

2025CA40060

NOV 03, 2025 12:04 PM

Kim Windle James

Kim Windle James, Clerk
Chattooga County, Georgia

**IN THE STATE COURT OF CHATTOOGA COUNTY
STATE OF GEORGIA**

THE TOWN OF LYERLY, GEORGIA,

Plaintiff,

v.

3M COMPANY, et al.,

Defendants.

CIVIL ACTION NO.
24SCA4052

**CERTIFICATE NEEDED
BY APRIL 3, 2025**

**DEFENDANT PFAS MANUFACTURERS' APPLICATION FOR
CERTIFICATE OF IMMEDIATE REVIEW**

On March 24, 2025, this Court issued an Order on Defendants' Motions to Dismiss the Town of Lyerly, Georgia's Amended Complaint (the "Order"). The Defendant PFAS Manufacturers (the term the Order uses to refer to the Defendants who supplied products containing PFAS, including 3M Company, Inc., E.I. DuPont de Nemours and Company, DuPont de Nemours, Inc., The Chemours Company, The Chemours Company FC, LLC, Corteva, Inc., and Daikin America, Inc.) disagree with the Court's ruling, but they recognize that the Court has rendered its decision and thus do not seek reconsideration of the Court's Order.

Consistent with the Court's direction to the parties at the motions hearing, however, the PFAS Manufacturers now respectfully request that the Court grant a certificate of immediate review. Allowing the Court of Appeals to determine whether interlocutory review of the Order is appropriate would in no way delay this

case, as discovery and other pre-trial proceedings can continue even if the Court of Appeals grants review. Indeed, immediate appellate review of these dispositive issues would foster efficiency and judicial economy. The Order unquestionably addresses legal issues that are dispositive of all the claims asserted against the PFAS Manufacturers in this case. And the establishment of binding, on-point precedent on those issues is desirable not only to benefit the parties and the Court in this case, but also the parties and trial courts in the many other pending and potential future PFAS cases applying Georgia law. Accordingly, the Order meets the standard for interlocutory review set by the Court of Appeals, *see* Ga. Ct. App. R. 30(b)(1), (3), and granting a certificate of immediate review is appropriate.

The Court should note that for a certificate of immediate review of the Orders to be effective, the Court must sign and enter the certificate no later than Thursday, April 3, 2025.

1. *Granting a Certificate Would Not Delay This Proceeding.*

Georgia's interlocutory review process was specifically designed for trial courts to efficiently obtain controlling appellate answers on dispositive and important issues. This case is an ideal candidate for that process. It is no answer for Lyerly to contend that the interlocutory review process would delay proceedings in this case. Neither a certificate of intermediate review nor a party's subsequent application for interlocutory review to the Court of Appeals acts as a supersedeas or

stay of this Court’s proceedings. *See Islamkhan v. Khan*, 299 Ga. 548, 551 (2016) (“The clear dictates of O.C.G.A. § 5-6-34(b) require a party to obtain both a certificate of immediate review from the trial court and an order from the appropriate appellate court granting the appeal prior to a notice of appeal pursuant to O.C.G.A. § 5-6-37 being effective as supersedeas once the party pays the costs required by O.C.G.A. § 5-6-46.” (emphasis omitted)). Thus, the Court may issue a scheduling order and the parties may commence and continue discovery while the interlocutory review process unfolds. In fact, no party has asked for a stay of discovery, and the PFAS Manufacturers have already filed their responses to Lyerly’s initial discovery requests and propounded some of their own.

Not only can discovery continue, but the Court of Appeals must issue its initial decision about interlocutory review in less than two months. If this Court issues a certificate of intermediate review, the PFAS Manufacturers will have just 10 days to apply for interlocutory review, and the Court of Appeals will have just 45 days to grant or deny that application. *See* O.C.G.A. § 5-6-34(b). So this Court and the parties would find out whether the Court of Appeals will be taking the case for interlocutory review before the end of May.

If the Court of Appeals *grants* interlocutory review, that *still* will not require any delay in discovery. An appeal would stay this Court’s Order declining to dismiss any claims—but it would *not* stay discovery or other proceedings. Georgia law

makes clear that this Court would retain full authority to allow discovery to continue unabated through the interlocutory appeal. *See Cohran v. Carlin*, 249 Ga. 510, 512 (1982) (holding that discovery may continue as to matters pending in the trial court notwithstanding a grant of interlocutory review, and explaining that “[i]f the trial judge’s order is found to be correct on appeal, . . . the final trial and disposition of the litigation will have been expedited”); *Argonaut Ins. Co. v. Atlantic Wood Indus., Inc.*, 187 Ga. App. 477, 480 (1988) (explaining that “the trial court [is] authorized to allow discovery to continue, regardless of whether that discovery relates to the issue involved in the pending [interlocutory] appeal”). Furthermore, the Court of Appeals would be constitutionally required to decide the granted appeal within two terms—meaning this interlocutory appeal would be resolved at the very latest by March 16, 2026. *See* Ga. Const. of 1983, Art. VI, Sec. IX, Par. II; O.C.G.A. § 15-2-4(c). Given the extensive fact and expert discovery this case will require, discovery is likely to still be ongoing at that time, and it is almost certain that briefing on motions to exclude experts and for summary judgment will not be complete at that point.

In sum, even at the outer limit of how long the interlocutory review process in the Court of Appeals could take, it need not cause any delay in this case before this Court will need to address these legal issues again at summary judgment.

2. *Granting a Certificate Would Allow the Court of Appeals to Provide Much Needed Legal Guidance.*

On the other hand, granting a certificate of immediate review would give the

Court of Appeals the opportunity to provide extremely valuable guidance on dispositive legal questions that will govern not only this case, but also other pending and potential future PFAS cases. Lyerly asserts claims for negligence, nuisance, trespass, and Georgia Water Quality Control Act (GWQCA) violations, all under Georgia law. Similar claims have been brought under Georgia law in state and federal courts, including not only the *Parris*, *Johnson*, *City of Rome*, and *City of Calhoun* cases¹ referenced in the Court's Order and Mohawk's case against the PFAS Manufacturers,² but also *six more* cases filed in the past four months.³ An appellate decision would also provide controlling guidance for Georgia-law claims in numerous other cases raising similar issues.⁴ It is now undeniable—more clearly

¹ *Johnson v. 3M Co.*, No. 4:20-cv-00008-AT (N.D. Ga.); *Parris v. 3M Co.*, No. 4:21-CV-00040-TWT (N.D. Ga.); *City of Rome v. 3M Co.*, No. 19-CV-02405 (Floyd Cnty., Ga. Super. Ct.); *City of Calhoun v. 3M Co.*, No. 24-CV-73929 (Gordon Cnty., Ga. Super. Ct.).

² *Aladdin Mfg. Corp. v. 3M Co.*, No. 24CI01575 (Whitfield Cnty., Ga. Super. Ct.).

³ *City of Dalton v. 3M Co.*, No. 24-cv-00293-WMR (N.D. Ga.); *Murray County v. Shaw Industries, Inc.*, No. 24-C-12330-S3 (Gwinnett Cnty., Ga. State Ct.), *Catoosa County v. Shaw Industries, Inc.*, No. 25-C-00548-S3 (Gwinnett Cnty., Ga. State Ct.), *Gordon County v. Shaw Industries, Inc.*, No. 25-C-00780-S3 (Gwinnett Cnty., Ga. State Ct.), *Stephens v. 3M Co.*, No. 25-CV-75072 (Gordon Cnty., Ga. Super. Ct.), *Mayor and Aldermen of the City of Savannah v. 3M Co.*, 4:25-cv-00058-LGW-BWC (S.D. Ga.).

⁴ See, e.g., *Cobb Cnty.-Marietta Water Auth. v. 3M Co.*, No. 2:24-cv-00464-RMG (D.S.C.); *Unified Gov't of Athens-Clarke Cnty. v. 3M Co.*, No. 2:23-cv-06769-RMG (D.S.C.); *Ellijay-Gilmer Cnty. Water & Sewerage Auth. v. 3M Co.*, No. 2:23-cv-05375-RMG (D.S.C.); *Dekalb Cnty. v. 3M Co.*, No. 2:23-cv-04903-RMG

so than when previous trial courts have denied immediate review on similar issues and even when this Court held argument on the motions to dismiss—that interlocutory appellate review would provide significant and necessary guidance to the bench and bar in Georgia.

As the Court is aware, there is no binding Georgia appellate precedent that specifically addresses the questions presented by the PFAS Manufacturers—that is, whether, as a matter of law, *product suppliers* may be held liable under theories of negligence, nuisance, trespass, or GWQCA violations for selling products containing PFAS to customers who, after using the products, discharge wastewater containing PFAS residues that eventually end up in wastewater treatment systems or water supplies or on the property of third parties. The PFAS Manufacturers have argued that the absence of such precedent should result in the dismissal of these claims. But even assuming (as this Court has now ruled) that decisions from other trial-level courts suggest that Georgia’s appellate courts will uphold such claims, there is great value in knowing (rather than just predicting) the actual, binding appellate decision sooner rather than later—especially when obtaining that answer does not require any delay in this case.

Each case of this kind imposes *enormous* fact and expert discovery expenses

(D.S.C.); *Upper Oconee Basin Water Authority v. 3M Co.*, No. 2:23-cv-04654-RMG (D.S.C.); *Columbus Water Works v. 3M Co.*, No. 2:23-cv-03557-RMG (D.S.C.).

on the PFAS Manufacturers, the other defendants, and the plaintiffs. Briefing, arguing, and deciding dispositive and other motions, and trying such cases, impose significant additional burdens not only on the parties, but on trial courts and their staff (not to mention on jurors required to serve for multi-week trials). One way or another, Georgia's appellate courts will *eventually* decide these dispositive questions of Georgia law. If the claims are held to fail as a matter of law, all of those costs and burdens will have been unnecessary and wholly wasteful. *Cf.* O.C.G.A. § 9-11-1 (the goal of civil litigation is “to secure the just, speedy, and inexpensive determination of every action”).⁵ Thus, interlocutory review could potentially save vast private, municipal, and judicial resources. And in any event, interlocutory review would give the appellate court the opportunity to clarify and refine the law, which no doubt would shape parties' expectations and guide trial courts' next steps in case management and potential trials, including jury instructions.

In short, whichever way the Court of Appeals decides the issues, there would be significant benefit for all—the parties and the Court in this case, and the parties and the trial courts in the many other cases presenting the same issues—in obtaining

⁵ The PFAS Manufacturers recognize that they and the other parties may have to bear the costs of discovery *in this case* even if interlocutory review is granted, because (to repeat) an interlocutory appeal would not require discovery in this case to be delayed. But a binding appellate decision could eliminate those costs in many other cases as well as eliminate or reduce other litigation costs and burdens in this and other cases.

appellate guidance now. That is the very purpose of interlocutory review, which the Court of Appeals grants when “[t]he issue to be decided appears to be dispositive of the case; or . . . [t]he establishment of precedent is desirable.” Ga. Ct. App. R. 30(b)(1), (3). Under these circumstances, every principle of judicial economy favors allowing the PFAS Manufacturers the opportunity to seek appellate answers to these important legal questions. And no pending case is any better situated for interlocutory review than this case is right now.

The Court should ask itself this fundamental question: **If Lyerly believes that its claims against the PFAS Manufacturers can survive appellate review, and such review need not delay the proceedings in this case, then why is Lyerly opposed to simply allowing the Court of Appeals to make a decision about interlocutory review?** There is no legitimate answer. There is no good reason for this Court to withhold that opportunity from the Court of Appeals.

* * *

For these reasons, the PFAS Manufacturers respectfully request that this Court GRANT a certificate of immediate review of its Order. A proposed certificate is attached for the Court’s convenience. *For a certificate of immediate review of the Order to be effective, the Court must enter it no later than Thursday, April 3, 2025.* O.C.G.A. § 5-6-34(b).

Dated: March 31, 2025

Respectfully submitted,

Spencer C. Davis
(GA Bar No. 559936)
Bowers & Davis, LLC
108 W. LaFayette Square Suite 101
P.O. Box 1770
LaFayette, GA 30728
Tel: (706) 996-8595
Email: sdavis@bowersandgibson.com

James L. Hollis
(GA Bar No. 930998)
Andrea L. Swartzberg
(GA Bar No. 338830)
BALCH & BINGHAM, LLP
30 Ivan Allen Jr. Blvd. NW,
Suite 700
Atlanta, Georgia 30309
Tel: (404) 261-6020
Email: jhollis@balch.com

/s/ David E. Nahmias
David E. Nahmias
(GA Bar No. 534106)
Jeffrey A. Kaplan, Jr.
(GA Bar No. 859280)
JONES DAY
1221 Peachtree Street NE,
Suite 400
Atlanta, GA 30361
Tel: (404) 581-8502
Email: dnahmias@jonesday.com
Email: jkaplan@jonesday.com

Attorneys for Defendant Daikin America, Inc.

Robert B. Remar
GA Bar No. 600575
Monica P. Witte
GA Bar No. 405952
Kirk R. Fjelstul
GA Bar No. 260015
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
mwitte@sgrlaw.com
kfjelstul@sgrlaw.com

Jackson R. Sharman, III
GA Bar No. 637930
Benjamin P. Harmon
GA Bar No. 979043
M. Christian King (PHV application
pending)
Harlan I. Prater, IV (PHV forthcoming)
W. Larkin Radney, IV (PHV
application pending)
Tatum Jackson (PHV application
pending)
Lightfoot, Franklin and White LLC
The Clark Building 400 20th St. North
Birmingham, AL 35203
jsharman@lightfootlaw.com
bharmon@lightfootlaw.com
cking@lightfootlaw.com
hprater@lightfootlaw.com
lradney@lightfootlaw.com
tjackson@lightfootlaw.com

Attorneys for Defendant 3M Company

Nia S. Wilson
Shook, Hardy & Bacon LLP
Caroline M. Gieser
Georgia Bar No. 167916
cgieser@shb.com
Nia S. Wilson
Georgia Bar No. 914011
nwilson@shb.com
1230 Peachtree Street, Suite 1200
Atlanta, GA 30309
Telephone: 470-867-6000
Facsimile: 470-867-6001

Andrew Carpenter (admitted pro hac
vice)
acarpenter@shb.com
Brent Dwerlkotte (admitted pro hac
vice)
dbdwerlkotte@shb.com
2555 Grand Blvd.
Kansas City, MO 64108
Telephone: 816-474-6550
Facsimile: 816-421-5547

*Attorneys for Defendants EIDP, Inc. f/k/a E.I. du Pont de Nemours and Company,
DuPont de Nemours, Inc., The Chemours Company, The Chemours Company FC,
LLC and Corteva, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this day I e-filed a true and correct copy of the foregoing Defendant PFAS Manufacturers' Application for Certificate of Immediate Review via the PeachCourt E-Filing system. The parties will be served via eService through PeachCourt.

Dated: March 31, 2025

/s/ David E. Nahmias

David E. Nahmias
GA Bar No. 534106