

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
	§	
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.	§	

**DEFENDANT NEW YORK ATTORNEY GENERAL'S
MOTION TO STAY DISCOVERY PENDING APPELLATE REVIEW**

Defendant, Eric T. Schneiderman, in his official capacity as the New York Attorney General, by and through counsel, hereby moves for a stay of all discovery in this action, including discovery purportedly sought pursuant to the Discovery Order [Dkt. 73], the Deposition Order [Dkt. 117], and the Order denying the Motion to Quash and for a Protective Order [Dkt. 152], pending appellate review of those Orders by the U.S. Court of Appeals for the Fifth Circuit. The New York Office of the Attorney General (“NYOAG”) anticipates filing its petition for mandamus on December 12, 2016, and this Court should thus stay all discovery while that petition is briefed and decided. In the alternative, the Court should adjourn the deadlines for the current discovery to permit the NYOAG to avoid irreparable harm while it requests a stay from the Fifth Circuit. In support of its motion the New York Office of the Attorney General (“NYOAG”) states as follows:

1. On October 13, 2016, this Court issued an order that permitted discovery regarding the alleged bad faith of the Massachusetts Attorney General in issuing a Civil Investigative Demand to plaintiff ExxonMobil Corp. (“Exxon”) to aid the Court in determining whether it should abstain from hearing the claims against the Massachusetts Attorney General under *Younger v. Harris*, 401 U.S. 37 (1971). [Dkt. No. 73] At that time, the NYOAG was not a party to this action.

2. On November 10, 2016, this Court granted Exxon’s motion for leave to amend and Exxon filed an amended complaint. [Dkt. 99, 100]

3. On November 16, 2016, without leave of court, Exxon served the NYOAG with extensive pre-answer discovery. It included deposition notices for the Attorney General and the two senior officials, as well as document requests, requests for admission, and interrogatories.

4. On December 5, 2016, the NYOAG made a timely motion to dismiss under Rule 12(b), raising as grounds for dismissal: (1) that this Court lacks personal jurisdiction over the NYOAG; (2) that venue in the Northern District of Texas is improper; (3) that Exxon’s claims regarding the NYOAG’s investigative subpoena are not ripe for federal review under *Google, Inc. v. Hood*, 822 F.3d 212 (5th Cir. 2016); (4) that this Court should abstain under the *Younger* doctrine because of an ongoing proceeding in New York state court brought by the NYOAG to compel Exxon’s compliance with the investigative subpoena in which Exxon can raise all of the federal constitutional and preemption claims that it brings in this action; (5) that all of Exxon’s federal claims fail to state a plausible claim for relief; and (6) that Exxon’s state-law claims are barred by sovereign immunity. [Dkt. 134] Exxon’s opposition to the motion to dismiss is currently due December 27, 2016. *See* LR 7.1(e).

5. Also on December 5, 2016, the NYOAG moved to quash and for a protective order regarding Exxon's discovery requests on the grounds that: (1) discovery is not necessary to resolve the NYOAG's motion to dismiss because dismissal is plainly warranted in light of the lack of personal jurisdiction over the NYOAG and lack of ripeness of Exxon's claims; (2) the discovery requests were issued without leave of court in violation of Rule 26(d); and (3) the discovery requests seek privileged, protected testimony. [Dkt. 136]

6. Following a *sua sponte* order expediting the briefing [Dkt. 139], the motion to quash was fully briefed as of December 8, 2016, at 5:00 p.m. C.S.T. [Dkt. 144, 150] On December 9, 2016, at 2:22 p.m. C.S.T., this Court denied the Motion to Quash. [Dkt. 152]

7. The NYOAG respectfully asks this Court to exercise its inherent authority to stay all discovery against the NYOAG pending immediate appellate review in the U.S. Court of Appeals for the Fifth Circuit, via a mandamus petition, of the discovery orders and the denial of the motion to quash. As set forth in its accompanying memorandum of law, the NYOAG's request satisfies the four traditional factors for issuance of a stay pending further appellate review: (1) whether the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) whether the stay is in the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 410 (5th Cir. 2013).

PRAYER

For these reasons, and those set out in the accompanying Memorandum of Law in Support, this Court should STAY all discovery in this action pending a ruling from the U.S. Court of Appeals for the Fifth Circuit on the NYOAG's forthcoming petition for a writ of mandamus.

Respectfully submitted,

Eric T. Schneiderman
Attorney General of New York

By his attorneys:

s/ Pete Marketos

Jason Brown*
Chief Deputy Attorney General
Leslie B. Dubeck (pro hac vice)
Counsel to the Attorney General
Roderick L. Arz (pro hac vice)
Assistant Attorney General
NEW YORK STATE OFFICE OF THE
ATTORNEY GENERAL
120 Broadway, 25th Floor
New York, New York 10271
212-416-8085

**pro hac vice application pending*

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, Texas 75201
(214) 382-9810
Fax: (214) 501-0731

Jeffrey M. Tillotson
Texas Bar No. 20039200
TILLOTSON LAW FIRM
750 N. Saint Paul St. Suite 610
Dallas, Texas 75201
Telephone: (214) 382-3041
Fax: (214) 501-0731

Dated: December 9, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on December 9, 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

CERTIFICATE OF CONFERENCE

On December 9, 2016, Counsel for Movants spoke with counsel for Plaintiff Exxon Mobil Justin Anderson and discussed the merits of the requested relief. Despite that discussion, no agreement was reached and Plaintiff opposes the relief sought by way of this motion.

s/ Pete Marketos
Pete Marketos