

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 61

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PEOPLE OF THE STATE OF NEW YORK By BARBARA D.
UNDERWOOD,
Attorney General of the State of New York,

Plaintiff,

-against-

Index No.
452044-18

EXXON MOBIL CORPORATION,

Defendant.

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March 21, 2019
60 Centre Street
New York, New York

BEFORE: HON. BARRY OSTRAGER,
Supreme Court Justice

APPEARANCES:

Attorney for Plaintiff
State of New York
Office of the Attorney General
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New York, NY 10005
BY: KEVIN WALLACE, ESQ.
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BY: THEODORE V. WELLS, JR. ESQ.
JUSTIN ANDERSON, ESQ.
DANIEL J TOAL, ESQ.
NORA ANMED, ESQ.

Also Present - Patrick Conlon

JACQUELINE CAMPBELL
Senior Court Reporter

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2 MR. WALLACE: Lead counsel for the
3 plaintiff is Kevin Wallace. Also speaking will be
4 Marc Montgomery. Also present is Kim Berger and
5 Jonathan Zweig.

6 MR. WELLS: For the defendant lead
7 counsel is Theodore west. And Justin Anderson
8 second seating. Two others present.

9 THE COURT: All right. We're here today
10 in connection with some discovery disputes which
11 are the subject of various letters that the court
12 received during the period March 4th to March
13 20th, 2019. I'd like to deal with the discovery
14 issues in reverse chronological order which is to
15 say I'd like to deal with Exxon Mobil's objections
16 to the production of documents that the office of
17 the Attorney General has made bearing in mind that
18 by letter dated March 20th in response to the
19 court notice I issued on March 19th the office of
20 the Attorney General claims to have essentially
21 satisfied all of the six requests contained in
22 Exxon Mobil's's letter of March 15th.

23 So I'll hear from Exxon Mobil.

24 MR. WELLS: Theodore Wells. Your Honor,
25 with respect to the production of documents the

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2 I'm happy to hand up a copy of it for the court,
3 described a potential action that the Attorney
4 General was bringing against Exxon before it
5 actually begun the investigation and Matt Pawa
6 said go for it. If you could get documents from
7 Exxon that's going to be tremendous benefit for
8 changing the dialogue of climate change.

9 THE COURT: I don't mean interrupt you,
10 but the office of the Attorney General in its
11 letter of March 20th states that it's turned over
12 a large volume of documents representing
13 third-party communications that are relevant to
14 Exxon Mobil's affirmative defenses based on the
15 search terms and custodian set forth in
16 correspondence that the office of Attorney General
17 exchanged with Exxon Mobil. And they further
18 represented they reviewed in live notes taken by
19 OAG's attorneys of interviews and discussions with
20 third-parties and the privileged log will reflect
21 the names of those third parties. The OAG has not
22 taken position that it's communications with
23 third-parties are privileged with the limited
24 exception of communication with other Attorney
25 General's office with which OAG had a common

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2 assertion. That's all they are proposing to do
3 with that privilege law at this point then that
4 satisfies our concern.

5 THE COURT: So what is your other issue?

6 MR. WELLS: The other one is the one
7 that you raised, Judge. It has to do with what is
8 appropriate search. The Attorney General has
9 identified custodians and search terms that we
10 think are a good start, but we've proposed
11 respectfully a few of additional custodians and a
12 few additional terms. Our initial request was
13 broader. We initially proposed an additional 48
14 terms on top of the terms that they had initially
15 suggested. We're now proposing and we recently
16 made a more targeted request in advance of coming
17 to court today of just 17 additional terms on top
18 of the ones that they were using for a total of
19 25. And then for the custodians we're simply
20 asking them to add another of 36 people. When you
21 measure that against the discovery we've done in
22 this case which I know the court is familiar with,
23 with the 160 something custodians that we
24 searched, with the 500 search terms that we've
25 applied, and all the documents you could pile them

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2 as high as the Empire State Building. The court
3 knows all of that.

4 THE COURT: I know that you've produced
5 more than 4 million documents. I know that
6 they've produced more than 800,000 documents.

7 MR. WELLS: Most of what they've
8 produced is documents they received from
9 third-party pursuant to subpoena. All they did
10 was stamp it and send it over to us. They didn't
11 search their files.

12 THE COURT: Is this an issue that is
13 unresolvable by parties meeting and conferring?
14 Do you want me to say you're entitled to three
15 additional custodians and four additional search
16 terms? Is that what we're here for?

17 MR. WELLS: No, Judge. I think we could
18 work this out between ourselves and report back to
19 the court within a week or so of the resolution of
20 this issue. I don't believe that this is an issue
21 that is ripe at this point for court intervention.

22 THE COURT: All right. So I'm going to
23 consider the discovery issues as between Exxon
24 Mobil and the AG relating to the OAG's production
25 resolved for purposes of today's hearing subject

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2 to further correspondence from the parties. Is
3 that acceptable to the OAG?

4 MR. WALLACE: It is, your Honor. I'm
5 gonna introduce myself since it's my first time in
6 front of you on this matter. And there are a few
7 other new faces. I'm Kevin Wallace. To my right
8 here is Kim Berger. We're going to be lead trial
9 counsel for the OAG going forward with the trial.
10 My right Marc Montgomery. He's not part of the
11 trial team, but we set up a separate group of
12 attorneys to review emails that we didn't have.
13 Our trial team essentially reviewing their own
14 emails.

15 THE COURT: Pleasure to meet you.
16 You're aware that we have an October 25th trial
17 and you're aware that the exchange of final
18 witness lists is due September 27th. And you've
19 represented that you're going to make available
20 information similar to that call for rule
21 26(A)(1)(a) of the Federal rules of procedure
22 which specifically require the production of the
23 name and if known the address and telephone number
24 of each individual likely to have discoverable
25 information along with the subject of that

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2 THE COURT: I think it's in the interest
3 of both sides to be reasonably transparent about
4 who are likely to be witnesses at this trial. And
5 I didn't interpret OAG's representation to be that
6 they are gonna give you a kitchen sink of names
7 and that I'm assuming that they are gonna identify
8 within reason the people who may be called as
9 trial witnesses.

10 MR. WALLACE: Absolutely, your Honor.
11 We're not planning to dump a huge list on them. I
12 know they've complained about the witness list we
13 gave in February. Obviously the issue who is a
14 witness. We are working on that. It's the kind
15 of thing you develop when you're getting closer to
16 trial.

17 THE COURT: It's a lot of work to be
18 done by both sides. And if everybody works in
19 good faith and communicates in good faith and
20 meets and confers, we'll have less correspondence,
21 but as is the case with the issues that we're
22 dealing with today, you are free at any time to
23 communicate by letter with the court and schedule
24 a discovery conference on short notice because as
25 I stated in the court notice both parties are

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2 draw distinction between whether we had a quantum
3 of evidence necessary to file a complaint that was
4 the challenge that the defendant issued to us.
5 It's a challenge that your Honor issued to us.
6 This investigation continued for too long and it
7 was time to make our decision and file a case or
8 not. So we did.

9 THE COURT: You did file a case. And
10 it's a very thick complaint.

11 MR. WALLACE: Thank you, your Honor. I
12 think the issue for us is just now that this
13 information is gonna be utilized by expert
14 witnesses and it's difficult for an expert witness
15 in some of the answers to the interrogatories.
16 Their answer is a yes or no question or they
17 identify that they use something called a --

18 THE COURT: These are not yes or no
19 questions. You asked them did Exxon state in
20 numbers the amount of projected future costs of
21 GHG admissions that the company applied with
22 respect to specific business processes.

23 Now, that is not a yes or no question. That
24 is a question asking for specific numbers relating
25 to specific assets and to the extent they have

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2 failed to respond to that interrogatory, I'm
3 directing them to respond to it right now.

4 MR. WALLACE: Your Honor, and we
5 appreciate that. I think the issue is that
6 ultimately we are have an expert witness sit down
7 and try to calculate the difference between what
8 Exxon said they were gonna do and what they
9 actually did relying on an interrogatory is
10 insufficient for them to do that work. An
11 economist isn't going to be able to sit down and
12 say the company claimed that they were using GHG
13 costs of \$80 a ton and it turns out when you open
14 the books it was a smaller number and what impact
15 does that have on the cost of Exxon? It's
16 difficult for us almost impossible for us to have
17 an expert offer an opinion if you don't have the
18 underlying data.

19 THE COURT: But Mr. Wallace, I propose
20 the interrogatory with a view towards making
21 things easier for you rather than harder for you.
22 You'll have to explain to me how reviewing tens of
23 thousands or hundreds of thousands of documents is
24 a more cost effective efficient way to extract
25 information than framing narrow tailored

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2 MR. WALLACE: Correct.

3 THE COURT: With the benefit of
4 witnesses.

5 MR. WALLACE: Yes.

6 THE COURT: So tell me what it is that
7 you want me to order them to do with some
8 specificity.

9 MR. WALLACE: What we want is --

10 THE COURT: You said you don't want a
11 lot of documents.

12 MR. WALLACE: We don't think that what
13 we've asked for is a tremendous number of
14 documents. To the extent the interrogatories
15 don't provide sufficient evidence for an expert,
16 we would like to get the underlying documents. If
17 they are simple, our other requests the four
18 requests before you are for their economic models
19 that relate to their reserves and their research
20 base and those are the four requests that we've
21 flagged in our letter.

22 MR. WELLS: May I comment?

23 THE COURT: Yes.

24 MR. WELLS: So, the item that they don't
25 have enough already is mind boggling at this

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2 MR. WALLACE: Correct.

3 THE COURT: What you're claiming is that
4 they made certain misrepresentations that
5 investors rely on and as a result of investors
6 relying on these representations, they got
7 something that was worth less than they paid for.
8 That's basically your claim, right.

9 MR. WALLACE: Correct.

10 THE COURT: All right. Now, explain to
11 me what it is that's in these spread sheets that
12 you want that will help you establish the Delta
13 between what the investors paid and what they
14 actually received.

15 MR. WALLACE: Okay. So Exxon has a
16 collection of assets that develop natural gas,
17 that develop basically products that burn green
18 house gas.

19 THE COURT: It's a very big company with
20 lots of operation and assets all over the world.

21 MR. WALLACE: They have told the
22 investor we are applying a cost that approaches 80
23 dollars a ton by the year 2040. If you go into
24 the models, if you look at what they were doing in
25 their planning to take the one of the examples we

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cite in our complaint, they don't have a cost that approaches 80. They have a cost that starts at 24 and stays there all the way out for the entire period. So they are representing to investors that they are better protected against those costs. That their costs in the future will be lower. They are representing that if someone were to say I'm protecting interest in my property, my property is protected except for a hundred year flood, but the reality is I'm only protected by a 10 year flood claim, then that significantly lowers the value of the properties. It's not a perfect example, but I'm trying to provide an example that if they had said to their investors we actually use a cost that only goes out to \$24, the investor would say that's not even planning very well, for what we think the realistic future for carbon cost. They say at when we use a cost of \$80 a ton, it actually increases our costs on projects by 25 billion dollars, which now is 6 million dollars that he mentioned, but the one we cite in our complaint is that Delta between what they said they were going to do and what they actually did was 25 million dollars that indicates

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2 that the value of the investors are paying for the
3 company is lower. So that is how we come to
4 investors have been harmed.

5 Now, I would also say under the Martin Act we
6 don't have to prove an investor loss. We have to
7 prove is a falsehood and we could again this is
8 one of the pieces of equitable relief that we're
9 asking for, is to go through and correct the
10 disclosure to investors to say that --

11 THE COURT: You say you had everything
12 you need with respect to liability. So passing
13 the issue of whether what you're asking for makes
14 any sense to Exxon is there a way that we can
15 agree on some type of sampling of documents that
16 you want so that we don't wind up with another six
17 figure production of material?

18 MR. WALLACE: Your Honor, we don't want
19 six figures of material so we're happy to do that,
20 and I think that if we were to agree that they are
21 not gonna attack our expert for not having looked
22 at a broad enough sample of these cash flow
23 funds --

24 THE COURT: They are not gonna agree to
25 how they are gonna cross examine your expert.

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2 What they will do because I'm gonna direct them to
3 do it is provide you with a reasonable sample of
4 what it is that you want. And then your expert
5 can say extrapolating from their sample, I have
6 this view.

7 MR. WALLACE: We're amenable to that.

8 THE COURT: Are you amenable to that.

9 MR. WELLS: We are. Can I describe what
10 Exxon has already done? They expressed interest
11 of 25 assets and of that we've already given them
12 14.

13 THE COURT: I understand.

14 MR. WELLS: That's a good sample of 25.

15 THE COURT: That's where we were in
16 August when I suggested the interrogatories which
17 they claim you didn't respond to and you
18 presumably believe you did respond to. I haven't
19 seen the interrogatory answer.

20 MR. WELLS: We spent 25 pages responding
21 to their interrogatories and as you pointed out
22 it's been six months since we served that
23 interrogatory. If there were issues with it, you
24 would have expected to hear. In fact, there
25 weren't issues because as the AG concedes they

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2 have what they need to from their point of view to

3 establish liability. So now we're talking about

4 what additional thing they need for damages and

5 what we cannot understand is how these internal

6 cash flow models that help internal

7 decision-making and never get reported to the

8 public are going to get translated into damages

9 award. That somehow they don't even tell you if

10 you would have made the exact same investment

11 decision regardless whether the models up a few

12 millions or down a few million. It's hard to

13 understand the relevance.

14 THE COURT: Well, their theory is that

15 assuming liability which of course we can't

16 assume, this information which could easily be

17 presented in response to interrogatories will give

18 their expert the ability to opine on damages.

19 Now, they are not interested in

20 interrogatories anymore. They are interested in

21 hard copies of these documents. And I'm of the

22 view that the discovery has to be proportionate

23 and not unreasonably overbroad so can you meet and

24 confer and agree on appropriate samples of the

25 categories of documents that they want.

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2 MR. WELLS: Your Honor, yes of course we
3 agree with you that the discovery needs to be
4 proportionate. We could also agree to discuss if
5 there are additional full funding models that they
6 want and further sample that might accommodate
7 their needs even though we don't understand how --

8 THE COURT: I understand you're not
9 conceding that any of this is relevant to
10 anything.

11 MR. WELLS: That's correct, Judge.

12 THE COURT: Is that something that's
13 acceptable to the AG?

14 MR. WALLACE: Yes. Your Honor, modeling
15 or a sample that is appropriate way forward, we
16 could work with that. They throw him some terms I
17 think go to technically what they are talking
18 about sampling whether it's full funded, but I
19 think we could work on that for negotiation and we
20 can sit down and find a sample of documents that
21 would meet the need and we could use for our
22 expert aggregate and talks about what's going on
23 with the company more broadly. We could do that.

24 THE COURT: These various deadlines are
25 going to start creeping up on you very quickly.

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2 So if you don't work things out with respect to
3 all of the issues that you've presented to me,
4 you'll come back very promptly and we'll issue
5 whatever orders have to be issued. But I think
6 this was a constructive exchange and both sides
7 seem to be prepared to be reasonable and let's
8 just keep in mind at all times that we're pointing
9 towards an October 23rd trial date.

10 MR. WALLACE: We feel that very acutely,
11 your Honor.

12 THE COURT: All right. Then have a nice
13 day.

14 MR. WELLS: Thank you, Judge.

15 MR. WALLACE: Thank you, judge. Both
16 sides please order the transcript. Speak to the
17 reporter.

18 Certified to be a true and accurate
19 transcript of the original stenographic
20 notes.

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JACQUELINE CAMPBELL
SENIOR COURT REPORTER

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