

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

UNITED STATES VIRGIN ISLANDS
OFFICE OF THE ATTORNEY
GENERAL,

Plaintiff,

v.

EXXONMOBIL OIL CORP.,

Defendant.

CASE NO. 2016 CA 002469

JUDGE JENNIFER A. DI TORO

**UNITED STATES VIRGIN ISLANDS OFFICE OF THE ATTORNEY GENERAL'S
UNOPPOSED MOTION FOR LEAVE TO FILE RESPONSE TO NONPARTY
COMPETITIVE ENTERPRISE INSTITUTE'S NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF ITS SPECIAL MOTION TO DISMISS,
MOTION FOR SANCTIONS, AND MOTION FOR COSTS AND
ATTORNEY'S FEES DATED OCTOBER 17, 2016**

COMES NOW United States Virgin Islands Office of the Attorney General, by and through undersigned counsel, to seek leave to submit the accompanying response to Nonparty Competitive Enterprise Institute's Notice of Supplemental Authority filed October 17, 2016. CEI does not oppose VIDOJ's motion for leave. VIDOJ respectfully requests that the Court grant this motion and direct the Clerk of the Court to file the accompanying response.

Rule 12-I Certification

CEI does not oppose VIDOJ's motion for leave to file a response to its Notice.

Conclusion

For the reasons previously stated by VIDOJ and stated in the accompanying response, the Court should deny CEI's motions and grant VIDOJ fees and costs under the Anti-SLAPP Act.

October 19, 2016

Respectfully submitted,

/s/ Linda Singer

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Certificate of Service

I hereby certify that on October 19, 2016, I caused a copy of the foregoing United States Virgin Islands Office of the Attorney General's Unopposed Motion for Leave to File Response To Nonparty Competitive Enterprise Institute's Notice of Supplemental Authority to be served by CaseFileXpress on the following:

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CEI argues that a decision by a judge in Texas related to another state attorney general's investigation against Exxon "demonstrates Attorney General Walker's bad faith in investigating CEI." CEI Notice Supplemental Authority (October 15, 2016) at 2. CEI's argument is meritless. The Texas judge made no findings of bad faith that "demonstrate" anything against the attorney general there—much less VIDOJ here. Instead, the judge questioned whether that attorney general "issued the CID with bias or prejudgment about what the investigation of Exxon would discover." *Id.* Att. A at 4. If so, the court held, such prejudgment "may constitute bad faith in issuing the CID." *Id.* Att. A. at 6.

Even if the judge had found that the other attorney general prejudged its investigation against Exxon, the decision has no bearing here. It is neither authority nor "supplemental" given that CEI has not previously argued—in its objections or 40 pages of prior briefing—that VIDOJ acted in bad faith because it prejudged the investigation. In any event, it is clear that in issuing subpoenas to Exxon, and to CEI as a non-target third party, VIDOJ had made no judgment about

either entities' conduct. The Attorney General made abundantly clear, both at the March 29 press conference and in subsequent communications with CEI, that it was only investigating "what [Exxon] knew about climate change and when they knew it," that it had made no decision about Exxon's conduct, and that the "potential" for an enforcement action "is speculative." CEI Mot. No. 1 Ex. A at 15; Mem. VIDOJ Opp'n CEI Mots. at 2 n.3. CEI's counsel admitted to this Court at the June 28 hearing that CEI agrees many of the documents requested by VIDOJ (in the now-withdrawn subpoena) were "reasonably . . . demanded" to investigate "what Exxon knew." Mot. Hr'g Tr. 16, July 28, 2016.

The Attorney General has been equally clear that VIDOJ has a valid basis for investigating Exxon's conduct: internal and other Exxon documents and statements of former Exxon executives uncovered by investigative journalists that demonstrate that Exxon may have misrepresented its knowledge of the risks of climate change to investors and consumers. In addition to the state attorneys general, the federal Securities and Exchange Commission (SEC) has now also launched an investigation into Exxon, with which Exxon has stated it is complying. *See, e.g., 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>.

Finally, CEI does not even get to any allegations of bad faith—it has failed first to demonstrate that the anti-SLAPP act, Rule 45 or the Court's "inherent authority" to impose sanctions apply to VIDOJ's statutorily authorized investigative subpoena against a non-party.

Accordingly, and for the reasons previously stated, this Court should deny CEI's motion for sanctions (along with its special motion to dismiss and motion for costs and attorneys' fees).

October 19, 2016

Respectfully submitted,

/s/ Linda Singer

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ORDER

Upon consideration of the United States Virgin Islands Office of the Attorney General's Unopposed Motion for Leave to File Response to Nonparty Competitive Enterprise Institute's Notice of Supplemental Authority, it is hereby ORDERED that VIDOJ's Unopposed Motion for Leave to File Response is granted and it is further ORDERED that United States Virgin Islands Office of the Attorney General's Response to Nonparty Competitive Enterprise Institute's Notice of Supplemental Authority attached to VIDOJ's Unopposed Motion for Leave to File Response is deemed filed as of the date of this Order.

SO ORDERED.

Judge Jennifer A. Di Toro
Superior Court of the District of Columbia