

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

STOURBRIDGE INVESTMENTS LLC, )  
Derivatively on Behalf of Nominal )  
Defendant EXXON MOBILE )  
CORPORATION, )

Plaintiff, )

v. )

SUSAN K. AVERY, ANGELA F. )  
BRALY, URSULA M. BURNS, )  
KENNETH C. FRAZIER, STEVEN A. )  
KANDARIAN, DOUGLAS R. )  
OBERHELMAN, SAMUEL J. )  
PALMISANO, STEVEN S. REINEMUND, )  
WILLIAM C. WELDON, DARREN W. )  
WOODS, MICHAEL J. BOSKIN, )  
HENRIETTA H. FORE, WILLIAM W. )  
GEORGE, LARRY R. FAULKNER, )  
PETER BRABEC- KLETMATHE, REX )  
W. TILLERSON, ANDREW P. SWIGER, )  
JEFFREY J. WOODBURY, and DAVID S. )  
ROSENTHAL )

Defendants, )

and )

EXXON MOBILE CORPORATION, )  
Nominal Defendant. )

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IN RE EXXON MOBIL CORPORATION )  
DERIVATIVE LITIGATION )

THIS DOCUMENT RELATES TO: )

ALL ACTIONS )

Civil Action No. 3:19-CV-2267-C

LEAD PLAINTIFF SAMUEL MONTINI'S  
MOTION TO CONSOLIDATE  
PURSUANT TO FED. R. CIV. P.  
RULE 42 AND BRIEF IN SUPPORT

Lead Case No. 3:19-cv-01067-K  
(Consolidated with No. 3:19-cv-1068-K)  
(Consolidated Derivative Action)

DEMAND FOR JURY TRIAL

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, Local Rule 7.1, and this Court's August 6, 2019 Order Consolidating Related Cases and Appointing Lead Counsel (ECF No. 11) ("Order"), Lead Plaintiff Samuel Montini ("Lead Plaintiff") for *In Re Exxon Mobil Corporation Derivative Litigation*, Case No. 3:19-cv-01067-K (the "*Consolidated Derivative Action*"), respectfully submits this motion for an order consolidating the above captioned recently filed derivative action into this action under the leadership of Lead Plaintiff Montini, Lead Counsel Johnson Fistel LLP, and Local Counsel Ron Wells.<sup>1</sup>

### **I. RELEVANT BACKGROUND**

On May 2, 2019, Lead Plaintiff filed the derivative action *Montini v. Woods, et al.*, Case No. 3:19-cv-01068-K (the "*Montini Action*") against the Individual Defendants,<sup>2</sup> who are certain current and former directors and officers of Nominal Defendant Exxon Mobil Corporation. Subsequently, on May 8, 2019, the *Montini Action* was reassigned and transferred to this Court. *See Consolidated Derivative Action*, ECF No. 4.

On August 6, 2019, this Court entered an order consolidating a related derivative action, *Von Colditz v. Woods, et al.*, Case No. 3:19-cv-01067-K, along with the *Montini Action* and assigning the *Consolidated Derivative Action* the above caption and case number. *See Order*. By the same Order, this Court also appointed Mr. Montini as Lead Plaintiff, Ron Wells as Local

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<sup>1</sup> Pursuant to Local Rule 7.1(a), counsel for Lead Plaintiff conferred with all parties before filing this motion. *See Certificate of Conference, infra*.

<sup>2</sup> The "Individual Defendants" include Darren W. Woods, Andrew P. Swiger, David S. Rosenthal, Jeffrey J. Woodbury, Steven S. Reinemund, Michael J. Boskin, Samuel J. Palmisano, Kenneth C. Frazier, Ursula M. Burns, Henrietta H. Fore, William C. Weldon, Rex W. Tillerson, William W. George, Larry R. Faulkner, Douglas R. Oberhelman, and Peter Brabeck-Letmathe.

Counsel, and Johnson Fistel, LLP as Lead Counsel for the *Consolidated Derivative Action*. *Id.* ¶¶ 5-7.

The Order provides that “[n]o motion, request for discovery, or other pre-trial or trial proceedings shall be initiated or filed by any plaintiff in the Consolidated Derivative Action except through Lead Counsel or Local Counsel.” *Id.* ¶ 9. Moreover, the Order provides that “Lead Counsel shall . . . ensure that Lead Plaintiff – and plaintiff(s) in any subsequently filed, related derivative action(s) consolidated with the Consolidated Derivative Action and their counsel – are kept informed of the progress of this Consolidated Derivative Action as necessary.” *Id.* ¶ 8(k).

Significantly, the Order “appl[ies] to each derivative case arising out of the same, or substantially the same, transactions or events as the Consolidated Derivative Action, which is subsequently filed in, remanded to, or transferred to this Court.” *Id.* ¶ 11. As more fully explained herein, this portion of the Order directly applies here.

On September 23, 2019, a derivative action arising out of the same or substantially the same transactions or events as the *Consolidated Derivative Action* was removed to the U.S. District Court, Northern District of Texas, Dallas Division, before the Hon. A. Joe Fish, captioned *Stourbridge Investments LLC v. Avery et al.*, Case No. 3:19-cv-02267 (the “*Stourbridge Derivative Action*”). *Stourbridge Derivative Action*, ECF No. 1. Thereafter, on September 30, 2019, Judge Fish recused himself from the *Stourbridge Derivative Action*, and on October 1, 2019, the Clerk reassigned the *Stourbridge Derivative Action* to the Hon. Sam R. Cummings. *Id.*, ECF No. 4.

On October 2, 2019, Pursuant to Local Rule 3.3, Lead Plaintiff Montini advised the Court that the *Stourbridge Derivative Action* and the *Consolidated Derivative Action* involve the same defendants, a common nucleus of operative facts, and are related derivative actions as they both seek redress for the same alleged wrongful conduct, from the same defendants, and during the

same time period. Lead Plaintiff further advised that he intended to file a motion to consolidate the *Stourbridge Derivative Action* into the *Consolidated Derivative Action* pursuant to the Order once the *Stourbridge Derivative Action* was transferred to this Court.

On October 9, 2019, Judge Cummings transferred the *Stourbridge Derivative Action* to this Court because the *Stourbridge Derivative Action* and the *Consolidated Derivative Action* substantially overlap.

On October 21, 2019, Plaintiff in the *Stourbridge Derivative Action* filed a motion to remand to State Court which this Court denied on January 27, 2019.

Significantly, the Order applies to the *Stourbridge Derivative Action*, which means this recently filed related derivative action should be consolidated with the *Consolidated Derivative Action* under the leadership of Lead Plaintiff Montini, Lead Counsel Johnson Fistel LLP, and Local Counsel Ron Wells.

**II. THE STOURBRIDGE DERIVATIVE ACTION SHOULD BE CONSOLIDATED WITH THE CONSOLIDATED DERIVATIVE ACTION**

Courts have long recognized that consolidation of shareholder actions alleging similar facts can be beneficial to the court and the parties by expediting pretrial proceedings, avoiding duplication, and minimizing expenditure of time and money. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (the power to consolidate related actions falls within the broad authority of every court “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants”). In addition, this Court’s August 6, 2019 Order “appl[ies] to each derivative case arising out of the same, or substantially the same, transactions or events as the Consolidated Derivative Action, which is subsequently filed in, remanded to, or transferred to this Court.”

Here, the *Consolidated Derivative Action* and the *Stourbridge Derivative Action* present substantially identical issues, transactions and occurrences, and relate to whether certain former and current Exxon directors and officers breached their fiduciary duties owed to Exxon and its shareholders. Both actions contend that certain Individual Defendants made or authorized publication of false and misleading statements and omissions, which artificially inflated the Company's stock price, concerning the value and profitability of ExxonMobil's reserve assets and the specific actions certain defendants were supposedly taking to protect those assets from the risks posed by climate-related policies and declining commodity prices.

Additionally, the *Consolidated Derivative Action* and the *Stourbridge Derivative Action* seek to recover damages derivatively on behalf of Exxon Mobil. Specifically, any damages flowing from, *inter alia*, the related securities class action, defense costs and any fines or penalties arising from regulatory investigations; defense costs and any recovery or settlement in excess of insurance in the commercial litigation; costs to the Company resulting from compensation and benefits paid to the Individual Defendants; damages related to loss of goodwill, loss of investor confidence, and increased costs of capital and debt following the potential rating agencies' downgrade of ExxonMobil. Accordingly, the *Consolidated Derivative Action* and the *Stourbridge Derivative Action* have the same motion practice, discovery, and trial issues, making consolidation a logical step to maximize judicial economy and justice.

Finally, the Order applies to the *Stourbridge Derivative Action* because it is a "derivative case arising out of the same, or substantially the same, transactions or events as the Consolidated Derivative Action" and was "subsequently filed in, remanded to, or transferred to this Court." Order ¶ 11. Accordingly, this recently filed related derivative action should be consolidated with

the *Consolidated Derivative Action* under the leadership of Lead Plaintiff Montini, Lead Counsel Johnson Fistel LLP, and Local Counsel Ron Wells.

### III. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that this Court order that the *Stourbridge Derivative Action* be consolidated with the *Consolidated Derivative Action*, under the leadership of Lead Plaintiff Montini, Lead Counsel Johnson Fistel LLP, and Local Counsel Ron Wells, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and this Court's Order.

Dated: February 5, 2020

RON WELLS LAW OFFICE

*/s/ Ron Wells*

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*Lead Counsel for the Consolidated Derivative  
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**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule 7.1(a), counsel for Lead Plaintiff conferred with all parties before filing this motion. Counsel for Defendants stated they do not oppose this motion. Lead Plaintiff conferred with counsel for Stourbridge Investments, LLC, plaintiff in the *Stourbridge Derivative Action*, by teleconference on Feb. 5, 2020. On that Feb. 5, 2020 conference call, counsel for Stourbridge Investments, LLC stated that he did not oppose consolidation, but indicated he intended to file a motion to disrupt the leadership structure of this case as set forth in this Court's August 6, 2019 Order Consolidating Related Cases and Appointing Lead Counsel (ECF No. 11).

Dated: February 5, 2020

/s/ Ron Wells  
RON WELLS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that 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 on February 5, 2020.

Dated: February 5, 2020

*/s/ Ron Wells*  
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RON WELLS