

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,

Plaintiff,

v.

MAURA TRACY HEALEY, Attorney
General of Massachusetts, in her official
capacity,

Defendant.

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NO. 4:16-CV-469-K

MOTION TO EXPEDITE

**PLAINTIFF’S MOTION TO EXPEDITE BRIEFING AND CONSIDERATION OF
ITS MOTION FOR LEAVE TO AMEND AND BRIEF IN SUPPORT**

Plaintiff Exxon Mobil Corporation (“ExxonMobil”) hereby moves the Court to (i) accelerate the filing deadline for Defendant Healey’s opposition to ExxonMobil’s Motion for Leave to File a First Amended Complaint (Doc. 74) to a period less than twenty-one days from October 17, 2016, the date the motion was filed; and (ii) expedite its consideration and ruling on ExxonMobil’s motion for leave to amend.

Brief in Support of Expedited Consideration

On October 13, 2016, the Court issued an Order (Doc. 73) noting that it had under advisement Plaintiff’s Motion For Preliminary Injunction (Doc. 8) and Defendant’s Motion to Dismiss (Doc. 41). The Court’s Order stated that it wanted “jurisdictional discovery [to] be conducted.” (Doc. 73 at 2.) Specifically, the Court directed “that jurisdictional discovery by both parties be permitted to aid the Court.” (*Id.* at 6.) The Court’s Order also referred to the March 29, 2016 AGs United for Clean Power Press

Conference including comments made at that conference by New York Attorney General Eric Schneiderman. (*Id.* at 4–5.) Finally, the Court’s Order noted that Plaintiff’s allegations concerning the press conference, the comments made by the participants, and specifically, Defendant Healey’s comments, “if true, may constitute bad faith in issuing the CID which would preclude *Younger* abstention.” (*Id.* at 6.)

On October 17, 2016, Plaintiff filed a motion seeking leave from the Court to file its First Amended Complaint. (Doc. 74.) The purpose of the proposed First Amended Complaint is to join Attorney General Schneiderman as a Defendant and to add new claims for federal preemption and for conspiracy to deprive ExxonMobil of its constitutional rights. (Doc. 75 at 4.) The record of collaboration between Attorneys General Healey and Schneiderman in committing the offenses alleged in the proposed First Amended Complaint (*see, e.g.*, Doc. 75 at 6) is one of the principal reasons for amending the Complaint. Their collaboration has also extended to this litigation. As the Court knows, Attorney General Schneiderman was one of the twenty “amici” who submitted an amicus filing in support of Defendant Healey’s motions to dismiss, in which the amici urged this Court to abstain under *Younger*. (Doc. 54 at 16.)

In light of Attorney General Schneiderman’s previous invocation of *Younger* and his close collaboration with Defendant Healey, ExxonMobil believes it is likely that, if the Court grants leave for the filing of its First Amended Complaint, Attorney General Schneiderman will file a motion to dismiss on the same grounds, including *Younger* abstention, that have been raised by Defendant Healey. Such a mirror-image motion

would require the same “jurisdictional discovery” that this Court has ruled is necessary to resolve Defendant Healey’s motion to dismiss.

ExxonMobil wishes to move forward with its claims expeditiously, both against Defendant Healey and proposed Defendant Schneiderman. In the interest of judicial economy, as well as conserving the parties’ resources, ExxonMobil respectfully submits that the court-ordered jurisdictional discovery should occur promptly, but only once. Therefore, the sooner it is determined that Attorney General Schneiderman is to be formally made a party to this case, the sooner ExxonMobil, Defendant Healey, and proposed Defendant Schneiderman can move forward and complete all necessary discovery on common jurisdictional questions.

Conclusion

Plaintiff ExxonMobil therefore respectfully requests that the Court exercise its discretion to accelerate the deadline for Defendant Healey to file her opposition to ExxonMobil’s motion for leave to amend and that the Court expedite its consideration and ruling on the motion for leave to amend.

Dated: October 19, 2016

EXXON MOBIL CORPORATION

By: /s/ Patrick J. Conlon

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CERTIFICATE OF CONFERENCE

I certify that on October 19, 2016 I spoke by telephone with Richard Kamprath, one of Defendant's lawyers, and explained the relief to be sought in the foregoing motion and the basis for it. Mr. Kamprath advised that Defendant is opposed to any expedited consideration of Plaintiff's motion for leave to file the proposed First Amended Complaint.

/s/Ralph H. Duggins
RALPH H. DUGGINS

CERTIFICATE OF SERVICE

This is to certify that on this 19th day of October, 2016, a true and correct copy of the foregoing document was filed electronically via the CM/ECF system, which gave notice to all counsel of record pursuant to Local Rule 5.1(d).

/s/Ralph H. Duggins
RALPH H. DUGGINS