

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)  
RANDOLPH E. PAUL (1946-1956)  
SIMON H. RIFKIND (1950-1995)  
LOUIS S. WEISS (1927-1950)  
JOHN F. WHARTON (1927-1977)

UNIT 5201, FORTUNE FINANCIAL CENTER  
5 DONGSANHUAN ZHONGLU  
CHAOYANG DISTRICT, BEIJING 100020, CHINA  
TELEPHONE (86-10) 5828-6300

HONG KONG CLUB BUILDING, 12TH FLOOR  
3A CHATER ROAD, CENTRAL  
HONG KONG  
TELEPHONE (852) 2846-0300

ALDER CASTLE  
10 NOBLE STREET  
LONDON EC2V 7JU, UNITED KINGDOM  
TELEPHONE (44 20) 7367 1600

WRITER'S DIRECT DIAL NUMBER

(212) 373-3089

WRITER'S DIRECT FACSIMILE

(212) 492-0089

WRITER'S DIRECT E-MAIL ADDRESS

twells@paulweiss.com

FUKOKU SEIMEI BUILDING  
2-2 UCHISAIWAICHO 2-CHOME  
CHIYODA-KU, TOKYO 100-0011, JAPAN  
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE  
77 KING STREET WEST, SUITE 3100  
P.O. BOX 226  
TORONTO, ONTARIO M5K 1J3  
TELEPHONE (416) 504-0520

2001 K STREET, NW  
WASHINGTON, DC 20006-1047  
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200  
POST OFFICE BOX 32  
WILMINGTON, DE 19899-0032  
TELEPHONE (302) 655-4410

July 30, 2019

*By NYSCEF and Hand Delivery*

The Hon. Barry R. Ostrager  
Supreme Court, New York County  
60 Centre Street, Room 232  
New York, NY 10007

MATTHEW W. ABBOTT  
EDWARD T. ACKERMAN  
JACOB A. ADLERSTEIN  
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JOHN F. BAUGHMAN  
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KENNETH A. GALLO  
MICHAEL E. GERTZMAN  
ADAM M. GIVERTZ  
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NEIL GOLDMAN  
MATTHEW B. GOLDSTEIN  
ROBERTO J. GONZALEZ\*  
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CHARLES H. GOOGE, JR.  
ANDREW G. GORDON  
BRIAN S. GRIEVE  
UDI GROFMAN  
NICHOLAS GROOMBRIDGE  
BRUCE A. GUTENPLAN  
ALAN S. HALPERIN  
CLAUDIA HAMMERMAN  
BRIAN S. HERMANN  
MICHELE HIRSHMAN  
DAVID S. HUNTINGTON  
AMRAN HUSSEIN  
LORETTA A. IPPOLITO  
JAREN JANGHORBANI  
BRIAN M. JANSOHN  
JEH C. JOHNSON  
MEREDITH J. KANE  
JONATHAN S. KANTER

BRAD S. KARP  
PATRICK N. KARSNITZ  
JOHN C. KENNEDY  
BRIAN KIM  
KYLE J. KIMPLER  
DAVID M. KLEIN  
ALAN W. KORNBERG  
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DAVID K. LAKHDHIR  
JOHN E. LANGE  
GREGORY F. LAUFER  
BRIAN C. LAVIN  
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MARCO V. MASOTTI  
DAVID W. MAYO  
ELIZABETH R. MCCOLM  
JEAN M. MCLOUGHLIN  
ALVARO MEMBRILLERA  
MARK F. MENDELSON  
CLAUDINE MEREDITH-GOUJON  
WILLIAM B. MICHAEL  
JUDIE NG SHORTELL  
CATHERINE NYARADY  
JANE B. O'BRIEN  
ALEX YOUNG K. OH  
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KELLEY D. PARKER  
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VALERIE E. RADWANER  
JEFFREY J. RECHER  
CARL L. REISNER  
LORIN L. REISNER  
WALTER G. RICCIARDI  
ALFRED RIEMER  
RICHARD J. ROSEN  
ANDREW N. ROSENBERG  
JUSTIN ROSENBERG  
JACQUELINE P. RUBIN  
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RAPHAEL M. RUSSO  
ELIZABETH M. SACKSTEDER  
JEFFREY D. SAUERSTEIN  
JEFFREY B. SAMUELS  
TERRY E. SCHIMEK  
KENNETH M. SCHNEIDER  
ROBERT B. SCHUMER  
JOHN M. SCOTT  
BRIAN SCRIVANI  
KANNON K. SHANMUGAM\*  
DAVID R. SICULAR  
AUDRA J. SOLOWAY  
SCOTT M. SONTAG  
SARAH STASNY  
TARUN M. STEWART  
ERIC ALAN STONE  
AIDAN SYNNOTT  
RICHARD C. TARLOWE  
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BETTY YAP  
JORDAN E. YARETT  
KAYE N. YOSHINO  
TONG YU  
TRACEY A. ZACCONE  
TAURIE M. ZEITZER  
T. ROBERT ZOCHOWSKI, JR.

\*NOT ADMITTED TO THE NEW YORK BAR

*Re: People of the State of New York v. Exxon Mobil Corporation, No. 452044/2018*

Dear Justice Ostrager:

We write on behalf of Exxon Mobil Corporation ("ExxonMobil") to request the Court's assistance in securing discovery from three third parties on the Office of the Attorney General's ("OAG") preliminary witness list.

On June 26, 2019, OAG sent ExxonMobil an updated preliminary list of witnesses it may call at trial. (*See* June 26, 2019 Letter from K. Wallace to D. Toal (Ex. A).) That list included 13 third-party witnesses. (*Id.*) At the June 28, 2019 status conference, the parties agreed that ExxonMobil could depose these 13 individuals. (*See* June 28, 2019 Hr'g Tr. 6:19-7:7 (Ex. B).) Thereafter, OAG removed four witnesses from its list. (*See* July 22, 2019 Letter from K. Berger to N. Ahmed at 2 (Ex. C).) Two others, both of whom reside outside of New York, have indicated they will not make themselves available to testify at trial. As a result, it appears that no more than seven third-party witnesses on OAG's list may testify at trial. Of these, three have agreed to appear voluntarily for a deposition. (*Id.*) ExxonMobil is working with OAG to schedule these depositions at mutually convenient times and locations.

ExxonMobil plans to issue document requests to all seven third parties currently expected to testify at trial. OAG contests ExxonMobil's right to do so because fact discovery has now closed. (*Id.*) But in asserting that ExxonMobil should only be permitted to *depose* third parties,

not seek documents from them, OAG draws an arbitrary line in the sand. Document discovery goes hand-in-hand with depositions. *See, e.g.*, New York Civil Practice Law and Rules (“CPLR”) 3111. And OAG has not identified any unfair prejudice that would result from third-party document production here. Needless to say, it would be wholly improper for OAG to attempt to use its own belated disclosures about likely third-party trial witnesses to limit ExxonMobil’s ability to secure pre-trial discovery. *See generally* CPLR 3101.

ExxonMobil’s document requests seek targeted information that is material and necessary to its defense. ExxonMobil requests documents concerning: (i) these third parties’ investments in oil and gas companies, including ExxonMobil; (ii) oil and gas companies’ use of costs akin to proxy costs and/or GHG costs; (iii) certain disclosures made by ExxonMobil; and (iv) OAG’s investigation of ExxonMobil, including the motives underlying OAG’s ensuing Complaint. (*See* Document Requests Common to All Third Parties (Ex. D).) These narrowly tailored requests will not unduly burden any third parties or their employers.

At this point, ExxonMobil requires the Court’s assistance issuing testimonial and document subpoenas to only three of the third parties.<sup>1</sup> These entities or individuals reside in U.S. jurisdictions that require compliance with specialized procedures to compel testimony or the production of documents:

***Office of the New York City Comptroller, Document Subpoena.*** ExxonMobil cannot issue a document subpoena to Mr. Michael Garland’s employer without this Court’s approval. The CPLR requires that a Justice of the Supreme Court issue the subpoena, and further requires the party seeking discovery to make a motion for such subpoena, “[u]nless the court orders otherwise.” CPLR 2307. Accordingly, we request that the Court so order the subpoena attached as Exhibit E.

***Natasha Lamb, Testimonial Subpoena.*** Because Ms. Lamb resides in Massachusetts, ExxonMobil requires a commission from this Court to compel her deposition testimony. *See* Mass. Gen. Laws ch. 223A, § 11; *see also* CPLR 3108. Once granted, ExxonMobil would present this commission to a Massachusetts court to secure an order compelling Ms. Lamb to testify. *See* Mass. Gen. Laws ch. 223A, § 11. ExxonMobil therefore requests that this Court issue the Commission to Subpoena Out of State Non-Party Natasha Lamb, attached as Exhibit F.

***Roger Read, Testimonial Subpoena.*** As with Ms. Lamb, ExxonMobil requires a commission from this Court to compel the testimony of Mr. Read, who resides in Texas. *See* Tex. R. Civ. Proc. 201.2; *see also* CPLR 3108. Accordingly, ExxonMobil requests that this Court issue the Commission to Subpoena Out of State Non-Party Roger Read, attached as Exhibit G.

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<sup>1</sup> If the Court prefers, ExxonMobil can file formal motions requesting the assistance it seeks for each of these third parties.

With trial on the horizon, ExxonMobil seeks to conduct third-party discovery as expeditiously as possible. Securing documents and testimony from the witnesses who may testify at trial is an essential first step.

Respectfully Submitted,

*/s/ Theodore V. Wells, Jr.*

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Theodore V. Wells, Jr.

cc: All counsel of Record (by NYSCEF)