

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

EXXON MOBIL CORP., EXXONMOBIL OIL
CORPORATION, ROYAL DUTCH SHELL
PLC, SHELL OIL COMPANY, BP P.L.C., BP
AMERICA INC., CHEVRON
CORPORATION, CHEVRON U.S.A. INC.,

Defendants.

Case No. 2020 CA 002892 B

**PLAINTIFF'S MOTION FOR CERTIFICATION AND ASSIGNMENT
TO CIVIL I CALENDAR**

Plaintiff District of Columbia respectfully requests entry of an order pursuant to Superior Court Rule of Civil Procedure 40-II(b) recommending to Presiding Judge Edelman that this case be designated to the Civil I calendar.¹ In support of the requested designation and pursuant to Rule 40-II(c), the District states as follows.

I. INTRODUCTION

1. In June 2020, by and through the Office of the Attorney General, the District brought claims under the Consumer Protection Procedures Act, D.C. Code §§ 28-3901 *et seq.* ("CPPA"), against Defendants Exxon Mobil Corp., ExxonMobil Oil Corp., Shell plc (formerly Royal Dutch Shell plc), Shell Oil Co., BP p.l.c., BP America Inc., Chevron Corp., and Chevron U.S.A. Inc. (collectively "Defendants").

¹ The District conferred with Defendants in advance of filing this motion, and Defendants have not taken a position on the relief sought.

2. Defendants removed the District’s case to federal court, asserting various theories of federal subject-matter jurisdiction. In November 2022, the U.S. District Court for the District of Columbia (Kelly, J.) granted the District’s motion to remand the case back to this Court. *See D.C. v. Exxon Mobil Corp.*, No. 20-1932 (TJK), 2022 WL 16901988, at *1 (D.D.C. Nov. 12, 2022). Defendants then moved to stay the case pending their appeal of the remand order, but their motions were denied by both the federal district court and the U.S. Court of Appeals for the D.C. Circuit. *See Order, D.C. v. Exxon Mobil Corp.*, No. 20-1932 (TJK), Dkt. 126 (D.D.C. Dec. 20, 2022); *D.C. v. Exxon Mobil Corp.*, No. 22-7163, 2023 WL 1480039 (D.C. Cir. Jan. 30, 2023).

3. In its Complaint, the District alleges that Defendants have systemically and intentionally misled District consumers in the marketing and sales of their fossil fuel products, by concealing and denying both the threat of global climate change and their fossil fuel products’ central role in causing it. Compl. ¶¶ 1, 2. Defendants have known for decades that their oil, gas, and associated hydrocarbon and hydrocarbon-derived products are a primary cause of climate change, and that the dangers to the environment and public health from climate change were both certain to occur and likely to be severe. *See id.* ¶¶ 4–7, 26–47. Yet, Defendants nonetheless separately and collectively engaged in a long-term, widespread campaign to obfuscate their own detailed knowledge of their products’ dangers, discredit the growing body of scientific evidence confirming those dangers, and sow doubt in the minds of consumers concerning the realities of climate change and its relationship to Defendants’ products. *See generally id.* ¶¶ 48–88.

4. Among an array of deceptive tactics deployed within the District and nationwide, Defendants continue to falsely claim that they are placing significant investment in researching and developing low- or zero-emission energy sources, and continue to deceptively and misleadingly present their fossil fuel products to consumers as “green” or “clean,” when there has

been no material change in the severe threats those products present to the climate—a practice referred to as “greenwashing.” *See id.* ¶¶ 8–11, 98–168. Consumers within the District were and are likely deceived by Defendants’ failure to adequately inform them that Defendants’ fossil fuel products cause and accelerate the climate crisis, and by Defendants’ efforts to falsely portray themselves as committed to reducing and reversing the effects of climate change, when the opposite is true. *Id.* ¶¶ 9–11.

5. The District’s case alleges a course of deceptive conduct stretching back more than a half century, involving several of the largest and most profitable corporations in the world, their research and response to the myriad global environmental impacts caused by their products, and their representations to billions of consumers and to the public, including millions of consumers within the District. Fact discovery is likely to encompass a large volume of documents and witnesses on a wide range of topics, from historical climate science research to present-day advertising decisions. The District anticipates expert discovery will also be extensive and disputed. Defendants will likely offer a large number of substantive, jurisdictional, and procedural defenses, as they have done in related climate deception lawsuits brought against members of the fossil fuel industry. And the Court will likely be called upon at multiple stages of the litigation to resolve complicated discovery and evidentiary issues. For all these reasons, certification and designation of this matter to a Civil I complex case calendar is appropriate.

II. RELIEF REQUESTED

6. The District requests certification of this case to a Civil I calendar. Under Rule 40-II(a), the Presiding Judge of the Civil Division retains discretion to designate any case not involving asbestos exposure to a Civil I calendar. Rule 40-II(b), in turn, provides that “[o]n motion of a party or sua sponte, a judge assigned to a case may recommend to the Presiding Judge that the case be designated to a Civil I calendar.”

7. Rule 40-II(c) provides a non-exhaustive list of factors the Presiding Judge may consider in determining whether to designate a case to a Civil I calendar. Each of the factors weighs in favor of designating this case:

- a. the estimated length of trial;
- b. the number of witnesses that may appear;
- c. the number of exhibits that may be introduced;
- d. the nature of the factual and legal issues involved;
- e. the extent to which discovery may require supervision by the court;
- f. the number of motions that may be filed in the case; and
- g. other relevant factors.

8. ***Trial Length.*** Trial in the District’s case is likely to significantly exceed the typical length of trial on the Civil II calendar because of the volume and complexity of issues to be presented by all parties. According to the District of Columbia Courts website, “[m]ost cases last 3-5 days.”² This case, by contrast, will likely require a trial of at least a month in light of the large number of witnesses and exhibits necessary to adequately present the relevant issues. See ¶¶ 9–11, *infra*.

9. ***Anticipated Number of Witnesses.*** The District anticipates that all parties will call numerous witnesses, both lay and expert, on multiple categories of topics. The finder of fact will be presented with evidence on issues including the science of climate change; the history of the public’s understanding of climate change; the history of Defendants’ individual and collective understanding of climate change; Defendants’ public messaging and advertising across at least

² District of Columbia Courts, *About Jury Duty*, <https://www.dccourts.gov/jurors/about-your-jury-duty> (last visited Feb. 15, 2023).

four decades concerning climate change and its relation to fossil fuel use; “greenwashing” techniques that Defendants currently use to persuade consumers that their products are not harmful and that Defendants are responsible environmental stewards; the effects that Defendants’ messaging and advertising were and are likely to have on consumers within the District over time; and consumer behavior more broadly. Many relevant witnesses reside outside the District, such that deposition testimony is likely to be heard in multiple jurisdictions. Because many potential witnesses are advanced in age, moreover, the District will likely seek to take some discovery depositions out of sequence from the rest of discovery, and possibly conduct trial preservation depositions to ensure testimony is not lost, as plaintiffs in other climate deception cases have done. *See, e.g., Massachusetts v. Exxon Mobil Corp.*, No. CV 19-3333-BLS1, 2022 WL 10393900, at *1 (Mass. Super. Feb. 8, 2022) (granting the State “leave to take the depositions of two elderly witnesses”); Ruling on Defendants’ Request to Stay Action Pending Appeal, *City & County of Honolulu v. Sunoco, LP*, No. 1CCV-20-380, Dkt. 678, at 3 (Haw. Cir. Ct. May 18, 2022) (allowing the plaintiffs to conduct “[f]ormal discovery for evidence which might otherwise be lost due to the passage of time”).

10. ***Anticipated Number of Exhibits.*** The number of issues at play, the length of time over which Defendants misled consumers in the District and elsewhere, and the parties’ dispersion across the nation and globe all suggest that document discovery and the documentary trial record will be voluminous and complex. For example, Exxon Mobil “produced at least 1.4 million pages of documents” in response to an investigative subpoena served by the Attorney General of New York concerning Exxon’s historic knowledge and communications about climate change. *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679, 687 (S.D.N.Y. 2018). And here, on the question of federal jurisdiction alone, Defendants proffered nearly 50 exhibits and hundreds of

pages of materials in support of their removal of the District's case to federal court. *See* Defendants' Opposition to Plaintiff's Motion to Remand, *D.C. v. Exxon Mobil Corp.*, No. 1:20-cv-01932-TJK, Dkt. 51 (D.D.C. Oct. 15, 2020). At trial, the factfinder will necessarily be presented with documentary evidence concerning climate change, Defendants' internal operations and scientific understanding, and many years of Defendants' advertising and statements within the District and elsewhere, among other topics. The volume of documentary material concerning merits issues will be extensive.

11. *Nature of Factual and Legal Issues Involved.* The issues of fact necessary to present the District's case will cover complex categories of science and history. As already noted, the trier of fact will be shown evidence concerning the basic science of climate change, the history of public understanding of that science, Defendants' understanding of the science over time compared to that of the public, Defendants' public representations concerning climate science and their products' relationship to climate change over time, the networks of organizations that Defendants worked through and with to influence public and consumer perceptions of climate change, Defendants' advertising statements within the District, and the actual and likely effect of those advertisements and statements on consumers within the District. Each of these issues will likely require substantial fact and expert testimony, and much of it will be contested.

12. The Court will likely be confronted with complex and voluminous legal issues as well. In other climate deception cases, many of these same Defendants have raised a battery of defenses under federal and state law, ranging from protections under the First Amendment, to lack of personal jurisdiction, to preemption by the Clean Air Act, the Commerce Clause, and the foreign-affairs doctrine. *See, e.g.,* Order Denying Defendants' Motion to Dismiss for Failure to State a Claim, *City & County of Honolulu v. Sunoco, LP*, No. 1CCV-20-380 Dkt. 618 (Haw. Cir.

Ct. Mar. 29, 2022); Order Denying Defendants’ Joint Motion to Dismiss for Lack of Personal Jurisdiction, *City & County of Honolulu v. Sunoco, LP*, No. 1CCV-20-380, Dkt. 622 (Haw. Cir. Ct., Mar. 31, 2022). The District anticipates that Defendants will raise similar defenses here.

13. ***Extent to Which Discovery May Require Supervision.*** The District also anticipates that the Court’s supervision will be necessary throughout the discovery process. The District expects that the parties will disagree concerning the permissible scope of discovery flowing both to and from Defendants, privilege and redaction issues, and the adequacy of the parties’ responses as the case proceeds. It is also likely Defendants will seek a protective order limiting the disclosure of any of their internal documents. By way of illustration, Exxon “produce[d] millions of pages of documents and dozens of witnesses for interviews and depositions” in a securities fraud case concerning the company’s disclosures of climate change risks to investors. *People by James v. Exxon Mobil Corp.*, 65 Misc. 3d 1233(A) at 1, 119 N.Y.S.3d 829 (Table) (N.Y. Sup. Ct. 2019) (unreported). In addition to the “reams of proprietary information” that Exxon produced “voluntarily and at the Court’s direction,” “multiple non-parties, including various financial institutions, were interviewed and deposed.” *Id.* Although the District pursues consumer protection claims that are qualitatively different from the securities fraud claims prosecuted in *People v. Exxon*, the breadth of discovery there is indicative of the potential scope and contention of the discovery process here. It appears highly likely that the parties will on multiple occasions require assistance from the Court to resolve discovery disputes, as has been the case in other climate deception lawsuits.

14. ***Anticipated Number of Motions to be Filed.*** The District anticipates that most stages of the litigation will be contested and will result in motion practice. The parties have already dedicated hundreds of pages of briefing over two years to Defendants’ removal of the case to

federal district court and the District's motion to remand, which Defendants have now appealed. As they indicated in the joint briefing stipulation, moreover, Defendants will likely move to stay proceedings after the Court resolves the District's motion for certification and assignment to the Civil I calendar. Once their stay motion is resolved, Defendants have indicated their intent to file multiple motions to dismiss the Complaint, and the District expects that Defendants will continue to submit procedural and substantive motions regularly as the case proceeds. The District, in turn, will likely seek relief if Defendants' discovery responses are less than forthcoming. In short, motion practice in this case is likely to be extensive, as it has been in other cases brought against the fossil fuel industry for its decades-long climate-disinformation campaigns.

15. ***Other Relevant Factors.*** The District filed this suit more than two years ago, and there has been no progress on the merits in that time. No Defendant has submitted an answer, dispositive motions have not been filed, initial disclosures have not been made, and there is no trial date or even pretrial litigation schedule set. It is in the interest of the District and the public that this litigation proceeds in a timely fashion, and close oversight by a Civil I docket judge will help achieve that goal.

III. CONCLUSION

16. This case is large, complex, and important. It will almost certainly be hotly contested, and it could very well disrupt the normal flow of the Civil II docket. For these reasons, the District respectfully requests that the case be recommended for designation on a Civil I calendar.

Dated: February 16, 2023

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Certificate of Service

I certify that on February 16, 2023, I caused a copy of the foregoing document to be served on all counsel of record by electronic filing and electronic mail.

/s/ Quentin C. Karpilow

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