

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

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

MDL No. 2873

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel:* Plaintiffs in the District of Minnesota *AIG* action listed on Schedule A,¹ along with approximately 33 insurer defendants,² move under Panel Rule 7.1 to vacate our order that conditionally transferred *AIG* to the District of South Carolina for inclusion in MDL No. 2873. Defendant 3M Company opposes this 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

* Judges Matthew F. Kennelly and David C. Norton did not participate in the decision of this matter.

¹ Moving plaintiffs include: AIG Property Casualty Company; AIG Specialty Insurance Company; AIU Insurance Company; American Home Assurance Company; Granite State Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; New Hampshire Insurance Company; and The Insurance Company of the State of Pennsylvania.

² Moving defendants include: Allianz Underwriters Insurance Company; Allianz Versicherungs, A.G.; Allstate Insurance Company; The American Insurance Company; Century Indemnity Company; Certain London Market Insurance Companies; Certain Underwriters at Lloyd's, London; Chicago Insurance Company; Chubb European Group Limited; Continental Insurance Company; Employers Insurance Company of Wausau; Evanston Insurance Company; Everest Reinsurance Company; Executive Risk Indemnity Inc; Federal Insurance Company; Fireman's Fund Insurance Company; HDI Global SE; Interstate Fire & Casualty Company; Old Republic Insurance Company; Starr Indemnity & Liability Company (as success to Republic Insurance Company); Repwest Insurance Company; Scottish Lion Insurance Company, Ltd.; St. Paul Surplus Lines Insurance Company; Swiss Reinsurance Company Ltd.; Swiss Re Asia Ltd.; Tenecom Ltd.; TIG Insurance Company; Travelers Casualty and Surety Company; The Travelers Indemnity Company; Wellfleet New York Insurance Company; Westchester Fire Insurance Company; Westport Insurance Corporation; and Zurich American Insurance Company.

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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 *AIG* seek a declaratory judgment regarding their insurance coverage obligations to 3M for its liabilities stemming from its manufacture, use, and disposal of PFAS and PFAS-containing products, including AFFF. Movants first argue that there is no federal subject matter jurisdiction over this action and that transfer to the MDL will delay resolution of their remand motion. Such jurisdictional objections generally do not present an impediment to transfer. *See, e.g., In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 170 F. Supp. 2d 1346, 1347–48 (J.P.M.L. 2001) (“[R]emand motions can be presented to and decided by the transferee judge.”).

Movants’ other arguments against transfer, however, are more persuasive. They argue that transfer is inappropriate because *AIG* is an insurance coverage action, and plaintiffs do not allege injury, property damage, or environmental contamination resulting from the manufacture, use, or disposal of AFFFs. Movants emphasize that discovery in *AIG* will be far broader than discovery in the MDL, requiring extensive investigation into 3M’s manufacture and sale of myriad PFAS-containing products, a minority of which were AFFFs.

We generally have declined to transfer insurance coverage disputes to products liability MDLs where there will be little overlap with the discovery in the liability actions. *See, e.g., In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, MDL No. 2047, 2010 WL 11747797, at *1 (J.P.M.L. June 15, 2010) (denying transfer where insurance coverage issues presented “strictly legal questions which require little or no centralized discovery”). “Where, however, such actions require and rely on the same factual discovery as the already-centralized actions, transfer may be warranted.” *In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mex., on Apr. 20, 2010*, 764 F. Supp. 2d 1352, 1353 (J.P.M.L. 2011). In June 2024, we transferred *Bouvet*, a “direct action” that included both claims against AFFF manufacturers and coverage claims against the manufacturers’ insurers. *See* Transfer Order at 2–3, MDL No. 2873 (J.P.M.L. June 7, 2024), ECF No. 2679. Transfer was appropriate because *Bouvet* itself was an AFFF action. We also noted, however, that the course of discovery in a coverage action by Tyco Fire Products LP, which had been directly filed in the transferee district, suggested that there would be significant overlaps with the discovery taken in the MDL, such that transfer would yield efficiencies. *Id.* at 3.

In August 2024, we transferred another direct action (*City of Wausau*) and a straightforward coverage action (*Lloyd’s*). *See* Transfer Order at 3, MDL No. 2873 (J.P.M.L. Aug. 1, 2024), ECF No. 2797. Although *Lloyd’s* itself did not involve AFFF claims, it overlapped significantly with the insurance coverage claims being litigated in the MDL and would involve substantially similar discovery of the AFFF manufacturers. *Id.*

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The course of the MDL litigation since then has demonstrated that the anticipated efficiencies with respect to discovery and pretrial proceedings of these coverage claims are not as great as we had anticipated. With respect to the coverage claims presented by Tyco and BASF (the AFFF manufacturer at the center of the *Lloyd's* action), the transferee court has dismissed the manufacturers' coverage actions that were directly filed in the transferee district on abstention grounds and remanded the insurers' coverage actions to state court. *See, e.g., In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, No. 2:18-02873 (D.S.C. Nov. 22, 2024), ECF No. 6409. Notably, the transferee court rejected BASF's contention that adjudication of the coverage claims within the MDL would yield significant efficiency benefits. *See id.* at 8–9 (“BASF has settled with the Water Provider plaintiffs in the AFFF MDL and that settlement has been finally approved by this Court. Therefore, no efficiency is gained by retaining BASF's South Carolina Action[.]”).

Like BASF and Tyco, 3M has reached a comprehensive settlement with the water provider plaintiffs in the MDL, which the transferee court has approved. With the insurance coverage litigation in the MDL effectively concluded,³ the only efficiencies to be gained pertain to the overlap between discovery in *AIG* and discovery in the MDL AFFF actions. But given the distinct nature of the insurance coverage claims in *AIG*, as well as the action's breadth (encompassing every PFAS and PFAS-containing product manufactured by 3M), we are no longer convinced that transfer will result in significant efficiencies, even if some discovery may overlap. Indeed, the transferee court itself agrees with this analysis—since the close of briefing, the transferee court has advised the Panel that transfer of such insurance coverage claims is no longer appropriate.

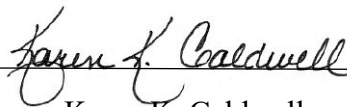
In support of transfer, 3M primarily relies on our prior orders in this MDL transferring coverage claims, which we no longer find persuasive. While there may be some overlapping discovery with respect to AFFF issues, we agree with movants that any relevant MDL discovery can be produced in *AIG* by agreement of the parties. Movants note, for instance, that MDL discovery materials were made available to the parties and cross-designated in a Wisconsin state court coverage action involving Tyco. The parties here can engage in similar coordination to minimize any potential for duplicative discovery. Accordingly, after considering the parties' arguments, we find that transfer of the action listed on Schedule A 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.

³ The Tyco coverage claims were dismissed on January 21, 2025. *See Tyco Fire Prods. LP v. AIU Ins. Co.*, C.A. No. 2:23-02384 (D.S.C. Jan. 21, 2025), ECF No. 366. The only remaining insurance claims in the MDL of which the Panel is aware are those incorporated in the two “direct actions” transferred by the Panel last year (*Bouvet* and *City of Wausau*). Plaintiffs in each of those actions, however, bring AFFF claims against AFFF manufacturers, and thus they are distinct from “coverage-only” actions such as *AIG*.

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IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-222" is vacated as to the action listed on Schedule A.

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
Dale A. Kimball

Roger T. Benitez
Madeline Cox Arleo

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

MDL No. 2873

SCHEDULE A

District of Minnesota

AIG PROPERTY CASUALTY COMPANY, ET AL. v. 3M COMPANY, ET AL.,
C.A. No. 0:24-04032