Exxon Mobil Begins Defense in Gas Additive Case

HOLLY RAMER,Associated Press

CONCORD, N.H. (AP) — A former Exxon Mobil engineer testified Monday that environmental hazards surrounding the gasoline additive MTBE were widely discussed in water quality and oil industry circles in the mid-1980s, contradicting the state of New Hampshire's allegations that the oil giant hid its concerns about the product.

Barbara Mickelson was the first witness as lawyers for Exxon Mobil Corp. began presenting their defense against the state's claim that it is owed hundreds of millions of dollars to clean up groundwater contamination caused by MTBE. Jurors had last week off after spending six weeks hearing the state's case, and the defense is expected to take just as long presenting its side.

New Hampshire filed its product liability lawsuit a decade ago against 26 oil companies and distributers, claiming that MTBE — methyl tertiary butyl ether — is a defective product because of its propensity to travel farther and faster and contaminate larger quantities of water than gasoline without additives. The state is seeking more than $700 million to test and monitor 250,000 private wells and clean up an estimated 5,600 contaminated sites, and so far has collected more than $120 million in settlement money.

Lawyers for Exxon Mobil, the only defendant that has not settled with the state, argue that MTBE did exactly what it was supposed to do — replace lead in gasoline and cut smog in compliance with the 1990 Clean Air Act. They opened their case by attempting to cast doubt on state witnesses who claimed to be surprised by memos Mickelson wrote describing environmental concerns about MTBE. Former Department of Environmental Services Commissioner Robert Varney testified earlier that he was shocked Exxon Mobil did not share Mickelson's findings with the state, but Mickelson said the information was widely available at the time.

Mickelson, who worked for Exxon from 1984 to 1987, described national conferences she attended along with other oil industry representatives, academic researchers, and state and federal regulators at which papers were presented about the environmental risks posed by MTBE. Though Exxon wasn't using MTBE at the time, other oil companies were, and they gave presentations about problems they had with gasoline leaks, she said. She also testified that she had discussed MTBE with Maryland officials and the federal Environmental Protection Agency. That was part of a joint investigation with Gulf Oil after gasoline containing MTBE leaked from a Gulf tank and mingled with non-MTBE gasoline from an Exxon tank at gas stations located next to each other.

Before the jury returned Monday, Exxon Mobil lawyers tried to win permission to expand Mickelson's testimony, but the state's lawyers objected, saying her testimony shouldn't be used to prove what the state knew or didn't know about

MTBE at the time. Noting that the judge already had ruled that Mickelson's testimony should be limited, attorney Jessica Grant said it was "grossly inappropriate" to continue arguing about it.

"At some point, they just have to live with it," she said.

But Exxon Mobil lawyer James Quinn countered that Mickelson should be allowed to explain that MTBE concerns were publicly discussed, given that the state has "made this whole case about us hiding things from people," and has maintained that state officials were shocked at Mickelson's memos.

"We need to respond to it. Fair is fair," he said.

While other lawsuits have been brought by municipalities, water districts or individual well owners, New Hampshire is the only state to have reached the trial stage in a lawsuit over MTBE. Most cases filed in the past decade have ended in settlements. New York City in 2009 won a $106 million federal jury verdict against Exxon Mobil for MTBE contamination of city wells; that verdict has been appealed.

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