

**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 3M Company moves under 28 U.S.C. § 1407(c) to transfer the *Uniformed Professional Fire Fighters Association of Connecticut (UPFFA)* action listed on Schedule A to the District of South Carolina for inclusion in MDL No. 2873. Numerous co-defendants support the motion.<sup>1</sup> Plaintiffs oppose the motion.

*UPFFA* is a putative class action brought on behalf of firefighters in the State of Connecticut who allegedly were exposed to per- and polyfluoroalkyl substances (PFAS) contained in personal protection equipment and turnout gear (TOG) used by firefighters. On its face, the *UPFFA* complaint does not involve allegations pertaining to the manufacture, use, or disposal of aqueous film-forming foams (AFFFs). As we have held repeatedly in 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.” Order Denying Transfer at 2, MDL No. 2873 (J.P.M.L. Dec. 18, 2019), ECF No. 541.

After considering the parties’ arguments, we find that transfer of *UPFFA* 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. This MDL involves allegations that 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). We subsequently expanded the scope of this litigation to include claims by firefighters alleging direct exposure to AFFF. See *In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, MDL No. 2873, 2021 WL 755083, at \*1–2 (J.P.M.L. Feb. 4, 2021). We did

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

<sup>1</sup> Elevate Textiles, Inc.; Fire-Dex LLC; Globe Manufacturing Company LLC; Honeywell Safety Products USA, Inc.; Lion Group, Inc.; Milliken & Company; Morning Pride Manufacturing, LLC; InterTech Group, Inc.; PBI Performance Products, Inc.; Safety Components Fabric Technologies, Inc.; Narcote LLC d/b/a Stedfast USA Inc.; and W. L. Gore & Associates, Inc.

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not, however, expand the scope of this MDL to encompass actions brought by firefighters asserting claims solely for PFAS exposure through the use of TOG. *Cf. id.* (transferring firefighter actions that involved *both* claims of PFAS-related injuries through direct exposure to AFFF and through use of TOG that contained PFAS). We have never transferred an action to this MDL that involves only claims relating to PFAS-containing TOG.<sup>2</sup>

3M argues that transfer of *UPFFA* is warranted because over a thousand actions in the MDL involve claims by firefighters who allege injury from PFAS-containing TOG, and thus transfer will result in significant efficiencies. Indeed, the transferee court has taken steps to manage these claims, such as by issuing an order relating to TOG fact sheets. *See* Case Mgmt. Order No. 5F, *In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, No. 2:18-mn-02873 (D.S.C. Feb. 26, 2024), ECF No. 4542. Such orders are entirely appropriate—the transferee court must efficiently manage the cases and claims that are before it. But this remains an *AFFF* MDL, not a PFAS MDL. *See In re Aqueous Film-Forming Foams*, 357 F. Supp. 3d at 1396 (denying a motion by 3M to extend the scope of the MDL to encompass all cases relating to 3M’s manufacture, management, disposal, and sale of PFAS). The mere fact that some actions in this MDL assert non-*AFFF* claims in addition to those at the core of the MDL does not, standing alone, justify expanding the scope of the litigation to encompass all such non-*AFFF* claims. Doing so would quickly transform this litigation into the unwieldy PFAS MDL that we have studiously avoided since the outset of this litigation. This, in turn, would greatly complicate the efficient management of the litigation, which already involves a wide range of *AFFF* claims and parties.

3M alternatively argues that *UPFFA* should be treated as an *AFFF* action because they intend to raise exposure to *AFFFs* as a defense or alternate cause of plaintiffs’ alleged injuries, and thus discovery in *UPFFA* and the *AFFF* actions will overlap. We have explained, however, that “the mere potential for overlap is not sufficient to justify transfer of an otherwise non-*AFFF* action.” Order Denying Transfer at 2, MDL No. 2873 (J.P.M.L. Dec. 7, 2023), ECF No. 2217. “If *potential* causation or contribution arguments are sufficient to bring an action within the ambit of MDL No. 2873, then a large number of cases that do not assert *AFFF* claims might be swept into this litigation.” Order Denying Transfer at 1–2, MDL No. 2873 (J.P.M.L. Dec. 18, 2019), ECF No. 541. 3M has not met its significant burden of demonstrating that transfer of this non-*AFFF* action is warranted.

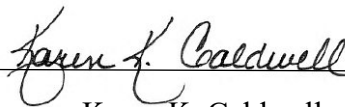
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<sup>2</sup> 3M identifies a single action in the MDL that asserts only claims relating to TOG. *See Fields v. 3M Co.*, C.A. No. 2:22-03402 (D.S.C.). This lone TOG action, which was directly filed in the District of South Carolina, does not justify the expansion of this MDL beyond *AFFF* claims.

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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  
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**SCHEDULE A**

District of Connecticut

UNIFORMED PROFESSIONAL FIRE FIGHTERS ASSOCIATION OF  
CONNECTICUT, ET AL. v. 3M COMPANY, ET AL., C.A. No. 3:24-01101