

Brief Case History

A. The Early Years: Removal and Venue, 1992-1994

This unique action began with the filing of a complaint seeking class action treatment in the Hampton County Court of Common Pleas on September 18, 1992. Over the next one and one-half years, it was removed to federal court, remanded to Hampton County, and venue was changed to Orangeburg County in early 1994. During these early years, although extensive discovery was sought of Exxon by class counsel, very little discovery was accomplished, as Exxon's strategy of frustrating class discovery was in full swing.

The early years of this action were characterized by Exxon's attempt to prevent a South Carolina state court and jury from deciding the issues raised and then its subsequent attempt to place venue in a forum it believed would be more favorable to it. Within a month after the action was filed, Exxon improperly removed the case to federal court. Nevertheless, the removal served one of Exxon's case strategies by adding delay to the resolution of where the case should be. Class counsel had to file a motion to remand, and appear in federal court to secure its remand which did not occur until April 8, 1993. During this period, Exxon refused to respond to the discovery served upon it, urging that responses should not be made until the jurisdiction of the court was decided. As soon as the case was remanded, Exxon initiated a second delaying tactic by refusing to respond to discovery until the "proper" venue was established, based on its motion to transfer venue from Hampton to Orangeburg County. That motion was filed on April 23, 1993 and was not resolved until early 1994.

B. Pre-Certification Discovery to Class Certification: Exxon's Non-Disclosure Strategy, 1993-1996

The period from early 1994 when the case became venued in Orangeburg County to class

certification in March, 1998 was characterized by a new Exxon approach to delay – the attempted limitation of discovery to matters related solely to class certification issues. It was not until 1996 that class counsel was successful in securing a series of court orders that required Exxon to produce what had been requested since 1993. A detailed summary of this strategy and its effect on class discovery at this early date in the case’s history can be seen in the supporting documents for a motion to compel which class counsel filed in February of 1996. Plaintiffs’ Memorandum in Support of Motion to Compel, February 1996. Although unknown to class counsel at the time, Exxon had another layer in its discovery strategy in place that was intended to completely prevent the disclosure of significant information to class counsel. *See* II.C. at 3-4 *infra*. Nevertheless, during this period of time, there were substantial document productions which occurred in Houston, Charlotte and Columbia and which were attended by class counsel, resulting in the production of thousands of documents and the copying and scanning of many of those documents. Toward the end of this period, the Court set a briefing schedule for class certification that resulted in a hearing and the Court’s issuance of the certification order in March, 1998. Immediately upon the entry of that order, Exxon attempted to appeal and/or secure the issuance of a *writ of certiorari* to review what was clearly an interlocutory, and therefore unappealable, order. Nevertheless, this appellate diversion resulted in still more delays to the substantive prosecution of this case.

C. Post-Certification Discovery: Exxon’s Discovery Strategy is Dicoveryed and Broken – 1998-2002

Between 1998 and 2001, the case went through two complex case judges, Judges Whetstone and Shuler. In the summer of 2001, Judge Goodstein was appointed to serve as the complex case judge. Through no fault of any of these highly-regarded and respected trial judges, the repeated changing of the “judicial guard” required class counsel to repeatedly revisit Exxon’s misdeeds with

new judges, which would have been abundantly clear to a single judge had these changes not occurred between 1993 and 2001. Fortunately for the class, the events which allowed the discovery and subsequent undoing of Exxon's carefully implemented strategy of delaying and frustrating class discovery, occurred during the watch of the last judge who was assigned this complex case: Judge Goodstein.

As a result of a refusal by class counsel to be deterred by Exxon's statement to the Court that full discovery had been given, a series of renewed requests for production, and a new judicial component, Exxon yielded to producing documents in the fall of 2000, which it had stated in the summer of 1996 had already been produced or did not exist. Through class counsel's aggressive, relentless and creative approach to yet another attempted "sleight of hand" by Exxon and its counsel through this "production," the seeds of destruction for Exxon's discovery strategy were sown.

There are many documents and proceedings which paint the complete picture of this massive deception, so it serves simply to reference and attach them here: Plaintiffs' Motion to Compel and Memoranda in Support dated December 7 and 21, 2000 and January 23, 2001; Plaintiffs' Memorandum in Support of Motion for Costs and Sanctions dated November 12, 2002; Transcripts of Record for Hearings on Plaintiffs' Motion for Sanctions of March 7, 14, 31, April 1, May 16, 2003; Plaintiffs' Proposed Findings of Fact re: Motion for Sanctions filed on May 30, 2003 .

The result of these motions, although never finally ruled upon by the Court, was that, as an ethics expert testified: "Exxon was caught by class counsel." He continued: "[T]his unfortunate detour in the case caused by profoundly serious miscalculation by Exxon and its advisors cost class counsel more than \$1 million in excess costs, expenditures that could have been avoided had Exxon played by the rules." However, once caught, these discovery abuses also added "significant power, force and leverage to the class' negotiating position." This was a significant factor in the ultimately

successful resolution of this case. It would never have been discovered without the unyielding efforts of class counsel in exposing Exxon's, and some of its counsels', discovery abuse. Exxon had successfully gotten away with this precise deception in two prior cases worth in excess of \$1 billion but which had not been discovered by plaintiff's counsel in those cases.

D. Pre-Trial Proceedings: 2002-2003

Many major events, in addition to the motion for sanctions, characterized this time period:

1. Abandoned tanks were discovered on and removed from the class representative's property;
2. Exxon twice moved for and successfully obtained a continuance of the case;
3. Exxon attempted to disqualify Judge Goodstein;
4. Exxon lost its effort to decertify the class; and
5. Discovery reached its zenith with over 160 depositions taken during this period, including all 58 of the expert depositions.

A detailed description of most of these issues is in Plaintiffs' Memorandum in Opposition to Defendants' Motion for Continuance, December 19, 2002.

E. Commencement of the Trial and the Settlement

The parties selected a jury on July 14, 2003. For the next three days, counsel and the Court engaged in extensive and detailed off-the-record settlement negotiations. It was only after opening statements were made that the case settled. The Court's comments the next morning display the culmination of years of effort resulting in, as the Court described it, a "marvelous resolution."

I scarcely know what to say other than in a moment I'm going to bring the jury out and tell them what has occurred.

But, as you all know, I have been in this case for a long time and yet only a moment's blink in time compared to the time that you all have been in this case. Certainly I am one that loves lawyers and I am of the opinion that to be a trial lawyer of the level

that you all are is as good as it gets. And I am absolutely moved by not only the herculean effort that all of you have put in this case but the professionalism, the intelligence, the passion and the professionalism that each and every one of you have brought to this case.

....

I am just so proud of you, and so grateful to you and I think this is a marvelous resolution and I thank you for it.

Transcript of Settlement Statement, July 18, 2003 at 13-14.