STATE OF NORTH CAROLINA CUMBERLAND COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 20 CVS 5612
STATE OF NORTH CAROLINA, *ex rel.* JEFF JACKSON, ATTORNEY GENERAL, Plaintiff, v. EIDP, INC. f/k/a E. I. DUPONT DE NEMOURS AND COMPANY; THE CHEMOURS COMPANY; THE CHEMOURS COMPANY FC, LLC; CORTEVA, INC.; DUPONT DE NEMOURS, INC.; and BUSINESS ENTITIES 1-10, Defendants.	**PLAINTIFF STATE OF NORTH CAROLINA'S OPPOSITION TO DEFENDANTS' MOTION FOR STAY OF ALL PROCEEDINGS PENDING DECISION ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA**

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Plaintiff, State of North Carolina ("the State") submits this opposition to Defendants EIDP, Inc. f/k/a E.I. Dupont de Nemours and Company's ("DuPont"), The Chemours Company's and The Chemours Company FC, LLC's ("Chemours FC") (with The Chemours Company, "Chemours") (collectively, "Moving Defendants") Motion for Stay of All Proceedings Pending Decision on Petition for Writ of Certiorari to the Supreme Court of North Carolina (ECF No. 483, the "Motion for Stay").

INTRODUCTION

The State filed this case nearly five years ago to hold Defendants accountable for the contamination of North Carolina's natural resources. The case has proceeded through several motions to dismiss and fact and expert discovery, with pending dispositive and expert motions to be argued at a hearing on October 30, 2025. During these five years, as the State has steadfastly sought a remedy for its harms, including for North Carolinians' contaminated drinking water, the extent of the widespread pollution is still unknown.

Meanwhile, Moving Defendants—the very entities which caused the contamination—request yet another delay in answering for their actions by requesting to stay proceedings while they petition our Supreme Court for a writ of certiorari to consider this Court's Order and Opinion holding that the Attorney General has, and has had, the authority to bring and maintain this action under common law. *See* Order and Opinion Denying Motion to Dismiss for Lack of Subject Matter Jurisdiction, ECF No. 472 (Aug. 7, 2025) ("Ord. and Op."). The ultimate reason they provide is simple: they wish to avoid the time and expense of preparing for the upcoming hearing. But their desire to avoid the burden of ongoing proceedings does

not rise to the level of sufficient irreparable harm to warrant a stay. Moreover, the relatively small amount of resources and expenses that Moving Defendants would prefer to avoid pales in comparison to the harm they have caused and that continues to plague the State and its residents.

Moving Defendants also attempt to cast their request as a "short" stay, when in reality they seek an indefinite stay of the State's ability to defend and protect North Carolina's natural resources and the health of its citizens. The prejudice to the State and its residents if an indefinite stay is granted while the widespread contamination persists outweighs any nominal prejudice to Moving Defendants if this case proceeds.

Not only do Moving Defendants fail to show irreparable harm if proceedings continue, they also make no attempt to demonstrate a substantial likelihood of success if the Supreme Court grants their petition. Moving Defendants maintain that this Court erred in its analysis and conclusion, but a mere disagreement with this Court's admittedly "careful and thorough consideration" does not establish a likelihood of success, much less a *substantial* likelihood. Defs.' Brief in Support of Motion for Stay, ECF No. 484 at 2.

Given the prejudice to the State and its residents from an indefinite stay of the case, and because Moving Defendants who caused the harms are not likely to succeed on the merits even if their petition for writ of certiorari is permitted, the State respectfully requests that the Court deny Moving Defendants' Motion for Stay, and maintain the current litigation schedule, including the hearing scheduled for October 30, 2025.

BACKGROUND

On August 7, 2025, the Court denied Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction. ECF No. 472 ¶ 46. On August 25, 2025, the Court inquired as to the parties' availability for an in-person hearing in late October on pending motions for partial summary judgment, motions to exclude, and motions to seal. The parties conferred and notified the Court on August 26, 2025, that the parties were available on October 30, 2025. The Court entered a Notice of Hearing the same day. ECF No. 479.

On September 26, 2025, more than seven weeks after the Court denied Defendants' Motion to Dismiss, Moving Defendants petitioned our Supreme Court for a writ of certiorari to review this Court's August 7, 2025 Order and Opinion. ECF No. 483 ¶ 2. On September 29, 2025, Moving Defendants moved to stay all proceedings in this Court under Appellate Rule 8 pending a decision by the Supreme Court as to Moving Defendants' petition. ECF No. 483. The State now responds to the Motion for Stay.

ARGUMENT

This Court has previously recognized that there is limited guidance on when to grant a discretionary stay pending appeal under Appellate Rule 8, but has also found that "[p]rejudice to litigants is an important consideration when a Court considers whether to order a discretionary stay pending appeal." ECF No. 161 ¶ 19; *see also Rutherford Elec. Membership Corp. v. Time Warner Ent./Advance-Newhouse P'ship*, No. 13 CVS 231, 2014 WL 3741316, at *4 (N.C. Super. July 25, 2014) (similar). This Court has further held that whether "an appellant can show a substantial

likelihood of success on appeal can be a factor in showing prejudice or irreparable harm." ECF No. 161 ¶ 18 (quoting *Vizant Tech., LLC v. YRC Worldwide, Inc.*, No. 15 CVS 20654, 2019 WL 995792, at *4 (N.C. Super. Mar. 1, 2019)).

Before addressing these factors, it bears noting at the outset that this is not an ordinary motion for stay pending appeal. Moving Defendants have no right to appeal here. It is well settled that "[d]enial of a motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction is interlocutory." *Burlington Indus., Inc. v. Richmond Cnty.*, 90 N.C. App. 577, 579 (1988). Denial of a such a motion, moreover, also does not affect a substantial right and is accordingly not immediately appealable. *Id.*[1]

Because Moving Defendants are not entitled to appeal, they instead seek a writ of certiorari from the Supreme Court, which may only exercise its discretion to take up this matter if Moving Defendants show, among other things, that "there are extraordinary circumstances that justify issuing the writ." *Cryan v. Nat'l Council of YMCA of the United States*, 384 N.C. 569, 570 (2023); *see also Carolina Bank v. Chatham Station, Inc.*, 186 N.C. App. 424, 428 (2007) (noting that issuance of the writ to review interlocutory orders is only appropriate in "exceptional cases.").

Moving Defendants correctly concede that simply filing a petition for a writ of certiorari (unlike filing a valid appeal) does not automatically stay proceedings in this Court. ECF No. 484 at 2; *cf.* N.C.G.S. § 1-294. As they acknowledge, when parties

[1] If Moving Defendants did have a right to appeal, their appeal to the Supreme Court would be untimely. *See* N.C. R. App. P. 3(c).

petition for certiorari relief, lower courts are only divested of jurisdiction upon the "*[i]ssuance* of the writ" by an appellate court. ECF No. 484 at 2 (emphasis added) (citing *State v. Perkins*, 286 N.C. App. 495, 504 (2022)).[2]

That rule makes perfect sense. Because writs of certiorari are only granted in "extraordinary circumstances," such writs will normally not issue. *Cryan*, 384 N.C. at 570. Staying proceedings in response to the mere filing of a petition would thus allow petitioners to delay proceedings even when appellate courts may well decline to issue the writ. Permitting such delay when there is no guarantee of review would be inconsistent with our State's policy of generally allowing cases to proceed to final judgment without appellate interruption, which avoids the "procrastinat[ion]" of "justice" through endless "appeals from intermediate orders." *Veazey v. City of Durham*, 231 N.C. 357, 363 (1950). Thus, important policy rationales support the rule that the filing of a petition for a writ of certiorari does not operate to stay proceedings in trial courts.

Despite the fact that the filing of certiorari petitions does not stay trial-court proceedings, Moving Defendants nonetheless ask this Court to exercise its discretion to stay all proceedings in this matter until their petition is resolved. In doing so, Moving Defendants make conclusory and speculative arguments that 1) ongoing proceedings would prejudice Moving Defendants while a stay would not prejudice the State; and 2) Moving Defendants "believe that they are likely to prevail on appeal."

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[2] *See also* 1 North Carolina Appellate Practice and Procedure § 21.06 ("[T]he trial court is only divested of jurisdiction over the case if and when the writ of certiorari is allowed.").

ECF No. 484 at 3–5. These arguments lack merit and do not justify a discretionary stay.

I. A Discretionary Stay of the Litigation Will Prejudice the State and Its Residents.

As an initial matter, a stay is not warranted because a stay would considerably prejudice the State and its residents. A stay is also not warranted because Moving Defendants have not shown that ongoing proceedings would sufficiently prejudice their interests to justify a stay.

A. The State Would Be Prejudiced by an Indeterminate Stay of the Case.

In their Motion, Moving Defendants try to show that a stay is warranted because a stay would supposedly not prejudice the State. They say that "[w]here a stay simply maintains the status quo and preserves claims, no meaningful prejudice arises to the nonmoving party[,]" and they further assert that the State "will not be prejudiced by a short stay while the Supreme Court considers whether to review this Court's ruling." ECF No. 484 at 4–5. These arguments fail for at least three reasons.

First, Moving Defendants' claim that their requested stay will be "short" is completely unfounded. *Id.* at 4. Decisions on whether to grant or deny petitions for writs of certiorari regularly take many months to over a year to be decided. *See, e.g.*, *Button v. Level Four Orthotics & Prosthetics, Inc.*. 380 N.C. 682 (2022) (petition filed Sept. 9, 2020 and denied Mar. 9, 2022 – 18 months later); *Cardiorentis AG v. Iqvia Ltd.*, 838 S.E.2d 180 (N.C. 2020) (petition filed June 3, 2019 and dismissed as moot on Feb. 26, 2020 – nearly 9 months later); *Intersal, Inc. v. Hamilton*, 371 N.C. 777 (2018) (petition filed Apr. 9, 2018 and granted Dec. 5, 2018 – 8 months later); *Ehmann*

v. Medflow, Inc., 371 N.C. 461 (2018) (petition filed on Jan. 31, 2018 and denied on Aug. 14, 2018 – 7 months later). Thus, even if our Supreme Court resolved Moving Defendants' petition relatively quickly, it might still take the Supreme Court as long as six months to do so. But a stay of six months (and likely longer) would not be a "short" stay. In six months, the parties could complete oral argument on the pending summary judgment and expert motions, as well as trial, depending on the Court's schedule.

Second, despite Moving Defendants' suggestions to the contrary, their proposal does not maintain "the status quo." ECF No. 484 at 4. A stay necessarily results in canceling the oral argument scheduled for October 30, 2025, and delaying resolution of the pending motions. Indeed, a discretionary stay is a departure from the ordinary course of litigation. The State deserves to have its claims heard as quickly as possible and resolved or set for trial in a timely manner, not indefinitely delayed because Defendants' petition might *potentially* be granted at some unknown point in the future. *See* BCR 1.1.

Third, a stay of the State's claims against the Defendants and the resultant delay in relief would also cause significant prejudice to the State and its residents. The State seeks to hold Defendants responsible for widespread environmental contamination, the full extent of which is not yet even known. At the time the State filed its lawsuit, investigation around the Fayetteville Works had revealed PFAS contamination linked to air emissions twenty miles from the facility, and residential drinking water wells with GenX concentrations as high 4,000 ng/L—an amount 400

times the Environmental Protection Agency's health advisory level. Compl. at ¶ 6, ECF No. 2; Drinking Water Health Advisory: "GenX Chemicals", ECF No. 381.4. The full extent of contamination is still unknown. What is known is that the drinking water of thousands of North Carolinians is contaminated with Defendants' chemicals. It would be unreasonable and unjust to stay proceedings for an unknown amount of time, while the State's citizens must rely on alternative drinking water sources to avoid drinking contaminated water, so that Moving Defendants—the very entities who caused the harm at issue in this case—can seek a writ of certiorari that may only *potentially* be granted.

B. Moving Defendants Fail to Show Sufficient Prejudice to Justify a Stay.

Moving Defendants also attempt to support their request for a stay by claiming that they will suffer prejudice absent a stay and by expressing concern for "judicial economy." ECF No. 484 at 3–4.

These concerns are rooted in a desire for cost savings for Defendants. Moving Defendants stress that preparing for the October 30 hearing will require extensive time and resources that they would not need to invest *if* the Supreme Court grants the petition *and* they ultimately prevail. *See id.* at 4 (preparation for hearing will require "extensive commitment" of Moving Defendants' time and resources); Defs.' Brief in Supp. of Mot. for Expedited Briefing on Mot. for Stay, ECF No. 486 at 1 (hearing preparation will require Moving Defendants to "spend significant time and resources").

But these speculative cost concerns based on numerous contingencies simply do not form the type of irreparable harm that justifies a stay. Indeed, it is well established that a "mere desire to avoid trial" and the associated costs of litigation, alone, is insufficient to affect a "substantial right" that allows for an immediate appeal of an interlocutory order. *Burton v. Phoenix Fabricators and Erectors, Inc.,* 185 N.C. App. 303, 304 (2007*)*.[3] It stands to reason that if a party cannot obtain immediate appeal based solely on its interest in avoiding litigation costs, then such costs likewise should not be sufficient to warrant a potentially lengthy and indefinite stay of litigation on the chance that the Supreme Court might grant certiorari.

Moreover, Moving Defendants are the very entities that caused the contamination for which they now seek to avoid liability. That Moving Defendants would prefer not to spend resources defending the lawsuit and preparing for a scheduled hearing (that all parties agreed to) simply does not justify further delay of the case, particularly when weighed against the widespread contamination of North Carolina's natural resources, including its citizens' drinking water.

Similarly, Moving Defendants' assertion that issuance of a stay will conserve judicial resources rings hollow given their delay in moving to dismiss. In reality, Moving Defendants' filing of their petition does more to highlight their lack of regard for the conservation of the Court's resources. Defendants' second motion to dismiss

[3] *See also Filipowski v. Oliver*, 219 N.C. App. 398, 399 (2012) ("Our courts have held many times that avoidance of the time and expense of a trial is not a substantial right justifying immediate appellate review of an interlocutory order."); *K2 Asia Ventures v. Trota*, 209 N.C. App. 716, 719 (2011) ("[A]voiding the expenditure of time and money is not a substantial right justifying immediate appeal.").

filed in this matter, four years after the case was filed, was predicated on a new law that had recently passed. Def.'s Mot. to Dismiss, ECF No. 392 at 5. But while the statute was changed in December 2024, Defendants waited until May 2025 to bring their motion at the same time as its summary judgment motion—hardly evidencing a concern with the timely resolution of jurisdictional matters.

In addition, the Court issued its Order and Opinion denying Defendants' Motion to Dismiss on August 7, 2025. ECF No. 472. And the Court set the October 30 argument, after conferral with the parties, on August 26, 2025. ECF No. 479. Yet Defendants waited nearly eight weeks after the Court's Order, and nearly a month after the setting of the hearing date, to alert the Court and the State of the filing of their petition. *See* ECF No. 483 ¶ 2. And they did so despite confirming to the Court that October 30 was an acceptable date for argument.[4]

Moving Defendants' concerns with the burden of ongoing proceedings and judicial economy are insufficient to justify a stay. If the Court were to grant a stay simply to allow the Moving Defendants to avoid the burden of ongoing proceedings alone, then virtually any litigant would be entitled to strategically delay any litigation for months simply by filing a petition for a writ of certiorari. The General Assembly, as noted, has provided for an automatic stay of proceedings pending

[4] Defendants note that their Memorandum in Support of their Motion for Stay is "barely over five pages in length," which did not require nearly eight weeks from the Court's decision to draft. At a minimum, Moving Defendants could have alerted the State and the Court that they intended to file such motion. Instead, Moving Defendants and the State agreed to the October 30 hearing date and notified the Court accordingly.

appellate review, but only when that review is premised on a valid appeal. N.C.G.S. § 1-294.[5] When a proper appeal is filed, appellate courts do not engage in discretionary gatekeeping. By contrast, when a petition for writ of certiorari is filed, appellate courts must first determine whether to take the case before it reaches the merits. *See, e.g.,* N.C. R. App. P. 21. That explains, as shown, why there is no automatic stay that is triggered by the filing of certiorari petitions. *See supra* pp. 4, 10. Thus, if the burden of ongoing proceedings alone could justify a stay, the Moving Defendants' position would create a virtual right to a stay outside the appeal context that the General Assembly did not see fit to enact.

The Court should thus view Defendants' feigned interest in judicial economy for what it is—an attempt to delay the proceedings.

II. Moving Defendants Are Unlikely to Succeed on Appeal.

Moving Defendants also argue that a stay is warranted because they "believe that they are likely to prevail on appeal." ECF No. 484 at 5. But their conclusory

[5] Indeed, Defendants previously appealed this Court's Order and Opinion on Consolidated Motions to Dismiss by Defendants Corteva, Inc. ("Corteva") and DuPont De Nemours, Inc. ("New DuPont"), which found that those Defendants are subject to the jurisdiction of this Court. *See* Ord. and Op. ECF Nos. 153, 154 (public) (Aug. 17, 2021); Notices of Appeal, ECF Nos. 155, 156. Although this Court entered a stay upon that appeal, *see* ECF No. 161 (Oct. 29, 2021), Moving Defendants' current request for stay differs in two respects. First, Defendants Corteva and New DuPont had a right to appeal the personal jurisdiction question, so there was no question whether the North Carolina Supreme Court would take the appeal. Second, upon appeal, N.C.G.S. § 1-294 provided for an automatic stay. The only question for this Court was the scope of the automatic stay. Here, there is no right to appeal and no guarantee the North Carolina Supreme Court will grant Moving Defendants' petition, and thus no automatic stay.

belief in their likelihood of success (should the Supreme Court grant their petition in the first place) is not sufficient to tip the scales in favor of granting a stay.

As this Court has acknowledged, to justify a stay, the movant must make a showing of "a *substantial* likelihood of success." ECF No. 161 ¶ 18 (emphasis added) (quoting *Vizant*, 2019 WL 995792, at *4); *cf. State v. Ricks*, 378 N.C. 737, 472 (2021) (holding that Court of Appeals abused its discretion in granting a petition for a writ of certiorari where the State had not conceded that "the trial court committed error").[6] Here, however, Moving Defendants make no attempt to make a showing of *substantial* likelihood of success. Rather, as Moving Defendants acknowledge, the Court denied their motion to dismiss after "careful and thorough consideration." ECF No. 484 at 2.

Defendants' motion to dismiss was fully briefed, and the Court held an in-person hearing on July 23, 2025, where the parties had the additional opportunity to present arguments supporting their positions to the Court. Notably, the Court did not accept either party's position in full, holding that "it is clear that N.C.G.S. § 114-2(8)(a) conferred authority on the Attorney General to originate and maintain the present case before the statute's repeal." Ord. and Op., ECF No. 472 ¶ 22. But the

[6] Citing the decision of the Court of Appeals in *Abbot v. Town of Highlands*, Moving Defendants suggest that a stay is warranted if they can show "some likelihood" of success. ECF No. 161 at 5 (citing 52 N.C. App. 69, 79 (1981)). *Abbot*, however, does not speak to the standards that govern granting stays in the first instance. *Abbot*, rather, addressed *an appeal* from the granting of stay and held that a trial court did not "abuse its discretion" in granting a stay where there was some likelihood of success. 52 N.C. App. at 79. The standards that govern the deferential review of stays on appeal do not govern whether stays should be granted in the first instance.

Court determined that the statute's repeal "did not clearly divest the Attorney General of his narrower common law authority[.]" *Id.* ¶ 27. Based on a thorough analysis of North Carolina's inheritance of English common law, as well as North Carolina law itself, the Court concluded that the Attorney General "has had, and continues to have, the power to originate and maintain suits for the protection and defense of North Carolina's natural resources." *Id.* ¶ 30.

Moving Defendants thus cannot point to any argument not already considered or rejected by this Court that would alter the Court's conclusion. They also do not point to any part of the Court's analysis that is allegedly so infirm that it could support a showing of "a substantial likelihood of success" with respect to Moving Defendants' petition for a writ of certiorari. ECF No. 161 at 8 (quoting *Vizant*, 2019 WL 995792, at *4). Given their failure to do so, Moving Defendants' disagreement with the Court's analysis does not warrant a departure from the ordinary course of litigation contemplated by the laws of this State.

For all these reasons, even assuming Moving Defendants are successful in obtaining a writ of certiorari (of which there is no guarantee), Moving Defendants are nevertheless not likely to succeed on appeal, and have therefore failed to show they will suffer the kind of harm that justifies a discretionary stay. *Vizant,* 2019 WL 995792 at *4.

CONCLUSION

A stay is an "intrusion into the ordinary processes of administration and judicial review and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant." *Rutherford Elec.,* 2014 WL 3741316, at *4

(quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009) (citation omitted)). Given the prejudice to the State if a stay is issued, weighed against the lack of prejudice if a stay is denied and the unlikelihood of success should appeal be permitted, the Court should deny Moving Defendants' Motion for Stay. The Court should maintain the litigation schedule, including the hearing scheduled for October 30.

Respectfully submitted,

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RULE 7.8 CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with Rule 7.8 of the North Carolina Business Court Rules in that the brief contains 4,290 words excluding the case caption, index, table of contents, table of authorities, signature blocks, and required certificates.

This the 7th day of October, 2025.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing brief has been served on all counsel of record in accordance with Business Court Rule 3.9 through electronic filing with the North Carolina Business Court.

This the 7th day of October, 2025.

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