Jury Orders Exxon Mobil To Pay $236M in Contamination Case

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CONCORD, N.H. (AP) — An order for Exxon Mobil to pay $236 million in damages for groundwater contamination is by far the largest verdict in state history but represents only about two days' worth of profit for the energy company, an industry analyst said.

Fadel Gheit, managing director of oil and gas research and a senior analyst at Oppenheimer & Co., said the verdict won't put a dent in Exxon Mobil's bottom line.

"Exxon will probably make close to a $40 billion profit this year," Gheit said. "That's two days' work."

He said it's no surprise that Exxon Mobil would take the state's 10-year-old contamination lawsuit to trial, saying the company "will make you sweat for every dollar you think you're going to get." Company leaders view it as a matter of principle, he said.

The jurors reached their verdict against the Irving, Texas-based energy company in less than 90 minutes after sitting through nearly three months of testimony. Lawyers on both sides were stunned by the speed with which they reached the verdict on liability and even more stunned when they took barely 20 minutes more to fill out the damages verdict.

Juror Dawn Booker, of Pembroke, said all 12 jurors felt "very, very confident about our decision."

"It was just cut and dry," Booker said. "We all pretty much had our own decision before we went in there."

Although the state's burden of proof was a preponderance of the evidence, or 51 percent, as the judge explained, Booker said it was "way more than 51 percent for New Hampshire."

Lawyers for Exxon Mobil Corp. say they will appeal and file motions that could land the case back to the courtroom before month's end. A motion to set aside the verdict is common in civil liability cases.

Exxon Mobil lawyer David Lender said "erroneous rulings" prevented the jurors from hearing all the evidence and deprived the company of a fair trial.

"We have strong legal and factual arguments to make on appeal," he said.

Attorney General Michael Delaney called the verdict and award "historic" and said the state will vigorously defend them on appeal.

The panel awarded the state all $236 million it was seeking from Exxon Mobil to monitor and remediate groundwater contaminated by MTBE, a chemical added to gasoline to reduce smog but found to travel farther and faster in groundwater than gasoline without the additive. A teaspoon, experts testified, can cause widespread contamination.

The verdict is more than twice the $105 million jurors awarded the New York City Water District in 2009 in its case against Exxon Mobil over MTBE contamination. That case is on appeal.

California law firm Sher Leff, which won the New York City verdict, was hired by New Hampshire near the outset of its 2003 lawsuit to try its case against Exxon Mobil.

Jurors found that Exxon Mobil was negligent in adding MTBE to its gasoline and that MTBE was a defective product. They also found Exxon Mobil liable for failing to warn distributors and consumers about its contaminating characteristics.

The jury found damages in the amount of $816 million, but that award was reduced to 28.9 percent of the total, reflecting Exxon's market share of gasoline sold in the state between 1988 and 2005.

Lawyers for Exxon Mobil argued the company used MTBE to meet federal Clean Air Act mandates to reduce air pollution and should not be held liable for sites contaminated by other retail businesses.

Exxon Mobil was the sole remaining defendant of the 26 the state sued in 2003. Citgo was a co-defendant when the trial began in January, but it began settlement negotiations with the state and withdrew from the trial. Citgo ultimately settled for $16 million, bringing the total the state has collected in MTBE settlement money to $136 million.

Attorney Matt Pawa, of the Pawa Law Group in Boston, has been involved in the case from the start and brought in the Sher Leff firm. He said perseverance paid off.

"When you seek justice against one of the world's biggest corporations, you have to stick it out for the long haul," he said.

Jurors had more than 400 exhibits to sift through, including memos and reports dating back decades. Those memos included some in which Exxon Mobil researchers warned against using MTBE gasoline because of the extensive harm it can do to groundwater.

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