

***Commonwealth of Massachusetts***  
**V.**  
***Exxon Mobil Corporation***

**1984-CV-03333-BLS1**

**Motion to Dismiss**

**March 12, 2021**

3/15/2021

EFILED ec

**ExxonMobil Is Not Subject to  
Personal Jurisdiction in Massachusetts**

# Investor Claim Is Based on Out-of-Forum Statements

736. In its climate risk disclosures, including *Managing the Risks, Energy and Climate*, its *Outlook for Energy*, and its *Energy and Carbon Summary*, ExxonMobil misrepresented, omitted, obscured, and failed to disclose to Massachusetts investors material facts regarding the risks posed by climate change to humanity, ecological...

492. *Managing the Risks* expressly rejects the potential for renewable energy to displace fossil fuels through 2040, stating that “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.”

498. ExxonMobil’s *2018 Outlook for Energy* projects that, through 2040, “oil grows and continues to be the primary source of energy for transportation and as a feedstock for chemicals” and “[n]atural gas also grows, with increasing use in power generation, as utilities look to switch to lower-emissions fuels.”

513. The *2019 and 2020 Summaries* conclude with the statement that “[e]xisting policy frameworks (including the Paris [Nationally Determined Contributions]), financial flows, and the availability of cost-effective technologies indicate that society is not currently on a 2°C pathway...”

▶ **Developed in Texas**

▶ **Published in Texas**

▶ **Do not target Massachusetts**

▶ **Not tailored for Massachusetts**

# In-State Conduct Does Not Give Rise to Investor Claim

## March 2017 State Street Meeting

456. ...Mr. Woodbury, Mr. Luetgen, and other ExxonMobil representatives traveled to Boston to meet with representatives of State Street about a number of issues, including the impact of climate change and climate change-related regulation on the Company's business. ExxonMobil and State Street specifically discussed the Company's proxy cost of carbon, write-down of certain assets, and investments in carbon capture and sequestration technology.

## October 2017 Wellington Meeting

460. ...An investment manager focused on ESG investing at Wellington also attended the meeting and asked questions about climate risk disclosures. After the meeting ended, Mr. Woodbury further discussed with the ESG manager her questions about the type of climate risk disclosures ExxonMobil might implement.

## Fall 2017 Fidelity Meeting

461. In September or October 2017, an energy analyst at Fidelity Investments hosted Mr. Woodbury and other ExxonMobil representatives in Boston to discuss ExxonMobil's investment options and its long-term outlook on energy markets. During this meeting, ExxonMobil discussed its views on sustained oil demand in light of renewables and other energy alternatives.

## February 2018 Wellington Meeting

465. Also as part of this "roadshow," in February 2018, Mr. Woodbury, Mr. Luetgen, and other ExxonMobil representatives met with representatives of Wellington in Boston specifically to discuss the impact of climate change and climate change regulation on the Company's business.

- ▶ **No reference to statements challenged as false or misleading in Complaint**
- ▶ **No allegation that any specific in-forum statement was false or misleading**
- ▶ **Vague references to climate change and energy policy are not allegations of false or misleading statements**

# Consumer Claims Are Based on Out-of-Forum Statements

595. A screenshot of the promotional webpage on ExxonMobil's website for its Synergy products, with its claims that Synergy™ gasolines are “engineered for: [b]etter gas mileage” and “[l]ower emissions” and that Synergy Supreme+ is “2X Cleaner”....

611. ...The Energy Factor webpage includes posts such as “Green Motor Oil? ExxonMobil Scientists Deliver an Unexpected Solution,” in which ExxonMobil promotes its green-colored motor oil....

645. ExxonMobil is running a series of paid full-page ads in print editions and posts in the electronic edition of *The New York Times*, produced with *The New York Times*' T Brand Studio, in which ExxonMobil misleadingly gushes about its efforts to develop energy production from alternate sources like algae and plant waste....

675. ExxonMobil's “Corporate Citizenship” and “Sustainability” reports repeatedly obfuscate and greenwash ExxonMobil's contribution to climate change....

- ▶ **Developed in Texas**
- ▶ **Published in Texas or New York**
- ▶ **Do not target Massachusetts**
- ▶ **Not tailored for Massachusetts**

# In-State Conduct Does Not Give Rise to Consumer Claims



Exs. 3-F, 3-I, 6, Goldberg Affidavit.

▶ **Do not appear in Amended Complaint**

▶ **No mention of:**

▶ **“emissions”**

Am. Compl. ¶¶ 561, 581-82, 587, 618, 622.

▶ **“green” motor oil**

*Id.* ¶¶ 608-09, 612, 614.

▶ **“climate change”**

*Id.* ¶¶ 541, 583, 675.

▶ **“environmental” benefits**

*Id.* ¶¶ 538-39, 561, 587.

▶ **“algae biofuel”**

*Id.* ¶¶ 645, 650, 652-58.

**The Amended Complaint  
Fails to State a Claim Under Chapter 93A**

# The Attorney General Has Failed to Allege Investor Deception

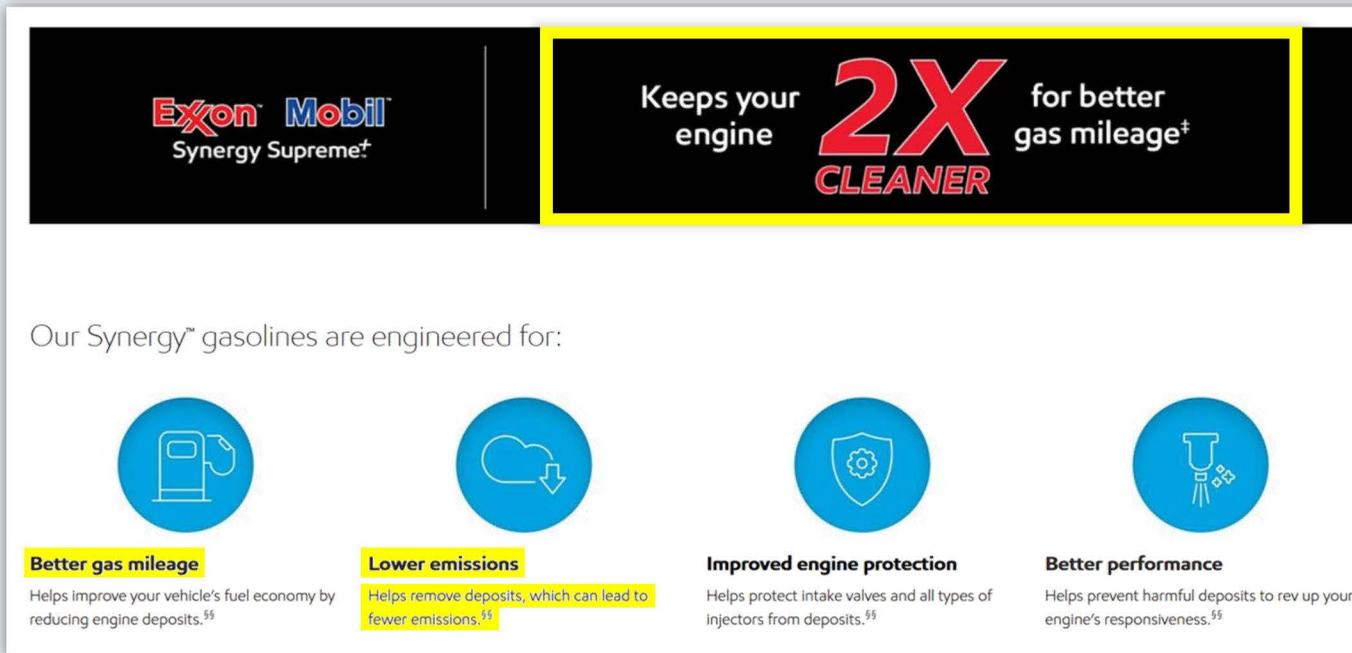
471. ...ExxonMobil's disclosures claim [that] fossil fuel demand is fated to grow in the coming decades, clean energy alternatives are not and will not in the near future be competitive with fossil fuels, and the world's governments are unlikely to constrain fossil fuel use to limit global warming to the level those governments have agreed is necessary to avert the most harmful potential consequences of climate change.

23. In these and other assurances, ExxonMobil wholly ignores, and fails to disclose to investors, the catastrophic risks that climate change presents to its business and to global economic and social systems—including unprecedented human migrations, resource scarcity, wealth destruction, armed conflict, and escalating human suffering, with complex and non-linear consequences for economic and geopolitical stability—which have been internally apparent to the Company for more than forty years.

265. ...ExxonMobil fails to disclose that the climatic changes that its own business model exacerbates are putting the geopolitical and societal stability of civilization, and the value of the world's financial markets, at increasing risk.

- ▶ **Challenged statements are forward-looking opinions**
- ▶ **No factual allegation ExxonMobil's opinions were not honestly held**
- ▶ **No known facts willfully omitted**
- ▶ **Not made in trade or commerce**

# The Attorney General Has Failed to Allege Consumer Deception



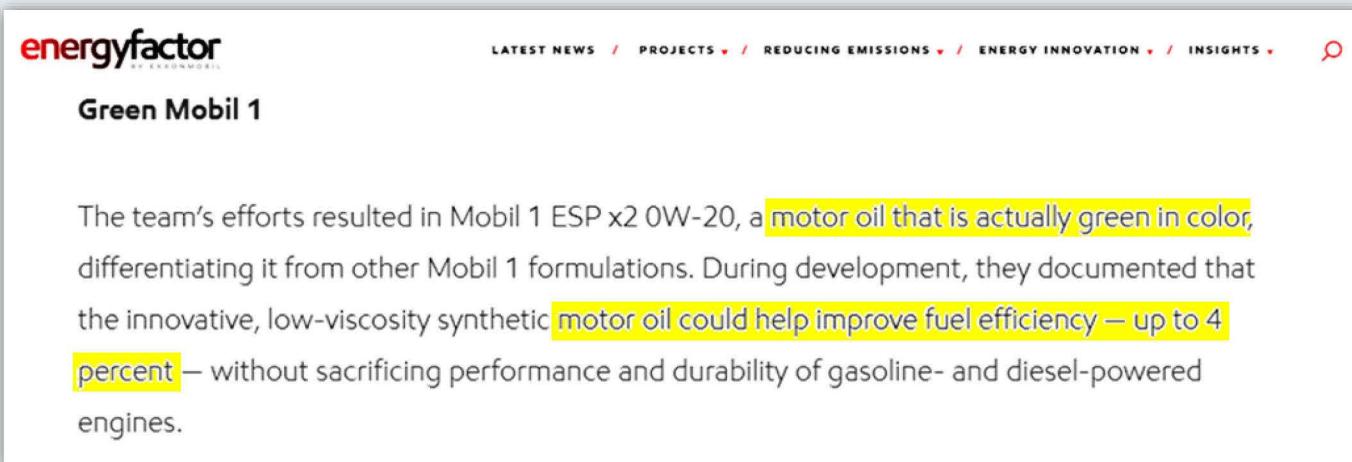
Exxon Mobil Synergy Supreme+

Keeps your engine **2X CLEANER** for better gas mileage<sup>†</sup>

Our Synergy™ gasolines are engineered for:

- Better gas mileage**  
Helps improve your vehicle's fuel economy by reducing engine deposits.<sup>§§</sup>
- Lower emissions**  
Helps remove deposits, which can lead to fewer emissions.<sup>§§</sup>
- Improved engine protection**  
Helps protect intake valves and all types of injectors from deposits.<sup>§§</sup>
- Better performance**  
Helps prevent harmful deposits to rev up your engine's responsiveness.<sup>§§</sup>

Am. Compl. ¶ 595.



energyfactor

LATEST NEWS / PROJECTS / REDUCING EMISSIONS / ENERGY INNOVATION / INSIGHTS

### Green Mobil 1

The team's efforts resulted in Mobil 1 ESP x2 0W-20, a **motor oil that is actually green in color**, differentiating it from other Mobil 1 formulations. During development, they documented that the innovative, low-viscosity synthetic **motor oil could help improve fuel efficiency — up to 4 percent** — without sacrificing performance and durability of gasoline- and diesel-powered engines.

Am. Compl. ¶ 611.

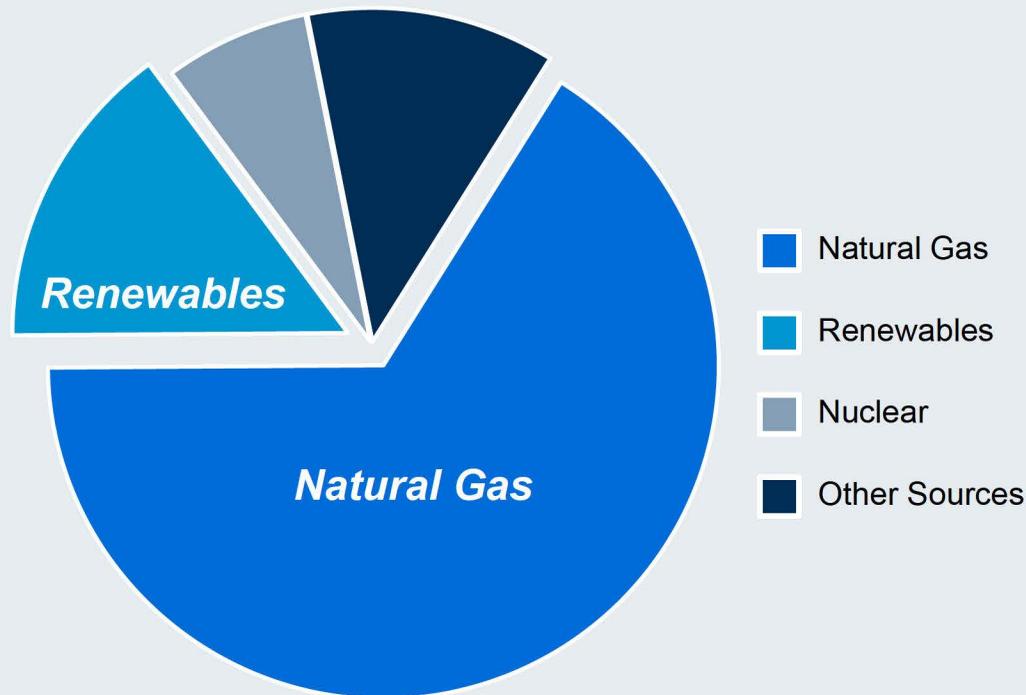
- ▶ **No allegation products do not perform as advertised**
- ▶ **AG concedes accuracy of factual representations**
- ▶ **No reasonable consumer would believe:**
  - ▶ **lower emissions means no emissions**
  - ▶ **green-colored motor oil has any particular attribute**

# Massachusetts Promotes Natural Gas as “Cleaner,” With a “Lower Carbon Content” That Is “More Efficient”

- ▶ Since suing EPA in 2003, Massachusetts has more than doubled its reliance on natural gas.
- ▶ As of 2019, natural gas provides almost 70% of Massachusetts’ electricity.

Jude Clemente, “Elizabeth Warren’s Massachusetts Loves Natural Gas,” *Forbes* (Dec. 10, 2019);  
Popovich & Plumer, “How Does Your State Make Electricity,” *N.Y. Times* (Oct. 28, 2020).

## Massachusetts 2019 Electricity Generation



See Popovich & Plumer, “How Does Your State Make Electricity,” *N.Y. Times* (Oct. 28, 2020).

## Massachusetts claims natural gas is:

... cleaner fossil fuels like natural gas, to act as a bridge to a clean energy future.

Massachusetts Clean Energy and Climate Plan for 2020 (Dec. 2010).

... projected to reduce GHG emissions . . . this[] reflects the replacement of coal-fired power plants with natural-gas fired power plants whose fuel has a lower carbon content, and whose generation technology is more efficient.

Massachusetts Clean Energy and Climate Plan for 2020 (Dec. 2015 Update).

# The Attorney General Has Failed to Allege Greenwashing

644. The ExxonMobil video and logo falsely depict the Company as a good corporate environmental citizen, while omitting any mention of the harms of climate change caused in large part by development, refining, and consumer use of fossil fuels, ExxonMobil's chief product.



Am. Compl. ¶ 644.

655. ...As of 2009, ExxonMobil had made a \$600 million investment in algae biofuels—a small fraction of the billions the Company invests annually in fossil fuels.

658. ExxonMobil's misleading algae biofuels advertisements never allude to the fact that other proven, cost-effective alternatives to fossil fuels, including wind and solar power, are already in widespread use in the United States and providing competitively priced power.



Am. Compl. ¶¶ 653, 655, 658.

- ▶ **Non-actionable brand promotion**
- ▶ **No false statement alleged**
- ▶ **AG concedes truth of ExxonMobil's disclosed investment in algae biofuels**
- ▶ **No reasonable inference of ExxonMobil's exit from fossil fuel industry**
- ▶ **No Massachusetts precedent recognizes "greenwashing" claims**
- ▶ **Statements not made in trade or commerce**

**The Amended Complaint  
Violates the Anti-SLAPP Statute**

# ExxonMobil Engages on Energy and Climate Policy



ExxonMobil believes that sound policy should reduce the risks of climate change at the lowest societal cost, while balancing increased demand for affordable energy and the need to address poverty, education, health and energy security.

Ex. 22 at 24, Anderson Affidavit.



As we provide the energy to meet growing needs around the world, we are also working to manage the risks of climate change. Climate change risks warrant action by businesses, governments and consumers, and we support the Paris Agreement as an effective framework for addressing this global challenge.

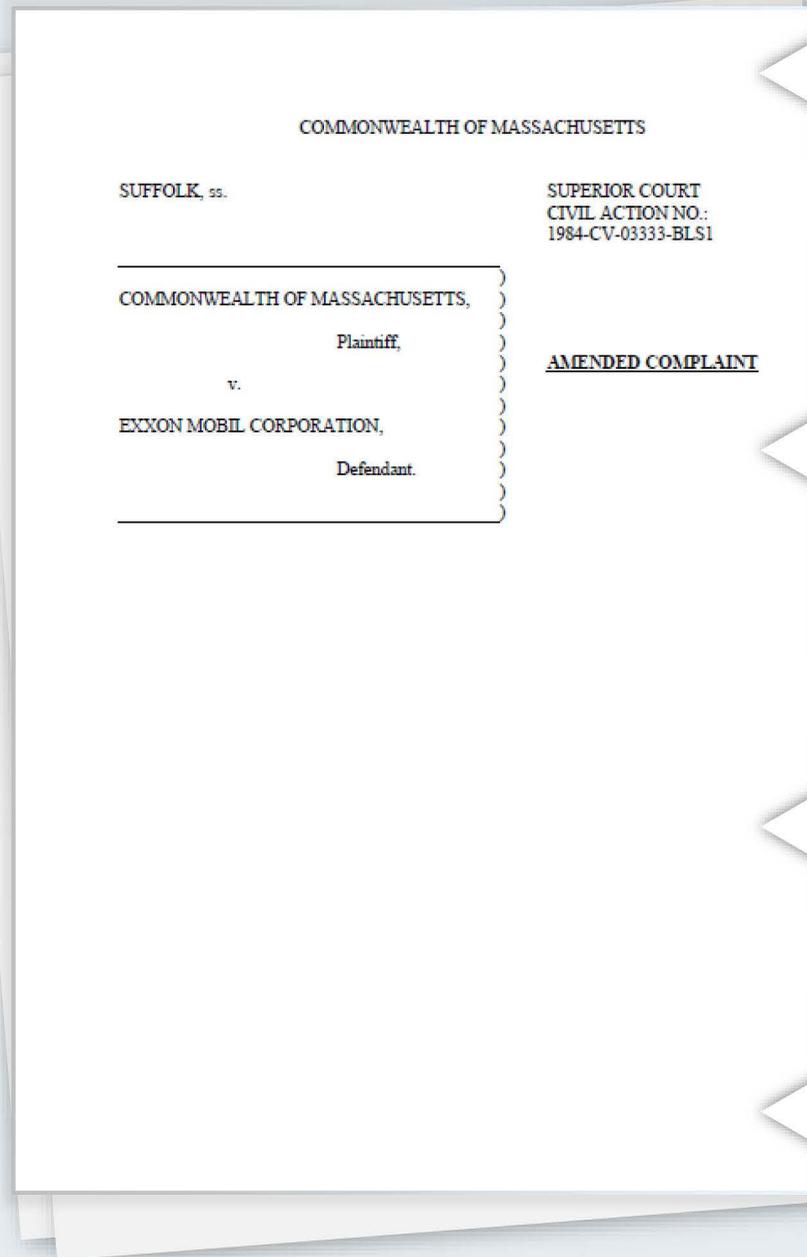
Ex. 24 at 3, Anderson Affidavit.



Global demand for energy is projected to rise by about 35 percent from 2010 to 2040. To meet this demand in the most effective and economic way, none of our energy options should be arbitrarily denied, dismissed, penalized or promoted. And free trade opportunities should be facilitated – not curtailed.

Ex. 25 at 51, Anderson Affidavit.

# The Amended Complaint Targets Petitioning Activity



A substantial number of the advertorials specifically sought to minimize concern about climate change, **urging delay in regulatory action**...

Am. Compl. ¶ 165.

At a June 2012 **speech to the Council on Foreign Relations**, available to Massachusetts investors and consumers on the Internet, then-ExxonMobil CEO Rex Tillerson told his audience, comprised of investment professionals and **journalists** among others, that there are “much more pressing priorities” than climate change, and that climate change is an “engineering problem, and it has engineering solutions.”

Am. Compl. ¶ 197.

In November 2019, the Company **attempted to influence the European Union** Commission to abandon its strict carbon dioxide emission standards

Am. Compl. ¶ 671.

Facebook advertisements promoted by the **campaign, including one rallying support for a “car freedom agenda,”** and one for “safer, cheaper cars that WE get to choose,”

Am. Compl. ¶ 668.

# All Three Claims Are Based on Petitioning Activity

## Count 1: Investor Deception

...engaging “the public and thought-leaders on energy issues,” including the Outlook for Energy, which is “but one of the many ways that ExxonMobil engages society on energy requirements”...

Am. Compl. ¶ 495.

ExxonMobil’s deceptive representations and omissions in its communications with consumers, as with its omissions and misrepresentations to investors, had the effect of delaying meaningful action to address climate change...

Am. Compl. ¶ 720.

## Count 2: Consumer Deception

On a promotional webpage on ExxonMobil’s website titled, “Providing solutions for customers,” ExxonMobil represents that it is “developing products that help customers reduce their emissions and improve their energy efficiency.”

Am. Compl. ¶ 592.

ExxonMobil engaged in a secretive campaign to roll back fuel economy and emission standards for passenger vehicles that limit pollution and help consumers save fuel and money ... ExxonMobil promotes its Synergy™ and “green” Mobil 1™ products with messaging that those products can help consumers reduce greenhouse gas emissions and use less fuel by improving fuel economy.

Am. Compl. ¶ 665.

## Count 3: Greenwashing

ExxonMobil is running a series of paid full-page ads in print editions and posts in the electronic edition of *The New York Times*.

Am. Compl. ¶ 573.

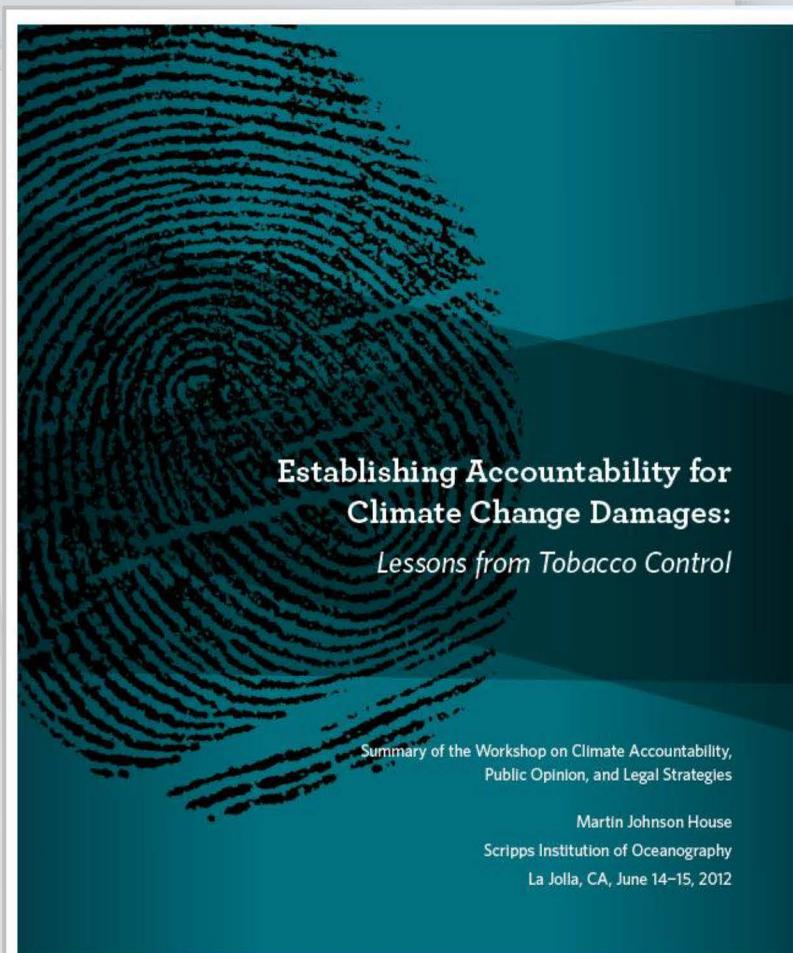
Other advertorials counseled against taking action to reduce emissions and fossil fuel reliance and presented delay as the prudent choice...

Am. Compl. ¶ 169.

The publications tend to focus on the need to reduce carbon dioxide emissions to the atmosphere, rarely mentioning the need to shift away from use of ExxonMobil’s fossil fuel products, despite Exxon’s internal knowledge that such a shift would be necessary to avoid dangerous warming.

Am. Compl. ¶ 693.

# Private Interests Urged State AGs to Reign in Energy Companies' Advocacy on Climate Policy



CLIMATE  
ACCOUNTABILITY  
INSTITUTE

 Union of Concerned Scientists  
App. 0002

Ex. 1 at 11, 27, 34-35, Anderson Affidavit.

## Appendix B: Participants

**Peter C. Frumhoff**

*Director of Science and Policy,  
Union of Concerned Scientists  
Cambridge, MA*

**Matt Pawa**

*President, Pawa Law Group, PC  
Founder, The Global Warming Legal  
Action Project  
Newton Centre, MA*

State attorneys general can also subpoena documents, raising the possibility that a single sympathetic state attorney general might have substantial success in bringing key internal documents to light.

Equally important was the nearly unanimous agreement on 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 that could eventually lead to its support for legislative and regulatory responses to global warming.

# State “AGs” Urged to “Create Scandal,” “Force Officials to Disassociate Themselves from Exxon,” and “Delegitimize ExxonMobil as a Political Actor”

From: **Kenny Bruno** <kenny.bruno@verizon.net>  
Date: Tue, Jan 5, 2016 at 4:42 PM  
Subject: Exxon meeting DRAFT Agenda and logistics  
To: Lee Wasserman <lwasserman@rffund.org>, Bill McKibben <bill.mckibben@gmail.com>, Jamie Henn <jamie@350.org>, Rob Weissman <rweissman@citizen.org>, Bill Lipton <blipton@workingfamilies.org>, Dan Cantor <dcantor@workingfamilies.org>, John Passacantando <j.passacantando@gmail.com>, Kert Davies <kertmail@gmail.com>, won@ef.org, SEubanks@bordaslaw.com, ikrarup@vkrf.org, mp@pawalaw.com, bcampbell@clf.org, Stephen Kretzmann <steve@priceofoil.org>, Carroll Muffett <cmuffett@ciel.org>, Naomi Ages <naomi.ages@greenpeace.org>

[mp@pawalaw.com](mailto:mp@pawalaw.com)

Dear All,  
If you are receiving this message then we believe you are attending the meeting this coming Friday Jan 8 regarding Exxon.  
The meeting will take place at:  
Rockefeller Family Fund  
475 Riverside Dr entrance on Claremont @ 120th St. in Upper Manhattan, 1 Train to 116th St. from Penn Station  
Please confirm whether you are attending in person (preferred, of course) or remotely. If remotely see instructions below.  
Here is a DRAFT Agenda, your suggestions are welcome.

DRAFT Agenda  
Exxon: Revelations & Opportunities  
Friday January 8 11 AM – 3 PM  
475 Riverside Dr @ 120th ST Manhattan  
10:45: Arrival and Coffee  
11:00 – 11:15: Introductions and purpose of the meeting (Lee)  
11:15-12:00 – Goals of an Exxon campaign  
What are our common goals? Examples include:

- To establish in public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm.
- To delegitimize them 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 call into question climate advantages of fracking, compared to coal.
- To drive divestment from Exxon.
- To drive Exxon & climate into center of 2016 election cycle.

Other goals?  
12:00 – 1:00 Legal Status and prospects  
What are the main avenues for legal actions & related campaigns?  
-AGs  
-DOJ  
-Torts  
-International  
-Other

Dear All,  
If you are receiving this message then we believe you are attending the meeting this coming Friday Jan 8 regarding Exxon.  
The meeting will take place at:  
Rockefeller Family Fund

## 11:15-12:00 – Goals of an Exxon campaign

What are our common goals? Examples include:

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- 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 call into question climate advantages of fracking, compared to coal.
- To drive divestment from Exxon.
- To drive Exxon & climate into center of 2016 election cycle.

## 12:00 – 1:00 Legal Status and prospects

What are the main avenues for legal actions & related campaigns?

-AGs

-DOJ

-Torts

-International

-Other

Which of these has the best prospects for successful action? For getting discovery? For creating scandal? Shortest time line? Do we know which offices may already be considering action and how we can best engage to convince them to proceed?

Exs. 2 & 3, Anderson Affidavit.

# The Attorney General Attended Secret Meetings With Private Interests Urging the Silencing of Opponents Such as ExxonMobil

Morgan, Wendy

From: Morgan, Wendy  
Sent: Friday, March 18, 2016 6:06 PM  
To: 'Michael Meade'  
Subject: RE: Clean Power Plan and Exxon Mobil

Great - thx

## Attorneys General Climate Change Meeting

Date: March 29, 2016

Have a great weekend!

9:30 to 10:15 – Peter Frumhoff, Union of Concerned Scientists, presentation on imperative of taking action now on climate change (AGs and staff only) <Lem Introduces Peter>

10:15 to 10:30 -- break

10:30 to 11:15 – Pawa Law office presentation regarding climate change litigation (AGs and staff only) <VT Introduces Pawa>

Attorneys General Climate Change Meeting

Date: March 29, 2016

Location: 120 Broadway, New York, NY

Schedule:

9:00 to 9:30 – Welcome (breakfast provided) <Lem Kicks off meeting and staff intros>

1

Ex. 7, Anderson Affidavit.

On Mar 30, 2016, at 6:31 PM, Matt Pawa <mp@pawalaw.com> wrote:

Cc: Kline, Scot  
Subject: Re: Wall Street Journal

> Lem and Scot - a WSJ reporter wants to talk to me.

I may not even talk to her at all but if I do I obviously will have no comment on anything discussed at the meeting. What should I

I say if she asks if I attended? No comment? Let me know.

> Matt Pawa  
> Pawa Law Group, P.C.  
> 1280 Centre Street, Suite 230  
> Newton Centre, MA 02459  
> (617) 641-9550  
> (617) 641-9551 facsimile  
> www.pawalaw.com

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From: Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>  
Sent: Wednesday, March 30, 2016 9:01 PM  
To: Matt Pawa

My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.

Ex. 6, Anderson Affidavit.

# Attorney General Healey Targeted Petitioning Activity at the “AGs United for Clean Power” Press Conference



“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.**”

Maura Healey, Ex. 4 at 12, Anderson Affidavit.

“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.**”

*Id.* at 12-13.

“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.”

*Id.* at 13.

