UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Northern Division)

CITY OF ANNAPOLIS, MARYLAND, Plaintiff, vs. BP P.L.C.; *et al.*, Defendants.	Case Number: 21-cv-00772-SAG

PLAINTIFF CITY OF ANNAPOLIS'S OPPOSITION TO DEFENDANTS' MOTION TO STAY PROCEEDINGS

TABLE OF CONTENTS

I. INTRODUCTION

The Fourth Circuit unanimously denied the appellants' petition for rehearing *en banc* in *Baltimore* on May 17, and its mandate issued the same day Defendants filed the instant Motion to Stay Proceedings here. *See Mayor & City Council of Baltimore v. BP P.L.C.*, No. 19-1644, Doc. 283 (4th Cir. May 17, 2022) ("The court denies the petition for rehearing en banc."); Doc. 284 (4th Cir. May 25, 2022) ("The judgment of this court, entered April 7, 2022, takes effect today."). The appellants in *Baltimore* did not ask the Fourth Circuit or the Supreme Court to stay the mandate while they pursue *certiorari* review, either in the *en banc* petition itself or in the eight days between the order denying the petition and the issuance of the mandate. The Fourth Circuit's affirmance of Judge Hollander's order remanding the *Baltimore* case to state court is now final.

Defendants concede on the first page of their opening brief that this case is "'strikingly similar'" to *Baltimore* and was "removed on many, but not all, of the grounds" the Fourth Circuit held were insufficient to confer subject-matter jurisdiction. *See* Doc. 158-1 at 1 (May 25, 2022) ("Mot.") (quoting *City of Annapolis v. BP P.L.C., et al.*, No. ELH-21-772, 2021 WL 2000469, at *1 (D. Md. May 19, 2021) (granting stay pending resolution of *Baltimore* appeal)). Defendants have modified some of their arguments and purported evidentiary support, *see* Mot. at 4 n.3, but all statutory bases for jurisdiction raised in their notice of removal were addressed and rejected in *Baltimore*. They nonetheless ask this Court not to even entertain briefing on Annapolis's motion to remand for at least another six months while they petition for *certiorari*. But "[a]s one district court put it" in a related context, "it is simply 'not an appropriate function for this court to pass on the likelihood that the ruling of a higher court will be accepted for review by the Supreme Court.'" *United States v. Lentz*, 352 F. Supp. 2d 718, 726 (E.D. Va. 2005) (quoting *Studiengesellschaft Kohle v. Novamont Corp.*, 578 F. Supp. 78, 79–80 (S.D.N.Y.1983)). The Fourth Circuit's decision

in *Baltimore* provides definitive, unequivocal guidance on the exact issues the Court will confront on Annapolis's motion to remand. The Court should apply those instructions without further delay.

II. BACKGROUND

The City filed this lawsuit on February 22, 2021. Complaint, Doc. 2 at 4–166. The City asserts that Defendants knew the catastrophic risks presented by their fossil fuel products for decades and actively engaged in a coordinated campaign of deception to conceal and deny that knowledge, all while continuing to promote their fossil fuel products. *Id.* ¶¶ 1–15. Defendants removed the action to this Court on March 25, 2021. *See generally* Notice of Removal, Doc. 1. Annapolis moved to remand on April 23, 2021. *See* Doc. 118. Before briefing on Annapolis's remand motion closed, the Supreme Court issued its opinion in *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021), which vacated the Fourth Circuit's decision affirming remand to state court on similar facts, and remanded for consideration of additional jurisdictional arguments raised in the removal notice. Two days later the Court stayed this case because "[t]he Fourth Circuit w[ould] surely provide guidance in the *Baltimore Case* that will aid resolution of the Remand Motion," and ruling in the interim "would result in a decision by this Court with the proverbial half a deck." *City of Annapolis*, 2021 WL 2000469, at *4.

On April 7, 2022, the Fourth Circuit "resoundingly" affirmed the order granting remand in *Baltimore* for the second time. *See Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 199 (4th Cir. 2022). This Court therefore lifted the existing stay on April 27. *See* Doc. 110. The Fourth Circuit denied the *Baltimore* defendants' petition for rehearing *en banc* on May 17, and the mandate issued on May 25. *See Mayor & City Council of Baltimore v. BP P.L.C.*, No. 19-1644, Doc. 283 (4th Cir. May 17, 2022); Doc. 284 (4th Cir. May 25, 2022).

There have been no other substantive activities in the 15 months this case has been on the Court's docket. No responsive pleadings have been filed, no discovery has been propounded or responded to, no initial disclosures have been made, and the City's efforts to return to its proper state forum remain in limbo.

III. LEGAL STANDARD

A. Courts Assess Motions to Stay Pending a *Certiorari* Petition in Another Case Using the Standard Applicable to Stays Pending Appeal.

"Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both," and a party seeking a stay while unrelated litigation proceeds "must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else [sic]." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936) (Cardozo, J.). "The power to grant a stay pending review" is "part of a court's traditional equipment for the administration of justice," but a stay pending appeal "is not a matter of right." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (cleaned up). The moving party always bears "the heavy burden for making out a case for such extraordinary relief." *Winston–Salem/Forsyth Cnty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971) (Burger, C.J., in chambers).

Where, as here, a party moves for a stay pending resolution of a *certiorari* petition in another case, courts in the Fourth Circuit apply the standards for resolving a motion to stay pending appeal. *See, e.g.*, *Gadsden v. United States*, 294 F. Supp. 3d 516, 519 (E.D. Va. 2018). Substantively, "[t]he standard for considering a request for a stay pending appeal is the same standard that governs a request for a preliminary injunction." *Davis v. Taylor*, No. 12–3208, 2012 WL 6055452, *3 (D.S.C. Nov. 16, 2012), *report and recommendation adopted*, 2012 WL 6085245 (Dec. 6, 2012). The four "traditional" factors to consider are "(1) whether the stay

applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken*, 556 U.S. at 434 (citation omitted). "The first two factors of the traditional standard are the most critical." *Id.*

Courts in this circuit have resolved motions materially identical to this one by reference to the *Nken* factors. In *Gadsden v. United States*, 294 F. Supp. 3d 516, 517–18 (E.D. Va. 2018), for example, the district court had stayed consideration of a habeas petition pending resolution of a separate appeal before the Fourth Circuit that "presented the issue of law raised in the Petitioner's Motion." After the Fourth Circuit ruled, the court found the decision was "dispositive of the Petitioner's Motion." *Id.* at 518. Anticipating that result, the petitioner Gadsden moved for another stay pending resolution of a petition for *certiorari* from the Fourth Circuit's decision. *See id.* at 519. The court applied the standards "[t]o determine whether a stay is appropriate pending an appeal," as articulated in *Nken*, and held that a stay was not warranted principally because Gadsden "made no showing that the Supreme Court w[ould] grant *certiorari* " in the separate case, "let alone that [the appellant] [wa]s likely to succeed on the merits of his claim." *Id. See also Dumas v. Clarke*, 324 F. Supp. 3d 716, 716–17 (E.D. Va. 2018) (Smith, C.J.) (applying *Nken* factors and denying stay where movant "request[ed] that the decision in this matter be stayed pending resolution of the petition for a writ of *certiorari*" in unrelated case presenting same question of law); *In re Sanctuary Belize Litig.*, No. CV PJM 18-3309, 2019 WL 7597770, at *2 (D. Md. Nov. 21, 2019) (applying *Nken* factors in similar context and denying stay because "binding precedent in the Fourth Circuit" resolved issue on the merits, and the defendants failed to demonstrate

irreparable harm). Defendants motion here asks for the same relief sought and denied in *Gadsden*, *Dumas*, and *In re Sanctuary Belize*. The same standard applies, and the stay should be denied.

Requiring a stay movant in this posture to satisfy *Nken* makes sense, because it accords appropriate respect to final rulings of the circuit court. Decisions addressing stay requests pending *certiorari* petitions from circuit court opinions in the same case are instructive. Under the "mandate rule," a district court has "no authority to issue a stay or a continuance pending resolution of a party's *certiorari* petition where . . . the party already sought and failed to obtain a stay of the circuit court's mandate when the case was on appeal," because doing so "would be inconsistent with the spirit of the Fourth Circuit's mandate remanding the case for further proceedings." *Lentz*, 352 F. Supp. 2d at 726–27. After a mandate issues, "it is simply not an appropriate function for th[e district] court to pass on the likelihood that the ruling of a higher court will be accepted for review by the Supreme Court." *Id.* at 726 (quotation omitted). The district court in *Baltimore* would therefore likely be prohibited from staying remand; the appellants there unsuccessfully asked both the Fourth Circuit and the Supreme Court for a stay pending appeal from Judge Hollander's 2019 opinion granting remand,[1] and did not request that the mandate from the Fourth Circuit's recent opinion be stayed. In light of those facts and out of due respect for the circuit court's authority, this Court should hold Defendants here to the same standard that would have been required to secure a stay pending appeal in the *Baltimore* action itself, and should deny the request.

[1] *Mayor & City Council of Baltimore v. BP P.L.C.*, No. CV ELH-18-2357, 2019 WL 3464667 (D. Md. July 31, 2019) (denying stay of remand pending appeal); *BP P.L.C. v. Mayor & City Council of Baltimore*, 140 S.Ct. 449 (2019) (same).

B. Defendants' Reliance on the Standard Governing Purely Discretionary Stays Misstates the Applicable Rule.

Defendants incorrectly conflate their motion with a "discretionary motion to stay," which a court may grant under its inherent authority in consideration judicial economy and the "competing interests" of the parties. *See Annapolis*, 2021 WL 2000469, at *2–3; *see* Mot. at 4. "It is," of course, "axiomatic that a district court has wide discretion to prioritize matters among its docket." *D.C. v. Trump*, 959 F.3d 126, 132 (4th Cir. 2020); *United States v. Janati*, 374 F. 3d 263, 273 (4th Cir. 2004) ("district courts have wide-ranging control over management of their dockets"). And in turn, "[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Hickey v. Baxter*, 833 F.2d 1005 (Table), at *1 (4th Cir. 1987) (quoting *Landis*, 299 U.S. at 254–55). As discussed above, however, when a party requests a stay pending a *certiorari* petition in a different case presenting a similar question of law, courts do not rely on their inherent docket management authority and instead treat the request as they would a motion to stay pending appeal.

Defendants proffer three district court decisions (including the prior order staying this case) for the proposition that the Court should ignore *Nken* and use the flexible standard that applies to discretionary stays. *See* Mot. at 4 (citing *City of Annapolis v. BP P.L.C.*, No. 21-772, 2021 WL 2000469 (D. Md. May 19, 2021); *Int'l Refugee Assistance Project v. Trump*, 323 F. Supp. 3d 726 (D. Md. 2018) ("*IRAP v. Trump*"); *Navigators Specialty Ins. Co. v. Med. Benefits Adm'rs of MD, Inc.*, 2014 WL 1918710 (D. Md. May 12, 2014)). On closer examination, however, those decisions arose in materially different procedural contexts.

In *Navigators Specialty Insurance Company*, the plaintiff insurer sought a declaratory judgment that it did not owe liability coverage to its insured, who was involved in separate

litigation over the underlying claim. *See* 2014 WL 1918710, at *1. The court stayed the case on the insured's motion, finding that determining whether liability coverage was owed would "require an inquiry into the relative merits of each party's position in the underlying accounting dispute" and that it would be improper to resolve "factual issues that should first be determined" in the liability action. *Id.* at *2. In *IRAP v. Trump*, the district court stayed proceedings in an action to enjoin President Trump's 2017 executive order "ban[ning] the entry of nationals from certain designated countries into the United States," because the Fourth Circuit had already stayed its affirmance of the preliminary injunction issued in the same case, and because the Supreme Court had stayed enforcement of a different district court's decision enjoining the same executive order. *See* 323 F. Supp. 3d at 728, 732–33. And in this case, the Court stayed briefing on Annapolis's motion to remand because the *Baltimore* case had already been remanded from the Supreme Court back to the Fourth Circuit to consider "the remaining jurisdictional claims," and its forthcoming opinion would "surely provide guidance . . . that w[ould] aid resolution of the Remand Motion." *City of Annapolis*, 2021 WL 2000469, at *5. None of them considered a stay in the situation presented in *Gadsden*, *Dumas*, *In re Sanctuary Belize*, and this case, where the Court of Appeals has issued its opinion and mandate in totally separate litigation, no stay has been ordered by a higher court in that litigation, and only a petition for *certiorari* remains.

IV. ARGUMENT

A. Defendants Cannot Show a Strong Likelihood the Supreme Court Will Accept *Certiorari* and Reverse the Fourth Circuit in the *Baltimore* Case.

Defendants' motion should be denied because Defendants cannot satisfy the first of the two "most critical" *Nken* factors: "a strong showing" that the petition for *certiorari* in the *Baltimore* case "is likely to succeed on the merits." *Nken*, 556 U.S. at 434. A party seeking a stay pending appeal must demonstrate "there is a *strong likelihood* that the issues presented on appeal

could be rationally resolved in favor of the party seeking the stay." *United States v. Fourteen Various Firearms*, 897 F. Supp. 271, 273 (E.D. Va. 1995) (emphasis added). "It is not enough that the chance of success on the merits be better than negligible," and "more than a mere possibility of relief is required." *Nken*, 556 U.S. at 434 (cleaned up).

The Fourth Circuit's ruling in *Baltimore* was not a close call. The court "resoundingly agree[d] with Baltimore and reject[ed] Defendants' attempts to invoke federal common law" as a basis for removal jurisdiction, 31 F.4th at 199, and held that their arguments on that issue constituted "a complete abdication of their removal burden," *id.* at 204. The court likewise held that the defendants' arguments under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005), "fail[ed] to pass legal muster," *id.* at 208; held that the argument Baltimore's claims were completely preempted by the Clean Air Act "fails as well," *id.* at 215; "decline[d] to endorse Defendants' overreaching approach to federal-question jurisdiction premised on federal enclaves," *id.* at 218; and rejected jurisdiction based on the Outer Continental Shelf Lands Act, *id.* at 219–22, the bankruptcy removal statute, *id.* at 222–25, admiralty jurisdiction, *id.* at 225–27, and finally the federal officer removal statute, *id.* at 228–38. All these jurisdictional arguments have now been rejected in materially similar cases before the First, Fourth, Ninth, and Tenth Circuits. *See Rhode Island v. Shell Oil Prod. Co.*, No. 19-1818, 2022 WL 1617206 (1st Cir. May 23, 2022) (affirming order granting remand); *Cnty. of San Mateo v. Chevron Corp.*, 32 F.4th 733 (9th Cir. 2022) (same); *Bd. of Cnty. Commissioners of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (10th Cir. 2022) (same). The *Baltimore* appellants' petition for rehearing *en banc* has been denied without dissent, and it is entirely unlikely they will secure *certiorari* review in the Supreme Court, let alone reversal of the Fourth Circuit's decision.

Defendants argue that "[t]he Supreme Court may very well grant review of the Fourth Circuit's decision because it has entrenched a split among the circuit courts of appeals," Mot. at 6, relying on a supposed conflict between the Fourth Circuit's decision and the Second Circuit's decision in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). As Annapolis has already explained, *see* Joint Submission Regarding Fourth Circuit Decision in *Baltimore* at 3–4, Doc. 144 (Apr. 21, 2022), the two opinions do not conflict, and both circuit courts expressly acknowledged as much. "First and foremost, *City of New York* was in a completely different procedural posture" from *Baltimore*, because it affirmed an order granting a motion to dismiss a case that was initiated in federal court. *See Baltimore*, 31 F.4th at 203. The Second Circuit thus "was not required to consider a 'heightened standard unique to the removability inquiry,'" and instead "confined itself to Rule 12(b)(6) and never addressed its own subject-matter jurisdiction." *Id.* (quoting *City of New York*, 993 F.3d at 89).

Second, *City of New York* explicitly "reconcile[d] [its] conclusion with the parade of recent opinions holding that state-law claims for public nuisance brought against fossil fuel producers do not arise under federal law," precisely because "[t]he single issue before each of those federal courts was [ ] whether the defendants' anticipated defenses could singlehandedly create federal-question jurisdiction" as Defendants urge here. *See City of New York*, 993 F.3d at 93–94 (cleaned up). The Second Circuit explained that the reasoning behind the "fleet of cases" granting remand—including in the district court opinion and 2020 Fourth Circuit opinion in *Baltimore*—"*does not conflict* with our holding." *Id.* at 94 (emphasis added).

Finally, two other circuit courts in materially similar cases this year reached the same result, expressly holding that their opinions affirming remand to state courts do not conflict with the *City of New York* decision. *See Rhode Island*, 2022 WL 1617206, at *5 ("*City of New York*,

after all, is distinguishable in at least one key respect. There, unlike here, the government 'filed suit in *federal court* in the *first instance* . . . .'" (quoting *City of New York*, 993 F.3d at 94)); *Boulder*, 25 F.4th at 1262 ("Importantly, [New York City] initiated the action in federal court, and thus, the issues before the district court and the circuit were not within the context of removal.").

There is no reasonable likelihood that the *Baltimore* appellants will succeed in the Supreme Court. All evidence suggests the opposite is true, as defendants in similar cases around the country have maintained a "batting average of .000" opposing remand, in both the district and circuit courts. *See City & Cty. of Honolulu v. Sunoco LP*, No. 20-CV-00163-DKW-RT, 2021 WL 839439, at *2 n.3 (D. Haw. Mar. 5, 2021) (denying stay of order granting remand to state court pending appeal in similar case). Defendants have failed to satisfy their burden and the Court's analysis can end there. The motion to stay must be denied.

B. Defendants Have Not Shown and Cannot Show Irreparable Harm Will Likely Occur Absent a Stay.

Even if there were a reasonable likelihood of success in *Baltimore*, Defendants' motion still must be denied because they cannot show any likelihood any of them will suffer irreparable harm absent a stay. No stay may issue without a finding that the threatened harm to the moving party is genuinely "irreparable" and that such irreparable harm is at least probable. *See Nken*, 556 U.S. at 430 (the "possibility standard is too lenient"); *id.* at 434–35. "[M]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough" to show irreparable harm. *Long v. Robinson*, 432 F.2d 977, 980 (4th Cir. 1970) (quotation omitted). In particular, "[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury." *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974).

The district court in *Baltimore* itself held that the defendants there were unlikely to suffer irreparable harm absent a stay of remand, and the same rationale applies here. The court reasoned that an appeal from the remand order "would only be rendered moot in the unlikely event that a final judgment is reached in state court before the resolution of their appeal," and that the defendants had not "shown that the cost of proceeding with litigation in state court would cause them to suffer irreparable injury." *Mayor & City Council of Baltimore v. BP P.L.C.*, No. CV ELH-18-2357, 2019 WL 3464667, at *5. (D. Md. July 31, 2019). "[E]ven if the remand is vacated on appeal," the court continued, "interim proceedings in state court may well advance the resolution of the case in federal court" because "the parties will have to proceed with the filing of responsive pleadings or preliminary motions, regardless of the forum." *Id.*, at *6. Defendants here make identical arguments, asserting that they face "serious hardship" absent a stay of remand, because "the parties may engage in substantive motion practice and possibly some discovery, which this Court would then have to untangle . . . if the Supreme Court ultimately determines that removal was proper after months of litigation in state court." Mot. at 10. Judge Hollander correctly rejected that contention in *Baltimore*: "This speculative harm does not constitute an irreparable injury." 2019 WL 3464667, at *5. This Court should do the same and deny Defendants' motion to stay.

C. Annapolis's Case May Be Substantially Prejudiced During a Prolonged Stay as Discoverable Evidence Becomes Increasingly Stale.

The last two *Nken* factors instruct the Court to "asses[s] the harm to the opposing party and weig[h] the public interest." *Nken*, 556 U.S. at 435. Where, as here, the party opposing the stay is a governmental entity, "[t]hese factors merge." *Id.* Annapolis has a strong interest in timely resolution of its claims, and a strong interest in access to discovery before witnesses' memories fade and documentary evidence becomes more difficult or impossible to locate. *Cf.*, *ACandS, Inc. v. Godwin*, 340 Md. 334, 422 (1995), *on reconsideration* (Dec. 1, 1995) (while court efficiency

procedures have changed over time, "the maxim has remained constant that, ordinarily, DELAY FAVORS THE DEFENDANT") (emphasis in original). Here especially, because many of the allegations in the City's complaint involve Defendants' conduct in the 1980s, 1990s, and earlier, Annapolis will be severely prejudiced if discovery is continually restrained. Annapolis intends to seek discovery from witnesses who are already elderly, and who may no longer be able to testify after the additional year or more of delay that would be caused by a stay pending resolution of the petition for *certiorari* in *Baltimore*. The potential prejudice to Annapolis's case due to loss of evidence is concrete and severe, and both the City and the public have a strong vested interest in the City's claims being timely adjudicated on the merits.[2]

D. Even Under the More Lenient Standard for Discretionary Stays, Defendants' Motion Should Be Denied.

Even if the Court applies the less demanding standard for discretionary stays that Defendants advocate, their motion still fails. Defendants first argue a stay will promote judicial economy because "the final decision on removal in *Baltimore* could be dispositive here." Mot. at 5. But the decision on removal in *Baltimore* is *already* final. "A court of appeals' judgment or order is not final *until issuance of the mandate*; *at that time* the parties' obligations become fixed." *See* Fed. R. App. P. 41(c), (advisory committee's note, 1998 amendment) (emphasis added). The mandate has issued in *Baltimore*, and Defendants did not move to stay it pursuant to Fed. R. App.

[2] Defendants argue that the City "cannot plausibly claim any meaningful harm from a brief stay," Mot. at 3, quoting the Court's statement that "the outcome of this lawsuit cannot turn back the clock on the atmospheric and ecological processes" of climate change, *Annapolis*, 2021 WL 2000469, at *4. Last year, however, Defendants argued that a stay was proper because "whether Annapolis may be prejudiced *by the alleged effects of climate change* is not the issue before the Court. The only relevant question is whether Plaintiff will be prejudiced *by a short stay of this litigation*." *See* Reply in Support of Motion to Stay, Doc. 119 at 7–8. Accepting arguendo that only prejudice to the litigation constitutes the type of harm the Court may consider, it is present here. Documents and witnesses are more likely lost to time with each passing day, and further delay will severely prejudice Annapolis.

P. 41(d)(1) ("A party may move to stay the mandate pending the filing of a petition for a writ of *certiorari* in the Supreme Court."). There is no likelihood that proceeding on Annapolis's motion to remand will create "needless duplication of work and the possibility of inconsistent rulings," because the Fourth Circuit has spoken with finality on the precise issues this Court must now consider. *See Commonwealth of Virginia ex rel. Integra Rec LLC v. Countrywide Securities Corp.*, 2015 WL 222312, at *4 (E.D. Va. Jan. 14, 2015) (quotation omitted). And for the reasons discussed above, there is no meaningful chance that the Supreme Court will grant *certiorari*.

As the City has explained, Defendants will face no hardship without a stay. The most that will be demanded of them pending the *Baltimore certiorari* petition is briefing on the remand motion and possibly the first procedural steps in state court after the Court grants remand. The City, by contrast, faces significant prejudice to its litigation in the face of further delay, because evidence will become increasingly stale and the risk that witnesses will become unavailable will become increasingly likely. At this juncture, "the hardship to the moving party if the case is not stayed" is minimal, and "the potential damage or prejudice to the non-moving party if a stay is granted" is grave and significant. *See* Mot. at 4 (quoting *Annapolis*, 2021 WL 2000469, at *3); *see also Williford v. Armstrong World Indus., Inc.*, 715 F.2d 124, 128 (4th Cir. 1983) (denying discretionary stay of appeal in part because "the position in which the appellants find themselves, while taxing and burdensome, does not constitute a sufficient offset to the plaintiff's right to have his case resolved without undue delay"); *Causey v. Altman*, No. 5:22-CV-89-FL, 2022 WL 1210854, at *3 (E.D.N.C. Apr. 25, 2022) (denying discretionary stay in part because "there is potential prejudice to plaintiff in delaying a ruling on the motion to remand, if the outcome of the motion results in remand to state court where proceedings may move forward on the merits").

Finally, none of the other stay orders Defendants cite are relevant because, like Defendants' other citations, they all arose in materially different procedural contexts. *See* Mot. at 1 n.2, 7. In each of those cases, the court either stayed its own order granting remand pending appeal,[3] stayed proceedings *in state court following remand* pending appeal from the federal court's remand order,[4] or merely entered a stipulated stay negotiated between the parties.[5] None of those decisions arose after an on-point final judgment from a directly superior court and they do not support a stay here. Defendants ultimately do not satisfy even the relaxed standards governing a purely discretionary stay pursuant to the court's inherent powers, and their motion should be denied.

V. CONCLUSION

The Court should deny Defendants' motion, permit the parties to fully brief Annapolis's motion to remand, and proceed to a ruling in due course.

[3] *Delaware ex rel. Jennings v. BP Am. Inc.*, C.A. No. 20-1429-LPS, 2022 WL 605822 (D. Del. Feb. 8, 2022); Order, *City of Hoboken v. Exxon Mobil Corp.*, Civ. No. 20-14243, Doc. 133 (D.N.J. Dec. 15, 2021); *Minnesota v. Am. Petroleum Ins.*, Civ. No. 20-1636, 2021 WL 3711072, at *2 (D. Minn. Aug. 20, 2021).

[4] Order, *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc., et al.*, No. 2018CV03049, Filing ID 2110BB3949408 (Colo. Dist. Ct. Mar. 25, 2022); Order, *Bd. of Cnty. Comm'rs of San Miguel Cnty. v. Suncor Energy (U.S.A.) Inc. et al.*, No. 2021CV150, Filing ID 3F398BF58DFEB (Colo. Dist. Ct. Mar. 25, 2022); Order, *Bd. of Cnty. Comm'rs of San Miguel Cnty. v. Suncor Energy (USA) Inc.*, Civ. No. 21-150 (Colo. Dist. Ct. July 14, 2021); Order, *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (USA) Inc.*, Civ. No. 18-30349 (Colo. Dist. Ct. June 29, 2021); Order Staying Case & Pending Motions, *Mayor & City Council of Baltimore v. BP P.L.C.*, Civ. No. 18-4219 (Md. Cir. Ct. May 25, 2021).

[5] Stipulation & Order Staying Proceedings, *Anne Arundel Cnty. v. BP P.L.C.*, Civ. No. 21-01323, Doc. 19 (D. Md. June 1, 2021); Order, *City of Charleston v. Brabham Oil Co.*, Civ. No. 20-3579, Doc. 121 (D.S.C. May 27, 2021); Order, *Pac. Coast Fed'n of Fishermen's Assocs., Inc. v. Chevron Corp.*, Civ. No. 18-07477, Doc. 91 (N.D. Cal. Jan. 2, 2019).

Dated: June 8, 2022

Respectfully submitted,

CITY OF ANNAPOLIS
OFFICE OF LAW

/s/ D. Michael Lyles
D. Michael Lyles
City Attorney, #13120
160 Duke of Gloucester Street
Annapolis, Maryland 21401
Tel: 410-263-7954
Fax: 410-268-3916
Email: dmlyles@annapolis.gov

Joel A. Braithwaite
Assistant City Attorney, #28081
160 Duke of Gloucester Street
Annapolis, Maryland 21401
Tel: 410-263-7954
Fax: 410-268-3916
Email jabraithwaite@annapolis.gov

SHER EDLING LLP
Victor M. Sher (*pro hac vice*)
Matthew K. Edling (*pro hac vice*)
Martin D. Quiñones (*pro hac vice*)
100 Montgomery St., Ste. 1410
San Francisco, CA 94104
Tel: (628) 231-2500
Fax: (628) 231-2929
Email: vic@sheredling.com
matt@sheredling.com
marty@sheredling.com

Attorneys for Plaintiff City of Annapolis

CERTIFICATE OF SERVICE

I hereby certify that, on the 8th day of June, 2022, 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/ Martin D. Quiñones
Martin D. Quiñones