

Court Opinions

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

In re **People** of the State of New York, Petitioner-Respondent, **v**
PriceWaterhouseCoopers, LLP, Respondent, Exxon Mobil Corporation, Respondent-
Appellant.

3685N 451962/16

May 23, 2017, Entered May 23, 2017, Decided

THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York (Theodore **V.** Wells, Jr. of counsel), for appellant.

Eric T. Schneiderman, Attorney General, New York (Anisha S. Dasgupta of counsel), for respondent.

Sweeny, J.P., Andrias, Moskowitz, Kahn, Gesmer, JJ.

Order, Supreme Court, New York County (Barry R. Ostrager, J.), entered on or about October 26, 2016, which granted the petition of New York State Attorney General (NYAG) to compel respondent Exxon Mobile Corporation (Exxon) and its independent auditor, respondent **PriceWaterhouseCoopers**, LLP (PwC), to comply with a subpoena duces tecum served on PwC, unanimously affirmed, without costs.

In this proceeding arising from an underlying investigation [***579**] by the NYAG into alleged fraud by respondent Exxon concerning its published climate change information, the motion court properly found that the New York law on privilege, rather than Texas law, applies, and that New York does not recognize an accountant-client privilege.

We reject Exxon's argument that an interest-balancing analysis is required to decide which state's choice of law should govern the evidentiary privilege. Our current case law requires that when we are deciding privilege issues, we apply the law of the place where the evidence will be introduced at trial, or the place where the discovery proceeding is located (*JP Morgan Chase & Co. v Indian Harbor Ins. Co.*, **98 AD3d 18**, **25**, **947 N.Y.S.2d 17** [1st Dept 2012], *lv denied* **20 N.Y.3d 858**, **984 N.E.2d 325**, **960 N.Y.S.2d 350** [2013], citing *People v Greenberg*, **50 AD3d 195**, **198**, **851 N.Y.S.2d 196** [2008], *lv dismissed* **10 N.Y.3d 894**, **891 N.E.2d 299**, **861 N.Y.S.2d 266** [2008]). In light of our conclusion that New York law applies, we need not decide how this issue would be decided under Texas law.

We have considered Exxon's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 23, 2017