Nos. 25-2693, 25-2722 & 25-2824

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IGNATUS PAPPAGALLO, et al.,

Plaintiffs-Appellees,

v.

REDCO CORP., et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Pennsylvania
Case No. 5:25-cv-01852-JMG
Hon. John M. Gallagher

APPELLEES' PARTIAL OPPOSITION TO MOTION TO STAY PENDING APPEAL OR TO EXPEDITE APPEAL

Casey R. Coburn
Michael A. Rowe
NASS CANCELLIERE
1500 JFK Boulevard
Suite 404
Philadelphia, PA 19103
(215) 546-8200

Adam R. Pulver
Nandan M. Joshi
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
apulver@citizen.org

Counsel for Plaintiffs-Appellees

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INTRODUCTION

Defendant John Crane International (JCI) removed this state-law action pursuant to the federal-officer removal statute, 28 U.S.C. § 1442(a)(1), arguing that Plaintiffs' wrongful death claims arose out of asbestos exposure on Navy and Coast Guard vessels. According to JCI, its asbestos-containing products on those vessels were produced under federal-officer direction. Plaintiffs, though, have expressly disclaimed any claims arising out of exposures on military ships. In light of the disclaimer, and consistent with cases decided by district courts and courts of appeals, the district court held that this case involves no claims for or relating to an act under color of federal office, as would be necessary for removal jurisdiction under 28 U.S.C. § 1442(a)(1), and remanded the case.

Applying the traditional standard for stays pending appeal, the district court declined to stay its remand order. The court found that each of the factors weighed against the requested stay. And as this Court has done in other appeals, and like the majority of other courts of appeals, the district court declined to read the Supreme Court's 2023 decision in *Coinbase v. Bielski* 599 U.S. 736 (2023)—which concerned interlocutory

appeals of denials of motions to compel arbitration under the Federal Arbitration Act (FAA)—to sub silentio abrogate decades of case law and create a new rule of automatic stays pending appeal of remand orders.

Two weeks after the district court denied its stay request, JCI filed a motion asking this Court for the extraordinary relief of staying the remand of this action—first filed in April 2023—pending appeal or, in the alternative, to expedite this appeal. JCI does not argue that any of the traditional stay factors are satisfied and instead relies solely on the theory that the filing of a notice of appeal creates an "automatic" stay. But in allowing appeals from certain remand orders, Congress did not provide for stays pending appeal as of right. And the circumstances that led the Supreme Court to find, in other contexts, that federal district court proceedings must be stayed pending appellate review, are not presented in appeals of remand orders—where state court and federal court proceedings may proceed concurrently, without a risk of conflict, and where federal jurisdiction can be reassumed in the event of reversal.

Further, unlike certain interlocutory appeals where the Supreme Court has recognized "automatic" stays, appeals of remand orders implicate important federalism and separation of powers considerations

that counsel against finding Congress impliedly provided an automatic stay.

Given that JCI cannot (and has not even attempted to) meet its burden to show that it is entitled to extraordinary relief under the well-established four-factor test for stays pending appeal, the Court should deny its request for a stay.

As to JCI's alternative request, Plaintiffs take no position as to whether JCI has established an "exceptional reason" for expedition under Local Appellate Rule 4.1. They note, though, that JCI did not confer as to a proposed expedited briefing schedule, as contemplated by Rule 4.1, and that JCI's proposal, without dates certain, would potentially limit Plaintiffs' time to prepare their brief to the period between Thanksgiving and Christmas. Plaintiffs thus propose an alternative schedule, with dates certain, that avoids that outcome.

BACKGROUND

From 1961 through 2002, Raffaele (Ralph) Pappagallo worked in machinery at Bethlehem Steel and Kearny Marine, where he was exposed to various asbestos-containing products. Dist.Ct.Dkt. 1 at 32. In

2022, Ralph was diagnosed with lung cancer, caused by his exposure to asbestos. *Id.* He died from that illness in December 2022. *Id.*

In April 2023, Ralph's son, Ignatius Pappagallo[1], as Executor of his estate, and his widow, Anna Pappagallo, commenced this state-law wrongful death action against 47 manufacturers and distributors of asbestos and asbestos-containing products in the Philadelphia Court of Common Pleas. Dist.Ct.Dkt. 1 at 27. Pursuant to a procedure adopted by that court for asbestos cases nearly forty years ago, he filed a "short form complaint," which incorporated by reference a "Master Long Form Complaint" filed in 1986. That master complaint sounds in negligence and strict liability, and includes claims based on defendants' design defects, failure to warn, failure to test, and conspiracy. Dist.Ct.Dkt. 1 at 186–90.

The parties litigated the action in the Court of Common Pleas for nearly two years, in accordance with that court's Master Case Management Order for Asbestos-Related Personal Injury Claims. *See*

[1] The notice of removal incorrectly spelled Mr. Pappagallo's name as "Ignatus." Plaintiffs-Appellees respectfully request the Court to amend the caption in these appeals to reflect the correct spelling of Mr. Pappagallo's name: "Ignatius." *See* Dist.Ct.Dkt. 1 at 31 (state court complaint).

Dist.Ct.Dkt. 1 at 395–436 (state court docket). In March 2025, Defendants deposed Antonio Albanese, a co-worker of Ralph's. Defendants' counsel asked Mr. Albanese if he had worked on any Naval or Coast Guard ships while working for Bethlehem Steel. Dist.Ct.Dkt. 1 at 87–88. Mr. Albanese responded that he had worked on "a few" Navy ships and some Coast Guard ships, and that he "imagine[d] it being the same" for Ralph. *Id.* He further stated that Navy ships were "a small percentage of the ships" on which he had worked, *id.* at 90, and that he had no specific recollection of Ralph working on Navy ships, *id.* at 91.

On April 10, 2025, JCI removed the action to the U.S. District Court for the Eastern District of Pennsylvania. Dist.Ct.Dkt. 1. Its sole basis for removal was the federal-officer removal statute, 28 U.S.C. § 1442(a)(1). JCI argued that that statute applied because "to the extent JCI supplied asbestos-containing gasket and packing material, it was at the direction of a federal officer, the United States Government, and under color of federal office," because there was a "causal nexus between JCI's alleged actions" taken under federal officer direction and Ralph's death, and because it was entitled to invoke a federal-contractor defense and the defense of derivative sovereign immunity. Dist.Ct.Dkt. 1 at 13–17.

On May 9, 2025, the Pappagallos moved to remand the action to state court and expressly waived any claims for any exposures while Ralph "was working on Navy vessels and Coast Guard vessels," Dist.Ct.Dkt. 60 at 6, and thus that there was no basis for federal-officer removal jurisdiction. *Id.* at 8–9.

The district court agreed with the Pappagallos and, on August 29, 2025, granted their motion to remand. Citing cases from courts around the country, the court concluded that the Pappagallos' "unambiguous location-based disclaimer" constituted an effective disclaimer of any claims that could give rise to federal-officer jurisdiction. Dist.Ct.Dkt. 85 at 3–7 (discussing, among others, *Long v. 3M Co.*, No. 3:23-CV-1325-AR, 2024 WL 866819, at *4 (D. Or. Jan. 31, 2024), *report and recommendation adopted*, 2024 WL 865872 (D. Or. Feb. 29, 2024), *aff'd sub nom. Long v. Foster Wheeler Energy Corp.*, No. 24-1557, 2025 WL 752487 (9th Cir. Mar. 10, 2025); *Heilner v. Foster Wheeler LLC*, No. 1:22-CV-00616, 2022 WL 3045838, at *3 (M.D. Pa. Aug. 2, 2022); *Martincic v. A.O. Smith Corp.*, No. 2:20-CV-958-WSS, 2020 WL 5850317, at *3 (W.D. Pa. Oct. 1, 2020); *Dougherty v. A O Smith Corp.*, No. CV 13-1972-SLR-SRF, 2014 WL 3542243, at *3 (D. Del. July 16, 2014), *report and recommendation*

adopted, 2014 WL 4447293 (D. Del. Sept. 8, 2014)). The court rejected Defendants' argument that such a waiver cannot be effective because "asbestos exposure is an indivisible injury," and thus that allowing waiver would "cause Plaintiffs' remaining claims to fail as a matter of law in state court." *Id.* at 8. That argument was "not relevant to the jurisdictional inquiry," but rather went solely to the merits—recognizing that "Plaintiffs will bear the burden of proving that non-government exposures caused Mr. Pappagallo's injury in the state court proceedings." *Id.* at 9. Concluding that the disclaimer meant there was no claim providing for federal jurisdiction, *id.* at 13–14, the court declined to retain the case, noting "there is no evidence of judicial manipulation or forum shopping" and that, "[f]rom the initial filing of the Complaint to the present moment, Plaintiffs have not made a clear claim against Defendants for Mr. Pappagallo's asbestos exposure on Navy and Coast Guard vessels." *Id.* at 15.

On September 2, 2025, JCI filed a notice of appeal and a motion in the district court to stay the remand pending appeal. Dist.Ct.Dkt. 87–89. Defendants ViacomCBS Inc. and Foster Wheeler LLC subsequently filed notices of appeal and joined in JCI's stay motion. Dist.Ct.Dkt. 90, 91, 96,

97. The district court denied the stay motion on September 19, 2025. Dist.Ct.Dkt. 98. The court rejected Defendants' argument that "a stay pending appeal is automatic anytime a District Court remands a case to the originating forum" and further held "that the traditional factors [do not] favor Defendants' ask for a stay here." *Id.* at 1 n.1. As Defendants "offer[ed] little more than a claim that they were right, and the Court was wrong," they had "not established a likelihood of success on appeal." *Id.* The district court also found that the Defendants failed to establish "they would suffer irreparable harm from a remand," noting that, while the appeal proceeded, the parties could "presumably resume the discovery process that was underway" in state court when the case was removed. *Id.* "In contrast," the court explained, "there is real harm to Plaintiff-Decedent's 85-year-old widow whose day in Court would be delayed indefinitely by the requested stay." *Id.*

ARGUMENT

I. The Court should not grant a stay pending appeal.

A. There is no automatic stay pending appeal of remand orders.

This Court has repeatedly held that the question whether to grant a stay pending appeal pursuant to Rule 8(a) is based on an analysis of

four factors: "(1) whether the stay applicant has made a strong showing that [it] 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." *In re Revel AC, Inc.*, 802 F.3d 558, 567 (3d Cir. 2015) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *see also Nken v. Holder*, 556 U.S. 418, 434 (2009); *In re Citizens Bank, N.A.*, 15 F.4th 607, 615 (3d Cir. 2021); *El v. Marino*, 722 F. App'x 262, 267 (3d Cir. 2018); *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 658 (3d Cir. 1991).

Despite this precedent, Defendants argue that, under the Supreme Court's pre-*Nken* decision in *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982) (per curiam), any order remanding a removed case to state court is *automatically* stayed pending appeal. The Supreme Court's own case law, however, both pre- and post-*Griggs*, does not support this proposition. *See, e.g.*, *BP P.L.C. v. Mayor & City Council of Baltimore*, 140 S. Ct. 449 (2019) (denying stay pending appeal of order remanding action to state court); Order, *Suncor Energy v. Bd. of Cty. Cmmrs. of Boulder Cty.*, No. 19A428 (Oct. 22, 2019) (denying motion to recall

remand pending appeal); *Hutchinson v. New York*, 86 S. Ct. 5, 6 (1965) (Harlan, J., in chambers) (same).

Nor has this Court embraced such a view; post-*Coinbase*, it has continued to deny stays of remand orders pending appeal—including orders in cases removed pursuant to the federal-officer removal statute. *See, e.g.*, Order Denying Stay, Dkt. 14, *M&T Bank v. Arsenis*, No. 24-1723 (3d Cir. Nov. 6, 2024); Order Denying Stay, Dkt. 24, *Att'y Gen. of N.J. v. Dow Chem. Co.*, No. 24-1753 (3d Cir. July 24, 2024); Order Denying Stay, Dkt. 25, *Doe v. Centerville Clinics*, No. 23-2738 (3d Cir. Dec. 21, 2023). In *Dow Chemical*, the appellants explicitly argued that *Coinbase* required an automatic stay. Defs.' Mot. for Stay Pending Appeal, Dkt. 22, No. 24-1753, at 10–13 (July 10, 2024). While the *Dow Chemical* motions panel did not explain its decision, consistent with this Court's ordinary practice of "grant[ing] or den[ying] a stay pending appeal without opinion," *Westinghouse Elec. Corp.*, 949 F.2d 653, 658 (3d Cir. 1991), its denial of the stay motion necessarily reflects a rejection of the appellants' *Griggs/Coinbase* argument.

The majority of other courts of appeals to consider the issue have likewise rejected such a reading of *Griggs* and *Coinbase*. Three courts

have explicitly done so. *See California ex rel. Harrison v. Express Scripts, Inc.*, 139 F.4th 763, 767–72 (9th Cir. 2025) ("*Harrison I*"); *Georgia v. Clark*, No. 23-13368, 2023 U.S. App. LEXIS 34018, at *2 (11th Cir. Dec. 21, 2023) ("*Coinbase* was limited to arbitration proceedings, which are not at issue here."); Order, *Cty. of Westchester v. Express Scripts, Inc.*, No. 24-1639 (2d Cir. Sept. 6, 2024) (denying stay of remand order "because the Appellants are not entitled to an automatic stay pending appeal under *Coinbase*"). Two others have implicitly done so. *See Plaquemines Parish v. Chevron United States, Inc.,* 84 F.4th 362, 378 (5th Cir. 2023) (acknowledging *Coinbase* but applying four-factor standard and vacating a stay pending appeal in a federal-officer removal case); *Puerto Rico v. Express Scripts*, 119 F.4th 174, 184 n.3 (1st Cir. 2024) (noting prior order, post-*Coinbase*, denying an emergency motion to stay a remand order pending appeal).[2] Only one court of appeals, in a divided opinion, has held

[2] These decisions are consistent with courts of appeals' decisions pre-*Coinbase* and post-*Griggs*, which did not recognize "automatic" stays of remand orders. *See, e.g.*, *Bd. of Cty. Commissioners of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 965 F.3d 792, 800 (10th Cir. 2020) (noting prior denial of stay motion); *Wilde v. Huntington Ingalls, Inc.*, 616 F. App'x 710, 712–17 (5th Cir. 2015) (applying traditional standard and denying stay motion); *cf. Patel v. Del Taco, Inc.*, 446 F.3d 996, 1000 (9th Cir. 2006), *abrogated on other grounds by BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230 (2021) (rejecting argument that court

otherwise. *See City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 268 (4th Cir. 2025).

As the courts in the majority have correctly recognized, *Coinbase* addressed only "interlocutory appeal[s] on arbitrability" under section 16(a) of the FAA. *See Coinbase*, 599 U.S. at 740 ("The sole question before [the] Court is whether a district court must stay its proceedings while the interlocutory appeal on arbitrability is ongoing."). Indeed, "nearly every paragraph of the *Coinbase* opinion specifically references 'arbitrability' or the provisions of the FAA." *Harrison I*, 139 F.4th at 768. *See also Martinsville*, 128 F.4th at 274 (Wynn, J., dissenting) ("*Coinbase* nowhere … discarded two centuries of practice and established what is tantamount to a generally applicable substantive Canon in Favor of Automatic Stays.").

Likewise, nothing in the reasoning of either *Coinbase* or *Griggs* requires an automatic stay of district court remand orders. In *Griggs*, the Court held that an appeal "divests the [federal] district court of its control over those aspects of the case involved in the appeal" because of the

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of appeals "had sole and exclusive jurisdiction [over remanded case] once the notice of appeal was filed").

"danger a [federal] district court and a court of appeals would be simultaneously analyzing the same judgment." 459 U.S. at 58–59. Here, no such conflict exists. For one, the question is not whether the *district* court may analyze anything while the appeal is pending. The district court is done with the case, except for the act of mailing out the remand order. The district court's *effectuation* of its judgment in mailing out a remand order is no different than any other effectuation of a judgment. And, as a general matter, judgments are not automatically stayed by an appeal. *See* Fed. R. App. P. 8 (specifying procedure to obtain "a stay of the judgment or order of a district court pending appeal").

Further, although the state court will consider various issues while the appeal is pending, it will *not* consider the question on appeal: whether the district court should have remanded the case. What JCI really is concerned with is the *state* court addressing other issues—for example, questions about the scope of discovery or the merits. But "[p]roceedings on those questions would not interfere with the appellate court's review of the remand order, nor risk inconsistent judgments." *Harrison I*, 139 F.4th at 771. They can be considered by the state court while this Court considers other questions. *See In re Diet Drugs*, 282 F.3d 220, 234 (3d Cir.

2002) (explaining how state and federal actions commonly proceed concurrently).

In addition, a stay is not, as JCI suggests, Motion at 10, necessary to make the right to appeal meaningful. Courts of appeals, including this Court, regularly review remand orders in cases where no stay was in effect. *See, e.g.*, *Att'y Gen. of N.J. v. Dow Chem. Co.*, 140 F.4th 115 (3d Cir. 2025). Indeed, the Supreme Court denied a motion for a stay pending appeal in *BP*, 140 S. Ct. 449, but it later granted a petition for certiorari in that same case, *see* 141 S. Ct. 222 (2020). Such appeals remain effective due to federal courts' ability to use "informal processes to retrieve improvidently remanded cases from state courts." *Forty Six Hundred LLC v. Cadence Educ., LLC*, 15 F.4th 70, 80 (1st Cir. 2021) (collecting cases). Thus, where no stay is granted and a remand order is later reversed, "the defendants' right to a federal forum [has not been] lost." *Plaquemines Parish*, 84 F.4th at 376; *see also New Hampshire v. 3M Co.*, 132 F.4th 556, 559–60 (1st Cir. 2025) (explaining that failure to obtain stay of remand pending appeal does not deprive appellate court of ability to review).

The possibility of effective appeal of a remand order without a stay distinguishes such appeals from the appeals in the qualified immunity and double jeopardy context that the *Coinbase* Court deemed "analogous" to arbitrability appeals. 599 U.S. at 746. In those situations, the appellant is arguing in favor of not just immunity from judgment, but immunity *from suit*. *See Graber v. Doe II*, 59 F.4th 603, 608 (3d Cir. 2023). "An order denying such immunity (or double jeopardy protection) from suit cannot be 'reviewed effectively after a conventional final judgment' because the suit has already occurred by the time the appeal is reviewed, and thus the purpose of the immunity (or double jeopardy protection) is defeated." *Id.* at 608 (quoting *Will v. Hallock*, 546 U.S. 345, 351 (2006)). Thus, a stay is necessary to preserve the underlying right. The federal-officer removal statute, however, does not provide immunity from suit. Rather, it simply shifts the forum in which the suit is litigated.

In this way, appeals from remand orders also differ from arbitrability appeals, where a party is seeking to avoid participation in litigation in court at all. "The reason why parties may prefer to arbitrate as opposed to litigate claims is due to 'efficiency, less expense, less intrusive discovery, and the like.' The continuation of proceedings in the

district court when stays are denied renders those features 'irretrievably lost.'" *Harrison I*, 139 F.4th at 770 (quoting *Coinbase*, 599 U.S. at 743). But the fact "[t]hat arbitration is a fundamentally different form of dispute resolution than litigation further demonstrates why *Coinbase*'s logic is inapposite in the federal officer removal context." *Id.* Such fundamental differences do not exist between federal and state-court litigation.

Further, delaying a state court's ability to resume jurisdiction over an improperly removed action implicates federalism concerns not considered in *Griggs* and *Coinbase*, which solely concerned the interplay between courts within the federal system. As to state court proceedings, "[t]he Supreme Court has repeated 'time and time again that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions.'" *Harrison I*, 139 F.4th at 769 (quoting *Younger v. Harris*, 401 U.S. 37, 45 (1971)). This admonition reflects the core principle of comity that federal courts should not unnecessarily wrest away state courts' power. *See Elkins v. United States*, 364 U.S. 206, 221 (1960) ("The very essence of a healthy federalism depends upon the avoidance of needless conflict between state

and federal courts."); *Healy v. Ratta*, 292 U.S. 263, 270 (1934) (because of the "rightful independence of state governments," federal courts must "scrupulously confine their own jurisdiction to the precise limits which the statute has defined"). But "[i]mproper removals based on the federal officer removal statute deprive state courts of jurisdiction over cases that should rightfully be heard in their fora, in violation of comity principles. Automatic stays of litigation based on those improper removals pursuant to *Coinbase* would only exacerbate federal infringement on state courts' rights." *Harrison I*, 139 F.4th at 769.

JCI dismisses this concern by stating that "federalism concerns must give way to Congress's judgment under § 1442(a) and § 1447(d)." Motion at 10. But nothing in those statutes provides for an automatic stay, and whether or not to find such a provision implicit requires consideration of background jurisprudential principles and the separation of powers. That Congress has treated appeals from remand orders invoking the federal-officer removal statute differently from other remand orders by allowing appeals *at all* does not mean that Congress has also mandated an automatic stay pending those appeals. Rather, Congress has placed those appeals on the same footing as any other

appeal from an order terminating a district court's involvement in a case—appeals that are stayed only upon the grant of a Rule 8(a) motion.

The *Nken* factors grant courts appropriate discretion to balance comity interests. *See Harrison I*, 139 F.4th at 769 (noting that "*Nken*'s discretionary stay power allows federal courts to 'scrupulously confine their own jurisdiction' and ensure they are giving '[d]ue regard for the rightful independence of state governments'" (quoting *Cty. of San Mateo v. Chevron Corp.*, 32 F.4th 733, 764 (9th Cir. 2022)). An inflexible, automatic rule like that proposed by JCI would wrongly impose federal case management preferences onto state courts, which of course remain free to decide whether ongoing proceedings before them should be stayed pending a federal appeal of a remand order, and are best suited to assess whether a stay would be appropriate to conserve their own judicial resources.

Further, issuing automatic stays would create incentives for gamesmanship. In theory, any defendant could attempt to remove their case under Section 1442, then appeal a district court's remand order. Under JCI's logic, they would be rewarded for this gamesmanship with an automatic stay pending appeal. Application of the *Nken* factors

eliminates this possibility. *See Harrison I*, 139 F.4th at 770 (explaining how *Coinbase*'s proposed solutions to gamesmanship do not carry over from the arbitration context).

B. Defendants are not entitled to a stay under the applicable standard.

Under the applicable standard, Defendants' motion should be denied because none of the four factors weighs in favor of a stay. Defendants do not attempt to show otherwise and thus have not met their burden. Plaintiffs nonetheless address each of the four factors.

1. Defendants are not likely to succeed on the merits.

To establish federal-officer removal jurisdiction, a defendant bears the burden of showing (1) that they are "a 'person' within the meaning of the statute," (2) that "the plaintiff's claims [are] based upon the defendant 'acting under' the United States, its agencies, or its officers," (3) that "the plaintiff's claims against the defendant [are] 'for or relating to' an act under color of federal office, and (4) that the defendant has "a colorable federal defense to the plaintiff's claims." *Mohr v. Trs. of Univ. of Pa.*, 93 F.4th 100, 104 (3d Cir. 2024) (quoting *Maglioli v. All HC Holdings LLC*, 16 F.4th 393, 404 (3d Cir. 2021)).

The district court correctly concluded that the second element is not satisfied. To satisfy this requirement, there must be a "connection or association between the acts complained of by [the defendant] and the federal government." *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 813 (3d Cir. 2016). In light of Plaintiffs' disclaimer, no such connection or association exists; at most, there is a connection or association between the defendants' acts *not* complained of and the federal government. Additionally, in light of Plaintiffs' disclaimer, Defendants lack a colorable federal defense to any of the claims that *are* at issue in this action. The government contractor defense does not provide a colorable defense to actions that were not taken pursuant to a government contract, and "Defendants cannot assert a defense to claims, 'that simply do not exist.'" *California ex rel. Harrison v. Express Scripts, Inc.*, __ F.4th __ , No. 24-1972, 2025 WL 2586648, at *7 (9th Cir. Sept. 8, 2025) (*Harrison II*) (quoting *Batchelor v. Am. Optical Corp.*, 185 F. Supp. 3d 1358, 1364–65 (S.D. Fla. 2016)).

"Federal courts across the country have frequently recognized disclaimers, such as the one here, as a mechanism available to plaintiffs who wish to limit their complaints and avoid federal jurisdiction."

Harrison II, 2025 WL 2586648, at *4 (citing *Puerto Rico*, 119 F.4th at 186–87). This Court has done so itself, rejecting the same sort of "indivisible injury" argument made by JCI here. In *City of Hoboken v. Chevron Corp.*, 45 F.4th 699, 713 (3d Cir. 2022), the defendants argued that it was impossible to "separate harm caused by military fuel use from harm caused by civilian fuel use," and thus plaintiffs could not choose to sue over only the former. This Court disagreed, holding that "the disclaimers [we]re no ruse," and thus concluding there was no basis for exercising federal-officer removal jurisdiction. *Id.*

The courts of appeals that have considered similar questions in the asbestos context have each found that waivers similar to that at issue here required remand. For instance, in *Long*, 2025 WL 752487, at *1, the Ninth Circuit affirmed a remand order where, "[a]fter discovery revealed that [the plaintiff] was present on Navy ships," the plaintiff disclaimed "causes of action for any exposures of any kind to asbestos dust while he was working on Navy vessels." And in *Chapman v. Crane Co.*, 694 F. App'x 825, 827 (2d Cir. 2017), the Second Circuit affirmed a remand order where the plaintiffs affirmatively disclaimed claims "arising from asbestos exposure which are alleged to have occurred at any government

facility." Finally, in *Wood v. Crane*, 764 F.3d 316, 321 (4th Cir. 2014), the Fourth Circuit found that a plaintiff's disclaimer of claims arising out of exposure from asbestos-containing valves purportedly supplied pursuant to naval specifications meant that there were no longer any claims as to which the defendant had a colorable federal defense that could support federal jurisdiction.

"Plaintiff[s], as 'the master[s] of the complaint' excised the basis for federal jurisdiction with [their] disclaimer, which made remand necessary." *Harrison II*, 2025 WL 2586648, at *4 (quoting *Royal Canin U.S.A. v. Wullschleger*, 604 U.S. 22, 28 (2025)).[3] Defendants are thus unlikely to succeed on the merits of their appeal.

[3] The district court held that Plaintiffs' effective waiver "bears on the court's exercise of supplemental jurisdiction" and then declined to exercise such jurisdiction. Dist.Ct.Dkt. 85 at 13 (quoting *Westchester Cnty. v. Mylan Pharms.*, 737 F. Supp. 3d 214, 222 (S.D.N.Y. 2024)). The authority on which the district court relied, however, was abrogated by the Supreme Court's decision in *Royal Canin*, which makes clear that once a plaintiff waives any "claims that enabled removal, the federal court loses its supplemental jurisdiction over the related state-law claims." 604 U.S. at 25. Thus, the district court was required to remand. *See Harrison II*, 2025 WL 2586648, at *4, *4 n.4 (applying *Royal Canin* to hold remand was mandatory given plaintiffs' waiver of claims that supported federal-officer removal).

2. Defendants will not suffer irreparable harm absent a stay.

Defendants will not suffer irreparable injury absent a stay. As the district court noted, upon remand, this case will simply resume discovery—discovery that would likewise be relevant should this case return to federal court upon completion of this appeal.

3. The balance of hardships weighs against a stay.

Defendants will have to litigate this case *somewhere* regardless of the outcome on appeal, and thus any hardship from the case returning to state court while the appeal is ongoing is minimal. If, as they argue, Plaintiffs' claims are barred as a matter of state law given their waiver of claims arising out of exposure on Naval and Coast Guard vessels, the Court of Common Pleas is capable of resolving that state-law issue. In contrast, as the district court noted, "there is real harm to Plaintiff-Decedent's 85-year-old widow whose day in Court would be delayed indefinitely by the requested stay." Dist.Ct.Dkt. 98 at 1 n.1. Plaintiffs filed their case in state court two-and-a-half years ago. Putting this case on hold pending resolution of a meritless appeal will further delay their ability to pursue justice on behalf of Ralph. *Cf. Dakota, Minn. & E. R.R.*

Corp. v. Schieffer, 742 F. Supp. 2d 1055 (D.S.D. 2010) (delaying resolution of litigant's claim in another forum would be prejudicial).

4. The public interest is not served by a stay.

The public interest would not be served by allowing justice to be delayed by a meritless appeal. This Court can evaluate Defendants' merits arguments without a stay, as it has done in cases like *Dow Chemical* and *Centerville Clinics*.

II. Should the Court grant expedition, it should adopt Plaintiffs' proposed schedule.

Local Appellate Rule 4.1 requires movants for expedition to "include a proposed briefing schedule that has been agreed upon by the parties, if possible." JCI did not include a proposed schedule with its motion, nor did it attempt to confer with Plaintiffs' counsel as to such a schedule. When the Clerk directed JCI to comply with Rule 4.1 and submit a proposed briefing schedule, *see* Oct. 6, 2025 Text Order, JCI still did not attempt to confer with Plaintiffs' counsel, or propose dates certain for briefing—instead requesting it be given 40 days from the Court's decision of its motion to stay to file its brief, and that Plaintiffs be given 30 days to file their answering brief, with no possibility of extensions.

JCI's proposal would give JCI, at a minimum, 82 days from the September 2, 2025, filing of its notice of appeal to file its opening brief, and provide Plaintiffs with only 30 days to prepare an answering brief—a period likely to coincide with the time between Thanksgiving and Christmas. To ensure Plaintiffs' ability to provide the Court with a fully developed response to JCI's arguments, should the Court find expedition appropriate, Plaintiffs request the Court set the following schedule:

JCI's opening brief	November 21, 2025
Plaintiffs' opening brief	January 5, 2026
JCI's optional reply brief	January 26, 2026

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court deny JCI's motion for a stay and that, should expedition be granted, the Court adopt Plaintiffs' proposed schedule.

October 10, 2025

Respectfully submitted,

/s/ Adam R. Pulver

Casey R. Coburn
Michael A. Rowe
NASS CANCELLIERE
1500 JFK Boulevard
Suite 404
Philadelphia, PA 19103
(215) 546-8200
ccoburn@nasscanceliere.com

Adam R. Pulver
Nandan M. Joshi
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
apulver@citizen.org

Counsel for Plaintiffs-Appellees

CERTIFICATE OF BAR MEMBERSHIP, WORD COUNT, IDENTICAL COMPLIANCE OF BRIEFS, AND VIRUS CHECK

1. I certify that I am a member of the bar of this Court.

2. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because, excluding the parts of the brief exempted by Rule 32(f) and the Rules of this Court, it contains 5,127 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word Version 2509 in 14-point Century Schoolbook.

3. I certify that the text of the electronic brief is identical to the text in the paper copies.

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October 10, 2025 /s/ Adam R. Pulver
Adam R. Pulver

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2025, the foregoing brief has been served through this Court's electronic filing system upon counsel of record for all parties.

/s/ Adam R. Pulver
Adam R. Pulver