**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ORIGINAL

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	**Civil Action No.**
Plaintiff	
v.	**COMPLAINT**
	3-06CV1732-K
EXXON MOBIL CORPORATION	
Defendant.	

**APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION PURSUANT TO RULE 65, F.R.C.P.**

NATURE OF ACTION

This is an action under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626 (the "ADEA") and Rule 65 of the Federal Rules of Civil Procedure to enjoin Exxon Mobil Corporation ("Defendant" or "Exxon Mobil") from involuntarily retiring Charging Party Michael Morschauser on or before October 1, 2006.

Specifically, Plaintiff Equal Employment Opportunity Commission (the "EEOC" or "Commission") files this Complaint in Application to this Court for a temporary restraining order and preliminary injunction which shall restrain and enjoin the Defendant from involuntarily retiring Charging Party Michael Morschauser on or before October 1, 2006. Defendant has implemented and enforced an age 60 practice that prohibits a pilot from flying corporate airplanes at the age of 60, forcing Mr. Moreschauser into involuntary retirement. Defendant claims that age 60 is a *bona fide* occupational qualification ("BFOQ") to involuntarily retire its

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the "ADEA"), which incorporates by reference Section 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. § 217.

2. The employment practices alleged to be unlawful were and are now being committed, or will be committed, within the jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "EEOC" or "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant, Exxon Mobil Corporation, has continuously been doing business in the State of Texas, and has continuously had at least 20 employees.

5. At all relevant times, Defendant, Exxon Mobil Corporation, has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

CONCILIATION

6. Prior to the institution of this lawsuit, the Commission's representatives attempted

pilots, regardless of their health, qualifications and proficiencies. EEOC complains that such policy is clearly against the public interest and in violation of the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 626.

REQUEST FOR EXPEDITED HEARING

The EEOC respectfully requests an expedited hearing on this matter. Mr. Moreschauser's 60th birthday was September 7, 2006. Exxon has already removed him from flight duty, and threatens to involuntarily retire him on or before October 1, 2006. Mr. Moreschauser will be irreparably harmed if forcibly retired. By letter dated June 19, 2006, Defendant has stated in absolute terms that Mr. Moreschauser will be removed from flight duty on September 7, 2006 and will be retired on or before October 1, 2006. (Letter of June 19, 2006, attached as Exhibit 1). Mr. Morschauser was involuntarily removed from flight status on September 7, 2006. Mr. Morschauser will be forcibly retired on or before October 1, 2006. If retired, Mr. Moreschauser will lose the position he has held for more than 20 years, because by the time litigation has concluded, a court would not as a practical matter, be likely to require Exxon Mobil to reinstate Mr. Moreschauser to a position then long-held by his replacement. If forcibly retired, Mr. Moreschauser will suffer irreparable harm to his piloting skills. It is not likely that Mr. Moreschauser will be able to find a full-time pilot position with another company or afford the significant expense of periodic flight testing. For the above reasons, the EEOC requests that this Court hold an expedited hearing on this matter, or in the alternative, requests that this Court order the Defendant to stay any retirement procedures or actions regarding Mr. Moreschauser until this Court is able to hold a hearing on this matter.

to eliminate the alleged unlawful employment practices and to effect voluntary compliance with the ADEA through informal methods of conference and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b). EEOC specifically requested that the Defendant stay any action against Mr. Morschauser while conciliation was pending. Defendant absolutely declined that request, making this request for court intervention necessary to preserve Mr. Morschauser's rights under the law.

STATEMENT OF CLAIMS

7. On February 24, 2006, Glen Skaggs filed a charge of discrimination (450-2006-00615) with the EEOC Dallas District Office, alleging that Exxon Mobil Corporation discriminated against him based on his age by the development and implementation of a policy that excludes corporate pilots from flight duty at age 60, in violation of the Age Discrimination in Employment Act of 1967. (Skaggs Charge of Discrimination, attached as Exhibit 2).

8. On August 9, 2006, Michael Morschauser filed a charge of discrimination (450-2006-02150) with the EEOC Dallas District Office, alleging that Exxon Mobil Corporation discriminated against him based on his age by the development and implementation of a policy that prohibits corporate pilots from flight duty at age 60, in violation of the Age Discrimination in Employment Act of 1967. (Morschauser Charge of Discrimination, attached as Exhibit 3).

9. The EEOC notified Exxon Mobil Corporation of Mr. Skagg's charge on February 24, 2006, and requested a Position Statement responding to the charge.

10. Exxon Mobil Corporation submitted a Position Statement on March 27, 2006. (Position Statement attached as Exhibit 5)

11. On August 9, 2006, EEOC notified Exxon Mobil Corporation of Mr.

Moreschauser's charge of discrimination.

12. On August 16, 2006, EEOC issued a Letter of Determination finding that Exxon Mobil violated the ADEA by its development and implementation of a policy that removes corporate pilots from flight duty when they reach age 60. The EEOC found that Exxon Mobil discriminated against Charging Parties and a class of similarly situated employees in violation of the ADEA. (EEOC Letter of Determination, attached as Exhibit 4).

13. In its position statement to the EEOC, Exxon Mobil stated that it has a long-standing practice of removing pilots from flight duty when they reach age 60. Exxon Mobil specifically stated that ExxonMobil Aviation has established a *bona fide* occupational qualification that its personnel will not pilot its corporate aircraft after the pilot reaches age 60. Exxon Mobil stated that the reason for this practice is safety, and that it is consistent with and based squarely on the FAA regulations governing commercial passenger airline pilots. (Exxon Mobil Position Statement, attached as Exhibit 5). Exxon Mobil reiterated this position in a letter sent to EEOC September 15, 2006. (Exxon Mobil Letter of September 15, attached as Exhibit 8).

14. On August 22, 2006, EEOC sent Mr. O'Niell a letter, indicating that EEOC could not wait until September 15, 2006, to talk about resolving this case because Mr. Morschauser's birthday is September 7, 2006. EEOC said it would agree to an extension if Exxon would agree to not take any action against Morschauser. EEOC said it would agree to extend a date for response until August 28, 2006. (EEOC Letter attached as Exhibit 9).

15. On August 29, 2006, EEOC received a letter from Mr. O'Niell indicating that the company would not agree to a stand down for any period of time, and indicated that Exxon

Mobil was unwilling to depart from its Age 60 policy for even a short period of time. (Letter attached as Exhibit 10).

16. A Temporary Restraining Order and Preliminary injunctive relief is necessary because Charging Party Michael Moreschauser will be involuntarily retired some time between now and October 1, 2006. Mr. Morschauser has not been offered the prospect of a non-flying position with the company.

17. The accompanying affidavit of Michael Morschauser provides factual support for this Complaint in Application for a Temporary Restraining Order and Preliminary Injunction. (Affidavit attached as Exhibit 6).

18. The requirements for a Temporary Restraining Order and Preliminary Injunction are satisfied in this case.

19. The EEOC incorporates by reference the attached Memorandum in Support of its Complaint in Application for a Temporary Restraining Order and Preliminary Injunction.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a Temporary Restraining Order and Preliminary Injunction restraining Defendant from involuntarily retiring Mr. Morschauser on or before October 1, 2006.

B. Schedule a hearing for the earliest possible date following issuance of a Temporary Restraining Order to hear this matter on the Commission's Application for a Preliminary Injunction.

C. Following a hearing, issue a Preliminary Injunction restraining and enjoining Defendant, its officers, agents, servants, employees, and attorneys and those persons acting in concert or participation with them from using age as a *bona fide* occupational qualification for its corporate pilots as that term is defined in 29 U.S.C. § 623(f)(1). Instead, the Court will order the Defendant to revise its corporate pilot retirement practice in light of current medical and technological developments and make an individualized assessment as to pilot retirement date based on factors other than age.

D. Grant such further relief as the Court deems necessary and proper in the public interest.

E. Award the Commission its costs of this action.

WHEREFORE, premises considered, the EEOC respectfully prays that this Court award the EEOC a temporary restraining order and preliminary injunction which shall restrain and enjoin the Defendant from involuntarily retiring Mr. Morschauser on or before October 1, 2006. The EEOC respectfully prays that this Court will grant the EEOC an expedited hearing on this matter. The EEOC prays for such other and further relief to which it may be entitled.

Respectfully submitted,

JAMES LEE
Deputy General Counsel

GWENDOLYN Y. REAMS
Associate General Counsel

ROBERT A. CANINO
Regional Attorney
Oklahoma State Bar No. 011782

SUZANNE M. ANDERSON
Supervisory Trial Attorney
Texas Bar No. 14009470

WILLIAM C. BACKHAUS
Senior Trial Attorney
Texas Bar No. 01493850

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Dallas District Office
207 South Houston, 3rd Floor
Dallas, Texas 75202
(214) 253-2742
(214) 253-2749 (FAX)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's Complaint in Application for a Preliminary Injunction was served by certified mail, return receipt requested on counsel of record on the 22nd day of September, 2006.

Herbert O'Niell
Exxon Mobil Corporation
Law Department
Houston, Texas 77252-2180

Suzanne M. Anderson

Exxon Mobil Corporation
3250 Love Field Drive
Dallas, Texas 75235
972 373 3790 Telephone
972 373 3799 Facsimile

Patrick [illegible] Andrews
Manager
Aviation Services

ExxonMobil

June 19, 2006

Mr. Michael C. Morschauser
1625 Glen Springs Drive
Plano, TX 75093

Dear Mike:

In keeping with the Company's present policy to have pilots cease flying upon reaching age 60, we would like to confirm that you will be removed from flight duty effective September 7, 2006 and retire on or before October 1, 2006. As you may be aware, this policy has been in place for many years.

The estimated retirement package that is being offered to you includes an enhanced benefit in the form of a severance payment. Attached is a waiver and release form related to that benefit. This form must be signed and returned for you to receive the severance payment. If you have any questions about the terms of the Waiver and Release, you should consult your personal attorney. We request that the form be returned by July 14, 2006.

If you have any questions, or need additional information regarding your upcoming retirement, please contact the Benefits Office in Houston at 713-680-5858 or 800-262-2383 or Luciana Abud in HR at 972-444-1874.

Best regards,

Pat Andrews

Attachment

EXHIBIT
1

CHARGE OF DISC[redacted]ATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGE[redacted]

[ ] FEPA
[X] EEOC

CHARGE NUMBER: 450 2006 00615

CIVIL RIGHTS DIVISION, TEXAS WORKFORCE COMMISSION and EEOC

State or local Agency, if any

NAME *(Indicate Mr., Ms., Mrs.)*	HOME TELEPHONE *(Include Area Code)*
Glen E. Skaggs	(865) 458-5151

STREET ADDRESS / CITY, STATE AND ZIP CODE	DATE OF BIRTH
113 Hiawassee Lane, Lowden, TN 37774	01/06/1946

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more than one list below.)*

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE *(Include Area Code)*
EXXON MOBIL CORPORATION	500+	(972) 373-3790

STREET ADDRESS / CITY, STATE AND ZIP CODE	COUNTY
3250 Love Field Dr., Dallas, TX 75235	Dallas

NAME	TELEPHONE NUMBER *(Include Area Code)*
EXXON MOBIL CORPORATION	(972) 444-1803

STREET ADDRESS / CITY, STATE AND ZIP CODE	COUNTY
5959 Las Colinas Blvd., Room 1152, Irving, TX 75039-2298	Dallas

[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN
[X] RETALIATION [X] AGE [ ] DISABILITY [ ] OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE: 11/03/2005 — 01/01/2006
[ ] CONTINUING ACTION

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s)):*

PERSONAL HARM:

On November 3, 2005, I was advised by a letter from Patricia Andrews, Manager, Aviation Services, that I would have to cease flying and my retirement would become effective on December 30, 2005. I received a second notification dated December 30, 2005, from Ms. Andrews, advising me that my separation would be effective on January 1, 2006 and I would no longer be an employee of Exxon Mobil Corporation. Exxon Mobil Corporation states that it is their present policy to have pilots cease flying upon reaching the age of 60 and are forced to retire. I believe this to be a discriminatory practice because of my age and because Exxon Mobil Corporation operates under FAR Part 91, General Aviation Regulations, not FAR 121.

I believe I have also been retaliated against because I would not agree to the terms of the company's severance agreement. In December 2005, I was taken completely off flight status and grounded from flying. On January 6, 2006, I received a checklist memo advising me that I was terminated as it instructed me to turn in my badge and keys, however, I had already been locked out and unable to enter the premises.

DISCRIMINATION STATEMENT: I believe I have been discriminated against because of my age, 60, in violation of the Age Discrimination in Employment Act of 1967, as amended, and retaliated against for opposing to unlawful practices by my former employer, in violation of Section 704(a) of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

Date 2/24/06 Charging Party *(Signature)*

EEOC FORM 5 (REV. 3/01)

EXHIBIT 2

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974 See enclosed Privacy Act Statement and other information before completing this form

Charge Presented To. Agency(ies) Charge No(s).

- [ ] FEPA
- [X] EEOC 450-2006-02150

Texas Workforce Commission Civil Rights Division and EEOC

State or local Agency, if any

Name (indicate Mr, Ms, Mrs)	Home Phone (Incl Area Code)	Date of Birth
Mr. Michael Morschauser	**(972) 407-0964**	**09-08-1946**

Street Address / City, State and ZIP Code

1625 Glen Springs Dr., Plano, TX 75093

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others (*If more than two, list under PARTICULARS below.*)

Name	No Employees, Members	Phone No (Include Area Code)
EXXON MOBIL CORPORATION	**500 or More**	**(972) 373-3790**

Street Address / City, State and ZIP Code

3250 Love Field Dr., Dallas, TX 75235

Name	No Employees Members	Phone No (Include Area Code)

Street Address / City, State and ZIP Code

DISCRIMINATION BASED ON (*Check appropriate box(es)*)

- [ ] RACE
- [ ] COLOR
- [ ] SEX
- [ ] RELIGION
- [ ] NATIONAL ORIGIN
- [ ] RETALIATION
- [X] AGE
- [ ] DISABILITY
- [ ] OTHER (*Specify below.*)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest	Latest
06-19-2006	

- [X] CONTINUING ACTION

THE PARTICULARS ARE (*If additional paper is needed, attach extra sheet(s)).*

PERSONAL HARM:

I believe I am being discriminated against under the Age Discrimination in Employment Act (ADEA) of 1967, as amended, because my employer has a policy/practice that requires me to retire at the age of 60.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY – *When necessary for State and Local Agency Requirements*

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Michael C. Morschauser

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (*month, day, year*)

Petra C Pineda 08/09/06

Aug 09, 2006 Michael C Morschauser

Date *Charging Party Signature*

EXHIBIT
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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Dallas District Office

207 S. Houston Street, 3rd Floor
Dallas, TX 75202-4726
(214) 253-2700
TTY (214) 253-2710
FAX (214) 253-2720

EEOC CHARGE NO: 450-2006-00615 and
EEOC CHARGE NO: 450 2006 02150

Glen E. Skaggs
113 Hiawassee Lane
Lowden, TN 37774

CHARGING PARTIES

Michael C. Morschauser
1625 Glen Springs Dr.
Plano, TX 75093

EXXON MOBIL CORP.
3250 Love Field Dr.
Dallas, TX 75235

RESPONDENT

Exxon Mobil Corporation
Attention: Herbert O'Niell
Counsel, Labor/Employment & Special Services
Law Department
P.O. Box 2180
Houston, TX 77252-2180

<u>DETERMINATION</u>

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission the following determination as to the merits of the subject charges filed under the Age Discrimination in Employment Act (ADEA) of 1967, as amended.

All requirements for coverage have been met. Charging Parties allege in their EEOC charges that Respondent discriminated against them by implementing a policy and practice that requires a pilot to cease flying corporate airplanes when the pilot reaches the age of 60 on his date of birth, which forces the pilot to involuntary retirement.

Respondent denies the allegations that it violates the ADEA. Respondent admits that it has implemented a policy that does not allow pilots to fly corporate aircraft after reaching age 60. Respondent claims that the age of a pilot is a bona fide occupational qualification ("BFOQ") necessary to the normal operations of the Respondent's business. The Respondent states that its policy is identical to FAA "Age 60 Rule" found in the Federal Air Regulations, FAR 121.383(c).

EXHIBIT
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The investigation revealed that there is sufficient evidence to show that the Respondent violated the Age Discrimination in Employment Act by the development and implementation of its policy. The FAA "Age 60 Rule" does not directly apply to the Respondent's flight operations. The Respondent has not met its burden of showing that the age of a pilot is a BFOQ. Therefore, there is reasonable cause to believe that the Respondent discriminated against the Charging Parties and a class of similarly situated employees in violation of the Age Discrimination in Employment Act of 1967, as amended.

The Commission has further concluded that at this time, it will not make any finding on the claim of retaliation also raised in the charge of discrimination.

The Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter, which will include immediate suspension of the Respondent's age 60 rule. If the Respondent declines to discuss settlement or if, for any other reason, a settlement acceptable to the Office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

On behalf of the Commission:

AUG 16 2006

Date

Michael C. Fetzer
District Director

Exxon Mobil Corporation
Law Department
P.O. Box 2180
Houston, Texas 77252-2180
713 656 7990 Telephone
713 656 9697 Facsimile

Her[illegible]'Niell
Counsel
Labor/Employment & Special Services

March 27, 2006

ExxonMobil

Lillie R. Wilson, Enforcement Supervisor
Equal Employment Opportunity Commission
Dallas District Office -- 450
207 S. Houston Street
3d Floor
Dallas, Texas 75202

Re: Charge # 450-2006-00615
Glen E. Skaggs

Dear Ms. Wilson:

This letter states the position of the Respondent Exxon Mobil Corporation (or "ExxonMobil") on the above charge. Exxon Mobil Corporation denies any unlawful age discrimination or retaliation against the Charging Party. Furthermore, there are procedural considerations including respect for the federal agency with specific responsibility for safe air travel and the filing of the charge vis-a-vis the challenged policy that would also render it non-viable. Any ExxonMobil documents and information provided in response to the Charge are considered confidential, valuable business information.

Exxon Mobil Corporation, a New Jersey corporation, is a large integrated energy company with headquarters in Irving Texas. The Charging Party, Mr. Glen E. Skaggs, was a Pilot in the Aviation Services Department until his separation from employment effective December 31, 2005.

Mr. Skaggs' principal duties included acting as pilot or pilot-in-command of Global Express and Gulfstream IV corporate aircraft. These company-owned aircraft are used to fly company personnel and business passengers to destinations worldwide. The Global Express is an ultra long range corporate jet designed to fly at high altitudes and at speeds just below sonic level (i.e. Mach 0.88 or 0.85). This aircraft is capable of extremely long intercontinental flights (e.g., New York to Tokyo) without refueling and can fly between any two points on the globe with only one refueling stop. The Global Express can be configured to accommodate up to eighteen passengers and a flight crew of two. The Gulfstream IV is also a high altitude, high speed corporate aircraft with a capacity of up to 19 passengers and two crew. Both aircraft are highly complex and designed for long range international travel. Typical worldwide destinations include Angola, Cameroon, Chad, Nigeria, Equatorial Guinea, Indonesia, and Kazakhstan.

EXHIBIT
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Under Federal Aviation Administration (or "FAA") regulations covering Section 121 operations, no person may serve as the pilot of any covered aircraft after attaining the age of 60. The FAA regulations (14 CFR 121) cover primarily commercial scheduled passenger aircraft operations. Section 121.383(c) of Title 14 C.F.R. states no person may serve as a pilot on an airplane engaged in operations under part 121 if that person has reached his 60th birthday. The reason for this regulatory age restriction is passenger and flight operations safety. The FAA has found upon repeated study that human physiological function declines with age and this decline affects a pilot's performance over time. The FAA has also found there are no medical testing methods that can identify the age at which a specific pilot can no longer fly safely. The FAA's long-standing selection of 60 as its pilot age cutoff has been challenged unsuccessfully by various pilots associations on numerous occasions and has not been revoked or modified.

ExxonMobil aviation operations are not technically covered by Section 121. However, ExxonMobil aviation operations have significant similarities to Section 121 operations, including large and complex high speed, high altitude aircraft that carry large numbers of passengers and crew over long distances and populated areas. ExxonMobil pilots have responsibilities for their craft, crew, passengers, and the public that are the same as the responsibilities of pilots of craft regulated by Section 121.

ExxonMobil believes its corporate aircraft operations should be as safe for its pilots, passengers, guests, and the public as FAA Section 121 commercial aviation. Therefore, ExxonMobil Aviation aligns its practices with these regulations, requires its pilots meet Class 1 medical requirements, and has established a bona fide occupational qualification that its personnel will not pilot these complex corporate aircraft after the pilot reaches age 60. The reason for these practices is safety and they are consistent with and based squarely on the FAA regulations governing commercial passenger airline pilots.

In 1999 all pilots were reminded of the company's safety-based qualification standard that pilots would not be allowed to fly company aircraft after attaining age 60. Historically, in cases in which there have been other suitable job assignments available, pilots reaching age 60 have been reassigned to other, non-pilot jobs within the company. Some pilots have refused such other work assignments and have resigned from the company; some of these have left with a severance package. In Mr. Skaggs' case, there was no other suitable job assignment for him. He was offered a severance package, refused to execute the release required to obtain the severance benefit, and was separated from the company with retiree status.

Mr. Skaggs' claim he was discharged in retaliation for refusing to execute the severance package release has no merit. The age-sixty qualification standard was communicated to Mr. Skaggs in 1999. He understood the requirement well, as he stated in his Employee Development Report for the 2001 - 2002 performance evaluation cycle: "Long term I would like to continue in that endeavor, but the parent company mandates retirement at 60 . . . " And, again in his contribution to the Employee Assessment & Development Summary for the 2002 - 2003 performance cycle, he stated: "I would like to discuss with management Exxon's 'practice' of forcing all pilots to retire at age 60 . . ." Mr. Skaggs knew that when he reached age 60 he would no longer be permitted to fly company aircraft. When Mr. Skaggs approached age 60 and no suitable job assignment existed for him, he was informed his separation would be effective December 31, 2005 and he was offered a severance package. He refused to accept the package offered and was separated from employment according to the company's well-known practice. As indicated by the fact that Mr. Skaggs' employment was terminated effective December 31, 2005, his refusal to execute the Waiver and Release required to receive the severance package had nothing to do with his separation from the company. The release is a routine prerequisite to severance pay packages and is based on the voluntary choice of the employee.

For the reasons above, this charge is without merit and should be dismissed.

Respectfully submitted,

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	}	
Plaintiff	}	
v.	}	**Civil Action No.**
EXXON MOBIL CORPORATION	}	
Defendant.	}	

AFFIDAVIT

1. My name is Michael Morschauser. I am over 18 years of age and of sound mind. I make this affidavit in connection with the Complaint in Application for Temporary Restraining Order and Preliminary Injunction brought by the Equal Employment Opportunity Commission against Exxon Mobil Corporation. I am one of the pilots at Exxon Mobil.

2. My duties include flying as pilot both domestically and internationally.

3. In my position, I used to fly Exxon Mobil company personnel and business passengers on Bombardier Global Express and Gulfstream IV ultra-long range business jets on flights to Angola, Moscow, London, Paris, Beijing, Nigeria, Equatorial Guinea, Indonesia and Kazakhstan, among other destinations, including multiple destinations in the Middle East.

4. I hold an Airline Transport Pilot license and am fully qualified to fly these complex, state-of-the-art business jets.

EXHIBIT
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5. I am in excellent health and hold a First Class Medical Certificate.

6. My qualifications and proficiency to fly these aircraft are unquestioned. I was a pilot for twenty years (1969-1989) of continuous flight duty in the Marine Corps. I flew 10,000 hours during my military service. Between 1981 and 1989, I was the Command Pilot for the Commandant of the Marine Corps. The Commandant is a Four Star General who has his own aircraft and sits on the Joint Chiefs of Staff. I was a Standards Captain for Exxon Mobil from 1989 until 2006.

7. I am aware of Exxon Mobil's practice of removing corporate pilots from flight duty at age 60.

8. On June 19, 2006, I received a letter from Exxon Mobil that indicated that "in keeping with the Company's policy to have pilots cease flying upon reaching age 60," the company decided to remove me from flight duty effective September 7, 2006 and retire on or before October 1, 2006. (Letter of June 19, 2006, attached as Exhibit 1).

9. I did not want to be retired from flying effective September 7, 2006 at age 60. I do not want to be permanently retired on or before October 1, 2006.

10. I have not been offered any non-flight position at Exxon Mobil.

11. I will suffer immediate and irreparable harm for the following reasons. If retired, I would lose a position that I have held for decades, because after protracted litigation, a court would likely not require Exxon Mobil to reinstate me to a position then long-held by another employee. If retired, I also would be unable to keep up with the daily operations of Exxon Mobil's sophisticated aviation department. If retired, I would

suffer irreparable harm to my piloting skills. This is especially so since Exxon Mobil flies such large and sophisticated jets.

12. Furthermore, even corporate aircraft departments that have no age policies are reluctant to hire pilots over age 60, because they commonly assume that the financial investment in training a pilot who would work only a few more years would not be cost effective. I know this from my experience and connections within the industry.

13. Once grounded and involuntarily retired, I likely would be unable to find full-time pilot employment or afford the significant expense of the periodic flight training necessary to maintain my flight proficiency.

14. Because recent flight experience has proven to be the most important factor in maintaining piloting skills, the longer I am off flight status the more my piloting skills will erode from non-use, and I might never fully regain those skills even if Exxon Mobil subsequently reinstates me to flight status.

15. On August 9, 2006, I filed EEOC Charge of Discrimination No. 450-2006-02150 with the Dallas District Office, complaining that Exxon Mobil discriminated against me because of my age in violation of the Age Discrimination in Employment Act.

16. On August 16, 2006, EEOC issued a Letter of Determination finding that Exxon Mobil violated the ADEA by its development and implementation of a policy that removes corporate pilots from flight duty when they reach age 60. The EEOC found that Exxon Mobil discriminated against me, Charging Party Glen Skaggs and a class of similarly situated employees in violation of the ADEA.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this _14th_ of _September_, 2006.

MICHAEL MORSCHAUSER

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Dallas District Office

207 S. Houston Street, 3rd Floor
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E-mail:william.backhaus@eeoc.gov

VIA FACSIMILE (262) 314-2331

August 21, 2006

Herbert O'Niell
Counsel, Labor/Employment & Special Services
Exxon Mobil Corporation
Law department
P.O. Box 2180
Houston, Texas 77252-2180

RE : EEOC Charge No. 450-2006-00615 (Skaggs)
EEOC Charge No. 450-2006-02150 (Morschauser)

Dear Mr. O'Niell:

I'm glad that we had the opportunity to speak on the telephone this morning and discuss our respective positions in the above referenced charges of discrimination. As stated in EEOC's Letter of Determination issued August 16, 2006, the EEOC's view is and will continue to be that Exxon's policy and practice for removal of pilots from flight status at the arbitrary age of 60 is a violation of the Age Discrimination in Employment Act. The Commission remains prepared to resolve these charges through conciliation, if possible. However, given that Charging Party Mike Morschauser's 60th birthday is September 7, 2006, the Commission seeks quick and immediate action from Exxon to resolve these charges on his behalf.

As I indicated to you in a voice message on Thursday, August 17, 2006, EEOC is willing to enter into a "stand down" agreement for 60 days during which time Mr. Morschauser will not be removed from active flight status and the parties can proceed through the conciliation process. This is an eminently reasonable course of action that will spare Mr. Morschauser irreparable harm and at the same time avoid court intervention. In our conversation this morning, you indicated that Respondent is not willing to change its plans to involuntarily retire Mr. Morschauser from active flight status effective September 8, 2006 pursuant to "long-standing company policy." You also indicated that the "timing was too tight" for Respondent to respond to EEOC's proposed Conciliation Agreement and you requested an extension until September 15, 2006 to do so. While the Commission is not averse to continuing the conciliation dialogue in good faith, Mr. Morschauser faces irreparable injury and adverse employment action if he is involuntarily retired effective September 8, 2006. Therefore, in light of Respondent's entrenched position regarding the removal of Mr. Morschauser from active flight status, please be advised

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that the Dallas District Office has no choice but to consider its options to file a temporary restraining order and preliminary injunction against Exxon.

Feel free to call me at (214) 253-2742 if you want to discuss this matter further.

Cordially,

William C. Backhaus
Senior Trial Attorney

Exxon Mobil Corporation
Law Department
P.O. Box 2180
Houston, Texas 77252-2180
713 656 7990 Telephone
713 656 9697 Facsimile

Herbert E. O'Niell
Counsel
Labor/Employment & Special Services

ExxonMobil

September 15, 2006

Suzanne M. Anderson, Supervisory Trial Attorney
Equal Employment Opportunity Commission
207 S. Houston Street, 3rd Floor
Dallas, Texas 75202-4726

Re: **EEOC Charge No. 450-2006-00615 (Skaggs)**
EEOC Charge No. 450-2006-02150 (Morschauser)

Dear Ms. Anderson:

We have carefully considered the EEOC's proposed resolution of the above-referenced charges, as set forth in its offer of conciliation; however we cannot agree with it. As you are aware, the FAA has thoroughly and repeatedly analyzed this issue and, to date continues to prohibit commercial airline and cargo pilots from flying after reaching age 60. Based on its analyses of the scientific studies—both FAA research and non-FAA research—the FAA has concluded that no medical tests or combination of tests can be applied to reliably predict the level of additional risks associated with aging, but that the increased risk is real and well documented. As made clear in its Statement of Position, ExxonMobil implemented its policy to manage these documented risks to public safety and the safety of its corporate passengers (including employees and guests) which the FAA has determined cannot currently be eliminated with any reliability by individual assessments. ExxonMobil pilots are faced with the same critical challenges as commercial pilots and cargo pilots directly covered by the FAA rule, and we believe our passengers, as well as the thousands of people in the flight paths of our aircraft, should have the same margin of safety that applies to commercial flight operations.

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In light of the FAA's analysis and conclusions regarding the scientific research on the safety issue, we must err on the side of avoiding risk to life and limb and we are not in a position to second-guess the FAA's conclusions on this issue. However, if the EEOC is aware of any information indicating that the FAA has reconsidered its analysis on the safety question, then it should provide such info to us so that we can consider it and discuss it with you.

Your cooperation in this matter is appreciated.

Regards,

/ph

EXXON MOBIL CORPORATION
POST OFFICE BOX 2180 • HOUSTON, TEXAS 77252-2180

Law Department

FACSIMILE TRANSMISSION REQUEST

DATE: September 15, 2006
FROM: Herb O'Niell

TIME: 4:37 PM
EXT: 713-656-7990
FAX: 713-656-9697

TO: **Suzanne M. Anderson, Supervisory Trial Attorney**

PHONE: **(214) 253-2700**

FAX NO.: **(214) 253-2720**

MESSAGE:

RE: EEOC Charge - No. 450-2006-00615 (Skaggs)
EEOC Charge - No. 450-2006-02150 (Morschauser)

FOR TRANSMISSION PROBLEMS CALL: 713/656-4419

2 Page(s) to follow

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Dallas District Office

207 S. Houston Street, 3rd Floor
Dallas, TX 75202-4726
(214) 253-2700
TTY (214) 253-2710
FAX (214) 253-2720
EEOC Website: www.eeoc.gov

VIA FACSIMILE (262) 314-2331

August 22, 2006

Herbert O'Niell
Counsel, Labor/Employment & Special Services
Exxon Mobil Corporation
Law department
P.O. Box 2180
Houston, Texas 77252-2180

RE : EEOC Charge No. 450-2006-00615 (Skaggs)
EEOC Charge No. 450-2006-02150 (Morschauser)

Dear Mr. O'Niell:

The EEOC cannot agree to extend the date to September 15, 2006 for Exxon to respond to the EEOC's draft Conciliation Agreement. Your letter does not indicate any pressing reason why Exxon needs an additional 3 weeks to respond to EEOC's request for conciliation of these charges. The EEOC could agree to extend the date for 7 days until August 29, 2006.

According to your letter, Exxon will enforce its Age 60 Policy and take away Mr. Moreschauser's piloting duties after his 60th birthday on September 7, 2006. EEOC cannot idly stand by while Mr. Morschauser is removed from flight duty. Would Exxon agree to postpone any action against Moreschauser until after the parties have had the opportunity to meet and discuss conciliation? If Exxon could agree to a standstill so that Mr. Moreschauser can continue all of his duties, then EEOC can agree to give Exxon a longer extension to think over the draft Conciliation Agreement. If Exxon cannot agree, then EEOC will have no choice but to fail conciliation and consider immediate legal options to protect Mr. Moreschauser's rights under the Age Discrimination in Employment Act.

Please call me at (214) 253-2740 if you have any questions. Please inform EEOC on or before August 28, 2006 as to whether Exxon can or cannot agree to postpone any action against Moreschauser. Thank you for your consideration.

Sincerely,

Suzanne M. Anderson
Supervisory Trial Attorney

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Confirmation Report – Memory Send

Page : 001
Date & Time: Aug-22-06 02:54pm
Line 1 : 2142532749
Line 2 : +214 253 2749
Machine ID : EEOC LEGAL

Job number	:	432
Date	:	Aug-22 02:53pm
To	:	☎92623142331
Number of pages	:	001
Start time	:	Aug-22 02:53pm
End time	:	Aug-22 02:54pm
Pages sent	:	001
Status	:	OK

Job number : 432 *** SEND SUCCESSFUL ***

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Dallas District Office

207 S. Houston Street, 3rd Floor
Dallas, TX 75202-4726
(214) 253-2700
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EEOC Website: www.eeoc.gov

VIA FACSIMILE (262) 314-2331

August 22, 2006

Herbert O'Niell
Counsel, Labor/Employment & Special Services
Exxon Mobil Corporation
Law department
P.O. Box 2180
Houston, Texas 77252-2180

RE : EEOC Charge No. 450-2006-00615 (Skaggs)
EEOC Charge No. 450-2006-02150 (Morschauser)

Dear Mr. O'Niell:

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According to your letter, Exxon will enforce its Age 60 Policy and take away Mr. Moreschauser's piloting duties after his 60th birthday on September 7, 2006. EEOC cannot idly stand by while Mr. Morschauser is removed from flight duty. Would Exxon agree to postpone any action against Moreschauser until after the parties have had the opportunity to meet and discuss conciliation? If Exxon could agree to a standstill so that Mr. Moreschauser can continue all of his duties, then EEOC can agree to give Exxon a longer extension to think over the draft Conciliation Agreement. If Exxon cannot agree, then EEOC will have no choice but to fail conciliation and consider immediate legal options to protect Mr. Moreschauser's rights under the Age Discrimination in Employment Act.

Please call me at (214) 253-2740 if you have any questions. Please inform EEOC on or before August 28, 2006 as to whether Exxon can or cannot agree to postpone any action against Moreschauser. Thank you for your consideration.

Sincerely,

Suzanne M. Anderson
Supervisory Trial Attorney

Exxon Mobil Corporation
Law Department
P.O. Box 2180
Houston, Texas 77252-2180
713 656 7990 Telephone
713 656 9697 Facsimile

Herbert [illegible] O'Niell
Counsel
Labor/Employment & Special Services

ExxonMobil

August 29, 2006

Suzanne M. Anderson, Supervisory Trial Attorney
Equal Employment Opportunity Commission
207 S. Houston Street, 3rd Floor
Dallas, Texas 75202-4726

Re: EEOC Charge No. 450-2006-00615 (Skaggs)
EEOC Charge No. 450-2006-02150 (Morschauser)
Your Letter of August 22, 2006

Dear Ms. Anderson:

We are disappointed that the EEOC has refused to extend the time until September 15 for ExxonMobil to consider your request to conciliate and has threatened to fail conciliation unless ExxonMobil first agrees to waive the Age-60 Rule for Mr. Morschauser and assign him to flying duties during the period of September 7 through September 15.

As you know, although Mr. Morschauser will not be permitted to fly after September 7, he will continue to receive full pay and benefits through the end of September. By September 15 (the date ExxonMobil proposes to respond to the EEOC's conciliation request), only a week will have passed. We believe there is no irreparable harm in any event, but certainly under these circumstances, it is difficult to fathom that Mr. Morschauser will have been irreparably harmed by such a short extension (and a brief discontinuation of his flying duties).

On the other hand, the EEOC cannot expect ExxonMobil to agree, as a precondition for a reasonable extension of time to consider the request for conciliation, that it accept the risk—even for a short time—of a departure from a safety standard which we feel we must respect. As made clear in our Statement of Position, ExxonMobil implemented its policy to manage documented risks to public safety and the safety of its corporate passengers (including employees and guests) that cannot currently be eliminated with any degree of reliability by individual assessments. In balancing these risks against the Hobson's choice presented by the EEOC, ExxonMobil must err on the side of avoiding the risk to life and limb.

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We still plan to respond to the EEOC's conciliation request on or before September 15, 2006.

Very truly yours,