

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: AQUEOUS FILM-FORMING FOAMS
PRODUCTS LIABILITY LITIGATION

MDL No. 2873

ORDER DENYING TRANSFER

Before the Panel:* Defendant Connecticut Water Company moves under 28 U.S.C. § 1407(c) to transfer the *Hoffnagle* action listed on Schedule A to the District of South Carolina for inclusion in MDL No. 2873. 3M Company, one of the principal defendants in the MDL, filed an amicus brief in support of transfer. Plaintiffs oppose the motion.

MDL No. 2873 involves allegations that aqueous film-forming foams (AFFFs) used at airports, military bases, or other locations to extinguish liquid fuel fires caused the release of perfluorooctane sulfonate (PFOS) and/or perfluorooctanoic acid (PFOA; collectively, these and other per- or polyfluoroalkyl substances are referred to as PFAS) into local groundwater and contaminated drinking water supplies. *See In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 357 F. Supp. 3d 1391, 1394 (J.P.M.L. 2018). Plaintiffs in *Hoffnagle* seek to represent a class of all customers of the Connecticut Water Company (CWC, the sole named defendant) who allegedly received water contaminated with PFAS. Plaintiffs seek damages and injunctive relief, including an order that CWC adequately filter and treat its water to remove PFAS contamination and to provide for a medical monitoring program. On its face, plaintiffs' complaint does not involve allegations pertaining to the manufacture, use, or disposal of AFFFs.

In support of its motion to transfer, CWC argues that *Hoffnagle* overlaps with an action brought by CWC against PFAS and AFFF manufacturers, which is pending in MDL No. 2873 and in which CWC alleges that the PFAS contamination of its water supplies stems, at least in part, from use or disposal of AFFF. *See Conn. Water Co. v. 3M Co.*, C.A. No. 2:21-03949 (D.S.C.). CWC contends that plaintiffs in *Hoffnagle* cite to CWC's complaint against PFAS manufacturers as support for its allegations regarding CWC's knowledge of the dangers of PFAS. Accordingly, CWC argues that there necessarily will be overlapping discovery as between *Hoffnagle* and CWC's AFFF action.

Both CWC and 3M Company rely heavily on our order that transferred the *Broy* action to the MDL. *See Transfer Order*, MDL No. 2873 (J.P.M.L. June 5, 2023), ECF No. 1927. *Broy* is indeed illustrative, though not in the way defendants suggest. The plaintiffs in *Broy*, like plaintiffs

* Judge David C. Norton did not participate in the decision of this matter.

- 2 -

in *Hoffnagle*, alleged that they were injured by drinking PFAS-contaminated water. This water allegedly was supplied by the City of Corona, California, which had itself brought an action to recover for PFAS contamination of its water supply allegedly caused, at least in part, by AFFF use or disposal. *See id.* at 2. Because plaintiffs' claims in *Broy* substantially overlapped with the claims in the City's action, transfer was appropriate. *Id.* But unlike *Hoffnagle*, neither *Broy* nor the City's action was directed solely against a water provider. Rather, both of those complaints were directed against 3M, one of the principal AFFF defendants in the MDL. This is a critical distinction.

When we centralized this docket, we denied a motion by 3M to extend the scope of the MDL to encompass not just cases involving AFFFs, but all cases relating to 3M's manufacture, management, disposal, and sale of PFAS. *See In re AFFF*, 357 F. Supp. 3d at 1396. We drew this line between "AFFF" and "non-AFFF" cases because of concerns for the manageability of this litigation:

While a non-AFFF MDL would allow for common discovery and motion practice with respect to 3M—the main producer of PFOA and PFOS—it also would include far more site-specific issues, different modes of PFAS contamination, and different PFAS chemicals (whereas the AFFF actions are limited to PFOA and PFOS contamination). Such an MDL could quickly become unwieldy.

Id. Since then, we have endeavored to maintain this distinction. *See, e.g.*, Order Denying Transfer at 2, MDL No. 2873 (J.P.M.L. Dec. 18, 2019), ECF No. 541 ("Given our continued concern about the manageability of this litigation, a party seeking transfer of an action that does not on its face raise AFFF claims bears a significant burden to persuade us that transfer is appropriate and will not undermine the efficient progress of the AFFF MDL."). To date, every action that we have transferred to the MDL has named entities involved in the manufacture, marketing, supply, use, or disposal of AFFFs as defendants.

Neither CWC nor 3M have met their "significant burden" of showing that transfer of *Hoffnagle* is appropriate. Plaintiffs' complaint is focused on CWC's alleged obligations to its customers to provide water free from PFAS contamination. CWC, the sole named defendant, is not alleged to have manufactured, used, or disposed of AFFFs. Transferring this action to MDL No. 2873 would significantly and unnecessarily broaden the scope of the MDL. The source of the alleged PFAS-contamination at issue in *Hoffnagle* is, to a large extent, irrelevant to plaintiffs' claims against CWC. Any overlap in discovery with CWC's claims against PFAS and AFFF manufacturers in the MDL should be minimal and can be addressed through informal cooperation and coordination among the involved parties and courts. Accordingly, after considering the parties' arguments, we find that transfer of *Hoffnagle* under 28 U.S.C. § 1407 will not serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation.¹

¹ Because we conclude that *Hoffnagle* is not an AFFF action for which transfer is appropriate, we need not address plaintiffs' other arguments against transfer.

- 3 -

IT IS THEREFORE ORDERED that the motion to transfer the action listed on Schedule A to MDL No. 2873 is denied.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Karen K. Caldwell", is positioned above a horizontal line.

Karen K. Caldwell
Chair

Nathaniel M. Gorton
Roger T. Benitez
Madeline Cox Arleo

Matthew F. Kennelly
Dale A. Kimball

**IN RE: AQUEOUS FILM-FORMING FOAMS
PRODUCTS LIABILITY LITIGATION**

MDL No. 2873

SCHEDULE A

District of Connecticut

HOFFNAGLE, ET AL. v. CONNECTICUT WATER COMPANY,
C.A. No. 3:23-01489