

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2873

TRANSFER ORDER

Before the Panel:* Plaintiffs in the *City of Muscle Shoals* and *Colbert County* actions listed on Schedule A move under Panel Rule 7.1 to vacate our order that conditionally transferred those actions to the District of South Carolina for inclusion in MDL No. 2873. Defendants BFI Waste Systems of Alabama, LLC, BFI Waste Systems of North America, LLC, and 3M Company oppose the motion.

After considering the argument of counsel, we find that the actions listed on Schedule A involve 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 held that the District of South Carolina was an appropriate Section 1407 forum for actions in which plaintiffs allege that aqueous film-forming foams (AFFFs) used at airports, military bases, or certain industrial locations caused the release of per- or polyfluoroalkyl substances (PFAS) 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).

Plaintiffs in these two actions allege that their water supplies have been contaminated by PFAS discharged from, *inter alia*, manufacturing facilities in Decatur, Alabama, operated by defendants 3M, Toray Fluorofibers (America), Inc., and Daikin America, Inc. When we initially centralized this litigation, we excluded four actions alleging similar PFAS contamination of the Tennessee River from the same manufacturing facilities at issue here. *See id.* at 1396. However, in June 2024, we transferred four Alabama actions that involved personal injury claims stemming from the alleged discharge of PFAS into the Tennessee River by 3M's manufacturing facility in Decatur, Alabama, upon being persuaded that 3M manufactured AFFF there. *See* Transfer Order at 1–2, MDL No. 2873 (J.P.M.L. June 7, 2024), ECF No. 2679 (the “June 2024 Order”). Plaintiffs' arguments against transfer here are substantially similar to those we rejected in June 2024. *See*

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

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also Transfer Order at 1, MDL No. 2873 (J.P.M.L. Aug. 1, 2024), ECF No. 2797 (transferring two actions alleging discharges from 3M’s Decatur Facility). These actions likewise will share common questions of fact with the AFFF actions in the MDL and will benefit from inclusion in the centralized proceedings.

Plaintiffs argue that the advanced procedural posture of these actions weighs against transfer. They emphasize the amount of factual discovery, including depositions, that was completed before the action was removed to federal court. Even so, significant discovery remains, including all expert discovery and dispositive motions. There is ample scope for coordination of discovery and pretrial motion practice with the other actions pending in the MDL, particularly the other actions alleging PFAS discharges stemming from 3M’s Decatur Facility. Transfer therefore remains appropriate.

Plaintiffs next contest our holding in the June 2024 Order that 3M manufactured AFFF at its Decatur Facility. They suggest that 3M made only “building block” chemicals at the Decatur Facility that could be incorporated into myriad products, the vast majority of which were not AFFF. 3M, in opposition, points to the evidence it previously submitted to the Panel—letters from the U.S. Navy confirming that AFFF manufactured at the Decatur Facility conformed to U.S. military specifications—as well as evidence it submitted in response to plaintiffs’ remand motions in these actions, such as shipment records that 3M characterizes as showing that, from 1989 to 2001, millions of pounds of AFFF were shipped annually from the Decatur Facility. We are not well positioned to resolve this factual dispute, but we do not need to do so. It is sufficient for purposes of Section 1407 transfer that 3M has demonstrated that AFFF is at issue in these actions. *Cf.* June 2024 Order at 1–2 (“[A] showing of the respective contribution of AFFF and non-AFFF sources [of] PFAS contamination is not required to determine the merits of transfer to the AFFF MDL.”). If the transferee court determines that these actions are not, in fact, AFFF actions, it may suggest remand under Section 1407 with a minimum of delay. *See* Panel Rules 10.1–10.3.

Finally, plaintiffs argue that transfer should be stayed until their motions for remand to state court have been resolved in the transferor court. We are not persuaded by this argument. Jurisdictional objections such as those asserted by plaintiffs in these actions generally do not present an impediment to transfer.¹ *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.”).

¹ Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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IT IS THEREFORE ORDERED that the actions listed on Schedule A are 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
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MDL No. 2873

SCHEDULE A

Northern District of Alabama

THE CITY OF MUSCLE SHOALS, ALABAMA, ET AL. v. 3M COMPANY, INC.,
ET AL., C.A. No. 3:24-01062
COLBERT COUNTY, ALABAMA, ET AL. v. 3M COMPANY, INC., ET AL.,
C.A. No. 3:24-01063