

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Northern Division)

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

vs.

BP P.L.C.; *et al.*,

Defendants.

Case Number: 1:18-cv-02357-ELH

**OPPOSITION TO DEFENDANTS' CONDITIONAL MOTION
TO STAY EXECUTION OF REMAND ORDER SHOULD THE
COURT GRANT THE PENDING MOTION TO REMAND**

Plaintiff Mayor and City Council of Baltimore opposes Defendants' conditional motion to stay execution of a remand order that has not yet been issued. Under the Federal Rules of Civil Procedure and established case law in the Fourth Circuit, Defendants' motion seeks an unduly long stay of execution and should be denied.

The primary case on which Defendants rely—*Northrop Grumman Tech. Servs. v. DynCorp Int'l LLC*, 2016 WL 3180775 (E.D. Va. June 7, 2016) ("*Northrop Grumman*")—has already answered the question of whether a stay of execution of a remand order is warranted, and it does not support a stay of 30 days here, should the Court grant remand. The district court in *Northrop Grumman* held that the defendant was entitled to an automatic stay of 14 days under Federal Rule of Civil Procedure 62(a). *Id.* at *2. The court's logic is straightforward:

- (1) Federal Rule of Civil Procedure 62(a) provides for an automatic stay of 14 days on "execution" of a judgment.
- (2) Federal Rule of Civil Procedure 54(a) defines a "judgment" as "any order from which an appeal lies."

(3) 28 U.S.C. § 1447(d) provides a limited right of appeal for cases removed under 28 U.S.C. § 1442.

(4) “It follows that an order remanding a case which had previously been removed under a claim of § 1442 removability is a ‘judgment’ for purposes of the Federal Rules of Civil Procedure.” *Northrop Grumman*, 2016 WL 3180775 at *2.

(5) “Therefore, under a plain reading of the applicable statutes and the Fourth Circuit's recent case law, the Court concludes that Federal Rule of Civil Procedure 62(a) applies to orders remanding cases removed from State court pursuant to 28 U.S.C. § 1442.” *Id.*

As in *Northrop Grumman*, Rule 62(a) would entitle Defendants here to an automatic 14-day stay on the execution of the remand order from the date of its issuance. Defendants’ conditional motion provides no explanation for why the automatic stay contemplated by the Federal Rules is insufficient for Defendants to exercise any right to appeal or to seek a further stay pending appeal. Defendants’ request for a 30-day stay is therefore excessive and should be denied.

Dated: April 5, 2019

/s/ Victor M. Sher

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CERTIFICATE OF SERVICE

I hereby certify that, on the 5th day of April, 2019, the foregoing document was filed through the ECF system and will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ Victor M. Sher
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