

**Matter of Nassau County Consol. MTBE (Methyl  
Tertiary Butyl Ether) Prods. & Liab. Litig.**

2010 NY Slip Op 30132(U)

January 19, 2010

Supreme County. Nassau County

Docket Number: 601516/2009

Judge: Ira B. Warshawsky

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**SHORT FORM ORDER**

**SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NASSAU**

**PRESENT:**

**HON. IRA B. WARSHAWSKY,**

**Justice.**

**TRIAL/IAS PART 8**

IN RE: NASSAU COUNTY CONSOLIDATED MTBE  
(METHYL TERTIARY BUTYL ETHER) PRODUCTS  
LIABILITY LITIGATION.

INDEX NO. 601516/2009  
MOTION DATE: 01/08/2010  
MOTION SEQUENCE: 001 and  
002

**MOTION FOR RECUSAL**

The following papers read on this motion:

Notice of Motion & Affirmation in Support & Exhibits Annexed .....	1
Amended Notice of Motion & Affirmation in Support & Exhibits Annexed .....	2
Defendants' Response to Plaintiffs' Motion for Recusal .....	3
Affirmation in Reply of Denise A. Rubin, Esq. ....	4

Plaintiffs have moved pursuant to Judiciary Law § 14 that the Court recuse itself from sitting on what are now fourteen products liability litigation cases consolidated under the caption In Re: Nassau County Consolidated MTBE (Methyl Tertiary Butyl Ether) Products Liability Litigation (nine filed in Nassau County and five transferred to Nassau County from Suffolk County). To date, the only rulings the Court has made have been to consolidate all Nassau County cases before myself so that there might not be inconsistent rulings from three different judges, and then this Court became the recipient of five cases transferred to it by the Administrative Judge of Suffolk County.

**History**

Upon a careful review of the over forty listed defendants, the Court discovered it owned, or believed it owned, stock in two of these companies related to gasoline manufacturing and/or distribution, Exxom (ExxonMobil) and BP p.l.c.

The Court informed the plaintiffs' counsel of this information on or about September 11, 2009, and asked them to determine from their clients if they objected to the Court remaining on this case. Plaintiffs responded that their clients objected to my remaining on these matters.

The Court wrote a decision dated October 2, 2009, that, in the Court's opinion, its "interest" in these companies was of a de minimus nature and, thus, not an "economic interest." "It is an insignificant interest that should not raise any reasonable questions as to the Court's impartiality in these matters." (See decision of this Court dated October 2, 2009 referencing Part 100 of the Rules of the Chief Administrative Judge, more specifically, Section 100.3(E), the "Preamble" and included 100.0).

In open court on October 6, 2009, the Court made it clear, in response to questions by the plaintiffs' counsel, that it had not ruled pursuant to Judiciary Law § 14 and gave counsel permission to move thereunder. Counsel so moved via an Amended Notice of Motion dated December 4, 2009.

#### Discussion

Counsel now argues that Judiciary Law § 14 prohibits the Court from sitting or taking any part in the decision in any matters in which he has an interest. They further argue that "[D]ue process implies an impartial court, which is not provided if the judge has a direct, personal and substantial pecuniary interest in the case." Apparently plaintiffs did not realize that that statement is inconsistent with its position in the balance of its argument.

Judiciary Law § 14 – relevant portions provide:

#### **§ 14. Disqualification of judge by reason of interest or consanguinity**

A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree.

....

No judge shall be deemed disqualified from passing upon any litigation before him because of his ownership of shares of stock or other securities of a corporate litigant, provided that the parties, by their attorneys, in writing, or in open court upon the record, waive any claim as to disqualification of the judge.

Plaintiffs argue that the language of the statute is mandatory unless a party consents to the matter remaining before that particular judge. As noted by plaintiff in Casterella v. Casterella, 65 A.D.2d 614, 615 (2d Dept. 1978), the Appellate Division stated “while the statute is in part directed at protecting innocent litigants, its primary purpose is to insure the dignity of the judiciary.” (Nothing this Court has done nor said has left an innocent litigant unprotected nor diminished the “dignity of the judiciary.”)

Plaintiffs further contend that not only is the language of Judiciary Law § 14 mandatory “but is also necessary to avoid even the appearance and suggestion of impropriety by the court.”

The defendants oppose plaintiffs’ application. The defense analyzes Judiciary Law § 14 somewhat differently than plaintiffs, referencing its actual language.

The only basis for disqualification within section 14, as applied to our facts, is if the Court is “interested” or has an “interest” in the action or proceeding. The statute has no definition for “interest” or “interested.”

Separate and apart from the definitive disqualification sentence which leads off section 14, is that which refers to stock holdings, which apparently reflects an “interest” in the litigation (and apparently referring back to the first sentence though it stands alone, with no connecting terminology to the first sentence).

Defendants superimpose the Rules of the Chief Administrative Judge pertaining to disqualification (22 NYCRR § 100.0, 100.3(E)(1)c) and the Court’s earlier opinion onto Judiciary Law § 14, most specifically, the word “interested.” That a judge “shall not sit in [a matter] [in] which he is interested, ...”

Interest, under our facts, could only mean economic interest. Economic interest

(under 22 NYCRR § 100.0(D)) means ownership of a more than de minimis legal or equitable interest in one of the parties. “De minimis” denotes an insignificant interest that could not raise reasonable questions as to a judge’s impartiality. (100.0(D)(5)).

As expressed in the Court’s earlier decision, the court’s “interest” in two of the defendants was a tiny fraction of 1%. In fact, an infinitesimal interest.

The Court believes that today Judiciary Law § 14 cannot stand alone without its interrelationship with the aforementioned Rules of the Chief Administrative Judge, rules that post-date the enactment of the statute. Why would these rules have even been created if their logical definitions were to be ignored when dealing with the same subject matter, recusal, and with the same concerns, being “interested” in the litigation (ownership of stock in a party to a litigation)?

Plaintiffs accuse the defendants of jury-rigging to create a hybrid statute “to understand the legislature’s clear intent in drafting Judiciary Law § 14.” The Court disagrees. Plaintiffs then go on to discuss statutory interpretation and break no new ground in their argument. Plaintiffs themselves provide an apparent inconsistent argument.

In paragraph 13 of their supporting affirmation they state:

A Supreme Court justice’s participation in a state court case when he is the owner of shares in a defendant corporation is a violation of the law of the State of New York. Judiciary Law § 14 prohibits a judge from sitting or taking any part in the decision on any matter in which he has an interest. Queens-Nassau Mortgage Company v. Graham, 157 A.D. 489 (2d Dept. 1913). Due process implies an impartial court, which is not provided if the judge has a direct, personal and substantial pecuniary interest in the case.

The last sentence quoted above, though no citation is provided, is a direct quote from Bradford Audio Corporation v. Edward Pious, 392 F.2d 67 (C.A. 2d Cir. 1968). The court in that case stated that one of the judges who handled the underlying action in State Supreme Court when he was an owner of \$300.00 of Bradford “was a violation of the law of the State of New York” (footnoting to Judiciary Law § 14), then it made the above statement about due process. Apparently, the reason for the court’s

statement was to later reject a constitutional challenge to the judge's actions. What is clear is that plaintiff would not suffer a deprivation of its due process rights when the court does not have a substantial pecuniary interest in the case. Both these cases predate the Rules of the Chief Administrator by many decades.

Obviously, this Court's holdings in Exxom and BP p.l.c. are not "substantial" and could not be substantially affected by this proceeding. (See prior decision of this Court dated October 2, 2009 for analysis).

The Judiciary Law § 14 should be examined in the light of the court system as it stands today, not in 1913 or even 1968.

For Judiciary Law § 14 to be triggered, for it to apply initially, under our facts, the Court must be "interested." The Court is not "interested" when the Rules of the Chief Administrative Judge are applied to our facts (economic interest and de minimus defined), thus, the balance of the paragraph should not apply to this matter.

Putting aside this logical, legal argument, a new factual issue has arisen. Defense counsel points out that Exxom has reached a settlement with all plaintiffs in this action and, therefore, they will not be a party going forward. It is interesting to note plaintiffs do not comment on this statement of fact in their reply papers.

The Court holds stock in BP p.l.c. This company is not a defendant in this action, but two of the BP entities are defendants. These entities are separately incorporated subsidiaries of BP p.l.c. Due to the Court's lack of knowledge of the subsidiary status of the two separate corporations, it never thought about them in any other way but as BP. It is clear to the Court that ownership of stock in a parent corporation does not require recusal when an affiliate is a defendant in a lawsuit. (See DeRosa v. Chase Manhattan Mortgage Corp., 10 A.D.3d 317 (1<sup>st</sup> Dept. 2004); New York State Advisory Committee on Judicial Ethics Opinion 04-17).

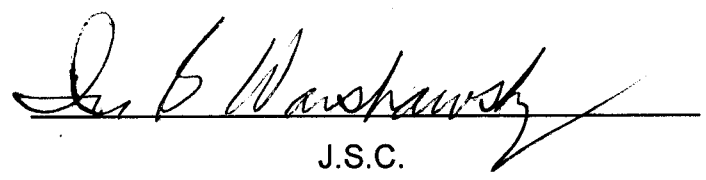
Therefore, in that Exxom is no longer a party to these case, and the Court has a minuscule ownership of a parent corporation of two of the defendants, it finds there is no factual basis for the Court to recuse itself pursuant to Judiciary Law § 14, nor pursuant to the Rules of the Chief Administrative Judge. Furthermore, the Court

believes it can rule over all matters in these cases fairly, impartially and without bias, partiality or prejudice to any party.

The motion to recuse is denied.

It is **SO ORDERED**.

Dated: January 19, 2010

  
J.S.C.

**ENTERED**

JAN 21 2010

NASSAU COUNTY  
COUNTY CLERK'S OFFICE