

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,
By BARBARA D. UNDERWOOD,
Attorney General of the State of New York,

Plaintiff,

– against –

EXXON MOBIL CORPORATION,

Defendant.

Index No. 452044/2018

IAS Part 61
Hon. Barry R. Ostrager

Motion Sequence No. 1

**AFFIRMATION OF
JONATHAN ZWEIG IN
SUPPORT OF PLAINTIFF’S
MOTION REQUESTING
JUDICIAL
DISQUALIFICATION**

JONATHAN ZWEIG, under penalty of perjury, affirms:

1. I am an Assistant Attorney General in the Office of the Attorney General of the State of New York (“OAG”), counsel for petitioner. I make this affirmation in support of OAG’s motion requesting that the Court return the action to the Clerk for reassignment based on the Court’s disqualification from presiding over this fraud action pursuant to N.Y. Judiciary Law § 14 and 22 NYCRR §§ 100.2 and 100.3(E). I am familiar with the facts and circumstances set forth herein.

2. OAG files this motion to preserve its right to appeal under the New York Civil Practice Law and Rules. OAG incorporates by reference the attached letters.

3. OAG has concluded its investigation of Exxon Mobil Corporation (“Exxon”) in connection with Exxon’s representations relating to climate change regulatory risk and its management of such risk. In the course of that investigation, OAG commenced a subpoena

enforcement proceeding by order to show cause that was assigned to this Court in *People of the State of New York v. PricewaterhouseCoopers, LLP and Exxon Mobil Corporation*, Index No. 451962/2016.

4. On October 24, 2018, OAG initiated the present fraud action against Exxon by filing a summons and complaint. Attached as Exhibit 1 is a true and correct copy of OAG's summons and complaint.

5. In an abundance of caution, OAG designated the subpoena enforcement proceeding as related on the Request for Judicial Intervention in this fraud proceeding, even though the two cases differ in substance, scope, named parties, and requested relief. Attached as Exhibit 2 is a true and correct copy of the Request for Judicial Intervention.

6. On October 24, 2018, OAG delivered to the Court a letter requesting that the Court, if assigned this case as a related case to the subpoena enforcement action, return the action to the Clerk for reassignment, on the basis of the Court's ownership of Exxon stock. Attached as Exhibit 3 is a true and correct copy of this letter.

7. New York Judiciary Law § 14 provides: "A judge shall not sit as such in . . . an action . . . in which he is interested[.]" Further, 22 NYCRR § 100.3(E)(1) provides that "a judge shall disqualify himself or herself" when the judge "has an economic interest in the subject matter in controversy or in a party to the proceeding," and 22 NYCRR § 100.2 provides that "[a] judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities[.]"

8. Later in the day on October 24, 2018, Exxon filed a letter contending that OAG waived this conflict, and that the Court should continue to preside over this case. Attached as Exhibit 4 is a true and correct copy of this letter.

9. On October 25, 2018, the Court issued a Notice that invited OAG to respond to Exxon's letter, particularly on the issue of whether there was a "knowing and express waiver." Attached as Exhibit 5 is a true and correct copy of this Notice.

10. On October 29, 2018, pursuant to the Court's Notice, OAG filed a letter contending that the Court should disqualify itself from presiding over this fraud action, and that no waiver occurred with respect to this action. Attached as Exhibit 6 is a true and correct copy of this letter.

11. On October 30, 2018, Exxon filed another letter contending that OAG waived this conflict, and that the Court should continue to preside over this case. Attached as Exhibit 7 is a true and correct copy of this letter.

12. On October 31, 2018, the Court issued a second Notice that requested certain information from the parties concerning the subpoena enforcement proceeding in OAG's now-concluded investigation. Attached as Exhibit 8 is a true and correct copy of this Notice.

13. On November 2, 2018, OAG filed a letter on behalf of both parties in response to the Court's Notice providing the information requested by the Court. Attached as Exhibit 9 is a true and correct copy of this letter.

14. For the reasons set forth in the correspondence referenced above and attached to this affirmation, OAG respectfully requests that the Court return the action to the Clerk for reassignment based on the Court's disqualification from presiding over this fraud action pursuant to N.Y. Judiciary Law § 14 and 22 NYCRR §§ 100.2 and 100.3(E), because of its ownership of Exxon stock.

15. As set forth in the attached correspondence, no waiver of that conflict occurred with respect to this action. Among other reasons supporting this conclusion, OAG's waiver in

the subpoena enforcement proceeding was expressly limited to the case that was pending before this Court at that time, which did not include this fraud action.

16. OAG appreciates the time and attention that this Court expended during the subpoena enforcement proceeding. However, in light of specific allegations in OAG's complaint, the Court's ownership of Exxon shares may give rise to an appearance of partiality to an outside observer.

17. For all of the reasons set forth herein, OAG therefore respectfully requests that the Court disqualify itself from presiding over this fraud action, and return the action to the Clerk for reassignment.

Dated: November 2, 2018
New York, New York



Jonathan Zweig