

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 actions listed on Schedule A to the District of South Carolina for inclusion in MDL No. 2873. Plaintiffs in the *Shelby County* and *Dupper* actions oppose transfer. Plaintiff in the *Noland* action did not respond to the transfer 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 each of these actions allege that they were injured, *inter alia*, by PFAS contamination of groundwater. Because no plaintiff alleges injury due to AFFF manufacture, use, or disposal, 3M “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.

Plaintiffs in *Shelby County* are two water providers that allege their water supplies (drawn from the Coosa River) were contaminated by PFAS discharged by various carpet manufacturers located upstream in Dalton, Georgia (colloquially known as the “Carpet Capital of the World”). In moving for transfer, 3M argues that this action will involve AFFF issues and presents an expert declaration by Samuel A. Flewelling, Ph.D., in which he concludes that AFFF released at the Anniston Army Depot contributed to the PFAS in plaintiffs’ water supply. Plaintiffs insist that their claims are limited to PFAS stemming from Dalton, Georgia. They also challenge Dr. Flewelling’s conclusions, arguing, *inter alia*, that his opinions are based on conjecture, and, at most, his declaration suggests that AFFF could be responsible for 0.94% of the PFAS in plaintiffs’ water supply.

The Panel is neither well-situated nor inclined to weigh the merits of the parties’ opposing characterizations of Dr. Flewelling’s opinions. *Cf.* Transfer Order at 3, MDL No. 2873 (J.P.M.L.

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\* Judges Nathaniel M. Gorton and David C. Norton did not participate in the decision of this matter.

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June 5, 2023), ECF No. 1927 (rejecting argument that would have required the Panel to “engage in a merits review” of the complaints based on the detail of plaintiffs’ pre-suit investigations). Nor do we need to do so here. The complaint in *Shelby County* focuses entirely on the carpet industry in Dalton, Georgia. This action thus is substantially similar to actions centered on non-AFFF industrial discharges, which the Panel generally has not transferred. Indeed, we denied transfer of another action (*Johnson*) in which the plaintiff also alleged PFAS contamination stemming from the Dalton carpet manufacturers. See Order Denying Transfer at 2–3, MDL No. 2873 (J.P.M.L. Apr. 5, 2022), ECF No. 1352. Transfer of *Shelby County*, like *Johnson*, is unwarranted based on a contested expert declaration.

Turning to the motion to transfer *Dupper*, plaintiff in this action alleges that her decedent developed breast cancer caused by PFAS discharges from DuPont’s Chambers Works chemical plant and Solvay’s Thorofare chemical plant, neither of which manufactured AFFF. This action is being litigated as part of a consolidated litigation in the District of New Jersey relating to alleged injuries caused by PFAS discharged from those facilities. In support of transfer, 3M argues that two of the addresses identified in the complaint as residences of the decedent were supplied with drinking water by New Jersey-American Water, Inc. (NJAW), which has filed an AFFF complaint pending in MDL No. 2873. Plaintiff, in response, argues that, when decedent lived at the residences identified in the complaint, she drank well water, not water supplied by NJAW.

This motion is similar to one that we denied last year with respect to the District of New Jersey *Deese* action. See *In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, MDL No. 2873, 2024 WL 4531134, at \*1 (J.P.M.L. Oct. 4, 2024). Like that action, *Dupper* is part of the consolidated Chambers Works litigation. It has been grouped with several other actions for pretrial workup, and the court’s prior dismissal rulings have been applied to *Dupper*. While *Dupper* is not as procedurally advanced as *Deese*, it is being litigated in an efficient manner with other actions sharing common factual questions regarding the Chambers Works and the Thorofare facility. The only distinction between *Dupper* and *Deese* is that here 3M points to potential overlap with AFFF claims by NJAW. This overlap, if it exists,<sup>1</sup> does not warrant transfer of *Dupper* where it is already part of a consolidated and efficiently organized proceeding in the District of New Jersey.

Finally, 3M moves to transfer the *Noland* action, in which plaintiff alleges that he developed chronic lymphocytic leukemia caused by, *inter alia*, PFAS discharged from a 3M facility located in Cordova, Illinois. In a concurrent order, we are transferring two other actions

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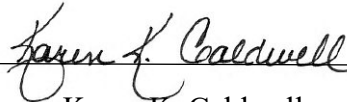
<sup>1</sup> 3M’s argument is, unlike *Shelby County*, not based on an expert declaration, but a comparison of the addresses listed in plaintiff’s complaint against public information regarding New Jersey’s public drinking water suppliers. Given the procedural posture of *Dupper*, this is not sufficient to meet 3M’s significant burden of demonstrating that transfer of an action that on its face does not involve AFFF is warranted. Should discovery in *Dupper* establish more concretely that decedent’s alleged injury stemmed from AFFF-based contamination, the parties can re-notice the action as a potential tag-along.

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that allege injury from PFAS discharged from the Cordova facility.<sup>2</sup> We decline to transfer *Noland*, however, because of the unique nature of plaintiff's allegations. Specifically, he alleges that numerous non-PFAS chemicals and products caused his injury, including tobacco, glyphosate (from Roundup herbicide), and aromatic hydrocarbons and volatile organic compounds, such as solvents, benzene, toluene, and diesel fuel. Only one of the 33 counts in the *Noland* complaint is directed to 3M and the Cordova facility. Indeed, this action may well be a better fit for MDL No. 2741 – *In re Roundup Products Liability Litigation*, as much of the complaint (and most of the claims) are directed to Monsanto and retailers that sold Roundup to plaintiff, and his alleged injury is one commonly alleged in that MDL. Until such time as plaintiff's claims become more focused, however, transfer to either MDL is unlikely to result in significant efficiencies.

IT IS THEREFORE ORDERED that the motions for transfer of the actions listed on Schedule A to MDL No. 2873 are denied.

PANEL ON MULTIDISTRICT LITIGATION



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Karen K. Caldwell  
Chair

Matthew F. Kennelly  
Dale A. Kimball

Roger T. Benitez  
Madeline Cox Arleo

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<sup>2</sup> As explained in that order, 3M has shown that AFFF used in the fire suppression system at the Cordova facility is likely to have contributed to PFAS contamination attributable to that facility.

**IN RE: AQUEOUS FILM-FORMING FOAMS  
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**SCHEDULE A**

Northern District of Alabama

SHELBY COUNTY, ALABAMA, ET AL. v. 3M COMPANY, ET AL.,  
C.A. No. 1:25-00112

Northern District of Illinois

NOLAND v. ENERGIZER AUTO MANUFACTURING, INC., ET AL.,  
C.A. No. 1:23-16598

District of New Jersey

DUPPER v. SOLVAY SPECIALTY POLYMERS, USA, LLC, ET AL.,  
C.A. No. 1:24-10533