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

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity. Defendants.	§ § § § § § § § § § § § § § §	NO. 4:16-CV-469-K

APPENDIX IN SUPPORT OF DEFENDANT ERIC T. SCHNEIDERMAN'S MOTION TO DISMISS EXXONMOBIL'S FIRST AMENDED COMPLAINT AND MOTION TO QUASH

Exhibit	**Description**	**Page(s)**
N/A	Declaration of Nicholas S. Davis	vii-xiv
1	Exxon Mobil Corporation's ("Exxon") First Amended Complaint for Declaratory and Injunctive Relief (Oct. 17, 2016) [Dkt. 100].	1-50
2	New York Attorney General Office's ("NYOAG") Subpoena for Production of Documents to Exxon (Nov. 4, 2015).	51-69
3	Judy Woodruff, *Has Exxon Mobil Mislead the Public About Its Climate Change Research?*, PBS NewsHour (Nov. 10, 2015, 6:45 PM).	70-78
4	Press Release, NYOAG, *A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat Climate Change* (Mar. 29, 2016), available at http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across.	79-82

5	Transcript of the AGs United For Clean Power Press Conference (Mar. 29, 2016), available at http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across.	83-103
6	NYOAG's Subpoena for Production of Documents to PricewaterhouseCoopers LLP (Aug. 19, 2016).	104-123
7	Order to Show Cause (Oct. 18, 2016) in *People of the State of New York v. PricewaterhouseCoopers, LLP and ExxonMobil Corporation*, Index No. 451962/2016 ("*New York v. PwC and Exxon*") [Doc. No. 32], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.	124-127
8	Letter to Hon. Barry R. Ostrager, Justice of the Supreme Court, from Michele Hirshman (Oct. 18, 2016) in *New York v. PwC and Exxon* [Doc. No. 31], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.	128-130
9	Corrected Memorandum of Law of Respondent Exxon Mobil Corporation In Opposition to the Office of the Attorney General's Motion to Compel Compliance with an Investigative Subpoena (Oct. 20, 2016) in *New York v. PwC and Exxon* [Doc. No. 36], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.	131-159
10	Transcript of an October 24, 2016, hearing before the New York Supreme Court for New York County in *New York v. PwC and Exxon* [Doc. No. 42], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.	160-177
11	Decision and Order (Oct. 25, 2016), of the New York Supreme Court for New York County in *New York v. PwC and Exxon* [Doc. No. 46], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.	178-184
12	Stipulation and Order for Partial Stay of Decision and Order Pending Appeal (Oct. 28, 2016), of the New York Supreme Court for New York County in *New York v. PwC and Exxon* [Doc. No. 48], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.	185-190
13	Order to Show Cause (Nov. 15, 2016) in *New York v. PwC and Exxon* [Doc. No. 92], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.	191-194
14	Exxon's Corrected Memorandum of Law in Opposition to the Attorney General's Motion to Compel Compliance with an Investigative Subpoena (Nov. 18, 2016) in *New York v. PwC and Exxon* [Doc. No. 91], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.	195-220

15	Transcript of a November 21, 2016, hearing before the New York Supreme Court for New York County in *New York v. PwC and Exxon* [Doc. No. 96], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.	221-228
16	Letter to Hon. Barry R. Ostrager from Daniel J. Toal (Dec. 5, 2016) in *New York v. PwC and Exxon* [Doc. No. 101], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.	229-237
17	Memorandum of Law for Amici Curiae States of Maryland, New York, Illinois, Iowa, Maine, Minnesota, Mississippi, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia and U.S. Virgin Islands In Support of Defendant's Motion to Dismiss and in Opposition to Plaintiff's Motion for a Preliminary Injunction (Aug. 8, 2016) [Dkt. 47].	238-275
18	Transcript of a September 19, 2016, preliminary injunction hearing before the Honorable Ed Kinkeade.	276-303
19	Order (Oct. 13, 2016) [Dkt. 73].	304-310
20	Exxon's Motion for Leave to Amend (Oct. 17, 2016) [Dkt. 74].	311-316
21	Excerpt of National Association of Attorneys General, *State Attorneys General: Powers and Responsibilities,* pages 244-45 (2d ed. 2007).	317-318
22	Nat'l Ass'n of Attorneys General & Dep't of Justice, Environmental & Nat'l Resources Division, *Guidelines for Joint State/Federal Civil Environmental Enforcement Litigation* 6-7, 20-21 (March 2003), available at https://www.justice.gov/sites/default/files/enrd/legacy/2015/04/13/Guidelines-for-joint-state-federal-civil-environmental-enforcement-litigation.pdf.	319-324
23	Assurance of Discontinuance in *In the Matter of Xcel Energy Inc.* (Aug. 2008), available at http://www.ag.ny.gov/sites/default/files/press-releases/archived/xcel_aod.pdf.	325-332
24	Assurance of Discontinuance in *In the Matter of Dynegy Inc.* (Oct. 2008), available at http://www.ag.ny.gov/sites/default/files/press-releases/archived/dynegy_aod.pdf.	333-340
25	Assurance of Discontinuance in *In the Matter of the AES Corporation* (Nov. 2009), available at http://www.ag.ny.gov/sites/default/files/press-releases/archived/AES%20AOD%20Final%20fully%20executed.pdf.	341-349

26	Assurance of Discontinuance in *In the Matter of Anadarko Petroleum Corp.* (Oct. 2014), available at http://www.ag.ny.gov/pdfs/Anadarko%20AOD%20signed.pdf and Assurance of Discontinuance in *the Matter of EOG Resources, Inc.* (Oct. 2014), available at www.ag.ny.gov/pdfs/EOG%20AOD%20Final%2010-1-14%20Signed.pdf	350-370
27	Assurance of Discontinuance in *In the Matter of Peabody Energy Corporation* (Nov. 2015), available at http://ag.ny.gov/pdfs/Peabody-Energy-Assurance-signed.pdf.	371-390
28	Inside Climate News, *Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago* (Sept. 16, 2015), available at https://insideclimatenews.org/news/15092015/Exxons-own-research-confirmed-fossil-fuels-role-in-global-warming.	391-397
29	Inside Climate News, *Exxon Believed Deep Dive Into Climate Research Would Protect Its Business* (Sept. 17, 2015), available at https://insideclimatenews.org/news/16092015/exxon-believed-deep-dive-into-climate-research-would-protect-its-business.	398-401
30	Inside Climate News, *Exxon Confirmed Global Warming Consensus in 1982 with In-House Climate Models* (Sept. 22, 2015), available at https://insideclimatenews.org/news/18092015/exxon-confirmed-global-warming-consensus-in-1982-with-in-house-climate-models.	402-410
31	Inside Climate News, *Exxon's Business Ambition Collided with Climate Change Under a Distant Sea* (Oct. 8, 2015), available at https://insideclimatenews.org/news/08102015/Exxons-Business-Ambition-Collided-with-Climate-Change-Under-a-Distant-Sea.	411-416
32	Inside Climate News, *Highlighting the Allure of Synfuels, Exxon Played Down the Climate Risks* (Oct. 8, 2015), available at https://insideclimatenews.org/news/08102015/highlighting-allure-synfuels-exxon-played-down-climate-risks.	417-420
33	Inside Climate News, *Exxon Sowed Doubt About Climate Science for Decades by Stressing Uncertainty* (Oct. 22, 2015), available at https://insideclimatenews.org/news/22102015/Exxon-Sowed-Doubt-about-Climate-Science-for-Decades-by-Stressing-Uncertainty.	421-428
34	Inside Climate News, *Exxon Made Deep Cuts in Climate Research Budget in the 1980s* (Nov. 25, 2015), available at https://insideclimatenews.org/news/25112015/exxon-deep-cuts-climate-change-research-budget-1980s-global-warming.	429-434

35	Inside Climate News, *More Exxon Documents Show How Much It Knew About Climate 35 Years Ago* (Dec. 1, 2015), available at https://insideclimatenews.org/news/01122015/documents-exxons-early-co2-position-senior-executives-engage-and-warming-forecast.	435-440
36	ExxonMobil, *Energy and Carbon – Managing the Risks* (2014).	441-471
37	Wall Street Journal, SEC Probes Exxon Over Accounting for Climate Change (Sept. 20, 2016), available at http://www.wsj.com/articles/sec-investigating-exxon-on-valuing-of-assets-accounting-practices-1474393593.	472-475
38	Subpoenas to Testify at a Deposition in a Civil Action and a Subpoena to Produce Documents (Nov. 3, 2016).	476-509
39	Letter to Roderick L. Arz from Justin Anderson (Nov. 11, 2016).	510-512
40	Order (Nov. 10, 2016) [Dkt. 99].	513-514
41	Letter to Hon. Ed Kinkeade from Nina Cortell (Nov. 14, 2016) [Dkt. 112].	515-518
42	Transcript of Status Conference (Nov. 16, 2016) [Dkt. 114].	519-526
43	Letter to Pete Marketos from Justin Anderson (Nov. 16, 2016), enclosing three Notices of Deposition, a First Request for Admission, a First Request for Interrogatories, and a First Request for the Production of Documents.	527-580
44	Order (Nov. 17, 2016) [Dkt. 117].	581-583
45	Letter to Pete Marketos and Jeffrey M. Tillotson from Justin Anderson, and Notices of Deposition (Nov. 18, 2016).	584-590
46	Email to Tyler Bexley and Pete Marketos from Justin Anderson (Nov. 29, 2016).	591-592

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of New York

By his attorneys:

s/ Pete Marketos
Pete Marketos
Lead Attorney
Texas State Bar No. 24013101
pete.marketos@rgmfirm.com
Tyler J Bexley
Texas State Bar No. 24073923
tyler.bexley@rgmfirm.com
REESE GORDON MARKETOS LLP
750 N. Saint Paul St. Suite 610
Dallas, TX 75201
(214) 382-9810
Fax: (214) 501-0731

Jeffrey M Tillotson
TILLOTSON LAW FIRM
750 N. Saint Paul St. Suite 610
Dallas, TX 75201

Jason Brown*
Chief Deputy Attorney General
Roderick L. Arz (*pro hac vice*)
Assistant Attorney General
Eric Del Pozo*
Assistant Solicitor General
NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
120 Broadway, 25th Floor
New York, NY 10271
212-416-8085

**pro hac vice application forthcoming*

Dated: December 5, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on December 5, 2016, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system. Any other counsel of record will be served in accordance with the Federal Rules of Civil Procedure.

s/ Pete Marketos
Pete Marketos

DECLARATION OF NICHOLAS S. DAVIS

I, Nicholas S. Davis, declare as follows:

1. My name is Nicholas S. Davis. I am admitted to practice in this Court and am an associate at Reese Gordon Marketos, LLP, which is counsel-of-record for Eric T. Schneiderman, Attorney General of New York, in his official capacity, in this case. I am over 18 years of age and am fully competent in all respects to make this declaration. Based on my personal knowledge, my review of relevant documents, and my discussion with colleagues, I have knowledge of the facts stated herein, and each of them is true and correct.

2. I submit this declaration in support of the Attorney General of New York's Motion to Dismiss Plaintiff's First Amended Complaint.

3. Attached to this declaration as Exhibit 1 is a true and accurate copy of Exxon Mobil Corporation's ("Exxon") First Amended Complaint for Declaratory and Injunctive Relief ("Amended Complaint") (Oct. 17, 2016) in this action [Dkt. 100].

4. Attached to this declaration as Exhibit 2 is a true and accurate copy of the New York Attorney General Office's ("NYOAG") Subpoena for Production of Documents to Exxon (Nov. 4, 2015).

5. Attached to this declaration as Exhibit 3 is a true and accurate copy of Judy Woodruff, *Has Exxon Mobil Mislead the Public About Its Climate Change Research?*, PBS NewsHour (Nov. 10, 2015, 6:45 PM), attached as an exhibit to the Amended Complaint.

6. Attached to this declaration as Exhibit 4 is a true and accurate copy of Press Release, NYOAG, *A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat*

Climate Change (Mar. 29, 2016), available at http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across.

7. Attached to this declaration as Exhibit 5 is a true and accurate copy of the Transcript of the AGs United for Clean Power Press Conference (Mar. 29, 2016), which was prepared by Exxon's counsel and attached as an exhibit to the Amended Complaint. The video recording is available at http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across.

8. Attached to this declaration as Exhibit 6 is a true and accurate copy of NYOAG's Subpoena for Production of Documents to PricewaterhouseCoopers LLP (Aug. 19, 2016).

9. Attached to this declaration as Exhibit 7 is a true and accurate copy of Order to Show Cause (Oct. 18, 2016) in *People of the State of New York v. PricewaterhouseCoopers, LLP and ExxonMobil Corporation*, Index No. 451962/2016 ("*New York v. PwC and Exxon*") [Doc. No. 32], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.

10. Attached to this declaration as Exhibit 8 is a true and accurate copy of Letter to Hon. Barry R. Ostrager, Justice of the Supreme Court, from Michele Hirshman (Oct. 18, 2016) in *New York v. PwC and Exxon* [Doc. No. 31], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.

11. Attached to this declaration as Exhibit 9 is a true and accurate copy of Corrected Memorandum of Law of Respondent Exxon Mobil Corporation In Opposition to the Office of the Attorney General's Motion to Compel Compliance with an Investigative Subpoena (Oct. 20, 2016) in *New York v. PwC and Exxon* [Doc. No. 36], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.

12. Attached to this declaration as Exhibit 10 is a true and accurate copy of Transcript of an October 24, 2016, hearing before the New York Supreme Court for New York County in *New York v. PwC and Exxon* [Doc. No. 42], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.

13. Attached to this declaration as Exhibit 11 is a true and accurate copy of Decision and Order (Oct. 25, 2016), of the New York Supreme Court for New York County in *New York v. PwC and Exxon* [Doc. No. 46], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.

14. Attached to this declaration as Exhibit 12 is a true and accurate copy of Stipulation and Order for Partial Stay of Decision and Order Pending Appeal (Oct. 28, 2016), of the New York Supreme Court for New York County in *New York v. PwC and Exxon* [Doc. No. 48], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.

15. Attached to this declaration as Exhibit 13 is a true and accurate copy of Order to Show Cause (Nov. 15, 2016) in *New York v. PwC and Exxon* [Doc. No. 92], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.

16. Attached to this declaration as Exhibit 14 is a true and accurate copy of Exxon's Corrected Memorandum of Law in Opposition to the Attorney General's Motion to Compel Compliance with an Investigative Subpoena (Nov. 18, 2016) in *New York v. PwC and Exxon* [Doc. No. 91], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.

17. Attached to this declaration as Exhibit 15 is a true and accurate copy of Transcript of a November 21, 2016, hearing before the New York Supreme Court for New York County in *New York v. PwC and Exxon* [Doc. No. 96], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.

18. Attached to this declaration as Exhibit 16 is a true and accurate copy of Letter to Hon. Barry R. Ostrager from Daniel J. Toal (Dec. 5, 2016) in *New York v. PwC and Exxon* [Doc. No. 101], available at https://iapps.courts.state.ny.us/webcivil/FCASMain.

19. Attached to this declaration as Exhibit 17 is a true and accurate copy of Memorandum of Law for Amici Curiae States of Maryland, New York, Illinois, Iowa, Maine, Minnesota, Mississippi, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia and U.S. Virgin Islands In Support of Defendant's Motion to Dismiss and in Opposition to Plaintiff's Motion for a Preliminary Injunction (Aug. 8, 2016) in this action [Dkt. 47].

20. Attached to this declaration as Exhibit 18 is a true and accurate copy of Transcript of a September 19, 2016, preliminary injunction hearing before the Honorable Ed Kinkeade in this action.

21. Attached to this declaration as Exhibit 19 is a true and accurate copy of Order (Oct. 13, 2016) in this action [Dkt. 73].

22. Attached to this declaration as Exhibit 20 is a true and accurate copy of Exxon's Motion for Leave to File a First Amended Complaint (Oct. 17, 2016) in this action [Dkt.74].

23. Attached to this declaration as Exhibit 21 is a true and accurate copy of Excerpt of National Association of Attorneys General, *State Attorneys General: Powers and Responsibilities,* pages 244-45 (2d ed. 2007).

24. Attached to this declaration as Exhibit 22 is a true and accurate copy of Nat'l Ass'n of Attorneys General & Dep't of Justice, Environmental & Nat'l Resources Division, *Guidelines for Joint State/Federal Civil Environmental Enforcement Litigation* 6-7, 20-21 (March 2003), available at

https://www.justice.gov/sites/default/files/enrd/legacy/2015/04/13/Guidelines-for-joint-state-federal-civil-environmental-enforcement-litigation.pdf.

25. Attached to this declaration as Exhibit 23 is a true and accurate copy of Assurance of Discontinuance in *In the Matter of Xcel Energy Inc.* (Aug. 2008), available at http://www.ag.ny.gov/sites/default/files/press-releases/archived/xcel_aod.pdf.

26. Attached to this declaration as Exhibit 24 is a true and accurate copy of Assurance of Discontinuance in *In the Matter of Dynegy Inc.* (Oct. 2008), available at http://www.ag.ny.gov/sites/default/files/press-releases/archived/dynegy_aod.pdf.

27. Attached to this declaration as Exhibit 25 is a true and accurate copy of Assurance of Discontinuance in *In the Matter of the AES Corporation* (Nov. 2009), available at http://www.ag.ny.gov/sites/default/files/press-releases/archived/AES%20AOD%20Final%20fully%20executed.pdf.

28. Attached to this declaration as Exhibit 26 is a true and accurate copy of Assurance of Discontinuance in *In the Matter of Anadarko Petroleum Corp.* (Oct. 2014), available at http://www.ag.ny.gov/pdfs/Anadarko%20AOD%20signed.pdf and Assurance of Discontinuance in *the Matter of EOG Resources, Inc.* (Oct. 2014), available at www.ag.ny.gov/pdfs/EOG%20AOD%20Final%2010-1-14%20Signed.pdf .

29. Attached to this declaration as Exhibit 27 is a true and accurate copy of Assurance of Discontinuance in *In the Matter of Peabody Energy Corporation* (Nov. 2015) available at http://ag.ny.gov/pdfs/Peabody-Energy-Assurance-signed.pdf.

30. Attached to this declaration as Exhibit 28 is a true and accurate copy of Inside Climate News, *Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago* (Sept. 16, 2015), available at

https://insideclimatenews.org/news/15092015/Exxons-own-research-confirmed-fossil-fuels-role-in-global-warming.

31. Attached to this declaration as Exhibit 29 is a true and accurate copy of Inside Climate News, *Exxon Believed Deep Dive Into Climate Research Would Protect Its Business* (Sept. 17, 2015), available at https://insideclimatenews.org/news/16092015/exxon-believed-deep-dive-into-climate-research-would-protect-its-business.

32. Attached to this declaration as Exhibit 30 is a true and accurate copy of Inside Climate News, *Exxon Confirmed Global Warming Consensus in 1982 with In-House Climate Models* (Sept. 22, 2015), available at https://insideclimatenews.org/news/18092015/exxon-confirmed-global-warming-consensus-in-1982-with-in-house-climate-models.

33. Attached to this declaration as Exhibit 31 is a true and accurate copy of Inside Climate News, *Exxon's Business Ambition Collided with Climate Change Under a Distant Sea* (Oct. 8, 2015), available at https://insideclimatenews.org/news/08102015/Exxons-Business-Ambition-Collided-with-Climate-Change-Under-a-Distant-Sea.

34. Attached to this declaration as Exhibit 32 is a true and accurate copy of Inside Climate News, *Highlighting the Allure of Synfuels, Exxon Played Down the Climate Risks* (Oct. 8, 2015), available at https://insideclimatenews.org/news/08102015/highlighting-allure-synfuels-exxon-played-down-climate-risks.

35. Attached to this declaration as Exhibit 33 is a true and accurate copy of Inside Climate News, *Exxon Sowed Doubt About Climate Science for Decades by Stressing Uncertainty* (Oct. 22, 2015), available at https://insideclimatenews.org/news/22102015/Exxon-Sowed-Doubt-about-Climate-Science-for-Decades-by-Stressing-Uncertainty.

36. Attached to this declaration as Exhibit 34 is a true and accurate copy of Inside Climate News, *Exxon Made Deep Cuts in Climate Research Budget in the 1980s* (Nov. 25, 2015), available at https://insideclimatenews.org/news/25112015/exxon-deep-cuts-climate-change-research-budget-1980s-global-warming.

37. Attached to this declaration as Exhibit 35 is a true and accurate copy of Inside Climate News, *More Exxon Documents Show How Much It Knew About Climate 35 Years Ago* (Dec. 1, 2015), available at https://insideclimatenews.org/news/01122015/documents-exxons-early-co2-position-senior-executives-engage-and-warming-forecast.

38. Attached to this declaration as Exhibit 36 is a true and accurate copy of ExxonMobil, *Energy and Carbon – Managing the Risks* (2014).

39. Attached to this declaration as Exhibit 37 is a true and accurate copy of the Wall Street Journal, *SEC Probes Exxon Over Accounting for Climate Change* (Sept. 20, 2016), available at http://www.wsj.com/articles/sec-investigating-exxon-on-valuing-of-assets-accounting-practices-1474393593.

40. Attached to this declaration as Exhibit 38 is a true and accurate copy of Subpoenas to Testify at a Deposition in a Civil Action and a Subpoena to Produce Documents (Nov. 3, 2016) in this action.

41. Attached to this declaration as Exhibit 39 is a true and accurate copy of Letter to Roderick L. Arz from Justin Anderson (Nov. 11, 2016) regarding this action.

42. Attached to this declaration as Exhibit 40 is a true and accurate copy of Order (Nov. 10, 2016) in this action [Dkt. 99].

43. Attached to this declaration as Exhibit 41 is a true and accurate copy of Letter to Hon. Ed Kinkeade from Nina Cortell (Nov. 14, 2016) in this action [Dkt. 112].

44. Attached to this declaration as Exhibit 42 is a true and accurate copy of Transcript of Status Conference (Nov. 16, 2016) in this action [Dkt. 114].

45. Attached to this declaration as Exhibit 43 is a true and accurate copy of Letter to Pete Marketos from Justin Anderson (Nov. 16, 2016), enclosing three Notices of Deposition, a First Request for Admission, a First Request for Interrogatories, and a First Request for the Production of Documents in this action.

46. Attached to this declaration as Exhibit 44 is a true and accurate copy of Order (Nov. 17, 2016) in this action [Dkt. 117].

47. Attached to this declaration as Exhibit 45 is a true and accurate copy of Letter to Pete Marketos and Jeffrey M. Tillotson from Justin Anderson, and Notices of Deposition (Nov. 18, 2016) in this action.

48. Attached to this declaration as Exhibit 46 is a true and accurate copy of Email to Tyler Bexley and Pete Marketos from Justin Anderson (Nov. 29, 2016) regarding this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 5, 2016.

Nicholas S. Davis

Exhibit 1

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

EXXON MOBIL CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity,	§	NO. 4:16-CV-469-K
	§	
	§	
	§	
	§	
	§	
Defendants.	§	
	§	

EXXONMOBIL'S FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

Exxon Mobil Corporation ("ExxonMobil") brings this action seeking declaratory and injunctive relief against Eric Tradd Schneiderman, the Attorney General of New York, in addition to Maura Tracy Healey, the Attorney General of Massachusetts. Attorneys General Schneiderman and Healey have joined together with each other as well as others known and unknown to conduct improper and politically motivated investigations of ExxonMobil in a coordinated effort to silence and intimidate one side of the public policy debate on how to address climate change. ExxonMobil seeks an injunction barring the enforcement of a subpoena issued by Attorney General Schneiderman and a civil investigative demand ("CID") issued by Attorney General Healey to ExxonMobil, and a declaration that the subpoena and CID violate ExxonMobil's rights under federal and state law. As demonstrated in this amended pleading, the same claims and arguments asserted against Attorney General Healey apply

with equal force against Attorney General Schneiderman. For its First Amended Complaint, ExxonMobil alleges as follows based on present knowledge and information and belief:

INTRODUCTION

1. Frustrated by the federal government's apparent inaction on climate change, Attorney General Schneiderman assembled a coalition of state attorneys general, including Attorney General Healey, to use law enforcement powers as a means of promoting a shared political agenda. According to an agreement executed by its members, this coalition embraced two goals.[1] First, it sought to "limit[] climate change" by pressing for a reduction in the use of fossil fuels.[2] Second, the coalition explicitly advocated for restrictions on speech and debate to accomplish that political agenda, listing as an objective "ensuring the dissemination of accurate information about climate change."[3] The coalition's agreement was concealed from the public until third parties recently obtained it from one coalition member under public records laws. Other coalition members continue to resist similar demands for transparency.

2. The coalition first publicly surfaced when Attorney General Schneiderman hosted a press conference in New York City on March 29, 2016,[4] with former Vice President and private citizen Al Gore as the featured speaker.[5] Attorney General Schneiderman pledged that the coalition would "deal with the problem of climate

1 *See* Paragraphs 52 to 53 below; *see also* Ex. R at App. 171–74.
2 Ex. V at App. 196.
3 *Id.*
4 *See* Paragraphs 27 to 39 below.
5 A transcript of the AGs United for Clean Power Press Conference, held on March 29, 2016, was prepared by counsel based on a video recording of the event, which is available at http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across. A copy of this transcript is attached as Exhibit B and is incorporated by reference.

change" by using law enforcement powers "creatively" and "aggressively" to force ExxonMobil[6] and other energy companies to support the coalition's preferred policy responses to climate change.[7] Considering climate change to be the "most pressing issue of our time," Attorney General Schneiderman said the coalition was "prepared to step into this [legislative] breach."[8]

3. Attorney General Healey similarly pledged "quick, aggressive action" by her office to "address climate change and to work for a better future."[9] She announced an investigation of ExxonMobil that she had already determined would reveal a "troubling disconnect between what Exxon knew" and what it "chose to share with investors and with the American public."[10] The statements of Attorney General Schneiderman, Attorney General Healey, Mr. Gore and others made clear that the press conference was a purely political event.

4. It was also the result of years of planning and lobbying by private interests.[11] For nearly a decade, climate change activists and certain plaintiffs' attorneys have sought to obtain the confidential records of energy companies as a means of pressuring those companies to change their policy positions. A 2012 workshop examined ways to obtain the internal documents of companies like ExxonMobil for the purpose of "maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming."[12] The attendees at that

6 ExxonMobil was formed as a result of a merger between Exxon and Mobil on November 30, 1999. For ease of discussion, we refer to the predecessor entities as ExxonMobil throughout the Complaint.
7 Ex. B at App. 9 –10.
8 *Id.* at App. 9, 11.
9 *Id.* at App. 21.
10 *Id.* at App. 20.
11 *See* Paragraphs 40 to 51 below.
12 Ex. C at App. 56.

workshop concluded that "a single sympathetic state attorney general might have substantial success in bringing key internal documents to light."[13]

5. In the months leading up to the press conference, these activists and attorneys met at the offices of the Rockefeller Family Fund in New York to discuss the "[g]oals of an Exxon campaign," which included to "delegitimize [it] as a political actor" and to "force officials to disassociate themselves from Exxon."[14]

6. The leadership of this group of activists and attorneys attended a meeting with "sympathetic state attorney[s] general" prior to the March 29 press conference. While this Court and the public have not been told what was discussed, a copy of the agenda for the meeting includes presentations on the "imperative of taking action now on climate change" and on "climate change litigation."[15]

7. Members of the coalition recognized that the behind-the-scenes involvement of these individuals—especially a private attorney likely to seek fees from any private litigation made possible by an attorney general-led investigation of ExxonMobil—could expose the special interests behind their so-called investigations and the bias underlying their deployment of law enforcement resources for partisan ends. When that same private attorney asked Attorney General Schneiderman's office what he should tell a reporter if asked about his involvement, Lemuel Srolovic, Chief of the Environmental Protection Bureau, asked the private attorney not to confirm his attendance at the conference.[16]

[13] *Id.* at 40.
[14] Ex. D at App. 67.
[15] Ex. E at App. 70.
[16] Ex. F at App. 80.

8. The investigations launched by Attorneys General Schneiderman and Healey amount to nothing more than an unlawful exercise of government power to further political objectives. The shifting justifications they have presented for their investigations are pretexts that have become more and more transparent over time.[17] Invoking state laws with limitations periods no longer than six years, the Attorneys General claim to be investigating whether ExxonMobil committed consumer or securities fraud by misrepresenting its knowledge of climate change.

9. But for more than a decade, ExxonMobil has widely and publicly confirmed[18] that it "recognize[s] that the risk of climate change and its potential impacts on society and ecosystems may prove to be significant."[19] ExxonMobil has also publicly advocated a tax on carbon emissions since 2009.[20] Moreover, in conducting its business, ExxonMobil addresses the potential for future climate change policy by estimating a proxy cost of carbon, which seeks to reflect potential policies governments may employ related to the exploration, development, production, transportation or use of carbon-based fuels.[21] This cost, which in some regions may approach $80 per ton by 2040, has been included in ExxonMobil's Outlook for Energy for several years.[22] Further, ExxonMobil requires all of its business lines to include, where appropriate, an estimate of greenhouse gas-related emissions costs in their economics when seeking funding for capital investments.[23] Despite the applicable limitations periods and ExxonMobil's longstanding

17 *See* Paragraphs 74 to 76 below.
18 *See* Paragraphs 63 to 64 below.
19 Ex. G at App. 93; *see also* Ex. H at App. 103 ("Because the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant, strategies that address the risk need to be developed and implemented.").
20 Ex. T at App. 182.
21 Ex. T at App. 190.
22 *Id.*
23 *Id.*

public recognition of the risks associated with climate change, the subpoena and the CID seek documents going back nearly four decades, seeking anything having to do with the issue.

10. Worse still, the New York Attorney General's subpoena and the Massachusetts Attorney General's CID target ExxonMobil's communications with those who the Attorneys General perceive to have different political viewpoints in the climate change debate. The subpoena seeks ExxonMobil's communications with oil and gas trade associations and industry groups that advocate on energy policy, and the CID demands ExxonMobil's communications with a list of organizations labeled by the coalition as so-called "climate deniers," *i.e.*, those who have expressed skepticism about the science of climate change or the coalition's preferred policies regarding climate change.[24] The CID also identifies statements made by ExxonMobil about the tradeoffs inherent in climate change policy and demands that ExxonMobil produce records supporting those disfavored statements.

11. Recent events have fully unmasked the pretextual nature of these investigations and the improper bias and unconstitutional objectives animating them.[25] When Attorney General Schneiderman launched his investigation, he claimed to be investigating ExxonMobil's scientific research in the 1970s and 1980s. Subject to the assertion of privilege, including First Amendment privileges, ExxonMobil initially provided documents to Attorney General Schneiderman with the expectation that his office would conduct a neutral, even-handed investigation. As events unfolded over the

[24] *See* Paragraphs 66 and 73 below.
[25] *See* Paragraphs 74 to 76 below.

ensuing months—including the politicized press conference in March and the secret agreement's coming to light over the summer—that expectation has evaporated.

12. Within the last month, and well after ExxonMobil commenced this action, Attorney General Schneiderman continued his practice of providing unprecedented briefings to the press on the status of his "investigation" of ExxonMobil and announced his expectation that a "massive securities fraud" will be uncovered. During one of those briefings, Attorney General Schneiderman conceded that he has abandoned his original inquiry into ExxonMobil's historical scientific research and is now pursuing a new theory of investor fraud. That shift further demonstrates that Attorney General Schneiderman is simply searching for a legal theory—any legal theory—to continue his efforts to pressure ExxonMobil and intimidate one side of a public policy debate.[26]

13. It is now indisputable that the subpoena and the CID were issued in bad faith to deter ExxonMobil from participating in ongoing public deliberations about climate change and to fish through decades of ExxonMobil's documents in the hope of finding some ammunition to enhance the coalition's, and its climate activist confederates', position in the policy debate over climate change. Through their actions, Attorneys General Schneiderman and Healey have deprived and will continue to deprive ExxonMobil of its rights under the United States Constitution, the Texas Constitution, and the common law.

14. ExxonMobil therefore seeks a declaration that the subpoena and the CID violate its rights under Articles One and Six of the United States Constitution; the First, Fourth, and Fourteenth Amendments to the United States Constitution; Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution; and constitutes an abuse of

[26] *See* Paragraphs 74 to 81 below.

process under the common law. ExxonMobil also seeks an injunction barring further enforcement of the subpoena and the CID. Absent an injunction, ExxonMobil will suffer imminent and irreparable harm for which there is no adequate remedy at law.

PARTIES

15. ExxonMobil is a public, shareholder-owned energy company incorporated in New Jersey with principal offices in the State of Texas. ExxonMobil is headquartered and maintains all of its central operations in Texas.

16. Defendant Eric Tradd Schneiderman is the Attorney General of New York. He is sued in his official capacity.

17. Defendant Maura Tracy Healey is the Attorney General of Massachusetts. She is sued in her official capacity.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction over this action pursuant to Sections 1331 and 1367 of Title 28 of the United States Code. Plaintiff alleges violations of its constitutional rights in violation of Sections 1983 and 1985 of Title 42 of the United States Code. Because those claims arise under the laws of the United States, this Court has original jurisdiction over them. 28 U.S.C. § 1331. Plaintiff also alleges related state law claims that derive from the same nucleus of operative facts. Each of Plaintiff's state law claims—like its federal claims—is premised on statements by Attorneys General Schneiderman and Healey at the press conference and during the course of their investigations, their issuance of the subpoena and the CID, the demands made therein, and their intention to muzzle ExxonMobil's speech in Texas. This Court therefore has supplemental jurisdiction over those claims. 28 U.S.C. § 1367(a).

19. Venue is proper within this District pursuant to Section 1391(b) of Title 28 of the United States Code because all or a substantial part of the events giving rise to the claims occurred in the Northern District of Texas. The subpoena was emailed to ExxonMobil in Texas, and both the subpoena and CID target and seek to suppress speech emanating from Texas. They also require ExxonMobil to collect and review a substantial number of records stored or maintained in the Northern District of Texas.

FACTS

A. Attorney General Schneiderman Opens His Investigation of ExxonMobil with a Press Leak Followed by a Television Interview.

20. In November 2015, ExxonMobil received Attorney General Schneiderman's subpoena at its corporate headquarters in Irving, Texas.[27] Within hours, the press was reporting on the subpoena's issuance and its contents. An article in *The New York Times* reported that the subpoena "demand[ed] extensive financial records, emails and other documents" and that the "focus" of the investigation was on "the company's own long running scientific research" on climate change.[28] The article identified as sources "people with knowledge of the investigation," all of whom "spoke on the condition of anonymity saying they were not authorized to speak publicly about investigations."[29] To state the obvious, ExxonMobil did not alert *The New York Times* or any other media to the subpoena's existence or its contents.

21. This press leak was unsettling. It is customary for law enforcement officials to maintain confidentiality of their investigations, both to protect the integrity of the investigative process and to avoid unfair prejudice to those under investigation. But

[27] Ex. I at App. 108.
[28] Ex. A at App. 2.
[29] *Id.* at App. 2–3.

Attorney General Schneiderman's investigation of ExxonMobil has been conducted with a marked disregard for traditional concerns about confidentiality or unfair prejudice. Before ExxonMobil had even accepted service of the subpoena, it had received multiple media inquiries about the subpoena and could read about the investigation in online news accounts.[30]

22. Within a week of issuing the subpoena, Attorney General Schneiderman appeared on a *PBS NewsHour* segment, entitled "Has Exxon Mobil misle[d] the public about its climate change research?"[31] During that appearance, Attorney General Schneiderman described the focus of his investigation on ExxonMobil's purported decision to "shift[] [its] point of view" and "change[] tactics" on climate change after "being at the leadership of doing good scientific work" on the issue "[i]n the 1980s."[32] Attorney General Schneiderman said his probe extended to ExxonMobil's "funding [of] organizations."[33] While he did not refer to them expressly as his political adversaries, he derided them as "climate change deniers" and "climate denial organizations."[34] Those organizations included the "American Enterprise Institute, . . . the American Legislative Exchange Council, . . . [and the] American Petroleum Institute."[35]

23. Renewable energy was another focus of the interview. Attorney General Schneiderman said he was "concerned about" ExxonMobil's purported "overestimating the costs of switching to renewable energy," but he did not explain how any supposed error in that estimate could conceivably constitute a fraud or mislead any consumer.[36]

30 Ex. A at App. 2–7; Ex. J at App. 110–112.
31 Ex. K at App. 114.
32 *Id.* at App. 115.
33 *Id.* at App. 116.
34 *Id.* at App. 116, 118.
35 *Id.* at App. 116.
36 *Id.*. at App. 117.

24. Attorney General Schneiderman did not discuss ExxonMobil's oil and gas reserves or its assets at all during this interview.

25. Later that month at an event sponsored by *Politico* in New York, Attorney General Schneiderman said that ExxonMobil appeared to be "doing very good work in the 1980s on climate research" but that its "corporate strategy seemed to shift" later.[37] Attorney General Schneiderman claimed that the company had funded organizations that he labeled "aggressive climate deniers," again specifically naming his perceived political opponents at the American Enterprise Institute, the American Legislative Exchange Council, and the American Petroleum Institute.[38] Attorney General Schneiderman admitted that his "investigation" of ExxonMobil was merely "one aspect" of his office's efforts to "take action on climate change," commenting that society's failure to address climate change would be "viewed poorly by history."[39]

26. After this initial flurry of statements to the press, relative quiet followed, and ExxonMobil attempted in good faith to produce records demanded by the subpoena. It provided Attorney General Schneiderman with documents related to its historical research on global warming and climate change.

B. The "Green 20" Coalition Plans to Use Law Enforcement Tools for Political Goals.

27. The playing field changed on March 29, 2016, when Attorney General Schneiderman hosted a press conference in New York City. Calling themselves the "AGs United For Clean Power" and the "Green 20," Attorneys General Schneiderman and Healey were joined by other state attorneys general and Al Gore to announce their

[37] Ex. L at App. 123.
[38] *Id.*
[39] *Id.* at App. 124.

plan to take "progressive action to address climate change" by investigating ExxonMobil.[40] Attorneys general or staff members from over a dozen other states were in attendance, as was Claude Walker, the Attorney General of the United States Virgin Islands.

28. Expressing dissatisfaction with the supposed "gridlock in Washington" regarding climate change legislation, Attorney General Schneiderman said that the coalition had to work "creatively" and "aggressively" to respond to "th[e] most pressing issue of our time," namely, the need to "preserve our planet and reduce the carbon emissions that threaten all of the people we represent."[41]

29. Attorney General Healey agreed, opining that "there's nothing we need to worry about more than climate change."[42] She considered herself to have "a moral obligation to act" to remedy what she described as a threat to "the very existence of our planet," and she vowed to take "quick, aggressive action" to "address climate change and to work for a better future."[43]

30. Echoing those themes, Attorney General Walker stated that "the American people . . . have to do something transformational" because "[w]e cannot continue to rely on fossil fuel."[44] In private communications with other members of the Green 20 coalition, Attorney General Walker expressed his hope that the coalition's efforts would "identify[] other potential litigation targets" and "increase our leverage" against

[40] Ex. M at App 127.
[41] Ex. B at App. 9–11.
[42] *Id.* at App. 20.
[43] *Id.* at App. 20–21.
[44] Ex. B at App. 24.

ExxonMobil to replicate or improve on an $800 million settlement he had previously obtained against another energy company.[45]

31. For the Green 20, the public policy debate on climate change was over and dissent was intolerable. Attorney General Schneiderman declared that he had "heard the scientists" and "kn[e]w what's happening to the planet."[46] To him, there was "no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up."[47] Clearing up that "confusion"—what the First Amendment safeguards as protected political speech—was an express objective of the Green 20.

32. According to Attorney General Healey, "[p]art of the problem has been one of public perception," causing "many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts."[48] She promised that those who "deceived" the public—by disagreeing with her about climate change—"should be, must be, held accountable."[49] Mr. Gore agreed, denouncing those he accused of "deceiving the American people . . . about the reality of the climate crisis and the dangers it poses to all of us."[50]

33. The attorneys general embraced the renewable energy industry, in which Mr. Gore is a prominent investor and promoter, as the only legitimate response to climate change. Attorney General Schneiderman said, "We have to change conduct" to "mov[e] more rapidly towards renewables."[51] Attorney General Healey promised to "speed our

45 Ex. N at App. 131, 134.
46 Ex. B at App. 10.
47 *Id.*
48 *Id.* at App. 20.
49 *Id.*
50 *Id.* at App. 14.
51 *Id.* at App. 27–28.

transition to a clean energy future"[52] According to Attorney General Walker, "[w]e have to look at renewable energy. That's the only solution."[53] Mr. Gore urged the coalition of state attorneys general to investigate his business competitors for "slow[ing] down this renewable revolution" by "trying to convince people that renewable energy is not a viable option."[54]

34. The assembled attorneys general had nothing but praise for Mr. Gore, whose financial interests aligned with their political agenda. Attorney General Schneiderman enthused that "there is no one who has done more for this cause" than Mr. Gore, who recently had been "traveling internationally, raising the alarm," and "training climate change activists."[55] Equally embracing the public support of Mr. Gore, Attorney General Healey praised him for explaining so "eloquently just how important this is, this commitment that we make," and she thanked him for his "inspiration" and "affirmation."[56] Virgin Islands Attorney General Walker hailed the former Vice President as one of his "heroes."[57]

35. In an effort to legitimize what the attorneys general were doing, Mr. Gore cited perceived inaction by the federal government as the justification for action by the Green 20. He observed that "our democracy's been hacked . . . but if the Congress really would allow the executive branch of the federal government to work, then maybe this would be taken care of at the federal level."[58] Reading from the same script, Attorney General Schneiderman pledged that the Green 20 would "step into th[e] [legislative]

[52] *Id.* at App. 21.
[53] *Id.* at App. 24.
[54] *Id.* at App. 17.
[55] *Id.* at App. 13.
[56] *Id.* at App. 20.
[57] *Id.* at App. 23.
[58] *Id.* at App. 17.

breach" created by this alleged federal inaction.[59] He then showed that his subpoena was a tool for achieving his political goals:

> We know that in Washington there are good people who want to do the right thing on climate change but everyone from President Obama on down is under a relentless assault from well-funded, highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action. So today, we're sending a message that, at least some of us—actually a lot of us—in state government are prepared to step into this battle with an unprecedented level of commitment and coordination.[60]

36. Attorney General Schneiderman linked the coalition's political efforts to his investigation of ExxonMobil, reminding the audience that he "had served a subpoena on ExxonMobil" to investigate "theories relating to consumer and securities fraud."[61] He also suggested that ExxonMobil faced a presumption of guilt in his office, arguing that ExxonMobil had been "using the best climate models" to determine "how fast the sea level is rising" and to "drill[] in places in the Arctic where they couldn't drill 20 years ago" while telling "the public for years that there were no 'competent models,' . . . to project climate patterns, including those in the Arctic."[62] Attorney General Schneiderman went on to suggest there was something illegal in ExxonMobil's alleged support for "organizations that put out propaganda denying that we can predict or measure the effects of fossil fuel on our climate, or even denying that climate change was happening."[63]

37. Attorney General Healey was equally explicit in her prejudgment of ExxonMobil. She stated that there was a "troubling disconnect between what Exxon

[59] *Id.* at App. 11.
[60] *Id.* at App. 12.
[61] *Id.* at App. 11.
[62] *Id.*
[63] *Id.*

knew, what industry folks knew, and what the company and industry chose to share with investors and with the American public."[64] Those conclusions were announced weeks before she even issued the CID to ExxonMobil.

38. The political motivations articulated by Attorneys General Schneiderman, Healey, and Walker, Mr. Gore, and the other press conference attendees struck a discordant note with those who rightfully expect government attorneys to conduct themselves in a neutral and unbiased manner. The overtly political tone of the conference even prompted one reporter to ask whether the press conference and the investigations were "publicity stunt[s]."[65]

39. Even some members of the coalition were apprehensive about the expressly political focus of its ringleader. Attorney General Schneiderman's office circulated a draft set of "Principles" for the "Climate Coalition of Attorneys General" that included a "[p]ledge" to "work together" to enforce laws "that require progressive action on climate change."[66] Recognizing the overtly political nature of that pledge, an employee of the Vermont Attorney General's Office wrote: "We are thinking that use of the term 'progressive' in the pledge might alienate some. How about 'affirmative,' 'aggressive,' 'forceful' or something similar?"[67]

C. In Closed-Door Meetings, the Green 20 Meet with Private Interests.

40. The impropriety of the statements made by Attorneys General Schneiderman and Healey and the other members of the Green 20 at the press conference is surpassed only by what is currently known about what they said behind closed doors.

64 *Id.* at App. 20.
65 *Id.* at App. 25.
66 Ex. M at App. 127.
67 *Id.* at App. 126.

41. During the morning of the press conference, the attorneys general attended two presentations. Those presentations were not announced publicly, and they were not open to the press or general public. The identity of the presenters and the titles of the presentations, however, were later released by the State of Vermont in response to a request by a third party under that state's Freedom of Information Act.

42. The first presenter was Peter Frumhoff, the Director of Science and Policy for the Union of Concerned Scientists.[68] His subject was the "imperative of taking action now on climate change."[69]

43. According to the Union of Concerned Scientists, those who do not share its views about climate change and responsive policy make it "difficult to achieve meaningful solutions to global warming."[70] It accuses "[m]edia pundits, partisan think tanks, and special interest groups" of being "contrarians," who "downplay and distort the evidence of climate change, demand policies that allow industries to continue polluting, and attempt to undercut existing pollution standards."[71]

44. Frumhoff has been targeting ExxonMobil since at least 2007. In that year, Frumhoff contributed to a publication issued by the Union of Concerned Scientists, titled "Smoke, Mirrors, and Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science."[72] This essay brainstormed strategies for "[p]utting the [b]rakes" on ExxonMobil's alleged "[d]isinformation [c]ampaign" on climate change.[73]

[68] Ex. O at App. 138.
[69] Ex. E at App. 70.
[70] Ex. P at App. 146.
[71] *Id.* at App. 146–47.
[72] Ex. Q at App. 160, 163.
[73] *Id.* at App. 166.

45. Matthew Pawa of Pawa Law Group, P.C., hosted the second presentation on the topic of "climate change litigation."[74] The Pawa Law Group, which boasts of its "role in launching global warming litigation,"[75] previously sued ExxonMobil and sought to hold it liable for causing global warming. That suit was dismissed because, as the court properly held, regulating greenhouse gas emissions is "a political rather than a legal issue that needs to be resolved by Congress and the executive branch rather than the courts."[76]

46. Frumhoff and Pawa have sought for years to initiate and promote litigation against fossil fuel companies in the service of their political agenda and for private profit. In 2012, for example, Frumhoff organized and Pawa presented at a workshop entitled "Climate Accountability, Public Opinion, and Legal Strategies."[77] The workshop's goal was to consider "the viability of diverse strategies, including the legal merits of targeting carbon producers (as opposed to carbon emitters) for U.S.-focused climate mitigation."[78]

47. The 2012 workshop's attendees discussed at considerable length "Strategies to Win Access to Internal Documents" of fossil fuel companies like ExxonMobil.[79] Even then, "lawyers at the workshop" suggested that "a single sympathetic state attorney general might have substantial success in bringing key internal documents to light."[80] The conference's attendees were "nearly unanimous" regarding "the importance of legal actions, both in wresting potentially useful internal documents from the fossil fuel industry and, more broadly, *in maintaining pressure on the industry*

74 Ex. E at App. 70.
75 Ex. S at App. 176.
76 Ex. C at App. 41; *see also Native Vill. of Kivalina* v. *ExxonMobil Corp.*, 663 F. Supp. 2d 863, 871–77 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012).
77 Ex. C at App. 30–31, 61, 63.
78 *Id.* at App. 32–33.
79 *Id*. at App. 40–41.
80 *Id.* at App. 40.

that could eventually lead to its support for legislative and regulatory responses to global warming."[81]

48. In January 2016, Pawa and a group of climate activists met at the Rockefeller Family Fund offices to discuss the "[g]oals of an Exxon campaign."[82] The goals included:

- To establish in [the] public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm.
- To delegitimize [ExxonMobil] as a political actor.
- To force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc.
- To drive divestment from Exxon.
- To drive Exxon & climate into [the] center of [the] 2016 election cycle.[83]

49. The investigations by the New York and Massachusetts Attorneys General and the Green 20 press conference represented the culmination of Frumhoff and Pawa's collective efforts to enlist state law enforcement officers to join them in a quest to silence political opponents, enact preferred policy responses to climate change, and obtain documents for private lawsuits.

50. The attorneys general in attendance at the press conference understood that the participation of Frumhoff and Pawa, if reported, could expose the private, financial, and political interests behind the announced investigations. The day after the

[81] *Id.* at App. 56 (emphasis added).
[82] Ex. D at App. 67.
[83] *Id.*; *see also* Ex. U at App. 192–94.

conference, a reporter from *The Wall Street Journal* contacted Pawa.[84] Before responding, Pawa dutifully asked Lemuel Srolovic, Chief of Attorney General Schneiderman's Environmental Protection Bureau, "[w]hat should I say if she asks if I attended?"[85] Mr. Srolovic—the Assistant Attorney General who had sent the New York subpoena to ExxonMobil in November 2015—encouraged Pawa to conceal from the press and the public the closed-door meetings. He responded, "[m]y ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event."[86]

51. The press conference, the closed-door meetings with activists, and the activists' long-standing desire to obtain ExxonMobil's "internal documents" as part of a campaign to put "pressure on the industry," inducing it to support "legislative and regulatory responses to global warming,"[87] form the partisan backdrop against which the New York and Massachusetts investigations must be considered.

D. The Green 20 Attempt to Conceal their Misuse of Power from the Public.

52. Recognizing the need to avoid public scrutiny, Attorneys General Schneiderman, Healey, and fifteen others entered into an agreement pledging to conceal their activities and communications in furtherance of their political agenda from the public. In April and May of 2016, the Green 20 executed a so-called "Climate Change Coalition Common Interest Agreement," which memorialized the twin goals of this illicit enterprise.[88] The first goal listed in the agreement, "limiting climate change," reflected the coalition's focus on politics, not law enforcement.[89] The second goal, "ensuring the dissemination of accurate information about climate change," confirmed the coalition's

84 Ex. F at App. 80.
85 *Id.*
86 *Id.*
87 Ex. C at App. 40, 56.
88 Ex. V at App. 196–214.
89 *Id.* at App. 196.

willingness to violate First Amendment rights to carry out its agenda.[90] They appointed themselves as arbiters of what information is "accurate" as regards climate change and stood ready to use the full arsenal of law enforcement tools at their disposal against those who did not toe their party line.

53. To conceal communications concerning this unconstitutional enterprise from public disclosure, the signatories agreed to maintain the confidentiality of their communications by pledging that, "unless required by law," the parties "shall . . . refuse to disclose" any "(1) information shared in organizing a meeting of the Parties on March 29, 2016, (2) information shared at and after the March 29 meeting . . . and (3) information shared after the execution of this Agreement."[91] The common interest agreement stifles not only public debate about the motivations and legality of the Green 20, but also prevents the public from learning of the political genesis of the Green 20.

E. The Attorneys General of Other States Condemn the Green 20's Investigations.

54. The overtly political nature of the March 29 press conference drew a swift and sharp rebuke from other state attorneys general who criticized the Green 20 for using the power of law enforcement as a tool to muzzle dissent and discussions about climate change. The attorneys general of Alabama and Oklahoma stated that "scientific and political debate" "should not be silenced with threats of criminal prosecution by those who believe that their position is the only correct one and that all dissenting voices must therefore be intimidated and coerced into silence."[92] They emphasized that "[i]t is

90 *Id.*
91 *Id.* at App. 196–97
92 Ex. X at App. 225.

inappropriate for State Attorneys General to use the power of their office to attempt to silence core political speech on one of the major policy debates of our time."[93]

55. The Louisiana Attorney General similarly observed that "[i]t is one thing to use the legal system to pursue public policy outcomes; but it is quite another to use prosecutorial weapons to intimidate critics, silence free speech, or chill the robust exchange of ideas."[94] Likewise, the Kansas Attorney General questioned the "'unprecedented'" and "strictly partisan nature of announcing state 'law enforcement' operations in the presence of a former vice president of the United State[s] who, presumably [as a private citizen], has no role in the enforcement of the 17 states' securities or consumer protection laws."[95] The West Virginia Attorney General criticized the attorneys general for "abusing the powers of their office" and stated that the desire to "eliminate fossil fuels . . . should not be driving any legal activity" and that it was improper to "use the power of the office of attorney general to silence [] critics."[96]

56. In addition, on June 15, 2016, attorneys general from thirteen states wrote a letter to their "Fellow Attorneys General," in which they explained that the Green 20's effort "to police the global warming debate through the power of the subpoena is a grave mistake" because "[u]sing law enforcement authority to resolve a public policy debate undermines the trust invested in our offices and threatens free speech."[97] The thirteen attorneys further described the Green 20's investigations as "far from routine" because (i) they "target[] a particular type of market participant," namely fossil fuel companies; (ii) the Green 20 had aligned itself "with the competitors of [its] investigative targets";

93 *Id.*
94 Ex. Y at App. 227.
95 Ex. QQ at App. 435.
96 Ex. RR at App. 438–39.
97 Ex. SS at App. 444.

and (iii) "the investigation implicates an ongoing public policy debate."[98] In conclusion, they asked their fellow attorneys general to "[s]top policing viewpoints."[99]

57. The actions of Defendants and their Green 20 allies caught the eye of Congress. The Committee on Science, Space, and Technology of the United States House of Representatives launched an inquiry into the investigations undertaken by the Green 20.[100] That committee was "concerned that these efforts [of the Green 20] to silence speech are based on political theater rather than legal or scientific arguments, and that they run counter to an attorney general's duty to serve as the guardian of the legal rights of the citizens and to assert, protect, and defend the rights of the people."[101] Perceiving a need to provide "oversight" of what it described as "a coordinated attempt to attack the First Amendment rights of American citizens," the Committee requested the production of certain records and information from the attorneys general.[102] The attorneys general have thus far refused to voluntarily cooperate with the inquiry.[103]

58. After Attorney General Schneiderman refused to turn over documents requested by the House Committee and criticized its "unfounded claims about the NYOAG's motives,"[104] the House Committee issued subpoenas to Attorney General Schneiderman, Attorney General Healey, and eight environmental organizations in order to "obtain documents related to coordinated efforts to deprive companies, nonprofit organizations, scientists and scholars of their First Amendment rights."[105] It further

98 *Id.*
99 *Id.* at App. 447.
100 Ex. Z at App. 229.
101 *Id.* (internal quotation marks omitted).
102 *Id.* at App. 232.
103 *See, e.g.*, Ex. TT at App. 449; Ex. UU at App. 453.
104 Ex. AA at App. 237.
105 Ex. BB at App. 240.

criticized the attorneys general for "hav[ing] appointed themselves to decide what is valid and what is invalid regarding climate change."[106]

59. Several senators have urged United States Attorney General Loretta Lynch to confirm that the Department of Justice is not investigating, and will not investigate, United States citizens or corporations on the basis of their views on climate change.[107] The senators observed that the Green 20's investigations "provide disturbing confirmation that government officials at all levels are threatening to wield the sword of law enforcement to silence debate on climate change."[108] The letter concluded by asking Attorney General Lynch to explain the steps she is taking "to prevent state law enforcement officers from unconstitutionally harassing private entities or individuals simply for disagreeing with the prevailing climate change orthodoxy."[109]

F. The Subpoena and the CID Reflect the Improper Political Objectives of the Green 20 Coalition.

60. The twin goals of the Green 20—advancing a political agenda and trammeling constitutional rights in the process—are fully reflected in the subpoena and the CID.

The New York Subpoena

61. Attorney General Schneiderman is authorized to issue a subpoena only if (i) there is "some factual basis shown to support the subpoena";[110] and (ii) the information sought "bear[s] a reasonable relation to the subject matter under investigation and the public purpose to be served."[111] Neither standard is met here.

106 *Id.*
107 Ex. DD at App. 248.
108 *Id.*
109 *Id.*
110 *Napatco, Inc.* v. *Lefkowitz*, 43 N.Y.2d 884, 885–86 (1978).
111 *Myerson* v. *Lentini Bros. Moving & Storage Co.*, 33 N.Y.2d 250, 256 (1973).

62. The New York subpoena purports to investigate whether ExxonMobil violated New York State Executive Law Article 5, Section 63(12), General Business Law Article 22-A or 23-A and "any related violation, or any matter which the Attorney General deems pertinent thereto."[112] These statutes have at most a six-year limitations period.[113]

63. During the six-year limitations period, however, ExxonMobil made no statements that could give rise to fraud as alleged in the subpoena. For more than a decade, ExxonMobil has publicly acknowledged that climate change presents significant risks that could affect its business. For example, ExxonMobil's *2006 Corporate Citizenship Report* recognized that "the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant" and reasoned that "strategies that address the risk need to be developed and implemented."[114] In addition, in 2002, ExxonMobil, along with three other companies, helped launch the Global Climate and Energy Project at Stanford University, which has a mission of "conduct[ing] fundamental research on technologies that will permit the development of global energy systems with significantly lower greenhouse gas emissions."[115]

64. ExxonMobil has also discussed these risks in its public SEC filings. For example, in its 2006 10-K, ExxonMobil stated that "laws and regulations related to . . . risks of global climate change" "have been, and may in the future" continue to impact its operations.[116] Similarly, in its 2015 10-K, ExxonMobil noted that the "risk of climate

[112] Ex. EE at App. 251.
[113] *See, e.g.*, *State ex rel. Spitzer* v. *Daicel Chem. Indus., Ltd.*,840 N.Y.S.2d 8, 11–12 (1st Dep't 2007); *Podraza* v. *Carriero*, 630 N.Y.S.2d 163, 169 (4th Dep't 1995); *State* v. *Bronxville Glen I Assocs.*, 581 N.Y.S.2d 189, 190 (1st Dep't 1992).
[114] Ex. H at App. 103.
[115] Ex. FF at App. 270.
[116] Ex. GG at App. 277–78.

change" and "current and pending greenhouse gas regulations" may increase its "compliance costs."[117] Long before the six-year statute of limitations period, ExxonMobil disclosed and acknowledged the risks that supposedly gave rise to Attorney General Schneiderman's investigation.

65. Notwithstanding that six-year limitations period and the absence of any conduct within that timeframe that could give rise to a statutory violation, the document requests in the subpoena span 39 years and extend to nearly every document ExxonMobil has ever created that in any way concerns climate change. For example, the subpoena demands "[a]ll Documents and Communications" from 1977 to the present, "[c]oncerning any research, analysis, assessment, evaluation, modelling or other consideration performed by You, on Your behalf, or with funding provided by You Concerning the causes of Climate Change."[118]

66. The subpoena includes 10 other similarly sweeping requests, such as (i) a demand for all documents and communications that ExxonMobil has produced since 1977 relating to "the impacts of Climate Change"; and (ii) exemplars of all "advertisements, flyers, promotional materials, and informational materials of any type" that ExxonMobil has produced in the last 11 years concerning climate change.[119] Other requests target Attorney General Schneiderman's perceived political opponents in the climate change debate by demanding ExxonMobil's communications with trade associations and industry groups that seek to promote oil and gas interests.[120]

[117] Ex. HH at App. 284.
[118] Ex. II at App. 257–58 (Request No. 1).
[119] *Id.* at App. 258–59 (Request Nos. 2, 8).
[120] *Id.* at App. 258 (Request No. 6).

67. In response to some of these requests, ExxonMobil asserted First Amendment privileges, including in connection with ExxonMobil scientists' participation in non-profit research organizations.

68. Moreover, almost all of the sweeping demands in the subpoena reach far beyond conduct bearing any connection to the State of New York. Ten of the eleven document requests make blanket demands for all of ExxonMobil's documents or communications on a broad topic, with no attempt to restrict the scope of production to documents or communications having any connection to New York.[121] Only two of the requests even mention New York.[122] And, while the subpoena seeks ExxonMobil's communications with five named organizations, only one of them is based in New York.[123]

The Massachusetts CID

69. The CID was served by Attorney General Healey on ExxonMobil's registered agent in Suffolk County, Massachusetts, on April 19, 2016. According to the CID, there is "a pending investigation concerning [ExxonMobil's] potential violations of [Mass. Gen. Laws] ch. 93A, § 2."[124] That statute prohibits "unfair or deceptive acts or practices" in "trade or commerce"[125] and has a four-year statute of limitations.[126] The CID specifies two types of transactions under investigation: ExxonMobil's (i) "marketing and/or sale of energy and other fossil fuel derived products to consumers in the Commonwealth," and (ii) "marketing and/or sale of securities" to Massachusetts

[121] *Id.* at App. 258–59 (Request Nos. 1, 10).
[122] *Id.* at App. 259 (Request Nos. 9, 11).
[123] *Id.* at App. 258 (Request No. 6).
[124] *Id.* at App. 286.
[125] Mass. Gen. Laws ch. 93A, §2(a).
[126] Mass. Gen. Laws ch. 260, § 5A.

investors.[127] The requested documents pertain largely to information related to climate change in the possession of ExxonMobil in Texas where it is headquartered and maintains its principal place of business.

70. ExxonMobil could not have committed the possible offenses that the CID purports to investigate for at least two reasons. First, at no point during the past five years—more than one year before the limitations period began—has ExxonMobil (i) sold fossil fuel derived products to consumers in Massachusetts, or (ii) owned or operated a single retail store or gas station in the Commonwealth.[128] Second, ExxonMobil has not sold any form of equity to the general public in Massachusetts since at least 2011, which is also well beyond the limitations period.[129] In the past decade, ExxonMobil has sold debt only to underwriters outside the Commonwealth, and ExxonMobil did not market those offerings to Massachusetts investors.[130]

71. The CID's focus on events, activities, and records outside of Massachusetts is demonstrated by the items it demands that ExxonMobil search for and produce. For example, the CID demands documents that relate to or support 11 specific statements.[131] None of those statements were made in Massachusetts.[132] The CID also seeks ExxonMobil's communications with 12 named organizations,[133] but only one of these organizations has an office in Massachusetts and ExxonMobil's communications

[127] Ex. II at App. 86.

[128] Any service station that sells fossil fuel derived products under an "Exxon" or "Mobil" banner is owned and operated independently. In addition, distribution facilities in Massachusetts, including Everett Terminal, have not sold products to consumers during the limitations period.

[129] Ex. JJ at App. 317.

[130] *Id.* This is subject to one exception. During the limitations period, ExxonMobil has sold short-term, fixed-rate notes, which mature in 270 days or less, to institutional investors in Massachusetts, in specially exempted commercial paper transactions. *Id.*; *see* Mass. Gen. Laws ch. 110A, § 402(a)(10); *see also* 15 U. S. C. § 77c(a)(3).

[131] Ex. II at App. 299–300 (Request Nos. 8–11).

[132] *Id.* (Request Nos. 8–11).

[133] *Id.* at App. 298 (Request No. 5).

with the other 11 organizations likely occurred outside of Massachusetts. Finally, the CID requests all documents and communications related to ExxonMobil's publicly issued reports, press releases, and Securities and Exchange Commission ("SEC") filings, which were issued outside of Massachusetts,[134] and all documents and communications related to ExxonMobil's climate change research, which also occurred outside of Massachusetts.[135]

72. The absence of any factual basis for investigating ExxonMobil's alleged fraud is glaring, particularly in light of the heavy burden imposed by the CID. Spanning 25 pages and containing 38 broadly worded document requests, the CID unreasonably demands production of essentially any and all communications and documents relating to climate change that ExxonMobil has produced or received over the last 40 years. For example, the CID requests all documents and communications "concerning Exxon's development, planning, implementation, review, and analysis of research efforts to study CO_2 emissions . . . and the effects of these emissions on the Climate" since 1976 and all documents and communications concerning "any research, study, and/or evaluation by ExxonMobil and/or any other fossil fuel company regarding the Climate Change Radiative Forcing Effect of" methane since 2010.[136] It also requests all documents and communications concerning papers and presentations given by ExxonMobil scientists since 1976[137] and demands production of ExxonMobil's climate change related speeches, public reports, press releases, and SEC filings over the last 20 years.[138] Moreover, it fails

[134] *Id.* at App. 301–03 (Request Nos. 15–16, 19, 22).
[135] *Id.* at App. 297–98, 300–03 (Request Nos. 1–4, 14, 17, 22).
[136] *Id.* at App. 297, 302 (Request Nos. 1, 17).
[137] *Id.* at App. 297–98. (Request Nos. 2–4).
[138] *Id.* at App. 299 (Request No. 8 (all documents since April 1, 1997)); *id.* at App. 302–03 (Request No. 22 (all documents since 2006)); *id.* at App. 299–302 (Request Nos. 9–12, 14–16, 19 (all documents since 2010)). The CID also demands the testimony of ExxonMobil officers, directors, or managing

to reasonably describe several categories of documents by, for example, requesting documents related to ExxonMobil's "awareness," "internal consideration," and "decision making" with respect to certain climate change matters.[139]

73. The CID's narrower requests, however, are in some instances more troubling than its overly broad ones. They appear to target groups simply because they hold views with which Attorney General Healey disagrees. All 12 of the organizations that ExxonMobil is directed to produce its communications with have been identified by environmental advocacy groups as opposing policies in favor of addressing climate change or disputing the science in support of climate change.[140] The CID also targets statements that are not in accord with the Green 20's preferred views on climate change. These include statements of pure opinion on policy, such as the suggestion that "[i]ssues such as global poverty [are] more pressing than climate change, and billions of people without access to energy would benefit from oil and gas supplies."[141]

G. Attorney General Schneiderman Shifts Investigative Theories in a Search for Leverage over ExxonMobil in a Public Policy Debate.

74. After receiving Attorney General Schneiderman's subpoena, ExxonMobil made a good-faith effort to comply with his request for information about its climate change research in the 1970s and 1980s. ExxonMobil provided his office with well over one million pages of documents, at substantial cost to the Company, with the expectation that a fair and impartial investigation would be conducted. Less than a month ago, and well after ExxonMobil commenced this action against Attorney General Healey, the

agents who can testify about a variety of subjects, including "[a]ll topics covered" in the CID. *Id.* at App. 306 (Schedule B).

139 *Id.* at App. 298–99, 302 (Request Nos. 7–8, 18).

140 *See, e.g.*, Ex. VV at App. 455–57.

141 *See, e.g.*, Ex. II at App. 299–300 (Request No. 9).

spokesman for Attorney General Schneiderman stated that ExxonMobil's "historic climate change research" was no longer "the focus of this investigation."[142]

75. Rather than close the investigation, however, Attorney General Schneiderman simply unveiled another theory. As he explained in a lengthy interview published in *The New York Times*, Attorney General Schneiderman now focused on the so-called "stranded assets theory." His office intended to examine whether ExxonMobil had overstated its oil and gas reserves and assets by not accounting for "global efforts to address climate change" that might require it in the future "to leave enormous amounts of oil reserves in the ground"—*i.e.*, cause the assets to be "stranded."[143] Without offering—or possessing—any supporting evidence whatsoever, Attorney General Schneiderman inappropriately opined that there "may be massive securities fraud" at ExxonMobil based on its estimation of proved reserves and the valuation of its assets.[144]

76. Attorney General Schneiderman has directed ExxonMobil to begin producing documents on its estimation of oil and gas reserves, and ExxonMobil has engaged in a dialogue with his office about that request. It is now apparent that Attorney General Schneiderman is simply searching for a legal theory, however flimsy, that will allow him to pressure ExxonMobil on the policy debate over climate change. With the filing of this lawsuit, ExxonMobil is challenging what has now been revealed as a manifestly improper investigation being conducted in bad faith.

142 Ex. KK at App. 321.
143 Ex. MM at App. 351.
144 *Id.*

H. An Investigation of ExxonMobil's Reporting of Oil and Gas Reserves and Assets Is a Thinly Veiled Pretext.

77. Attorney General Schneiderman's decision to investigate ExxonMobil's reserves estimates under a stranded asset theory is particularly egregious because it cannot be reconciled with binding regulations issued by the SEC, which apply strict guidelines to the estimation of proved reserves.

78. Those regulations prohibit companies like ExxonMobil from considering the impact of future regulations when estimating reserves. To the contrary, they require ExxonMobil to calculate its proved reserves in light of "*existing* economic conditions, operating methods, and *government regulations*."[145] The SEC adopted that definition of proved reserves as part of its efforts to provide investors with a "comprehensive understanding of oil and gas reserves, which should help investors evaluate the relative value of oil and gas companies."[146] The SEC's definition of proved oil and gas reserves thus reflects its reasoned judgment about how best to supply investors with information about the relative value of energy companies, as well as its balancing of competing priorities, such as the agency's desire for comprehensive disclosures, that are not unduly burdensome, and which investors can easily compare. Attorney General Schneiderman's theory of "massive securities fraud" in ExxonMobil's reported reserves cannot be reconciled with binding SEC regulations about how those reserves must be reported.

79. The same rationale applies to Attorney General Schneiderman's purported investigation of the impairment of ExxonMobil's assets. The SEC recognizes as authoritative the accounting standards issued by the Financial Accounting Standards

[145] *Modernization of Oil & Gas Reporting*, SEC Release No. 78, File No. S7-15-08, 2008 WL 5423153, at *66 (Dec. 31, 2008) (emphasis added).

[146] *Id.* at *1.

Board ("FASB").[147] The FASB's rules concerning the impairment of assets require ExxonMobil to "incorporate [its] own assumptions" about future events when deciding whether its assets are impaired.[148] Contravening those rules, the Attorney General's theory requires that ExxonMobil adopt his assumptions about the likelihood of possible future climate change regulations and then incorporate those assumptions into its determination of whether an asset has been impaired. Attorney General Schneiderman cannot hold ExxonMobil liable for complying with federal law.

80. Attorney General Healey's investigation also purports to encompass the same unsound theory of fraud.[149] The decision to embrace this theory speaks volumes about the pretextual nature of the investigations being conducted by Attorneys General Schneiderman and Healey. To read the relevant SEC rules is to understand why ExxonMobil may not account for future climate change regulations when calculating its proved reserves. And to read the applicable accounting standards is to understand why it is impermissible for the Attorneys General to impose their assumptions about the financial impact of possible future climate change regulations on companies that are required to develop their own independent assumptions. The Attorneys General's claims that they are conducting a bona fide investigation premised on ExxonMobil's supposed failure to account for the Attorneys Generals' expectations regarding the financial impact of future regulations thus cannot be taken seriously. Their true objectives are clear: to

[147] *See* Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, 68 Fed. Reg. 23,333–401 (May 1, 2003).

[148] *See* FASB Accounting Standards Codification 360-10-35-30; *see also* Statement of Financial Accounting Standards No. 144 ¶ 17.

[149] Ex. NN at App. 367, 372; Opp'n. of Att'y Gen. Maura Healey to Pl. Exxon Mobil Corp.'s Mot. for Prelim. Inj. at 8, *ExxonMobil* v. *Healey*, No. 4:16-cv-00469-K (N.D. Tex. Aug. 8, 2016) (Dkt. No. 43) ("If substantial portions of Exxon's vast fossil fuel reserves are unable to be burned due to carbon dioxide emissions limits put in place to stabilize global average temperature, those assets—valued in the billions—will be stranded, placing shareholder value at risk.").

fish indiscriminately through ExxonMobil's records with the hope of finding some violation of some law that one of them might be empowered to enforce, or otherwise to harass ExxonMobil into endorsing the Green 20's policy views regarding how the United States should respond to climate change.

81. The desire of Attorneys General Schneiderman and Healey to impose liability on ExxonMobil for complying with SEC disclosure requirements, and the accounting methodologies incorporated in them, would create a direct conflict with federal law. Even if the New York or Massachusetts Attorneys General were to seek only to layer additional disclosure requirements beyond those imposed by the SEC, this would frustrate, and pose an obstacle to, Congress's and the SEC's efforts to create a uniform market for securities and provide consistent metrics by which investors can measure oil and gas companies on a relative basis.

I. ExxonMobil Files Suit to Protect its Rights.

82. ExxonMobil has challenged members of the Green 20 for violating its constitutional rights. Attorney General Walker issued a subpoena to ExxonMobil on March 15, 2016.[150] ExxonMobil responded by seeking a declaratory judgment that Attorney General Walker's subpoena was illegal and unenforceable because it violated ExxonMobil's rights under the United States and Texas constitutions.[151]

[150] Ex. WW at App. 459–77.
[151] Ex. LL at App. 323–49.

83. The Attorneys General of Texas and Alabama intervened in that action in an effort to protect the constitutional rights of their citizens. They criticized Attorney General Walker for undertaking an investigation "driven by ideology, and not law."[152] The Texas Attorney General called Attorney General Walker's purported investigation "a fishing expedition of the worst kind" and recognized it as "an effort to punish Exxon for daring to hold an opinion on climate change that differs from that of radical environmentalists."[153] The Alabama Attorney General echoed those sentiments, stating that the pending action in Texas "is more than just a free speech case. It is a battle over whether a government official has a right to launch a criminal investigation against anyone who doesn't share his radical views."[154]

84. On June 30, 2016, Attorney General Walker and ExxonMobil entered into a joint stipulation of dismissal, whereby the Attorney General agreed to withdraw his subpoena and ExxonMobil agreed to withdraw its litigation challenging the subpoena.

85. ExxonMobil commenced this action on June 15, 2016, seeking a preliminary injunction from this Court that would bar Attorney General Healey from enforcing the CID. In an attempt to defend Attorney General Healey's constitutionally infirm CID, Attorney General Schneiderman, along with other attorneys general, filed an amicus brief on August 8, 2016.[155] They argued that Attorney General Healey has a

[152] Ex. OO at App. 395.
[153] Ex. CC at App. 244–45.
[154] Ex. W at App. 216.
[155] Mem. of Law for *Amici Curiae* States of Maryland, New York, Illinois, Iowa, Maine, Minnesota, Mississippi, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia and the U.S. Virgin Islands in Support of Def.'s Mot. to Dismiss and in Opp'n. to Pl.'s Motion for a Prelim. Inj. at 1, *Exxon Mobil Corp.* v. *Healey*, No. 4:16-CV-469-K (N.D. Tex. Aug. 8, 2016) (Dkt. No. 47).

"compelling interest in the traditional authority" of her office "to investigate and combat violations of state law."[156]

86. Recognizing that there was nothing "traditional" about Attorney General Healey's use of state power, attorneys general from eleven states filed an amicus brief in support of ExxonMobil's preliminary injunction motion.[157] "As chief legal officers" of their respective states, they explained that their investigative power "does not include the right to engage in unrestrained, investigative excursions to promulgate a social ideology, or chill the expression of points of view, in international policy debates."[158] As a result, they noted that "[u]sing law enforcement authority to resolve a public policy debate undermines the trust invested in our offices and threatens free speech."[159] They concluded, "Regrettably, history is embroiled with examples where the legitimate exercise of law enforcement is soiled with political ends rather than legal ones. Massachusetts seeks to repeats that unfortunate history. That the statements and workings of the 'AG's United for Clean Power' are entirely one-sided, and target only certain participants in the climate change debate, speaks loudly enough."[160]

87. ExxonMobil's motion for a preliminary injunction against Attorney General Healey has been briefed and argued and is now submitted before this Court.

THE SUBPOENA AND CID VIOLATE EXXONMOBIL'S RIGHTS

88. The facts recited above demonstrate the pretextual nature of the stated reasons for the investigations conducted by Attorneys General Schneiderman and Healey.

156 *Id.*

157 Br. of Texas, Louisiana, South Carolina, Alabama, Michigan, Arizona, Wisconsin, Nebraska, Oklahoma, Utah, and Nevada as *Amici Curiae* in Supp. of Pl.'s Mot. for Prelim. Inj. at Attachment 2, *Exxon Mobil Corp.* v. *Healey*, No. 4:16-CV-469-K (N.D. Tex. Sept. 8, 2016) (Dkt. No. 63).

158 *Id.* at 1.

159 *Id*.

160 *Id.* at 9.

The statements Attorneys General Schneiderman and Healey made at the press conference and after, the climate change coalition common interest agreement, and recently released emails reveal the improper purpose of the investigations: to change the political calculus surrounding the debate about policy responses to climate change by (1) targeting speech that the Attorneys General perceive to support political perspectives on climate change that differ from their own, and (2) exposing ExxonMobil's documents that may be politically useful to climate activists.

89. The pretextual character of the investigations is brought into sharp relief when the scope of the subpoena and the CID—which demand nearly 40 years of records—are contrasted with the, at most, six-year limitations periods of the statutes that purportedly authorize the investigations.

90. Neither Attorney General Schneiderman nor Attorney General Healey (nor, indeed, any other public official) may use the power of the state to prescribe what shall be orthodox in matters of public concern. By deploying the law enforcement authority of their offices to target one side of a political debate, their actions violated—and continue to violate—the First Amendment.

91. It follows from the political character of the subpoena and the CID and their remarkably broad scope that they also violate the Fourth Amendment. Their burdensome demands for irrelevant records violate the Fourth Amendment's reasonableness requirement, as well as its prohibition on fishing expeditions. Indeed, the evolving justifications for the New York and Massachusetts inquiries confirm that they are investigations driven by the identity of the target, not any good faith belief that a law was broken.

92. The investigations also fail to meet the requirements of due process. Attorneys General Schneiderman and Healey have publicly declared not only that they believe ExxonMobil and other fossil fuel companies pose an existential risk to the planet, but also the improper purpose of their investigations: to silence ExxonMobil's voice in the public debate regarding climate change and to pressure ExxonMobil to support polices the Attorneys General favor. Even worse, Attorney General Schneiderman has publicly accused ExxonMobil of engaging in a "massive securities fraud" without any basis whatsoever, and Attorney General Healey declared, before her investigation even began, that she knew how it would end: with a finding that ExxonMobil violated the law.[161] The improper political bias that inspired the New York and Massachusetts investigations disqualifies Attorneys General Schneiderman and Healey from serving as the disinterested prosecutors required by the Constitution.

93. In the rush to fill what Attorney General Schneiderman described as a "[legislative] breach" in Congress regarding climate change, both he and Attorney General Healey have also openly and intentionally infringed on Congress's powers to regulate interstate commerce. Their investigations seek to regulate speech and conduct that occur almost entirely outside of New York and Massachusetts. Where a state seeks to regulate and burden out-of-state speech, as the subpoena and the CID do here, the state improperly encroaches on Congress's exclusive authority to regulate interstate commerce and violates the Dormant Commerce Clause.

94. Attorneys General Schneiderman and Healey's new focus on ExxonMobil's reporting of proved reserves and assets is equally impermissible. They seek to hold ExxonMobil liable for not taking into account possible future regulations

[161] Ex. B at App. 20–21.

concerning climate change and carbon emissions when estimating proved reserves and reporting assets. But that theory cannot be reconciled with the SEC's requirement that ExxonMobil calculate its proved reserves based only on "existing" regulations, not future regulations. This facet of the investigation, therefore, impermissibly conflicts with, and poses an obstacle to, the goals and purposes of federal law. That conflict is also present in the Attorneys General's investigation of how ExxonMobil determines under binding accounting rules whether an asset has become impaired.

95. The subpoena and the CID also constitute an abuse of process because they were issued for the improper purposes described above.

96. ExxonMobil asserts the claims herein based on the facts available to it in the public record from, among other things, press accounts and freedom of information requests made by third parties. ExxonMobil anticipates that discovery from Attorneys General Schneiderman and Healey, as well as third parties, will reveal substantial additional evidence in support of its claims.

EXXONMOBIL HAS BEEN INJURED BY THE SUBPOENA AND THE CID

97. The subpoena and the CID have injured, are injuring, and will continue to injure ExxonMobil.

98. ExxonMobil is an active participant in the policy debate about potential responses to climate change. It has engaged in that debate for decades, participating in the Intergovernmental Panel on Climate Change since its inception and contributing to every report issued by the organization since 1995. Since 2009, ExxonMobil has publicly advocated for a carbon tax as its preferred method to regulate carbon emissions. Proponents of a carbon tax on greenhouse gas emissions argue that increasing

taxes on carbon can "level the playing field among different sources of energy."[162] While Attorneys General Schneiderman and Healey and the other members of the Green 20 are entitled to disagree with ExxonMobil's position, no member of that coalition is entitled to silence or seek to intimidate one side of that discussion (or the debate about any other important public issue) through the issuance of baseless and burdensome subpoenas. ExxonMobil intends—and has a constitutional right—to continue to advance its perspective in the national discussions over how best to respond to climate change. Its right to do so should not be violated through this exercise of government power.

99. As a result of the improper and politically motivated investigations launched by Attorneys General Schneiderman and Healey, ExxonMobil has suffered, now suffers, and will continue to suffer violations of its rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution and under Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution. Attorneys General Schneiderman's and Healey's actions also violate Articles One and Six of the United States Constitution and constitute an abuse of process under common law.

100. Acting under the laws, customs, and usages of New York and Massachusetts, Attorneys General Schneiderman and Healey have subjected ExxonMobil, and are causing ExxonMobil to be subjected, to the deprivation of rights, privileges, and immunities secured by the United States Constitution and the Texas Constitution. ExxonMobil's rights are made enforceable against Attorneys General Schneiderman and Healey, who are acting under the color of law, by Article One, Section Eight of the United States Constitution, and the Due Process Clause of Section 1 of the Fourteenth Amendment to the United States Constitution, all within the meaning and

[162] Ex. PP at App. 402.

contemplation of 42 U.S.C. § 1983, and by Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution.

101. Absent relief, Attorneys General Schneiderman and Healey will continue to deprive ExxonMobil of these rights, privileges, and immunities.

102. In addition, ExxonMobil is threatened with further imminent injury that will occur if it is forced to choose between conforming its constitutionally protected speech to Attorneys General Schneiderman and Healey's shared political views or exercising its rights and risking sanctions and prosecution.

103. The subpoena and the CID also threaten ongoing imminent injury to ExxonMobil because they subject ExxonMobil to an unreasonable search in violation of the Fourth Amendment. Complying with this unreasonably burdensome and unwarranted fishing expeditions would require ExxonMobil to collect, review, and produce millions more documents, and would cost millions of dollars.

104. If ExxonMobil's request for injunctive relief is not granted, and Attorneys General Schneiderman and Healey are permitted to persist in their investigations, then ExxonMobil will suffer these imminent and irreparable harms. ExxonMobil has no adequate remedy at law for the violation of its constitutional rights.

CAUSES OF ACTION

A. First Cause of Action: Conspiracy

105. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

106. The facts set forth herein demonstrate that, acting under color of state law, Attorneys General Schneiderman and Healey have agreed with each other, and with others known and unknown, to deprive ExxonMobil of rights secured by the law to all,

including those guaranteed by the First, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution.

107. In furtherance of these objectives, Attorneys General Schneiderman and Healey have, among other things, issued the unlawful subpoena and CID and entered the common interest agreement described above at paragraphs 52–53. The subpoena and CID were issued without having a good faith basis for conducting any investigation, and with the ulterior motive of preventing ExxonMobil from enjoying and exercising its rights protected by the First, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution.

108. ExxonMobil has been damaged, and has been deprived of its rights under the United States and Texas Constitutions, as a proximate result of the unlawful conspiracy entered into by Attorneys General Schneiderman and Healey. The conduct of Attorneys General Schneiderman and Healey therefore violates both 42 U.S.C. § 1985 and the Texas common law.

B. Second Cause of Action: Violation of ExxonMobil's First and Fourteenth Amendment Rights

109. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

110. The focus of the subpoena and the CID on one side of a policy debate—in an apparent effort to silence, intimidate, and deter those possessing a particular viewpoint from participating in that debate—contravenes, and any effort to enforce the subpoena or CID would further contravene, the rights provided to ExxonMobil by the First

Amendment to the United States Constitution, made applicable to the State of New York and the Commonwealth of Massachusetts by the Fourteenth Amendment, and by Section Eight of Article One of the Texas Constitution.

111. The subpoena and the CID are impermissible viewpoint-based restrictions on speech, and they burden ExxonMobil's political speech. Attorneys General Schneiderman and Healey issued the subpoena and the CID based on their disagreement with ExxonMobil regarding how the United States should respond to the risks of climate change. And even if the subpoena and the CID had not been issued for that illegal purpose, they would still violate the First Amendment, because they burden ExxonMobil's political speech without being substantially related to any compelling governmental interest.

C. Third Cause of Action: Violation of ExxonMobil's Fourth and Fourteenth Amendment Rights

112. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

113. The issuance of the subpoena and the CID contravenes, and any effort to enforce the subpoena would further contravene, the rights provided to ExxonMobil by the Fourth Amendment to the United States Constitution, made applicable to the State of New York and the Commonwealth of Massachusetts by the Fourteenth Amendment, and by Section Nine of Article One of the Texas Constitution, to be secure in its papers and effects against unreasonable searches and seizures.

114. The subpoena and CID are each unreasonable searches and seizures because each of them constitutes an abusive fishing expedition into 40 years of ExxonMobil's records, without any legitimate basis for believing that ExxonMobil

violated New York or Massachusetts law. Their overbroad and irrelevant requests impose an undue burden on ExxonMobil and violate the Fourth Amendment's reasonableness requirement, which mandates that a subpoena be limited in scope, relevant in purpose, and specific in directive.

D. Fourth Cause of Action: Violation of ExxonMobil's Fourteenth Amendment Rights

115. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

116. The investigations conducted by Attorneys General Schneiderman and Healey contravene the rights provided to ExxonMobil by the Fourteenth Amendment to the United States Constitution and by Section Nineteen of Article One of the Texas Constitution not to be deprived of life, liberty, or property without due process of law.

117. The subpoena and CID deprive ExxonMobil of due process of law by violating the requirement that a prosecutor be disinterested. The statements by Attorneys General Schneiderman and Healey at the Green 20 press conference and elsewhere make clear that they are biased against ExxonMobil.

E. Fifth Cause of Action: Violation of ExxonMobil's Rights Under the Dormant Commerce Clause

118. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

119. Article I, Section 8 of the United States Constitution grants Congress exclusive authority to regulate interstate commerce and thus prohibits the States from doing so. The issuance of the subpoena and the CID contravenes, and any effort to enforce the subpoena and the CID would further contravene, the rights provided to ExxonMobil under the Dormant Commerce Clause.

120. The subpoena and the CID effectively regulate ExxonMobil's out-of-state speech while only purporting to investigate ExxonMobil's marketing and/or sale of energy and other fossil fuel derived products to consumers in New York and Massachusetts and its marketing and/or sale of securities to investors in New York and Massachusetts.

121. The subpoena and the CID demand documents that relate to (1) statements ExxonMobil made outside New York and Massachusetts, and (2) ExxonMobil's communications with organizations residing outside New York and Massachusetts. The subpoena and CID therefore have the practical effect of primarily burdening interstate commerce.

F. Sixth Cause of Action: Federal Preemption

122. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

123. Article VI, Clause 2 of the United States Constitution provides that the laws of the United States "shall be the supreme law of the land." Any state law that imposes disclosure requirements inconsistent with federal law is preempted under the Supremacy Clause.

124. Federal law requires ExxonMobil to calculate and report its proved oil and gas reserves based on "existing economic conditions, operating methods, and government regulations." This requirement reflects the SEC's reasoned judgment about how best to supply investors with information about the relative value of oil and gas companies, as well as its balancing of competing priorities, such as the agency's desire for comprehensive disclosures, that are not unduly burdensome, and which investors can easily compare. Similarly, accounting standards recognized as authoritative by the SEC

require ExxonMobil to use its own assumptions about future events when determining whether assets are impaired, not the assumptions of the Attorneys General. Attorneys General Schneiderman and Healey have stated that they seek to impose liability on ExxonMobil for failing to account for what they believe will be the financial impact of as-yet-unknown "carbon dioxide emissions limits put in place to stabilize global average temperature" in estimating and reporting ExxonMobil's proven reserves and valuing its assets. The Attorneys General therefore would seek to punish ExxonMobil for complying with federal law and the accounting standards embedded therein.

125. Even if the New York or Massachusetts Attorneys General were to seek only to layer additional disclosure requirements concerning oil and gas reserves and asset valuations beyond those imposed by the SEC, this would frustrate, and pose an obstacle to, Congress's and the SEC's efforts to create a uniform market for securities and provide consistent metrics by which investors can measure oil and gas companies on a relative basis.

126. Because these investigations under New York and Massachusetts law create a conflict with, and pose an obstacle to, federal law, the application of New York and Massachusetts law to this case is preempted.

G. Seventh Cause of Action: Abuse of Process

127. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

128. Attorneys General Schneiderman and Healey committed an abuse of process under common law by (1) issuing the subpoena and the CID to ExxonMobil without having a good faith basis for conducting an investigation; (2) having an ulterior motive for issuing and serving the subpoena and the CID, namely, an intent to prevent

ExxonMobil from exercising its right to express views with which they disagree; and (3) causing injury to ExxonMobil's reputation and violating its constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that Attorneys General Schneiderman and Healey be summoned to appear and answer and that this Court award the following relief:

1. A declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that the subpoena and the CID violate ExxonMobil's rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution; violate ExxonMobil's rights under Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution; and violate the Dormant Commerce Clause and the Supremacy Clause of the United States Constitution;

2. A declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that the issuance of the subpoena and the CID constitute an abuse of process, in violation of common law;

3. A preliminary and permanent injunction prohibiting enforcement of the subpoena and of the CID;

4. Such other injunctive relief to which Plaintiff is entitled; and

5. All costs of court together with any and all such other and further relief as this Court may deem proper.

Dated: October 17, 2016

EXXON MOBIL CORPORATION

By: /s/ Patrick J. Conlon
Patrick J. Conlon
(*pro hac vice*)
State Bar No. 24054300
patrick.j.conlon@exxonmobil.com
Daniel E. Bolia
State Bar No. 24064919
daniel.e.bolia@exxonmobil.com
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

/s/ Nina Cortell
Nina Cortell
State Bar No. 04844500
nina.cortell@haynesboone.com
HAYNES & BOONE, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
(214) 651-5579
Fax: (214) 200-0411

/s/ Theodore V. Wells, Jr.
Theodore V. Wells, Jr.
(*pro hac vice*)
twells@paulweiss.com
Michele Hirshman
(*pro hac vice*)
mhirshman@paulweiss.com
Daniel J. Toal
(*pro hac vice*)
dtoal@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

/s/ Ralph H. Duggins
Ralph H. Duggins
State Bar No. 06183700
rduggins@canteyhanger.com
Philip A. Vickers
State Bar No. 24051699
pvickers@canteyhanger.com
Alix D. Allison
State Bar. No. 24086261
aallison@canteyhanger.com
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102
(817) 877-2800
Fax: (817) 877-2807

Justin Anderson
(*pro hac vice*)
janderson@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Counsel for Exxon Mobil Corporation

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2016, a copy of the foregoing instrument was served on the following party via the Court's CM/ECF system in accordance with the Federal Rules of Civil Procedure:

Maura Healey
Massachusetts Attorney General's Office
One Ashburton Place
Boston, MA 02108-1518
Phone: (617) 727-2200

/s/ Ralph H. Duggins
Ralph H. Duggins

Exhibit 2

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

SUBPOENA FOR PRODUCTION OF DOCUMENTS
THE PEOPLE OF THE STATE OF NEW YORK

TO: S. Jack Balagia, Jr.
Vice-President and General Counsel
Exxon Mobil Corporation
Corporate Headquarters
5959 Las Colinas Boulevard
Irving, Texas 75039-2298

WE HEREBY COMMAND YOU, pursuant to New York State Executive Law Section 63(12) and Section 2302(a) of the New York State Civil Practice Law and Rules, to deliver and turn over to Eric T. Schneiderman, the Attorney General of the State of New York, or a designated Assistant Attorney General, on the **4th day of December, 2015** by 10:00 a.m., or any agreed upon adjourned date or time, at the at the offices of the New York State Office of the Attorney General, 120 Broadway, 26th Floor, New York, New York 10271, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein in connection with an investigation to determine whether an action or proceeding should be instituted with respect to repeated fraud or illegality as set forth in the New York State Executive Law Article 5, Section 63(12), violations of the deceptive acts and practices law as set forth in New York State General Business Law Article 22-A, potential fraudulent practices in respect to stocks, bonds and other securities as set forth in New York State General Business Law Article 23-A, and any related violations, or any matter which the Attorney General deems pertinent thereto.

PLEASE TAKE NOTICE that under the provisions of Article 23 of the New York State Civil Practice Laws and Rules, you are bound by this subpoena to produce the documents requested on the date specified and any adjourned date. Pursuant to New York State Civil Practice Laws and Rules Section 2308(b)(1), your failure to do so subjects you to, in addition to any other lawful punishment, costs, penalties and damages sustained by the State of New York State as a result of your failure to so comply.

PLEASE TAKE NOTICE that the Attorney General deems the information and documents requested by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.

WITNESS, Honorable Eric T. Schneiderman, Attorney General of the State of New York, this 4th day of November, 2015.

By: _____

Lemuel M. Srolovic
Kevin G. W. Olson
Mandy DeRoche

Office of the Attorney General
Environmental Protection Bureau

120 Broadway, 26th Floor
New York, New York 10271
(212) 416-8448 (telephone)
(212) 416-6007 (facsimile)

SCHEDULE 1

A. General Definitions and Rules of Construction

1. "All" means each and every.

2. "Any" means any and all.

3. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Subpoena all information or Documents that might otherwise be construed to be outside of its scope.

4. "Communication" means any conversation, discussion, letter, email, memorandum, meeting, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing. Except where otherwise stated, a request for "Communications" means a request for all such Communications.

5. "Concerning" means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.

6. "Custodian" means any Person or Entity that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled such Document.

7. "Document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail ("e-mail"), instant messages, text messages, Blackberry or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof. Except where otherwise stated, a request for "Documents" means a request for all such Documents.

8. "Entity" means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.

9. "Identify" or "Identity," as applied to any Document means the provision in writing of information sufficiently particular to enable the Attorney General to request the Document's production through subpoena or otherwise, including but not limited to: (a) Document type (letter, memo, etc.); (b) Document subject matter; (c) Document date; and (d) Document author(s), addressee(s) and recipient(s). In lieu of identifying a Document, the Attorney General will accept production of the Document, together with designation of the Document's Custodian, and identification of each Person You believe to have received a copy of the Document.

10. "Identify" or "Identity," as applied to any Entity, means the provision in writing of such Entity's legal name, any d/b/a, former, or other names, any parent, subsidiary, officers, employees, or agents thereof, and any address(es) and any telephone number(s) thereof.

11. "Identify" or "Identity," as applied to any natural person, means and includes the provision in writing of the natural person's name, title(s), any aliases, place(s) of employment, telephone number(s), e-mail address(es), mailing addresses and physical address(es).

12. "Person" means any natural person, or any Entity.

13. "Sent" or "received" as used herein means, in addition to their usual meanings, the transmittal or reception of a Document by physical, electronic or other delivery, whether by direct or indirect means.

14. "Subpoena" means this subpoena and any schedules, appendices, or attachments thereto.

15. The use of the singular form of any word used herein shall include the plural and vice versa. The use of any tense of any verb includes all other tenses of the verb.

16. The references to Communications, Custodians, Documents, Persons, and Entities in this Subpoena encompass all such relevant ones worldwide.

B. Particular Definitions

1. "You" or "Your" means ExxonMobil Corporation, ExxonMobil Oil Corporation, any present or former parents, subsidiaries, affiliates, directors, officers, partners, employees, agents, representatives, attorneys or other Persons acting on its behalf, and including predecessors or successors or any affiliates of the foregoing.

2. "Climate Change" means global warming, Climate Change, the greenhouse effect, a change in global average temperatures, sea level rise, increased concentrations of carbon dioxide and other Greenhouse Gases and/or any other potential effect on the earth's physical and biological systems as a result of anthropogenic emissions of carbon dioxide

and other Greenhouse Gases, in any way the concept is described by or to You.

3. "Fossil Fuel" or "Fossil Fuels" means all energy sources formed from fossilized remains of dead organisms, including oil, gas, bitumen and natural gas, but excluding coal. For purposes of this subpoena, the definition includes also fossil fuels blended with biofuels, such as corn ethanol blends of gasoline. The definition excludes renewable sources of energy production, such as hydroelectric, geothermal, solar, tidal, wind, and wood.

4. "Greenhouse Gases" or "GHGs" meanscarbon dioxide, methane, nitrous oxide, hydroflurocarbons, perfluorocarbons and sulfur hexafloride.

5. "Renewable Energy" means renewable sources of energy production, such as hydroelectric, geothermal, solar, tidal, wind, and wood.

C. Instructions

1. Preservation of Relevant Documents and Information; Spoliation. You are reminded of your obligations under law to preserve Documents and information relevant or potentially relevant to this Subpoena from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit or otherwise vary the terms of this Subpoena, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish your aforementioned preservation obligations. Nor shall you act, in reliance upon any such agreement or otherwise, in any manner inconsistent with your preservation obligations under law. No agreement purporting to modify, limit or otherwise vary your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating or otherwise diminishing such aforementioned preservation obligations, nor shall you act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

2. Possession, Custody, and Control. The Subpoena calls for all responsive Documents or information in your possession, custody or control. This includes, without limitation, Documents or information possessed or held by any of your officers, directors, employees, agents, representatives, divisions, affiliates, subsidiaries or Persons from whom you could request Documents or information. If Documents or information responsive to a request in this Subpoena are in your control, but not in your possession or custody, you shall promptly Identify the Person with possession or custody.

3. Documents No Longer in Your Possession. If any Document requested herein was formerly in your possession, custody or control but is no longer available, or no longer exists, you shall submit a statement in writing under oath that: (a) describes in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including

without limitation whether it was misplaced, lost, destroyed or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.

4. No Documents Responsive to Subpoena Requests. If there are no Documents responsive to any particular Subpoena request, you shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.

5. Format of Production. You shall produce Documents, Communications, and information responsive to this Subpoena in electronic format that meets the specifications set out in Attachments 1 and 2.

6. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Documents that are physically attached to each other in your files shall be accompanied by a notation or information sufficient to indicate clearly such physical attachment.

7. Document Numbering. All Documents responsive to this Subpoena, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the form, sequence, organization or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.

8. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, you shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.

9. Privilege. If You withhold or redact any Document responsive to this Subpoena on ground of privilege or other legal doctrine, you shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld or redacted; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding or redacting the Document. If the legal ground for withholding or redacting the Document is attorney-

client privilege, you shall indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.

10. Your Production Instructions to be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by you concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, you shall provide a written statement under oath from the Person(s) who gave such instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.

11. Cover Letter. Accompanying any production(s) made pursuant to this Subpoena, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the Subpoena request to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document.

12. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and you shall submit such executed Affidavit(s) of Compliance with Your response to this Subpoena.

13. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, you shall Identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further Identify all other natural person(s) able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.

14. Continuing Obligation to Produce. This Subpoena imposes a continuing obligation to produce the Documents and information requested. Documents located, and information learned or acquired, at any time after your response is due shall be promptly produced at the place specified in this Subpoena.

15. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this Subpoena shall be valid or binding, and you shall not act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

16. Time Period. The term "Time Period 1" as used in this Subpoena shall be from January 1, 2005 through the date of the production. The term "Time Period 2" shall be from January 1, 1977 through the date of the production.

D. Documents to be Produced

1. All Documents and Communications, within Time Period 2, Concerning any research, analysis, assessment, evaluation, modeling or other consideration performed by You, on Your behalf, or with funding provided by You Concerning the causes of Climate Change.

2. All Documents and Communications, within Time Period 2, Concerning any research, analysis, assessment, evaluation, modeling (including the competency or accuracy of such models) or other consideration performed by You, on Your behalf, or with funding provided by You, Concerning the impacts of Climate Change, including but not limited to on air, water and land temperatures, sea-level rise, ocean acidification, extreme weather events, arctic ice, permafrost and shipping channels, precipitation, flooding, water supplies, desertification, agricultural and food supplies, built environments, migration, and security concerns, including the timing of such impacts.

3. All Documents and Communications, within Time Period 2, Concerning the integration of Climate Change-related issues (including but not limited to (a) future demand for Fossil Fuels, (b) future emissions of Greenhouse Gases from Fossil Fuel extraction, production and use, (c) future demand for Renewable Energy, (d) future emissions of Greenhouse Gases from Renewable Energy extraction, production and use, (e) Greenhouse Gas emissions reduction goals, (f) the physical risks and opportunities of Climate Change, and (g) impact on Fossil Fuel reserves into Your business decisions, including but not limited to financial projections and analyses, operations projections and analyses, and strategic planning performed by You, on Your behalf, or with funding provided by You.

4. All Documents and Communications, within Time Period 1, Concerning whether and how You disclose the impacts of Climate Change (including but not limited to regulatory risks and opportunities, physical risks and opportunities, Greenhouse Gas emissions and management, indirect risks and opportunities, International Energy Agency scenarios for energy consumption, and other carbon scenarios) in Your filings with the U.S. Securities and Exchange Commission and in Your public-facing and investor-facing reports including but not limited to Your *Outlook For Energy* reports, Your *Energy Trends, Greenhouse Gas Emissions, and Alternative Energy* reports, and Your *Energy and Carbon - Managing the Risks* Report.

5. All Documents and Communications, within Time Period 1, presented to Your board of directors Concerning Climate Change

6. All Documents and Communications Concerning Climate Change, within Time Period 1, prepared by or for trade associations or industry groups, or exchanged between You and trade associations or industry groups, or sent from or to trade associations or industry groups, including but not limited to the: (i) American Petroleum Institute; (ii) Petroleum Industry Environmental Conservation Association; (IPIECA); (iii) US Oil & Gas Association; (iv) Petroleum Marketers Association of America; and (v) Empire State Petroleum Association.

7. All Documents and Communications, within Time Period 1, related to Your support or funding for organizations relating to communications or research of Climate Change, including decisions to cease funding or supporting such organizations.

8. All Documents and Communications, within Time Period 1, created, recommended, sent, and/or distributed by You, on Your behalf, or with funding provided by You, Concerning marketing, advertising, and/or communication about Climate Change including but not limited to (a) policies, procedures, practices, memoranda and similar instructive or informational materials; (b) marketing or communication strategies or plans, (c) flyers, promotional materials, and informational materials; (d) scripts, Frequently Asked Questions, Q&As, and/or other guidance documents; (e) slide presentations, power points or videos; (f) written or printed notes from or video or audio recordings of speeches, seminars or conferences; (g) all Communications with and presentations to investors; and/or (h) press releases.

9. All Documents and Communications, within Time Period 1, that are exemplars of all advertisements, flyers, promotional materials, and informational materials of any type, (including but not limited to web-postings, blog-postings, social media-postings, print advertisements, radio and television advertisements, brochures, posters, billboards, flyers and disclosures) used, published, or distributed by You, on Your behalf, or with funding provided by You, Concerning Climate Change including but not limited to (a) a copy of each print advertisement placed in New York State; (b) a DVD format copy of each television advertisement that ran in New York State; (c) an audio recording of each radio advertisement that ran in New York State and the audio portion of each internet advertisement; and (d) a printout, screenshot or copy of each advertisement, information, or communication provided via the internet, email, Facebook, Twitter, You Tube, or other electronic communications system.

10. All Documents and Communications, within Time Period 1, substantiating or refuting the claims made in the materials identified in response to Demand Nos. 4, 8 and 9.

11. All Documents and Communications sufficient to identify any New York State consumer who has complained to You, or to any state, county or municipal consumer protection agency located in New York State, Concerning Your actions with respect to Climate Change; and for each New York State consumer identified: (i) each complaint or request made by or on behalf of a consumer, (ii) all correspondence between the consumer, his or her representative, and You, (iii) recordings and notes of all conversations between the consumer and You, and (iv) the resolution of each complaint, if any.

APPENDIX 1

Electronic Document Production Specifications

Unless otherwise specified and agreed to by the Office of Attorney General, all responsive documents must be produced in LexisNexis® Concordance® format in accordance with the following instructions. Any questions regarding electronic document production should be directed to the Assistant Attorney General whose telephone number appears on the subpoena.

1. Concordance Production Components. A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 7.

   A. ***Metadata Load File.*** A delimited text file that lists in columnar format the required metadata for each produced document.

   B. ***Extracted or OCR Text Files.*** Document-level extracted text for each produced document or document-level optical character recognition ("OCR") text where extracted text is not available.

   C. ***Single-Page Image Files.*** Individual petrified page images of the produced documents in tagged image format ("TIF"), with page-level Bates number endorsements.

   D. ***Opticon Load File.*** A delimited text file that lists the single-page TIF files for each produced document and defines (i) the relative location of the TIF files on the production media and (ii) each document break.

   E. ***Native Files.*** Native format versions of non-printable or non–print friendly produced documents.

2. Production Folder Structure. The production must be organized according to the following standard folder structure:
   - data\ (contains production load files)
   - images\ (contains single-page TIF files, with subfolder organization)
     \0001, \0002, \0003…
   - native files\ (contains native files, with subfolder organization)
     \0001, \0002, \0003…
   - text\ (contains text files, with subfolder organization)
     \0001, \0002, \0003…

3. De-Duplication. You must perform global de-duplication of stand-alone documents and email families against any prior productions pursuant to this or previously related subpoenas.

4. Paper or Scanned Documents. Documents that exist only in paper format must be scanned to single-page TIF files and OCR'd. The resulting electronic files should be

pursued in Concordance format pursuant to these instructions. You must contact the Assistant Attorney General whose telephone number appears on the subpoena to discuss (i) any documents that cannot be scanned, and (ii) how information for scanned documents should be represented in the metadata load file.

5. Structured Data. Before producing structured data, including but not limited to relational databases, transactional data, and xml pages, you must first speak to the Assistant Attorney General whose telephone number appears on the subpoena. Spreadsheets are not considered structured data.

6. Media and Encryption. All documents must be produced on CD, DVD, or hard-drive media. All production media must be encrypted with a strong password, which must be delivered independently from the production media.

7. Production File Requirements.

A. ***Metadata Load File***

- Required file format:
  - ASCII or UTF-8
  - Windows formatted CR + LF end of line characters, including full CR + LF on last record in file.
  - .dat file extension
  - Field delimiter: (ASCII decimal character 20)
  - Text Qualifier: þ (ASCII decimal character 254). Date and pure numeric value fields do not require qualifiers.
  - Multiple value field delimiter: ; (ASCII decimal character 59)
- The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 2.
- Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
- ***Note:*** All documents must have page-level Bates numbering (except documents produced only in native format, which must be assigned a document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each document. For document families, including but not limited to emails and attachments, compound documents, and uncompressed file containers, the metadata load file must also list the Bates range of the entire document family (ATTACHRANGE), beginning with the first Bates number (BEGDOC) of the "parent" document and ending with the last Bates number (ENDDOC) assigned to the last "child" in the document family.
- Date and Time metadata must be provided in separate columns.
- Accepted date formats:
  - mm/dd/yyyy
  - yyyy/mm/dd
  - yyyymmdd
- Accepted time formats:
  - hh:mm:ss (if not in 24-hour format, you must indicate am/pm)

- hh:mm:ss:mmm

B. ***Extracted or OCR Text Files***

- You must produce individual document-level text files containing the full extracted text for each produced document.
- When extracted text is not available (for instance, for image-only documents) you must provide individual document-level text files containing the document's full OCR text.
- The filename for each text file must match the document's beginning Bates number (BEGDOC) listed in the metadata load file.
- Text files must be divided into subfolders containing no more than 500 to 1000 files.

C. ***Single-Page Image Files (Petrified Page Images)***

- Where possible, all produced documents must be converted into single-page tagged image format ("TIF") files. See Section 7.E below for instructions on producing native versions of documents you are unable to convert.
- Image documents that exist only in non-TIF formats must be converted into TIF files. The original image format must be produced as a native file as described in Section 7.E below.
- For documents produced only in native format, you must provide a TIF placeholder that states "Document produced only in native format."
- Each single-page TIF file must be endorsed with a unique Bates number.
- The filename for each single-page TIF file must match the unique page-level Bates number (or document-level Bates number for documents produced only in native format).
- Required image file format:
  - CCITT Group 4 compression
  - 2-Bit black and white
  - 300 dpi
  - Either .tif or .tiff file extension.
- TIF files must be divided into subfolders containing no more than 500 to 1000 files. Where possible documents should not span multiple subfolders.

D. ***Opticon Load File***

- Required file format:
  - ASCII
  - Windows formatted CR + LF end of line characters
  - Field delimiter: , (ASCII decimal character 44)
  - No Text Qualifier
  - .opt file extension
- The comma-delimited Opticon load file must contain the following seven fields (as indicated below, values for certain fields may be left blank):
  - ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
  - VOLUME – this value is optional and may be left blank.

- RELATIVE PATH – the filepath to each single-page image file on the production media.
- DOCUMENT BREAK – defines the first page of a document. The only possible values for this field are "Y" or blank.
- FOLDER BREAK – defines the first page of a folder. The only possible values for this field are "Y" or blank.
- BOX BREAK – defines the first page of a box. The only possible values for this field are "Y" or blank.
- PAGE COUNT – this value is optional and may be left blank.

- ***Example***:
ABC00001,,IMAGES\0001\ABC00001.tif,Y,,,2
ABC00002,,IMAGES\0001\ABC00002.tif,,,,
ABC00003,,IMAGES\0002\ABC00003.tif,Y,,,1
ABC00004,,IMAGES\0002\ABC00004.tif,Y,,,1

E. ***Native Files***

- Non-printable or non–print friendly documents (including but not limited to spreadsheets, audio files, video files and documents for which color has significance to document fidelity) must be produced in their native format.
- The filename of each native file must match the document's beginning Bates number (BEGDOC) in the metadata load file and retain the original file extension.
- For documents produced only in native format, you must assign a single document-level Bates number and provide an image file placeholder that states "Document produced only in native format."
- The relative paths to all native files on the production media must be listed in the NATIVEFILE field of the metadata load file.
- Native files that are password-protected must be decrypted prior to conversion and produced in decrypted form. In cases where this cannot be achieved the document's password must be listed in the metadata load file. The password should be placed in the COMMENTS field with the format Password: <PASSWORD>.
- You may be required to supply a software license for proprietary documents produced only in native format.

APPENDIX 2

Required Fields for Metadata Load File

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE[1]
DOCID	Unique document reference (can be used for de-duplication).	ABC0001 or ###.#######.###
BEGDOC	Bates number assigned to the first page of the document.	ABC0001
ENDDOC	Bates number assigned to the last page of the document.	ABC0002
BEGATTACH	Bates number assigned to the first page of the parent document in a document family (*i.e.*, should be the same as BEGDOC of the parent document, or PARENTDOC).	ABC0001
ENDATTACH	Bates number assigned to the last page of the last child document in a family (*i.e.*, should be the same as ENDDOC of the last child document).	ABC0008
ATTACHRANGE	Bates range of entire document family.	ABC0001 - ABC0008
PARENTDOC	BEGDOC of parent document.	ABC0001
CHILDDOCS	List of BEGDOCs of all child documents, delimited by ";" when field has multiple values.	ABC0002; ABC0003; ABC0004…
COMMENTS	Additional document comments, such as passwords for encrypted files.	
NATIVEFILE	Relative file path of the native file on the production media.	.\Native_File\Folder\...\BEGDOC.ext
SOURCE	For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered.	Company Name, Department Name, Location, Box Number…
CUSTODIAN	Owner of the document or file.	Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name...
FROM	Sender of the email.	Firstname Lastname < FLastname @domain >

[1] Examples represent possible values and not required format unless the field format is specified in Attachment 1.

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE[1]
TO	All to: members or recipients, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …
CC	All cc: members, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …
BCC	All bcc: members, delimited by ";" when field has multiple values	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …
SUBJECT	Subject line of the email.	
DATERCVD	Date that an email was received.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMERCVD	Time that an email was received.	hh:mm:ss AM/PM or hh:mm:ss
DATESENT	Date that an email was sent.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMESENT	Time that an email was sent.	hh:mm:ss AM/PM or hh:mm:ss
CALBEGDATE	Date that a meeting begins.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
CALBEGTIME	Time that a meeting begins.	hh:mm:ss AM/PM or hh:mm:ss
CALENDDATE	Date that a meeting ends.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
CALENDTIME	Time that a meeting ends.	hh:mm:ss AM/PM or hh:mm:ss
CALENDARDUR	Duration of a meeting in hours.	0.75, 1.5…
ATTACHMENTS	List of filenames of all attachments, delimited by ";" when field has multiple values.	AttachmentFileName.; AttachmentFileName.docx; AttachmentFileName.pdf;…
NUMATTACH	Number of attachments.	1, 2, 3, 4….
RECORDTYPE	General type of record.	IMAGE; LOOSE E-MAIL; E-MAIL; E-DOC; IMAGE ATTACHMENT; LOOSE E-MAIL ATTACHMENT; E-MAIL ATTACHMENT; E-DOC ATTACHMENT
FOLDERLOC	Original folder path of the produced document.	Drive:\Folder\...\...\
FILENAME	Original filename of the produced document.	Filename.ext
DOCEXT	Original file extension.	html, xls, pdf

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE[1]
DOCTYPE	Name of the program that created the produced document.	Adobe Acrobat, Microsoft Word, Microsoft Excel, Corel WordPerfect…
TITLE	Document title (if entered).	
AUTHOR	Name of the document author.	Firstname Lastname; Lastname, First Name; FLastname
REVISION	Number of revisions to a document.	18
DATECREATED	Date that a document was created.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMECREATED	Time that a document was created.	hh:mm:ss AM/PM or hh:mm:ss
DATEMOD	Date that a document was last modified.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMEMOD	Time that a document was last modified.	hh:mm:ss AM/PM or hh:mm:ss
FILESIZE	Original file size in bytes.	128, 512, 1024…
PGCOUNT	Number of pages per document.	1, 2, 10, 100…
IMPORTANCE	Email priority level if set.	Low, Normal, High
TIFFSTATUS	Generated by the Law Pre-discovery production tool (leave blank if inapplicable).	Y, C, E, W, N, P
DUPSTATUS	Generated by the Law Pre-discovery production tool (leave blank if inapplicable).	P
MD5HASH	MD5 hash value computed from native file (a/k/a file fingerprint).	BC1C5CA6C1945179FEE144F25F51087B
SHA1HASH	SHA1 hash value	B68F4F57223CA7DA3584BAD7ECF111B8044F8631
MSGINDEX	Email message ID	

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

State of }

County of }

I, _____, being duly sworn, state as follows:

1. I am employed by _____ in the position of _____;

2. The enclosed production of documents and responses to the Subpoena of the Attorney General of the State of New York, dated November 4, 2015 (the "Subpoena") were prepared and assembled under my personal supervision;

3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;

4. The enclosed production of documents and responses to the Subpoena are complete and correct to the best of my knowledge and belief;

5. No Documents or information responsive to the Subpoena have been withheld from this production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;

6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions in the Subpoena;

7. The Documents contained in these productions and responses to the Subpoena are authentic, genuine and what they purport to be;

8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and

9. Attached is a true and accurate statement of those requests under the Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

_____ _____

Signature of Affiant Date

_____

Printed Name of Affiant

****

Subscribed and sworn to before me
this 4th day of December 2015.

_____
Notary Public

My commission expires:

_____

Exhibit 3

PBS NEWSHOUR

Has Exxon Mobil misled the public about its climate change research?

November 10, 2015 at 6:45 PM EDT

Oil giant Exxon Mobil was recently subpoenaed by New York's attorney general in an investigation of whether the company has intentionally downplayed the risks of climate change. Judy Woodruff hears from Eric Schneiderman, attorney general of New York, and Kenneth Cohen, vice president of Public & Government Affairs for the Exxon Mobil Corporation.

JUDY WOODRUFF: First, a new tack in the battle over climate change: going after energy companies for alleged financial fraud.

New York State Attorney General Eric Schneiderman recently subpoenaed oil giant ExxonMobil, apparently seeking documents that might show the company had downplayed the risks to profits and therefore to investors of stronger regulations on burning fossil fuels. Exxon's history has been the subject of recent reporting by Inside Climate News, The Los Angeles Times and others.

The reporting has alleged the company misled the public about what its own scientists found about the risks of climate change and greenhouse gases.

Here is a clip of a video produced by PBS' Frontline in collaboration with Inside Climate News, a not-for-profit journalism organization that covers energy and the environment.

MAN: Proponents of the global warming theory say that higher levels of greenhouse gases are causing world temperatures to rise and that burning fossil fuels is the reason.

The scientific evidence remains inconclusive as to whether human activities affect the global climate.

WOMAN: We found a trail of documents that that go back to 1977.

Exxon knew carbon dioxide was increasing in the atmosphere, that combustion of fossil fuels was driving it, and that this posed a threat to Exxon. At that time, Exxon understood very quickly that governments would probably take action to reduce fossil fuel consumption. They're smart people, great scientists, and they saw the writing on the wall.

JUDY WOODRUFF: That's a Frontline excerpt.

I spoke earlier this evening with New York State Attorney General Eric Schneiderman.

Welcome, Attorney General Eric Schneiderman.

Let me just begin by asking in — what is it that ExxonMobil has done, in your view, that caused you to launch this investigation?

ERIC SCHNEIDERMAN, Attorney General, New York: We have been looking at the energy sector generally for a number of years, and have — had several investigations that relate to the phenomenon of global warming, climate change, and the human contribution to it.

So we have subpoenaed, issued a broad subpoena to Exxon because of public statements they have made and how they have really shifted their point of view on this in terms of their public presentation and public reporting over the last few decades.

In the 1980s, they were putting out some very good studies about climate change. They were compared to Bell Labs as being at the leadership of doing good scientific work. And then they changed tactics for some reason, and their numerous statements over the last 20 years or so that question climate change, whether it's happening, that claim that there is no competent model for climate change.

So we're very interested in seeing what science Exxon has been using for its own purposes, because they're tremendously active in offshore oil drilling in the Arctic, for example, where global warming is happening at a much more rapid rate than in more temperate zones. Were

they using the best science and the most competent models for their own purposes, but then telling the public, the regulators and shareholders that no competent models existed?

Things like that. We're interested in what they were using internally and what they were telling the world.

JUDY WOODRUFF: And what law would be violated by doing this?

ERIC SCHNEIDERMAN: Well, in New York, we have laws against defrauding the public, defrauding consumers, defrauding shareholders.

We're at the beginning of the investigation. We have to see what documents are in there, but certainly all of the claims would lie in some form of fraud.

JUDY WOODRUFF: Well, I'm sure you're not surprised to know Exxon is categorically denying this. The CEO, Rex Tillerson, said this week nothing could be further from the truth.

In the company's written statement, they start out by saying for many years, they have included all the information they have about the risks of climate change in their public filings, in their reports to shareholders.

ERIC SCHNEIDERMAN: We know that they have been issuing public statements that are at odds with that, and that they have been funding organizations that are even more aggressive climate change deniers.

And they have made numerous statements, both Exxon officials and in Exxon reports, but also through these organizations they fund, like the American Enterprise Institute, ALEC, the American Legislative Exchange Council, through their activities with the American Petroleum Institute, so directly and through other organizations, Exxon has said a lot of things that conflict with the statement that they have always been forthcoming about the realities of climate change.

JUDY WOODRUFF: Well, let me read you, Attorney General Schneiderman, something else that Exxon has been saying where they reacted to some of the reporting that was done on this which is similar to what you're describing.

They say these are allegations based on what they call deliberately cherry-picked statements attributed to various ExxonMobil employees to wrongly suggest that conclusions were reached decades ago by researchers. He said they were statements taken completely out of context and ignored other available statements at the same time.

ERIC SCHNEIDERMAN: Well, then they should welcome this investigation, because, unlike journalists, my staff is going to get to read all of the documents in context, and they will have an opportunity to explain the context of the statements and whether there are contradictions or not.

So, we're at the very beginning stages. We don't want to prejudge what we're going to find, but the public record is troubling enough that we brought — that we decided we had to bring this investigation.

Another area that — where they have been active and we're concerned about is overestimating the costs of switching to renewable energy. They have issued reports, one as recently as last year in response to shareholder requests and public requests, estimating that switching over to renewables by the end of this century would raise energy costs, to the point that they would cost — they would be 44 percent of the median income of an American family.

We want to see how they arrived at that conclusion, which we believe to be vastly overstated.

JUDY WOODRUFF: How do you draw a line between ExxonMobil doing research and talking openly about the debate out there about what is known about climate change, and on the other hand advocating for policies that they think are going to be better for their own bottom line?

ERIC SCHNEIDERMAN: Well, there's nothing wrong with advocating for your own company.

What you're not allowed to do is commit fraud. You're not allowed to have the best climate change science that you're using to build — in your planning of offshore oil towers in the Arctic, where you have to take into account rising sea levels and the melting of the permafrost and things like that. If you're using that internally, but what you're putting out to

the world, directly and through these climate denial organizations, is completely in conflict with that, that's not OK.

JUDY WOODRUFF: New York State Attorney General Eric Schmitt, we thank you.

ERIC SCHNEIDERMAN: Thank you.

JUDY WOODRUFF: And joining me now is Kenneth Cohen. He is vice president for public and government affairs with ExxonMobil Corporation.

Kenneth Cohen, welcome.

Let me just begin by asking flat out, has Exxon in any way misled or been dishonest with the public about what it knows about climate change?

KENNETH COHEN, Vice President of Public & Government Affairs, Exxon Mobil Corporation: Well, Judy, first, thank you for the invitation to come on tonight's program.

And I also appreciate opening with that question, because the answer is a simple no. And what the facts will show is that the company has been engaged for many decades in a two-pronged activity here.

First, we take the risks of climate change seriously. And we also have been working to understand the science of climate change. And that activity started in the late '70s and has continued up to the present time. Our scientists have produced over 150 papers, 50 of which have been part of peer-reviewed publications.

Our scientists participate in the U.N.'s climate body. We have been participating in the U.N. activities beginning in 1988, running through the present time. At the same time, we have also been engaged in discussions on policy.

And in the discussions on policy, for example, in the late '90s, we were part of a large business coalition that opposed adoption in the U.S. of the Kyoto protocol. Now, why did we do that? We opposed the Kyoto protocol because it would have exempted from its application over two-thirds of the world's emitters. Think about that. And that was in 1997.

Going forward, if that policy were in effect today, it would have excluded almost 80 percent of the world's emissions. So that wasn't a good policy approach.

JUDY WOODRUFF: Well, let me ask you about one of the points that the attorney general made. He said Exxon over the last few decades, in his words, has shifted tactics, from taking climate change seriously, engaging in serious research, to, he said, much more recently questioning whether it's happening at all.

Is that an accurate, a fair description of the shift that's taken place?

KENNETH COHEN: No, it's not. And the facts are as follows.

We have endeavored with — to understand the science of this very complex subject, as I mentioned, beginning in the '70s and running to the present time. This is a very complex area. This is a very complex system, climate.

What we discovered, what our scientists discovered, working in conjunction with the U.S. government, with the Department of Energy, working in conjunction with some of the leading research institutions around the world in the '70s and the '80s, was that the tools available the science to get a handle on the risk, these tools needed to develop, and we, for example, were part of developing, working with others, some of the complex modeling that is used today.

And, today, that work continues. Now, on the policy side, we have to remember that ExxonMobil is a large energy provider, one of the world's largest energy companies. We have a two-pronged challenge in front of us. We produce energy that the modern world runs on.

And what we strive to do is produce that energy while at the same time reducing the environmental footprint associated with our operations and, most importantly, with consumers' use of the energy.

JUDY WOODRUFF: And I think people understand that, but I think what is striking was his — was the attorney general's comment that Exxon — what he's concerned about and wants to know is whether Exxon was using one set of scientific models to do its work in the Arctic, for

example, where Exxon has been engaged in drilling, and on the other hand telling the public, telling its shareholders a very different set of facts about the state of climate change.

KENNETH COHEN: Well, the facts will show that the company has been engaged with, not only on our own, but with — in conjunction with some of the leading researchers.

Our view of this very complex subject over the years, over the decades has mirrored that of the broader scientific community. That is to say, the discussions that have taken place inside our company, among our scientists mirror the discussions that have been taking place and the work that's been taking place by the broader scientific community.

That's what the facts will show.

JUDY WOODRUFF: Just final question. He made a point of saying that Exxon has funded a number of organizations that he said that have been openly climate change deniers. He mentioned the American Enterprise Institute. He mentioned the American Petroleum Institute and the American Legislative Exchange.

Has Exxon been funding these organizations?

KENNETH COHEN: Well, the answer is yes. And I will let those organizations respond for themselves.

But I will tell you that what we have been engaged in, both — we have been focused on understanding the science, participating with the broader scientific community in developing the science, while at the same time participating in understanding what would be and working with policy-makers on what would be appropriate policy responses to this evolving body of science.

That's why we were involved with large business coalitions challenging the adoption of the Kyoto protocol in the United States. And we then moved to oppose, for example, early adoption of cap-and-trade approaches in the U.S. One of the earlier approaches in the last decade would have exempted, for example, coal from its operations.

So we favor the adoption — policy-makers should consider policy and should adopt policy. We have disclosed the risks of climate change to our investors beginning in the middle part of the last decade and extending to the present time.

JUDY WOODRUFF: Kenneth Cohen, vice president for ExxonMobil, we appreciate having your point of view, as we do the New York attorney general.

Thank you.

KENNETH COHEN: Thank you.

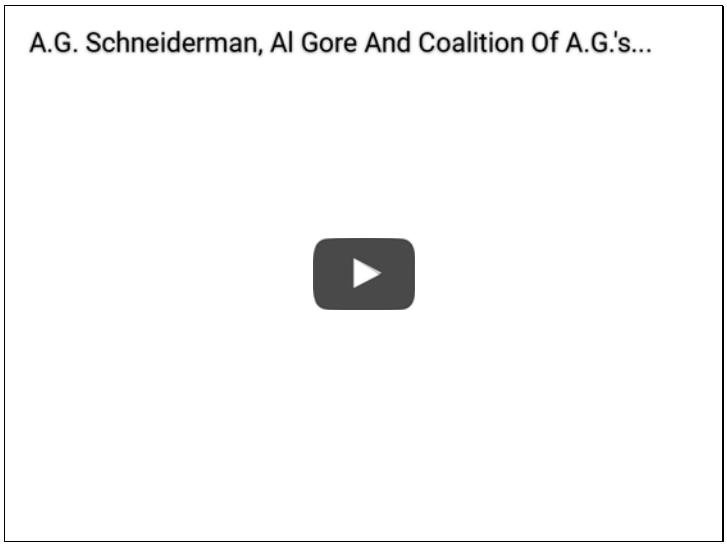
Exhibit 4

A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat Climate Change

Unprecedented Coalition Vows To Defend Climate Change Progress Made Under President Obama And To Push The Next President For Even More Aggressive Action

Attorneys General From California, Connecticut, District Of Columbia, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, Rhode Island, Virginia, Vermont, Washington State And The US Virgin Islands Agree To Coordinate Efforts

Schneiderman: Climate Change Is The Most Consequential Issue Of Our Time. This Unprecedented State-To-State Coordination Will Use All The Tools At Our Disposal To Fight For Climate Progress



NEW YORK – Attorney General Eric T. Schneiderman today joined Attorneys General from across the nation to announce an unprecedented coalition of top law enforcement officials committed to aggressively protecting and building upon the recent progress the United States has made in combatting climate change.

Attorneys General Schneiderman, William Sorrell of Vermont, George Jepsen of Connecticut, Brian E. Frosh of Maryland, Maura Healey of Massachusetts, Mark Herring of Virginia, and Claude Walker of the US Virgin Islands were joined by former Vice President Al Gore for the announcement in New York City. Today's announcement took place during a one-day Attorneys General climate change conference, co-sponsored by Schneiderman and Sorrell.

The participating states are exploring working together on key climate change-related initiatives, such as ongoing and potential investigations into whether fossil fuel companies misled investors and the public on the impact of climate change on their businesses. In 2015, New York State reached a historic settlement with Peabody Energy – the world's largest publicly traded coal company – concerning the company's misleading financial statements and disclosures. New York is also investigating ExxonMobil for similar alleged conduct.

Many of the states in the coalition have worked together on previous multi-state environmental efforts, including pressing the EPA to limit climate change pollution from fossil-fueled electric power plants, defending federal rules controlling climate change emissions from large industrial facilities, and pushing for federal controls on emissions of the potent greenhouse gas methane emissions from the oil and natural gas industry.

All of the members of the new coalition are part a coalition of 25 states, cities and counties led by Attorney General Schneiderman that intervened to defend the federal Environmental Protection Agency's "Clean Power Plan" against legal challenge. Today, the interveners filed a brief with the DC Circuit Court defending President Obama's Clean Power Plan rule, which establishes a nationwide framework to achieve meaningful and cost effective reductions of carbon-dioxide emissions from power plants—the largest single source of greenhouse gas emissions in the nation—and provides states and power plants flexibility to decide how best to achieve these reductions.

"With gridlock and dysfunction gripping Washington, it is up to the states to lead on the generation-defining issue of climate change. We stand ready to defend the next president's climate change agenda, and vow to fight any efforts to roll-back the meaningful progress we've made over the past eight years," said **Attorney General Schneiderman**. "Our offices are seriously examining the potential of working together on high-impact, state-level initiatives, such as investigations into whether fossil fuel companies have misled investors about how climate change impacts their investments and business decisions."

"We cannot continue to allow the fossil fuel industry or any industry to treat our atmosphere like an open sewer or mislead the public about the impact they have on the health of our people and the health of our planet. Attorneys General and law enforcement officials around the country have long held a vital role in ensuring that

the progress we have made to solve the climate crisis is not only protected, but advanced. The first-of-its-kind coalition announced today is another key step on the path to a sustainable, clean-energy future," said **Vice President Al Gore**.

Vermont Attorney General William Sorrell said**,** "We are happy to have worked closely with New York to organize this meeting. As we all know, global warming, if not reversed, will be catastrophic for our planet. We, the states, have a role to play in this endeavor and intend to do our part."

"The states represented here today have long been working to sound the alarm, to put smart policies in place to speed our transition to a clean energy future, and to stop power plants from emitting millions of tons of dangerous global warming pollution into our air," said **Massachusetts Attorney General Maura Healey**. "In Massachusetts, we're a leader in clean energy and together we're taking a thoughtful, aggressive approach to ensuring our planet's health for generations to come."

Connecticut Attorney General George Jepsen, said "I am delighted to meet with so many thoughtful leaders to strategize on ways we can protect our citizens from the greatest threat we collectively face, climate change. I am proud to have worked with them and others in defending the Obama Administration's action to combat global warming, and look forward to discussing how we can best further that important work. I also appreciate the opportunity to discuss potential future efforts, including the merits of possible joint investigations in this important area."

U.S. Virgin Islands Attorney General Claude Earl Walker said, "The Virgin Islands, which is especially vulnerable to environmental threats, has a particular interest in making sure that companies are honest about what they know about climate change. We are committed to ensuring a fair and transparent market where consumers can make informed choices about what they buy and from whom. If ExxonMobil has tried to cloud their judgment, we are determined to hold the company accountable."

Maryland Attorney General Brian E. Frosh said, "Climate changes poses an existential threat to Maryland and to the nation. I am proud to join with my colleagues across the country in this important collaboration, and am willing to use every tool at our collective disposal to protect our air, our water and our natural resources. The pledge we are making today can help insure a cleaner and safer future."

Virginia Attorney General Mark Herring said, "As a Commonwealth and as a nation, we can't just put our heads in the sand because we are already confronting the realities of climate change. Hampton Roads is our Commonwealth's second most populated region, it's our second biggest economy, and it is the second most vulnerable area in the entire country as climate change drives continued sea-level rise. State government, local governments, and the military are spending millions to prepare for this challenge, and even more significant investment and resiliency measures will be required. I'm proud to have Virginia included in this first-of-its-kind coalition, which recognizes the reality and the pressing threat of manmade climate change and sea level rise. I'm looking forward to working with my colleagues to explore opportunities to address climate change, encourage the growth of our clean energy sectors, and build a cleaner, more sustainable future."

"Taking additional steps to reduce carbon pollution will keep us moving toward cleaner air, a healthier environment, and more affordable energy," said **Illinois Attorney General Lisa Madigan**. "I look forward to continuing to work with other states to advance the Clean Power Plan, as well as to advocate for a comprehensive portfolio of renewable energy sources and enhancements to energy efficiency programs."

"Climate change has real and lasting impacts on our environment, public health, and the economy," said **California Attorney General Kamala D. Harris**. "California has been a national leader in fighting to reduce greenhouse gas emissions, and I am proud to join this effort to preserve and protect our natural resources for future generations to come."

Maine Attorney General Janet Mills said, "Our natural resources are the lifeblood of our state's economy and our quality of life. Global climate change demands immediate action and I am committed to using the authority of my office to address the problem in a meaningful way by defending important EPA regulations against attacks led by the coal industry and exploring litigation options that will hold the worst polluters accountable for their actions."

"Washington is mired by political gridlock. We cannot sit back and watch the dysfunction while nothing gets done, or worse, Washington rolls back the progress we have made in the recent past to address the issue of climate change. If Washington is not going to step up and recognize the crisis and find meaningful solutions, then it will be up to the states to do so," said **Rhode Island Attorney General Peter F. Kilmartin**. "As a state that will incur significant negative impacts from global climate change, including sea-level rise and increased flooding, Rhode Island is committed to continuing the fight for common-sense regulation of greenhouse gas emissions from power plants and other large emitters."

"Washington State has long made protecting our environment a top priority," **Washington State Attorney General Bob Ferguson** said. "A problem like climate change is bigger than any one state. I look forward to working with the coalition on innovative solutions to combat and reverse the harmful effects of climate change."

"Our office has a mandate to protect the public interest, and this includes ensuring that our community is not negatively affected by preventable climate change. We welcome this crucial state-to-state cooperation to ensure that we do everything we can to fight the causes of climate change regardless of whether the federal government continues to partner with us in these efforts or not," said **District of Columbia Attorney General Karl Racine.**

"We have been impacted by climate change, and we see its drastic effects in New Mexico---extreme drought, increased risk of severe forest fires, and the ruin of our wildlife and natural habitats," Attorney General Balderas said. "Our efforts will ensure that progress is made on climate change and that the public is fully aware of

the effects on the health and well-being of New Mexico families," said **New Mexico Attorney General Hector Balderas**.

Español

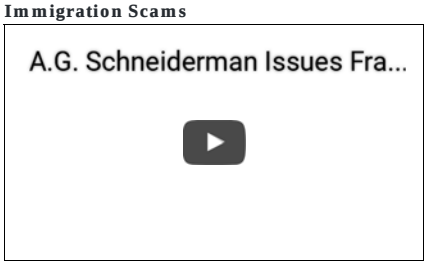
New York City Press Office: (212) 416-8060

Albany Press Office: (518) 776-2427

nyag.pressoffice@ag.ny.gov

The People of the State of New York v. Maurice R. Greenberg & Howard I. Smith

A.G. Schneiderman Issues Fraud Alert On Immigration Scams



Amid Surge Of Bias Crimes, A.G. Schneiderman Stands With Dozens Of Civil Rights Leaders To "Stand Up To Hate," Issues Urgent Bulletin To Local Law Enforcement Offering Guidance In Identifying And Prosecuting Hate Crimes

A.G. Schneiderman & Western NY Law Enforcement Leaders Stand Together In Fight Against Illegal Guns

A.G. Schneiderman And Rochester Leaders Stand Together In Fight Against Illegal Guns

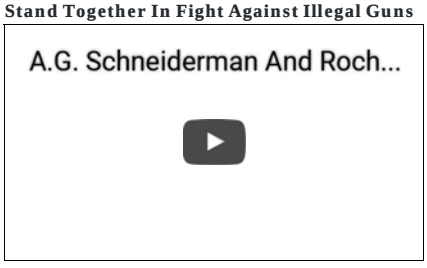


Exhibit 5

AG Schneiderman: Thank you, good morning. I'm New York's Attorney General, Eric Schneiderman. I thank you for joining us here today for what we believe and hope will mark a significant milestone in our collective efforts to deal with the problem of climate change and put our heads together and put our offices together to try and take the most coordinated approach yet undertaken by states to deal with this most pressing issue of our time. I want to thank my co-convener of the conference, Vermont Attorney General, William Sorrel, who has been helping in joining us here and been instrumental in making today's events possible, and my fellow attorneys general for making the trip to New York for this announcement. Many of them had been working for years on different aspects of this problem to try and preserve our planet and reduce the carbon emissions that threaten all of the people we represent. And I'm very proud to be here today with Attorney General George Jepsen of Connecticut, Attorney General Brian Frosh of Maryland, Attorney General Maura Healey of Massachusetts, Attorney General Mark Herring of Virginia, and Attorney General Claude Walker of the U.S. Virgin Islands.

We also have staff representing other attorneys general from across the country, including: Attorney General Kamala Harris of California, Matt Denn of Delaware, Karl Racine of the District of Columbia, Lisa Madigan of Illinois, Tom Miller of Iowa, Janet Mills of Maine, Lori Swanson of Minnesota, Hector Balderas of New Mexico, Ellen Rosenblum of Oregon, Peter Kilmartin of Rhode Island and Bob Ferguson of Washington.

And finally, I want to extend my sincere thanks to Vice President Al Gore for joining us. It has been almost ten years since he galvanized the world's attention on climate change with his documentary *An Inconvenient Truth*.

And, I think it's fair to say that no one in American public life either during or beyond their time in elective office has done more to elevate the debate of our climate change or to expand global awareness about the urgency of the need for collective action on climate change than Vice President Gore. So it's truly an honor to have you here with us today.

* The following transcript of the AGs United For Clean Power Press Conference, held on March 29, 2016, was prepared by counsel based on a video recording of the event, which is available at http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across.

So we've gathered here today for a conference – the first of its kind conference of attorneys general dedicated to coming up with creative ways to enforce laws being flouted by the fossil fuel industry and their allies in their short-sighted efforts to put profits above the interests of the American people and the integrity of our financial markets. This conference reflects our commitment to work together in what is really an unprecedented multi-state effort in the area of climate change. Now, we have worked together on many matters before and I am pleased to announce that many of the folks represented here were on the Amicus Brief we submitted to the United States Supreme Court in the *Friedrichs* v. *California Teacher Association* case. We just got the ruling that there was a four-four split so that the American labor movement survives to fight another day. And thanks, thanks to all for that effort and collaboration. It shows what we can do if we work together. And today we are here spending a day to ensure that this most important issue facing all of us, the future of our planet, is addressed by a collective of states working as creatively, collaboratively and aggressively as possible.

The group here was really formed when some of us came together to defend the EPA's Clean Power Plan, the new rules on greenhouse gases. And today also marks the day that our coalition is filing our brief in the Court of Appeals for the District of Columbia. In that important matter we were defending the EPA's rules. There is a coalition of other states on the other side trying to strike down the rules, but the group that started out in that matter together was 18 states and the District of Columbia. We call ourselves The Green 19, but now that Attorney General Walker of the Virgin Islands has joined us our rhyme scheme is blown. We can't be called The Green 19, so now we're The Green 20. We'll come up with a better name at some point.

But, ladies and gentlemen, we are here for a very simple reason. We have heard the scientists. We know what's happening to the planet. There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up. The U.S. Defense Department, no radical agency, recently called climate change an urgent and growing threat to our national security. We know that last month, February, was the furthest above normal for any month in history since 1880 when they started keeping meteorological records. The

facts are evident. This is not a problem ten years or twenty years in the future. [There are] people in New York who saw what happened with the additional storm surge with Super Storm Sandy. We know the water level in New York Harbor is almost a foot higher than it was. The New York State Department of Environmental Conservation, not some radical agency, predicts that if we continue at this pace, we'll have another 1.5 feet of water in New York Harbor. It'll go up by that much in 2050. So today, in the face of the gridlock in Washington, we are assembling a group of state actors to send the message that we are prepared to step into this breach. And one thing we hope all reasonable people can agree on is that every fossil fuel company has a responsibility to be honest with its investors and with the public about the financial and market risks posed by climate change. These are cornerstones of our securities and consumer protection laws.

My office reached a settlement last year based on the enforcement of New York securities laws with Peabody Energy. And they agreed to rewrite their financials because they had been misleading investors and the public about the threat to their own business plan and about the fact that they had very detailed analysis telling them how the price of coal would be going down in the face of actions taken by governments around the world. But they were hiding it from their investors. So they agreed to revise all of their filings with the SEC. And the same week we announced that, we announced that we had served a subpoena on ExxonMobil pursuing that and other theories relating to consumer and securities fraud. So we know, because of what's already out there in the public, that there are companies using the best climate science. They are using the best climate models so that when they spend shareholder dollars to raise their oil rigs, which they are doing, they know how fast the sea level is rising. Then they are drilling in places in the Arctic where they couldn't drill 20 years ago because of the ice sheets. They know how fast the ice sheets are receding. And yet they have told the public for years that there were no "competent models," was the specific term used by an Exxon executive not so long ago, no competent models to project climate patterns, including those in the Arctic. And we know that they paid millions of dollars to support organizations that put out propaganda denying that we can predict or measure the effects of fossil fuel on our climate, or even denying that climate change was happening.

There have been those who have raised the question: aren't you interfering with people's First Amendment rights? The First Amendment, ladies and gentlemen, does not give you the right to commit fraud. And we are law enforcement officers, all of us do work, every attorney general does work on fraud cases. And we are pursuing this as we would any other fraud matter. You have to tell the truth. You can't make misrepresentations of the kinds we've seen here.

And the scope of the problem we're facing, the size of the corporate entities and their alliances and trade associations and other groups is massive and it requires a multi-state effort. So I am very honored that my colleagues are here today assembling with us. We know that in Washington there are good people who want to do the right thing on climate change but everyone from President Obama on down is under a relentless assault from well-funded, highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action. So today, we're sending a message that, at least some of us – actually a lot of us – in state government are prepared to step into this battle with an unprecedented level of commitment and coordination.

And now I want to turn it over to my great colleague, the co-convener of this conference, Vermont Attorney General William Sorrel.

AG Sorrel: I am pleased that the small state of Vermont joins with the big state of New York and are working together to make this gathering today a reality. Truth is that states, large and small, have critical roles to play in addressing environmental quality issues. General Schneiderman has mentioned our filing today in the D.C. Circuit on the Clean Power Plan case. Going back some time, many of the states represented here joined with the federal government suing American Electric Power Company, the company operating several coal-fired electric plants in the Midwest and largely responsible for our acid rain and other air quality issues in the eastern part of the United States, ultimately resulting in what I believe to date is the largest settlement in an environmental case in our country's history. With help from a number of these states, we successfully litigated Vermont's adoption of the so-called California standard for auto emissions in federal court in Vermont, now the standard in the country. And right down to the present day, virtually all of the

states represented today are involved in looking at the alleged actions by Volkswagen and the issues relating to emissions from tens of thousands of their diesel automobiles.

But today we're talking about climate change which I don't think there's any doubt, at least in our ranks, is the environmental issue of our time. And in order for us to effectively address this issue, it's going to take literally millions of decisions and actions by countries, by states, by communities and by individuals. And, just very briefly, Vermont is stepping up and doing its part. Our legislature has set goals of 75% reduction – looking from a 1990 base line – a 75% reduction in greenhouse gas emissions by 2050. Similarly, our electric utilities have a goal of 75% use of renewable energy sources by 2032. So, we've been doing our part. Our presence here today is to pledge to continue to do our part. I'm mindful of the fact that I'm between you and the real rock star on this issue, and so I'm going to turn it back to General Schneiderman to introduce the next speaker.

AG Schneiderman: Thank you. Thank you. I'm not really a rock star.

[Laughter]

Thank you Bill. It's always a pleasure to have someone here from a state whose U.S. senator is from Brooklyn.

[Laughter]

And doing pretty well for himself. So, Vice President Gore has a very busy schedule. He has been traveling internationally, raising the alarm but also training climate change activists. He rearranged his schedule so he could be here with us to day to meet with my colleagues and I. And there is no one who has done more for this cause, and it is a great pleasure to have him standing shoulder to shoulder with us as we embark on this new round in what we hope will be the beginning of the end of our addiction to fossil fuel and our degradation of the planet. Vice President Al Gore.

VP Gore: Thank you very much, Eric. Thank you. Thank you very much.

[Applause]

Thank you very much, Attorney General Schneiderman. It really and truly is an honor for me to join you and your colleagues here,

Bill Sorrel of Vermont, Maura Healey of Massachusetts, Brian Frosh of Maryland, Mark Herring of Virginia, George Jepsen of Connecticut and Claude Walker from the U.S. Virgin Islands, and the ten (let's see 1, 2, 3, 4, 5) how many other – ten other states . . . eleven other state attorneys general offices that were represented in the meetings that took place earlier, prior to this press conference.

I really believe that years from now this convening by Attorney General Eric Schneiderman and his colleagues here today may well be looked back upon as a real turning point in the effort to hold to account those commercial interests that have been – according to the best available evidence – deceiving the American people, communicating in a fraudulent way, both about the reality of the climate crisis and the dangers it poses to all of us. And committing fraud in their communications about the viability of renewable energy and efficiency and energy storage that together are posing this great competitive challenge to the long reliance on carbon-based fuels. So, I congratulate you, Attorney General, and all of you, and to those attorneys general who were so impressively represented in the meetings here. This is really, really important.

I am a fan of what President Obama has been doing, particularly in his second term on the climate crisis. But it's important to recognize that in the federal system, the Congress has been sharply constraining the ability of the executive branch to fully perform its obligations under [the] Constitution to protect the American people against the kind of fraud that the evidence suggests is being committed by several of the fossil fuel companies, electric utilities, burning coal, and the like. So what these attorneys general are doing is exceptionally important. I remember very well – and I'm not going to dwell on this analogy – but I remember very well from my days in the House and Senate and the White House the long struggle against the fraudulent activities of the tobacco companies trying to keep Americans addicted to the deadly habit of smoking cigarettes and committing fraud to try to constantly hook each new generation of children to replenish their stock of customers who were dying off from smoking-related diseases. And it was a combined effort of the executive branch, and I'm proud that the Clinton-Gore administration played a role in that, but it was a combined effort in which the state attorneys general played the crucial role in securing an historic victory for public health. From the time the tobacco companies were first found out, as evidenced by the historic attorney generals' report of 1964, it

took 40 years for them to be held to account under the law. We do not have 40 years to continue suffering the consequences of the fraud allegedly being committed by the fossil fuel companies where climate change is concerned.

In brief, there are only three questions left to be answered about the climate crisis. The first one is: Must we change, do we really have to change? We rely on fossil fuels for more than 80% of all the energy our world uses. In burning it we've reduced poverty and raised standards of living and built this elaborate global civilization, and it looks like it'll be hard to change. So naturally, people wonder: Do we really have to change? The scientific community has been all but unanimous for a long time now. But now mother nature and the laws of physics – harder to ignore than scientists – are making it abundantly clear that we have to change. We're putting 110 million tons of man-made heat trapping global warming pollution into the thin shell of atmosphere surrounding our planet every day, as if it's an open sewer. And the cumulative amount of that man-made global warming pollution now traps as much extra heat energy in the earth's system as would be released by 400,000 Hiroshima-class atomic bombs exploding every 24 hours on the surface of our planet.

It's a big planet, but that's a lot of energy. And it is the reason why temperatures are breaking records almost every year now. 2015 was the hottest year measured since instruments had been used to measure temperature. 2014 was the second hottest. 14 of the 15 hottest have been in the last 15 years. As the Attorney General mentioned, February continues the trend by breaking all previous records – the hottest in 1,632 months ever measured. Last December 29th, the same unnatural global warming fuel storm system that created record floods in the Midwest went on up to the Arctic and on December 29th, smack in the middle of the polar winter night at the North Pole, temperatures were driven up 50 degrees above the freezing point. So the North Pole started thawing in the middle of the winter night. Yesterday the announcement came that it's the smallest winter extent of ice ever measured in the Arctic.

Ninety-three percent of the extra heat goes into the oceans of the world, and that has consequences. When Super Storm Sandy headed across the Atlantic toward this city, it crossed areas of the Atlantic that were nine degrees Fahrenheit warmer than normal

and that's what made that storm so devastating. The sea level had already come up because of the ice melting, principally off Greenland and Antarctica. And as the Attorney General mentioned, that's a process now accelerating. But these ocean-based storms are breaking records now. I just came from the Philippines where Super Typhoon Haiyon created 4 million homeless people when it crossed much warmer waters of the Pacific. By the way, it was a long plane flight to get here and I happened to get, just before we took off, the 200-page brief that you all filed in support of the Clean Power Plan. Really excellent work. Footnotes took up a lot of those 200 pages so I'm not claiming to [have] read all 200 of them.

The same extra heat in the oceans is disrupting the water cycle. We all learned in school that the water vapor comes off the oceans and falls as rain or snow over the land and then rushes back to the ocean. That natural life-giving process is being massively disrupted because the warmer oceans put a lot more water vapor up there. And when storm conditions present themselves they, these storms will reach out thousands of kilometers to funnel all that extra humidity and water vapor into these massive record-breaking downpours. And occasionally it creates a snowpocalypse or snowmaggedon but most often, record-breaking floods. We've had seven once-in-a-thousand-year floods in the last ten years in the U.S. Just last week in Louisiana and Arkansas, two feet of rain in four days coming again with what they call the Maya Express off the oceans. And the same extra heat that's creating these record-breaking floods also pull the soil moisture out of the land and create these longer and deeper droughts all around the world on every continent.

Every night on the news now it's like a nature hike through the Book of Revelation. And we're seeing tropical diseases moving to higher latitudes – the Zika virus. Of course the transportation revolution has a lot to do with the spread of Zika and Dengue Fever and Chikungunya and diseases I've never heard of when I was growing up and maybe, probably most of you never did either. But now, they're moving and taking root in the United States. Puerto Rico is part of the United States, by the way – not a state, but part of our nation. Fifty percent of the people in Puerto Rico are estimated to get the Zika virus this year. By next year, eighty percent. When people who are part of the U.S. territory, when women are advised not to get pregnant, that's something new that

ought to capture our attention. And in large areas of Central America and South America, women are advised now not to get pregnant for two years until they try to get this brand new viral disease under control.

The list of the consequences continues, and I'm not going to go through it all, but the answer to that first question: "Do we have to change?" is clearly now to any reasonable thinking person: "yes, we have to change." Now the second question is: "Can we change?" And for quite a few years, I will confess to you that, when I answered that question yes, it was based on the projections of scientists and technologists who said, just wait. We're seeing these exponential curves just begin, solar is going to win, wind power is going to get way cheaper, batteries are going to have their day, we're going to see much better efficiency. Well now we're seeing these exponential curves really shoot up dramatically. Almost 75% of all the new investment in the U.S. in new generating capacity last year was in solar and wind – more than half worldwide. We're seeing coal companies go bankrupt on a regular basis now. Australia is the biggest coal exporter in the world. They've just, just the analysis there, they're not going to build any more coal plants because solar and wind are so cheap. And we're seeing this happen all around the world. But, there is an effort in the U.S. to slow this down and to bring it to a halt because part of the group that, again according to the best available evidence, has been committing fraud in trying to convince people that the climate crisis is not real, are now trying to convince people that renewable energy is not a viable option. And, worse than that, they're using their combined political and lobbying efforts to put taxes on solar panels and jigger with the laws to require that installers have to know the serial number of every single part that they're using to put on a rooftop of somebody's house, and a whole series of other phony requirements, unneeded requirements, that are simply for the purpose of trying to slow down this renewable revolution. In the opinion of many who have looked at this pattern of misbehavior and what certainly looks like fraud, they are violating the law. If the Congress would actually work – our democracy's been hacked, and that's another story, not the subject of this press conference – but if the Congress really would allow the executive branch of the federal government to work, then maybe this would be taken care of at the federal level. But these brave men and women, who are the attorneys general of the states represented in this historic coalition, are doing their job and – just

as many of them did in the tobacco example – they are now giving us real hope that the answer to that third question: "Will we change?" is going to be "yes." Because those who are using unfair and illegal means to try to prevent the change are likely now, finally, at long last, to be held to account. And that will remove the last barriers to allow the American people to move forward and to redeem the promise of our president and our country in the historic meeting in Paris last December where the United States led the global coalition to form the first global agreement that is truly comprehensive. If the United States were to falter and stop leading the way, then there would be no other leader for the global effort to solve this crisis. By taking the action these attorneys general are taking today, it is the best, most hopeful step I can remember in a long time – that we will make the changes that are necessary.

So, I'll conclude my part in this by, once again, saying congratulations to these public servants for the historic step they are taking today. And on behalf of many people, who I think would say it's alright for me to speak for them, I'd like to say thank you.

AG Schneiderman: Thank you very much, and now my other colleagues are going to say a few words. For whatever reason, I've gotten into the habit, since we always seem to do this, we do this in alphabetical order by state, which I learned when I first became an AG but I guess we'll stick with it. Connecticut Attorney General George Jepsen who was our partner in the *Friedrichs* case and stood with me when we announced that we were filing in that case. We've done a lot of good work together. Attorney General Jepsen.

AG Jepsen: I'd like to thank Eric and Bill for their leadership on this important issue and in convening this conference and to recognize the man who has done more to make global warming an international issue than anybody on the entire planet – Vice President Al Gore. In the backdrop, in the backdrop of a very dysfunctional Congress, state attorneys general, frequently on a bipartisan, basis have shown that we can stand up and take action where others have not. The Vice President referenced the tobacco litigation, which was before my time but hugely important in setting the tone and the structures by which we do work together. Since becoming attorney general in 2011, we've taken on the big banks and their mortgage servicing issues, a $25 billion settlement. We've taken on Wall Street's Standard & Poor's for mislabeling mortgage-backed securities – as

a 20-state coalition – mislabeling mortgage-backed securities as AAA when in fact they were junk. Working together on data privacy issues, and now it's time that we stand up once again and take on what is the most important issue of our generation. We owe it to our children, our children's children, to step up and do the right thing, to work together and I'm committed to it. Thank you.

AG Schneiderman: Thank you. And now a relatively new colleague but someone who has brought incredible energy to this fight and who we look forward to working with on this and other matters for a long time to come. Maryland Attorney General Brian Frosh.

AG Frosh: Well, first thank you again to General Schneiderman and General Sorrel for putting together this group and it's an honor to be with you, Mr. Vice President. Thank you so much for your leadership. I'm afraid we may have reached that point in the press conference where everything that needs to be said has been said, but everyone who needs to say it hasn't said it yet.

[Laughter]

So, I will try to be brief. Climate change is an existential threat to everybody on the planet. Maryland is exceptionally vulnerable to it. The Chesapeake Bay bisects our state. It defines us geographically, culturally, historically. We have as much tidal shoreline as states as large as California. We have islands in the Chesapeake Bay that are disappearing. We have our capital, Annapolis, which is also the nuisance flood capital of the United States. It's under water way, way, way too often. It's extraordinarily important that we address the problem of climate change. I'm grateful to General Sorrel and General Schneiderman for putting together this coalition of the willing. I'm proud to be a part of it in addressing and supporting the President's Clean Power Plan. What we want from ExxonMobil and Peabody and ALEC is very simple. We want them to tell the truth. We want them to tell the truth so that we can get down to the business of stopping climate change and of healing the world. I think that as attorneys general, as the Vice President said, we have a unique ability to help bring that about and I'm very glad to be part of it.

AG Schneiderman: Thank you. And, another great colleague, who has done extraordinary work before and since becoming attorney general working with our office on incredibly important civil rights issues,

financial fraud issues, Massachusetts Attorney General Maura Healey.

AG Healey: Thank you very much General Schneiderman. Thank you General Schneiderman and General Sorrel for your leadership on this issue. It's an honor for me to be able to stand here today with you, with our colleagues and certainly with the Vice President who, today, I think, put most eloquently just how important this is, this commitment that we make. Thank you for your leadership. Thank you for your continuing education. Thank you for your inspiration and your affirmation.

You know, as attorneys general, we have a lot on our plates: addressing the epidemics of opiate abuse, gun violence, protecting the economic security and well-being of families across this country; all of these issues are so important. But make no mistake about it, in my view, there's nothing we need to worry about more than climate change. It's incredibly serious when you think about the human and the economic consequences and indeed the fact that this threatens the very existence of our planet. Nothing is more important. Not only must we act, we have a moral obligation to act. That is why we are here today.

The science – we do believe in science; we're lawyers, we believe in facts, we believe in information, and as was said, this is about facts and information and transparency. We know from the science and we know from experience the very real consequences of our failure to address this issue. Climate change is and has been for many years a matter of extreme urgency, but, unfortunately, it is only recently that this problem has begun to be met with equally urgent action. Part of the problem has been one of public perception, and it appears, certainly, that certain companies, certain industries, may not have told the whole story, leading many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts. Fossil fuel companies that deceived investors and consumers about the dangers of climate change should be, must be, held accountable. That's why I, too, have joined in investigating the practices of ExxonMobil. We can all see today the troubling disconnect between what Exxon knew, what industry folks knew, and what the company and industry chose to share with investors and with the American public.

We are here before you, all committed to combating climate change and to holding accountable those who have misled the public. The states represented here today have long been working hard to sound the alarm, to put smart policies in place, to speed our transition to a clean energy future, and to stop power plants from emitting millions of tons of dangerous global warming pollution into our air. I will tell you, in Massachusetts that's been a very good thing. Our economy has grown while we've reduced greenhouse gas emissions and boosted clean power and efficiency. We're home to a state with an $11 billion clean energy industry that employs nearly 100,000 people. Last year clean energy accounted for 15% of New England's power production. Our energy efficiency programs have delivered $12.5 billion in benefits since 2008 and are expected to provide another $8 billion over the next three years. For the past five years, Massachusetts has also been ranked number one in the country for energy efficiency. So we know what's possible. We know what progress looks like. But none of us can do it alone. That's why we're here today. We have much work to do, but when we act and we act together, we know we can accomplish much. By quick, aggressive action, educating the public, holding accountable those who have needed to be held accountable for far too long, I know we will do what we need to do to address climate change and to work for a better future. So, I thank AG Schneiderman for gathering us here today and for my fellow attorneys general in their continued effort in this important fight. Thank you.

AG Schneiderman: Thank you. And now another great colleague who speaks as eloquently as anyone I've heard about what's happening to his state, and a true hero of standing up in a place where maybe it's not quite as politically easy as it is to do it in Manhattan but someone who is a true aggressive progressive and a great attorney general, Mark Herring from Virginia.

AG Herring: Thank you, Eric. Good afternoon. In Virginia, climate change isn't some theoretical issue. It's real and we are already dealing with its consequences. Hampton Roads, which is a coastal region in Virginia, is our second most populated region, our second biggest economy and the country's second most vulnerable area as sea levels rise. The area has the tenth most valuable assets in the world threatened by sea level rise. In the last 85 years the relative sea level in Hampton Roads has risen 14 inches – that's well over a foot – in just the last century.

Some projections say that we can expect an additional two to five feet of relative sea level rise by the end of this century – and that would literally change the face of our state. It would cripple our economy and it could threaten our national security as Norfolk Naval, the world's largest naval base, is impacted. Nuisance flooding that has increased in frequency will become the norm. They call it blue sky flooding. Storm surges from tropical systems will threaten more homes, businesses and residents. And even away from the coast, Virginians are expected to feel the impact of climate change as severe weather becomes more dangerous and frequent. Just a few weeks ago, we had a highly unusual February outbreak of tornadoes in the Commonwealth that was very damaging and unfortunately deadly.

Farming and forestry is our number one industry in Virginia. It's a $70 billion industry in Virginia that supports around 400,000 jobs and it's going to get more difficult and expensive. And, the Commonwealth of Virginia local governments and the navy are already spending millions to build more resilient infrastructure, with millions and millions more on the horizon. To replace just one pier at Norfolk Naval is about $35 to $40 million, and there are 14 piers, so that would be around a half billion right there.

As a Commonwealth and a nation, we can't put our heads in the sand. We must act and that is what today is about. I am proud to have Virginia included in this first of its kind coalition which recognizes the reality and the pressing threat of man-made climate change and sea level rise. This group is already standing together to defend the Clean Power Plan – an ambitious and achievable plan – to enjoy the health, economic and environmental benefits of cleaner air and cleaner energy. But there may be other opportunities and that's why I have come all the way from Virginia. I am looking forward to exploring ideas and opportunities, to partner and collaborate, if there are enforcement actions we need to be taking, if there are legal cases we need to be involved in, if there are statutory or regulatory barriers to growing our clean energy sectors and, ultimately, I want to work together with my colleagues here and back in Virginia to help combat climate change and to shape a more sustainable future.

And for any folks who would say the climate change is some sort of made-up global conspiracy, that we're wasting our time, then

come to Hampton Roads. Come to Norfolk and take a look for yourselves. Mayor Fraim would love to have you.

AG Schneiderman: Thank you. And our closer, another great colleague who has traveled far but comes with tremendous energy to this cause and is an inspiration to us all, U.S. Virgin Islands Attorney General Claude Walker.

AG Walker: Thank you. Thank you, General Schneiderman, Vice President Gore. One of my heroes, I must say. Thank you. I've come far to New York to be a part of this because in the Virgin Islands and Puerto Rico, we experience the effects of global warming. We see an increase in coral bleaching, we have seaweeds, proliferation of seaweeds in the water, all due to global warming. We have tourism as our main industry, and one of the concerns that we have is that tourists will begin to see this as an issue and not visit our shores. But also, residents of the Virgin Islands are starting to make decisions about whether to live in the Virgin Islands – people who have lived there for generations, their families have lived there for generations. We have a hurricane season that starts in June and it goes until November. And it's incredibly destructive to have to go through hurricanes, tropical storms annually. So people make a decision: Do I want to put up with this, with the power lines coming down, buildings being toppled, having to rebuild annually? The strengths of the storms have increased over the years. Tropical storms now transform into hurricanes. When initially they were viewed as tropical storms but as they get close to the land, the strength increases. So we're starting to see people make decisions about whether to stay in a particular place, whether to move to higher ground – which is what some have said – as you experience flooding, as you experience these strong storms. So we have a strong stake in this, in making sure that we address this issue.

We have launched an investigation into a company that we believe must provide us with information about what they knew about climate change and when they knew it. And we'll make our decision about what action to take. But, to us, it's not an environmental issue as much as it is about survival, as Vice President Gore has stated. We try as attorneys general to build a community, a safe community for all. But what good is that if annually everything is destroyed and people begin to say: Why am I living here?

So we're here today to support this cause and we'll continue. It could be David and Goliath, the Virgin Islands against a huge corporation, but we will not stop until we get to the bottom of this and make it clear to our residents as well as the American people that we have to do something transformational. We cannot continue to rely on fossil fuel. Vice President Gore has made that clear. We have to look at renewable energy. That's the only solution. And it's troubling that as the polar caps melt, you have companies that are looking at that as an opportunity to go and drill, to go and get more oil. Why? How selfish can you be? Your product is destroying this earth and your strategy is, let's get to the polar caps first so we can get more oil to do what? To destroy the planet further? And we have documents showing that. So this is very troubling to us and we will continue our fight. Thank you.

AG Schneiderman: Thank you and Eric. And I do want to note, scripture reports David was not alone in fact, Brother Walker. Eric and Matt will take on-topic questions.

Moderator: Please just say your name and publication.

Press Person: John [inaudible] with *The New York Times*. I count two people who have actually said that they're launching new investigations. I'm wondering if we could go through the list and see who's actually in and who is not in yet.

AG Schneiderman: Well, I know that prior to today, it was, and not every investigation gets announced at the outset as you know, but it had already been announced that New York and California had begun investigations with those stories. I think Maura just indicated a Massachusetts investigation and the Virgin Islands has, and we're meeting with our colleagues to go over a variety of things. And the meeting goes on into the afternoon. So, I am not sure exactly where everyone is. Different states have – it's very important to understand – different states have different statutes, different jurisdictions. Some can proceed under consumer protection law, some securities fraud laws, there are other issues related to defending taxpayers and pension funds. So there are a variety of theories that we're talking about and collaborating and to the degree to which we can cooperate, we share a common interest, and we will. But, one problem for journalists with investigations is, part of doing an investigation is you usually don't talk a lot about what you're doing after you start it or even as you're preparing to start it.

Press Person: Shawn McCoy with *Inside Sources*. A *Bloomberg Review* editorial noted that the Exxon investigation is preposterous and a dangerous affirmation of power. *The New York Times* has pointed out that Exxon has published research that lines up with mainstream climatology and therefore there's not a comparison to Big Tobacco. So is this a publicity stunt? Is the investigation a publicity stunt?

AG Schneiderman: No. It's certainly not a publicity stunt. I think the charges that have been thrown around – look, we know for many decades that there has been an effort to influence reporting in the media and public perception about this. It should come as no surprise to anyone that that effort will only accelerate and become more aggressive as public opinion shifts further in the direction of people understanding the imminent threat of climate change and other government actors, like the folks represented here step up to the challenge. The specific reaction to our particular subpoena was that the public reports that had come out, Exxon said were cherry picked documents and took things out of context. We believe they should welcome our investigation because, unlike journalists, we will get every document and we will be able to put them in context. So I'm sure that they'll be pleased that we're going to get everything out there and see what they knew, when they knew it, what they said and what they might have said.

Press Person: David [inaudible] with *The Nation.* Question for General Schneiderman. What do you hope to accomplish with your Exxon investigation? I'm thinking with reference to Peabody where really there was some disclosure requirements but it didn't do a great deal of [inaudible]. Is there a higher bar for Exxon? What are the milestones that you hope to achieve after that investigation?

AG Schneiderman: It's too early to say. We started the investigation. We received a lot of documents already. We're reviewing them. We're not pre-judging anything, but the situation with oil companies and coal companies is somewhat different because the coal companies right now are, the market is already judging the coal industry very harshly. Coal companies, including Peabody, are teetering on the brink. The evidence that we advanced and what was specifically disclosed about Peabody were pretty clear cut examples of misrepresentations made in violation with the Securities and Exchange Commission, made to investors. It's too early to say what we're going to find with Exxon but we intend to work as

aggressively as possible, but also as carefully as possible. We're very aware of the fact that everything we do here is going to be subject to attack by folks who have a huge financial interest in discrediting us. So we're going to be aggressive and creative but we are also going to be as careful and meticulous and deliberate as we can.

VP Gore: Could I respond to the last couple of questions just briefly. And in doing so, I'd like to give credit to the journalistic community and single out the Pulitzer Prize winning team at *InsideClimate News*, also the *Los Angeles Times* and the student-led project at Columbia School of Journalism under Steve Coll. And the facts that were publicly presented during, in those series of articles that I have mentioned, are extremely troubling, and where Exxon Mobil in particular is concerned. The evidence appears to indicate that, going back decades, the company had information that it used for the charting of its plan to explore and drill in the Arctic, used for other business purposes information that largely was consistent with what the mainstream scientific community had collected and analyzed. And yes, for a brief period of time, it did publish some of the science it collected, but then a change came, according to these investigations. And they began to make public statements that were directly contrary to what their own scientists were telling them. Secondly, where the analogy to the tobacco industry is concerned, they began giving grants – according to the evidence collected – to groups that specialize in climate denial, groups that put out information purposely designed to confuse the public into believing that the climate crisis was not real. And according to what I've heard from the preliminary inquiries that some of these attorneys general have made, the same may be true of information that they have put out concerning the viability of competitors in the renewable energy space. So, I do think the analogy may well hold up rather precisely to the tobacco industry. Indeed, the evidence indicates that, that I've seen and that these journalists have collected, including the distinguished historian of science at Harvard, Naomi Oreskes wrote the book *The Merchants of Doubt* with her co-author, that they hired several of the very same public relations agents that had perfected this fraudulent and deceitful craft working for the tobacco companies. And so as someone who has followed the legislative, the journalistic work very carefully, I think the analogy does hold up.

Press Person: [inaudible] with *InsideClimate News*. Along the lines of talking about that analogy: from a legal framework, can you talk about a comparison, similarities and differences between this potential case and that of Big Tobacco?

AG Schneiderman: Well, again, we're at the early stages of the case. We are not pre-judging the evidence. We've seen some things that have been published by you and others, but it is our obligation to take a look at the underlying documentation and to get at all the evidence, and we do that in the context of an investigation where we will not be talking about every document we uncover. It's going to take some time, but that's another reason why working together collectively is so important. And we are here today because we are all committed to pursuing what you might call an all-levers approach. Every state has different laws, different statutes, different ways of going about this. The bottom line is simple. Climate change is real, it is a threat to all the people we represent. If there are companies, whether they are utilities or they are fossil fuel companies, committing fraud in an effort to maximize their short-term profits at the expense of the people we represent, we want to find out about it. We want to expose it, and we want to pursue them to the fullest extent of the law.

Moderator: Last one.

Press Person: Storms, floods will arise they are all going to continue to destroy property and the taxpayers . . .

Moderator: What's your name and . . .

Press Person: Oh, sorry. Matthew Horowitz from *Vice*. Taxpayers are going to have to pay for these damages from our national flood insurance claims. So if fossil fuel companies are proven to have committed fraud, will they be held financially responsible for any sorts of damages?

AG Schneiderman: Again, it's early to say but certainly financial damages are one important aspect of this but, and it is tremendously important and taxpayers – it's been discussed by my colleagues – we're already paying billions and billions of dollars to deal with the consequences of climate change and that will be one aspect of – early foreseeing, it's far too early to say. But, this is not a situation where financial damages alone can deal with the problem. We have to change conduct, and as the Vice President indicated, other

places in the world are moving more rapidly towards renewables. There is an effort to slow that process down in the United States. We have to get back on that path if we're going to save the planet and that's ultimately what we're here for.

Moderator: We're out of time, unfortunately. Thank you all for coming.

Exhibit 6

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF NEW YORK

GREETINGS

TO:

PricewaterhouseCoopers LLP
300 Madison Avenue
New York, New York 10017

YOU ARE HEREBY COMMANDED, pursuant General Business Law § 352, Executive Law § 63(12), and § 2302(a) of the New York Civil Practice Law and Rules, to deliver and turn over to Eric T. Schneiderman, the Attorney General of the State of New York, or a designated Assistant Attorney General, on ***the 2nd day of September, 2016, at 9:30 a.m.,*** or any agreed upon adjourned date or time, at 120 Broadway, New York, New York 10271, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein.

TAKE NOTICE that the Attorney General deems the documents and information commanded by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.

TAKE FURTHER NOTICE that Your disobedience of this Subpoena, by failing to produce documents and information on the date, time and place stated above or on any agreed upon adjourned date or time, ***may subject You to prosecution for a misdemeanor or penalties and other lawful punishment*** under General Business Law § 352 and § 2308 of the New York Civil Practice Law, and/or other statutes.

TAKE FURTHER NOTICE that You should not disclose the existence of this Subpoena, its contents, or any subsequent communications with the Office of the Attorney General while this investigation is pending. Disclosure of this Subpoena may impede a confidential investigation being conducted by the Attorney General. In the event You believe that You are required to disclose the existence of this Subpoena or any information related thereto, You shall notify the Assistant Attorney General listed below immediately and well in advance of Your disclosure of the same.

WITNESS, The Honorable Eric T. Schneiderman, Attorney General of the State of New York, this 19th day of August, 2016.

By: _____

Katherine Milgram
Deputy Bureau Chief
Investor Protection Bureau
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-8222

By: _____

Jonathan Zweig
Assistant Attorney General
Investor Protection Bureau
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-8954

SCHEDULE

A. General Definitions and Rules of Construction

1. "All" means each and every.

2. "Any" means any and all.

3. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Subpoena all information or Documents that might otherwise be construed to be outside of its scope.

4. "Communication" means any conversation, discussion, letter, email, memorandum, meeting, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing.

5. "Concerning" means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.

6. "Custodian" means any Person or Entity that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled such Document.

7. "Document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail ("e-mail"), instant messages, text messages, Blackberry or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, work papers, files, desk files, permanent files, temporary files, notes, confirmations, account statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.

8. "Entity" means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.

9. "Identify" or "Identity," as applied to any Document, means the provision in writing of information sufficiently particular to enable the Attorney General to request the Document's production through subpoena or otherwise, including but not limited to: (a) Document type (letter, memorandum, etc.); (b) Document subject matter; (c) Document date; and (d) Document author(s), addressee(s) and recipient(s). In lieu of identifying a Document, the Attorney General will accept production of the Document, together with designation of the Document's Custodian, and identification of each Person You believe to have received a copy of the Document.

10. "Identify" or "Identity," as applied to any Entity, means the provision in writing of such Entity's legal name, any d/b/a, former, or other names, any parent, subsidiary, officers, employees, or agents thereof, and any address(es) and any telephone number(s) thereof.

11. "Identify" or "Identity," as applied to any natural person, means and includes the provision in writing of the natural person's name, title(s), any aliases, place(s) of employment, telephone number(s), e-mail address(es), mailing addresses and physical address(es).

12. "Person" means any natural person, or any Entity.

13. "Sent" or "received" as used herein means, in addition to their usual meanings, the transmittal or reception of a Document by physical, electronic or other delivery, whether by direct or indirect means.

14. "Subpoena" means this subpoena and any schedules or attachments thereto.

15. The use of the singular form of any word used herein shall include the plural and vice versa. The use of any tense of any verb includes all other tenses of the verb.

16. The references to Communications, Custodians, Documents, Persons, and Entities in this Subpoena encompass all such relevant ones worldwide.

B. Particular Definitions

1. "You," "Your," or "PwC" means PricewaterhouseCoopers LLP and Any present or former parents, subsidiaries, affiliates, directors, officers, partners, employees, agents, representatives, attorneys or other Persons acting on its behalf, and including predecessors or successors or Any affiliates of the foregoing.

2. "Exxon" means ExxonMobil Corporation, ExxonMobil Oil Corporation, and Any present or former parents, subsidiaries, affiliates, directors, officers, partners, employees, agents, representatives, attorneys or other Persons acting on its behalf, and including predecessors or successors or Any affiliates of the foregoing.

3. "CDP" means the organization formerly called Carbon Disclosure Project and Any present or former parents, subsidiaries, affiliates, directors, officers, partners, employees, agents, representatives, attorneys or other Persons acting on its behalf, including

predecessors or successors or Any affiliates of the foregoing, and All associated reports, publications, and analysis.

4. "Climate Change" means climate and environmental system impacts, weather-related events, and Any other effect on the earth's physical, biological, and human systems (e.g., communities and built infrastructure) that may be related to anthropogenic emissions of carbon dioxide and other Greenhouse Gases, including but not limited to increasing air or water temperatures, global warming, rising sea levels, melting of sea ice and land-based ice including glaciers and ice sheets, ocean acidification, permafrost thawing, changes in precipitation patterns, intensity or frequency, droughts, coastal and riverine flooding, and extreme storms.

5. "E&P" means the exploration and production segment of the energy industry, including but not limited to discovering, augmenting, extracting, producing, recovering, and merchandising oil, gas, and other hydrocarbons, together with All other upstream activities and assets, and including but not limited to oil, gas, and other hydrocarbon reserves, resource base, and potential resource base.

6. "Fossil Fuel" means All energy sources formed from fossilized remains of dead organisms, including oil, gas, bitumen and natural gas. For purposes of this Subpoena, the definition includes also fossil fuels blended with biofuels, such as corn ethanol blends of gasoline. The definition excludes renewable sources of energy production, such as hydroelectric, geothermal, solar, tidal, wind, and biomass.

7. "Greenhouse Gases" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

8. "Renewable Energy" means renewable sources of energy production, such as hydroelectric, geothermal, solar, tidal, wind, and biomass.

C. Instructions

1. Preservation of Relevant Documents and Information; Spoliation. You are reminded of Your obligations under law to preserve Documents and information relevant or potentially relevant to this Subpoena from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit or otherwise vary the terms of this Subpoena, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish Your aforementioned preservation obligations. Nor shall You act, in reliance upon any such agreement or otherwise, in any manner inconsistent with Your preservation obligations under law. No agreement purporting to modify, limit or otherwise vary Your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating or otherwise diminishing such aforementioned preservation obligations, nor shall You act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

2. Possession, Custody, and Control. The Subpoena calls for all responsive Documents or information in Your possession, custody or control. This includes, without limitation, Documents or information possessed or held by any of Your officers, directors, employees, agents, representatives, divisions, affiliates, subsidiaries or Persons from whom You could request Documents or information. If Documents or information responsive to a request in this Subpoena are in Your control, but not in Your possession or custody, You shall promptly Identify the Person with possession or custody.

3. Documents No Longer in Your Possession. If any Document requested herein was formerly in Your possession, custody or control but is no longer available, or no longer exists, You shall submit a statement in writing under oath that: (a) describes in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including without limitation whether it was misplaced, lost, destroyed or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.

4. No Documents Responsive to Subpoena Requests. If there are no Documents responsive to any particular Subpoena request, You shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.

5. Format of Production. You shall produce Documents and information responsive to this Subpoena in the format requested by the Office of the New York State Attorney General. Productions in electronic format shall meet the specifications set out in Attachments 1 and 2 hereof.

6. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Likewise, all Documents that are physically attached to each other in Your files shall remain so attached in any production; or if such production is electronic, shall be accompanied by notation or information sufficient to indicate clearly such physical attachment.

7. Document Numbering. All Documents responsive to this Subpoena, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the

form, sequence, organization or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.

8. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, You shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.

9. Privilege. If You withhold any Document responsive to this Subpoena on ground of privilege or other legal doctrine, You shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding the Document. If the legal ground for withholding the Document is attorney-client privilege, You shall indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.

10. Your Production Instructions to be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by You concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, You shall provide a written statement under oath from the Person(s) who gave such instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.

11. Cover Letter. Accompanying any production(s) made pursuant to this Subpoena, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the Subpoena request to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document.

12. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and You shall submit such executed Affidavit(s) of Compliance with Your response to this Subpoena.

13. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, You shall Identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further Identify all other natural person(s) able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.

14. Continuing Obligation to Produce. This Subpoena imposes a continuing obligation to produce the Documents and information requested. Documents located, and information learned or acquired, at any time after Your response is due shall be promptly produced at the place specified in this Subpoena.

15. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this Subpoena shall be valid or binding, and You shall not act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

16. Time Period. Unless otherwise specified, the time period for information, Documents, and Communications requested by this Subpoena is from January 1, 2010 (i.e. PwC's audits of financial statements for 2010) through the date of the production.

D. Requests for Information

1. Identify All individuals and business groups or divisions at PwC that were involved in PwC's reviews and audits of Exxon's financial statements.

2. Identify All individuals and business groups or divisions at PwC that were involved in PwC's review of Exxon's decisions Concerning its oil, gas, and other hydrocarbon reserves, resource base, and potential resource base.

3. Identify All individuals and business groups or divisions at PwC that were involved in PwC's review of Exxon's decisions Concerning actual or potential E&P-related write-downs, impairment charges, impairment testing or analysis, or triggers for impairment testing or analysis.

4. Identify All individuals and business groups or divisions at PwC that were involved in PwC's review of Exxon's capital allocation and expenditure decisions based on actual or potential impacts of Climate Change or policies or regulations Concerning Climate Change.

5. Identify All individuals and business groups or divisions at Exxon with which PwC communicated Concerning Exxon's oil, gas, and other hydrocarbon reserves, resource base, and potential resource base.

6. Identify All individuals and business groups or divisions at Exxon with which PwC communicated Concerning actual or potential E&P-related write-downs, impairment charges, impairment testing or analysis, and triggers for impairment testing or analysis.

7. Identify All individuals and business groups or divisions at Exxon with which PwC communicated concerning Exxon's capital allocation and expenditure decisions based on actual or potential impacts of Climate Change or policies or regulations Concerning Climate Change.

E. Documents to be Produced

1. All Documents and Communications Concerning the valuation, accounting, booking, de-booking, and reporting of Exxon's oil, gas, and other hydrocarbon reserves, resource base, and potential resource base, and the time period within which Exxon expects to produce its reserves, resource base, and potential resource base.

2. All Documents and Communications Concerning the preparation or completion, or the potential preparation or completion, of Any audit of Exxon's oil, gas, and other hydrocarbon reserves, resource base, and potential resource base.

3. All Documents and Communications Concerning (a) Exxon's internal auditing of its database or system containing its estimates of oil, gas, and other hydrocarbon reserves, resource base, and potential resource base; (b) the processes and controls used by Exxon in the preparation of its estimates of such reserves, resource base, and potential resource base; and (c) the qualifications of the technical personnel responsible for overseeing the preparation of such estimates.

4. All Documents and Communications Concerning E&P-related write-downs, impairment charges, impairment testing or analysis, and triggers for impairment testing or analysis, actual or potential, with respect to Exxon, including but not limited to Exxon's late 2015 effort to assess its major long-lived assets most at risk for potential impairment.

5. All Documents and Communications Concerning Exxon's outlook or projections of oil, gas, and other hydrocarbon prices, including but not limited to Any outlook or projections Concerning the duration of Any price changes (such as Any classification of price changes as short-term, temporary, or long-term).

6. All Documents and Communications Concerning Exxon's consideration, analysis, determination, or application of a carbon price, shadow price of carbon, or proxy cost of carbon.

7. All Documents and Communications Concerning the impact or potential impact of Any of the following factors on Exxon's financial statements or its business generally, including operations and capital allocation and expenditures:

    a. changes or potential changes in the cost or price of carbon, including but not limited to Any proxy or shadow cost of carbon;

    b. actual or potential policies or regulations limiting or discouraging the emission of Greenhouse Gases;

    c. actual or potential policies or regulations limiting or discouraging the use or development of Fossil Fuels;

    d. actual or potential policies or regulations promoting or incentivizing the use or development of Renewable Energy;

e. actual or potential policies or regulations Concerning Climate Change;

f. actual or potential effects of Climate Change; and/or

g. changes or potential changes in the price of oil, gas, and other hydrocarbons.

8. All Documents and Communications from PwC's audit files for Exxon Concerning Exxon's oil, gas, and other hydrocarbon reserves, resource base, and potential resource base; E&P-related write-downs, impairment charges, impairment testing or analysis, and triggers for impairment testing or analysis, actual or potential; and capital expenditures or allocation based on actual or potential impacts of Climate Change or policies or regulations Concerning Climate Change.

9. Indices of PwC's work papers, permanent files, and desk files Concerning PwC's audits of Exxon's financial statements.

10. All engagement letters Concerning Exxon's retention of PwC.

11. All management representation letters Concerning PwC's audits of Exxon's financial statements.

12. All Documents and Communications Concerning Exxon's CDP submissions and PwC's analysis of Exxon's CDP submissions.

ATTACHMENT 1
Electronic Document Production Specifications

Unless otherwise specified and agreed to by the Office of the Attorney General, all responsive documents must be produced in LexisNexis® Concordance® format in accordance with the following instructions. Any questions regarding electronic document production should be directed to the Assistant Attorney General whose telephone number appears on the subpoena.

1. Concordance Production Components. A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 7.

   A. ***Native Files.*** Native format versions of produced documents that are not redacted, named by their first Bates number.

   B. ***Single-Page Image Files.*** Individual petrified page images of the produced documents in tagged image format ("TIF"), with page-level Bates number endorsements.

   C. ***Extracted or OCR Text Files.*** Document-level extracted text for each produced document or document-level optical character recognition ("OCR") text where extracted text is not available.

   D. ***Metadata Load File.*** A delimited text file that lists in columnar format the required metadata for each produced document.

   E. ***Opticon Load File.*** A delimited text file that lists the single-page TIF files for each produced document and defines (i) the relative location of the TIF files on the production media and (ii) each document break.

2. Production Folder Structure. The production must be organized according to the following standard folder structure:
   - data\ (contains production load files)
   - images\ (contains single-page TIF files, with subfolder organization)
     \0001, \0002, \0003…
   - natives\ (contains native files, with subfolder organization)
     \0001, \0002, \0003…
   - text\ (contains text files, with subfolder organization)
     \0001, \0002, \0003…

3. De-Duplication. You must perform global de-duplication of stand-alone documents and email families against any prior productions pursuant to this or previously related subpoenas.

4. Paper or Scanned Documents. Documents that exist only in paper format must be scanned to single-page TIF files and OCR'd. The resulting electronic files should be pursued in Concordance format pursuant to these instructions. You must contact the

Assistant Attorney General whose telephone number appears on the subpoena to discuss (i) any documents that cannot be scanned, and (ii) how information for scanned documents should be represented in the metadata load file.

5. Structured Data. Structured data includes but is not limited to relational databases, transactional data, and xml pages. Spreadsheets are not considered structured data. You must first speak to the Assistant Attorney General whose telephone number appears on the subpoena.

A. Relational Databases

1. Database tables should be provided in comma-separated or other machine-readable, non-proprietary format, with each table in a separate data file. Each data file must have an accompanying data dictionary that explains the meaning of each column name and explains the values of any codes used.

2. Dates and numbers must be clearly and consistently formatted and, where relevant, units of measure should be explained in the data dictionary.

3. Records must contain clear, unique identifiers, and the data dictionary must include explanations of how the files and records relate to one another.

6. Media and Encryption. All document sets over 2 GB must be produced on CD, DVD, or hard-drive media. All production media must be encrypted with a strong password, which must be delivered independently from the production media. Document sets under 2 GB may be delivered electronically. The OAG offers a secure cloud storage option that can be set up to receive media on a one-time basis, or the OAG will download media from the providing party's server.

7. Production File Requirements.

A. ***Native Files***

- Documents that do not contain redacted information must be produced in their native format.
- The filename of each native file must match the document's beginning Bates number (BEGDOC) in the metadata load file and retain the original file extension.
- For documents produced only in native format, and not additionally as single-page image files, you must assign a single document-level Bates number and optionally provide an image file placeholder that states "Document produced only in native format."
- The relative paths to all native files on the production media must be listed in the NATIVEFILE field of the metadata load file.
- Native files that are password-protected must be decrypted prior to conversion and produced in decrypted form.
- You may be required to supply a software license for proprietary documents

produced only in native format.

B. ***Single-Page Image Files (Petrified Page Images)***

- Where possible, all produced documents must be converted into single-page tagged image format ("TIF") files.
- Image documents that exist only in non-TIF formats must be converted into TIF files.
- For documents produced only in native format, you may provide a single, TIF placeholder that states "Document produced only in native format."
- Each single-page TIF file must be endorsed with a unique Bates number.
- The filename for each single-page TIF file must match the unique page-level Bates number (or document-level Bates number for documents produced only in native format).
- Required image file format:
  - CCITT Group 4 compression
  - 2-Bit black and white
  - 300 dpi
  - Either .tif or .tiff file extension.
- TIF files must be divided into subfolders containing no more than 5000 files. Documents should not span multiple subfolders, a document with more than 5000 pages should be kept in a single folder.

C. ***Extracted or OCR Text Files***

- You must produce individual document-level text files containing the full extracted text for each produced document.
- When extracted text is not available (for instance, for image-only documents) you must provide individual document-level text files containing the document's full OCR text.
- The filename for each text file must match the document's beginning Bates number (BEGDOC) listed in the metadata load file.
- Text files must be divided into subfolders containing no more than 5000 files.

D. ***Metadata Load File***

- Required file format:
  - UTF-8
  - .dat file extension
  - Field delimiter: (ASCII decimal character 20)
  - Text Qualifier: þ (ASCII decimal character 254). Multiple value field delimiter: ; (ASCII decimal character 59)
- The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 2.
- Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
- ***Note:*** All documents must have page-level Bates numbering (except documents produced only in native format, which must be assigned a document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each document.
- Accepted date formats:

- mm/dd/yyyy
- yyyy/mm/dd
- yyyymmdd

- Accepted time formats:
  - hh:mm:ss (if not in 24-hour format, you must indicate am/pm)
  - hh:mm:ss:mmm

E. ***Opticon Load File***

- Required file format:
  - Field delimiter: , (ASCII decimal character 44)
  - No Text Qualifier
  - .opt file extension
- The comma-delimited Opticon load file must contain the following seven fields (as indicated below, values for certain fields may be left blank):
  - ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
  - VOLUME – this value is optional and may be left blank.
  - RELATIVE PATH – the file path to each single-page image file on the production media.
  - DOCUMENT BREAK – defines the first page of a document. The only possible values for this field are "Y" or blank.
  - FOLDER BREAK – defines the first page of a folder. The only possible values for this field are "Y" or blank.
  - BOX BREAK – defines the first page of a box. The only possible values for this field are "Y" or blank.
  - PAGE COUNT – this value is optional and may be left blank.
- ***Example***:

ABC00001,,IMAGES\0001\ABC00001.tif,Y,,,2
ABC00002,,IMAGES\0001\ABC00002.tif,,,,
ABC00003,,IMAGES\0002\ABC00003.tif,Y,,,1
ABC00004,,IMAGES\0002\ABC00004.tif,Y,,,1

ATTACHMENT 2
Required Fields for Metadata Load File

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE[1]
BEGDOC	Bates number assigned to the first page of the document.	ABC0001
ENDDOC	Bates number assigned to the last page of the document.	ABC0002
BEGATTACH	Bates number assigned to the first page of the parent document in a document family (*i.e.*, should be the same as BEGDOC of the parent document, or PARENTDOC).	ABC0001
ENDATTACH	Bates number assigned to the last page of the last child document in a family (*i.e.*, should be the same as ENDDOC of the last child document).	ABC0008
PARENTDOC	BEGDOC of parent document.	ABC0001
CHILDDOCS	List of BEGDOCs of all child documents, delimited by ";" when field has multiple values.	ABC0002; ABC0003; ABC0004…
COMMENTS	Additional document comments, such as passwords for encrypted files.	
NATIVEFILE	Relative file path of the native file on the production media.	.\Native_File\Folder\...\BEGDOC.ext
TEXTFILE	Relative file path of the plain text file on the production media.	.\Text_Folder\Folder\...\BEGDOC.txt
SOURCE	For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered.	Company Name, Department Name, Location, Box Number…
CUSTODIAN	Owner of the document or file.	Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name...
FROM	Sender of the email.	Firstname Lastname < FLastname @domain >
TO	All to: members or recipients, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …

[1] Examples represent possible values and not required format unless the field format is specified in Attachment 1.

CC	All cc: members, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …
BCC	All bcc: members, delimited by ";" when field has multiple values	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …
SUBJECT	Subject line of the email.	
DATERCVD	Date and time that an email was received.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
DATESENT	Date and time that an email was sent.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
CALBEGDATE	Date that a meeting begins.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
CALENDDATE	Date that a meeting ends.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
ATTACHMENTS	List of filenames of all attachments, delimited by ";" when field has multiple values.	AttachmentFileName.; AttachmentFileName.docx; AttachmentFileName.pdf;…
NUMATTACH	Number of attachments.	
RECORDTYPE	General type of record.	IMAGE; LOOSE E-MAIL; E-MAIL; E-DOC; IMAGE ATTACHMENT; LOOSE E-MAIL ATTACHMENT; E-MAIL ATTACHMENT; E-DOC ATTACHMENT
FOLDERLOC	Original folder path of the produced document.	Drive:\Folder\...\...\
FILENAME	Original filename of the produced document.	Filename.ext
DOCEXT	Original file extension.	html, xls, pdf
DOCTYPE	Name of the program that created the produced document.	Adobe Acrobat, Microsoft Word, Microsoft Excel, Corel WordPerfect…
TITLE	Document title (if entered).	
AUTHOR	Name of the document author.	
REVISION	Number of revisions to a document.	18
DATECREATED	Date and time that a document was created.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss

DATEMOD	Date and time that a document was last modified.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
FILESIZE	Original file size in bytes.	
PGCOUNT	Number of pages per document.	
IMPORTANCE	Email priority level if set.	Low, Normal, High
MD5HASH	MD5 hash value computed from native file (a/k/a file fingerprint).	
SHA1HASH	SHA1 hash value	
MSGINDEX	Email message ID	
CONVERSATIONINDEX	Email Conversation Index	

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

State of _____}

County of _____}

I, _____, being duly sworn, state as follows:

1. I am employed by Respondent in the position of _____;

2. Respondent's productions and responses to the Subpoena of the Attorney General of the State of New York, dated _____, 20____ (the "Subpoena") were prepared and assembled under my personal supervision;

3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;

4. Respondent's productions and responses to the Subpoena are complete and correct to the best of my knowledge and belief;

5. No Documents or information responsive to the Subpoena have been withheld from Respondent's production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;

6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log;

7. The Documents contained in Respondent's productions and responses to the Subpoena are authentic, genuine and what they purport to be;

8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and

9. Attached is a true and accurate statement of those requests under the Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

_____ _____
Signature of Affiant Date

_____
Printed Name of Affiant

* * *

Subscribed and sworn to before me this _____ day of _____, 20____.

_____, Notary Public

My commission expires: _____

Exhibit 7

At IAS Part 61 of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse at 60 Centre Street, New York, New York, on the 18th day of October, 2016

PRESENT: The Hon. BARRY R. OSTRAGER JSC
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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,

For an order pursuant to C.P.L.R. § 2308(b) to compel compliance with a subpoena issued by the Attorney General

- against -

PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION,

Respondents.

Index No. 451962/16

ORDER TO SHOW CAUSE

ORAL ARGUMENT REQUESTED

MOTION SEQUENCE # 001

Upon the Office of the Attorney General's Memorandum of Law in Support of its motion to compel compliance with a *subpoena duces tecum* issued to PricewaterhouseCoopers LLP ("PwC") dated August 19, 2016 in connection with the Attorney General's investigation of Exxon Mobil Corporation ("Exxon") (together with PwC, "Respondents"), the annexed Affirmation of Katherine C. Milgram in Support of such motion to compel dated October 14,

2016, and upon all the other documentation submitted in support of such motion, and sufficient cause having been alleged therefor, it is hereby

ORDERED that the Respondents appear and show cause before IAS Part 61 of the Supreme Court, New York County, at the Courthouse located at 60 Centre Street, Room 341 New York, New York, on the 24th day of October 2016, at 9:30 a.m./~~p.m.~~ or as soon thereafter as counsel may be heard, why an Order should not be issued pursuant to New York Civil Procedure Law and Rules Sections 403(d) and 2308(b)(1):

1. compelling Respondents, within 10 days of issuance of this Order, to comply with the Attorney General's *Subpoena Duces Tecum* dated August 19, 2016, without applying a purported accountant-client privilege; and
2. granting such other and further relief as the Court deems just and proper.

ORDERED that any opposition papers shall be served on Petitioner by electronic mail to Petitioner's counsel, Katherine C. Milgram, at katherine.milgram@ag.ny.gov, by ~~5:00 p.m. three days prior to the date set forth above for the hearing on Petitioner's motion to compel.~~ with working copies delivered to Room 341 by October 20 at 11:00 a.m.

ORDERED that any reply papers shall be served on Respondents by electronic mail to Respondent Exxon's counsel, Theodore Wells Jr., at twells@paulweiss.com and Michele Hirshman, at mhirshman@paulweiss.com, and to Respondent PwC's counsel, David Meister, at david.meister@skadden.com, and Jocelyn Strauber, at jocelyn.strauber@skadden.com, by ~~5:00 p.m. one day prior to the date set forth above for the hearing on Petitioner's motion to compel.~~ with a working copy delivered to Room 341 by October 21 at noon.

ORDERED, that service of a copy of this Order and the papers upon which it is granted by electronic mail to Respondent Exxon's counsel, Theodore Wells Jr. and Michele Hirshman,

and to Respondent PwC's counsel, David Meister and Jocelyn Strauber, on or before October 19, shall be deemed sufficient service, assuming counsel has consented to accept service or jurisdiction has otherwise been obtained.

ENTER:

J.S.C.

BARRY R. OSTRAGER
JSC

ORAL ARGUMENT DIRECTED

J.S.C.

BARRY R. OSTRAGER
JSC

Exhibit 8

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 3601, OFFICE TOWER A, BEIJING FORTUNE PLAZA
NO. 7 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

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

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

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

WRITER'S DIRECT DIAL NUMBER
212-373-3747

WRITER'S DIRECT FACSIMILE
212-492-0747

WRITER'S DIRECT E-MAIL ADDRESS
mhirshman@paulweiss.com

MATTHEW W. ABBOTT
ALLAN J. ARFFA
ROBERT A. ATKINS
DAVID J. BALL
SCOTT A. BARSHAY
JOHN F. BAUGHMAN
LYNN B. BAYARD
DANIEL J. BELLER
CRAIG A. BENSON
MITCHELL L. BERG
MARK S. BERGMAN
DAVID M. BERNICK
JOSEPH J. BIAL
BRUCE BIRENBOIM
H. CHRISTOPHER BOEHNING
ANGELO BONVINO
JAMES L. BROCHIN
RICHARD J. BRONSTEIN
DAVID W. BROWN
SUSANNA M. BUERGEL
PATRICK S. CAMPBELL*
JESSICA S. CAREY
JEANETTE K. CHAN
GEOFFREY R. CHEPIGA
ELLEN N. CHING
WILLIAM A. CLAREMAN
LEWIS R. CLAYTON
JAY COHEN
KELLEY A. CORNISH
CHRISTOPHER J. CUMMINGS
CHARLES E. DAVIDOW
THOMAS V. DE LA BASTIDE III
ARIEL J. DECKELBAUM
ALICE BELISLE EATON
ANDREW J. EHRLICH
GREGORY A. EZRING
LESLIE GORDON FAGEN
MARC FALCONE
ROSS A. FIELDSTON
ANDREW C. FINCH
BRAD J. FINKELSTEIN
BRIAN P. FINNEGAN
ROBERTO FINZI
PETER E. FISCH
ROBERT C. FLEDER
MARTIN FLUMENBAUM
ANDREW J. FOLEY
ANDREW J. FORMAN*
HARRIS B. FREIDUS
MANUEL S. FREY
ANDREW L. GAINES
KENNETH A. GALLO
MICHAEL E. GERTZMAN
ADAM M. GIVERTZ
SALVATORE GOGLIORMELLA
ROBERT D. GOLDBAUM
NEIL GOLDMAN
ROBERTO J. GONZALEZ*
CATHERINE L. GOODALL
ERIC GOODISON
CHARLES H. GOOGE, JR.
ANDREW G. GORDON
UDI GROFMAN
NICHOLAS GROOMBRIDGE
BRUCE A. GUTENPLAN
GAINES GWATHMEY, III
ALAN S. HALPERIN
JUSTIN G. HAMILL
CLAUDIA HAMMERMAN
BRIAN S. HERMANN
MICHELE HIRSHMAN
MICHAEL S. HONG
DAVID S. HUNTINGTON
AMRAN HUSSEIN
LORETTA A. IPPOLITO
BRIAN C. KERR
DARREN LAVERBACH
MEREDITH J. KANE
JONATHAN S. KANTER
ROBERTA A. KAPLAN
BRAD S. KARP
PATRICK N. KARSNITZ
JOHN C. KENNEDY
BRIAN KIM
ALAN W. KORNBERG
DANIEL J. KRAMER
DAVID K. LAKHDHIR
STEPHEN P. LAMB*
JOHN E. LANGE
GREGORY F. LAUFER
DANIEL J. LEFFELL
XIAOYU GREG LIU
JEFFREY D. MARELL
MARCO V. MASOTTI
EDWIN S. MAYNARD
DAVID W. MAYO
ELIZABETH R. McCOLM
MARK F. MENDELSOHN
CLAUDINE MEREDITH-GOUJON
WILLIAM B. MICHAEL
TOBY S. MYERSON
JUDIE NG SHORTELL*
CATHERINE NYARADY
JANE B. O'BRIEN
ALEX YOUNG K. OH
BRAD R. OKUN
KELLEY D. PARKER
VALERIE E. RADWANER
CARL L. REISNER
LORIN L. REISNER
WALTER G. RICCIARDI
WALTER RIEMAN
RICHARD A. ROSEN
ANDREW N. ROSENBERG
JACQUELINE P. RUBIN
CHARLES F. "RICK" RULE*
RAPHAEL M. RUSSO
ELIZABETH M. SACKSTEDER
JEFFREY D. SAFERSTEIN
JEFFREY B. SAMUELS
DALE M. SARRO
TERRY E. SCHIMEK
KENNETH M. SCHNEIDER
ROBERT B. SCHUMER
JOHN M. SCOTT
STEPHEN J. SHIMSHAK
DAVID R. SICULAR
MOSES SILVERMAN
STEVEN SIMKIN
JOSEPH J. SIMONS
AUDRA J. SOLOWAY
SCOTT M. SONTAG
TARUN M. STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
MONICA K. THURMOND
DANIEL J. TOAL
LIZA M. VELAZQUEZ
LAWRENCE G. WEE
THEODORE V. WELLS, JR.
STEVEN J. WILLIAMS
LAWRENCE I. WITDORCHIC
MARK B. WLAZLO
JULIA MASON WOOD
JENNIFER H. WU
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

October 18, 2016

By NYSCEF

The Honorable Barry R. Ostrager
Supreme Court of the State of New York
Commercial Division
60 Centre Street, Room 629
New York, NY 10007

Re: In the Matter of the Application of the People of the State of New York, by Eric T. Schneiderman, Index No. 451962/2016.

Dear Justice Ostrager:

We represent Respondent Exxon Mobil Corporation ("ExxonMobil") in connection with the above referenced matter. We write in response to the letter sent to your Honor last night by the Office of the Attorney General of the State of New York (the "Attorney General"). As an initial matter, we wish to reiterate that ExxonMobil does not object to this Court's consideration of the Attorney General's application regarding the applicability of the accountant-client privilege.[1]

As the Attorney General notes in its letter, ExxonMobil recently filed a motion to amend its complaint to add the Attorney General as a defendant in his official capacity in a pending action in the United States District Court for the Northern District of Texas. Surprisingly, the Attorney General asserts that ExxonMobil's effort to protect

[1] *See* Resp.'s Memo. of Law in Opp. 1, Oct. 17, 2016, NYSCEF No. 18.

its rights with respect to the Attorney General's investigation is somehow an effort to "evade" this Court's jurisdiction over the Parties' dispute over the applicability of the accountant-client privilege. The Attorney General is attempting to conflate two entirely separate proceedings. The Texas action concerns the propriety of the Attorney General's investigation and whether the Attorney General has violated ExxonMobil's rights under the United States Constitution. The Attorney General's Application is narrowly focused on the applicability of the accountant-client privilege to documents sought by the Attorney General pursuant to a subpoena issued to ExxonMobil's auditor, PricewaterhouseCoopers LLP ("PwC").

In its letter, the Attorney General also claims that ExxonMobil's opposition to the Attorney General's Application for an Order to Show Cause is an "attempt[] to slow the pace of these proceedings" and "evade" this Court's jurisdiction. Far from it. ExxonMobil welcomes the opportunity to have this Court rule on the Attorney General's challenge to the possible assertion of the accountant-client privilege, and certainly has not attempted to "evade" this Court's jurisdiction, despite the Attorney General's unsupported assertion to the contrary. ExxonMobil simply requests that the Attorney General follow the proper procedure. As explained in its Memorandum of Law in Opposition to the Attorney General's Application, ExxonMobil does "not object to this Court's treatment of the Attorney General's filing as if it were a notice of petition—as it should have been filed—and the subsequent setting of a briefing schedule convenient to the parties to address the merits of the Attorney General's claims."[2]

Respectfully,

/s/ Michele Hirshman

Michele Hirshman

cc:

Katherine Milgram, Esq.
John Oleske, Esq.
Mandy DeRoche, Esq.
Jonathan Zweig, Esq.
David Meister, Esq.
Jocelyn Strauber, Esq.
Patrick Conlon, Esq.
Theodore V. Wells, Jr., Esq.
Michelle Parikh, Esq.
Abel McDonnell, Esq.

[2] *Id.*

Exhibit 9

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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,

For an order pursuant to C.P.L.R. § 2308(b) to compel compliance with a subpoena issued by the Attorney General

-against-

PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION,

Respondents.

Index No. 451962/2016

CORRECTED MEMORANDUM OF LAW OF RESPONDENT EXXON MOBIL CORPORATION IN OPPOSITION TO THE OFFICE OF THE ATTORNEY GENERAL'S MOTION TO COMPEL COMPLIANCE WITH AN INVESTIGATIVE SUBPOENA

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

Attorneys for Respondent Exxon Mobil Corporation

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS 1

ARGUMENT 6

I. Texas Occupations Code Section 901.457 Creates an Evidentiary Privilege. 6

A. The Text and Structure of Section 901.457 Reveal that Texas' Accountant-Client Privilege Is an Evidentiary Privilege. 6

B. The Cases Cited By the Attorney General Do Not Establish the Non-Existence of the Privilege. 11

II. Section 901.457 Does Not Yield To the Attorney General's Subpoena. 14

III. Under Choice of Law Rules, New York Privilege Law Does Not Control This Case. 16

IV. This Court Should Not Grant the Attorney General's Request in the Absence of an Appropriate Record. 18

CONCLUSION 21

TABLE OF AUTHORITIES

Page(s)

Cases

Affiliated of Fla., Inc. v. *U-Need Sundries, Inc.*,
397 So. 2d 764 (Fla. Dist. Ct. App. 1981) 11

In re Arnold,
No. 13-12-00619-CV, 2012 WL 6085320 (Tex. App., Nov. 30, 2012) 11, 12, 15

Babcock v. *Jackson*,
12 N.Y.2d 473 (1963) 16

Bamco 18 v. *Reeves*,
685 F. Supp. 414 (S.D.N.Y. 1988) 17

Bd. of Educ. for City Sch. Dist. of City of Buffalo v. *Buffalo Teachers Fed'n, Inc.*,
191 A.D.2d 985 (4th Dep't 1993) 19

In re Bell,
91 S.W.3d 784 (Tex. 2002) 7

Boudreaux v. *State of La., Dep't of Transp.*,
11 N.Y.3d 321 (2008) 20

Cantu v. *TitleMax, Inc.*,
No. 5:14-CV-628 RP, 2015 WL 5944258 (W.D. Tex. Oct. 9, 2016) 12

Canyon Partners, L.P. v. *Developers Diversified Realty Corp.*,
No. 3-04-CV-1335-L, 2005 WL 5653121 (N.D. Tex. Nov. 4, 2005) 12, 13

Channel Two Television Co. v. *Dickerson*,
725 S.W.2d 470,472 (Tex. App. Houston 1987) 15, 16

Crair v. *Brookdale Hosp. Med. Ctr.*,
94 N.Y.2d 524, 728 N.E.2d 974 (2000) 20

Dep't of Econ. Dev. v. *Arthur Andersen & Co. (USA)*,
139 F.R.D. 295 (S.D.N.Y. 1991) 19

Desiderio v. *Ochs*,
100 N.Y.2d 159 (2003) 9

In re Doe,
964 F.2d 1325 (2d Cir. 1992) 18

Ernst & Ernst v. *Underwriters Nat. Assur. Co.*,
381 N.E.2d 897 (Ind. App. 1978) 11

Ferko v. *National Ass'n for Stock Car Auto Racing, Inc.*,
218 F.R.D. 125 (E.D.Tex.2003) 12

First Interstate Credit All., Inc. v. *Arthur Andersen & Co.*,
150 A.D.2d 291 (1st Dep't 1989) 17

Gearhart v. *Etheridge*,
208 S.E.2d 460 (Ga. 1974) 11

Greschler v. *Greschler*,
51 N.Y.2d 368 (1980) 20

In re Higgins,
246 S.W.3d 744 (Tex. App. 2007) 8

Jones v. *Bill*,
10 N.Y.3d 550 (2008) 9

In re Natividad Arriola,
159 S.W.3d 670 (Tex. App. Ct. Corpus Christi 2004) 15

In re Patel,
218 S.W.3d 911 (Tex. App. 2007) 13

Pritchard v. *County of Erie*,
No. 04CV534C, 2006 WL 29227852 (W.D.N.Y. 2006) 18

Rodriguez v. *State*,
469 S.W.3d 626 (Tex. App. 2015) 15

Sims v. *Kaneb Servs, Inc.*,
No. B14-87-00608-CV, 1988 Tex. App. LEXIS 2243 (Tex. App.
June 16, 1988) 12

In re Smith,
333 S.W.3d 582 (Tex. 2011) 6

Unigard Sec. Ins. Co. v. *Schaefer*,
572 S.W.2d 303 (Tex. 1978) 7

In re United Servs. Auto. Ass'n,
307 S.W.3d 299 (Tex. 2010) 6

Victor Stanley, Inc. v. *Creative Pipe, Inc.*,
250 F.R.D. 251 (D.Md. 2008) 18

Willis v. *Willis*,
79 A.D.3d 1029 (2d Dep't 2010) 18

Yellow Book of NY L.P. v. *Dimilia*,
188 Misc.2d 489 (N.Y. Sup. Ct. 2001) 11

Statutes

N.J. Stat. § 45:2B-65 9

New York Privilege Law 16

Tex. Gov't Code § 311.023(7) 6

Tex. Gov't Code § 311.024 8

Tex. Occ. Code § 160.007(a) 8

Tex. Occ. Code § 258.102 8

Tex. Occ. Code § 901.457(a) 7, 14

Tex. Occ. Code § 901.457(b) 7, 13, 14

Tex. Occ. Code § 901.457(b)(3) 9, 14, 15

Tex. Occ. Code § 901.457 10

§ 26, 1989 Tex. Sess. Law Serv. 41a-1 10

§ 28, 1989 Tex. Sess. Law Serv. 892 10

Texas Occupations Code section 901.457 ..... *passim*

Texas Securities Act 7

Other Authorities

CPLR § 402 5

1-4 Dorsaneo, *Texas Litigation Guide* § 4.03(2) 6

Binimow, Precidential Effect of Unpublished Opinions, 2000 A.L.R. 5th
17 (West Group) 11

Tex. R. Evid. 501 8

Respondent Exxon Mobil Corporation ("ExxonMobil") submits this memorandum of law in opposition to the request of Petitioner New York Attorney General Eric Schneiderman ("Attorney General") to compel compliance with an investigative subpoena issued by the Attorney General to PricewaterhouseCoopers LLC ("PwC"), ExxonMobil's independent auditor. Before ExxonMobil has even asserted a claim of privilege over a single responsive PwC document, the Attorney General asks this Court to decide an issue of first impression under Texas law: whether Texas Occupations Code section 901.457 creates an evidentiary accountant-client privilege. The small handful of cases that cite section 901.457 only mention the statute in a conclusory fashion and in dicta, and none of those cases contain a detailed analysis of the statutory text, the title of the statute, the history of the statute, the existence of similar statutes creating evidentiary privileges applicable to other professions, or the legislative history of the statute. The record upon which Attorney General seeks this Court's intervention is virtually nonexistent, and at this juncture, any decision on this issue would be premature. Because this issue is one of first impression and necessarily will be the subject of an appeal by the loser and is an issue of importance to the practice of accountants in Texas, this Court should await a more concrete record.

The Attorney General's motion should be denied for four reasons. *First*, the text and structure of section 901.457, which is entitled "Accountant-Client Privilege" and directs that certain documents and communications between an accountant and its client should not be disclosed, make clear that an accountant-client privilege exists under Texas law. While section 901.457 includes certain limited enumerated exceptions to the application of the privilege, those exceptions do not encompass a subpoena by the New

York Attorney General. *Second*, the Attorney General's argument that, even if there is a privilege under Texas law, two of the exceptions under section 901.457 justify disclosure pursuant to the subpoena, is incorrect. Despite the Attorney General's arguments to the contrary, the Attorney General's subpoena falls neither within the limited exception for subpoenas issued pursuant to certain laws and regulations—none of which include New York law—nor within the exception for court orders by virtue of the fact that it is subject to judicial enforcement. And while ExxonMobil acknowledges that section 901.457 does create an exception for court orders, a ruling that no accountant-client privilege exists under Texas law, as the Attorney General asks for here, cannot be the "court order" that the exceptions contemplate. Because there is no claim of privilege over any document, there is no record on which this Court could issue an order that would fall within the Texas statute. *Third*, the Attorney General argues in the alternative that regardless of whether the Texas statute creates an evidentiary privilege, Texas law should not apply and instead New York law, which does not have an accountant-client privilege, governs under choice of law principles. The Attorney General is incorrect. Under well-established New York choice of law principles, Texas law controls the potential applicability of the privilege because of Texas' far greater interest in the treatment of communications between PwC and ExxonMobil. *Fourth*, the Attorney General's request for an order in this case is premature and seeks an abstract ruling on a novel issue in Texas law.

If the Court decides to consider the applicability of the privilege, as the Attorney General requests, in a vacuum, the Court should deny the request because the section 901.457 clearly creates an evidentiary privilege on its face. In the alternative, the

Court should deny the Attorney General's request for an order until after such time that ExxonMobil has actually asserted the privilege to withhold specific documents and the Attorney General has articulated a need for those documents sufficient to overcome the privilege, should that time ever come.

STATEMENT OF FACTS

On August 19, 2016, the Attorney General issued a *subpoena duces tecum* to PwC pertaining to its client ExxonMobil (the "PwC Subpoena"). The PwC Subpoena seeks documents related to PwC's audit of ExxonMobil, among other topics. This PwC Subpoena had an original return date of September 2, 2016. (Milgram Aff. ¶ 14.)[1] Some of the documents in PwC's possession that are potentially responsive to the PwC Subpoena may be privileged under Texas state law, specifically Texas Occupations Code section 901.457, titled the "Accountant-Client Privilege."

On September 7, 2016, counsel for ExxonMobil informed the Attorney General that some of the documents in PwC's possession that are potentially responsive to the PwC Subpoena may be privileged under Texas Occupations Code section 901.457. (Milgram Aff. ¶ 16.) Separately, the Attorney General agreed to PwC's request to extend the return date of the PwC Subpoena, with an agreement by PwC that it would begin to provide certain categories of documents to the Attorney General on September 23, 2016. (*Id.* ¶ 17.)

On September 23, 2016, counsel for ExxonMobil informed the Attorney General that it intended to review "certain categories of responsive documents that may be subject to the accountant-client privilege, prior to production of those documents by

[1] Citations in the form "Milgram Aff. __" are references to the Affirmation of Katherine C. Milgram in Support of the Office of the Attorney General's Motion to Compel Compliance with an Investigative Subpoena, dated October 14, 2016.

PwC." (Milgram Aff. Ex. H.) Counsel for ExxonMobil informed the Attorney General that if it determined that any responsive document was privileged under Texas law, it would assert the privilege and provide a privilege log. (*See id.*) The Attorney General raised no objection at that time.

PwC has made three productions to the Attorney General. (Milgram Aff. ¶ 19.) As part of its production of documents, PwC had, as of October 14, shared with ExxonMobil 126 documents, of which ExxonMobil is still deliberating as to the application of a privilege with respect to nine. To date, ExxonMobil has not asserted the accountant-client privilege to withhold a single responsive document from the PwC productions to the Attorney General.

On the morning of October 14, 2016, Katherine Milgram, Chief of the Investor Protection Bureau of the New York Attorney General's Office, left a voicemail for counsel for ExxonMobil, stating the Attorney General's view that section 901.457 did not constitute a rule of evidentiary privilege and indicating that the Attorney General had previously assured ExxonMobil and PwC of its intent to treat the documents provided pursuant to the subpoena confidentially. (*See* Hirshman Aff. ¶ 3 & Ex. A.)[2] Ms. Milgram asked that counsel let the Attorney General know if ExxonMobil intended to withdraw its accountant-client privilege claim and to allow PwC to produce documents without a document-by-document privilege review by Exxon. (*See id.*) This voicemail said nothing about the Attorney General's intention to file a motion with the Court. (*See id.*) That same afternoon, counsel for ExxonMobil contacted Ms. Milgram via email to

[2] Citations in the form "Hirshman Aff. __" are references to the Affirmation of Michele Hirshman in Support of ExxonMobil's Opposition to the Application for an Order to Show Cause, dated October 17, 2016.

confirm the receipt of her voicemail message and "arrange a call next week to discuss the accountant privilege." (Hirshman Aff. Ex. B.) However, approximately twenty minutes *before* counsel for ExxonMobil sent the above response to the Attorney General's voicemail message, and less than four hours after making its demand, the Attorney General filed its Application for an Order to Show Cause. Approximately two hours after commencing this action, Ms. Milgram left another voicemail for ExxonMobil's counsel, acknowledging receipt of counsel's email and indicating that the Attorney General's Office was happy to discuss the matter further, but also informing counsel that the Attorney General "went ahead and filed a motion today, in New York Supreme" and would serve a copy of the papers on counsel. (Hirshman Aff. ¶ 7 & Ex. C.) Copies of the Attorney General's papers were provided by email to counsel for ExxonMobil at approximately 5:18pm on October 14, 2016.[3] (*See* Hirshman Aff. Ex. D.)

On October 17, 2016, ExxonMobil submitted a letter to the Court requesting an opportunity to be heard regarding the Attorney General's Application. (Dkt. No. 17.) That morning, counsel for all parties had a telephone conference with the Court's staff regarding the Attorney General's Application. (*See* Dkt. No. 24 at 1.) Later that day, ExxonMobil submitted a memorandum of law in opposition to the Attorney General's Application, arguing that it was improper under New York law to proceed by way of an order to show cause because there were no emergent circumstances and a motion could have been filed. (Dkt. No. 18.) The Attorney General responded with a letter later that evening alleging that ExxonMobil was seeking to "evade" this Court's

[3] ExxonMobil notes that the Attorney General failed to even file a petition in this action, which arguably renders the Attorney General's Application defective. *See* CPLR § 402. The Attorney General's surprising oversight only serves to highlight the Attorney General's rush to the courthouse in this case.

consideration of the issue. (Dkt. No. 24 at 2.) ExxonMobil responded and reiterated its prior assent for this Court to consider the issue raised by the Attorney General's papers. (Dkt. No. 31 at 1.) The next day, the Court set a briefing schedule and ordered the parties to appear on October 24, 2016. (Dkt. 32 No. at 2-3.)

The Attorney General does not seek to compel production of any specific documents. The Attorney General's motion is premised not on an assertion of privilege or a refusal to provide responsive documents, but rather upon ExxonMobil's request and PwC's agreement that ExxonMobil review certain responsive documents to determine *if* ExxonMobil should assert privilege with respect to those documents. The relief sought by the Attorney General should not be granted.

ARGUMENT

I. TEXAS OCCUPATIONS CODE SECTION 901.457 CREATES AN EVIDENTIARY PRIVILEGE.

The plain language of Texas Occupations Code section 901.457 clearly creates an accountant-client evidentiary privilege. No Texas case holds to the contrary. The issue of whether section 901.457 creates an evidentiary privilege is one of first impression. No court has confronted this issue directly or issued an opinion that analyzes comprehensively whether such an evidentiary privilege exists. The Attorney General's refusal to acknowledge the privilege is grounded in a strained reading of the statutory text and a collection of cases which we address and distinguish in Part I.B, *infra*. We begin with an analysis of the text of section 901.457.

A. The Text and Structure of Section 901.457 Reveal that Texas' Accountant-Client Privilege Is an Evidentiary Privilege.

The plain language of Texas Occupations Code section 901.457—titled "Accountant-Client Privilege"—creates an evidentiary privilege. When interpreting a

Texas statute, a court must "begin with its language." *In re Smith*, 333 S.W.3d 582, 586 (Tex. 2011); *accord* 1-4 William V. Dorsaneo III, *Texas Litigation Guide* § 4.03(3)(a). At the outset, section 901.457's title, the "Accountant-Client Privilege," makes clear that the statute creates an evidentiary privilege. While "a heading cannot limit or expand the statute's meaning, the heading gives some indication of the Legislature's intent." *In re United Servs. Auto. Ass'n*, 307 S.W.3d 299, 307 (Tex. 2010) (internal quotation marks and citation omitted)); *see also* 1-4 Dorsaneo, *Texas Litigation Guide* § 4.03(2) (title of a statute "may be of assistance in ascertaining legislative intent"); Tex. Gov't Code § 311.023(7) (allowing Texas courts to use the title to construe a statute). The text of section 901.457 expressly prohibits an accountant from "voluntarily disclos[ing] information" received from its client "in connection with services provided to the client . . . except with the permission of the client or the client's representative." Tex. Occ. Code § 901.457(a).

The enumeration of specific exceptions to the confidentiality mandate for accountant-client communications set forth within the statute further supports the view that section 901.457 prohibits disclosure for any other reasons. "When specific exclusions or exceptions to a statute are stated by the Legislature, the intent is usually clear that no others shall apply." *Unigard Sec. Ins. Co.* v. *Schaefer*, 572 S.W.2d 303, 307 (Tex. 1978); *accord* 1-4 Dorsaneo, *supra*, § 4.03(6). The accountant-client privilege is not absolute; seven carefully delineated exceptions allow disclosure to certain parties in certain circumstances. *See* Tex. Occ. Code § 901.457(b). There is in fact a specific carve-out for subpoenas. The only subpoenas in response to which an accountant may disclose client information are those issued under (i) the federal securities laws, (ii) the

Internal Revenue Code, or (iii) the Texas Securities Act. Disclosure may also be made "in the course of a peer review under Section 901.159 or in accordance with the requirements of the Public Company Accounting Oversight Board." *Id.* at § 901.457(b)(2), (6). However, section 901.457(b) ***does not*** authorize disclosure to law enforcement in sister states pursuant to a subpoena. Under Texas law, "every word excluded from a statute must . . . be presumed to have been excluded for a purpose." *In re Bell*, 91 S.W.3d 784, 790 (Tex. 2002) (internal quotation marks omitted). Because section 901.457 prohibits an accountant from disclosing client materials without client permission and the Texas legislature chose to exclude subpoenas—except those issued pursuant to the specific statutes listed above—PwC may not provide documents to the Attorney General without ExxonMobil's consent.[4]

The Attorney General's attempts to deny that the Texas statute establishes an accountant-client privilege are unavailing. *First*, it is of no moment that the accountant-client privilege does not appear in the Texas Rules of Evidence. The Rules themselves state quite clearly that evidentiary privileges may be created by "a Constitution, ***a statute***, these rules or ***other rules prescribed under statutory authority***." Tex. R. Evid. 501 (emphasis added). Indeed, a number of established privileges under Texas law are not found in the Rules of Evidence. The Texas Occupations Code itself creates several privileges in addition to the accountant-client privilege, including the medical peer review privilege, Tex. Occ. Code § 160.007(a), the dentist-patient privilege, *id.* § 258.102, and the podiatrist-patient privilege, *id.* § 202.402.

[4] The Attorney General notes that the title of section 901.457 is a section heading that "does not limit or expand the meaning of a statute," Tex. Gov't Code § 311.024. As explained above, the plain meaning of section 901.457 severely restricts the possibilities for involuntary disclosure. Accordingly, the statute describes a privilege, and its title does not "expand" its meaning.

Courts have interpreted these sections to establish evidentiary privileges. *See, e.g.*, *In re Higgins*, 246 S.W.3d 744, 745 (Tex. App. 2007) (holding dental records to be privileged based on a "plain reading of" Tex. Occ. Code § 258.102); *In re Mem'l Hermann Hosp. Sys.*, 464 S.W.3d 686, 715 (Tex. 2015) (deciding that certain documents retained protection under the privilege); *In re Living Centers of Texas, Inc.*, 175 S.W.3d 253, 257 (Tex. 2005) (observing that the privilege extends to communications to a medical peer review committee); *In re Univ. of Texas Health Ctr. at Tyler*, 33 S.W.3d 822, 827-28 (Tex. 2000) (vacating order to produce documents based on privilege). The Attorney General's observation that the accountant-client privilege does not appear in the Texas Rules of Evidence is irrelevant.

Second, the Attorney General argues that the Texas accountant-client privilege is analogous to the "confidentiality" provisions of New Jersey and other states that contain exceptions for disclosure in court proceedings. (*See* AG Mem. at 10-11 (citing N.J. Stat. § 45:2B-65).)[5] But this comparison is inapt. For one thing, New Jersey's statute does not describe itself as a privilege; instead it merely provides that specified materials "shall be deemed confidential." *Compare* N.J. Stat. § 45:2B-65 ("Disclosure of information") *with* Tex. Occ. Code § 901.457 ("Accountant-Client Privilege"). Moreover, the New Jersey statute broadly allows "disclosures in court proceedings [and] investigations," N.J. Stat. Ann. § 45:2B-65, in addition to disclosures in other circumstances. Section 901.457 contains no such language.

[5] References in the form "AG Mem. at __" refer to the Memorandum of Law in Support of Motion to Compel Complaint with an Investigative Subpoena Issued by the Office of the Attorney General of the State of New York, Dkt. No. 10.

The Attorney General's reliance on legislative history is similarly unavailing. Where, as here, a statute's meaning is unambiguous, there is no need to consider legislative history. *See Jones* v. *Bill*, 10 N.Y.3d 550, 554 (2008) ("As a general proposition, we need not look further than the unambiguous language of the statute to discern its meaning."); *Desiderio* v. *Ochs*, 100 N.Y.2d 159, 169 (2003) ("[A]pplication of a statute's clear language should not be ignored in favor of more equivocal evidence of legislative intent."). The Attorney General quotes preambulatory language in the legislation that enacted section 901.457 to argue that the amendment was a "nonsubstantive revision of statutes relating to the licensing and regulations of certain professions and business practices" in an apparent attempt to convince the Court that section 901.457 is of no significance. (AG Mem. at 11 (quoting 1999 Tex. ALS 388 (H.B. 3155)).) What the Attorney General fails to mention, however, is that the prior version of the accountant-client privilege under Texas law that was in effect when section 901.457 was enacted contained a substantially similar privilege for accountant-client communications in a section also titled "Accountant-client privilege."[6] Because an earlier version of the accountant-client privilege with very similar language was in place at the time of the enactment of section 901.457, the language in the preamble cited by the Attorney General sheds little light on the current statute's interpretation. The Attorney General's assertion that "there was no Texas accountant-client privilege in place at th[e] time" that § 901.457 was enacted (AG Mem. at 11 (citing *Sims* v. *Kaneb Servs, Inc*., No.

[6] *See* Public Accountants, § 26, 1989 Tex. Sess. Law Serv. 41a-1 (Vernon's) (codified as amended at Tex. Occ. Code § 901.457) ("A licensee or a partner, officer, shareholder, or employee of a licensee may not voluntarily disclose information communicated to the licensee by a client in connection with services rendered to the client by the licensee in the practice of public accountancy, except with the permission of the client or a duly appointed representative of the client."). The prior version of the statute also enumerated a limited set of exceptions to the privilege. *Id.*

B14-87-00608-CV, 1988 Tex. App. LEXIS 2243, at *14 (Tex. App. June 16, 1988),) is entirely disingenuous, as the cited case predates the privilege's original codification in 1989. *See* Public Accountants, § 28, 1989 Tex. Sess. Law Serv. 892 (Vernon's) (codified as amended at Tex. Occ. Code § 901.457). Furthermore, the general statement highlighted by the Attorney General —which applied to a number of statutes, not just section 901.457—is insufficient to overcome the plain text of the specific provision for an accountant-client privilege in section 901.457.

Finally, the Attorney General's policy arguments do not justify contravening the plain meaning of section 901.457 and the policy choices of the Texas legislature. (*See* AG Mem. at 11-12.) Several states have embraced the accountant-client privilege to protect the confidential relationship between client and accountant in order to encourage clients to provide full and frank information to accountants, thereby enabling accountants to better ensure the accuracy of their opinions. *See, e.g.*, *Gearhart* v. *Etheridge*, 208 S.E.2d 460, 461 (Ga. 1974); *Affiliated of Fla., Inc.* v. *U-Need Sundries, Inc.*, 397 So. 2d 764, 765–66 (Fla. Dist. Ct. App. 1981); *Ernst & Ernst* v. *Underwriters Nat. Assur. Co.*, 381 N.E.2d 897, 902 (Ind. App. 1978). While it may be true that the other jurisdictions that have chosen not to create an accountant-client privilege have prioritized "auditors' obligations to investors and the public" over open client-accountant communication, (AG Mem. at 11-12), that is not the choice made by Texas. Our federal system demands that States respect the policy choices of sister jurisdictions.

B. The Cases Cited by the Attorney General Do Not Establish the Non-Existence of the Privilege.

The Attorney General cites passages from four cases—only two of which are Texas state cases—for the proposition that section 901.457 does not create an

evidentiary privilege. Each quotation cited by the Attorney General is dicta, and each case is inapposite. Moreover, three of the four cases cited by the Attorney General are unpublished opinions, and "[g]enerally, unpublished decisions or opinions have no precedential value other than the persuasiveness of their reasoning." *Yellow Book of NY L.P.* v. *Dimilia*, 188 Misc.2d 489, 491 (N.Y. Sup. Ct. 2001) (citing Binimow, *Precidential Effect of Unpublished Opinions*, 2000 A.L.R. 5th 17 (West Group)). As explained below, these cases have almost no persuasive reasoning, and as such, they do not provide a basis to deny the privilege's existence.

The Attorney General's reliance on *In re Arnold*, No. 13-12-00619-CV, 2012 WL 6085320 (Tex. App., Nov. 30, 2012) is misplaced. While it is true that the court in that case observed that "the existence of an accountant-client privilege based on section 901.457" was "doubtful," it never had to decide whether section 901.457 created an evidentiary privilege because the party asserting the privilege in *In re Arnold* had "produced no evidence to substantiate any claim of an alleged privilege." *Id.* at *3. Not only was there "no evidence in the record that [the purported accountant was] a licensed accountant" but the court made clear that the "accountant was employed in a capacity other than as an accountant." *Id.* at *3-4. *In re Arnold* therefore provides no support for the Attorney General's claim that Texas has refused to recognize the accountant-client privilege.

The Attorney General cites *Cantu* v. *TitleMax, Inc.*, No. 5:14-CV-628 RP, 2015 WL 5944258 (W.D. Tex. Oct. 9, 2016), for the proposition that section 901.457 is a confidentiality provision. Without any discussion whatsoever regarding the applicable law, *Cantu* conclusorily determined that no privilege existed because it was a federal case

and the Federal Rules of Evidence do not recognize an accountant-client privilege. *See id.* at *6 ("[T]his is a federal question case and, accordingly, federal privilege law governs."). We address the choice of law question in section III, *infra*.

In *Canyon Partners, L.P.* v. *Developers Diversified Realty Corp.*, No. 3-04-CV-1335-L, 2005 WL 5653121 (N.D. Tex. Nov. 4, 2005), a federal district court "observe[d]" that neither federal nor Texas law recognizes an accountant-client privilege. But that observation was not a holding of the court, and an observational comment does not constitute a "conclu[sion]," as the Attorney General claims. (AG Mem. at 2.) Moreover, to support its observation, the *Canyon Partners* court cited two cases, neither of which support the conclusion that section 901.457 does not create an evidentiary privilege. The first, *Ferko* v. *National Ass'n for Stock Car Auto Racing, Inc.*, 218 F.R.D. 125 (E.D. Tex. 2003), is a federal case interpreting federal privilege law. *See id.* at 134. The second, *Sims* v. *Kaneb Servs, Inc*., No. B14-87-00608-CV, 1988 Tex. App. LEXIS 2243 (Tex. App. June 16, 1988), as noted above, was decided ***before*** the accountant-client privilege was adopted in 1989. Significantly, no party in *Canyon Partners* argued that the section 901.457 privilege applied. The issue was raised by a third party subpoena recipient in a letter, but the contested subpoena was actually challenged on the basis of (1) relevance, (2) burden, and (3) the availability of the subpoenaed materials from other sources. *See Canyon Partners*, 2005 WL 5653121, at *1 & n.2. *Canyon Partners'* "observation," based on nonbinding or inapplicable precedent, plainly does not establish that section 901.457 does not create an evidentiary privilege.

Finally, the Attorney General cites *In re Patel*, 218 S.W.3d 911 (Tex. App. 2007). In that case, petitioners filed a motion to quash subpoenas and deposition notices

on various grounds, including overbreadth, relevance, and materiality, as well as the assertion of the Texas accountant-client privilege. The trial court granted the motions and the Texas Court of Appeals considered the ruling on mandamus review. In making its determination, the court considered the documents sought against the objections raised and made a determination as to each argument the petitioner raised. Regarding the accountant-client privilege, the court "assum[ed] without determining that an accountant-client evidentiary privilege exists in Texas." *Id.* at 920. The court did not decide the effect of the privilege, however, because it held that the materials were sought pursuant to a court order, which fell under the exceptions enumerated in section 901.457(b). *See id.* We discuss this exception in section II, *infra*.

The dicta in those cases cited by the Attorney General do not contravene the plain language of section 901.457 clearly establishing an evidentiary privilege, and the dicta from the cases cited by the Attorney General does not change the analysis.

II. SECTION 901.457 DOES NOT YIELD TO THE ATTORNEY GENERAL'S SUBPOENA.

The Attorney General advances two contentions in an effort to support its claim that even if the Texas accountant-client privilege does exist, it does not apply here. Both are meritless.

First, the Attorney General argues that compliance with the subpoena would not be a "voluntar[y]" disclosure under section 901.457(a). (AG Mem. at 10.) Such an interpretation, however, eviscerates the exceptions enumerated in section 901.457(b). Had the Texas legislature wanted to carve out all subpoenas that are potentially subject to judicial enforcement from the protections of section 901.457, it could have done so. It did not. Section 901.457(b) creates an exception for a limited set

of summons or subpoenas: those issued under the Internal Revenue Code or the federal and Texas securities laws. However, section 901.457(b) ***does not*** authorize disclosure pursuant to a subpoena issued by law enforcement in another jurisdiction. The Attorney General's subpoena does not fall under any exception and, indeed, his interpretation of "voluntar[y]" would make the enumerated subpoenas in section 901.457(b) superfluous. Because section 901.457 prohibits an accountant from disclosing client materials without client consent and the Texas legislature chose to exclude subpoenas issued by other state law enforcement from its enumerated exceptions, the Attorney General's subpoena does not abrogate the protection of section 901.457(b).

Second, the Attorney General asserts that a judicially enforceable subpoena satisfies the "court order" exception under § 901.457(b)(3). However, none of the cases cited by the Attorney General remotely supports this assertion. *In re Arnold*, 2012 WL 6085320, unlike the situation here, involved a deposition notice that had been subject to a motion to quash. The court denied that motion, thereby effectively elevating the notice to a court order. *Id.* at *4. In *In re Natividad Arriola*, 159 S.W.3d 670 (Tex. App. Ct. Corpus Christi 2004), the court found that the information sought had to be disclosed because the materials at issue fell squarely under the abuse-and-neglect exception to the applicable privilege. *Id.* at 674. *Finally*, in *Rodriguez* v. *State*, 469 S.W.3d 626 (Tex. App. 2015), the court relied on the criminal prosecution exception to the physician-patient confidentiality provision in addition to the court order exception. *See id.* at 632. The cases cited by the Attorney General do not show that merely because a subpoena may be subject to judicial enforcement, it constitutes a court order under section 901.457(b)(3).

The Attorney General next argues that even if the PwC Subpoena itself does not fall within the exceptions to the statute, it will transform into an exception if the Court grants the relief it seeks. But it cannot be that a ruling that there is no privilege under Texas law creates the "court order" contemplated by the statute as an exception. To be clear, such an order could be issued. In response to a concrete claim of privilege as to a specific document, this Court could deny or uphold the privilege claim. And even if it recognized the privilege claim, it could conceivably engage in some balancing that would warrant overcoming the privilege. *See Channel Two Television Co*. v. *Dickerson*, 725 S.W.2d 470,472 (Tex. App. Houston 1987) (when a privilege is asserted, "the party seeking disclosure [of the privileged material] must demonstrate that there is a compelling and overriding need for the information"). "At a minimum," a party seeking to overcome a privilege "must make a clear and specific showing in the trial court that the information sought is: (1) highly material and relevant; (2) necessary or critical to the maintenance of the claim; and (3) not obtainable from other available sources." *Id.* But that record has not been made because ExxonMobil has not asserted the privilege with regard to any document. Thus, while it is certainly possible that the "court order" exception could apply, there is no record here to support its application.

III. UNDER CHOICE OF LAW RULES, NEW YORK PRIVILEGE LAW DOES NOT CONTROL THIS CASE.

The Attorney General appears to argue that in making its determination as to the existence of the accountant-client privilege, this Court should apply New York law. This argument is predicated on the contention that the applicable law is that of the place where evidence will be introduced at trial or where the discovery proceeding occurs. (AG Mem. at 13-15.) But under New York's well-settled choice of law principles, the

governing law is that "of the jurisdiction which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in the litigation." *Babcock* v. *Jackson*, 12 N.Y.2d 473, 481 (1963). There are four facts that militate in favor of applying Texas law: (1) ExxonMobil is based in Texas; (2) the relevant information underlying PwC's audit function is located in Texas; (3) the PwC personnel who audited ExxonMobil are based in Texas and performed their work there; and (4) the bulk of the communications at issue were made in Texas. Texas therefore "has the greatest concern with the specific issue raised in the litigation," *id*., namely, whether the accountant-client privilege applies to certain communications between ExxonMobil and its auditor, PwC.

The Attorney General argues that the applicable law is that of the place where evidence will be evidence will be introduced at trial or where the discovery proceeding occurs should apply. (AG Mem. at 13-15.) But the cases cited by the Attorney General are distinguishable and inapposite. Critically, in each of those cases a lawsuit had commenced, whereas here the matter is still in the investigation phase.

The Attorney General cites *First Interstate Credit All., Inc.* v. *Arthur Andersen & Co.*, 150 A.D.2d 291, 293-94 (1st Dep't 1989) and *Bamco 18* v. *Reeves*, 685 F. Supp. 414, 416 (S.D.N.Y. 1988). Both cases, which involved litigation in New York, held that the Maryland accountant-client privilege should not apply in litigation located in New York. However, in both of those cases, the privilege was held not to apply only after a balancing of each state's interests. By virtue of the fact that both ExxonMobil and PwC's engagement team working on ExxonMobil's audit are based in Texas, and all of the communications occurred in Texas, the state of Texas—a jurisdiction with an express

statutory accountant-client privilege—has a far greater interest in the present dispute than New York. As such, these cases actually support the application of Texas law. Notably, in addition, a lawsuit had commenced in those cases, whereas this matter is still in the investigation phase.

Finally, the Attorney General's reliance on the choice of law provision in the engagement letters between ExxonMobil and PwC is misplaced. The Attorney General argues that New York law applies based on a statement in the engagement letters between ExxonMobil and PwC that "[a]ny Dispute ***between the parties***, including any claims or defenses asserted, and the interpretation of the engagement letter shall be governed by the law of New York State." (Ex. F, at PNYAG0000039, PNYAG0000047 (emphasis added).) This statement is plainly irrelevant because the subpoena is not a "[d]ispute between" ExxonMobil and PwC, and because the demands in the Attorney General's motion do not implicate the interpretation of any aspect of the engagement letters. Because the issue of whether Texas or New York privilege law applies is outside the scope of the choice-of-law provision, PwC and ExxonMobil have not contracted out of standard New York choice-of-law rules, and the principle of *Babcock* still applies.

IV. THIS COURT SHOULD NOT GRANT THE ATTORNEY GENERAL'S REQUEST IN THE ABSENCE OF AN APPROPRIATE RECORD.

Though fashioned as a request to compel compliance, the relief sought by the Attorney General is at this stage more in the nature of a declaration that no accountant-client privilege exists under Texas law. That is not to say that a time may come when a genuine controversy exists between the Attorney General and ExxonMobil regarding the applicability of the Texas accountant-client privilege to documents in PwC's possession with an appropriate record to support a decision by this Court, but that

time is not now. While this Court presumably has authority to issue a declaratory judgment on this subject, disputes regarding a claim of privilege are not ordinarily so resolved. *See Willis* v. *Willis*, 79 A.D.3d 1029, 1030 (2d Dep't 2010) ("The scope of the [attorney-client] privilege is to be determined on a case-by-case basis"); *Pritchard* v. *County of Erie*, No. 04CV534C, 2006 WL 29227852, *3 (W.D.N.Y. 2006) (declining to resolve privilege dispute prior to deposition; noting "normal practice" dictates that deposition should proceed so that parties may "create a record of where questionable inquiries, objections, or assertions of privilege arose and furnish a context for the dispute," thereby enabling the court to resolve the dispute on a "concrete record"); *Victor Stanley, Inc.* v. *Creative Pipe, Inc.*, 250 F.R.D. 251, 266 (D.Md. 2008) ("It should go without saying that the court should never be required to undertake *in camera* review unless the parties have first properly asserted privilege/protection, then provided sufficient factual information to justify the privilege/protection claimed for each document, and, finally, met and conferred in a good faith effort to resolve any disputes without court intervention."); *In re Doe*, 964 F.2d 1325, 1328 (2d Cir. 1992) (noting that the psychotherapist-patient privilege is "highly qualified and requires a case-by-case assessment of whether the evidentiary need for the psychiatric history of a witness outweighs the privacy interests of that witness); *Dep't of Econ. Dev.* v. *Arthur Andersen & Co. (USA)*, 139 F.R.D. 295, 300 (S.D.N.Y. 1991) (noting that a party may not make a "blanket assertion" of attorney client privilege; the "privilege must be determined on a case-by-case analysis of the relevant factors").

The "dispute" of which the Attorney General complains between it and ExxonMobil regarding the accountant-client privilege is too indefinite to be resolved at

this time. ExxonMobil has not directed PwC to withhold any document on the basis of the privilege, and as such, its assertion of the accountant-client privilege is a "future event that may or may not come to pass." *Bd. of Educ. for City Sch. Dist. of City of Buffalo* v. *Buffalo Teachers Fed'n, Inc.*, 191 A.D.2d 985, 986 (4th Dep't 1993) (dismissing motion for declaratory judgment as "premature"). The Attorney General asks this Court to opine on the accountant-client privilege before either ExxonMobil has even asserted the privilege or the Attorney General has advanced an argument as to why the privilege should be overcome. This Court should decline the Attorney General's request for relief until a record is developed upon which the issuance of that relief would be warranted and, in addition, to preserve scarce judicial resources that would otherwise be expended on appellate consideration of an issue given its status as one of first impression.

This approach is particularly prudent where this Court is being asked to decide the scope of a Texas statute with virtually no guidance from the Texas state courts. Because no Texas court has decided whether Texas law provides an accountant-client privilege, considerations of comity caution against New York deciding that it does not. In New York, "comity is not a rule of law, but a voluntary decision by one state to defer to the policy of another, especially 'in the face of a strong assertion of interest by the other jurisdiction.'" *Boudreaux* v. *State of La., Dep't of Transp.*, 11 N.Y.3d 321, 326 (2008) (quoting *Ehrlich–Bober & Co.* v. *University of Houston*, 49 N.Y.2d 574, 580 (1980)). In applying the doctrine of comity, New York "defer[s] to . . . the public policy embodied within the statute enacted by [the foreign] *legislature*." *Id.* at 325–26 (emphasis added). New York chooses to "apply the laws of other States where the application of those laws does not conflict with New York's public policy," *Crair* v.

Brookdale Hosp. Med. Ctr., 94 N.Y.2d 524, 528–29, 728 N.E.2d 974, 976 (2000), and "the public policy exception to the doctrine of comity is usually invoked only in the rare instance where the original claim is repugnant to fundamental notions of what is decent and just in the State where enforcement is sought," *Greschler* v. *Greschler*, 51 N.Y.2d 368, 377 (1980) (internal quotation marks omitted).

Here, Texas has statutorily expressed its public policy by creating a privilege provision entitled "Accountant-Client Privilege," Tex. Occ. Code § 901.457, which is consistent with its broader policy of extending privileges to additional professional relationships via the Texas Occupations Code beyond those privileges listed in the Texas Rules of Evidence. New York has no legitimate interest in the issue of whether Texas protects documents located in Texas according to the accountant-client privilege, so the public policy exception to the doctrine is certainly not repugnant to any New York policy. Accordingly, comity considerations call for this Court to defer to the Texas legislature and deny the Attorney General's motion to compel compliance with the subpoena.

CONCLUSION

No court has previously considered head on the question whether section 901.457 creates an evidentiary privilege. Any resolution by this Court will have significant impact on accountants and their clients in the state of Texas, and will without question ultimately be appealed by the losing party. A judicial resolution of such import should be made not in the abstract but on a developed record, which is consistent with how claims of privilege are typically and most appropriately adjudicated. Because this is an issue of first impression, the development of such a record will also economize the

expenditure of judicial resources. It would be a waste of judicial resources if, in the course of an appeal, the First Department were to decide that the Court should have waited for the development of a full record rather than addressing this issue in the abstract. Because ExxonMobil has not yet asserted the accountant-client privilege to withhold a single document from PwC's production pursuant to the Attorney General's subpoena, this Court should not issue a decision until the appropriate record—and in which ExxonMobil has actually designated and withheld specific documents as privileged and the Attorney General has made arguments challenging that designation—exists. Should the Court decide to reach the merits of the scope of section 901.457, the Court should deny the Attorney General's request for an order, as the text of section 901.457 clearly creates an evidentiary privilege and the authorities invoked by the Attorney General do not provide the type of reasoned analysis that would justify disregarding the statute's plain meaning.

For the reasons set forth above, Respondent ExxonMobil respectfully request that the Court deny Petitioner's Motion to Compel Compliance with Its Investigative Subpoena.

Dated: October 20, 2016

Respectfully submitted,

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP

/s/ Theodore V. Wells, Jr.
Theodore V. Wells, Jr.
twells@paulweiss.com
Michele Hirshman
mhirshman@paulweiss.com

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Michelle Parikh
mparikh@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Attorneys for Exxon Mobil Corporation

Exhibit 10

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 61 Mot Seq 001

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 No. 451962/16

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.

October 24, 2016
60 Centre Street
New York, NY 10007

Before:

HON. BARRY R. OSTRAGER, Justice.

Appearances:

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
ERIC T. SCHNEIDERMAN
Attorneys for Petitioner
120 Broadway
New York, New York 10271
BY: MANISHA M. SHETH, ESQ., and
KATHERINE C. MILGRAM, ESQ., and
JOHN OLESKE, ESQ., and
JONATHAN C. ZWEIG, ESQ.,
Assistant Attorneys General

(Appearances continue on next page.)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
Attorneys for Respondent PRICEWATERHOUSECOOPERS LLP
Four Times Square
New York, New York 10036
BY: DAVID MEISTER, ESQ., and
JOCELYN E. STRAUBER, ESQ.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
Attorneys for Respondent EXXON MOBIL CORPORATION
1285 Avenue of the Americas
New York, New York 10019
BY: THEODORE V. WELLS, JR., ESQ., and
MICHELE HIRSHMAN, ESQ., and
MICHELLE K. PARIKH, ESQ., and
EDWARD C. ROBINSON, JR., ESQ.

MINUTES OF PROCEEDINGS

Reported By:
William L. Kutsch
Senior Court Reporter

Proceedings

THE COURT: All right. I'm prepared to offer everyone an apology here.

There are two significant items of disclosure.

The first item of disclosure is that an envelope was delivered to me from the New York Attorney General, which was not e-filed, and the respondents, to the best of my knowledge, are not aware that this was delivered to my Chambers. I have not looked at this material, so I'm going to return it to the Attorney General.

(Handing.)

THE COURT: The second item of disclosure, which is more significant, or potentially more significant, is that as I was reading the papers in this case over the weekend, I realized that I am an Exxon shareholder. I own 1,050 shares of Exxon stock in an account, and I own an additional 2,000 shares of Exxon stock in an IRA account.

According to the Canons of Judicial Ethics, I will be disqualified from hearing this case unless the parties, pursuant to Section 100.3(F), were satisfied to allow me to continue on the case.

The circumstance that I have shares in Exxon would not in any way, in my opinion, affect my impartiality in the case, but the rules are the rules.

So I'm prepared to disqualify myself if that's the desire of the parties. I'm prepared to continue on the case

Proceedings

if the parties are comfortable that I can be impartial.

MR. WELLS: Your Honor, could I just check with my client, who is here?

THE COURT: By all means.

And if you want to take a ten-minute recess, that would be an appropriate thing to do.

(At this time a brief recess was taken.)

MR. WELLS: Your Honor, we are ready to resume.

I have been authorized to say on behalf of all three parties that we have no objection to your Honor sitting on this case.

THE COURT: All right. Then I will sit on the case.

I should tell you, Mr. Wells knows this, I was a partner at Simpson, Thacher & Bartlett for 35 years, and my Exxon holdings, I'm happy to say, are not a material portion of my life savings.

So, I have a couple of questions which I'll direct to counsel.

First, let me ask counsel for Exxon when Exxon might decide that it has an objection to the production of any material document that it believes production of which would violate the alleged evidentiary accountant-client privilege under the Texas Occupations Code Section 901.457.

MR. WELLS: Your Honor, the way the protocol works

is that Pricewaterhouse identifies documents that they believe are responsive to the subpoena. They then give us on a rolling basis the documents. We then review the documents to determine if we are going to assert the privilege.

To date, we have not asserted the privilege. To date, we have only received two batches of documents. The first batch was 126 documents, and Miss Parikh, who is counsel to Paul Weiss, she is in charge of that project.

Please correct me if I misspeak in terms of numbers.

The first batch involved 126 documents. Of the 126 documents, we have pulled three documents that we're trying to research to understand if there's -- if there are confidential communications embedded. The rest of those, we have signed off on and have not asserted any privilege.

There's a second batch of documents that we just got access to in terms of being able to view them, I think on Friday.

(Pause in the proceedings.)

MR. WELLS: Okay. They're not -- there's another batch of 900 documents Miss Parikh tells me we had access to but then we lost access to because of computer problems in terms of interfacing with Mr. Meister's firm. Of that 900, we have not started that review because we just got back up

online, but on that, I can only tell you where we are in the protocol.

We have not identified to date any document that we are asserting a privilege to, but there are three that we're trying to research and understand if they may contain confidential information.

THE COURT: The reason that I asked the question is that you argue in your brief that it's premature for the court to consider these issues because you haven't raised any specific objections to the production of any of the documents. The compliance subpoena was served some time ago. You've had an opportunity for some period of time to review the documents.

And it does seem strange for a New York court to interpret Section 901.457 of the Texas Occupations Code section, which both parties tell me hasn't been construed by any Texas courts, if you're not expeditiously reviewing the documents that you may or may not assert in an accountant-client privilege with respect to that.

MR. WELLS: Your Honor, we are, and I have no hesitation in saying we are reviewing what we have been given by Pricewaterhouse expeditiously. Pricewaterhouse is still engaged, to my understanding, in the great -- with respect to the vast majority of documents, they haven't even pulled them yet.

So we have only gotten two of the tranches. The first tranche was 126, of which we signed off on 123. We've got three documents now, and we are trying to understand in discussions with our client and Pricewaterhouse whether it contains confidential information on those three documents.

The other 900, we got access to. That's the universe. There are probably thousands of documents that are coming but we have not gotten access to.

THE COURT: Respectfully, Exxon and its outside counsel have the resources to review these documents with considerable expedition, and Pricewaterhouse has the resources to produce the documents to Exxon with considerable expedition. So it seems to me that we could deal with this in a much more concrete way if Exxon and PricewaterhouseCoopers moved a little quicker than they are moving.

MR. WELLS: And what I will say to you, your Honor, and perhaps Mr. Meister should speak for PricewaterhouseCoopers, we had moved expeditiously, and we will, I make that representation, and we are willing to talk in Chambers or whatever, whatever would satisfy your Honor or the State, even to agree, you know, to an order that says we're going to do it expeditiously.

But in terms of the documents we have been given, okay, what is in the queue --

THE COURT: I get it that you have turned over 123 of the 126 documents that you have been provided by PricewaterhouseCoopers, and you are contemplating whether or not to assert an objection with respect to three. I get that.

MR. WELLS: Okay.

THE COURT: The issue here is, if we're going to have a dispute about 5,000 documents, I would like to know that sooner rather than later. If we're going to have a dispute about 14 documents, I would also like to know that sooner rather than later, rather than deal with this in a factual vacuum.

MR. WELLS: Certainly. And I'll make the last representation, and then I will turn it over to Mr. Meister.

I represent that Paul Weiss is devoting resources to do this on an expeditious fashion.

THE COURT: Can you commit to a specific time in the month of October at which the review of these documents would be complete?

MR. WELLS: In terms of the 900 --

THE COURT: Yes.

MR. WELLS: -- and the three? That's all we have right now.

THE COURT: No. In terms of all of the documents.

MR. WELLS: I don't even have any idea what he's

going to give me. I'll sit down and let Mr. Meister speak, because to the extent there's a production issue, I'm at the mercy of what Pricewaterhouse gives me when they give me what they do. I represent, whatever he gives me, we will put in the resources --

THE COURT: Look, the State is essentially claiming that you are unreasonably delaying and, for lack of a better term, flimflamming them because PricewaterhouseCoopers isn't producing the documents to you expeditiously, and you're not reviewing them expeditiously, and so the matter is more complicated than it has to be.

So let me hear from PricewaterhouseCoopers as to why it would take a month to produce these documents.

MR. MEISTER: Good morning, your Honor.

I'm David Meister from Skadden Arps for PwC, PricewaterhouseCoopers.

Just on the issue of how long it's taking us, to be a little bit more concrete, on October the 10th, we shared with Paul Weiss what I would consider core documents here. I guess -- let me take you a little bit back.

The subpoena is quite broad. After we got the subpoena, we engaged in some dialogues with the Attorney General's office to talk about where we would prioritize the production as we uploaded a vast quantity of documents onto a server. We agreed upon to start with five categories of

documents. That's the small set that we've spoken about.

The second set, Judge, are sets of work papers. And the subpoena seeks work papers which each -- for each year going back to 2010. The work papers are vast. Some, not all of those work papers are responsive to the subpoena, but a lot of them are. And so what we proposed to the Attorney General is to start with the most recent stuff of work papers and then go backwards from there. They didn't commit to anything, but they say that's a good way to proceed, at least for now.

We provided the 2015 work papers, the first half of the select version, to Paul Weiss on October the 10th. After that, there was some computer glitch. When we put them onto a website, kind of a shared website, there was a computer glitch, so they lost access for some period of time between October 10th and the 18th of October.

In addition, on October 10th, we also shared the 2014 work papers with Paul Weiss. These are large quantities of documents, Judge. I don't have the exact number at hand, but it's a large quantity of documents.

So that's where we are right now as far as production.

And I do think, your Honor, this is the -- these are core, this is the core stuff.

What is coming potentially are e-mail

communications within Paul Weiss, between Paul Weiss and Exxon, and that is going to be a massive undertaking.

MR. WELLS: Pricewaterhouse. You said Paul Weiss.

MR. MEISTER: Oh, I'm sorry. Between Exxon and Pricewaterhouse. E-mails. And that will be a massive undertaking. That will take some time.

There were a huge number of people from Pricewaterhouse who have worked on this audit, and I think that there's a huge number of Exxon people who interfaced with Pricewaterhouse as well. So the communication part of this is going to take awhile, your Honor. I couldn't responsively say how long it's going to take, but it's going to take awhile.

MS. SHETH: Your Honor, let me introduce myself.

I'm Manisha Sheth. I'm the Executive Deputy AG of the Economic Justice Division at the Attorney General's office.

Let me first begin by addressing the issue of ripeness, which your Honor has raised.

There has been no question in this case that Exxon has asserted clearly and unequivocally that they believe a privilege, an accountant-client privilege, not some rule of confidentiality, but a privilege applies to these documents.

So the harm that we are talking about, the harm that the AG's offices is facing, is happening right now as

we speak.

As we have heard from both sets of counsel, 900 documents are responsive documents. So these 900 documents that counsel for PwC has found to be responsive to our subpoena are presently being withheld on grounds of this purported privilege.

So, and the defendants, or Exxon and PwC, want this court to have the burden of reviewing each of those documents or the contested documents to determine whether the privilege applies. And we respectfully submit that that is not the issue before the court.

The narrow legal issue before the court is twofold:

One, which forum jurisdiction choice of law applies. Is it New York or is it Texas. And we submit, your Honor, that clearly New York law applies and your Honor need not even get to the secondary question of whether there is a privilege under Texas law.

Second, that even if Texas law applies, the Texas Occupations Code does not create any accountant-client privilege. And contrary to Exxon's representation that there has not been a single Texas court case that has decided the issue, your Honor, there have been four cases in the courts of Texas where they have uniformly held --

THE COURT: I read them over the weekend.

MS. SHETH: -- that there is no accountant-client

privilege, and Exxon has not identified a single case that identifies, that holds that there is such a privilege. In fact, what they are referring to is a rule of confidentiality, nothing more.

And what they're asking you to do is basically do a document-by-document review, which would be appropriate if we were talking about an existing recognized privilege such as the attorney-client privilege. That's not what we have here. The question before your Honor is whether or not there actually exists a privilege in this case.

And we submit that if you apply New York's choice of law rules: The place that the trial will be conducted will certainly be in New York; the place of discovery will be in New York; and New York, it's uncontested amongst PwC, Exxon and the AG's office that New York does not recognize an accountant-client privilege. And if your Honor would like, we can articulate why even under Texas law there was not a privilege either.

THE COURT: I understand that there is no accountant's privilege in New York. There may or may not be an accountant's privilege in Texas.

There is a choice of law issue I have to deal with.

For purposes of this morning, because I'm not going to decide this this morning, what I'm interested in having the parties come to some understanding with before we leave

today, is that PwC expedite its production of all responsive documents to Exxon, that Exxon review these documents with some expedition. Both PwC and Exxon have the resources to deal with collecting the potentially responsive documents to which Exxon may or may not have a legitimate claim of privilege to in a very short period of time. And while that's going on, in a telescoped period of time, we'll find out what the Texas court does with respect to the Texas action. And I'm not going to wait for the Texas court to rule on what's before me. I have your fully submitted set of papers, and I will revolve the issue expeditiously.

But in the interim, there is no reason that I can see why the process of collecting the documents that are responsive to the subpoena and Exxon's evaluating which of those documents, if any, it's going to assert a privilege with respect to the documents that it's not going to assert the privilege, and they claim they haven't asserted the privilege with respect to any documents, all of the other documents should be turned over to the New York AG forthwith.

MS. SHETH: Thank you, your Honor. We appreciate that.

The concern we have is that PwC has repeatedly stated that the subpoena is overbroad and that there is an enormous volume of responsive documents.

THE COURT: I don't have anything before me which would enable me to assess the extent to which the subpoena is or isn't overbroad. So, because nobody has asserted in any court filing that the subpoena is overbroad, at least for purposes of today, I'm assuming that the subpoena is a reasonable and appropriate subpoena.

MS. SHETH: Thank you, your Honor.

THE COURT: If anything changes on that score, I'll deal with it.

But in the meantime, until and unless there is a ruling that the subpoena is overbroad, anything that Exxon isn't asserting a privilege with respect thereto should be produced forthwith.

And to the extent that PwC and/or Exxon is dragging their feet in terms of moving this process forward, the New York AG has a legitimate grievance which will be appropriately addressed at an appropriate time.

MS. SHETH: Thank you, your Honor. I mean, that seems to be a reasonable solution. Our concern is that we have a very set timeframe for when PwC completes its production.

THE COURT: We're not going to leave here today without having an agreement on a timeframe.

MS. SHETH: Thank you, your Honor.

THE COURT: So can PwC and Exxon confer and agree

on a timetable? It can't be Christmas.

MR. WELLS: May I talk to PwC's counsel for one second, your Honor?

MR. MEISTER: May we just confer one moment, your Honor?

THE COURT: Sure.

(Pause in the proceedings.)

THE COURT: Counsel.

MR. MEISTER: Thank you, your Honor.

Your Honor, I have two just items to discuss here.

The first is, Judge, you say this shouldn't be Christmas, and I hear you, your Honor. I don't even know the exact number of documents that we have to review in order to determine their responsiveness and whether or not they're covered by, say, for example, the attorney-client privilege, but it's enormous, is my understanding. And we will absolutely put to work whatever resources we can put to work, and PwC will, as well. But these are -- this will be a very large undertaking for us, and I don't know how long it will take us to go through all of the documents.

THE COURT: Okay, look. I don't find this credible, to be perfectly candid.

It seems to me that you can produce all of the documents that are responsive to the subpoena within 30 days of the date that the subpoena was issued to counsel for

Proceedings

Exxon.

While that process is going on, any documents that are privileged attorney-client communications can be the subject of a privilege log. Any documents that are not potentially the subject of the assertion of an accountant's privilege, pending the ruling that I'm going to make on that issue, should be turned over to the Attorney General's office.

If there are claims that the subpoena is overbroad, an application can be made by order to show cause to narrow the scope of the subpoena. That could have been done at an earlier point in time. It wasn't done. It can still be done.

So November 10th should be the outside cutoff date for the turnover of documents to Exxon. That's going to be done on a rolling basis. And Exxon is going to be producing on a rolling basis the documents as to which Exxon doesn't assert any accountant's privilege to it.

So that's just the ministerial portion of what we're doing this morning.

Substantively, I assume that you are now going to argue the issue of whether Texas law or New York law applies, and you are going to argue whether or not, assuming Texas law applies, Texas Occupations Code Section 901.457 creates an evidentiary accountant-client privilege.

Proceedings

MR. MEISTER: Your Honor, I actually was not going to argue the latter.

And just on the scheduling, would it be all right with your Honor if we worked with the Attorney General?

THE COURT: If the Attorney General agrees to some other and different arrangement, whatever you stipulate to is fine with me.

MR. MEISTER: All right.

MS. SHETH: Your Honor, just to clarify the schedule, what we would ask respectfully is that the three documents that Mr. Wells referred to this morning, that those be produced with or without the privilege log by the end of this week, and the remainder of the documents, as your Honor alluded to, can be produced by November 10th. But we would ask that rolling privilege logs be submitted, as well.

THE COURT: Okay. Well, I just said that the documents are going to be produced on a rolling basis.

And as to documents as to which attorney-client privilege are being asserted, a privilege log will be produced on a rolling basis.

And now we have to get to the substantive issue which is the reason that we are here this morning.

MS. SHETH: Thank you, your Honor. Appreciate that.

Proceedings

MR. MEISTER: Your Honor, may we speak to the Attorney General's office about the schedule of production?

THE COURT: You will do that outside of my presence. I've given you a timeframe. If the Attorney General is amenable to another and different timeframe, or in a more convenient timeframe for the parties, and you come to a stipulation, that's fine with me.

But for you to produce to your client, Exxon, within 30 days of the date of the subpoena the documents that are responsive to the subpoena, I don't think that's an unreasonable deadline.

MR. MEISTER: Your Honor, the other issue that I wanted to put on the table here, Judge, is that the protocol that we had worked out, that PwC has worked out with Exxon that PWC has asked for, is that only Paul Weiss review the materials, that Exxon people not review the materials.

And I understand, Judge, having consulted with Paul Weiss, that that makes it more difficult as a matter of timing for Paul Weiss to make the decision as to whether or not the privilege, the Texas privilege, should be asserted. I wanted your Honor to be aware of that.

THE COURT: Well, what I am aware of is that there are well in excess of a thousand attorneys at the Paul Weiss firm, and that Mr. Wells has almost limitless resources in his litigation department to assist in this process.

Proceedings

MS. SHETH: Your Honor, to clarify --

THE COURT: One moment.

Mr. Wells.

MR. WELLS: Thank you, your Honor.

I asked Mr. Meister to raise that last issue with you because -- so the record is clear.

In terms of the protocol, there is a disagreement between Pricewaterhouse and Paul Weiss in terms of whether or not Paul Weiss, once we get the documents, is permitted to talk to our client about the documents in order to figure out if they involve privileged conversations.

Pricewaterhouse is taking the position that we cannot talk to our client about the documents; that after we review the documents at Paul Weiss, which we are doing expeditiously, we then have to come back to Pricewaterhouse to have Pricewaterhouse then tell us, based on their involvement in creating the documents, if the material was based on confidential communications between Exxon people and Pricewaterhouse people.

We have told them we disagree with that because that's -- that's why there are three documents I have. I haven't been able to pass on them because I have to go back to Skadden Arps, then they go back to their client to find out if something was based on a confidential communication.

We have a disagreement, but I want that on the

record, because that's my problem.

I do have significant resources. I can get through these documents if I can talk to my client about the documents to find out if Document A involves confidential communications. But they have decided, in total good faith, but they have decided that I can't do that.

So I want that -- that has to be worked out, because the only way I can do this quickly, and I want to do it quickly, and I make that representation, is if I'm able to talk to my client. And that's just kind of the basis right now to a protocol.

THE COURT: Look, this isn't that complicated. We're going to decide in a very short period of time whether or not there's any evidentiary accountant-client privilege under Texas Occupations Code Section 901.457, and we're going to decide in a very short period of time whether Texas law even applies to this proceeding.

As respects whether documents are privileged attorney-client documents, I am sure that PwC can give you a list of every lawyer at Exxon that's communicated with PwC. If it's a communication from a lawyer to PwC, then it's a privileged communication, and you will log it as a privileged communication. If it's a communication from a businessperson at Exxon to PwC, then it's not privileged communication unless it contains some advice of counsel, and

that should be evident from the document itself once you have a list of all the lawyers involved.

So we are just making this much more complicated than it needs to be. The parties around this table are all very sophisticated. None of these issues are novel nor new to any of you.

And let's get to the merits of why we are here this morning.

MS. SHETH: Thank you, your Honor.

Let me begin by addressing the choice of law issue first. Hopefully that will result in us not getting to resolve the issue of the Texas Occupations Code.

So as a threshold matter, two recent First Department decisions confirm that the law that should be applied is the law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding. And that -- those two cases are the JP Morgan case and the People v. Greenberg case, both recent First Department decisions.

And there is no question that under that legal standard, the appropriate choice of law in this matter would be New York. And it's undisputed among all three parties here that New York does not provide for an accountant-client privilege.

Now, even if this court were to apply the center of

gravity test that is advocated by Exxon, New York still has the greatest interest in this proceeding and, therefore, New York law would apply.

First, this is a law enforcement proceeding brought by the New York Attorney General's Office of potential violations of New York State law, including the Martin act, by Exxon, a company that does business in the State of New York. Exxon's independent auditor, PwC, also does business in New York, and its U.S. chairman's office is also in New York.

Moreover, neither Exxon nor PwC could have reasonably expected that anything other than New York choice of law would govern their communications, because in their representation letters between -- excuse me, in their engagement letters between Exxon and PwC, they actually agreed that New York was the appropriate choice of law.

And it's further telling that in this matter, PwC does not take a position on the choice of law analysis or whether the Texas Occupations Code creates a privilege.

So, your Honor, we submit that New York is the appropriate choice of law to apply, and there is no dispute that under that law, there is no accountant-client privilege.

Now, Exxon, unable to contest this black-letter law, attempts to manufacture an accountant-client privilege

based on the Texas Occupations Code Section 901.457. We respectfully submit that even if this court were to consider Texas law, it should not interpret Section 901.457 as a privilege but rather construe it to be a rule of confidentiality.

Now, first, contrary to Exxon's claim that not a single court, or that this is a case of first impression, every court that has considered this issue has concluded that 901.457 does not create an evidentiary privilege. And your Honor has read and is familiar with the cases, the four cases we have cited in our papers.

Second, Exxon, despite bearing the burden of establishing this privilege, has not cited the court to a single case, Texas or anywhere else, that interprets Section 901.457 to create an accountant-client privilege.

Now, third, let me talk about the text of Section 901.457. And if it's helpful for your Honor, we have a copy of the language of the text, if your Honor would like it.

THE COURT: You can give it to the Court Officer and I will review. It's obviously part of your papers.

MS. SHETH: Yes. So, your Honor, if you look at Section 901.457, you will see that although the term "Accountant-Client Privilege" is used in the title, nowhere does it appear, nowhere does the word "privilege" appear in the body of the section. And, in fact, if you look at the

language of Subsection (a), it clearly states that: "A license holder...may not voluntarily disclose information communicated to the license holder...by a client in connection with services provided to the client by the license holder...except with the permission of the client..."

Now, the plain language here is phrased as a rule or a restriction against voluntary disclosure of information absent client consent. It is not phrased in any way as a privilege.

And, in fact, there are three characteristics about this particular section that suggest to you that it is a rule of confidentiality.

First, the fact that it is limited to voluntary disclosures. In evidence, rules of privileges, privileges apply regardless of whether the disclosure is voluntary or required. The fact that this section is limited to voluntary disclosures further supports the OAG's argument that this is a rule of confidentiality as opposed to an evidentiary privilege.

Second, if you look at Subsection (b), which contains the exceptions, there is a broad exception under (b)(3) for "a court order that is signed by a judge if the order is addressed to the license holder," in this case, that would be PwC; "mentions the client by name," in this

case, that would be Exxon; "and (C), requests specific information concerning the client."

So, the fact that this exception (b)(3) is broadly written supports the interpretation that 901.457 is a confidentiality rule rather than a privilege.

In fact, had the Texas legislature intended to actually create an accountant-client privilege, then these broad exemptions, particularly "for a court order," would vitiate the privilege and render it nonexistent.

In both the In Re Patel case as well as the In Re Arnold case, the Texas court found, noted that its order on a motion to quash was the requisite order pursuant to (b)(3) that allowed disclosure of otherwise confidential information.

Now, your Honor, we have also prepared a chart for your Honor which compares this section with the prior Texas accountant-client privilege which was in existence before from the time period from 1979 to 1983. It also compares it with other Texas privileges which are cited by Exxon in its motion papers, and other states' accountant-client privileges. And if your Honor will permit, we will hand up a copy of this chart, as well.

So if your Honor looks at this court, we have the three characteristics on the left-hand side of the chart. Does "privilege," the word "privilege" appear in the text,

is the disclosure limited to voluntary disclosures, and is there is a broad exception for court orders.

In the first column, we have this particular statute in question, 901.457, and you see that the word "privilege" does not appear in the text, the statute is limited to voluntary disclosures, and there is a broad exemption. All three characteristics suggest that this is a rule of confidentiality.

Now, if you look at the other columns starting with the second column, there is a prior Texas accountant privilege which was repealed in 1983. And in that case, in that statute, the word "privilege" expressly appeared in the text of the statute, the statute was not limited to voluntary disclosures, and there was no broad exception for court orders.

And similarly, the other Texas privileges which Exxon cites in its papers had the same three characteristics.

And then finally, if we look at other states' accountant-client privileges, we have found 16 states that recognize an accountant-client privilege, and in 13 of those states, the word "privilege" appears in the text of the statute, the disclosures are not limited to voluntary disclosures, and there is no broad exemption for court orders.

And then fourth, if we look at the legislative history behind 901.457, that also confirms that this is not an evidentiary privilege.

As I mentioned earlier, there was a prior statute in place from the period of 1979 to 1983. And in that statute, the 1979 statute, the word "privilege" was used in the text, it was not restricted to voluntary disclosures, and there was no broad exception for court orders.

That provision was repealed in 1983, and in 1989, the Texas court had -- excuse me, the Texas legislature enacted the predecessor to the statute in question today. And that statute was enacted in 1989, and that statute did not use the word "privilege" in the text, that statute was restricted like the statute to voluntary disclosures, and it also contained a broad exemption for court orders.

THE COURT: Did the legislative history specifically say in words or substantial: We're changing the statute in order to make it clear that there is no privilege?

MS. SHETH: The statute did not say that, but, your Honor --

THE COURT: I'm talking about the legislative history.

MS. SHETH: Excuse me. The legislative history did not expressly say that.

THE COURT: What did it say?

MS. SHETH: There is a statement, a sponsor's statement that was made in 2013 when there was an amendment to the statute. And if I can hand that up to your Honor, we can read to you from that statement.

So if your Honor looks at the bottom of page 1, there is a statement made there which clarifies that this is a rule of confidentiality. So it reads: "S.B. 228 clarifies client confidentiality or what some refer to as the accountant-client privilege. Section 901.457 (Accountant-Client Privilege) Occupations Code, outlines the requirements for a certified public accountant to maintain client information confidentiality."

So the changes being proposed by this bill will make it clear that CPA's may disclose client information when required to do so by state or federal law, or when a court order is signed by a judge.

Now, Exxon makes several arguments in response to our papers that -- to our argument that this is a rule of confidentiality.

The first argument they make is that Subsection (b), which contains a list of the required disclosures, is a limited list of required disclosures. We argue that reading Section (b) in this fashion is inconsistent with the plain language in Subsection (a), which suggests that the rule

only applies to voluntary disclosures. So if we read the statute in the way Exxon suggests, we would essentially be reading the word "voluntary" right out of the statute. And rather, we think the better interpretation is that the Texas legislature wanted state enforcement agencies to go through the additional hurdle of coming to a court, getting a court order, before allowing the disclosure of otherwise confidential communications between an accountant and their client.

And then Exxon also makes an argument that this court's order on the office of the Attorney General's application or motion should not be the order that would take us into Subsection (b)(3), and we strongly disagree with that.

Subsection (b)(3) expressly provides that if a court issues an order that meets the requirements of (A), (B) and (C), and that is addressed to PwC, it mentions Exxon, and it requests specific information concerning Exxon, that that order would satisfy the exception outlined in (b)(3) and would allow PwC to produce the documents directly to the OAG without any review or need for review by Exxon.

And, in fact, there are two court cases that we have cited in our papers, In Re Arnold as well as In Re Patel, where the court relied on that order on a motion to

quash to allow information -- this was in the context of a motion to quash the deposition notice, a deposition information as opposed to a document subpoena, but relied on that order to allow production pursuant -- despite the existence of 901.457.

So, your Honor, we respectfully request a finding by this court that there is no accountant-client privilege, certainly not under New York law. And even if this court were to consider Texas law, not even under Texas law.

And we would ask that your Honor ask PwC or require PwC to produce responsive documents that it has collected and is now -- that are now pending review by Exxon to the OAG's office immediately, certainly by the end of this week, and that would include a certain category of documents which was identified in our papers that are not even subject to any accountant privilege because PwC was not acting in the role of accountant. And that category is the documents relating to the Carbon Disclosure Project. So that is a separate bucket of documents where it's uncontested that PwC was not acting as Exxon's independent auditor. Those documents should be produced right away, and they should be completed -- production of those documents should be completed forthwith.

As to the other documents that are being reviewed by Exxon, if your Honor finds that either New York law

applies or that there is no Texas privilege, those documents should also be produced forthwith.

And we respectfully ask that, given that there is no privilege, Exxon should not be permitted to delay the production of responsive documents to the OAG based on the assertion of some purported accountant-client privilege.

Thank you, your Honor.

THE COURT: Mr. Wells.

MR. WELLS: Thank you, your Honor.

First, with respect to the Carbon Study that she referred to, to my understanding, that document has been produced.

Is that correct?

MR. MEISTER: Your Honor, we have produced the CDP-related documents to the Attorney General September 30th, and then a corrected production on October the 7th. The first was black and white, the second was color.

MR. WELLS: So that is off the table. It was produced.

Your Honor, I am going to address the choice of law issue, then I am going to turn to the text of the statute and walk through the history of the statute, and then I'm going to talk about the case law, because it is our position that at no point has a Texas state court ruled that there is no accountant-client privilege. In those opinions, there is

language where they assume for purposes of analysis that there is a privilege, but at no point has there been a ruling.

But before I turn to a discussion of the cases, I want to start with the choice of law issue.

It is our position that the choice of law issue is governed by a balancing test, and that's based on the Court of Appeals decision in Babcock, that this court must look at the respective interests of both sides in deciding on the choice of law. We submit that in this case, ExxonMobil's documents are in Texas, ExxonMobil is based in Texas, the auditing team that audits ExxonMobil is based in Texas, the communications between ExxonMobil and the Pricewaterhouse accountants occur in Texas. In this situation, the court has to balance where the communications took place, where are the parties, what parties have the greatest interest.

This is not a case where the New York Attorney General has brought an enforcement action. They talk about what are going to be the rules when they get to trial. There has not been any return of a charge. There is no reality at the moment that there's going to be a trial of anything. This at the moment is a mere investigation. They have the right to conduct the investigation, but that is what it is. This is not a case, as in many situations, where it is clear there's going to be a trial and what rules

should govern in the course of the trial. And I submit that the interests in New York is far different when they have brought a case, when they have alleged some particularized harm to the citizens of New York. This case in contrast is purely in the investigative stage.

Furthermore, in order to do a balancing test, one of the issues is always the materiality of the evidence. To engage in a materiality of the evidence review, you must know what evidence, what documents, we are talking about. That is why, we submit, it is not appropriate to do this in the abstract.

It's similar to a work product privilege. There are situations where a court has the power to override the work product privilege based on a particular document that discloses certain evidence that is important to the truth-finding process. But in that situation, you have to look at the document. You cannot do a balancing test because materiality is a big part of that in the abstract. You need actual documents. So it is our position that Texas law should apply. And, furthermore, to do the balancing test, you cannot do it in the abstract. The court may need to engage in an in Camera review of certain documents in order to ask what is the materiality of the documents that the court is being asked to give over to the New York Attorney General. So we believe Texas law applies.

Now, with that said, I want to turn at this time to a discussion of the Texas statute and how it has evolved over the years, and I would like to hand up to the court an exhibit that sets forth the language of the statute as it was in 1989 when it was drafted, then how it was amended in 1999, how it was then amended in 2001, and then how it was amended in 2013.

We have some charts. So, your Honor, we just start with page 1. That is the actual bill that the Texas legislature voted on.

Now, the title on page 1 of the exhibit is that it regards an Act relating to the regulation of public accountants. That is the title of the Act.

If you turn to the second page, you see what is denominated as Section 26, which is the accountant-client privilege. And it is important that the word "privilege" is used as part of what the Texas legislature -- if you had been voting from a particular county, and you were the legislature voting on this bill, this is what was before you, and it was denominated Privilege. So this is not a term that was put into effect after people had voted on it, and then somebody at WestLaw used it as some organizing term. This is actually part of what was in front of the legislators who voted.

Now, in 1989, when it was enacted, it did not refer

to a court order. That language does not come until much later. It referred to an order "in a court proceeding." That was the language used. It says "in a court proceeding."

There also was no exception with respect to investigative agencies like the SEC or the Internal Revenue Service. That all comes later.

But the point I want to make right now is that the word "privilege" is part of the act, this is what the legislature voted on, and it does not refer to "court order." It refers to "court proceeding."

Now, the thing that happened next, if we go to the third page, is, there is an amendment in 1999. That amendment involves nonsubstantive changes. They changed the word "license" to "licensee." It is -- both sides agree the 1999 amendments were of a nonsubstantive nature, and nothing changes, but they add some commas and a few words. So, that's the next change in 1999. It still involves "court proceeding," not "court order." It's still entitled as a section Accountant-Client Privilege.

The next change then comes in 2001. That's the fourth page of the document I handed you. At that point in time, that is the first time that we have a carveout for certain governmental agencies that do not need to seek any type of judicial approval. The word "privilege" remains,

but it says for the first time in a section entitled (b)(2), that, "under a summons under the provisions of the Internal Revenue Code...and the Securities Act of 1933...or the Securities Act of 1934," that you do not need to get any type of court order. And the words "court order" appear for the first time instead of "court proceeding."

And so what we have in the 2001 statute as amended is a carveout for certain agencies, and I submit this language about summonses from the Internal Revenue Service and the SEC, that refers to those governmental agencies. There's a carveout for the SEC and the IRS. And then in the same section, "court proceeding" is deleted and "court order" is inserted. And that relates to instances where you need a court order. And we contend what that relates to are situations other than people who have been left out of the exceptions. And we think the government exceptions does not pick up New York -- the New York Attorney General's office, nor do we believe that they're covered by this court order section.

But there is another amendment in 2013.

But before I go there, I want to say that the decisions in Patel and the decisions in Arnold all were done under this 2001 amendment. Arnold is I think a 2012 case. Patel is 2007.

This is very important, your Honor, because what

those courts passed on was the 2001 structure of the statute. The statute changes in 2013.

Now, in 2013, there is another amendment, and it changes the structure of the statute. And what happens in 2013, they put in separate sections. There is now a section (2) that is purely a carveout section. They add the word for the first time "subpoena." "Subpoena" has now been added to "summons." They add as part of the carved-out agencies the Securities Act for Texas. So they've added the Texas AG. So at this point in time, the carveout section has taken on an independent role. It's no longer tied to the court order section, and it covers the IRS, it covers the U.S. Securities and Exchange Commission, and now it covers the Texas Attorney General. That is now a separate section.

They then take the court order provision that used to be part of (2) and they drop it into a separate section. It is now an independent item denominated as (b)(3), which says, "under a court order signed by a judge" if it has these three items.

This structure in 2013 is different, as I said, than that that existed during the Patel case or during the Arnold case.

It is the position of Exxon that not only is there an accountant-client privilege, those are the words that the

legislature passed on under the laws of Texas, but that Section (2) states what agencies have the carveout. And it's limited to the IRS, the U.S. Securities and Exchange Commission, and the Texas AG. And that under laws of statutory construction, the New York AG is not part of the carveout section. And it is our position that the New York AG, had they not been named in this section that deals with investigative agencies, they do not now drop down into Section (3) as a catchall.

THE COURT: So your position is that the exceptions that are allowed to be of an otherwise privileged nature of accountant-client communication all relate to the IRS and the SEC and the Texas Attorney General?

MR. WELLS: Yes, sir, with respect to investigative subpoenas. And it is exhaustive, it does not include the New York AG, and it is our position that the New York AG does not now get to drop down into Section (3) and get exempted by way of a court order.

THE COURT: How do you get from a specific exception identified as item (2) being related to item (3) when there's also items (4), (5), (6) and (7) under Section (b)?

MR. WELLS: Because Section (2) deals with specific situations involving investigative agencies. The other agencies listed are different. And the New York AG is akin

to those --

THE COURT: No, I get it. The New York AG doesn't fit within exception (b)(2).

Now, but what about (b)(4), (b)(5), (b)(6) and (b)(7)? Those are also exceptions.

MR. WELLS: That is correct. And they are of a different type of entity. And they also are exceptions.

But what we're saying in terms of an investigative agency like the New York AG, that the exceptions here are exhaustive. They do not come within this section. This section is exhaustive with respect to investigative subpoenas, and they do not get to drop down and pick up the court order exemption like it's a catchall.

And the fact that there are other entities identified in (4), (5) and (6), they do not relate -- (4) and (5), they do not relate to investigative subpoenas but rather they relate to a particular accounting investigation by the board, an accounting entity, and an ethical investigation involving a professional organization of accountants in the course of a peer review. (3), (4) and (5) are different than (2). That is what we are saying.

And what we're saying also --

THE COURT: So you're saying that (b)(2) and (3) aren't, but (b)(4), (5), (6) and (7) are separate exceptions that have no relationship to (b)(2)?

MR. WELLS: That's right. (3) is an independent exception, but (3) does not permit the New York AG to get an exemption under (3) because the New York AG is excluded under (2). Under the rules of statutory construction, if the legislature has identified with specificity a particular type of entity, it is to be assumed that other entities were not covered. They could have written this differently. They could have said "or any law enforcement agency" or "any other Attorney General." They did not do so.

THE COURT: No. What they said was that the section doesn't prohibit a licensor from disclosing information that is required to be disclosed "under a court order signed by a judge if the order is addressed to the license holder, mentions the client by name, and requests specific information concerning the client."

Isn't that a clear reading of the provision?

MR. WELLS: No, your Honor. We submit that (2) is an independent section dealing with investigative-type agencies, that this is exhaustive, and that agencies such as would come under (2) do not drop down to item (3).

THE COURT: Okay. That's your position. I get it.

MR. WELLS: Okay. Now, it is also our position, We want to point out that this structure, where (3) is now separate and (2) is independent, was not passed on by the Patel court or the Arnold court. It didn't even exist at

that time. And I think that also is of significance.

Now, what I would like to talk about now are the four cases they talk about, and I want to begin --

THE COURT: You just told me that those cases don't apply to the 2013 statute.

MR. WELLS: They do not, but what --

THE COURT: But they are instructive.

MR. WELLS: They are instructive. But the importance of the cases is that in none of the cases do they hold, do they hold that there is not an accountant-client privilege.

The New York Attorney General takes the position that these cases hold that no such privilege exists. I submit that if you carefully read the cases, the cases make clear they are not so holding. And we need -- and I would like to walk through the four cases, because what they show is that no court to this date has ever taken the time to look at the statutory history, look at the statutory structure, look at the issue before it, and grapple with all of this. And it's in part because, in many of those cases, the issue never was briefed, and the issue arose in the context of a relatively small tort litigation where somebody was trying to get access to the accountant's records, a claim was made that there was a privilege, people did not fight about it because of what was at stake. No court has

ever grappled with this question in a careful and reasoned way. That is the core point.

If we could just start with the first case, in terms of, I want to go through the cases chronologically, and the first case is the Canyon Partners case, and that is in 2005. This is a case that comes right before Patel, which is 2007, but Canyon probably starts a lot of the trouble, I submit, if you want to kind of do an autopsy on how did we get here, and whether people were actually doing research and issuing reasoned decisions, or did it just happen in terms of a throwaway line.

In Canyon Partners, a federal case, 2005, the court wrote: "The court initially observes that there is no accountant-client privilege under federal or Texas law." The court cites the Ferko case with the proposition that there's no accountant-client privilege for federal court.

Then to support the argument that there's no accountant privilege from Texas law, they cite a case called Sims. Sims is a 1988 case. In 1988, there was no Texas accountant privilege. The Act does not come back until 1989. It did not exist. And if you go and read the Sims case, all the court says in Sims is that under the Texas rules of evidence, there's no reference to a privilege. That's all that was said.

But it's important, your Honor, because that

language in Canyon where they cite Sims keeps getting picked up like somebody thought about it, they cite a case, as I said, that preexisted the passage of the statute, then in Canyon in a footnote they say in a letter to counsel from JDN, it references the accountant-client privilege. And then it says, "However, no court has elevated the professional standard established by this statute to an evidentiary privilege under Texas law." That is an accurate statement. And this is the first case we could find where anybody grappled with it. And to the extent he's saying: "We haven't been able to find a court that has said there is a privilege," that is accurate, but it's not based on any analysis that says the opposite is true, that there is no privilege.

And we went and got the briefs in Canyon, and I want to, at the end of the day, move them into the record because the issue was not briefed. It was not briefed other than this letter appearing in the file.

But that case is kind of the foundational case that people keep citing for the proposition that there is no privilege. But, again, it came up in the context where it wasn't briefed, and there is no support other than to Sims which just says it's not in the Texas rule of evidence.

The next case is 2007. Let's look at the progression. That's the Patel case. And I think there are

only two Texas court cases, Patel and Arnold. The other two cases we talk about, Canyon, and I think it's Cantu, those are federal cases, but I think your Honor in trying to determine what weight to put on what cases, the two Texas court cases have particular importance because that's the Texas court passing on the Texas statute.

But in Patel, in that case, at the lower court, the court had quashed a motion with respect to the -- had ruled against the motion to quash the subpoena. The party then took a mandamus to the Texas appeals court, the intermediate court. It's very important because under Texas law, with respect to questions of both law and fact, for mandamus, it's an abuse of discretion standard. So they are not actually even looking at the issues as if it were a regular appeal even on legal questions. But what the court wrote is that, "First, Nautilus does not counter that an accountant-client evidentiary privilege does not exist in Texas." That's critical. The other side did not question whether the privilege existed. It accepted that the privilege existed but then it looked in one of the exceptions. So this is not a case from the beginning where the party is coming in and saying: No privilege exists. That's not the situation.

Then the court wrote: "Assuming without determining that an accountant-client evidentiary privilege

exists in Texas, we will address the only issue before this court, that being whether there is a court order requiring the production of the requested documents."

So the Patel court assumes for purposes of discussion that a privilege exists, and then they go to whether the exception applies.

The Patel court also has relevant language. In footnote 6 in Patel, the court notes: "Other than citing Section 901.457 of the Occupations Code, neither party has provided authority for the proposition that an accountant-client evidentiary privilege exists in Texas." I think that's a true statement, but the point of it is, both sides were accepting that it existed. That wasn't even briefed. It wasn't eyen an issue.

Then the court says, "and we find none." And that's a true statement because at that point, no court has ever ruled on the issue except for that snippet of language in Canyon. And then they cite again to the Canyon case, which I've shown was not based on any analysis, and relied on a case that predated the statute.

And then the court ends up saying: "Therefore, because the law is not clear", not clear on the question of whether the privilege exists, "on this issue, to the extent the trial court's denial of the motion to quash in this case was based on no privilege, we cannot conclude it abused its

discretion." And it's really only what the trial court did. They say: "If that's what he was thinking. The law is unclear." So for purposes of mandamus, it's not an abuse of discretion.

But the point is, Patel does not issue a ruling that there is no privilege.

THE COURT: But what was the exception that the Patel court was concerning itself with?

MR. WELLS: There was an ongoing litigation, and in the context of the ongoing litigation, there had been a request to depose and for documents, and then they went to the issue of whether the quashing of that order constituted an order within the exception, and the court said it does.

In our case, we have a totally different argument.

Our argument is that (b)(2), which deals with investigative agencies, occupies the field, is exhaustive.

THE COURT: And (b)(3) is irrelevant.

MR. WELLS: That's right. And when you drop down to (b)(3), it is not a catchall. That is a different issue than presented in Patel.

THE COURT: Okay.

MR. WELLS: Okay?

The last case, the last Texas case, is In Re Arnold. That's 2012. And that case, what the Texas appeal courts wrote: "As we have stated, the existence of an

accountant-client privilege based on Section 901.457 is doubtful." They then quote from Patel. They didn't rule on the issue. And they cite the footnote about the law being unclear, from Patel. But this court does not issue a ruling. There's no ruling. There's an observation.

THE COURT: But Patel and Arnold, both --

MR. WELLS: Texas.

THE COURT: Texas court decisions, they are predating the 2013 amendment.

MR. WELLS: Yes, sir. But even assuming you want to give them weight, what I want to make clear to your Honor is that it would be incorrect to do what the government has urged you to do, which is say: The Texas Court of Appeals has ruled already that no privilege exists. They never issued such a ruling. And that's contrary to what they briefed, your Honor. If I come away with having made that point, I will have done at least part of my job today.

THE COURT: You've done your job.

MR. WELLS: Okay. Now, there's a last case, a last federal case that they cite. It is actually after now the 2013 amendment. It doesn't do any analysis, but it's the last case that they cite. It's called Cantu. It's a federal case. And what they say, the court writes: "However, in Texas, accountant-client communications are confidential, but not privileged." And the court cites

Patel. But, as I demonstrated, that's not what the Patel court said, but he cites to that. And then the court says: "Anyway, this is a federal question case and, accordingly, federal privilege law governs." That's an accurate statement. So, he cites Patel incorrectly.

But the bottom line is, no court has ruled that there is no privilege, and especially the two Texas courts, they don't do it.

Now, again, our core position is that Patel and Arnold are not controlling for our case; that we have a totally different argument involving the interaction between (b)(2) and (b)(3) and whether (b)(2) is exhaustive, and whether you can drop down to (b)(3) as they want to to save it. Those are different. That's a point different than is raised in any of these cases.

And what we are asking your Honor to do ultimately is not deal on an abstract record, to permit us to develop a record so that you could do the balancing test in the context of concrete documents, and that you will rule as you see fit, but that you not go down the road, as they've asked you, to say that Texas courts have ruled on this issue, because they have not.

That completes my argument.

Thank you.

Your Honor, excuse me. One last thing.

I do not think what is going on in Texas has any relevancy to this motion and dispute about the PwC subpoena and the attorney-client privilege, but the New York Attorney General has made reference to the Texas litigation, and if I could take maybe five or ten minutes just to at least explain what is going on there to your Honor, because I don't think it's been fairly described.

THE COURT: Why don't you tell me what it is that you are seeking vis-à-vis the New York Attorney General in the Texas proceeding.

MR. WELLS: Okay. Our original action in Texas was against the Attorney General of the Virgin Islands. I have a timeline that I could give to you as an exhibit that I think would help, your Honor. We can put it up.

This is a timeline of what is going on in Texas.

I start with the first bullet, which is November 4, 2015, when Attorney General Schneiderman issued the subpoena to ExxonMobil.

The day after the subpoena was issued, the New York Times had a full-blown story here about the ExxonMobil subpoena and investigation. The New York Times had the story before we even got the subpoena. We didn't get the subpoena until late at night before this full-blown story is in the paper the next day.

The next thing that happens is March 15, 2016, the

Virgin Islands Attorney General issues a subpoena to ExxonMobil.

March 29, 2016, Attorney General Schneiderman hosts a public press conference entitled: "Attorney Generals United for Clean Power," and they called themselves the "Green 20", with Vice President Al Gore, and they hold a conference, and they get on stage, and it's on the Internet, and what they say is that these attorney generals had banded together because the United States Congress is in gridlock about the issue of climate change, and they are going to step into the void and deal with the fact that Congress has not been able to deal with climate change. And one of the ways they are going to do it is to investigate ExxonMobil.

And that's really what -- up until then, we met with them, we kind of forgotten, you know, the leak to the New York Times in producing documents, but without question, the world changes the day they get on stage and basically say they have decided that we're guilty, they're coming after us for political reasons, and they're sitting there with the vice president.

What happens next, on April 13th -- and the Attorney General of the Virgin Islands is up on stage with him -- April 13th, we then file a petition in the Texas court seeking a declaration that the Virgin Islands subpoena is unconstitutional. We sue based on the First Amendment

and the Fourth Amendment in terms of the suppression of our right to participate in the climate change debate.

Six days later, Attorney General Healey issues a subpoena.

So what's going on now, we started with Attorney General Schneiderman, they've had the press conference, the Attorney General of the Virgin Islands has jumped on us, now the Attorney General of Massachusetts.

We then reach a settlement with the Attorney General of the Virgin Islands where he decides, rather than fighting us in Texas, he's going to withdraw his subpoena.

Then in June of 2016, we file a complaint and motion for a preliminary injunction against enforcement of the subpoena by the state of Massachusetts. We're now in Texas.

And a quick question: "Mr. Wells, why are you in Texas? Why don't you go to Massachusetts? Why don't you go to the Virgin Islands?" It's our position that there is a group of attorney generals who has decided to use their law enforcement powers for a political purpose, and the only place we can get them all, rather than fight them separately in each court, is in our home state of Texas. That's the only forum.

We also actually, when we filed against the state of Massachusetts in Texas, we did also filed against the

state of Massachusetts in Massachusetts, but we asked that court to stay it. It hasn't issued a ruling yet. We argue that I think in December.

Now, then there's an article in the New York Times where Attorney General Schneiderman gives an extensive interview, and he states that there may be massive securities fraud at Exxon, so he made this public statement now in August. Then the same day, he makes the public -- he's quoted in the New York Times, we get the subpoena for PwC documents. Okay? This all comes: New York Times, massive securities fraud, then he serves a subpoena on PwC.

Then on September 19th, this is a critical date, September 19th, we go to Texas and we argue the preliminary injunction against the state of Massachusetts before Judge Kinkeade. During the oral argument, Judge Kinkeade says to us, in essence: "Well, what are you doing about New York? You sue in Massachusetts, but you produce it to New York." At least as we read the court, he's got some concerns that, "Well, why are you suing in Mass. and not New York?" And that's how we read it, that he had those concerns, because he even said: "Doesn't New York have the same motive as Attorney General Healey?"

Then what happened, this is what they don't tell you in their papers. They're trying to create the picture in their papers that they filed this action in front of your

Honor to enforce the PwC subpoena on Friday, and we ran down to Texas and filed something on Monday. Nothing could be further from the truth. They don't tell you about what happened on Thursday. They make the story start on Friday like they filed an order to show cause. Nobody cared about, in all due respect, this accountant issue. What happened on Thursday was that Judge Healey -- I'm sorry, Judge Kinkeade on Thursday issued an opinion, and his opinion said that we were going to get discovery against the Mass. AG, as we read it, the other attorney generals, because we had made a sufficient showing of bad faith under the *Younger* doctrine, and that's when we decide to join them on Monday, but it's because of what happened in that opinion.

Then on the 14th, they filed their action the next day, then we filed our action against the Attorney General of New York in Texas.

In terms of where the Texas case is right now, two things have happened that are not on the chart. Earlier this week -- well, at the end of last week, the state of Massachusetts filed a motion for reconsideration, saying to Judge Kinkeade: We want you to reconsider your order not dismissing the case for jurisdictional purposes and also giving ExxonMobil discovery rights.

We filed a motion to expedite the filing of the Amended Complaint so the New York AG can be brought into the

case because the next step is, we're going to have a discovery conference, and there's no question it's going to be heated because right now we have the right, as we read the order, to take the deposition of both the Mass. AG people and really everybody, as we read it, that was at that March 29th conference. And we would like to get the New York AG in the case as we work out these discovery issues. So that is what we have done.

In terms of where Texas is going to go, it's months down the road because right now we're going to engage without a question in fairly heated discovery issues. We are going to try to take depositions of the state AG's. I have no doubt that the state AG's are going to contest Judge Kinkeade's order. And I have no doubt that they are going to say "investigative privilege." They have, all the AG's have entered into what they call a common-interest agreement. We believe that is a pretext to keep from the public and from us exactly what they have been doing for political purposes, because there's going to be litigation over that common-interest privilege which we submit is designed to keep people from learning the true facts, but it's going to be months down the road.

But when they -- so the order to show cause on Friday and the following Monday were not tied together. What was tied was what happened on Thursday. And we

immediately said in our papers: "We submit to your Honor jurisdiction. We have no problem with your Honor's ruling on this." We said that immediately. And that is our position.

But in terms of where Texas is, that's the one place we can get multiple attorney generals who are coming after ExxonMobil with what we believe are pretextual subpoenas designed not really to ferret out any wrongdoing but really for political purposes because we had deigned not to toe the line in terms of what they see as was politically correct with respect to the issue of climate change.

One last point.

ExxonMobil has been on the record for years now that we recognize the seriousness of climate change. All of these attorney generals operate within a four- to six-year statute of limitations. And we have been, prior to the statutory period, been on the record, we recognize that climate change, the issue is real, it deserves attention.

But this is part of a political agenda, and I understand that the New York AG made our complaint in Texas part of the record, and I would invite your Honor to read the complaint because it sets forth in more detail what I've laid out on this timeline.

Last point.

I just want to read from Judge Kinkeade's order

that was issued on Thursday. I would like to hand to your Honor a copy of the judge's order.

THE COURT: Thank you.

MR. WELLS: This is what Judge Kinkeade ruled on Thursday, signed October 13th. He said: "The court finds the allegations about Attorney General Healey and the anticipatory nature of Attorney General Healey's remarks about the outcome of the Exxon investigation to be concerning to this court. The foregoing allegations about Attorney General Healey, if true, may constitute bad faith in issuing the CID which would preclude *Younger* abstention. Attorney General Healey's comments and actions before she issued the CID require the court to request further information so that it can make a more thoughtful determination about whether this lawsuit should be dismissed for lack of jurisdiction.

"Conclusion.

"Accordingly, the court ORDERS that jurisdictional discovery by both parties be permitted to aid the court in deciding whether this lawsuit should be dismissed on jurisdictional grounds."

So that is where the case is as it stands.

But again, we are in Texas and we are fighting multiple attorney generals, and Texas is the one forum where we can fight them together. We may end up having, as we do

in Mass., we may end up at some point, I don't know, having New York litigation also. Right now, we have given them over one million pages of documents, and that may come to pass. But at this moment, we are in Texas because Texas is the only state, because it's where we're based, where we can bring our constitutional claims against multiple attorney generals rather than fighting state by state by state.

Thank you.

MS. SHETH: Your Honor, may I be heard?

THE COURT: Briefly.

MS. SHETH: Thank you, your Honor.

Let me briefly just address what Mr. Wells just said.

We are not -- the New York AG is not a party to that action in Texas at present, and the order that he just put up in front of your court does not -- is not directed at the New York AG, and the quoted statements were not about statements made by the New York AG.

Now, let me turn back to the issue which is before your Honor involving the PwC documents and this purported privilege.

Just quickly in response to the CDP documents, to date we have only received 30 such Carbon Disclosure Project documents. If that's the full universe, then we would like a representation that that production is complete. But we

find it surprising that there would only be 30 such documents.

Let me now turn to the choice of law.

Mr. Wells argues for a balancing test and relies on the Court of Appeals decision in Babcock. That is a case from 1963 involving a car accident that happened in Canada by two New York parties. It does not involve the question of what state's choice of law provisions apply, what state's choice of law provisions apply when dealing with the question of privilege.

When you are talking about privileges, the appropriate authority to look at is the two cases we cited to your Honor from the First Department, Greenberg as well as JP Morgan.

And in addition, I would point your Honor to the case called Bamco 18 as well as First Interstate, which are also decisions involving the application of choice of law principles to the privilege question.

And what is very telling is a case from the Southern District of New York in 2004 called Condit v. Dunne, 225 FRD 100, and in that case, the court noted, even applying an interest test, as Mr. Wells urges this court to do, that the factors the courts consider in determining which state's privilege logs apply include the following: 1, the state where the allegedly privileged communication

was made; 2, the state where the discovery is sought and the evidence will be admitted; 3, the state of the parties' citizenship; 4, the state where the suit was filed; 5, the state whose laws control the substance of the litigation; and 6, the state where the offense giving rise to the litigation took place."

If we look at that six-factor test, there are four factors that weigh in favor of New York. And the third factor also weighs in favor of New York given that this is a New York law enforcement investigation of a company that indisputably does business here in New York. And if you apply that standard, we urge you to apply New York law, no privilege applies.

Let me now turn to the legislative history that is relied upon by Exxon's counsel.

The key document that was not shown to your Honor, which we are happy to provide you with, is a copy of the original 1979 statute. This is the statute that actually did create an accountant-client privilege. And if your Honor looks at that statute, you will see that the word "privilege" shows up in the statute. There is no restriction to just voluntary disclosures, and there is no exception for broad orders. That is entirely consistent with how privileges work.

Now, if you then look at every subsequent -- well,

the thing we forgot to mention is that in 1983, that statute was repealed. And starting in 1989 through 2013 there were various predecessors and amendments to the current statute. And if you look at those, each of those contain the three characteristics that suggest that this is, in fact, a rule of confidentiality, not a privilege.

Exxon's counsel relies heavily on the fact that the title includes the word "privilege." But, your Honor, if you look at the Texas Government Code Section 311.024, it makes clear that a statute -- that the title of a statute cannot be used to expand its meaning. And that is exactly what Exxon is trying to do here.

If you look at every amendment that Mr. Wells has pointed out, it makes clear that what we're talking about is a rule of confidentiality.

The fact that we went from "a court proceeding" to "a court order" is further confirmation that they have a broad exception. I mean, "a court proceeding" is even broader than "a court order." So that further suggests that this is, in fact, a rule of confidentiality.

And then if we look at the 2013 amendment, the legislature went so far as to have a separate section giving it even more significance for court orders. And to interpret Section (b)(2) as being an exhaustive list that only includes the IRS and the SEC and the Texas Securities

statute, that seems entirely inconsistent with, one, the fundamental principle that this statute is limited to voluntary disclosures, and, from a policy reason, how could it be the case that the Texas legislature wanted to allow accountants to disclose information to ethical boards and licensing boards that are covered in the 4, 5 and 6 exceptions listed in the statute, but not to sister state law enforcement agencies.

In fact, the better reading would be that the Texas legislature thought that those agencies should get the additional protection of a court order before disclosing confidential information.

So, again, we would argue that this structure of the statute conveys that it supports the view that it's better construed as a rule of confidentiality as opposed to an evidentiary privilege.

And, in fact, the cases, the four cases that Exxon's counsel put up on the boards, further illustrate, they are instructive to this court, that no Texas court has interpreted this to be a privilege and, rather, have stated that the existence of an accountant-client privilege is doubtful and not supported in the case law.

We would also argue that no further record is needed on this legal issue. This is a legal issue at its core. Whether it's an issue of statutory construction,

looking at the legislative history, there's further documents that PwC are going to provide, or the accountant-client privilege log if Exxon is ordered to do so. Those are not going to shed light on whether this privilege even exists under the law.

Let me now turn to the Texas action, and I feel compelled to address the allegations against the NYAG which I will reiterate have not -- this is a motion to amend. The AG has not been added as a party to the Texas litigation. And, in fact, the timing of Exxon's motion papers is quite curious.

What has happened in this case is, the subpoena to Exxon was issued back in November of 2015. For the past year, Exxon has produced documents to the New York AG, the most recent of which were produced in this month on October 11th. They have produced, as they said, over 1.2 million pages of documents. At no point during the last year have they contested the authority of this office to bring this investigation or the good faith of this office in bringing this investigation. And they did not do that until we filed these papers in this court. And there can be no dispute that this investigation is proper. It's a proper exercise of our authority to investigate violations of state securities laws and other state statutes.

There is no question that this subpoena to Exxon,

and to PwC for that matter, is valid and is the appropriate forum to decide the validity of our investigation, and the fact that the Attorney General enjoys a presumption of good faith in this court.

THE COURT: They don't dispute that.

MS. SHETH: And they don't dispute that. You are right, your Honor.

And what they have done instead is not raise that issue in this court and instead raise it in the Texas Federal Court, and then try to expedite consideration of their motion as soon as we serve them with a copy of your Honor's order to show cause.

And I would note that the facts that are alleged in their proposed First Amended Complaint in adding the New York State Attorney General, those facts were available to them back in June of 2015 when they filed their case against State Attorney General Maura Healey from Massachusetts, and it is only now, where after we have come to this court, that they have filed that motion.

And then just briefly, your Honor, on the substantive points, we do -- to the extent the Texas court intends to add us as a party to the Texas litigation, I would note that Attorney General Schneiderman's statements with regard to this investigation have been very balanced. He's repeatedly stated that we are at the early stages of

the investigation, that it is too early to say, he's made no predetermination about the outcome of this investigation.

For purposes of our choice of law analysis, all we have said is that if a case is filed, that case will be brought here in New York, and if there is a trial of such a case, that trial will happen here in New York given that it's a case brought by this office involving allegations of violations of state law.

And as to the point of multiple attorney generals working together, that happens all the time to conserve resources of taxpayers involving cases and investigations that transcend states. That is a normal course of practice to have states and federal law enforcement coordinate together to investigate and litigate actions, and the Volkswagen matters is a prime example of that.

Thank you, your Honor.

THE COURT: Okay. So, we have agreed that subject to any agreement that the parties consensually enter into, PwC and Exxon will expedite the production of any documents that are neither attorney-client communications nor allegedly privileged accounting communications on a rolling basis by November 10th. And if that proves to be unworkable and the parties can't consent, you can come back to this court.

In the meantime, I will attempt as expeditiously as

possible to resolve that which is before me, which is whether New York law or Texas law applies to the claim of privilege. If New York law applies, there is no claim of privilege. If Texas law applies, I'll have to determine what the 2013 statute means in terms of this case, and I will do that as expeditiously as I can.

The last thing that we need to have agreement on is that if there are going to be any submissions to the court, that those submissions are to be shared with opposing counsel. And if they are formal submissions, they have to be e-filed. If they are letters, they have to be cc'd to opposing counsel.

I think that concludes everything that we need to discuss today.

MS. SHETH: Your Honor, may I address the question you asked earlier this morning about this envelope?

THE COURT: Yes.

MS. SHETH: Your Honor, we took a look at what was in the envelope. These are the documents that were submitted under seal because they were designated by PwC as confidential. A copy of this exhibit was provided to counsel for both Exxon and PwC but was submitted under seal for your Honor. It was not publicly filed.

THE COURT: Okay. Well, it certainly wasn't clear, to me, from receiving an envelope --

MS. SHETH: I apologize, your Honor.

THE COURT: -- with a note saying: "This is not e-filed," that those are documents that were submitted under seal. So if you want to resubmit them to me for review with an appropriate cover letter, I will review them.

MS. SHETH: Happy to do so.

Thank you, your Honor.

THE COURT: Thank you.

I think you should both order a copy of the transcript because you will both want a copy of the transcript, and to the extent that you can get it expedited, that would be a good idea.

Thank you.

(At this time the proceedings were concluded.)

-oOo-

CERTIFICATION

This is to certify the within is a true and accurate transcript of the proceedings as reported by me.

William L. Kutsch, SCR

SO ORDERED

BARRY R. OSTRAGER, J.S.C.

Exhibit 11

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS 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,

For an order pursuant to C.P.L.R. § 2308(b) to compel compliance with a subpoena issued by the Attorney General

-against-

PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION,

Respondents.

X

Index No. 451962/16

DECISION & ORDER

Motion Seq. No. 001

OSTRAGER, J:

Presently before the Court is a petition by the Office of the New York Attorney General ("NYAG") seeking an order pursuant to CPLR section 2308(b) compelling respondent PricewaterhouseCoopers LLP ("PWC") to comply with a *subpoena duces tecum* issued by the NYAG on August 19, 2016 (the "Subpoena") and compelling respondent Exxon Mobil Corporation ("Exxon") to allow PWC to produce responsive documents without withholding some based on a purported accountant-client privilege. The Subpoena, attached as Exhibit A to the Affirmation of Katherine C. Milgram, Chief of the Investor Protection Bureau of the Office of the Attorney General, was issued in connection with the Attorney General's investigation of Exxon's representations about the impact of climate change on its business, including on its assets, reserves, and operations.

A highly publicized subpoena was originally issued to Exxon on November 4, 2015. Concurrent with additional publicity, including an interview of Attorney General Schneiderman in the New York Times, the NYAG issued its investigative subpoena to PWC on August 19, 2016. Both subpoenas relate to potential Martin Act violations by Exxon in connection with its allegedly misleading public disclosures relating to climate change. All parties agree that this Court is the proper forum in which to resolve the NYAG's application.

It is undisputed that Exxon has produced at least one million documents to the NYAG pursuant to the subpoena issued to Exxon. The question raised by the instant petition is whether the production of PWC documents would violate Texas Occupations Code Section 901.457, which is captioned "Accountant-Client Privilege." The answer to this question turns, in the first instance, on whether New York law applies to an investigative subpoena issued by the NYAG with respect to a New York investigation involving companies that do business in New York. If, as the NYAG claims, New York law applies, counsel agree that there is no accountant-client privilege as New York law does not recognize any such privilege. If, as Exxon claims, Texas law applies to the Subpoena, there is an issue as to whether Texas Operations Code Section 901.457 would operate to preclude production of non-attorney client communications on the grounds of an accountant-client privilege. Significantly, PWC takes no position on the applicability of the Texas Occupations Code Section 901.457.

The short answer to the latter issue is that Texas Operations Code Section 901.457 does not preclude production of the requested documents. It is therefore unnecessary to resolve the choice of law issue, although as set forth *infra*, New York law is applicable to the NYAG's petition.

The precursor statute to Texas Operations Code Section 901.457 was originally enacted in 1979. As originally enacted, the statute appears to have created a limited accountant-client privilege subject to several carve outs, although no Texas case has specifically recognized an accountant-client privilege. The statute was subsequently amended multiple times, first in 1989 and, thereafter in 1999, 2001, and again in 2013. Each succeeding amendment to the statute modified in some respect the carve outs to any arguable accountant-client privilege.

The case law and legislative history relating to the intent and proper interpretation of Texas Operations Code Section 901.457 and its predecessors is sparse and not dispositive of this case. In all events, all of the limited case law addressing the statute predates the 2013 version of the statute, except for one federal case that mentions the state law but applies federal law. This Court finds that the statute has a plain meaning. Specifically, subdivision (b) of the statute provides in relevant part:

> This section does not prohibit a license holder [PWC] from disclosing information that is required to be disclosed:
>
> (1) by the professional standards for reporting on the examination of a financial statement;
>
> (2) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, the Securities Act of 1933 *(15 U.S.C. Section 77a et seq.)* and its subsequent amendments, the Securities Exchange Act of 1934 *(15 U.S.C. Section 78a et seq.)* and its subsequent amendments, or The Securities Act *(Article 581-1 et seq., Vernon's Texas Civil Statutes);*
>
> (3) under a court order signed by a judge if the order:
>
> (A) is addressed to the license holder;
>
> (B) mentions the client by name; and
>
> (C) requests specific information concerning the client;
>
> (4) in an investigation or proceeding conducted by the board;
>
> (5) in an ethical investigation conducted by a professional organization of certified public accountants;

> (6) in the course of a peer review under Section 901.159 or in accordance with the requirements of the Public Company Accounting Oversight Board or its successor; or
>
> (7) in the course of a practice review by another certified public accountant or certified public accountancy firm for a potential acquisition or merger of one firm with another, if both firms enter into a nondisclosure agreement with regard to all client information shared between the firms.

This Court rejects Exxon's assertion that subsections (b)(2) and (b)(3) must be read together and that because the Subpoena was not issued pursuant to one of the federal laws specified in (b)(2), the NYAG may not seek a court order compelling production pursuant to (b)(3). As a matter of pure statutory construction, this interpretation of the statute is flawed because there is no textural support for the proposition that the carve out in (b)(3) is tethered to the carve out in (b)(2) while the carve outs in (b)(4), (b)(5), (b)(6), and (b)(7) are not. Consequently, the carve out in (b)(3) would be satisfied by an order from this Court compelling compliance by Exxon and PWC of the investigative subpoenas issued by the NYAG inasmuch as those subpoenas request specific information concerning Exxon. *Cf. In re Arnold*, 2012 WL 6085320 (Tex. App., Nov. 30, 2012) (holding that an order denying a motion to quash a deposition notice functioned as a court order, thus vitiating any confidentiality obligation under the statute).

For the reasons stated above, it is not necessary to resolve the choice of law issue. If there were an applicable accountant-client privilege under Texas law, it would be nevertheless unavailing because New York law applies to the NYAG's application. New York does not recognize an accountant-client privilege, and controlling authority holds that: "The law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding is applied when deciding privilege issues[.]" *JP Morgan Chase & Co. v Indian Harbor Ins. Co.*, 98 A.D.3d 18, 25 (1st Dep't 2012); *see also G-I Holdings, Inc. v Baron & Budd*, No. 01 Civ. 0216 (RWS), 2005 U.S. Dist. LEXIS 14128, at 7 (S.D.N.Y. July 13, 2005) ("With

respect to the law of evidentiary privileges, New York courts generally apply the law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding itself."); *Fine v Facet Aerospace Products Co.*, 133 F.R.D. 439, 443 (S.D.N.Y. 1990 ("New York courts apply the privilege law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding when deciding privilege issues."); *People v Greenberg*, 50 AD3d 195, 198 (1st Dep't 2008) ("New York courts routinely apply the law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding when deciding privilege issues.") (internal quotation marks omitted).

Accordingly, it is hereby

ORDERED that the motion by the Attorney General of the State of New York to compel compliance with the investigative *subpoena duces tecum* issued on August 19, 2016 is, in all respects, granted. As stated in open court, compliance with the Subpoena shall occur in accordance with any schedule to which the parties agree, as long as that schedule is not unnecessarily protracted. Counsel shall appear for a conference on Thursday, December 15, 2016 at 9:30 a.m. in Room 341.

Dated: October 25, 2016

J.S.C.

BARRY R. OSTRAGER
JSC

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BARRY R. OSTRAGER JSC *Justice* PART 61

Index Number : 451962/2016
PEOPLE OF THE STATE OF NEW YORK
vs.
PRICEWATERHOUSECOOPERS LLP ET AL
SEQUENCE NUMBER : 001
ORDER TO COMPEL

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 01

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is granted in accordance with the accompanying memorandum decision. Counsel shall appear in Room 341 for a conference on December 15, 2016 at 9:30 a.m.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: October 25, 2016

Barry R. Ostrager, J.S.C.
BARRY R. OSTRAGER JSC

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

Exhibit 12

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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, For an order pursuant to C.P.L.R. § 2308(b) to compel compliance with a subpoena issued by the Attorney General -against- PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION, Respondents.	Index No:451962/2016 Hon. Barry R. Ostrager **STIPULATION AND [PROPOSED] ORDER FOR PARTIAL STAY OF DECISION AND ORDER PENDING APPEAL**

WHEREAS, the Supreme Court of the State of New York, New York County (Hon. Barry R. Ostrager), issued a Decision and Order (the "Decision and Order"), dated October 26, 2016, and entered on October 26, 2016, granting the motion by the Office of the Attorney General of the State of New York ("OAG") to compel compliance with the investigative *subpoena duces tecum* issued to PricewaterhouseCoopers LLP ("PwC") on August 19, 2016 ("PwC Subpoena") in the above proceeding; and

WHEREAS, Exxon Mobil Corporation ("ExxonMobil") intends to appeal the Decision and Order to the Supreme Court of the State of New York, Appellate Division, First Department (the "Appeal");

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys for the OAG, ExxonMobil, and PwC, as follows:

1. ExxonMobil shall perfect the Appeal by November 7, 2016, so that it may be heard in the First Department's 2017 January Term.

2. The Decision and Order shall be partially stayed during the pendency of the Appeal.

3. In particular, during the pendency of the Appeal, PwC shall not produce to the OAG documents and communications responsive to the PwC Subpoena that ExxonMobil asserts are protected by the accountant-client privilege set forth at Texas Occupations Code Section 901.457. To the extent that ExxonMobil asserts the accountant-client privilege set forth at Texas Occupations Code Section 901.457 over any responsive documents and communications, ExxonMobil shall produce privilege logs to the OAG on a rolling basis as documents and communications are withheld. PwC shall have no obligation to produce to the OAG documents and communications provided by PwC to ExxonMobil's counsel Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul, Weiss") pending Paul, Weiss's review of those documents and communications to determine whether ExxonMobil will assert such a privilege over such documents and communications, provided that the parties will meet and confer on a schedule for PwC to provide to Paul, Weiss materials responsive to the subpoena, and for Paul, Weiss to review such materials to determine whether ExxonMobil will assert the accountant-client privilege set forth at Texas Occupations Code Section 901.457. If the meet and confer, which shall be conducted in good faith, results in an agreed-upon schedule, that schedule will be so ordered by this Court.

4. Production by PwC of all other documents responsive to the PwC Subpoena shall continue during the partial stay as ordered by this Court.

5. ExxonMobil, the OAG, and PwC further agree that no party shall seek to modify, amend or terminate the partial stay at any time during the pendency of the Appeal.

Dated: October 28, 2016
New York, New York

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: /_____

Katherine C. Milgram
Bureau Chief, Investor Protection Bureau
John Oleske, Senior Enforcement Counsel
Jonathan Zweig, Assistant Attorney General
Office of the New York Attorney General
120 Broadway
New York, New York 10271

Attorneys for the Office of the New York Attorney General

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /_____

David Meister
Jocelyn Strauber
4 Times Square
New York, New York 10036
Attorneys for PricewaterhouseCoopers, LLC

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: /Michelle Parikh

Theodore V. Wells, Jr.
Michele Hirshman
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
twells@paulweiss.com
mhirshman@paulweiss.com

Michelle Parikh
mparikh@paulweiss.com
2001 K Street, NW
Washington D.C. 20006-1047
(202) 223-7300

Attorneys for Exxon Mobil Corporation

So ordered.

_____
Barry R. Ostrager J.S.C.

4. Production by PwC of all other documents responsive to the PwC Subpoena shall continue during the partial stay as ordered by this Court.

5. ExxonMobil, the OAG, and PwC further agree that no party shall seek to modify, amend or terminate the partial stay at any time during the pendency of the Appeal.

Dated: October 28, 2016
New York, New York

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: /_____

Katherine C. Milgram
Bureau Chief, Investor Protection Bureau
John Oleske, Senior Enforcement Counsel
Jonathan Zweig, Assistant Attorney General
Office of the New York Attorney General
120 Broadway
New York, New York 10271

Attorneys for the Office of the New York Attorney General

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: /_____

Theodore V. Wells, Jr.
Michele Hirshman
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
twells@paulweiss.com
mhirshman@paulweiss.com

Michelle Parikh
mparikh@paulweiss.com
2001 K Street, NW
Washington D.C. 20006-1047
(202) 223-7300

Attorneys for Exxon Mobil Corporation

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /_____

David Meister
Jocelyn Strauber
4 Times Square
New York, New York 10036
Attorneys for PricewaterhouseCoopers, LLC

So ordered.

_____
Barry R. Ostrager J.S.C.

4. Production by PwC of all other documents responsive to the PwC Subpoena shall continue during the partial stay as ordered by this Court.

5. ExxonMobil, the OAG, and PwC further agree that no party shall seek to modify, amend or terminate the partial stay at any time during the pendency of the Appeal.

Dated: October 28, 2016
New York, New York

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: /Katherine C. Milgram/

Katherine C. Milgram
Bureau Chief, Investor Protection Bureau
John Oleske, Senior Enforcement Counsel
Jonathan Zweig, Assistant Attorney General
Office of the New York Attorney General
120 Broadway
New York, New York 10271

Attorneys for the Office of the New York Attorney General

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: /_____/

Theodore V. Wells, Jr.
Michele Hirshman
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
twells@paulweiss.com
mhirshman@paulweiss.com

Michelle Parikh
mparikh@paulweiss.com
2001 K Street, NW
Washington D.C. 20006-1047
(202) 223-7300

Attorneys for Exxon Mobil Corporation

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /_____/

David Meister
Jocelyn Strauber
4 Times Square
New York, New York 10036
Attorneys for PricewaterhouseCoopers, LLC

So ordered.

/Barry R. Ostrager/

Barry R. Ostrager J.S.C.

BARRY R. OSTRAGER
JSC

Exhibit 13

At IAS Part 61 of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse at 60 Centre Street, New York, New York, on the 15th day of November, 2016

PRESENT: The Hon. Barry R. Ostrager
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MOTION SEQUENCE # ~~003~~ 002

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,

For an order pursuant to C.P.L.R. § 2308(b) to compel compliance with a subpoena issued by the Attorney General

- against -

PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION,

Respondents.

Index No. 451962/2016

ORDER TO SHOW CAUSE

ORAL ARGUMENT REQUESTED

Upon the Office of the Attorney General's Memorandum of Law in Support of its motion to compel compliance with a *subpoena duces tecum* issued to Exxon Mobil Corporation ("Exxon") dated November 4, 2015, the annexed Affirmation of John Oleske in Support of such motion to compel dated November 14, 2016, and upon all the other documentation submitted in support of such motion, and sufficient cause having been alleged therefor, it is hereby

ORDERED that Respondent Exxon appear and show cause before IAS Part 61 of the Supreme Court, New York County, at the Courthouse located at 60 Centre Street, Room 341,

New York, New York, on the 21st day of November 2016, at 3:00 ~~a.m.~~/p.m. or as soon thereafter as counsel may be heard, why an Order should not be issued pursuant to New York Civil Procedure Law and Rules Sections 403(d) and 2308(b)(1):

(1) compelling Exxon to produce, no later than November 23, 2016:

> Documents concerning (i) XOM's valuation, accounting, and reporting of its assets and liabilities, including reserves, operational assets, extraction costs, and any impairment charges; and (ii) the impact of climate change and related government action on such valuation, accounting, and reporting, including documents held by additional custodians and documents found using appropriately-targeted search terms, *including, but not limited to,* documents relating to the disclosure, calculation, use and application of the proxy cost of carbon/greenhouse gases (also known as the carbon price); and

(2) retaining continuing jurisdiction over Exxon's compliance with the subpoena, and mandating such other and further relief as the Court deems just and proper in implementing a schedule for the prompt production of all other responsive documents called for by the subpoena.

ORDERED that any opposition papers shall be served on Petitioner by electronic mail to Petitioner's counsel, John Oleske, at john.oleske@ag.ny.gov, by ~~5:00~~ 1:00 p.m. ~~three days prior to~~ with a working copy delivered to Room 341 by 1:00 p.m. on November 18, 2016 the date set forth above for the hearing on Petitioner's motion to compel.

ORDERED that any reply papers ~~shall be served on Respondents by electronic~~ no written will be accepted. mail to Respondent Exxon's counsel, Theodore Wells Jr., at twells@paulweiss.com and Michele Hirshman, at mhirshman@paulweiss.com, and to Respondent PricewaterhouseCoopers LLP's ("PwC") counsel, David Meister, at david.meister@skadden.com, and Jocelyn Strauber, at jocelyn.strauber@skadden.com, by 5:00 p.m. one day prior to the date set forth above for the hearing on Petitioner's motion to compel.

ORDERED, that service of a copy of this Order and the papers upon which it is granted by electronic mail to Respondent Exxon's counsel, Theodore Wells Jr. and Michele Hirshman,

and to Respondent PwC's counsel, David Meister and Jocelyn Strauber, on or before November 15 shall be deemed sufficient service.

ENTER:

J.S.C.

BARRY R. OSTRAGER
JSC

ORAL ARGUMENT DIRECTED
BARRY R. OSTRAGER JSC

Exhibit 14

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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, For an order pursuant to C.P.L.R. § 2308(b) to compel compliance with a subpoena issued by the Attorney General -against- PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION, Respondents.	Index No. 451962/2016

EXXON MOBIL CORPORATION'S CORRECTED MEMORANDUM OF LAW IN OPPOSITION TO THE ATTORNEY GENERAL'S MOTION TO COMPEL COMPLIANCE WITH AN INVESTIGATIVE SUBPOENA

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

Attorneys for Respondent Exxon Mobil Corporation

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 3

ARGUMENT 11

I. This Discovery Dispute Is Not Properly Before this Court on an Order to Show Cause. 12

A. The Attorney General Has Failed to Show Any "Genuine Urgency." 12

B. The Attorney General's Motion Is Premature Under this Court's Rules. 14

II. The Subpoena Does Not Extend to Materials Unrelated to Climate Change 16

III. If the Subpoena Is Held to Reach Documents Unrelated to Climate Change, Further Briefing Is Warranted. 19

CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

CASES

See v. *City of Seattle*, 387 U.S. 541, 544 (1967) 16

In re A-85-04-38,
525 N.Y.S.2d 479 (Sup. Ct. Albany Cnty. 1988) 18

Abrams v. *Thruway Food Mkt. & Shopping Ctr., Inc*.,
147 A.D.2d 143 (2d Dep't 1989).....17

Am. Dental Coop., Inc. v. *Att'y Gen. of N.Y*.,
127 A.D.2d 274 (1st Dep't 1987) 19

Amherst Synagogue v. *Schuele Paint Co.*,
30 A.D.3d 1055 (4th Dep't 2006).....15

Anheuser-Busch, Inc. v. *Abrams*,
71 N.Y.2d 327 (1988).....19

Baez v. *Sugrue*,
300 A.D.2d 519 (2d Dep't 2002).....15

In re Cassini,
41 Misc. 3d 1207(A), 2013 WL 5493965
(Surr. Ct. Nassau Cnty. Sept. 26, 2013).....15

City of New York v. *W. Winds Convertibles Int'l*,
16 Misc. 3d 646 (Sup. Ct. Kings Cnty. 2007) 12

Dias v. *Consol. Edison Co. of N.Y.*,
116 A.D.2d 453 (2d Dep't 1986).....16

Hurrell-Harring v. *State*,
20 Misc. 3d 1108(A), 2008 WL 2522360
(Sup. Ct. Albany Cnty. May 16, 2008).....12

Hynes v. *Moskowitz*,
44 N.Y.2d 383 (N.Y. 1978) 18

Hypo Bank Claims Grp., Inc. v. *Am. Stock Transfer & Trust Co.*,
4 Misc. 3d 1020(A), 2004 WL 1977612
(Sup. Ct. New York Cnty. June 28, 2004).....14

LaRossa, Axenfeld & Mitchell v. *Abrams*,
62 N.Y.2d 583 (1984).....19

Lu Huang v. *Di Yuan Karaoke*,
28 Misc. 3d 920 (Sup. Ct. Queens Cnty. 2010) 13

Matter of Roemer v. *Cuomo*,
67 A.D.3d 1169 (3d Dep't 2009) 19

Murphy v. *Cnty. of Suffolk*,
35 Misc. 3d 1239(A) (Sup. Ct. Suffolk Cnty. 2012), *aff'd*,
115 A.D.3d 820 (2d Dep't 2014) 15

Weiner v. *Abrams*,
119 Misc. 2d 970 (Sup. Ct. Kings Cnty. 1983) 17

OTHER AUTHORITIES

22 N.Y.C.R.R. § 202.70, Rule 14 ..... 14, 15

22 N.Y.C.R.R. § 202.70, Rule 19 ..... 12, 13

C.P.L.R. § 2304 19

C.P.L.R. § 2308(b) 16, 19

Respondent Exxon Mobil Corporation ("ExxonMobil") submits this memorandum of law in opposition to the motion of Petitioner New York Attorney General Eric Schneiderman (the "Attorney General") to compel compliance with an investigative subpoena issued to ExxonMobil on November 4, 2015.

PRELIMINARY STATEMENT

With utter disregard for the limits of his power, the Attorney General asks this Court to compel the production of documents that are not called for by the subpoena he issued. While he makes that request in an order to show cause, there is nothing exigent or imminent about the underlying dispute. It raises a simple question about whether documents related to the valuation and reporting of ExxonMobil's assets and liabilities, without any limitation or restriction, must be produced pursuant to a subpoena that is expressly limited to the topic of climate change. ExxonMobil submits—and this should be uncontroversial—that the subpoena's terms must be honored and that it is the proper role of this Court to rebuff the Attorney General's effort to transform his subpoena into an impermissible general warrant.

To justify his position, the Attorney General points to Requests Nos. 3 and 4 in the subpoena, which he contends reach "documents reflecting Exxon's general practices." (Oleske Aff. ¶ 7.)[1] They do not. Those requests, just like all the others set forth in the subpoena, restrict the scope of production only to materials related to climate change. Request No. 3 seeks documents concerning the "integration of *Climate Change-related issues* . . . into [the Company's] business decisions." (Oleske Ex. A at 8

[1] Citations in the form "Oleske Aff." are references to the Affirmation of John Oleske in Support of the Attorney General's Motion to Compel, dated November 14, 2016.

(emphasis added).)[2] Likewise, Request No. 4 requires ExxonMobil to "disclose the *impacts of Climate Change* . . . in [its] filings . . . and [] public-facing and investor-facing reports." (*Id*. (emphasis added).) The common denominator: climate change. For the Attorney General to now claim that the subpoena reaches any and all records pertaining to ExxonMobil's "general practices," he must disregard the express terms of the subpoena. This Court should not ratify that effort to unilaterally revise the content of the subpoena.

The most noteworthy, and revealing, aspect of this "emergency" motion is its timing. It comes just two business days after a federal judge authorized joining the Attorney General to a lawsuit alleging his participation in a conspiracy to violate the constitutional rights of ExxonMobil. Arguing that a "federal injunction barring New York courts from enforcing the . . . subpoena" is imminent (Mem. 2),[3] the Attorney General conjures up a false conflict between the federal case and this one. There is no such conflict. The federal case has nothing to do with the issues raised by the Attorney General's motion, which pertains solely to the construction of the subpoena's text. The constitutional claims in federal court are simply beside the point.

The Attorney General is also mistaken about what is imminent in the federal action. Far from issuing an injunction, the judge has ordered discovery on the question of bad faith, so that he can determine whether jurisdiction exists. At the time the Attorney General filed this motion, he had been served with subpoenas in connection

[2] Citations in the form "Oleske Ex. __" are references to exhibits to the Oleske Aff, dated November 14, 2016.

[3] Citations in the form "Mem." are references to the Attorney General's Memorandum of Law in Support of Motion to Compel Compliance with an Investigative Subpoena Issued by the Attorney General of the State of New York, dated November 14, 2016.

with that jurisdictional inquiry and faced a looming deadline (then just three days away) to produce relevant documents. Since then, the Attorney General has refused to comply with those subpoenas. Now, the Attorney General's deposition will be scheduled by the federal court "after he files his answer in the matter," which is due on December 5, 2016. It is fear of imminent discovery, not an injunction, that is the driving force behind the Attorney General's motion.

Placed in context, the Attorney General's motion has far more to do with the litigation in federal court—and the Attorney General's desire to avoid court-mandated discovery that might reveal the improper motives animating the underlying investigations—than with any supposedly urgent dispute over the construction of a year-old subpoena. Stripped of hyperbole, the Attorney General's motion amounts to a transparent effort to insert this Court into pending litigation in federal court about whether the Attorney General conspired with others to violate ExxonMobil's federal constitutional rights. There is no legitimate reason to do so. Just as this Court is empowered to adjudicate the scope of the subpoena the Attorney General issued, the federal court is empowered to consider ExxonMobil's constitutional claims. The Attorney General's invitation to use a simple dispute over the text of a subpoena as a pretext to derail the orderly progress of litigation pending in a sister court should be rejected.

STATEMENT OF FACTS

On November 4, 2015, the Attorney General issued a subpoena to ExxonMobil that demanded the production of essentially every document in the Company's possession concerning global warming or climate change. The subpoena was expressly limited in scope to the topic of climate change. Each of the subpoena's eleven

document requests specifically refers to climate change. That restriction appears in the way each and every request is defined in the subpoena, which reaches:

- "any research, analysis, assessment, evaluation, modeling or other consideration" performed by or on behalf of the Company concerning the "causes" and "impacts" of "Climate Change" (Request Nos. 1 and 2);
- the "integration of Climate Change-related issues . . . into [the Company's] business decisions" (Request No. 3);
- "whether and how [the Company] disclose[s] the impacts of Climate Change . . . in [its] filings . . . and [] public-facing and investor-facing reports" (Request No. 4);
- materials "presented to [the Company's] board of directors Concerning Climate Change" (Request No. 5);
- materials "prepared by or for," "exchanged between," or "sent from or to" the Company and "trade associations or industry groups" "[c]oncerning Climate Change" (Request No. 6);
- "support or funding for organizations relating to communications or research of Climate Change" (Request No. 7);
- "marketing, advertising, and/or communication about Climate Change" (Request No. 8);
- "advertisements, flyers, promotional materials, and informational materials" the Company has produced "[c]oncerning Climate Change" (Request No. 9);
- "claims made in the materials identified in . . . [Request] Nos. 4, 8 and 9" (Request No. 10); and
- complaints made by "any New York State consumer" concerning ExxonMobil's "actions with respect to Climate Change" (Request No. 11).

(Oleske Ex. A. at 8–9.)

The subpoena was emailed to ExxonMobil's General Counsel at 9:45 pm on the night of November 4, 2015, just hours before reports about the subpoena appeared

in the press. (Anderson Aff. ¶ 6.)[4] The day after the subpoena was issued, ExxonMobil received multiple media inquiries about the subpoena, and it could read in the New York Times that members of the Attorney General's office had confirmed the subpoena's issuance. (Anderson Ex. A at 1–6.)[5] With the benefit of its sources inside the Attorney General's office, the *New York Times* reported that the focus of the Attorney General's investigation was "on whether statements made to investors about climate risk as recently as this year were consistent with the company's own long running scientific research." (Anderson Ex. A at 1.) That reporting was in accord with the terms of the subpoena, which expressly targeted climate change.

The following week, the Attorney General appeared on a *PBS NewsHour* segment, where he reinforced the subpoena's focus on climate change. (Anderson Ex. B.) During the segment, entitled "Has Exxon Mobil misle[d] the public about its climate change research[,]" the Attorney General described the focus of his investigation as "seeing what science Exxon has been using for its own purposes," and probing the Company's purported decision to "shift[] [its] point of view" and "change[] tactics" on climate change after "putting out some very good studies" and "being at the leadership of doing good scientific work" on climate change "[i]n the 1980s." (*Id.* at 2.) Later that month at an event sponsored by *Politico* in New York, the Attorney General stated that ExxonMobil appeared to be "doing very good work in the 1980s on climate research," but that its "corporate strategy seemed to shift" later. (Anderson Ex. C at 1.) The

[4] Citations in the form "Anderson Aff." are references to the Affidavit of Justin Anderson in Support of ExxonMobil's Opposition to the Attorney General's Motion to Compel Compliance with an Investigative Subpoena, dated November 18, 2016.

[5] Citations in the form "Anderson Ex. __" are references to exhibits to the Affidavit of Justin Anderson in Support of ExxonMobil's Opposition to the Attorney General's Motion to Compel Compliance with an Investigative Subpoena, dated November 18, 2016.

Attorney General admitted that his "investigation" of ExxonMobil was merely "one aspect" of his office's efforts to "take action on climate change," commenting that society's failure to address climate change would be "viewed poorly by history." (*Id.*) In none of these statements to the press did the Attorney General even mention ExxonMobil's oil and gas reserves or its assets.

While preserving its "right to seek to quash or otherwise object to the subpoena" (Anderson Ex. L at 1),[6] ExxonMobil worked with members of the Attorney General's office to identify responsive documents and prioritize their production, with a clear understanding that all relevant materials pertained to climate change. For example, the Attorney General's Environmental Protection Bureau Chief offered to clarify the scope of Request No. 3, which sought documents "[c]oncerning the integration of Climate Change-related issues . . . into [ExxonMobil's] business decisions . . . ." (Mem. Ex. A at 8.) According to his instructions, that request reached documents at a "very high management level, committee or group in which *climate change is integrated* into the high-level business decisions of the company—that's the essence of Request No. 3." (Anderson Aff. ¶ 3 (emphasis added).) Climate change was a consistent limitation on the scope of production, both in the text of the subpoena and in how members of the Attorney General's office explained the requests.

Within four weeks, the parties agreed on a set of search terms that could be used by ExxonMobil to identify documents responsive to the subpoena. (Anderson Ex. D.) The search terms confirmed the Attorney General's focus on climate change.

[6] In an email from his office dated November 19, 2015, the Attorney General's representative "confirm[ed] our understanding that, by producing documents in accordance with our discussions prior to the return date as extended, Exxon is not waiving any right to seek to quash or otherwise object to the subpoena. Likewise, the Attorney General's office is not waiving any right to compel compliance with the subpoena." (Anderson Ex. L at 1.)

For example, any documents that contained the word "asset" or "reserve" were responsive only if they also contained the word "stranded"—a reference to the alleged risk that climate change might cause oil and gas assets to be unprofitable to develop and therefore left (or "stranded") in the ground. (*Id.*)

Search terms in place, ExxonMobil initiated its production of documents in the order requested by the Attorney General. Document production began on December 3, 2015 and is ongoing, with the most recent production delivered on October 31, 2016. (Anderson Aff. ¶ 4.) During that time, the Attorney General's priorities shifted. First the review focused on ExxonMobil's historic scientific research; it later turned to ExxonMobil's projections about how climate change and possible regulations might affect worldwide demand for energy. ExxonMobil has adjusted to those priorities, all of which related to climate change, as the Attorney General presented them. To date, ExxonMobil has produced on a monthly basis tens of thousands of documents amounting to the equivalent of over a million pages of documents from 54 custodians across numerous business lines. (Anderson Aff. ¶ 4.)

On June 24, 2016, the Attorney General wrote to ExxonMobil requesting that it focus on new "investigative priorities" pertaining to "(i) [ExxonMobil's] valuation, accounting, and reporting of its assets and liabilities, including reserves, operational assets, extraction costs, and any impairment charges; and (ii) the impact of climate change and related government action on such valuation, accounting, and reporting." (Oleske Ex. C at 2–3.) The letter also sought documents from the "Global Reserves Group" and the "Reserves Technical Oversight Group." (*Id.* at 3–4.)

In response, ExxonMobil informed the Attorney General that "[b]ased on the NYAG's subpoena and our prior discussions with the Office, we understand that these requests are targeted at climate change-related documents rather than every document related to 'valuation, accounting, and reporting of . . . assets and liabilities' or otherwise held by those business units." (Oleske Ex. D at 5.) The Attorney General replied in a footnote to his July 22, 2016 letter, claiming for the first time and contrary to the text of the subpoena itself, that his "requests [were] not limited to documents that directly address climate change, but include valuation, accounting, and reporting documents that relate to future oil prices, extraction costs, and/or carbon taxes, all of which may be indirectly impacted by climate change." (Oleske Ex. E at 5 n.2.) The Attorney General also directed ExxonMobil to complete the production of previously identified documents before turning to the new request for reserves and other accounting documents. (*Id.* at 2.)

The parties continued to discuss the Attorney General's request. On September 8, 2016, ExxonMobil provided the Attorney General with the names of 37 custodians who had been placed on litigation hold and were in possession of documents responsive to the new priority. (Oleske Ex. H at A-1–A-2.) In that letter, ExxonMobil made clear that its corresponding production would pertain to "ExxonMobil's 'valuation, accounting, and reporting of its assets and liabilities' *that are affected by climate change*." (*Id.* at 1 (emphasis added).) Likewise, on September 13, 2016, ExxonMobil stated that it would "begin producing documents from the files of individuals" who "are in the Global Reserves Group and the Reserves Technical Oversight Group or otherwise associated with ExxonMobil's 'valuation, accounting, and reporting of its assets and

liabilities' *that are affected by climate change*." (Oleske Ex. I at 2 (emphasis added).) Consistent with those representations, on September 30, 2016, ExxonMobil provided the Attorney General with responsive materials, identified using the previously agreed-upon search terms, that pertained to assets and liabilities—but also related to climate change. (Anderson Aff. ¶ 5.)

The overarching theme of climate change was reflected in the Attorney General's contemporaneous public statements. As has become all too common in this matter, the Attorney General's shift in investigative priorities was fully communicated to the press. In an interview with the *New York Times* on August 19, 2016, the Attorney General stated that he was now focused on whether ExxonMobil had overstated its reserves and failed to impair its assets in light of the potential impact of "global efforts to address climate change," which he claimed might require ExxonMobil "to leave enormous amounts of oil reserves in the ground." (Anderson Ex. E at 1.) Further, the *Wall Street Journal*, in a September 16, 2016 article, quoted a spokesman for the Attorney General stating that ExxonMobil's "historic climate change research" was no longer "the focus of this investigation." (Anderson Ex. F at 2.) The article was attributed to "people familiar with the matter," who made clear that the Attorney General was "investigat[ing] the company's knowledge of the impact of climate change and how it could affect its future business." (*Id.* at 1.) As presented to the press, and consistent with the text of the subpoena itself, the Attorney General described his own inquiry as cabined by climate change.

While ExxonMobil attempted to address these shifting investigative priorities, it became increasingly clear that the Attorney General was participating, and

indeed leading, a larger conspiracy to violate ExxonMobil's constitutional rights. ExxonMobil therefore sought leave on October 17, 2016, to join the Attorney General to litigation that was already pending in federal court against Massachusetts Attorney General Maura Healey.[7] On November 10, United States District Judge Kinkeade granted ExxonMobil's application and joined the Attorney General to the lawsuit. (Oleske Ex. N.) Pursuant to an order authorizing jurisdictional discovery in that matter, the Attorney General was served subpoenas that demanded the production of documents on November 17, followed by three depositions scheduled for November 21 and 28, and December 5.[8]

Meanwhile, the Attorney General began to press his demands for records with newfound urgency. On November 1, the Attorney General wrote to ExxonMobil about the status of document production relating to assets and liabilities, asking ExxonMobil to "provide [] the custodians and search terms used to locate the documents produced on October 3." (Oleske Ex. K at 1.) On November 11, ExxonMobil responded that it used the agreed-upon search terms to identify and produce documents from 19 custodians "whose work involves or involved the valuation, accounting, and reporting of ExxonMobil's assets and liabilities, including issues relating to reserves and impairments." (Oleske Ex. L at 1.) ExxonMobil explained that the search terms "relate to the requests in the NYAG's November 4, 2015 subpoena, which seek documents concerning climate change." (*Id.* at 2.) The letter expressly noted that the Attorney General's subpoena "does not seek reserves or accounting documents that have no

[7] ExxonMobil's filing of this lawsuit fully refutes the Attorney General's claim that "Exxon has conceded in this Court that OAG has the authority to investigate it and it does not dispute that the Subpoena is valid or that OAG has acted in good faith." (Mem. 7.)

[8] After the Attorney General was joined as a party, those requests were replaced with party discovery.

relation to climate change" and, as such, ExxonMobil "ha[d] not searched for or produced such documents." (*Id.*)

Rather than issue a new subpoena or file a motion in the normal course to resolve this disagreement, the Attorney General brought an order to show cause before this Court, creating a false sense of urgency over a routine disagreement about the scope of a subpoena. Two days after filing that motion, the Attorney General informed the judge overseeing the federal litigation that he would not comply with the jurisdictional discovery order entered in that case. (Anderson Ex. I at 11:21–11:22.) In response to the judge's direct question about "comply[ing] with the order on . . . discovery or not," counsel for the Attorney General replied, "the answer is no." (*Id.*) Seeking to expeditiously resolve this discovery dispute, the judge proposed assigning a special master, but the Attorney General rejected the proposal. (Anderson Ex. J.) The judge then issued an order on November 17, 2016, requiring the Attorney General to appear on December 13, 2016, the date on which Attorney General Healey is scheduled to be deposed in connection with jurisdictional discovery. (Anderson Ex. K.) The judge also ordered the Attorney General's deposition to be scheduled "after he files his answer in the matter," which is due on December 5, 2016. (*Id.* at 2.)

ARGUMENT

The Attorney General's motion is flawed in form and substance. As to form, the lack of any urgency renders the filing of an order to show cause wholly improper. That impropriety is compounded because even a regular motion violates court rules disfavoring motion practice of any sort on discovery disputes in pending cases. But even if those procedural failings are excused, the motion cannot withstand scrutiny on the merits. The Attorney General's subpoena is expressly restricted to documents concerning

climate change. While his powers are substantial, the Attorney General lacks authority to unilaterally alter the provisions of a previously issued subpoena. If he were allowed to do so, the safeguard of judicial review would be reduced to a dead letter. This Court should hold the Attorney General to the terms of the instrument he drafted and issued.

I. This Discovery Dispute Is Not Properly Before this Court on an Order to Show Cause.

An order to show cause requires a preliminary showing of urgency, which the Attorney General has failed to plead, let alone establish. But even if he could establish the requisite urgency, an emergency motion would remain improper under the Rules of the Commercial Division and Your Honor's Rules, which require that discovery disputes be raised at a conference, not through motion practice.

A. The Attorney General Has Failed to Show Any "Genuine Urgency."

Under Rule 19 of the Commercial Division, motions may "be brought on by order to show cause *only when there is genuine urgency* . . . , a stay is required or a statute mandates so proceeding." 22 N.Y.C.R.R. § 202.70, Rule 19 (emphasis added). Courts have routinely refused to grant orders to show cause where there was no established exigency. *See, e.g.*, *Hurrell-Harring* v. *State*, 20 Misc. 3d 1108(A), 2008 WL 2522360, at *4 (Sup. Ct. Albany Cnty. May 16, 2008) (denying request for a conference on an order to show cause where "defendant did not offer . . . an explanation as to the urgency that warranted an immediate conference"); *City of New York* v. *W. Winds Convertibles Int'l*, 16 Misc. 3d 646, 655 (Sup. Ct. Kings Cnty. 2007) (denying City of New York's application for an order to show cause where the city sought temporary relief pending a hearing on its motion for a preliminary injunction based, in part, on failure to show required exigency).

The Attorney General has identified only one source of supposed "urgency" to support his application—the pendency of a federal lawsuit against him. In his brief, the Attorney General urges this Court to intervene because of the prospect of a "federal injunction barring New York courts from enforcing [his] subpoena" and the fear that "injunctive relief, if granted, would effectively terminate [the Attorney General's] investigation of Exxon." (Mem. 2, 7.) But fear that a federal court might issue an injunction to halt unconstitutional misconduct is not the type of urgency that would justify this Court's concern. Even if it were, the federal judge has done nothing to indicate that an injunction is about to be issued. To the contrary, the judge is considering whether he has jurisdiction over the matter and has issued a discovery order on that question. The Attorney General's desire not to participate in discovery falls well short of constituting a cognizable emergency.

Under Rule 19, urgency is generally established by a legitimate need to preserve the status quo in order to protect against a risk of irreparable harm, such as the risk of spoliation. *See* 4C N.Y. Prac., Com. Litig. in N.Y. State Courts § 89:48 (4th ed.). Evading discovery orders in federal court does not constitute the type of urgency that courts in New York have recognized—nor should they.

Where courts have granted orders to show cause in discovery disputes, the moving party established the egregious bad faith of the party against whom discovery was sought. This bad faith generally took the form of destroying or concealing evidence. *See, e.g.*, *Lu Huang* v. *Di Yuan Karaoke*, 28 Misc. 3d 920, 921 (Sup. Ct. Queens Cnty. 2010) (order to show cause granted "[i]n light of the particular circumstances of this case, and the prospect that respondent may be destroying or concealing the potent evidence");

Hypo Bank Claims Grp., Inc. v. *Am. Stock Transfer & Trust Co.*, 4 Misc. 3d 1020(A), 2004 WL 1977612, at *2 (Sup. Ct. New York Cnty. June 28, 2004) (similar). Where there is a risk that evidence will be lost, the urgency is clear. By contrast, ExxonMobil has engaged in no conduct, and the Attorney General has identified none, suggesting that any evidence is at risk of being destroyed or concealed. To the contrary, ExxonMobil has continued to comply with the subpoena and to accommodate the Attorney General's ever-shifting priorities for a period of twelve months, notwithstanding the litigation in federal court. In the absence of any urgent need for court intervention, the Attorney General's motion should be denied as improper.

B. The Attorney General's Motion Is Premature Under this Court's Rules.

The Attorney General purports to file his "emergency" application before this Court as part of a pending case concerning the subpoena he issued to PricewaterhouseCoopers ("PWC") over the assertion of a privilege. There is good cause to question the propriety of raising this dispute, which concerns a different subpoena and has nothing to do with an assertion of privilege, in the same litigation as the dispute over the PWC subpoena. But the Attorney General's decision to do so has consequences. Chief among them is that he must comply with this Court's Rules and the Rules of the Commercial Division, which govern discovery disputes in "pending case[s]." *See* 22 N.Y.C.R.R. § 202.70, Rule 14 ("If the court's Part Rules address discovery disputes, those Part Rules will govern discovery disputes in a pending case."). He has failed to do so.

Rule 14 of the Commercial Division provides that "[d]iscovery disputes are preferred to be resolved through court conference as opposed to motion practice." 22

N.Y.C.R.R. § 202.70, Rule 14. Counsel must "consult with one another in a good faith effort to resolve all disputes about disclosure." *Id.* This Court's Rules similarly require good faith efforts to resolve disputes. *See* "Discovery Disputes and Conference," Practice Rules for Part 61. Under those Rules, the Attorney General is not permitted to resort to motion practice, much less an order to show cause, to resolve discovery disputes in a pending action. *Id.* Such disputes are properly resolved through private consultation and then a court appearance. But in his haste to reach the courthouse, the Attorney General did neither.

Courts routinely deny discovery motions due to a party's failure to abide by the "good faith" requirement, which is "'intended to remove from the court's work load all but the most significant and unresolvable disputes over what has been the most prolific generator of pre trial motions: discovery issues.'" *In re Cassini*, 41 Misc. 3d 1207(A), 2013 WL 5493965, at *1 (Surr. Ct. Nassau Cnty. Sept. 26, 2013) (quoting *Eaton* v. *Chahal*, 146 Misc. 2d 977, 982 (Sup. Ct. Rensselaer Cnty. 1990)). "[D]iscovery disputes can and should be resolved by the attorneys without the necessity of judicial intervention." *Murphy* v. *Cnty. of Suffolk*, 35 Misc. 3d 1239(A) (Sup. Ct. Suffolk Cnty. 2012), *aff'd*, 115 A.D.3d 820 (2d Dep't 2014). A party that simply informs opposing counsel by letter of its dissatisfaction fails to "demonstrate" the "diligent effort" required "to resolve a discovery dispute." *See, e.g.*, *Amherst Synagogue* v. *Schuele Paint Co.*, 30 A.D.3d 1055, 1057 (4th Dep't 2006); *Baez* v. *Sugrue*, 300 A.D.2d 519, 521 (2d Dep't 2002).

Rather than file an order to show cause, the Attorney General should have conferred with ExxonMobil in good faith and then requested a court appearance to

address any concerns that could not be resolved. The Attorney General's failure to do so provides another reason to deny the motion as improperly filed.

II. The Subpoena Does Not Extend to Materials Unrelated to Climate Change

If the Court considers the merits of the Attorney General's motion, it should be denied for the most basic of reasons: The documents the Attorney General seeks are outside the scope of the subpoena. A subpoena recipient need only "produce a book, paper or other thing which he was directed to produce by the subpoena." C.P.L.R. § 2308(b); *Dias* v. *Consol. Edison Co. of N.Y.*, 116 A.D.2d 453, 454 (2d Dep't 1986). Here, the scope of the subpoena is limited to climate change. Notwithstanding that express limitation, the Attorney General now seeks all documents related to the valuation and reporting of ExxonMobil's assets and liabilities, not merely those related to climate change. This Court should honor the subpoena's clear language and reject the Attorney General's attempt to rewrite his own subpoena and to transform it into an impermissible general warrant.

Rather than address the question of whether the subpoena actually reaches documents pertaining to reserves, assets, and liabilities that do not concern climate change, the Attorney General presents this Court with platitudes about its power to issue subpoenas. (Mem. 8–10.) That power—when properly exercised—is not in dispute. ExxonMobil does not contest here the Attorney General's authority to issue subpoenas when appropriate and in the normal course. But when the Attorney General exercises his power to issue subpoenas, he must abide by the requirement that subpoenas be "limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *See* v. *City of Seattle*, 387 U.S. 541, 544 (1967). If that principle means anything at all, it means that the scope of a subpoena cannot be modified

after the fact and on the whim of the issuer. Were it otherwise, a subpoena would be nothing more than a blank check, making judicial review of breadth and burden meaningless.

Nothing in the Attorney General's brief suggests otherwise. To the contrary, the precedent invoked by the Attorney General confirms that a subpoena recipient can be compelled to produce only those documents that are within the scope of the subpoena at issue. *See, e.g.*, *Abrams* v. *Thruway Food Mkt. & Shopping Ctr., Inc*., 147 A.D.2d 143, 145 (2d Dep't 1989) (identifying the specific requests contained in the subpoena); *Weiner* v. *Abrams*, 119 Misc. 2d 970, 972 (Sup. Ct. Kings Cnty. 1983) (same). The principle should be utterly uncontroversial, for the failure to recognize such limits would merely license abuse and oppression.

Here, there can be no legitimate dispute that the subpoena reaches only documents concerning climate change. Nevertheless, the Attorney General contends that Request No. 3 calls for documents reflecting ExxonMobil's "general practices concerning the valuation, accounting, and reporting of its assets and liabilities," without any limitation whatsoever. (Mem. 4.) The Attorney General's reading contradicts (i) the face of the 113-word Request, which at no point makes reference to ExxonMobil's general valuation and accounting practices;[9] (ii) the representation of the Attorney General's Environmental Protection Bureau on November 18, 2015 that Request No. 3 is

[9] Request No. 3 seeks: "All Documents and Communications, within Time Period 2, ***Concerning the integration of Climate Change-related issues*** (including but not limited to (a) a future demand for Fossil Fuels, (b) future emissions of Greenhouse Gases from Fossil Fuel extraction, production and use, (c) future demand for Renewable Energy, (d) future emissions of Greenhouse Gases from Renewable Energy extraction, production and use, (e) Greenhouse Gas emissions reduction goals, (f) the physical risks and opportunities to climate change, and (g) impact on Fossil Fuel reserves ***into Your business decisions***, including but not limited to financial projections and analyses, operations projections and analyses, and strategic planning performed by You, on Your behalf, or with funding provided by You." (Oleske Ex. A at 8 (Req. No. 3) (emphasis added).)

in fact limited in scope to those documents concerning climate change; and (iii) the Attorney General's public statements about the scope of his investigation. The Attorney General's claim that Request No. 3 somehow covers accounting documents unrelated to climate change thus defies the plain language of the Request.[10]

It is no answer for the Attorney General to point to correspondence with ExxonMobil in an effort to expand the scope of the subpoena. (Mem. 4–5.) In addition to providing no authority for such a view, the Attorney General would be hard-pressed to explain how the right to judicial review would be upheld under that regime. New York law protects subpoena recipients, like ExxonMobil, against the "abuse of subpoena power" by providing for judicial review. "Bifurcation of the power, on the one hand, of the public official to issue subpoenas duces tecum and, on the other hand, of the courts to enforce them, is an inherent protection against abuse of subpoena power." *See Hynes* v. *Moskowitz*, 44 N.Y.2d 383, 393 (1978); *see also In re A-85-04-38*, 525 N.Y.S.2d 479, 481 (Sup. Ct. Albany Cnty. 1988) ("It is ancient law that no agency of government may conduct an unlimited and general inquisition into the affairs of persons within its jurisdiction solely on the prospect of possible violations of law being discovered, especially with respect to subpoenas duces tecum.") (quoting *A'Hearn* v. *Comm. on Unlawful Practice of Law*, 23 N.Y.2d 916, 918 (1969)).

[10] The Attorney General has also claimed that Request No. 4 seeks documents concerning reserves and impairments that do not relate to climate change. For the reasons already discussed, this interpretation cannot be reconciled with the plain language of the Subpoena. Request No. 4 targets: "All Documents and Communications, within Time Period 1, ***Concerning whether and how You disclose the impacts of Climate Change*** (including but not limited to regulatory risks and opportunities, physical risks and opportunities, Greenhouse Gas emissions and management, indirect risks and opportunities, International Energy Agency scenarios for energy consumption, and other carbon scenarios) ***in Your filings with the U.S. Securities and Exchange Commission and in Your public-facing and investor-facing reports*** including but not limited to Your *Outlook For Energy* reports, Your *Energy Trends, Greenhouse Gas Emissions, and Alternative Energy* reports, and Your *Energy and Carbon - Managing the Risks* Report." (Oleske Ex. A at 8 (Request No. 4) (emphasis added).)

If the Attorney General had actually served a new subpoena on ExxonMobil, ExxonMobil would have had the right to challenge in court the Attorney General's request through a motion to quash or to modify the subpoena.[11] *See* C.P.L.R. § 2304. The Attorney General's attempt to compel compliance with a request not contained in the subpoena subverts that protection.

III. If the Subpoena Is Held to Reach Documents Unrelated to Climate Change, Further Briefing Is Warranted.

Should the Court conclude that, notwithstanding its express textual limitation, the subpoena reaches documents having nothing to do with climate change, that holding would raise a number of complicated and weighty legal questions. Chief among those questions are those relating to burden and breadth. If the subpoena no longer means what it says, what limits can this Court place on the Attorney General's power to modify the terms of the subpoena at will? How will judicial review proceed and on what record? How can burden be measured when the parameters of production—even after a year of compliance, as here—remain constantly in flux? And if ExxonMobil is required to produce asset and liability documents without a climate change restriction, what limitation will cause this sweeping and boundless request not to be overly burdensome?

Separately, the production of any and all documents related to the reporting of reserves, assets, and liabilities presents substantial questions of federal

[11] Several of the very precedents on which the Attorney General relies to buttress his argument that an investigatory subpoena need only be authorized in order for this Court to provide relief under C.P.L.R. § 2308(b)(1) are themselves decisions on a motion to quash or modify a subpoena, or expressly note that the noncompliant party had an opportunity to move to quash or modify the subpoena at issue. *See Anheuser-Busch, Inc.* v. *Abrams*, 71 N.Y.2d 327, 331 (1988) (reversing quashing of subpoenas); *LaRossa, Axenfeld & Mitchell* v. *Abrams*, 62 N.Y.2d 583, 590 (1984) ("Plaintiffs also had the opportunity to move pursuant to CPLR 2304 to modify or quash the subpoenas. . . ."); *Matter of Roemer* v. *Cuomo*, 67 A.D.3d 1169, 1169 (3d Dep't 2009) (appeal from order denying motion to quash); *Am. Dental Coop., Inc.* v. *Att'y Gen. of N.Y.*, 127 A.D.2d 274, 284 (1st Dep't 1987).

preemption in light of the Attorney General's public statements about his purpose in obtaining those records. Second-guessing the reasoned judgment of the Securities and Exchange Commission as expressed in duly issued regulations is simply not the proper role of the Attorney General. And insofar as the Attorney General seeks documents with no connection to New York, the demand raises serious questions about jurisdiction and extraterritoriality.

These questions, and others, are significant and complicated. They would require careful consideration on a fully developed factual record supported by adequate and thoughtful briefing. For that reason, ExxonMobil respectfully requests that, if this Court holds that the subpoena is not bound by its express climate change limitation, a briefing schedule be set to resolve the serious issues presented by such a holding.

CONCLUSION

Facing the obligation to respond to a jurisdictional discovery order likely to expose bad faith and bias, the Attorney General looks to this Court for refuge by ginning up an "emergency" discovery dispute over a year-old subpoena. There is no valid basis to accept that overwrought invitation. The Attorney General's motion pertains to the narrow question of whether the words written on the face of a subpoena have any meaning. ExxonMobil submits that the question must be answered in the affirmative. To accept the Attorney General's view is to reject the fundamental protection that judicial review affords the recipients of subpoenas. And ExxonMobil looks to this Court to vindicate the rights of subpoena recipients in the face of abusive government practices, just as it looks to federal court to protect its constitutional rights from a conspiracy to violate them. Whether for its failure to demonstrate any urgency, to

comply with court rules, or to present any legitimate reason to displace the plain text of the subpoena, the Attorney General's motion should be denied.

November 18, 2016

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP

/s/ Theodore V. Wells, Jr.
Theodore V. Wells, Jr.
twells@paulweiss.com
Michele Hirshman
mhirshman@paulweiss.com
Daniel J. Toal
dtoal@paulweiss.com

1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Justin Anderson, *pro hac vice pending*
janderson@paulweiss.com

2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Attorneys for Exxon Mobil Corporation

Exhibit 15

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

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

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.

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

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

Proceedings

beyond the scope of the subpoena that is at issue.

So, I will hear from the Attorney General.

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

John Oleske for The State, Judge.

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

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

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

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

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

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

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

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

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

THE COURT: That is your position.

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

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

MR. OLESKE: No.

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

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

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

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

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

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

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

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

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

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

MR. WELLS: May we set up one second?

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

They are requesting documents that are basically accounting documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Short pause)

MR. WELLS: If you look at the Pricewaterhouse

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

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

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

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

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

This is a new, this is a new investigation.

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

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

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

The next sentence which is key.

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

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

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

THE COURT: Of course.

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

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

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

THE COURT: I understand completely.

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

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

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

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

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

have just said.

That's not what they said.

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

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

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

That is how we have been going for 5 months.

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

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

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

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

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

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

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

THE COURT: When can it happen?

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

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

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

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

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

And we made multiple productions based upon the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

is incorporating these impacts.

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

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

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

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

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

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

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

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

That's why we are here today.

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

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

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

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

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

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

filed.

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

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

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

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

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

broad area.

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

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

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

THE COURT: I understand the issues here.

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

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

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

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

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

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

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

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

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

We spent 5 months trying to come to that kind of

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

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

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

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

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

And that is the disposition of the motion.

Thank you.

MR. OLESKE: Thank your, your Honor.

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

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

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

Exhibit 16

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 3601, OFFICE TOWER A, BEIJING FORTUNE PLAZA
NO. 7 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

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

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

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

WRITER'S DIRECT DIAL NUMBER
212-373-3869

WRITER'S DIRECT FACSIMILE
212-492-0868

WRITER'S DIRECT E-MAIL ADDRESS
dtoal@paulweiss.com

December 5, 2016

By NYSEF

The Honorable Barry R. Ostrager
Supreme Court of the State of New York
Commercial Division
60 Centre Street, Room 629
New York, NY 10007

Re: In the Matter of the Application of the People of the State of New York, by Eric T. Schneiderman, Index No. 451962/2016.

Dear Justice Ostrager:

We represent Respondent Exxon Mobil Corporation ("ExxonMobil") in the above referenced matter. We write in response to the New York Attorney General's ("NYAG") letter to the Court, dated December 1, 2016, complaining of purported deficiencies in ExxonMobil's response to the NYAG's November 4, 2015 investigative subpoena (the "Subpoena").

The record in this matter makes clear that ExxonMobil is fully complying with its obligations with regard to the Subpoena. ExxonMobil has undertaken an extensive search for responsive documents that is reasonable in all respects. It has spent millions of dollars producing documents to the NYAG, has accommodated the NYAG's shifting investigative priorities, and has already produced nearly 1.4 million pages of responsive documents. The NYAG nonetheless complains that ExxonMobil must do more. While the NYAG proclaims that something must be done, it does not say what additional steps ExxonMobil should take. Contrary to the NYAG's position, ExxonMobil's production of documents has been entirely reasonable, and the law requires nothing more.

ExxonMobil's History of Compliance

ExxonMobil has been reviewing and producing documents to the NYAG in compliance with the Subpoena since December 3, 2015. To date, and in accordance with the NYAG's investigative priorities, ExxonMobil has collected and produced documents from 56 custodians. The search terms it has used to identify potentially responsive documents are those agreed to by the NYAG and ExxonMobil on December 16, 2015. (Exhibit A.) These include the original terms proposed by ExxonMobil on December 15, 2015, as well as the twelve modifications and three additional terms proposed by the NYAG on December 16—all of which ExxonMobil accepted that same day. The terms are unusually broad, containing such commonplace phrases as (i) "climate" within two words of "change"; (ii) "global warming"; (iii) "carbon dioxide" within five words of "tax," "cost," "asset," or "budget"; and (iv) "greenhouse." Using these broad terms, ExxonMobil has already produced 1,389,703 pages of documents from 56 custodians. The Company has agreed to produce documents from an additional 12 custodians—and, as applicable and if feasible, other key custodians identified during the course of the document review—by the end of December 2016.

The custodians from whom ExxonMobil has produced documents are those most central to the NYAG's investigation. Most of them were identified and prioritized based on the NYAG's shifting investigative theories. ExxonMobil thus produced over 109,000 documents, totaling over 680,000 pages, from four custodians who studied climate science. When these documents evidently refuted the NYAG's investigative theory, the NYAG directed ExxonMobil instead to review the documents of employees who had contributed to a report ExxonMobil published in 2014, entitled "*Energy and Carbon - Managing the Risks*," and those on ExxonMobil's greenhouse gas issue management teams. After ExxonMobil produced over 80,000 documents (totaling over 455,000 pages) from these custodians, the NYAG shifted its focus yet again to ExxonMobil's "valuation, accounting, and reporting of its assets and liabilities," expressing an interest in two groups that have exceedingly limited involvement in issues relating to climate change: the "Global Reserves Group" and the "Reserves Technical Oversight Group."[1]

In view of these diligent and concerted efforts, ExxonMobil has agreed to complete a reasonable production of documents responsive to Requests 3 through 5 by December 31, 2016, and a reasonable production of documents responsive to Requests 8 through 11 by January 31, 2017. And the NYAG has agreed that no further production is required for Requests 1, 2, 6, and 7.

Efforts to Resolve the Discovery Dispute

Notwithstanding ExxonMobil's willingness to work with the NYAG, in a letter dated November 1, 2016, the NYAG demanded the production of all accounting and proxy cost of carbon documents within three weeks' time. ExxonMobil, in a letter dated November 11,

[1] As ExxonMobil stated in its letter to the NYAG, dated September 8, 2016, the Reserves Technical Oversight Group is also known, and referred to, as the Global Reserves Group.

2016, explained that while it was willing to collect documents from the remaining accounting custodians identified on its September 8 list, production from additional custodians inevitably would extend into 2017.

The parties then appeared before your Honor on November 21, 2016. At that hearing, the Court noted that since "there has been a long negotiation between the parties," he would not "fix a specific date" for discovery to be concluded. (Exhibit B at 24:16-17.) Instead, the Court instructed the parties to meet-and-confer to determine when ExxonMobil could reasonably complete production of all documents requested by the Subpoena. (*Id.* at 24:13-23.) The Court added that, if the parties could not reach a "reasonable resolution on a consensual basis among themselves," then the Court would resolve the outstanding issues. (*Id.* at 24:22-23.)

The next day, pursuant to the Court's November 21, 2016 Order, ExxonMobil requested a meet-and-confer with the NYAG to "develop a joint proposal for completing the production of documents responsive to the [Subpoena]." (Exhibit C.) The NYAG accepted ExxonMobil's invitation, and the parties agreed to meet the following week. (Exhibit D.) In advance of the meeting, the NYAG, in a letter dated November 22, 2016, proposed a timeline for the completion of the production with December deadlines. (*Id*.) ExxonMobil responded in a letter dated November 29, 2016 that it would discuss a production schedule that provided sufficient time for review and production, but noted that production from any additional custodians would require additional time.

During the meet-and-confer, which took place on November 29, 2016, ExxonMobil sought to discuss a reasonable production schedule with the NYAG's office. The NYAG, however, declined to discuss specific perceived deficiencies in ExxonMobil's production, instead asserting that the Subpoena would not be satisfied until ExxonMobil had identified every responsive document. The NYAG expressly stated that a "reasonable production" would not suffice, and insisted that it wanted "everything."

ExxonMobil has made substantial efforts to compromise with the NYAG. Although ExxonMobil believes that the agreed-to search terms are more than adequate to identify potentially responsive documents, it nonetheless agreed to add the term "proxy cost" to the list of terms. But, no sooner had the NYAG made this demand, than it rejected ExxonMobil's acceptance of it as inadequate. Similarly, when ExxonMobil said it was willing to consider producing documents from additional custodians at the NYAG's request, the NYAG steadfastly refused to identify any.

The NYAG's December 1 Letter to the Court

In its submission to the Court, the NYAG raised several supposed deficiencies with ExxonMobil's production in response to the Subpoena. Each of the NYAG's complaints is without merit. For the past year, ExxonMobil has worked tirelessly to address the NYAG's ever-changing objectives. This has included the identification and collection of documents from scores of custodians, the negotiation of broad search terms with the NYAG, and the production of over 214,000 documents—and nearly 1.4 million pages—identified by those terms. The

NYAG appears to believe that it is entitled to every responsive document possessed by any of ExxonMobil's tens of thousands of employees, but the law establishes otherwise.[2]

First, the NYAG contends that ExxonMobil has failed to produce documents from certain categories. Not so. ExxonMobil has collected responsive documents from an expansive selection of key custodians, including its CEO, senior management, Public and Government Affairs professionals, members of its Corporate Strategic Planning group, authors and contributors to various external facing publications that reference climate change, and numerous science teams that have focused on climate change. The NYAG has no basis for believing that the current custodians and search terms exclude unique relevant documents in the categories that it has identified. With respect to documents involving the proxy cost of carbon, for example, ExxonMobil has produced 1,403 documents from 25 custodians where the term "proxy cost" appears, notwithstanding that "proxy cost" was not an agreed-to search term. Further, and notwithstanding that this Court explicitly ruled that the current Subpoena applies only to documents concerning climate change, the NYAG continues to press for greater information about reserves, a topic that has no connection to climate change. ExxonMobil nonetheless has produced, and continues to produce, climate change–related documents that mention reserves and are otherwise responsive to the Subpoena. To date, 1,400 such documents have been produced. The NYAG should not be surprised that there are not more documents that discuss a connection between ExxonMobil's reserves and climate change because no such connection exists. "Proved reserves" under Securities and Exchange Commission ("SEC") regulations encompass only energy sources that ExxonMobil estimates with "reasonable certainty" to be economically producible "under existing economic conditions, operating methods, and government regulations." *Modernization of Oil & Gas Reporting*, SEC Release No. 78, File No. S7-15-08, 2008 WL 5423153, at *66 (Dec. 31, 2008). By definition, therefore, future government regulations related to climate change, which may or may not be enacted, are not to be considered when measuring and disclosing proved reserves.

The NYAG's contention that ExxonMobil has failed to search databases or shared folders and collect responsive documents therefrom is similarly baseless. As previously detailed to the NYAG, relevant electronic documents belonging to each custodian are collected from multiple data sources, including shared folders such as "MySite" and "TeamSite." (Exhibit E at 1, Ex. B.) The Company searched shared drives or databases where custodians indicated that there was a reasonable likelihood that a shared drive or database contained responsive

[2] As noted in the *Sedona Principles*, "[d]iscovery should not be permitted to continue indefinitely merely because a requesting party can point to undiscovered documents and electronically stored information when there is no indication that the documents or information are relevant to the case, or further discovery is disproportionate to the needs of the case." The Sedona Conference, *The Sedona Principles (Second Edition): Best Practices Recommendations & Principles for Addressing Electronic Document Production* (2007), at 38, http://www.thesedonaconference.org; *see also Zubulake* v. *UBS Warburg LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004) ("counsel and client must take *some reasonable steps* to see that sources of relevant information are located") (emphasis in original); *Barrison* v. *D'Amato & Lynch, LLP,* 2015 WL 1158573, at *2 (N.Y. Sup. New York Cty. March 16, 2015) (recognizing that "litigants are not entitled to a perfect production of documents in e-discovery").

documents. Thus, the underlying location of a document is immaterial with regard to whether the relevant custodial files of a custodian are reviewed and subsequently produced.

Second, the list of custodians from whom ExxonMobil has collected documents is more than reasonable.[3] ExxonMobil crafted its custodian list through comprehensive research, witness interviews, and document review. The custodial list reaches into almost every component of the Company and includes a cross section of individuals who may have the type of information sought by the Subpoena. This list includes the scientists who conducted ExxonMobil's climate change research, employees who developed ExxonMobil's principal communications regarding the relevance of climate change, individuals involved in accounting and valuation, senior management, and even ExxonMobil's current and former CEOs. Indeed, this was not a list created without the NYAG's knowledge and consent. In fact, the NYAG often proposed names to be added to the list of custodians. Now, having repeatedly selected custodians for collection at earlier stages of the investigation, the NYAG disclaims the obligation and ability to identify additional custodians that it considers necessary to a reasonable production. Instead, the NYAG asserts that key custodians must be missing because it has not found documents supporting any of its investigative theories. Notably, at no point has ExxonMobil refused to add a single custodian requested by the NYAG, although it has noted that the addition of custodians inevitably would affect and prolong the timetable for production.

Third, the search terms to which ExxonMobil and the NYAG agreed in December 2015 are entirely reasonable and sufficient to identify potentially relevant documents.[4] The current search terms used by ExxonMobil were created after discussion with, and modification by, the NYAG. Indeed, when the NYAG suggested the addition of twelve modifications and three additional terms, ExxonMobil immediately complied. (Exhibit A.) Further, as explained above, there is no evidence that these search terms have been inadequate. They have resulted in almost 1.4 million pages of responsive information, and have been broad enough to capture documents related to the proxy cost of carbon, even though "proxy cost" was not itself a search-term. Contrary to the NYAG's suggestion, the search terms agreed to on December 16, 2015 were expected to capture an exceedingly broad swath of documents and were not intended to be "preliminary." (AG Letter at 3.) And, in all circumstances to date, ExxonMobil never said that

[3] The NYAG's reliance on *Crown Castle USA Inc.* v. *Fred A. Nudd Corp.*, No. 05-CV-6163T, 2010 WL 1286366 (W.D.N.Y. Mar. 31 2010), is unavailing. In that case, the company's in-house counsel erred by failing to implement a litigation hold, leading to the destruction of relevant documents. *Id*. at *12. In contrast, ExxonMobil immediately instituted a litigation hold of relevant custodians—including ExxonMobil's CEO, senior management, and various science-based teams—as soon as the investigation began. ExxonMobil has also conducted numerous witness interviews and reviewed documents in its efforts to identify key custodians.

[4] The NYAG quotes *William A. Gross Const. Associates, Inc.* v. *American Manufacturers Mutual Insurance. Co*., 256 F.R.D. 134 (S.D.N.Y. 2009), out of context. (NYAG Letter of December 1, 2016 ("AG Letter") at 3 n.4.) Inappropriate search terms, as the court in *William A. Gross* noted, are those created "without adequate information" or "involvement" from the parties themselves. *Id.* at 136. Here, the parties did "carefully craft" the set of search terms. First, ExxonMobil investigated terms that would capture documents of interest through interviews and review of documents. Second, ExxonMobil accommodated the request from the NYAG to add an additional search term. The NYAG has not alleged—nor could it—that there was inadequate "involvement" from both parties in this case.

it was unwilling to consider additional terms that have a reasonable likelihood of identifying unique responsive documents that the prior search terms would have missed. In fact, during the November 29, 2016 discussion with the NYAG, ExxonMobil agreed to add "proxy cost" to the list of search terms that ExxonMobil will apply across the files of the produced custodians. By contrast, the additional search terms that the NYAG proposed in its October 14, 2016 letter were largely unrelated to climate change and, in any event, were unreasonably broad, including such generic terms as "capital investments," "environmental standards," or "project economics" (Exhibit F[5] at 1).[6]

Fourth, the NYAG objects to ExxonMobil's redaction in certain documents of non-responsive material. But the NYAG fails to cite to a single New York state court case in support of its position that it is entitled to the production of non-responsive information, and, as far as ExxonMobil is aware, no such case exists. Instead, the NYAG relies upon a handful of unrepresentative federal cases applying the Federal Rules of Civil Procedure, which are not at issue here, in the context of discovery disputes.[7] While ExxonMobil maintains that New York state law unambiguously and routinely permits redactions for non-responsiveness,[8] it is nonetheless willing to re-review all of its non-responsiveness redactions. In conducting this re-review, ExxonMobil will limit its redactions to proprietary and commercially sensitive information, which even the NYAG concedes is proper. That review is underway and will be completed by month's end.

Finally, ExxonMobil maintains that, the current protocol–which involves monthly document productions and quarterly submissions of privilege logs covering documents withheld over a three-month period–is reasonable.[9] By contrast, weekly productions and productions of

[5] Exhibit F is an excerpt of a letter from the NYAG, dated October 14, 2016. ExxonMobil omitted the second page of the letter in order to protect the identities of specific document custodians. The Company will provide the full letter to the Court for *in camera* review upon request.

[6] Paradoxically, the very documents highlighted in the NYAG's October 14 letter were identified through use of the search terms the NYAG now claims are inadequate to identify such documents.

[7] Even if these federal cases had been applicable to this matter, which they are not, the NYAG's citations would still be inapt. The NYAG cited *John Wiley & Sons, Inc.* v. *Book Dog Books, LLC*, 298 F.R.D. 184, 186 (S.D.N.Y. 2014), for the proposition that "redactions of portions of a document are normally impermissible unless the redactions are based on a legal privilege." However, it overlooks the court's statement that governing federal standards "specifically contemplate[] that in the case of trade secret[s] or other confidential . . . commercial information, that the Court may order that such information be not revealed at all or be revealed only in a specified way." *Id*. at 186 (internal quotation marks omitted). Indeed, it is well established that "[r]edactions of documents are commonplace where sensitive and irrelevant materials are mixed with highly relevant information." *In re AutoHop Litig.*, 2014 WL 6455749, at *9 (S.D.N.Y. Nov. 4, 2014) (quoting *The New York Times Co.* v. *Gonzales*, 459 F.3d 160, 170 (2d Cir. 2006)).

[8] *See*, *e.g.*, *Feingold* v. *River Place 1 Holding, LLC*, No. 150084/2012, 2014 N.Y. Misc. LEXIS 2169, at *7 (N.Y. Sup. Ct. N.Y. Cty. May 9, 2014) ("Irrelevant material may be redacted prior to production of the records."); *accord Fox Paine & Co., LLC* v. *Houston Cas. Co.,* 37 N.Y.S.3d 207 (N.Y. Sup. Ct. Westchester Cty. 2016) (holding that a party "may redact[] as irrelevant" information about matters "not relevant to the issues" in the case).

[9] NYAG will be receiving a privilege log for the July through September 2016 productions on December 30, 2016.

privilege logs two weeks later would impose needless administrative burdens. A more frequent production schedule is also unnecessary given the parties' common aspiration to conclude the production by January 31, 2017.

ExxonMobil's Proposal to Conclude Production

ExxonMobil remains intent on completing its reasonable production of documents responsive to the Subpoena by January 31, 2017. To that end, ExxonMobil proposes the following schedule for completion of its production:

1. ExxonMobil agrees with the NYAG that no further production is required regarding Requests 1, 2, 6, and 7.

2. ExxonMobil will complete a reasonable production of documents responsive to Requests 3 through 5 by December 31, 2016. The December production will include documents belonging to (a) three proxy cost of carbon custodians; (b) two greenhouse gas issue management team custodians; (c) seven senior manager custodians; and (d) as applicable and if feasible, other key custodians identified during the course of the document review.

3. ExxonMobil will complete a reasonable production of documents responsive to Requests 8–11 by January 31, 2017.

To the extent that ExxonMobil is required to produce documents from additional custodians, it would not be possible to produce any such documents by January 31, 2017. If ordered to produce from additional custodians, ExxonMobil would have to collect documents from each such custodian and transfer that data to its discovery vendor. The vendor would then have to upload the data and apply the search terms. After determining the volume of documents that contain any of the search terms, ExxonMobil's counsel would then have to conduct a manual review to determine responsiveness, identify privileged documents, and redact any proprietary and commercially sensitive information. As a result, it is only after determining the volume of documents that "hit" any of the search terms that ExxonMobil would be in a position to assess how long it would take to complete the production of documents from those custodians. It is clear, however, that any such production could not be completed by January 31, 2017.

ExxonMobil regrets that the parties have been unable to resolve this discovery dispute without judicial intervention. Nonetheless, ExxonMobil looks forward to a productive discussion that will allow it to complete a reasonable production of documents by a date certain.

Respectfully Submitted,

/s/ Daniel J. Toal
Daniel J. Toal

cc:

Katherine Milgram, Esq.
John Oleske, Esq.
Mandy DeRoche, Esq.
Patrick Conlon, Esq.

Theodore V. Wells, Jr., Esq.
Michele Hirshman, Esq.
David Meister, Esq.
Jocelyn Strauber, Esq.

Exhibit 17

Docket No. 4:16-cv-469-K

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.

MEMORANDUM OF LAW FOR AMICI CURIAE STATES OF MARYLAND, NEW YORK, ILLINOIS, IOWA, MAINE, MINNESOTA, MISSISSIPPI, NEW MEXICO, OREGON, RHODE ISLAND, VERMONT, WASHINGTON, AND THE DISTRICT OF COLUMBIA AND THE U.S. VIRGIN ISLANDS IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

ERIC T. SCHNEIDERMAN
Attorney General
State of New York

Barbara D. Underwood
Solicitor General

Anisha S. Dasgupta
Deputy Solicitor General

Judith N. Vale
Assistant Solicitor General

120 Broadway
New York, NY 10271
Tel: (212) 416-8020

(Additional counsel listed on signature page)

BRIAN E. FROSH
Attorney General
State of Maryland

Thiruvengran Vignarajah
Deputy Attorney General
Maryland Bar # 0812180249

200 St. Paul Place
Baltimore, MD 21202
Tel: (410) 576-6300
Fax: (410) 576-7036
tvignarajah@oag.state.md.us

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF *AMICI CURIAE* 1

STATEMENT OF THE CASE 2

A. The Fundamental Investigatory Powers That State Attorneys General Exercise under State Law, Subject to Oversight by State Courts 2

1. The broad authority of state Attorneys General to investigate fraud and wrongdoing that harms their States' citizens 2

2. The state court oversight ensuring that state Attorneys General exercise their investigatory authority properly and within proscribed limits 7

B. The Massachusetts Attorney General's Investigation into Potentially Unfair or Deceptive Practices by Exxon 9

C. Exxon's Pending Proceeding in Massachusetts State Court 9

D. This Federal Lawsuit 10

ARGUMENT 10

POINT I - UNDER BASIC PRINCIPLES OF FEDERALISM, FEDERAL COURTS CANNOT AND SHOULD NOT ENTERTAIN CHALLENGES TO SUBPOENAS ISSUED BY STATE ATTORNEYS GENERAL 10

A. The Ripeness Doctrine Bars Federal Suits Challenging a State Attorney General's CID When a Comprehensive Process Exists for State Court Review of the CID. 11

B. Related Considerations of Abstention and Personal Jurisdiction Also Warrant Dismissal of Such a Lawsuit. 16

1. Abstention is triggered by a pending state proceeding to review a CID issued by a state Attorney General, such as Exxon's ongoing Massachusetts proceeding 16

TABLE OF CONTENTS (cont'd)

Page

2. Federal courts lack personal jurisdiction over the Attorney General of another State whose only action consists of exercising her traditional state law investigatory authority. 18

C. The Discretion Conferred on Federal Courts by the Declaratory Judgment Act Is an Additional Reason for Declining to Interfere with a Pending State Court Proceeding Reviewing a State-Issued Subpoena. 20

POINT II - THE PUBLIC INTEREST AND BALANCE OF THE EQUITIES SUPPORT DENIAL OF A PRELIMINARY INJUNCTION 22

A. The Public Interest and Balance of the Equities Weigh Heavily Against a Preliminary Injunction.....23

B. Exxon Will Not Suffer Any Irreparable Injury from Litigating Its Objections to the CID in the Massachusetts Courts.....24

CONCLUSION.....25

TABLE OF AUTHORITIES

Cases **Page(s)**

Agey v. Am. Liberty Pipe Line Co.,
141 Tex. 379 (1943).....2

Atl. Richfield Co. v. Fed. Trade Comm'n,
546 F.2d 646 (5th Cir. 1977) 12, 13, 24

Attorney General v. Allstate Ins. Co.,
687 S.W.2d 803 (Tex. App. 1985).....8

Attorney General v. Bodimetric Profiles,
404 Mass. 152 (1989) 13, 14, 17

Canal Auth. of the State of Fla. v. Callaway,
489 F.2d 567 (5th Cir. 1974) 22

Charles Scribner's Sons v. Marrs,
114 Tex. 11 (1924).....3

Colo. River Water Conservation Dist. v. United States,
424 U.S. 800 (1976).....17

Craig v. Barney,
678 F.2d 1200 (4th Cir. 1982) 17

CUNA Mut. Ins. Soc'y v. Att'y Gen.,
380 Mass. 539 (1980) 8

Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.,
710 F.3d 579 (5th Cir. 2013) 24

Employers' Liab. Assurance Corp. v. Mitchell,
211 F.2d 441 (5th Cir. 1954) 21

Florida ex rel. Shevin v. Exxon Corp.,
526 F.2d 266 (5th Cir. 1976) 2

Google, Inc. v. Hood,
822 F.3d 212 (5th Cir. 2016) 11, 12, 13, 15, 16, 24

Idaho ex rel. Lance v. Hobby Horse Ranch Tractor & Equip. Co.,
129 Idaho 565 (1996).....14

In re Criminal Investigation No. 1,
75 Md. App. 589 (1988) 4

TABLE OF AUTHORITIES (cont'd)

Cases (cont'd) **Page(s)**

In re Ramirez,
905 F.2d 97 (5th Cir. 1990) 12

In re Yankee Milk, Inc.,
372 Mass. 353 (1977) 13

Juidice v. Vail,
430 U.S. 327 (1977)....15, 17

Lubin v. Agora, Inc.,
389 Md. 1 (2005) 8

Lynch v. Conley,
853 A.2d 1212 (R.I. 2004)....8

Matter of A'Hearn v. Comm. on Unlawful Practice of the Law of the N.Y. Cty. Lawyers' Ass'n,
23 N.Y.2d 916 (1969) 8

Matter of Abrams v. Thruway Food Mkt. & Shopping Ctr., Inc.,
147 A.D.2d 143 (2d Dep't 1989)....9

Matter of Cuomo v. Dreamland Amusements Inc.,
2009 N.Y. Slip Op. 50062 (Sup. Ct. N.Y. County 2009) 14

Matter of Hirschorn v. Attorney-General of the State of N.Y.,
93 Misc. 2d 275 (Sup. Ct. N.Y. County),
aff'd, 63 A.D.2d 865 (N.Y. App. Div. 1978)....8

McKinley v. Abbot,
643 F.3d 403 (5th Cir. 2011) 18

Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n,
457 U.S. 423 (1982)....14, 16, 17

Minuteman Research, Inc. v. Lefkowitz,
69 Misc. 2d 330 (N.Y. Sup. Ct. 1972) 4

Mission Ins. Co. v. Puritan Fashions Corp.,
706 F.2d 599 (5th Cir. 1983) 21

Missouri ex rel. Ashcroft v. Goldberg,
608 S.W.2d 385 (Mo. 1980) 14

TABLE OF AUTHORITIES (cont'd)

Cases (cont'd) **Page(s)**

O'Keefe v. Chisholm,
769 F.3d 936 (7th Cir. 2014) 12

Pennzoil Co. v. Texaco Inc.,
481 U.S. 1 (1987) 14

People ex rel. DuFauchard v. U.S. Fin. Mgmt.,
169 Cal. App. 4th 1502 (2009) 8

Piper Aircraft Co. v. Reyno,
454 U.S. 235 (1981) 22

Reisman v. Caplin,
375 U.S. 440 (1964) 11, 13, 24

Scott v. Ass'n for Childbirth at Home,
88 Ill. 2d 279 (1981) 8

Shepard v. Attorney General,
409 Mass. 398 (1991) 3

Sherwin-Williams Co. v. Holmes Cty.,
343 F.3d 383 (5th Cir. 2003) 20, 21, 22

Sprint Commc'ns, Inc. v. Jacobs,
134 S. Ct. 584 (2013) 17

Stroman Realty, Inc. v. Wercinski,
513 F.3d 476 (5th Cir. 2008) 11, 18, 19, 20

Tex. Ass'n of Bus. v. Earle,
388 F.3d 515 (5th Cir. 2004) 17, 18

United States v. Ferrara,
54 F.3d 825 (D.C. Cir. 1995) 18

Wilton v. Seven Falls Co.,
515 U.S. 277 (1995) 20

Winter v. NRDC, Inc.,
555 U.S. 7 (2008) 22

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980) 18, 19

TABLE OF AUTHORITIES (cont'd)

Cases (cont'd) **Page(s)**

Younger v. Harris,
401 U.S. 37 (1971) 16

State Statutes

Idaho Code § 48-611 8

Ky. Rev. Stat. Ann. § 367.240 8

Me. Rev. Stat. Ann. tit. 5
§ 194 3
§ 207 3
§ 209 4
§ 211 ..... 4, 7
§ 221 8

Me. Rev. Stat. Ann. tit. 10, §§ 1101-1110 3

Md. Code Ann. Corps. & Ass'ns
§ 11-301 3
§ 11-303 3
§§ 11-701 to 11-705 3

Mass. Gen. Laws ch. 93A
§ 1 ..... 3, 9
§ 2 ..... 3, 9
§ 4 ..... 3, 4
§ 6 ..... 3, 4, 7, 8, 9, 12
§ 7 ..... 8, 12, 13

Miss. Code Ann.
§ 75-21-1 3
§ 75-21-7 3
§ 75-24-17 8

N.M. Stat. Ann.
§ 57-12-3 3
§ 57-12-8 4
§ 57-12-11 4
§ 57-12-12 ..... 4, 7, 8
§ 57-22-6.3 3
§ 57-22-9.1 4

N.Y. Exec. Law § 63 ..... 3, 4, 9

TABLE OF AUTHORITIES (cont'd)

State Statutes (cont'd) **Page(s)**

N.Y. Gen. Bus. Law
§ 342....3
§ 343....3
§ 349....3, 4, 9
§ 352....3, 4, 9
§ 353....3, 4

N.Y. Not-for-Profit Corp. Law
§ 112....3
§ 115....3
§ 1101....3

Or. Rev. Stat. § 180.070....4

Tex. Bus. & Com. Code Ann.
§ 15.10....8
§ 17.47....3
§ 17.58....3
§ 17.60....3
§ 17.61....3, 4, 7, 8, 12

Tex. Rev. Civ. Stat. Ann. art. 581-32....3

Wash. Rev. Code
§ 19.86.020....3
§ 19.86.040....3
§ 19.86.080....4, 7, 8
§ 19.86.100....4, 7
§ 19.86.110....4, 8
§ 21.20.010....3

Rules

Mass. R. Civ. P. 26(c)....8

N.Y. C.P.L.R. 2304....8

N.Y. C.P.L.R. 2308....8

TABLE OF AUTHORITIES (cont'd)

Miscellaneous Authorities **Page(s)**

Cal. Att'y Gen., Press Release, Attorney General Kamala D. Harris Announces That Volkswagen Will Pay Additional $86 Million to California over Emissions "Defeat Devices" (July 6, 2016), at https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-volkswagen-will-pay-additional-86 7

Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, 13B *Federal Practice & Procedure - Jurisdiction* § 3532.1 (3d ed. 2008) 11

Civil Investigative Demand to Wells Fargo Financial Inc. (Oct. 1, 2004), at https://texasattorneygeneral.gov/files/cpd/cid_wellsfargo.pdf 5

Default Judgment, *Texas v. Norvergence, Inc.*, No. 2004-65357 (Dist. Ct. Harris County Apr. 29, 2005), at https://texasattorneygeneral.gov/files/cpd/norvergence_judgment.pdf 5

Md. Att'y Gen., Press Release, AG Frosh, Secretary of State Wobensmith Announce Dissolution of Scam Cancer Charities: Cancer Fund of America, Related Charities Dissolved After Bilking Donors of $75 Million (Mar. 30, 2016), at https://www.oag.state.md.us/Press/2016/033016.htm 7

Mich. Att'y Gen., Press Release, Cox Demands Vehicle Data from Toyota (Mar. 24, 2010), at http://www.michigan.gov/ag/0,1607,7-164--234101--,00.html 5

Miss. Att'y Gen., Press Release, AG Jim Hood Announces Settlement with Volkswagen Over Emissions Fraud (June 28, 2016), at http://www.ago.state.ms.us/releases/ag-jim-hood-announces-settlement-with-volkswagen-over-emissions-fraud-mississippi-to-receive-2-5-million-in-compensation 7

Nat'l Ass'n of Att'ys Gen., Press Release, 50 States Sign Mortgage Foreclosure Joint Statement (Oct. 13, 2010), at http://www.naag.org/naag/media/naag-news/joint-statement-of-the-mortgage-foreclosure-multistate-group.php 6

Nat'l Ass'n of Att'ys Gen., *State Attorneys General: Powers and Responsibilities* (2d ed. 2007) 2, 3, 4, 5

Philip A. Lehman, *Executive Summary of Multistate/Federal Settlement of Foreclosure Misconduct Claims* (2012), at https://d9klfgibkcquc.cloudfront.net/NMS_Executive_Summary-7-23-2012.pdf 6

Tex. Att'y Gen., *Consumer Protection Major Lawsuits & Settlements:* NorVergence, at https://texasattorneygeneral.gov/cpd/norvergence. 5

Tucker S. Player, *After the Fall: The Cigarette Papers, the Global Settlement, & the Future of Tobacco Litigation*, 49 S.C. L. Rev. 311, 339–40 (1998).....6

Wash. Att'y Gen., Press Release, Multistate Settlement Puts the Brakes on Toyota (Feb. 14, 2013), at http://www.atg.wa.gov/news/news-releases/multistate-settlement-puts-brakes-toyota 5

INTEREST OF *AMICI CURIAE*

In this lawsuit, Exxon Mobil Corporation (Exxon) asks the U.S. District Court for the Northern District of Texas to issue a sweeping and unprecedented injunction prohibiting the Attorney General of Massachusetts from seeking to enforce in the Massachusetts state courts a civil administrative subpoena issued under Massachusetts law to investigate potential violations of Massachusetts statutes. The States of Maryland, New York, Illinois, Iowa, Maine, Minnesota, Mississippi, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia and Virgin Islands submit this brief to explain that governing precedents—and the federalism principles underpinning those cases—bar the recipient of a state Attorney General's subpoena from bringing a federal lawsuit to stymie an Attorney General's investigation, where the recipient already has a comprehensive process for challenging the subpoena in the courts of the Attorney General's State.

The *amici* States have a compelling interest in the traditional authority of their Attorneys General to investigate and combat violations of state law. As the chief legal officers of their respective States, Attorneys General have long used their state law powers—including the issuance of civil subpoenas, which are often called civil investigative demands (CIDs)—to gather information necessary to determine whether a company has engaged in fraudulent or misleading conduct harmful to the people of the Attorney General's State. Proper respect for the States' sovereign interests has long dictated that the federal courts should not needlessly impede this core duty of state Attorneys General to detect and halt misconduct.

The *amici* States also have a keen interest in safeguarding the roles of their state courts in this nation's system of dual sovereignty. Fundamental principles of comity forbid using a federal court injunction to bypass available and adequate state court review of a state law subpoena

issued pursuant to a state Attorney General's state-law investigatory responsibilities. The States have established specific procedures to ensure that subpoena recipients have a full and fair opportunity to challenge state subpoenas in state court. Under Our Federalism, these state court processes for enforcing state law and protecting state citizens are the proper forums for adjudicating disputes about a state Attorney General's subpoena.

STATEMENT OF THE CASE

A. The Fundamental Investigatory Powers That State Attorneys General Exercise under State Law, Subject to Oversight by State Courts

1. The broad authority of state Attorneys General to investigate fraud and wrongdoing that harms their States' citizens

A fundamental responsibility of state Attorneys General is investigating and remediating matters of public concern affecting their States. Carried over from English common law, the office of Attorney General has existed since this country's founding. *See* Nat'l Ass'n of Att'ys Gen., *State Attorneys General: Powers and Responsibilities* ("*Attorneys General*") 1, 4–7 (2d ed. 2007). Today, every State in the nation as well as the District of Columbia, Puerto Rico, and the Virgin Islands has an Attorney General. *See id.* at 8. The specific contours of each state Attorney General's authority are a core matter of state concern dictated by each State's own common law, constitution, and statutes. *See e.g.*, *Florida ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 268–74 (5th Cir. 1976). Although their powers vary, state Attorneys General traditionally serve as their State's "chief law officer" responsible for safeguarding the public interest through, among other things, investigations and enforcement proceedings to halt violations of state law. *See Agey v. Am. Liberty Pipe Line Co.*, 141 Tex. 379, 382 (1943).

Protecting the State's citizens and economy from fraud, deception, and other improper conduct is a principal and critical state law responsibility of state Attorneys General. For

example, most States empower their Attorney General to enforce state consumer protection laws prohibiting various forms of false, misleading, or unfair business practices. *See Attorneys General*, *supra,* at 234.[1] Many state Attorneys General—including the Attorneys General of Maryland, Massachusetts, New York, and Texas—are also authorized by state statutes to protect investors from fraudulent or misleading schemes in the offering or sale of securities. *See Attorneys General*, *supra* at 249–50, 265–68.[2] And state laws charge Attorneys General with guarding against many other dishonest or inequitable activities, such as anticompetitive conduct[3] or improper practices by charitable organizations.[4]

To ensure that Attorneys General can fulfill these important state law duties, States have long vested their Attorneys General with broad discretion to use a wide array of investigatory and enforcement tools. *See, e.g.*, *Shepard v. Attorney General*, 409 Mass. 398, 401–03 (1991); *Charles Scribner's Sons v. Marrs*, 114 Tex. 11, 27 (1924). For example, many States authorize their Attorneys General to investigate alleged criminal wrongdoing—including by issuing subpoenas through grand juries or other legal processes to gather documentary or testamentary

[1] *See, e.g.*, Me. Rev. Stat. Ann. tit. 5, § 207; Mass. Gen. Laws ch. 93A, §§ 2, 4, 6; N.Y. Exec. Law § 63(12); N.M. Stat. Ann. § 57-12-3; N.Y. Gen. Bus. Law § 349; Tex. Bus. & Com. Code Ann. §§ 17.47, 17.58, 17.60, 17.61; Wash. Rev. Code § 19.86.020.

[2] *See, e.g.*, Md. Code Ann. Corps. & Ass'ns §§ 11-301, 11-303, 11-701 to 11-705; Mass. Gen. Laws ch. 93A, §§ 1(b), 2, 4, 6; N.Y. Gen. Bus. Law §§ 352, 353; Tex. Rev. Civ. Stat. Ann. art. 581-32(A); Wash. Rev. Code § 21.20.010.

[3] *See, e.g.*, Me. Rev. Stat. Ann. tit. 10, §§ 1101-1110; Miss. Code Ann. §§ 75-21-1, 75-21-7; N.Y. Gen. Bus. Law §§ 342-43; Wash. Rev. Code § 19.86.040.

[4] *See, e.g.*, N.M. Stat. Ann. § 57-22-6.3; Me. Rev. Stat. Ann. tit. 5, §§ 194-194K; N.Y. Not-for-Profit Corp. Law §§ 112, 115(b), 1101.

evidence.[5] And state Attorneys General are also often empowered to conduct civil investigations into potential state law violations using CIDs or other investigatory means.[6] *See Attorneys General*, *supra*, at 234–35. CIDs are a vital means for Attorneys General to obtain the information necessary to "determine whether a violation has occurred and evaluate the strengths of the case, before taking any formal court action." *Id.* at 235; *see also Minuteman Research, Inc. v. Lefkowitz*, 69 Misc. 2d 330, 330 (N.Y. Sup. Ct. 1972). When civil investigations reveal improper conduct, Attorneys General possess considerable discretion to pursue a variety of enforcement remedies through judicial or administrative proceedings, including victim restitution, civil fines, or injunctions to prevent further wrongdoing.[7]

Using CIDs and other investigatory tools, state Attorneys General throughout the country have uncovered many types of fraudulent, misleading, or deceptive practices and successfully pursued enforcement actions against perpetrators to protect the public. Because businesses in our global economy often operate across state lines, these investigations and enforcement proceedings commonly involve entities that operate in multiple States or that are incorporated or headquartered in a State other than the State of the investigating Attorney General.

For example, the Texas Attorney General issued CIDs to numerous financial firms headquartered outside of Texas as part of an investigation into whether NorVergence, a New

[5] *See, e.g.*, Or. Rev. Stat. § 180.070; *In re Criminal Investigation No. 1*, 75 Md. App. 589, 594–95 (1988).

[6] *See, e.g.*, Me. Rev. Stat. Ann. tit. 5, § 211; Mass. Gen. Laws ch. 93A, § 6; N.Y. Exec. Law § 63(12); N.M. Stat. Ann. §§ 57-12-12, 57-22-9.1; N.Y. Gen. Bus. Law § 352(2); Tex. Bus. & Com. Code Ann. § 17.61; Wash. Rev. Code § 19.86.110.

[7] *See, e.g.*, Me. Rev. Stat. Ann. tit. 5, § 209; Mass. Gen. Laws ch. 93A, § 4; N.M. Stat. Ann. §§ 57-12-8, 57-12-11; N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law §§ 349(b), 353; Wash. Rev. Code §§ 19.86.080, 19.86.100.

Jersey-based telecommunications company, defrauded Texas consumers by misleading them about the services it had promised to provide.[8] This investigation eventually led the Texas Attorney General to obtain a default judgment against NorVergence for violating Texas's consumer protection laws, which voided NorVergence's fraudulent contracts and provided for the recovery of monetary damages and penalties, including from financial companies that had sought to collect money from consumers based on NorVergence's fraudulent agreements.[9]

Similarly, the Michigan Attorney General subpoenaed information from Toyota Motor Sales USA, a California company, to investigate whether the company had misled consumers about vehicle safety issues from unintended acceleration.[10] That investigation, along with similar investigations conducted by other state Attorneys General, resulted in a settlement under which Toyota agreed to pay $29 million plus restitution, and agreed to provide incentives to vehicle owners to promote compliance with vehicle recalls.[11]

The increasingly interstate nature of commerce has also led state Attorneys General to cooperate frequently in investigating and combatting unlawful activity occurring in many States. Multistate collaboration can take many forms, such as staff from different Attorney General's offices sharing information, forming working groups, or coordinating investigation and litigation strategies. *See Attorneys General*, *supra*, at 244–45. Such coordination not only allows States to

[8] *See, e.g.*, Civil Investigative Demand to Wells Fargo Financial Inc. (Oct. 1, 2004); *see generally* Tex. Att'y Gen., *Consumer Protection Major Lawsuits & Settlements:* NorVergence.

[9] *See* Default Judgment, *Texas v. NorVergence, Inc.*, No. 2004-65357 (Dist. Ct. Harris County Apr. 29, 2005).

[10] Mich. Att'y Gen., Press Release, Cox Demands Vehicle Data from Toyota (Mar. 24, 2010).

[11] *See* Wash. Att'y Gen., Press Release, Multistate Settlement Puts the Brakes on Toyota (Feb. 14, 2013).

pool scarce resources and save taxpayer monies, but also facilitates coordinated negotiations and global settlements with wrongdoers that can more effectively protect the public.

These joint efforts have greatly enhanced the ability of state Attorneys General to uncover and halt widespread practices that harm individuals and businesses across the nation. For example, state Attorneys General worked together to investigate and bring enforcement actions against several tobacco companies for engaging in fraudulent or deceptive practices that concealed the harmful effects of tobacco use. Those efforts culminated in a settlement among forty-six state Attorneys General and the tobacco companies, under which the companies agreed to pay billions of dollars to reimburse the States for tobacco-related healthcare costs and to implement major changes to their marketing practices.[12]

More recently, in 2010, Attorneys General from all fifty States worked together in a bipartisan group to investigate nationwide mortgage-foreclosure abuses against homeowners.[13] This cooperative effort resulted in, among other things, an approximately $25 billion settlement among Attorneys General, federal agencies, and five mortgage-servicing companies to repay victims of unfair foreclosure practices and fund foreclosure-prevention programs.[14] In 2015, the Attorneys General of every State and the District of Columbia joined together with the Federal Trade Commission to file an enforcement action against four nationwide sham cancer charities that had bilked donors of more than $75 million, leading to a settlement involving a damages

[12] *See* Tucker S. Player, *After the Fall: The Cigarette Papers, the Global Settlement, & the Future of Tobacco Litigation*, 49 S.C. L. Rev. 311, 339–40 (1998).

[13] *See* Nat'l Ass'n of Att'ys Gen., Press Release, 50 States Sign Mortgage Foreclosure Joint Statement (Oct. 13, 2010).

[14] *See* Philip A. Lehman, *Executive Summary of Multistate/Federal Settlement of Foreclosure Misconduct Claims* (2012).

award, liquidation of the fraudulent entities, and a ban against the companies' president managing charitable assets.[15] And a coalition of more than forty state Attorneys General recently cooperated to investigate Volkswagen's nationwide deception of consumers about vehicle emission standards. Volkswagen, many States, the federal government, and private plaintiffs have reached partial settlements under which Volkswagen will pay more than $10 billion for consumer reimbursements and mitigation projects.[16]

2. The state court oversight ensuring that state Attorneys General exercise their investigatory authority properly and within proscribed limits

The same sources of state law that empower state Attorneys General to investigate and combat misconduct also delimit their authority to use CIDs and other investigatory tools. For example, many state statutes provide that an Attorney General issuing a CID must seek documents that are relevant to the inquiry, protect the confidentiality of subpoenaed information, and follow notice procedures.[17] And state laws also often require that Attorneys General have "some basis" for requesting information, even though Attorneys General need not establish in advance that unlawful conduct has occurred in order to investigate.[18]

[15] *See* Md. Att'y Gen., Press Release, AG Frosh, Secretary of State Wobensmith Announce Dissolution of Scam Cancer Charities: Cancer Fund of America, Related Charities Dissolved After Bilking Donors of $75 Million (Mar. 30, 2016).

[16] *See, e.g.*, Miss. Att'y Gen., Press Release, AG Jim Hood Announces Settlement with Volkswagen Over Emissions Fraud (June 28, 2016); Cal. Att'y Gen., Press Release, Attorney General Kamala D. Harris Announces That Volkswagen Will Pay Additional $86 Million to California over Emissions "Defeat Devices" (July 6, 2016).

[17] *See, e.g.*, Me. Rev. Stat. Ann. tit. 5, § 211; Mass. Gen. Laws ch. 93A, § 6; N.M. Stat. Ann. § 57-12-12; Tex. Bus. & Comm. Code § 17.61; Wash. Rev. Code §§ 19.86.080, 19.86.100.

[18] *See, e.g.*, *Matter of A'Hearn v. Comm. on Unlawful Practice of the Law of the N.Y. Cty. Lawyers' Ass'n*, 23 N.Y.2d 916, 918 (1969); *see also CUNA Mut. Ins. Soc'y v. Att'y Gen.*, 380

The courts of an Attorney General's State have long been the authority entrusted with ensuring that the Attorney General complies with all legal requirements when issuing CIDs. State laws generally authorize a CID recipient to challenge the CID in state court; for example, by showing "good cause" for quashing, modifying, or imposing conditions on a CID.[19] And in most States—including Massachusetts, Mississippi, and New York—the Attorney General cannot obtain penalties or sanctions from a recipient for noncompliance absent a court order.[20]

CID recipients routinely use these state court processes to raise objections to a subpoena, and the state courts have proven amply capable of protecting such objectors' federal and state rights. State courts have ably resolved objections to CIDs based on federal constitutional grounds, including assertions that a subpoena infringed on protected speech in violation of the First Amendment, constituted an unreasonable search under the Fourth Amendment, or violated the Commerce Clause.[21] And state courts frequently and searchingly review whether a CID is authorized by state law, directed at relevant information, and proper in scope and burden.[22]

Mass. 539, 542 n.5 (1980) (Attorney General "must not act arbitrarily" in issuing CID but "need only have a belief" that unlawful conduct has or is occurring).

[19] *See* Idaho Code § 48-611(2); Ky. Rev. Stat. Ann. § 367.240(2); Mass. Gen. Laws ch. 93A, § 6(7); Mass. R. Civ. P. 26(c); N.M. Stat. Ann. § 57-12-12(G); Tex. Bus. & Com. Code Ann. §§ 15.10, 17.61; Wash. Rev. Code §§ 19.86.080, 19.86.110; *see also* N.Y. C.P.L.R. 2304.

[20] *See, e.g.*, Me. Rev. Stat. Ann. tit. 5, § 221; Mass. Gen. Laws ch. 93A, § 7; Miss. Code Ann. § 75-24-17; N.Y. C.P.L.R. 2308; Wash. Rev. Code §§ 19.86.080, 19.86.110.

[21] *See, e.g.*, *Lubin v. Agora, Inc.*, 389 Md. 1, 15–27 (2005) (First Amendment); *Scott v. Ass'n for Childbirth at Home*, 88 Ill. 2d 279, 292–300 (1981) (First and Fourth Amendments); *People ex rel. DuFauchard v. U.S. Fin. Mgmt.*, 169 Cal. App. 4th 1502, 1521–22 (2009) (Commerce Clause); *Matter of Hirschorn v. Attorney-General of the State of N.Y.*, 93 Misc. 2d 275, 277 (Sup. Ct. N.Y. County), *aff'd*, 63 A.D.2d 865 (2d Dep't 1978) (First Amendment).

[22] *See, e.g.*, *Attorney General v. Allstate Ins. Co.*, 687 S.W.2d 803, 805 (Tex. App. 1985) (authority); *Lynch v. Conley*, 853 A.2d 1212, 1214–16 (R.I. 2004) (authority); *Matter of Abrams*

B. The Massachusetts Attorney General's Investigation into Potentially Unfair or Deceptive Practices by Exxon

In April 2016, the Massachusetts Attorney General issued a CID to Exxon under her state law authority to investigate unfair or deceptive practices in the conduct of trade or commerce in Massachusetts, including the offer or sale of securities. (Decl. of J. Anderson, Ex. B ("App."), at 23.) *See* Mass. Gen. Laws ch. 93A, §§ 1(b), 2(a), 6. The CID seeks documents and testimony relevant to determining whether Exxon violated Massachusetts' consumer protection laws by misleading consumers or investors regarding the risks of climate change and their impact on Exxon's business. (App. 23, 34–42.) The CID also notified Exxon of its rights under Massachusetts law to challenge the CID in a Massachusetts court. (App. 24.)

Prior to this CID's issuance, the New York Attorney General had also exercised his traditional state law powers to investigate whether Exxon had violated New York's securities, business, and consumer fraud laws by making false or misleading statements to investors and consumers concerning climate change related risks and their effects on Exxon's business. *See* N.Y. Exec. Law § 63(12), N.Y. Gen. Bus. Law § 349; *id.* § 352 et seq. As part of this investigation, the New York Attorney General issued a subpoena to Exxon requesting documents relevant to his inquiry. Exxon began producing documents responsive to this subpoena in January 2016, and continues to produce documents on a rolling basis.

C. Exxon's Pending Proceeding in Massachusetts State Court

In June 2016, Exxon used the procedures available under Massachusetts law to file a state court petition objecting to the Massachusetts Attorney General's CID. *See* Pet. of Exxon Mobil

v. Thruway Food Mkt. & Shopping Ctr., Inc., 147 A.D.2d 143, 144–45, 147 (2d Dep't 1989) (authority, factual basis, relevancy).

Corp., *In re Civil Investigative Demand No. 2016-EPD-36*, No. 16-1888F (Mass. Super. Ct., Suffolk County) (June 16, 2016) ("Pet."). Exxon claims, among other things, that the CID infringes on its protected speech, constitutes an unreasonable search, and is overly burdensome in violation of the Constitution, statutes, and common law of Massachusetts. *Id.* ¶¶ 60–67.

D. This Federal Lawsuit

One day before it filed its petition in Massachusetts state court, Exxon filed this federal lawsuit pursuant to 42 U.S.C. § 1983 seeking a declaratory judgment and permanent injunction prohibiting the Massachusetts Attorney General from enforcing the CID. (*See* Compl. ¶ 17; *id.* at 31–32.) Exxon asserts, among other things, that the CID infringes on its protected speech, constitutes an unreasonable search, and is overly burdensome in violation of the First, Fourth, and Fourteenth Amendments of the federal Constitution. (*Id.* ¶¶ 86–94; *see also id.* ¶¶ 76, 95–98 (asserting claims under Dormant Commerce Clause).) Exxon also filed a motion for a preliminary injunction seeking to enjoin the Massachusetts Attorney General from enforcing the CID. (*See* Pl.'s Mot. for a Prelim. Inj. at 2.)

ARGUMENT

POINT I

UNDER BASIC PRINCIPLES OF FEDERALISM, FEDERAL COURTS CANNOT AND SHOULD NOT ENTERTAIN CHALLENGES TO SUBPOENAS ISSUED BY STATE ATTORNEYS GENERAL

In this suit, Exxon seeks a federal declaratory judgment and injunction prohibiting the potential future enforcement of a CID issued by the Massachusetts Attorney General, even though Exxon can seek—and indeed is seeking—review of the CID in the Massachusetts courts. The relief Exxon seeks from this Court thus would interfere with a State's established and

ongoing process for adjudicating objections to a CID issued by that State's Attorney General under that State's laws. Fundamental principles of comity and state sovereignty require the federal courts to avoid such interference.

Core values of federalism give rise to multiple, overlapping reasons why this Court should deny Exxon's extraordinary requests and dismiss its complaint. Doctrines of ripeness, abstention, and personal jurisdiction—and the considerations of comity triggered when a federal court is asked to enjoin a state Attorney General's investigation—work in tandem to safeguard the authority that a State's courts possess to oversee state law CIDs issued by that State's Attorney General.[23] And the federal courts retain broad discretion under the Declaratory Judgment Act to refrain from entertaining a federal lawsuit that would improperly invade a State's sovereign interests. Together, these legal and equitable principles ensure that federal courts do not intrude needlessly on States' compelling interests in investigating fraudulent or misleading practices that harm the consumers and investors of their State.

A. The Ripeness Doctrine Bars Federal Suits Challenging a State Attorney General's CID When a Comprehensive Process Exists for State Court Review of the CID.

It is well settled that a preenforcement federal court challenge to a CID is unripe where the recipient has an adequate legal forum for review of the subpoena before any sanctions can be imposed for noncompliance. *Reisman v. Caplin*, 375 U.S. 440, 445–49 (1964); *Google, Inc. v. Hood*, 822 F.3d 212, 224–26 (5th Cir. 2016). Under such circumstances, the CID recipient suffers

[23] *See* Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, 13B *Federal Practice & Procedure - Jurisdiction* § 3532.1, at 402–08 (3d ed. 2008) (explaining interrelatedness of ripeness and abstention); *see also Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 488–89 (5th Cir. 2008) (explaining federalism concerns underlying personal jurisdiction).

"no undue hardship in being remitted" to the comprehensive legal remedy that is already available to him. *Atl. Richfield Co. v. Fed. Trade Comm'n*, 546 F.2d 646, 649 (5th Cir. 1977); *see In re Ramirez*, 905 F.2d 97, 98–99 (5th Cir. 1990).

This is true irrespective of whether the CID was issued under federal or state law. For a state-issued CID, the recipient does not suffer harm sufficient to create a ripe federal controversy where he has a full and fair opportunity to assert in state court the "same challenges raised in the federal suit" prior to facing "consequence[s] for resisting the subpoena." *Google*, 822 F.3d at 226*; see O'Keefe v. Chisholm*, 769 F.3d 936, 939–40 (7th Cir. 2014) (reversing injunction against Wisconsin investigation supervised by Wisconsin courts because objectors obtained "effective relief" from state courts). Moreover, where a CID has been issued under state law by a state Attorney General exercising traditional state law investigatory powers, the availability of a comprehensive state court process for contesting the CID counsels especially strongly against federal court review of unripe challenges to the CID. As the Fifth Circuit has observed, comity and federalism concerns render the federal courts even "less willing to intervene" in anticipatory disputes about state-issued rather than federally-issued CIDs. *Google*, 822 F.3d at 226.

These principles require dismissal of Exxon's federal lawsuit. *See Google*, 822 F.3d at 225. Like many States—including Texas—Massachusetts has a specific statutory process for a CID recipient to petition the state courts to quash or modify a CID issued by its Attorney General under its consumer protection laws. *See, e.g.*, Mass. Gen. Laws ch. 93A, § 6(7); Tex. Bus. & Com. Code Ann. § 17.61. See also *supra* at 8. And the recipient of a CID by the Massachusetts Attorney General can utilize that state law review process prior to receiving sanctions for any refusal to comply. *See* Mass. Gen. Laws ch. 93A, §§ 6(7), 7 (recipient must comply with CID unless "otherwise provided by" Massachusetts court). See *supra* at 8. In addition, as in many

States, the Massachusetts Attorney General needs a court order to effect statutory sanctions for noncompliance with a CID. Mass. Gen. Laws ch. 93A, § 7; *see Google*, 822 F.3d at 224–26.

Exxon thus has a full and fair opportunity to raise all of its federal and state law claims through Massachusetts's available state court processes, including its claims under the Dormant Commerce Clause and the First, Fourth, and Fourteenth Amendments.[24] Indeed, Exxon has already invoked Massachusetts's procedures for challenging a CID by filing a petition in Massachusetts state court objecting to the CID. And the Massachusetts state court is currently considering that petition. See *supra* at 9–10. Accordingly, Exxon's federal lawsuit is unripe because Massachusetts has provided an "adequate remedy at law" for challenging a CID, and Exxon has not availed itself of that remedy. *See Google*, 822 F.3d at 225.

Exxon is mistaken in contending (Compl. ¶ 67) that this controversy is somehow rendered ripe by Massachusetts's requirement that a CID recipient either file a timely state court petition or risk waiving its objections in a future proceeding brought by the Attorney General to enforce a CID. *See Attorney General v. Bodimetric Profiles*, 404 Mass. 152, 155 (1989). The mere existence of state procedural rules for raising objections to a CID does not impose any injury on a CID recipient that could create a ripe federal controversy so long as those rules "work[] no injustice and suffer[] no constitutional invalidity." *See Reisman*, 375 U.S. at 450. And here, there is no evidence to suggest that Massachusetts' system raises any such concerns, particularly where state law allows "prompt review of" a CID for the specific purpose of protecting "against invasion of the rights of the person to whom the demand is addressed,"

[24] *See, e.g.*, *In re Yankee Milk, Inc.*, 372 Mass. 353, 356–63 (1977) (reviewing scope of CID issued by Massachusetts Attorney General to company operating in many States); *see also Atl. Richfield*, 546 F.2d at 649.

Bodimetric, 404 Mass. at 154. That the recipient of a state Attorney General's CID must follow normal state procedures for adjudicating its objections in no way justifies the recipient's skipping over an established state law CID-review process to instead obtain a preenforcement injunction from a federal court.[25]

This analysis is not altered by Exxon's failure to assert its federal claims in its Massachusetts petition, which raises nearly indistinguishable claims "under the Massachusetts Constitution, Massachusetts statutes, and Massachusetts common law." (*Compare* Pet. ¶¶ 60–67; *with* Compl. ¶¶ 86–94.) Absent compelling evidence to the contrary, federal courts must "assume that state procedures will afford an adequate remedy" for reviewing federal claims. *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 14 (1987). Respect for state sovereignty and state processes "precludes any *presumption* that the state courts will not safeguard federal constitutional rights." *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). And if the CID recipient is ultimately dissatisfied with the state courts' resolution of his federal claims, he can seek review in the United States Supreme Court.

Artful pleading cannot so easily undermine this basic respect for the States' court systems. Recipients cannot manufacture federal subject matter jurisdiction through the simple expedient of refusing to participate fully in a State's available and comprehensive state court

[25] There is nothing novel about a State having procedural rules for preserving objections to state-issued CIDs. Idaho law, for example, also provides that a recipient of a CID issued by the Idaho Attorney General will waive challenges to the CID if it fails to raise them through Idaho's specified statutory procedure. *Idaho ex rel. Lance v. Hobby Horse Ranch Tractor & Equip. Co.*, 129 Idaho 565, 567–68 (1996); *see also Missouri ex rel. Ashcroft v. Goldberg*, 608 S.W.2d 385, 387–88 (Mo. 1980) (recipient of CID from Missouri Attorney General waived objection by failing to seek "to modify or set aside the demand" (quotation marks omitted)). And in other States, such as New York, failure to raise a timely objection to a CID can also waive the recipient's ability to seek to quash the subpoena in a later proceeding. *See Matter of Cuomo v. Dreamland Amusements Inc.*, 2009 N.Y. Slip Op. 50062, at *5 (Sup. Ct. N.Y. County 2009).

remedy for challenging a CID. *See Google*, 822 F.3d at 226 (dismissing complaint where "same challenges raised in the federal suit *could* be litigated in state court (emphasis added)); *cf. Juidice v. Vail*, 430 U.S. 327, 335 (1977) (abstention appropriate where litigants had "opportunity to fairly pursue their constitutional claims in" state proceeding). Otherwise, CID litigants could side-step the ripeness doctrine, burdening the federal courts with anticipatory challenges to CIDs issued by state Attorneys General or other state officials and agencies. Nearly any recipient of a state-issued subpoena could claim that the CID violates the First, Fourth, or Fourteenth Amendments or the Dormant Commerce Clause. (*See* Compl. ¶¶ 86–94.) *See, e.g.*, *Google*, 822 F.3d at 219. And if merely asserting these federal claims could automatically preempt state court review, the state courts' traditional supervisory authority over state-issued subpoenas would be severely impinged. The race to the federal courthouse would also undermine the States' compelling interest in protecting their citizens from fraudulent or deceptive practices, by forcing state Attorneys General to defend themselves against federal lawsuits filed all across the country. The federal courts should not facilitate such friction between the state and federal governments when recipients of state law CIDs have an adequate state court remedy available.

Exxon asserts (Compl. ¶¶ 17–18) that this Court should entertain its objections to the CID because Exxon is headquartered in Texas and stores documents there. But state Attorneys General routinely investigate companies that are based in another State or that operate and keep documents in many different States. See *supra* at 4–7. Under Exxon's theory, every CID recipient in any of those investigations could challenge the subpoena in the federal courts of the State where the company is headquartered, incorporated, or happens to store the requested information. For example, a Manhattan-based mortgage-servicing firm that receives a CID from the Texas Attorney General investigating fraudulent or deceptive mortgage practices could haul

the Texas Attorney General into the U.S. District Court for the Southern District of New York, rather than the Texas courts, to defend the investigation. And if the CID required the firm to "collect and review a substantial number of records stored" in Connecticut (*see* Compl. ¶ 18), the firm could elect to sue the Texas Attorney General in the federal courts of Connecticut instead. The widespread and disruptive consequences of such tactics explains why courts have already rejected the theories Exxon expounds here. *See Google*, 822 F.3d at 225–26.

B. Related Considerations of Abstention and Personal Jurisdiction Also Warrant Dismissal of Such a Lawsuit.

1. Abstention is triggered by a pending state proceeding to review a CID issued by a state Attorney General, such as Exxon's ongoing Massachusetts proceeding.

Like the ripeness doctrine, the doctrine of *Younger* abstention instructs federal courts to avoid unnecessary intervention in state proceedings where that would "unduly interfere" with the judicial systems and paramount sovereign interests of the States. *Younger v. Harris*, 401 U.S. 37, 44 (1971); *see Middlesex*, 457 U.S. at 431. The Fifth Circuit has concluded that the principal difference between ripeness and abstention is a matter of timing: whereas a federal challenge to a CID is unripe when the recipient has the *opportunity* to raise objections in state court irrespective of whether any state court proceeding has begun, *Younger* abstention will apply only when a state court proceeding for reviewing the CID is underway. *See Google*, 822 F.3d at 223–26. Both doctrines work together to channel challenges to state court processes into the state courts.

In this case, a proceeding in Massachusetts state court to review Exxon's objections to the CID is already pending. Such an ongoing state action to determine the propriety and ultimate enforceability of a state Attorney General's CID falls squarely within the type of pending state court proceedings that are entitled to *Younger* abstention, in that such an action implicates the

state courts' unique and traditional judicial functions. *See Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 591 (2013). Reviewing and enforcing state law CIDs issued by a State's Attorney General has long been "the traditional and primary responsibility of" state courts. *Middlesex*, 457 U.S. at 438 (Brennan, J., concurring). See *supra* at 7–8. And a State's sovereign interests in preserving the paramount role of its courts in overseeing state investigations is particularly acute where the State has crafted a specific judicial process to address objections to a CID efficiently and fairly—as Massachusetts has done here.[26] A federal court ruling shutting down this critical state judicial function would improperly intrude on "the rights of a state to enforce its own laws in its own courts." *See Craig v. Barney*, 678 F.2d 1200, 1201 (4th Cir. 1982).

The States' comprehensive processes for reviewing state-issued CIDs also satisfy the two additional factors required for *Younger* abstention: a state proceeding that (i) vindicates strong state interests and (ii) provides litigants with an opportunity to object. *See Earle*, 388 F.3d at 519. States have a compelling interest in enforcing their consumer and investor protection laws through state Attorney General investigations and enforcement proceedings. And state court processes such as those in Massachusetts afford CID recipients with "an adequate opportunity to raise constitutional challenges."[27] *Earle*, 388 F.3d at 521. See *supra* at 8, 12–16.

[26] *See, e.g.*, *Bodimetric*, 404 Mass. at 154; *see also Juidice*, 430 U.S. at 336 (contempt proceedings warrant abstention because they are "core" piece "of a State's judicial system"); *Tex. Ass'n of Bus. v. Earle*, 388 F.3d 515, 520 (5th Cir. 2004) (abstention applies to a State's grand jury proceedings where grand jury acts as arm of a state court in issuing subpoenas).

[27] Abstention is also warranted under *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), which permits federal courts to abstain from adjudicating matters pending in a parallel state-court proceeding after considering such factors as the avoidance of piecemeal litigation, the inconvenience of the federal forum, and the adequacy of the state proceedings. *Id.* at 818–19. Here, abstention would avoid the piecemeal litigation that will otherwise result from parallel lawsuits proceeding in the Massachusetts and federal courts to address the same CID. Indeed, because sovereign immunity bars this Court from determining

2. Federal courts lack personal jurisdiction over the Attorney General of another State whose only action consists of exercising her traditional state law investigatory authority.

Our Federalism requires respect not only for the role of States in relation to the federal government but also for the coequal status of each State in relation to each of its sister States. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293–94 (1980). This principle of "interstate federalism" divests a federal court located in one State of personal jurisdiction over a different State's Attorney General conducting an investigation pursuant to her own State's laws. *See Stroman Realty, Inc. v. Wecinski*, 513 F.3d 476, 484–89 (5th Cir. 2008). Under those circumstances, the Due Process Clause of the Fourteenth Amendment prohibits the exercise of personal jurisdiction because (1) the state Attorney General does not have the requisite "minimum contacts" with the federal court's home State, and (2) exerting personal jurisdiction would "'offend traditional notions of fair play and substantial justice.'" *Id.* at 484 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

As the Fifth Circuit held in *Stroman*, a state Attorney General does not create the requisite "minimum contacts" with Texas simply by asserting her own regulatory authority over a Texas-based entity based on that entity's potential misconduct within the Attorney General's State. *Id.* at 484–86; *accord United States v. Ferrara*, 54 F.3d 825, 830–31 (D.C. Cir. 1995). A state Attorney General that exercises her traditional state law power to issue a CID does not avail herself of "the privilege of conducting activities" in the State where the CID recipient happens to

whether the Massachusetts Attorney General has complied with Massachusetts law, *see McKinley v. Abbot*, 643 F.3d 403, 406 (5th Cir. 2011), Exxon's state law challenges to the CID must proceed in Massachusetts court. The Massachusetts court, which obtained jurisdiction one day after Exxon filed its federal lawsuit, is also the more convenient forum to adjudicate a CID issued by the Massachusetts Attorney General to investigate violations of Massachusetts law. And that state forum will adequately protect Exxon's rights. See *supra* at 8, 12–14.

be located. *Stroman*, 513 F.3d at 484 (quotation marks omitted). Rather, the Attorney General has fulfilled her state law duty to "uphold and enforce the laws of" her own State. *Id.* at 486. Holding otherwise would put state Attorneys General in the untenable position of having to predict which of many federal courts located in different States might assert personal jurisdiction depending on where a CID recipient operates or stores subpoenaed information. *See World-Wide Volkswagen*, 444 U.S. at 297 (due process requires that defendant can "reasonably anticipate being haled into court").

Moreover, the policy considerations that dictate whether an exercise of jurisdiction would be reasonable and fair preclude a Texas federal court from exerting personal jurisdiction over a different State's Attorney General based merely on her issuing a CID to a Texas-based company. *See generally id.* at 292–93. In assessing the reasonableness of jurisdiction, the "most significant" consideration is preserving the dignity of each State's sovereign interests. *Stroman*, 513 F.3d at 488. But allowing a federal court to exercise "personal jurisdiction over a nonresident state official" conducting a state law investigation would diminish each State's independence by creating "an avenue for challenging the validity of one state's laws in courts located in another state." *Id.* The "principles of interstate federalism embodied in the Constitution" counsel strongly against such a result. *Id.* (quotation marks omitted).

Reasonableness considerations also weigh against the exercise of personal jurisdiction over a nonresident Attorney General. First, exercising jurisdiction would burden not only the Attorney General, who would be required to litigate in a faraway forum, but also the public interest of the Attorney General's State. The State's strong interest in combatting misconduct efficiently and effectively would be diminished because its Attorney General would "have to defend her attempt to enforce" her State's laws "in courts throughout the nation"—hampering

investigations before they truly begin. *Id.* at 487. And the Attorney General's State would lose "the benefit of having" its own state law investigations examined by its own courts, which have a "special expertise" in interpreting that State's laws. *Id.* Second, unlike the investigating Attorney General's State, the forum State of the federal court has "little interest in adjudicating disputes" over the validity of a CID issued under a different State's consumer and investor protection laws. *Id.* Finally, judicial efficiency further counsels against the exercise of personal jurisdiction to avoid the "multiplicity of inconsistent verdicts" that would result from having different federal courts situated in different States adjudicate similar disputes over CIDs—a significant risk for state investigations into complex financial frauds that often involve CIDs issued to many companies operating in many States. *See id.* at 488.

C. The Discretion Conferred on Federal Courts by the Declaratory Judgment Act Is an Additional Reason for Declining to Interfere with a Pending State Court Proceeding Reviewing a State-Issued Subpoena.

Even if this Court were to determine that ripeness or other doctrines do not mandate dismissal of Exxon's federal complaint, it should still exercise its broad discretion to decline to hear this case. The Declaratory Judgment Act confers on federal courts "unique and substantial discretion in deciding whether to declare the rights of litigants." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). Courts consider multiple, nonexclusive factors in evaluating whether to entertain a declaratory judgment action, including: (i) federalism principles that inform the "proper allocation of decision-making between state and federal courts"; (ii) considerations of fairness, such as whether the federal lawsuit is being used for improper forum shopping; and (iii) issues of efficiency and judicial economy. *See Sherwin-Williams Co. v. Holmes Cty.*, 343 F.3d 383, 390–92 (5th Cir. 2003). These factors, and basic "considerations of practicality and wise judicial administration," *Wilton*, 515 U.S. at 288, call for dismissal of a declaratory judgment

action where, as here, a pending state court proceeding will properly adjudicate all federal and state law issues concerning a state Attorney General's CID issued pursuant to state law.

When an established and adequate state court process for reviewing a state Attorney General's CID is underway, "federalism and comity concerns" weigh strongly against a federal court entertaining a declaratory judgment action involving the same issues that are raised in the state litigation. *See Sherwin-Williams*, 343 F.3d at 392. Issues of state law—such as whether a state statute authorizes the investigation—often predominate in CID challenges. Indeed, here, Exxon raises a host of issues based on Massachusetts law. (*See* Compl. ¶¶ 10, 56–62, 72.) Under these circumstances, a federal declaratory judgment action "serve[s] no useful purpose" and only creates "needless conflict" with the state courts. *See Employers' Liab. Assurance Corp. v. Mitchell*, 211 F.2d 441, 443 (5th Cir. 1954).

Fairness-related factors also counsel for dismissal of declaratory judgment actions like the action Exxon brings here. Allowing the recipient of a state-issued CID to circumvent the state court system designated to review the CID would permit unfair and abusive forum shopping that denigrates the rightful role of the States. A CID recipient could use the federal courts to attempt to select the state law applicable to its challenge by invoking the law of the State in which the federal court sits rather than the law of the State governing the Attorney General's subpoena powers—as Exxon seeks to do here (*see* Compl. ¶¶ 81, 87, 93). *See Mission Ins. Co. v. Puritan Fashions Corp.*, 706 F.2d 599 at 602 n.3 (5th Cir. 1983) (upholding dismissal of declaratory judgment action where choice of forum could affect burden of proof or applicable law). And an objector could further seek to game choice-of-law rules by selecting among federal courts sitting in different States, such as the State in which the CID recipient is headquartered, incorporated, or stores documents. See *supra* at 15–16. Such procedural fencing would improperly strip

Attorneys General of their traditional state law authority and permit the CID recipient "to gain precedence in time and forum by its conduct." *See Sherwin-Williams*, 343 F.3d at 397 (quotation marks omitted).

Efficiency and judicial economy further warrant dismissal of a federal challenge to a state Attorney General's CID. Proceeding in federal court would create wasteful, duplicative litigation when the designated state court experienced in adjudicating the CID is already reviewing the recipient's objections. *See id.* at 391. Such unnecessary federal proceedings would also risk inconsistent judgments on issues of state law that necessarily govern a state-issued CID. *See id.* And hauling a state Attorney General into a federal court located in a different State would be inconvenient and impede on the State's compelling interest in having a localized controversy involving the Attorney General's state law authority resolved by the state courts. *See id.* at 392; *cf. Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 260 (1981).

POINT II

THE PUBLIC INTEREST AND BALANCE OF THE EQUITIES SUPPORT DENIAL OF A PRELIMINARY INJUNCTION

To obtain the extraordinary remedy of a preliminary injunction, Exxon must demonstrate not only that it is likely to succeed on the merits, but also that it will "suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008); *see Canal Auth. of the State of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974) ("[A] preliminary injunction is an extraordinary and drastic remedy which should not be granted unless the movant clearly carries the burden of persuasion."). Exxon cannot meet this high bar for two reasons. First, the public interest and balance of the equities strongly favor States' compelling interests in

protecting their citizens from harmful practices and ensuring that their state courts maintain authority to review state-issued CIDs. Second, CID objectors do not suffer irreparable harm from being remitted to an available and adequate state court remedy.

A. The Public Interest and Balance of the Equities Weigh Heavily Against a Preliminary Injunction.

The public interest in all States would suffer significant injury if CID recipients could obtain a federal injunction to thwart a state Attorney General's investigation into potential misconduct. State Attorneys General are responsible under state law for serving the public interest by investigating and combatting false, misleading, and deceptive practices that harm state consumers and investors. See *supra* at 2–5. The Massachusetts Attorney General seeks to fulfill this fundamental state law responsibility by gathering the information necessary to discern whether a company's practices have defrauded or misled Massachusetts citizens. Her CID is not materially different from countless subpoenas that Attorneys General have issued to businesses headquartered or operating in other States. See *supra* at 4–5. And contrary to Exxon's suggestion (*see* Compl. ¶¶ 19–35), there is nothing alarming about the Massachusetts Attorney General working with other state Attorneys General—a common cooperative practice that has long aided Attorneys General in combatting widespread wrongdoing. See *supra* at 5–7.

A preliminary injunction barring the Massachusetts Attorney General from even asking the Massachusetts courts to enforce the CID would thus hurt the public not only in Massachusetts but also in States across the country. Such an injunction would undermine the fundamental authority of state Attorneys General to investigate and prevent consumer and investor harms in their States. Without the ability to obtain the basic facts necessary to determine whether a business has violated state laws, state Attorneys General would be hamstrung in uncovering violations of state law and bringing enforcement actions to aid victims and remediate unlawful

practices. Stymying investigations at their earliest stages, before Attorneys General can determine whether any misconduct has occurred, defeats the public interest that the States' consumer and investor protection laws are designed to protect.

On the other side of the balance, denying a preliminary injunction would not injure CID recipients or the public. Denying the preliminary relief that Exxon seeks here would simply remit the CID recipient to the existing and adequate state law remedy for challenging subpoenas—a result that does not cause any "undue hardship." *Atl. Richfield*, 546 F.2d at 649; *see Reisman*, 375 U.S. at 445–49. That state law process fully protects the interests of CID recipients and the public in ensuring that state Attorneys General exercise their subpoena powers properly and within constitutional and statutory limits. And allowing the state courts to review state-issued CIDs further promotes public goals by preserving federalism values.

B. Exxon Will Not Suffer Any Irreparable Injury from Litigating Its Objections to the CID in the Massachusetts Courts.

Exxon has also failed to establish that it will suffer any irreparable harm if a preliminary injunction is denied. A CID recipient such as Exxon does not experience irreparable injury from having to challenge the CID through an established and comprehensive state court process rather than a preemptive federal lawsuit. To show irreparable harm warranting a preliminary injunction, a CID recipient must demonstrate "harm for which there is no adequate remedy at law." *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013). But the availability of an "adequate remedy at law" in state court to challenge a state Attorney General's CID, *see Google*, 822 F.3d at 225, necessarily supplies the type of adequate legal remedy that renders a preliminary injunction unnecessary and inappropriate.

Accordingly, contrary to Exxon's assertion (Compl. ¶¶ 78–80), the mere existence of a CID does not cause irreparable injury. If there is anything to Exxon's arguments about the First,

Fourth, and Fourteenth Amendments or the Dormant Commerce Clause, it can raise its objections to the Massachusetts courts. And Exxon does not face immediate sanctions for noncompliance while its state court challenge is pending, and would not suffer penalties in any event unless the Massachusetts Attorney General petitions the state court for such relief. See *supra* at 8, 12–13. Any possible harm from the Attorney General's future enforcement of the CID is thus fully reparable in state court. And if the Massachusetts courts were to reject Exxon's federal challenges, Exxon can seek review in the Supreme Court. Invoking the First Amendment and other provisions of the federal Constitution does not change the fact that Exxon already has a full and adequate legal remedy available to it to challenge the CID.

CONCLUSION

For the foregoing reasons, this Court should dismiss Exxon's complaint and deny Exxon's motion for a preliminary injunction.

Dated: Baltimore, Maryland
August 8, 2016

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General
State of New York
BARBARA D. UNDERWOOD
Solicitor General
ANISHA S. DASGUPTA
Deputy Solicitor General
JUDITH N. VALE
Assistant Solicitor General
(Pro Hac Vice pending)

120 Broadway
New York, NY 10271
Tel: (212) 416-8020
Fax: (212) 416-8962

BRIAN E. FROSH
Attorney General
State of Maryland

/s/ Thiruvendran Vignarajah
THIRUVENDRAN VIGNARAJAH
Deputy Attorney General
(Pro Hac Vice pending)
Maryland Bar # 0812180249

200 St. Paul Place,
Baltimore, MD 21202
Tel: (410) 576-6300
Fax: (410) 576-7036
tvignarajah@oag.state.md.us

(*Counsel listing continues on next page*)

LISA MADIGAN
Attorney General
State of Illinois
100 W. Randolph St., 12th Fl.
Chicago, IL 60601

THOMAS J. MILLER
Attorney General
State of Iowa
1305 E. Walnut Street
Des Moines IA 50319

JANET T. MILLS
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333

LORI SWANSON
Attorney General
State of Minnesota
102 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

JIM HOOD
Attorney General
State of Mississippi
P.O. Box 220
Jackson, MS 30205

HECTOR H. BALDERAS
Attorney General
State of New Mexico
408 Galisteo St.
Santa Fe, NM 87501

ELLEN F. ROSENBLUM
Attorney General
State of Oregon
1162 Court St. N.E.
Salem, OR 97301

PETER F. KILMARTIN
Attorney General
State of Rhode Island
150 S. Main St.
Providence, RI 02903

WILLIAM H. SORRELL
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

ROBERT W. FERGUSON
Attorney General
State of Washington
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504

KARL A. RACINE
Attorney General
District of Columbia
441 4th Street, NW
Washington, DC 20001

CLAUDE EARL WALKER
Attorney General
U.S. Virgin Islands
3438 Kronprindsens Gade
GERS Complex, 2nd Floor
St. Thomas, VI 00802

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 2016, I caused the foregoing *Amici* States' Memorandum of Law in Support of Defendant's Motion to Dismiss and in Opposition to Plaintiff's Motion for a Preliminary Injunction to be served on all parties via the Court's CM/ECF system.

/s/ Thiruvendran Vignarajah
Thiruvendran Vignarajah

Exhibit 18

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

EXXON MOBIL CORPORATION, Plaintiff,) 4:16-CV-469-K

VS.) DALLAS, TEXAS

MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendant.) September 19, 2016

TRANSCRIPT OF PRELIMINARY INUNCTION HEARING

BEFORE THE HONORABLE ED KINKEADE

UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF:

MR. JUSTIN ANDERSON
Paul, Weiss, Ritkind, Wharton & Garrison LLP
2001 K Street, NW
Washington, D.C. 20006
janderson@paulweiss.com
(202) 223-7300

MR. SAM RUDMAN
Paul, Weiss, Ritkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
srudman@paulweiss.com
(212) 373-3512

MR. TED WELLS
Paul, Weiss, Ritkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
twells@paulweiss.com
(212) 373-3317

MR. RALPH A. DUGGINS
Cantey Hanger LLP
Cantey Hanger Plaza
600 W. 6th Street
Suite 300
Fort Worth, Texas 76102
rduggins@canteyhanger.com
(817) 877-2800

FOR THE DEFENDANT:

MR. DOUGLAS A. CAWLEY
McKool Smith
300 Crescent Court
Suite 1500
Dallas, Texas 75201
dcawley@mckoolsmith.com
(214) 978-4972

MR. RICHARD KAMPRATH
McKool Smith
300 Crescent Court
Suite 1500
Dallas, Texas 75201
kramprath@mckoolsmith.com
(214) 978-4210

MR. RICHARD JOHNSTON
Massachusetts Attorney General's Office
One Ashburton Place
20th Floor
Boston, Massachusetts 02108
Richard.Johnston@state.ma.us
(617) 963-2028

MS. MELISSA HOFFER
Massachusetts Attorney General's Office
One Ashburton Place
19th Floor
Boston, Massachusetts 02108
melissa.hoffer@state.ma.us
(617) 963-2322

MR. PETER MULCAHY
Massachusetts Attorney General's Office
One Ashburton Place
18th Floor
Boston, Massachusetts 02108
peter.mulcahy@state.ma.us
(617) 963-2068

COURT REPORTER:

MR. TODD ANDERSON, RMR, CRR
United States Court Reporter
1100 Commerce St., Rm. 1625
Dallas, Texas 75242
(214) 753-2170

Proceedings reported by mechanical stenography and transcript produced by computer.

PRELIMINARY INJUNCTION HEARING - SEPTEMBER 19, 2016

P R O C E E D I N G S

THE COURT: Okay. Case of Exxon Mobil Corp. versus Maura Tracy Healey and a bunch of others, Cause Number 4:16-CV-00469-K, set today for hearing on this motion for preliminary injunction.

And before I begin, let me know. If y'all have already settled this, let me know and I'll stop right now. No? Y'all didn't settle this? I'm just shocked. I would have thought for sure. I'm kidding. I'm kidding. I'm just trying to keep y'all from being so serious.

I know it's an important case, but as far as I know there is no dead bodies in this case, correct? There's not -- it's not a murder case. There's no -- death penalty is not -- so y'all kind of calm it down a little bit.

All right. So here we go.

Mr. -- who's going to argue for ExxonMobil? Y'all have 300 lawyers on your side.

Ms. Cortell, are you going to do it?

MS. CORTELL: I am not, Your Honor. I'm sort of the introducer.

THE COURT: Introducer.

MS. CORTELL: Introducer, yes, sir.

THE COURT: Well, good.

MS. CORTELL: Your local introducer.

THE COURT: Well, good, good.

Okay. Well, tell me who these folks are.

MS. CORTELL: Presenting for ExxonMobil today will be Justin Anderson at the far end of the table.

MR. ANDERSON: Good morning, Judge.

THE COURT: Gosh, are you out of law school? You look so young.

MS. CORTELL: Your Honor, he's a little older than he looks.

THE COURT: Is he? You've got to admit he looks pretty young.

MS. CORTELL: He does.

THE COURT: I mean, really.

MS. CORTELL: And they're looking younger every day. In fact, younger next to him is Sam Rudman.

THE COURT: Okay.

MS. CORTELL: And then our senior lawyer from Paul Weiss is Ted Wells.

THE COURT: Hi, Mr. Wells. How are you?

MR. WELLS: Would somebody say I look younger?

THE COURT: I wasn't going to say that about you, Mr. Wells. Okay.

MS. CORTELL: And from Cantey Hanger, local counsel with me, is Ralph Duggins.

THE COURT: Okay. Hi, Mr. Duggins.

MR. DUGGINS: Good morning, Your Honor.

MS. CORTELL: And then on behalf of ExxonMobil we have vice president and general counsel, Jack Balagia.

MR. BALAGIA: Good morning, Your Honor.

THE COURT: The only person with any white hair on your side.

MS. CORTELL: Your Honor, I won't disclose my true --

THE COURT: Well, okay. I won't tell. Well, good.

Okay. And y'all are going to take 45 minutes; is that right? And you're going to offer whatever you've got to offer. And I understand that's what both side are going to do. We're not calling any witnesses. Is that right?

MR. ANDERSON: That's right, Judge. We had an agreement to just use the materials that are already in the record.

THE COURT: I want to tell you I appreciate y'all doing that and y'all working together on that.

MR. ANDERSON: Of course, Judge.

THE COURT: Okay. On the other side is there an introducer, or do I need to go through it?

MR. CAWLEY: Good morning, Your Honor. Douglas Cawley from McKool Smith, and I am the introducer. I am out of law school, but I do have white hair.

THE COURT: Yes, you do. And my hair was as long as yours until I got a haircut yesterday.

MR. CAWLEY: Ah-oh. All right.

THE COURT: All right.

MR. CAWLEY: Thank you, Your Honor.

THE COURT: Tell me about all these --

MR. CAWLEY: Also presenting for Attorney General Healey will be Rich Johnston.

MR. JOHNSTON: Good morning, Your Honor.

MR. CAWLEY: He is chief legal counsel to the Attorney General of Massachusetts.

THE COURT: Well, good. Good to have you.

MR. JOHNSTON: Thank you very much.

THE COURT: You have one of those really strong "park the car" and Boston kind of accents or --

MR. JOHNSTON: No, I wasn't born there, so I'm not as strong as my neighbors --

THE COURT: Okay. But --

MR. JOHNSTON: -- in terms of accent.

THE COURT: If I need an interpreter, I'll tell you as you get to talking, okay?

MR. JOHNSTON: Okay. Thanks.

THE COURT: All right. Good.

MR. CAWLEY: We also have with us Melissa Hoffer.

MS. HOFFER: Good morning, Your Honor.

MR. CAWLEY: She is chief of the Energy and Environmental Bureau of the Attorney General's Office.

THE COURT: Also in Massachusetts, correct?

MS. HOFFER: Yes, Your Honor.

THE COURT: Okay. Great.

MR. CAWLEY: And beside her, Mr. Peter Mulcahy.

MR. MULCAHY: Good morning.

THE COURT: Good morning.

MR. CAWLEY: Mr. Mulcahy is an Assistant Attorney General in the Environmental Protection Division of the Attorney General's Office.

THE COURT: Okay.

MR. CAWLEY: And then Richard Kamprath --

MR. KAMPRATH: Good morning, Judge.

MR. CAWLEY: -- who's with McKool Smith in Dallas.

THE COURT: Okay.

MR. CAWLEY: We're ready to proceed, Your Honor.

THE COURT: All right. Well, it's good to have y'all. And I appreciate it. And I've got all your documents and I've read everything, except there were some things filed late that I'm sorry I haven't, but I'll get to those as soon as I can.

And I've got the Defendant's PowerPoint of what you're going to present today.

And I'm glad to take y'all's, too, at some point if you've got some sort of PowerPoint of what you're doing later on. You can file it. You don't have to file it right now, but

you can, okay?

MR. ANDERSON: And, Judge, we're happy to hand up now a copy.

THE COURT: Okay. That would be great.

MR. ANDERSON: And, of course, to opposing counsel also.

THE COURT: Great.

MR. ANDERSON: We also prepared for the Court a binder that has all of the exhibits that we intend to use during today's hearing, and it's cited in this presentation. So it might be a little bit easier to flip through a binder than to go through the appendices that were filed.

THE COURT: Okay. That's great.

Okay. And I'm assuming we've got some really sharp computer people that are going to make all of this work correctly today. I see a gentleman back there in front of a computer, so I'm assuming you're the man? He's the man. Okay. All right.

Okay. Where did you go to law school?

MR. MULCAHY: Harvard.

THE COURT: Do they teach this computer stuff there?

MR. MULCAHY: Not well.

THE COURT: Okay. All right. We're going to find out.

All right. Who's doing it on y'all's side? Who's

doing the computer side?

MR. ANDERSON: I have a clicker here, Your Honor, but we have redundancy.

THE COURT: Okay. All right.

All right. So here we go. I'm ready.

MR. ANDERSON: Thank you, Judge. May I approach?

THE COURT: Sure.

MR. ANDERSON: And, Your Honor, we also prepared two poster boards. With the Court's permission I'd like to use them during the presentation.

THE COURT: Look, there's no jury here. Y'all can do -- you can even walk around.

Now, if this were normal, I would make you wear white wigs and stay at the podium and use English that was used a hundred years ago, but not today.

MR. ANDERSON: Thank you. Thank you in particular for the white wigs.

THE COURT: Yeah. That's right.

MR. ANDERSON: It would be hot in here.

THE COURT: It would be good.

(Pause)

THE COURT: And I know it kind of seems like we have low lights in here, but that's so we can really get good -- it's not so that we'll look like a lounge or something. It's just so we can really see this up here.

So if you need to turn it up a little bit, we can turn it up a little bit, Ronnie.

Go ahead.

MR. ANDERSON: Judge, are you able to see the poster boards from where you're sitting?

THE COURT: I can see this one. I can't see that one.

Okay. And y'all can get up and walk around if you can't see it. That's fine.

Okay. All right.

MR. ANDERSON: May I proceed?

THE COURT: Sure.

MR. ANDERSON: Judge, a preliminary injunction is an extraordinary remedy, and this is an extraordinary case. It's extraordinary because the Massachusetts Attorney General announced a plan to shape public opinion on climate change by holding her perceived political opponents to account for disagreeing with her.

She memorialized her plan with her collaborators in a common interest agreement that has its express purpose regulating speech. It listed among its objectives ensuring the accurate dissemination of information about climate change, accurate information according to the Attorney General.

And she issued a civil investigative demand that was focused on speech that she disagrees with and that targeted

entities who she perceives to be her political opponents.

So, Your Honor, this case is extraordinary because the evidence of viewpoint bias is so clear even before discovery is started.

And it's also extraordinary because of the widespread criticism that this investigation has drawn, including in the amicus brief that was filed by 11 state attorneys general before this Court last week. Those state AG's would be in a position to know the difference between a legitimate use of law enforcement power and a pretextual abusive one to regulate speech.

Your Honor, that's why we're here today. We're here today to ask this Court to prevent this pretextual use of law enforcement power to constrain and restrict the public debate on climate change.

THE COURT: Why did y'all get singled out? There's a lot of energy companies.

MR. ANDERSON: Well, Your Honor, as part of the evidence in the record --

THE COURT: I'm asking that because obviously I'm going to ask them that. And I just want you to tell me why you think you got singled out.

I mean, could they have gone against Shell, who is based in another part of the world, or gone against some wildcatters here in Texas, or people in California? Oh, no,

there's no drilling out there, so it wouldn't be in California. So why y'all?

MR. ANDERSON: Your Honor, it's a good question. And in the record we see that there has been a campaign to discredit ExxonMobil in particular that was spearheaded by climate change activists and trial attorneys who actually presented their theories at the conference that kicked off this investigation.

And so what you see is actually documented, and we have it in the presentation, Your Honor, where, you know, back in January of this year at the Rockefeller Family Fund there is explicitly an agenda about discrediting ExxonMobil, delegitimizing it as a political actor.

And so they've targeted ExxonMobil as, from their point of view, a perceived political opponent perhaps because it's one of the most prominent, if not the most prominent, traditional energy company. And it's well documented.

Now, there are reasons -- I think that's a good question for the other side about why they're targeting ExxonMobil.

THE COURT: I'm going to ask them. That's why I'm asking you. I get that. I mean, there's nothing else other than this that prompted this?

You know, I came up through the world of politics. That's how I got here. I mean, I wasn't just out here because

I went to Harvard and they just found me. I came through the world of running for election and that sort of thing, so I understand a little bit about politics.

Did y'all poke the bear, so to speak? Did you do something to the Attorney General in Massachusetts that brought this on? Or did y'all give -- did the president of Exxon give money trying to promote somebody else or -- no?

MR. ANDERSON: Your Honor, you know, that doesn't seem to be the story here.

THE COURT: Okay.

MR. ANDERSON: The issue is that -- what's extraordinary about this is that ExxonMobil doesn't really do anything in Massachusetts. I mean, we don't sell gas there. We don't -- we don't issue securities there.

THE COURT: There's no ExxonMobil stations there?

MR. ANDERSON: Oh, there are, but they're owned by franchisees, so they're not actually owned by the company there. They're owned by independent owners.

But what's more -- what's even more remarkable is that for the last ten years -- and, again, this is part of the presentation as well -- it's well documented ExxonMobil has acknowledged the risks of climate change, acknowledged that climate change could affect its business, and that regulations that might be enacted in response to climate change could affect its business as well.

In fact, it's been promoting for at least since, I think, 2009 the carbon tax as a way of responding to climate change.

So this idea that someone has poked the bear or has been antagonistic towards -- in particular towards the views of the Attorney General is just contradicted by the record.

But, you know, if it would help the Court, what perhaps I could do is just proceed through the facts that are --

THE COURT: Oh, I'm going to stop you when I want to. It doesn't work that way.

I don't know. They may -- where are you from? I forgot.

MR. ANDERSON: I'm from Washington, Judge.

THE COURT: Yeah, yeah. They may do that there. That's not how we do it here, okay? I tied my horse outside and ran in here to ask questions.

MR. ANDERSON: Well, Your Honor, what could be helpful, if it would be usable to the Court --

THE COURT: Oh, go through your deal and I'll stop you when I want to.

MR. ANDERSON: Okay. Why don't we begin with the way this investigation began. It began with a press conference in New York back in March where the Attorney General announced, you know, the investigation.

And there are really three critical takeaways from this conference. First, the explicitly political nature of the objective.

And as you can see in the picture there, you know, they're standing behind "AG's United for Clean Power," you know, a policy objective. It's this idea that in order to address climate change we -- the country has to move from traditional sources of energies into renewable sources of energy. And they're all very frustrated. Members of this coalition are frustrated with the Federal Government for not doing more.

And then what you see they identify as a big part of the problem here is that the public is not on their side, that there's confusion, there's public perception where the public hasn't yet agreed that these are the correct solutions to the climate change problem.

And to this coalition that debate is over, the solutions are clear, and so what they need to do is clear up the confusion that remains. And the way they're going to do that is by holding accountable those entities and voices that disagree.

THE COURT: Basically, what they're saying is Exxon hasn't been telling the truth and we want to show that so that the public perception will change; is that right?

MR. ANDERSON: Essentially -- essentially what

they're saying is even more than that, is that -- and you'll see this in documents -- is that what we want to do is get ExxonMobil to stop speaking or to speak in favor of the policies we support so that public perception will come over to our side so we can enact the policies that we prefer, you know, renewable energy and the other things that Al Gore invests in.

And the problem with that is that that's just an improper use of an investigative law enforcement authority. It might be appropriate to hold congressional hearings or rallies outside of -- you know, outside of Congress to support a transition from traditional energy to these renewable sources. But the idea that you use a subpoena to burden those on the other side of the debate, to chill them, to ask about their policy positions, is just a misuse of law enforcement power. That's not what that power is for.

And, Judge, maybe it would be helpful to hear some of the Attorney General's own words --

THE COURT: Okay.

MR. ANDERSON: -- as she describes this political objective.

THE COURT: Okay.

(Video played)

"But make no mistake about it, in my view, there's nothing we need to worry about more than climate change. It's incredibly serious when you think about the human and the

economic consequences and indeed the fact that this threatens the very existence of our planet. Nothing is more important. Not only must we act, we have a moral obligation to act. That is why we are here today.

"We know from the science and we know from experience the very real consequences of our failure to address this issue. Climate change is and has been for many years a matter of extreme urgency, but, unfortunately, it is only recently that this problem has begun to be met with equally urgent action. Part of the problem has been one of public perception, and it appears, certainly, that certain companies, certain industries, may not have told the whole story, leading many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts.

"The states represented here today have long been working hard to sound the alarm, to put smart policies in place, to speed our transition to a clean energy future, and to stop power plants from emitting millions of tons of dangerous global warming pollution into our air."

MR. ANDERSON: So, Your Honor, as you see in these statements, it's all about politics. It's all about moving from traditional energy to renewables.

And in particular, part of the problem that the Defendant identifies is one of perception that there are certain industries, certain companies -- in the next slide

she'll name ExxonMobil as one of them -- that have been causing people not to agree with her about the catastrophic nature of the impact of climate change or the need to adopt these smart policies that she prefers that speed our transition to a clean energy future.

And then the next -- in the next breath she says, so this is how we're going to clear that up.

(Video played)

"Fossil fuel companies that deceived investors and consumers about the dangers of climate change should be, must be, held accountable. That's why I, too, have joined in investigating the practices of ExxonMobil. We can all see today the troubling disconnect between what Exxon knew, what industry folks knew, and what the company and industry chose to share with investors and with the American public."

THE COURT: So if you stop there --

(Video played)

"By quick, aggressive action --"

THE COURT: -- that seems to imply they're going to go after other companies, too. That's what she says. That's -- I don't know what other -- I guess there are other inferences, but that's what it seems.

MR. ANDERSON: Yeah. I mean, I think it's a fair -- fair argument, Judge.

THE COURT: And I guess my question is going to be,

so why aren't they here?

Why don't we just have up here everybody at once, get all this over with? Is it just one of many beginning, or what's going on?

MR. ANDERSON: Judge, it's unclear, and I think a lot will depend on what the Court does today about whether it allows this type of abusive, you know, use of law enforcement power to continue or whether it orders it to stop.

And I think it's exactly right, that, you know, based on that statement -- and by the way, based on the previous subpoena that was before this Court that was issued by the Virgin Islands, they actually targeted some of the nonprofit groups that speak out on this issue, and there's still litigation going on in DC over that effort.

So I think you're right to see that this is the beginning of a trend, a trend that 11 state AG's have raised the alarm about and others are raising the alarm about. But it's in its infancy, and so there's still time to put an end to it.

THE COURT: Okay.

(Video played)

"-- educating the public, holding accountable those who have needed to be held accountable for far too long, I know we will do what we need to do to address climate change and to work for a better future."

MR. ANDERSON: And these statements, Judge --

THE COURT: My question is, regardless of what we do here, if China and India and third world countries don't do something -- doesn't science say we've still got to get ahold of that? I mean, it seems to me.

I don't -- they are belching out stuff in China. I mean, you can barely go into their main cities without a mask on. It's terrible. I mean, I guess I don't get it. But, anyway, at that point, I don't get it. But I'll -- you can explain it to me.

MR. ANDERSON: Judge, that's a great point, because one of the very observations this subpoena, this civil investigative demand seeks to have ExxonMobil explain, is the former chairman's statement that in order to address climate change there needed to be a global effort that included reducing emissions from third world countries, so --

THE COURT: But I guess their answer is going to be, and I'll anticipate it, is that if you're lying, you're kind of the lead liar, and so you're leading everybody else down the primrose path. You are the pied piper.

MR. ANDERSON: But that's exactly the point. This is lying about public policy. For every debate there's someone on one side, someone on the other side.

THE COURT: No, no, no. I agree with that. But we kind of know back when those who were growing tobacco, it's

going to cause cancer. I mean, it isn't just public policy. There was -- there were things being hidden by the tobacco companies that weren't -- they weren't telling the truth about it, I mean, if that's what they're saying.

Is this -- is this that argument that, hey, there's really bad stuff behind all this that's causing terrible things?

MR. ANDERSON: Well, you know, Judge, if that were the argument, then you would expect the Defendants to be able to come forward and explain to you what the basis for the argument is, because we've shown that for the last ten years ExxonMobil has openly acknowledged the risks of climate change and again supports the carbon tax.

We have shown to you that this is a statute -- this is a statute that is a four-year limitations period. So all we're really talking about is what happened in Massachusetts over the last four years.

And we said in our briefs, identify the misleading statement, identify the falsehood, tell us what you think ExxonMobil did wrong. And what we got were basically two things in response: five documents from the 1980s where, if you look at them and -- you know, in the brief it makes it sound like in the 1980s ExxonMobil had it all figured out, it essentially determined that climate change was a serious threat, it knew how many degrees of temperature increase we

were looking at, and it knew the policies that had to be enacted in order to respond.

THE COURT: Okay.

MR. ANDERSON: And that's the characterization of the documents. And this has been in the press, too. But it's entirely misleading.

We put those documents in front of you. They're in the binder. They're in this presentation. You read them and they're riddled with caveats, hesitation, doubt. They say things like, you know, this is all subject to further analysis, we need better models, it would be premature to take any action based on this.

So, first of all, you've got that. The documents themselves are not these declarative, decisive statements that the Defendants would like them to be.

Then you also have the fact that what's in those documents is entirely consistent with the record that was being issued by the EPA, by MIT, by basically everyone speaking on this. So there's no big disconnect between what these internal documents say and what was generally available to the public at the time in the 1980s.

And three is, you know, these documents have been sitting at the University of Texas since 2003. They're not -- they're not these smoking guns that were being locked away and hidden that were somehow rested and came to light. They're

just corporate records that nobody was ashamed of, no one was embarrassed, because this is not at all different from what the public knew or indicative of any type of effort to conceal.

So that was one, and I think --

THE COURT: Why are they at U.T.? Remind me about that.

MR. ANDERSON: I'm sorry?

THE COURT: Why are they at the University of Texas?

MR. ANDERSON: They were deposited there, I think, around 2003.

THE COURT: That's where Exxon puts its old archives or something or --

MR. ANDERSON: It might have been Legacy Mobil. We could find out and provide the Court with more information, but I believe it was just the nature of providing corporate records to a university --

THE COURT: Okay.

MR. ANDERSON: -- as is often the case.

So that was one theory, Judge. And it doesn't withstand scrutiny. It's pretextual. This is not what this is about. This is about this. This is about changing public perception by putting a subpoena on ExxonMobil to discourage it from speaking out on the other side of this debate.

But they came up with this other theory which was about the idea, well, if climate change regulations come into

place, then ExxonMobil might not be able to take the oil out of the ground and might not be able to refine and sell it.

Now, you know, that's -- their argument is that our proved reserves might have to be impaired or written down or something, as the theory goes, because of these regulations that might come up in the future.

Now, that sounds -- it sounds sketchy anyway, but let's say you take it as a plausible argument. Big problem with that is that the SEC in its regulations makes it unambiguous, clear as day, that you can't anticipate future regulations. You have to calculate proved reserves based on regulations as they exist today.

So even if the Defendants were right, and I don't think they are, but even if they were right that regulations are coming in the next few years that would limit the ability to extract traditional fossil fuel, SEC says you don't take that into account in reporting proved reserves. So that theory of fraud easily is swept away.

And so I guess the question still is, so what is the theory that would justify 40 years of records about climate change? What is the theory that justifies asking all of these questions about policy statements that ExxonMobil has made in the past? And it's this --

THE COURT: Well, I mean, let's think about the other side of that. If y'all were doing some really terrible things,

which apparently they think you are, shouldn't they be aggressive, and isn't that what the courts are for, and they're being innovative, and that's what we do here?

I mean, that's -- that's why we have courts, to come in here and fight about that, and try to use the court system to punish evildoers. Isn't that what it's for?

MR. ANDERSON: The Court doesn't -- the Court is really -- actually, it's explicitly not for the purpose of punishing evildoers because they speak out on the wrong -- on the perceived wrong side of a policy debate.

THE COURT: No, no, no, no, not just about speech, but if you were withholding -- you know, like the tobacco companies just lied about stuff for years and years and years, oh, no, we don't have this, we don't have that, we don't know that it's cancer causing, or the same in the asbestos kinds of cases.

If companies were doing that, companies ought to be held accountable. That's what I'm assuming they're going to argue ultimately. I don't know -- they're not arguing that today, but ultimately that's what they're going to say is, see, we told you, they had these documents that showed all this terrible stuff.

MR. ANDERSON: Well, Judge, again, it would have to fit into some theory of fraud that could be litigated.

I mean, you might have noticed that the New York

Attorney General has entirely walked way from this theory that we knew in the past and that that was fraudulent because we didn't disclose it.

He's completely -- it's reported in the press. He's completely walked away from that, is now focused on the stranded asset theory that is equally flawed for the reasons I just described.

THE COURT: The what?

MR. ANDERSON: The idea that our reserves need to be impaired because of future government regulations. That seems to be what he's shifted his focus on.

THE COURT: That they should be impaired?

MR. ANDERSON: They should be, even though the SEC regulations prohibit that.

THE COURT: Okay.

MR. ANDERSON: But the -- Judge, I think that there would need to be some type of theory that actually made sense, some theory of fraud that you could present with a straight face and not turn red when you're explaining it, because what we have here is a statute that says don't defraud consumers, don't defraud investors in the state of Massachusetts, four-year limitations period.

And so we have said, what have we said? What have we done that could possibly give rise to this -- to an enforcement action against the company?

And, you know, we've gone through it about we don't sell gas there, we don't talk -- we don't sell gas to consumers, we don't sell our equity to investors. We've gone through. And what are the statements that could give rise to it?

And all they've been able to come back with are these two pretexts. They say, oh, these five documents show that you knew something. That's absurd. They don't show anything. They show that in the early '80s ExxonMobil knew about as much as anyone else on climate change and recognized that it was a fluid situation, the research needed to be developed, and we'll see where it goes.

And in the last ten years, as science has gotten a little more clear, as people's understanding has become a little more focused, ExxonMobil has been right there saying climate change is real, we recognize that, and it could have impacts on our business.

So when you talk about the comparisons to tobacco companies, it's just totally inept. There's no comparison here. The idea that ExxonMobil knew anything that others didn't, there's no basis for that. The idea that ExxonMobil concealed information to the public, you've got no basis for that, certainly not during the four-year limitations period.

THE COURT: Well, they want to -- they want to look and see. That's what they want. They want to look and see.

They don't trust you.

I mean, they just -- hey, he's a nice man, we like him, he's a good lawyer and all that, but we don't trust Exxon. We'll just look and we'll determine one way or the other what the real -- what the real truth is. Isn't that going to be their argument?

MR. ANDERSON: Well, that is, and that sounds like a fishing expedition to me. It sounds like they're going out there to see what they can find. And the Fourth Amendment doesn't authorize that. It doesn't authorize them to go out on a lark and see -- you know, let's see if we can stir up in the corporate -- 40 years of corporate records at ExxonMobil to see if maybe somewhere in there there's a document we can use.

And that would just -- that would be even without this press conference, even without the press. The problem is when you hear -- so when you hear what was --

THE COURT: Do you want me to hear some more?

MR. ANDERSON: Actually -- well, you know, Judge, we have a bit more, but not to hear, just to read.

THE COURT: All right.

MR. ANDERSON: Also present was the New York Attorney General. And he was sounding similar themes about the need to clear up this confusion, confusion about policy.

Again, this is called -- you know, the First Amendment calls this debate, disagreement, free exchange of

ideas. What he's talking about is cleaning up confusion, stepping into the breach of federal inaction, going after the morally and vacant forces -- I think they're talking about us -- that are trying to block Federal Government action, and talking about an unprecedented level of commitment and coordination.

THE COURT: I guess one of the things that really concerns me looking at all those attorney generals, I don't recognize them personally, but they're all from the Northeast, correct?

MR. ANDERSON: Your Honor, I think Maryland is in there. Does that -- does that count as the Northeast?

THE COURT: Yes. Yes, it does.

MR. ANDERSON: And, of course, the Virgin Islands.

THE COURT: Well, and the Virgin Islands are a different animal, but they are what they are.

I guess my concern is, is that you've got a group of very bright, well-meaning, thoughtful folks in the Northeast obviously disagreeing with, I think, bright, thoughtful, careful people in the Southeast and the Southwest.

You know, it's a -- it's an interesting -- it's an interesting precedent. I guess someday we'll end up with much smarter folks at the Supreme Court to try to decide that. But, you know, it's just one of those things that are really sad. I guess I would rather have geniuses and scientists deciding this

versus a generalist in Dallas, Texas. But it is what it is. And it's just -- it's just difficult. That's a very difficult thing to see.

There's not one southern attorney general on this, is there? Not one, correct?

MR. ANDERSON: Correct. And, in fact, the southern --

THE COURT: And no producing states attorney generals are on this, correct? None of those people are producing.

MR. ANDERSON: Judge, in the coalition there is Virginia as well, just to be clear.

THE COURT: Is Virginia there?

MR. ANDERSON: Virginia.

THE COURT: Yeah. How much drilling happens in Virginia?

MR. ANDERSON: Yeah. I just want to be clear, Judge.

THE COURT: Let me tell you, you can count those rigs on one hand.

Is Pennsylvania there?

MR. ANDERSON: Pennsylvania was not -- you know, Judge, I have this -- have this on a binder.

THE COURT: Pennsylvania is not going to be there. I don't have to look. Pennsylvania is not going to be there. They drill the heck out of Pennsylvania, because it goes right up to the border -- I mean not the border but the state line

with New York. They drill right on the state line.

It's very interesting when you look at the study of that. I mean, it just goes right up to it. So those Pennsylvania people are sucking the heck out of the oil underneath New York. I mean, they are. Just the way it is.

But, anyway, go ahead.

MR. ANDERSON: Well, it must be busy --

THE COURT: I'm just saying that is a very -- it's problematic or it's not problematic. And I guess I don't -- I mean, doesn't it concern y'all if we're kind of getting a us and them kind of a thing? I hate that.

MR. ANDERSON: Oh, Judge, absolutely. We'd prefer not to be here. We'd prefer not to be in the middle of this. But it is -- it is one of these regional disputes that is essentially political where one side is attempting to use law enforcement power to silence the other side.

And just to answer your question about Pennsylvania --

THE COURT: No, the real answer is -- and I'm going to ask them. If you had oil underneath your state like Texas has underneath its state, would you take the same position? Of course, I know the answer is going to be "yes." And I'm just saying, think about that.

Is that really -- I mean, mercy, we could drill under this courthouse probably and find gas or oil in Texas. It's

just -- that's just the way the Earth was made. The Barnett Shale actually comes even over here.

But, anyway, just a curious -- I'm just curious about that.

Go ahead.

MR. ANDERSON: It's a valid point, Judge. And, in fact, if you think about it, it would be something like -- you know, we have Al Gore up here. He's not an AG, but he was at this press conference. What he's known for is two things: climate change activism and investing in companies that are developing alternative sources of fuel.

THE COURT: And creating Al Jazeera, or selling his company to Al Jazeera.

But go ahead.

MR. ANDERSON: Right. Well, Judge, no one is criticizing -- if what you're saying -- I think you're onto something here when you say that.

If this became a regional type dispute -- he says a lot of things about the dire consequences of climate change and the need to adopt renewables and how renewables are the only solution. Now, of course, that affects his financial interests. And you could see if this were to escalate, you could see the attorneys general and producing states investigating him.

And so you could see how this type of thing -- if the

Defendant is right that it's appropriate to drop subpoenas on people and entities that disagree with you on politics, then you could just see how this snowballs, because for as many states that are on one side of the issue, you have an equal number on the other side of the issue. And they all have the same power to issue subpoenas that go outside of their states.

And that's why what we're doing today is just so important, Judge, because you are right that this is a troubling -- and you can see it in the way that this whole enterprise drew this swift criticism from the state attorney generals in producing states and elsewhere.

THE COURT: Why didn't you bring in the State of Texas and other states on your side?

MR. ANDERSON: Bring them in?

THE COURT: Yeah. Why didn't you bring them in?

MR. ANDERSON: You mean as parties?

THE COURT: Yeah.

MR. ANDERSON: Well, you know, Judge, it's a good question. They filed an amicus --

THE COURT: This is an innovative -- this is a very innovative, unique kind of sort of thing. I'm just saying if you thought outside the box, I kind of would have -- I mean, if I had a state on my team, I think I would like it. I mean, I just -- you're telling me this is all political. If it is, I think I would bring in some political animals. It's your

business, not mine.

MR. ANDERSON: Well, Judge, we do have 11 states on our side.

THE COURT: Yeah, I know. They filed amicus briefs. But I'm saying as -- you know, whatever.

Okay. Go ahead.

MR. ANDERSON: Well, Judge, the litigation is proceeding, and people are hearing --

THE COURT: Who knows what will happen after that? I know.

MR. ANDERSON: Right. I mean, look, this was an unprecedented filing. I mean, this is not just one. Eleven state attorneys general are saying we're law enforcement, these are our powers, we know the proper use, we know the improper use, and what Massachusetts is doing is wrong.

These are some of the statements in the brief:

That law enforcement power doesn't include the right to engage in unrestrained investigative excursions to promulgate a social ideology, or chill the expression of points of view.

Using law enforcement to resolve a public policy debate undermines the trust in the offices -- undermines the trust in offices of state AG's and threatens free speech.

Silencing Exxon not only harms ExxonMobil, it harms those who want to hear the views that are expressed by

ExxonMobil.

And probably most -- most hard-hitting, Judge, is the way they conclude, is that, you know, our history is embroiled with examples where legitimate exercise of law enforcement is soiled with political ends rather than legal ones, and Massachusetts seeks to repeat that unfortunate history.

They might not be parties -- I mean, they might not be parties yet, but this statement speaks -- it sends a loud message about where their views are and the threat that they perceive to not only their -- you know, their institution and the public confidence in their institutions but also to the free exchange of ideas on this matter.

THE COURT: You know, when you're looking at law enforcement, it's always troubling. I'll give you another law that's troubling that could be used. For example, when Al Gore was attacked for making political phone calls from the White House, was that an overreach? Is that similar to this? And eventually that was all thrown out.

Are those the sort of things that, you know -- or using RICO in political efforts that go after political -- whether it's by Republicans or Democrats or Whigs or whoever is doing it, is that too much?

I mean, are we using -- are we going too far? I don't know. I guess that's something -- all of these are questions, I guess, for you and the other side, so I wanted to

warn them.

You know, it's -- the power of Government, and I would say especially in criminal cases, is always -- needs to be checked. It can't be unfettered. I mean, it can't be unfettered. Is this one that has gone too far? And that's what they're saying. Is that what you're saying?

MR. ANDERSON: Yeah. Absolutely, Judge. Your instinct here is exactly right. This is -- this is on the wrong side of that line.

The law enforcement -- and no one up here is saying that law enforcement can't issue subpoenas to investigate crimes, that the proper use of law enforcement authority isn't important and appropriate. We recognize that. These 11 state attorneys general recognize that. Among all, they would recognize that. But what we're saying is that --

THE COURT: You're saying this ought to be done in legislatures and Congress and --

MR. ANDERSON: Exactly.

THE COURT: -- all those places?

MR. ANDERSON: Exactly. And that's what they're -- and they recognize that. And that's what they're complaining about. What they say is, oh, there is gridlock in Washington because some of the northeastern states don't agree with some of the southeastern states about how to resolve this conflict. And to them, that is not acceptable. To them, they're saying

what we need to do is change the focus of the debate and take it out of Congress where things aren't happening and put it in states -- the attorney generals' offices to start issuing subpoenas on those who disagree with us so that the policy we like gets enacted, because the people who are saying that it shouldn't be enacted are terrified of getting these subpoenas in the mail asking for 40 years of records so that the investigators can search through those records and find something, really anything that they can find in there, so they can start to piece together some type of case.

And, meanwhile, while you're responding, you've got that sword of Damocles dangling over you. You know, is it going to drop? It this -- you know, what can we say to appease the regulator? And that's exactly -- Judge, and that's exactly the plan here.

You know, let me back up just a second, because, you know, at this meeting back in March before they got out there and had their press conference -- and one of the things that -- you know, of the things that they tried to conceal is that they had a meeting --

THE COURT: Is this all in the booklet you gave me?

MR. ANDERSON: Yeah.

THE COURT: Okay.

MR. ANDERSON: Yes, Judge. I could direct you to the --

THE COURT: "Yeah"? "Yeah"? This is federal court. "Yeah" is not acceptable even in the South, okay?

MR. ANDERSON: Sorry, Judge. It's page 13 of the presentation.

THE COURT: Yes, sir. Yes, sir, I can see it.

MR. ANDERSON: And what we see here is that, you know, before they came out on the stage in the clips that we just saw --

THE COURT: Yes, sir.

MR. ANDERSON: -- they had this meeting with two people, Peter Frumhoff of the Union of Concerned Scientists, and Matthew Pawa, who's a climate change attorney. He sued ExxonMobil before over climate change, and a judge threw out the case and said this is what you should be taking to -- this is what you should be taking to Congress, not to the courts.

Anyway, they had a meeting where they met with these men. This was not in public. This wasn't recorded. We don't know what -- we don't know exactly what was said, but we know what these two men believe. We know that they pioneered this theory back in 2012 that if they could persuade a single sympathetic state attorney general to go issue a subpoena and get some documents, they could then use those documents --

THE COURT: Wait. You used the tobacco example.

MR. ANDERSON: That's right, Judge. They see that you can see the power of state prosecutors to get lots of

records and then see if you can pressure the companies once you get those records -- well, first of all, maybe into a settlement or something like that, but that's not even what he's talking about. What he's talking about is putting pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming.

THE COURT: What do they really want out of y'all, other than your documents? What do they want? What do you want? What do they want?

MR. ANDERSON: I think they want ExxonMobil to get on their train. They want ExxonMobil to support the policies that they favor, including a shift to renewables, or to be quiet. They might settle for that.

They either want us to be quiet or to agree with them, but to stop being on the side that they perceive as wrong, to stop being on the side that's slowing down the progress towards renewables that's sowing the confusion that bothers them so much.

According to one of the attorneys general, I think it was Schneiderman, the debate is settled, the debate is over.

And so what they would like ExxonMobil to do is to stop speaking, stop presenting another point of view, and either be quiet or support their position.

And this is laid out -- I mean, it's laid out in a

document about the goal here is not to protect consumers, it's not to protect investors. The goal is to get these documents so that you can put pressure on the industry to change its support for legislative and regulatory responses to global warming. I mean, it's well documented. It's in the public record.

And you see also, Judge, I think -- I think my clicker stopped. Oh, there it goes. You can see in the -- I was describing this meeting before back in January. It's all pursuant to this strategy that Matthew Pawa and others have been cooking up about targeting ExxonMobil, delegitimizing them as a political actor.

I mean, this is a movement that is being -- it's a playbook that's being created by Pawa and Frumhoff.

And so it shouldn't come as a surprise that when a Wall Street Journal reporter contacted Matthew Pawa and he was concerned that that reporter might ask about whether he attended that meeting in March with the Defendant and her collaborators and Al Gore, he reached out to the Environmental Bureau Chief at the New York Attorney General's Office saying, what should I do? And he wrote back, my ask is if you speak to the reporter, do not confirm that you attended or otherwise discuss the event.

So they know. They know this.

THE COURT: I don't get that either. I didn't

make -- I mean, let's just have this fight out in the public, it just seems to me. I mean, whatever. I mean, it's pretty clear how these fellows feel. They're scientists and feel strongly about it, and they have strong feelings about it. Okay. Nothing wrong with that, I don't think.

MR. ANDERSON: I agree.

THE COURT: I mean, they can say and do what they want. I mean, and they can file lawsuits if they want and pressure y'all if they want to.

Okay. All right. I don't know why they wouldn't confirm they were at the event.

MR. ANDERSON: Well --

THE COURT: I mean, that doesn't make any sense, but anyway.

MR. ANDERSON: Well, Judge, I agree with you that they are entitled under the First Amendment to have their views. I think the reason -- I think what the evidence shows here is the reason that they were trying to conceal the involvement of these men is because they don't want the public to know that this is political. They don't want the public to know that it's about pressuring ExxonMobil.

THE COURT: Yeah, I get it. I get all that. I just don't know why. They're not good politicians. They need to stick to science. No offense.

But go ahead.

MR. ANDERSON: Thank you, Judge. What I --

THE COURT: You're getting close to your time, so tell me what else you really want me to -- this is a swift review from the other AG's?

MR. ANDERSON: We did that.

THE COURT: Let me see all the states that they're from. Let me see them, all the states.

MR. ANDERSON: Texas --

THE COURT: Louisiana, Texas, South Carolina, Alabama, Michigan. Hmm. What's in Michigan? Where they make cars. Arizona, Wisconsin. Now, I don't know if they drill in Wisconsin. Nebraska, Oklahoma, Utah, Nevada. Interesting.

Kind of a -- are there any -- if we were going to have red and blue states, all red states on your side, all blue states on their side, that's kind of interesting, too, isn't it?

MR. ANDERSON: Well, I think under --

THE COURT: I just hate this us and them thing, but it is what it is.

MR. ANDERSON: And, Judge, we hate it, too. And I think --

THE COURT: Although Michigan might be a blue state. We don't know.

MR. ANDERSON: Yeah, Wisconsin also might be one that goes back and forth, I know.

THE COURT: You're right.

MR. ANDERSON: Paul Ryan, I think, is from there.

But, Judge, it does -- but it does highlight the points you're making, is that this isn't about consumer protection versus consumer fraud or securities protection, securities fraud. It's about politics. It's about --

THE COURT: I get that. You've made that point.

MR. ANDERSON: Okay.

THE COURT: What else?

MR. ANDERSON: Here's the other thing I think you really need to know, Judge, about this CID, is that it's -- in its own request it tells you that this is about viewpoint discrimination. It lists out all the groups -- in one of the many requests, it lists out all the groups that it wants ExxonMobil to produce its documents, its communications with.

And look at that group of 11. Every single one of them, if you Google, you're going to find out that people in the press deride these entities as climate deniers, like Heritage, American Enterprise Institute, API, ALEC. All of these are like the boogie man.

THE COURT: I get that point. I get that.

MR. ANDERSON: The next thing is, look at some of the statements that the CID wants to investigate. These are policy statements that we were talking about at the beginning about energy rationing.

You mentioned before that China and India would have to get onboard to limit CO2. Well, that was part of what the former chairman discussed at the World Petroleum Conference in China, that they would have to resort to energy rationing and in another statement by the current chairman about adaptation to change, about it's an engineering problem with engineering solutions and that issues such as global poverty might be more pressing than climate change. So policy tradeoff between development which requires energy and maintaining a certain level of CO2 that might require less, that's not fraud. That's a policy question. And they want to investigate this? They want to know why ExxonMobil was saying it.

And here's another great example. This is in their subpoena. They want to know why we said that the level of GDP growth requires more accessible, reliable, and affordable energy to fuel that growth, and it's vulnerable populations who would suffer most should that growth be artificially constrained. That's fraud? That's policy.

That's a question about tradeoff that everyone recognizes between limiting CO2 emissions and restricting energy production and the growth that comes with it. That's exactly what society is dealing with.

And so, Judge, we went through this before. And I encourage you, if you want to see it, the presentation has the detail.

THE COURT: So you're saying four years is really the max of what they should be able to get?

MR. ANDERSON: Well, yeah.

THE COURT: They shouldn't get anything is what you're arguing, I know, but four years is what it should be?

MR. ANDERSON: Yeah. It --

THE COURT: Because that's it. That's the statute of limitations.

MR. ANDERSON: The statute of limitations said we had to do something in the last four years in Massachusetts with consumers or investors that would give rise to the claims. And so we've asked repeatedly what have we done. Because everything we're seeing takes us back to 1976, '76, '97. I mean, these go back far into the past to find the documents that they don't like generally about public policy. And then you read what they're looking for: a policy, the design, communications about climate change, regulation of methane gas.

Again, for the last decade we've been saying climate change is a serious issue. We don't do anything in Massachusetts that would give rise to these claims in the last four years and even beyond. And yet what they want to know about has nothing to do with Massachusetts. They want to know about our statements in China, our statements at a Council on Foreign Relations meeting in New York, here in Dallas, our statements in England.

And then, Judge, you know, this one we obviously don't have time to do in the courtroom, but the idea that based on their review of these five documents from the '80s that ExxonMobil knew in 1982 that the mitigation of greenhouse effect would require major reductions in fossil fuel combustion, that's what they say? This is the document that they say supports it?

Look at this. Currently no unambiguous scientific evidence.

The relative contribution of each is uncertain.

Considerable uncertainty about whether these effects should occur.

Making significant changes in energy consumption patterns now would be premature.

These key points need better definition.

Uncertainties. Further study is necessary. Monitoring is necessary before any specific actions are taken.

This is called pretext. The fact that they are grasping at straws to justify their investigation tells you it didn't come from the right place. This investigation didn't come out of the right place. It came out of the place that was revealed in the press conference when they told you and then when they put it in their common interest agreement.

THE COURT: What do you mean it didn't come out of these documents? What are you saying?

MR. ANDERSON: This is the pretext for it.

THE COURT: I get it.

MR. ANDERSON: The real purpose is to silence -- I mean, it says it in the common interest agreement. It says we're doing two things here, this coalition of state attorney generals, we're limiting climate change and we're ensuring the dissemination of accurate information about climate change.

They memorialized it in their agreement.

THE COURT: Is that it?

MR. ANDERSON: Yes, Judge.

THE COURT: No, no. Give me your last shot.

MR. ANDERSON: All right. Judge, look, again, if this case were about a challenge to legitimate exercise of law enforcement power -- because we see that a lot in their briefs: It is routine, this is normal, they get to issue subpoenas.

No one is saying that's not true. No one is saying that the Massachusetts Attorney General can't issue subpoenas. No one is saying that she can't make appropriate comments about her priorities so if fighting drug dealers is a priority and she wants to hold a press conference saying, I'm putting 40 assistants on a drug enforcement task force and they're going to handle that today, no one is saying that's inappropriate. But that's not what this case is about, and if it were, we wouldn't have the support from the 11 state attorneys general.

What we are saying and what those state attorneys

general are saying and so many others are saying is that it's objectionable to use law enforcement tools to silence political opponents.

And when states engage in this conduct, when they misuse their power to violate the First Amendment rights of others, of citizens, that's when Federal courts come in. And so we're asking you to issue a preliminary injunction preventing this activity from continuing.

THE COURT: Okay.

MR. ANDERSON: Thanks, Judge.

THE COURT: Thank you.

All right. And so who's going to make the argument?

MR. JOHNSTON: Your Honor, my name is Richard Johnston.

THE COURT: Okay. Good to see you, Mr. Johnston.

MR. JOHNSTON: Thank you very much.

Your Honor, I know you're going to have a lot of questions for me because you've already telegraphed them, but I would appreciate it if I could just spend a couple of minutes explaining to you a couple of things about why I think it's inappropriate for the Court to be considering preliminary injunction at this time.

THE COURT: Sure.

MR. JOHNSTON: Mr. Anderson has been very passionate and eloquent about his position, but all of that eloquence and

passion doesn't really make up for the fact that he has a fatal defect in his case, that there's no irreparable harm sitting here today that should cause Your Honor to interfere with an ongoing legal proceeding in Massachusetts between the same parties on the same issues or to interfere with the efforts of an attorney general from another state to investigate what it considers potential wrongdoing.

As Exxon has indicated in its own papers, for it to get an injunction, it needs to show imminent harm. But there isn't any imminent harm because the Attorney General has no ability to enforce its CID on her own.

In order for the Attorney General to be able to enforce a CID, she needs the approval, once there is a challenge by a recipient, of the Superior Court in Massachusetts. And then the recipient has the ability to seek an appeal in the Massachusetts courts.

So as Your Honor knows from the papers, I believe, Exxon filed an almost identical proceeding in Massachusetts the day after it filed here, and that case is proceeding on the normal course of things. We have filed an initial brief. Exxon has filed a brief. We have another brief due in three weeks. Afterwards there will be a hearing in Massachusetts.

In the meantime, there's absolutely nothing that we as an attorney general can do to force Exxon to comply with the CID. For example, Exxon has not produced one document to us.

THE COURT: So regardless of how I rule here, one of your state superior judges may do something different? I mean, regardless of what I do, they'll do something different.

MR. JOHNSTON: Well, the Judge in Superior Court is going to do something.

THE COURT: Yeah, but it can't be exactly the same as what I do, unless he goes, oh, that Kinkeade is a smart judge, I'm going to do what he -- that never happens. We're too independent to do that as judges, so --

Who's going to win that fight?

MR. JOHNSTON: Well, my point is, Your Honor, that you should take a look at how the Massachusetts CID statute is set up.

THE COURT: Okay.

MR. JOHNSTON: Okay. Because the statute provides very precise rights and remedies for above Exxon and above the Attorney General, and we have been following that very prescribed procedure in Massachusetts state court.

We have some slides that I would like to refer Your Honor to.

THE COURT: Okay. Is your time up now when I can start blasting you with questions?

MR. JOHNSTON: No.

THE COURT: You're not ready yet?

MR. JOHNSTON: No.

THE COURT: Okay. Tell me when.

MR. JOHNSTON: I want to get into a few procedural things so you understand the context.

THE COURT: Okay.

MR. JOHNSTON: And also I want to talk a little bit about Your Honor's lack of jurisdiction over the Massachusetts Attorney General, and then I'm all yours.

THE COURT: Okay. I kind of felt that lack of jurisdiction might come up at some point.

MR. JOHNSTON: Well, you wouldn't --

THE COURT: Although, you know, in Texas we kind of think everything is in Texas. I don't know if y'all know that. I mean, you know, actually the Northern District of Texas is larger than all of New England. I didn't know if you know that. But, I mean, you could put all of New England in the Northern District of Texas. We have three other districts in here.

MR. JOHNSTON: Yeah, we had a debate this morning how many Massachusetts would fit in Texas on the way over to the courthouse. Some people said five. I thought it was probably closer to 20.

THE COURT: Yeah, probably -- I don't know. I would have to look -- I'll have to look at it and see.

But, anyway, a jurisdictional question is key and critical. And then I'm curious --

MR. JOHNSTON: And I'm going to get to that, but could I just explain the Massachusetts procedure?

THE COURT: Sure. Yes, sir.

MR. JOHNSTON: First we start with Chapter 93A, which is our consumer protection statute, which provides in one of its sections that the Attorney General can investigate also violations with the consumer protection statute, which applies to consumers and investors through the issuance of a civil investigative demand.

Section 7 of that statute says that the recipient must comply with the terms thereof unless otherwise provided by the order of a court of the commonwealth.

Now, I know Texas is the Lone Star state. We're the commonwealth of Massachusetts. So that means us, Massachusetts.

Now, there's another provision, Section 6.7, which provides that at any time before the date specified in the notice, or 21 days, the Court can extend the reporting date or modify or set aside such demand or grant a protective order, in accordance with Rule 26(c) of the Massachusetts Rules of Civil Procedure.

And what the Attorney General did when it sent out the CID to Exxon was to tell Exxon, by the way, you have rights to challenge this. And it says, you can make a motion prior to the production date or within 21 days in the appropriate court

of law to modify or set aside this CID. And if it's burdensome, you can call us.

In any event, that's exactly what Exxon --

THE COURT: You didn't really expect that call to come in, did you?

MR. JOHNSTON: We didn't get the call.

THE COURT: Right, right. Okay. I mean, you kind of knew you were starting a firestorm, didn't you?

MR. JOHNSTON: Well, we certainly expected that when we sent out the CID.

THE COURT: I'm going to ask you this again. Yes. The answer is yes.

MR. JOHNSTON: Okay. We certainly knew --

THE COURT: I'm going to cross-examine you, and I'm going to do that until you say yes.

MR. JOHNSTON: Yes, we expected that there would be some resistance.

THE COURT: Some resistance?

MR. JOHNSTON: Well -- well, let me just say it this way, Your Honor.

THE COURT: You thought Exxon would kind of go, hey, it's okay?

MR. JOHNSTON: Well, in fact, Your Honor, you raised a good point, because about six months -- no -- four months before we sent out our CID, the State of New York Attorney

General, Mr. Schneiderman, sent a CID to Exxon. And as far as we know, Exxon never submitted any written objection to it, never submitted any legal challenge, and has produced 700,000 pages of documents or more to the New York AG.

THE COURT: So they're working with them and not with you?

MR. JOHNSTON: Yes, that's true, or what we understand to be true.

THE COURT: Why don't you just work with Schneiderman?

MR. JOHNSTON: Well, because under -- as I understand it, New York rules, Schneiderman can't release --

THE COURT: He can't share?

MR. JOHNSTON: -- those documents with us without the consent of Exxon. Just as in our CID law, we can't share what we get with other people unless Exxon were to agree.

THE COURT: Okay.

MR. JOHNSTON: So what they did was within the 21-day period they filed a lawsuit or a motion in Suffolk Superior Court which said they wanted to set aside or modify the CID.

And we will show you in a moment the table of contents from their brief that they filed with Massachusetts Superior Court which lists essentially all the issues that they have raised here. You know, it's a violation of their free speech rights, they're a victim by us --

THE COURT: Right.

MR. JOHNSTON: -- et cetera, bad faith. So they raised all those issues in Massachusetts.

Then what we did, which is what the statute prescribes for us, is that we can file a motion to confirm the CID and enforce it. We can file in the Superior Court a petition for an order of such court for the enforcement of this section and section six.

That's what we did. We filed a cross motion in Exxon's paper -- in Exxon's case seeking to have the Court enforce the CID. And that is where things stand.

As I said, each of the two parties have filed a brief. We have briefs that are due in three weeks, on October the 11th, at which point the whole case will be fully briefed in Massachusetts.

And as I said, until a court does something there, as a practical matter there isn't anything we can do. You know, we can't bang down the doors at Exxon and say, give us those documents. We can't send the sheriff out to collect a witness. We can't say that they can't sell Exxon gasoline in Massachusetts until a court in Massachusetts tells us that we can.

So for that matter alone, Your Honor --

THE COURT: Is that what you're seeking?

MR. JOHNSTON: No, we're not seeking any of that, in

terms of shutting Exxon down. What we will be seeking from --

THE COURT: Except in Massachusetts? You don't want them to sell gasoline there?

MR. JOHNSTON: No, I said we are not seeking that at all. I was just telling --

THE COURT: No, you just said that earlier. You said, we haven't done this, haven't done that, but --

MR. JOHNSTON: I said we couldn't. In the absence of a court order, we couldn't go out and do any of those things.

THE COURT: Until. Until. I'm just saying, some day down the road that's what you would like?

MR. JOHNSTON: No, that's not what we're looking for. What we want are documents and witnesses.

Now --

THE COURT: Okay.

MR. JOHNSTON: -- given the fact, Your Honor, that we can't do anything on our own, there's no need for you today to say we want to enjoin the Attorney General from doing anything, because we can't.

But beyond that, there's no irreparable harm, because as Your Honor knows, if there's an adequate remedy at law, there's no reason for a court to grant an injunction. Here there's no irreparable harm, because they have a full-blown statutory remedy in Massachusetts to deal with whatever their objections are. They've raised their objections fully. They

can argue all of them. So --

THE COURT: Have they argued jurisdiction?

MR. JOHNSTON: They certainly are arguing no jurisdiction over them in Massachusetts.

THE COURT: The same argument you're making here?

MR. JOHNSTON: Correct.

THE COURT: They don't have jurisdiction over you, and you don't have jurisdiction over them?

MR. JOHNSTON: They are arguing that. A difference is that in Massachusetts under their consumer protection statute, Chapter 93A, they're free to come in and argue without prejudice. And they have argued without prejudice. They've said, we're here to try to set aside the CID. Please be advised we don't think that Massachusetts has jurisdiction over us, and that's one of our key arguments as to why the CID shouldn't issue.

THE COURT: In fact, that's their first argument, right?

MR. JOHNSTON: It is their first argument.

THE COURT: Right. And then that it's too broad, I guess, is one of their other big arguments.

MR. JOHNSTON: Well, and they also say, it violates our First Amendment rights.

So everything that you've heard from Mr. Anderson this morning, he or one of his colleagues will be arguing in

Massachusetts in a few weeks in the place where the statute says it's supposed to be argued.

You also indicated --

THE COURT: We're glad still to have you down here. Even if I don't have jurisdiction, I just want you to know, I'm glad to have you here, and it's a very interesting case.

Y'all have done a great job as lawyers. It's very unique. I'm very interested in it. And I appreciate -- I don't want you to think that I don't appreciate the importance of this, and I'm looking at that hard. I really am. I think y'all -- it's a very unique effort, and I think that's what lawyers should do.

MR. JOHNSTON: Well, I appreciate the very open-minded way in which you're hearing all these issues this morning.

I would like to get to my next point, which is why I think that no matter how interested you may be in this and how much fun this case may be at an intellectual level, the fact is, Your Honor, with all due respect, we don't think you have the jurisdiction to hear a case against the Attorney General of Massachusetts. So let me get on to that.

Not only the U.S. Supreme Court, but the Fifth Circuit in several cases and Your Honor yourself in the 2010 case of *Saxton v. Faust* --

THE COURT: You're going to cite my own case?

MR. JOHNSTON: I'm going to cite your own case, among others.

THE COURT: Wow. Man. How cruel. Go ahead.

MR. JOHNSTON: Among others. But Your Honor relied on Fifth Circuit cases, which I'll talk about as well.

But what this series of cases has held quite conclusively is that a federal court in one state should not exercise jurisdiction over a state official in another state simply because the impact that the plaintiff may be feeling occurs in the forum state.

Exxon's really purported basis for being here and asserting jurisdiction is the claim that Attorney General Healey somehow committed a tort in Massachusetts by serving a CID in Massachusetts on Exxon where Exxon has a registered agent with the expectation that Exxon was going to have to produce all these documents from Texas where its headquarters is.

But as the cases I referred to in our brief, including the *Walden* case from the Supreme Court, the *Stroman* cases from the Fifth Circuit, which you relied on in your *Saxton* case, and your *Saxton* case, that simply is not an appropriate measure for gaining jurisdiction.

And I would like to cite some of the language in Your Honor's own decision back from *Saxton*. You said in dismissing that case, quote, the only contacts with Texas alleged by the

Saxtons are the effects felt of Judge Faust's rulings in Utah state court, because this case involved a judge who had issued a decision from Utah. And then you went on to say, the Fifth Circuit recently rejected the idea that a nonresident government official may be haled into a Texas court simply because the effects of a ruling are felt in Texas. And then you cited *Stroman versus Wercinski.* And I will end the quote.

Now, what had happened in *Stroman* upon which Your Honor was relying is that the Fifth Circuit had said that an Arizona official who took regulatory action against a Texas company that happened to have facilities in Arizona, as well as a bunch of other states, couldn't be sued in Texas where the only thing that had happened in Texas was that this company was feeling the regulatory effects in Texas.

And the Supreme Court found the same thing in the *Walden* case, which we cite in our brief, where a DEA agent at an airport in Georgia fraudulently took some money off of somebody who was going through the security system and then filed a false affidavit, trying to seize the money.

And the person whose money was stolen tried to sue in Nevada, and the Supreme Court said you can't do that because the only effect upon -- the only thing that happened in Nevada was that the people who lost the money had less money in Nevada and felt the loss of that money there. But everything happened on the defendant's side in Georgia. And the defendant, not

having done anything in Nevada, couldn't be sued there.

So let's apply that to Attorney General Healey's situation. Now, she has no office or presence here in Texas. She hasn't conducted any official business here. She served the CID in Massachusetts, as I said, on the registered agent. She's not alleged to have called upon the Texas Attorney General or anyone else here in Texas to help her with the CID.

So this case really couldn't get too much closer to your decision in *Saxton.* We've got an official from an outside state, one Utah, one Massachusetts. We've got a state action, one a judge's decision, one the issuance of a CID. And in both cases we have an outside state official who had nothing to do with Texas.

Now, Exxon has cited to you not one case in which a federal judge asserted jurisdiction over an out-of-state attorney general where the attorney general had resisted jurisdiction.

And we did find several decisions from other federal district courts that found that a federal court could not exercise jurisdiction over another state's attorney general.

And I would invite Your Honor's attention in particular to a case that we cited in our reply brief, among several others that we cited, and that's the case of *Turner versus Abbott* in the DC -- in DC District Court where the court refused jurisdiction over the Texas Attorney General where he

had been sued by somebody who wanted to declare the Texas foreclosure statute unconstitutional. And the Court simply said that it was not appropriate to take jurisdiction over the Texas AG.

Now, if Your Honor elects not to dismiss this case, what's going to happen is that you will be opening up this courthouse potentially to every disgruntled Texas business and individual who feels slighted by some action whether it's a tax or a law or something else undertaken in some other state and they want to be able to sue here in their home state.

Similarly, you open up the prospect, as the Fifth Circuit referred to in the *Stroman* case, of every attorney general in every state, as well as every other state official in other states, are going to have to be subjected to the possibility that they're going to be dragged across the country every time they do something because one of their decisions impacts somebody who lives in Oregon or Nevada or Texas. And the Fifth Circuit in *Stroman* said it wasn't going to take jurisdiction in part to avoid that problem.

And I would also refer Your Honor to the amicus brief that was filed on our behalf in this case. And I would note that that amicus brief was filed by 20 attorneys general. And you asked about who's on --

THE COURT: Oh, you did get Alaska. I'm sorry.

MR. JOHNSTON: We did get Alaska. We got Virginia.

We got Mississippi, as well as 17 other attorneys general.

And one of the things that they said in their brief -- and I'll quote -- is the race to the federal courthouse would also undermine the States' compelling interest in protecting their citizens from fraudulent or deceptive practices, by forcing state Attorneys General to defend themselves against federal lawsuits filed all across the country. The federal courts should not facilitate such friction between the state and federal governments when recipients of state law CIDs have an adequate state court remedy available.

So I would suggest, Your Honor, that there just isn't jurisdiction here. And even if there were jurisdiction, Your Honor is familiar with the very prevalent concept of *Younger* abstention. *Younger* held that a federal court should abstain from hearing a case when there was a pending state criminal enforcement proceeding. And that principle was later extended to civil enforcement proceedings as well. And numerous federal courts have abstained from hearing cases involving parallel state enforcement proceedings precisely because they need to rely on the *Younger* abstention.

And I'm going to refer you to one particular decision, because it involves a CID. That's the case of *Lupin Pharmaceuticals versus Richards.* Richards was the Attorney General of Alaska, and Lupin was a Maryland drug company,

pharmaceutical company, that sued in federal court in Maryland to block the Alaska Attorney General from enforcing a CID that he'd issued in Alaska.

And the court in *Lupin* said, quote, the Lupin Plaintiffs have failed to demonstrate that they have no way of vindicating their rights through the Alaska proceeding and, thus, they have failed to show that the threatened harm constitutes an irreparable injury for purposes of *Younger*.

So I would suggest that based on the *Lupin* precedent, as well as the larger abstention doctrine in *Younger*, even if you had jurisdiction, given that there is an existing Massachusetts proceeding, you should defer to that proceeding and abstain.

I also would suggest, Your Honor, that the Plaintiffs have to show they have a decent chance of substantial likelihood of winning on the merits. And let me explain to you why I don't think that they're going to be able to do that. And, again, it goes back to the CID statute under which we're operating and the basis on which we brought this CID.

First off, I would like to refer you to the statute itself. The statute says that any person -- I'm sorry. I'll talk a little bit about the statute itself. The statute, 93A, says that anybody that commits an unfair business practice can be subject to liability. Then it says that in the regulation that we cited here that any person who fails to disclose to a

buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction.

So, you know, that's a pretty broad statute and broad set of regulations.

The Attorney General has power under the CID statute to issue a CID whenever he believes a person has engaged or is engaging in any method, act, or practice declared to be unlawful, including, of course, failing to make disclosures that may have influenced a buyer or -- a buyer of a consumer product or stock to make a different decision.

Now, it's important to recognize that the Attorney General doesn't need to have probable cause, you know, doesn't have to have substantial cause or substantial belief. He or she needs to have a reasonable belief.

And one of the purposes of the CID statute which allows the Attorney General to obtain information before bringing suit is so that an Attorney General who has a belief can conduct the investigation and then determine at the end of the investigation whether he or she has enough to proceed with a civil lawsuit or he or she doesn't, and --

THE COURT: So your contention in Massachusetts is that -- is that they lied and people wouldn't have bought their stock?

MR. JOHNSTON: In general, that they would not

have -- they would not have bought the stock or may have made other investment decisions if they knew the full extent of what Exxon's scientists knew or that consumers may have made different consumer choices.

Now, if there had been full disclosure of the full extent of the impact of gasoline products on climate change and on the environment, some consumers may have said, well, I think I'm going to switch to electric cars or I'm going to take the bus or I'm going to walk to work or I'm going to move so that I don't have to commute every day, which in fact many people these days are doing, so --

THE COURT: Not in Texas.

MR. JOHNSTON: Maybe not, but certainly in Massachusetts. I mean, we have a much smaller state. Many --

THE COURT: All compacted up.

MR. JOHNSTON: Yeah.

THE COURT: Right. Sure.

MR. JOHNSTON: I walk to work. Every day I have walked to my office for 30 years.

THE COURT: Yeah, move down here and see if that works out for you.

MR. JOHNSTON: It would be harder, I suspect.

THE COURT: It would be harder, I'm just telling you.

MR. JOHNSTON: But --

THE COURT: It's just a different world.

MR. JOHNSTON: But there are other methods of transportation, and also there are other things that could be done to try to --

THE COURT: How many times have y'all used this before, this very method of going against and using a CID to do this?

MR. JOHNSTON: We issued in the last three years about 300 CIDs.

THE COURT: I didn't say all your CIDs. Like this, though, using this same theory.

MR. JOHNSTON: We have used a number of CIDs for that theory. Let me give you an example --

THE COURT: Yeah, just give me an example.

MR. JOHNSTON: -- of one we just settled. And this is one that I think you probably read about in the papers, involving Volkswagen. Volkswagen made representations to the public, including consumers and regulators --

THE COURT: Involving diesel?

MR. JOHNSTON: -- about the diesel emissions.

THE COURT: And the switch?

MR. JOHNSTON: Right. And they knew based on what their own engineers and scientists knew that their emissions were different than what they were representing.

We issued a CID to Volkswagen, along with a bunch of other states, and the multi-state group recently announced a

rather substantial settlement with Volkswagen based in our case on our unfair and deceptive trade practices statute, Chapter 93A. I mean, it's not an uncommon thing at all.

We also, Your Honor, recently settled a case with a for-profit school where the for-profit school was making certain claims about the graduation rates of people who had taken out huge amounts of federal loans to go to school, and it turned out the graduation rates were really minimal. They represented that there were all sorts of employers who were taking their graduates in, when in fact those employers weren't taking their graduates in.

And we settled that case through a consent judgment in which they admitted to not disclosing things to their students that reflected what was really happening at the school.

So this is a very common thing. Our Consumer Protection Division is a very busy division.

THE COURT: Okay.

MR. JOHNSTON: Okay. So you asked the question --

THE COURT: Are you going to answer any of my questions?

MR. JOHNSTON: Well, I'm going to answer the first question.

THE COURT: No, no, no. I'm done with you.

MR. JOHNSTON: Oh.

THE COURT: You've gone as far as you're going to go for a while. You're going to answer all those questions I asked earlier.

MR. JOHNSTON: Well, the first one I think you asked Mr. Anderson was why Exxon, why did they pick on Exxon.

THE COURT: Yeah. Why?

MR. JOHNSTON: So can I answer that? There are obviously lots of oil companies. The reason why Exxon is featuring prominently now is because in November or so, late last fall, two different periodicals, one the Los Angeles Times, which, as you know, is a well-known metropolitan newspaper, and the other, Inside Climate News, which was nominated for a Pulitzer Prize for the articles that are published, they published a series of articles. I think there are something like eight articles. They're all in our papers which you can read to understand where we derived our belief from.

Those articles had gone and interviewed a whole bunch of people from Exxon, and they had looked at a whole bunch of Exxon documents, including at various repositories of Exxon documents, and they had concluded that it looked as though Exxon had not been forthcoming over the years with what its scientists knew and concluded back when.

And what we have gleaned from those articles are at least the following. And this is gleaned from the articles as

well as having read the documents that the articles made public.

So we read those articles and we read the documents, and it appears to us as though the following is at least evident from what we have read.

First, that Exxon knew that rising carbon dioxide emissions were causing global temperatures to increase.

Second, that Exxon knew that certain levels of warming would likely cause very significant adverse impacts on natural resources or human populations.

And third, that Exxon knew that using the products that it sells, like oil and gas, were playing a significant role in the CO2 emissions and warming and that sharp -- quote, sharply curtailing those uses would help mitigate the risk of climate change.

Now, the Attorney General said publicly before the CID was issued -- and you heard a part of what she said at the press conference -- that there was a disconnect between what Exxon knew and what Exxon told investors and customers. And that was based on the review of those articles as well as our own review of a bunch of documents.

In addition, Attorney General Healey knew at the time that she issued her CID that, as I mentioned earlier, Attorney General Schneiderman from New York had already issued a CID, and that Exxon -- for similar reasons, consumers and investors,

and that Exxon had produced a lot of documents in response. Attorney General Healey also knew that there had been calls in Congress for the DOJ to investigate Exxon.

Thus, you know, based on the statute in Massachusetts of having a belief that there may be problems with communications to investors and to consumers, she has a basis for being able to issue the CID.

THE COURT: How can she go back more than four years?

MR. JOHNSTON: Well, let me explain it to you as we see it. And Your Honor alluded to the tobacco cases. I think as you know then, the same thing pretty much happened in the tobacco cases. In fact, the DC circuit case which found that the tobacco companies had committed RICO violations basically starts out the opinion, as I recall it, with a discussion about a meeting that took place -- and the decision of the DC circuit was somewhere around 2009, I think.

Anyway, the DC circuit starts out the opinion by saying this all began back in 1952 when the vice presidents or executive vice presidents of each of the major tobacco companies got together in a room and talked about the fact that there were problems with the way tobacco might cause cancer, and none of those companies were supposed to use any kind of public pronouncements the fact that one of them was safer than another cigarette, and went on to talk all about what the tobacco companies' scientists knew, what they had seen in the

lab, and what they didn't tell consumers or regulators and, in fact, denied there was any sort of problem for a long time.

So, you know, the fact is that there are a number of means under Massachusetts law by which the Massachusetts courts can hold somebody liable for things that happened a pretty long time ago. And let me discuss a couple of them.

First, what somebody knew a while ago is relevant to whether they are saying something that's truthful now.

I mean, for example, if, you know, you knew from 20 years ago that your brother stole something and it was somehow relevant to a case today, the fact that you learned it 20 years ago doesn't stop you from having the knowledge that your brother stole something.

And the same thing here. If Exxon scientists were telling Exxon back when all of our products are going to cause a disaster for the environment, you know, the fact that Exxon knew that then bears upon what they're telling people now.

The other three specific ways in which old documents can be relevant and toll the statute -- or deal with the statute of limitations are that there is a concept in Massachusetts called continuing tort. So if something goes on for a long time, you know, you can reach back to the beginning of that time as opposed to just the last four years.

THE COURT: So basically the law in Massachusetts allows you to go way beyond --

MR. JOHNSTON: In some circumstances. I'm not saying in every circumstance. But in some circumstance it is. So if it's a continuous string where this was going on for 30 or 40 years, the courts may say it's the string that we get, not just the last piece of the string.

THE COURT: I get it.

MR. JOHNSTON: The second concept is the tolling of the statute of limitations for discovery purposes.

You know, if people don't know what Exxon was doing and don't find it out until the L.A. Times or Inside Climate News publishes all that stuff and then people start to look at it, the courts can say, well, your trigger started when you learned in those articles that Exxon may have been lying, not four years ago. How would you have known? Because you didn't know what Exxon scientists were doing.

And then the final theory is fraudulent concealment. You know, if a company takes steps to conceal what it knew, the courts will sometimes say, shame on you, we're not going to apply the statute of limitations where you were taking active steps to keep the plaintiffs from learning what you know that they would have known if you hadn't been hiding it from them.

So it's for all of those reasons that we believe --

THE COURT: I get it.

MR. JOHNSTON: -- at this stage that we have the right to at least get the documents.

And make no mistake, Your Honor, we aren't saying that today we're able to go into court and file a case against Exxon for misrepresentation or violations of the consumer protection law.

THE COURT: Or fraud or anything else.

MR. JOHNSTON: Or fraud or anything else. What we're saying is, we have this statute which allows us to get information before we have to make that decision. And we're saying to the courts -- we think it should be the Massachusetts court -- but we're telling you, too, because we're here.

THE COURT: You can do that based on nothing?

MR. JOHNSTON: Pardon me?

THE COURT: You can do that based on nothing just because you want to?

MR. JOHNSTON: No. We have to have a belief based on something.

THE COURT: Those five documents. Those five documents. That's it?

MR. JOHNSTON: Well, we cited those documents, but -- and, you know, if you would like to have a further analysis of those documents, you know, I would invite my colleague, Ms. Hoffer, who is chief of our Environmental Bureau, to deal with those documents.

THE COURT: I'm just saying those are your -- those are your bases?

MR. JOHNSTON: Those are our principal documents which we believe make out some of the points that we address. But keep in mind, Your Honor --

THE COURT: So what is the level? What's the level you've got to achieve to be able to do this?

MR. JOHNSTON: We would have to satisfy the Rule 11 criteria.

THE COURT: Okay.

MR. JOHNSTON: I mean, that's -- that's the burden on us. And so we, as an attorney general's office, have been --

THE COURT: I mean, you can't just go to any company and say, we want all your stuff because we think you might be doing some shenanigans.

MR. JOHNSTON: No. We have to have a reasonable belief.

THE COURT: Right.

MR. JOHNSTON: That's the limit on us.

And Exxon has raised the issue of the Fourth Amendment and how it's unreasonable and so forth. Well, I'll say a couple of things about that. One is the courts have long recognized since at least the *Morton Salt* case by the Supreme Court that governments, of course, have the right to obtain documents as part of investigations from companies. That's what investigations are. And to the extent that the requests are unreasonable, well, Exxon has every right in the world to

object in a Massachusetts court to say they are unreasonable.

As I mentioned, our CID statute says that it's governed by Rule 26(c), so, you know, we have to basically comply with the Rules of Civil Procedure with respect to what documents we're entitled to get. They have raised these objections. And, in fact, I suspect that when we're arguing in Massachusetts Superior Court, you know, we'll be hearing from Exxon as to why this category of documents is no good and that category of documents is no good.

But most of the documents that we have requested have dealt with either the scientific evidence that was referenced in the articles that we read or backup for that, for what people were doing with that research, and what Exxon was telling investors, what Exxon was telling consumers, and what sort of marketing strategies Exxon was developing in view of the fact that it knew that it had this perceived problem with respect to climate change. So --

THE COURT: Maybe I'm -- maybe I'm wrong, but I think he said, look, we agree there's climate change and that fossil fuels obviously add to that and -- isn't that different than Volkswagen hiding what they were doing so they could pass those tests in your state and all the other states, particularly California?

I mean, they're going to say, hey, that's a whole lot different. We're not hiding. We agree. We agree with you

that this is a problem. We just didn't see it as developed as you see it, the science.

MR. JOHNSTON: Well, from the documents that we have reviewed, Your Honor --

THE COURT: There are things that say --

MR. JOHNSTON: We think --

THE COURT: -- hey, we know it's all bad back in the '50s or '60s or whenever?

MR. JOHNSTON: '60s, '70s, yes.

And instead of telling the world, hey, we think gasoline products are going to be having a catastrophic impact on climate and one way to reduce that catastrophic effect would be to sell less and use less gasoline, instead, you know, they went on selling gasoline at the ordinary clip.

And, you know, if we're correct that we have the right to go back that distance because of various extensions of the statute of limitations, the fact that in 2010 they get around to saying, oh, in our financial disclosures in a little piece that says, oh, global warming is an issue that we have to think about, you know, that's not the same as saying 30 years ago we should be telling the world now what's happening.

THE COURT: I get it. Sure. I get it.

MR. JOHNSTON: Okay.

THE COURT: What else did I cut you off that you really want to tell me?

MR. JOHNSTON: Well, Your Honor --

THE COURT: You didn't answer my other questions, but it's okay. It's all right. That's all right. I'll just have to decide that on my own without your benefit. That's okay.

I always tell lawyers this is like stepping out into the street and you have a gun and it was like the beginning of Gunsmoke. You're probably too young to remember that. And somebody shoots somebody and they're dead. This is your only shot to make an argument in front of me.

I will not call y'all back, so you better take your shots, all I'm telling you. If you don't want to answer them, I'm okay with that.

MR. JOHNSTON: Well, I do know Gunsmoke, and James Arness went to my high school.

THE COURT: And he also didn't pull the gun as fast as the other guy, so every time he should have gotten shot in the beginning of that show.

But, anyway, go ahead.

MR. JOHNSTON: Well, I remember that one of the questions you posed to Mr. Anderson was, you know, why you? Did you poke the bear? And I've explained why Exxon.

In terms of poking the bear --

THE COURT: They're the biggest. Of course that's why you went after them.

MR. JOHNSTON: Well, we also have access to Exxon

documents.

THE COURT: And they're pretty -- they make a lot of money. They're pretty effective at what they do, wouldn't you agree?

MR. JOHNSTON: They are, according to their own records, the largest publicly held oil and gas company in the world.

THE COURT: And arguably the largest company in the world if we -- I don't know how we consider Apple and all those other companies, whether they're real or not.

MR. JOHNSTON: You will never get an argument out of me that they are a big, big company. They are a big, big company. They do business everywhere.

But in terms of poking the bear, I mean, I'm not aware that Exxon went out of its way to do anything to the Attorney General. I wasn't even aware until I read their papers that Exxon is or was back in March of 2016 a political opponent of the Attorney General. I didn't think they made -- had any particular presence in political elections or so on.

You know, our CID was based on --

THE COURT: You're saying that very wryly like that doesn't happen.

MR. JOHNSTON: Well --

THE COURT: Like Al Gore wasn't freaking involved in all the politics that there could be of this. Mercy, he's

front and center of this thing. He's the politician, wouldn't you say?

MR. JOHNSTON: I didn't say that he wasn't. What I said was, I wasn't aware that Exxon had done anything in particular against Attorney General Healey.

THE COURT: Yeah, I understand that. But, you know, you can't deny that these are politicians involved in this.

MR. JOHNSTON: Well --

THE COURT: Doesn't -- your Attorney General is not appointed by the governor in Massachusetts.

MR. JOHNSTON: No, no. The attorney general --

THE COURT: She runs.

MR. JOHNSTON: -- runs for office.

THE COURT: Right. And she has run for other offices prior to this, correct?

MR. JOHNSTON: No, she hasn't.

THE COURT: This is her first time?

MR. JOHNSTON: Yeah. She's 44. In fact, there's alleged in their papers some sort of conspiracy going back to 2012. I mean, she took office in 2015, was her first office. She had been a line attorney general until about a year before the election, and then she stepped down and ran for Attorney General.

THE COURT: And I'm assuming well thought of or she wouldn't have got elected?

MR. JOHNSTON: I think that many people think well of her in Massachusetts.

THE COURT: Good. And I'm sure other states do, too. Okay. Are you going to answer my other ones?

MR. JOHNSTON: I've probably forgotten what some of them are.

THE COURT: That's okay. That's all right.

MR. JOHNSTON: But, no, if they're burning issues to Your Honor, by all means, please ask me, because that's what I'm up here for.

THE COURT: Sorry, I only ask them once. I don't go back.

MR. JOHNSTON: Yeah. Well, I have my notes that you -- you asked about why just Exxon. You asked is this case like tobacco.

THE COURT: And it is going to go beyond Exxon, right, if this is successful?

MR. JOHNSTON: Well --

THE COURT: I mean, you don't think other companies were doing anything differently than they were, or do you?

MR. JOHNSTON: Look, depending on what we find in Exxon, we may look other places. But, you know, Exxon is the place that we've started, because there appeared to be a basis from published documents about Exxon.

THE COURT: Oh, I get it. I understand it. I

think -- I get why you did it. But you're likely to go after other oil producers?

MR. JOHNSTON: Depends where this investigation leads us.

Let me respond to some other things that came up a little bit earlier about the First Amendment and Exxon's speech. This is not --

THE COURT: The bottom line is, you want to have the fight in Massachusetts, and you think that's the appropriate place, right?

MR. JOHNSTON: We certainly do think it's appropriate --

THE COURT: Right.

MR. JOHNSTON: -- because of the statutes and because of jurisdiction.

THE COURT: And that's your strongest argument, way stronger than your argument about, hey, the statute of limitations can be extended. Anytime lawyers get into that, you'd agree that's not your number one argument, correct? That's not the strongest argument?

MR. JOHNSTON: No. It's toward the end of our brief.

THE COURT: Right. Exactly. I mean, that's the one where you're -- you're being a pioneer. Nothing wrong with that.

MR. JOHNSTON: Well, no, I'm not being a pioneer.

I'm not arguing for an extension of the law. Those principles exist in Massachusetts. We're saying that this case would fit one of those exceptions.

THE COURT: Okay. That's a better -- you're right. You're -- that's a better way of saying it.

MR. JOHNSTON: But with respect to the arguments about political speech, you know, Mr. Anderson said we're trying to basically squelch Exxon from saying stuff. You know, what we're trying to do by our CID is not deal with what Exxon necessarily wants to say five years from now, but, you know, what has Exxon said already.

THE COURT: I get it.

MR. JOHNSTON: Did it make statements that were at variance with what it knew? If it did, there could be liability under the consumer protection statute.

THE COURT: If they had had information about how bad global warming was and they said something other than that or withheld it, then you want to know?

MR. JOHNSTON: That's correct.

THE COURT: Right?

MR. JOHNSTON: That's correct, so we can determine whether the totality of the circumstances warrant bringing a civil enforcement action. The circumstances may; they may not. Attorney General Healey hasn't made any predetermination.

I mean, if she had, which is what Exxon suggests, I

mean, we would have filed the lawsuit. But, you know --
THE COURT: You made a predetermination there's some reasonable belief that there's some shenanigans going on.
MR. JOHNSTON: That's right. We had to have that belief --
THE COURT: Right.
MR. JOHNSTON: -- in order to get the CID in the first place.
THE COURT: Right.
MR. JOHNSTON: But we have to wait till we have the evidence before we could stand up, sign our names on a pleading under Rule 11, and say we have a right to collect something or get an injunction against Exxon going forward.
THE COURT: I get it. I get it.
Whatever else you want to tell me that I cut you off, tell me.
MR. JOHNSTON: I think that I probably dealt with most of the things that I wanted to deal with, but may I just confer with my associates?
THE COURT: Oh, sure, sure.
MR. JOHNSTON: Thank you very much.
(Pause)
THE COURT: Yes, sir?
MR. JOHNSTON: The consensus is sit down.
THE COURT: Okay. I would love to hear from all your

other lawyers, especially Ms. Hoffer.
Is it "Hoffer" or "Hoffer"?
MR. JOHNSTON: Ms. Hoffer.
MS. HOFFER: Hoffer, Your Honor.
THE COURT: Hoffer. Because I know she's the one that did all the special research, but I know her time is limited. So I'll know that she would have liked to have told me all about it, but that's okay. Okay?
Thank you.
MR. JOHNSTON: Yes.
THE COURT: Good presentation. I thought you did a good job. You know, you're one of my -- I guess you're about my thirteenth favorite Yankee, okay?
MR. JOHNSTON: Well, may I say, Your Honor, that I hope you won't be upset at me if I say that I hope this is the last time we see each other.
THE COURT: It's okay. It's okay. I have actually been to some football games in Boston, and I might go back one of these days again.
MR. JOHNSTON: I didn't think that people in Texas thought that we played football in Massachusetts.
THE COURT: Oh, no. You beat my team when I went up there.
MR. JOHNSTON: Oh, pro football. Okay.
THE COURT: It was good.

MR. JOHNSTON: All right.
THE COURT: No, it was college. It was college.
MR. JOHNSTON: College?
THE COURT: So I love it, and I love your state. It's a wonderful place for people to be, and I don't blame y'all for living there.
MR. JOHNSTON: You are welcome in a friendly capacity anytime.
THE COURT: Thank you.
MR. JOHNSTON: I'll put you up.
THE COURT: Thank you. I appreciate it. Thank you very much.
MR. JOHNSTON: Okay. Thank you.
THE COURT: Do you have any response to any of theirs? And then I'll give him a response, too.
MR. ANDERSON: Sure.
THE COURT: Particularly about jurisdiction. How the heck do I have jurisdiction?
MR. ANDERSON: You have personal jurisdiction, Judge, because the Defendant directed her intentional tort at Texas.
The face of the CID itself indicates that what she's investigating is speech that occurred in Texas. She wants the records of that speech that are in Texas, and she wants to suppress speech that's coming out of Texas.
THE COURT: Okay. Stop. I get that.

Here's my other question. Is it true what he said about y'all cooperating in New York and not cooperating with them?
MR. ANDERSON: Your Honor, we were served with a subpoena before the press conference, and we are cooperating with it.
THE COURT: Yes? No? Or whatever?
MR. ANDERSON: Yes.
THE COURT: So why the heck are we having this big fight? I'm about to start a case involving 10,000, the largest case in federal court. Why are y'all poking this bear? If you are agreeing to cooperate there, why aren't you cooperating with them?
MR. ANDERSON: Well, Your Honor, when we started complying with New York, that was before the press conference, and so circumstances have changed. And with respect to New York, all options are on the table, and so --
THE COURT: What does that mean?
MR. ANDERSON: That means that we are considering our options with respect to further compliance.
THE COURT: You're maybe going to comply or maybe going to fight?
MR. ANDERSON: (Indicating in the affirmative)
THE COURT: Yes?
MR. ANDERSON: That's right, Judge. When we started

complying with New York, it's a different landscape.

THE COURT: So if they had not had that press conference, some poor judge somewhere else would be fiddling with this, not me, right?

MR. ANDERSON: Your Honor, it's so rare that you have evidence like this in the public record about an impermissible motive behind a government action. Normally, that's the type of thing that's concealed.

THE COURT: Yeah, but doesn't New York have the same motive they've got?

MR. ANDERSON: Oh, New York -- like I said, judge, it could very well be that -- that, you know, all options are available, and they're being considered now, and it's possible.

THE COURT: All options are available. Mercy, you sound like the Secretary of State or Defense or the guy that's driving our nuclear submarines or something. It doesn't tell me what that even means.

MR. ANDERSON: Judge, it just reflects the fact that this has been a very fluid situation. And ExxonMobil's initial reaction whenever it receives an inquiry from Government is to respond and comply and to do what it's supposed to do like everybody else. It's this press conference and these documents that have come to light that have upended that normal presumption.

And that's why everything that the defense says

about, you know, we issue CIDs to investigate fraud, we issued 400 of them, including to Volkswagen -- you know, we're not contesting any of that. That's all well and good and appropriate.

THE COURT: So you're saying if they hadn't had this press conference and it hadn't been pointed out that y'all are doing something -- something that's a shenanigan, it might have had a different outcome?

MR. ANDERSON: Right. If there had not been these express public statements that the problem we have with ExxonMobil is that it's confusing the public about the need for the policies we support in the press conference, in the common interest agreement, and in the CID itself --

THE COURT: How many documents have you produced to New York? 700,000 or more? A bunch?

MR. ANDERSON: A bunch, Judge. Yeah, that production has been ongoing for a while and --

THE COURT: Are you still producing?

MR. ANDERSON: We are still producing to New York, yes.

THE COURT: Okay.

MR. ANDERSON: And, Judge, even --

THE COURT: But Schneiderman, is he part of this still? Is he still part of this one?

MR. ANDERSON: Oh, yes. He's pictured on the right

of -- in the press conference looking on, or on my right, the Attorney General's left. He's there.

THE COURT: So I'm assuming after this press conference and you had already been cooperating there was a frank conversation with somebody from the Attorney General's Office and a lawyer for Exxon, correct?

MR. ANDERSON: That would -- that -- without going into those details, that would be a fair assumption, Judge.

THE COURT: Without going into those details, there was a -- I don't know how frank -- very frank, kind of like what happens at halftime at some football game between the coach and the kid that let the guy score the touchdown. Those really hard conversations, or that I had with my children growing up when they messed up, you know.

MR. ANDERSON: Right.

THE COURT: A very hard conversation, correct?

MR. ANDERSON: Correct, Judge. Because this is the type of thing that you don't expect to see in a normal investigation --

THE COURT: Okay.

MR. ANDERSON: -- where the political objectives are totally laid bare.

THE COURT: All right. Any other response?

MR. ANDERSON: Judge, I just think it's important to address personal jurisdiction, Judge, because we are confident

that you have personal jurisdiction. And the reason is --

THE COURT: He said no other federal judge has ever done this. He even pulled my own cases out. I mean, how -- how appropriate.

MR. ANDERSON: *Saxon*, Judge, is a case that I'm sure you remember.

THE COURT: I do remember.

MR. ANDERSON: You told, Judge, with the parties in front of them, complaining about the fact that the orders that were issued in Utah might have some effect here.

Walden is another case where the seizure of the money took place in Georgia where the plaintiffs had been traveling. The DEA agent was in Georgia. He seized the money there. They go home to Arizona, and that's where they would like to have their money. And then they file their lawsuit there. And the Supreme Court says that's not enough. The fact that you feel some of the effects in Arizona is not enough.

But then you have *Calder* which is where in California there's a celebrity named Shirley Jones who resided there, and the National Inquirer published a story in Florida which is where all the defendants were, in Florida, criticizing her, something about her personal life. She sues them for libel in California. And the Supreme Court says that was appropriate, there's personal jurisdiction over the National Inquirer and those defendants in California because the brunt of the injury

and the cause of action occurs in California.

Here, the cause of action occurs in Texas. This is where ExxonMobil speaks. This is where the speech that the Attorney General disapproves of is coming from. When she issued her CID, she directed that intentional tort at this state. And that is why the tort is here. She intentionally --

Let's think about the principle of personal jurisdiction.

THE COURT: I get the principle, but you're comparing Ms. Healey to the National Inquirer. So you're saying what she did was akin to that?

MR. ANDERSON: It was akin to it in the sense that she intentionally committed a tort and directed it at the State of Texas. What she did was, she knows that Massachusetts is not the state where ExxonMobil operates. We have a registered agent there who receives service of process and sends it on down to Texas.

What she did not like -- and it's in the CID -- is she didn't like that there were certain statements that were being made in Texas. She didn't like that speech. And she wants the records that are here in Texas. And so she sent the CID to the registered agent knowing that it would come to Texas.

And there's -- you know, in addition to *Calder*, there's plenty of Fifth Circuit authority on the proposition

that where the communication creates a tort in Texas, like *Wien Air* or *Lewis,* where you intentionally direct your conduct at the State of Texas knowing that an intentional tort will occur there, there's personal jurisdiction.

THE COURT: I get all that. I know those cases. I'm not -- that's not it. I mean, has there ever been a judge do this and shut down an attorney general?

MR. ANDERSON: Well, Judge, this is -- I mean, this is honestly unprecedented. Has there ever been an amicus brief filed by 11 state attorneys general saying one of our peers is doing something wrong, she's violating the Constitution by issuing it?

If there is such a case where we had that record and a federal judge turned down jurisdiction, then I say that's a good point. But the reason there's no precedent here is because these actions are unprecedented. They're outrageous. This is a misuse of law enforcement authority, because the Attorney General and those she's working with, including Al Gore --

THE COURT: All right. Let me stop you. What about his argument that you have adequate remedy there in Massachusetts?

MR. ANDERSON: Well, that presupposes that there is some type of exhaustion requirement for a 1983 action that first you have to go to state court, and if you can go to state

court then you can't come to federal court. But if that were true, then all 1983 actions would be heard in state courts because you could always go. The court is a general jurisdiction. You can bring your claims there. There's no exhaustion requirement.

And so the idea that we could be in Massachusetts is just -- it's just a false premise; that if we could be there, then we can't be here. That's just not true.

THE COURT: You could be both?

MR. ANDERSON: We could be both, but the problem is that the Massachusetts state court doesn't have personal jurisdiction over ExxonMobil.

We filed there because we had to. We were conservative. We didn't want to forfeit any rights we might have, so we filed a petition there.

THE COURT: I'm assuming -- I have not looked at your petition there, but I'm assuming that whatever you filed said we're not giving up on our jurisdictional point. And there's a procedure to do that, like we do with special appearance in Texas, something like that?

MR. ANDERSON: Exactly right, Judge.

THE COURT: Something like that?

MR. ANDERSON: Precisely that. We made a special appearance.

THE COURT: Appearance. Okay. Is that what it's

called up there?

MR. ANDERSON: I believe it's called a special appearance.

THE COURT: Is it? Okay.

MR. ANDERSON: Or it may have a different name, but has that effect.

THE COURT: Okay. Okay.

MR. ANDERSON: We appeared to contest jurisdiction. That was the first point in the brief, is that the Court does not have personal jurisdiction over ExxonMobil. We asked that the Court not do anything. We said just stay this action pending the lawsuit that we filed here.

THE COURT: And they didn't do that.

MR. ANDERSON: So far the state hasn't done anything. We're still in the middle of briefing. So we'll see if the state -- when we go up there, we'll see if the Judge who's assigned the case --

THE COURT: Stays it?

MR. ANDERSON: -- decides to stay it --

THE COURT: Okay.

MR. ANDERSON: -- in deference to these actions.

THE COURT: Okay.

MR. ANDERSON: So for those two reasons -- and, you know, the third one, Judge, even if a *Younger* abstention was relevant, you know, there's an exception for bad faith. And

that's the idea that, you know, if there is a forum in state court, if you're there because of the bad faith of the defendant, well, that's not an argument for putting you in that forum.

And so here there is a bad faith that permeates the entire case. What we're arguing here is bad faith, that the Attorney General brought this investigation in bad faith. She brought it to deter the exercise of constitutional rights. That is the definition of bad faith. And that means that *Younger* abstention doesn't apply and the normal presumption applies, which is that when a federal court has subject matter jurisdiction over the cause and personal jurisdiction over the parties, it hears the case.

THE COURT: And so you're saying -- he said, hey, we've got a reasonable belief from these documents. You're saying they can't have a reasonable belief. That's your argument?

MR. ANDERSON: What I'm saying, Judge, is that that's exactly right. They say they have a reasonable belief, but everything they've told you about this case is pretext, and now we hear for the first time that there are documents from the '50s and '60s that might support their investigation? Well, why didn't they put it in their briefs.

They've had -- they filed three -- at least three briefs in this case, and all that they've cited as the basis

for their investigation were those handful of documents from the '80s, which we looked at and we told -- and we encourage you to look at them, too, Judge. All they show is uncertainty and doubt and the need for further research, the same as everybody else in the '80s.

And then this theory about -- which the Defendants haven't even tried to defend, this idea that the assets, the proved reserves, might become stranded because of future regulations that might be enacted -- who knows -- in response to climate change.

THE COURT: Anything else?

MR. ANDERSON: Yes, Judge. May I have just one moment?

THE COURT: Sure, sure, sure.

(Pause)

MR. ANDERSON: Could I make two final points, Judge?

THE COURT: Sure.

MR. ANDERSON: The first is the nature of the First Amendment harms that we are asking for relief. Here those -- those are irreparable injuries. The injury is irreparable for the reason that we were discussing before, is that you have that constant risk that your regulator is going to take an adverse action because she doesn't like what you're saying.

That's why it's settled precedent, and the defense hasn't contended otherwise, that if you accept that there is a

substantial likelihood that we will prove a First Amendment violation here, then you've also found irreparable injury. It's just a legal truism. If you find one, then you've got the other.

So all of this back-and-forth about irreparable harm is settled if you find that there is a First Amendment violation, which we believe we have established.

THE COURT: I get that, but go back to -- what's the -- what's the tort?

What do you think is the tort?

MR. ANDERSON: The tort is a constitutional tort. It's, number one, the viewpoint discrimination that --

THE COURT: I get it. Okay.

MR. ANDERSON: -- motivates, and then the political speech that's being burdened, the fishing expedition in violation of the Fourth Amendment, and the biased investigation in violation of due process.

THE COURT: Okay. I get that.

Okay. Go back to your other point.

MR. ANDERSON: Judge, I think the other point that is very important here is that with respect to Volkswagen, which was the example of an investigation that is on -- that is similar to this one, Volkswagen. Perhaps I missed it, but was there a press conference where the Attorney General and others announced they were against diesel fuel, and so, therefore,

would be investigating Volkswagen because they had a policy disagreement about whether diesel fuel was an appropriate fuel for Americans to use? I doubt it.

Did the subpoena to Volkswagen ask for 40 years of records, or did it pertain only to a violation that occurred within the limitations period?

Everyone knows the Volkswagen issue is a recent one. It's within the four-year period. It's not from the '80s.

And, Judge, I think that comparison actually undermines their argument quite a bit, because it shows the difference between a real investigation and one that is -- one that is pretext, one that's about changing the political debate by putting pressure on a company to produce 40 years of records so that someone can sift through all of them and find something that can be used as leverage so the company will change its position.

You know, that's the playbook that Matthew Pawa and Peter Frumhoff wrote up a few years ago. It's the one that they likely presented just before that press conference with the Defendant and Al Gore. And it's the reason that this Government action is impermissible.

THE COURT: Is that it?

MR. ANDERSON: That's all, Judge.

THE COURT: Thanks.

MR. ANDERSON: Thank you.

THE COURT: Mr. Johnston, anything else?

MR. JOHNSTON: Just a few quick points, Your Honor --

THE COURT: You bet.

MR. JOHNSTON: -- in response to what Mr. Anderson just said.

First off, it's my understanding in response to your question that even though Attorney General Schneiderman was at the press conference, even though there may have been frank conversations, that Exxon continues to produce documents to New York.

Second of all, Exxon has suggested that there is no comparison between the Volkswagen case and this one. In fact, there are plenty of similar comparisons. There were press articles about what had happened at Volkswagen. We sent out a CID. We worked collaboratively with other attorneys general to find out whether, in fact, there had been deceptive conduct. We ended up settling the case on the basis of what we learned through the CID.

I want to also make one last point about something that is unclear in what Exxon is seeking here. Exxon has asked you to grant an injunction preventing us from enforcing the CID or seeking to enforce the CID. And that may mean simply that they don't want the Attorney General to do something unilateral about the CID, which, as I have explained to you, we can't, because we need court authority to do so.

But it may also mean, although they don't say it so explicitly, that if you were to grant an injunction against us enforcing the CID, it means that we can't even file our brief in three weeks in Massachusetts Superior Court.

And we certainly would urge you, regardless of what you are thinking about the case, not to tell us we can't file our briefs in Massachusetts court.

And the last corollary to that is that Mr. Anderson has suggested that they have irreparable harm because of the First Amendment. They don't have any irreparable harm if they're not producing any documents. And at least until the Massachusetts court rules under our state procedure that we're entitled to documents, there's no First Amendment issue because there's no document being produced.

So for all of these reasons, including the ones that I raised earlier, Your Honor --

THE COURT: What about his argument *Younger* doesn't apply where you've got 1983?

MR. JOHNSTON: Well, I think that in a number of cases that *Younger* -- that addressed *Younger*, I think some were 1983, but I won't --

THE COURT: I'll look. You know, I don't know. I'm not trying to set you up. I don't know the answer.

MR. JOHNSTON: And, frankly, I can't remember whether any of the cases we cited did or not.

THE COURT: Okay. I'll look at it. I promise you.

MR. JOHNSTON: And I don't want to make a statement that I can't back up --

THE COURT: Okay. Thank you.

MR. JOHNSTON: -- since, after all, that's what this case is about.

THE COURT: Yes, sir. Yes, sir. Thank you.

MR. JOHNSTON: Thank you.

THE COURT: Anything else?

MR. ANDERSON: Judge, could I just clarify that the *Younger* point wasn't that it was because it's a 1983 action.

THE COURT: Oh, I'm sorry.

MR. ANDERSON: But it was because it's bad faith. *Younger* abstention could easily apply in a 1983 action --

THE COURT: It could. Okay.

MR. ANDERSON: -- when there is no bad faith. It's the bad faith.

The other point was just that as a general proposition the mere existence of a state forum doesn't preclude a 1983 action from proceeding in federal court.

THE COURT: Oh, okay. Okay.

MR. ANDERSON: It's two different --

THE COURT: I got it backwards.

MR. JOHNSTON: But, Your Honor, just with respect to *Younger,* the case law does say that that bad-faith exception to

Younger --

THE COURT: Yes, sir.

MR. JOHNSTON: -- is to be applied. And the term they use is parsimonious things. So we would urge you to be very parsimonious --

THE COURT: Whoa. I better write that word down. That's a big word.

MR. JOHNSTON: It means --

THE COURT: Could that be rarely?

MR. JOHNSTON: Very, very rarely.

THE COURT: Mercy. We use that in Waco occasionally. Okay. Off the record.

(Discussion off the record)

(Hearing adjourned)

INDEX

ARGUMENT: Mr. Anderson..... 11
ARGUMENT: Mr. Johnston..... 49
ARGUMENT: Mr. Anderson..... 87
ARGUMENT: Mr. Johnston..... 101
ARGUMENT: Mr. Anderson..... 103
ARGUMENT: Mr. Johnston..... 103

I, TODD ANDERSON, United States Court Reporter for the United States District Court in and for the Northern District of Texas, Dallas Division, hereby certify that the above and foregoing contains a true and correct transcription of the proceedings in the above entitled and numbered cause.

WITNESS MY HAND on this 19th day of September, 2016.

/s/Todd Anderson
TODD ANDERSON, RMR, CRR
United States Court Reporter
1100 Commerce St., Rm. 1625
Dallas, Texas 75242
(214) 753-2170

Exhibit 19

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.	§ § § § § § § § § §	Civil Action No. 4:16-CV-469-K

ORDER

Plaintiff Exxon Mobil Corporation's Motion for a Preliminary Injunction (Doc. No. 8) and Defendant Attorney General Healey's Motion to Dismiss (Doc. No. 41) are under advisement with the Court. Plaintiff Exxon Mobil Corporation ("Exxon") moves to enjoin Defendant Attorney General Maura Tracy Healey of Massachusetts from enforcing the civil investigative demand ("CID") the Commonwealth of Massachusetts issued to Exxon on April 19, 2016. The Attorney General claims that the CID was issued to investigate whether Exxon committed consumer and securities fraud on the citizens of Massachusetts. Exxon contends that the Attorney General issued the CID in an attempt to satisfy a political agenda. Compliance with the CID would require Exxon to disclose documents dating back to January 1, 1976 that relate to what Exxon possibly knew about climate change and global warming.

Additionally, Defendant Attorney General Healey moves to dismiss Plaintiff Exxon's Complaint for (1) lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), (2) lack of subject matter jurisdiction under Rule 12(b)(1) under *Younger v. Harris*, 401 U.S. 37 (1971), (3) lack of subject matter jurisdiction under Rule 12(b)(1) because the dispute is not yet ripe, and (4) improper venue under Rule 12(b)(3). Before reaching a decision on either Plaintiff Exxon's Motion for a Preliminary Injunction or Defendant Attorney General Healey's Motion to Dismiss, the Court **ORDERS** that jurisdictional discovery be conducted.

I. Applicable Law

The Court has an obligation to examine its subject matter jurisdiction *sua sponte* at any time. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230–31 (1990); *see also Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) ("[S]ubject-matter delineations must be policed by the courts on their own initiative even at the highest level."). A district court has broad discretion in all discovery matters, including whether to permit jurisdictional discovery. *Wyatt v. Kaplan*, 686 F.2d 276, 283 (5th Cir. 1982). "When subject matter jurisdiction is challenged, a court has authority to resolve factual disputes, and may devise a method to . . . make a determination as to jurisdiction, 'which may include considering affidavits, allowing further discovery, hearing oral testimony, or conducting an evidentiary hearing.'" *Hunter v. Branch Banking and Trust Co.*, No. 3:12-cv-2437-D, 2012 WL 5845426, at *1 (N.D. Tex. Nov. 19, 2012) (quoting *Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir.

1994)). If subject matter jurisdiction turns on a disputed fact, parties can conduct jurisdictional discovery so that they can present their arguments and evidence to the Court. *In re Eckstein Marine Serv. L.L.C.*, 672 F.3d 310, 319 (5th Cir. 2012).

II. The Reason for Jurisdictional Discovery

One of the reasons Defendant Attorney General Healey moves to dismiss Plaintiff Exxon's Complaint is for lack of subject matter jurisdiction under Rule 12(b)(1). Fed. R. Civ. P. 12(b)(1). The Court particularly wants to conduct jurisdictional discovery to determine if Plaintiff Exxon's Complaint should be dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction because of the application of *Younger* abstention. *See Younger*, 401 U.S. at 43–45; *Health Net, Inc. v. Wooley*, 534 F.3d 487, 494 (5th Cir. 2008) (stating that although *Younger* abstention originally applied only to criminal prosecution, it also applies when certain civil proceedings are pending if important state interests are involved in the proceeding). The Supreme Court in *Younger* "espouse[d] a strong federal policy against federal court interference with pending state judicial proceedings." *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982).

Jurisdictional discovery needs to be conducted to consider whether the current proceeding filed by Exxon in Massachusetts Superior Court challenging the CID warrants *Younger* abstention by this Court. If Defendant Attorney General Healey issued the CID in bad faith, then her bad faith precludes *Younger* abstention. *See Bishop v. State Bar of Texas*, 736 F.2d 292, 294 (5th Cir. 1984). Attorney General Healey's

actions leading up to the issuance of the CID causes the Court concern and presents the Court with the question of whether Attorney General Healey issued the CID with bias or prejudgment about what the investigation of Exxon would discover.

Prior to the issuance of the CID, Attorney General Healey and several other attorneys general participated in the AGs United for Clean Power Press Conference on March 29, 2016 in New York, New York. Notably, the morning before the AGs United for Clean Power Press Conference, Attorney General Healey and other attorneys general allegedly attended a closed door meeting. At the meeting, Attorney General Healey and the other attorneys general listened to presentations from a global warming activist and an environmental attorney that has a well-known global warming litigation practice. Both presenters allegedly discussed the importance of taking action in the fight against climate change and engaging in global warming litigation.

One of the presenters, Matthew Pawa of Pawa Law Group, P.C., has allegedly previously sued Exxon for being a cause of global warming. After the closed door meeting, Pawa emailed the New York Attorney General's office to ask how he should respond if asked by a Wall Street Journal reporter whether he attended the meeting with the attorneys general. The New York Attorney General's office responded by instructing Pawa "to not confirm that [he] attended or otherwise discuss" the meeting he had with the attorneys general the morning before the press conference.

During the hour long AGs United for Clean Power Press Conference, the attorneys general discussed ways to solve issues with legislation pertaining to climate

change. Attorney General Eric Schneiderman of New York and Attorney General Claude Walker of the United States Virgin Islands announced at the press conference that their offices were investigating Exxon for consumer and securities fraud relating to climate change as a way to solve the problem.

Defendant Attorney General Healey also spoke at the AGs United for Clean Power Press Conference. During Attorney General Healey's speech, she stated that "[f]ossil fuel companies that deceived investors and consumers about the dangers of climate change should be, must be, held accountable." Attorney General Healey then went on to state that, "[t]hat's why I, too, have joined in investigating the practices of ExxonMobil. We can all see today the troubling disconnect between what Exxon knew, what industry folks knew, and what the company and industry chose to share with investors and with the American public." The speech ended with Attorney General Healey reiterating the Commonwealth of Massachusetts's commitment to combating climate change and that the fight against climate change needs to be taken "[b]y quick, aggressive action, educating the public, holding accountable those who have needed to be held accountable for far too long." Subsequently, on April 19, 2016, Attorney General Healey issued the CID to Exxon to investigate whether Exxon committed consumer and securities fraud on the citizens of Massachusetts.

The Court finds the allegations about Attorney General Healey and the anticipatory nature of Attorney General Healey's remarks about the outcome of the Exxon investigation to be concerning to this Court. The foregoing allegations about

Attorney General Healey, if true, may constitute bad faith in issuing the CID which would preclude *Younger* abstention. Attorney General Healey's comments and actions before she issued the CID require the Court to request further information so that it can make a more thoughtful determination about whether this lawsuit should be dismissed for lack of jurisdiction.

III. Conclusion

Accordingly, the Court **ORDERS** that jurisdictional discovery by both parties be permitted to aid the Court in deciding whether this law suit should be dismissed on jurisdictional grounds.

SO ORDERED.

Signed October 13th, 2016.

_____
ED KINKEADE
UNITED STATES DISTRICT JUDGE

Exhibit 20

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

EXXON MOBIL CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	No. 4:16-CV-469-K
	§	
MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity,	§	
	§	
Defendant.	§	
	§	

EXXON MOBIL CORPORATION'S MOTION
FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiff Exxon Mobil Corporation ("ExxonMobil") respectfully submits this Motion for Leave to File a First Amended Complaint. In support thereof, Plaintiff shows the Court as follows:

1. Plaintiff moves the Court for leave to file a first amended complaint.

2. As set out more fully in Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Leave to File a First Amended Complaint, Plaintiff should be granted leave to file the amended complaint. Under Rule 15(a), there is a strong presumption in favor of permitting amendment, and there is no reason to depart from that presumption here.

3. No party will be prejudiced by the proposed amendment.

PRAYER

For these reasons, and those set out in the Memorandum of Law in Support of Plaintiff's Motion for Leave to File a First Amended Complaint, Plaintiff requests that the Court grant it leave to file its First Amended Complaint.

Dated: October 17, 2016

EXXON MOBIL CORPORATION

By: /s/ Patrick J. Conlon
Patrick J. Conlon
pro hac vice
State Bar No. 24054300
patrick.j.conlon@exxonmobil.com
Daniel E. Bolia
State Bar No. 24064919
daniel.e.bolia@exxonmobil.com
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

/s/ Nina Cortell
Nina Cortell
State Bar No. 04844500
nina.cortell@haynesboone.com
HAYNES & BOONE, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
(214) 651-5579
Fax: (214) 200-0411

/s/ Theodore V. Wells, Jr.
Theodore V. Wells, Jr.
pro hac vice
twells@paulweiss.com
Michele Hirshman
pro hac vice
mhirshman@paulweiss.com
Daniel J. Toal
pro hac vice
dtoal@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

/s/ Ralph H. Duggins
Ralph H. Duggins
State Bar No. 06183700
rduggins@canteyhanger.com
Philip A. Vickers
State Bar No. 24051699
pvickers@canteyhanger.com
Alix D. Allison
State Bar. No. 24086261
aallison@canteyhanger.com
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102
(817) 877-2800
Fax: (817) 877-2807

Justin Anderson
pro hac vice
janderson@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Counsel for Exxon Mobil Corporation

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2016, a copy of the foregoing instrument was served on the following party via the Court's CM/ECF system in accordance with the Federal Rules of Civil Procedure:

Maura Healey
Massachusetts Attorney General's Office
One Ashburton Place
Boston, MA 02108-1518
Phone: (617) 727-2200

/s/ Ralph H. Duggins
Ralph H. Duggins

CERTIFICATE OF CONFERENCE

I certify that at 8:25 a.m. CDT Pat Conlon, Justin Anderson, and I called Richard Johnston, one of the lawyers representing Defendant Healey. We were advised he was away at a meeting. We then tried to reach Melissa Hoffer and were told that she was unavailable and in a morning meeting. We next tried Christophe Courchesne, Chief of the Environmental Protection Division, and reached him at 8:30 am CDT. Mr. Anderson advised Mr. Courchesne that Plaintiff would this morning be filing a motion for leave to amend its Complaint to add two new claims and to add the Attorney General for the State of New York as a co-defendant. He also identified the claims to be added. Mr. Courchesne initially advised us that Defendant Healey opposed the motion unless he got back to us by 9 am. Mr. Courchesne later emailed to state that that Defendant Healey does not at this time consent to the relief sought by Plaintiff's motion. Plaintiff will supplement this Certificate of Conference if it turns out Defendant consents to the relief sought by the motion.

/s/ Ralph H. Duggins
Ralph H. Duggins

Exhibit 21

high. Moreover, the proliferation of cellular telephones has resulted in increased consumer complaints regarding calling plan advertisements and service contracts. The Attorneys General have been in the forefront of bringing enforcement actions against long distance carriers and their resellers. In 2002, twenty-four Attorneys General reached a $1.5 million settlement with the three largest long-distance carriers, resolving claims they advertised their long distance services without adequately disclosing the extra fees customers would have to pay to take advantage of these offers.[24] More recently, thirty-two Attorneys General settled with three of the nation's largest wireless carriers, resolving allegations of misleading advertisements and unclear disclosures relating to agreement terms and wireless coverage areas.[25]

Telemarketing Fraud

State and federal do-not-call laws have provided consumers with enhanced protection against intrusion by unwelcome marketing calls. From 2003-06, Attorneys General augmented that protection by bringing more than 800 telemarketing fraud enforcement actions in state and federal courts. In response to enhanced regulation and enforcement, much illegal telemarketing has moved off-shore. In order to counter this increased challenge in enforcement and consumer protection, Attorneys General have addressed the high number of "fraud-induced" transfers, i.e., money wired by consumers via U.S.-based companies that, in turn, forward the money to off-shore fraudulent telemarketers. In 2005, forty-seven states and the District of Columbia settled allegations against a major wire transferor, requiring it to institute consumer warnings and other consumer protections, as well as fund a multi-million dollar peer-counseling program designed to reach more than three million consumers.[26]

Multistate Actions

Cooperative multistate enforcement efforts continue to be an extremely effective tool for combating fraud perpetrated on a multistate

[24] Press Release, Office of the Attorney General of Maryland, Long Distance Carriers Agree to Disclose Extra Costs and Fees to Consumers (Feb. 21. 2002).

[25] Press Release, Office of the Attorney General of Wyoming, Attorneys General Settle Claims Against Wireless Carriers (July 22, 2004).

[26] Deseret Morning News, *Wire Transfer Firm Agrees to Settlement* (Nov. 15, 2005).

basis. This cooperation has greatly enhanced the enforcement work of Attorneys General in halting practices found in more than one jurisdiction. Attorneys General routinely share complaint data, conduct joint investigations and devise coordinated litigation strategies. Joint enforcement efforts have been directed against travel scams, telemarketing and telecommunications fraud, quackery, illegal drug marketing, privacy breaches, predatory lending and deceptive advertising.

Through NAAG, subcommittees, task forces and working groups have been established to monitor specific issues on behalf of all the Attorneys General. These include: privacy, subprime lending, telemarketing fraud, telecommunications, health fraud, pharmaceutical issues, financial practices and automobiles. Quite often, multistate enforcement actions, legislative and rulemaking commentary and NAAG resolutions grow out of the work of these subgroups. In other instances, multistate enforcement efforts are the result of ad hoc groups of states convened for the limited purpose of the enforcement effort. Examples of these efforts include investigations into the maker of defective bullet-proof vests; a maker of genetically-modified corn that entered food and grain chains and prompted a nationwide recall of food products; and a book publisher that purposely overcharged schools and public libraries for books.

Exhibit 22

National Association of Attorneys General

GUIDELINES FOR JOINT STATE/FEDERAL CIVIL ENVIRONMENTAL ENFORCEMENT LITIGATION

March 2003

Prepared by:

National Association of Attorneys General

United States Department of Justice
Environment & Natural Resources Division

- United States Attorneys

  There are 94 United States Attorneys, one for each federal judicial district. The role of the U.S. Attorney in a civil environmental enforcement case ranges from lead counsel to local counsel. Assistant United States Attorneys (AUSAs) bring considerable experience with their district courts, including court procedures. The U.S. Attorneys Manual describes the roles of ENRD and U.S. Attorneys in more detail; *see* http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/. This link also has contact information for each U.S. Attorney office.

☐ Communicate Regularly

- Establish a mechanism for regular communication between the state Attorneys General offices, ENRD, and EPA regional office enforcement divisions outside the context of specific cases, such as periodic conference calls or e-mail groups.

- Use regular communications to identify opportunities for joint effort, share information on new cases or policies, and foster an atmosphere of cooperation that will reduce the possibility of disagreements or tension once litigation has commenced.

- Regular communication and cooperation can reduce the instances in which the federal and state agencies are separately investigating and/or prosecuting violations arising out of the same incidents or occurrences.

- Include state and federal client agencies as appropriate.

---

keeps current lists of environmental contacts. In a few states, civil environmental litigation is handled by the state environmental agency.

B. COORDINATING JOINT LITIGATION IN A SPECIFIC CASE

The importance of communicating early and often cannot be overemphasized. Regular communication will help establish a common approach and understanding, is vital for effective case management, and will reduce disputes between the plaintiffs and aid in resolving those that may develop.

1. Early State/Federal Coordination Efforts

- ☐ Determine whether joint federal/state enforcement action is appropriate.
  - ▫ Are the two governments likely to pursue common interests and goals?
  - ▫ Is the case likely to require or benefit from joint prosecution?
  - ▫ Is joint prosecution an efficient use of enforcement resources?
- ☐ Reach agreement on common goals in litigation as early as possible, and record these goals for reference.
- ☐ Wherever possible, discuss the case and the process for joint decision making early -- *well before the filing of the complaint or the beginning of settlement negotiations with actual or potential defendants*.
- ☐ *DO NOT* wait until the settlement is nearly concluded before contacting the other sovereign!
- ☐ Where prior coordination with a state or federal counterpart is not possible, contact should be made as soon as possible after the filing of the action to discuss the case and the potential for joint enforcement.
- ☐ Use established lines of communication (such as those already developed outside the litigation context, and contacts developed with EPA Regional enforcement offices and EPA and state program offices).
- ☐ Hold a "kick-off" conference call or meeting with the appropriate federal and state personnel.
  - ▫ Consider including counsel from ENRD (and as appropriate the USAO), the state Attorney General's office, a representative(s) from the relevant EPA Office of Regional Counsel, state agency counsel, if appropriate, and state and EPA regional program representatives.
  - ▫ People with background knowledge about the violator should be given the opportunity to share information about the company and the potential violations.

D. INFORMATION SHARING

In order to bring civil cases jointly, the United States and states need to share confidential and privileged information. As discussed below, a number of steps must be taken to facilitate a free exchange of confidential information while protecting confidences and privileges. However, the parties should be aware that, even if these steps are taken, there are certain risks that shared information cannot be protected.

- ☐ Discuss Information Sharing Early
  - ▫ Discuss issues relating to the exchange of confidential and privileged information at the beginning of the cooperative effort, before documents are exchanged, in order to avoid waiving critical privileges or disclosing information or documents that are restricted from disclosure by federal or state statute.[21/]
  - ▫ Common law privileges that should be protected while working together include the attorney-client privilege, the work product privilege and the deliberative process privilege. State and federal interpretations of the deliberate process privilege and means of invoking it may differ. Federal case law tends to construe the privilege more narrowly than some state law. Accordingly, the state and federal attorneys should discuss the reach of this privilege (as well as their understandings concerning the other privileges) early so that privileged documents and discussions can best be protected.
  - ▫ It is important that client agencies understand the scope of the various privileges to prevent the inadvertent disclosure of documents or information during discovery or in responding to FOIA requests. This is particularly important where the privilege is held by their federal or state counterpart, as may be the case with documents subject to the deliberative process privilege.
- ☐ Sharing Information Between Plaintiffs – the Common Interest Privilege
  - ▫ Asserting that the state and the United States have a common interest in an enforcement action may protect the exchange of privileged information from discovery (especially if this assertion is embodied in a confidentiality agreement -- *see below).*
  - ▫ In general, privileged communications can be shared with parties that have a

---

[21/] For example, federal regulations published at 40 C.F.R. Part 2, subpart B, and the Trade Secrets Act, 18 U.S.C. § 1905, restrict the disclosure of documents that have been claimed as confidential business information and/or trade secrets. The Privacy Act, 5 U.S.C. § 552a, restricts the disclosure of such information as an individual's social security number, medical history, education, financial transactions, and employment history.

common legal strategy without waiving confidentiality. This privilege (actually a doctrine of nonwaiver) provides that the confidential sharing of privileged information between persons who have a "common interest" does not waive the underlying privilege. [22]

- The party asserting the privilege must show that: (1) the communications were made in the course of a joint effort, (2) the statements were designed to further that effort, and (3) the underlying privilege has not been waived.[23]

- Before exchanging documents, check the law in your jurisdiction. Currently, the First, Second, Third, Fifth, Sixth, Seventh and Tenth Circuits have had occasion to adopt the common interest privilege only for attorney client material.[24] The Fourth, Eighth and D.C. Circuits have had occasion to adopt the common interest privilege for both attorney work product and attorney client communications.[25] It appears that there is increasing recognition of this principle, and research on the issue did not turn up caselaw rejecting the validity of the doctrine.

☐ Sharing Information Between Plaintiffs – Confidentiality Agreements

---

[22] *See* United States v. Evans, 113 F.3d 1457, 1467 (7th Cir. 1997); Bank Brussels Lambert v. Credit Lyonnais (Suisse) S.A., 160 F.R.D. 437, 446-48 (S.D.N.Y. 1995). *See also* United States v. Schwimmer, 892 F.2d 237, 243 (2d. Cir.1989), *aff'd,* 924 F.2d 443 (1991), *cert. denied,* 502 U.S. 810 (1991); Transmirra Products Corp. v. Monsanto Chemical Co., 26 F.R.D. 572, 578 (S.D.N.Y. 1960).

[23] *See* In re Bevill, Bresler & Schulman Asset Management Corp., 805 F.2d 120, 126 (3d Cir. 1986), (*citing* In re Grand Jury Subpoena Duces Tecum Dated Nov. 16, 1974, 406 F. Supp. 381 (S.D.N.Y. 1975)).

[24] *See* Cavallaro v. United States, 284 F.3d 236, 250 (1st Cir. 2002); Federal Deposit Insurance Corporation v. Ogden Corporation, 202 F.3d 454, 461-462 (1st Cir. 2000); United States v. Weissman, 195 F.3d 96, 99-100 (2nd Cir. 1999); United States v. Moscony, 927 F.2d 742, 753 (3rd Cir. 1991); In re Grand Jury Proceedings Jean Auclair, 961 F.2d 65, 69-71 (5th Cir. 1992); In re Santa Fe Intern. Corp., 272 F.2d 705, 711-12 (5th Cir. 2001); Reed v. Baxter, 134 F.3d 351, 357-358 (6th Cir. 1998); United States v. Evans, 113 F.3d 1457, 1467-1468 (7th Cir. 1997); In re Grand Jury Proceedings, 156 F.3d 1038, 1042-43 (10th Cir. 1998). *See also* United States v. Aramony, 88 F.3d 1369, 1392 (4th Cir. 1996);

[25] *See* In re Grand Jury Subpoenas, 902 F.2d 244, 249 (4th Cir. 1990); In re Grand Jury Subpoena Duces Tecum, 112 F.3d 910, 922-23 (8th Cir. 1997); In re Bruce R. Lindsey, 158 F.3d 1263, 1282-83 (D.C. Cir. 1998). *See also* Brill v. Walt Disney Pictures and Television, 2000 WL 1770657 (9th Cir. 2000)(unpublished opinion). Numerous district courts within the other circuits have also recognized the application of the common interest rule to the work product doctrine. Transmirra Products Corp. v. Monsanto Chemical Co., 26 F.R.D. 572, 578 (S.D.N.Y. 1960); U.S. Information Systems, Inc. v. Intern. Brotherhood of Electrical Workers Local Union 2002 WL 31296430 at *3 (S.D.N.Y. Oct. 11, 2002); Katz v. AT&T Corp., 191 F.R.D. 433,437 (E.D. Pa. 2000); LaSalle Bank Nat. Ass'n v. Lehman Bros. Holdings, Inc., 209 F.R.D. 112, 116 (D. Md. 2002); Bowman v. Brush Wellman, Inc., 2001 WL 1339003 at *3 (N.D. Ill. 2001); Power Mosfet Technologies v. Siemens AG, 206 F.R.D. 422, 424 (E.D. Tex. 2000); Filanowski v. Wal-mart Stores, Inc., 1999 WL 33117058 at *1 (D.Me. 1999); In re Imperial Corp. v. Shields, 179 F.R.D. 286, 289 (S.D. Cal. 1998).

Exhibit 23

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU
ENVIRONMENTAL PROTECTION BUREAU

----------X

IN THE MATTER OF

XCEL ENERGY INC.,

Respondent.

ASSURANCE OF DISCONTINUANCE PURSUANT TO EXECUTIVE LAW § 63(15)

AOD # 08-012

----------X

WHEREAS:

A. Pursuant to Executive Law § 63(12) and General Business Law § 352, in September 2007 Andrew M. Cuomo, Attorney General of the State of New York, caused an inquiry to be made of Xcel Energy Inc. ("Xcel Energy" or the "Company") regarding the adequacy of Xcel Energy's disclosures to investors, including in its filings with the Securities and Exchange Commission ("SEC") concerning the expected impact of climate change and the regulation of greenhouse gas ("GHG") emissions on Xcel Energy's operations, financial condition, and plans to construct a new coal-fired electric generating unit.

B. On September 14, 2007, the Attorney General issued a subpoena *duces tecum* to Xcel Energy seeking information regarding Xcel Energy's disclosure practices. Subsequently, on October 11, representatives of the Attorney General and Xcel Energy met to discuss Xcel Energy's disclosures and other sources of information available to investors, and Xcel Energy provided documents responsive to the subpoena, including its 2006 response to the Carbon Disclosure Project ("CDP") questionnaire, its "Triple Bottom Line" report and information filed

with the Colorado Public Utilities Commission regarding its new coal-fired electric generating unit in Colorado.

C. Xcel Energy is in the business of providing electricity and natural gas to commercial and residential customers in eight Midwestern and Western states. According to its 2006 response to the CDP questionnaire, Xcel Energy was the fifth largest emitter of GHG emissions among utilities in the United States in 2006.

D. Xcel Energy represents that it has voluntarily reduced its GHG emissions by a cumulative total of over 18 million tons since 2003. Xcel Energy is the largest utility provider of wind energy in the United States, according to the American Wind Energy Association. The Company also has announced plans to expand its renewable energy portfolio by at least 6000 MW of additional renewable electric generating capacity by 2020.

E. In its 2006 response to the CDP questionnaire and in other publicly-available documents available on the Company's website, Xcel Energy provided information concerning the expected impact of climate change and the regulation of GHG on Xcel Energy's operations, financial condition, and any plans to construct new coal-fired power plants. After entering into discussions with the Attorney General's office, Xcel Energy filed its 10-K for the year 2007, in which the Company provided more detailed information about climate change risk in its SEC filings than in previous filings.

F. Xcel Energy has agreed to resolve this investigation voluntarily by agreeing to expand and/or continue to provide a discussion of climate change and possible attendant risks in its Form 10-K filing with the SEC as set forth in paragraph 1, below.

THEREFORE, without admitting or denying that there has been any violation of law or wrongdoing, Xcel Energy and the Attorney General have agreed to enter into this Assurance of Discontinuance ("Assurance") for the purpose of resolving this investigation.

NOW, upon the consent of the undersigned counsel for the Attorney General and Xcel Energy, it is hereby **STIPULATED** and **AGREED** pursuant to Executive Law § 63(15) as follows:

1. **Disclosures to Investors Concerning Climate Change Risk.** Xcel Energy shall disclose (or, to the extent applicable, continue to disclose) in its 10-K filings:

(a) *Analysis of Financial Risks from Regulation.* The material financial risks to Xcel Energy associated with the regulation of GHG emissions. At a minimum, this shall include:

(1) *Present Law.* Identification of GHG legislation or regulations in effect in states and countries in which Xcel Energy operates and an analysis of the material financial effect of the legislation or regulations.

(2) *Probable Future Law.* Discussion of expected trends in GHG legislation or regulations likely to be adopted that would have a material financial effect on Xcel Energy's business and an assessment of the potential material financial effect of the legislation or regulations, including a discussion of the factors that may affect the Company's business.

(b) *Analysis of Financial Risks from Litigation.* A description of any litigation related to climate change involving Xcel Energy the outcome of which will

likely have a material financial effect on Xcel Energy and any climate change-related decisions issued by the United States Supreme Court, any United States Court of Appeals, or any court in any jurisdiction in which the Company operates that the Company concludes may have a material financial effect on its business.

(c) *Analysis of Financial Risks from Physical Impacts of Climate Change.* The material financial risks to Xcel Energy's operations from the physical impacts associated with climate change, including the impact, if any, of an increase in sea level and changes in weather conditions, such as increases in extreme weather events, changes in precipitation resulting in drought or water shortages, and changes in temperature.

(d) *Strategic Analysis of Climate Change Risk and Emissions Management.* To the extent Xcel Energy's GHG emissions materially affect its financial exposure from climate change risk, Xcel Energy shall include:

(1) *Climate Change Statement.* Xcel Energy's current position on climate change.

(2) *Emissions Management.* Xcel Energy's:

(i) estimated GHG emissions (in tons) for the reporting year;

(ii) expected increases in GHG emissions (in tons) from planned new coal-fired electric generation projects;

(iii) strategies to reduce its climate change risk and to adapt to the physical impacts of climate change, including actions the Company is taking to reduce, offset, or limit GHG emissions (such actions may include, but are not limited to, emission reduction programs, energy efficiency and

conservation programs, renewable energy development, diversification of electricity resources, improvements in energy infrastructure, and/or participation in research and development of new technologies to reduce GHG emissions);

(iv) the results of strategies undertaken to date; and

(v) the expected effect of such strategies on future GHG emissions, including the GHG emission reduction goals (as a percentage of aggregate emissions) the Company seeks to achieve from such strategies.

(3) *Corporate Governance of Climate Change.* Xcel Energy's corporate governance actions concerning climate change, including the role of the Board of Directors, and a statement regarding whether environmental performance, including meeting climate change objectives, is incorporated into officer compensation.

Except as otherwise required by law, Xcel Energy may identify or reference other public documents or reports, including, but not limited to, its Triple Bottom Line report, the CDP response, proxy statements and other submittals to state agencies relating to GHG emissions and climate change risks in its Form 10-K filing with the SEC to provide further details on climate change risk.

2. **Entire Settlement.** This Assurance shall constitute the entire agreement of the parties with respect to settlement of the alleged violations specifically referenced herein and is in

full satisfaction of all civil and criminal claims that were or could have been raised with respect thereto.

3. **Binding Effect.** This Assurance shall be binding on Xcel Energy and its officers, directors, partners, affiliates, employees, successors and assigns.

4. **Compliance with Other Disclosure Obligations.** In the event that Xcel Energy reasonably believes that the performance of its disclosure obligations under any provision of this Assurance would conflict with any federal law, regulation, or binding directive that may be enacted or adopted after the date of this Assurance such that compliance with both this Assurance and such provision of federal law, regulation or binding directive would be impossible without violating such law, regulation, or directive, Xcel Energy shall notify the Attorney General within 14 days of the effective date of such law, regulation or binding directive, and the parties shall meet and confer at their earliest convenience to attempt to resolve such conflict.

5. **Termination of Assurance of Discontinuance.** Subject to paragraph 4 herein, this Assurance and the obligations agreed to herein shall terminate within 4 years of the effective date of the Assurance.

6. **Execution of the Assurance.** The Attorney General and Xcel Energy agree that this Assurance may be executed in counterparts, and that the separate execution of the signatures shall not affect their validity. The effective date of this Assurance shall be the date on which the latter signature is executed.

7. **Notices**. Any and all correspondence related to this Assurance must reference AOD # 08-012. Notices required under this Assurance shall be sent, by first class or express mail, to the following party representatives:

For the Attorney General:

Michael J. Myers
Morgan A. Costello
Assistant Attorneys General
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, New York 12224

Daniel Sangeap
Assistant Attorney General
Investor Protection Bureau
New York State Attorney General
120 Broadway
New York, New York 10271

For Xcel Energy Inc.:

Michael Connelly
Vice President and General Counsel
Xcel Energy, Inc.
GO 5
414 Nicollet Mall
Minneapolis, Minnesota 55401-1993

CONSENTED AND AGREED TO:

ANDREW M. CUOMO
Attorney General of the State of New York

By: Michael J. Myers (MK)
MICHAEL J. MYERS
Assistant Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224
(518) 402-2594

Dated: August 26, 2008

XCEL ENERGY INC.

By: Michael Connelly
MICHAEL CONNELLY
Vice President and General Counsel

Dated: July 31, 2008

Exhibit 24

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU
ENVIRONMENTAL PROTECTION BUREAU

----------X

IN THE MATTER OF

DYNEGY INC.,

Respondent.

ASSURANCE OF DISCONTINUANCE PURSUANT TO EXECUTIVE LAW § 63(15)

AOD # 08-132

----------X

WHEREAS:

A. Pursuant to Executive Law § 63(12) and General Business Law § 352, in September 2007 Andrew M. Cuomo, Attorney General of the State of New York, caused an inquiry to be made of Dynegy Inc. (the "Company") regarding the adequacy of the Company's disclosures to investors, including in its filings with the Securities and Exchange Commission ("SEC") concerning the expected impact of climate change and the regulation of greenhouse gas ("GHG") emissions on the Company's operations, financial condition, and plans to construct new coal-fired electric generating units.

B. On September 14, 2007, the Attorney General issued a subpoena *duces tecum* to the Company seeking information regarding the Company's disclosure practices. Subsequently, on October 29, 2007 and April 8, 2008, representatives of the Attorney General and the Company met to discuss the Company's disclosures and other sources of information available to investors, and the Company provided documents responsive to the subpoena.

C. Through its subsidiaries, Dynegy Inc. produces and sells electric energy, capacity and ancillary services in many U.S. markets. The power generation portfolio consists of more

than 18,000 megawatts of baseload, intermediate and peaking power plants fueled by a mix of natural gas, coal and fuel oil. In addition to operating assets, Dynegy Inc. owns a 50 percent interest in a development joint venture with LS Power, and minority interests in two coal-fired plants currently under construction.

D. Dynegy represents that the joint development platform currently includes approximately 6,400 megawatts of potential new site projects, including coal and gas initiatives, and approximately 3,100 megawatts of natural gas-fired repowering, solar and efficiency initiatives at existing operating facilities in the portfolio.

E. The Company has agreed to resolve this investigation voluntarily. After entering into discussions with the Attorney General's office, Dynegy filed its 10-K for the year 2007, in which the Company voluntarily provided more detailed information about climate change risk than in previous SEC filings. Based on the Company's commitment to expand and/or continue to provide a discussion of climate change and possible attendant risks in its Form 10-K filing with the SEC as set forth in paragraph 1, below, the Attorney General agrees to conclude the above-referenced inquiry.

THEREFORE, without admitting or denying that there has been any violation of law or wrongdoing, the Company and the Attorney General have agreed to enter into this Assurance of Discontinuance ("Assurance") for the purpose of resolving this investigation.

NOW, upon the consent of the undersigned counsel for the Attorney General and the Company, it is hereby **STIPULATED** and **AGREED** pursuant to Executive Law § 63(15) as follows:

1. **Disclosures to Investors Concerning Climate Change Risk.** The Company shall disclose (or, to the extent applicable, continue to disclose) in its 10-K filings:

(a) *Analysis of Financial Risks from Regulation.* The material financial risks to the Company associated with the regulation of GHG emissions in relation to climate change. At a minimum, this shall include:

(1) *Present Law.* Identification of GHG legislation or regulations in effect in states and countries in which the Company operates and an analysis of the material financial effect, if any, of the legislation or regulations, including, but not limited to, the costs of compliance with the Regional Greenhouse Gas Initiative.

(2) *Probable Future Law.* Discussion of expected trends in GHG legislation or regulations likely to be adopted that would have a material financial effect on the Company's business and an assessment of the material financial effect, if any, of the legislation or regulations, including a discussion of the factors that may affect the Company's business.

(b) *Analysis of Financial Risks from Litigation.* A description of any litigation related to climate change involving the Company the outcome of which will likely have a material financial effect on the Company and any climate change-related decisions issued by the United States Supreme Court, any United States Court of Appeals, or any court in any jurisdiction in which the Company operates that the Company concludes are likely to have a material financial effect on its business.

(c) *Analysis of Financial Risks from Physical Impacts of Climate Change.* The material financial risks to the Company's operations, if any, from the physical impacts associated with climate change including the impact of an increase in sea level

and changes in weather conditions, such as increases in extreme weather events, changes in precipitation resulting in drought or water shortages, and changes in temperature.

(d) *Strategic Analysis of Climate Change Risk and Emissions Management*. To the extent the Company's GHG emissions materially affect its financial exposure from climate change risk, the Company shall include:

(1) *Climate Change Statement.* The Company's current position on climate change.

(2) *Emissions Management.* The Company's:

(i) estimated GHG emissions (in tons) for the reporting year;

(ii) expected increases in GHG emissions (in tons) from planned new electric generation projects for which a state or EPA Clean Air Act permit has been sought;

(iii) strategies to reduce its climate change risk and to adapt to the physical impacts of climate change, including actions the Company is taking to reduce, offset, or limit GHG emissions (such actions may include, but are not limited to, emission reduction programs, energy efficiency and conservation programs, renewable energy development, diversification of electricity resources, improvements in energy infrastructure, and/or participation in research and development of new technologies to reduce GHG emissions);

(iv) the results of strategies undertaken to date, and the expected effect of such strategies on future GHG emissions, including any GHG emission reduction goals (as a percentage of aggregate emissions) the Company seeks to achieve from such strategies.

(3) *Corporate Governance of Climate Change.* The Company's corporate governance process applicable to climate change issues, including the role of the Board of Directors; and a statement regarding environmental performance factors, including meeting climate change objectives, incorporated into officer compensation, if any.

Except as otherwise required by law, the Company may identify or reference other public documents or reports, including, but not limited to, annual reports, proxy statements and other submittals to state agencies relating to GHG emissions and climate change risks in its Form 10-K filing with the SEC to provide further details on climate change risk.

2. **Entire Settlement.** This Assurance shall constitute the entire agreement of the parties with respect to settlement of the inquiry by the Attorney General referenced herein and is in full satisfaction of any and all potential civil and criminal claims that could have been raised with respect thereto.

3. **Binding Effect.** This Assurance shall be binding on the Company and its officers, directors and successors.

4. **Compliance with Other Disclosure Obligations.** In the event that the Company reasonably believes that the performance of its disclosure obligations under any provision of this

Assurance would conflict with any federal law, regulation, or binding directive that may be enacted or adopted after the date of this Assurance such that compliance with both this Assurance and such provision of federal law, regulation or binding directive would be impossible without violating such law, regulation, or directive, the Company shall notify the Attorney General within 14 days of the effective date of such law, regulation or binding directive, and the parties shall meet or confer at their earliest convenience to discuss same.

5. **Termination of Assurance of Discontinuance.** Subject to paragraph 4 herein, this Assurance and the obligations agreed to herein shall terminate within 4 years of the effective date of the Assurance.

6. **Execution of the Assurance.** The Attorney General and the Company agree that this Assurance may be executed in counterparts, and that the separate execution of the signatures shall not affect their validity. The effective date of this Assurance shall be the date on which the latter signature is executed.

7. **Governing Law.** This Assurance shall be governed by the laws of the State of New York without reference to conflicts-of-law provisions. In the event a provision of this Assurance is held unenforceable in a court of competent jurisdiction or is otherwise contrary to applicable federal, state or other law, the remaining provisions of this Assurance shall continue in full force and effect as though such provision were stricken from the Assurance.

8. **Notices.** Any and all correspondence related to this Assurance must reference AOD # 08-132. Notices required under this Assurance shall be sent, by first class or express mail, to the following party representatives:

For the Attorney General:

Michael J. Myers
Morgan A. Costello

Daniel Sangeap
Assistant Attorney General

Assistant Attorneys General
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, New York 12224

Investor Protection Bureau
New York State Attorney General
120 Broadway
New York, New York 10271

For the Company:

J. Kevin Blodgett
General Counsel
Dynegy Inc.
1000 Louisiana Street, Suite 5800
Houston, Texas 77002

CONSENTED AND AGREED TO:

ANDREW M. CUOMO
Attorney General of the State of New York

By: _____
DANIEL SANGEAP
Assistant Attorney General
Investor Protection Bureau
120 Broadway
New York, New York 10271

Dated: 10/23/2008

Dynegy Inc.

By: _____
J. Kevin Blodgett
General Counsel and EVP Administration

Dated: 10/24/08

Exhibit 25

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU
ENVIRONMENTAL PROTECTION BUREAU

----------X

IN THE MATTER OF

THE AES CORPORATION

ASSURANCE OF DISCONTINUANCE PURSUANT TO EXECUTIVE LAW § 63(15)

Respondent.

AOD # 09-159

----------X

WHEREAS:

A. Pursuant to Executive Law § 63(12) and General Business Law § 352, in September 2007 Andrew M. Cuomo, Attorney General of the State of New York, caused an inquiry to be made of The AES Corporation ("AES" or the "Company") regarding the adequacy of the Company's disclosures to investors, including in its filings with the Securities and Exchange Commission ("SEC"), concerning the expected impact of climate change and the regulation of greenhouse gas ("GHG") emissions on the Company's operations and financial condition.

B. On September 14, 2007, the Attorney General issued a subpoena *duces tecum* to the Company seeking information regarding the Company's disclosure practices. Subsequently, on October 29, 2007 and September 9, 2008, representatives of the Attorney General and the Company met to discuss the Company's disclosures and other sources of information available to investors, and the Company provided documents responsive to the subpoena.

C. AES is a global electricity generation company with operations in 29 countries. As of 2007, the Company's subsidiaries had generation capacity of approximately 43,000 megawatts.

D. AES has launched strategies to grow its alternative energy generation business and to develop a climate change solutions business which focuses on, among other things, generating GHG emission offset credits.

E. The Company has agreed to resolve this investigation voluntarily. After the Attorney General's office commenced its inquiry, AES filed its 10-K for the year 2007, in March 2008, in which it voluntarily provided more information about risks in connection with climate change than in its previous SEC filings. Based on the Company's commitment to continue to provide and/or expand the discussion of material risks related to climate change in its Form 10-K filing with the SEC as set forth in this agreement, the Attorney General agrees to conclude the above-referenced inquiry.

THEREFORE, without admitting or denying that there has been any violation of law or wrongdoing, the Company and the Attorney General have agreed to enter into this Assurance of Discontinuance ("Assurance") for the purpose of resolving this investigation.

NOW, upon the consent of the undersigned counsel for the Attorney General and the Company, it is hereby **STIPULATED** and **AGREED** pursuant to Executive Law § 63(15) as follows:

1. **Disclosures to Investors Concerning Climate Change Risk.** The Company shall continue to disclose (or, to the extent applicable, disclose) in its 10-K filings:

(a) *Analysis of Financial Risks from GHG Regulation.* The material financial risks to the Company associated with the regulation of GHG emissions in relation to climate change. At a minimum, this shall include:

(1) *Present Law.* Identification of GHG legislation or regulations in effect in states and countries in which the Company operates that

would have a material effect on the Company's business and, to the extent reasonably estimable, an analysis of the material financial effect, if any, of the legislation or regulations, including, but not limited to, the costs of compliance with the Regional Greenhouse Gas Initiative.

(2) *Probable Future Law.* Discussion of reasonably expected trends in GHG legislation or regulations that would have a material effect on the Company's business and, to the extent reasonably estimable, an assessment of the material financial effect, if any, of the legislation or regulations, including a discussion of the factors that may affect the Company's business.

(b) *Analysis of Financial Risks from Litigation.* A description of any litigation related to climate change involving the Company the outcome of which will likely have a material financial effect on the Company and any climate change-related decisions issued by the United States Supreme Court, any United States Court of Appeals, or any court in any jurisdiction in which the Company operates that the Company concludes are likely to have a material financial effect on its business.

(c) *Analysis of Financial Risks from Physical Impacts of Climate Change.* The material financial risks to the Company's operations, if any, from the possible physical impacts associated with climate change, as identified by the Intergovernmental Panel on Climate Change and including, as relevant, the impact of an increase in sea level and changes in weather conditions, such as increases in extreme weather events, changes in precipitation resulting in drought or water shortages, and changes in temperature.

(d) *Strategic Analysis of Climate Change Risk and Emissions Management*. To the extent the Company's GHG emissions materially affect its financial exposure from climate change risk, the Company shall include:

(1) *Climate Change Statement.* The Company's current position on climate change.

(2) *Emissions Management.* The Company's:

(i) estimated CO_2 emissions and other measured GHG emissions (in tons) for the most recent available period, and the methodology used;

(ii) expected increases in CO_2 emissions and other measured GHG emissions (in tons) from planned new coal fired electric generation projects for which a U.S. state or EPA Clean Air Act permit has been applied for, expected increases in CO_2 emissions and other measured GHG emissions (in tons) from planned new non-coal fired electric generation projects for which a U.S. state or EPA Clean Air Act permit (or the foreign equivalent) has been received, and the GHG estimation methodology used;

(iii) any material strategies to reduce its climate change risk and to adapt to the physical impacts of climate change, including actions the Company is taking to reduce, offset, or limit GHG emissions (such actions may include, but are not limited to, GHG offset projects, emission reduction

programs, energy efficiency and conservation programs, renewable energy development, diversification of electricity resources, improvements in energy infrastructure, and/or participation in research and development of new technologies to reduce GHG emissions); and

(iv) the results of strategies undertaken to date, and the expected effect of such strategies on future GHG emissions, including any GHG emission reduction goals (as a percentage of aggregate emissions) the Company seeks to achieve from such strategies.

(3) *Corporate Governance of Climate Change.* The Company's corporate governance process applicable to climate change issues, including the role of the Board of Directors; and a statement regarding environmental performance factors, including meeting climate change objectives, incorporated into officer compensation, if any.

Except as otherwise required by law, the Company may identify or reference other public documents or reports, including, but not limited to, annual reports, proxy statements and other submittals to state agencies relating to GHG emissions and climate change risks in its Form 10-K filing with the SEC to provide further details on climate change risk.

2. **Entire Settlement.** This Assurance shall constitute the entire agreement of the parties with respect to settlement of the inquiry by the Attorney General referenced herein and is

in full satisfaction of any and all potential civil and criminal claims that could have been raised with respect thereto.

3. **Binding Effect.** This Assurance shall be binding on the Company and its officers, directors and successors.

4. **Compliance with Other Disclosure Obligations.** In the event that the Company reasonably believes that the performance of its disclosure obligations under any provision of this Assurance would conflict with any federal law, regulation, or binding directive that may be enacted or adopted after the date of this Assurance such that compliance with both this Assurance and such provision of federal law, regulation or binding directive would be impossible without violating such law, regulation, or directive, the Company shall notify the Attorney General within 14 days of the effective date of such law, regulation or binding directive, and the parties shall meet or confer at their earliest convenience to discuss same.

5. **Termination of Assurance of Discontinuance.** Subject to paragraph 4 herein, this Assurance and the obligations agreed to herein shall terminate within 4 years of the effective date of the Assurance.

6. **Execution of the Assurance.** The Attorney General and the Company agree that this Assurance may be executed in counterparts, and that the separate execution of the signatures shall not affect their validity. The effective date of this Assurance shall be the date on which the latter signature is executed.

7. **Governing Law.** This Assurance shall be governed by the laws of the State of New York without reference to conflicts-of-law provisions. In the event a provision of this Assurance is held unenforceable in a court of competent jurisdiction or is otherwise contrary to

applicable federal, state or other law, the remaining provisions of this Assurance shall continue in full force and effect as though such provision were stricken from the Assurance.

8. **Notices.** Any and all correspondence related to this Assurance must reference AOD # 09-159. Notices required under this Assurance shall be sent, by first class or express mail, to the following party representatives:

For the Attorney General:

Michael J. Myers
Morgan A. Costello
Assistant Attorneys General
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, New York 12224

Daniel Sangeap
Assistant Attorney General
Investor Protection Bureau
New York State Attorney General
120 Broadway
New York, New York 10271

For the Company:

General Counsel
The AES Corporation
4300 Wilson Boulevard
Arlington, VA 22203

CONSENTED AND AGREED TO:

ANDREW M. CUOMO
Attorney General of the State of New York

By: _____
DANIEL SANGEAP
Assistant Attorney General
Investor Protection Bureau
120 Broadway
New York, New York 10271

Dated: 11/19/2009

The AES Corporation

By: 

Brian A. M
Executive Vice President, General Counsel and Corporate Secretary

Dated: 

Exhibit 26

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK
----------X

In the Matter of the **Investigation by Eric T. Schneiderman, Attorney General of the State of New York, of** ANADARKO PETROLEUM CORP., Respondent.	Assurance No. 14-183

----------X

ASSURANCE OF DISCONTINUANCE

Pursuant to Executive Law § 63(12) and General Business Law § 352, in June 2011, the Office of the Attorney General of the State of New York ("OAG"), caused an investigation to be made of Anadarko Petroleum Corp. ("Anadarko" or the "Company") regarding the adequacy of the Company's disclosures to investors, including in its filings with the Securities and Exchange Commission ("SEC"), concerning natural gas development from unconventional formations. As used throughout this investigation, the term "unconventional formations" means underground geologic formations or resource deposits which typically require directional drilling and hydraulic fracturing to make extraction economically feasible.

Anadarko's operations in the United States include oil and natural gas exploration and production onshore in the Lower 48 states, onshore Alaska, and the deepwater Gulf of Mexico. In 2011, the Company's shale plays delivered a year-over-year sales-volume increase of almost 200 percent. Shale volumes in that year accounted for slightly more than 10 percent of the Company total sales volumes, which was up from less than one percent two years before. Shales also then represented about five percent of Anadarko's total proved reserves. Development of

these reserves may require hydraulic fracturing, directional drilling, and other development activities, which could give rise to certain environmental and financial risks. Anadarko has conducted hydraulic fracturing in the Marcellus Shale formation in Pennsylvania and other formations and states.

On June 17, 2011, the OAG issued a subpoena duces tecum to Anadarko ("Subpoena") seeking information regarding Anadarko's disclosure practices concerning development in unconventional formations. Subsequently, OAG and Anadarko met to discuss the Company's disclosures and other sources of information available to investors, and Anadarko provided documents responsive to the subpoena. On July 27, 2011, Anadarko filed its 10-Q for the 2nd Quarter of 2011, and on February 21, 2012, Anadarko filed its 10-K for the year 2011, on February 19, 2013, Anadarko filed its 10-K for the year 2012, and on February 28, 2014, Anadarko filed its 10-K for the year 2013, and in these filings the Company voluntarily provided more detailed information regarding its natural gas development in unconventional formations than in previous SEC filings.

This Assurance of Discontinuance ("Assurance") sets forth below the commitments agreed to by the OAG and the Company to conclude this investigation:

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63 and to discontinue its civil investigation; and

WHEREAS, the OAG believes that the commitments imposed by this Assurance are prudent and appropriate;

THEREFORE, without asserting, admitting or denying herein any findings, Anadarko and the OAG have agreed to enter into this Assurance for the purpose of resolving this investigation.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the undersigned parties, that:

1. **Disclosures to Investors in Anadarko's SEC Filings Concerning Natural Gas Development from Unconventional Formations**. Anadarko shall disclose (or, to the extent applicable, continue to disclose) in its Form 10-K filings (and, where appropriate, in its other SEC filings):

    a. *Analysis of Financial Risks from Regulation*. Any material (as defined by applicable federal securities laws) financial effects on the Company associated with the regulation of natural gas development from unconventional formations. Specifically:

        i. Present Law. Identification of any material financial effects related to legislation or regulations in effect in states in which the Company operates, including, but not limited to, costs of compliance. Such legislation or regulations to be discussed should include, without limitation, state or federal moratoriums, local bans or ordinances, requirements regarding disclosure of chemicals used or any other promulgated actions or guidance that have a material financial effect on operations.

        ii. Probable Future Law. Discussion of any material financial effects from expected trends in legislation or regulations likely to be adopted and an assessment of any such material financial effect, including but not limited to any such law that Anadarko believes will make completion of new natural gas wells materially more difficult.

    b. *Analysis of Financial Risks from Environmental Impacts*. The material financial effects, if any, to Anadarko's operations from the environmental impacts associated with natural gas development from unconventional formations. Any such discussion should include a basic description of hydraulic fracturing, its importance to development of Anadarko's natural gas reserves, and where material, Anadarko's approaches (through the adoption of industry best practices or other methods) to address attendant risks, including but not limited to risks related to the following:

        i. Aquifer Protection. Description of any material risks to Anadarko associated with well construction related to hydraulic fracturing, including a discussion of efforts by the Company to reduce any such material risks, such as the Company's practices for assuring well integrity.

        ii. Chemical Use, Handling, and Disclosure. Description of any material risks to Anadarko associated with chemical use and handling related to hydraulic fracturing, including a discussion of efforts by the Company to reduce any such material risks.

iii. Water Use and Wastewater Handling and Disposal. Description of any material risks to Anadarko associated with water and wastewater use, handling, and disposal related to hydraulic fracturing, including a discussion of efforts by the Company to reduce any such material risks.

iv. Air Emissions. Description of any material risks to Anadarko associated with air emissions related to hydraulic fracturing, including a discussion of efforts by the Company to reduce any such material risks, such as the Company's strategy for compliance with regulations requiring capture of methane and other gases emitted during completion of wells.

c. *Strategic Analysis of Financial Risks.* To the extent regulation, litigation or any physical impacts associated with natural gas development from unconventional formations could materially affect Anadarko's financial position, the Company shall include:

i. Anadarko management's discussion and analysis of the Company's financial position with respect to the material effects of such regulation, litigation or environmental impacts.

ii. Anadarko's strategies to reduce any such material financial effects, including actions the Company is taking to reduce, offset, or limit such effects (such actions may include, but are not limited to, the research, development, testing and use of more environmentally compatible hydraulic fracturing chemicals and services and of "green completions" in the development and completion of natural gas wells).

iii. The results of such strategies undertaken to date, and the expected effect of such strategies on the Company's future financial position.

Except as otherwise required by law, in its Form 10-K filing with the SEC (and, where appropriate, in its other filings with the SEC), the Company may also identify or reference other public documents or reports, including, but not limited to, annual reports, proxy statements and other submittals to state or federal agencies or non-government organizations relating to financial risks associated with natural gas development from unconventional formations.

2. **Other Publicly Available Disclosures to Investors Concerning Natural Gas Development from Unconventional Formations**. To the extent not addressed in the disclosures provided pursuant to paragraph 1, no later than one hundred and twenty (120) days after the effective date of this Assurance, Anadarko shall disclose (or, to the extent applicable, continue to disclose) in other publicly accessible documents such as its website, annual report, environmental and/or safety reports, or corporate responsibility report, the following additional information:

a. Aquifer Protection. Discussion of Anadarko's efforts to minimize the risk of aquifer contamination in drilling and completing wells (*e.g.*, reporting on the Company's water quality testing practices, efforts to ensure well integrity through

measures to protect and isolate drinking water aquifers from the production stream and from hydraulic fracturing fluids in the wellbore, and annulus monitoring to detect pressure changes in wells), including any quantification of such efforts.

b. Chemical Use, Handling, and Disclosure. (A) Discussion of Anadarko's efforts to minimize risks associated with chemical use and handling, including any quantification of such efforts, with such discussion to include Anadarko's procedures for reporting and responding to spills and efforts to prevent spill incidents, and Anadarko's efforts to work with service providers to assess viability and potential benefits of more environmentally compatible products for hydraulic fracturing operations, (B) Disclosure of all chemicals used by or on behalf of Anadarko, with such disclosure to include identification of chemicals by Chemical Abstract Number (CAS) and reporting of chemical use on a well-by-well basis on a publicly available website, for all Anadarko wells that are hydraulically fractured, excluding information that the manufacturer of supplier asserts to the Company is protected as trade secret under applicable law, and (C) Reporting of the percentage of Anadarko's hydraulically fractured domestic wells submitted to a publicly available website, such as FracFocus.org.

c. Water Use and Wastewater Handling and Disposal. Discussion of Anadarko's efforts to minimize risks associated with water and wastewater use, handling and disposal, including any quantification of such efforts. Discussion of Anadarko's hydraulic fracturing water uses and needs, procedures for managing and tracking hydraulic fracturing source water, and the availability of and options for managing hydraulic fracturing wastewaters (e.g., reuse, recycling, treatment, storage, and disposal options).

d. Air Emissions. Discussion of Anadarko's efforts to minimize risks associated with emissions of air pollutants associated with hydraulic fracturing, including any quantification of such efforts to limit the generation of greenhouse gas emissions or other air pollutants.

3. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Company in agreeing to this Assurance.

4. The Company represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. The Company shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance. Nothing in this paragraph affects the Company's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party. This Assurance is not intended for use by any person other than the parties and does not confer upon any such person any rights or remedies, and it is not intended, and should not be construed, as an admission of liability by the Company.

5. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

6. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance, including the Company's officers and directors, and their respective successors and assigns, and no party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the other party.

7. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

8. To the extent not already provided under this Assurance, the Company shall, upon request by OAG, provide to OAG all documentation and information necessary to verify compliance with this Assurance.

9. Any and all correspondence related to this Assurance must reference AOD # 14-183. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the Company, to:

Sean J. Urvan
Counsel
Anadarko Petroleum Corporation
1201 Lake Robbins Drive
The Woodlands, TX 77380
(832) 636-1664
sean.urvan@anadarko.com

cc:

Michael B. Wigmore, Esq.
Vinson & Elkins LLP
2200 Pennsylvania Ave., NW
Suite 500 West
Washington, DC 20037
(202) 639-6778
mwigmore@velaw.com

If to the OAG, to:

Michael J. Myers
Assistant Attorney General
Environmental Protection Bureau

New York State Attorney General
The Capitol
Albany NY 12224
(518) 402-2594
Michael.myers@ag.ny.gov

and

Andrew J. Gershon
Assistant Attorney General
New York State Office of the Attorney General
120 Broadway, 26th Floor
New York, NY 10271-0332
(212) 416-8474
andrew.gershon@ag.ny.gov

10. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and the Company shall make no representation to the contrary.

11. The OAG finds the terms contained in this Assurance appropriate and in the public interest. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles. Nothing contained herein shall be construed as to deprive any person of any private right of action.

12. This Assurance shall constitute the entire agreement of the parties with respect to settlement of the investigation by the Attorney General referenced herein and is in full satisfaction of any and all potential civil and criminal claims that could have been raised with respect thereto.

13. In the event that the Company reasonably believes that the performance of its disclosure obligations under any provision of this Assurance would conflict with any federal law, regulation, or binding directive that may be enacted or adopted after the date of this Assurance such that compliance with both this Assurance and such provision of federal law, regulation or binding directive would be impossible without violating such law, regulation, or directive, the Company shall notify the OAG and the parties shall meet or confer at their earliest convenience to discuss same, but no later than 120 days from the effective date of such law, regulation or binding directive.

14. Subject to paragraph 6 herein, this Assurance and the obligations agreed to herein shall terminate 2 years from the effective date of the Assurance.

15. The Attorney General and the Company agree that this Assurance may be executed in counterparts, and that the separate execution of the signatures shall not affect their validity. The effective date of this Assurance shall be the date on which the latter signature is executed.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on the date set forth below.

Eric T. Schneiderman
Attorney General of the State of New York

By: _____
Michael J. Myers, Assistant Attorney General
Environmental Protection Bureau
Karla G. Sanchez, Executive Deputy Attorney General
Economic Justice Division

Dated: 10/1/14

Anadarko Petroleum Corp.

By: _____
Robert K. Reeves, Executive Vice President,
General Counsel, and Chief Administrative Officer

Dated: 9-4-14

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

In the Matter of the **Investigation by Eric T. Schneiderman, Attorney General of the State of New York, of** **EOG RESOURCES, INC.,** **Respondent.**	Assurance No. 14-182

ASSURANCE OF DISCONTINUANCE

On June 17, 2011, the Office of the Attorney General of the State of New York ("OAG") commenced an investigation, pursuant to Article 23-A, Section 352 *et seq.* of the General Business Law of New York (the "Martin Act") and Section 63 of the Executive Law of New York, of EOG Resources, Inc. ("EOG" or the "Company"; together with OAG, "the parties") regarding the adequacy of the Company's disclosures to investors, including in its filings with the Securities and Exchange Commission ("SEC"), concerning natural gas development from unconventional formations. The term "unconventional formations," herein, refers to underground geologic formations or resource deposits that typically require horizontal drilling and hydraulic fracturing to make extraction economically feasible.

The Company explores for, develops, produces and markets crude oil and natural gas. As of December 31, 2013, the Company reported 5,045 billion cubic feet of estimated net proved natural gas reserves, located predominately in the United States, Canada and Trinidad. Approximately 40% of the Company's net proved reserves are natural gas reserves. Development of these natural gas reserves will require hydraulic fracturing and other

development activities, which the OAG recognizes may give rise to certain environmental and financial risks. The Company has engaged in hydraulic fracturing as part of its unconventional shale production operations in the Marcellus Shale formation in Pennsylvania and in other formations in other states.

On June 17, 2011, the OAG issued a subpoena duces tecum to the Company seeking information regarding the Company's disclosure practices. The Company subsequently provided responsive documents to the OAG. On February 24, 2012, February 22, 2013 and February 24, 2014, the Company filed its Forms 10-K for fiscal years 2011, 2012 and 2013, respectively, in which the Company voluntarily provided additional information regarding its natural gas development typically requiring hydraulic fracturing activities.

This Assurance of Discontinuance ("Assurance") sets forth below the commitments agreed to by the OAG and the Company to conclude this investigation;

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63 and to discontinue its civil investigation; and

WHEREAS, the OAG believes that the commitments imposed by this Assurance are prudent and appropriate;

THEREFORE, without asserting, admitting or denying herein any findings, the Company and the OAG have agreed to enter into this Assurance for the purpose of resolving this investigation.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the undersigned parties, that:

1. **Disclosures to Investors Concerning Natural Gas Development Typically Requiring Hydraulic Fracturing.** The Company shall disclose (or, to the extent applicable, continue to disclose) in its Form 10-K filings:

a. *Analysis of Material Financial Effects from Regulation*. Any financial effects that are material (as defined by applicable federal securities laws, and henceforth referred to as "material") to the Company related to the regulation of natural gas development from unconventional formations, including, to the extent material:

i. Present Law. Identification of any such effects related to legislation or regulations in effect in states in which the Company operates, or will likely operate, including, but not limited to, any costs of compliance that are material. Such legislation or regulations may include, without limitation, state or federal moratoriums, local bans or restrictive ordinances, requirements for disclosure of chemicals used in hydraulic fracturing fluids, or other legal requirements that are material, and

ii. Probable Future Law. Discussion of any such effects from expected trends in legislation or regulations likely to be adopted and an assessment of any such effects.

b. *Analysis of Material Financial Effects from Environmental Impacts of Natural Gas Development Typically Requiring Hydraulic Fracturing*. A description of hydraulic fracturing and its importance to the Company's natural gas development from unconventional formations and any financial effects that are material from the environmental impacts, if any, associated with natural gas development from unconventional formations, specifically, to the extent material:

i. Drinking Water Aquifer Protection. Description of any such effects on drinking water aquifers arising from well construction in unconventional formations, and efforts of the Company to reduce any such effects through, for example, best practices in the industry.

ii. Chemical Use, Handling, and Disclosure. Description of any such effects arising from the use and handling of chemicals in hydraulic fracturing, and efforts of the Company to reduce any such effects through, for example, the development and implementation of best practices in the industry.

iii. Water Use and Wastewater Handling and Disposal. Description of any such effects arising from the use, handling, and disposal of water and wastewater relating to hydraulic fracturing, and efforts of the Company to reduce any such effects through, for example, the development and implementation of best practices in the industry.

iv. Air Emissions. Description of any such effects arising from air emissions related to hydraulic fracturing and efforts of the Company to reduce any such effects through, for example, strategies to achieve compliance with regulations requiring capture of methane and other gases and through the development and implementation of best practices in the industry.

c. *Strategic Analysis of Material Financial Effects Relating to Natural Gas Development Typically Requiring Hydraulic Fracturing*. To the extent regulation, litigation or any environmental impacts of natural gas development from unconventional formations have any material financial effects, the Company shall include:

i. Company management's current perspective with respect to any such effects of such regulation, litigation or environmental impacts;

ii. The Company's strategies and actions to address, reduce, offset, or limit any such effects (such strategies and actions may include, but not be limited to, research, development, testing and use of newer and more environmentally compatible hydraulic fracturing chemicals; evaluating the recycling and reuse of hydraulic fracturing fluids; using protective liners and perimeter barriers to prevent runoff; improving monitoring of the hydraulic fracturing process; and promoting transparency in the disclosure of the fluids used in the hydraulic fracturing process); and

iii. The results of such strategies and actions undertaken to date, and the expected effect of such strategies on the Company's future financial position.

Except as otherwise required by law, in its Form 10-K filings, the Company may identify or reference other public documents or reports, including, but not limited to, annual reports, proxy statements and other submittals to state or federal agencies or non-government organizations relating to material financial effects associated with natural gas development from unconventional formations and hydraulic fracturing.

2. **Other Publicly-Available Information Concerning Natural Gas Development from Unconventional Formations**.

a. The Company recognizes the importance of providing information to the public concerning natural gas development typically requiring hydraulic fracturing, beyond the disclosures required pursuant to Paragraph 1, using publicly accessible

sources such as a corporate website, annual report to shareholders, or data provided to, for example, the FracFocus Chemical Disclosure Registry, and has an existing practice of providing such information. The Company commits to continuing to use and, as appropriate, expanding use of such sources to provide information to the public concerning the Company's natural gas development activities that typically require hydraulic fracturing, including information concerning:

i. Factors considered in well drilling and completion plans and natural gas production processes, such as: minimization of surface disturbance, development of drilling and completion plans based on geological, geophysical and engineering analyses, the placement of casing and cement to protect and isolate drinking water aquifers from the production stream and from hydraulic fracturing fluids in the wellbore, the monitoring of the hydraulic fracturing process via the use of visualization technology, and the reclamation of well sites when production ceases;

ii. Use, handling, disclosure, and availability of environmentally compatible hydraulic fracturing chemicals; the reuse, recycling, treatment, storage, and disposal of hydraulic fracturing fluids; and the disclosure of all chemicals known to and used by or on behalf of the Company in hydraulic fracturing operations, including identification of chemicals by Chemical Abstract Number (CAS) and reporting of chemical use on a well-by-well basis on a publicly available website, excluding information that the

manufacturer or supplier asserts to the Company is protected as trade secret under applicable law;

iii. Water management techniques, such as with respect to water sources, use, conservation, and purification and reuse technologies;

iv. Groundwater and surface water protection, such as spill prevention and contingency planning and the use of protective liners and perimeter barriers; and

v. Air emissions management and reporting.

b. The Company also recognizes the importance of tracking and reporting data relevant to specific environmental, health and safety topics. Beginning with data collected for the 2012 calendar year, and on an annual basis going forward, the Company commits to disclosing on its corporate website, or other source readily accessible to the general public, the following information:

i. The percentage of the Company's hydraulically fractured domestic wells submitted to FracFocus.org;

ii. The percentage of the Company's hydraulically fractured domestic wells submitted to FracFocus.org that include both MSDS information and non-MSDS information available from suppliers, excluding information that the manufacturer or supplier asserts to the Company is protected as trade secret under applicable law;

iii. The percentage of the Company's hydraulically fractured domestic wells that undergo surface casing integrity testing prior to completion;

iv. The percentage of the Company's hydraulically fractured domestic wells where annulus monitoring is conducted to detect pressure changes;

v. The aggregate volume of oil spills greater than 5 barrels spilled from a Company-operated domestic facility during such calendar year, per 1,000 barrels of oil equivalent of the Company's domestic production for such calendar year;

vi. Recordable injury rate from the Company's domestic operations, as the aggregate of Company and contractor incidents during such calendar year; and

vii. Greenhouse gas emissions from the Company's domestic operations for such calendar year, as required to be reported under the EPA's greenhouse gas reporting program, per 1,000 barrels of oil equivalent of the Company's domestic production for such calendar year.

For the avoidance of doubt, making information publicly available pursuant to this Paragraph 2 does not thereby require the information to be disclosed pursuant to Paragraph 1.

3. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Company in agreeing to this Assurance.

4. The Company represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. The Company shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance. Nothing in this paragraph affects the Company's

(i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any person other than the parties and does not confer upon any such person any rights or remedies, and it is not intended, and should not be construed, as an admission of liability by the Company.

5. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

6. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance, including the Company's officers and directors, and their respective successors and assigns, and no party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the other party.

7. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

8. To the extent not already provided under this Assurance, the Company shall, upon request by the OAG, provide to the OAG all documentation and information necessary to verify compliance with this Assurance.

9. Any and all correspondence related to this Assurance must reference AOD # 14-182. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the Company, to:

General Counsel
EOG Resources, Inc.
1111 Bagby, Sky Lobby 2
Houston, Texas 77002
(713) 651-7000

cc:

Thomas F. Kokalas
Bracewell & Giuliani LLP
1251 Avenue of the Americas, 49th Floor
New York, New York 10020
(212) 508-6136

If to the OAG, to:

Andrew J. Gershon
Assistant Attorney General
New York State Office of the Attorney General
120 Broadway, 26th Floor
New York, NY 10271-0332
(212) 416-8474

10. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and the Company shall make no representation to the contrary.

11. The OAG finds the terms contained in this Assurance appropriate and in the public interest. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles. Nothing contained herein shall be construed as to deprive any person of any private right of action.

12. This Assurance shall constitute the entire agreement of the parties with respect to settlement of the investigation by the OAG referenced herein and is in full satisfaction of any and all potential civil and criminal claims that could have been raised with respect thereto.

13. In the event that the Company reasonably believes that the performance of its disclosure obligations under any provision of this Assurance would conflict with any federal law, regulation, or binding directive that may be enacted or adopted after the date of this Assurance such that compliance with both this Assurance and such provision of federal law, regulation or binding directive would be impossible without violating such law, regulation, or directive, the Company shall notify the OAG and the parties shall meet or confer at their earliest convenience to discuss same, but no later than 120 days from the effective date of such law, regulation or binding directive.

14. This Assurance and the obligations agreed to herein shall terminate two years from the effective date of this Assurance.

15. The OAG and the Company agree that this Assurance may be executed in counterparts, and that the separate execution of the signatures shall not affect their validity. The effective date of this Assurance shall be the date on which the latter signature is executed.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on October 1, 2014.

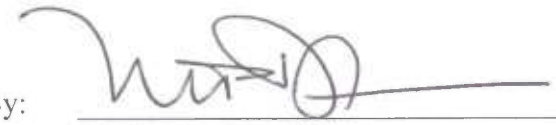
Eric T. Schneiderman
Attorney General of the State of New York

By: Andrew J. Gershon

Andrew J. Gershon, Assistant Attorney General
Environmental Protection Bureau
Karla G. Sanchez, Executive Deputy Attorney General
Economic Justice Division

Dated: October 1, 2014

EOG Resources, Inc.

By: 

Michael P. Donaldson
Vice President, General Counsel and Corporate Secretary

Dated: October 1, 2014

Exhibit 27

ATTORNEY GENERAL OF THE STATE OF NEW YORK
ENVIRONMENTAL AND INVESTOR PROTECTION BUREAUS

In the Matter of

Investigation by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, of

Peabody Energy Corporation,

Respondent.

Assurance No. 15-**242**

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York ("NYAG") commenced an investigation pursuant to Article 23-A, Section 352 *et seq*. of the New York General Business Law (the "Martin Act") and Section 63(12) of the New York Executive Law, concerning various disclosures made by Peabody Energy Corporation (together with its predecessors, successors, subsidiaries and assigns, "Peabody" or the "Respondent") concerning climate change and the potential effects of climate change policy on Peabody's future business (the "Investigation").

This Assurance of Discontinuance (the "Assurance"), dated as of November 8, 2015, contains the findings of the Investigation, and an agreement between NYAG and Peabody (collectively, the "Parties") resolving the Investigation.

FINDINGS

NYAG makes the following findings, which are neither admitted to nor denied by Peabody (the "Findings"):

A. Peabody's Projections of Severe Adverse Impacts to Its Business from Potential Regulation of Climate Change

1. In Securities and Exchange Commission ("SEC") filings, including various annual reports, Peabody denied its ability to reasonably predict the impact to its future business from any future law or regulation relating to greenhouse gas emissions generated from the combustion of coal, in order to address harms from climate change.

2. In its 2011, 2012, 2013 and 2014 SEC Form 10-K Annual Reports, Peabody stated that "Enactment of laws or passage of regulations regarding emissions from the combustion of coal by the U.S. or some of its states or by other countries, or other actions to limit such emissions, could result in electricity generators switching from coal to other fuel sources." But, Peabody further stated, in each Form 10-K Annual Report, that it was "not possible for [Peabody] to reasonably predict the impact that any such laws or regulations may have on [Peabody's] results of operations, financial condition or cash flows."

3. Peabody has in fact made market projections about the impact of potential climate change regulatory actions. Some of those market projections found that certain such actions could have a severe negative impact on Peabody's future financial condition.

4. For example, in March 2013, Peabody projected that if a specific aggressive regulatory action scenario for existing power plants and future electricity

generation were to be implemented in the United States, it would in 2025 reduce the dollar value of sales of Southern Powder River Basin coal by 38% and Illinois Basin coal by 33%.

5. To further illustrate, in March 2014, Peabody hired an outside consulting firm, which projected that enactment of a $20 per ton carbon tax would reduce the demand for coal as a fuel source in electric power generation in the United States in 2020 by between 38% and 53% compared to 2013 levels.

6. The NYAG finds that although Peabody's disclosures denied its ability to reasonably predict the future impacts of any future climate change regulation on its business, Peabody and its consultants actually made market projections in the ordinary course of business of severe impacts from certain potential regulations and did not disclose its market projections to the public. These market projections found that certain potential regulatory scenarios could materially and adversely impact Peabody's future business and financial condition.

B. Peabody Statements About IEA Projections Relating to the Future Demand for Coal

7. In numerous SEC filings, including various annual reports and form 8-Ks, and other public communications, Peabody provided an incomplete discussion of the findings and projections of the International Energy Agency (the "IEA"), and omitted less favorable IEA projections for future coal demand.

8. The IEA, founded in 1974, is an autonomous organization that works to ensure reliable, affordable and clean energy for its 29 member countries and beyond. It is considered the world's leading authority on future global energy developments. The IEA is at the heart of global dialogue on energy, providing authoritative and

unbiased research, statistics, analysis and recommendations. The IEA advises member countries (including the United States) on ways to develop their energy policies so they effectively address climate change.

9. Since 1993, the IEA has made projections about world coal demand based on various scenarios for future world energy development. For several years, those scenarios have included: the New Policies Scenario, which is IEA's central scenario; the Current Policies Scenario, which the high case for coal usage; and the 450 Scenario, which is the low case for coal usage. The IEA does not endorse any particular scenario. As stated in the Executive Summary of its 2014 World Energy Outlook, the IEA recognizes that, as a general matter, coal's "future use is constrained by measures to tackle pollution and reduce CO_2 emissions."

10. The New Policies Scenario incorporates policies and measures affecting energy markets which have already been adopted, as well as other relevant commitments that have been announced by governments of the world but where the precise implementation measures have yet to be fully defined. The IEA considers the New Policies Scenario to be its "central scenario."

11. The Current Policies Scenario, which is the high case for coal usage, assumes that governments do not implement any recent commitments that have yet to be backed-up by legislation and will not introduce other new policies bearing on the energy sector in the future, even those that are likely to be implemented by various nations. According to the IEA, global energy usage consistent with the Current Policies Scenario would likely result in a global temperature rise of about 6°C.

12. The 450 Scenario, which is the low case for coal usage, incorporates government policies that would, if enacted, limit long-term increases in the average global temperature to two degrees Celsius. The goal of limiting temperature rise to no more than two degrees Celsius has long been endorsed by nations of the world in international meetings, most recently at the 2010 United Nations Climate Change Conference in Cancun, Mexico.

13. In its public statements, Peabody has frequently referred only to the Current Policies Scenario, which has never been IEA's central scenario. In its 2011 Form 10-K Annual Report, Peabody stated that IEA "estimates in its World Energy Outlook 2011, current policies scenario, that world primary energy demand will grow 51% between 2009 and 2035. Demand for coal is projected to rise 65%, and the growth in global electricity generation from coal is expected to be greater than the growth in oil, natural gas, nuclear, hydro, biomass, geothermal and solar combined." Peabody did not provide the significantly less favorable growth estimates for coal under IEA's central scenario (the New Policies Scenario) or the alternative 450 Scenario.

14. In its 2012 Form 10-K Annual Report, Peabody stated that IEA "estimates in its World Energy Outlook 2012, current policies scenario, that worldwide primary energy demand will grow 47% between 2010 and 2035. Demand for coal during this time period is projected to rise 59%, and the growth in global electricity generation from coal is expected to be greater than the growth in oil, natural gas, nuclear, hydro, geothermal and solar combined." Peabody did not provide the

significantly less favorable growth estimates for coal under IEA's central scenario (the New Policies Scenario) or the alternative 450 Scenario.

15. In its 2013 Form 10-K Annual Report, Peabody stated that IEA "estimates in its World Energy Outlook 2013, Current Policies Scenario, that worldwide primary energy demand will grow 43% between 2011 and 2035. Demand for coal during this time period is projected to rise 44%, and the growth in global electricity generation from coal is expected to be greater than the growth in oil, natural gas, nuclear, geothermal and solar combined." Peabody did not provide the significantly less favorable growth estimates for coal under IEA's central scenario (the New Policies Scenario) or the alternative 450 Scenario.

16. Further, even though Peabody mentioned the existence of the New Policies Scenario and the 450 Scenario in its 2013 Form 10-K Annual Report (unlike in prior years), Peabody did not disclose that the New Policies Scenario is the IEA's central scenario, and Peabody also did not disclose that the Current Policies Scenario does not include future regulations of coal and other greenhouse gases that are likely to be implemented by various nations.

17. In its 2014 Form 10-K Annual Report, Peabody stated that IEA "estimates in its World Energy Outlook 2014, Current Policies Scenario, that worldwide primary energy demand will grow 50% between 2012 and 2040. Demand for coal during this time period is projected to rise 51%, and the growth in global electricity generation from coal is expected to be greater than the growth in oil, natural gas, nuclear and solar combined." Again, Peabody did not provide the significantly

less favorable growth estimates for coal under IEA's central scenario (the New Policies Scenario) or the alternative 450 Scenario.

18. Further, even though Peabody continued to mention the existence of the New Policies Scenario and the 450 Scenario, Peabody again did not state that the New Policies Scenario is the IEA's central scenario, and Peabody also did not disclose that the Current Policies Scenario does not include future regulations of coal and other greenhouse gases that are likely to be implemented by various nations.

19. Peabody's representations regarding the IEA, as discussed above, were not just limited to its annual reports, but were widespread in other communications by Peabody and its senior executives to the investment community and general public, in which they cited the IEA to support optimistic growth projections for the coal market based solely on the Current Policies Scenario.

20. For example, in the Q4 2013 Earnings Conference Call, on January 30, 2014, Peabody's Chairman and Chief Executive Officer (CEO) stated that "IEA and other observers project that coal will surpass oil as the world's largest energy source in the coming years," while not mentioning that such a projection is premised on the IEA's Current Policies Scenario, which is not the IEA's central scenario. Under the IEA's central scenario, the New Policies Scenario, the promising future for coal announced by the CEO was not projected to occur. And, under the 450 Scenario, coal's future was projected to be significantly less favorable.

21. This and similar citations to the IEA in support of a promising future for coal were repeated in other documents and presentations by Peabody executives at

meetings with investment companies and at industry conferences, and were also included in filings by Peabody in Form 8Ks with the SEC.

CONCLUSIONS

22. The NYAG concludes that Peabody's disclosures denied its ability to reasonably predict the future impact of any climate change regulation on its business, while the company and its consultants projected severe impacts from certain potential regulations that would materially affect Peabody. The NYAG concludes that these disclosures violated provisions of the Martin Act (Article 23-A of the General Business Law) and violated § 63(12) of the Executive Law.

23. The NYAG concludes that Peabody's statements concerning the IEA's projections for the future of coal, both in SEC filings and in other communications, were incomplete and omitted less favorable IEA projections for future coal demand. The NYAG concludes that these statements and omissions violated provisions of the Martin Act (Article 23-A of the General Business Law) and violated § 63(12) of the Executive Law.

AGREEMENT

WHEREAS, Peabody neither admits nor denies the NYAG's Findings;

WHEREAS, NYAG is willing to accept the terms of this Assurance pursuant to Executive Law § 63(15) and to discontinue its Investigation; and

WHEREAS, the Parties each agree that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties that:

1. **Relief.**

a. Peabody agrees that its next regularly filed quarterly report with the Securities and Exchange Commission (the "SEC"), Form 10-Q, on or about November 9, 2015, shall contain the disclosures contained in Exhibit A attached hereto.

b. Peabody agrees that any future SEC filings, or any future communications with shareholders, the financial industry, investors, the general public, and others (collectively, the "Public Communications") will not contain any disclosure inconsistent with Sections 1(c) – (d) of this Assurance or Exhibit A attached hereto.

c. Peabody shall not represent in any Public Communication that it cannot reasonably project or predict the range of impacts that any future laws, regulations, and policies relating to climate change or coal would have on Peabody's markets, operations, financial condition or cash flow. Any statement by Peabody concerning the difficulty of making particular projections or predictions shall be accompanied by a statement that Peabody has made projections of the impact of scenarios involving certain potential laws and regulations relating to climate change or coal, which could result in materially adverse effects on its markets, operations, financial condition or cash flow.

d. Unless or until such time as IEA changes its definition of the scenarios used in its World Energy Outlook report (in which case Peabody shall correctly and in good faith describe IEA's analysis), any further citation to, any use of data or information from, or any other use of, the IEA's Current Policies Scenario by Peabody in any Public Communication shall expressly state (1) that the IEA does not endorse any particular scenario; (2) that the New Policies Scenario is the central scenario in the IEA's World Energy Outlook; (3) that the New Policies Scenario incorporates policies and measures affecting energy markets which have already been adopted, as well as other relevant commitments that have been announced by governments of the world but where the precise implementation measures have yet to be fully defined; (4) that the Current Policies Scenario is the most favorable IEA scenario for coal, incorporating only those policies and measures affecting energy markets that were formally enacted; it assumes that governments do not implement any recent commitments that have yet to be backed-up by legislation and will not introduce other new policies bearing on the energy sector in the future; and (5) that while the Current Policies Scenario presents the most favorable scenario for coal, IEA's 450 Scenario presents the most unfavorable IEA scenario for coal; the 450 Scenario incorporates a variety of government policies compatible with limiting the long-term increase in the average global temperature to two degrees Celsius, the limit recognized by nations of the world in the 2010 United Nations Climate

Change Conference in Cancun, Mexico. Moreover, whenever Peabody shall cite a statistic or projection of the IEA under the Current Policies Scenario, it shall cite the corresponding statistic or projection under the New Policies Scenario and 450 Scenario. Any further disclosure made pursuant to this section must be made in the same character size and font, and at the same location in the filing or public communication, as disclosures by Peabody concerning the Current Policies Scenario.

2. **Tolling; No Bar**. If the Assurance is breached, Peabody agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is breached, Peabody expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude NYAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Peabody, or from using any statements, documents or other materials produced or provided by Peabody prior to or after the date of this Assurance.

3. **Acceptance of Assurance**. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding.

4. **Jurisdiction and Governing Law**. Peabody acknowledges the jurisdiction of the NYAG to enter into this Assurance, without prejudice to any rights or defenses

Peabody may have to contest those Findings in any future proceeding; however, pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by NYAG. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Assurance is the Supreme Court of the State of New York for New York County. This Assurance is governed by the laws of the State of New York.

5. **Negotiation in Good Faith**. The terms of this Assurance were negotiated in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

6. **Binding on Successors**. This Assurance is binding on Peabody's successors, transferees, heirs, and assigns.

7. **Effective Date**. This Assurance is effective on the date indicated in the preamble to this agreement (the "Effective Date"). Facsimiles of signatures and signatures provided by portable document format (".PDF") shall constitute acceptable, binding signatures for purposes of this Assurance.

8. **Communications**. All communications from any party concerning the subject matter of this Assurance shall be addressed as follows:

   a. If to the State of New York:

   Philip Bein
   Assistant Attorney General
   Office of the New York Attorney General
   Environmental Protection Bureau
   The Capital
   Albany, New York 12224
   (518) 776-2413

Philip.Bein@ag.ny.gov

-and-

Steven Glassman
Senior Enforcement Counsel
Office of the New York Attorney General
Economic Justice Division
120 Broadway
New York, New York 10271
(212) 416-6542
Steven.Glassman@ag.ny.gov

b. If to Peabody:

A. Verona Dorch
Executive Vice President
Chief Legal Officer
Peabody Energy Corporation
701 Market Street
St. Louis, Missouri 63101
(314) 342-3400
vdorch@peabodyenergy.com

-and-

David B. Anders
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
(212) 403-1307
DBAnders@wlrk.com

9. **Compliance with Other Disclosure Obligations.** In the event that Peabody reasonably believes that the performance of its disclosure obligations under any provision of this Assurance would conflict with any federal law, regulation, or binding directive that may be enacted or adopted after the date of this Assurance such that compliance with both this Assurance and such provision of federal law, regulation or binding directive would be impossible without violating such law, regulation, or directive, Peabody shall notify the Attorney General promptly after the effective date of such law, regulation or binding directive, and the parties shall meet and confer at their earliest convenience to attempt to resolve such conflict.

10. **Additional Terms**.

a. This Assurance shall be deemed to have been drafted by all Parties and shall not, therefore, be construed against any Party for that reason in any dispute.

b. This Assurance constitutes the complete agreement between the Parties. This Assurance may not be amended except by written consent of the Parties.

c. The undersigned counsel represent and warrant that they are fully authorized to execute this Assurance on behalf of the persons and entities indicated below.

d. This Assurance may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Assurance.

Dated: November 8, 2015
New York, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: Philip Bein /MS

Philip Bein
Assistant Attorney General
Office of the New York Attorney General
Social Justice Division
Environmental Protection Bureau
The Capital
Albany, New York 12224
(518) 776-2413

By: Steven Glassman /MS

Steven Glassman
Senior Enforcement Counsel
Economic Justice Division
David Castleman
Assistant Attorney General
Investor Protection Bureau
Office of the New York Attorney General
120 Broadway
New York, New York 10271
(212) 416-6542

Counsel for The People of the State of New York

Dated: NOVEMBER 8, 2015
New York, New York

PEABODY ENERGY CORPORATION

BY: A. Verona Dorch

A. Verona Dorch
Executive Vice President
Chief Legal Officer
Peabody Energy Corporation
701 Market Street
St. Louis, Missouri 63101
(314) 342-3400

BY: D B. A

David B. Anders
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
(212) 403-1307

Counsel for Peabody Energy Corporation

Exhibit A

Contingencies Section

Other
In June 2007, the New York Office of the Attorney General (NYAG) served a letter and subpoena on the Company, seeking information and documents relating to the Company's disclosure to investors of risks associated with possible climate change and related legislation and regulations. The Company believes it has made full and proper disclosure of these potential risks. In late 2013, the NYAG submitted a letter to the Company requesting additional information and documents. On November 8, 2015, the NYAG and the Company entered into an agreement pursuant to which the Company agreed to make certain disclosures concerning the issues raised by the NYAG.

MD&A

Long-Term Outlook

While a well-supplied market and declining seaborne coal prices have tempered near-term expectations, our long-term outlook for international coal market segments is more positive based on anticipated growth in Asia. We project that new global coal-fueled generation, as well as industrialization and urbanization trends in China and India, will drive aggregate global thermal and metallurgical coal demand growth. Seaborne supply growth is expected to be constrained during that period due to limited capital investment in response to the current pricing environment. In the U.S., we expect natural gas prices to rise modestly over the next several years as export infrastructure is completed, on-shore demand rises and production growth is constrained due to the amount of natural gas production that is associated with oil and natural gas liquids pricing.

Our long-term plans also include advancing projects to expand our presence in Asia, some of which include sourcing third-party coal and partnerships to utilize our mining experience for joint mine development. We also continue to support clean coal technology development and Btu Conversion projects that are designed to expand the uses of coal.

The International Energy Agency (IEA) regularly makes projections about world coal demand based on various future scenarios for energy development. The scenarios used by the IEA as the bases for these projections vary by time and publication. Further details are available to the public directly from the IEA, including through the IEA's website: http://www.iea.org/publications/scenariosandprojections/. Information contained on or accessible through the IEA's website is not incorporated by reference into this Quarterly Report on Form 10-Q.

The "New Policies Scenario" is IEA's central scenario in its World Energy Outlook report (WEO). It incorporates policies and measures affecting energy markets that have already been adopted, as well as other relevant commitments and plans that have been announced by countries, including national pledges to reduce emissions and plans to phase-out fossil fuel subsidies, even if the measures to implement these commitments have yet to be identified or announced.

Different scenarios used by the IEA in its projections of energy demand have different implications for coal usage. Projected coal usage is highest in the "Current Policies Scenario" and lowest in the "450 Scenario." The Current Policies Scenario (previously called the "Reference Scenario") assumes no changes in policies from the mid-point of the year of publication, thus considering policies and measures that have already been formally enacted, but assuming that governments do not implement any commitments that have yet to be finalized by legislation and will not introduce any new policies affecting coal usage.

Finally, the 450 Scenario assumes implementation of a set of government policies consistent with a goal of limiting long-term increases in the average global temperature to two degrees Celsius, a limit determined by various governments and non-governmental organizations and recognized by nations of the world in the 2010 United Nations Climate Change Conference in Cancun, Mexico.

The Company has historically emphasized the Current Policies Scenario in its strategic planning processes and its investor communications. We believe that the Current Policies Scenario is the most appropriate for our investors to consider because we believe that it has proven to be the scenario that has yielded the most

accurate projections of coal usage. Although the New Policies Scenario is the IEA's central scenario, the IEA does not endorse any particular scenario as being a more probable forecast than the others.

The IEA estimates in its WEO 2014, Current Policies Scenario, that worldwide primary energy demand will grow 50% (37% under the New Policies Scenario) between 2012 and 2040. Demand for coal during this time period is projected to rise 51% (15% under the New Policies Scenario)

Under its Current Policies Scenario, the IEA expects coal to retain its prominent presence as a fuel for the power sector worldwide. Coal's share of the power generation mix was 41% in 2012. By 2040, the IEA's Current Policies Scenario estimates that coal's fuel share of global power generation will be 40% as it continues to have the largest share of worldwide electric power production (31%, slightly less than the share attributable to hydro and renewables, under the New Policies Scenario). Under the Current Policies Scenario, the IEA also projects that global natural gas-fueled electricity generation will have a compound annual growth rate of 2.7% from 2012-2040 (2.2% annual growth rate under the New Policies Scenario). The total amount of electricity generated from natural gas is expected to be approximately 40% below the total for coal (approximately 20% below the total for coal under the New Policies Scenario), even in 2040. Hydro and other renewables are projected to comprise a combined 25% of the 2040 fuel mix (33% under the New Policies Scenario) versus 21% in 2012. Electricity generation from nuclear power is expected to fall from 11% to 9% (while growing from 11% to 12% under the New Policies Scenario) between 2012 and 2040.

As noted above, projected coal usage is highest under the Current Policies Scenario. Future energy use consistent with the 450 Scenario would likely yield results materially lower than the projections noted above under the Current Policies Scenario or the New Policies Scenario.

Enactment of laws or passage of regulations regarding emissions from the combustion of coal by the U.S., some of its states or other countries, or other actions to limit such emissions (including measures incorporated into the New Policies and 450 Scenarios discussed above), could result in electricity generators switching from coal to other fuel sources or in coal-fueled power plant closures. Further, policies limiting available financing for the development of new coal-fueled power plants could adversely impact global coal demand in the future. The potential financial impact on us of future laws, regulations or other policies will depend upon the degree to which any such laws, regulations or other policies force electricity generators to diminish their reliance on coal as a fuel source. That, in turn, will depend on a number of factors, including the specific requirements imposed by any such laws, regulations or other policies, the time periods over which those laws, regulations or other policies would be phased in, the state of commercial development and deployment of carbon capture and storage technologies and the alternative markets for coal.

From time to time, we attempt to analyze the potential impact on the Company of as-yet-unadopted, potential laws, regulations and policies. Such analyses require that we make significant assumptions as to the specific provisions of such potential laws, regulations and policies. These analyses sometimes show that certain potential laws, regulations and policies, if implemented in the manner assumed by the analyses, could result in material adverse impacts on our operations, financial condition or cash flow, in view of the significant uncertainty surrounding each of these potential laws, regulations and policies. We do not believe that such analyses reasonably predict the quantitative impact that future laws, regulations or other policies may have on our results of operations, financial condition or cash flows.

As noted above, on August 3, 2015, the EPA announced the final rules (which were published in the Federal Register on October 23, 2015) for regulating carbon dioxide emissions from existing fossil fuel-fired EGUs. This ruling is intended to begin reducing carbon dioxide emissions by 2022 and, by 2030, reach a reduction of 32% from 2005 baseline emissions. The EPA expects the rule to have a significant impact on demand for coal-fired electricity generation in the U.S. and, depending upon the implementation methods adopted by the various states, we believe the rule could have a material adverse effect on our results of operations, financial condition and cash flows in future periods.

Exhibit A

Risk Factor

Concerns about the environmental impacts of coal combustion, including perceived impacts on global climate issues, are resulting in increased regulation of coal combustion in many jurisdictions, unfavorable lending policies by government-backed lending institutions and development banks toward the financing of new overseas coal-fueled power plants and divestment efforts affecting the investment community, which could significantly affect demand for our products or our securities.

Global climate issues continue to attract public and scientific attention. Numerous reports, such as the Fourth (and, more recently, the Fifth) Assessment Report of the Intergovernmental Panel on Climate Change, have also engendered concern about the impacts of human activity, especially fossil fuel combustion, on global climate issues. In turn, increasing government attention is being paid to global climate issues and to emissions of what are commonly referred to as greenhouse gases, including emissions of carbon dioxide from coal combustion by power plants.

Enactment of laws or passage of regulations regarding emissions from the combustion of coal by the U.S., some of its states or other countries, or other actions to limit such emissions, could result in electricity generators switching from coal to other fuel sources or coal-fueled power plant closures. Further, policies limiting available financing for the development of new coal-fueled power plants could adversely impact the global demand for coal in the future. The potential financial impact on us of future laws, regulations or other policies will depend upon the degree to which any such laws or regulations force electricity generators to diminish their reliance on coal as a fuel source. That, in turn, will depend on a number of factors, including the specific requirements imposed by any such laws, regulations or other policies, the time periods over which those laws, regulations or other policies would be phased in, the state of commercial development and deployment of CCS technologies and the alternative markets for coal. From time to time, we attempt to analyze the potential impact on the Company of as-yet-unadopted, potential laws, regulations and policies. Such analyses require that we make significant assumptions as to the specific provisions of such potential laws, regulations and policies. These analyses sometimes show that certain potential laws, regulations and policies, if implemented in the manner assumed by the analyses, could result in material adverse impacts on our operations, financial condition or cash flow, in view of the significant uncertainty surrounding each of these potential laws, regulations and policies. We do not believe that such analyses reasonably predict the quantitative impact that future laws, regulations or other policies may have on our results of operations, financial condition or cash flows.

There have also been efforts in recent years affecting the investment community, including investment advisors, sovereign wealth funds, public pension funds, universities and other groups, promoting the divestment of fossil fuel equities and also pressuring lenders to limit funding to companies engaged in the extraction of fossil fuel reserves. The impact of such efforts may adversely affect the demand for and price of securities issued by us, and impact our access to the capital and financial markets.

Exhibit 28

Published on *InsideClimate News* (https://insideclimatenews.org)

Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago

Top executives were warned of possible catastrophe from greenhouse effect, then led efforts to block solutions.

By Neela Banerjee, Lisa Song and David Hasemyer

Sep 16, 2015

Exxon's Richard Werthamer (right) and Edward Garvey (left) are aboard the company's Esso Atlantic tanker working on a project to measure the carbon dioxide levels in the ocean and atmosphere. The project ran from 1979 to 1982. (Credit: Richard Werthamer)

At a meeting in Exxon Corporation's headquarters, a senior company scientist named James F. Black addressed an audience of powerful oilmen. Speaking without a text as he flipped through detailed slides, Black delivered a sobering message: carbon dioxide from the world's use of fossil fuels would warm the planet and could eventually endanger humanity.

"In the first place, there is general scientific agreement that the most likely manner in which mankind is influencing the global climate is through carbon dioxide release from the burning of fossil fuels," Black [1] told Exxon's Management Committee, according to a written version he recorded later.

It was July 1977 when Exxon's leaders received this blunt assessment, well before most of the world had heard of the looming climate crisis.

A year later, Black, a top technical expert in Exxon's Research & Engineering division, took an updated version of his presentation to a broader audience. He warned Exxon scientists and managers that independent researchers estimated a doubling of the carbon dioxide (CO_2) concentration in the atmosphere would increase average global temperatures by 2 to 3 degrees Celsius (4 to 5 degrees Fahrenheit), and as much as 10 degrees Celsius (18 degrees Fahrenheit) at the poles. Rainfall might get heavier in some regions, and other places might turn to desert.

"Some countries would benefit but others would have their agricultural output reduced or destroyed," Black said, in the written summary of his 1978 talk.

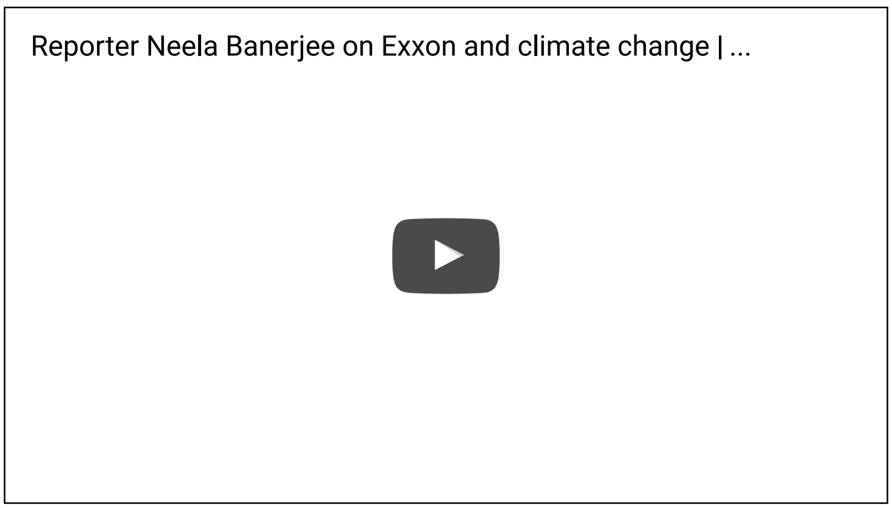
His presentations reflected uncertainty running through scientific circles about the details of climate change, such as the role the oceans played in absorbing emissions. Still, Black estimated quick action was needed. "Present thinking," he wrote in the 1978 summary, "holds that man has a time window of five to ten years before the need for hard decisions regarding changes in energy strategies might become critical."

Exxon responded swiftly. Within months the company launched its own extraordinary research into carbon dioxide from fossil fuels and its impact on the earth. Exxon's ambitious program included both empirical CO_2 sampling and rigorous climate modeling. It assembled a brain trust that would spend more than a decade deepening the company's understanding of an environmental problem that posed an existential threat to the oil business.

Then, toward the end of the 1980s, Exxon curtailed its carbon dioxide research [2]. In the decades that followed, Exxon worked instead at the forefront of climate denial. It put its muscle behind efforts to manufacture doubt about the reality of global warming its own scientists had once confirmed. It lobbied to block federal and international action to control greenhouse gas emissions. It helped to erect a vast edifice of misinformation that stands to this day.

This untold chapter in Exxon's history, when one of the world's largest energy companies worked to understand the damage caused by fossil fuels, stems from an eight-month investigation by InsideClimate News. ICN's reporters interviewed former Exxon employees, scientists, and federal officials, and consulted hundreds of pages of internal Exxon documents, many of them written between 1977 and 1986, during the heyday of Exxon's innovative climate research program. ICN combed through thousands of documents from archives including those held at the University of Texas-Austin, the Massachusetts Institute of Technology and the American Association for the Advancement of Science.

The documents record budget requests, research priorities, and debates over findings, and reveal the arc of Exxon's internal attitudes and work on climate and how much attention the results received.



Of particular significance was a project launched in August 1979, when the company outfitted a supertanker with custom-made instruments. The project's mission was to sample carbon dioxide in the air and ocean along a route from the Gulf of Mexico to the Persian Gulf.

In 1980, Exxon assembled a team of climate modelers who investigated fundamental questions about the climate's sensitivity to the buildup of carbon dioxide in the air. Working with university scientists and the U.S. Department of Energy, Exxon strove to be on the cutting edge of inquiry into what was then called the greenhouse effect.

Exxon's early determination to understand rising carbon dioxide levels grew out of a corporate culture of farsightedness, former employees said. They described a company that continuously examined risks to its bottom line, including environmental factors. In the 1970s, Exxon modeled its research division after Bell Labs, staffing it with highly accomplished scientists and engineers.

In written responses to questions about the history of its research, ExxonMobil spokesman Richard D. Keil said that "from the time that climate change first emerged as a topic for scientific study and analysis in the late 1970s, ExxonMobil has committed itself to scientific, fact-based analysis of this important issue."

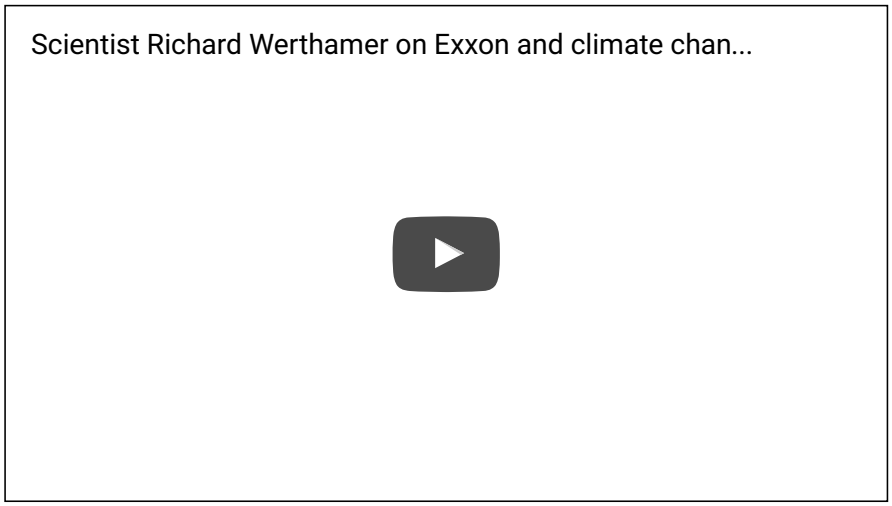
"At all times," he said, "the opinions and conclusions of our scientists and researchers on this topic have been solidly within the mainstream of the consensus scientific opinion of the day and our work has been guided by an overarching principle to follow where the science leads. The risk of climate change is real and warrants action."

At the outset of its climate investigations almost four decades ago, many Exxon executives, middle managers and scientists armed themselves with a sense of urgency and mission.

One manager at Exxon Research, Harold N. Weinberg [3], shared his "grandiose thoughts" about Exxon's potential role in climate research in a March 1978 internal company memorandum that read: "This may be the kind of opportunity that we are looking for to have Exxon technology, management and leadership resources put into the context of a project aimed at benefitting mankind."

His sentiments were echoed by Henry Shaw [4], the company's leading carbon dioxide research effort.

"Exxon must develop a credible scientific team that can critically evaluate the information generated on the subject and be able to carry bad news [5], if any, to the corporation," Shaw wrote to his boss Edward E. David [6], the president of Exxon Research and Engineering in 1978. "This team must be recognized for its excellence in the scientific community, the government, and internally by Exxon management."



Irreversible and Catastrophic

Exxon budgeted more than $1 million over three years for the tanker project to measure how quickly the oceans were taking in CO_2. It was a small fraction of Exxon Research's annual $300 million budget, but the question the scientists tackled was one of the biggest uncertainties in climate science: how quickly could the deep oceans absorb atmospheric CO_2? If Exxon could pinpoint the answer, it would know how long it had before CO_2 accumulation in the atmosphere could force a transition away from fossil fuels.

Exxon also hired scientists and mathematicians to develop better climate models and publish research results in peer-reviewed journals. By 1982, the company's own scientists, collaborating with outside researchers, created rigorous climate models – computer programs that simulate the workings of the climate to assess the impact of emissions on global temperatures. They confirmed an emerging scientific consensus that warming could be even worse than Black had warned five years earlier.

Between 1979 and 1982, Exxon researchers sampled carbon dioxide levels aboard the company's Esso Atlantic tanker (shown here).

Exxon's research laid the groundwork for a 1982 corporate primer [7] on carbon dioxide and climate change prepared by its environmental affairs office. Marked "not to be distributed externally," it contained information that "has been given wide circulation to Exxon management." In it, the company recognized, despite the many lingering unknowns, that heading off global warming "would require major reductions in fossil fuel combustion."

Unless that happened, "there are some potentially catastrophic events that must be considered," the primer said, citing independent experts. "Once the effects are measurable, they might not be reversible."

The Certainty of Uncertainty

Like others in the scientific community, Exxon researchers acknowledged the uncertainties surrounding many aspects of climate science, especially in the area of forecasting models. But they saw those uncertainties as questions they wanted to address, not an excuse to dismiss what was increasingly understood.

"Models are controversial," Roger Cohen [8], head of theoretical sciences at Exxon Corporate Research Laboratories, and his colleague, Richard Werthamer, senior technology advisor at Exxon Corporation, wrote in a May 1980 status report on Exxon's climate modeling program. "Therefore, there are research opportunities for us."

When Exxon's researchers confirmed information the company might find troubling, they did not sweep it under the rug.

"Over the past several years a consensus scientific opinion has emerged," Cohen wrote in September 1982 reporting on Exxon's own analysis of climate models. It was that a doubling of the carbon dioxide blanket in the atmosphere would produce average global warming of 3 degrees Celsius, plus or minus 1.5 degrees C (equal to 5 degrees Fahrenheit plus or minus 1.7 degrees F).

"There is unanimous agreement in the scientific community that a temperature increase of this magnitude would bring about significant changes in the earth's climate," he wrote, "including rainfall distribution and alterations in the biosphere."

He warned that publication of the company's conclusions might attract media attention because of the "connection between Exxon's major business and the role of fossil fuel combustion in contributing to the increase of atmospheric CO_2."

Nevertheless, he recommended publication.

Our "ethical responsibility is to permit the publication of our research in the scientific literature," Cohen wrote. "Indeed, to do otherwise would be a breach of Exxon's public position and ethical credo on honesty and integrity."

Exxon followed his advice. Between 1983 and 1984, its researchers published their results in at least three peer-reviewed papers in *Journal of the Atmospheric Sciences* and an American Geophysical Union monograph.

David, the head of Exxon Research, told a global warming conference [9] financed by Exxon in October 1982 that "few people doubt that the world has entered an energy transition away from dependence upon fossil fuels and toward some mix of renewable resources that will not pose problems of CO_2 accumulation." The only question, he said, was how fast this would happen.

But the challenge did not daunt him. "I'm generally upbeat about the chances of coming through this most adventurous of all human experiments with the ecosystem," David said.

Exxon considered itself unique among corporations for its carbon dioxide and climate research. The company boasted in a January 1981 report, "Scoping Study on CO_2," that no other company appeared to be conducting similar in-house research into carbon dioxide, and it swiftly gained a reputation among outsiders for genuine expertise.

"We are very pleased with Exxon's research intentions related to the CO_2 question. This represents very responsible action, which we hope will serve as a model for research contributions from the corporate sector," said David Slade, manager of the federal government's carbon dioxide research program at the Energy Department, in a May 1979 letter to Shaw. "This is truly a national and international service."

Business Imperatives

In the early 1980s Exxon researchers often repeated that unbiased science would give it legitimacy in helping shape climate-related laws that would affect its profitability.

Still, corporate executives remained cautious about what they told Exxon's shareholders about global warming and the role petroleum played in causing it, a review of federal filings shows. The company did not elaborate on the carbon problem in annual reports filed with securities regulators during the height of its CO_2 research.

Nor did it mention in those filings that concern over CO_2 was beginning to influence business decisions it was facing.

Throughout the 1980s, the company was worried about developing an enormous gas field off the coast of Indonesia because of the vast amount of CO_2 the unusual reservoir would release.

Exxon was also concerned about reports that synthetic oil made from coal, tar sands and oil shales could significantly boost CO_2 emissions. The company was banking on synfuels to meet growing demand for energy in the future, in a world it believed was running out of conventional oil.

In the mid-1980s, after an unexpected oil glut caused prices to collapse, Exxon cut its staff deeply to save money, including many working on climate. But the climate change problem remained, and it was becoming a more prominent part of the political landscape.

"Global Warming Has Begun, Expert Tells Senate," declared the headline of a June 1988 New York Times article describing the Congressional testimony of NASA's James Hansen, a leading climate expert. Hansen's statements compelled Sen. Tim Wirth (D-Colo.) to declare during the hearing that "Congress must begin to consider how we are going to slow or halt that warming trend."

With alarm bells suddenly ringing, Exxon started financing efforts to amplify doubt about the state of climate science.

Exxon helped to found and lead the Global Climate Coalition, an alliance of some of the world's largest companies seeking to halt government efforts to curb fossil fuel emissions. Exxon used the American Petroleum Institute, right-wing think tanks, campaign contributions and its own lobbying to push a narrative that climate science was too uncertain to necessitate cuts in fossil fuel emissions.

As the international community moved in 1997 to take a first step in curbing emissions with the Kyoto Protocol, Exxon's chairman and CEO Lee Raymond [10] argued to stop it.

"Let's agree there's a lot we really don't know about how climate will change in the 21st century and beyond," Raymond said in his speech before the World Petroleum Congress in Beijing in October 1997.

"We need to understand the issue better, and fortunately, we have time," he said. "It is highly unlikely that the temperature in the middle of the next century will be significantly affected whether policies are enacted now or 20 years from now."

Over the years, several Exxon scientists who had confirmed the climate consensus during its early research, including Cohen and David, took Raymond's side, publishing views that ran contrary to the scientific mainstream.

Paying the Price

Exxon's about-face on climate change earned the scorn of the scientific establishment it had once courted.

In 2006, the Royal Society, the United Kingdom's science academy, sent a harsh letter to Exxon accusing it of being "inaccurate and misleading" on the question of climate uncertainty. Bob Ward, the Academy's senior manager for policy communication, demanded that Exxon stop giving money to dozens of organizations he said were actively distorting the science.

In 2008, under mounting pressure from activist shareholders, the company announced it would end support for some prominent groups such as those Ward had identified.

Still, the millions of dollars Exxon had spent since the 1990s on climate change deniers had long surpassed what it had once invested in its path-breaking climate science aboard the *Esso Atlantic.*

"They spent so much money and they were the only company that did this kind of research as far as I know," Edward Garvey [11], who was a key researcher on Exxon's oil tanker project, said in a recent interview with InsideClimate News and Frontline. "That was an opportunity not just to get a place at the table, but to lead, in many respects, some of the discussion. And the fact that they chose not to do that into the future is a sad point."

Michael Mann, director of the Earth System Science Center at Pennsylvania State University, who has been a frequent target of climate deniers, said that inaction, just like actions, have consequences. When he recently spoke to InsideClimate News, he was unaware of this chapter in Exxon's history.

"All it would've taken is for one prominent fossil fuel CEO to know this was about more than just shareholder profits, and a question about our legacy," he said. "But now because of the cost of inaction—what I call the 'procrastination penalty'—we face a far more uphill battle."

Click here for Part II [12], an accounting of Exxon's early climate research; Part III [13], a review of Exxon's climate modeling efforts; Part IV [14], a dive into Exxon's Natuna gas field project; Part V [15], a look at Exxon's push for synfuels; Part VI [16], an accounting of Exxon's emphasis on climate science uncertainty.

ICN staff members Zahra Hirji, Paul Horn, Naveena Sadasivam, Sabrina Shankman and Alexander Wood also contributed to this report.

Published Under:
Exxon: The Road Not Taken [17]
Business and Accountability [18]
Exxon: The Road Not Taken [19]

Source URL: https://insideclimatenews.org/news/15092015/Exxons-own-research-confirmed-fossil-fuels-role-in-global-warming

Links
[1] http://insideclimatenews.org/news/15092015/james-black
[2]
http://insideclimatenews.org/sites/default/files/documents/Exxon%20Review%20of%20Climate%20Research%20Program%20%281981%29.pdf
[3] http://insideclimatenews.org/news/15092015/harold-weinberg
[4] http://insideclimatenews.org/news/15092015/henry-shaw

[5] http://insideclimatenews.org/sites/default/files/documents/1977%20Exxon%20Presentation%20to%20Management%20Committee.pdf
[6] http://insideclimatenews.org/news/15092015/edward-david
[7] http://insideclimatenews.org/sites/default/files/documents/1982%20Exxon%20Primer%20on%20CO2%20Greenhouse%20Effect.pdf
[8] http://insideclimatenews.org/news/15092015/roger-cohen
[9] http://sites.agu.org/publications/files/2015/09/ch1.pdf
[10] http://insideclimatenews.org/news/15092015/lee-raymond
[11] http://insideclimatenews.org/news/15092015/edward-garvey
[12] http://insideclimatenews.org/news/16092015/exxon-believed-deep-dive-into-climate-research-would-protect-its-business
[13] http://insideclimatenews.org/news/18092015/exxon-confirmed-global-warming-consensus-in-1982-with-in-house-climate-models
[14] http://insideclimatenews.org/news/08102015/Exxons-Business-Ambition-Collided-with-Climate-Change-Under-a-Distant-Sea
[15] http://insideclimatenews.org/news/08102015/highlighting-allure-synfuels-exxon-played-down-climate-risks
[16] http://insideclimatenews.org/news/22102015/Exxon-Sowed-Doubt-about-Climate-Science-for-Decades-by-Stressing-Uncertainty
[17] https://insideclimatenews.org/content/Exxon-The-Road-Not-Taken
[18] https://insideclimatenews.org/topics/business-and-accountability-0
[19] https://insideclimatenews.org/tags/exxon-road-not-taken

Exhibit 29

Published on *InsideClimate News* (https://insideclimatenews.org)

Exxon Believed Deep Dive Into Climate Research Would Protect Its Business

Outfitting its biggest supertanker to measure the ocean's absorption of carbon dioxide was a crown jewel in Exxon's research program.

Neela Banerjee, Lisa Song, David Hasemyer

Sep 17, 2015

Researchers conducted Exxon's first climate-related project aboard the Esso Atlantic tanker, pictured here, between 1979 and 1982.

In 1981, 12-year-old Laura Shaw won her seventh-grade science fair at the Solomon Schechter Day School in Cranford, N.J. with a project on the greenhouse effect.

For her experiment, Laura used two souvenir miniatures of the Washington Monument, each with a thermometer attached to one side. She placed them in glass bowls and covered one with plastic wrap – her model of how a blanket of carbon dioxide traps the reflected heat of the sun and warms the Earth. When she turned a lamp on them, the thermometer in the plastic-covered bowl showed a higher temperature than the one in the uncovered bowl.

If Laura and her two younger siblings were unusually well-versed in the emerging science of the greenhouse effect, as global warming was known, it was because their father, Henry Shaw [1], had been busily tracking it for Exxon Corporation.

Henry Shaw, a former Exxon scientist, and his son David Shaw. (Credit: Family of Henry Shaw)

"I knew what the greenhouse effect was before I knew what an actual greenhouse was," David Shaw, Henry's son, said in a recent interview.

Henry Shaw, who died in 2003, was one of the Exxon scientists engaged in an ambitious quest to comprehend the potentially devastating effects that carbon dioxide emissions could have on the climate. From the late 1970s to the mid-80s, Exxon scientists worked at the cutting edge of climate change research, documents examined by InsideClimate News show. This history of that research emerged from an eight-month investigation by InsideClimate News.

Exxon documents show that top corporate managers were aware of their scientists' early conclusions about carbon dioxide's impact on the climate. They reveal that scientists warned management that policy changes to address climate change might affect profitability. After a decade of frank internal discussions on global warming and conducting unbiased studies on it, Exxon changed direction in 1989 and spent more than 20 years discrediting the research its own scientists had once confirmed.

After reading the first chapter of InsideClimate News' series on Exxon's carbon dioxide research, the company declined to answer specific questions. In an email, Exxon spokesman Richard D. Keil said he would no longer respond to inquiries from InsideClimate News, and added, "ExxonMobil scientists have been involved in climate research and related policy analysis for more than 30 years, yielding more than 50 papers in peer-reviewed publications [2]."

Building the Team

Henry Shaw was part of an accomplished group at Exxon tasked with studying the greenhouse effect. In the mid-70s, documents show that Shaw was responsible for seeking out new projects that were "of national significance," and that could win federal funding. Others included Edward E. David, Jr. [3], a former science advisor to President Richard Nixon, and James F. Black [4], who worked on hydrogen bomb research at Oak Ridge National Laboratory in the 1950s.

Black, who died in 1988, was among the first Exxon scientists to become acquainted with the greenhouse effect. Esso, as Exxon was known when he started, allowed him to pursue personal scientific interests. Black was fascinated by the idea of intentionally modifying weather to improve agriculture in arid countries, said his daughter, Claudia Black-Kalinsky.

"He believed that big science could save the world," she said. In the early 1960s, Black helped draft a National Academy of Sciences report on weather and climate modification. Published in 1966, it said the buildup of carbon dioxide in the atmosphere [5] "agrees quite well with the rate of its production by man's consumption of fossil fuels."

In the same period, a report for President Lyndon Johnson from the President's Science Advisory Council in 1965 said the burning of fossil fuels "may be sufficient to produce measurable and perhaps marked changes in climate" by the year 2000.

By 1977, Black had become a top technical expert at Exxon Research & Engineering, a research hub based in Linden, N.J., and a science advisor to Exxon's top management. That year he made a presentation [6] to the company's leading executives warning that carbon dioxide accumulating in the upper atmosphere would warm the planet and if the CO_2 concentration continued to rise, it could harm the environment and humankind.

"The management committee consisted of the top level senior managers at Exxon. The chairman, the president, the senior vice presidents, corporate wide," N. Richard Werthamer [7], who worked at Exxon Research, said in a recent interview with InsideClimate News. "The management committee only has a limited amount of time and they're only going to deal with issues that are of relevance to the corporation as a whole. They're not interested in science per se, they are interested in the implications, so it was very significant."

In those years, the evidence of global warming justified neither panic nor complacency. "A lively sense of urgency," is what the National Academy of Sciences (NAS) called for in a 1977 report [8] that contained a comprehensive survey of what was understood about global warming at that time.

The NAS report said that it would be understandable if the uncertainties of climate science elicited a cautious response from researchers and policymakers. But "if the decision is postponed until the impact of man-made climate changes has been felt, then, for all practical purposes, the die will already have been cast," it concluded.

Shaw heard these conclusions in October 1977 at a meeting in Atlanta organized by scientists and officials from the Carter administration who had formed a "study group on global environmental effects of carbon dioxide," he told Exxon colleagues in a memo two weeks later [9].

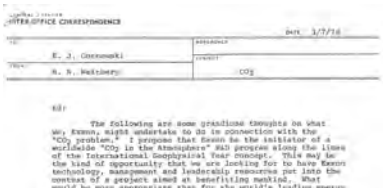
The NAS report had concluded that the climatic effects of rising carbon dioxide "may be the primary limiting factor on energy production from fossil fuels over the next few centuries," Shaw wrote, quoting the report's central conclusion almost verbatim.

Along with an awareness of the science, Shaw gained a sense of opportunity, Exxon documents show. The U.S. Energy Department, which had only been created in 1977 in response to a global oil shortage, was launching a research program into carbon dioxide's effects and planned to disburse about $9 million to research laboratories, Shaw learned.

At the time, two major uncertainties plagued climate science: how much of the CO_2 in the air came from fossil fuels as opposed to deforestation? And how quickly could the oceans absorb atmospheric CO_2? The scientists at the Atlanta meeting considered it crucial to investigate those questions immediately, Shaw wrote.

Both issues were vital to the oil industry's future. If deforestation played as great a role as fossil fuels in CO_2 accumulation, then responsibility for reducing carbon dioxide emissions would not fall entirely on the energy industry. If the oceans could slow the greenhouse effect by absorbing more CO_2, there would be time before the fossil fuel industry had to adjust.

In a memo to a colleague in March 1978 [10], one of Shaw's bosses, Harold N. Weinberg [11], wrote: "I propose that Exxon be the initiator of a worldwide 'CO_2 in the Atmosphere' R&D program...What would be more appropriate than for the world's leading energy company and leading oil company [to] take the lead in trying to define whether a long-term CO_2 problem really exists, and if so, what counter measures would be appropriate."



INTER-OFFICE CORRESPONDENCE

DATE 3/7/78

E. J. Cheremski

H. N. Weinberg — CO_2

The following are some grandiose thoughts on what we, Exxon, might undertake to do in connection with the "CO_2 problem." I propose that Exxon be the initiator of a worldwide "CO_2 in the Atmosphere" R&D program along the lines of the International Geophysical Year concept. This may be the kind of opportunity that we are looking for to have Exxon technology, management and leadership resources put into the context of a project aimed at benefitting mankind. What

But Weinberg's vision proved too ambitious for Exxon.

Exxon Research "considered an independent research program but concluded that the amount of effort required and the scope of disciplines involved made it impractical for a single institution to attack this problem alone," Walter R. Eckelmann, an executive at the Science & Technology Department at Exxon headquarters in New York wrote to a senior vice president.

Eckelmann's letter was one of many instances when Exxon's CO_2 research would reach beyond Exxon Research & Engineering in New Jersey and to executives at the company's New York headquarters, documents show.

Exxon's extensive research was driven by the threat accumulating CO_2 posed to the company's core business, according to participants and documents.

"My guess is they were looking for what might happen if we keep burning fossil fuels; what that would mean to them," said Taro Takahashi [12], an adjunct professor at Columbia University's Lamont-Doherty Earth Observatory. Takahashi, who spent his career studying climate change, collaborated on a research project with Exxon in the late 1970s to early 80s and used data from the research in several studies he later published in peer-reviewed journals.

The project he worked on—outfitting an ocean tanker to measure the ocean's absorption of carbon dioxide—was a crown jewel in Exxon's research program.

Groundbreaking Experiments

Bold research projects were not uncommon at Exxon, which in the 1970s considered gradually shifting from oil to become a diversified energy company. Through its research units, Exxon explored ways to encourage more efficient consumption of petroleum and a wide range of alternative fuels. After company scientist Elliot Berman found a way to slash the cost of making photovoltaic solar cells by 80 percent, Exxon's chairman Clifton Garvin publicized how he heated his family swimming pool with solar power to show support for energy diversification.

To nudge greater innovation, Garvin hired Edward E. David, Jr. in 1977 to run Exxon Research. David had spent two decades at Bell Labs, a leader in the blue-sky research that led to big leaps in technology, and eventually became its director of research. While serving as Nixon's science advisor from 1970-'73, White House staff taught him about climate science as part of a report on energy and electricity issues, one former staff member recalled.

At Exxon, David opened the door wide to studying carbon dioxide.

In a letter to David and 14 other Exxon Research executives in December 1978, Shaw spelled out why Exxon should take on carbon dioxide research—specifically, with the ambitious ocean-sampling initiative.

"The rationale for Exxon's involvement and commitment of funds and personnel is based on our need to assess the possible impact of the greenhouse effect on Exxon business," Shaw wrote. "Exxon must develop a credible scientific team that can critically evaluate the information generated on the subject and be able to carry bad news, if any, to the corporation.

"We see no better method to acquire the necessary reputation than by attacking one of the major uncertainties in the global CO_2 balance, i.e., the flux to the oceans and providing the necessary data."

Scientists knew the oceans had some ability to absorb CO_2 and potentially neutralize climate change. Any CO_2 that made its way from the atmosphere into the deep oceans—more than 50 to 100 feet below the surface—would be sequestered away for hundreds of years. But they also knew the rate of absorption was limited, and determining the exact rate was crucial for understanding the oceans' ability to delay the greenhouse effect.

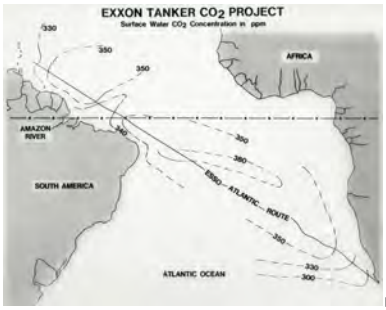
Exxon's Floating Lab

Exxon delved into the oceans' role by installing a state-of-the-art lab aboard the *Esso Atlantic,* one of the biggest supertankers of the time.

Exxon planned to gather atmospheric and oceanic CO_2 samples along the *Esso Atlantic's* route from the Gulf of Mexico to the Persian Gulf. If the sensors revealed a deep enough oceanic sink, or absorption, the fossil fuel industry might have more time before it had to make tough decisions about its role in warming the planet.

"We couldn't account for everything because the exchanges between the atmosphere and the oceans weren't fully understood," Edward Garvey, Shaw's main researcher on the tanker project, said in an interview. "Our goal was to complete the carbon cycle to understand where global carbon production would end up and then make forecasts of how the system would react in the future."

The experiment began on August 8, 1979, when Garvey oversaw the equipping of the *Esso Atlantic,* which was docked by the Lago Refinery in Aruba, an island in Dutch West Indies.



[13]

The route of Exxon's Esso Atlantic tanker.

Werthamer, Shaw's boss in 1980-81, said the project wouldn't have happened without Shaw's initiative.

"Henry Shaw was a very forceful guy, quiet, he didn't hit you over the head, but he presented his case in ways that made it hard to not agree with it," Werthamer said in a recent interview. "He had the political savvy to put it over and the technical savvy to make it happen."

While the company had the wherewithal to carry out the study on the oceans, it lacked the expertise. So Exxon recruited two experts, Wallace Broecker and Takahashi [14], his colleague at Columbia University's Lamont-Doherty Geological Observatory.

Takahashi said he made it clear that he and Broecker [15] would not compromise their scientific integrity. "The one condition that was not negotiable was we shall publish our results to the open public no matter the results," he said in an interview.

Exxon scientists and managers involved with the project agreed.

"The tanker project was intended to provide valid, legitimate, scientific data, unassailable hopefully, on key questions in atmospheric chemistry [of] CO_2 emissions," Werthamer said. "Henry's additional goal was to make Exxon a credible participant in that research and in the dialogue that would inevitably follow...He wanted Exxon to be respected as a valid player and have Exxon's opinions solicited, and participate in discussions on policy, rather than have the issue suddenly dumped with Exxon's back turned."

Responding to ICN's questions about the tanker research last week, Exxon spokesman Richard Keil said it "was actually aimed at increasing understanding of the marine carbon cycle – it had nothing to do with CO_2 emissions."

But from the beginning of the research, documents show, its participants described it differently.

In a memo to Harold Weinberg on July 3, 1979, Shaw described in detail the tanker's route and its instruments, explaining that "this will provide information on the possible growth of CO_2 in the atmosphere."

In a November 1979 memo [16] to Weinberg, he wrote, "It behooves us to start a very aggressive defensive program in the indicated areas of atmospheric science and climate because there is a good probability that legislation affecting our business will be passed."

Depending on its findings, the research might provide an escape valve from the carbon problem, or point to some new direction in energy.

The research "could well influence Exxon's view about the long-term attractiveness of coal and synthetics relative to nuclear and solar energy" David wrote in a November 1979 letter to senior vice president George T. Piercy [17].

Exxon's enthusiasm for the project flagged in the early '80s when federal funds fell through. Exxon Research cancelled the tanker project in 1982, but not before Garvey, Shaw and other company engineers published an initial paper in a highly specialized journal [18] on the project's methodology.

"We were anxious to get the word out that we were doing this study," Garvey said of the paper, which did not reach sweeping conclusions. "The paper was the first of what we hoped to be many papers from the work," he said in a recent email. But the other publications never materialized.

Takahashi later co-authored a study in 1990 [19] partially based on the tanker data that said land-based ecosystems—boreal forests, for example—absorbed more atmospheric CO_2 than the oceans. He used Exxon's tanker records again in 2009, in an updated study that compiled [20] 30 years of oceanic CO_2 data from dozens of reports. This time, his team concluded the oceans absorb only about 20 percent of the CO_2 emitted annually from fossil fuels and other human activities. The paper earned Takahashi a "Champions of the Earth" prize from the United Nations.

Columbia scientist Taro Takahashi helped review and process the climate-related data collected aboard Exxon's Esso Atlantic tanker. (Credit: Taro Takahashi)

Other research ideas that bubbled up in those days were even more imaginative.

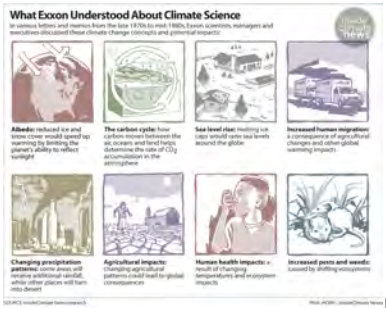
Shaw and Garvey sketched out a second project to determine how much carbon dioxide in the atmosphere was attributable to fossil fuels as compared to deforestation. Shaw's team proposed measuring the carbon isotopes—a chemical fingerprint—in 100 bottles of vintage French wine over time. To ensure data quality, they would only sample wine from long-established vineyards that kept careful records of temperatures and growing conditions. In the same file was a New York Times review by wine critic Frank Prial of classic Bordeaux vintages, including a $200 Lafite Rothschild bottle from 1945.

critic Frank Prial of classic Bordeaux vintages, including a 1900 Lafite-Rothschild bottle from 1945.

"The C-isotope studies of biologically material also appear useful and novel," David Slade, the head of the Energy Department's carbon dioxide research, wrote to Shaw in a May 1979 letter. "We congratulate (with some envy) Exxon's resourcefulness in selecting aged wines as the biological material."

Implications Become Clearer

As Exxon worked to reduce the uncertainties of climate science, its employees developed a sophisticated understanding of the potential effects of rising CO_2 concentrations, documents show. They understood that the Earth's poles would warm more quickly than the rest of the planet, and how a reduction in ice and snow cover would change the planet's ability to reflect sunlight.



[21]

They also discussed among themselves and with corporate executives other potential effects of climate change, including an increase in weeds, pests, and human migration, the documents show.

Some of the company's highest-ranking executives were told of the studies and of estimates about when the impact of global warming might be felt. On November 9, 1979, Edward David wrote a three-page letter to senior vice president Piercy explaining the importance of the ocean investigations.

In January 1980, Science & Technology's Eckelmann wrote to senior vice president M.E.J. "Morey" O'Loughlin [22] that his unit "feels that the build-up of carbon dioxide in the atmosphere is a potentially serious problem requiring the results of a huge worldwide research effort before quantitative predictions can be reached on the probabilities and timing of world climate changes."

Piercy and O'Loughlin seemed particularly interested in following the emerging climate science, internal documents indicate [23]. In a memo to Werthamer and Shaw in June 1980, Weinberg wrote that Piercy "questioned him closely" at an Exxon meeting about the movement of carbon dioxide between the atmosphere and the oceans.

Outside Experts Take Notice

During this time, Exxon was building a reputation for expertise on carbon dioxide, prompting government and industry to seek its input on the issue. As early as 1979, the American Petroleum Institute formed a CO_2 and Climate Task Force, and Exxon sent Shaw to the group's meetings as its representative, according to documents. The other industry members were Sohio, Texaco, and Shell. They often met in a conference room at LaGuardia Airport.

Shaw was a regular on advisory committees and government task forces, rubbing shoulders with many leading climate scientists, including NASA's James Hansen and Columbia's Stephen Schneider, whom Exxon even considered as a possible recruit, according to one document.

U.S. government officials expressed their appreciation to Exxon for the company's contributions, calling it a valued partner.

In a letter to Shaw in May 1979, David Slade, the head of the Energy Department's Carbon Dioxide and Climate Research program, wrote: "This represents very responsible action, which we hope will serve as a model for research contributions from the corporate sector."

Two years later, Slade's successor in President Ronald Reagan's administration, Frederick A. Koomanoff, wrote: "We feel that Exxon should be commended for their initiatives to investigate the carbon dioxide issue."

Check out Part I [24], Part III [25], Part IV [26], Part V [27] and Part VI [28] of the series.

ICN staff members Zahra Hirji, Paul Horn, Naveena Sadasivam, Sabrina Shankman and Alexander Wood also contributed to this report.

Published Under:
Exxon: The Road Not Taken [29]
Business and Accountability [30]
Exxon: The Road Not Taken [31]

Source URL: https://insideclimatenews.org/news/16092015/exxon-believed-deep-dive-into-climate-research-would-protect-its-business

Links
[1] http://insideclimatenews.org/news/15092015/henry-shaw
[2] http://cdn.exxonmobil.com/~/media/global/files/energy-and-environment/climate_peer_reviewed_publications_1980s_forward.pdf
[3] http://insideclimatenews.org/news/15092015/edward-david
[4] http://insideclimatenews.org/news/15092015/james-black
[5] https://books.google.com/books?id=lz4rAAAAYAAJ&pg=PA163&lpg=PA163&dq=%22j.+f.+black%22+esso&source=bl&ots=Ys9zwfVY39&sig=AZLOxmnkZ480TLhWIE99cam108g&hl=en&sa=X&ved=0CB4Q6AEwAGoVChMIjauAvbaBxwIVQ56ACh1HWAB5#v=onepage&q=esso&f=false
[6] http://insideclimatenews.org/sites/default/files/documents/James%20Black%201977%20Presentation.pdf
[7] http://insideclimatenews.org/news/15092015/n-richard-werthamer
[8] http://www.nap.edu/catalog/12024/energy-and-climate-studies-in-geophysics
[9] http://insideclimatenews.org/sites/default/files/documents/Government%20Meeting%20Memo%20%281977%29.pdf
[10] http://insideclimatenews.org/sites/default/files/documents/%2522Worldwide%2522%20R%26D%20Memo%20%281978%29.pdf
[11] http://insideclimatenews.org/news/15092015/harold-weinberg
[12] http://insideclimatenews.org/news/15092015/taro-takahashi
[13] https://insideclimatenews.org/sites/default/files/styles/colorbox_full/public/Tanker%20Route_FINAL.jpg?itok=PrXhf6lF
[14] http://insideclimatenews.org/sites/default/files/documents/Presentation%20to%20NOAA%20%281979%29.pdf
[15] http://insideclimatenews.org/news/15092015/wallace-broecker
[16] http://insideclimatenews.org/sites/default/files/documents/Probable%20Legislation%20Memo%20%281979%29.pdf
[17] http://insideclimatenews.org/news/15092015/george-t-piercy
[18] http://ieeexplore.ieee.org/xpl/articleDetails.jsp?reload=true&arnumber=6312509
[19] http://www.sciencemag.org/content/247/4949/1431
[20] http://www.researchgate.net/publication/222887238_Takahashi_T._et_al._Climatological_mean_and_decadal_changes_in_surface_ocean_pCO2_and_net_sea-air_CO2_flux_over_the_global_oceans._Deep-Sea_Res._II_56_554-577
[21] http://insideclimatenews.org/content/what-exxon-understood-about-climate-science
[22] http://insideclimatenews.org/news/15092015/maurice-edwin-james-morey-oloughlin
[23] http://insideclimatenews.org/sites/default/files/documents/Letters%20to%20Senior%20VPS%20%281980%29.pdf
[24] http://insideclimatenews.org/news/15092015/Exxons-own-research-confirmed-fossil-fuels-role-in-global-warming
[25] http://insideclimatenews.org/news/18092015/exxon-confirmed-global-warming-consensus-in-1982-with-in-house-climate-models
[26] http://insideclimatenews.org/news/08102015/Exxons-Business-Ambition-Collided-with-Climate-Change-Under-a-Distant-Sea
[27] http://insideclimatenews.org/news/08102015/highlighting-allure-synfuels-exxon-played-down-climate-risks
[28] http://insideclimatenews.org/news/22102015/Exxon-Sowed-Doubt-about-Climate-Science-for-Decades-by-Stressing-Uncertainty
[29] https://insideclimatenews.org/content/Exxon-The-Road-Not-Taken
[30] https://insideclimatenews.org/topics/business-and-accountability-0
[31] https://insideclimatenews.org/tags/exxon-road-not-taken

Exhibit 30

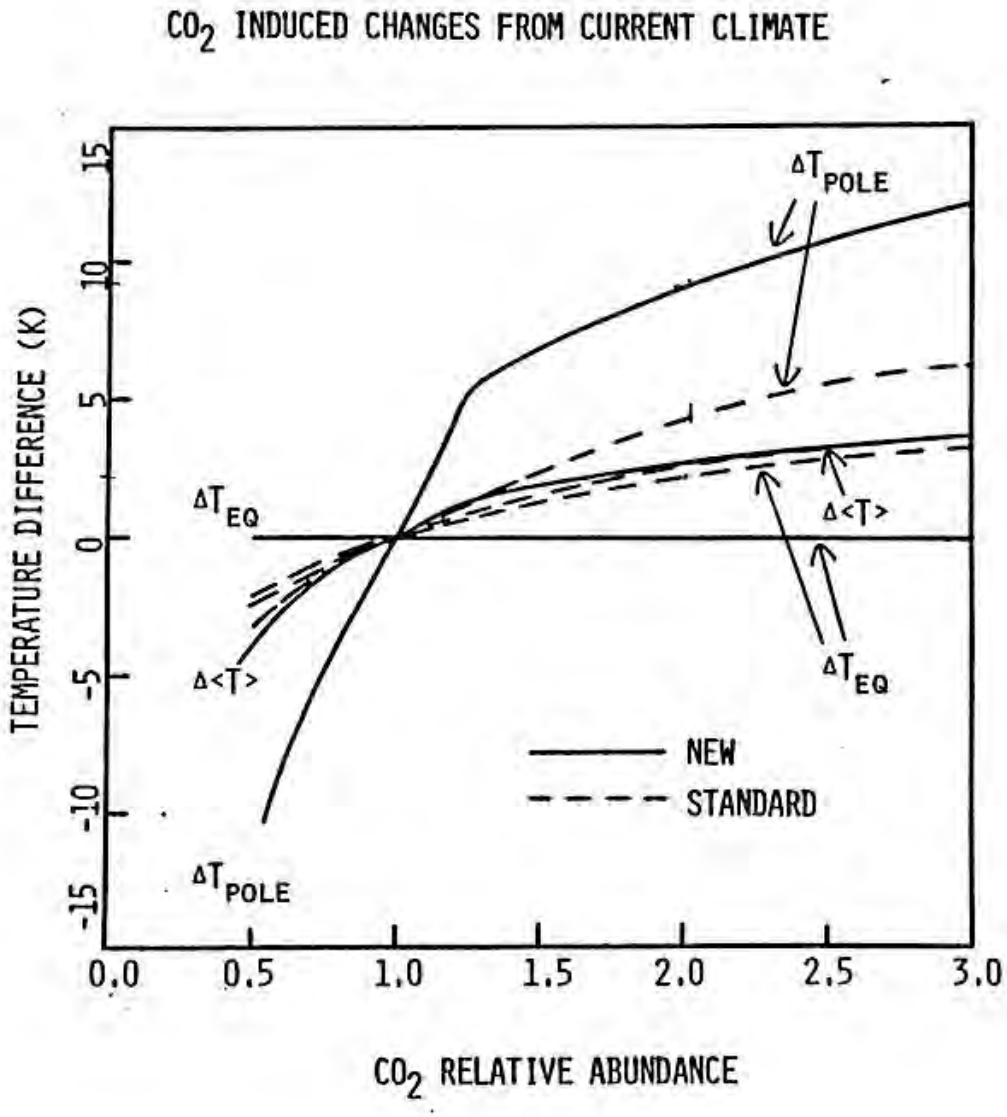
Published on *InsideClimate News* (https://insideclimatenews.org)

Exxon Confirmed Global Warming Consensus in 1982 with In-House Climate Models

The company chairman would later mock climate models as unreliable while he campaigned to stop global action to reduce fossil fuel emissions.

Lisa Song, Neela Banerjee, David Hasemyer

Sep 22, 2015



In 1981, Exxon scientist Andrew Callegari put together a presentation on Exxon's modeling of future climate change. The chart pictured here.

Steve Knisely was an intern at Exxon Research and Engineering in the summer of 1979 when a vice president asked him to analyze how global warming might affect fuel use.

"I think this guy was looking for validation that the greenhouse effect should spur some investment in alternative energy that's not bad for the environment," Knisely, now 58 and a partner in a management consulting company, recalled in a recent interview.

Knisely projected [1] that unless fossil fuel use was constrained, there would be "noticeable temperature changes" and 400 parts per million of carbon dioxide (CO_2) in the air by 2010, up from about 280 ppm before the Industrial Revolution. The summer intern's predictions turned out to be very close to the mark.

Knisely even concluded that the fossil fuel industry might need to leave 80 percent of its recoverable reserves in the ground to avoid doubling CO_2 concentrations, a notion now known as the carbon budget [2]. In 2013, the United Nations' Intergovernmental Panel on Climate Change formally endorsed the idea.

"The potential problem is great and urgent," Knisely wrote. "Too little is known at this time to recommend a major U.S. or worldwide change in energy type usage but it is very clear that immediate research is necessary."

The report, which circulated within the company through the early 1980s, reflected Exxon's growing need to understand when the climate implications of increased CO_2 emissions would begin to spur policy changes.

So Exxon (now ExxonMobil) shelved an ambitious but costly program that sampled carbon dioxide in the oceans—the centerpiece of its climate research in the 1970s—as it created its own computerized climate models. The models aimed to simulate how the planet's climate system would react to rising CO_2 levels, relying on a combination of mathematics, physics, and atmospheric science.

Through much of the 1980s, Exxon researchers worked alongside university and government scientists to generate objective climate models that yielded papers published in peer-reviewed journals. Their work confirmed the emerging scientific consensus on global warming's risks.

Yet starting in 1989, Exxon leaders went down a different road. They repeatedly argued that the uncertainty inherent in computer models makes them useless for important policy decisions. Even as the models grew more powerful and reliable, Exxon publicly derided the type of work its own scientists had done. The company continued its involvement with climate research, but its reputation for objectivity began to erode as it campaigned internationally to cast doubt on the science.

This eight-month InsideClimate News investigation [3] details Exxon's early research into global warming, based on hundreds of pages of internal documents and interviews with former employees and scientists. The company declined to provide comment or answer questions for this article.

[4]

Brian Flannery. (Credit: © Academia Engelberg Foundation)

One scientist who crossed over from academia to Exxon Research was Brian Flannery [4], an associate professor of astronomy from Harvard and an expert in mathematical modeling. Flannery joined the company in 1980. At about the same time, Exxon hired Andrew Callegari [5], a mathematics professor at New York University. When the company shifted its focus to modeling in 1981, Callegari became head of the company's CO_2 research, replacing Henry Shaw [6], who had steered the ocean sampling project.

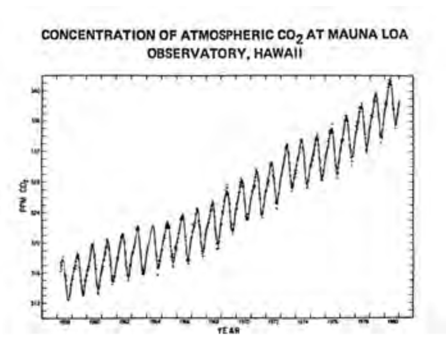
Callegari approached Martin Hoffert [7], an old colleague at NYU, to work with the Exxon team as a consultant on modeling. Hoffert jumped at the chance. He was already deeply concerned about the consequences of atmospheric carbon and saw the opportunity as an "all hands on deck" approach to heading off an environmental disaster.

"We were all interested as geek scientists at the time," Hoffert, who is now retired, recalled in a recent interview. "There were no divisions, no agendas."

Flannery and Callegari were "very legitimate research guys," Hoffert said. "We talked about the politics of this stuff a lot, but we always separated the politics from the science."

Climate 'Catastrophe' Foreseen

By 1981, Exxon scientists were no longer questioning whether the buildup of CO_2 would cause the world to heat up. Through their own studies and their participation in government-sponsored conferences, company researchers had concluded that rising CO_2 levels could create catastrophic impacts within the first half of the 21^{st} century if the burning of oil, gas and coal wasn't contained.



A chart showing the increase in the growth rate of carbon dioxide measurements in Hawaii. Exxon scientists shared this chart in their documents discussing the company's climate modeling efforts.

"When I arrived there, I was quite surprised to discover that people in the research lab were very aware of the increase in the growth rate of carbon dioxide measurements in Hawaii [at the Mauna Loa observatory]," Morrel H. Cohen, a senior scientist at Exxon Research from 1981 to 1996, said in a recent interview. "They were very aware of the greenhouse effect."

As the researchers alerted Exxon's upper management about the CO_2 problem, the scientists worked to provide better estimates of when the warming trend would create noticeable damage, and how large the impacts might be.

One scientist, Werner Glass, wrote an analysis in 1981 for a senior vice president that said the rise in global temperatures would begin to be noticed in a few decades. But Glass hedged his bet, saying the magnitude of the change would be "well short of catastrophic" in the early years.

Exxon manager Roger Cohen [8] saw things differently.

"I think that this statement may be too reassuring," Cohen, director of the Theoretical and Mathematical Sciences Laboratory at Exxon Research, wrote in an August 18, 1981 memo to Glass [9].

INTER-OFFICE CORRESPONDENCE

DATE August 18, 1981

TO W. Glass

REFERENCE

SUBJECT

FROM R. W. Cohen

I have looked over the draft of the EED reply to the request from O'Loughlin. The only real problem I have is with the second clause of the last sentence in the first paragraph: "but changes of a magnitude well short of catastrophic..." I think that this statement may be too reassuring. Whereas I can agree with the statement that our best guess is that observable effects in the year 2030 are likely to be "well short of catastrophic", it is distinctly possible that the CPD scenario will later produce effects which will indeed be catastrophic (at least for a substantial fraction of the earth's population). This is because the global ecosystem in 2030 might still be in a transient, headed for much more significant effects after time lags perhaps of the order of decades. If this indeed turns out to be case, it is very likely that we will unambiguously recognize the threat by the year 2000 because of advances in climate modeling and the beginning of real experimental confirmation of the CO_2 effect. The effects of such a recognition on subsequent fossil fuel combustion are unpredictable, but one can say that predictions based only on our knowledge of availability and economics become hazardous.

[10]

He called it "distinctly possible" that the projected warming trend after 2030 "will indeed be catastrophic (at least for a substantial fraction of the earth's population)."

Cohen continued: "This is because the global ecosystem in 2030 might still be in a transient, headed for much significant effects after time lags perhaps of the order of decades."

Cohen demonstrated a sophisticated understanding of the climate system. He recognized that even if the impacts were modest in 2030, the world would have locked in enough CO_2 emissions to ensure more severe consequences in subsequent decades. By 2030, he warned, the damage could be irreversible.

Unanimous Agreement

"Over the past several years a clear scientific consensus has emerged regarding the expected climatic effects of increased atmospheric CO_2," Cohen wrote to A.M. Natkin [11] of Exxon Corporation's Science and Technology Office in 1982. "The consensus is that a doubling of atmospheric CO_2 from its pre-industrial revolution value would result in an average global temperature rise of (3.0 ± 1.5)°C." (Equal to 5.4 ± 2.7°F).

"There is unanimous agreement in the scientific community that a temperature increase of this magnitude would bring about significant changes in the earth's climate, including rainfall distribution and alterations in the biosphere."

Exxon's own modeling research confirmed this and the company's results were later published in at least three peer-reviewed science articles. Two of them were co-authored [12] by Hoffert [13], and a third was written entirely by Flannery [14].

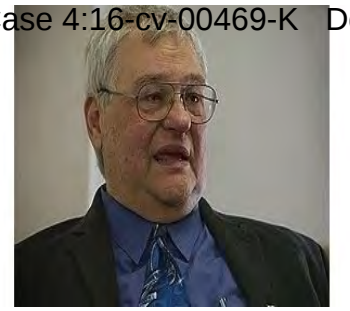
Exxon's modeling experts also explained away the less-dire predictions of a 1979 study led by Reginald Newell, a prominent atmospheric scientist at the Massachusetts Institute of Technology. Newell's model projected [15] that the effects of climate change would not be as severe as most scientists were predicting.

Specifically, Newell and a co-author from the Air Force named Thomas Dopplick challenged the prevailing view that a doubling of the earth's CO_2 blanket would raise temperatures about 3°C (5°F)– a measure known as climate sensitivity. Instead, they said the earth's true climate sensitivity was roughly less than 1°C (2°F).

They based their results on a mechanism called "evaporative buffering," in which excess warming at the equator causes increased evaporation, cooling the planet in the same way that perspiration cools a marathon runner.

Exxon's research team disagreed [16]. Even if the mechanism cooled the equator, the worldwide warming would still be higher, they found, according to the researchers' peer-reviewed studies.

"In summary, the results of our research are in accord with the scientific consensus on the effect of increased atmospheric CO_2 on climate," Cohen wrote in the 1982 letter he sent to Natkin.



[7]

Martin Hoffert (Credit: NASA)

Exxon's science turned out to be spot on, and the company's early modeling projections still hold up more than 30 years later, Hoffert said in an email to InsideClimate News. The Arctic's rapid warming and the extreme vulnerability of Antarctica's ice sheets are "consistent with the results of our theory which predicted them before they happened," Hoffert wrote.

Exxon "should be taking credit for their role in developing useful model predictions of the pattern of global warming by their research guys, as opposed to their denialist lobbyists saying global warming from fossil fuel burning doesn't exist or is at best 'unproven,'" he wrote.

Spreading the Word, Internally

The conclusions of Exxon's climate modeling were being circulated broadly within the company in the 1980s.

Marvin B. Glaser, an Environmental Affairs Manager at Exxon, distributed a 43-page primer [17] on climate change on Nov. 12, 1982.

In a cover letter to 15 Exxon executives and managers, Glaser said the document provided guidance "on the CO_2 'Greenhouse' Effect which is receiving increased attention in both the scientific and popular press as an emerging environmental issue." He continued: "The material has been given wide circulation to Exxon management and is intended to familiarize Exxon personnel with the subject."

"However, it should be restricted to Exxon personnel and not distributed externally," he wrote.

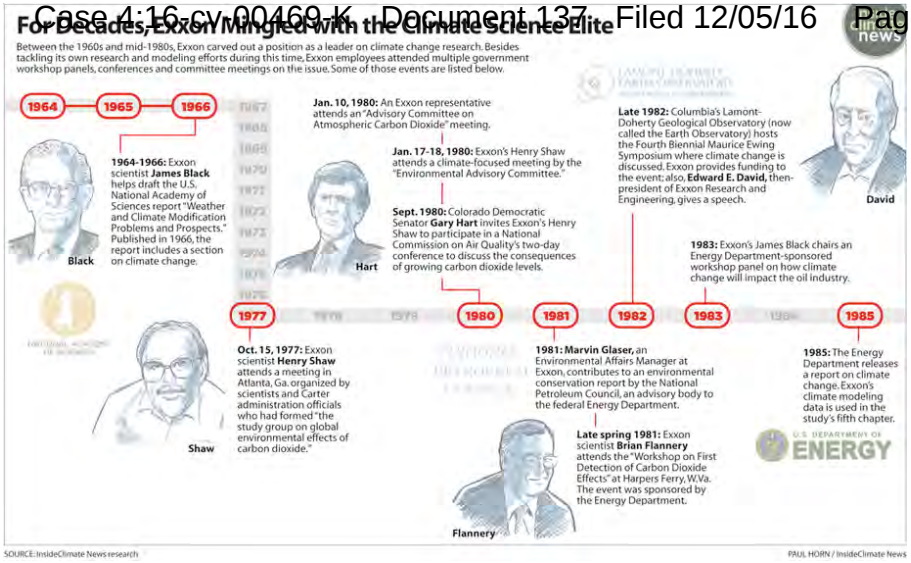
Glaser's primer drew from the best research of the time, including Exxon's, to explain how global temperatures would rise considerably by the end of the 21st century. Because of the warming, "there are some potentially catastrophic events that must be considered," including sea level rise from melting polar ice sheets, according to the document. It noted that some scientific groups were concerned "that once the effects are measurable, they might not be reversible."

Reining in "the greenhouse effect," the primer said, "would require major reductions in fossil fuel combustion."

Yet the report also argued against a rapid shift to non-fossil fuel energy sources, noting that "making significant changes in energy consumption...amid all the scientific uncertainties would be premature in view of the severe impact such moves could have on the world's economies and societies."

Exxon's reputation for conducting serious carbon dioxide research was growing outside the company. Its scientists were frequent participants on industry and government panels.

Click to enlarge [18]



Flannery, for example, contributed to a multi-volume series of Energy Department reports published in 1985 on the state of climate change science. It concluded that atmospheric carbon dioxide concentrations had already increased by about 25 percent in the past century, and continued use of fossil fuels would lead to substantial temperature increases in the future.

Flannery was the only industry representative among 15 scientists who wrote the volume titled [19] "Projecting the Climatic Effects of Increasing Carbon Dioxide."

Hoffert and Flannery co-authored a chapter that concluded that since the Industrial Revolution the Earth would warm 1°C (or 2°F) by 2000 and rise another 2 to 5°C (4 to 9°F) over the next hundred years.

As it turned out, the world's temperature has risen about 0.8°C (1.4°F) and mainstream scientists continue to predict, with increasing urgency, that if emissions are not curtailed, carbon pollution would lock in warming of as much as 3 to 6°C (or 5 to 11°F) over the next several decades.

Quantifying the Uncertainty

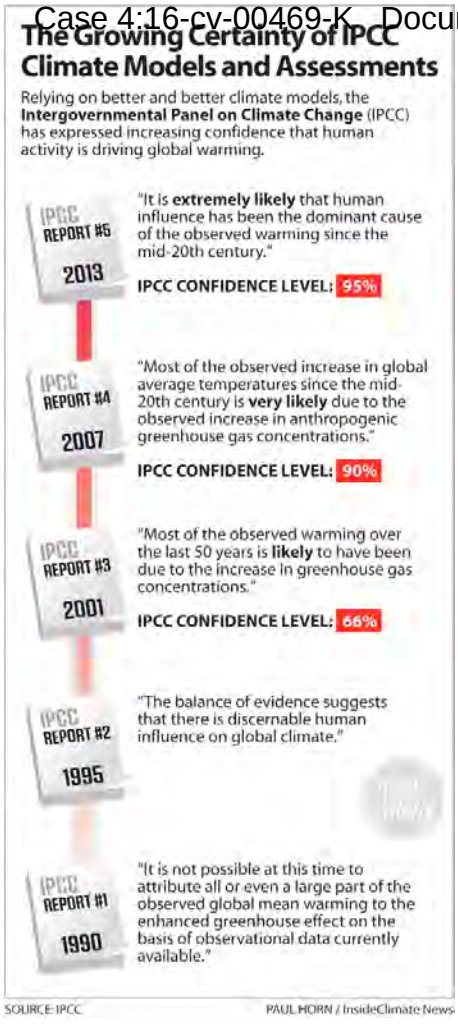
Throughout its climate modeling phase, Exxon researchers, like outside scientists, grappled with the uncertainties inherent in climate model projections.

"Models are being used to explore physical effects (scenarios) and as a predictive tool," Andrew Callegari said in a Feb. 2, 1984 presentation [20] for colleagues. The "validity of models [are] not established," Callegari wrote. "Complexity of carbon cycle and climate system require many approximations."

Scientists, regulators and Exxon all had to ask themselves: what should be done, given that uncertainty? Should governments and corporations wait for the ambiguities to be resolved before acting to cut fossil fuel emissions? Or should the researchers recommend immediate action because of a preponderance of evidence?

Since then, modeling has become an increasingly useful and reliable tool. The IPCC, the United Nations institution that compiles the scientific consensus on global warming, has issued a series of reports since 1990 based on those models. Each report has grown more certain. By the fifth report in 2013, the IPCC said it was *"extremely likely* that human influence has been the dominant cause of the observed warming since the mid-20th century."

Click to Enlarge [21]


 [21]

As the consensus grew within the scientific world, Exxon doubled down on the uncertainty. Its campaign to muddy research results placed the company outside the scientific mainstream. Some of the researchers who once led the company's modeling became vocal climate contrarians, among them Brian Flannery and Roger Cohen.

Flannery survived the lay-offs of the mid-1980s that decimated the Exxon Research staff and rose in the corporate ranks to become the company's chief scientist. He attended IPCC meetings from the outset and by the early 1990s, he emerged as a prominent skeptic of the science he had once conducted.

For example, in a 1999 paper based on a speech to Exxon's European affiliates, Flannery derided the second IPCC assessment that concluded in 1995 that the scientific evidence suggested "a discernible human influence on climate."

"You'll note that this is a very carefully worded statement, recognizing that the jury is still out, especially on any quantifiable connection to human actions," Flannery wrote. "The conclusion does not refer to global warming from increases in greenhouse gases. Indeed, many scientists say that a great deal of uncertainty still needs to be resolved."

The change in Cohen's thinking was also stark, as he acknowledged in 2008. While still at Exxon he was "well convinced, as were most technically trained people, that the IPCC's case for Anthropogenic Global Warming (AGW) is very tight." But he wrote in a 2008 essay for the Science and Public Policy Institute, a climate denial website, that upon closer inspection of the research he found it to be "flimsy."

In 2007, the American Physical Society, the country's largest organization of physicists, adopted a strong statement on climate change that said "The evidence is incontrovertible: Global warming is occurring."

Cohen, an APS fellow, helped lead a campaign to weaken the APS's official position and earlier this year succeeded in stripping out the word 'incontrovertible' from a draft text. APS members will vote on the final language in November.

Flannery and Cohen declined to comment, despite multiple requests.

Exxon's former chairman and CEO, Lee Raymond [22], took an even tougher line against climate science. Speaking before the World Petroleum Congress in Beijing in 1997, Raymond mocked climate models in an effort to stop the imminent adoption of the

Kyoto Protocol, an international accord to reduce emissions.

"They are notoriously inaccurate," Raymond said. "1990's models were predicting temperature increases of two to five degrees Celsius by the year 2100," he said, without explaining the source of those numbers. "Last year's models say one to three degrees. Where to next year?"

Check out Part I [23], Part II [24], Part IV [25], Part V [26] and Part VI [27] of the series.

ICN staff members Zahra Hirji, Paul Horn, Naveena Sadasivam, Sabrina Shankman and Alexander Wood also contributed to this report.

Correction 9/22: An earlier version of this article misstated the rank of an Exxon official who ordered the fuel use report written by Steve Knisely, an intern at the company, in 1979. He was a vice president of Exxon Research & Engineering, not a senior vice president at Exxon Corporation.

Published Under:
Exxon: The Road Not Taken [28]
Business and Accountability [29]
Exxon: The Road Not Taken [30]

Source URL: https://insideclimatenews.org/news/18092015/exxon-confirmed-global-warming-consensus-in-1982-with-in-house-climate-models

Links
[1] http://insideclimatenews.org/sites/default/files/documents/CO2%20and%20Fuel%20Use%20Projections.pdf
[2] http://insideclimatenews.org/news/20140213/climate-change-science-carbon-budget-nature-global-warming-2-degrees-bill-mckibben-fossil-fuels-keystone-xl-oil
[3] http://insideclimatenews.org/content/Exxon-The-Road-Not-Taken
[4] http://insideclimatenews.org/news/15092015/brian-flannery
[5] http://insideclimatenews.org/news/15092015/andrew-callegari
[6] http://insideclimatenews.org/news/15092015/henry-shaw
[7] http://insideclimatenews.org/news/15092015/martin-hoffert
[8] http://insideclimatenews.org/news/15092015/roger-cohen
[9] http://insideclimatenews.org/sites/default/files/documents/%2522Catastrophic%2522%20Effects%20Letter%20%281981%29.pdf
[10] http://insideclimatenews.org/sites/default/files/documents/"Catastrophic" Effects Letter (1981).pdf
[11] http://insideclimatenews.org/sites/default/files/documents/%2522Consensus%2522%20on%20CO2%20Impacts%20%281982%29.pdf
[12] http://journals.ametsoc.org/doi/abs/10.1175/1520-0469%281983%29040%3C1659%3AELTTAA%3E2.0.CO%3B2
[13] http://sites.agu.org/publications/files/2015/09/ch10.pdf
[14] http://journals.ametsoc.org/doi/abs/10.1175/1520-0469%281984%29041%3C0414%3AEBMITO%3E2.0.CO%3B2
[15] http://journals.ametsoc.org/doi/abs/10.1175/1520-0450%281979%29018%3C0822%3AQCTPIO%3E2.0.CO%3B2
[16] http://insideclimatenews.org/sites/default/files/documents/Exxon%20Modeling%20%281982%29.pdf
[17] http://insideclimatenews.org/sites/default/files/documents/1982%20Exxon%20Primer%20on%20CO2%20Greenhouse%20Effect.pdf
[18] http://insideclimatenews.org/content/decades-exxon-mingled-climate-science-elite
[19] http://www.osti.gov/scitech/servlets/purl/5885458
[20] http://insideclimatenews.org/sites/default/files/documents/Exxon%20Climate%20Modeling%20%281984%29.pdf
[21] http://insideclimatenews.org/content/growing-certainty-ipcc-climate-models-and-assessments
[22] http://insideclimatenews.org/news/15092015/lee-raymond
[23] http://insideclimatenews.org/news/15092015/Exxons-own-research-confirmed-fossil-fuels-role-in-global-warming
[24] http://insideclimatenews.org/news/16092015/exxon-believed-deep-dive-into-climate-research-would-protect-its-business
[25] http://insideclimatenews.org/news/08102015/Exxons-Business-Ambition-Collided-with-Climate-Change-Under-a-Distant-Sea
[26] http://insideclimatenews.org/news/08102015/highlighting-allure-synfuels-exxon-played-down-climate-risks
[27] http://insideclimatenews.org/news/22102015/Exxon-Sowed-Doubt-about-Climate-Science-for-Decades-by-Stressing-Uncertainty
[28] https://insideclimatenews.org/content/Exxon-The-Road-Not-Taken
[29] https://insideclimatenews.org/topics/business-and-accountability-0
[30] https://insideclimatenews.org/tags/exxon-road-not-taken

Exhibit 31

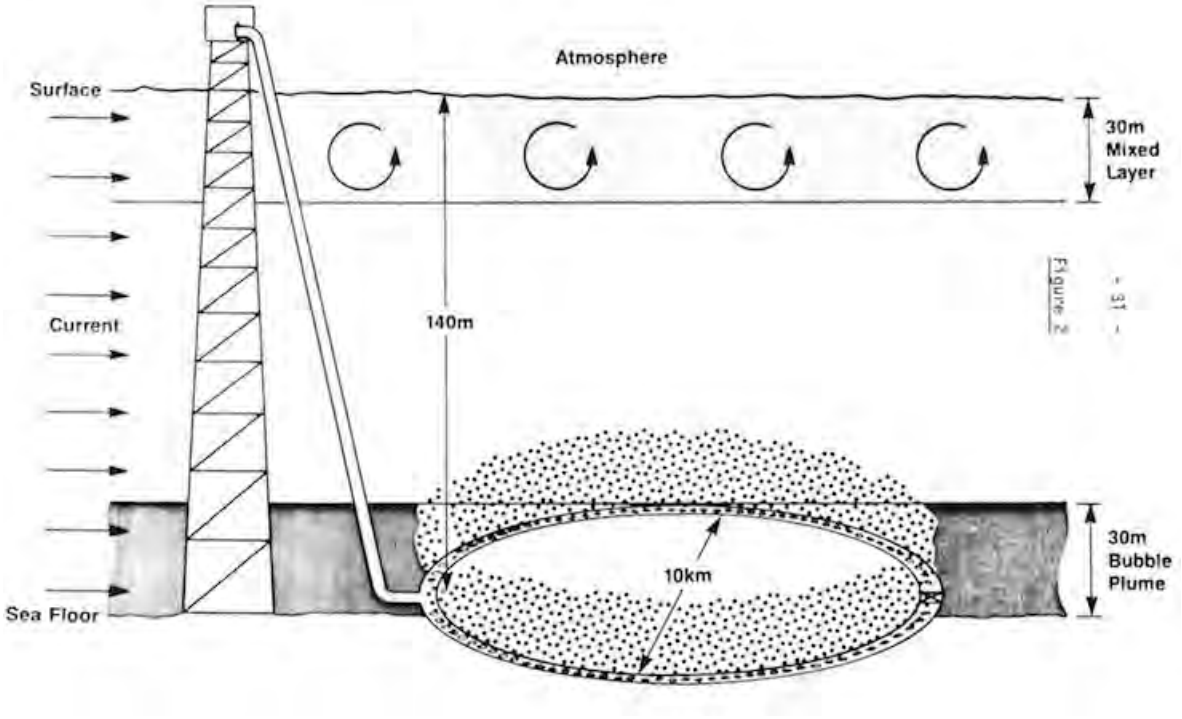
Published on *InsideClimate News* (https://insideclimatenews.org)

Exxon's Business Ambition Collided with Climate Change Under a Distant Sea

Throughout the 1980s, the company struggled to solve the carbon problem of one of the biggest gas fields in the world out of concern for climate impacts.

by Neela Banerjee & Lisa Song

Oct 8, 2015



After Exxon got the rights to develop the Natuna gas field, company researchers determined that the project site was contaminated with much more carbon dioxide than normal. This picture is from one of the company's documents exploring how to address the carbon dioxide issue.

In 1980, as Exxon Corp. set out to develop one of the world's largest deposits of natural gas, it found itself facing an unfamiliar risk: the project would emit immense amounts of carbon dioxide, adding to the looming threat of climate change.

The problem cropped up shortly after Exxon signed a contract with the Indonesian state oil company to exploit the Natuna gas field in the South China Sea—big enough to supply the blossoming markets of Japan, Taiwan and Korea with liquefied natural gas into the 21st century.

Assessing the environmental impacts, Exxon Research and Engineering quickly identified Natuna's greenhouse gas problem. The reservoir was contaminated with much more carbon dioxide than normal. It would have to be disposed of somehow—and simply venting it into the air could have serious consequences, Exxon's experts warned.

Exxon's dawning realization that carbon dioxide and the greenhouse effect posed a danger to the world collided with the company's fossil fuel ambitions.

"They were being farsighted," recalled John L. Woodward, who wrote an internal report in 1981 on Natuna's climate implications.

"They were aware when CO2 concentrations would be detected and how it would affect the economics of the project."

Since 1978, long before the general public grew aware of the climate crisis, Exxon had worked at the cutting edge of emerging climate science. At first, Exxon's internal studies had described climate change as an important but somewhat distant problem. Now, sooner than expected, climate considerations were affecting strategic business decisions. Natuna was one example; another was Exxon's proposed leap into synthetic fuels [1].

Releasing Natuna's carbon pollution would make it "the world's largest point source emitter of CO_2 and raises concern for the possible incremental impact of Natuna on the CO_2 greenhouse problem," declared an October 1984 report [2] from Exxon's top climate modeler, Brian Flannery, and his boss Andrew Callegari.

Documents and other evidence uncovered by InsideClimate News also show that Exxon calculated that Natuna's emissions would have twice the climate impact of coal. The company spent years researching possible remedies, but found them all too costly or ineffective, ICN's eight-month investigation found.

Exxon managers saw the problem as both technically vexing and environmentally fraught. Not only was there carbon dioxide to be dealt with, it was mixed with toxic, flammable hydrogen sulfide, a contributor to acid rain.

"I think we generally agree that we are seeking a method of disposing of the off gases in a manner which will minimize the risk of environmental damage," wrote Exxon's manager of environmental affairs Alvin M. Natkin in an October 1983 letter to Natuna project executive Richard L. Preston [3]. "We must also have the data which will be convincing not only to ourselves but also to the international environmental community that the method selected is environmentally sound."

The company consulted with leading scientists, including NASA's pioneering expert James E. Hansen, to understand the effect on atmospheric CO_2 concentrations if the gas from Natuna were released. It sent staff to facilities at Dalhousie University in Halifax, Canada to simulate the diffusion of the gas into ocean water. Over the years, Exxon scientists developed mathematical models to assess the options.

Because the project was so complex and expensive, the Natuna staff presented regular updates, including details of the CO_2 issue, to Exxon's board of directors, whose members were drawn almost entirely from the company's upper management.

Some Exxon directors accepted the emerging climate consensus. Others were less sure of the science, but agreed that as popular attention to global warming mounted, releasing Natuna's greenhouse gases into the air could turn into a public relations debacle, former employees said.

Either way, directors repeatedly told project staff Natuna could not proceed unless the CO_2 was handled in a cost-effective way that did not harm the atmosphere.

"Their concerns kept getting stronger," said a former employee with knowledge of the project, who asked for anonymity because the issue remains sensitive even years later. "Their attitude went from, 'Maybe we have to remove the CO_2,' to, as the years went by, their saying, 'This project cannot go ahead unless we remove the CO_2.'"

In 1984, Lee Raymond joined Exxon's board of directors. A senior vice president, Raymond's responsibilities included overseeing Exxon Research and Engineering, which conducted the Natuna studies. In the summer of 1985, ER&E prepared documents for Raymond about a study that examined disposing Natuna's CO_2 into the ocean, an Exxon memo shows.

Eventually, Raymond would rise to become chairman and chief executive, and to lead a public campaign discrediting the scientific consensus on climate change and fighting measures to control greenhouse gas emissions.

In the meantime Exxon, now known as ExxonMobil, appears to have kept its years of climate-related deliberations about Natuna mostly to itself. Exxon only began to disclose climate risks to its shareholders years after it first weighed Natuna's risks, federal filings show.

ExxonMobil declined to answer specific questions for this article. In July, when ICN questioned him for an earlier article about Natuna, spokesman Richard Keil said, "It is company policy not to comment on potential commercial operations."

The Carbon Footprint

First discovered by the Italian oil company Agip in the early 1970s, the Natuna gas field lies about 700 miles north of Jakarta and holds about 46 trillion cubic feet of recoverable methane, or natural gas. But the undersea formation also contains 154 trillion cubic feet of other gases, mostly CO_2.

To liquefy Natuna's methane for shipping, it must be supercooled. At those low temperatures, the carbon dioxide would freeze into dry ice and clog equipment, so it had to be removed. The question was where to put it.

The Indonesian government and the state-run oil company had no issue with releasing the CO_2 into the air, former Exxon staff said. But awareness of carbon dioxide's impact on global temperatures had been seeping through Exxon, from its rank-and-file engineers to its board of directors.

"Within Exxon in those days, there were probably two to three believers in global warming for every denier or those who emphasized the uncertainty," said another former Exxon Research executive, who asked not to be identified for fear of reprisal.

[4]

Among the key people searching for a solution was Gilbert Gervasi, the Natuna project manager, who worked in Houston under executive Richard Preston for Esso Eastern, the unit that oversaw projects in East Asia. Gervasi spearheaded the effort from the early to mid-1980s to figure out how big Natuna's carbon footprint would be and what to do about it.

In a Feb. 3, 1981 letter to Gene Northington [5] at Research and Engineering, Gervasi challenged a "rough calculation" that Northington had made of the CO_2 emissions from producing Natuna's gas and burning it as fuel. Northington's math showed Natuna's total CO_2 emissions would be "no higher than what would be emitted by burning" an equivalent amount of coal, Gervasi wrote.

After conducting what he described as "more rigorous" calculations, Gervasi concluded "that the total release of CO_2 from producing Natuna gas and burning of the LNG manufactured from the gas would be almost twice that emitted by burning an equivalent amount of coal."

Six months later, Research and Engineering sent Gervasi a report, entitled "Possible Climate Modification Effects of Releasing Carbon Dioxide to the Atmosphere from the Natuna LNG Project." It commissioned assessments of Natuna by seven eminent atmospheric scientists, including the climatologists Helmut Landsberg of University of Maryland and NASA's Hansen.

The report, written by John Woodward, a high level engineer at Exxon Research, presented a mixed message. Natuna would constitute a "small fraction of worldwide CO_2 budget," it found. But it also found that "emissions are nonetheless substantial by several comparisons."

Disposal Options

Woodward examined the option of flaring the CO_2 after it had been stripped from the natural gas.

Although not combustible, the CO_2 had to be flared rather than simply vented because it was mixed with hydrogen sulfide, which is often burned to convert it to safer compounds. But flaring would not eliminate Natuna's greenhouse gas emissions.

Next, Woodward looked at releasing the CO_2 into seawater around Natuna, a process known as sparging. The gas from the Natuna well would be piped to a nearby platform where the valuable methane would be separated from the waste CO_2 and the toxic hydrogen sulfide. Those unwanted gases, in turn, would then be sent from the platform to a pipe about 300 feet below on the ocean floor. The pipe would be arranged in a circle 6 miles in diameter and the gas would be bubbled out of perforations every six to 10 feet, like aerating an aquarium.

Woodward said that in 1982 he visited the oceanography department at Dalhousie University in Nova Scotia to use their equipment to collect data for sparging models. Dalhousie had a tank about 40 feet high and 10 feet wide, filled with ocean water. Researchers released CO_2 at the bottom of the tank, and Woodward measured the size and quantity of the bubbles at various depths as they rose to the surface to understand how the gas dissipated.

In the end, the hydrogen sulfide released with the CO_2 from the sparging area would dissipate quickly and that gaseous plume might kill fish and result in bad press.

Back to Square One

The Natuna project staff and Research and Engineering specialists probed for answers through the 1980s, sometimes revisiting the approaches that Woodward had examined.

In October 1983, Gervasi sent a letter and background paper on Natuna [6] to about a dozen staff and executives from different branches of the corporation to develop "a study program which over the next 1-2 years will put Exxon in a position to reach a final decision on the environmental aspects of the project."

The background paper laid out options to dispose of the CO_2, none of them optimal. Releasing the waste gases into the air remained the simplest, cheapest method. "However, this raises environmental questions concerning the 'greenhouse' effect of the CO_2," the paper said.

Gervasi's paper said the only effective way to dispose of carbon dioxide and hydrogen sulfide without harming the atmosphere or ocean would involve injecting the gases underground into the Natuna formation itself or a nearby reservoir. But that option appeared prohibitively expensive.

Thwarted by cost or environmental impact, Exxon returned to mathematical models over the next two years to home in on a suitable approach.

By February 1984, Exxon Research began modelling once more the feasibility of sparging.

The scientists found that the ocean would release the CO_2 into the atmosphere, probably in 10 years or sooner. Further, increased CO_2 would raise the acidity of the ocean water, damaging the local environment. "Our conclusion is that atmospheric discharge is preferable to seawater sparging," Flannery and others concluded.

Study after study returned Exxon back to square one with Natuna: it held the rights to an enormously promising field but was unable to develop it because it was unwilling to pump so much CO_2 into the air.

The scientists' conclusions were reflected in papers prepared for a 1985 [7] meeting with Lee Raymond on Exxon Research's activities.

Their synopsis said: "We modeled the sub-sea disposal of CO_2 in the shallow basin near the Natuna site and found that retention in the sea is only about a decade, as opposed to 1000 years if the CO_2 is disposed in the deep ocean. We recommend that the sub-sea sparging of CO_2 not be implemented since it offers little advantage over direct atmospheric release."

By the late 1980s, Exxon started to explore pumping the CO_2 back into the Natuna formation, the safest option but probably the priciest.

The company found a cost-effective method to dispose of half of Natuna's CO_2 underground, but calculated that the rest of the CO_2 would still be the equivalent of half of Canada's annual greenhouse gas emissions, said Roger Witherspoon, a former Program Officer in Corporate Contributions in the Public Affairs department.

Company officials asked Witherspoon to find a way to plant 100,000 trees annually to offset Natuna's remaining CO_2 emissions. The total acreage would eventually equal the size of Connecticut, Witherspoon said.

As Witherspoon researched the options starting around 1993, Exxon had embarked on a public campaign casting doubt on climate science as a basis for strong policy actions. Internally, the attitude was different.

"It was that greenhouse gas buildup could pose a threat to our business," said Witherspoon, a longtime journalist who worked at Exxon's Texas headquarters from 1990 to 1995. "You didn't want climate change caused by oil and gas. So the responsible thing to do was offset any greenhouse gases you were putting into the atmosphere."

Witherspoon said Exxon started his tree planting plan, but he does not know how long it lasted.

Exxon continued to investigate possibilities for responsibly disposing of Natuna's CO_2. The project remains dormant, but Exxon never gave up. After an on-and-off relationship with Indonesia, the company still holds the license, which is up for renewal next summer.

Coming soon, Part VI: Exxon embarks on a public campaign of climate denial that would last for decades.

Check out Part I [8], Part II. [9] Part III [10], Part V [1] and Part VI [11] of the series.

Published Under:
Exxon: The Road Not Taken [12]
Business and Accountability [13]
Climate Science [14]
Natural Gas and Fracking [15]
Exxon: The Road Not Taken [16]

Links
[1] http://insideclimatenews.org/news/08102015/highlighting-allure-synfuels-exxon-played-down-climate-risks
[2] http://insideclimatenews.org/sites/default/files/documents/CO2%20Sparging%20Report%20%281984%29.pdf
[3] http://insideclimatenews.org/sites/default/files/documents/Natuna%20Environmental%20Concerns%20Letter%20%281983%29.pdf
[4] http://insideclimatenews.org/content/exxons-natuna-gas-field-major-source-co2
[5] http://insideclimatenews.org/sites/default/files/documents/Gilbert%20Gervasi%27s%20Natuna%20CO2%20Calculations%20%281981%29.pdf
[6] http://insideclimatenews.org/sites/default/files/documents/Natuna%20Background%20Paper%20%281983%29.pdf
[7] http://insideclimatenews.org/sites/default/files/documents/Handout%20For%20Meeting%20With%20Lee%20Raymond%20%281985%29.pdf
[8] http://insideclimatenews.org/news/15092015/Exxons-own-research-confirmed-fossil-fuels-role-in-global-warming
[9] http://insideclimatenews.org/news/16092015/exxon-believed-deep-dive-into-climate-research-would-protect-its-business
[10] http://insideclimatenews.org/news/18092015/exxon-confirmed-global-warming-consensus-in-1982-with-in-house-climate-models
[11] http://insideclimatenews.org/news/22102015/Exxon-Sowed-Doubt-about-Climate-Science-for-Decades-by-Stressing-Uncertainty
[12] https://insideclimatenews.org/content/Exxon-The-Road-Not-Taken
[13] https://insideclimatenews.org/topics/business-and-accountability-0
[14] https://insideclimatenews.org/topics/climate-science
[15] https://insideclimatenews.org/topics/natural-gas-and-fracking
[16] https://insideclimatenews.org/tags/exxon-road-not-taken

Exhibit 32

Published on *InsideClimate News* (https://insideclimatenews.org)

Highlighting the Allure of Synfuels, Exxon Played Down the Climate Risks

In the 1980s, Exxon lobbied to replace scarce oil with synthetic fossil fuels, but it glossed over the high carbon footprint associated with synfuels.

By John H. Cushman Jr., InsideClimate News

Oct 8, 2015

In 1980, Exxon acquired the Colony Shale Oil Project in Colorado to support the production of synfuels. Two years later, Exxon announced the termination of the project, in part due to low oil prices. (Credit: U.S. National Archives via Wikimedia Commons)

Early in the 1980s, the lingering fear of oil scarcity and the emerging threat of climate change were beginning to intersect. And at that junction stood Exxon Corp., working out its strategy for survival in the uncertain 21st century.

At the time, Exxon believed oil supplies could not keep up with demand, so it put its weight behind a crusade to develop synthetic fossil fuels as a costly and carbon intensive, but potentially profitable alternative. It could liquefy the vast deposits of coal, oil shale and tar sands that were readily available in North America. This would be the new black gold, supplying as much as a third of the energy the United States would use in the early 21st century, company executives estimated.

"These resources are adequate to support a 15 million barrel a day industry for 175 years," said Randall Meyer, a senior vice president, in a 1981 speech before the U.S. Chamber of Commerce.

By then, however, researchers at Exxon were well aware of the looming problem of climate change. Years earlier, one climate researcher at the company, Henry Shaw, had called management's attention to a key conclusion of a landmark National Academy of Sciences report: global warming caused by carbon dioxide emissions, not a scarcity of supply, would likely set the ultimate limit on the use of fossil fuels.

Yet in his speech, Meyer said nothing about the carbon footprint of synfuels – even though the company was aware that making and burning them would release much more carbon dioxide into the atmosphere than ordinary oil.

In a 21-page speech, Meyer explained that a national synfuels program would require investing almost $800 billion (in 1980 dollars) over three decades. He said it would create 870,000 jobs. It would, he promised, carry the nation through a long-term transition to "non-depleting and renewable" energy sources.

"Over the past couple of years my associates and I have talked about synthetic fuels as a major national need to a lot of audiences," he noted. "In the federal government, that included the White House and most cabinet members. At the state level, we visited with governors, and a good many senators and congressmen. We have had audiences like GM's and Ford's senior managements, the Business Roundtable, national labor leaders, major media companies, influential academics and many others."

The government did respond, with a costly synfuels program that ultimately folded as oil markets turned from shortage to glut and the technology proved to be unaffordable. Congress withdrew funding from the United States Synfuels Corporation, and most forms of synfuels production never grew to global significance.

One important remnant that survived was the industry's foray into tar sands oil, especially in Canada, where Exxon would become a major player – and where the carbon dioxide problem still plagues the industry after more than three decades. Recent research finds that substantial growth in tar sands production is incompatible with keeping CO_2 emissions below the internationally accepted target of 2 degrees C.

But in the early days of synfuels, as Exxon defended them as a costly but plausible solution to oil scarcity, it sidestepped the carbon problem. In the text of a speech by Exxon chief executive Clifton Garvin before a particularly skeptical audience, the Environmental Defense Fund, in April 1981, global warming was never mentioned among the environmental risks that he said the industry would be "held primarily responsible for solving."

Nor, it appears, did Exxon elaborate on the link between synfuels and global warming in annual reports to shareholders filed with regulatory agencies in those early days, when synfuels remained at the heart of the company's long term ambitions.

Yet all along, there had been a bubbling concern among researchers, including some inside Exxon, about the carbon implications of synfuels.

Company documents discovered during an eight-month investigation by InsideClimate News show that Exxon Research & Engineering estimated that producing and burning oil shales would release 1.4 to 3 times more carbon dioxide than conventional oil, and would accelerate the doubling of greenhouse gases in the atmosphere by about five years. The company knew that a doubling would risk about 3 degrees Celsius of warming, or 5.4 degrees Fahrenheit.

The company was tracking the research closely. When two U.S. Geological Survey scientists submitted to Science magazine in 1979 that the carbon footprint from synfuels might be three to five times more than conventional fuels, ER&E climate researcher Henry Shaw wrote in a memo that the upper range "may alarm the public unjustifiably."

As early as November, 1979, Shaw had told Harold Weinberg in a memo on atmospheric research that environmental groups "have already attempted to curb the budding synfuels industry because it could accelerate the buildup of CO_2 in the atmosphere." He warned Exxon not to be caught off guard, the way the aviation industry had been surprised by the threat to supersonic airplane development when the ozone hole was discovered.

In 1980, after attending a federal advisory committee meeting, Shaw explained why he didn't think the carbon dioxide problem would block work on synfuels any time soon.

"I attended the last meeting of this committee on January 17 and 18, 1980, and found such a vast diversity of interests and backgrounds that I believe no imminent action is possible," he wrote in a memo.

"For example, some environmentalists suggested that all development of synthetic fuels be terminated until sufficient information becomes available to permit adequate strategic decisions to be made. The industrial representation, on the other hand, indicated that the build up of CO_2 in the atmosphere was not necessarily anthropogenic, and is of little consequence for the next century."

But Shaw also circulated a clipping from The New York Times in August 1981, under the headline "Synthetic Fuels Called a Peril to the Atmosphere."

In the article, the Associated Press quoted an economist named Lester Lave as testifying before Congress that "if we take CO_2 seriously, we would change drastically the energy policy we are pursuing."

As in so many other realms of its research, Exxon studied a potential future of synthetic fuels while recognizing that carbon dioxide could be a powerful factor in its business decisions for decades to come.

Coming soon, Part VI: Exxon embarks on a public campaign of climate denial that would last for decades.

Check out Part I [1], Part II. [2] Part III [3], Part IV [4] and Part VI [5] of the series.

Published Under:
Exxon: The Road Not Taken [6]
Business and Accountability [7]
Climate Science [8]
Oil/Tar Sands [9]
Exxon: The Road Not Taken [10]

Source URL: https://insideclimatenews.org/news/08102015/highlighting-allure-synfuels-exxon-played-down-climate-risks

Links
[1] http://insideclimatenews.org/news/15092015/Exxons-own-research-confirmed-fossil-fuels-role-in-global-warming
[2] http://insideclimatenews.org/news/16092015/exxon-believed-deep-dive-into-climate-research-would-protect-its-business
[3] http://insideclimatenews.org/news/18092015/exxon-confirmed-global-warming-consensus-in-1982-with-in-house-climate-models
[4] http://insideclimatenews.org/news/08102015/Exxons-Business-Ambition-Collided-with-Climate-Change-Under-a-Distant-Sea
[5] http://insideclimatenews.org/news/22102015/Exxon-Sowed-Doubt-about-Climate-Science-for-Decades-by-Stressing-Uncertainty
[6] https://insideclimatenews.org/content/Exxon-The-Road-Not-Taken
[7] https://insideclimatenews.org/topics/business-and-accountability-0
[8] https://insideclimatenews.org/topics/climate-science
[9] https://insideclimatenews.org/topics/oiltar-sands
[10] https://insideclimatenews.org/tags/exxon-road-not-taken

Exhibit 33

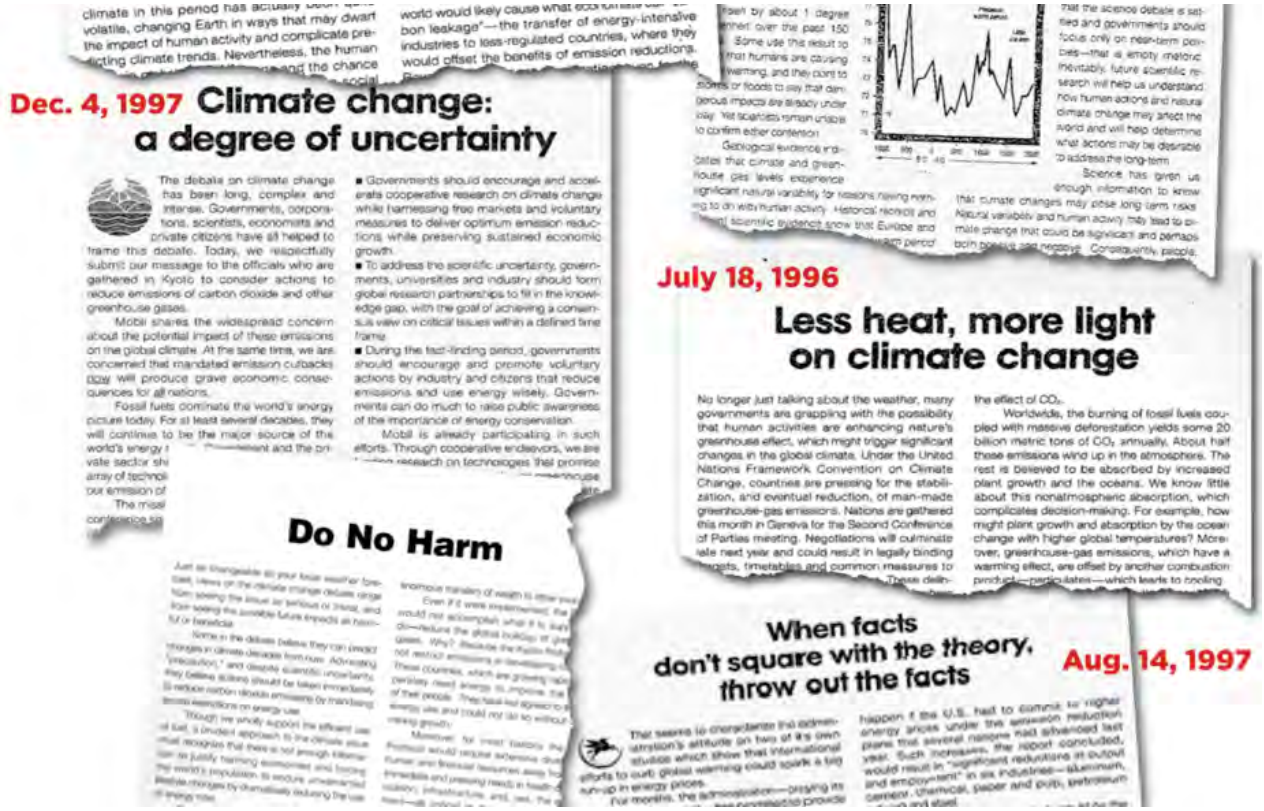
Published on *InsideClimate News* (https://insideclimatenews.org)

Exxon Sowed Doubt About Climate Science for Decades by Stressing Uncertainty

Collaborating with the Bush-Cheney White House, Exxon turned ordinary scientific uncertainties into weapons of mass confusion.

By David Hasemyer and John H. Cushman Jr.

Oct 22, 2015



Credit: Paul Horn/InsideClimate News

As he wrapped up nine years as the federal government's chief scientist for global warming research, Michael MacCracken lashed out at ExxonMobil for opposing the advance of climate science.

His own great-grandfather, he told the Exxon board, had been John D. Rockefeller's legal counsel a century earlier. "What I rather imagine he would say is that you are on the wrong side of history, and you need to find a way to change your position," he wrote.

Addressed to chairman Lee Raymond [1] on the letterhead of the United States Global Change Research Program, his September 2002 letter [2] was not just forceful, but unusually personal.

No wonder: in the opening days of the oil-friendly Bush-Cheney administration, Exxon's chief lobbyist had written the new head of the White House environmental council demanding that MacCracken [3] be fired for "political and scientific bias."

Exxon was also attacking other officials in the U.S. government and at the UN's Intergovernmental Panel on Climate Change (IPCC), MacCracken wrote, interfering with their work behind the scenes and distorting it in public.

Exxon wanted scientists who disputed the mainstream science on climate change to oversee Washington's work with the IPCC, the authoritative body that defines the scientific consensus on global warming, documents written by an Exxon lobbyist and one of its scientists show. The company persuaded the White House to block the reappointment of the IPCC chairman, a World Bank scientist. Exxon's top climate researcher, Brian Flannery [4], was pushing the White House for a wholesale revision of federal climate science. The company wanted a new strategy to focus on the uncertainties.

Michael MacCracken (Credit: Michael MacCracken)

"To call ExxonMobil's position out of the mainstream is thus a gross understatement," MacCracken wrote. "To be in opposition to the key scientific findings is rather appalling for such an established and scientific organization."

MacCracken had a long history of collaboration with Exxon researchers. He knew that during the 1970s and 1980s, well before the general public understood the risks of global warming, the company's researchers had worked at the cutting edge of climate change science. He had edited and even co-authored some of their reports. So he found it galling that Exxon was now leading a concerted effort to sow confusion about fossil fuels, carbon dioxide and the greenhouse effect.

Exxon had turned a colleague into its enemy.

It was a vivid example of Exxon's undermining of mainstream science and embrace of denial and misinformation, which became most pronounced after President George W. Bush took office. The campaign climaxed when Bush pulled out of the Kyoto Protocol in 2001. Taking the U.S. out of the international climate change treaty was Exxon's key goal, and the reason for its persistent emphasis on the uncertainty of climate science.

This in-depth series by InsideClimate New [5]s has explored Exxon's early engagement with climate research more than 35 years ago – and its subsequent use of scientific uncertainty as a shield against forceful action on global warming. The series is based on Exxon documents, interviews, and other evidence from an eight-month investigation.

"What happened was an incredible disconnect in people trained in physical science and engineering," recalled Martin Hoffert [6], a New York University professor who collaborated with Exxon's team as its early computer modeling confirmed the emerging scientific consensus on global warming. "It's an untold story of how we got to the point where climate change has become a threat to the world."

The Uncertainty Agenda

As the Bush-Cheney administration arrived in the White House in 2001, ExxonMobil (NYSE: XOM) now had partners for a climate uncertainty strategy.

Just weeks after Bush was sworn in, Exxon's top lobbyist Randy Randol sent the White House a memo [7] complaining that "Clinton/Gore carry-overs with aggressive agendas" were still playing a role at the IPCC as it prepared its next assessment of the climate science consensus.

MacCracken and three colleagues should be replaced, or at least kept out of "any decisional activities," he wrote. Meanwhile, U.S. input to the IPCC should be delayed.

Further, two scientists highly critical of the prevailing consensus should be enlisted: John Christy of the University of Alabama should take the science lead and Richard Lindzen of MIT should review U.S. submissions to the IPCC.

Exxon had been circulating a proposal to fundamentally overhaul MacCracken's global change research program, by emphasizing the uncertainties of climate science.

The timing was not coincidental because the administration, as required by law, was about to lay out a new federal climate research strategy. Exxon and its allies wanted the work done during the Clinton-Gore years to be marginalized.

In March 2002, Flannery, Exxon's science strategy and programs manager, contacted John H. Marburger, the president's incoming assistant for science and technology, to pitch the company's favored approach of emphasizing the uncertainty [8]. Earlier discussions, he asserted, "have not sought to place the uncertainty in the context of why it is important to public policy."

Exxon's position paper, attached to his letter, took a dig at the work of the IPCC.

"A major frustration to many is the all-too-apparent bias of IPCC to downplay the significance of scientific uncertainty and gaps," the memo said.

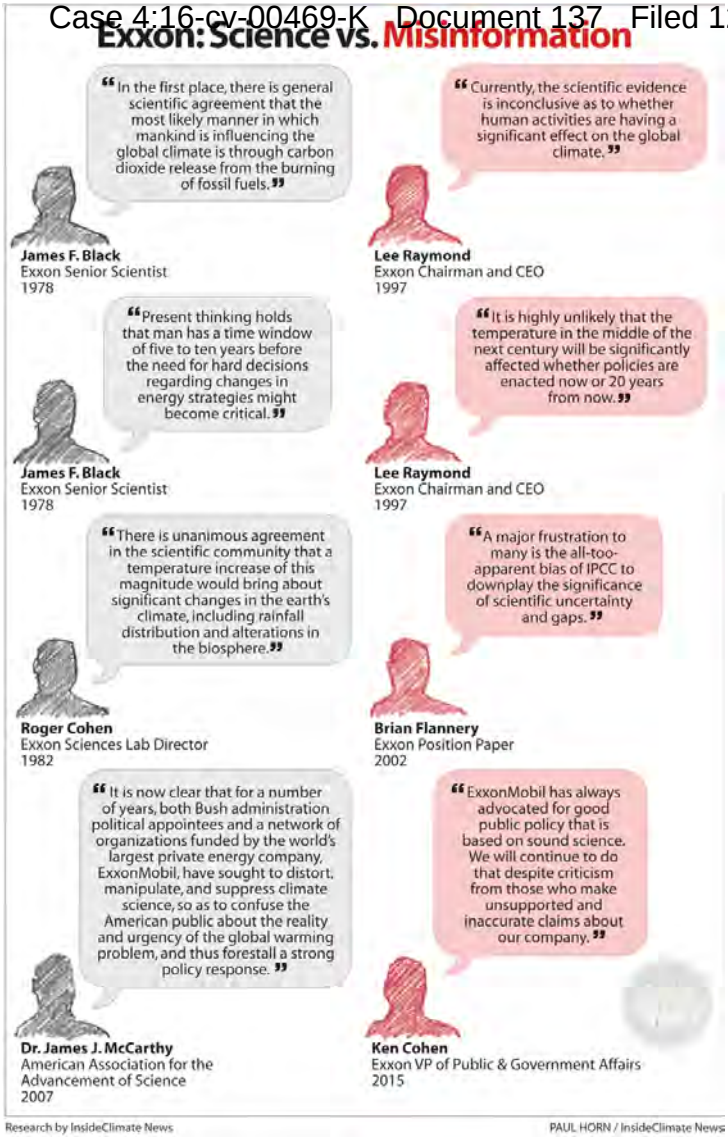
A Seat at the Table

Exxon had not always been so at odds with the prevailing science.

Since the late 1970s, Exxon scientists had been telling top executives [9] that the most likely cause of climate change was carbon pollution from the combustion of fossil fuels, and that it was important to get a grip on the problem quickly. Exxon Research & Engineering had launched innovative ocean research [10] from aboard the company's biggest supertanker, the Esso Atlantic. ER&E's modeling experts, by the early 1980s, had confirmed the consensus [11] among outside scientists about the climate's sensitivity to carbon dioxide.

"The facts are that we identified the potential risks of climate change and have taken the issue very seriously," said Ken Cohen, Exxon's vice president of public and government affairs, in a press release [12] on October 21 addressing the ICN reports. "We embarked on decades of research in collaboration with many parties."

Exxon has declined to answer specific questions from InsideClimate News.



[13]

A 1980 memo proposed an ambitious public-relations plan [14] aimed at "achieving national recognition of our CO_2 Greenhouse research program."

"It is significant to Exxon since future public decisions aimed at controlling the build-up of atmospheric CO_2 could impose limits on fossil fuel combustion," said the memo. "It is significant to all humanity since, although the CO_2 Greenhouse Effect is not today widely perceived as a threat, the popular media are giving increased attention to doom-saying theories about dramatic climate changes and melting polar icecaps."

Most of all, Exxon wanted a seat at the policy-making table, and the credibility of its research had earned that. In 1979, David Slade, manager of carbon dioxide research at the Energy Department, called it "a model for research contributions from the corporate sector."

Sen. Gary Hart, a Colorado Democrat, invited Henry Shaw [15], an early Exxon scientist, to join the policy deliberations. He was the only industry representative invited to an October 1980 conference of the National Commission on Air Quality, newly set up by Congress, to discuss "whether potential consequences of increased carbon dioxide levels warrant development of policies to mitigate adverse effects."

Shaw's bosses agreed that he should attend, "both to be informed as to what actions or proposals that result and to bring objective thinking and information to the meeting," Harold Weinberg [16], Shaw's boss in Exxon Research and Engineering, wrote in a memo. But first, he said, Shaw needed to be briefed by public affairs executives "on possible hidden agenda and individual biases of which we may not already be aware."

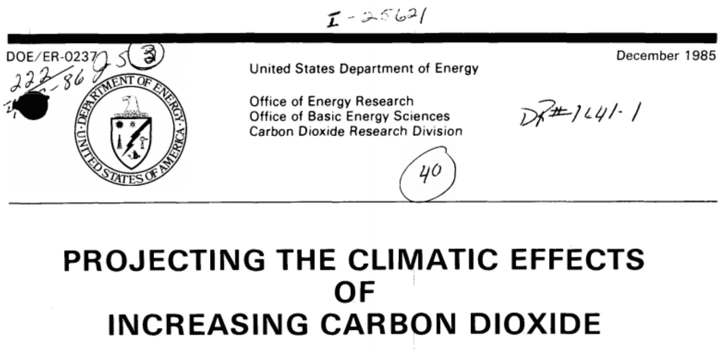
When Shaw gave feedback to the commission in December, he noted the uncertainties about carbon dioxide and climate change [17]. At the same time, he wrote that it was "important" to place CO_2 on the nation's public policy agenda, as the commission was recommending, and supported the panel's suggestion that it was "timely to consider ways of reducing CO_2 emissions now."

He also backed a recommendation that the U.S. "seek to develop discussions on national and international policies."

In late spring of 1981, Flannery was one of the few industry representatives at a large gathering of accomplished scientists at Harper's Ferry, W. Va., for a Department of Energy "Workshop on First Detection of Carbon Dioxide Effects." He sat on a panel with NASA's James Hansen, who was about to publish a landmark study in Science magazine warning of significant warming even if controls were placed on carbon emissions.

The workshop's proceedings [18] would declare that "scientists are agreed" that carbon dioxide was building up in the atmosphere, that the effects "are well known" and "will bring about an increase in the mean global temperature," and that it is "commonly accepted" that warming "will affect the biosphere through a change in climate."

Working with Hoffert, Flannery wrote a highly technical 50-page chapter to a 1985 Energy Department report.[19] Their modeling projected up to 6 degrees Celsius of warming by the end of the 21st century unless emissions of greenhouse gases were curtailed.



I-25621

DOE/ER-0237 (3)

United States Department of Energy

December 1985

Office of Energy Research
Office of Basic Energy Sciences
Carbon Dioxide Research Division

DX#1641.1

40

PROJECTING THE CLIMATIC EFFECTS OF INCREASING CARBON DIOXIDE

Exxon researchers contributed key climate modeling to a 1985 Energy Department study that projected significant global warming, and said some climate change was already locked in. (Credit: DoE)

[20]

The influential government report said the models provided a "firm basis" for this kind of projection, and that "we are already committed to some of this warming as a result of emissions over the last several decades."

The Harper's Ferry conference was chaired by MacCracken; he also edited the warming report. He recalled recently that "the underlying push was for a level of understanding that was convincing enough to let policymakers become aware of what the issue was that society faced."

As Hoffert put it in a recent interview, in those days at Exxon "there were no divisions, no agendas. We were coming together as scientists to address issues of vital importance to the world."

Fork in the Road

In 1988, James Hansen told Congress that there was now enough warming to declare that the greenhouse effect had arrived. Also that year, the United Nations set up the Intergovernmental Panel on Climate Change.

It was a moment that Exxon's climate experts had been forecasting for a decade: that as warming became unmistakable, governments would move to control it.

Looking backward, one Exxon document from the early 1990s reflects a trail of research into global warming stretching back "long before the issue achieved its current prominence."

An internal compendium of the company's environmental record, on file in the official ExxonMobil historical archives at the University of Texas-Austin, acknowledged the uncertainties that have always faced climate researchers, but it didn't downplay the risks.

"Fossil fuel use dominates as the source of man-made emissions of carbon dioxide," said one section of the encyclopedic review. "Current scientific understanding demonstrates the potential for climate change to produce serious impacts."

"For Exxon and the petroleum industry, potential enhancement of the greenhouse effect and the possibility of adverse climate are of particular and fundamental concern," it said.

Drilling for Uncertainty

The IPCC published its first report in 1990. Despite the scientific gaps, the panel warned that unrestrained emissions from burning fossil fuels would surely warm the planet in the century ahead. The conclusion, the IPCC said after intense deliberations, was "certain." It prescribed deep reductions in greenhouse gas emissions to stave off a crisis in the coming decades.

At this crucial juncture, Exxon pivoted toward uncertainty and away from the global scientific consensus.

At the IPCC's final session to draft its summary for policymakers, Exxon's Flannery was in the room as an observer. He took the microphone to challenge both the certainty and the remedy. None of the other scientists agreed with Flannery, and the IPCC brushed off Exxon's advice to water down the report, according to Jeremy Leggett's eyewitness account in his book, *The Carbon War*.

At a conference in June 1991, MacCracken joined a panel chaired by Flannery to work together on a climate change project involving geo-engineering.

The contact, according to MacCracken, led to an unexpected solicitation from the oil lobby in Washington. Will Ollison, a science adviser at the American Petroleum Institute, in a fax marked urgent, asked MacCracken, then at the Lawrence Livermore National Laboratory, to write a paper highlighting the scientific uncertainties surrounding global warming.

The API, where Exxon held enormous sway, wanted him to write up the complex nuances in plain English – with an emphasis on the unknown, not the known.

Ollison said the IPCC's 1990 report "may not have adequately addressed alternative views."

"A review of these alternative projections would be useful in illustrating the uncertainties inherent in the 'consensus' views expressed in the IPCC report," Ollison wrote.

MacCracken rejected the task as "fruitless."

"I would caution you about too readily accepting whatever the naysayers put forth as a means of achieving balance," MacCracken wrote back.

Flannery, for his part, continued to emphasize uncertainty. And so did Exxon's new chairman and chief executive, Lee Raymond, who spoke of it repeatedly in public.

"Currently, the scientific evidence is inconclusive as to the significance of human activities in causing significant changes in the global climate," Raymond declared in a speech delivered in 1996 to the Economic Club of Detroit.

"Many people, politicians and the public alike, believe that global warming is a rock-solid certainty," he said the next year in a speech in Beijing. "But it's not."

Addressing the World Petroleum Congress, which was meeting just before the conclusion of the Kyoto Protocol negotiations, Raymond even disputed that the planet was warming at all. "The earth is cooler today than it was 20 years ago," he said.

That was false. Authoritative climate agencies declared 1997 the warmest year [21] ever measured. Decade by decade, the warming has continued, in line with the climate models.

But Raymond, turning his back on Exxon researchers and their state-of-the-art work, mocked those climate models.

"1990's models were predicting temperature increases of two to five degrees Celsius by the year 2100. Last year's models say one to three degrees. Where to next year?"

"It is highly unlikely," he said, "that the temperature in the middle of the next century will be significantly affected whether policies are enacted now or 20 years from now."

The Doubt Industry

Exxon and its allies had been working hard to spread this dilatory message.

First, they set up the Global Climate Coalition (GCC), a lobbying partnership of leading oil and automobile companies dedicated to defeating controls on carbon pollution.

"As major corporations with a high level of internal scientific and technical expertise, they were aware of and in a position to understand the available scientific data," recounts an essay on corporate responsibility for climate change published last month [22] in the peer-reviewed journal Climatic Change.

"From 1989 to 2002, the GCC led an aggressive lobbying and advertising campaign aimed at achieving these goals by sowing doubt about the integrity of the IPCC and the scientific evidence that heat-trapping emissions from burning fossil fuels drive global warming," says the article, by Harvard climate science historian Naomi Oreskes and two co-authors.

[23]

Then, in 1998 Exxon also helped create the Global Climate Science Team, an effort involving Randy Randol, the company's top lobbyist, and Joe Walker, a public relations representative for API.

Their memo [24], leaked to The New York Times, asserted that it is "not known for sure whether (a) climate change actually is occurring, or (b) if it is, whether humans really have any influence on it." Opponents of the Kyoto treaty, it complained, "have done little to build a case against precipitous action on climate change

based on the scientific uncertainty.

The memo declared: "Victory will be achieved when average citizens 'understand' (recognize) uncertainties in climate science," and when "recognition of uncertainty becomes part of the 'conventional wisdom.'"

Exxon wholeheartedly embraced that theme. For example, an advertisement called "Unsettled Science" that ran in major papers in the spring of 2000, prompted one scientist to complain that it had distorted his work by suggesting it supported the notion that global warming was just a natural cycle. "It's a shame," Lloyd Keigwin later told the Wall Street Journal. "The implication is that these data show that we don't need to worry about global warming."

Another ad, one of a series placed in The New York Times, cast aspersions on scientists who "believe they can predict changes in climate decades from now."

Then, in the heat of the 2000 presidential race between climate champion Al Gore and erstwhile oilman George W. Bush, Exxon placed an ad in the Washington Post accusing MacCracken's office of putting the "political cart before a scientific horse."

Blowing the Whistle

The collaboration between Exxon, its surrogates, and the Bush administration [25] to emphasize uncertainty and stave off action came to light in 2005. A whistleblower named Rick Piltz [26] disclosed that Philip Cooney, an oil lobbyist who had become chief of staff at the White House environmental council, had been heavily editing the work of government researchers. Cooney resigned, and was hired by Exxon.

But the clashes continued between the scientific establishment and Exxon's purveyors of uncertainty.

The Royal Society of the United Kingdom, for centuries a renowned arbiter of science, harshly criticized Exxon in 2006 for publishing "very misleading" statements about the IPCC's Third Assessment Report. The IPCC found that most of the observed warming of the planet in the late 20th century was probably caused by humans.

The Society's communications manager Bob Ward reminded Exxon pointedly that one of its own scientists had contributed to the IPCC chapter in question.

The Royal Society said [27] it had no problem with Exxon funding scientific research, but "we do have concerns about ExxonMobil's funding of lobby groups that seek to misrepresent the scientific evidence relating to climate change."

Ward said Exxon was funding at least 39 organizations [28] "featuring information on their websites that misrepresented the science on climate change, by outright denial of the evidence that greenhouse gases are driving climate change, or by overstating the amount and significance of uncertainty in knowledge."

Appendix B

GROUPS AND INDIVIDUALS ASSOCIATED WITH EXXONMOBIL'S DISINFORMATION CAMPAIGN

Table 1 **Select ExxonMobil-Funded Organizations Providing Disinformation on Global Warming**[174]

Organization	Total ExxonMobil Funding[175] (1998–2005)	Illustrative Information
Africa Fighting Malaria	$30,000	AFM received $30,000 donation in 2004 for "climate change outreach." This grant represents 10% of their total expenses for that year. AFM's website has an extensive collection of articles and commentary that argue against urgent action on climate change.[176]
American Council for Capital Formation, Center for Policy Research	$1,604,523	One-third of the total ExxonMobil grants to ACCF-CPR between 1998 and 2005 were specifically designated for climate change activities. ExxonMobil funds represent approximately 36% of their total expenses in 2005.[177]
American Council on Science and Health	$125,000	ExxonMobil donated $15,000 to ACSH in 2004 for "climate change issues." A September 2006 Better Business Bureau Wise Giving Alliance Charity Report concludes that the ACSH does not meet all the standards for charity accountability.[178]
American Enterprise Institute	$1,625,000	Lee R. Raymond, retired chair and CEO of ExxonMobil, is vice chairman of AEI's Board of Trustees.[179]
American Friends of the Institute of Economic Affairs	$50,000	American Friends of the IEA received a $50,000 ExxonMobil donation in 2004 for "climate change issues." This grant represents 29% of their total expenses for that year. The 2004 IEA study, *Climate Alarmism Reconsidered*, "demonstrates how the balance of evidence supports a benign, enhanced greenhouse effect."[180]
American Legislative Exchange Council	$1,111,700	Of the total ExxonMobil grants to ALEC, $327,000 was specifically for climate change projects. ALEC received $241,500 in 2005 from ExxonMobil.

In 2007, the Union of Concerned Scientists published a report detailing Exxon's campaign of uncertainty, including a table identifying dozens of organizations that the group said had received $16 million in Exxon contributions over several years. (Credit: Union of Concerned Scientists)

[29]

Exxon's uncertainty campaign was detailed in three exhaustive reports published in 2007 by the Union of Concerned Scientists and the Government Accountability Project.

James McCarthy (Credit: Kris Snibbe/Harvard Staff Photographer)

At a Congressional hearing in 2007 [30], Harvard scientist James McCarthy, who was a member of the UCS board and the newly elected president of the American Association for the Advancement of Science, declared: "The Bush administration and a network of Exxon-funded, ExxonMobil funded organizations have sought to distort, manipulate and suppress climate science so as to confuse the American public about the urgency of the global warming problem, and thus, forestall a strong policy response."

To this day, top Exxon officials sometimes argue that models are no basis for policy.

While Rex Tillerson, the current chairman, doesn't echo Lee Raymond's science denial [1], he sometimes backs it by speaking off the cuff.

At Exxon's annual meeting in 2015, Tillerson said it would be best to wait for more solid science before acting on climate change. "What if everything we do, it turns out our models are lousy, and we don't get the effects we predict?" he asked.

And in its formal annual energy forecasts, as well as in its latest report on the implications of its carbon footprint, Exxon adopts business-as-usual assumptions. It deflects the question of how much carbon will build up in the world's atmosphere over the next few decades, or how much the planet will warm as a result.

"As part of our energy outlook process, we do not project overall atmospheric GHG [greenhouse gas] concentration, nor do we model global average temperature impacts," both reports say.

In footnotes, Exxon offers this excuse: "These would require data inputs that are well beyond our company's ability to reasonably measure or verify."

Click here for Part 1 [9], an overview of Exxon's history with climate change; Part II [10], an accounting of Exxon's early climate research; Part III [11], a review of Exxon's climate modeling efforts; Part IV [32], a dive into Exxon's Natuna gas field project; Part V [33], a look at Exxon's push for synfuels.

ICN staff members Neela Banerjee, Lisa Song, Zahra Hirji, and Paul Horn also contributed to this report.

Published Under:
Exxon: The Road Not Taken [34]
Business and Accountability [35]
Denial [36]
Exxon: The Road Not Taken [37]

Source URL: https://insideclimatenews.org/news/22102015/Exxon-Sowed-Doubt-about-Climate-Science-for-Decades-by-Stressing-Uncertainty

Links
[1] http://insideclimatenews.org/news/15092015/lee-raymond
[2] http://insideclimatenews.org/sites/default/files/documents/MacCracken%20Letter%20to%20Exxon%20%282002%29.pdf
[3] http://insideclimatenews.org/news/15092015/mike-maccracken
[4] http://insideclimatenews.org/news/15092015/brian-flannery
[5] http://insideclimatenews.org/content/Exxon-The-Road-Not-Taken
[6] http://insideclimatenews.org/news/15092015/martin-hoffert
[7] http://insideclimatenews.org/sites/default/files/documents/Exxon%20Lobbyist%27s%20Memo%20to%20the%20White%20House%20%282001%29.pdf
[8] http://insideclimatenews.org/sites/default/files/documents/Exxon%20Scientist%20Lobbies%20the%20White%20House%20%282002%29.pdf
[9] http://insideclimatenews.org/news/15092015/Exxons-own-research-confirmed-fossil-fuels-role-in-global-warming
[10] http://insideclimatenews.org/news/16092015/exxon-believed-deep-dive-into-climate-research-would-protect-its-business
[11] http://insideclimatenews.org/news/18092015/exxon-confirmed-global-warming-consensus-in-1982-with-in-house-climate-models
[12] http://news.exxonmobil.com/press-release/exxonmobil-says-climate-research-stories-inaccurate-and-deliberately-misleading
[13] http://insideclimatenews.org/content/exxon-science-vs-misinformation
[14] http://insideclimatenews.org/sites/default/files/documents/PR%20Plan%20for%20Exxon%27s%20CO2%20Research%20%281980%29.pdf
[15] http://insideclimatenews.org/news/15092015/henry-shaw
[16] http://insideclimatenews.org/news/15092015/harold-weinberg
[17] http://insideclimatenews.org/sites/default/files/documents/Exxon%27s%20Policy%20Input%20to%20Congressional%20Commission%20%281980%29.pdf
[18] http://babel.hathitrust.org/cgi/pt?id=uc1.31822016268534;view=1up;seq=14
[19] http://catalog.hathitrust.org/Record/008363809
[20] http://www.osti.gov/scitech/servlets/purl/5885458
[21] http://www.ncdc.noaa.gov/oa/climate/research/1997/climate97.html
[22] http://link.springer.com/article/10.1007/s10584-015-1472-5
[23] http://insideclimatenews.org/content/exxons-uncertainty-campaign-black-and-white
[24] http://www.euronet.nl/users/e_wesker/ew@shell/API-prop.html
[25] http://www.ucsusa.org/our-work/center-science-and-democracy/promoting-scientific-integrity/climate-change.html#.Vijc_WSrS2x
[26] http://www.biologicaldiversity.org/programs/climate_law_institute/fighting_climate_science_suppression/enforcing_national_assessment_of_climate_change/pdfs/Piltz-Resignation-Memo.pdf
[27] https://royalsociety.org/topics-policy/publications/2006/royal-society-exxonmobil/
[28] http://insideclimatenews.org/sites/default/files/documents/Royal%20Society%20Letter%20to%20Exxon%20%282006%29.pdf
[29] http://www.ucsusa.org/sites/default/files/legacy/assets/documents/global_warming/exxon_report.pdf
[30] http://babel.hathitrust.org/cgi/pt?id=pst.000061515956;view=1up;seq=3
[31] http://corporate.exxonmobil.com/en/company/news-and-updates/speeches/unleashing-innovation-to-meet-our-energy-and-environmental-needs
[32] http://insideclimatenews.org/news/08102015/Exxons-Business-Ambition-Collided-with-Climate-Change-Under-a-Distant-Sea
[33] http://insideclimatenews.org/news/08102015/highlighting-allure-synfuels-exxon-played-down-climate-risks
[34] https://insideclimatenews.org/content/Exxon-The-Road-Not-Taken
[35] https://insideclimatenews.org/topics/business-and-accountability-0
[36] https://insideclimatenews.org/topics/denial
[37] https://insideclimatenews.org/tags/exxon-road-not-taken

Exhibit 34

Published on *InsideClimate News* (https://insideclimatenews.org)

Exxon Made Deep Cuts in Climate Research Budget in the 1980s

The cuts ushered in a five-year hiatus in peer-reviewed publication by its scientists and the era when the company first embraced disinformation.

By John H. Cushman Jr., InsideClimate News

Nov 25, 2015

Pictured here is the Esso Atlantic tanker, where Exxon's first climate-related project was conducted , between 1979 and 1982.

Internal Exxon Corporation budget documents from the 1980s show that the oil giant sharply curtailed its ambitious program of innovative climate research in those years, chopping well over half from its annual budget for internal investigations into how carbon dioxide emissions from fossil fuels would affect the planet.

Facing a budget crunch and sensing that any government efforts to clamp down on carbon pollution were a long way off, Exxon terminated two especially innovative experiments. One involved oceanic observations during voyages of the Esso Atlantic, a supertanker. The other proposed to test vintage French wines for tell-tale traces of carbon dioxide from fossil fuels or other sources.

And then, in the late 1980s, Exxon ramped up a decades-long public relations campaign to sow uncertainty about the increasing scientific evidence for urgent action on climate change.

Exxon's pivoting from the cutting edge of early climate change science to the forefront of climate denial was described in a six-part series published by InsideClimate News beginning in September [1], based largely on primary sources including Exxon's own internal documents. Similar findings were reached independently by a team based at the Columbia Journalism School in partnership with the Los Angeles Times.

Exxon spokesman Ken Cohen has questioned ICN's reporting that the company "curtailed" its research program after a few years of unusually advanced experiments and modeling work in the 1980s.

But several documents uncovered by ICN show that the budget cuts during the 1980s were steep and sudden. The cuts reversed the course that the company followed in the late 1970s, when top company scientists warned Exxon's management for the first time of the risks of climate change, and launched internal research programs unparalleled among its oil industry peers.

ICN provided Exxon spokesman copies of the documents being published today and requested that a spokesman comment on the research spending during the 1980s, the period closely examined in ICN's series, "Exxon: The Road Not Taken." [1] The spokesman, Alan Jeffers, declined to provide any additional budget numbers.

One of the documents, a June 18, 1982 memo to Harold Weinberg [2], a top research official, informed him that the year's budget for research into the looming CO2 problem was to be cut from $900,000 to $385,000 immediately, and to just $150,000 the following year, an 83 percent cut.

EXXON CORPORATION

1251 AVENUE OF THE AMERICAS, NEW YORK, N.Y. 10020

Science & Technology Department
A.M. NATKIN
Environmental Affairs Coordinator

June 18, 1982

CRL/CO_2 Greenhouse Program

H. N. WEINBERG
JUN 21 1982

Dr. H. N. Weinberg
ER&E
Bldg. 16
Linden

file

Dear Harold:

As we discussed, it is our view that total expenditures for CRL's CO_2 Greenhouse program should not be more than $150k/year beginning July 1, 1982. We feel this rate of expenditure should be sufficient to fulfill the Corporation's needs in the CO_2 Greenhouse field.

[3]

Click to view the full document.

"We feel this rate of expenditure should be sufficient to fulfill the Corporation's needs in the CO2 greenhouse field," said the memo, written by A.M. Natkin, environmental affairs coordinator in the corporate science and technology department.

"These funds are intended to support a resident source of scientific expertise on all phases and aspects of the CO2 Greenhouse effect," he wrote. "It is important for the corporation to stay abreast of developments in order to assess the impact of new scientific discoveries and to respond to various inquiries."

He said that $150,000 a year "should be sufficient to do this."

Exxon's annual research and development budget at the time was more than $600 million, according to a speech by Exxon Research & Engineering chief Ed David at a 1981 Exxon R&D symposium in San Francisco. The company's exploration and capital budgets amounted to $11 billion.

The Natkin memo augured the dismantling of the crown jewel of Exxon's early research on climate change: a seagoing field experiment into the ocean's absorption of carbon dioxide emissions from the burning of fossil fuels. Once envisioned as an expanding, multiyear effort, it was terminated in 1982, another memo confirmed [4].

EXXON RESEARCH AND ENGINEERING COMPANY

CORPORATE RESEARCH
SCIENCE LABORATORIES

P. O. Box 45, Linden, N. J. 07036

DUANE G. LEVINE, Director

ROGER W.COHEN, Director
Theoretical and Mathematical Sciences Laboratory

July 14, 1982

Mr. Peter Kimon
Exxon International
Tanker R&D Division
PA 222/B320

Dear Peter:

This is to advise you that the CO_2 Greenhouse Project on board the "S/s Esso Atlantic" has been terminated.

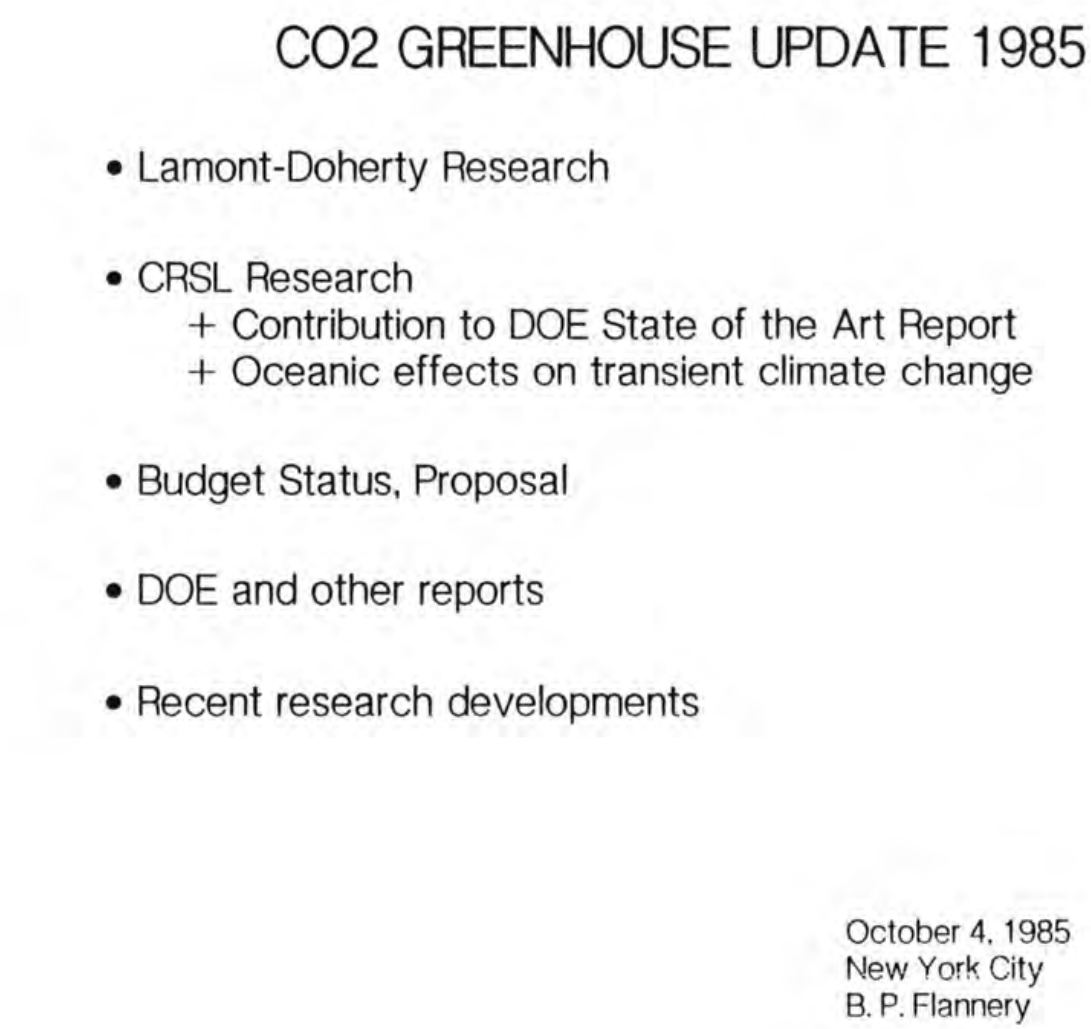
[5]

Click to view the full document.

Another innovative proposal to test the carbon dioxide in old vintages of fine French wines also fell by the wayside.

An additional internal document, this one an October 4, 1985 update [6] presented by Brian Flannery, Exxon's top climate researcher, showed that Exxon's budget for CO2 research in 1985 and 1986 would be no more than $250,000 each year.

That was to cover professional work by Exxon employees, payments to consultants or contractors for research, travel and miscellaneous expenses, and payments to the Lamont-Doherty Earth Observatory of Columbia University, which was a partner in the tanker project and other early Exxon work.



[7]

Click to view the full document.

Exxon's documents show not only that the research was curtailed, but why.

The idea to cut back the research program first surfaced in a January 1981 "scoping study. [8]" That was a type of internal Exxon planning document meant to be the "initial phase in the development of comprehensive plans for high-impact programs," a cover sheet explained.

"Our recommendation is that comprehensive program plan development not be undertaken for the atmospheric CO2 area," said the cover sheet.

After all, said the 16-page scoping study, "There is no near term threat of legislation to control CO2. One reason for this is that it has not yet been proven that the increases in atmospheric CO2 constitute a serious problem that requires immediate action."

The scoping study, a 16-page document, was published by ICN as part of the first installment of its six-part investigative series [9].

"The increasing level of atmospheric CO2 is causing considerable concern due to potential climate effects," the document said. Exxon Research & Engineering, it noted, "has been actively conducting research on certain aspects of the issue for approximately two years. This report addresses the question of whether a comprehensive research plan with greater breadth for ER&E than the current plan should be developed."

The answer to that question was, in short, no. The work "if successful, will likely provide recognition for Exxon for making important technical contributions to this global environmental issue," according to the document.

However, "an expanded R&D program does not appear to offer significantly increased benefits," the document went on. "It would require skills which are in limited supply, and would require additional funds on the part of Exxon since Government funding appears unlikely."

In the mid-1980s the company wrapped up publication of a burst of modeling efforts undertaken during the heyday of its early research–including three important peer-reviewed studies, all described in the ICN series [10]. Those studies by Exxon scientists and consultants, one of them published by the federal government and two by academic journals, confirmed the emerging consensus regarding the planet's sensitivity to increased concentrations of carbon dioxide in the atmosphere.

Then Exxon's published research hit a five-year hiatus, as shown in Exxon's own list [11] of more than 50 peer-reviewed climate studies its employees have worked on.

From 1980 to 1990, Exxon worked without publishing any peer-reviewed scientific research into the probable impact of fossil fuels on climate, just as it was beginning a long campaign of political debate.

In 1988, 1989 and 1990, Exxon sharply escalated its well-documented efforts to emphasize the scientific uncertainty [12] surrounding climate change, a campaign of misinformation that would last for decades.

Exxon asserts that it has been doing important scientific research continuously since the 1970s. It frequently mentions its financial support for work done by programs at the Massachusetts Institute of Technology. (Exxon's support for work at Stanford University, more costly and more geared to developing technologies as opposed to understanding climate change itself, began much later.)

Announced in 1993, Exxon's first grant of $1 million to the MIT program was expressly designed to produce assessments "based on realistic representations of the uncertainties of climate science." That phrase occurred both in the press release announcing the grant and, a year later, in the program's first report [13], entitled "Uncertainty in Climate Change Policy Analysis."

In the light of 20 years of hindsight, that 1994 MIT report's conclusions seem vague and equivocal, providing "no guidance for greenhouse policy."

It said "neither of the extreme positions, to take urgent action now or do nothing awaiting firm evidence, is a constructive response to the climate threat."

"Uncertainty is the essence of the issue," it declared.

Published Under:
Business and Accountability [14]
Exxon: The Road Not Taken [15]

Source URL: https://insideclimatenews.org/news/25112015/exxon-deep-cuts-climate-change-research-budget-1980s-global-warming

Links
[1] http://insideclimatenews.org/content/Exxon-The-Road-Not-Taken
[2] http://insideclimatenews.org/sites/default/files/documents/Budget%20Cutting%20Memo%20%281982%29.pdf
[3] http://insideclimatenews.org/sites/default/files/documents/Budget Cutting Memo (1982).pdf
[4] http://insideclimatenews.org/sites/default/files/documents/Esso%20Project%20Terminated%281982%29.pdf
[5] http://insideclimatenews.org/sites/default/files/documents/Esso Project Terminated(1982).pdf
[6] http://insideclimatenews.org/sites/default/files/documents/CO2%20Research%20Update%281985%29.pdf
[7] http://insideclimatenews.org/sites/default/files/documents/CO2 Research Update(1985).pdf
[8] http://http://insideclimatenews.org/documents/exxon-review-climate-research-program-1981
[9] http://insideclimatenews.org/sites/default/files/documents/Exxon%20Review%20of%20Climate%20Research%20Program%20%281981%29.pdf
[10] http://insideclimatenews.org/news/18092015/exxon-confirmed-global-warming-consensus-in-1982-with-in-house-climate-models
[11] http://cdn.exxonmobil.com/~/media/global/files/energy-and-environment/climate_peer_reviewed_publications_1980s_forward.pdf
[12] http://insideclimatenews.org/news/22102015/Exxon-Sowed-Doubt-about-Climate-Science-for-Decades-by-Stressing-Uncertainty
[13] http://globalchange.mit.edu/files/document/MITJPSPGC_Rpt1.pdf
[14] https://insideclimatenews.org/topics/business-and-accountability-0
[15] https://insideclimatenews.org/tags/exxon-road-not-taken

Exhibit 35

Published on *InsideClimate News* (https://insideclimatenews.org)

More Exxon Documents Show How Much It Knew About Climate 35 Years Ago

Documents reveal Exxon's early CO2 position, its global warming forecast from the 1980s, and its involvement with the issue at the highest echelons.

By Neela Banerjee, InsideClimate News

Dec 1, 2015

A Mobil logo is painted on a storage tank at the Exxon Mobil refinery in Joliet, Illinois. Credit: Scott Olson/Getty Images

In our series, "Exxon: The Road Not Taken [1]," InsideClimate News published several dozen documents [2] that established the arc of Exxon's pioneering yet little-known climate research, which began 40 years ago.

Our reporting team chose them from the thousands of mainly internal company documents that we reviewed in our 10-month investigation.

In addition to the ones we have already published since September—which ExxonMobil has now downloaded from the ICN website and imported to its blog [3]—there are more worth sharing.

Each illuminates a nuance of Exxon's early internal discussions about climate change, from interactions at the highest echelons to presentations for the rank-and-file. The documents reveal the contrast between Exxon's initial public statements about climate change and the company's later efforts to deny the link between fossil fuel use and higher global temperatures.

A selection of previously unpublished memos and documents included in the Exxon files, as part of ICN's continuing exploration of Exxon's climate documents.

Exxon Senior Vice President Weighs in on the 'Greenhouse Program' (1980)

This memo from June 9, 1980 [4], indicates that carbon dioxide research was not a project that Exxon's board simply greenlighted. It was an issue so important that at least one senior vice president was paying close attention to the science, and he was interested and versed enough to argue its arcana.

GENERAL – 154-1-1B
INTER-OFFICE CORRESPONDENCE

DATE June 9, 1980

TO H. Shaw
N. R. Werthamer

REFERENCE

SUBJECT GREENHOUSE PROGRAM

FROM H. N. Weinberg

At the CRIAC Meeting on June 4 I presented the material on the Greenhouse Program as covered in the attached pages 15 and 16. George Piercy questioned me closely on the statement that there is a net CO_2 flux out of the ocean at the upwelling zones. He argued that the concentration of CO_2 in the ocean in parts per million could well be higher than that in the atmosphere in parts per million and that there would be no net flux because those concentrations might be the ones required for equilibrium. On reflection, I think George may be right. Please let me have your comments.

[4]

Click to view the full document.

On June 9, 1980, Harold N. Weinberg, a top manager in Exxon Research and Engineering [5], the hub of the company's carbon dioxide research, sent a note to Richard Werthamer [6] and Henry Shaw [7] with the subject, "Greenhouse Program," the company's CO_2 research initiative. Shaw was the unit's lead climate researcher at the time, Werthamer his boss.

In the note, Weinberg wrote that he gave a presentation at a June 4 meeting about the program and said, "George Piercy [8] questioned me closely on the statement that there is a net CO_2 flux out of the ocean at the upwelling zones."

At the time, Exxon had deployed a state-of-the-art supertanker outfitted with equipment for measuring marine CO_2 concentrations to understand the role the oceans play in the world's carbon cycle. Scientists knew that the oceans had absorbed some of the carbon dioxide released from the increased global consumption of fossil fuels. But Exxon's researchers wanted to understand how exactly CO_2 behaved in the oceans—and whether after trapping the gas, the seas would eventually release it into the atmosphere.

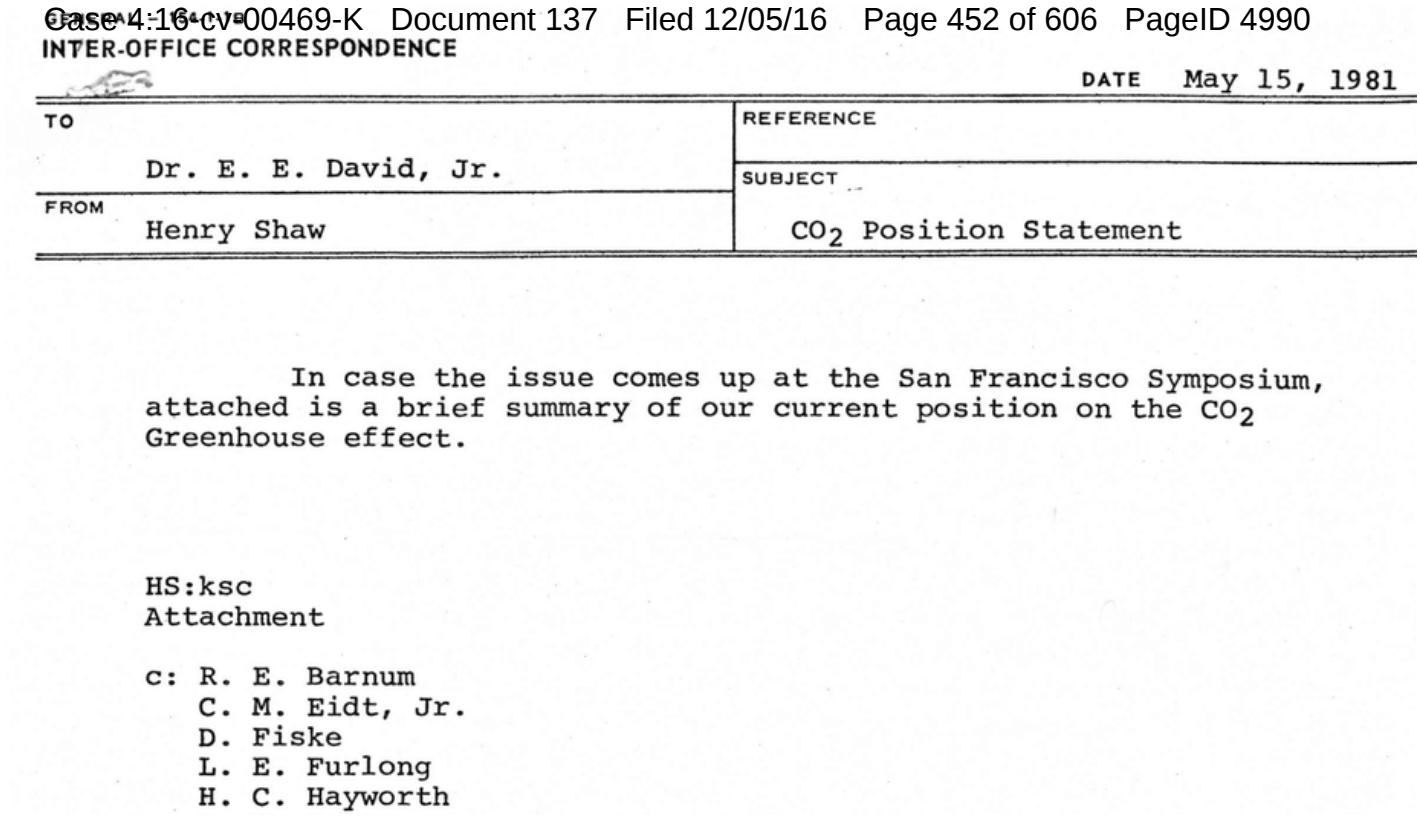
Piercy was a senior vice president at Exxon [8] in 1980, and a member of the board of directors. According to the note, he challenged Weinberg's assertion that global circulation patterns move CO_2 out of the deep oceans to the surface where it escapes into the atmosphere, a process known as "upwelling."

Piercy disagreed, arguing the oceans can hold higher concentrations of CO_2 without releasing it into the air. (As it turns out, Weinberg was right, though overall, the world's oceans act as a global sink, pulling CO2 from the air into the water and helping dampen the effects of climate change.)

Other memos from the early 1980s (here [9] and here [10]) show that ER&E staff regularly apprised at least one other senior vice president, M.E.J. O'Loughlin, of the latest climate research, too.

Exxon's Lead Climate Researcher Presents: The Company's Position on the CO_2 Greenhouse Effect (1981)

In this May 15, 1981 memo [11], Exxon estimates a 3-degree Celsius rise in global average temperatures in 100 years, and appears ready to discuss publicly that a time could arrive when the world would have to shift to renewable energy. Exxon thought such a transition could happen in a gradual, "orderly" way.



INTER-OFFICE CORRESPONDENCE

DATE May 15, 1981

TO
Dr. E. E. David, Jr.

REFERENCE

SUBJECT
CO_2 Position Statement

FROM
Henry Shaw

In case the issue comes up at the San Francisco Symposium, attached is a brief summary of our current position on the CO_2 Greenhouse effect.

HS:ksc
Attachment

c: R. E. Barnum
C. M. Eidt, Jr.
D. Fiske
L. E. Furlong
H. C. Hayworth

[11]

Click to view the full document.

By 1981, Exxon had already established itself as a leader on the greenhouse effect with many in industry and the government. In early May of that year, Henry Shaw prepared a "brief summary of our current position on the CO_2 Greenhouse effect" for Edward E. David, Jr. [12], president of Exxon Research and Engineering, in case the topic came up at an Exxon symposium in San Francisco where David would be speaking.

Based on documentary evidence, it appears the summary went through several drafts and the final version went to David's office on May 15.

The bullet points that Shaw presented to David start with the idea that "there is sufficient time to study the problem before corrective action is required." Shaw based his caution on estimates that higher global temperatures caused by rising CO_2 would only be felt around the year 2000, and that CO_2 concentrations in the atmosphere would double in about 100 years. Those gaps, Shaw wrote, permit "time for an orderly transition to non-fossil fuel technologies should restrictions on fossil fuel use be deemed necessary."

The document did not raise doubts about the links between fossil fuel use, higher CO_2 concentrations and a warmer planet. Shaw wrote:

- "Atmospheric CO_2 will double in 100 years if fossil fuels grow at 1.4%/ a^2.
- 3°C global average temperature rise and 10°C at poles if CO_2 doubles.

—Major shifts in rainfall/agriculture
—Polar ice may melt"

Eleven other staff and managers at Exxon Research, besides David, were sent the paper with the corporate position on global warming that Shaw had articulated.

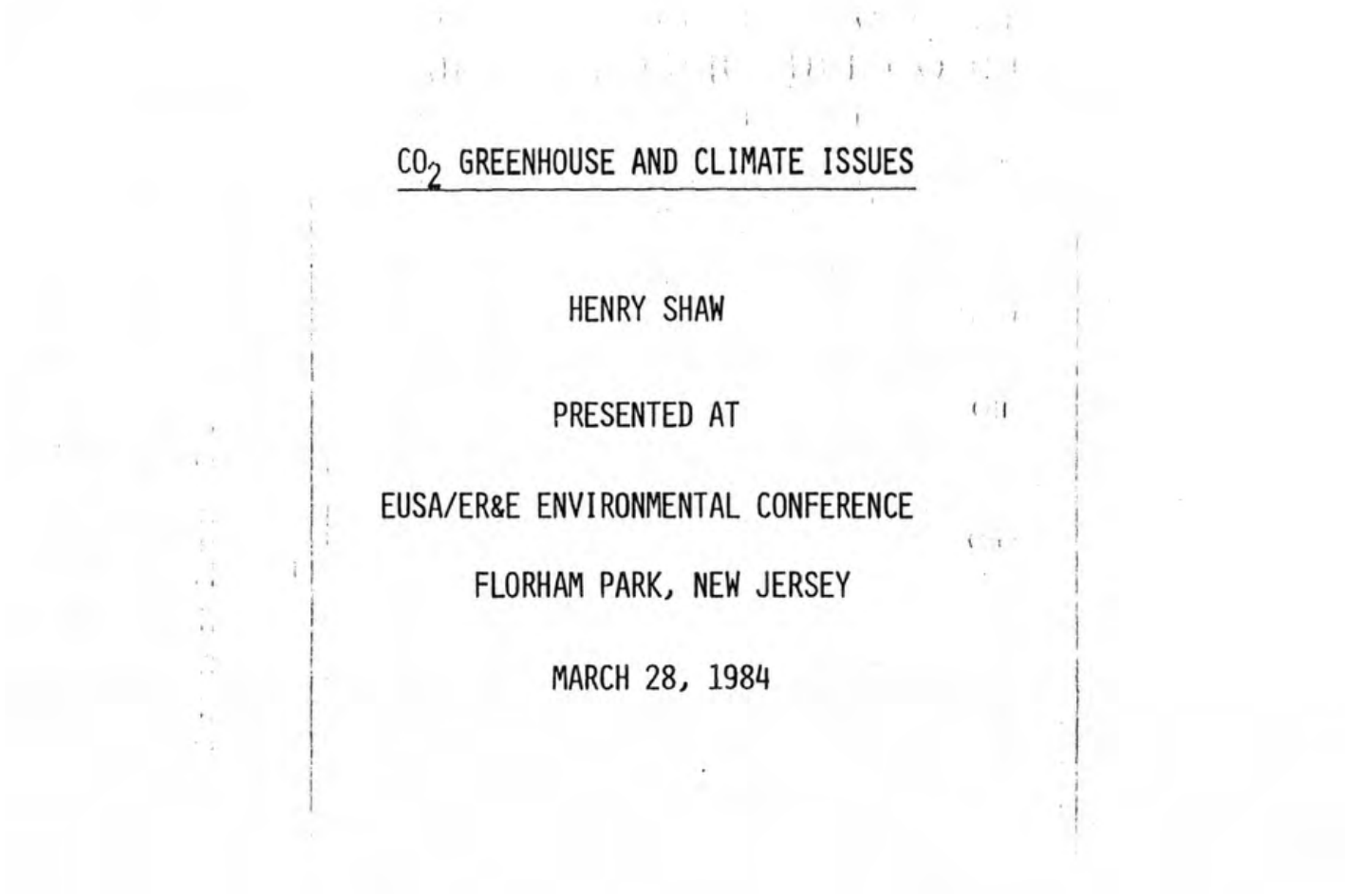
By the end of the 1980s, Exxon would publicly pivot away from open consideration of any restrictions on fossil fuel use because of its effect on the atmosphere.

In 1996, when climate research was more certain about the link between fossil fuel combustion and climate change than during the time of Shaw's memo, Exxon's new chairman and chief executive Lee Raymond said in a speech in Detroit: [13] "Currently, the scientific evidence is inconclusive as to whether human activities are having a significant effect on the global climate."

At Exxon's annual meeting in 2015, chairman Rex Tillerson said it would be best to wait for more solid science before acting on climate change. "What if [after] everything we do, it turns out our models are lousy, and we don't get the effects we predict?"

A Presentation on 'CO_2 Greenhouse and Climate Issues' (1984)

Exxon began incorporating CO_2 estimates into its corporate planning as early as 1981, this March 28, 1984 presentation shows [14]. The company acknowledged the link between fossil fuel use and climate change throughout most of the 1980s.



CO_2 GREENHOUSE AND CLIMATE ISSUES

HENRY SHAW

PRESENTED AT

EUSA/ER&E ENVIRONMENTAL CONFERENCE

FLORHAM PARK, NEW JERSEY

MARCH 28, 1984

[15]

Click to view the full document.

In 1984, Shaw no longer ran Exxon's CO_2 research. He had been moved from that post a few years earlier as the company shifted its focus from the expensive empirical research on the tanker to cheaper, yet still highly significant, climate modeling. By the mid-1980s, Shaw worked on keeping track of emerging independent climate research and apprising top managers.

On March 28, Shaw gave a presentation at an internal Exxon environmental conference in Florham Park, N.J. He showed projections of fossil fuel use through the 21st century and the growth in global carbon dioxide expected from it.

Shaw told his audience that he was regularly asked to prepare estimates for Exxon about CO_2 from fossil fuel use. Those estimates used and were integrated into the company's energy projections for the 21st century and circulated within Exxon.

He wrote in the presentation: "As part of CPPD's technology forecasting activities in 1981, I wrote a CO_2 greenhouse forecast based on publically available information. Soon thereafter, S&T [Science & Technology] requested an update of the forecast using Exxon fossil fuel projections. This request was followed late in 1981 with a request by CPD [Corporate Planning Department] for assistance in evaluating the potential impact of the CO_2 effect in the '2030 Study.' After meeting CPD's specific need, a formal technology forecast update was issued to S&T in the beginning of April 1982. It was subsequently sent for review to the Exxon affiliates."

Exxon's affiliates are the company's various divisions, including exploration and production, refining, international units and shipping.

Then Shaw shared with his audience estimates by Exxon and three other entities—the Environmental Protection Agency, the National Academy of Sciences, and the Massachusetts Institute of Technology—about when CO_2 would double in the atmosphere, what kind of increases could occur in average global temperatures and the effects of such changes on human life.

Exxon estimated that CO_2 would double by 2090, which was later than what the other groups had projected. It estimated that average global temperatures would rise by 1.3 to 3.1 degrees Celsius (2.3 to 5.6 degrees Fahrenheit), which was in the mid-range of the four projections that Shaw shared.

Shaw showed the policy recommendations of the three organizations and Exxon to address climate change. According to him, MIT argued for an "extreme reduction in fossil fuel use," while the others, including Exxon, urged a more cautious approach. But Exxon did not deny the link between fossil fuel use and climate change as it would begin to do just five years later.

ICN reporter Lisa Song contributed to this report.

Published Under:
Business and Accountability [16]
Exxon: The Road Not Taken [17]

Source URL: https://insideclimatenews.org/news/01122015/documents-exxons-early-co2-position-senior-executives-engage-and-warming-forecast

Links
[1] http://insideclimatenews.org/content/Exxon-The-Road-Not-Taken
[2] http://insideclimatenews.org/search_documents?field_related_project=41124
[3] http://corporate.exxonmobil.com/en/shareholder-archive/supporting-materials
[4] http://insideclimatenews.org/documents/weinberg-co2-memo-1980
[5] http://insideclimatenews.org/news/15092015/harold-weinberg
[6] http://insideclimatenews.org/news/15092015/n-richard-werthamer
[7] http://insideclimatenews.org/news/15092015/henry-shaw
[8] http://insideclimatenews.org/news/15092015/george-t-piercy
[9] http://insideclimatenews.org/documents/letters-senior-vps-1980
[10] http://insideclimatenews.org/documents/catastrophic-effects-letter-1981
[11] http://insideclimatenews.org/documents/exxon-position-co2-1981
[12] http://insideclimatenews.org/news/15092015/edward-david
[13] http://insideclimatenews.org/news/22102015/Exxon-Sowed-Doubt-about-Climate-Science-for-Decades-by-Stressing-Uncertainty
[14] http://insideclimatenews.org/documents/shaw-climate-presentation-1984
[15] http://insideclimatenews.org/sites/default/files/documents/Shaw Climate Presentation (1984).pdf
[16] https://insideclimatenews.org/topics/business-and-accountability-0
[17] https://insideclimatenews.org/tags/exxon-road-not-taken

Exhibit 36

Energy and Carbon -- Managing the Risks

ExxonMobil[1] engages in constructive and informed dialogue with a wide variety of stakeholders on a number of energy-related topics. This report seeks to address important questions raised recently by several stakeholder organizations on the topics of global energy demand and supply, climate change policy, and carbon asset risk.

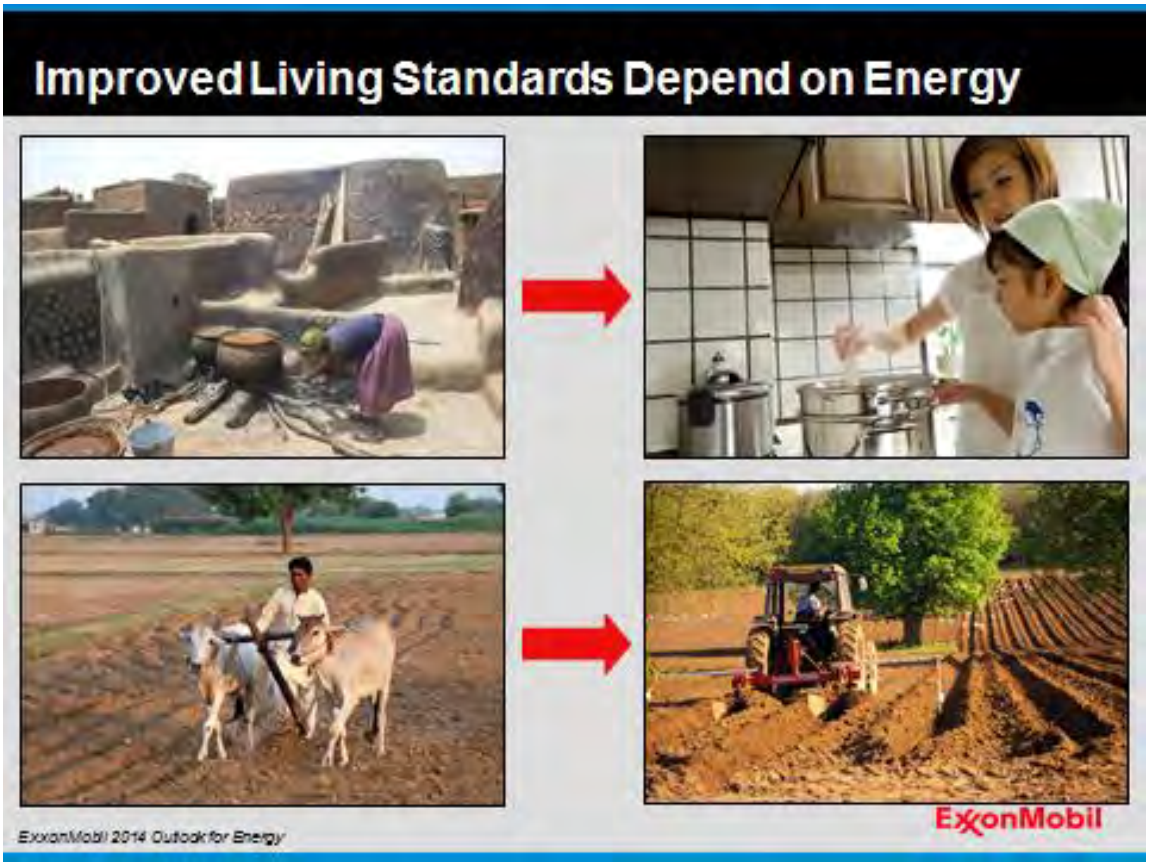
As detailed below, ExxonMobil makes long-term investment decisions based in part on our rigorous, comprehensive annual analysis of the global outlook for energy, an analysis that has repeatedly proven to be consistent with the International Energy Agency *World Energy Outlook*, the U.S. Energy Information Administration *Annual Energy Outlook*, and other reputable, independent sources. For several years, our *Outlook for Energy* has explicitly accounted for the prospect of policies regulating greenhouse gas emissions (GHG). This factor, among many others, has informed investments decisions that have led ExxonMobil to become the leading producer of cleaner-burning natural gas in the United States, for example.

Based on this analysis, we are confident that none of our hydrocarbon reserves are now or will become "stranded." We believe producing these assets is essential to meeting growing energy demand worldwide, and in preventing consumers – especially those in the least developed and most vulnerable economies – from themselves becoming stranded in the global pursuit of higher living standards and greater economic opportunity.

[1] As used in this document, "ExxonMobil" means Exxon Mobil Corporation and/or one or more of its affiliated companies. Statements of future events or conditions in this report are forward-looking statements. Actual future results, including economic conditions and growth rates; energy demand and supply sources; efficiency gains; and capital expenditures, could differ materially due to factors including technological developments; changes in law or regulation; the development of new supply sources; demographic changes; and other factors discussed herein and under the heading "Factors Affecting Future Results" in the Investors section of our website at: www.exxonmobil.com. The information provided includes ExxonMobil's internal estimates and forecasts based upon internal data and analyses, as well as publicly available information from external sources including the International Energy Agency. Citations in this document are used for purposes of illustration and reference only and any citation to outside sources does not necessarily mean that ExxonMobil endorses all views or opinions expressed in or by those sources.

1. Strong Correlation between Economic Growth and Energy Use

The universal importance of accessible and affordable energy for modern life is undeniable. Energy powers economies and enables progress throughout the world. It provides heat for homes and businesses to protect against the elements; power for hospitals and clinics to run advanced, life-saving equipment; fuel for cooking and transportation; and light for schools and streets. Energy is the great enabler for modern living and it is difficult to imagine life without it. Given the importance of energy, it is little wonder that governments seek to safeguard its accessibility and affordability for their growing populations. It is also understandable that any restrictions on energy production that decrease its accessibility, reliability or affordability are of real concern to consumers who depend upon it.



2. World Energy Needs Keep Growing

Each year, ExxonMobil analyzes trends in energy and publishes our forecast of global energy requirements in our *Outlook for Energy*. The Outlook provides the foundation for our business and investment planning, and is compiled from the breadth of the company's worldwide experience in and understanding of the energy industry. It is based on rigorous analyses of supply and demand, technological development, economics, and government policies and regulations, and it is consistent with many independent, reputable third-party analyses.

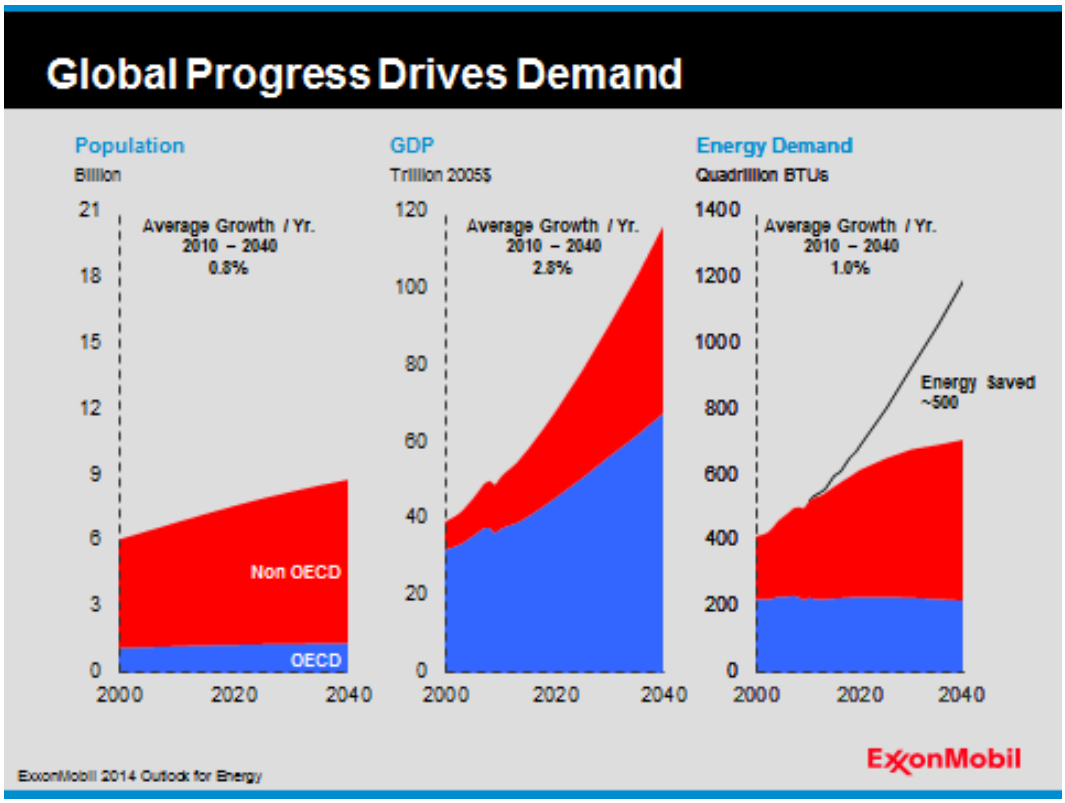
ExxonMobil's current *Outlook for Energy* extends through the year 2040, and contains several conclusions that are relevant to questions raised by stakeholder organizations. Understanding this factual and analytical foundation is crucial to understanding ExxonMobil's investment decisions and approach to the prospect of further constraints on carbon.

World population increases. Ultimately, the focus of ExxonMobil's *Outlook for Energy* – indeed, the focus of our business – is upon people, their economic aspirations and their energy requirements. Accordingly, our analysis begins with demographics. Like many independent analyses, ExxonMobil anticipates the world's population will add two billion people to its current total of seven billion by the end of the Outlook period. The majority of this growth will occur in developing countries.

World GDP grows. The global economy will grow as the world's population increases, and it is our belief that GDP gains will outpace population gains over the Outlook period, resulting in higher living standards. Assuming sufficient, reliable and affordable energy is available, we see world GDP growing at a rate that exceeds population growth through the Outlook period, almost tripling in size from what it was globally in 2000.[2] It is

[2] We see global GDP approaching $120 trillion, as compared to $40 trillion of global GDP in 2000 (all in constant 2005 USA$'s). GDP per capita will also grow by about 80 percent between 2010 and 2040, despite the increase in population.

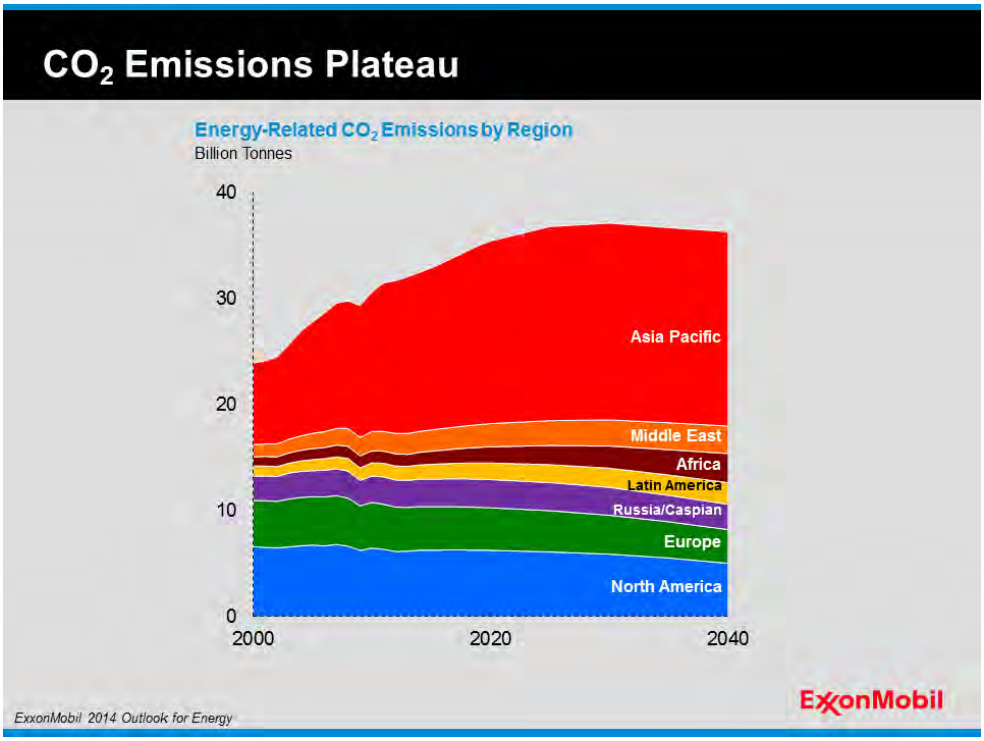
largely the poorest and least developed of the world's countries that benefit most from this anticipated growth. However, this level of GDP growth requires more accessible, reliable and affordable energy to fuel growth, and it is vulnerable populations who would suffer most should that growth be artificially constrained.



Energy demand grows with population and GDP. As the world becomes more populous and living standards improve over the Outlook period, energy demand will increase as well. We see the world requiring 35 percent more energy in 2040 than it did in 2010. The pace of this energy demand increase is higher than the population growth rate, but less than global GDP growth rate. Greater energy efficiency is a key reason why energy demand growth trails economic growth. We see society implementing policy changes that will promote energy efficiency, which will serve to limit energy demand growth. We also see many governments adopting policies that promote the switch to less carbon-intensive fuels, such as natural gas. As noted in the chart above, energy demand in 2040 could be almost double what it would be without the anticipated efficiency gains.

ExxonMobil believes that efficiency is one of the most effective tools available to manage greenhouse gas emissions, and accordingly our company is making significant contributions to energy efficiency, both in our own operations and in our products.

Energy-related CO2 emissions stabilize and start decreasing. As the world's population grows and living standards increase, we believe GHG emissions will plateau and start decreasing during the Outlook period. In the OECD countries, energy-based GHG emissions have already peaked and are declining. Our views in this regard are similar to other leading, independent forecasts.[3]

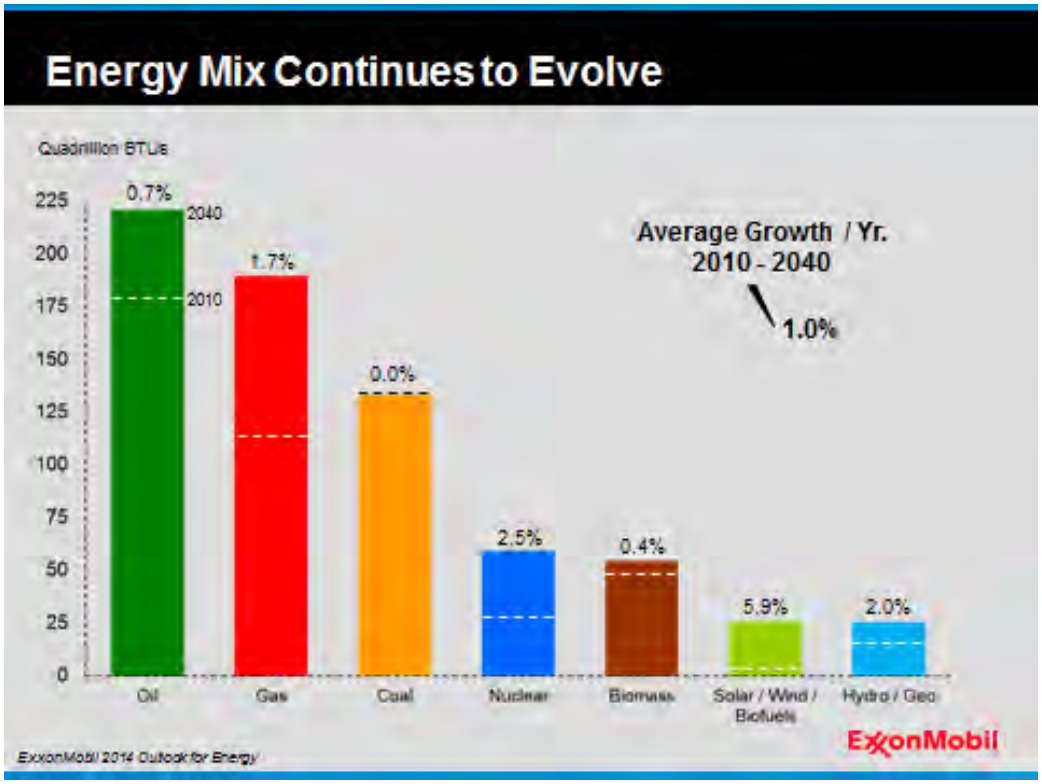


As part of our Outlook process, we do not project overall atmospheric GHG concentration, nor do we model global average temperature impacts.[4] However, we do project an energy-related CO2 emissions profile through 2040, and this can be compared

[3] For example, the IEA predicts that energy-related emissions will grow by 20%, on trend but slightly higher than our Outlook. See www.worldenergyOutlook.org.
[4] These would require data inputs that are well beyond our company's ability to reasonably measure or verify.

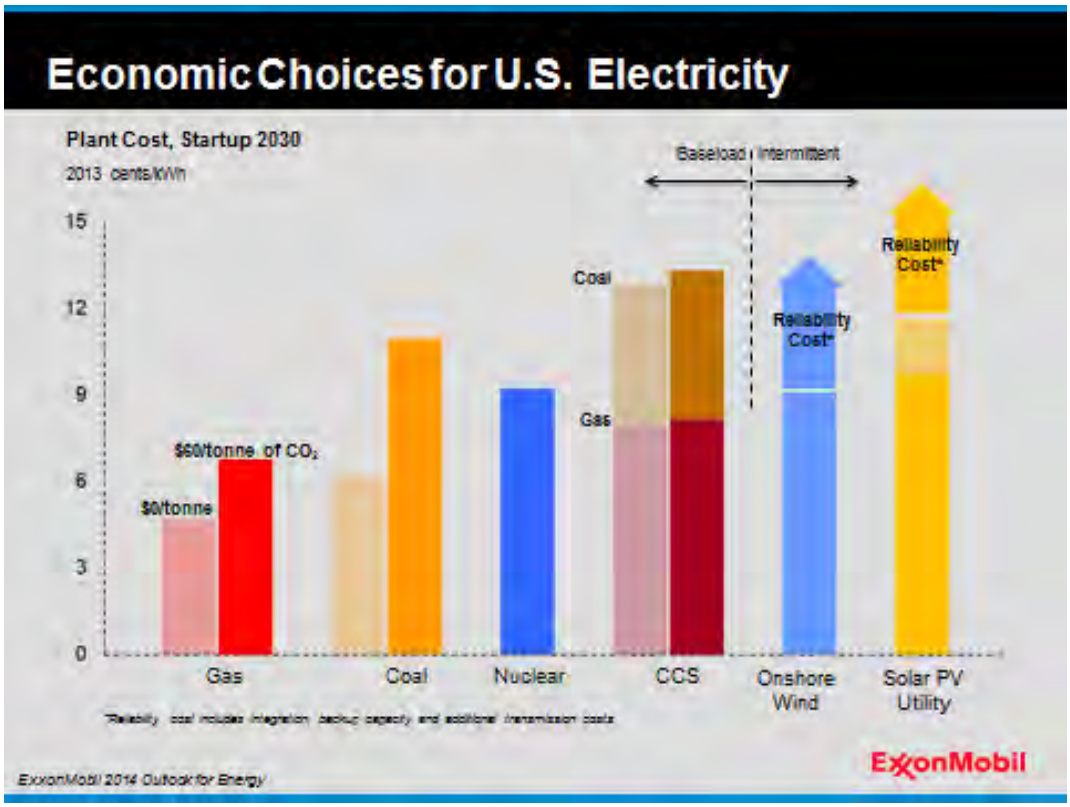
to the energy-related CO2 emissions profiles from various scenarios outlined by the Intergovernmental Panel on Climate Change (IPCC). When we do this, our Outlook emissions profile through 2040 would closely approximate the IPCC's intermediate RCP 4.5 emissions profile pathway in shape, but is slightly under it in magnitude.[5]

All economic energy sources are needed to meet growing global demand. In analyzing the evolution of the world's energy mix, we anticipate renewables growing at the fastest pace among all sources through the Outlook period. However, because they make a relatively small contribution compared to other energy sources, renewables will continue to comprise about 5 percent of the total energy mix by 2040. Factors limiting further penetration of renewables include scalability, geographic dispersion, intermittency (in the case of solar and wind), and cost relative to other sources.



[5] The IPCC RCP 4.5 scenario extends 60 years beyond our Outlook period to the year 2100, and incorporates a full carbon cycle analysis. The relevant time horizons differ and we do not forecast potential climate impacts as part of our Outlook, and therefore cannot attest to their accuracy.

The cost limitations of renewables are likely to persist even when higher costs of carbon are considered.



3. Climate Change Risk

ExxonMobil takes the risk of climate change seriously, and continues to take meaningful steps to help address the risk and to ensure our facilities, operations and investments are managed with this risk in mind.

Many governments are also taking these risks seriously, and are considering steps they can take to address them. These steps may vary in timing and approach, but regardless, it is our belief they will be most effective if they are informed by global energy demand and supply realities, and balance the economic aspirations of consumers.

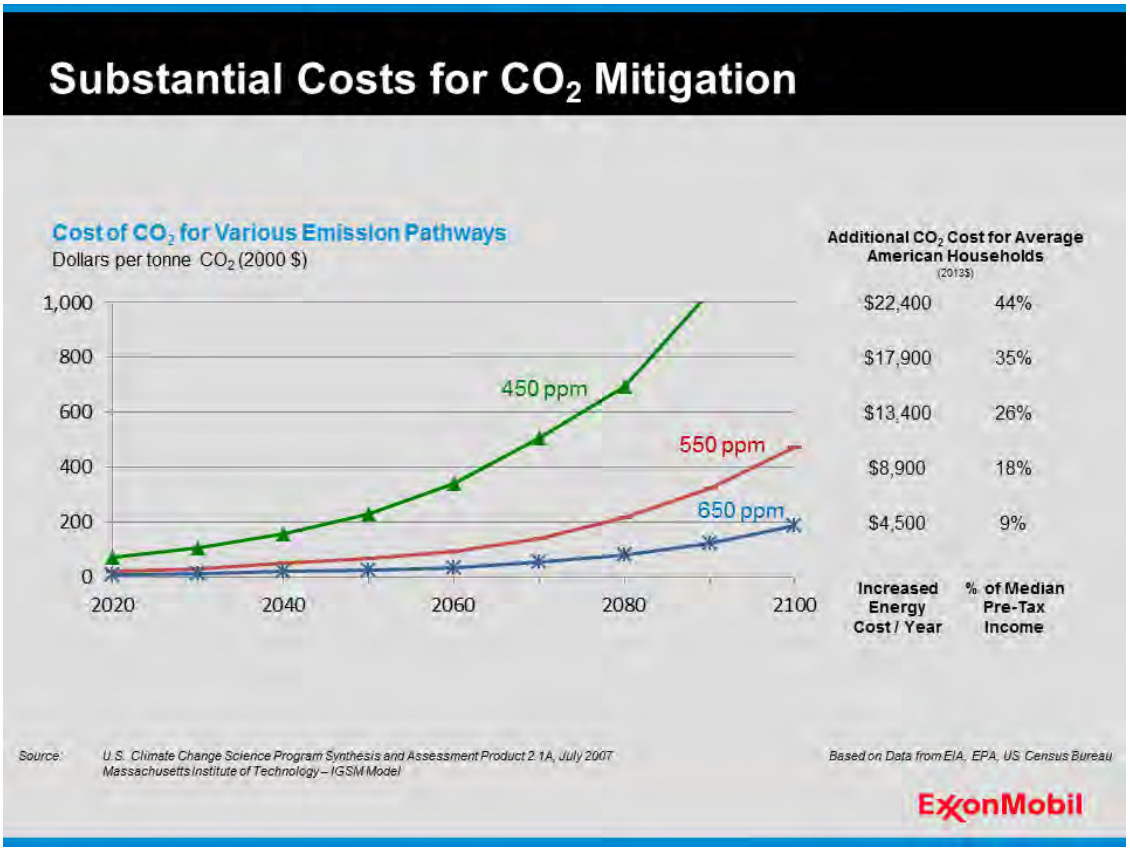
4. Carbon Budget and Carbon Asset Risk Implications

One focus area of stakeholder organizations relates to what they consider the potential for a so-called carbon budget. Some are advocating for this mandated carbon budget in order to achieve global carbon-based emission reductions in the range of 80 percent through the year 2040, with the intent of stabilizing world temperature increases not to exceed 2 degrees Celsius by 2100 (i.e., the "low carbon scenario"). A concern expressed by some of our stakeholders is whether such a "low carbon scenario" could impact ExxonMobil's reserves and operations – i.e., whether this would result in unburnable proved reserves of oil and natural gas.

The "low carbon scenario" would require CO2 prices significantly above current price levels. In 2007, the U.S. Climate Change Science Program published a study that examined, among other things, the global CO2 cost needed to drive investments and transform the global energy system, in order to achieve various atmospheric CO2 stabilization pathways. The three pathways shown in the chart below are from the MIT IGSM model used in the study, and are representative of scenarios with assumed climate policies that stabilize GHGs in the atmosphere at various levels, from 650 ppm CO2 down to 450 ppm CO2, a level approximating the level asserted to have a reasonable chance at meeting the "low carbon scenario." Meeting the 450 ppm pathway requires large, immediate reductions in emissions with overall net emissions becoming negative in the second half of the century. Non-fossil energy sources, like nuclear and renewables, along with carbon capture and sequestration, are deployed in order to transform the energy system. Costs for CO2 required to drive this transformation are modeled. In general, CO2 costs rise with more stringent stabilization targets and with time. Stabilization at 450 ppm would require CO2 prices significantly above current price levels, rising to over $200 per ton by 2050. By comparison, current EU Emissions Trading System prices are approximately $8 to $10 per ton of CO2.

In the right section of the chart below, different levels of added CO2 are converted to estimated added annual energy costs for an average American family earning the median

income. For example, by 2030 for the 450ppm CO2 stabilization pathway, the average American household would face an added CO2 cost of almost $2,350 per year for energy, amounting to about 5 percent of total before-tax median income. These costs would need to escalate steeply over time, and be more than double the 2030 level by mid-century. Further, in order to stabilize atmospheric GHG concentrations, these CO2 costs would have to be applied across both developed and developing countries.

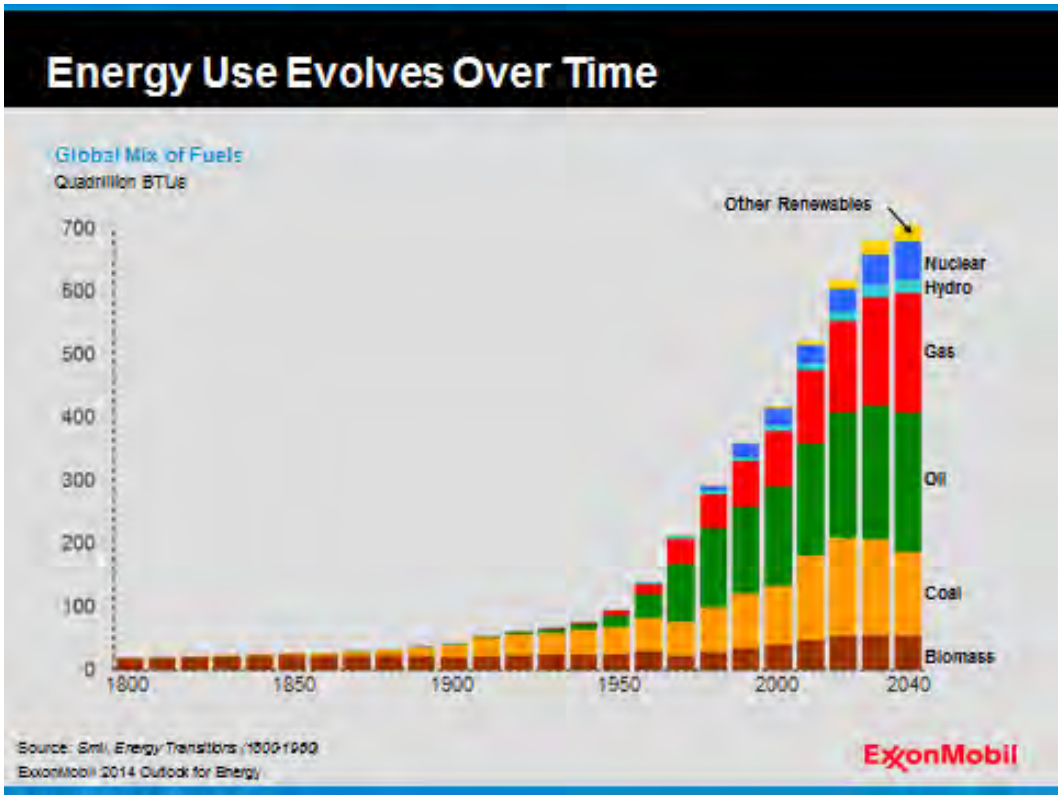


In 2008, the International Energy Agency estimated that reducing greenhouse gas emissions to just 50 percent below 2005 levels by 2050 would require $45 trillion in added energy supply and infrastructure investments.[6] In this scenario, the IEA estimated that *each year* between 2005 and 2050 the world would need to construct 24 to 32 one-thousand-megawatt nuclear plants, build 30 to 35 coal plants with carbon capture and

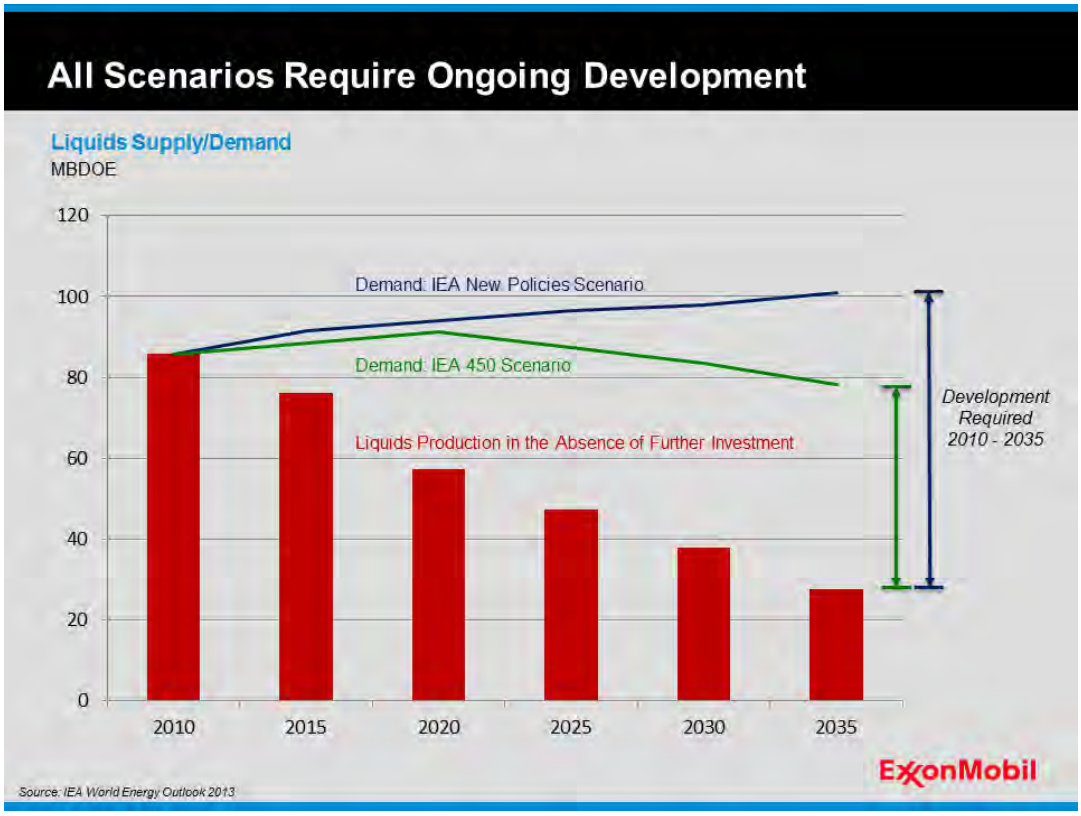
[6] See *IEA Energy Technology Perspectives 2008, Scenarios & Strategies to 2050*.

sequestration capabilities, and install 3,700 to 17,800 wind turbines of four megawatt capacity.

Transforming the energy system will take time. Energy use and mix evolve slowly due to the vast size of the global energy system. As shown in the chart below, biomass like wood was the primary fuel for much of humanity's existence. Coal supplanted biomass as the primary energy source around 1900; it was not until the middle of the 20th century before oil overtook coal as the primary source of energy. We believe the transition to lower carbon energy sources will also take time, despite rapid growth rates for such sources. Traditional energy sources have had many decades to scale up to meet the enormous energy needs of the world. As discussed above, renewable sources, such as solar and wind, despite very rapid growth rates, cannot scale up quickly enough to meet global demand growth while at the same time displacing more traditional sources of energy.



A "low carbon scenario" will impact economic development. Another consideration related to the "low carbon scenario" is that capping of carbon-based fuels would likely harm those least economically developed populations who are most in need of affordable, reliable and accessible energy.[7] Artificially restricting supplies can also increase costs, and increasing costs would not only impact the affordability and accessibility of energy, especially to those least able to pay, it could impact the rate of economic development and living standards for all. Increasing energy costs leads to a scarcity of affordable, reliable and accessible energy and can additionally lead to social instability. While the risk of regulation where GHG emissions are capped to the extent contemplated in the "low carbon scenario" during the Outlook period is always possible, it is difficult to envision governments choosing this path in light of the negative implications for economic growth and prosperity that such a course poses, especially when other avenues may be available, as discussed further below.



[7] According to the International Energy Agency, 2.6 billion people still rely on biomass for cooking and over 15% of the world's population lacks access to electricity (http://www.iea.org/topics/energypoverty/).

Even in a "low carbon scenario," hydrocarbon energy sources are still needed. The IEA in its World Energy Outlook 2013 examined production of liquids from currently-producing fields, in the absence of additional investment, versus liquids demand, for both their lead "*New Policies Scenario*" and for a "*450 Scenario.*" As shown in the chart above, in both scenarios, there remains significant liquids demand through 2035, and there is a need for ongoing development and investment. Without ongoing investment, liquids demand will not be met, leaving the world short of oil.

ExxonMobil believes that although there is always the possibility that government action may impact the company, the scenario where governments restrict hydrocarbon production in a way to reduce GHG emissions 80 percent during the Outlook period is highly unlikely. The Outlook demonstrates that the world will require all the carbon-based energy that ExxonMobil plans to produce during the Outlook period.[8] Also, as discussed above, we do not anticipate society being able to supplant traditional carbon-based forms of energy with other energy forms, such as renewables, to the extent needed to meet this carbon budget during the Outlook period.

5. Managing the Risk

ExxonMobil's actions. ExxonMobil addresses the risk of climate change in several concrete and meaningful ways. We do so by improving energy efficiency and reducing emissions at our operations, and by enabling consumers to use energy more efficiently through the advanced products we manufacture. In addition, we conduct and support extensive research and development in new technologies that promote efficiency and reduce emissions.

[8] ExxonMobil's proved reserves at year-end 2013 are estimated to be produced on average within sixteen years, well within the Outlook period. See Exxon Mobil Corporation 2013 Financial & Operating Review, p. 22. It is important to note that this sixteen year average reserves-to-production ratio does not mean that the company will run out of hydrocarbons in sixteen years, since it continues to add proved reserves from its resource base and has successfully replaced more than 100% of production for many years. See Item 2 Financial Section of ExxonMobil's 2013 Form 10-K for ExxonMobil's proved reserves, which are determined in accordance with current SEC definitions.

In our operations, we apply a constant focus on efficiency that enables us to produce energy to meet society's needs using fewer resources and at a lower cost.

For example, ExxonMobil is a leader in cogeneration at our facilities, with equity ownership in more than 100 cogeneration units at more than 30 sites with over 5200 megawatts of capacity. This capacity, which is equivalent to the electricity needs of approximately 2.5 million U.S. households, reduces the burden on outside power and grid suppliers and can reduce the resulting emissions by powering ExxonMobil's operations in a more efficient and effective manner.

We also constantly strive to reduce the emission intensity of our operations. Cumulative savings, for example, between 2009 and 2012 amounted to 8.4 million metric tons of greenhouse gases.

Many of ExxonMobil's products also enable consumers to be more energy efficient and therefore reduce greenhouse gas emissions. Advancements in tire liner technology developed by ExxonMobil allow drivers to save fuel. Our synthetic lubricants also improve vehicle engine efficiency. And lighter weight plastics developed by ExxonMobil reduce vehicle weights, further contributing to better fuel efficiency. [9]

ExxonMobil is also the largest producer of natural gas in the United States, a fuel with a variety of consumer uses, including heating, cooking and electricity generation. Natural gas emits up to 60 percent less CO2 than coal when used as the source for power generation.

Research is another area in which ExxonMobil is contributing to energy efficiency and reduced emissions. We are on the forefront of technologies to lower greenhouse gas emissions. For example, ExxonMobil operates one of the world's largest carbon capture

[9] Using ExxonMobil fuel-saving technologies in one-third of U.S. vehicles, for example, could translate into a saving of about 5 billion gallons of gasoline, with associated greenhouse gas emissions savings equivalent to taking about 8 million cars off the road.

and sequestration (CCS) operations at our LaBarge plant in Wyoming. It is a co-venturer in another project, the Gorgon natural gas development in Australia, which when operational will have the largest saline reservoir CO2 injection facility in the world. The company is leveraging its experience with CCS in developing new methods for capturing CO2, which can reduce costs and increase the application of carbon capture for society. ExxonMobil also is actively engaged, both internally and in partnership with renowned universities and institutions, in research on new break-through technologies for energy.

The company also engineers its facilities and operations robustly with extreme weather considerations in mind. Fortification to existing facilities and operations are addressed, where warranted due to climate or weather events, as part of ExxonMobil's Operations Integrity Management System.

ExxonMobil routinely conducts life cycle assessments (LCAs), which are useful to understand whether a technology can result in environmental improvements across a broad range of factors. For example, in 2011 we conducted a LCA in concert with Massachusetts Institute of Technology and Synthetic Genomics Inc. to assess the impact of algal biofuel production on GHG emissions, land use, and water use. The study demonstrated the potential that algae fuels can be produced with freshwater consumption equivalent to petroleum refining, and enable lower GHG emissions. A more recent LCA demonstrated that "well-to-wire" GHG emissions from shale gas are about half that of coal, and not significantly different than emissions of conventional gas.

In addition, ExxonMobil is involved in researching emerging technologies that can help mitigate the risk of climate change. For example, the company has conducted research into combustion fundamentals with automotive partners in order to devise concepts to improve the efficiency and reduce emissions of internal combustion engines.

ExxonMobil has also developed technology for an on-board hydrogen-powered fuel cell that converts other fuels into hydrogen directly under a vehicle's hood, thereby eliminating the need for separate facilities for producing and distributing hydrogen. This

technology can be up to 80 percent more fuel efficient and emit 45 percent less CO2 than conventional internal combustion engines. The company is also a founding member of the Global Climate and Energy Project at Stanford University, a program that seeks to develop fundamental, game-changing scientific breakthroughs that could lower GHG emissions.

Government policy. Addressing climate risks is one of many important challenges that governments face on an ongoing basis, along with ensuring that energy supplies are affordable and accessible to meet societal needs.

Energy companies like ExxonMobil can play a constructive role in this decision-making process by sharing our insights on the most effective means of achieving society's goals given the workings of the global energy system and the realities that govern it.

The introduction of rising CO2 costs will have a variety of impacts on the economy and energy use in every sector and region within any given country. Therefore, the exact nature and pace of GHG policy initiatives will likely be affected by their impact on the economy, economic competitiveness, energy security and the ability of individuals to pay the related costs.

Governments' constraints on use of carbon-based energy sources and limits on greenhouse gas emissions are expected to increase throughout the Outlook period. However, the impact of these rising costs of regulations on the economy we expect will vary regionally throughout the world and will not rise to the level required for the "low carbon scenario." These reasonable constraints translate into costs, and these costs will help drive the efficiency gains that we anticipate will serve to curb energy growth requirements for society as forecasted over the Outlook period.

We also see these reasonable constraints leading to a lower carbon energy mix over the Outlook period, which can serve to further reduce greenhouse gas emissions. For example, fuel switching to cleaner burning fuels such as natural gas has significantly

contributed to the United States reducing greenhouse gas emissions last year to levels not seen since 1994. Furthermore, the impact of efficiency is expected to help stabilize and eventually to reduce GHG emissions over the Outlook period, as discussed previously. These constraints will also likely result in dramatic global growth in natural gas consumption at the expense of other forms of energy, such as coal.

We see the continued focus on efficiency, conservation and fuel switching as some of the most effective and balanced ways society can address climate change within the Outlook period in a manner that avoids the potentially harmful and destabilizing consequences that the artificial capping of needed carbon-based energy sources implied within the "low carbon scenario" can cause.[10]

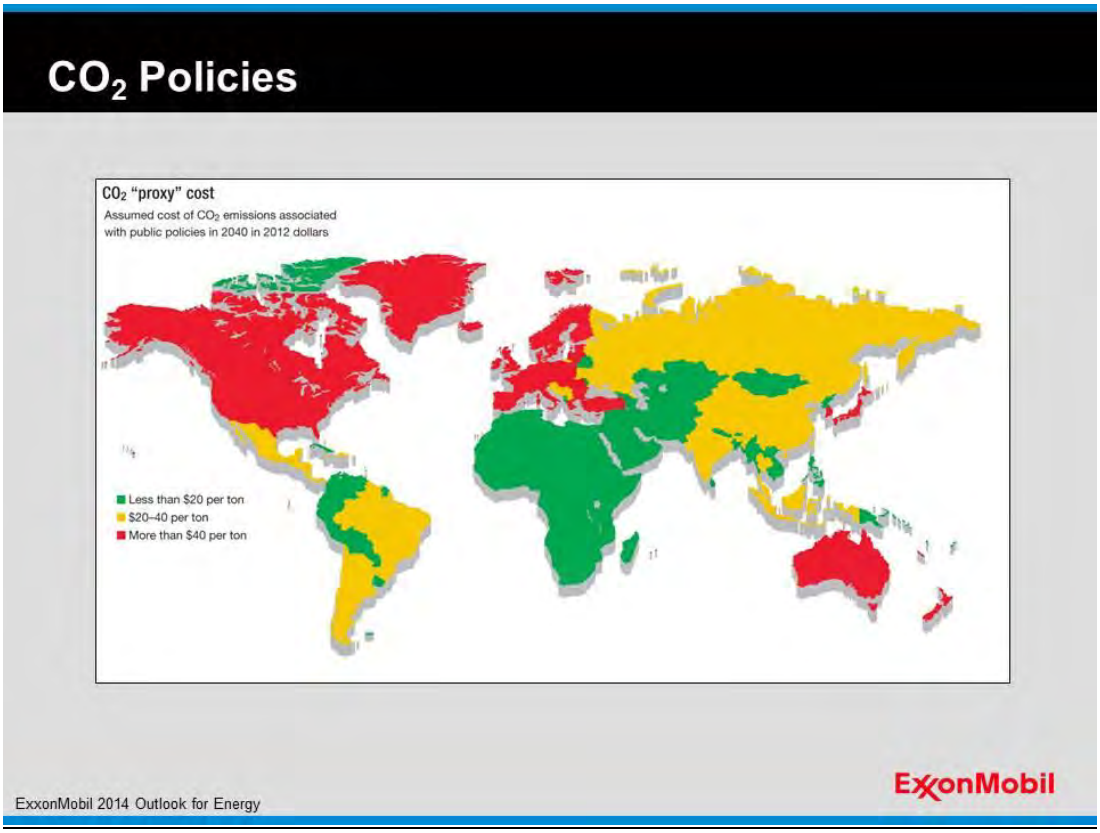
6. Planning Bases and Investments

ExxonMobil is committed to disciplined investing in attractive opportunities through the normal fluctuations in business cycles. Projects are evaluated under a wide range of possible economic conditions and commodity prices that are reasonably likely to occur, and we expect them to deliver competitive returns through the cycles. We do not publish the economic bases upon which we evaluate investments due to competitive considerations. However, we apply prudent and substantial safety margins in our planning assumptions to help ensure robust returns. In assessing the economic viability of proved reserves, we do not believe a scenario consistent with reducing GHG emissions by 80 percent by 2050, as suggested by the "low carbon scenario," lies within the "reasonably likely to occur" range of planning assumptions, since we consider the scenario highly unlikely.

The company also stress tests its oil and natural gas capital investment opportunities, which provides an added margin of safety against uncertainties, such as those related to technology, costs, geopolitics, availability of required materials, services, and labor, etc.

[10] Permitting the freer trade and export of natural gas is but one way, for example, where countries that rely on more carbon-intense forms of energy can increase their use of cleaner-burning fuels.

Such stress testing differs from alternative scenario planning, such as alternate Outlooks, which we do not develop, but stress testing provides us an opportunity to fully consider different economic scenarios in our planning and investment process. The Outlook is reviewed at least annually, and updated as needed to reflect changes in views and circumstances, including advances in technology.



We also address the potential for future climate-related controls, including the potential for restriction on emissions, through the use of a proxy cost of carbon. This proxy cost of carbon is embedded in our current *Outlook for Energy*, and has been a feature of the report for several years. The proxy cost seeks to reflect all types of actions and policies that governments may take over the Outlook period relating to the exploration, development, production, transportation or use of carbon-based fuels. Our proxy cost,

which in some areas may approach $80/ton over the Outlook period[11], is not a suggestion that governments should apply specific taxes. It is also not the same as a "social cost of carbon," which we believe involves countless more assumptions and subjective speculation on future climate impacts. It is simply our effort to quantify what we believe government policies over the Outlook period could cost to our investment opportunities. Perhaps most importantly, we require that all our business segments include, where appropriate, GHG costs in their economics when seeking funding for capital investments. We require that investment proposals reflect the climate-related policy decisions we anticipate governments making during the Outlook period and therefore incorporate them as a factor in our specific investment decisions.

When governments are considering policy options, ExxonMobil advocates an approach that ensures a uniform and predictable cost of carbon; allows market prices to drive solutions; maximizes transparency to stakeholders; reduces administrative complexity; promotes global participation; and is easily adjusted to future developments in climate science and policy impacts. We continue to believe a revenue-neutral carbon tax is better able to accommodate these key criteria than alternatives such as cap-and-trade.

Our views are based on our many years of successful energy experience worldwide and are similar to long-term energy demand forecasts of the International Energy Agency. As discussed previously, we see population, GDP and energy needs increasing for the world over the Outlook period, and that *all* economically viable energy sources will be required to meet these growing needs. We believe that governments will carefully balance the risk of climate change against other pressing social needs over the Outlook period, including the need for accessible, reliable and affordable energy, and that an artificial capping of carbon-based fuels to levels in the "low carbon scenario" is highly unlikely.

[11] As noted in our Outlook, this amount varies from country to country, with that amount generally equating to OECD countries, and lower amounts applying to non-OECD countries.

7. Capital Allocation

ExxonMobil maintains capital allocation discipline with rigorous project evaluation and investment selectivity, while consistently returning cash to our shareholders. Our capital allocation approach is as follows:

I. Invest in resilient, attractive business opportunities
II. Pay a reliable and growing dividend
III. Return excess cash to shareholders through the purchase of shares.

Although the company does not incorporate the "low carbon scenario" in its capital allocation plans, a key strategy to ensure investment selectivity under a wide range of economic assumptions is to maintain a very diverse portfolio of oil and gas investment opportunities. This diversity – in terms of resource type and corresponding development options (oil, gas, NGLs, onshore, offshore, deepwater, conventional, unconventional, LNG, etc.) and geographic dispersion is unparalleled in the industry. Further, the company does not believe current investments in new reserves are exposed to the risk of stranded assets, given the rising global need for energy as discussed earlier.

8. Optional Reserves Disclosure under SEC Rules

Some have suggested that ExxonMobil consider availing itself of an optional disclosure available to securities issuers under Item 1202 of SEC Regulation S-K. [12] That SEC item provides, among other things, that "the registrant may, but is not required to, disclose, in the aggregate, an estimate of reserves estimated for each product type based on different price and cost criteria, such as a range of prices and costs that may reasonably be

[12] The rules were subject to comment at the time that they were proposed. See Modernization of Oil and Gas Reporting, Securities and Exchange Commission, 17 CFR Parts 210, 211, 229, and 249 [Release Nos. 33-8995; 34-59192; FR-78; File Nos. S7-15-08] at p. 66. (***www.sec.gov****/rules/final/2008/33-8995.pdf)* ExxonMobil also provided comments to the proposed provision. See Letter of Exxon Mobil Corporation to Ms. Florence Harmon, Acting Secretary, Securities and Exchange Commission, September 5, 2008, File Number S7-15-08 – Modernization of the Oil and Gas Reporting Requirements at p. 24.

achieved, including standardized futures prices or management's own forecasts." Proponents ask the company to use this option to identify the price sensitivity of its reserves, with special reference to long-lived unconventional reserves such as oil sands.

We believe the public reporting of reserves is best done using the historical price basis as required under Item 1202(a) of Regulation S-K, rather than the optional sensitivity analysis under Item 1202(b), for several reasons. First and most importantly, historical prices are a known quantity and reporting on this basis provides information that can be readily compared between different companies and over multiple years.[13] Proved reserve reporting using historical prices is a conservative approach that gives investors confidence in the numbers being reported.

Using speculative future prices, on the other hand, would introduce uncertainty and potential volatility into the reporting, which we do not believe would be helpful for investors. In fact, we believe such disclosure could be misleading. Price forecasts are subject to considerable uncertainty. While ExxonMobil tests its project economics to ensure they will be robust under a wide variety of possible future circumstances, we do not make predictions or forecasts of future oil and gas prices. If reserves determined on a speculative price were included in our SEC filings, we believe such disclosure could potentially mislead investors, or give such prices greater weight in making investment decisions than would be warranted.

We are also concerned that providing the optional sensitivity disclosure could enable our competitors to infer commercial information about our projects, resulting in commercial harm to ExxonMobil and our shareholders. We note that none of our key competitors to our knowledge provide the Item 1202(b) sensitivity disclosure.

[13] We note the rules under 1202(a) use an average of monthly prices over the year rather than a single "spot" price, thus helping to reduce the effects of short-term volatility that often characterize oil and gas prices.

Lastly, we note that even when sensitivity disclosure under Item 1202(b) is included in a filing, the price and cost assumptions must be ones the company believes are reasonable. This disclosure item is therefore not intended or permitted to be a vehicle for exploring extreme scenarios.

For all the above reasons, we do not believe including the sensitivity disclosure under Item 1202(b) in our SEC filings would be prudent or in the best interest of our shareholders.

9. Summary

In summary, ExxonMobil's *Outlook for Energy* continues to provide the basis for our long-term investment decisions. Similar to the forecasts of other independent analysts, our Outlook envisions a world in which populations are growing, economies are expanding, living standards are rising, and, as a result, energy needs are increasing. Meeting these needs will require all economic energy sources, especially oil and natural gas.

Our *Outlook for Energy* also envisions that governments will enact policies to constrain carbon in an effort to reduce greenhouse gas emissions and manage the risks of climate change. We seek to quantify the cumulative impact of such policies in a proxy cost of carbon, which has been a consistent feature of our *Outlook for Energy* for many years.

We rigorously consider the risk of climate change in our planning bases and investments. Our investments are stress tested against a conservative set of economic bases and a broad spectrum of economic assumptions to help ensure that they will perform adequately, even in circumstances that the company may not foresee, which provides an additional margin of safety. We also require that all significant proposed projects include a cost of carbon – which reflects our best assessment of costs associated with potential GHG regulations over the Outlook period – when being evaluated for investment.

Our *Outlook for Energy* does not envision the "low carbon scenario" advocated by some because the costs and the damaging impact to accessible, reliable and affordable energy resulting from the policy changes such a scenario would produce are beyond those that societies, especially the world's poorest and most vulnerable, would be willing to bear, in our estimation.

In the final analysis, we believe ExxonMobil is well positioned to continue to deliver results to our shareholders and deliver energy to the world's consumers far into the future. Meeting the economic needs of people around the world in a safe and environmentally responsible manner not only informs our *Outlook for Energy* and guides our investment decisions, it is also animates our business and inspires our workforce.

10. Additional Information

There were additional information requests raised by some in the course of engagement with the groups with whom we have been dialoguing. These are addressed in the Appendix.

Appendix

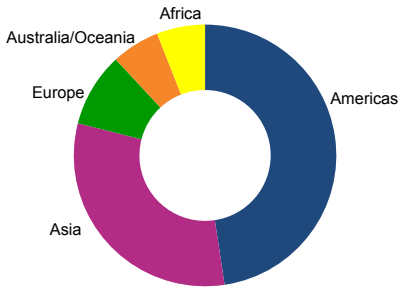
Topic	**Page**
Proved Reserves	**24**
Resource Base	**25**
Oil & Gas Production Outlook	**26**
CAPEX Outlook	**27**
Oil & Gas Exploration and Production Earnings and Unit Profitability	**28**
Production Prices and Production Costs	**29**
Wells-to-Wheels GHG emissions seriatim	**30**

EXXONMOBIL PROVED RESERVES - AT DECEMBER 31, 2013

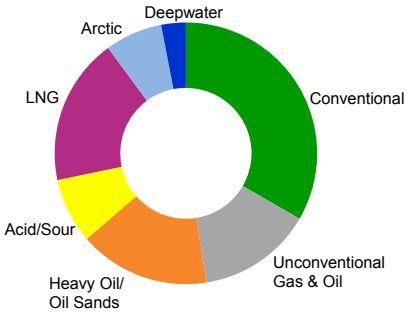
	United States	Canada/ S. Amer. (2)	Europe	Africa	Asia	Australia/ Oceania	Total	Worldwide	Canada/ S. Amer. (2)	Canada/ S. Amer. (2)	Total
				Crude Oil				Natural Gas Liquids (2)	Bitumen	Synthetic Oil	
Total liquids proved reserves (1) **(millions of barrels)**	2,338	284	273	1,193	3,308	155	7,551	1,479	3,630	579	13,239
				Natural Gas							
Total natural gas proved reserves (1) **(billions of cubic feet)**	26,301	1,235	11,694	867	24,248	7,515	71,860	-	-	-	71,860
Oil-Equivalent Total All Products (3) **(millions of oil-equivalent barrels)**	6,722	490	2,222	1,338	7,349	1,407	19,528	1,479	3,630	579	25,216

Proved Reserves Distribution (4)
(percent, oil equivalent barrels)

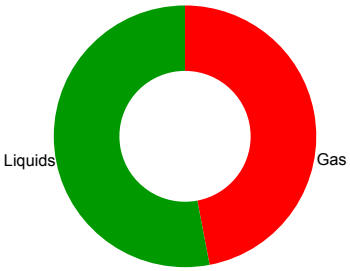
By Region



By Resource Type

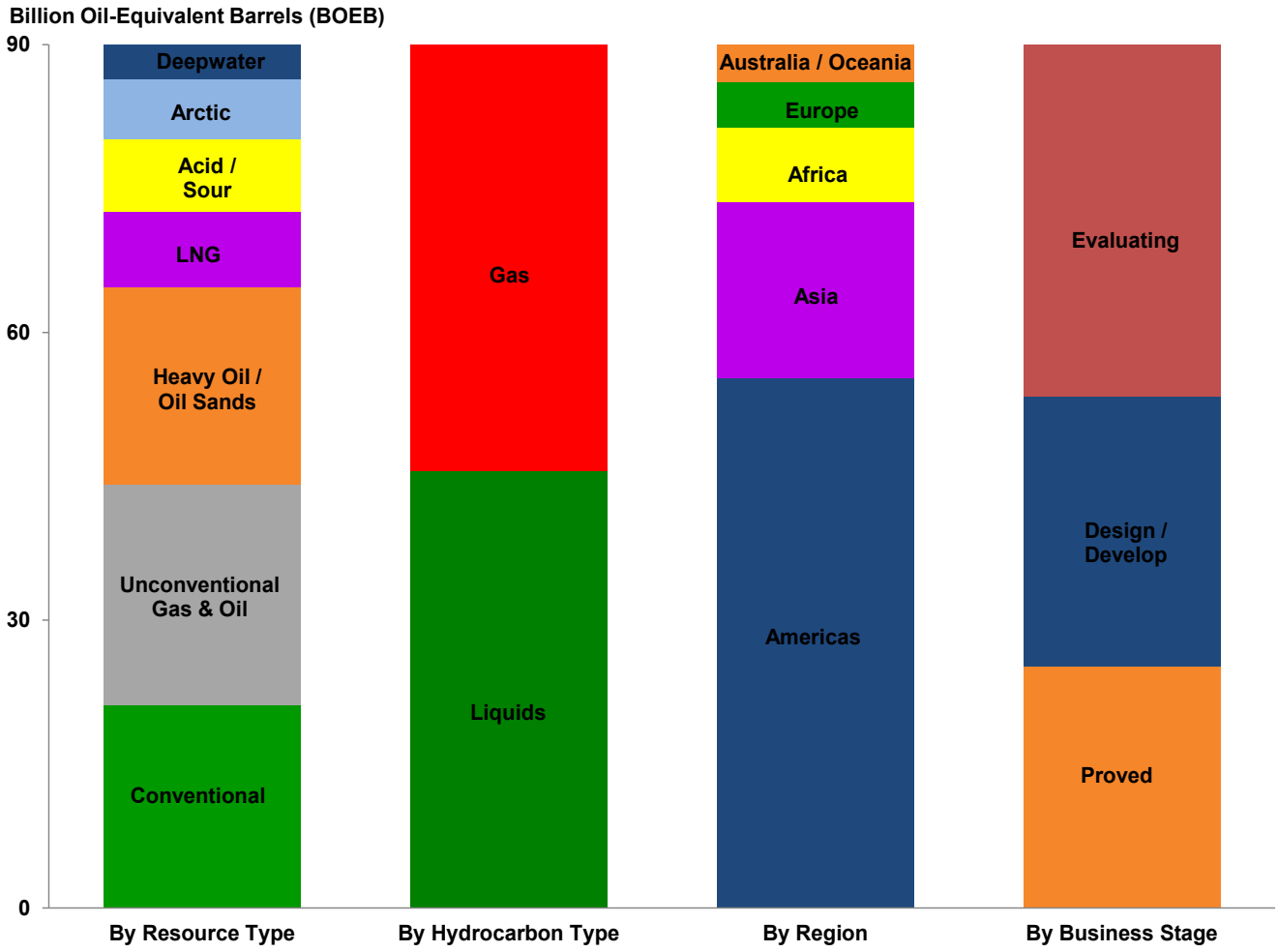


By Hydrocarbon Type



(1) Source: ExxonMobil 2013 Form 10-K (pages 103 and 106).
(2) Includes total proved reserves attributable to Imperial Oil Limited, in which there is a 30.4 percent noncontrolling interest. Refer to ExxonMobil 2013 Form 10-K (pages 103, 104, and 106) for more details.
(3) Natural gas is converted to oil-equivalent basis at six million cubic feet per one thousand barrels.
(4) Source: ExxonMobil 2013 Financial and Operating Review (page 22).

EXXONMOBIL RESOURCE BASE – AT DECEMBER 31, 2013 (1)



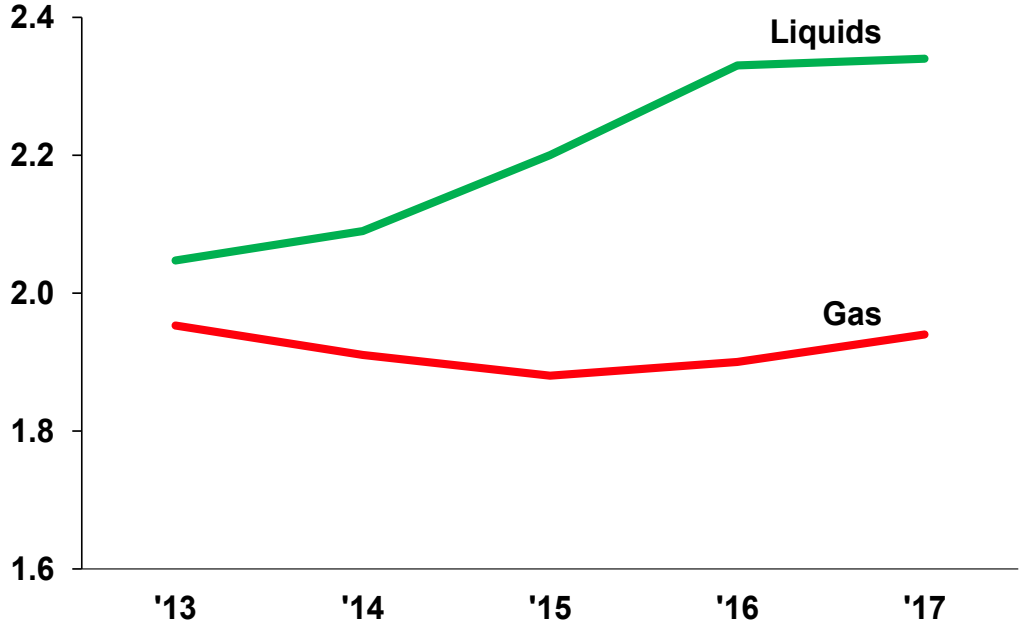
(1) Source: 2013 ExxonMobil Financial & Operating Review (page 21) and 2014 Analyst Meeting (slide 49).

Note: ExxonMobil's resource base includes quantities of oil and gas that are not yet classified as proved reserves under SEC definitions, but that we believe will ultimately be developed. These quantities are also not intended to correspond to "probable" or "possible" reserves under SEC rules.

EXXONMOBIL OIL & GAS PRODUCTION OUTLOOK (1)

Total Production Outlook (2)

Millions Oil-Equivalent Barrels Per Day (MOEBD), net



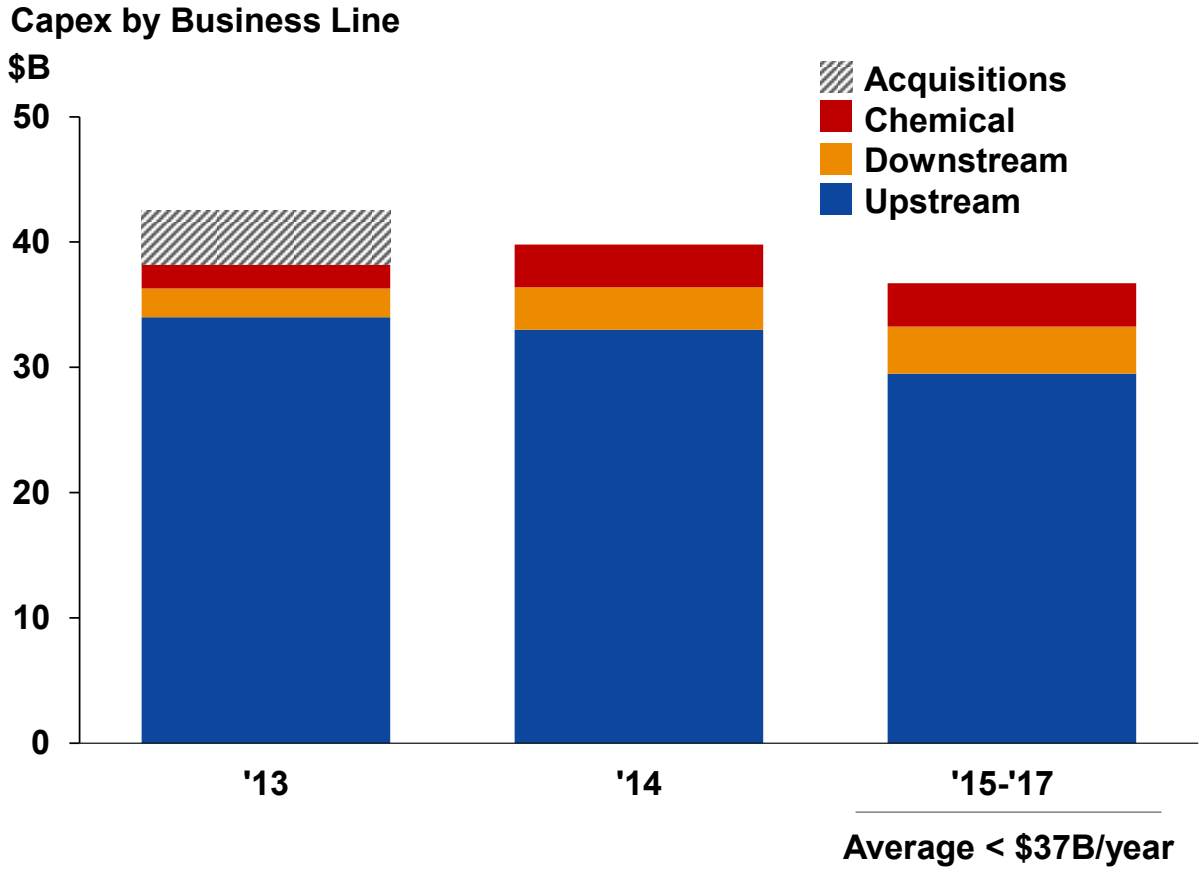
	'13	'14	'15	'16	'17
Total	4.0	4.0	4.1	4.2	4.3

- Total production outlook
  - 2014: Flat
  - 2015 – 2017: up 2-3% per year
- Liquids outlook
  - 2014: up 2%
  - 2015 – 2017: up 4% per year
- Gas outlook
  - 2014: down 2%
  - 2015 – 2017: up 1% per year

(1) Source 2014 ExxonMobil Analyst Meeting (slide 32).

(2) 2013 production excludes the impact of UAE onshore concession expiry and Iraq West Qurna 1 partial divestment. Production outlook excludes impact from future divestments and OPEC quota effects. Based on 2013 average price ($109 Brent).

EXXONMOBIL CAPEX OUTLOOK (1)



- Expect to invest $39.8B in 2014
  - Reduced Upstream spending
  - Selective Downstream and Chemical investments
- Average less than $37B per year from 2015 to 2017

(1) Source 2014 ExxonMobil Analyst Meeting (slide 33).

EXXONMOBIL OIL & GAS EXPLORATION AND PRODUCTION EARNINGS AND UNIT PROFITABILITY (1)

The revenue, cost, and earnings data are shown both on a total dollar and a unit basis, and are inclusive of non-consolidated and Canadian oil sands operations.

	Total Revenues and Costs, Including Non-Consolidated Interests and Oil Sands							Revenues and Costs per Unit of Sales or Production (2)			
	United States	Canada/ South America	Europe	Africa	Asia	Australia/ Oceania	Total	United States	Canada/ South America	Outside Americas	Worldwide
2013	*(millions of dollars)*							*(dollars per unit of sales)*			
Revenue											
Liquids	**13,350**	**7,558**	**6,751**	**18,811**	**28,440**	**1,596**	**76,506**	**84.87**	**75.28**	**101.92**	**95.25**
Natural gas	**3,880**	**360**	**11,384**	**6**	**13,477**	**539**	**29,646**	**3.00**	**2.80**	**8.77**	**6.86**
								(dollars per barrel of net oil-equivalent production)			
Total revenue	**17,230**	**7,918**	**18,135**	**18,817**	**41,917**	**2,135**	**106,152**	**46.20**	**63.93**	**78.86**	**69.66**
Less costs:											
Production costs excluding taxes	**4,742**	**3,965**	**3,318**	**2,396**	**2,423**	**654**	**17,498**	**12.72**	**32.02**	**8.56**	**11.48**
Depreciation and depletion	**5,133**	**989**	**2,050**	**3,269**	**2,635**	**334**	**14,410**	**13.76**	**7.99**	**8.07**	**9.46**
Exploration expenses	**413**	**386**	**260**	**288**	**997**	**92**	**2,436**	**1.11**	**3.12**	**1.59**	**1.60**
Taxes other than income	**1,617**	**94**	**4,466**	**1,583**	**9,146**	**427**	**17,333**	**4.33**	**0.74**	**15.21**	**11.37**
Related income tax	**1,788**	**542**	**4,956**	**6,841**	**14,191**	**202**	**28,520**	**4.79**	**4.38**	**25.50**	**18.72**
Results of producing activities	**3,537**	**1,942**	**3,085**	**4,440**	**12,525**	**426**	**25,955**	**9.49**	**15.68**	**19.93**	**17.03**
Other earnings (3)	**662**	**(495)**	**302**	**59**	**234**	**(118)**	**644**	**1.77**	**(4.00)**	**0.47**	**0.42**
Total earnings, excluding power and coal	**4,199**	**1,447**	**3,387**	**4,499**	**12,759**	**308**	**26,599**	**11.26**	**11.68**	**20.40**	**17.45**
Power and coal	**(8)**	**-**	**-**	**-**	**250**	**-**	**242**				
Total earnings	**4,191**	**1,447**	**3,387**	**4,499**	**13,009**	**308**	**26,841**	**11.23**	**11.68**	**20.64**	**17.61**
								Unit Earnings Excluding NCI Volumes (4)			**18.03**

(1) Source: ExxonMobil 2013 Financial and Operating Review (page 56).

(2) The per-unit data are divided into two sections: (a) revenue per unit of sales from ExxonMobil's own production; and, (b) operating costs and earnings per unit of net oil-equivalent production. Units for crude oil and natural gas liquids are barrels, while units for natural gas are thousands of cubic feet. The volumes of crude oil and natural gas liquids production and net natural gas production available for sale used in this calculation are shown on pages 48 and 49 of ExxonMobil's 2013 Financial & Operating Review. The volumes of natural gas were converted to oil-equivalent barrels based on a conversion factor of 6 thousand cubic feet per barrel.

(3) Includes earnings related to transportation operations, LNG liquefaction and transportation operations, sale of third-party purchases, technical services agreements, other nonoperating activities, and adjustments for noncontrolling interests.

(4) Calculation based on total earnings (net income attributable to ExxonMobil) divided by net oil-equivalent production less noncontrolling interest (NCI) volumes.

EXXONMOBIL
PRODUCTION PRICES AND PRODUCTION COSTS (1)

The table below summarizes average production prices and average production costs by geographic area and by product type.

	United States	Canada/ S. America	Europe	Africa	Asia	Australia/ Oceania	Total
During 2013			*(dollars per unit)*				
Total							
Average production prices (2)							
Crude oil, per barrel	95.11	98.91	106.49	108.73	104.98	107.92	104.01
NGL, per barrel	44.24	44.96	65.36	75.24	61.64	59.55	56.26
Natural gas, per thousand cubic feet	3.00	2.80	9.59	2.79	8.53	4.20	6.86
Bitumen, per barrel	-	59.63	-	-	-	-	59.63
Synthetic oil, per barrel	-	93.96	-	-	-	-	93.96
Average production costs, per oil-equivalent barrel - total (3)	12.72	32.02	12.42	13.95	4.41	16.81	11.48
Average production costs, per barrel - bitumen (3)	-	34.30	-	-	-	-	34.30
Average production costs, per barrel - synthetic oil (3)	-	50.94	-	-	-	-	50.94

(1) Source: ExxonMobil 2013 Form 10-K (page 9)

(2) *Revenue per unit of sales from ExxonMobil's own production. (See ExxonMobil's 2013 Financial & Operating Review, page 56.) Revenue in this calculation is the same as in the Results of Operations disclosure in ExxonMobil's 2013 Form 10-K (page 97) and does not include revenue from other activities that ExxonMobil includes in the Upstream function, such as oil and gas transportation operations, LNG liquefaction and transportation operations, coal and power operations, technical service agreements, other nonoperating activities and adjustments for noncontrolling interests, in accordance with Securities and Exchange Commission and Financial Accounting Standards Board rules.*

(3) *Production costs per unit of net oil-equivalent production. (See ExxonMobil's 2013 inancial & Operating Review, page 56.) The volumes of natural gas were converted to oil-equivalent barrels based on a conversion factor of 6 thousand cubic feet per barrel. Production costs in this calculation are the same as in the Results of Operations disclosure in ExxonMobil's 2013 Form 10-K (page 97) and do not include production costs from other activities that ExxonMobil includes in the Upstream function, such as oil and gas transportation operations, LNG liquefaction and transportation operations, coal and power operations, technical service agreements, other nonoperating activities and adjustments for noncontrolling interests, in accordance with Securities and Exchange Commission and Financial Accounting Standards Board rules. Depreciation & depletion, exploration costs, and taxes are not included in production costs.*

Seriatim of crudes processed in US in 2012

Well-to-wheels GHG emissions: Oil sands compared to other crude oils (Wide boundary—$kgCO_2e$/barrel of refined product)

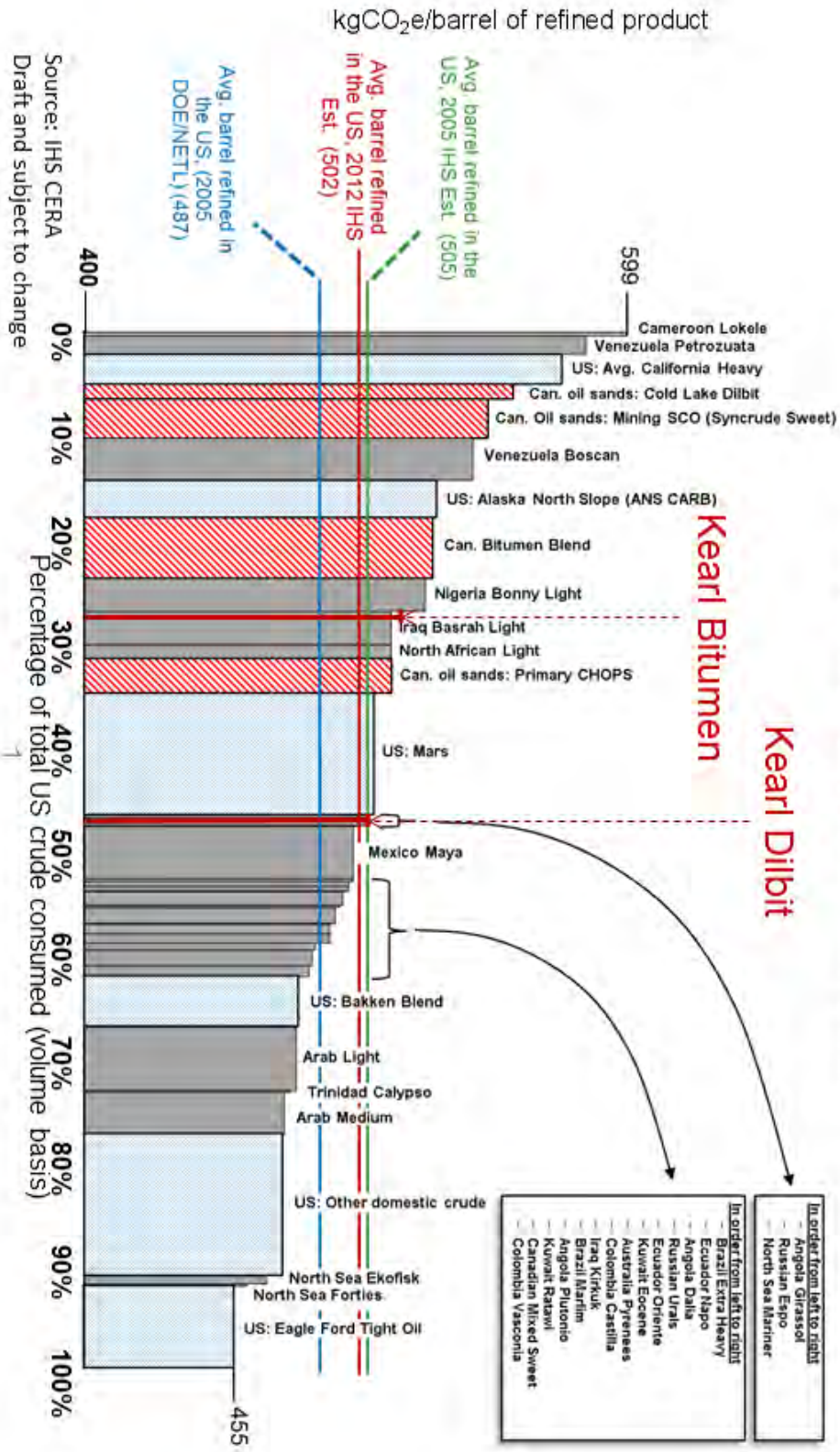


Exhibit 37

1 of 1 DOCUMENT

The Wall Street Journal

September 21, 2016 Wednesday

SECTION: Pg. A1

LENGTH: 826 words

HEADLINE: SEC Probes Exxon Over Accounting For Climate Change

BYLINE: By Bradley Olson and Aruna Viswanatha

BODY:

The U.S. Securities and Exchange Commission is investigating how Exxon Mobil Corp. values its assets in a world of increasing climate-change regulations, a probe that could have far-reaching consequences for the oil and gas industry.

The SEC sought information and documents in August from Exxon and the company's auditor, PricewaterhouseCoopers LLP, according to people familiar with the matter. The federal agency has been receiving documents the company submitted as part of a continuing probe into similar issues begun last year by New York Attorney General Eric Schneiderman, the people said.

The SEC's probe is homing in on how Exxon calculates the impact to its business from the world's mounting response to climate change, including what figures the company uses to account for the future costs of complying with regulations to curb greenhouse gases as it evaluates the economic viability of its projects.

The decision to step into an Exxon investigation and seek climate-related information represents a moment in the effort to take climate change more seriously in the financial community, said Andrew Logan, director of the oil and gas program at Ceres, a Boston-based advocacy organization that has pushed for more carbon-related disclosure from companies.

"It's a potential tipping point not just for Exxon, but for the industry as a whole," he said.

As part of its probe, the SEC is also examining Exxon's longstanding practice of not writing down the value of its oil and gas reserves when prices fall, people familiar with the matter said. Exxon is the only major U.S. producer that hasn't taken a write down or impairment since oil prices plunged two years ago. Peers including Chevron Corp. have lowered valuations by a collective $50 billion.

"The SEC is the appropriate entity to examine issues related to impairment, reserves and other communications important to investors," said Exxon spokesman Alan Jeffers. "We are fully complying with the SEC request for information and are confident our financial reporting meets all legal and accounting requirements."

A spokeswoman for PwC declined to comment. An SEC spokeswoman declined to comment. A spokesman for Mr. Schneiderman said the attorney general wouldn't comment on the matter.

The SEC probe isn't believed to involve other energy companies, according to a person familiar with the matter.

Activists, members of Congress and former government officials have ratcheted up pressure on the SEC in the past year to do more to assess climate risks. Four congressional Democrats including U.S. Rep. Ted Lieu last year asked the SEC to investigate Exxon over its climate-related science and advocacy. Three former U.S. treasury secretaries wrote the SEC in July urging the agency to adopt industry-specific standards for disclosure in company filings.

A potential sticking point in the probe is what price Exxon uses to assess the "price of carbon" -- the cost of regulations such as a carbon tax or a cap-and-trade system to push down emissions -- when evaluating certain future oil and gas prospects, the people said. The SEC is asking how Exxon's carbon price affects its balance sheet and the outlook for its future, the people said.

When such a theoretical price for carbon is low, more oil and gas wells would be commercially viable. Conversely, a high carbon price would make more of Exxon's assets look uneconomic to pull out of the ground in future years.

In 2014, Exxon determined that none of its assets are at risk of being rendered less valuable by impacts from the global response to climate change.

Exxon doesn't disclose the exact price it uses to determine the commercial viability of its projects -- outside of a general $20-$80 range for the future -- but many of its rivals, including Royal Dutch Shell PLC and BP PLC, do. Both Shell and BP say they use an internal price of roughly $40 a metric ton to decide whether to proceed with a project.

By contrast, Houston-based ConocoPhillips said it uses an internal carbon price range of between $6 and $51 a metric ton, depending on a project's location and annual projected emissions.

Exxon has ardently defended its record of climate research against critics, as well as its view that the use of fossil fuels will grow in coming decades, which corresponds to the predictions of major global energy forecasters.

Still, some investors such as the California Public Employees' Retirement System say Exxon and other energy companies should acknowledge the growing global response to climate change may mean that it will never be able to tap future wells that make up a great deal of its multibillion-dollar value.

Exxon also has defended its practice of not writing down the value of assets, saying that it is extremely conservative in booking the value of new fields and wells, which lowers its need to reduce the value of those assets if falling prices later affect the reserves' value.

NOTES:

PUBLISHER: Dow Jones & Company, Inc.

LOAD-DATE: September 21, 2016

Exhibit 38

AO 88A (Rev 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Texas

Exxon Mobil Corporation
Plaintiff
v.
Maura Tracy Healey, Attorney General of Massachusetts, in her official capacity,
Defendant

Civil Action No. 4:16-CV-469-K

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Eric Schneiderman, Office of the Attorney General, State of New York, 120 Broadway, 26th Floor, New York, New York 10271
(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, NY 10019-6064	12/05/2016 10:00 am

The deposition will be recorded by this method: Audiovisual and Stenographic

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/3/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Exxon Mobil Corporation, who issues or requests this subpoena, are:

Justin Anderson, PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP 2001 K Street, NW, Washington, D.C. 20006-1047, janderson@paulweiss.com, (202) 223-7300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 4:16-CV-469-K

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

$ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person, or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer, or

(ii) is commanded to attend a trial and would not incur substantial expense

(2) ***For Other Discovery.*** A subpoena may command

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person, and

(B) inspection of premises at the premises to be inspected

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial

(B) *Objections* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served If an objection is made, the following rules apply

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that

(i) fails to allow a reasonable time to comply,

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c),

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies, or

(iv) subjects a person to undue burden

(B) *When Permitted* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires

(i) disclosing a trade secret or other confidential research, development, or commercial information, or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party

(C) *Specifying Conditions as an Alternative* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship, and

(ii) ensures that the subpoenaed person will be reasonably compensated

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information

(A) *Documents* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand

(B) *Form for Producing Electronically Stored Information Not Specified* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms

(C) *Electronically Stored Information Produced in Only One Form* The person responding need not produce the same electronically stored information in more than one form

(D) *Inaccessible Electronically Stored Information* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C) The court may specify conditions for the discovery

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must

(i) expressly make the claim, and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim

(B) *Information Produced* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has, must not use or disclose the information until the claim is resolved, must take reasonable steps to retrieve the information if the party disclosed it before being notified, and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim The person who produced the information must preserve the information until the claim is resolved

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it

For access to subpoena materials, see Fed R Civ P 45(a) Committee Note (2013)

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Texas

EXXON MOBIL CORPORATION, *Plaintiff*	)	
v.	)	Civil Action No. 4:16-cv-469-k
MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, *Defendant*	)	

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Lemuel Srolovic, Office of the Attorney General, State of New York, 120 Broadway, 26th Floor, New York, New York 10271

(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP, 1285 Avenue of the Americas, New York, NY 10019-6064	11/28/2016 10:00 am

The deposition will be recorded by this method: Audiovisual and Stenographic

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/3/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Exxon Mobil Corporation, who issues or requests this subpoena, are:

Justin Anderson, PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP 2001 K Street, NW, Washington, D.C. 20006-1047, janderson(g)paulweiss.com, (202)223-7300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 4:16-cv-469-k

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

$ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person, or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer, or

(ii) is commanded to attend a trial and would not incur substantial expense

(2) ***For Other Discovery.*** A subpoena may command

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person, and

(B) inspection of premises at the premises to be inspected

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial

(B) *Objections* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served If an objection is made, the following rules apply

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that

(i) fails to allow a reasonable time to comply,

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c),

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies, or

(iv) subjects a person to undue burden

(B) *When Permitted* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires

(i) disclosing a trade secret or other confidential research, development, or commercial information, or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party

(C) *Specifying Conditions as an Alternative* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship, and

(ii) ensures that the subpoenaed person will be reasonably compensated

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information

(A) *Documents* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand

(B) *Form for Producing Electronically Stored Information Not Specified* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms

(C) *Electronically Stored Information Produced in Only One Form* The person responding need not produce the same electronically stored information in more than one form

(D) *Inaccessible Electronically Stored Information* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C) The court may specify conditions for the discovery

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must

(i) expressly make the claim, and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim

(B) *Information Produced* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has, must not use or disclose the information until the claim is resolved, must take reasonable steps to retrieve the information if the party disclosed it before being notified, and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim The person who produced the information must preserve the information until the claim is resolved

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it

For access to subpoena materials, see Fed R Civ P 45(a) Committee Note (2013)

AO 88A (Rev 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Texas

EXXON MOBIL CORPORATION,
Plaintiff
v.
MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity,
Defendant

Civil Action No. 4:16-CV-469-K

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Monica Wagner, Office of the Attorney General, State of New York, 120 Broadway, 26th Floor, New York, New York 10271
(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP, 1285 Avenue of the Americas, New York, NY 10019-6064	11/21/2016 10:00 am

The deposition will be recorded by this method: Audiovisual and Stenographic

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/3/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Exxon Mobil Corporation, who issues or requests this subpoena, are:

Justin Anderson, PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP 2001 K St, NW, Washington, D.C. 20006-1047, janderson@paulweiss.com, (202) 223-7300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 4:16-CV-469-K

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

$ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person, or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer, or

(ii) is commanded to attend a trial and would not incur substantial expense

(2) ***For Other Discovery.*** A subpoena may command

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person, and

(B) inspection of premises at the premises to be inspected

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial

(B) *Objections* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served If an objection is made, the following rules apply

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that

(i) fails to allow a reasonable time to comply,

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c),

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies, or

(iv) subjects a person to undue burden

(B) *When Permitted* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires

(i) disclosing a trade secret or other confidential research, development, or commercial information, or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party

(C) *Specifying Conditions as an Alternative* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship, and

(ii) ensures that the subpoenaed person will be reasonably compensated

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information

(A) *Documents* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand

(B) *Form for Producing Electronically Stored Information Not Specified* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms

(C) *Electronically Stored Information Produced in Only One Form* The person responding need not produce the same electronically stored information in more than one form

(D) *Inaccessible Electronically Stored Information* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C) The court may specify conditions for the discovery

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must

(i) expressly make the claim, and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim

(B) *Information Produced* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has, must not use or disclose the information until the claim is resolved, must take reasonable steps to retrieve the information if the party disclosed it before being notified, and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim The person who produced the information must preserve the information until the claim is resolved

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it

For access to subpoena materials, see Fed R Civ P 45(a) Committee Note (2013)

AO 88B (Rev 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Texas

Exxon Mobil Corporation,
Plaintiff
v.
Maura Tracy Healey, Attorney General of Massachusetts, in her official capacity,
Defendant

Civil Action No. 4:16-CV-469-K

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Eric Schneiderman, Office of the Attorney General, State of New York, 120 Broadway, 26th Floor, New York, New York 10271
(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A attached hereto.

Place:	Date and Time:
Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, NY 10019-6064	11/17/2016 5:00 pm

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/3/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Exxon Mobil Corporation, who issues or requests this subpoena, are:

Justin Anderson, Paul, Weiss, 2001 K Street, NW, Washington, D.C. 20006 janderson@paulweiss.com, (202)223-7420

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 4:16-CV-469-K

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

$ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person, or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer, or

(ii) is commanded to attend a trial and would not incur substantial expense

(2) ***For Other Discovery.*** A subpoena may command

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person, and

(B) inspection of premises at the premises to be inspected

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial

(B) *Objections* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served If an objection is made, the following rules apply

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that

(i) fails to allow a reasonable time to comply,

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c),

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies, or

(iv) subjects a person to undue burden

(B) *When Permitted* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires

(i) disclosing a trade secret or other confidential research, development, or commercial information, or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party

(C) *Specifying Conditions as an Alternative* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship, and

(ii) ensures that the subpoenaed person will be reasonably compensated

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information

(A) *Documents* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand

(B) *Form for Producing Electronically Stored Information Not Specified* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms

(C) *Electronically Stored Information Produced in Only One Form* The person responding need not produce the same electronically stored information in more than one form

(D) *Inaccessible Electronically Stored Information* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C) The court may specify conditions for the discovery

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must

(i) expressly make the claim, and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim

(B) *Information Produced* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has, must not use or disclose the information until the claim is resolved, must take reasonable steps to retrieve the information if the party disclosed it before being notified, and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim The person who produced the information must preserve the information until the claim is resolved

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it

For access to subpoena materials, see Fed R Civ P 45(a) Committee Note (2013)

Exhibit A

EXHIBIT A

This subpoena calls for the recipient to produce the documents described under the heading "Requests" below in accordance with the accompanying "Definitions" and "Instructions."

DEFINITIONS

1. "And" and "or" shall be construed either disjunctively or conjunctively as to bring within the scope of the request all information or documents that might otherwise be construed to be outside of its scope.

2. "All" shall be construed to include "any" and "each," "any" shall be construed to include "all" and "each," and "each" shall be construed to include "all" and "any," in each case as is necessary to bring within the scope of these requests documents that might otherwise be construed as outside their scope.

3. The terms "all" and "each" shall be construed as all and each.

4. "Any" is used in its inclusive sense. For example, if a Request calls for "any communication that you had with the plaintiff," you should produce each and every communication with the plaintiff.

5. "Communication" means any conversation, discussion, letter, electronic mail ("email"), memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any document that abstracts, digests, transcribes, records, or reflects any of the foregoing. Except where otherwise stated, a request for "Communications" means a request for all communications.

6. "Concerning" means referring or relating to and includes without limitation analyzing, commenting on, comprising, connected with, constituting, containing, contradicting, describing, embodying, establishing, evidencing, memorializing, mentioning, pertaining to, recording, regarding, reflecting, responding to, setting forth, showing, or supporting, directly or indirectly.

7. "Custodian" means any person or entity that, as of the date of this Request for Production, maintained, possessed, or otherwise kept or controlled such document.

8. "Date" shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date (based upon relationship with other events).

9. "Document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, email, instant messages, text messages, personal digital assistant or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes, or records or transcriptions of conversations or communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries. Any non-identical version of a document constitutes a separate

document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical documents. In the case of documents bearing any notation or other marking made by highlighting ink, the term document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof. Except where otherwise stated, a request for "documents" means a request for all such documents.

10. "Entity" means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.

11. "Identify" means: (a) when referring to a person or persons, to state the name and present address or, if unknown, the last known address, telephone number, e-mail address, title and employer of such person or persons; (b) when referring to a firm, partnership, corporation, association or other entity, to state the full name, address and telephone number or, if unknown, the last known address and telephone number; (c) when referring to documents, to state, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s); (d) when referring to communications, to state, to the extent known, the (i) date of the communication; (ii) identity of the parties to the communication; (iii) means of transmission of the communication; and (iv) identity of all documents memorializing all or part of the communication. To the extent any responsive

communication is memorialized in a document, please produce a copy of the document for inspection and copying.

12. "Including" means "including without limitation."

13. "Information" shall be construed expansively and shall include, but not be limited to, facts, data, opinions, documents, communications, images, impressions, concepts and formulae.

14. "Person" includes any natural person, firm, partnership, joint venture, corporation, sole proprietorship, trust, union, association, federation, labor organizations, legal representatives, trustees, trustees in bankruptcy, receivers, business entities, any other form of business, governmental, public, charitable entity, or group of natural persons or such entities.

15. "Refer" means embody, refer or relate, in any manner, to the subject of the document request.

16. "Civil Investigative Demand" or "CID" means the civil investigative demand issued by the office of Defendant Attorney General Maura Healey to ExxonMobil on or about April 19, 2016.

17. "Common Interest Agreement" means the Climate Change Coalition Common Interest Agreement signed by individuals from the offices of the attorneys general for California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Virginia, U.S. Virgin Islands, Vermont, Washington, and Washington, D.C., in April and May of 2016.

18. "Green 20" means the attorneys general for the States, Commonwealths, or Territories of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, the U.S. Virgin Islands, Vermont, Virginia, Washington, and Washington, D.C.; the Offices of these attorneys general; their directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on their behalf, including, but not limited to, Assistant Attorneys General.

19. "Green 20 Press Conference" or "AGs United for Clean Power Press Conference" means the Press Conference attended by Defendant Attorney General Maura Healey and other members of the Green 20 on March 29, 2016.

20. "Investigation" means an actual or contemplated issuance of a subpoena, Civil Investigative Demand, or any other investigative process concerning purported violations of law related to climate change.

21. "You," "Yours," and/or "Yourself" mean Eric Schneiderman, as well as the Office of the New York State Attorney General, and its directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on its behalf, including, but not limited to, Assistant Attorneys General in the Office of the New York State Attorney General.

INSTRUCTIONS

22. Any ambiguity as to any Request shall be construed so as to require the production of the greater number of documents.

23. These Requests are continuing in nature under Federal Rule of Civil Procedure 26(e). Any document created or identified after service of any response

to these Requests that would have been produced in response had the document then existed or been identified shall promptly be produced whenever you find, locate, acquire, create, or become aware of such documents, up until the resolution of this lawsuit.

24. Each Request shall be responded to fully, unless it is in good faith objected to, in which event the reasons for the objection shall be stated with specificity. If an objection pertains only to a portion of a Request, or to a word, phrase, or clause contained in a Request, you shall state your objection to that portion only and respond to the remainder of the request.

25. Documents that are produced should be identified according to which request they are responsive to, or in the order in which they are kept in the ordinary course of business. All documents that are physically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other Documents, whether by inclusion of binders, files, subfiles, or by use of dividers, tabs, clips, or any other method, shall be left so segregated or separated.

26. Where any copy of any document, the production of which is requested, is not identical to any other copy thereof, by reason of any alterations, marginal notes, comments, metadata, omissions, or material contained therein or attached thereto, or otherwise, all such non-identical copies shall be produced separately.

27. If any document responsive to these Requests has been destroyed, discarded, or lost, or is otherwise not capable of being produced, identify each such document and set forth the following information: (a) the date of the document; (b) a description of the subject matter of the document; (c) the name and address of each person who prepared, received, viewed, or had possession, custody, or control of the

document; (d) the date when the document was destroyed, discarded, or lost; (e) the identity of the person who directed that the document be destroyed, who directed that the document be discarded, or who lost the document; and (f) a statement of the reasons for and circumstances under which the document was destroyed, discarded, or lost.

28. If any document responsive to these Requests is withheld under a claim of privilege (including the work-product doctrine), you shall identify with respect to each document: (a) the author; (b) the address(es); (c) all other persons to whom the document was distributed, shown, or explained; (d) its present custodian; (e) the document's number of pages, and attachments or appendices. In addition, all claims of privilege, including the attorney work-product rule.

29. Pursuant to Fed. R. Civ. P. 34(b)(1)(c), Plaintiff requests that all electronically stored information be produced in accordance with the "Requested Production Format" provided as Exhibit B.

30. Each request shall be deemed to include a request for all transmittal sheets, cover letters, exhibits, enclosures, and attachments to a document in addition to the Document itself, without abbreviation or expurgation.

31. If no documents or things exist that are responsive to a particular paragraph of these requests, so state in writing.

32. Unless otherwise stated in a specific request, these requests seek responsive information and documents authored, generated, disseminated, drafted, produced, reproduced, or otherwise created or distributed, concerning the period of January 21, 2015, through the date of production.

33. These requests call for the production of responsive documents within Your possession, custody, or control (including those on non-government email servers), regardless of whether those documents were generated and/or are maintained by the Office of the New York State Attorney General.

34. The foregoing Definitions and Instructions also apply to the Definitions and Instructions themselves.

DOCUMENTS AND THINGS TO BE PRODUCED BY ERIC SCHNEIDERMAN

1. Any and all documents, including, but not limited to, electronically maintained or paper visitor logs or sign-in sheets, sufficient to identify attendees at any meetings concerning the Green 20 Press Conference, including any meetings with and/or presentations from Peter Frumhoff and/or Matthew Pawa.

2. Any and all documents, recordings, and/or other materials discussed or presented during any meeting concerning the Green 20 Press Conference, including any meetings with and/or presentations from Peter Frumhoff and/or Matthew Pawa.

3. Any and all documents and communications concerning the following statements made by You, Attorney General Eric Schneiderman, at the Green 20 Press Conference, including any and all documents that You believe support or otherwise form the basis for, these statements:

(a) There is a "relentless assault from well-funded highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action" regarding climate change.

(b) "[T]here are companies using the best climate science. They're using the best climate models so that when they spend shareholder dollars to raise their oil rigs, which they are doing, they know how fast the sea level is rising, then they are drilling in places in the Arctic where they couldn't drill 20 years ago because of the ice sheets. They know how fast the ice sheets are receding."

(c) "[W]e know that they paid millions of dollars to support organizations that put up propaganda denying that we can predict or measure the effects of fossil fuel on our climate or even denying that climate change was happening."

4. Any and all documents sufficient to show and identify any fees or expenses paid to former Vice President Al Gore in connection with his participation in or attendance at the Green 20 Press Conference.

5. Any and all documents concerning the Common Interest Agreement, including any documents concerning the purpose of the Common Interest Agreement, the decision to enter into the Common Interest Agreement, efforts to recruit or obtain signatories to the Common Interest Agreement, and the preparation, drafting and finalizing of the text of the Common Interest Agreement.

6. Any and all documents sufficient to show and identify any communications concerning any investigation of ExxonMobil related to climate change between You, Your agents, representatives, or employees and any other member of the Green 20, including any Attorney General from another state, territory, or municipality, or his/her directors, officers, employees, agents, representatives or other persons acting,

or purporting to act, on his/her behalf, including, but not limited to, Assistant Attorneys General.

7. Any and all documents, recordings, or other materials discussed or presented during any meetings regarding any investigation of ExxonMobil that You attended at which any person not employed or retained by Your Office was present or participating. This request includes, without limitation, video recordings, audio recordings, photographs, attendance logs, notes, and meeting minutes.

8. Any and all documents or communications that mention ExxonMobil and any of the following persons or organizations (a) Peter Frumhoff, (b) Matthew Pawa and/or the Pawa Law Group, (c) the Union of Concerned Scientists, (d) Sharon Eubanks, (e) former Vice President Al Gore, and/or (f) Bill McKibben.

9. Any and all documents, including but not limited to email correspondence and visitor logs, sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and (a) Peter Frumhoff, (b) Matthew Pawa and/or the Pawa Law Group, (c) the Union of Concerned Scientists, (d) Sharon Eubanks, (e) former Vice President Al Gore, and/or (f) Bill McKibben.

10. Any and all documents, including, but not limited to electronically maintained or paper visitor logs or sign-in sheets, sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and the following persons and/or email addresses:

- Dave Johnson and/or dcjohnson@ourfuture.org;
- John Passacantando and/or j.passacantando@gmail.com;
- Kert Davis and/or kertmail@gmail.com;
- Kenny Bruno and/or Kenny.bruno@verizon.net;
- Lee Wasserman and/or lwasserman@rfffund.org;
- Dan Cantor and/or dcantor@workingfamilies.org;

- Bill Lipton and/or blipton@workingfamilies.org;

11. Any and all documents, including, but not limited to electronically maintained or paper visitor logs or sign-in sheets, sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and the following persons and/or email addresses:

- Jamie Henn and/or jamie@350.org;
- Robert Weissman and/or rweissman@citizen.org;
- Won Ha and/or won@ef.org;
- Irene Krarup and/or ikrarup@vkrf.org;
- Bradley Campbell and/or bcampbell@clf.org;
- Stephen Kretzman and/or steve@priceofoil.org;
- Carroll Muffett and/or cmuffett@ciel.org;
- Naomi Ages and/or Naomi.ages@greenpeace.org;
- Naomi Klein;
- Clayton Thomas-Muller;
- Peter Sarsgaard;
- Milan Loeak;
- Kathy Jetnil-Kijiner;
- Joydeep Gupta;
- Antonia Juhasz;
- Cindy Baxter;
- Jason Box;
- Bryan Parras;
- Jannie Staffansson;
- Sandra Steingraber;
- Ken Henshaw;
- Cherri Foytlin;
- Faith Gemmill.

12. Any and all documents, including but not limited to email correspondence, sufficient to show and identify any communications concerning ExxonMobil and climate change between any member of the Green 20 and third parties whose email addresses include any of the following domain names:

@350.org;
@algore.com;
@ciel.org;

@climatetruth.org;
@cohenmilstein.com;
@desmogblog.com;
@ef.org;
@greenpeace.org;
@insideclimatenews.org;
@nextgenclimate.org
@ourfuture.org;
@pawalaw.com;
@pellislaw.com;
@rbf.org;
@rffund.org;
@tellusmater.org.uk; or
@ucsusa.org.

13. Any and all documents sufficient to show and identify any communications between any member of the Green 20 and any director, officer, employee, agent, or representative of the Conservation Law Foundation concerning ExxonMobil, including but not limited to any actual or contemplated legal action concerning ExxonMobil and the Conservation Law Foundation.

14. For the period January 1, 2012 through the present, any and all documents and communications concerning the conference entitled "Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control" held in La Jolla, California from on or about June 14, 2012 to on or about June 15, 2012.

15. For the period January 1, 2007 through the present, any and all documents and communications concerning the 2007 report issued by the Union of Concerned Scientists, titled "Smoke, Mirrors, and Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science."

16. Any and all documents concerning the actual or anticipated participation of ExxonMobil or other fossil fuel companies or trade associations in the international Paris Climate Change Conference of December 2015.

17. Any and all documents concerning any shareholder resolution relating to climate change made at ExxonMobil's annual shareholder meeting in either 2015 or 2016.

18. Any and all documents and communications concerning fundraising for candidates for political office, including fundraising for any member of the Green 20, and also concerning ExxonMobil.

19. Any and all documents and communications sufficient to show and identify any communications between any member of the Green 20 and any director, officer, employee, agent, or representative of any political party concerning ExxonMobil.

20. Any and all documents sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and Thomas Fahr Steyer, or any of his agents, employees, or representatives, NextGen Climate, or any other person or entity whose email address includes the domain name @nextgenclimate.org.

21. Any and all documents sufficient to show and identify any funding or fundraising provided to You or any member of the Green 20 by Thomas Fahr Steyer or NextGen Climate.

22. Any and all documents, communications, recordings, or materials of any kind concerning the "Exxon: Revelations & Opportunities" meeting held on or about January 8, 2016 at 475 Riverside Drive, New York, New York.

23. Any and all documents and communications concerning the mock trial referred to as "Exxon vs. The People," held in or around Montreuil, France on or about December 5, 2015.

24. Any and all documents and communications concerning climate change and ExxonMobil that discuss, mention, or reference the following organizations listed in the CID issued by Attorney General Healey:

- Acton Institute;
- American Enterprise Institute (AEI);
- Americans for Prosperity;
- American Legislative Exchange Council (ALEC);
- American Petroleum Institute (API);
- Beacon Hill Institute at Suffolk University;
- Competitive Enterprise Institute (CEI);
- Center for Industrial Progress (CIP);
- George C. Marshall Institute;
- Heartland Institute;
- Heritage Foundation; and
- Mercatus Center at George Mason University.

25. Any and all communications between You and any person not employed or retained by the New York Attorney General's Office concerning climate change and ExxonMobil that discuss, mention, or reference any of the following organizations listed in Request 6 of the New York CID:

- American Petroleum Institute (API);
- International Petroleum Industry Environmental Conservation Association (IPIECA);
- U.S. Oil & Gas Association;
- Petroleum Marketers Association of America; and
- Empire State Petroleum Association.

26. Any and all documents and communications sufficient to show and identify any requests received pursuant to the New York Freedom of Information Law, N.Y. Pub. Officers Law Article 6, Section 87, related to (a) ExxonMobil, (b) the Green 20 Press Conference, (c) any coalition of attorneys general comprised in whole or in part of members of the Green 20, (d) communications among or between any members of the

Green 20, (e) the Common Interest Agreement, (f) climate deniers, and/or (g) climate change.

27. Any and all documents and communications sufficient to show and identify any responses to requests received pursuant to the New York Freedom of Information Law, N.Y. Pub. Officers Law Article 6, Section 87, related to ExxonMobil, the Green 20 Press Conference, any coalition of attorneys general comprised in whole or in part of members of the Green 20, communications among or between any members of the Green 20, the Common Interest Agreement, climate deniers, and/or climate change.

28. Any and all documents and communications sufficient to show and identify any communications concerning requests received pursuant to the New York Freedom of Information Law, N.Y. Pub. Officers Law Article 6, Section 87, related to ExxonMobil, the Green 20 Press Conference, any coalition of attorneys general comprised in whole or in part of members of the Green 20, communications among or between any members of the Green 20, the Common Interest Agreement, climate deniers, and/or climate change.

29. Documents and records sufficient to identify Your document retention policy.

30. Documents and records sufficient to identify any and all documents or communications within the scope of these requests that were disposed of or destroyed since April 13, 2016.

Exhibit B

REQUESTED PRODUCTION FORMAT

I. Overview

A. All documents should be produced as Bates-stamped tagged image file format ("TIFF") images along with an image load/cross reference file, a data load file with fielded metadata, and document-level extracted text for electronically stored information or optical character recognition ("OCR") text for scanned hard copy documents. Details regarding requirements, including files to be delivered in native format, are below.

II. TIFF Image Requirements

A. All documents should be produced as TIFF images in 300x300 dpi Group IV single-page monochrome format.

B. All such images should be sequentially Bates-stamped.

C. Images should include the following content where present:

1. For word processing files (*e.g.*, Microsoft Word) – Comments and "track changes" (and similar in-line editing).
2. For spreadsheet files (*e.g.*, Microsoft Excel) – Hidden columns, rows, and sheets; comments; and "track changes" (and similar in-line editing).
3. For presentation files (*e.g.*, Microsoft PowerPoint) – Speaker notes and comments.

III. Native Format Requirements

A. Spreadsheet files

1. Spreadsheet files (*e.g.*, Microsoft Excel) should be provided in native format.
2. In lieu of a TIFF image version of each spreadsheet file, a Bates-stamped single-page TIFF placeholder file should be produced along with the native format version of each file.
3. When redaction is necessary, a redacted TIFF version may be produced; Paul Weiss reserves the right to request access to the native format versions of such files.

B. Multimedia files

1. Multimedia files (*e.g.*, Audio or video files) should be provided in native format.
2. In lieu of a TIFF image version of each multimedia file, a Bates-stamped single-page TIFF placeholder file should be produced along with the native format version of each file.

C. Other files

1. In limited circumstances, it may be necessary to obtain or view the native format versions of files, including color documents/images and dynamic files such as databases. Paul, Weiss reserves the right to request access to the native format versions of such files.

IV. Image Load/Cross Reference File Requirements

A. A single-page image load/cross reference file should be provided with each production.

B. The file may be in either IPRO (.lfp) or Opticon (.opt) format as in the samples below (note that volume label information – "@MSC001" in the sample IPRO file and "MSC001" in the sample Opticon file – is optional):

Sample IPRO .lfp file
IM,MSC00000014,D,0,@MSC001;MSC\0000;00000014.TIF;2
IM,MSC00000015,,0,@MSC001; MSC\0000;00000015.TIF;2
IM,MSC00000016,D,0,@MSC001; MSC\0000;00000016.TIF;2
IM,MSC00000017,,0,@MSC001; MSC\0000;00000017.TIF;2

Sample Opticon .opt file
MSC000001,MSC001,MSC\0000\00000001.TIF,Y,,,3
MSC000002,MSC001,MSC\0000\00000002.TIF,,,,
MSC000003,MSC001,MSC\0000\00000003.TIF,,,,
MSC000004,MSC001,MSC\0000\00000004.TIF,Y,,,2
MSC000005,MSC001,MSC\0000\00000005.TIF,,,,

V. Data Load File and Extracted Text/OCR Requirements

A. A data load file should be provided with each production.

B. The file should be a Concordance-loadable data file, also known as a "DAT" file, and should contain Bates-stamp and metadata information as detailed below.

C. Extracted text and/or OCR text should not be embedded in the DAT file but should rather be provided as separate, document-level text files. Document-level text file names should contain the beginning Bates number information of the document. If a document is provided in native format with a placeholder tiff, (*e.g.*, spreadsheet files) the text file should contain the extracted text of the native file. OCR text should be included for redacted documents.

D. The requested delimiters and qualifiers to be used in the DAT file are:

Record delimiter: Windows newline/Hard return (ASCII 10 followed by ASCII 13)
Field delimiter: □ (ASCII 20)
Multi-value delimiter: Semicolon ; (ASCII 59)
Text qualifier: Small thorn þ (ASCII 254)

E. The DAT file should have a header line with field names and include the following fields:

Field	Comments
BegBates	Beginning Bates number
EndBates	Ending Bates number
BegRange	Bates number of first page of family range, *e.g.*, first page of an email.
EndRange	Bates number of last page of family range, *e.g.*, last page of last attachment to an email.
PageCount	Number of pages in document.
FileExtension	Loose files, attachments and email.
FileSize	Loose files, attachments and email (in bytes).
Title	Loose files and attachments only.
Custodian	Include field only if production is de-duped by custodian. Loose files, attachments, and email. Custodian full name formatted: LASTNAME, FIRSTNAME.
AllCustodian	Include field only if production is de-duped globally. Loose files, attachments, and emails. Full name of all custodians for whom the document is being produced formatted: LASTNAME, FIRSTNAME; LASTNAME, FIRSTNAME
Author	Loose files and attachments only.
From	Email only.
To	Email only.
CC	Email only.
BCC	Email only.
Subject	Email only.
DateCreated	Loose files and attachments only. MM/DD/YYYY
DateModified	Loose files and attachments only. MM/DD/YYYY
DateSent	Email only. MM/DD/YYYY
TimeSent	Email only. HH:MM:SS AM/PM
DateReceived	Email only. MM/DD/YYYY
TimeReceived	Email only. HH:MM:SS AM/PM
FilePath	Loose files. Original path to the file as maintained in the ordinary course of business.
FileName	Loose files and attachments. Name of file as maintained in the ordinary course of business.
FolderPath	Email only. Path within the mail container file (*e.g.*, PST file) to the message at collection time.
HiddenContent	For loose files and attachments only. List type of hidden content found in document (for content described in section II.C above)
TextPath	The path to the extracted text or OCR for the document, including the file name.

Field	Comments
NativePath	The path to the native-format file for the document, including the file name (if a native-format file is provided).

F. Two sample DAT files in the appropriate format when production is globally de-duped are below.

1. The following three entries are, respectively, the header row, a parent email, and a spreadsheet attachment:

þBatesPrefixþ□þBeginning Bates Numberþ□þEnding Bates Numberþ□þBeginning Bates Rangeþ□þEnding Bates Rangeþ□þPage Countþ□þFile Extensionþ□þFile Sizeþ□þTitleþ□þCustodianAllþ□þAuthorþ□þFromþ□þToþ□þCCþ□þBCCþ□þSubjectþ□þDate Createdþ□þDate Modifiedþ□þDate Sentþ□þTime Sentþ□þDate Receivedþ□þTime Receivedþ□þFilePathþ□þFilenameþ□þFolderPathþ□þHidden Contentþ□þTextPathþ□þNativePathþ

þSAMPLEþ□þ00000001þ□þ00000001þ□þ00000001þ□þ00000002þ□þ1þ□þMSGþ□þ2354þ□þþ□þSmith, John H.þ□þþ□þSmith, John H.þ□þDoe, Janeþ□þSchmidt, Jane W.; Doe, Markþ□þþ□þChecks Payableþ□þþ□þþ□þ12/25/2008þ□þ9:30:01 AMþ□þ12/25/2008þ□þ9:30:11 AMþ□þþ□þþ□þ\Inbox\Payable\þ□þþ□þþ□þText\SAMPLE\0000\00000001.txtþ□þþ

þSAMPLEþ□þ00000002þ□þ00000002þ□þ00000001þ□þ00000002þ□þ1þ□þxlsþ□þ46444þ□þAccounts Receivableþ □þSmith, John H.þ□þSmith, John H.þ□þþ□þþ□þþ□þþ□þ12/22/2008þ□þ12/25/2008þ□þþ□þþ□þþ□þþ□þþ□þ2010 budget.xlsþ□þþ□þHidden Columnþ□þText\SAMPLE\0000\00000002.txtþ□þNatives\SAMPLE\0000\00000002.xlsþ

2. In globally de-duped productions there will be instances where production of documents from additional custodians will include documents previously produced. The two entries below are, respectively, the header row, and an overlay row producing a new custodian's copy of an email previously produced:

þBatesPrefixþ□þBeginning Bates Numberþ□þEnding Bates Numberþ□þBeginning Bates Rangeþ□þEnding Bates Rangeþ□þPage Countþ□þFile Extensionþ□þFile Sizeþ□þTitleþ□þCustodianþ□þAuthorþ□þFromþ□þToþ□þCCþ□þBCCþ□þSubjectþ□þDate Createdþ□þDate Modifiedþ□þDate Sentþ□þTime Sentþ□þDate Receivedþ□þTime Receivedþ□þFilePathþ□þFilenameþ□þFolderPathþ□þHidden Contentþ□þTextPathþ□þNativePathþ

þSAMPLEþ□þ00000001þ□þ00000001þ□þ00000001þ□þ00000002þ□þ1þ□þMSGþ□þ2354þ□þþ□þSchmidt, Jane W.þ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þ\Inbox\Accts Payable\þ□þþ□þþ□þText\SAMPLE\0000\00000001.txtþ□þþ

Exhibit 39

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

2001 K STREET, NW
WASHINGTON, DC 20006-1047

TELEPHONE (202) 223-7300

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)

1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6064
TELEPHONE (212) 373-3000

UNIT 3601, OFFICE TOWER A, BEIJING FORTUNE PLAZA
NO. 7 DONGSANHUAN ZHONGLU, CHAOYANG DISTRICT
BEIJING 100020, PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

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

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

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

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

WRITER'S DIRECT DIAL NUMBER

202-223-7321

WRITER'S DIRECT FACSIMILE

202-204-7393

WRITER'S DIRECT E-MAIL ADDRESS

janderson@paulweiss.com

November 11, 2016

BY EMAIL

Roderick Arz
Assistant Attorney General
Office of the Attorney General
State of New York
120 Broadway, 24th Floor
New York, New York 10271

Re: Exxon Mobil Corporation v. *Healey*, No. 4:16-CV-469-K

Dear Mr. Arz:

We write in regard to your letter, dated November 9, 2016, concerning the subpoenas issued to:

- New York Attorney General Eric T. Schneiderman, to testify at a deposition to be held on December 5, 2016 at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064;

- New York Attorney General's Office Environmental Protection Bureau Chief Lemuel Srolovic, to testify at a deposition to be held

Roderick Arz
November 11, 2016

on November 28, 2016 at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064;

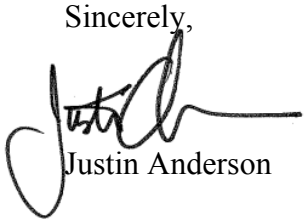
- New York Attorney General's Office Environmental Protection Bureau Deputy Chief Monica Wagner, to testify at a deposition to be held on November 21, 2016 at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064;

- As well as the subpoena duces tecum issued to Attorney General Schneiderman.

We thank you for your letter and respectfully decline your proposal to hold the subpoenas in abeyance pending a decision on the Motion to Dismiss (Docket No. 41) and Motion to Reconsider (Dkt. 78) filed by Massachusetts Attorney General Maura Healey. Pursuant to the order entered on October 13, 2016, in the above-captioned matter (Dkt. 73), discovery is necessary "to aid the Court in deciding whether" the aforementioned action "should be dismissed on jurisdictional grounds." (Dkt. 73 at 6.)

Please confirm that the depositions may proceed on the dates and at the times noticed in the subpoenas.

Sincerely,



Justin Anderson

Exhibit 40

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.	§ § § § § § § § § §	Civil Action No. 4:16-CV-469-K

ORDER

Before the Court is Plaintiff Exxon Mobil Corporation's Motion for Leave to File a First Amended Complaint (Doc. No. 74). There is a presumption in favor of the Court granting a party's motion for leave to amend. *Mayeaux v. Louisiana Health Serv. & Indem. Co.*, 376 F.3d 420, 425 (5th Cir. 2004); *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002). Federal Rule of Civil Procedure 15(a) permits the Court to "freely give leave" to a party to amend a pleading "when justice so requires." FED. R. CIV. P. 15(a). The Court **GRANTS** Plaintiff's Motion for Leave to File a First Amended Complaint.

SO ORDERED.

Signed November 10th, 2016.

ED KINKEADE
UNITED STATES DISTRICT JUDGE

Exhibit 41

November 14, 2016

The Honorable Ed Kinkeade
United States District Court for the Northern District of Texas
1100 Commerce Street, Room 1625
Dallas, Texas 75242

Re: *Exxon Mobil Corporation v. Healey*, Docket No. 4:16-cv-00469-K

Dear Judge Kinkeade:

We respectfully submit this letter to request a status conference in the captioned matter.

On November 10, the Court granted ExxonMobil's motion to amend the Complaint to join New York Attorney General Eric Schneiderman, in his official capacity, as a party and to add two additional claims against both Attorney General Schneiderman and Massachusetts Attorney General Maura Healey. This morning, two business days later, Attorney General Schneiderman filed an order to show cause in New York Supreme Court, which his office characterized as the only "appropriate place" for ExxonMobil to litigate claims related to the constitutionally infirm subpoena that is the predicate for his office's investigation. Explaining the decision to rush into state court on an emergency basis over a year-old subpoena, Attorney General Schneiderman pointed to his concern that this Court might issue a "federal injunction barring New York courts from enforcing [the] subpoena to Exxon."

In addition to today's development, ExxonMobil previously issued discovery requests to Attorneys General Schneiderman and Healey and relevant third parties, pursuant to the Court's Discovery Order of October 13, 2016. Neither Attorney General Schneiderman nor Attorney General Healey has yet to say whether either will comply with those requests or challenge them, but Attorney General Healey has previously written in her briefs that she intends to challenge any efforts to obtain discovery in this action.

We therefore respectfully request that the Court schedule an immediate status conference to address the pending discovery requests and any other matter the Court deems appropriate.

Respectfully submitted,

/s/ Nina Cortell
Nina Cortell
Direct Phone Number: (214) 651-5579
Direct Fax Number: (214) 200-0411
Nina.Cortell@haynesboone.com
Counsel for Exxon Mobil Corporation

Cc: (via ECF)
All counsel of record

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2016, I caused the foregoing correspondence to be served on all parties via the Court's CM/ECF system.

/s/ Nina Cortell
Nina Cortell

Exhibit 42

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

EXXON MOBIL CORPORATION, Plaintiff,	)	4:16-CV-469-K
VS.	)	
ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	)	DALLAS, TEXAS
	)	November 16, 2016

TRANSCRIPT OF TELEPHONE CONFERENCE

BEFORE THE HONORABLE ED KINKEADE

UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF:

MR. JUSTIN ANDERSON
Paul, Weiss, Ritkind, Wharton & Garrison LLP
2001 K Street, NW
Washington, D.C. 20006
janderson@paulweiss.com
(202) 223-7300

MR. TED WELLS
Paul, Weiss, Ritkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
twells@paulweiss.com
(212) 373-3317

MS. MICHELE HIRSHMAN
Paul, Weiss, Rifkind, Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, New York 10019
MHirschman@paulweiss.com
(212) 373-3000

MR. DANIEL E. BOLIA
Exxon Mobil Corporation
1301 Fannin Street
Room 1546
Houston, Texas 77002
daniel.e.bolia@exxonmobil.com
(832) 648-5500

MR. PATRICK JOSEPH CONLON
Exxon Mobil Corporation
1301 Fannin Street
Room 1539
Houston, Texas 77002
patrick.j.conlon@exxonmobil.com
(832) 624-6336

MS. NINA CORTELL
Haynes & Boone LLP
2323 Victory Avenue
Suite 700
Dallas, Texas 75219
nina.cortell@haynesboone.com
(214) 651-5579

FOR THE DEFENDANT, ERIC TRADD SCHNEIDERMAN:

MR. RODERICK ARZ
Office of the Attorney General State of New York
120 Broadway, Fl 24th
New York, New York 10271
(212) 416-8633

MR. JEFFREY M. TILLOTSON, P.C.
Tillotson Law
750 N. Saint Paul Street
Suite 610
Dallas, Texas 75201
Jtillotson@TillotsonLaw.como
(214) 382-3041

MR. PETE MARKETOS
Reese Gordon Marketos LLP
750 N. Saint Paul Street
Suite 610
Dallas, Texas 75201
petemarketos@rgmfirm.com
(214) 382-9810

FOR THE DEFENDANT, MAURA TRACY HEALY:

MR. DOUGLAS A. CAWLEY
McKool Smith
300 Crescent Court
Suite 1500
Dallas, Texas 75201
dcawley@mckoolsmith.com
(214) 978-4972

MR. RICHARD JOHNSTON
Massachusetts Attorney General's Office
One Ashburton Place
20th Floor
Boston, Massachusetts 02108
Richard.Johnston@state.ma.us
(617) 963-2028

MS. MELISSA HOFFER
Massachusetts Attorney General's Office
One Ashburton Place
19th Floor
Boston, Massachusetts 02108
melissa.hoffer@state.ma.us
(617) 963-2322

ALSO PRESENT: **MR. JASON BROWN**

COURT REPORTER:

MR. TODD ANDERSON, RMR, CRR
United States Court Reporter
1100 Commerce St., Rm. 1625
Dallas, Texas 75242
(214) 753-2170

Proceedings reported by mechanical stenography and transcript produced by computer.

TELEPHONE CONFERENCE - NOVEMBER 16, 2016

P R O C E E D I N G S

THE COURT: Good morning. Let me make sure who I have got.

Mr. Anderson?

Hello?

Mr. Anderson?

MR. ANDERSON: Good morning, Judge.

THE COURT: Ms. Cortell?

MS. CORTELL: Yes, Your Honor. I've got a full list if that would help.

THE COURT: Is it Richard Johnston?

MR. JOHNSTON: Yes, Your Honor.

THE COURT: And then Mr. Arz?

MR. ARZ: Yes, Your Honor. Good morning.

THE COURT: Good morning.

How is the weather in New York?

MR. ARZ: Good.

MR. BROWN: And, Your Honor, this is Jason Brown. I'm the chief deputy for the New York Attorney General's Office. I'm on the line as well.

And the weather up here is actually not so bad.

THE COURT: What does that mean?

Is it raining -- raining and cold?

MR. BROWN: Yesterday it was raining and cold.

Today, it's funny, it's a little bit warmer, so --

THE COURT: Oh, well, good. Good.

MR. BROWN: (Inaudible)

THE COURT: Well, good. So -- all right. Anybody else on the line?

MS. CORTELL: Your Honor, it's Nina Cortell. Let me give you a full list, if that's okay.

THE COURT: Sure.

MS. CORTELL: I think that might expedite it.

THE COURT: Okay.

MS. CORTELL: So for ExxonMobil, in addition to Justin Anderson, you have myself, Nina Cortell, Ted Wells, Pat Conlon, Dan Bolia, and Michele Hirshman.

For the Massachusetts Attorney General, in addition to Richard Johnston, you have Melissa Hoffer and Doug Cawley.

And for the New York Attorney General you have -- in additional to Mr. Arz and Jason Brown, you have Pete Marketos and Jeff Tillotson.

THE COURT: Mr. Tillotson. You haven't been in here since you became an independent lawyer. How are you doing?

MR. TILLOTSON: I'm doing fine, Your Honor. Thanks for asking. I'm -- I'm my own boss, and so I routinely both hire and fire myself every afternoon.

THE COURT: Well, there you go. I wasn't worried that you were going broke. I just wondered what was going on

with you. That's good. Good to have you back.

Okay.

MR. TILLOTSON: Thank you.

THE COURT: You know, I've got Ms. Cortell's letter, and I guess her concern and my concern, too, at this point is whether or not Attorney General Schneiderman -- isn't that the right way to say it, general? Just call him General Schneiderman and General Healey, whether they're going to comply with the order on the discovery or not and/or what's going to happen there. And I just wanted to kind of hear y'all's response from that.

MR. JOHNSTON: Your Honor, this is Richard Johnston. You heard from me in September when we were down there arguing. I will talk for the Attorney General's Office in Massachusetts.

As Your Honor will probably recall when we were before you the last time, we argued quite strenuously that the Court didn't have personal jurisdiction over Attorney General Healey. We argued secondarily that the Court should abstain from taking the case because there was almost equivalent proceeding in a Massachusetts state court.

We also argued there was no real irreparable harm because Exxon had already produced many of the same documents to New York.

And when we left court, or as we were leaving court, you told us -- you told the parties that it seemed strange that

Exxon had produced a lot of documents to New York but wouldn't give them to Massachusetts, and directed the parties to have a discussion, and failing a discussion between us that we would mediate before Judge Stanton.

We had discussions about the subject, and then we had a mediation with Judge Stanton, and we left the process with no documents from Exxon.

To our somewhat surprise we then got almost immediately the discovery order, which seemed to relate primarily the issue of abstention, at which point we filed a motion for reconsideration with Your Honor on the discovery order because we pointed out that the law on personal jurisdiction seemed very clear under the Fifth Circuit, that there was no ability on the part of the Court to exercise jurisdiction over an attorney general from another state, no federal court anywhere in the country had done that over the opposition of an attorney general and Exxon didn't provide any such cases. So that motion for reconsideration is still pending.

In the meantime, we received from Exxon approximately a hundred and so written discovery requests, including interrogatories, document requests, and requests for admission. We also got notices of the deposition for Attorney General Healey herself and -- to assist the attorneys general.

Now, each one of those discovery requests had a

particular time period for responding under the rules, and we do intend to respond to all of them under the rules. And as we have said in at least one other paper, we do intend to object to the discovery, including depositions of Attorney General Healey and her associates and to the other forms of discovery.

But we will be filing those in a timely fashion. I think in direct response to Ms. Cortell's concern, we do not expect that Attorney General Healey or the other assistant attorneys general will show up for depositions. We will be filing motions with respect to those prior to the depositions.

I should note that when we got the notices -- we got the letter from Exxon's counsel, I think on Friday during the holiday about whether we would show up or not, and when by Monday afternoon we had not yet responded, they sent a letter to Your Honor saying there was concern about whether people were going to show up.

So it's not as though there was any long delay in letting people know. I think less than -- there hadn't even been a working day on Friday and we were a few hours into the working day on Monday and we still had several days before our formal responses were due.

So we will be filing those responses, and the responses will, among other things, talk about the fact that it is heavily, heavily disfavored to have top executive officials, including attorneys general, deposed about their thought

processes in bringing particular matters.

And what we seem to have here, as we argue in our motion for reconsideration, is a situation where the normal investigatory process has been turned on its head.

We still in response to our civil investigation demand have not received one document from Exxon, and yet Exxon is going after the Attorney General's entire thought process through a hundred written discovery requests and more and then three depositions of key people who are involved in the decision-making process.

So our motion for reconsideration focuses on that as will our objections to the specific discovery requests which they have made.

THE COURT: Is that no?

MR. JOHNSTON: That is a no.

THE COURT: That's the longest no I have had in two or three weeks, but it's okay. I'm used to that. You're a lawyer.

All right.

MR. JOHNSTON: Also it's been a few -- it's been a couple of months now since we were before you, and I know you have been in a busy trial. And, you know, sometimes it's important to just remind everybody where we -- where we think we are on this.

THE COURT: I appreciate that, and that -- you know,

I was a history minor, and so I always like history, and so not that I always need it, and I kind of like to choose which history I'm -- you know, whatever.

But I kind of do keep up with my docket, what's going on. But I'm glad for you to keep up with it, too. That's always fascinating, and that's -- you know, you talk about things are unusual. I would say that's a little unusual to think that, you know, your comments about we got this unusual thing from the Court. You know, whatever.

You can make whatever comments you want to make. I'm going to make whatever rulings I think are appropriate, and I'll rule on your motion when I -- in due time.

So I'll take that as an answer of no.

All right. Mr. Schneiderman's representative -- excuse me. General Schneiderman's representative, who is going to be -- tell me who's speaking for him.

Mr. Arz?

MR. BROWN: So, Your Honor, again, Chief Deputy Jason Brown speaking.

THE COURT: Oh, I'm sorry. Okay.

MR. BROWN: I'm going to take Your Honor's cue, the answer is no. I'm happy to expand at greater length.

The only thing I would note at this point is we were served as nonparty. We got nonparty discovery requests, you know, basically hours or a day or so before we became a party,

so that's also an issue that needs to be fleshed out.

But -- but for the reasons that Mr. Johnston said and others that are unique to me, you are the -- we'll need to exercise our right to make appropriate objections to that discovery request.

THE COURT: Are you a party now?

MR. BROWN: Now? Yes. I think we were served earlier. We're new to the dance, as the Court knows. Today is Wednesday. I think we became a party either on Monday or yesterday. So this is all very new to us.

MS. CORTELL: Your Honor, it's Nina. It may be new to New York, but the order amending was November 10th, and then they immediately went into court in New York and sought to pursue a subpoena there which they had now set for hearing on this coming Monday. And that's really what prompted our letter, because in their papers they're saying that New York is the appropriate place to litigate this, whereas we're already set here on discovery that was then pending.

And so what we're hoping to do is set up a protocol here to handle our discovery which was issued properly pursuant to this Court 's October 13 order permitting discovery.

We acted promptly, which I think the Court would have expected us to do. The discovery is returnable as early as some of it tomorrow and early next week.

We had asked them for confirmation if they were going

to comply. We had not heard back. And in the meantime they go into court in New York and assert jurisdiction there, and that's what prompted the letter.

So what we're here for today is to ask for a protocol, if you will, for how to handle discovery, discovery disputes, so that we, you know, get the discovery we're entitled to under this Court's order.

THE COURT: Y'all want to respond?

MR. BROWN: Yes, Your Honor. Jason Brown again. I mean, Ms. Cortel has slightly butchered the procedural history here. We had, as I think the Court knows, a prior case pending in New York where actually Justice Ostrager had issued an opinion rejecting one of their arguments, as Mr. Wells knows. He appeared in court on that.

So this is not some new litigation intended to do an end-run around anybody. It was simply pursuing the motion to compel that we had previously begun litigation on for a subpoena that long predated any issues that Exxon raises in the Texon case -- in Exxon case that has been pending now for over a year on the subpoena.

So what we did is when we got the -- when we were added as a party, we -- we wrote to Paul, Weiss and asked whether they would withdraw those subpoenas since we were now a party.

On Saturday we received the response no, and then the

next thing we knew we were being scheduled for a status conference here.

So I'm still a little unclear as to what is being requested, but obviously we haven't missed any deadlines yet. We are planning to participate in a way that makes the Court aware of our -- our issues.

Right now, because they are styled as Rule 45 nonparty discovery requests, the only court that would have jurisdiction over that dispute, because the depositions have been noticed here in Manhattan, would be the Southern District of New York.

So right now, without withdrawing their prior subpoenas to us, we have no choice but to go to the Southern District of New York. Again, these are issues that perhaps, know, we would have been better off discussing with Paul, Weiss directly, but they requested a status conference, so here we are.

MR. ANDERSON: Judge, this is Justin Anderson. May I respond to a few of those points?

THE COURT: Yes.

MR. ANDERSON: Well, first, I would just like to say Ms. Cortell did not butcher any -- any history, procedural or otherwise. The matter that was pending before the New York Supreme Court had to do with a subpoena that the New York Attorney General issued to PricewaterhouseCoopers. That was

the subject matter of that litigation, and that is the only litigation that was pending before they rushed into court on Monday morning to raise the subpoena that was at issue before this Court.

So in terms of the procedural history, it is not correct to suggest that this matter was before the Court in New York. It was a separate subpoena issued to ExxonMobil's auditors.

Second, the request on Friday to adjourn the subpoena that had been issued to ExxonMobil to the New York Attorney General, that request had nothing to do with the addition of the New York Attorney General as a party to this action.

You know, the basis in the letter was that there is a motion for reconsideration and a motion to dismiss pending, and the New York Attorney General requested that we adjourn the return date pending this Court's resolution of those motions.

We responded in the letter promptly that that would make no sense because you ordered discovery to determine whether there is jurisdiction. So putting off discovery until jurisdiction has been resolved was nonsensical.

Aside from -- aside from that letter, we had heard nothing from either the Massachusetts Attorney General or the New York Attorney General in response to the discovery request that we made.

And we made our first set of discovery requests at

the end of October.

On October 24th we served Massachusetts.

We then served New York on the 3rd of November.

So this idea that we came rushing to you without giving them any time to respond, that is truly a butchering of the record.

And, finally, Judge, you know, with respect to the subpoenas, if -- if -- it is correct that right now all that is pending is the third-party subpoenas, and they naturally would be -- if there is a motion to quash or a motion to compel, it naturally would -- would begin in the Southern District of New York. But there is a procedure for transferring jurisdiction of -- of any motion to quash in connection with those subpoenas to this Court.

And in light of the fact that those subpoenas now pertain to parties to the litigation before this Court, they would be -- it would be quite likely that if a motion to transfer is made that those objections find their way to you.

THE COURT: Well, here's -- let me -- let me begin by saying, Mr. Brown, you scored some points by being -- with the Court by being frank and to the point. So I'm making you an honorary, as you said, Texon. I don't know what that is. But I'm going to make you -- I look forward to having you here sometimes and I will tease you about that. That's a good name for some future company, I guess.

But, anyway, here's what I would like to do, especially since I'm in this trial that may take the rest of my adult days to finish, and then I have another one starting in January with Facebook and a local company here, another big case.

So what I would like to do is convert Judge Stanton to a special master to deal with y'all on this so you can be talking to somebody regularly. He's my special master on this case. I have complete confidence in him. Obviously, I need y'all's permission to do that. And you're going to -- you're going to have to pay for that among yourselves.

But then we can get something, and you'll have somebody to have my ear when my other part of me is sitting out there and we can get this moving and can consider all of your -- you know, your various concerns.

I get it. And it's -- you know, we're getting pretty close to the point of loggerheads. And okay, that's fine. And try to figure that answer out.

Is that okay with the parties at this point?

I will make sure that he does not overcharge or undercharge you, if that's okay. I think he charges about $725.00 an hour. And, you know, that's what Johnson & Johnson -- I think that's what they're paying him in here.

But, anyway, so that's what I would like to be able to do so we can get something going on it and try to get

something besides us talking on the phone and get some resolution for y'all as quickly as possible.

So what about New York, Mr. Brown?

MR. BROWN: Thank you, Your Honor. And -- and I think we all very much appreciate the spirit of that suggestion.

My only concern -- and I -- you know, I know lawyers always come up with concerns. But we -- we obviously do have a personal jurisdiction defense that we wanted to be careful not to waive.

THE COURT: I'm not trying to get you to waive -- I don't want you to waive anything. I'm not -- you know, yes, you don't know me, but I'm not -- I'm not trying to sneak up on you or anybody else. That's not my style. We're going to fight this thing out, y'all are, one way or the other, and it's not going to be based upon, you know, that sort of thing, okay?

I'm not -- I'm not trying to get you to do that, okay?

This is on the record. This is on the record. I don't know how much clearer I can be than that, okay?

MR. BROWN: Okay. Thank you, Your Honor.

THE COURT: Is that okay?

So it's okay with you?

MR. BROWN: Yeah, I mean, we haven't -- unfortunately we have taxpayer money that we have to account for, but

conceptually I think that's fine.

THE COURT: Okay.

MR. BROWN: I just have to work out the mechanics of how that would -- how we would be able to find funding for our payment. That's all.

THE COURT: Yeah, but don't you do that now in various cases?

MR. BROWN: No. Actually, no.

THE COURT: You don't?

MR. BROWN: I'm not looking to throw -- Your Honor, I'm not looking to throw a roadblock, so let's do this issue and then let the Court know.

THE COURT: Well, who's -- who's paying for Marketos?

MR. BROWN: Marketos, Your Honor.

THE COURT: Yeah, but, I mean, he's -- you're paying for him, right?

MR. BROWN: Yeah. No. And -- we have to get to several levels of authorization to do it. So, again, Your Honor, I don't mean to put a --

THE COURT: And Tillotson doesn't work for free. Tillotson doesn't work for free at all, because I've had him in here. He's the most expensive lawyer in Dallas.

MR. TILLOTSON: I'm going to take that as a compliment.

THE COURT: It is a compliment.

MR. TILLOTSON: Have to go through a big process and approval process that we went through, so I think there's just -- they want to make sure they can -- they can fund this in a way --

THE COURT: Yeah. Okay. Mr. Tillotson, will you just -- just commit to me -- yeah, Mr. Tillotson, will you just commit to me you will do your best to get this done?

MR. TILLOTSON: Of course, Your Honor. Absolutely.

THE COURT: Yeah. Okay. And you know -- you know Judge Stanton well, correct?

MR. TILLOTSON: I do, Your Honor. I just want to make sure -- he needs to clear conflicts, because obviously I have had relationships with him and against him in the past, so he will need to inform everyone obviously of any conflicts he may have with the parties.

THE COURT: Okay.

MR. TILLOTSON: I have no problem with him being special master.

THE COURT: Yeah. Yeah. Okay. Well, yeah. Obviously, everybody has got to do that.

All right. All right. And then I haven't meant to ignore you, Mr. Johnston.

MR. JOHNSTON: I will be short, Your Honor. I echo Mr. Brown's comments. Because it is taxpayer money I don't have the authority to commit to that, so I will have to have

discussions internally here.
THE COURT: Well, you did hire Mr. Cawley, correct? Is that correct?
MR. JOHNSTON: That's correct.
THE COURT: And McKool Smith is known on what I see locally as the most expensive law firm and the most successful -- one of the successful firms, I'm sure that you would agree, wouldn't you, Mr. Cawley?
MR. CAWLEY: Well, I'd agree -- I'd love to agree with the second half, Your Honor. On the first one I'd say maybe we're not the most expensive after getting through negotiating with the State of Massachusetts.
THE COURT: Oh, I'm sorry. But you are a very successful firm and do extremely well, partner by partner, correct?
MR. CAWLEY: Yes, Your Honor.
THE COURT: I know.
Okay. So y'all work on getting that done. Assuming that you can work through whatever layers there are -- there are, you'll work on that?
Yes?
MR. CAWLEY: Absolutely.
THE COURT: Who said that?
UNIDENTIFIED SPEAKER: Absolutely, Your Honor.
THE COURT: Who said that, for the record?

MR. CAWLEY: This is Doug Cawley. I'm one person who said we'll work on it.
THE COURT: And also, Mr. Johnston, do you, too?
MR. JOHNSTON: I do. I do, too.
THE COURT: Hey, is the T silent or not in your -- Johnston?
MR. JOHNSTON: Not the way I pronounce it, Your Honor.
THE COURT: Okay. I'm working on trying to get you to be a -- what did we make -- what did I make Mr. Brown? A Texon.
MR. BROWN: Not a very strong --
THE COURT: Texon. A Texon. You're next. We're going to --
MR. BROWN: A Texon.
THE COURT: Okay.
MR. JOHNSTON: Last time you told me I was your thirteenth favorite Yankee.
THE COURT: That's correct. Okay. Well --
MS. CORTELL: And, Your Honor, for the record, ExxonMobil of course is agreeable, and we'll work with the parties to that end.
THE COURT: Oh, you were next.
Okay. So y'all work on that. And get that done in the next day or two so we can get that resolved before

Thanksgiving, and we can kind of get things moving, okay?
And then try to set up --
MR. BROWN: Your Honor?
THE COURT: Yes, sir.
MR. BROWN: Your Honor, this is Mr. Brown here. Implicit in what you're saying, I hope, is because I think our objections -- our court filing might be due as early as tomorrow -- is that the current discovery requests are stayed pending our discussions to work with the special master?
THE COURT: Well, you agree on the special master and then we'll see, okay?
So -- all right. That does kind of put the pressure on y'all to get on it, so let me know.
You know what? I have always found that what we want to do or can -- we can get things done through the process of whatever. I realize there's a lot of lawyers in the attorney generals' offices, but there's one at the top and can make these decisions, and so y'all get that done, okay?
Anything else y'all want to talk to me about?
MS. CORTELL: I'm assuming that there's no implied stay as a result of this conference.
THE COURT: I'm not staying anything. I'm not staying anything. No. If you want to stay, file something and ask me for it, okay?
MS. CORTELL: Okay.

THE COURT: All right.
MS. CORTELL: Thank you, Your Honor.
THE COURT: All right. Y'all --
MR. BROWN: Thank you, Your Honor.
THE COURT: Thank y'all. And we'll look forward to seeing y'all again soon, and have a wonderful Thanksgiving.
MS. CORTELL: You, too, Your Honor. Thank you.
MR. BROWN: Thank you, Your Honor.
THE COURT: Thank y'all. Bye-bye.
(Hearing adjourned)

INDEX

Telephone conference..... 5

I, TODD ANDERSON, United States Court Reporter for the United States District Court in and for the Northern District of Texas, Dallas Division, hereby certify that the above and foregoing contains a true and correct transcription of the proceedings in the above entitled and numbered cause.

WITNESS MY HAND on this 17th day of November, 2016.

/s/Todd Anderson
TODD ANDERSON, RMR, CRR
United States Court Reporter
1100 Commerce St., Rm. 1625
Dallas, Texas 75242
(214) 753-2170

Exhibit 43

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

2001 K STREET, NW
WASHINGTON, DC 20006-1047

TELEPHONE (202) 223-7300

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)

1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6064
TELEPHONE (212) 373-3000

UNIT 3601, OFFICE TOWER A, BEIJING FORTUNE PLAZA
NO. 7 DONGSANHUAN ZHONGLU, CHAOYANG DISTRICT
BEIJING 100020, PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

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

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

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

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

WRITER'S DIRECT DIAL NUMBER

(202) 223-7321

WRITER'S DIRECT FACSIMILE

(202) 223-7420

WRITER'S DIRECT E-MAIL ADDRESS

janderson@paulweiss.com

November 16, 2016

BY EMAIL

Pete Marketos
Reese Gordon Marketos LLP
750 N. Saint Paul Street, Suite 610
Dallas, Texas 75201

Jeffrey M. Tillotson
Tillotson Law
750 N. Saint Paul Street, Suite 610
Dallas, Texas 75201

Re: Exxon Mobil Corporation v. *Eric Schneiderman* and *Maura Healey*, No. 4:16-CV-469-K

Dear Messrs. Marketos and Tillotson:

I am writing on behalf of Plaintiff Exxon Mobil Corporation ("ExxonMobil") in reference to the above-captioned matter. In light of the order entered by the Honorable Ed Kinkeade, of the United States District Court for the Northern District of Texas on November 10, 2016, joining Attorney General Eric Schneiderman as a Defendant in this action (Docket No. 99), ExxonMobil hereby withdraws the following subpoenas issued pursuant to Rule 45 of the Federal Rules of Civil Procedure:

1. Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, served upon New York Attorney General Eric Schneiderman on November 4, 2016;

2. Subpoena to Testify at a Deposition in a Civil Action, served upon Monica Wagner on November 4, 2016;

3. Subpoena to Testify at a Deposition in a Civil Action, served upon Lemuel Srolovic on November 4, 2016; and

4. Subpoena to Testify at a Deposition in a Civil Action, served upon New York Attorney General Eric Schneiderman on November 4, 2016.

In lieu of the subpoenas enumerated above, please find enclosed the following discovery requests:

1. Plaintiff Exxon Mobil Corporation's First Request to Defendant Eric Schneiderman for the Production of Documents;

2. Plaintiff Exxon Mobil Corporation's First Set of Requests for Admission to Defendant Eric Schneiderman;

3. Plaintiff Exxon Mobil Corporation's First Set of Interrogatories to Defendant Eric Schneiderman;

4. Plaintiff Exxon Mobil Corporation's Notice of Deposition of Monica Wagner, Deputy Chief of the Environmental Protection Bureau of the Office of the Attorney General of New York at 10:00 am on November 21, 2016;

5. Plaintiff Exxon Mobil Corporation's Notice of Deposition of Lemuel Srolovic at 10:00 am on November 28, 2016; and

6. Plaintiff Exxon Mobil Corporation's Notice of Deposition of Eric Schneiderman, Attorney General of the New York, at 10:00 am on December 5, 2016.

I am available to discuss at your convenience. Thank you for your anticipated response.

Sincerely,

Justin Anderson

Enclosures

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

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Exxon Mobil Corporation, by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, will take the deposition of Eric Tradd Schneiderman, Attorney General for the State of New York.

The deposition will commence on December 5, 2016, beginning at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064 or at such other time or location as shall be mutually agreed by the parties and the deponent.

The deposition will be recorded by audiovisual and stenographic means before an officer or other person authorized by law to administer oaths, and shall continue until completed.

Dated: November 16, 2016

EXXON MOBIL CORPORATION

Patrick J. Conlon
pro hac vice
State Bar No. 24054300
patrick.j.conlon@exxonmobil.com
Daniel E. Bolia
State Bar No. 24064919
daniel.e.bolia@exxonmobil.com
EXXON MOBIL CORPORATION
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

Ralph H. Duggins
State Bar No. 06183700
rduggins@canteyhanger.com
Philip A. Vickers
State Bar No. 24051699
pvickers@canteyhanger.com
Alix D. Allison
State Bar. No. 24086261
aallison@canteyhanger.com
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102
(817) 877-2800
Fax: (817) 877-2807

Theodore V. Wells, Jr.
pro hac vice
twells@paulweiss.com
Michele Hirshman
pro hac vice
mhirshman@paulweiss.com
Daniel J. Toal
pro hac vice
dtoal@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Nina Cortell
State Bar No. 04844500
nina.cortell@haynesboone.com
HAYNES & BOONE, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
(214) 651-5579
Fax: (214) 200-0411

By: _____
Justin Anderson
pro hac vice
janderson@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Counsel for Exxon Mobil Corporation

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

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Exxon Mobil Corporation, by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, will take the deposition of Lemuel Srolovic, Chief of the Environmental Protection Bureau of the Office of the New York Attorney General.

The deposition will commence on November 28, 2016, beginning at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064 or at such other time or location as shall be mutually agreed by the parties and the deponent.

The deposition will be recorded by audiovisual and stenographic means before an officer or other person authorized by law to administer oaths, and shall continue until completed.

Dated: November 16, 2016

EXXON MOBIL CORPORATION

Patrick J. Conlon
pro hac vice
State Bar No. 24054300
patrick.j.conlon@exxonmobil.com
Daniel E. Bolia
State Bar No. 24064919
daniel.e.bolia@exxonmobil.com
EXXON MOBIL CORPORATION
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

Ralph H. Duggins
State Bar No. 06183700
rduggins@canteyhanger.com
Philip A. Vickers
State Bar No. 24051699
pvickers@canteyhanger.com
Alix D. Allison
State Bar. No. 24086261
aallison@canteyhanger.com
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102
(817) 877-2800
Fax: (817) 877-2807

Theodore V. Wells, Jr.
pro hac vice
twells@paulweiss.com
Michele Hirshman
pro hac vice
mhirshman@paulweiss.com
Daniel J. Toal
pro hac vice
dtoal@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Nina Cortell
State Bar No. 04844500
nina.cortell@haynesboone.com
HAYNES & BOONE, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
(214) 651-5579
Fax: (214) 200-0411

By: _____
Justin Anderson
pro hac vice
janderson@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Counsel for Exxon Mobil Corporation

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

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Exxon Mobil Corporation, by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, will take the deposition of Monica Wagner, Deputy Chief of the Environmental Protection Bureau of the Office of the New York Attorney General.

The deposition will commence on November 21, 2016, beginning at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064 or at such other time or location as shall be mutually agreed by the parties and the deponent.

The deposition will be recorded by audiovisual and stenographic means before an officer or other person authorized by law to administer oaths, and shall continue until completed.

Dated: November 16, 2016

EXXON MOBIL CORPORATION

Patrick J. Conlon
pro hac vice
State Bar No. 24054300
patrick.j.conlon@exxonmobil.com
Daniel E. Bolia
State Bar No. 24064919
daniel.e.bolia@exxonmobil.com
EXXON MOBIL CORPORATION
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

Ralph H. Duggins
State Bar No. 06183700
rduggins@canteyhanger.com
Philip A. Vickers
State Bar No. 24051699
pvickers@canteyhanger.com
Alix D. Allison
State Bar. No. 24086261
aallison@canteyhanger.com
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102
(817) 877-2800
Fax: (817) 877-2807

Theodore V. Wells, Jr.
pro hac vice
twells@paulweiss.com
Michele Hirshman
pro hac vice
mhirshman@paulweiss.com
Daniel J. Toal
pro hac vice
dtoal@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Nina Cortell
State Bar No. 04844500
nina.cortell@haynesboone.com
HAYNES & BOONE, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
(214) 651-5579
Fax: (214) 200-0411

By: _____
Justin Anderson
pro hac vice
janderson@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Counsel for Exxon Mobil Corporation

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

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

PLAINTIFF EXXON MOBIL CORPORATION'S FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT ERIC SCHNEIDERMAN

Plaintiff Exxon Mobil Corporation ("ExxonMobil"), by and through its undersigned counsel, hereby propounds Requests for Admission Numbers 1 through 33 to Defendant Eric Tradd Schneiderman, Attorney General for the State of New York, and requests that he admit the truth of the following requests within thirty (30) days of service hereof pursuant to Federal Rule of Civil Procedure 36, and the orders of the United State District Court for the Northern District of Texas in the above-captioned action, entered on October 13, 2016 (Docket No. 73) and November 10, 2016 (Docket No. 99), and in accordance with the definitions and instructions set forth herein.

DEFINITIONS

1. The terms "communication" and "communicated" shall mean every manner or means of disclosure, transfer or exchange of oral or written information, whether in person, by telephone, mail, electronic mail, personal delivery or otherwise.

2. The term "information" shall be construed expansively and shall include, but not be limited to, facts, data, opinions, images, impressions, concepts and formulae.

3. The term "CID" refers to the Civil Investigative Demand issued by the office of Defendant Attorney General Maura Healey to ExxonMobil on or about April 19, 2016.

4. The term "Subpoena" refers to the Subpoena issued by the office of Defendant Attorney General Eric Schneiderman to ExxonMobil on or about November 4, 2015.

5. The term "Common Interest Agreement" refers to the Climate Change Coalition Common Interest Agreement signed by individuals from the offices of the Attorneys General for California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Virginia, U.S. Virgin Islands, Vermont, Washington, and Washington, D.C., between April and May 2016.

6. The term "Green 20" refers to the Attorneys General for the States, Commonwealths, or Territories of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, the U.S. Virgin Islands, Vermont, Virginia, Washington, and Washington, D.C.; the Offices of these Attorneys General; their directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on their behalf, including, but not limited to, Assistant Attorneys General.

7. The term "Green 20 Press Conference" or "AGs United for Clean Power Press Conference" refers to the Press Conference attended by Defendant Attorney General Eric Schneiderman and other members of the Green 20 on March 29, 2016.

8. The term "investigation" refers to an actual or contemplated issuance of a subpoena or any other investigative process concerning purported violations of law by ExxonMobil concerning or related, directly or indirectly, in whole or in part, to climate change.

9. The term "person" includes any natural person, firm, partnership, joint venture, corporation, sole proprietorship, trust, union, association, federation, labor organizations, legal representatives, trustees, trustees in bankruptcy, receivers, business entities, any other form of business, governmental, public, charitable entity, or group of natural persons or such entities.

10. The term "SEC" refers to the United States Securities and Exchange Commission.

11. The words "You," "Your," "Yours," and/or "Yourself" refer to Defendant Attorney General Eric Schneiderman, as well as the Office of the New York State Attorney General, and its directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on its behalf, including, but not limited to, Assistant Attorneys General in the Office of the New York State Attorney General.

INSTRUCTIONS

1. These Requests for Admission are directed to Defendant and the answers are to be completed to the best of Defendant's knowledge, by the person with the most knowledge, and based on the best knowledge of Defendant's counsel, agents, servants,

investigators, employees, predecessors, representatives and any other person acting or purporting to act on Defendant's behalf.

2. If You are unable to answer any Request for Admission or portion thereof, identify the person whom You believe has the knowledge or information sought by the request(s).

3. The following rules of construction apply to these discovery requests:

(a) The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each document request all responses that might otherwise be construed to be outside of its scope.

(b) The terms "any," "all" and "each" shall be construed without limitation.

(c) The term "including" shall be construed without limitation.

(d) The use of the singular form of any word includes the plural and vice versa.

(e) A masculine, feminine, or gender-free pronoun shall not exclude the other, or both, genders.

(f) Unless otherwise indicated, all words and terms used in this request shall mean their common connotations.

(g) Unless otherwise stated, the timeframe for this Request for Admissions is January 1, 2011 until the present.

(h) The foregoing Definitions and Instructions also apply to the Definitions and Instructions themselves.

REQUESTS FOR ADMISSION

1. Admit that You communicated and shared information with other members of the Green 20 concerning Your investigation of ExxonMobil.

2. Admit that one objective of the Green 20 was to "reduce emissions of climate change pollution to minimize its harm to people now and in the future."

3. Admit that You attended a presentation on the morning of the Green 20 Press Conference given by Peter Frumhoff on the subject of the "imperative of taking action now on climate change."[1]

4. Admit that the presentation by Peter Frumhoff referred to in Request for Admission 3 was not announced publicly.

5. Admit that You attended a presentation on the morning of the Green 20 Press Conference given by Matthew Pawa of the Pawa Law Group, P.C., on the subject of "climate change litigation."[2]

6. Admit that that the presentation by Pawa referred to in Request for Admission 5 was not announced publicly.

7. Admit that You directed Matthew Pawa "to not confirm or discuss" his attendance at the Green 20 Press Conference.

8. Admit that You participated in the drafting and executing of the Common Interest Agreement.

9. Admit that You signed the Common Interest Agreement, along with other members of the Green 20.

10. Admit that the objectives of the Common Interest Agreement were:

---

[1] Ex. I at App. 78.
[2] *Id.*

(a) "[L]imiting climate change"; and

(b) "[E]nsuring the dissemination of accurate information about climate change."[3]

11. Admit that the objective of "limiting climate change" can be accomplished through political and/or legislative means.

12. Admit that You "assembl[ed] a group of state actors to send the message that [You and other attorneys general] are prepared to step into th[e] breach" created by "gridlock in Washington."

13. Admit that one goal of the Green 20 was to use law enforcement powers to achieve a political and/or legislative objective.

14. Admit that climate change is, and has been, a matter of public debate.

15. Admit that "ensuring the dissemination of accurate information" about a matter of public debate involves the regulation of speech.

16. Admit that climate change cannot be limited through a historical investigation of a single energy company.

17. Admit that You perceive ExxonMobil as an opponent to Your preferred policies to address the potential for and effects of climate change.

18. Admit that, in its 2006 Corporate Citizenship Report, ExxonMobil publicly stated that "the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant" and "strategies that address the risk need to be developed and implemented."

[3] MTD App. At 57.

19. Admit that, in its 2006 10-K filing with the SEC, ExxonMobil stated that the "risks of global climate change" "have been, and may in the future" continue to impact its operations.

20. Admit that, in its 2015 10-K, ExxonMobil stated that the "risk of climate change" and "pending greenhouse gas regulations" may increase its "compliance costs."

21. Admit that, in 2006, ExxonMobil disclosed and acknowledged the risks to its business from possible future climate change regulations that supposedly give rise to Your investigation.

22. Admit that, under the SEC's rules concerning the reporting of reserves, ExxonMobil is required to estimate its proved reserves in light of "existing economic conditions, operating methods, and government regulations."[4]

23. Admit that Your theory that ExxonMobil may have committed "massive securities fraud" depends on the adoption of regulations not yet promulgated.

24. Admit that You were acting under color of state law in initiating and pursuing Your Investigation.

25. Admit that on or about November 4, 2015, You believed that New York State General Business Law Article 22-A and New York State Executive Law Article 5, Section 63(12) has six-year statutes of limitation.

26. Admit that the Subpoena issued by Your office seeks documents from ExxonMobil dating back to January 1977.

27. Admit that You believe the following groups have expressed skepticism regarding the causes and impacts of climate change:

[4] *Modernization of Oil & Gas Reporting,* SEC Release No. 78, File No. S7-15-08, 2008 WL 5423153, at *66 (Dec. 31,2008).

(a) American Enterprise Institute (AEI)
(b) American Legislative Exchange Council (ALEC)
(c) American Petroleum Institute (API). [5]

28. Admit that the Subpoena seeks documents relating to trade associations and industry groups perceived to advocate for the fossil fuel industry including, without limitation, the American Enterprise Institute (AEI), the American Legislative Exchange Council (ALEC) and the American Petroleum Institute (API).

29. Admit that You disclosed information about Your investigation of ExxonMobil to the *New York Times* for its November 5, 2015 article concerning the Subpoena issued by Your office.

30. Admit that You publicly discussed the investigation of ExxonMobil on *PBS NewsHour* on November 10, 2015, days after issuing the Subpoena.

31. Admit that on August 19, 2016, You told the *New York Times* that Your investigation will focus on a purported "massive securities fraud" based on a "stranded assets" theory.

32. Admit that You have abandoned any theory of liability premised primarily on ExxonMobil's scientific research about climate change and/or global warming in the 1970s and 1980s.

33. Admit that You shifted the focus of Your investigation away from ExxonMobil's scientific research about climate change and/or global warming in the 1970s and 1980s after learning of challenges ExxonMobil asserted to the CID issued by Massachusetts Attorney General Healey.

[5] Oil Daily, New York Attorney General Comments on Exxon Probe, November 13, 2015.

Dated: November 16, 2016

EXXON MOBIL CORPORATION

Patrick J. Conlon
pro hac vice
State Bar No. 24054300
patrick.j.conlon@exxonmobil.com
Daniel E. Bolia
State Bar No. 24064919
daniel.e.bolia@exxonmobil.com
EXXON MOBIL CORPORATION
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

Ralph H. Duggins
State Bar No. 06183700
rduggins@canteyhanger.com
Philip A. Vickers
State Bar No. 24051699
pvickers@canteyhanger.com
Alix D. Allison
State Bar. No. 24086261
aallison@canteyhanger.com
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102
(817) 877-2800
Fax: (817) 877-2807

Theodore V. Wells, Jr.
pro hac vice
twells@paulweiss.com
Michele Hirshman
pro hac vice
mhirshman@paulweiss.com
Daniel J. Toal
pro hac vice
dtoal@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Nina Cortell
State Bar No. 04844500
nina.cortell@haynesboone.com
HAYNES & BOONE, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
(214) 651-5579
Fax: (214) 200-0411

By: _____
Justin Anderson
pro hac vice
janderson@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Counsel for Exxon Mobil Corporation

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

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

PLAINTIFF EXXON MOBIL CORPORATION'S FIRST SET OF INTERROGATORIES TO DEFENDANT ERIC SCHNEIDERMAN

Pursuant to and the orders entered by the United States District Court for the Northern District of Texas in the above-captioned action on October 13, 2016 (Docket No. 73) and November 10, 2016 (Docket No. 99), and pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and in accordance with the definitions and instructions set forth herein, Plaintiff Exxon Mobil Corporation ("ExxonMobil"), by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, requests that Defendant Eric Tradd Schneiderman, Attorney General for the State of New York, answer separately, under oath and in writing, each of the following Interrogatories, within thirty (30) days from the service of this request, or at such other time as may be agreed upon among counsel.

DEFINITIONS

1. The terms "and" and "or" shall be construed either disjunctively or

conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

2. The terms "all" and "each" shall be construed as all and each.

3. The term "any" is used in its inclusive sense. For example, if a request calls for identification of "any statement" made by the Plaintiff on a topic, You shall identify each and all such statements on that topic.

4. The term "communication" shall mean every manner or means of disclosure, transfer or exchange of oral or written information, whether in person, by telephone, mail, electronic mail, personal delivery or otherwise.

5. The term "date" shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date (based upon relationship with other events).

6. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including any email or electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of the term.

7. The term "identify" means: (a) when referring to a person or persons, to state the name and present address or, if unknown, the last known address, telephone number, e-mail address, title and employer of such person or persons; (b) when referring to a firm, partnership, corporation, association or other entity, to state the full name, address and telephone number or, if unknown, the last known address and telephone number; (c) when referring to documents, to state, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv)

author(s), addressee(s) and recipient(s); (d) when referring to communications, to state, to the extent known, the (i) date of the communication; (ii) identity of the parties to the communication; (iii) means of transmission of the communication; and (iv) identity of all documents memorializing all or part of the communication. To the extent any responsive communication is memorialized in a document, please produce the document for inspection and copying.

8. The term "including" shall be construed without limitation.

9. The term "information" shall be construed expansively and shall include, but not be limited to, facts, data, opinions, images, impressions, concepts and formulae.

10. The term "person" includes any natural person, firm, partnership, joint venture, corporation, sole proprietorship, trust, union, association, federation, labor organizations, legal representatives, trustees, trustees in bankruptcy, receivers, business entities, any other form of business, governmental, public, charitable entity, or group of natural persons or such entities.

11. The term "CID" refers to the Civil Investigative Demand issued by the office of Defendant Attorney General Maura Healey to ExxonMobil on or about April 19, 2016.

12. The term "Subpoena" refers to the Subpoena issued by the office of Defendant Attorney General Eric Schneiderman to ExxonMobil on or about November 4, 2015.

13. The term "Common Interest Agreement" refers to the Climate Change Coalition Common Interest Agreement signed by individuals from the offices of

the Attorneys General for California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Virginia, U.S. Virgin Islands, Vermont, Washington, and Washington, D.C., between April and May 2016.

14. The term "Green 20" refers to the Attorneys General for the States, Commonwealths, or Territories of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, the U.S. Virgin Islands, Vermont, Virginia, Washington, and Washington, D.C.; the Offices of these Attorneys General; their directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on their behalf, including, but not limited to, Assistant Attorneys General.

15. The term "Green 20 Press Conference" or "AGs United for Clean Power Press Conference" refers to the Press Conference attended by Defendant Attorney General Eric Schneiderman and other members of the Green 20 on March 29, 2016.

16. The term "investigation" refers to an actual or contemplated issuance of a subpoena or any other investigative process concerning purported violations of law by ExxonMobil concerning or related, directly or indirectly, in whole or in part, to climate change.

17. The words "You," "Your," "Yours," and/or "Yourself" refer to Defendant Attorney General Eric Schneiderman, as well as the Office of the New York State Attorney General, and its directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on its behalf, including, but not limited to, Assistant Attorneys General in the Office of the New York State Attorney General.

INSTRUCTIONS

1. These Interrogatories are continuing in nature. Any information obtained subsequent to the service of answers to these Interrogatories that would have been included in the answers had the information been known shall promptly be supplied by supplemental answers whenever You find, locate, acquire, or become aware of such information, up until the time of trial. Supplemental answers are to be served as soon as reasonably possible after receipt of such information.

2. The answers are to be signed by You under oath. Objections, if any, are to be signed by the attorney making them.

3. Each Interrogatory shall be responded to fully, unless it is in good faith objected to, in which event the reasons for the objections shall be stated with specificity. If an objection pertains to only a portion of an Interrogatory, or to a word, phrase, or clause contained therein, You shall state Your objection to that portion only and answer the remainder of the Interrogatory. If, in responding to these Interrogatories, You claim any ambiguity in an Interrogatory, or in a definition or instruction applicable thereto, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Interrogatory.

4. If a claim of privilege or other legal doctrine (including, but not limited to, the work product doctrine) is asserted in objecting to any means of discovery or disclosure, You shall comply with the requirements of Federal Rule of Civil Procedure 26(b)(5), and, promptly following Your response, You shall identify with respect to the information: (i) the general nature of the information withheld; and (ii) the specific

privilege or protection claimed and the basis for its assertion. This includes, but is not limited to, specifically stating that You are withholding information in purported reliance on the Common Interest Agreement.

5. Although some Interrogatories may overlap with other Interrogatories, no Interrogatory should be read as limiting any other.

6. The foregoing Definitions and Instructions also apply to the Definitions and Instructions themselves.

7. Unless otherwise specified, the time period covered by these Interrogatories is January 1, 2011, to the present.

INTERROGATORIES

1. State the name, job title and/or position of all members, employees or agents of the Office of Attorney General of the State of New York involved in Your investigation of ExxonMobil, Your issuance of the Subpoena, Your participation in the Green20 Press Conference, and/or Your participation in the Common Interest Agreement, including but not limited to those persons who provided information for answers to one or more of these Interrogatories, and identify by number each Interrogatory that he or she answered or for which he or she provided information.

2. State, identify, and describe the basis for the following statements You made at the Green 20 Press Conference. As part of Your answer, identify all persons, documents or other sources of information that You contacted, consulted, reviewed or otherwise considered in making these statements:

(a) Your statement that there is a "relentless assault from well-funded highly aggressive and morally vacant forces that are trying to

block every step by the federal government to take meaningful action" regarding climate change.

(b) Your statement that "there are companies using the best climate science. They're using the best climate models so that when they spend shareholder dollars to raise their oil rigs, which they are doing, they know how fast the sea level is rising, then they are drilling in places in the Arctic where they couldn't drill 20 years ago because of the ice sheets. They know how fast the ice sheets are receding."

(c) Your statement that "we know that they paid millions of dollars to support organizations that put up propaganda denying that we can predict or measure the effects of fossil fuel on our climate or even denying that climate change was happening."

(d) Your statement that "[w]e know what's happening to the planet. There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up."

3. State, identify, and describe the basis for Your statements concerning Your investigation of ExxonMobil, quoted in the *New York Times* on August 19, 2016, that "there may be massive securities fraud here" and that "[t]he older stuff really is just to establish knowledge and look for inconsistencies." As part of Your answer, identify all persons, documents or other sources of information that You contacted, consulted, reviewed or otherwise considered in making these statements.

4. State, identify, and describe the basis for Your authority to impose securities disclosure obligations on ExxonMobil that are distinct from or inconsistent with federal securities law and regulations, including those promulgated and/or administered by the Securities and Exchange Commission.

5. Identify any and all plaintiffs' attorneys, environmental attorneys, environmental organizations, current or former public officeholders and their staffs, political party officials and their staffs, or other Attorneys General, that You contacted or with whom You have communicated regarding any Investigation of ExxonMobil. As part of Your answer, identify (i) the date on which any of these communications occurred and (ii) the topics discussed in these communications.

6. State, identify, and describe the actions that Your office, including Your office's Environmental Protection Bureau, took prior to the Green 20 Press Conference to learn the status of other states' investigations and/or plans and explore avenues for coordination with these other states. As part of Your answer, identify all persons, documents or other sources of information that You contacted, consulted, reviewed or otherwise considered in taking these actions.

7. State, identify, and describe Your involvement in drafting the Common Interest Agreement. As part of Your answer, identify all persons, documents or other sources of information that You contacted, consulted, reviewed or otherwise considered in taking these actions.

8. State, identify, and describe Your relationship and any and all communications with Peter Frumhoff and/or the Union of Concerned Scientists, both before and after the Green 20 Press Conference.

9. State, identify, and describe Your relationship and any and all communications with Matthew Pawa, the Pawa Law Group. P.C., and/or the Global Warming Legal Action Project both before and after the Green 20 Press Conference.

10. State, identify, and describe Your relationship and any and all communications with former Vice President Al Gore, both before and after the Green 20 Press Conference. As part of Your answer, describe your understanding of how Al Gore became involved in the Green 20 Press Conference, including whether he was paid a fee in connection with his participation in or attendance at the Green 20 Press Conference.

11. State, identify, and describe Your relationship and any and all communications with Sharon Eubanks, both before and after the Green 20 Press Conference.

12. State, identify, and describe Your relationship and any and all communications with Bill McKibben and/or 350.org, both before and after the Green 20 Press Conference.

13. State, identify, and describe Your relationship and any and all communications with NextGen Climate or any of its directors, officers, employees, agents, or representatives, both before and after the Green 20 Press Conference.

14. State, identify, and describe Your relationship and any and all communications with the Rockefeller Brothers Fund and/or the Rockefeller Family Fund, both before and after the Green 20 Press Conference.

15. State, identify, and describe any and all political meetings, workshops, rallies, fundraising initiatives, or other events attended by persons outside the office of the New York Attorney General, at which You discussed any pending or

potential investigation of ExxonMobil by a member of the Green 20 or any subpoenas or civil investigative demands issued thereto.

16. State, identify, and describe Your participation in, attendance at, or Your relationship to the "Exxon: Revelations & Opportunities" event held on or about January 8, 2016 at 475 Riverside Drive, New York, New York. As part of Your answer, state, identify, and describe the purpose and nature of the meeting, and any known speakers, organizers, attendees, or participants at the event.

17. State, identify, and describe Your participation in, attendance at, or Your relationship to the mock trial referred to as "Exxon vs. The People" held in or around Montreuil, France on or about December 5, 2015. As part of Your answer, state, identify, and describe the purpose and nature of the mock trial, and any known speakers, organizers, attendees, or participants at the event.

18. State, identify, and describe Your policy and practice for publicly discussing or disclosing information concerning ongoing investigations.

19. State, identify. and describe the basis for Your statements on November 13, 2015, at a gathering sponsored by *Politico*, that ExxonMobil funded "aggressive climate deniers." As part of Your answer, describe what You understood to constitute a "climate denier[ ]" when You made this statement.

20. Identify and describe Your statutory authority to "limit[] climate change" and "ensur[e] the dissemination of accurate information about climate change," which are the stated objectives of the Common Interest Agreement You executed.

21. Identify and describe the basis for Your Subpoena's demand that Exxon Mobil produce documents from a time period exceeding 39 years when the

Subpoena purports to investigate violations of statutes with six-year statute of limitations periods.

22. State, identify, and describe the basis for Your belief that investigating a single energy company will help to combat or limit climate change.

23. State, identify and describe all communications You had with the *New York Times* concerning the November 5, 2015 article, "Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General," describing Your investigation of ExxonMobil.

24. Identify and describe Your document retention policies in effect between , January 1, 2011 and November 10, 2016. As part of Your answer, describe the efforts undertaken to ensure the preservation of relevant documents in connection with this litigation and the date on which such actions occurred.

Dated: November 16, 2016

EXXON MOBIL CORPORATION

Patrick J. Conlon
pro hac vice
State Bar No. 24054300
patrick.j.conlon@exxonmobil.com
Daniel E. Bolia
State Bar No. 24064919
daniel.e.bolia@exxonmobil.com
EXXON MOBIL CORPORATION
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

Ralph H. Duggins
State Bar No. 06183700
rduggins@canteyhanger.com
Philip A. Vickers
State Bar No. 24051699
pvickers@canteyhanger.com
Alix D. Allison
State Bar. No. 24086261
aallison@canteyhanger.com
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102
(817) 877-2800
Fax: (817) 877-2807

Theodore V. Wells, Jr.
pro hac vice
twells@paulweiss.com
Michele Hirshman
pro hac vice
mhirshman@paulweiss.com
Daniel J. Toal
pro hac vice
dtoal@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Nina Cortell
State Bar No. 04844500
nina.cortell@haynesboone.com
HAYNES & BOONE, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
(214) 651-5579
Fax: (214) 200-0411

By: _____
Justin Anderson
pro hac vice
janderson@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Counsel for Exxon Mobil Corporation

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

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

PLAINTIFF EXXON MOBIL CORPORATION'S FIRST REQUEST TO DEFENDANT ERIC SCHNEIDERMAN FOR THE PRODUCTION OF DOCUMENTS

PLEASE TAKE NOTICE that pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the orders entered by the United States District Court for the Northern District of Texas in the above-captioned action, (i) on October 13, 2016, ordering the parties to engage in jurisdictional discovery (Docket No. 73), and (ii) on November 10, 2016, granting Plaintiff's Motion for Leave to File a First Amended Complaint, joining Attorney General Eric Schneiderman as a Defendant (Docket No. 99), Plaintiff ExxonMobil Corporation ("ExxonMobil"), by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, hereby demands that Defendant Massachusetts Attorney General Eric Schneiderman produce for inspection and copying the documents designated below at the offices of Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, New York 10019-6064, no later than thirty (30) days after service of this request.

DEFINITIONS

1. "And" and "or" shall be construed either disjunctively or conjunctively as to bring within the scope of the request all information or documents that might otherwise be construed to be outside of its scope.

2. "All" shall be construed to include "any" and "each," "any" shall be construed to include "all" and "each," and "each" shall be construed to include "all" and "any," in each case as is necessary to bring within the scope of these requests documents that might otherwise be construed as outside their scope.

3. The terms "all" and "each" shall be construed as all and each.

4. "Any" is used in its inclusive sense. For example, if a Request calls for "any communication that you had with the plaintiff," you should produce each and every communication with the plaintiff.

5. "Communication" means any conversation, discussion, letter, electronic mail ("email"), memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any document that abstracts, digests, transcribes, records, or reflects any of the foregoing. Except where otherwise stated, a request for "Communications" means a request for all communications.

6. "Concerning" means referring or relating to and includes without limitation analyzing, commenting on, comprising, connected with, constituting, containing, contradicting, describing, embodying, establishing, evidencing, memorializing, mentioning, pertaining to, recording, regarding, reflecting, responding to, setting forth, showing, or supporting, directly or indirectly.

7. "Custodian" means any person or entity that, as of the date of this Request for Production, maintained, possessed, or otherwise kept or controlled such document.

8. "Date" shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date (based upon relationship with other events).

9. "Document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, email, instant messages, text messages, personal digital assistant or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes, or records or transcriptions of conversations or communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries. Any non-identical version of a document constitutes a separate document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical documents. In the case of documents bearing any notation or other marking made by highlighting ink, the term document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof. Except where otherwise stated, a request for "documents" means a request for all such documents.

10. "Entity" means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.

11. "Identify" means: (a) when referring to a person or persons, to state the name and present address or, if unknown, the last known address, telephone number, e-mail address, title and employer of such person or persons; (b) when referring to a firm, partnership, corporation, association or other entity, to state the full name, address and telephone number or, if unknown, the last known address and telephone number; (c) when referring to documents, to state, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s); (d) when referring to communications, to state, to the extent known, the (i) date of the communication; (ii) identity of the parties to the communication; (iii) means of transmission of the communication; and (iv) identity of all documents memorializing all or part of the communication. To the extent any responsive communication is memorialized in a document, please produce a copy of the document for inspection and copying.

12. "Including" means "including without limitation."

13. "Information" shall be construed expansively and shall include, but not be limited to, facts, data, opinions, documents, communications, images, impressions, concepts and formulae.

14. "Person" includes any natural person, firm, partnership, joint venture, corporation, sole proprietorship, trust, union, association, federation, labor organizations, legal representatives, trustees, trustees in bankruptcy, receivers, business entities, any other form of business, governmental, public, charitable entity, or group of natural persons or such entities.

15. "Refer" means embody, refer or relate, in any manner, to the subject of the document request.

16. "Civil Investigative Demand" or "CID" means the civil investigative demand issued by the office of Defendant Attorney General Maura Healey to ExxonMobil on or about April 19, 2016.

17. "Common Interest Agreement" means the Climate Change Coalition Common Interest Agreement signed by individuals from the offices of the attorneys general for California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Virginia, U.S. Virgin Islands, Vermont, Washington, and Washington, D.C., in April and May of 2016.

18. "Green 20" means the attorneys general for the States, Commonwealths, or Territories of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, the U.S. Virgin Islands, Vermont, Virginia, Washington, and Washington, D.C.; the Offices of these attorneys general; their directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on their behalf, including, but not limited to, Assistant Attorneys General.

19. "Green 20 Press Conference" or "AGs United for Clean Power Press Conference" means the Press Conference attended by Defendant Attorney General Maura Healey and other members of the Green 20 on March 29, 2016.

20. "Investigation" means an actual or contemplated issuance of a subpoena, Civil Investigative Demand, or any other investigative process concerning purported violations of law related to climate change.

21. "You," "Yours," and/or "Yourself" mean Eric Schneiderman, as well as the Office of the New York State Attorney General, and its directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on its behalf, including, but not limited to, Assistant Attorneys General in the Office of the New York State Attorney General.

INSTRUCTIONS

22. Any ambiguity as to any Request shall be construed so as to require the production of the greater number of documents.

23. These Requests are continuing in nature under Federal Rule of Civil Procedure 26(e). Any document created or identified after service of any response to these Requests that would have been produced in response had the document then existed or been identified shall promptly be produced whenever you find, locate, acquire, create, or become aware of such documents, up until the resolution of this lawsuit.

24. Each Request shall be responded to fully, unless it is in good faith objected to, in which event the reasons for the objection shall be stated with specificity. If an objection pertains only to a portion of a Request, or to a word, phrase, or clause contained in a Request, you shall state your objection to that portion only and respond to the remainder of the request.

25. Documents that are produced should be identified according to which request they are responsive to, or in the order in which they are kept in the ordinary course of business. All documents that are physically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other Documents,

whether by inclusion of binders, files, subfiles, or by use of dividers, tabs, clips, or any other method, shall be left so segregated or separated.

26. Where any copy of any document, the production of which is requested, is not identical to any other copy thereof, by reason of any alterations, marginal notes, comments, metadata, omissions, or material contained therein or attached thereto, or otherwise, all such non-identical copies shall be produced separately.

27. If any document responsive to these Requests has been destroyed, discarded, or lost, or is otherwise not capable of being produced, identify each such document and set forth the following information: (a) the date of the document; (b) a description of the subject matter of the document; (c) the name and address of each person who prepared, received, viewed, or had possession, custody, or control of the document; (d) the date when the document was destroyed, discarded, or lost; (e) the identity of the person who directed that the document be destroyed, who directed that the document be discarded, or who lost the document; and (f) a statement of the reasons for and circumstances under which the document was destroyed, discarded, or lost.

28. If any document responsive to these Requests is withheld under a claim of privilege or other legal doctrine (including the work-product doctrine), You shall promptly submit a document stating: (a) the document control number(s) of the document withheld or redacted; (b) the type of document; (c) the date of the document; (d) the author(s) and recipient(s) of the document, and any recipients copied as cc's or bcc's; (e) the general subject matter of the document; and (f) the legal ground for withholding or redacting the document. If the legal ground for withholding or redacting the document is attorney-client privilege, You shall indicate the name of the attorney(s) whose legal advice is sought or provided in the document.

29. You shall further certify that the document production is complete and correct in accordance with specifications of the attached Certification that Response is Complete and Correct form provided as Exhibit A.

30. Pursuant to Fed. R. Civ. P. 34(b)(1)(c), Plaintiff requests that all electronically stored information be produced in accordance with the "Requested Production Format" provided as Exhibit B.

31. Each request shall be deemed to include a request for all transmittal sheets, cover letters, exhibits, enclosures, and attachments to a document in addition to the Document itself, without abbreviation or expurgation.

32. If no documents or things exist that are responsive to a particular paragraph of these requests, so state in writing.

33. Unless otherwise stated in a specific request, these requests seek responsive information and documents authored, generated, disseminated, drafted, produced, reproduced, or otherwise created or distributed, concerning the period of January 1, 2011, through the date of production.

34. These requests call for the production of responsive documents within Your possession, custody, or control (including those on non-government email servers), regardless of whether those documents were generated and/or are maintained by the Office of the New York State Attorney General.

35. The foregoing Definitions and Instructions also apply to the Definitions and Instructions themselves.

DOCUMENTS AND THINGS TO BE PRODUCED BY
DEFENDANT ATTORNEY GENERAL ERIC TRADD SCHNEIDERMAN

1. Any and all documents, including, but not limited to, electronically maintained or paper visitor logs or sign-in sheets, sufficient to identify attendees at any meetings concerning the Green 20 Press Conference, including any meetings with and/or presentations from Peter Frumhoff and/or Matthew Pawa.

2. Any and all documents, recordings, and/or other materials discussed or presented during any meeting concerning the Green 20 Press Conference, including any meetings with and/or presentations from Peter Frumhoff and/or Matthew Pawa.

3. Any and all documents and communications concerning the following statements made by You, Attorney General Eric Schneiderman, at the Green 20 Press Conference, including any and all documents that You believe support or otherwise form the basis for, these statements:

(a) There is a "relentless assault from well-funded highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action" regarding climate change.

(b) "[T]here are companies using the best climate science. They're using the best climate models so that when they spend shareholder dollars to raise their oil rigs, which they are doing, they know how fast the sea level is rising, then they are drilling in places in the Arctic where they couldn't drill 20 years ago because of the ice sheets. They know how fast the ice sheets are receding."

(c) "[W]e know that they paid millions of dollars to support organizations that put up propaganda denying that we can predict or measure the

effects of fossil fuel on our climate or even denying that climate change was happening."

4. Any and all documents sufficient to show and identify any fees or expenses paid to former Vice President Al Gore in connection with his participation in or attendance at the Green 20 Press Conference.

5. Any and all documents concerning the Common Interest Agreement, including any documents concerning the purpose of the Common Interest Agreement, the decision to enter into the Common Interest Agreement, efforts to recruit or obtain signatories to the Common Interest Agreement, and the preparation, drafting and finalizing of the text of the Common Interest Agreement.

6. Any and all documents sufficient to show and identify any communications concerning any investigation of ExxonMobil related to climate change between You, Your agents, representatives, or employees and any other member of the Green 20, including any Attorney General from another state, territory, or municipality, or his/her directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on his/her behalf, including, but not limited to, Assistant Attorneys General.

7. Any and all documents, recordings, or other materials discussed or presented during any meetings regarding any investigation of ExxonMobil that You attended at which any person not employed or retained by Your Office was present or participating. This request includes, without limitation, video recordings, audio recordings, photographs, attendance logs, notes, and meeting minutes.

8. Any and all documents or communications that mention ExxonMobil and any of the following persons or organizations (a) Peter Frumhoff, (b) Matthew Pawa and/or the

Pawa Law Group, (c) the Union of Concerned Scientists, (d) Sharon Eubanks, (e) former Vice President Al Gore, and/or (f) Bill McKibben.

9. Any and all documents, including but not limited to email correspondence and visitor logs, sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and (a) Peter Frumhoff, (b) Matthew Pawa and/or the Pawa Law Group, (c) the Union of Concerned Scientists, (d) Sharon Eubanks, (e) former Vice President Al Gore, and/or (f) Bill McKibben.

10. Any and all documents, including, but not limited to electronically maintained or paper visitor logs or sign-in sheets, sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and the following persons and/or email addresses:

- Dave Johnson and/or dcjohnson@ourfuture.org;
- John Passacantando and/or j.passacantando@gmail.com;
- Kert Davis and/or kertmail@gmail.com;
- Kenny Bruno and/or Kenny.bruno@verizon.net;
- Lee Wasserman and/or lwasserman@rfffund.org;
- Dan Cantor and/or dcantor@workingfamilies.org;
- Bill Lipton and/or blipton@workingfamilies.org;

11. Any and all documents, including, but not limited to electronically maintained or paper visitor logs or sign-in sheets, sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and the following persons and/or email addresses:

- Jamie Henn and/or jamie@350.org;
- Robert Weissman and/or rweissman@citizen.org;
- Won Ha and/or won@ef.org;
- Irene Krarup and/or ikrarup@vkrf.org;
- Bradley Campbell and/or bcampbell@clf.org;
- Stephen Kretzman and/or steve@priceofoil.org;
- Carroll Muffett and/or cmuffett@ciel.org;
- Naomi Ages and/or Naomi.ages@greenpeace.org;

- Naomi Klein;
- Clayton Thomas-Muller;
- Peter Sarsgaard;
- Milan Loeak;
- Kathy Jetnil-Kijiner;
- Joydeep Gupta;
- Antonia Juhasz;
- Cindy Baxter;
- Jason Box;
- Bryan Parras;
- Jannie Staffansson;
- Sandra Steingraber;
- Ken Henshaw;
- Cherri Foytlin;
- Faith Gemmill.

12. Any and all documents, including but not limited to email correspondence, sufficient to show and identify any communications concerning ExxonMobil and climate change between any member of the Green 20 and third parties whose email addresses include any of the following domain names:

@350.org;
@algore.com;
@ciel.org;
@climatetruth.org;
@cohenmilstein.com;
@desmogblog.com;
@ef.org;
@greenpeace.org;
@insideclimatenews.org;
@nextgenclimate.org
@ourfuture.org;
@pawalaw.com;
@pellislaw.com;
@rbf.org;
@rffund.org;
@tellusmater.org.uk; or
@ucsusa.org.

13. Any and all documents sufficient to show and identify any communications between any member of the Green 20 and any director, officer, employee,

agent, or representative of the Conservation Law Foundation concerning ExxonMobil, including but not limited to any actual or contemplated legal action concerning ExxonMobil and the Conservation Law Foundation.

14. For the period January 1, 2012 through the present, any and all documents and communications concerning the conference entitled "Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control" held in La Jolla, California from on or about June 14, 2012 to on or about June 15, 2012.

15. For the period January 1, 2007 through the present, any and all documents and communications concerning the 2007 report issued by the Union of Concerned Scientists, titled "Smoke, Mirrors, and Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science."

16. Any and all documents concerning the actual or anticipated participation of ExxonMobil or other fossil fuel companies or trade associations in the international Paris Climate Change Conference of December 2015.

17. Any and all documents concerning any shareholder resolution relating to climate change made at ExxonMobil's annual shareholder meeting in either 2015 or 2016.

18. Any and all documents and communications concerning fundraising for candidates for political office, including fundraising for any member of the Green 20, and also concerning ExxonMobil.

19. Any and all documents and communications sufficient to show and identify any communications between any member of the Green 20 and any director, officer, employee, agent, or representative of any political party concerning ExxonMobil.

20. Any and all documents sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and Thomas Fahr Steyer, or any of his agents, employees, or representatives, NextGen Climate, or any other person or entity whose email address includes the domain name @nextgenclimate.org.

21. Any and all documents sufficient to show and identify any funding or fundraising provided to You or any member of the Green 20 by Thomas Fahr Steyer or NextGen Climate.

22. Any and all documents, communications, recordings, or materials of any kind concerning the "Exxon: Revelations & Opportunities" meeting held on or about January 8, 2016 at 475 Riverside Drive, New York, New York.

23. Any and all documents and communications concerning the mock trial referred to as "Exxon vs. The People," held in or around Montreuil, France on or about December 5, 2015.

24. Any and all documents and communications concerning climate change and ExxonMobil that discuss, mention, or reference the following organizations listed in the CID issued by Attorney General Healey:

- Acton Institute;
- American Enterprise Institute (AEI);
- Americans for Prosperity;
- American Legislative Exchange Council (ALEC);
- American Petroleum Institute (API);
- Beacon Hill Institute at Suffolk University;
- Competitive Enterprise Institute (CEI);
- Center for Industrial Progress (CIP);
- George C. Marshall Institute;
- Heartland Institute;
- Heritage Foundation; and
- Mercatus Center at George Mason University.

25. Any and all communications between You and any person not employed or retained by the New York Attorney General's Office concerning climate change and ExxonMobil that discuss, mention, or reference any of the following organizations listed in Request 6 of the New York CID:

- American Petroleum Institute (API);
- International Petroleum Industry Environmental Conservation Association (IPIECA);
- U.S. Oil & Gas Association;
- Petroleum Marketers Association of America; and
- Empire State Petroleum Association.

26. Any and all documents and communications sufficient to show and identify any requests received pursuant to the New York Freedom of Information Law, N.Y. Pub. Officers Law Article 6, Section 87, related to (a) ExxonMobil, (b) the Green 20 Press Conference, (c) any coalition of attorneys general comprised in whole or in part of members of the Green 20, (d) communications among or between any members of the Green 20, (e) the Common Interest Agreement, (f) climate deniers, and/or (g) climate change.

27. Any and all documents and communications sufficient to show and identify any responses to requests received pursuant to the New York Freedom of Information Law, N.Y. Pub. Officers Law Article 6, Section 87, related to ExxonMobil, the Green 20 Press Conference, any coalition of attorneys general comprised in whole or in part of members of the Green 20, communications among or between any members of the Green 20, the Common Interest Agreement, climate deniers, and/or climate change.

28. Any and all documents and communications sufficient to show and identify any communications concerning requests received pursuant to the New York Freedom of Information Law, N.Y. Pub. Officers Law Article 6, Section 87, related to ExxonMobil, the Green 20 Press Conference, any coalition of attorneys general comprised in whole or in part of

members of the Green 20, communications among or between any members of the Green 20, the Common Interest Agreement, climate deniers, and/or climate change.

29. Documents and records sufficient to identify Your document retention policy.

30. Documents and records sufficient to identify any and all documents or communications within the scope of these requests that were disposed of or destroyed since April 13, 2016.

Dated: November 16, 2016

EXXON MOBIL CORPORATION

Patrick J. Conlon
pro hac vice
State Bar No. 24054300
patrick.j.conlon@exxonmobil.com
Daniel E. Bolia
State Bar No. 24064919
daniel.e.bolia@exxonmobil.com
EXXON MOBIL CORPORATION
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

Ralph H. Duggins
State Bar No. 06183700
rduggins@canteyhanger.com
Philip A. Vickers
State Bar No. 24051699
pvickers@canteyhanger.com
Alix D. Allison
State Bar. No. 24086261
aallison@canteyhanger.com
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102
(817) 877-2800
Fax: (817) 877-2807

Theodore V. Wells, Jr.
pro hac vice
twells@paulweiss.com
Michele Hirshman
pro hac vice
mhirshman@paulweiss.com
Daniel J. Toal
pro hac vice
dtoal@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Nina Cortell
State Bar No. 04844500
nina.cortell@haynesboone.com
HAYNES & BOONE, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
(214) 651-5579
Fax: (214) 200-0411

By: _____
Justin Anderson
pro hac vice
janderson@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Counsel for Exxon Mobil Corporation

EXHIBIT A

CERTIFICATION THAT RESPONSE IS CORRECT AND COMPLETE

I, _____, certify as follows:

1. I am employed by _____ in the position of _____;

2. The enclosed production of documents and responses were prepared and assembled under my personal supervision;

3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;

4. The enclosed production of Documents and information requested by the Subpoena are complete and correct to the best of my knowledge and belief;

5. No Documents or information responsive to the Subpoena have been withheld from this production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;

6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions in the Subpoena;

7. The Documents contained in these productions and responses to the Subpoena are authentic, genuine and what they purport to be;

8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and

9. Attached is a true and accurate statement of those requests under the Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

Signature: _____ Date: _____

Printed Name: _____

Address, e-mail and telephone number: _____

_____

_____

EXHIBIT B

REQUESTED PRODUCTION FORMAT

I. Overview

A. All documents should be produced as Bates-stamped tagged image file format ("TIFF") images along with an image load/cross reference file, a data load file with fielded metadata, and document-level extracted text for electronically stored information or optical character recognition ("OCR") text for scanned hard copy documents. Details regarding requirements, including files to be delivered in native format, are below.

II. TIFF Image Requirements

A. All documents should be produced as TIFF images in 300x300 dpi Group IV single-page monochrome format.

B. All such images should be sequentially Bates-stamped.

C. Images should include the following content where present:

1. For word processing files (*e.g.,* Microsoft Word) – Comments and "track changes" (and similar in-line editing).
2. For spreadsheet files (*e.g.,* Microsoft Excel) – Hidden columns, rows, and sheets; comments; and "track changes" (and similar in-line editing).
3. For presentation files (*e.g.,* Microsoft PowerPoint) – Speaker notes and comments.

III. Native Format Requirements

A. Spreadsheet files

1. Spreadsheet files (*e.g.,* Microsoft Excel) should be provided in native format.
2. In lieu of a TIFF image version of each spreadsheet file, a Bates-stamped single-page TIFF placeholder file should be produced along with the native format version of each file.
3. When redaction is necessary, a redacted TIFF version may be produced; Paul Weiss reserves the right to request access to the native format versions of such files.

B. Multimedia files

1. Multimedia files (*e.g.,* Audio or video files) should be provided in native format.
2. In lieu of a TIFF image version of each multimedia file, a Bates-stamped single-page TIFF placeholder file should be produced along with the native format version of each file.

C. Other files

1. In limited circumstances, it may be necessary to obtain or view the native format versions of files, including color documents/images and dynamic files such as databases. Paul, Weiss reserves the right to request access to the native format versions of such files.

IV. Image Load/Cross Reference File Requirements

A. A single-page image load/cross reference file should be provided with each production.

B. The file may be in either IPRO (.lfp) or Opticon (.opt) format as in the samples below (note that volume label information – "@MSC001" in the sample IPRO file and "MSC001" in the sample Opticon file – is optional):

Sample IPRO .lfp file
IM,MSC00000014,D,0,@MSC001;MSC\0000;00000014.TIF;2
IM,MSC00000015,,0,@MSC001; MSC\0000;00000015.TIF;2
IM,MSC00000016,D,0,@MSC001; MSC\0000;00000016.TIF;2
IM,MSC00000017,,0,@MSC001; MSC\0000;00000017.TIF;2

Sample Opticon .opt file
MSC000001,MSC001,MSC\0000\00000001.TIF,Y,,,3
MSC000002,MSC001,MSC\0000\00000002.TIF,,,,
MSC000003,MSC001,MSC\0000\00000003.TIF,,,,
MSC000004,MSC001,MSC\0000\00000004.TIF,Y,,,2
MSC000005,MSC001,MSC\0000\00000005.TIF,,,,

V. Data Load File and Extracted Text/OCR Requirements

A. A data load file should be provided with each production.

B. The file should be a Concordance-loadable data file, also known as a "DAT" file, and should contain Bates-stamp and metadata information as detailed below.

C. Extracted text and/or OCR text should not be embedded in the DAT file but should rather be provided as separate, document-level text files. Document-level text file names should contain the beginning Bates number information of the document. If a document is provided in native format with a placeholder tiff, (*e.g.*, spreadsheet files) the text file should contain the extracted text of the native file. OCR text should be included for redacted documents.

D. The requested delimiters and qualifiers to be used in the DAT file are:

Record delimiter: Windows newline/Hard return (ASCII 10 followed by ASCII 13)
Field delimiter: ▯ (ASCII 20)
Multi-value delimiter: Semicolon ; (ASCII 59)
Text qualifier: Small thorn þ (ASCII 254)

E. The DAT file should have a header line with field names and include the following fields:

Field	Comments
BegBates	Beginning Bates number
EndBates	Ending Bates number
BegRange	Bates number of first page of family range, *e.g.*, first page of an email.
EndRange	Bates number of last page of family range, *e.g.*, last page of last attachment to an email.
PageCount	Number of pages in document.
FileExtension	Loose files, attachments and email.
FileSize	Loose files, attachments and email (in bytes).
Title	Loose files and attachments only.
Custodian	Include field only if production is de-duped by custodian. Loose files, attachments, and email. Custodian full name formatted: LASTNAME, FIRSTNAME.
AllCustodian	Include field only if production is de-duped globally. Loose files, attachments, and emails. Full name of all custodians for whom the document is being produced formatted: LASTNAME, FIRSTNAME; LASTNAME, FIRSTNAME
Author	Loose files and attachments only.
From	Email only.
To	Email only.
CC	Email only.
BCC	Email only.
Subject	Email only.
DateCreated	Loose files and attachments only. MM/DD/YYYY
DateModified	Loose files and attachments only. MM/DD/YYYY
DateSent	Email only. MM/DD/YYYY
TimeSent	Email only. HH:MM:SS AM/PM
DateReceived	Email only. MM/DD/YYYY
TimeReceived	Email only. HH:MM:SS AM/PM
FilePath	Loose files. Original path to the file as maintained in the ordinary course of business.
FileName	Loose files and attachments. Name of file as maintained in the ordinary course of business.
FolderPath	Email only. Path within the mail container file (*e.g.*, PST file) to the message at collection time.
HiddenContent	For loose files and attachments only. List type of hidden content found in document (for content described in section II.C above)
TextPath	The path to the extracted text or OCR for the document, including the file name.

Field	Comments
NativePath	The path to the native-format file for the document, including the file name (if a native-format file is provided).

F. Two sample DAT files in the appropriate format when production is globally de-duped are below.

1. The following three entries are, respectively, the header row, a parent email, and a spreadsheet attachment:

þBatesPrefixþ□þBeginning Bates Numberþ□þEnding Bates Numberþ□þBeginning Bates Rangeþ□þEnding Bates Rangeþ□þPage Countþ□þFile Extensionþ□þFile Sizeþ□þTitleþ□þCustodianAllþ□þAuthorþ□þFromþ□þToþ□þCCþ□þBCCþ□þSubjectþ□þDate Createdþ□þDate Modifiedþ□þDate Sentþ□þTime Sentþ□þDate Receivedþ□þTime Receivedþ□þFilePathþ□þFilenameþ□þFolderPathþ□þHidden Contentþ□þTextPathþ□þNativePathþ

þSAMPLEþ□þ00000001þ□þ00000001þ□þ00000001þ□þ00000002þ□þ1þ□þMSGþ□þ2354þ□þþ□þSmith, John H.þ□þþ□þSmith, John H.þ□þDoe, Janeþ□þSchmidt, Jane W.; Doe, Markþ□þþ□þChecks Payableþ□þþ□þþ□þ12/25/2008þ□þ9:30:01 AMþ□þ12/25/2008þ□þ9:30:11 AMþ□þþ□þþ□þ\Inbox\Payable\þ□þþ□þþ□þText\SAMPLE\0000\00000001.txtþ□þþ

þSAMPLEþ□þ00000002þ□þ00000002þ□þ00000001þ□þ00000002þ□þ1þ□þxlsþ□þ46444þ□þAccounts Receivableþ □þSmith, John H.þ□þSmith, John H.þ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þ2010 budget.xlsþ□þþ□þHidden Columnþ□þText\SAMPLE\0000\00000002.txtþ□þNatives\SAMPLE\0000\00000002.xlsþ

2. In globally de-duped productions there will be instances where production of documents from additional custodians will include documents previously produced. The two entries below are, respectively, the header row, and an overlay row producing a new custodian's copy of an email previously produced:

þBatesPrefixþ□þBeginning Bates Numberþ□þEnding Bates Numberþ□þBeginning Bates Rangeþ□þEnding Bates Rangeþ□þPage Countþ□þFile Extensionþ□þFile Sizeþ□þTitleþ□þCustodianþ□þAuthorþ□þFromþ□þToþ□þCCþ□þBCCþ□þSubjectþ□þDate Createdþ□þDate Modifiedþ□þDate Sentþ□þTime Sentþ□þDate Receivedþ□þTime Receivedþ□þFilePathþ□þFilenameþ□þFolderPathþ□þHidden Contentþ□þTextPathþ□þNativePathþ

þSAMPLEþ□þ00000001þ□þ00000001þ□þ00000001þ□þ00000002þ□þ1þ□þMSGþ□þ2354þ□þþ□þSchmidt, Jane W.þ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þ\Inbox\Accts Payable\þ□þþ□þþ□þText\SAMPLE\0000\00000001.txtþ□þþ

Exhibit 44

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

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	Civil Action No. 4:16-CV-469-K

ORDER

On November 16, 2016, the Court conducted a telephone status conference with the parties. In order to expeditiously conduct the necessary discovery to inform the Court on issues relating to pending and anticipated motions related to jurisdictional matters, the Court orders that Attorney General Healey shall respond to written discovery ten (10) days from the date the discovery is served.

It is further ordered that Attorney General Healey shall appear for her deposition in Courtroom 1627 at 1100 Commerce Street, Dallas, Texas 75242 at 9:00 a.m. on Tuesday, December 13, 2016. Attorney General Schneiderman is also advised to be

available on December 13, 2016 in Dallas, Texas. The Court will enter an Order regarding Attorney General Schneiderman's deposition after he files his answer in this matter. The Court is mindful of the busy schedule of each of the Attorneys General Healey and Schneiderman and will be open to considering a different date for the deposition.

SO ORDERED.

Signed November 17th, 2016.

_____
ED KINKEADE
UNITED STATES DISTRICT JUDGE

Exhibit 45

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

2001 K STREET NW
WASHINGTON, DC 20006-1047

TELEPHONE (202) 223-7300

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)

1285 AVENUE OF THE AMERICAS
NEW YORK NY 10019 6064
TELEPHONE (212) 373-3000

UNIT 3601 OFFICE TOWER A BEIJING FORTUNE PLAZA
NO 7 DONGSANHUAN ZHONGLU CHAOYANG DISTRICT
BEIJING 100020 PEOPLE S REPUBLIC OF CHINA
TELEPHONE (86 10) 5828 6300

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

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU U K
TELEPHONE (44 20) 7367 1600

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
PO BOX 226
TORONTO ONTARIO M5K 1J3
TELEPHONE (416) 504 0520

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

WRITER S DIRECT DIAL NUMBER

(202) 223-7321

WRITER S DIRECT FACSIMILE

(202) 223-7420

WRITER S DIRECT E MAIL ADDRESS

janderson@paulweiss com

November 18, 2016

By Federal Express and Email

Pete Marketos
Reese Gordon Marketos LLP
750 N. Saint Paul Street, Suite 610
Dallas, Texas 75201

Jeffrey M. Tillotson
Tillotson Law
750 N. Saint Paul Street, Suite 610
Dallas, Texas 75201

Re: Exxon Mobil Corporation v. *Eric Schneiderman* and *Maura Healey*, No. 4:16-CV-469-K

Dear Messrs. Marketos and Tillotson:

I am writing on behalf of Plaintiff Exxon Mobil Corporation ("ExxonMobil") in reference to the above-captioned matter. In light of the order entered by the Honorable Ed Kinkeade, of the United States District Court for the Northern District of Texas on November 17, 2016, noting that the court will enter an order following Attorney General Eric Schneiderman's answer (Docket No. 117), ExxonMobil hereby withdraws the following Notices of Deposition issued pursuant to Rule 30 of the Federal Rules of Civil Procedure:

1. Plaintiff Exxon Mobil Corporation's Notice of Deposition of Monica Wagner, Deputy Chief of the Environmental Protection Bureau of the Office of the Attorney General of New York at 10:00 am on November 21, 2016;

2. Plaintiff Exxon Mobil Corporation's Notice of Deposition of Lemuel Srolovic, Chief of the Environmental Protection Bureau of the Office of the Attorney General of New York at 10:00 am on November 28, 2016.

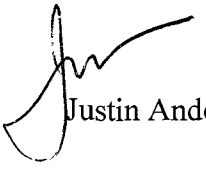
In lieu of the Notices of Depositions enumerated above, please find enclosed the following Notices of Deposition:

1. Plaintiff Exxon Mobil Corporation's Notice of Deposition of Monica Wagner, Deputy Chief of the Environmental Protection Bureau of the Office of the Attorney General of New York at 10:00 am on December 9, 2016;

2. Plaintiff Exxon Mobil Corporation's Notice of Deposition of Lemuel Srolovic, Chief of the Environmental Protection Bureau of the Office of the Attorney General of New York at 10:00 am on December 12, 2016.

I am available to discuss at your convenience. Thank you for your anticipated response.

Sincerely,



Justin Anderson

Enclosures

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

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Exxon Mobil Corporation, by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, will take the deposition of Monica Wagner, Deputy Chief of the Environmental Protection Bureau of the Office of the New York Attorney General.

The deposition will commence on December 9, 2016, beginning at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064 or at such other time or location as shall be mutually agreed by the parties and the deponent.

The deposition will be recorded by audiovisual and stenographic means before an officer or other person authorized by law to administer oaths, and shall continue until completed.

Dated: November 18, 2016

EXXON MOBIL CORPORATION

Patrick J. Conlon
pro hac vice
State Bar No. 24054300
patrick.j.conlon@exxonmobil.com
Daniel E. Bolia
State Bar No. 24064919
daniel.e.bolia@exxonmobil.com
EXXON MOBIL CORPORATION
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

Ralph H. Duggins
State Bar No. 06183700
rduggins@canteyhanger.com
Philip A. Vickers
State Bar No. 24051699
pvickers@canteyhanger.com
Alix D. Allison
State Bar. No. 24086261
aallison@canteyhanger.com
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102
(817) 877-2800
Fax: (817) 877-2807

Theodore V. Wells, Jr.
pro hac vice
twells@paulweiss.com
Michele Hirshman
pro hac vice
mhirshman@paulweiss.com
Daniel J. Toal
pro hac vice
dtoal@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Nina Cortell
State Bar No. 04844500
nina.cortell@haynesboone.com
HAYNES & BOONE, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
(214) 651-5579
Fax: (214) 200-0411

By: _____
Justin Anderson
pro hac vice
janderson@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Counsel for Exxon Mobil Corporation

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

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Exxon Mobil Corporation, by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, will take the deposition of Lemuel Srolovic, Chief of the Environmental Protection Bureau of the Office of the New York Attorney General.

The deposition will commence on December 12, 2016, beginning at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064 or at such other time or location as shall be mutually agreed by the parties and the deponent.

The deposition will be recorded by audiovisual and stenographic means before an officer or other person authorized by law to administer oaths, and shall continue until completed.

Dated: November 18, 2016

EXXON MOBIL CORPORATION

Patrick J. Conlon
pro hac vice
State Bar No. 24054300
patrick.j.conlon@exxonmobil.com
Daniel E. Bolia
State Bar No. 24064919
daniel.e.bolia@exxonmobil.com
EXXON MOBIL CORPORATION
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

Ralph H. Duggins
State Bar No. 06183700
rduggins@canteyhanger.com
Philip A. Vickers
State Bar No. 24051699
pvickers@canteyhanger.com
Alix D. Allison
State Bar. No. 24086261
aallison@canteyhanger.com
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102
(817) 877-2800
Fax: (817) 877-2807

Theodore V. Wells, Jr.
pro hac vice
twells@paulweiss.com
Michele Hirshman
pro hac vice
mhirshman@paulweiss.com
Daniel J. Toal
pro hac vice
dtoal@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Nina Cortell
State Bar No. 04844500
nina.cortell@haynesboone.com
HAYNES & BOONE, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
(214) 651-5579
Fax: (214) 200-0411

By: _____
Justin Anderson
pro hac vice
janderson@paulweiss.com
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Counsel for Exxon Mobil Corporation

Exhibit 46

From: **Anderson, Justin** janderson@paulweiss.com
Subject: RE: Exxon: Schneiderman Deposition
Date: November 29, 2016 at 5:57 PM
To: Tyler Bexley tyler.bexley@rgmfirm.com
Cc: Pete Marketos pete.marketos@rgmfirm.com

AJ

Hi Tyler. Thanks for your note. Please accept this email as confirmation that the notice of deposition for Mr. Schneiderman is withdrawn and will be reissued at a later time. If you have any further questions, please let me know.

Justin Anderson | Counsel
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, NW | Washington, DC 20006-1047
(202) 223-7321 (Direct Phone) | (410) 591-1737 (Cell)
janderson@paulweiss.com | www.paulweiss.com

From: Tyler Bexley [mailto:tyler.bexley@rgmfirm.com]
Sent: Tuesday, November 29, 2016 4:10 PM
To: Anderson, Justin <janderson@paulweiss.com>
Cc: Pete Marketos <pete.marketos@rgmfirm.com>
Subject: Exxon: Schneiderman Deposition

Justin,

Exxon still has a notice for Attorney General Schneiderman's deposition on December 5 in New York. Your November 18 letter withdrew and replaced the initial deposition notices for Monica Wagner and Lemuel Srolovic but did not mention the notice to Mr. Schneiderman. In light of the court's November 17 order (Dkt. #117), please confirm that Exxon also will withdraw the notice for Mr. Schneiderman's deposition on December 5. Thanks.

RGM
Tyler J. Bexley
Reese Gordon Marketos LLP | 750 N. Saint Paul St., Suite 610
Dallas, Texas 75201 | Direct: (214) 382-9805 | Main: (214) 382-9810
www.rgmfirm.com