

**In the United States Court of Appeals
for the Tenth Circuit**

No. 19-1330

BOARD OF COUNTY COMMISSIONERS OF BOULDER
COUNTY, ET AL., PLAINTIFFS-APPELLEES

v.

SUNCOR ENERGY (U.S.A.) INC., ET AL.,
DEFENDANTS-APPELLANTS

MOTION OF APPELLANTS FOR CLARIFICATION

Appellants Exxon Mobil Corporation, Suncor Energy (U.S.A.) Inc., Suncor Energy Sales Inc., and Suncor Energy Inc. respectfully move for clarification of the order entered by the Court earlier today with respect to the Motion of Appellants for an Emergency Stay of the Remand Order Pending Appeal.

1. At issue in this appeal is the district court's order remanding this climate-change case to Colorado state court. After the district court issued its memorandum opinion setting forth the reasons for its ruling, appellants moved to stay execution of the remand order. The district court denied the motion yesterday evening. *See* D. Ct. Dkt. No. 80.

In response, appellants filed a motion for emergency relief with this Court. As defendants explained in that motion, once the clerk sends a certified copy of the remand order by mail to the state court, it is not clear how the cases would return to federal court if defendants prevail on appeal. While the district court believed that “federal courts are fully capable of ensuring that the proceeding in state court returns to federal court if a remand order is vacated,” ECF No. 80, at 15, the two cases cited by the district court to support that view are neither binding nor persuasive. In *Bryan v. Bell-South Communications, Inc.*, 492 F.3d 231 (4th Cir. 2007), the court of appeals did not hold that a district court could, consistent with the Anti-Injunction Act, enjoin state-court proceedings simply because the remand order had been vacated on appeal. Instead, the court of appeals called the issue “difficult” and expressly chose not to resolve it. *See id.* at 241-242. And in *In re Meyerland Co.*, 910 F.2d 1257 (5th Cir. 1990), the panel opinion cited by the district court was superseded after rehearing en banc. *See* 960 F.2d 512 (5th Cir. 1992). The en banc opinion did not address whether an injunction of state-court proceedings was permissible. *See id.*

In addition to filing the motion for a stay with this Court, appellants filed an emergency motion for a temporary stay with the district court this morning. The district court denied that motion earlier today and directed the clerk to remand the case to state court “forthwith.” *See* D. Ct. Dkt. 82.

After the district court entered that order, this Court issued an order calling for a response to appellants' emergency motion for a stay. The order did not state whether the Court planned to issue a temporary stay of the remand order pending full consideration the motion.

2. Appellants now seek clarification of whether this Court's order calling for a response to the stay motion was an effective denial of appellants' motion for a temporary stay of the remand order. If the clerk of the district court sends a certified copy of the remand order by mail to the state court, the state court will regain jurisdiction over the case. *See* 28 U.S.C. 1447(c). At that point, there will be no ongoing federal-court proceedings for the Court to "stay"; the Court could only enjoin the state-court proceedings, assuming, *arguendo*, that the Court even has the power to do so. *See Chandler v. O'Bryan*, 445 F.2d 1045, 1057-1058 (10th Cir. 1971); *FDIC v. Santiago Plaza*, 598 F.2d 634, 636 (1st Cir. 1979).

Accordingly, appellants respectfully request clarification of the Court's intended action in calling for a response to the motion for a stay without issuing a temporary stay of the remand order. Appellants also reiterate their request that the Court enter a temporary stay pending resolution of appellants' motion for a stay.

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OCTOBER 8, 2019

**CERTIFICATE OF COMPLIANCE
WITH TYPEFACE AND WORD-COUNT LIMITATIONS**

I, Kannon K. Shanmugam, counsel for appellant Exxon Mobil Corporation and a member of the Bar of this Court, certify, pursuant to Federal Rule of Appellate Procedure 27(d)(2)(A), that the attached Motion of Appellants for Clarification is proportionally spaced, has a typeface of 14 points or more, and contains 590 words.

/s/ Kannon K. Shanmugam
KANNON K. SHANMUGAM

OCTOBER 8, 2019

CERTIFICATE OF DIGITAL SUBMISSION AND ANTIVIRUS SCAN

I hereby certify, pursuant to the Tenth Circuit CM/ECF User's Manual, that the attached Motion of Appellants for Clarification, as submitted in digital form via the Court's ECF system, has been scanned for viruses using Malwarebytes Anti-Malware (version 2019.10.08.04, updated Oct. 8, 2019) and, according to that program, the document is free of viruses. I also certify that any hard copies submitted are exact copies of the document submitted electronically.

/s/ Kannon K. Shanmugam
KANNON K. SHANMUGAM

OCTOBER 8, 2019

CERTIFICATE OF SERVICE

I, Kannon K. Shanmugam, counsel for appellant Exxon Mobil Corporation and a member of the Bar of this Court, certify that, on October 8, 2019, the attached Motion of Appellants for Clarification was filed with the Clerk of the Court through the electronic-filing system. I further certify that all parties required to be served have been served.

/s/ Kannon K. Shanmugam
KANNON K. SHANMUGAM

OCTOBER 8, 2019