

1 SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK : CIVIL TERM PART 61  
 2 -----X  
 3 PEOPLE OF THE STATE OF NEW YORK,  
 By BARBARA D. UNDERWOOD,  
 4 Attorney General of the State of New York,  
 Plaintiff,  
 5  
 - against -  
 6 EXXON MOBIL CORPORATION,  
 Defendant.  
 7 -----X  
 8 INDEX NO. 452044/18 60 Centre Street  
 New York, New York  
 November 7, 2018

9 BEFORE:  
 10 THE HON. BARRY R. OSTRAGER, J.S.C.

11  
 12 APPEARANCES:

13 FOR THE PLAINTIFF:

14 BARABARA D. UNDERWOOD  
 STATE OF NEW YORK  
 15 Office of the Attorney General  
 28 Liberty Street  
 16 New York, New York 10005  
 BY: MANISHA M. SHETH, Executive Deputy AG  
 17 JONATHAN ZWEIG, Assistant AG  
 RITA BURGHARDT McDONOUGH, Assistant AG  
 18

19 FOR THE DEFENDANT:

20 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
 1285 Avenue of the Americas  
 21 New York, New York 10019  
 BY: THEODORE V. WELLS, JR., ESQ.  
 22 DANIEL J. TOAL, ESQ.

23  
 24  
 25 JACK L. MORELLI  
 Senior Court Reporter

## PROCEEDINGS

1 THE COURT: All right, in the Exxon case. Let  
2 me preface my remarks this afternoon by noting that  
3 although there are seven justices of the Commercial  
4 Division, at this time and for a significant period of  
5 time prior to today, only five justices of the Commercial  
6 Division are in the wheel, including me. None of the  
7 other four justices to whom this case could conceivably be  
8 assigned have presided over seven hearings in proceedings  
9 that generated 434 docket entries. None of the other four  
10 justices read almost 500 pages of pretrial submissions or  
11 investigation related submissions that the parties made to  
12 the Court, which resulted in the Court supervising the  
13 production of a half million documents by Exxon Mobil to  
14 the New York AG.

15 So, against that background I have a very  
16 elegant solution to the New York Attorney General's  
17 problems. I am prepared to liquidate all holdings that I  
18 have in Exxon Mobil by the time the sun goes down  
19 tomorrow, assuming that the New York Attorney General has  
20 no further concerns about the Court's impartiality and no  
21 further concerns about the propriety of proceeding with  
22 this case in accordance with the general schedule that I  
23 outlined to the parties, with no objection whatsoever from  
24 the New York Attorney General's office last August.

25 I'll hear from the New York Attorney General's

- J L M -

## PROCEEDINGS

1 office.

2 MS. SHETH: Your Honor, thank you for that  
3 proposed solution. Manisha Sheth, on behalf of the Office  
4 of the Attorney General. Let me begin by saying that we  
5 fully appreciate all the care, the time and the attention  
6 that Your Honor has been --

7 THE COURT: I don't want any reference to the  
8 historic efforts that I invested in this case. I've told  
9 you that I'm prepared to divest all of my holdings in  
10 Exxon Mobil by the close of business tomorrow. Even  
11 though under well-settled principles of law I have no  
12 obligation to do so.

13 So I'm simply asking you, yes or no, is that  
14 satisfactory to the New York Attorney General's office?

15 MS. SHETH: Your Honor, we appreciate --

16 THE COURT: Yes or no.

17 MS. SHETH: Your Honor, I don't believe it's a  
18 yes or no. I can't answer that yes or no at this time  
19 because I don't have enough --

20 THE COURT: What would prevent you from  
21 answering that question yes or no? You appeared before me  
22 seven times. You were told last August that we were going  
23 to trial in 2019. You caused me to make Exxon Mobil  
24 produce a half million documents. You caused me to read  
25 close to 500 pages of briefs, not to mention a number of

- J L M -

## PROCEEDINGS

1 affidavits. You completely waived any conflict associated  
2 with my ownership of Exxon Mobil stock expressly the first  
3 day that you appeared before me and each time that you  
4 came back to appear before me.

5 MS. SHETH: Your Honor, respectfully, we don't  
6 believe that we have waived. The reason I can't answer  
7 your question yes or no is because the rules provide for  
8 two economic interests. The first is the interests in the  
9 party. Your Honor is telling us that you're prepared to  
10 sell Your Honor's interest in the party. That resolves  
11 one portion of the economic interest in the --

12 THE COURT: Yes, and there are myriad cases that  
13 say that the conflict that you waived, which isn't a  
14 conflict any more anyway, can be cured by divestiture. So  
15 what's the second point that you have?

16 MS. SHETH: The second point is that there is a  
17 second economic interest and that is the interest of the  
18 Court in the subject matter in controversy. So although  
19 that Your Honor may disavow, may get rid of the Exxon  
20 stock, what we don't know if Your Honor held the stock  
21 during a time period when we would allege that the stock  
22 price was inflated. If that is the case, see, if Your  
23 Honor purchased the stock during the relevant time period  
24 of the alleged scheme which goes from 2000 to the present,  
25 that Your Honor still could be part of the class of

- J L M -

## PROCEEDINGS

1 individuals who would recover, who would benefit from any  
2 recovery. So that's the part where I don't --

3 THE COURT: This is patent nonsense and I'm not  
4 going to abide it.

5 Do you have anything to say, Mr. Wells?

6 MR. WELLS: No, Your Honor. But I assume if  
7 this is not too intrusive and to the extent the New York  
8 AG has some concern that in theory you might be part of  
9 some class even though you sell, and to the extent that  
10 you were part of some class, I assume that you would  
11 relinquish any --

12 THE COURT: I relinquish any interest I have  
13 whatsoever.

14 MR. WELLS: Future or past.

15 THE COURT: From this time the sun goes down  
16 tomorrow in perpetuity.

17 MR. WELLS: Or in the past. That seems to be  
18 what she's talking about.

19 THE COURT: Is that what you're talking about?

20 MS. SHETH: That is what I'm talking about.

21 THE COURT: If there is a class action and by  
22 virtue of my historic holdings I am entitled to collect 33  
23 cents, I'm going to not collect the 33 cents. Is that  
24 satisfactory to the New York Attorney General?

25 MS. SHETH: Your Honor, the way that we read the

- J L M -

## PROCEEDINGS

1 rule is, that Rule 100.3, E sub (1) sub (23) provides  
2 security of divestment is available where the judge has an  
3 economic interest in the party. But the rule is cited  
4 when the interest is in the subject matter of the  
5 controversy.

6 THE COURT: I have no interest in the subject  
7 matter of the controversy. We are dealing with a  
8 situation in which you expressly waived my presiding over  
9 the case even if I continue to hold the stock. Now, this  
10 is gamesmanship and judge shopping and I'm not going to  
11 abide it.

12 MS. SHETH: Your Honor, what I was going to  
13 finish saying was, that the rule is silent as to the  
14 economic interest in the subject matter of the proceeding.

15 That being said, if Your Honor is, we are  
16 willing to consider that. I think that we need to get --

17 THE COURT: I'm not interested in what you're  
18 willing to consider. Your motion to disqualify me is  
19 denied. Even though the Court has no obligation  
20 whatsoever to divest itself of Exxon Mobil shares because  
21 you waived my holding in Exxon Mobil, I'm going to divest  
22 myself in all interests in Exxon Mobil from tomorrow to  
23 the end of time. Understood?

24 MS. SHETH: We understand, Your Honor.

25 THE COURT: Then you can take this to the

- J L M -

## PROCEEDINGS

1 Appellate Division. I would like to see an opinion  
2 finding that after your waive and after my voluntary  
3 undertaking to divest myself of shares I do not have to  
4 divest myself because you waived my holding this stock,  
5 you're still quibbling.

6 MS. SHETH: Your Honor, with respect, we are not  
7 quibbling. We don't submit, we don't agree that our  
8 waiver was a waiver as to all cases. There is a  
9 distinction between the case that was to be an enforcement  
10 proceeding and the instant plenary action; they are not  
11 the same.

12 THE COURT: I don't know what you're talking  
13 about and I don't think that anybody in this room does  
14 either. You waived my involvement in this case after I  
15 disclosed to you the first 30 seconds the case was before  
16 me.

17 MS. SHETH: I'm sorry, Your Honor. Go ahead.

18 THE COURT: And I presided over seven different  
19 hearings without objection. I told you in August that  
20 when the case ceases to be an enforcement proceeding and  
21 seeks to be a formal complaint I will give you a 2019  
22 trial. That is what I'm going to do. You'll meet with my  
23 court attorney and you will work out a preliminary  
24 conference order. Your motion to disqualify me is denied  
25 and you have an appealable order. I will divest myself of

- J L M -

## PROCEEDINGS

1 any Exxon Mobil shares that I beneficially own.

2 MS. SHETH: May we?

3 THE COURT: I'm sorry?

4 MS. SHETH: May we take a five minute recess so  
5 I can just consult with my colleagues?

6 THE COURT: Yes.

7 MS. SHETH: Thank you, Your Honor.

8 (Short recess taken)

9 MS. SHETH: Thank you for Your Honor's  
10 indulgence. I wanted to answer more directly Your Honor's  
11 question. Assuming that Your Honor divest Your Honor's  
12 shares in Exxon as well as any interest in the proceeding  
13 in this instant plenary filed action against Exxon, the  
14 AG's office is prepared to proceed with Your Honor as the  
15 trial court judge and we do not intend to seek an appeal  
16 of Your Honor's ruling.

17 THE COURT: All right, thank you.

18 MS. SHETH: Then in addition with regard to --

19 THE COURT: I'm sorry?

20 MS. SHETH: With regard to our proceeding in  
21 this action, we would propose that we contact the defense  
22 counsel, work out a schedule for the pretrial phase of  
23 this case and approach Your Honor at the appropriate time  
24 with the preliminary conference.

25 THE COURT: All right, that is satisfactory to

- J L M -



## PROCEEDINGS

1 the Court. It is my intention for the benefit of the  
2 People of the State of New York, for the New York Attorney  
3 General to have a trial of this action in 2019.

4 Yes, Mr. Wells?

5 MR. WELLS: There is a reference just now to the  
6 pretrial conference. I know that we have a date on the  
7 calendar to appear before Your Honor on November 14th. Is  
8 that the date that you were referring to?

9 MS. SHETH: That would be fine with the AG.

10 MR. WELLS: I just want to know is November 14th  
11 still on? That date is fine.

12 THE COURT: If you can work things out with the  
13 Attorney General's office between now and the 14th, we'll  
14 proceed on the 14th. If you can't work things out between  
15 now and the 14th you'll let the Court know and we'll have  
16 a different date before the end of 2018.

17 MR. WELLS: Okay. I would suggest, Your Honor,  
18 that we hold the appearance for November 14th regardless  
19 of whether we're able to work out every point.

20 THE COURT: There is no point of you coming here  
21 on the 14th if you haven't agreed on how you wish to  
22 proceed. Unless there is an issue that requires guidance  
23 from the Court. But as I recall, the New York Attorney  
24 General's office has taken pretrial examinations of at  
25 least 19 custodians of documents. Has reviewed something

- J L M -

## PROCEEDINGS

1 on the order of a half million documents in connection  
2 with its investigation into this matter. So I assume that  
3 the New York Attorney General is in a position to work  
4 with you on a meet and confer basis, a targeted schedule  
5 that will get this case ready for trial by the end of  
6 2019.

7 MR. WELLS: Your Honor, first, Exxon Mobil wants  
8 to try the case in 2019 and we are delighted that you're  
9 going to move the case. What I'm concerned about and I  
10 think that the New York AG may have the same concerns in  
11 order to get the case trial ready for 2019, if we are not  
12 able to reach agreement on the meet and confer, I would  
13 prefer that we not start a whole motion schedule around  
14 that we can't agree to, but come here on November 14th.

15 THE COURT: All right, you'll come back here on  
16 November 14th. But between now and November 14th I'm  
17 requesting in the most polite and emphatic terms, that you  
18 use the week to accomplish something constructive.

19 MR. WELLS: I promise. I think that it will  
20 help both sides, I think that it will help both sides if  
21 we have a date where we have to come back here if we have  
22 not been able to get there. I promise we're going to work  
23 out to come back with an expedited trial schedule.

24 THE COURT: If anything comes back between now  
25 and then you demonstrated in the past you know how to

- J L M -

PROCEEDINGS

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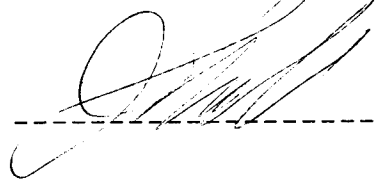
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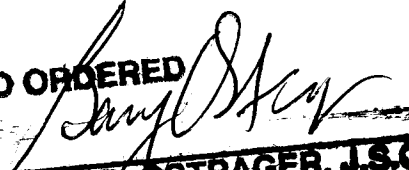
MR. WELLS: Yes, Your Honor. Thank you.

MS. SHETH: Thank you.

\* \* \*

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT.

  
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JACK L. MORELLI, CM, CSR

**SO ORDERED**  
  
**BARRY R. OSTRAGER, J.S.C.**

- J L M -