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APPEALS COURT UPHOLDS \$105 MILLION VERDICT AGAINST EXXONMOBIL FOR CONTAMINATING NEW YORK CITY'S GROUNDWATER

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New York, Date, July 26, 2013 – A federal appeals court today affirmed that Exxon Mobil Corporation is liable for contaminating New York City's groundwater with the gasoline additive methyl tertiary butyl ether, commonly referred to as "MTBE." Today's decision by the Second Circuit Court of Appeals upholds a landmark \$105 million verdict awarded to the City in October 2009 to help cover clean-up costs.

New York City sued ExxonMobil in 2003 for the enormous costs of removing MTBE from drinking water wells in southeast Queens. New York State banned MTBE as of 2004, after it was found to have polluted groundwater drinking water supplies throughout the State. More than 20 other states have also banned MTBE.

At trial, the City effectively demonstrated that ExxonMobil added MTBE to its gasoline despite the company's knowledge that existing gasoline storage systems would leak, that leaked MTBE would contaminate groundwater, and that MTBE contamination would be very costly to remove. Even ExxonMobil's own scientists expressed what they termed "ethical and environmental" concerns about MTBE and recommended that it not be used, especially in areas like Queens, that have used groundwater for drinking water. However, ExxonMobil ignored these warnings and failed to warn the government and the public about the risks of MTBE contamination.

Today's appeals decision upholds prior jury findings that ExxonMobil is liable for its failure to warn others about the dangerous nature of its product, as well as trespass, public nuisance, and negligence claims brought by the City. The Second Circuit also found that ExxonMobil failed to show that it couldn't have used an alternative to MTBE. Rejecting ExxonMobil's argument that MTBE did not make the water legally undrinkable, the Second Circuit noted, "It strikes us as illogical to conclude that a water provider suffers no injury-in-fact—and therefore cannot bring suit—until pollution becomes 'so severe that it would be illegal to serve the water to the public'" (page 64). In addition, the Second Circuit concluded that the fact that the City has not yet used the individual wells at issue did not prevent the City from bringing the lawsuit.

"Yet again, this company—which carelessly polluted our groundwater supply—has been put in its place by a court," said Mayor Bloomberg. "This should be a warning to any company whose actions threaten New Yorkers' health and quality of life."

"We knew that the City's legal case was very strong from the beginning and that ExxonMobil should be made to pay for the high clean-up costs its actions imposed on the City," said Michael A. Cardozo, Corporation Counsel for New York City. "I'd like to thank our team at Jenner & Block for their excellent handling of the appeal, as well as Victor Sher, Robert Chapman, and our Law Department team, who worked immensely hard on this win."

"This decision upholds the jury's earlier finding that ExxonMobil, and not New Yorkers who pay water bills, will be held responsible for the cost of the cleanup," said Department of Environmental Protection

Commissioner Carter Strickland. "I'd like to thank the Corporation Counsel's office for their efforts to protect ratepayers and to ensure that the polluter pays."

Paul M. Smith, a partner at Jenner and Block who argued the appellate case for the City, said, "We are pleased that we were able to assist the City in upholding its landmark verdict against a company that committed a series of tortious acts in manufacturing and distributing gasoline containing an ingredient that it knew could cause widespread pollution of groundwater."

The City's drinking water supply system includes 68 groundwater wells in southeast Queens, which serve as a back-up supply as needed to the upstate water system. The installation and upgrade of treatment stations to remove MTBE would help provide drinking water to Queens residents when portions of the upstate reservoir system are out of service for repair, or during droughts or other emergencies. After the MTBE is removed from the groundwater, the wells will be able to provide drinking water to Queens residents that is of the same high quality as the upstate system.

Several of the nation's largest oil companies—including Shell, BP, Chevron, Citgo, Hess, and Sunoco—previously settled the City's related claims involving MTBE contamination for a total of \$15 million.

This case was overseen by Susan Amron of the New York City Law Department, and was argued at the appellate level by Paul M. Smith of Jenner & Block, LLP. Senior Counsel Karen Griffin of the New York City Law Department's Appeals Division also had input on the appeal. The District Court case was tried by Victor Sher of Sher Leff LLP, a San Francisco law firm specializing in litigation on behalf of public water suppliers and agencies in cases involving contamination of drinking water with toxic chemicals, and Robert Chapman, currently with Eisner, Kahan, Gorry, Chapman, Ross & Jaffe, a Beverly Hills law firm.

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