



Todd A. Noteboom

PARTNER

DIRECT: 612.335.1894

OFFICE: 612.335.1500

todd.noteboom@stinson.com

August 2, 2023

The Honorable John R. Tunheim
U.S. District Judge, District of Minnesota
United States District Court
300 South Fourth Street
Minneapolis, MN 55415

Re: *State of Minnesota v. American Petroleum Institute, et al.*
United States District Court – District of Minnesota
Case No. 20-cv-01636-JRT-HB

Dear Judge Tunheim:

We write with your permission on behalf of the Defendants in the above-captioned action to respond to the letter submitted by Plaintiff State of Minnesota on July 31, 2023, requesting that this Court lift the stay of the remand order.

Defendants oppose the State's letter request. The Court stayed remand of this action in an Order dated August 20, 2021. (ECF Docket No. 116.) In concluding a stay was appropriate, the Court recognized the risk that the litigation could proceed in state court before an appeal was fully and finally resolved. "There is . . . a heightened likelihood that the state court would decide the merits of the claims or address dispositive motions before Defendants' appeal is fully exhausted." Slip Op. at 10; *see also id.* at 12 ("Because the Court cannot foreclose the possibility of a final disposition on the claims in state court prior to resolution of the appeal . . . the Court finds it prudent to stay this action pending appellate review. Considerations of judicial economy and conservation of resources also weigh in favor of staying execution of the remand order as the Eighth Circuit determines whether the state or federal court has jurisdiction over this matter.").

The Court's reasoning mirrored the concerns raised by Defendants in their stay motion, which sought a stay of the remand order until the appeal was fully exhausted, up to and including a potential appeal to the U.S. Supreme Court. *See, e.g.,* Defs.' Mem. in Supp. of Mot. to Stay at 1 (requesting the Court "stay execution of its Order remanding this case . . . until the Eighth Circuit and, if needed, the U.S. Supreme Court, have the opportunity to determine whether this action should be heard in federal court"); *id.* at 5 ("Defendants' appellate rights will be compromised, and all parties will be forced to invest substantial resources that will be wasted should the Eighth Circuit or Supreme Court later hold that this case is removable."); *id.* at 19 ("Unless this Court stays the Remand Order, Defendants will be forced to litigate their appeal of the Remand Order before the Eighth Circuit and potentially the U.S. Supreme Court while simultaneously defending themselves against the Attorney General's claims in Minnesota state court.");

The Honorable John R. Tunheim

August 2, 2023

Page 2

id. at 20 (“If the Eighth Circuit or U.S. Supreme Court subsequently hold that this case is properly removable, the resources devoted to preparing those motions would be wasted.”); *id.* at 22 (“Should the Eighth Circuit or U.S. Supreme Court reverse the Remand Order, this Court will be forced to address the effects of any interim rulings by the Minnesota state court.”).

Defendants anticipate filing with the U.S. Supreme Court a petition for writ of certiorari of the Eighth Circuit’s opinion and order affirming this Court’s remand order, no later than August 20, 2023. Accordingly, as Defendants’ appeal rights are not yet exhausted, the reasons for entering and maintaining the stay of the remand order remain in effect, and Defendants respectfully request that the Court deny the State’s request.

Sincerely,

STINSON LLP

s/ Todd A. Noteboom

Todd A. Noteboom

TAN:bsh

cc: Counsel of Record (via ECF)