



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

BARBARA D. UNDERWOOD
ATTORNEY GENERAL

October 24, 2018

The Honorable Barry R. Ostrager
Supreme Court, New York County
60 Centre Street, Room 232
New York, NY 10007

Re: *State of New York v. Exxon Mobil Corporation*, Index No. 452044/2018
State of New York v. PricewaterhouseCoopers, LLP and Exxon Mobil Corporation,
Index No. 451962/2016

Dear Justice Ostrager:

We write to inform Your Honor that the Office of the Attorney General (“OAG”) filed a summons and complaint against Exxon Mobil Corporation (“Exxon”) today in the Commercial Division of the Supreme Court, New York County. The Complaint alleges securities fraud by Exxon in connection with alleged false and misleading representations to investors concerning the company’s climate change risk management practices during the period from 2007 to the present. The complaint alleges statutory and common law securities fraud claims, and requests injunctive relief, damages, disgorgement, restitution, and all other and further relief as is appropriate.

We contemporaneously filed a Request for Judicial Intervention (“RJI”) requesting a Preliminary Conference to effectuate the assignment of the action to a Justice presiding in the Commercial Division. Although the new action is materially different from the investigatory subpoena enforcement proceeding (No. 451962/2016) in substance, scope, named parties, and requested relief, we have designated the two matters as related cases on the RJI. We understand that under the IAS assignment system, the new action will likely be assigned to Your Honor.

However, in light of Your Honor’s ownership of Exxon stock as recently as 2017, we respectfully request that Your Honor decline to preside over this action and return the assignment, if made, to the Clerk for random assignment to another Justice of the Commercial Division of the Court. Canon 3 of the Code of Judicial Conduct, as adopted in New York, provides that a “judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where . . . the judge knows that he or she, individually or as a fiduciary . . . has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding.” 22 NYCRR § 100.3(E)(1)(c). See Judiciary Law § 14 (a “judge shall not sit as such in . . . an action . . . in which he is interested”). A Justice who is an Exxon

Page 2

shareholder, or was an Exxon shareholder during the period in question, would have economic interests in both the subject matter in controversy and in the party defendant.

Lastly, with the filing of the securities fraud action, the subpoena enforcement proceeding under Index No. 451962/2016 should be closed. If there is no objection by Exxon, we will prepare and submit a stipulation discontinuing that proceeding. If Exxon objects, OAG intends to request the entry of a judgment terminating the proceeding.

We appreciate Your Honor's consideration of this submission.

Respectfully submitted,

BARBARA D. UNDERWOOD
Attorney General of the State of New York

By: 
Jonathan Zweig
Assistant Attorney General
Investor Protection Bureau
(212) 416-8954
jonathan.zweig@ag.ny.gov

Office of the Attorney General
28 Liberty Street
New York, New York 10005

Encls:

Complaint and RJI, *State of New York v. Exxon Mobil Corporation*, Index No. 452044/2018

Carbon copy, with enclosures, by electronic mail:

Theodore Wells Jr., Daniel J. Toal
twells@paulweiss.com, dtoal@paulweiss.com
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Counsel for Exxon Mobil Corporation