UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2312

ROBERT F. COCKERILL, ET AL.,
Plaintiffs-Appellees,

v.

CORTEVA, INC., ET AL.,
Defendants-Appellants.

APPEAL FROM THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION NO. 2:21-cv-03966-MMB

Plaintiffs' Opposition to Defendants' Motion to Stay Judgment Pending Appeal

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for Plaintiffs and Appellees Robert F. Cockerill, , Oliver Major and Darrell D. Benson, Sr. states that the Plaintiffs are individuals and not corporate entities with any disclosures to be made.

Respectfully submitted,

Dated: July 17, 2025

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INTRODUCTION

This appeal arises from a class action filed by participants in the DuPont Pension and Retirement Plan ("Plan") seeking early and optional retirement benefits under the Plan following the merger of Historical DuPont and The Dow Chemical Company, and the subsequent corporate spin-off in 2019 that resulted in three publicly traded companies: Corteva, New DuPont, and Dow, Inc. Following a bench trial, the district court found Defendants-Appellants (hereinafter "Defendants") improperly determined that Plaintiffs over the age of 50 were ineligible for optional retirement benefits under the Plan, and further found that Defendants breached their fiduciary duties through misleading and inadequate communications to Plan participants concerning the changes to their early and optional retirement benefits that were underway.

After five years of litigation, the certification of two classes, this Court's denial of Defendants' appeal of class certification pursuant to Federal Rules of Civil Procedure 23(f), and a bifurcated bench trial, the district court entered its Final Judgment and awarded the relief at issue to Plaintiffs, members of one of the two certified classes. Defendants then asked the district court to stay the Final Judgment pending appeal. On July 11, 2025, the district court denied that motion, explaining that none of the relevant factors supported the issuance of a stay, but nevertheless granted a short, temporary stay to allow Defendants to seek a stay in this Court. On

July 15, 2025, pursuant to Federal Rule of Appellate Procedure 8, Defendants filed their Motion to Stay Judgment Pending Appeal and to Expedite Consideration of Motion to Stay ("Motion"). Plaintiffs respond herein to that Motion.

This Court should not stay the district court's Final Judgment. As the district court correctly determined, Defendants have failed to establish either of the two most important factors: irreparable injury and likelihood of success, nor do the balance of the equities support a stay. Defendants have failed to show that irreparable injury will result from execution of the Final Judgment while an appeal is pending. At most, Class Members would receive monetary payments that might be difficult or time-consuming for the Plan to recoup, but that does not meet the standard of irreparable harm, which is a threshold for issuance of a stay. Further, Defendants' arguments about their likelihood of success on appeal are unpersuasive and largely turn on factual findings by the district court that this Court is unlikely to disturb. The interest of Class Members – aging workers and retirees – in obtaining pension benefits they should have gotten years ago far outweighs the financial interests of Defendants – multibillion dollar corporations – and the public interest in enforcing ERISA's purpose of protecting plan participants and beneficiaries likewise weighs against a stay.

LEGAL STANDARD

The Third Circuit "generally review[s] appeals from a denial of a stay for abuse of discretion" and gives "proper regard" to the trial court's "feel of the case." *In re Revel AC, Inc*., 802 F.3d 558, 567 (3d Cir. 2015) (citations and internal quotations omitted).

The standard for obtaining a stay pending appeal mirrors that of a preliminary injunction. *Conestoga Wood Specialties Corp. v. Sec'y of the United States Dept. of Health & Human Servs.*, No. 13-1144, 2013 WL 1277419, at *1 (3d Cir. Feb. 7, 2013). Courts balance four factors: (i) whether the movant has made a strong showing of likelihood of success on the merits; (ii) whether the movant will suffer irreparable injury absent a stay; (iii) whether a stay would substantially harm other parties; and (iv) where the public interest lies. *Revel*, 802 F.3d at 568 (citing *Hilton v. Braunskill,* 481 U.S. 770, 776 (1987)). The first two factors – likelihood of success and irreparable harm – are the most critical. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

After presiding over years of litigation, a multitude of pre- and post-trial motions and a bifurcated bench trial, the district court developed a deep understanding of the facts and the law impacting this case. The district court certainly understands the equities of this case and, as reflected in its denial of Defendants' motion for a stay, the district court understands how a stay would affect

Class Members.[1] This Court should defer to the district court's determination that a stay is unwarranted and should deny Defendants' Motion and allow for immediate execution of the district court's Final Judgment.

ARGUMENT

I. Defendants Will Not Suffer Irreparable Injury if the Final Judgment is Executed.

A showing of "irreparable harm" is a necessary precondition to issuance of a stay. *Revel*, 802 F.3d at 571 (if the movant demonstrates that it is likely to succeed on the merits *and* that it will suffer irreparable harm absent a stay, the court must "balance the relative harms considering all four [stay] factors using a 'sliding scale' approach," but "if the movant does not make the requisite showings on either of these [first] two factors . . . the stay should be denied without further analysis."). Defendants cannot establish irreparable harm: their only argument is that immediate enforcement of the Final Judgment would require the Plan to pay out benefits that would be "difficult, if not impossible, to recoup." Mot. 16.[2]

But "a purely economic injury, compensable in money, cannot satisfy the irreparable injury requirement" unless it "is so great as to threaten the existence of

[1] *See* Mem. re: Mot. to Stay [ECF No. 423], Mot., Ex. 5.

[2] Defendants are unclear about what entity they believe would suffer irreparable harm, asserting in different sentences that the Plan and the Defendants themselves would be injured unless a stay is granted. Mot. 15-17. As discussed herein, Plaintiffs' position is that neither the Plan nor Defendants would suffer irreparable harm and that Corteva and/or Historical DuPont are required to ensure that the Plan is adequately funded.

the movant's business." *Revel*, 802 F.3d at 572. Defendants do not even attempt to argue that paying additional benefits to what they call a "small minority" of Plan participants would threaten their business or the Plan's financial stability. Mot. 4. Instead, they cite out-of-circuit authorities for the proposition that the "inability to return the Plan and Defendants to the position they would have been in" justifies a stay. Mot. 17. Defendants offer no evidence that the Final Judgment is "substantial" relative to the Plan's overall assets or the assets of Defendants, which include two-multibillion-dollar corporations, unlike in their cited cases. *See R.J. Reynolds Vapor Co. v. Food & Drug Admin.*, 65 F.4th 182, 194 (5th Cir. 2023) (moving party submitted unchallenged allegations that it would "incur substantial financial losses in annual revenue as well as reputational harm" and out-of-pocket costs). Standing alone, the risk that Defendants will be unable to recoup payments to Plan participants if they are successful on appeal does not constitute irreparable harm. *Randolph Township Bd. of Educ., Morris Cnty., New Jersey v. M.T.*, No. 22-2540, 2023 WL 4265760, at *2 (3d Cir. June 29, 2023).

Defendants cite *Gerardi v. Pelullo*, 16 F.3d 1363, 1373 (3d Cir. 1994), but that case does not support their position that the Plan's status quo must be preserved to avoid irreparable harm. Mot. 15-16. In *Gerardi*, two pension plans made loans to a corporation and its president, which failed to pay them back. *Id.* at 1364-65. The plans obtained a money judgment which the district court found was unlikely to be

satisfiable without a preliminary injunction. Unlike *Gerardi*, Defendants here do not have a money judgment in their favor.

Defendants argue for maintaining the status quo, but if preserving the status quo were sufficient to meet the irreparable injury requirement then every case would be stayed pending appeal. In reality, stays are disfavored. *Nken v. Holder*, 556 U.S. 418, 427 (2009) ("A stay is an intrusion into the ordinary processes of administration and judicial review") (internal quotation omitted). In fact, the Third Circuit has expressly stated that "a motion for a stay pending appeal . . . is an *extraordinary remedy*." *Conestoga Wood Specialties Corp. v. Sec'y of the United States Dept. of Health & Human Servs.*, No. 13-1144, 2013 WL 1277419, at *1 (3d Cir. Feb. 7, 2013) (citing *United States v. Cianfrani*, 573 F.2d 835, 846 (3d Cir. 1978)) (emphasis added).

Since Defendants have failed to meet the requirement of showing irreparable harm, the instant request for a stay must be denied.

II. Defendants are Unlikely to Succeed on the Merits on Appeal.

A. Plaintiffs Have Standing for Count IV.

The district court considered, and properly held, that Plaintiffs satisfied the requirements of Article III standing for Count VI (Breach of Fiduciary Duty). Mot. 8-9; ECF No. 376 at 3-6. Defendants failed to provide material information to which Class Members were entitled under ERISA, including that they had been terminated

from the Plan sponsor, and that the Administrative Committee had determined the spin-off was an exception to Optional Retirement under the Plan. ECF No. 318 at ¶¶ 163, 164 fn. 17, 183, 206-207, 216, 232, 471-472. Plaintiffs have been deprived of the opportunity to try to protect their retirement benefits, giving rise to an injury-in-fact. *See, e.g., Amara v. CIGNA Corp.*, 775 F.3d 510, 525 (2d Cir. 2014). ECF No. 376 at 6-7, ECF No. 357 at 8-10. If Defendants were correct that a fiduciary's failure to provide material information to participants does not give rise to an injury-in-fact, an entire line of ERISA precedent would be called into question. This argument is unlikely to be successful on appeal.

B. Detrimental Reliance is Not Required for Count IV.

Defendants argue that the district court erred in not requiring Plaintiffs to prove detrimental reliance. Mot. 8. The case on which they rely, *Shook v. Avaya Inc.*, 625 F.3d 69,73 (3d Cir. 2010) predates *CIGNA Corp. v. Amara*, 563 U.S. 421, 443 (2011). Post *Amara*, numerous courts have held that detrimental reliance need not be proven where the requested remedy for the fiduciary breach is plan reformation. *See Osberg v. Foot Locker, Inc.*, 862 F.3d 198, 213 (2d Cir. 2017); *Silva v. Metropolitan Life Ins. Co.*, 762 F.3d 711, 720–23 (8th Cir. 2014); *Cunningham v. Wawa*, 387 F. Supp. 3d 529, 540–42 (E.D. Pa. 2019). Defendants do not address this case law at all. The Third Circuit is likely to agree with the Second and Eighth

Circuits and hold that proof of reliance was not required here because Plaintiffs seek reformation of the Plan.

C. The Court's Analysis of Fiduciary Breach was Proper.

Defendants further contend that the Court's decision on Count IV was erroneous because (1) its mistaken analysis of materiality applied a novel "causation-free" and "harm-free" standard" for fiduciary breach claims, (2) it found Defendants liable without affirmative misrepresentations giving rise to Plaintiff's assumptions, and (3) Plaintiffs did not prove Defendants actually knew participants were confused by the communications. Mot. 8-11. Each of these arguments fail.

First, the district court correctly found that Defendants' failure to inform Plan participants about the effect of the spin-off on Early and Optional Retirement benefits caused harm in that participants did not know where they stood with respect to the Plan or their retirement benefits. ECF No. 318 at ¶¶ 469-472. *See also* ECF No. 376 at 6-7 (noting that participants were unable to pressure Defendants). Defendants apparently disagree that the omitted and/or misleading information – including that participants were no longer working for a participating employer, and that the spin-off would be considered an exception to Optional Retirement – was material. "Materiality is a mixed question of law and fact," *Brady v. Airgas, Inc.*, No. CV 15-4099, 2015 WL 6599750, at *3 (E.D. Pa. Oct. 30, 2015), and the Third Circuit is unlikely to disturb the district court's findings that this information was

material. *See, e.g., United States ex rel. Int'l Bhd. of Elec. Workers Loc. Union No. 98 v. Farfield Co.*, 5 F.4th 315, 329 (3d Cir. 2021) ("when the mixed questions immersed the district court in case-specific factual issues, our review is a deferential one for clear error").

Second, Defendants incorrectly assert that the district court found Defendants liable "without affirmative misrepresentations giving rise to Plaintiffs' assumptions or actual knowledge of Class Members' confusion." Mot. 10. Here, the district court found that Defendants made multiple affirmative misstatements, including "that Class Members would continue working for DuPont and that nothing was changing due to the spin-off and providing information which "was woefully insufficient to notify a reasonable Plan participant of the spin-off's effect . . ." [3] ECF No. 318 at ¶¶ 152, 176, 201, 478-79, 478 n.35, 480, 487, 497.

The district court also made numerous findings that Defendants knew Plan Participants were confused. *See e.g.*, ECF No. 318 at ¶¶ 85, 113, 117-119, 476, 482, 492, 497-98. The cases Defendants cite for the proposition that a fiduciary must have knowledge of participant confusion does not go nearly as far as they would have this Court believe. In *Daniels v. Thomas & Betts Corp.*, 263 F.3d 66, 76 (3d Cir. 2001), the Third Circuit noted that "knowledge of employee confusion" is *not* an element of a fiduciary breach claim where there have been affirmatively misleading

[3] *See* Mem. Re: Mot. to Stay [ECF No. 423 at 9], Mot., Ex. 5.

statements, and that the fiduciary's knowledge only bears on whether harm to participants was "reasonably foreseeable." Likewise, *UAW v. Skinner Engine Co*., 188 F.3d 130, 150 (3d Cir. 1999), does not hold that knowledge of employee confusion is an element of a breach of fiduciary duty claim where there are affirmative misrepresentations. *Daniels*, 263 F.3d at 76.

The district court properly held that Defendants were required under ERISA's prudence standard to take reasonable steps with regard to communicating important information about changes to plan benefits to the participants who would be impacted. The district court also found that Defendants' efforts were grossly deficient because participants were directed to the summary plan description ("SPD"), which contained no explanation of the impact of the spin-off on pension benefits; because Defendants failed altogether to inform participants of the Committee's (arbitrary) interpretation of the Optional Retirement provision; and because the PowerPoints were downplayed and hard to find and to follow. ECF No. 318 at ¶¶ 480-482, 484-487, 498.

D. The District Court's Holding that the Plan Administrator Abused its Discretion With Respect to Optional Retirement Benefits is Correct.

Contrary to Defendants' argument, the district court did not merely disagree with the Plan Administrator's interpretation of the Plan's Optional Retirement provision; it determined that this interpretation was inconsistent with the Plan's unambiguous language. ECF No. 318 at ¶¶ 421-432. Defendants' conclusory

assertion that the district court only paid lip service to the deferential standard of review is unpersuasive. It is clear that gaps in a plan cannot be filled in a manner inconsistent with its plain terms. See *Dowling v. Pension Plan for Salaried Emps. of Union Pac. Corp. & Affiliates*, 871 F.3d 239, 245 (3d Cir. 2017).

Defendants attempt to argue that the district court committed reversible error in determining that Optional Retirement Benefits should have been made available to Class Members who continued their employment with New DuPont or its subsidiaries. Once again, Defendants miss the mark. In fact, the district court went to great lengths and considered documentary evidence and live testimony at trial that clearly established that Optional Retirement benefits were improperly taken away from Class Members by Administrative Committee fiat following a fifteen-minute contrived meeting that no trial witness testifying on Defendants' behalf could recall in any detail whatsoever. ECF No. 318 at ¶¶ 66, 132, 270, 292. Moreover, the district court unequivocally determined that the decision of the Administrative Committee was never communicated to Class Members until well after the spin-offs were complete. ECF No. 318 at ¶ 274.

Based on the trial court record pertaining to Optional Retirement, the Third Circuit is likely to affirm on this issue.

E. The Remedies Awarded Are Appropriate.

Defendants insist that "Plaintiffs must prove they would have applied for the benefits but for Defendants' alleged misconduct" under *Cottillion v. United Ref. Co.*, 781 F.3d 47, 62 (3d Cir. 2015). Not so. As the Court explained, in *Cottillion* "plan participants knew of their eligibility to elect benefits but chose not to because of misleading plan communications," and they did not seek permission to elect retroactive benefits. ECF No. 376 at 7-9. Thus, *Cottillion* does not stand for the proposition that retroactive benefits are only appropriate upon proof that participants would have made a different election earlier. The district court cited other authorities supporting the remedies award, *id.*, which Defendants ignore. They also ignore basic, longstanding remedial principles, including that courts must resolve uncertainties against breaching fiduciaries and in favor of innocent plan participants in determining appropriate remedies, *see Donovan v. Bierwirth*, 754 F.2d 1049, 1056 (2d Cir. 1985), and that "the court has a duty to enforce the remedy which is most advantageous to the participants and most conducive to effectuating the purposes of the trust." *Eaves v. Penn*, 587 F.2d 453, 462 (10th Cir. 1978) (citing Restatement (Second) of Trusts, § 214).

Defendants are unlikely to prevail on their argument that the remedies awarded are improper.

III. A Stay Would Cause Substantial Harm to Plaintiffs.

Defendants argue that Plaintiffs and the Class Members will not suffer substantial harm if the Final Judgment is stayed because the benefits they are owed at normal retirement age are unaffected by the Judgment, and at most they would experience delay in receipt of additional benefits to which they are entitled under the Judgment. Mot. 17-19. The fact that Plaintiffs are still entitled to their normal retirement benefits is utterly irrelevant. This case is about their entitlement to Early and Optional Retirement benefits and fiduciary misrepresentations regarding the same. Almost all of the Class Members are approaching or are well over age 50 and all of them have worked for DuPont for 15 years or more. They deserve the immediate opportunity to elect and use the additional pension monies which they are owed and about which they were misled.

Defendants cite *In re Citizens Bank, N.A.*, 15 F.4th 607, 622 (3d Cir. 2021), for the proposition that a stay will not substantially harm plaintiffs where "any monetary amounts owed to them would be satisfied after judgment with interest" and they would "emerge no worse off." Mot. 18. But *Citizens* considered a request for a stay of trial pending a mandamus petition, so the plaintiffs did not already have a judgment in their favor. And unlike here, the plaintiffs in *Citizens* were not aging workers and retirees who had already been waiting more than six years to recover vital pension benefits. Defendants also cite *Howard Johnson Int'l, Inc. v. Univ.*

Hosp., LLC, No. CV 11-4720, 2018 WL 2095595, at *3 (D.N.J. May 7, 2018), which is also distinguishable: the funds in dispute in *Howard Johnson* would "remain frozen and outside the possession of Defendant" during appeal, but here Defendants have full control over the Plan's assets, which are not frozen. *See JTH Tax, LLC v. Shahabuddin*, 2021 WL 8445889, at *5 (E.D. Va. Oct. 8, 2021) (finding that issuance of a stay would substantially injure the non-moving party where the moving party had not "provid[ed] any real guarantee of future payment").

Defendants have the audacity to argue that a stay pending appeal would somehow *benefit* Early Retirement Members who would be forced to choose retirement and the loss of employment income absent a stay. Nothing in the record supports any such argument and the Third Circuit should not be swayed by bare conclusions drawn by Defendants themselves.

Finally, this factor asks the Court to weigh the harm to Plaintiffs if a stay is granted against the harm to Defendants if a stay is denied. *Revel*, 802 F.3d at 569. Several Class Members have already died during the pendency of this action and additional Class Members may die during the pendency of this appeal. While both parties face financial harms, Defendants – multibillion-dollar corporations and their affiliates – are far better able to bear such risk than the Class Members, individuals who are retired or who stand on the cusp of retirement. The balance of harms clearly weighs in Plaintiffs' favor.

IV. The Public Interest Would Not be Served by a Stay.

"ERISA is principally concerned with protecting the financial security of plan participants and beneficiaries." *Nat'l Sec. Sys., Inc. v. Iola*, 700 F.3d 65, 81 (3d Cir. 2012). The statute was intended "to ensure the proper administration of pension and welfare plans, both during the years of the employee's active service and in his or her retirement years." *Id.* (quoting *Boggs v. Boggs*, 520 U.S. 833, 839 (1997)). This interest is best served by executing the district court's Final Judgment, which remedies Defendants' improper administration of the Plan and boosts participants' and beneficiaries' financial security by giving them the opportunity to elect additional pension benefits.

Defendants urge the Court to consider the public interest in "preserving the assets" of the Plan and "easing administrative burdens" on the Plan, Mot. at 19-21, but these interests are secondary to the public interest in preventing breaches of fiduciary duty and failures to follow Plan terms. The Court should not prioritize the Plan's retention of monies that should have been made available to participants years ago. *See Rose v. Volvo Construction Equipment North Am., Inc.*, 2008 WL 11489022, at *6 (N.D. Ohio Aug. 18, 2008) (denying stay pending appeal because "the public interest is served by ensuring that Plaintiff retirees and their dependents receive the [] benefits due them").

Finally, Defendants argue that a stay is warranted because "in a case predicated on allegedly confusing benefits information, the more prudent course would be to "measure twice and cut once" lest the Judgment compound – rather than remedy – Class Members' uncertainty about their benefits" citing *Quantum Corp. v. Riverbed Tech.,* No. C 07-04161, 2008 WL 314490, at *3 (N.D. Cal. Feb. 4, 2008) for this whole cloth proposition. Mot. 21. However, it is Defendants' own unclear and misleading communications that created confusion in the first place. Defendants' preference not to tell participants about this lawsuit and its outcome (which have been public information for years) is not equivalent to a public interest in clarity and certainty regarding employee benefits. The public interest weighs against staying the Final Judgment pending appeal.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants' request for a stay of the Final Judgment pending appeal.

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CERTIFICATE OF COMPLIANCE

This Opposition complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 3,715 words, excluding the parts of the Opposition exempted by Rule 32(f). This Motion also complies with the typeface and type style requirements of Rules 32(a)(5) and 32(a)(6) because it has been prepared in a proportionately spaced 14-point typeface, Times New Roman, using Microsoft Word.

Pursuant to Third Circuit Local Appellate Rule 31.1(c), I certify that a virus check was performed using Todyl Secure Global Network (SGN), version 2, and no viruses were detected.

Dated: July 17, 2025

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CERTIFICATE OF SERVICE

I, Elizabeth Hopkins, hereby certify that on July 17, 2025, I electronically filed the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO STAY JUDGMENT PENDING APPEAL** with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users and will, therefore, be directly notified of the filing.

Dated: July 17, 2025

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