

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

EXXONMOBIL CORPORATION,

Defendant.

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INDEX NO. 452044/2018

MOTION DATE 01/15/2020

MOTION SEQ. NO. 010

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 010) 572, 573, 574, 575, 579, 580, 581, 582, 584, 585, 586, 587, 588, 592, 593, 594

were read on this motion to/for LEAVE TO INTERVENE

HON. BARRY R. OSTRAGER:

The motion by Energy Policy Advocates and its Board member Robert Schilling to intervene in this closed case for the purpose of gaining access to limited redactions in five publicly filed documents is denied. The cross-motion by Mathew Pawa to submit an amicus curiae brief opposing intervention is also denied, as the Office of the Attorney General has more than adequately opposed the motion.

The movants rely on CPLR 1013, which is a statute allowing permissive intervention in the discretion of the Court. The redactions at issue are contained in documents submitted by ExxonMobil and were presented to the Court primarily in connection with opposing a successful motion by the Office of the New York Attorney General in June 2019 to dismiss certain affirmative defenses asserted by ExxonMobil. The Office of the Attorney General successfully sought to maintain the filings on the public docket with limited redactions of information no longer relevant to the case (see NYSCEF Doc. Nos. 236 and 237). The oral argument on the

motion was held in open court and was transcribed, and the case was extensively reported upon in the press. The information sought by the motion to intervene is substantially reflected in the publicly available transcript of the oral argument which was e-filed (see NYSCEF Doc. No. 240). The courtroom was open to the public and the press throughout the proceedings, and the trial and the oral argument on the motions to dismiss and seal were well attended.

The nature and scope of the affirmative defenses that were dismissed are fully memorialized in ExxonMobil's original Answer, which was e-filed with no redactions and is a matter of public record (NYSCEF Doc. No. 240). The Amended Answer which is one of the five documents at issue in this motion is a 50-page document that also was publicly e-filed with the exception of 29 lines that were redacted (see NYSCEF Doc. No. 241). Two of the other documents at issue here were demonstratives used by ExxonMobil during the oral argument on the motion, which were publicly filed with very limited redactions, but which did not have to be publicly e-filed (NYSCEF Doc. Nos. 235 and 236). The contents of those demonstratives were largely disclosed during oral argument and reflected in the publicly filed transcript of proceedings. The remaining two documents are a letter to the Court and a memorandum of law submitted by ExxonMobil related to the motion, and both were e-filed with only minimal redactions (NYSCEF Doc. Nos. 142 and 144). In sum, none of the documents at issue in this motion are entirely sealed, and they were all publicly discussed and available with the exception of minor redactions.

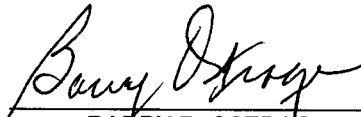
It is no secret that Matthew Pawa was in contact with the Office of the Attorney General prior to the filing by the Office of the Attorney General of the Martin Act securities fraud case against ExxonMobil, and it is information about those communications that the movants seek to review. But the movants acknowledge that they have already obtained substantial information

concerning those communications from various sources. What is more, the movant has not demonstrated a sufficient interest in the merits of the underlying securities fraud case or common issues of law or fact warranting the Court’s exercise of discretion permitting intervention in this disposed case pursuant to CPLR 1013. Nor has an adequate reason been offered for the movants’ delay in asking this Court to revisit issues determined in June of 2019.

In sum, this is a closed case that was resolved against the Office of the Attorney General after a lengthy trial discussed in detail in the Court’s decision dated December 10, 2019 (NYSCEF Doc. No. 567). After reviewing extensive papers submitted on this motion and cross-motion by all interested parties, the Court specifically finds that the limited redactions do not in any way undermine the important public policy assuring that judicial proceedings be open and transparent. Neither the interests of the public nor the movants are prejudiced by this decision.

Accordingly, both the motion to intervene and the cross-motion to submit an *amicus curiae* brief are denied in their entirety. The Court finds oral argument unnecessary, as all parties were given a full and fair opportunity to be heard in their papers. Therefore, the appearance previously scheduled for March 12, 2020 is cancelled in favor of an expeditious final determination of this dispute.

2/27/2020
DATE


BARRY R. OSTRAGER, J.S.C.
BARRY R. OSTRAGER
JSQ

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE