



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

BARBARA D. UNDERWOOD
SOLICITOR GENERAL
DIVISION OF APPEALS & OPINIONS

April 3, 2019

Catherine O'Hagan Wolfe, Esq.
Clerk of Court
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: *Exxon Mobil Corp. v. Healey*, No. 18-1170

Dear Ms. Wolfe:

This Office represents defendant-appellee New York Attorney General Letitia James in this appeal brought by plaintiff Exxon Mobil Corp. after the dismissal of Exxon's lawsuit against Attorney General James and Massachusetts Attorney General Maura Healey. The parties finished briefing the appeal on October 19, 2018. On December 7, 2018, Attorney General James moved to dismiss the appeal against her as moot, in light of events occurring after the close of the merits briefing.

On March 27, 2019, this Court placed Attorney General James's pending motion to dismiss on the substantive motions calendar for April 16, 2019, as a submitted case. (*See* ECF No. 231.) Because the parties' arguments concerning the motion overlap substantively with the parties' arguments on the merits, the motions panel may wish to refer the motion for consideration by the merits panel ultimately assigned to the case.

This appeal arises from Exxon's challenge to securities fraud investigations brought against it by the Office of the New York State Attorney General (NYOAG) and the Office of the Massachusetts Attorney General. As ultimate relief, Exxon's operative complaint seeks to enjoin the investigations. The U.S. District Court for the Southern District of New York (Caproni, J.) dismissed the complaint and denied Exxon leave to amend. Exxon then appealed to this Court.

After the completion of merits briefing, NYOAG formally closed its investigation of Exxon and brought an enforcement action against Exxon in New York State Supreme Court, New York County, for violations of New York's securities laws. The closure of NYOAG's investigation means that Exxon's requested injunction against the investigation would be meaningless, and Exxon's appeal from the dismissal of its claims against the New York Attorney General is thus moot.

These arguments for dismissal require an understanding of Exxon's operative complaint, the investigation it challenges, and the relief it seeks. Indeed, the parties' motion papers repeatedly cite the merits briefs and the complaint. Accordingly, the merits panel—which will be fully versed in Exxon's allegations and the nature of NYOAG's investigation—may be best suited to adjudicate the New York Attorney General's motion to dismiss.

Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Scott A. Eisman

Scott A. Eisman
Assistant Solicitor General

cc: All counsel of record (by ECF)