

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: AQUEOUS FILM-FORMING FOAMS
PRODUCTS LIABILITY LITIGATION

MDL No. 2873

TRANSFER ORDER

Before the Panel:* Defendant 3M Company moves under 28 U.S.C. § 1407(c) to transfer the *Suessmann* action listed on Schedule A to the District of South Carolina for inclusion in MDL No. 2873. Neither plaintiffs nor the other defendants responded to the motion.¹

We have consistently held that a party seeking transfer of action that does not on its face raise claims relating to the use or disposal of aqueous film-forming foams (AFFFs) bears a “significant burden” to persuade us that transfer is appropriate. Order Denying Transfer at 2, MDL No. 2873 (J.P.M.L. Dec. 18, 2019), ECF No. 541. 3M has satisfied that burden here. Plaintiffs in *Suessmann* allege that Mr. Suessmann developed testicular cancer caused by ingesting water contaminated with per- or polyfluoroalkyl substances (PFAS). Plaintiffs allege that they resided at various locations in New Jersey, including Hawthorne and Ho-Ho-Kus. As 3M correctly points out, these municipalities have filed suit against 3M and other PFAS/AFFF manufacturers to recover for the alleged PFAS contamination of their drinking water supplies, and both allege that the contamination was caused, at least in part, by the use or disposal of AFFF. *See, e.g.*, Am. Compl. ¶¶ 19–32, 54–57, 82, *Borough of Hawthorne v. 3M Co.*, C.A. No. 2:23-02773 (D.S.C.), ECF No. 6; Compl. ¶¶ 5, 11–60, 77–101, 205–42, *Borough of Ho-Ho-Kus v. 3M Co.*, C.A. No. 2:23-03191 (D.S.C.), ECF No. 1. Both complaints are pending in the MDL. In addition, while plaintiffs in *Suessmann* generally do not assert AFFF claims, they do assert claims against AGC Chemicals, which is alleged to have “designed, manufactured, marketed, and sold fluoro-surfactants containing PFOA, and/or their precursors used to manufacture AFFF, that was . . . discharged[] and/or disposed in New Jersey.” Compl. ¶ 16, *Suessmann v. E.I. du Pont de Nemours & Co.*, C.A. No. 2:23-20415 (D.N.J.), ECF No. 1-1.

Accordingly, after considering the argument of counsel, we find that the action listed on Schedule A involves common questions of fact with the actions transferred to MDL No. 2873, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we

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

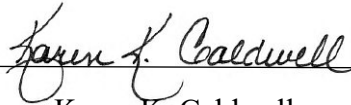
¹ Panel Rule 6.1(c) states that “[f]ailure to respond to a motion shall be treated as that party’s acquiescence to it.”

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held that the District of South Carolina was an appropriate Section 1407 forum for actions in which plaintiffs allege that AFFF products used at airports, military bases, or certain industrial locations caused the release of perfluorooctane sulfonate and/or perfluorooctanoic acid into local groundwater and contaminated drinking water supplies. The actions in the MDL share factual questions concerning the use and storage of AFFFs; the toxicity of PFAS and the effects of these substances on human health; and these substances' chemical properties and propensity to migrate in groundwater supplies. *See In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 357 F. Supp. 3d 1391, 1394 (J.P.M.L. 2018). *Suessmann* will share common questions of fact with the AFFF actions in the MDL and will benefit from inclusion in the centralized proceedings.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of South Carolina and, with the consent of that court, assigned to the Honorable Richard M. Gergel for coordinated or consolidated pretrial proceedings.

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 New Jersey

SUESSMANN, ET AL. v. E.I. DU PONT DE NEMOURS AND COMPANY, ET AL.,
C.A. No. 1:23-20415