

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 United States of America moves under 28 U.S.C. § 1407(c) to transfer the *Dumais* action listed on Schedule A to the District of South Carolina for inclusion in MDL No. 2873. Plaintiffs and defendant ASM Industries, Inc., 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. The MDL also includes claims by firefighters and others alleging that direct exposure to AFFF caused them injuries. Plaintiffs in *Dumais*, however, assert idiosyncratic claims. They allege that Mr. Dumais was conducting an inspection of the fire suppression system at Pease Air National Guard Base when a pump (allegedly manufactured by defendant ASM) exploded. Plaintiffs allege that the explosion shot pressurized AFFF concentrate into Mr. Dumais’s eyes, nose, and mouth. They further allege that, as a result, Mr. Dumais suffered various injuries not alleged in the actions in the MDL—namely, esophagitis, gastritis, chemical burns, a concussion and post-concussion syndrome, acoustical trauma, cognitive issues, and aggravated tinnitus.

In support of its motion to transfer, the United States argues that, in addition to these unique injuries, plaintiffs allege that Mr. Dumais is at severe risk of developing cancer, an injury that *is* alleged by plaintiffs in the MDL. The United States also argues that plaintiffs’ claims share common factual questions regarding AFFF with the claims by other firefighters in the MDL, and that transfer will lead to efficiencies and prevent inconsistent pretrial rulings. We are not persuaded by these arguments.

The central issue in *Dumais* appears to be the maintenance and operation of the pump that allegedly exploded and injured Mr. Dumais. The overwhelming majority of Mr. Dumais’s alleged injuries were caused by the physical impact of the explosion and of the pressurized AFFF—as opposed to its chemical composition. In short, while *Dumais* involves AFFF, it is not an “AFFF action” similar to those we have transferred to MDL No. 2873. *See In re Aqueous Film-Forming*

* Judges David C. Norton and Madeline Cox Arleo did not participate in the decision of this matter.

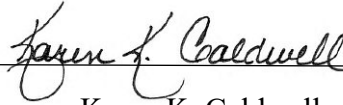
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Foams Prods. Liab. Litig., 357 F. Supp. 3d 1391, 1396 (J.P.M.L. 2018) (excluding “non-AFFF” cases because of concerns for the manageability of this litigation). Plaintiffs’ single allegation that Mr. Dumais is at risk of developing cancer does not, by itself, convert this action into an AFFF action. Rather, given how distinct *Dumais* is from the actions in the MDL, it is unlikely that transfer will yield significant efficiencies or conveniences for the parties and witnesses.

Accordingly, after considering the parties’ arguments, we find that transfer of *Dumais* 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. To be clear, we do not foreclose the possibility that discovery and pleading practice could demonstrate that *Dumais* is, in fact, more similar to the actions in the MDL than it presently appears. Should *Dumais* evolve into a more obvious AFFF action, the parties or the court at that time can re-notice *Dumais* as a potential tag-along in MDL No. 2873. At present, though, we are not persuaded that transfer of *Dumais* is appropriate.

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



Karen K. Caldwell
Chair

Nathaniel M. Gorton
Roger T. Benitez

Matthew F. Kennelly
Dale A. Kimball

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

MDL No. 2873

SCHEDULE A

District of New Hampshire

DUMAIS, ET AL. v. UNITED STATES OF AMERICA, ET AL., C.A. No. 1:22-00112