

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART - 61

-----X

In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN,  
Attorney General of the State of New York,

Petitioner

INDEX NUMBER:  
451962/2016

For an order pursuant to CPLR 2308(b) to compel  
Compliance with a subpoena issued by the Attorney General,

-against-

PRICEWATERHOUSECOOPERS, LLP and EXXON MOBIL CORPORATION

Respondents

-----X

60 Centre Street  
New York, New York 10007  
November 21, 2016

BEFORE:

HONORABLE: Barry R. Ostrager, JSC

APPEARANCES:

State of New York  
Office of the Attorney General  
Eric T. Schneiderman  
120 Broadway  
New York, New York 10271  
By: John Oleske, Esq.  
Manisha M. Sheth, Esq.  
Mandy DeRoche, Esq.

dh

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Skadden, Arps, Slate, Meagher & Flom, LLP  
Attorneys for Respondent,  
PRICEWATERHOUSECOOPERS, LLP  
Four Times Square  
New York, New York 10036  
By: David Meister, Esq.  
Jocelyn E. Strauber, Esq.

Paul, Weiss, Rifkind, Wharton & Garrison, LLP  
Attorneys for Respondents,  
Exxon Mobil Corporation  
1285 Avenue of the Americas  
New York, New York 10019  
By: Theodore Wells Jr., Esq.  
Justin Anderson, Esq.

Delores Hilliard  
Official Court Reporter

dh

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

COURT CLERK: Index Number 451962/2016.

In the Matter of the Application of the.

PEOPLE OF THE STATE OF NEW YORK versus PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION.

THE COURT: I have read the order to show cause, the memorandum in support of the order to show cause, the affirmations in support and of course the opposition.

So, as I understand the dispute here, the New York Attorney General's office issued an information subpoena to Exxon Mobil.

And I have looked at the text of your subpoena. And it appears that what is called for under section D, documents to be produced, are 11 specific categories of documents relating to climate change issues.

Now, I am not going to trail into anything. There is an information subpoena that was issued to Pricewaterhousecoopers. And the last time the parties were here I ordered that Pricewaterhousecoopers comply with that subpoena. And then the attorneys from the Attorney General and Pricewaterhousecoopers should work out a more recent schedule for the production of documents than the order that I entered.

So, this application is to compel Exxon to comply with the production of documents that Exxon claims goes

dh

## Proceedings

1  
2 beyond the scope of the subpoena that is at issue.

3 So, I will hear from the Attorney General.

4 MR. OLESKE: Yes, your Honor, thank you.

5 John Oleske for The State, Judge.

6 First and foremost I need to address some confusion  
7 that I think Exxon has stated in their brief.

8 Documents that we are seeking to compel go beyond  
9 this kind of carve-out of category that Exxon is creating,  
10 which is the documents they claim are beyond the scope of  
11 the subpoena.

12 There are already, in fact, many documents. We  
13 expected the bulk of the response of documents actually do  
14 relate or indirectly to climate change. Those are part of  
15 the documents, we expect the bulk of the documents we are  
16 trying to compel.

17 They have advanced no argument, whatsoever, as to  
18 the burdensomeness or the overbreadth of those requests.  
19 They have argued nothing at all in response as to why they  
20 cannot produce those documents by the now extended by a year  
21 return date that we have offered for the documents that are  
22 responsive and to requests 3 and 4 in the original subpoena.

23 So, really, we see Exxon as having conceded the  
24 bulk of this motion.

25 Now, we are talking about really in this carve-out  
26 category Exxon is trying to recreate.

dh

## 1 Proceedings

2 But, it is really a Red Herring, Judge, because the  
3 fact is that the documents that we are looking for are  
4 documents that explain or reflect how Exxon is including or  
5 counting for the impact of climate change related effects  
6 directly or indirectly in its valuation, accounting and  
7 reporting of its financial condition.

8 Now, obviously, that calls for documents that say  
9 climate change on them, this is our plan for integrating  
10 climate change into our decisions.

11 But, obviously, it also calls for documents that  
12 reflect Exxon's practices in valuing, accounting and  
13 reporting its evaluations or its assets and liabilities so  
14 that we can understand the documents that specifically deal  
15 with climate change impacts on those procedures.

16 THE COURT: That is your position.

17 MR. OLESKE: Yes. I mean, but first and foremost  
18 the vast majority of what we expect to get out of this  
19 production they have advanced no argument for why they  
20 should not produce this.

21 THE COURT: Then, there isn't really a lot for me  
22 to decide.

23 MR. OLESKE: No.

24 THE COURT: You're telling me that they don't  
25 object to the vast majority of the documents that you're  
26 seeking.

dh

1 Proceedings

2 MR. OLESKE: You're right, your Honor.

3 In their November 11th letter they did not object  
4 to or give any specific objection to the scope or breadth of  
5 those requests. Although, they refused to commit that they  
6 would, would produce by the extended return date and refused  
7 to provide any other date that they would provide those  
8 documents, the ones they don't have a dispute as to.

9 But, they did in their November 11th letter openly  
10 defy our requests. Because, they said they were not going  
11 to produce additional documents related to proxy costs which  
12 are documents that specifically relate to climate change.  
13 They weren't going to go back and search for documents even  
14 though we have identified specific deficiencies in their  
15 production.

16 So, in fact, they have not just not given an  
17 explanation for why they are not producing these documents.  
18 They have at the same time they are doing that openly  
19 refused to produce those documents.

20 So, we view that as the main issue in getting an  
21 order to compel the production of those documents by the  
22 extended time.

23 Now the question is are there documents out there  
24 that Exxon is going to say this doesn't relate directly or  
25 indirectly to climate change, so we are not going to produce  
26 them.

dh

1 Proceedings

2 The answer is for Exxon to produce by the return  
3 date all of the documents that are encompassed by the  
4 subpoena.

5 When we get those documents and have a chance to  
6 review them and we identify deficiencies with which we can  
7 go back to Exxon and have an argument over whether or not  
8 the documents we think are deficiencies, and we think are,  
9 they think are beyond the scope. But, that's not really  
10 necessary for the Court to order Exxon to comply with the  
11 subpoena requests 3 and 4 with the specific, the  
12 clarification that we offered 5 months ago which we are now  
13 hearing about for the first time are beyond the scope.

14 THE COURT: All right. They have received the  
15 charts that Mr. Wells has brought with him.

16 MR. WELLS: May we set up one second?

17 While we are setting them up, let me take a step  
18 back and tell you that our core argument is that the New  
19 York Attorney General has requested documents concerning our  
20 general accounting practices, concerning valuation, and  
21 assets and liabilities.

22 They are requesting documents that are basically  
23 accounting documents.

24 THE COURT: So, your argument is that that is  
25 beyond the scope of the scan.

26 MR. WELLS: Yes. And what they have done, your

dh

## Proceedings

1  
2 Honor, they started out in November of 2015 with an  
3 investigation concerning issues of climate change. And if  
4 you look, if you look at that subpoena it is modified not  
5 just item 3 and 4 by relating them to climate change.

6 After we got the subpoena we had meetings with  
7 them, because some of the requests on their face were  
8 somewhat confusing.

9 One was item number 3 that talked about  
10 integration. But, we don't need this because you said you  
11 read that. I will just move right through that.

12 They told us with respect to item number 3 in terms  
13 of integration what they wanted were high level documents  
14 concerning how the company integrated its knowledge in  
15 fusion climate change into its day to day business practice.

16 And they told us, candidly, that their theory of  
17 investigation was, well, Exxon Mobil at times has said we  
18 believe that it doesn't believe in climate change. And we  
19 want to see in your day to day business practices if, in  
20 fact, you have integrated into your practices a belief that  
21 climate change is real, so that you build a certain offshore  
22 rig a certain height because you think the ocean is going to  
23 rise. So, it is about integration, not about accounting.  
24 That's what they told us.

25 We, thereafter, we agreed upon search terms. Those  
26 search terms do not cover any accounting documents or

dh



## Proceedings

1  
2 accounting. The only time the word, these are the actual  
3 search terms which are in the certification, the only time  
4 the word asset is even used is with respect to a term called  
5 stranded assets.

6 So, the only time you would pick up the word asset  
7 would be if it was in 5 words with the word stranded.

8 Stranded asset is not an accounting concept, it is  
9 a political concept that certain environmental groups have  
10 coined to deal with the argument that if regulators around  
11 the world pass regulations limiting the use of fossil fuels  
12 that some of our assets might be stranded in the ground  
13 because if wouldn't be profitable to take them out of the  
14 ground.

15 But, the search terms did not involve accounting  
16 search terms.

17 Now, in addition, they stated in press that the  
18 investigation was related to climate change. So, that is  
19 repeatedly by them in the press what the investigation was  
20 about, which was consistent with the subpoena and what they  
21 said to us.

22 Now, in late June of this year they opened up a  
23 different arm of the investigation. A non-climate change  
24 related piece of the investigation.

25 That different investigation is not tied to climate  
26 change. It concerns our accounting practicing with respect

dh

## Proceedings

1  
2 to how we valued our assets in the face of the last two  
3 years of fallen oil prices. That is a different  
4 investigation.

5 They have admitted that the investigation is  
6 different in the press. If you look at the Pricewaterhouse  
7 subpoena it's not tied in most parts to climate change.  
8 They want the accounting records.

9 What they are trying to get now by this motion is  
10 really the flip side of the accounting records that they are  
11 getting from Pricewaterhouse.

12 Now, in terms of -- in terms of what they say they  
13 want now, this is from Mr. Oleske's affirmation, I think  
14 this is the key point. He says, number 3 calls for  
15 documents reflecting Exxon's general practices concerning  
16 the valuation, accounting and reporting of its assets and  
17 liabilities.

18 That's what we are objecting to. It's not tied in  
19 any way to climate change.

20 They really want our accounting records, similar to  
21 what they have asked Pricewaterhouse to give to them.

22 We say that these two items or descriptions in the  
23 subpoena do not cover that type of general practices  
24 accounting requests.

25 (Short pause)

26 MR. WELLS: If you look at the Pricewaterhouse

dh

## Proceedings

1  
2 subpoena that was served August 19th, as they have done  
3 throughout this case, they serve a subpoena. They leak to  
4 the press.

5 So, the subpoena was served August 19th. Then, in  
6 The New York Times the same day the subpoena is issued they  
7 say in the press, if collectively the fossil fuel companies  
8 are overstating their assets by trillions of dollars that is  
9 a big deal. Okay. There may be massive securities fraud  
10 here.

11 That is not a climate change investigation. It is  
12 whether or not we have properly valued our assets in light  
13 of falling oil prices having nothing to do with climate  
14 change.

15 And we don't have to guess, because as part of  
16 their continued practice of leaking after they talked to The  
17 New York Times the same day they issued the Pricewaterhouse  
18 subpoena they then talked to The Wall Street Journal.

19 And what The Wall Street Journal reported based  
20 upon what is described as sources close to their  
21 investigation, they say the new probe, that is a 100 scored  
22 word, new, the new probe and why Exxon hasn't written down  
23 the value of its assets two years into a crash in oil prices  
24 is an outgrowth of the climate change investigation say  
25 people familiar with the matters.

26 This is a new, this is a new investigation.

dh

## Proceedings

1  
2           • The same day there is another article in The Wall  
3 Street Journal, we are still September 16th. New York  
4 Attorney General's probe focuses on why Exxon is the only  
5 oil firm not to write down value of assets amid price route.

6           That is a new piece of the investigation that is  
7 not tied to climate change.

8           If you turn to page 6 of their brief, page 6 of  
9 their brief they, The New York Attorney General writes,  
10 finally, Exxon unilaterally declared that it would not  
11 produce documents revealing how it values accounts for and  
12 reports its assets and liabilities, generally, but only  
13 documents that specifically discuss how those processes are  
14 effected by climate change. Which would leave OAT  
15 understanding only one half of the relevant equation.

16           The next sentence which is key.

17           Exxon's unilateral limitations would deprive the  
18 OAG of documents reflecting Exxon's procedures for assessing  
19 the impact, for example, of the declining oil and gas prices  
20 on reserves and impairments and capital expenditures.

21           That is what the new investigation is about. It is  
22 not climate change related.

23           We do not dispute for purposes of argument that if  
24 they want to open up that new front that they can serve us  
25 with a new subpoena.

26           THE COURT: Of course.

dh

## Proceedings

1  
2 MR. WELLS: Okay. But, they cannot take the old  
3 subpoena that was about something else and now use it to get  
4 our general accounting practice documents. They have to  
5 serve us with a new subpoena.

6 I represent to the Court that if they serve us with  
7 the new subpoena I will discuss it with my client, I'll  
8 discuss it with them. And if we decide that it is overly  
9 broad or it raises Federal preemption issues as we think it  
10 very well might, we will move to quash the subpoena. If you  
11 want to set a briefing schedule to make sure everybody does  
12 things proper, we have no objection to that.

13 But, they cannot take the old subpoena and turn it  
14 into something it was not intended for. And that is the  
15 core of what this dispute is about.

16 THE COURT: I understand completely.

17 Did you have an agreed upon date pursuant to which  
18 you were going to produce climate change documents in  
19 accordance with the old subpoena?

20 MR. WELLS: Yes. We have been producing on a  
21 rolling basis.

22 I would prefer, since Mr. Anderson is involved in  
23 that if I let him speak to that. Because, he is the one who  
24 is involved in the process.

25 I just don't want to make a misstep because I'm not  
26 down at that level.

dh

## Proceedings

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

THE COURT: All right, Mr. Anderson.

MR. ANDERSON: Yes, Judge.

We have been producing documents to The Attorney General.

THE COURT: I understand there are more documents.

My specific question is do you have a date certain by which you have agreed that you're going to produce the climate change documents?

MR. ANDERSON: Your Honor, I don't believe that we set a date certain.

But, based upon the schedule that we are producing at we expect that for the assets, liabilities and reserves custodians who have been identified that the production would be completed by the end of the year.

THE COURT: Okay. And why is that unacceptable to the AG's office?

MR. OLESKE: Yes, your Honor.

THE COURT: Let's just assume hypothetically that I agree with Mr. Wells that the documents that you are entitled to are climate change documents. And Mr. Wells' partner is representing that by the end of the year you will have all of the documents responsive to the 11 categories of documents to be produced in the subpoena ready.

MR. OLESKE: There is the problem, your Honor, is that your Honor interpreted that is what Exxon's counsel may

dh

## Proceedings

1  
2 have just said.

3 That's not what they said.

4 What they said was there is a list of custodians  
5 relating just to that June 24th letter that they came up  
6 with two months later that they said, okay, we have got  
7 these custodians relating just to your letter. And we are  
8 going to produce these on a time frame that we are not going  
9 to tell you about on a rolling basis.

10 Now, for the first time we are hearing that they  
11 are going to give us those custodians.

12 We have no idea what universal custodians are.  
13 They are not representing that this is even all of the  
14 documents to requests 3 and 4, let alone what your Honor is  
15 saying which is the entirety of the subpoena.

16 That is how we have been going for 5 months.

17 THE COURT: Let me hear from Mr. Anderson, so there  
18 is no confusion about this.

19 It seems to me that you issued an investigative  
20 subpoena a long, long time ago.

21 You have worked out with each other search terms.  
22 You have worked out with each other schedules within reason  
23 recognizing that millions of documents can't be produced  
24 overnight.

25 Are you going to produce all of these documents by  
26 the end of the year?

dh

## Proceedings

1  
2 MR. ANDERSON: Your Honor, I think it is the  
3 definition of these documents that we have to address.

4 THE COURT: The climate change documents that refer  
5 to items 1 through 11 of documents to be produced.

6 MR. ANDERSON: No, that cannot happen by the end  
7 the year, Judge.

8 THE COURT: When can it happen?

9 And then we can get some parameters on what is  
10 reasonable and what requires Court intervention and what  
11 doesn't.

12 MR. ANDERSON: The system that we worked out with  
13 The Attorney General's office is that we would identify  
14 custodians and we would identify search terms.

15 We would gather the documents from the custodians  
16 based upon the priorities set by The Attorney General's  
17 office. Run those documents through the search terms and  
18 then make our production.

19 And that is how we have proceeded for the last  
20 year.

21 We initially began with scientists and others who  
22 were responsive to that initial inquiry about whether Exxon  
23 was using an internal knowledge to run its business and  
24 whether it is inconsistent with statements it was making to  
25 the public.

26 And we made multiple productions based upon the

dh



## Proceedings

1  
2 priorities that were identified where we could provide The  
3 Attorney General with the documents it wanted.

4 The shift, there was a first shift around February  
5 or March of this year when the priority became a report  
6 called Managing The Risks.

7 So, we said, fine, we have custodians for that.

8 We came up with 17. And we have produced the  
9 records from those 17 custodians to The Attorney General's  
10 office.

11 Then, in June, July we start hearing about, no, now  
12 we want to know about the assets and the liabilities. So,  
13 then we switched over to that to start to work out who are  
14 the custodians for this. We will run them through the  
15 search terms and produce documents.

16 You can see in the declaration that Mr. Oleske  
17 filed that the letters go back and forth and have  
18 attachments with custodians.

19 This is not something that is being done in a  
20 vacuum. It is a process that has been going on for a year.  
21 And there has been no need to come to court before.

22 Because, as they shifted priorities we have  
23 produced the documents that they wanted.

24 The only reason we are here now is because they  
25 have asked for documents that are outside the scope of the  
26 subpoena.

dh

## Proceedings

1  
2 MR. OLESKE: Your Honor, if I may? Because, this  
3 keeps coming up.

4 I have to address their issue of this shift that  
5 does not exist. And somehow explain why Exxon and Paul,  
6 Weiss a year after the subpoena cannot even commit to when  
7 they are going to finish production.

8 There has never been an issue. This law  
9 enforcement investigation from the beginning has been trying  
10 to find out whether or not Exxon has misrepresented to  
11 investors, consumers or the public generally the impact of  
12 the effects of climate change on its business.

13 And so, for example, all of the characterization  
14 that Mr. Wells made or that The Wall Street Journal had made  
15 about different phases of the investigation are not  
16 relevant. What is relevant is what is in the subpoena.

17 And for example, the question of declining oil  
18 prices is in the subpoena. It is in request 3. It  
19 specifically talks about it. The effects of future declines  
20 in oil prices. And of course, we need to know if we are  
21 looking at documents that talk about Exxon's reaction to the  
22 impact of oil price declines that have to do with climate  
23 change on its business. We also need to know how Exxon  
24 deals with accounting, valuation and reporting relating to  
25 declines of oil prices generally to see how that fits into  
26 their business.

dh

## Proceedings

1  
2 But, to The Court's specific inquiry about these  
3 documents and this time line for production, it started as a  
4 process. We did go back and forth on search terms in  
5 December of 2015.

6 We did ask for Exxon to focus on producing  
7 custodians who were responsible for the managing of the  
8 risks report that is detailed in our papers in February.

9 That was part of request number 4. That was not  
10 some new priority we came up with. This was specifically  
11 identified in request number 4 of the subpoena.

12 They did produce a bunch of custodians relating to  
13 that report. We don't know if they are complete or not.  
14 They haven't confirmed that.

15 But, then, yes, come June we got to the point where  
16 it is now 7 months, 8 months later. We still haven't gotten  
17 any documents that show the integration of climate change  
18 impact into their business other than the managing  
19 structures trying to push them to do this.

20 It is 5 months later. They still cannot tell us  
21 when they are going to give us even those documents related  
22 to those specific requests.

23 And this whole integrated process idea, in our most  
24 recent letter that prompted this request to the Court, we  
25 told them there are these documents about the proxy that  
26 your company says that it uses to insure investors that it

dh

## Proceedings

1  
2 is incorporating these impacts.

3 We have noticed there are deficiencies in these  
4 productions. That there are documents that would not be  
5 caught by the prior search terms.

6 We have spent the previous 5 months trying to get  
7 Exxon to revamp the search terms to catch these additional  
8 documents. They didn't do it.

9 Then, in their most recent letter on November 11th  
10 they have flatly refused to supplement their search terms to  
11 catch documents that we know relate directly to climate  
12 change and we know are in their production. And they cannot  
13 explain why they are not even willing to do that.

14 And now we are hearing about an integrative process  
15 where they are cooperating and there is just no way they can  
16 put an end date on this process.

17 That is a real problem for The Attorney General's  
18 office from a law enforcement perspective. Because, we are  
19 conducting an investigation. And the investigation, the  
20 production of documents from a company like Exxon has to  
21 have an ending, Judge. We have to have some expectations of  
22 the finality of when at least they say they have completed  
23 their production.

24 Now, I think we can all assume that when Exxon  
25 says, okay, we have given you all of the documents in  
26 response to these 11 categories, we are going to have

dh

## Proceedings

1  
2 additional questions. We are going to see additional  
3 deficiencies. We are going to come back with more  
4 questions. But, at least we have to get to that point.

5 But, the whole point of this seemed to be to never  
6 get to that point.

7 That's why we are here today.

8 MR. WELLS: Your Honor, this is very unfair what  
9 they are saying.

10 They made a motion last Monday. They filed it at  
11 8:30 in the morning. They proceeded by order to show cause.

12 The order to show cause for which they wanted  
13 emergent relief is very specific. The order to show cause  
14 asks for an order compelling Exxon to produce no later than  
15 November 23rd documents concerning little i, Exxon Mobil's  
16 valuation, accounting and reporting of its assets and  
17 liabilities, etc. And little two i, the impact of climate  
18 change relating to, on such valuation.

19 That related to items 3 and 4 that they say were  
20 covered by that request.

21 The order to show cause did not ask for The Court  
22 to issue any kind of orders about when we would finish  
23 complying with the entire subpoena. Nobody has briefed that  
24 issue. No one has discussed that issue.

25 We have been complying, in all due respect, with  
26 their subpoena, we believe in good faith, since it was

dh

## Proceedings

1  
2 filed.

3           May we have differences on the margins? Everybody  
4 does. But, that was not what got us into court today about  
5 when are all of the documents going to be finished, because  
6 we have worked with them.

7           And if you look at the June 24th letter which was  
8 central to this specific order to show cause, the letter  
9 says, we want you to stop what you have been doing and  
10 change priorities. And we now want you to look at the, this  
11 valuation accounting stuff.

12           So, and that is how it has worked throughout. They  
13 tell us. We work on the science documents. They call us.  
14 They say, you know what, we have decided we want you to go  
15 here. We find the custodians. We go here. They get that  
16 and they tell us, we want you to go somewhere else.

17           What happened on June 24th, for the first time we  
18 felt they were asking for something that was beyond the  
19 subpoena. That is where the friction was created, because  
20 it was in the paper. They had said, they had a new  
21 investigation about, not about climate change, but about the  
22 impairment issues and whether you did certain things.

23           Okay, they knew we were not supposed to be in court  
24 today to talk about the general schedules of when we would  
25 finish the 11 items. Because, they know they take us one  
26 place one day and another place another day. Because, its a

dh

## Proceedings

1  
2 broad area.

3 This subpoena in part goes back to either 10 years  
4 for some items or 40 years for others. This is a huge  
5 request. And we have been working cooperatively with them.  
6 And they haven't briefed that.

7 That's not, that's not what got us into court and  
8 had teams working around the clock to get these papers in.  
9 They were very focused on these accounting documents.

10 And now for them to have flipped this court  
11 conference into some discussion of when are we going to  
12 finish the 11 items that nobody has briefed, discussed at  
13 all, I mean, I just don't think --

14 THE COURT: I understand the issues here.

15 Obviously, the parties have been engaged for an  
16 extended period of time in discussions about what documents  
17 should be prioritized, what should be produced and how they  
18 are going to be produced.

19 I agree with Exxon that there is a difference  
20 between an inquiry relating to climate change and an  
21 entirely different inquiry relating to Exxon's general  
22 accounting procedures.

23 Now, if The Attorney General's office issues a  
24 subpoena to Pricewaterhousecoopers which dealt with Exxon's  
25 general accounting procedures, apparently, The Attorney  
26 General's office has worked out a stipulation with

dh

## Proceedings

1  
2 Pricewaterhouse with respect to the manner in which  
3 Pricewaterhouse will produce documents relating to Exxon's  
4 general accounting procedures.

5 I don't see any prejudice to The Attorney General's  
6 office in awaiting the production of that information from  
7 Pricewaterhousecoopers in accordance with the schedule that  
8 The Attorney General's office worked out with  
9 Pricewaterhousecoopers.

10 If The Attorney General's office wants to issue a  
11 subpoena to Exxon Mobil with respect to its general  
12 accounting procedures, it is free to do so.

13 With respect to the climate change documents there  
14 clearly does need to be an agreement between the parties  
15 concerning the production of those documents. And The Court  
16 is not going to fix a specific date today. Because, there  
17 has been a long negotiation between the parties relating to  
18 search terms, relating to priorities, relating to the  
19 sequencing of various kinds of documents.

20 And so, frankly, this wasn't a matter for an order  
21 to show cause. It is a matter for the parties to come to  
22 some reasonable resolution on a consensual basis among  
23 themselves. And failing that The Court will enter an order.

24 MR. OLESKE: Your Honor, if I may be heard on just  
25 that one point.

26 We spent 5 months trying to come to that kind of

dh



## Proceedings

1  
2 agreement. Trying to find out when we were going to get  
3 these documents.

4 And in the most recent correspondence Exxon refused  
5 to modify its search terms to capture documents that we knew  
6 were missing.

7 So, while the office understands completely your  
8 Honor's interest in having the parties go back and try to  
9 work it out without having some kind of enforcement of our  
10 return date, we are kind of left in this limbo where we have  
11 been for the last 5 months kind of banging our head against  
12 the wall trying to get an agreement for a specific date and  
13 for the universe of documents that are going to be produced.  
14 And we are talking to ourselves.

15 THE COURT: Well, if you cannot get a specific  
16 agreement between now and December 1st, then you can return  
17 to The Court and The Court will fix a date.

18 And if necessary The Court will arbitrate what are  
19 reasonable or unreasonable search terms.

20 And that is the disposition of the motion.

21 Thank you.

22 MR. OLESKE: Thank your, your Honor.

23 THE COURT: Both parties are to order a copy of the  
24 transcript.

25 And the actual disposition of the order to show  
26 cause is that the motion is denied with the understanding

dh

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

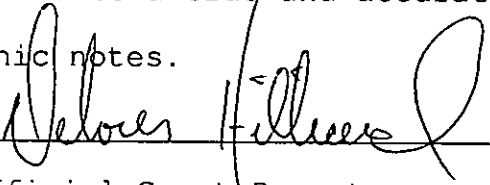
Proceedings

that if the parties do not come to a consensual agreement by  
December 1st The Court will impose upon the appropriate  
application.

MR. OLESKE: Thank you, your Honor.

\*\*\*

Certified to be a true and accurate transcription  
of said stenographic notes.

  
\_\_\_\_\_  
Official Court Reporter

**SO ORDERED**  
  
**BARRY R. OSTRAGER, J.S.C.** 11/29/16.

dh