

Gerald Krovatin
Helen A. Nau*

Also Admitted in NY*

September 8, 2021

VIA ELECTRONIC FILING

Hon. John Michael Vazquez, U.S.D.J.
United States District Court
for the District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: City of Hoboken v. Exxon Mobil, et al.
Case No. 20-cv-14243

Dear Judge Vazquez:

Plaintiff, the City of Hoboken, writes in response Defendants' emergency motion to stay, ECF No. 124, and proposed order, ECF No. 124-1.

First, it is unclear this Court even has jurisdiction to consider this motion. The transmittal letter divesting this Court of jurisdiction has already been sent to State court pursuant to 28 U.S.C. § 1447(c). ECF No. 123. “[W]hen a party moves to stay a remand order that has already been sent to the state court, the motion stay is moot.” *Barnhill v. Pregent*, No. 3:09-CV-0273, 2010 WL 1791170, at *2 (M.D. Pa. May 3, 2010). To stay this action would require “having this court attempt to enjoin a state court from proceeding with a case that has already been remanded” in violation of principles of comity, *id.* at *3, and the Anti-Injunction Act, 28 U.S.C. § 2283, “which generally prohibits federal courts from granting an injunction ‘to stay proceedings in a State court,’” *SFA Grp., LLC v. Certain Underwriters at Lloyd's, London*, No. 16-CV-4202, 2017 WL 7661481, at *2 (C.D. Cal. Jan. 6, 2017); *see also Rivera Perez v. Massachusetts Gen. Hosp.*, 193 F.R.D. 43, 45 (D.P.R. 2000) (district court cannot stay proceedings in state court after execution of remand order). As far as Plaintiff’s counsel is aware from our research in the last two hours, none of the cases cited by Defendants—including *Norhtrop Grumman Tech. Servs., Inc. v. DynCorp Int’l LLC*—involved a stay on an already-transmitted order of remand. If Defendants wish to appeal the remand order and seek a stay, they should seek it in the court that currently has jurisdiction: the Superior Court of New Jersey.

Second, Defendants have filed a proposed order in support of a stay that goes beyond the relief they seek in their letter motion. While their letter motion “ask[s] the Court to temporarily stay execution of the Order and instruct the Court Clerk not to send a certified copy of the Order to the New Jersey Superior Court, pending briefing on Defendants’ forthcoming motion to stay,” ECF No. 124 at 3, their proposed order additionally proposes a stay “until the Third Circuit rules on the motion to stay Defendants intend to file in that forum, if necessary” ECF No. 124-1. Defendants have no basis for a stay from this Court pending a motion to stay in the Third Circuit that has not yet been filed. If they seek an administrative stay in the Third Circuit that would be because Your Honor has denied their motion to stay here, on the merits or on jurisdictional grounds. Their attempt to obtain this preemptive relief is improper.

Third, Plaintiff cannot consent to a stay that will delay litigation of this proceeding in State court at the same time that it is recovering from yet another onslaught of storms exacerbated by the climate emergency. On August 21-22, 2021, Tropical Storm Henri dumped 6.5 inches of rain on Hoboken, nearly double its average total rainfall for the entire month of August, causing sewage and floodwaters to spill into Hoboken’s streets.¹ Not to be outdone, less than two weeks later, on September 1, 2021, Tropical Storm Ida walloped Hoboken with *another* 6.5 inches of rain, causing devastating and widespread flooding across the City,² as well as at least 27 deaths across the state of New Jersey.³ The role of anthropogenic climate change in increasing the intensity and severity of extreme rainfall events, documented in Plaintiff’s Complaint, is beyond dispute. *See* Compl. ¶¶ 45, 225-54. In light of those facts, Plaintiff cannot and does not consent to a stay pending appeal.

Accordingly, should the Court conclude it has jurisdiction to consider a motion to stay the remand order, Plaintiff requests that the Court issue an expedited briefing schedule on Defendants’ motion to ensure that it does not unnecessarily delay litigation of this case in State court.

Respectfully submitted,

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

KROVATIN NAU LLC

/s/ Gerald Krovatin
gkrovatin@krovatin.com

¹ <https://www.nj.com/hudson/2021/08/hoboken-and-jersey-city-survey-the-damage-left-by-tropical-storm-henri.html>.

² <https://www.nj.com/hudson/2021/09/worst-storm-event-since-superstorm-sandy-hudson-county-assesses-the-damage-from-ida.html>.

³ <https://www.nbcnews.com/news/us-news/two-more-deaths-new-jersey-caused-ida-bringing-state-total-n1278524>.