posed to its business by the likelihood
16 of increasingly stringent climate change regulation. For
17 example, Exxon made a presentation to investors in
18 December 2013 in New York City. Then on March 31st, 2014
19 Exxon released its Managing the Risks and energy and climate
20 reports. In those reports and the presentation in 2013
21 Exxon implied that it used GHG proxy cost figures it
22 disclosed, \$80 per ton by 2040 in developed countries, not
23 just in projecting demand for oil and gas, but also in
24 assessing the cost of projected emissions from its own
25 investments and operations.

1 Now, the most striking evidence that that's in fact
2 what Exxon had implied in those reports comes next in the
3 timeline, in May 2014. When an internal presentation
4 prepared for Exxon's Management Committee specifically
5 recognized that Managing the Risks and energy and climate
6 had implied that Exxon was using the publically disclosed
7 cost of carbon in evaluating its investments. For that
8 reason the presentation recommended increasing the internal
9 costs in Exxon's dataguide to match the figures the company
10 had publically disclosed.

11 Then it's undisputed that in June 2014, just a
12 month later, without telling anyone, Exxon did align the
13 long-term dataguide costs for developed countries with the
14 figures it had been representing externally. It's also
15 undisputed that it wasn't until June 2016 that Exxon aligned
16 those costs for countries outside the OECD.

17 Focussing our timeline for a moment on Alberta,
18 Canada. In 2015 and 2016 Exxon tried to apply the higher
19 aligned costs in the dataguide to its cost projections for
20 its enormous GHG intensive oil sands projects. I'm glad
21 that Exxon showed your Honor some photos of those projects.
22 I believe it was during Mr. Hoy's testimony. Those
23 projects, for example, include Kearl, Cold Lake. And those
24 photos are really the only way I think to get a sense of the
25 scale of those projects and the enormous amount of emissions

1 associated with their operation. These aren't just unfunded
2 ideas that some people are kicking around. These projects
3 are very real. And their emissions are very real too.

4 Now what happened when Exxon tried applying those
5 increased costs in Alberta. Well, the documents, including
6 those quoted on the screen, lay it out clearly. Massive GHG
7 costs. Warnings of large write downs. Significant impacts
8 on the projected end of fuel life on these enormous GHG
9 intensive assets. So, a decision was made. Who made it?
10 The guidance that Dallas has given us. A decision by
11 corporate planning, a management decision. In other words,
12 a decision by Exxon. And what did Exxon decide to do?
13 Well, they decided to apply what Dan Hoy in his e-mail
14 called an alternate methodology. Rather than applying the G
15 GHG planning basis in the dataguide to Alberta, Exxon
16 applied only the existing legislative price of carbon to the
17 existing legislative percentage of emissions held flat into
18 the future. In other words, instead of applying escalating
19 costs to account for the likelihood of increasingly
20 stringent climate change regulation, as it publically
21 claimed to be doing, and instead of accepting its own
22 projections that it will face massive costs and large
23 reserves right down as a result, Exxon decided to assume
24 that the existing costs in Alberta will be held flat through
25 2030 and 2040.

1 Yet throughout 2014, '15 and '16 in its Corporate
2 Citizenship reports, responses to the carbon disclosure
3 project and other statements to shareholders, Exxon
4 continued to make the same representations that it used the
5 \$80 per ton GHG proxy cost figure including in Canada.

6 Now, the Exxon and Imperial Oil witnesses who
7 testified at this trial responded to these undisputed facts
8 by saying over and over again, we were just trying to get it
9 right. We were just trying to use the most accurate costs
10 possible. As Mr. Wells put it, that we have no incentive to
11 cheat ourselves. What I want to emphasize is that we can
12 give Exxon the benefit of the doubt on all of this, and it's
13 perfectly consistent with our case. To illustrate why, I
14 would like to highlight Mr. Tillerson's testimony about
15 Alberta. I think it's pretty important testimony.

16 Mr. Tillerson testified that in his assessment
17 "Governments will never impose high enough taxes to
18 seriously threaten the oil sands industry because that
19 industry and the jobs it provides are just too important to
20 the economy of Alberta." Mr. Tillerson concluded, "What I
21 do know is that the Alberta government doesn't want to put
22 the oil sands out of business."

23 Now, let me be perfectly clear. Exxon is entitled
24 to have that point of view. In fact, if you assume that
25 governments will make preserving the oil sands their top

1 priority, even more important than combatting climate
2 change, then of course those assets never will be stranded
3 due to climate change regulation. At the end of the day
4 that's just circular. But the reality is that many
5 investors, including some of the largest financial firms in
6 the world, believe that there is a real likelihood that
7 governments will rise to the challenge of climate change.
8 That governments won't just continue business as usual.
9 That governments ultimately won't back down from imposing
10 costs just because they will have a real impact on the
11 fossil fuel industry. That oil and gas assets may in fact
12 become stranded due to climate change regulation. And their
13 concern isn't that these oil and gas assets are stranded
14 under existing legislative climate change policies,
15 including in Alberta, but that they may become stranded
16 under future climate change policies.

17 Now, the purpose of this case isn't to decide who
18 is right about those questions, but simply to decide whether
19 Exxon was honest with its investors. So, what did Exxon
20 tell its investors? Just one example, in the 2014 Corporate
21 Citizenship Report Exxon said that it was not assuming that
22 future government policies will be "business as usual".
23 Exxon said that it was accounting for increasingly stringent
24 climate change policies by adopting a proxy cost approaching
25 \$80 per ton by 2040.

1 Your Honor, Exxon can't have it both ways. That's
2 why Exxon's argument that they have no reason to cheat
3 themselves is so misplaced. For example, if a company
4 represents to investors that it let's say bought an
5 insurance policy to protect against certain risks, then in
6 reality it never bought the insurance policy, did the
7 company cheat itself? Well, not necessarily. The company
8 maybe thought the risk wasn't worth insuring, but in that
9 case it should not have told its investors that it bought
10 the insurance policy.

11 Whether Exxon was somehow misleading itself, that
12 might be an interesting philosophical question, but the
13 question for this Court is whether Exxon was misleading its
14 investors. Exxon never told its investors that it was
15 ripping up its GHG proxy cost insurance policy just when
16 those costs were most significant.

17 Now, because the costs that Exxon was actually
18 applying aren't in dispute, the real question for purposes
19 of the falsity element of The Martin Act is what Exxon
20 actually represented to its investors. The representations
21 again that our claims stem from our Exxon's December 2013
22 meeting with shareholders in New York City, the March 2014
23 publication of Managing the Risks and energy and climate,
24 Exxon's December 2014 meeting with shareholders that Mr.
25 Garland testified about and then Exxon's reputation in those

1 disclosure and the Corporate Citizenship responses to the
2 carbon disclosure projects and other public statements such
3 as Mr. Tillerson's statement to shareholders that we'll
4 discuss in a few moments.

5 In assessing those disclosures, the key question is
6 this. Would these statements by Exxon as well as what Exxon
7 omitted from those statements have misled a reasonable
8 investor into believing that Exxon was applying the GHG
9 proxy costs it publicized to the projected emissions from
10 its own investments and operations. We know that Exxon
11 wasn't actually doing that, but the question is did it imply
12 that it was. The bottom line is this. Every single piece
13 of testimony in this case from people who weren't Exxon
14 insiders shows that the investors were misled. They all
15 understood from Exxon's representations that the company was
16 applying a cost approaching \$80 per ton on the expense side
17 to its own projected emissions, not just in projecting the
18 demand for oil and gas. For example, there is Roger Read,
19 the Wells Fargo analyst, who testified by video. In
20 response to questioning from Exxon's attorneys, Mr. Read
21 testified that he "definitely" understood from Exxon's
22 disclosures that the company was applying the proxy cost to
23 its cost projections. It's not just the demand. And Mr.
24 Read emphasized that the cost side was particularly
25 important, because that's what a company in control.

1 Then there is Natasha Lamb, from Arjuna Capital,
2 she filed a shareholder proposal on behalf of her investor
3 clients. She wasn't off on her own doing this. It was on
4 behalf of her investor clients. And that lead to the
5 Managing the Risk Report. She testified that she understood
6 from Exxon's representations that Exxon was using the
7 publically disclosed proxy cost not only in assessing
8 demand, but also in assessing its own investments and
9 operations. And her understanding was that Exxon was using
10 the terms proxy cost and GHG cost interchangeably. I also
11 note that Mr. Rosenthal's letter to Ms. Lamb doesn't
12 distinguish between the demand side and the expense side
13 either whatever may have been in Mr. Rosenthal's mind.

14 Then there is Mark Garland from the New York City
15 Comptroller's Office, which controls about \$1 billion of
16 Exxon stock. Mr. Garland testified that he understood from
17 a December 2014 presentation to investors in New York City
18 that Exxon was integrating these costs in all of its
19 business decisionmaking and planning, not just in demand
20 projections. He also testified that Exxon never told him
21 about any difference between the terms proxy costs and GHG
22 costs.

23 Now moving beyond just investors, there is Richard
24 Auter, who is Exxon's very first witness. He also didn't
25 understand at the time the distinction between proxy costs

1 and GHG costs that Exxon claims to have disclosed to the
2 public. Even though Mr. Auter had been auditing Exxon for
3 over a decade by that point and even though he had two
4 separate conversations with Guy Powell, the GHG manager
5 about this very topic in early 2017, Mr. Mr. Auter
6 acknowledged in his testimony that he still used the terms
7 proxy costs and GHG costs and I quote "interchangeably" in
8 his memorandum on the subject.

9 So, the bottom line is everyone from outside the
10 company who has testified on this subject has stated that
11 they understood that Exxon was applying the publically
12 disclosed proxy cost figures to its own projected emissions
13 from its investments and operations. None of them under-
14 stood that "GHG costs" were suppose to mean something
15 different. Not a single witness from outside the company
16 has testified that they appreciated that distinction.

17 Then even inside the company Exxon's employees
18 recognized at the time that the company had not made clear
19 that it meant different things by proxy costs and GHG costs.
20 To the contrary, as we discussed, the May 2014 presentation
21 to the Management Committee proposed that the long-term
22 costs be aligned for developed countries. The second stated
23 reason was in recent reports released by Exxon energy
24 climate and energy of carbon Managing the Risk, we have
25 implied that we use the Energy Outlook basis for the proxy

1 cost of carbon when evaluating investments. In other words,
2 Exxon was saying hey, we need to change our internal
3 practices here, because we have been implying that we have
4 been doing something that we haven't been doing. We've been
5 implying that we used the publically disclosed costs when
6 evaluating investments, but in reality we use a different
7 set of costs for that purpose.

8 Now, Mark Shores, who actually delivered the
9 presentation to the Management Committee, testified at his
10 deposition that was read into the record, clearly that Guy
11 Powell, Exxon's corporate GHG manager, wrote these notes.
12 And Mr. Powell's office, should this confirm, by the
13 chronology of e-mails back and forth. But regardless, this
14 document is a key internal acknowledgment and a presentation
15 clearly prepared for Exxon's Management Committee that
16 Managing the Risks and energy and climate had implied
17 something that was not true.

18 Now Guy Powell isn't the only Exxon employee whose
19 contemporaneous documents tell a different story than what
20 Exxon is telling us today. Tom Eizember, Exxon's former
21 corporate planning manager, gave a presentation to
22 Mr. Tillerson in 2008 in which he specifically referred to
23 the costs in the Energy Outlook as GHG costs, not proxy
24 costs. Mr. Eizember's testimony on this point is telling,
25 because what did he testify? He testified that the term

1 "GHG cost" is really just a generic term. That was his
2 word, generic. And he also said it's not a specific term of
3 art. And I think that's really the point. If GHG costs, as
4 Mr. Eizember testified, is really a generic, nonspecific
5 term that can be applied to any kind of costs that concern
6 in someway Greenhouse Gases, then how are investors suppose
7 to know that it was somehow distinct from the proxy costs?

8 And even Mr. Tillerson himself said at the 2016
9 annual shareholder meeting, "We have, unlike many of our
10 competitors, we have for many years included a price of
11 carbon in our Outlook, and that price of carbon gets put
12 into all of our economic models when we make investment
13 decisions as well. It's a proxy. We don't know how else to
14 model what future policy impacts might be, but whatever
15 policies are, ultimately they come back to either your
16 revenues or your cost. So we choose to put it in as a cost.
17 So we have accommodated that uncertainty in the future and
18 everything gets tested against it."

19 I think this is really one of the key documents in
20 the case. Exxon's entire defense is that it supposedly made
21 clear to investors that the proxy cost was only used to
22 influence demand projections, which influences the oil and
23 gas price bases, which ultimately influences its revenues.
24 By contrast, on the cost side, Exxon admits it didn't use
25 the proxy cost figures in projecting its own expenses. Yet

1 in this statement, at the shareholder meeting, Rex Tillerson
2 specifically distinguished between the costs side on the one
3 hand, the revenue side on the other, and he specifically
4 said that Exxon applies the proxy cost on the cost side.
5 That's the very thing that Exxon admits isn't true. And
6 that Exxon says that its investors should have realized was
7 not true.

8 Mr. Tillerson's statement came after Exxon had
9 already conflated these terms and concepts in Managing the
10 Risks and energy and climate. There are a few points about
11 these documents that I would like to emphasize.

12 First, Exxon specifically referred to the cost it
13 was applying to manage climate risk as "GHG proxy costs".
14 And they did so in both energy and climate where, as you can
15 see on the screen, Exxon said these costs are integral to
16 its planning as well as the December 2013 meeting with
17 shareholders in New York City. In light of this GHG proxy
18 cost terminology, it's just not reasonable to expect
19 investors to have understood that GHG costs on the one hand
20 and proxy costs on the other hand meant different things.

21 Second. Managing the Risks Exxon wrote that the
22 proxy costs seems to reflect all types of actions and
23 policies that governments may take over the Outlook period
24 relating to the exploration, development, production,
25 transportation or use of carbon based fuels. Now, the term

1 "use of carbon base fuels" does concern demand for Exxon's
2 products, but exploration, development, production and
3 transportation refers to the stages of an oil and gas
4 company's business. The strong implication of this
5 statement is that the proxy cost concern not just emissions
6 from the use of carbon based fuels, but also emissions from
7 exploration, development, production and transportation from
8 Exxon's own business. Exxon's own emissions.

9 Third. Managing the Risks goes on to very
10 carefully distinguish the concept of the proxy cost from a
11 "social cost of carbon", which Exxon does make clear is a
12 very distinct concept. But then when it gets to the GHG
13 cost, rather than using a similarly clear distinguishing
14 language, Exxon just continues on, in the middle of the same
15 paragraph, it says "perhaps most importantly", which really
16 connotes emphasis more than separation, "Exxon never
17 clarified that the GHG cost was an entirely new concept that
18 it was for some reason revealing for the first time right in
19 the middle of a paragraph about the proxy cost." To make
20 their argument work, you really have to add some extra words
21 like also or separately. I want to highlight this is Rex
22 Tillerson's testimony. He was asked a question about this
23 sentence, and in repeating it or rephrasing it he said,
24 "Perhaps most importantly, we also require business
25 segments", and then it goes on. But if you look back at

1 Managing the Risks the word "also" isn't there. So there is
2 Managing the Risks. And there is Mr. Tillerson's addition
3 in his testimony of the word "also". At the end of the day,
4 whether these reports were misleading to investors depends
5 on the words that are actually on the page, not on how
6 Exxon's witnesses would interpret them or even rewrite them.

7 Now fourth, Managing the Risks says that Exxon
8 required that its business segments apply these costs where
9 appropriate. Rex Tillerson and David Rosenthal both
10 testified that the term where appropriate was meant to
11 exclude situations in which GHG emissions were insignificant
12 or as Mr. Tillerson put it, de minimus. Mr. Tillerson added
13 on the lower right that under this language these costs
14 should be included "if they are significant and meaningful".

15 Now, we completely agree with Rex Tillerson's
16 reading. And I would submit that it's further supported by
17 this sentence from the summary which Exxon said also
18 concerns GHG costs where it says "We also require all
19 significant proposed projects include the cost of carbon."

20 Now de minimus emissions are one thing, but this
21 language, as well as the "where appropriate" language is not
22 consistent with Exxon's decision to use lower costs in its
23 internal dataguide across the board compared to what it said
24 publically. And it's also not consistent with Exxon's
25 decision to exclude these costs just when they would have

1 had the greatest, the most significant and the most
2 meaningful effect for the oil sands projects in Alberta.
3 Again, that's just like ripping up your GHG proxy cost
4 insurance policy just when the risk is at its height.

5 The bottom line is that under Mr. Tillerson's own
6 reading of the "where appropriate" language as well as the
7 "all significant proposed projects" language, this was not
8 meaningful, cautionary language that Exxon wasn't going to
9 apply these costs when they were significant. And that's
10 particularly true for countries like Canada, which is
11 highlighted in bright red on the map on the page before and
12 that places it in the highest category for Exxon's assumed
13 carbon cost. This is what Exxon was telling investors was
14 it's "best" assessment.

15 Fifth, in Managing the Risks, Exxon said the proxy
16 costs is simply our effort to quantify what we believe
17 government policies over the Outlook period could cost to
18 our investment opportunities. But Mr. Tillerson and Exxon's
19 other witnesses testified that the proxy cost was in fact
20 not used to assess Exxon's future costs. Instead they
21 testified that it was only used to assess worldwide demands
22 for oil and gas, which may affect prices, which may affect
23 revenues. But this text doesn't say demand or revenues. It
24 says cost. They can't leave that out of the sentence.

25 Sixth. Exxon has strenuously argued that whenever

1 investors saw the word "Outlook", they knew the company was
2 only talking about demand projections and not cost
3 projections. But let's take a look at the last sentence of
4 this key paragraph of managing the risks. "We require that
5 investment proposals reflect the climate-related policy
6 decisions we anticipate governments making during the
7 Outlook period, and therefore incorporate them as a factor
8 in our specific investment decisions." Rex Tillerson and
9 David Rosenthal both testified that any investor should have
10 understood that this sentence was talking about GHG costs,
11 and their reasoning was because they pointed to the last
12 phrase, specific investment decisions. But as you'll see,
13 the sentence also refers very specifically to the Outlook
14 with a capital O. That's the Outlook for Energy.

15 So, this sentence is about GHG costs, even though
16 it's specifically referencing the Outlook. So, we would
17 submit that Exxon's argument that the term "Outlook"
18 automatically signifies demand collapses right here.

19 Seven. In energy and climate Exxon said that
20 "Exxon requires that all business units use a consistent
21 corporate planning basis, including the proxy cost of carbon
22 discussed above, in evaluating capital expenditures and
23 developing business plans." Exxon's witnesses, quite a few
24 of them, have testified that this sentence is actually only
25 referring to the oil and gas price basis in Exxon's

1 corporate plan. The sentence doesn't say that. It just
2 says "consistent corporate plan basis". Yet another example
3 of reading additional words into the disclosure.

4 It's also worth noting that even the connection
5 between proxy costs leading to demand, leading to revenues
6 is nowhere near as direct as Exxon portrayed it at the
7 beginning of this case. Now, even if that connection were
8 rock solid, Exxon's representations would still be
9 misleading, because the company wasn't applying the
10 publically disclosed GHG proxy costs to its own emissions
11 from its investments and operations. But the fact is, in
12 addition to that, the connection between proxy cost on the
13 one hand and an oil and gas price basis on the other hand,
14 it's actually pretty tenuous. In particular, Exxon's
15 witnesses like Bill Colton and Tom Eizember, and Mr.
16 Eizember was the planning manager at the time so he would
17 know, testified that proxy costs are actually just one of
18 the many factors including setting demand projections except
19 in the transportation sector where proxy costs aren't used
20 at all. In turn, demand projections are just one of many
21 factors influencing the company's oil and gas price basis.
22 As Tom Eizember's memo, which is on the screen made clear,
23 the price bases that Mr. Tillerson and the Management
24 Committee chose, often had more to do with sending a signal
25 to the organization than the market factors such as demand

1 projections.

2 (Continue on the next page.)

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1 MR. ZWEIG: Now, just to be clear, there's nothing
2 wrong with the Management Committee setting the price bases,
3 however, it sees fit, we're not trying to tell the
4 management committee how to do it's job, but the point is
5 that their decision to override market factors like demand
6 breaks the link between proxy cost on the one hand and the
7 price basis on the other hand because demand, which is in
8 the middle, is that link.

9 In fact, no witness has testified that Exxon's oil
10 and gas price bases would have changed by even a dollar if
11 there hadn't been a proxy cost. Tom Eizember testified that
12 he couldn't point to a specific link from one number to the
13 other. And then to top it off, even as Exxon's proxy cost
14 rose in real terms all the way to \$80 in 2040 according to
15 their representations, the company's oil and gas price bases
16 stayed flat into the future indefinitely.

17 In other words, any affect that the proxy cost had
18 on Exxon's oil and gas price bases over time was so
19 attenuated that it actually had no discernible affect. So,
20 again, it's not necessary to our case, but the fact is that
21 the connection between proxy cost and demand oil and gas
22 price bases and revenues doesn't even hold up on its own
23 terms, but then meanwhile most importantly, Exxon admits
24 that it was not applying the publicly stated costs on the
25 cost side.

1 Additionally, Exxon has highlighted the edits that
2 the Corporate Strategic Planning Manager, Bill Colton, made
3 to Managing the Risks, but at most that just shows that
4 Exxon's report could have been even more misleading. It's
5 important to emphasize that we don't have to prove intent to
6 prove a Martin Act violation. So whether Mr. Colton and
7 Exxon's other employees were intending to misled investors
8 is ultimately besides the point. The question isn't even
9 what Exxon's employees were intending to convey at all, but
10 rather how reasonable investors would have understood the
11 disclosures. And as we've seen, Mr. Colton would have had
12 to make a lot more edits to keep those reports from being
13 misleading.

14 Now, all of these points support the testimony that
15 every witness at this trial who isn't an Exxon insider, as
16 well as contemporaneous documents of Exxon employees, which
17 is that Exxon's disclosure misled reasonable investor into
18 believing the company was applying the publicly disclosed
19 proxy cost in it's cost projections, not just in the at
20 projections. None of the math or the models that Exxon took
21 the Court through to show that it applied two different sets
22 of costs really moved the needle here because we never
23 disputed that as we made clear in the opening. So the
24 question here isn't whether Exxon's employees are good
25 people or whether they were trying their best. And on the

1 other has been, the question here is whether Exxon is
2 somehow to blame for climate change more broadly. Neither
3 of those things are the question. The question in this case
4 is whether Exxon's disclosures were accurate, and the
5 evidence shows that they were not.

6 We've also demonstrated that Exxon's misleading
7 statements were material to the company's investors. Now,
8 as your Honor has pointed out it's not in dispute that
9 Mr. Tillerson has testified, and it's even in Exxon's own
10 10-K that climate change regulatory risk posed a material
11 risk to Exxon. So that's the starting point.

12 At a more granular level, I would like to review
13 materiality by, first of all, considering the evidence that
14 investors viewed the topic of climate change risk management
15 carbon pricing and Exxon's statement on the subject as
16 important.

17 Then, we'll review the internal evidence that the
18 impact of not applying the GHG proxy cost as the company
19 represented was significant to Exxon's business. In so
20 doing, we'll address Exxon's argument that there was no
21 effect on the books and records, and that in particular,
22 we'll consider how Exxon's misleading statements affected
23 both the company's funded projects and its unfunded
24 projects.

25 To start with the first item, investors and market

1 participants demonstrated through their words and action
2 that they care about how Exxon was managing the risks posed
3 by climate change including the company's carbon price
4 assumptions.

5 Let's consider once again the testimony of
6 Mr. Read, the Wells Fargo analyst. And there's no question
7 here of Mr. Read having any kind of agenda. As we
8 discussed, Mr. Read testified that he "definitely understood
9 that Exxon weighs applying a proxy cost reaching \$80 in
10 certain countries to its projected expenses, not just to
11 it's demand projections. And Mr. Read believed that the
12 expense side was particularly important because unlike the
13 broader issue of worldwide energy demand Exxon's costs are
14 something it can control.

15 In particular, Mr. Read wrote in his research
16 report that Exxon's application of the proxy cost depends on
17 the project and it's location. That really only makes sense
18 if those costs are applied to the emissions from those
19 projects not to overall worldwide demand.

20 Mr. Read also observed that applying the proxy cost
21 incentivizes Exxon to reduce overall emissions of all future
22 projects. That only makes sense if Exxon was applying the
23 proxy cost to it's cost projections from it's own emissions,
24 not just the demand projections. If we think about it, why
25 would a proxy cost incentivize a company to reduce it's

1 emissions from it's projects if it wasn't applying the proxy
2 cost to its emissions from it's projects? The answer is
3 that it wouldn't. But Mr. Read was clear that to his
4 understanding the proxy cost did incentivize Exxon to reduce
5 it's emission from it's own projects which confirms his
6 testimony that he understood Exxon to be applying these
7 costs to it's own emissions.

8 Mr. Read went further. He said, that applying the
9 proxy cost i this way helps Exxon avoid the risk of stranded
10 investments. And then he testified by video that he was
11 asking Exxon questions about climate change to it's business
12 because he was "receiving increased interest, concern,
13 questions from investors about these topics." And he
14 specifically testified that these questions were not coming
15 exclusively from investors with a focus on environment,
16 social and governance issues.

17 Then in another equity research report, which is
18 Plaintiff's Exhibit 73, Mr. Read summarized Exxon's
19 application of a proxy cost and wrote, this is very
20 important for long-lived projects to ensure full cycle
21 returns are fairly evaluated on an environmental basis as
22 well as financial and operational. There's simply no reason
23 to doubt Mr. Read's assessment that this was a "very
24 important" issue.

25 Investors who testified in person also supported

1 that assessment. Ms. Lamb testified that her firm was
2 concerned about Exxon's allocation of capital to high cost,
3 carbon-intensive assets like oil sands assets, which would be
4 the first to be stranded in the low-carbon future. That's
5 the major reason why she filed the shareholder proposal that
6 she ultimately withdrew in exchange for Exxon's agreement to
7 publish Managing the Risks.

8 Now, Ms. Lamb certainly had a point of view about
9 how climate change poses a risk to the future valuation of
10 oil and gas companies. But it should be noted she's far
11 from the only person with that view. And as Mr. Tillerson
12 acknowledged, shareholder proponents, like Ms. Lamb, deserve
13 accurate disclosures as much as anyone else. And that's
14 particularly true when the shareholders have made an
15 agreement with the company to withdraw their proposal in
16 exchange for those very disclosures.

17 Similarly, we heard from Mr. Garland of the New
18 York City Comptroller's Office. He explained that because
19 New York City pension funds hold stock indefinitely and
20 generally hold that stock through index strategies, the way
21 that his office protects long-term value is by engaging with
22 companies on issues such as climate risk.

23 Mr. Garland testified that his office was most
24 concerned about higher cost sources of oil. For example,
25 tar sands because those assets would be the least

1 economically viable if governments imposed higher-carbon
2 taxes. He testified that he vividly recalled the proxy cost
3 map that Exxon presented at the December 2014 meeting. And
4 he recalled that Exxon's representation that it was using an
5 internal cost of carbon in its business decision-making was
6 a source of comfort given the risks proposed to Exxon by
7 prospective climate change regulation.

8 Now, the documentary evidence supports the
9 significance of the climate change regulatory risks that
10 these witnesses discussed. For example, there's the
11 September 2013 letter to Exxon from Ceres signed by 72
12 institutional investors representing nearly three trillion
13 dollars in assets including such major investors as the New
14 York State and City pension funds, CalSTRS, CalPERS and many
15 others.

16 In the letter, the investors specifically asked
17 that Exxon assess how increased climate change regulation
18 would affect its capital expenditure plans for finding and
19 developing new reserves and how carbon pricing would create
20 risks to unproduced reserves.

21 Now these investors weren't just asking Exxon to do
22 something about climate risks, they were very interested in
23 getting as much specific information as Exxon was willing to
24 give them about what that something was. Now, of course,
25 these investors didn't know in advance what information

1 Exxon would provide and whether it would consider
2 proprietary, but they did want all the information Exxon was
3 willing to provide on all these topics because they
4 considered them important.

5 Moreover, report after report by major
6 institutional investors and Wall Street analysts confirms
7 that climate change regulatory risks and the internal carbon
8 price assumptions company were using to manage those risks
9 were material to investors. Throughout this trial we've
10 highlighted just a sample of those reports to provide a
11 flavor of market place commentary on these issues and --
12 well, let's start with an example because it speaks to
13 support, which highlighted that carbon price assumptions are
14 important because they provide insight into how companies
15 account for climate risk in the planning process. And they
16 are key in helping companies to identify potential stranded
17 assets and mitigate the risk of investing in assets that may
18 become stranded in the future.

19 There's the Morgan Stanley report which stated that
20 mainstream companies and investors are increasingly
21 recognizing climate change and it's economic and financial
22 implication. Climate change is now seen by many of the
23 world's largest investors as a critical investment issue.

24 The Vanguard memorandum which Mr. Boukouzis
25 highlighted, stating that climate change poses risks to

1 investors in certain sectors such as oil and gas and these
2 risks are most prominently skewed towards long-term asset
3 owners like Vanguard.

4 Lastly, the report from Standard & Poors, which
5 says that Exxon's 2014 agreement that published details of
6 it's climate risk exposure from stranded assets was a sign
7 of the growing acceptances among companies and investors
8 that the climate and carbon risks are increasingly material
9 to corporate performance and value.

10 I would also highlight the June 2014 email, where
11 Mr. Rosenthal, Exxon's former head of investor relations,
12 wrote, I sometimes get asked if real investors read the
13 Carbon Disclosure Project or even care that we participate.
14 He went on to discuss a call with an analyst from Goldman
15 Sachs and concluded, all this folks we talked to, and again,
16 this was at a meeting with investors in New York City, but
17 all of the folks we talked to said that these types of
18 efforts have enhanced our reputation with the investment
19 community and encouraged ExxonMobil to continue.

20 Now, of course, investors who are particularly
21 concerned about the effect of climate change regulation on
22 the value of oil and gas company are real investors too.
23 But importantly, even Exxon's head of investor relations
24 acknowledged that the investors he considered to be real
25 like Goldman Sachs, for example, cared about Exxon's

1 disclosures concerning it's management of climate change
2 risks. So there's really no reason to doubt the materiality
3 of those disclosures.

4 While it's true that Exxon's expert, Marc Zenner,
5 disputes materiality, he, unfortunately, ignored the strong
6 evidence of materiality we discussed, including shareholder
7 proposals, including statements from investors, including
8 the equity research reports from Mr. Read. He focused
9 exclusively on equity research reports and even in that
10 universe, he ignored destroy reports and ignored reports if
11 they were from the teams of those firms whose very job it
12 was to report environmental issues.

13 Let's now turn to the evidence showing that in
14 example after example, Exxon's failure to abide by it's
15 representations has significant impact at the company
16 itself.

17 Let's look back, once again, at the May 2014
18 presentation of the management committee. Now in addition
19 to, in number 2, admitting that Exxon had implied that the
20 company used costs that it hadn't really used, let's look at
21 the first reaction, which says while using a lower cost
22 basis in the Corporate Plan provides a conservative view for
23 evaluating energy conservation and emissions reduction
24 investments. It provides a nonconservative view for
25 evaluating capacity growth investments that involve GHG

1 emission creation, combustion, venting flaring, etcetera.

2 Now, it's Mr. Tillerson who testified vast majority
3 of Exxon's projects involved GHG emission creation as
4 opposed to GHG emission reduction. So because Exxon was
5 applying non-conservative, as the document says,
6 non-conservative carbon costs to its emissions from those
7 GHG emission increasing projects, Exxon's internal practices
8 were actually a lot less protective against climate change
9 regulatory risk than what the company was leading investors
10 to believe.

11 Now, once these costs were aligned in 2014, in the
12 Dataguide and the Outlook, Exxon's planners noticed a
13 significant impact. For example, Jim Wepler, a development
14 planning manager who worked for Exxon and was based in
15 Nigeria, called the alignment a huge change. And then
16 Mr. Iwanika, a development planning supervisor, conducted an
17 analysis and concluded that applying the new costs would
18 have a "very material" impact on the oil sands projects in
19 Alberta.

20 Mr. Iwanika's analysis demonstrates that a decrease
21 in profitability by a few points of rate and return can
22 actually be very significant whether or not it flips a
23 project from profitable to unprofitable. As Mr. Tillerson
24 specifically testified, Exxon is always deciding how to
25 invest it's limited resources to get the highest return

1 possible, not just any overturn that happens to be more than
2 zero.

3 Now, it's true there's no way to know for sure how
4 Exxon's Management Committee would have responded at the
5 time to new or different information, but the evidence is
6 strong that the difference between what Exxon was doing and
7 what it was saying and implying it was doing was
8 significant.

9 Next, the evidence shows that when Exxon tried
10 applying the higher Dataguide costs internally after the
11 2014 alignment that led to such massive costs that Exxon
12 decided to apply an alternative methodology instead.

13 Under that methodology, as we've discussed, rather
14 than applying escalating costs, it assumed that cost levels
15 under existing legislation to the legislative percentage of
16 emissions will remain flat with no change for decades into
17 the future.

18 The document made clear that this change in
19 methodology, again, tearing up the GHG proxy cost insurance
20 policy had an enormous effect.

21 For example, Kirsten Bannister, wrote in 2015 that
22 applying existing legislative costs at the Cold Lake oil
23 sands asset significantly reduced the end of field life
24 impact that otherwise would have resulted from applying the
25 GHG cost in the Dataguide.

1 Similarly, Dan Hoy wrote in 2016, last year the
2 guidance resulted in massive GHG costs in the out years. So
3 alternate methodology was applied. I suspect something
4 similar will be required this year. And in case there was
5 any doubt Mr. Hoy specifically testified that by massive he
6 meant significant or material.

7 And then in August 2016, Miss Bannister received a
8 message from an engineer at Cold Lake stating, last year
9 after initial guidance to use the Exxon Corporate forecast,
10 despite warnings it would result in large write-downs, we
11 had to redo our calculations using legislative GHG taxes.

12 Now, Exxon's cash flow models also confirm the
13 significance of the cost the company decided not to apply.
14 Now, to avoid any possibility of overlapping models, let's
15 just look at one single cash flow model. It's the 2015
16 Corporate Planning model for Kearl that Mr. Boukouzis took
17 us through.

18 Exxon has not disputed that in this model it was
19 applying existing legislative costs topping out at about \$24
20 per ton and it applied that to only 20 percent of emissions,
21 which was the percentage under existing legislation, meaning
22 that the effective costs were less than \$5 per ton held flat
23 indefinitely into the future through the 2060's, in fact.

24 Exxon also has not disputed that for just this one
25 asset the undiscounted difference between applying a cost

1 reaching \$80 per ton in 2040 and a cost held flat under \$5
2 is over 11 and a half billion dollars over the life of the
3 asset. Even when they questioned Mr. Iwanika for a second
4 time, Exxon never challenged the overall magnitude of the
5 effect on just this one asset. Really, none of this is in
6 dispute and it just confirms the evidence of materiality
7 that can be found in a multitude of sources.

8 Now, Exxon also argues that its failure to use the
9 GHG proxy cost and the way it publicly disclosed in the cost
10 projections had no impact on it's books and records, that at
11 most it only affected unfunded projects.

12 This argument is misguided on both the law and the
13 facts. Starting with the law, there is no precedence that a
14 misstatement or material omission has to have some specific
15 impact on a company's books and records in order to be
16 considered material.

17 For example, it's common place for security fraud
18 claims to be based on a company's representations that it's
19 taking certain actions, whatever they may be, in order to
20 make profits in the future or avoid losses in the future.
21 If the company's statement that it's taking those actions
22 are misleading for whatever reason, that might well
23 constitute securities fraud.

24 It's no defense for the company to say, well, those
25 future profits aren't in our books and records, yet

1 investors aren't just interested in past profits or assets
2 that are already on the books. They also want to know what
3 steps the company is taking today to maximize profits and
4 minimize risks tomorrow.

5 And then, in any event, the case law makes clear
6 that facts important to shareholder voting are considered
7 material for Martin Act purposes, even without proof that an
8 investor would have ultimately changed his or her view or
9 vote.

10 Exxon's climate risk disclosures were certainly
11 material to the climate-related shareholder proposal
12 Mr. Boukouzis took us through, and then in particular,
13 Managing the Risks and Energy and Climate were specifically
14 issued in exchange for the withdrawal of shareholder
15 resolutions concerning stranded assets and management of
16 climate change risks.

17 Indeed, representations far less specific than
18 Exxon's statement about the use of a proxy cost have been
19 found to be actionable in the shareholder voting context.

20 For example, the United Paperworkers case in the
21 Second Circuit that a company's long-standing commitment to
22 the protection of the environment, that it was a leader in
23 the environmental protection and so forth created an
24 impression that was entirely false.

25 These representations were considered material

1 regardless of the fact that being a leader in an
2 environmental protection wouldn't have been a specific line
3 item in the company's growth.

4 Now, returning to the facts of this case, the
5 evidence shows that Exxon's failure to apply the GHG proxy
6 costs publicly disclosed had significant effects on it's
7 business. Some of those effects, as Exxon acknowledges,
8 were on projects that have not yet been fully funded.

9 Exxon's process for evaluating it's unfunded
10 projects and deciding which ones to move through the
11 pipeline is an important aspect of it's business and
12 shouldn't be discounted.

13 But we've presented example after example from
14 Alberta, to Mobile Bay, to Beaumont Texas and then from
15 corporate planning to reserves estimates, to impairment
16 evaluations, which all show that considered as a whole
17 Exxon's misrepresentations had significant effects on it's
18 existing fully funded projects.

19 Again, starting with Alberta, Exxon showed your
20 Honor photos of Kearl and it's other enormous oil sands
21 projects.

22 Additionally, Rex Tillerson testified that during
23 his tenure, Exxon invested tens of billions of dollars in
24 Kearl alone and that these projects have significant
25 emissions.

1 Miss Bannister testified about the impact of
2 applying existing legislative cost at Cold Lake. Again,
3 another project that has been funded and is operational.

4 And then Mr. Iwanika testified about the impact of
5 these costs at Aspen, which is a project that hasn't yet
6 been fully funded, but Exxon has spent hundreds of millions
7 of dollars in advanced commitments.

8 Exxon's long-term GHG planning basis also
9 specifically impacted the annual corporate planning process
10 in Alberta. As Mr. Hoy wrote in his email and testified,
11 they needed to decide how to apply this 2020+ guidance to
12 the plan as it will have an impact on long-term Opex and
13 earnings. Only question was whether to apply the existing
14 costs or the escalating costs in the Dataguide. When Exxon
15 found that using the Dataguide costs, like massive costs,
16 again, they ripped up the insurance policy and decided to
17 apply the existing costs.

18 Now, another example which I will go through very
19 briefly is Exxon's chemical facility in Beaumont, Texas.
20 The evidence about Beaumont is from Exxon's letters and
21 interrogatories responses we read into the record. So
22 there's no dispute about the fact. They're going to show
23 that in 2016 Exxon invested nearly 850 million dollars into
24 a Beaumont expansion project and it did so without applying
25 the GHG planning basis to it's expected costs. Exxon

1 explained that it didn't apply those costs or even estimated
2 future emissions because existing law didn't require them to
3 do so.

4 Again, with this assumption, Exxon was making a
5 business as usual assumption that existing law will remain
6 frozen in place forever and that there's actually no need to
7 apply the GHG proxy cost to the projected cost regardless of
8 what's in the Dataguide, but more importantly regardless of
9 what's in the company's public disclosures.

10 Exxon's failure to apply the publicly disclosed GHG
11 proxy cost to it's cost projection also specifically
12 impacted the company's reserves and resource base estimates.
13 Those are important to investors because they represent the
14 oil and gas the company plans to develop in the future and
15 that's why Mr. Tillerson told a group of research analysts
16 that Exxon's resource base is the life and blood of the
17 company. And it's why Exxon disclosed the size of that
18 resource base at that meeting, and that's on the slide and
19 in numerous reports.

20 Now, Exxon's 11-f witness testified that Exxon's
21 resource base reserves are important because it's important
22 that a company know what it's inventory is. It is part of
23 the company's planning and budgeting process. And when it
24 comes to GHG proxy costs, Exxon told it's investors what
25 costs it believed governments will impose in the coming

1 decades, and as we went through with Ms. Bannister, those
2 are the costs Exxon's own costs company plan operating and
3 capital costs what Exxon was supposed to apply to it's
4 company reserves.

5 In evaluating company reserves in Alberta, Exxon
6 initially directed employees to use the publicly disclosed
7 cost assumptions for GHG emissions, but that caused warnings
8 of large write-downs as we've seen in the email from -- to
9 Miss Bannister. So inside Exxon applied existing
10 legislative costs instead of, in short, Exxon's company
11 reserves and resource based estimates are a key area where
12 ripping up the GHG proxy cost insurance policy had
13 significant consequences.

14 On top of that, Exxon chose to apply the costs on
15 the costs side had a specific affect on it's books and
16 records in the area of long-lived asset impairment. It's
17 undisputed that in it's impairment evaluations in 2015 and
18 earlier, Exxon did not include the GHG planning basis set
19 out in the Dataguide. Again, this was at a time when
20 investors were asking for information about Exxon's exposure
21 to the risk of stranded assets. Exxon told those investors,
22 such as in Managing the Risks, that due in part to its use
23 of a GHG proxy costs, the company didn't believe that any of
24 it's assets were stranded. Yet at the same time that Exxon
25 was telling it's investors that it didn't believe it's

1 assets were stranded, in part due to the use of the GHG
2 proxy costs, Exxon was not actually applying those costs
3 when evaluating whether it needed to write down it's assets
4 on it's books. That's really a fundamental contradiction of
5 the company's representations.

6 Further, as Dr. Bartov explained, GAAP accounting
7 rules which Exxon said it was following, required that a
8 company apply economic assumptions for impairment testing
9 that are reasonable in relation to the assumptions used
10 elsewhere in the business and stated to investors.

11 Dr. Bartov demonstrated that if Exxon had used
12 these costs in the 2015 recoverability testing at Mobile Bay
13 and it would have been subject to an impairment of 320 to
14 478 million dollars.

15 And then as the PwC, Mr. Auter testified that PwC
16 never analyzed whether or not Exxon's failure to include
17 these costs in it's cost projections, in it's 2015
18 impairment testing complied with GAAP. All PwC concluded,
19 as Mr. Auter testified, was that it was fine for Exxon to
20 include these costs in it's testing in 2016, which we have
21 no quarrel with.

22 Dr. Bartov was the only witness who actually
23 performed the relevant impairment analysis from Mobile Bay
24 for 2015 with the GHG proxy costs.

25 But at the end of the day, the question isn't

1 whether the impairment Exxon should have taken at Mobile Bay
2 in 2015 is material all on it's own. The point is it's just
3 one more example of Exxon's failure to apply it's GHG proxy
4 costs in the manner it represented to investors. On top of
5 the examples we have seen in Alberta, in Texas, across the
6 entire OECD before the alignment in 2014 and across the rest
7 of the world until 2016.

8 Investors expected Exxon to actually apply it's
9 proxy costs to its cost projections, not to find some reason
10 to cross off every possible example where those costs would
11 have been significant until eventually almost the whole
12 company is crossed off and that's because investors actually
13 care about how Exxon was managing the risks to climate
14 change. Considered as a whole the evidence shows that
15 Exxon's misleading representations were significant in light
16 of the total mix of information and were therefore material.

17 The fact is we still don't have a full accounting
18 of the impact of Exxon's failure to apply these costs as
19 represented. That's why as a relief we are seeking, among
20 other things, complete disclosures going back to 2014 and
21 supervised disclosures going forward for the next four
22 years.

23 Additionally, Dr. Bartov's event study, which we
24 have certainly not abandoned, demonstrates that when the
25 truth started to emerge Exxon's share price failed

1 significantly. The caselaw makes it clear, and we will
2 discuss it more in our post-trial memo, that news concerning
3 investigations can qualify as a corrective disclosure
4 because it signals to investors that there may be a
5 substantive problem. The cases also make clear that the
6 announcement of a new investigation by a different regulator
7 can lead investors to take a second look and can also
8 constitute a corrective disclosure.

9 In fact, Dr. Bartov and Dr. Ferrell agreed that for
10 one of the corrective disclosure dates using customary
11 close-to-close return window, there's a stock price decline
12 which can't be explained by any other reason with a 98
13 percent level of statistical certainty. And to provide
14 restitution to investors for the stock price impact that
15 Dr. Bartov scientifically calculated, we agree with
16 Dr. Ferrell, that a claims process would be the most
17 appropriate path forward.

18 Now, restitution and regular equitable relief would
19 be appropriate here because despite all the heated rhetoric
20 in this case, this is really a classic securities fraud
21 case. In essence, Exxon represented that it was protecting
22 the safety and the long-term value of its securities through
23 its use of GHG proxy cost. But in reality Exxon was not
24 ensuring that safety and security in the manner it led
25 investors to believe.

1 Now, the subject matter of the risk at issue here
2 is climate change, but it really could be any other kind of
3 risk and it would still be a classic securities fraud
4 pattern. The real impact of the fact that the risk here is
5 about climate change is that there's such a wealth of
6 evidence that this risk is material to investors. I would
7 submit that even the term material doesn't quite do it
8 justice. Climate change risk may well be the defining risk
9 for oil and gas companies like Exxon in the coming decades.

10 But still, as far as the Martin Act is concerned,
11 Exxon is free to assess the risks posed to it's business by
12 climate change regulation as it sees fit. Rex Tillerson and
13 Exxon's new CEO are free to assume for investment and
14 planning purposes that governments will ultimately back down
15 from imposing costs that will have a serious affect on the
16 cost of fuel industry and to assume that existing
17 legislative costs will be held flat into the future. If
18 Exxon wants to, in essence, rip up it's GHG proxy costs
19 insurance policy, they are free to do that.

20 All the Martin Act requires is that Exxon be honest
21 and not mislead it's investors. That's not too much to ask.
22 And, here, we've presented strong evidence that Exxon's
23 disclosures were misleading and that those disclosures were
24 material to investors.

25 (Continued on next page.)

1 That's falsity and materiality, which at the end of
2 the day, is what this case is all about.

3 Justice Ostrager, for your time and attention
4 today, over the course of this trial and throughout the
5 entire matter, we thank you very much.

6 THE COURT: All right. Prior to my complimenting
7 both sides on the quality of the advocacy of both sides,
8 their quality of the preparation of both sides and the
9 quality of the presentation that both sides made, I just
10 want to be sure I understand one fact. You do not dispute
11 that Exxon applied a proxy cost to its Canadian operations
12 as reflected in the map, correct?

13 MR. ZWEIG: We dispute that with respect to the
14 cost side. But we do not dispute, for purposes of its
15 demand projections around the world, Exxon applied a proxy
16 cost.

17 THE COURT: Okay. Yes.

18 MR. WELLS: Not done.

19 THE COURT: Yes. Mr. Wells.

20 MR. WELLS: I want to be heard on this.

21 THE COURT: I'm sorry?

22 MR. WELLS: I want to be heard on the issue of
23 they're stipulating that they are not advancing counts three
24 and counts four. That is common law fraud and equitable
25 fraud.

1 THE COURT: Why?

2 MR. WELLS: This is a very serious issue.

3 THE COURT: What more do you need from them, their
4 concession they are not pressing those claims?

5 MR. WELLS: Your Honor, we did not come to this
6 trial and try this case for two weeks to have them stand up
7 after the evidence has been presented and after I have given
8 my summation and stand up and say we are not pressing the
9 two claims that have caused in many respects the most severe
10 reputational harm to the company and to the executives.

11 THE COURT: Respectfully, the trial ended. You
12 didn't make a motion for judgment on those issues. I
13 inquired of the Office of the Attorney General whether they
14 were pressing those two claims, because it was on my mind.
15 They forthrightly stipulated those claims out of the case.
16 And I understand that there was a three plus year
17 investigation inquiring into the subject matter of those two
18 claims. And I understand that you came to this trial
19 prepared to dispute those claims. And at the conclusion of
20 the trial, for whatever reason, the Office of the Attorney
21 General has stipulated those claims out of the case. So,
22 I've saved you some briefing time.

23 MR. WELLS: Your Honor, I don't want -- I don't
24 want to save time. I think the operative phrase that
25 expresses my concerns is the one just made by you. That

1 they stipulated for whatever reasons. And that's the very
2 issue I am concerned about. Because without a judicial
3 ruling on the common law fraud that the evidence was
4 insufficient as presented to establish scienter or in the
5 equitable claim, reliance, they are going to be able to say
6 that no ruling was issued on those claims. That they just
7 dismissed those claims for strategic reasons. And the
8 company and its executives --

9 THE COURT: Look, they are dismissing those claims
10 with prejudice, okay. Today, this last two plus weeks of
11 trial was on the complaint that they filed. And if they
12 elected not to press those claims, they dismiss those
13 claims, and I'm dismissing them with prejudice.

14 MR. WELLS: It is not -- it is not just a dismissal
15 with prejudice. It is what you recognize. They are now in
16 a position to say there was no ruling on the -- or whether
17 the evidence was sufficient. And in essence Exxon and its
18 executives, who have been disparaged right up until the
19 present day, I can't tell you the text messages that the
20 company and its executives get about being criminals and
21 crooks based on the fraud claims and for them -- for us not
22 to have a ruling or stipulation where they recognize that
23 the evidence was insufficient on the elements of scienter
24 and reliance is inappropriate because they have brought the
25 case. We have tried the case. And they should not be able

1 to now say well, we just dismissed those claims for
2 strategic purposes. There was never any ruling.

3 THE COURT: It's not strategic. We had a trial.
4 And the trial was on the complaint. And they have
5 stipulated to the dismissal of those claims. So this was
6 their one opportunity to establish those claims in this
7 courtroom, and they have withdrawn those claims. So, I'm
8 operating on the premise that those claims are dismissed
9 with prejudice.

10 MR. WELLS: They are dismissed with prejudice, but
11 it permits them to say they dismissed them for strategic
12 purposes and that there was never any finding by your Honor
13 or stipulated statement by them that they dismissed them
14 because the evidence they presented was insufficient to
15 establish scienter or reliance. That's critically important
16 in terms of the reputations of the executives to say that
17 they tried the case and it was not proven as opposed to
18 dismissal with prejudice. There are very different concepts
19 involved. And these individuals in the company have a right
20 either to have a stipulation that concedes that the evidence
21 was insufficient and I'll -- I'll accept that, but to -- for
22 them to be able to say it was done for "strategic reasons".
23 And you know what, nobody ever ruled on whether Exxon
24 intentionally did something wrong. That's not fair after
25 two weeks of trial in the types of harm that they have done

1 to these individuals. I mean, the e-mails. And they should
2 have a right to say I went to trial to defend my reputation
3 and the evidence produced was insufficient. Not that they
4 made a strategic decision to dismiss the case. We have a
5 right to a stipulation that covers the information, I'm
6 sorry, that the evidence was insufficient or for judicial
7 findings. They just can't really torment the company and
8 the people for -- for three years, from day one
9 Mr. Snyderman was saying in the press this is a massive
10 fraud. Implying that the company was involved in
11 intentional misconduct. They charged the Potemkin village,
12 an illusion. That wasn't a Martin Act fraud. That was hard
13 core fraud.

14 THE COURT: That was a hard core fraud claim, and
15 they advanced a common law fraud claim that requires intent
16 and scienter. And they had their opportunity to prove it.
17 They elected to withdraw those claims, since this was their
18 one and only opportunity in this court to try the issues on
19 the complaint that was filed in this case. Their withdrawal
20 of those claims is obviously with prejudice.

21 MR. WELLS: I understand it's with prejudice, but I
22 want --

23 THE COURT: I'm not going to make findings of fact
24 with respect to a claim that they have withdrawn.

25 MR. WELLS: Your Honor, what I'm saying is, either

1 the stipulation should make clear that it's being withdrawn
2 because they failed to prove the claims.

3 THE COURT: A stipulation of discontinuance with
4 prejudice means that those allegations have been dismissed
5 with prejudice and cannot be refiled or repackaged by this
6 governmental agency in this court.

7 MR. WELLS: I understand what prejudice means.
8 What I am -- I am raising a different point, because they
9 can say with prejudice, but we did it for strategic purposes
10 and there was no ruling. They can still go out even in the
11 press and say well we removed it for strategic reasons.

12 THE COURT: Well, the press is here. They have
13 heard what I said. They have heard what you said. They
14 understand that these claims are no longer part of the case.

15 MR. WELLS: Your Honor, the executives who came to
16 court, some of whom were retired, didn't have to show up,
17 came here because they wanted to clear their reputations, I
18 submit have a right to either a stipulation that says there
19 was no intentional misconduct or a court ruling. They can't
20 put us through the whole trial, I submit, and then at the
21 last minute recognize they didn't prove the claims. And
22 then say I'm going to dismiss it. And that leaves both a
23 cloud over the reputations of the people. And, furthermore,
24 your Honor, we have got, because of this case, and it's all
25 connected, we have got copycat cases tracking this case word

1 for word in private federal securities cases, books and
2 records cases. Right before we started this trial, as you
3 know, the state of Massachusetts copied the claim word for
4 word. And we have a right, after trying the case, I submit,
5 to either a stipulation that says they didn't produce
6 evidence to support the claims and a dismissal with
7 prejudice.

8 THE COURT: I don't think they are going to give
9 you that stipulation.

10 MR. WELLS: Well, your Honor, that's why I either
11 want a judicial finding or I want the opportunity --

12 THE COURT: I can't rule on something that's not
13 before us.

14 MR. WALLACE: There wouldn't be a prejudicial
15 effect on a party that isn't here anyway. So, I don't see
16 what a finding -- In any event, your Honor, common law fraud
17 wasn't in his closing. It wasn't in his opening. It isn't
18 in their pretrial briefs. Common law fraud was part of the
19 complaint. We'll withdraw the claims with prejudice as you
20 have said. That is the legal outcome. I don't see why
21 we're continuing.

22 THE COURT: All right. Mr. Wallace, just so there
23 is no misunderstanding, you're withdrawing the fraud and the
24 common law fraud claims with prejudice?

25 MR. WALLACE: Correct.

1 THE COURT: All right. That's all I can do for
2 you, Mr. Wells.

3 MR. WELLS: Your Honor, I reserve the right to
4 raise the issue. I want to go see what the case law is and
5 we will be heard.

6 THE COURT: I'm sorry?

7 MR. WELLS: I want -- your Honor, I do not know,
8 'cause I have not researched the issue as I stand here, if
9 they have a right, after a full trial, after the case is
10 closed, to stand up. Having charged people with the most
11 egregious conduct. If they can stand up and just avoid a
12 judicial finding, because they didn't prove their case, I
13 want to research whether they can do that. I want to see
14 what the case law is. I don't know.

15 THE COURT: Look, you can make a post-trial motion.

16 MR. WELLS: Fine.

17 THE COURT: And they will respond to it. But I
18 want to end where I start. I think this case was prosecuted
19 and defended with the utmost professionalism. I thought the
20 quality of the advocacy, the quality of the preparation, the
21 quality of the presentations reflected well on the Office of
22 the Attorney General and reflected well on the
23 representatives of ExxonMobil.

24 It was a well tried case. You tried the case in a
25 shorter timeframe than was allotted. And everybody did the

1 best they could to give the Court information the Court
2 needs to resolve two counts of the complaint that remain in
3 the case.

4 MR. WELLS: And I appreciate the comments. And
5 nothing I have said is intended to show any disrespect to
6 the comments of the Court. But I want to go back to the
7 library, and I want to see what the case law is. And I
8 just -- I want the record to be clear. I think there is a
9 real issue about whether a regulator -- I'm being quite
10 candid. It's a very serious issue. It says they can track
11 us, harass the company for three years. That the company
12 can say, I want to stand on my right to a trial. That you
13 can go to trial. That the government's proofs on the most
14 serious counts can be insufficient and they can say at the
15 last minute, oh, never mind. No. No. I don't think that's
16 right. And I want to see what the case law is. I want to
17 reserve my position to research and brief the position.

18 THE COURT: You can preserve your position, and if
19 the law is that the Office of the Attorney General can't
20 withdraw two counts of its complaint at the conclusion of
21 the trial with prejudice, then I'll apply the law that says
22 they can't do that.

23 MR. WELLS: Fair enough. Nothing is waived. My
24 position is reserved. I'll go to the library and see what
25 the books say.

1 THE COURT: I don't think you're going to the
2 library.

3 MR. WELLS: Fair comment.

4 MR. WALLACE: Thank you your Honor.

5 THE COURT: Thank you all.

6 MR. ANDERSON: Thank you, your Honor.

7 THE COURT: Have a nice day. I do want to clarify
8 what we have agreed to with respect to post-trial
9 submissions, other than Mr. Wells' post-trial motion on the
10 last two counts of the complaint. I think you've agreed
11 that you're going to submit post-trial memos no more than 25
12 pages in ten days. Ten days turn out to be a Sunday. So,
13 4 o'clock the following Monday is when the post-trial briefs
14 are due. In addition, I have offered you the opportunity to
15 submit proposed findings of fact. If you wish to do so, I
16 don't want more than 15 proposed findings of fact from
17 either party. So that would also be due in ten days,
18 4 o'clock on the Monday after the expiration of ten days.

19 Again, thank you for the excellent presentations.
20 It's been a pleasure having you in the courtroom.

21 MR. WELLS: Thank you, your Honor.

22 MR. WALLACE: Thank you your Honor.

23 MR. ZWEIG: Thank you, your Honor.

24 ooOoo

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1 Certified to be a true and accurate transcript of the
2 above-captioned stenographic minutes.

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5 Lori Ann Sacco

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Official Court Reporter

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11 Certified to be a true and accurate transcript of the
12 above-captioned stenographic minutes.

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15 Lynnette Cruz

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Official Court Reporter

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