

W.D.N.Y.
10-cv-6229
Larimer, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of November, two thousand seventeen.

Present:

Rosemary S. Pooler,
Richard C. Wesley,
Peter W. Hall,
Circuit Judges.

Robert Testa, an individual,

Plaintiff-Appellee-Cross-Appellant,

v.

17-1826 (L)
17-1985 (XAP)

Lawrence Becker, as plan administrator of the Xerox Corporation Retirement Income Guarantee Plan, Xerox Corporation Retirement Income Guarantee Plan, an Employee Pension Benefit Plan,

Defendants-Appellants-Cross-Appellees.

Defendants-Appellants move, pursuant to Federal Rule of Civil Procedure (“FRCP”) 62(d) and Federal Rule of Appellate Procedure (“FRAP”) 8(a), for (1) a stay, pending appeal, of the district court’s order directing Defendants-Appellants to “take immediate steps to recalculate and pay [P]laintiff[-Appellee] benefits” and (2) a waiver of FRCP 62(d)’s supersedeas bond requirement or, alternatively, fixing of the bond amount. Upon due consideration, it is hereby ORDERED that Defendants-Appellants’ request for a stay of the injunctive part of the district court’s order (requiring recalculation of the benefits) is DENIED. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (discussing FRAP 8(a) factors); *Nken v. Holder*, 556 U.S. 418, 434 (2009). It is further ORDERED that Defendants-Appellants’ request for a stay of the monetary part of the district

court's order (requiring the payment of benefits) and a waiver of the bond requirement is GRANTED. *See In re Nassau Cty. Strip Search Cases*, 783 F.3d 414, 417-18 (2d Cir. 2015) (discussing FRCP 62(d)).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

A handwritten signature in blue ink that reads "Catherine O'Hagan Wolfe". The signature is written in a cursive style and is positioned over a circular official seal.

The seal of the United States Second Circuit Court of Appeals. It is a circular emblem with a red border. The words "UNITED STATES" are written in red at the top, "SECOND CIRCUIT" in blue in the center, and "COURT OF APPEALS" in blue at the bottom. Two small stars are located on the left and right sides of the inner circle.