

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

EARL PARRIS, JR., individually, and)
on behalf of a Class of persons similarly)
situated,)

Plaintiff,)

CITY OF SUMMERVILLE,)
GEORGIA,)

Intervenor-Plaintiff,)

v.)

3M COMPANY, et al.,)

Defendants.)

CIVIL ACTION NO.:
4:21-CV-00040-TWT

**DEFENDANTS E.I. DU PONT DE NEMOURS AND COMPANY,
THE CHEMOURS COMPANY, 3M COMPANY, DAIKIN
AMERICA INC., PULCRA CHEMICALS LLC, AND TOWN OF TRION,
GEORGIA’S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
TEMPORARILY STAY THIS CASE IN ITS ENTIRETY PENDING
TERMINATION OF MDL STAY ORDERS**

Rather than litigating this case in a piecemeal, inefficient fashion, Defendants E.I. du Pont de Nemours and Company (“EIDP”), The Chemours Company (“Chemours”) (together “EIDP/Chemours”), 3M Company (“3M”), Daikin America, Inc. (“Daikin”), Pulcra Chemicals, LLC (“Pulcra”), and Town of Trion,

Georgia (“Town of Trion”) (collectively “Defendants”) move¹ to temporarily stay this action in its entirety. As this Court knows, Intervenor-Plaintiff the City of Summerville, Georgia’s (“City of Summerville”) claims against EIDP/Chemours and 3M are stayed as a result of the Injunction and Stay Orders recently entered by the United States District Court for the District of South Carolina (“MDL Court”) in *In re: Aqueous Film-Forming Foams Products Liability Litigation*, Master Docket No. 2:18-mn-2873-RMG (“AFFF MDL”); but the City of Summerville may proceed with its claims against other Defendants, and Parris may proceed with all of his claims. In the interest of efficiency, Defendants respectfully request that this Court stay all proceedings in this matter, including Plaintiff Parris’s claims—only for a matter of months—through completion of the Final Fairness Hearing proceedings for both EIDP/Chemours and 3M. All parties have conferred on this Motion. Plaintiffs and Defendant Mount Vernon Mills, Inc. oppose the Motion; Defendant Huntsman International, LLC, takes no position; and, as set forth above, all other Defendants join.

In further support of their Motion, Defendants state:

On August 22, 2023, based on a settlement agreement reached with EIDP/Chemours, the MDL Court entered an Order temporarily staying all further

¹ Because Intervenor-Plaintiff the City of Summerville, Georgia’s action is already stayed as to EIDP/Chemours and 3M, these Defendants are movants only as to Plaintiff Parris’s action.

proceedings as to any claims against EIDP/Chemours by the Public Water System class members encompassed in that agreement. *See* Notice of Stay as to the Claims of Intervenor-Pl. Summerville (ECF No. 414); Notice of Am. Stay Order (ECF No. 419) (confirming that the City of Summerville is enjoined from litigating its claims against EIDP/Chemours until the conclusion of the Final Fairness Hearing). On August 29, 2023, based on a settlement agreement reached with 3M, the MDL Court also temporarily stayed and enjoined all further proceedings as to all claims against 3M by the Public Water System class members encompassed within that agreement. *See* Notice of Inj. and Stay (ECF No. 417). The City of Summerville is a member of the class of Public Water System plaintiffs encompassed in each of these agreements. As such, its claims against EIDP/Chemours and 3M are currently stayed.

The Final Fairness Hearing for the EIDP/Chemours settlement is December 14, 2023 (Ex. A to EIDP/Chemours's Notice at 11 (ECF No. 414-1)), and the Final Fairness Hearing for the 3M settlement is six weeks later, on February 2, 2024 (3M's Notice of Injunction and Stay at 1 (ECF No. 417)).

As a result of the present stays, the City of Summerville may not proceed with its claims against EIDP/Chemours and 3M; but the City of Summerville may proceed with its claims against other Defendants, and Parris may proceed with all of his claims. This unique posture will result in piecemeal litigation if allowed to

proceed and leads Defendants to ask this Court to stay all proceedings in this action until after completion of the 3M Final Fairness Hearing proceedings on or after February 2, 2024, after which any plaintiff opting out of the settlement may proceed² and a new Scheduling Order can be entered in this matter that applies to all Parties.

ARGUMENT IN SUPPORT OF STAY

A district court has broad discretion to stay proceedings, incidental to its inherent power “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see Clinton v. Jones*, 520 U.S. 681, 706 (1997). And “[f]ederal courts routinely exercise their power to stay a proceeding where a pending decision [in another case] would have a substantial or controlling effect on the claims and issues in the stayed case.” *HCL Am. Inc. v. Am. Teleconferencing Servs., Ltd.*, No. 1:22-CV-139-TWT, 2023 WL 4482329, at *1 (N.D. Ga. July 10, 2023) (Thrash, J.) (citation omitted).

This Court has outlined certain factors to consider when deciding whether a stay is appropriate: “(1) whether a stay would unduly prejudice or present a tactical disadvantage to the nonmovant; (2) whether a stay will simplify the issues in the case; and (3) whether discovery is complete and a trial date has been set.” *Tomco Equip. Co. v. Se. Agri-Sys., Inc.*, 542 F. Supp. 2d 1303, 1307 (N.D. Ga. 2008).

² Preliminary Approval Order §§ VI, VIII (ECF No. 417-1).

Considering these factors, good cause exists to stay this action, including discovery and all other pretrial deadlines.

I. A temporary stay will not unduly prejudice or present any tactical disadvantage to Plaintiff or Intervenor-Plaintiff.

This is a complex case that is in its early stages, with fact discovery ongoing and expert discovery yet to begin (*see infra* § III). A stay could slightly prolong the final resolution of this case, but only minimally. And as this Court has stated, “the potential for delay does not, by itself, establish undue prejudice.” *JBS Hair, Inc. v. SLI Prod. IW Corp.*, No. 1:21-CV-1861-MLB, 2022 WL 877501, at *1 (N.D. Ga. Jan. 12, 2022); *see Roblor Mktg. Grp., Inc. v. GPS Indus., Inc.*, 633 F. Supp. 2d 1341, 1347 (S.D. Fla. 2008) (“That a stay will delay the progress of litigation ‘is not a dispositive issue as it is common to all stayed cases.’” (citation omitted)); *see also Peschke Map Techs. LLC v. Miromar Dev. Corp.*, No. 215CV173FTM38MRM, 2015 WL 6501131, at *2 (M.D. Fla. Oct. 20, 2015) (granting a stay and finding no irreparable prejudice even if the patent reexamination “could potentially ‘last several years’”). In fact, the Public Water Provider Settlement could effectively *expedite* the relief the City of Summerville seeks and efficiently resolve some of Parris’s alleged damages categories that are inherently derivative and intertwined with the City of Summerville’s claims. *See, e.g., infra* § II (discussing Parris’s allegation of increased rates to pay for Summerville’s future water treatment system).

Defendants do not seek an indefinite stay—rather, they ask only that this action be stayed long enough for the MDL Court to complete the Final Fairness Hearings, which will determine whether the City of Summerville’s claims against EIDP/Chemours and 3M are resolved. *See Wittman v. Aetna Health, Inc.*, No. 1:14-CV-00322-JAW, 2014 WL 4772666, at *2 (D. Me. Sept. 24, 2014) (“[A]ny potential prejudice to Plaintiff as the result of the stay would be minimal given the likelihood the stay will be of limited duration.”).

A moderate extension at this early stage in the litigation—only until after the February 2, 2024 3M Final Fairness Hearing proceedings are complete—is clearly within this Court’s discretion and will not result in any undue delay or prejudice to any party. *Cf. Ortega Trujillo v. Conover & Co. Commc’ns*, 221 F.3d 1262, 1264 (11th Cir. 2000) (concluding that a stay was impermissibly “immoderate” where it was indefinite in scope).

II. A stay will further simplify the issues in the case.

Staying this case in its entirety while the MDL Court resolves the scope of the Public Water System settlement agreements allows for simplification of the case, streamlines the issues and defenses for trial, and avoids wasting resources.

The City of Summerville’s claims against EIDP/Chemours and 3M are stayed, but fact discovery among the other Parties and on the other claims is ongoing (*see infra* § III). Additionally, the December 14, 2023 and February 2, 2024 Final

Fairness Hearings will take place in the midst of expert discovery and class certification briefing related to the unstayed claims.³ As the City of Summerville successfully argued when seeking intervention this matter, the claims of Summerville and Parris are not only intertwined, but Parris’s claimed injuries and damages are derivative of and, in fact, hinge on the alleged impacts from PFAS to the water supplied to him (and the proposed class members) by the City of Summerville and the costs associated with remediating those impacts. *See* City of Summerville’s Am. Mot. to Intervene ¶¶ 10, 13 (ECF No. 84) (asserting that “the City has a direct and substantial interest in the property or transactions that is the subject of [Parris’s] action,” that “the disposition of [Parris’s separate] action could adversely affect the City’s interests” and that allowing the City of Summerville and Parris to pursue their claims together would “avoid duplicative litigation”). Any discovery by Parris will be based on the alleged impacts to the City of Summerville. Having discovery proceed as to only *some* claims during the four months between now and the 3M Final Fairness Hearing would cast an undue burden on the Parties and the Court, create the potential for confusion, and require duplication of effort and the expenditure of unnecessary resources.

³ Parris’s and the City of Summerville’s expert disclosures are due on January 22, 2024, and the deadline to depose their experts is March 22, 2024. Parris’s class certification motion is due in the interim, on February 21, 2024.

If the City of Summerville ultimately opts out of the Public Water Provider Settlements and its claims against EIDP/Chemours and 3M resume following the Final Fairness Hearings, for example, EIDP/Chemours and 3M will not have fully participated in any fact or expert depositions the City of Summerville notices during the stay, nor will they have participated in discovery conducted by other Defendants as to the City of Summerville. Therefore, previously taken depositions will have to be reconvened so that 3M and EIDP/Chemours can ask questions specific to Summerville's claims. Defendants should not be required to potentially absorb the cost associated with conducting this discovery twice (if the City of Summerville opts out of the Public Water Provider Settlements). Without a stay, duplication of effort and unnecessary expenditure of resources is inevitable.

The City of Summerville's expert discovery will also have to proceed on a different track, with different disclosure deadlines, deposition deadlines, and potentially different briefing deadlines. A stay of all claims would avoid this piecemeal litigation and further the Court's and Parties' interest in efficiency and consistency. *See JBS Hair, Inc.*, 2022 WL 877501, at *1 (granting a stay where five cases presented the same issues and allegations to "allow the schedules of all cases to remain consistent"); *Cajun Glob. LLC v. Volunteer Chicken, LLC*, No. 1:18-CV-4124-AT, 2019 WL 12763080, at *3 (N.D. Ga. Apr. 29, 2019) (granting a stay and explaining that "piecemeal" litigation is disfavored); *Baine v. Citibank, N.A.*, No.

1:18-CV-3024-AT-JSA, 2018 WL 6167950, at *1 (N.D. Ga. Oct. 10, 2018) (granting a stay where other defendants would have to proceed “piecemeal” while discovery as to another defendant is held in abeyance); *see also Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009) (stating, in dicta, that it is “at least a good [decision], if not an excellent one” to stay a case while awaiting another court’s decision that is likely to substantially affect the stayed case).

Conversely, if the City of Summerville does not opt out of the Public Water Provider Settlements and thus becomes eligible for the financial benefits available to water providers under those settlements, many of Parris’s allegations—which likely require extensive, costly discovery—will be simplified if not moot. For example, the most substantial damages issue in this case is Summerville’s assertion that it “must build a Granular Activated Carbon (‘GAC’) treatment system or other sophisticated water filtration system” to address the PFAS levels in its water supply. Am. Compl. ¶ 22 (ECF No. 351). Parris, in turn, claims that the proposed class members will incur damages related to “the future measures to be taken by Summerville to permanently filter PFAS pollution in order to provide a safe, long-term water supply.” Second Am. Compl. ¶ 102 (ECF No. 280). These allegations are inextricably intertwined, with Parris’s claimed damages relying on Summerville’s water remediation plan and—of principal importance here—funding

for that plan. Accordingly, the Public Water Provider Settlement, by providing funding for water treatment improvements, could render some of Parris's damages claims moot.

A temporary stay of the case would avoid the costs associated with litigating issues that could easily become moot. *See Morrissey v. Subaru of Am., Inc.*, No. 1:15-CV-21106-KMM, 2015 WL 4512641, at *2 (S.D. Fla. July 24, 2015) (granting a stay because it “promote[d] judicial economy and efficiency by avoiding the litigation of issues that may become irrelevant or moot”); *see also United States f/w/b/o Am. Elec. Co., LLC v. Travelers Cas. & Sur. Co.*, No. 3:21-CV-614-MMH-JRK, 2021 WL 5280665, at *6-7 (M.D. Fla. Nov. 12, 2021) (permitting intervention under Rule 24 and then staying the case to allow the Court to properly take up a motion to compel arbitration, under the intervenor's motion); *Roblor Mktg. Grp., Inc.*, 633 F. Supp. 2d at 1348 (“[T]he grant of a stay will maximize the likelihood that neither the Court nor the parties expend their assets addressing invalid claims.”); *HCL Am. Inc.*, 2023 WL 4482329, at *2 (granting a stay where two cases arose from the same set of facts and the disposition of a motion in the other case could simplify the issues in the present case).

Put simply, irrespective of whether the EIDP/Chemours and 3M Public Water Provider Settlements resolve the City of Summerville's claims against

EIDP/Chemours and 3M, the requested stay furthers the Court’s and the Parties’ interests in efficiency and consistency.

III. A temporary stay will be effective because discovery is ongoing and there is no trial date.

The third factor—whether discovery is complete and whether a trial date has been set—also favors granting a stay. Fact discovery is ongoing. The Parties have engaged in written discovery and taken a few corporate and individual witness depositions, including 30(b)(6) depositions of representatives for Mount Vernon Mills and Town of Trion.⁴ Many additional depositions need to be taken before fact discovery closes on November 23, 2023. *See* Order at 2 (ECF No. 349) (setting a fact discovery deadline). Expert reports have not been served, and expert discovery has not started. Briefing on class certification has not commenced. And—of utmost importance—a trial date has not been set. It is therefore “sufficiently early for a stay to be effective.” *Tomco Equip. Co.*, 542 F. Supp. 2d at 1312 (granting a stay where “although it [was] relatively late in discovery, both parties [were] looking to extend discovery for the addition of new defendants” and a trial had not been set); *see Roblor Mktg. Grp., Inc.*, 633 F. Supp. 2d at 1347, 1350 (granting a stay where the case was “at the very early stages,” noting that “[m]uch of the work in the case that

⁴ Notably, depositions have not commenced for representatives of 3M or EIDP/Chemours—and they cannot be taken due to the stays. Nor, for that matter, could 3M or EIDP/Chemours participate in a deposition of the City of Summerville.

typically consumes a patent action—extensive merits and expert discovery, claim construction, and motions for summary judgment—has not yet begun,” a factor which “overwhelmingly supports a stay”); *see also HCL Am. Inc.*, 2023 WL 4482329, at *2 (granting a stay where discovery was complete but no trial date had been set).

CONCLUSION

For the foregoing reasons, Defendants EIDP/Chemours, 3M, Daikin, Pulcra, and Town of Trion ask that this action be stayed in its entirety in conjunction with the stays currently in effect for the City of Summerville’s actions against EIDP/Chemours and 3M.

Dated: September 25, 2023

Respectfully submitted,

/s/ Robert B. Remar

Robert B. Remar

GA Bar No. 600575

Monica P. Witte

GA Bar No. 405952

SMITH, GAMBRELL

& RUSSELL, LLP

1105 W. Peachtree St. NE

Suite 1000

Atlanta, GA 30309

Phone: (404) 815-3500

Facsimile: (404) 815-3509

rremar@sgrlaw.com

mwwitte@sgrlaw.com

Jackson R. Sharman, III
GA Bar No. 637930
Benjamin P. Harmon
GA Bar No. 979043
M. Christian King (*PHV*)
Harlan I. Prater, IV (*PHV*)
W. Larkin Radney, IV (*PHV*)
Tatum Jackson (*PHV*)
LIGHTFOOT, FRANKLIN
AND WHITE LLC
The Clark Building 400 20th
Street North
Birmingham, AL 35203
Telephone: (205) 581-0700
jsharman@lightfootlaw.com
bharmon@lightfootlaw.com
cking@lightfootlaw.com
hprater@lightfootlaw.com
lradney@lightfootlaw.com
tjackson@lightfootlaw.com

Quentin F. Urquhart, Jr. (*PHV*)
John W. Sinnott (*PHV*)
IRWIN FRITCHIE URQUHART
MOORE & DANIELS LLC
400 Poydras Street, Suite 2700
New Orleans, LA 70130
Telephone: (504) 310-2100
Facsimile: (504) 310-2101
qurquhart@irwinllc.com
jsinnott@irwinllc.com

Counsel for Defendant 3M Company

/s/ John M. Johnson

John M. Johnson
AL Bar No.: asb-7318-o52j
Pro Hac Vice

jjohnson@lightfootlaw.com
Lana A. Olson
AL Bar No.: asb-6841-a591
Pro Hac Vice
lolson@lightfootlaw.com
R. Ashby Pate
AL Bar No. asb-3130-e64p
Pro Hac Vice
apate@lightfootlaw.com
Meghan S. Cole
AL Bar No.: asb-6544-b101
Pro Hac Vice
mcole@lightfootlaw.com
LIGHTFOOT FRANKLIN &
WHITE, LLC
The Clark Building
400 20th Street North
Birmingham, AL 35203
(205) 581-0700

Blair Cash
Georgia Bar No. 360457
MOSELEY MARCINAK LAW
GROUP LLP
P.O. Box 1688
Kennesaw, Georgia 30156
(470) 480-7258
blair.cash@momarlaw.com

*Counsel for Defendant E.I. du Pont de
Nemours and Company and The
Chemours Company*

/s/ Jonathan P. Dyal
Jonathan P. Dyal
Admitted *PHV*
BALCH & BINGHAM LLP
1310 25th Avenue
Gulfport, MS 39501

(228) 864-9800
jdyal@balch.com

Christopher L. Yeilding
Admitted *PHV*
BALCH & BINGHAM LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203-4642
(205) 226-8728
cyeilding@balch.com

Theodore M. Grossman
Admitted *PHV*
JONES DAY
250 Vesey Street
New York, NY 10281
(212) 326-3939
tgrossman@jonesday.com

Jeffrey A. Kaplan, Jr.
Georgia Bar No. 859280
JONES DAY
1221 Peachtree Street NE, Suite 400
Atlanta, GA 30361
(404) 581-8325
jkaplan@jonesday.com

James R. Saywell
Admitted *PHV*
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114-1190
(216) 586-3939
jsaywell@jonesday.com

Steven N. Geise
Admitted *PHV*
JONES DAY
Suite 1500
4655 Executive Drive

San Diego, CA 92121
(858) 314-1170
sngeise@jonesday.com
Kevin P Holewinski
Admitted *PHV*
JONES DAY
51 Louisiana Avenue
Washington, DC 20001
kpholewinski@jonesday.com

*Counsel for Defendant Daikin
America, Inc.*

/s/ Robert D. Mowrey
Robert D. Mowrey
GA Bar No. 527510
C. Max Zygmunt
GA Bar No. 567696
E. Peyton Nunez
GA Bar No. 756017
KAZMAREK MOWREY CLOUD
LASETER LLP
1230 Peachtree Street, NE
Suite 900
Atlanta, Georgia 30309
Telephone: (404) 812-0839
bmowrey@kmcllaw.com
mzygmunt@kmcllaw.com
pnunez@kmcllaw.com

*Counsel for Defendant Pulcra
Chemicals, LLC*

/s/ Leslie K. Eason
Leslie K. Eason
Georgia Bar No. 100186
GORDON REES SCULLY
MANSUKHANI, LLP

55 Ivan Allen Jr. Blvd., NW, Suite
750
Atlanta, Georgia 30308
(404) 869-9054
leason@grsm.com

Erich P. Nathe
Pro Hac Vice
Katie S. Lonze
Pro Hac Vice
GORDON REES SCULLY
MANSUKHANI, LLP Attorney
1 North Franklin Street
Chicago, IL 60606
(312) 565-1400
enathe@grsm.com
klonze@grsm.com

*Counsel for Defendant Town of Trion,
GA*

CERTIFICATE OF COMPLIANCE

Pursuant to Northern District of Georgia Civil Local Rule 7.1.D., the undersigned counsel certifies that the foregoing filing is prepared in Times New Roman 14-point font, as mandated in Local Rule 5.1.C.

/s/ Robert B. Remar

Robert B. Remar

GA Bar No. 600575

SMITH, GAMBRELL & RUSSELL, LLP

rremar@sgrlaw.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO TEMPORARILY STAY THIS CASE IN ITS ENTIRETY PENDING TERMINATION OF MDL STAY ORDERS** has been filed electronically with the Clerk of Court by using the CM/ECF system which will automatically email all counsel of record.

This 25th day of September, 2023.

/s/ Robert B. Remar

Robert B. Remar

GA Bar No. 600575

SMITH, GAMBRELL & RUSSELL, LLP

rremar@sgrlaw.com