

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: AQUEOUS FILM-FORMING FOAMS
PRODUCTS LIABILITY LITIGATION

MDL No. 2873

TRANSFER ORDER

Before the Panel:* We are presented with two motions in this docket. First, 3M Company moves under 28 U.S.C. § 1407(c) to transfer the *Long* action listed on Schedule A to the District of South Carolina for inclusion in MDL No. 2873. Plaintiffs oppose the motion to transfer. Second, plaintiff in the *City Utilities* action listed on Schedule A moves under Panel Rule 7.1 to vacate our order that conditionally transferred *City Utilities* to MDL No. 2873. Defendant 3M Company opposes this motion.

This litigation involves allegations that aqueous film-forming foams (AFFFs), which are used to extinguish liquid fuel fires, contaminated the groundwater near locations where they were used with per- or polyfluoroalkyl substances (PFAS), which allegedly were contained in the AFFFs and are toxic. *See In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 357 F. Supp. 3d 1391, 1394 (J.P.M.L. 2018). Because an MDL that incorporated all actions involving PFAS would raise management concerns due to its breadth, we have since the outset of this litigation limited the MDL to actions that involve claims relating specifically to AFFFs. *See id.* at 1396. For this reason, parties seeking to transfer an action that does not on its face raise AFFF claims bear a significant burden to persuade us that transfer is appropriate. *See Order Denying Transfer at 2*, MDL No. 2873 (J.P.M.L. Dec. 18, 2019), ECF No. 541.

3M has satisfied that burden with respect to *Long*. Plaintiffs in *Long* seek to represent a putative class of property owners in or near Canton, Missouri, whose groundwater allegedly has been contaminated by PFAS manufactured by defendants 3M Company, E.I. du Pont de Nemours & Company, The Chemours Company, and The Chemours Company FC, LLC. Although plaintiffs argue that they explicitly disclaim any damages from PFAS contamination stemming from the use or disposal of AFFFs, 3M correctly points out that the allegedly contaminated groundwater in *Long* is already at issue in the MDL. Specifically, the City of Canton (as well as the adjacent City of LaGrange) have filed lawsuits in MDL No. 2873 alleging that the contaminated groundwater in those municipalities—the same groundwater at issue in *Long*—was contaminated by use or disposal of AFFFs. *See City of Canton v. 3M Co.*, C.A. No. 2:23-02792 (D.S.C.), ECF No. 1; *City of LaGrange v. 3M Co.*, C.A. No. 2:23-03995 (D.S.C.), ECF No. 1.

* Judges Karen K. Caldwell and David C. Norton did not participate in the decision of this matter.

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Thus, regardless of how plaintiffs characterize their complaint, *Long* substantially overlaps with the AFFF claims in the MDL and necessarily will involve common questions of fact regarding, for instance, the nature of the alleged PFAS contamination and its source(s). See Transfer Order at 2, MDL No. 2873 (J.P.M.L. June 5, 2023), ECF No. 1927 (transferring *Broy*, despite plaintiffs' attempt to disclaim AFFF damages, where plaintiffs' water provider alleged in the MDL that the groundwater contamination was caused by AFFF use or disposal).

City Utilities presents a more obvious case for transfer. Plaintiff in *City Utilities* brings claims against 3M for violation of the Clean Water Act and the Resources Conservation and Recovery Act stemming from PFAS discharges from 3M's industrial facility in Springfield, Missouri, which allegedly violated 3M's stormwater discharge permits. Unlike plaintiffs in *Long*, plaintiff in *City Utilities* alleges that the groundwater contamination of which it complains was caused by AFFFs—specifically, from the operation of an outdoor AFFF fire suppression system at the Springfield Plant—as well as from non-AFFF sources. See, e.g., Compl. ¶¶ 59–61, *City Utils. of Springfield, Mo. v. 3M Co.*, C.A. No. 6:24-03164 (W.D. Mo.), ECF No. 1.

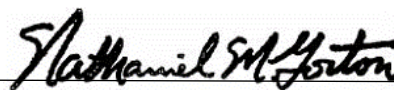
Plaintiff, in opposing transfer, emphasizes that it brings claims under environmental protection statutes and argues that the factual and legal issues arising from these claims are not shared by the actions in the MDL. But we have transferred numerous actions asserting claims under the same environmental statutes. See, e.g., *In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, MDL No. 2873, 2021 WL 755083, at *3 (J.P.M.L. Feb. 4, 2021) (rejecting argument by State of Michigan that transfer was not warranted because it asserted claims under environmental protection statutes). Furthermore, plaintiff has filed a separate action in the MDL, alleging that the contamination of the same water sources at issue in *City Utilities* was caused by the use or disposal of AFFFs. See *City Utils. of Springfield, Mo. v. 3M Co.*, C.A. No. 2:23-03046 (D.S.C.), ECF No. 1 (“the AFFF Compl.”). These actions are likely to involve duplicative discovery and seemingly seek overlapping relief. Cf. *City Utilities* Compl. at 30 (seeking remediation of affected water supplies) with AFFF Compl. at 63–64 (seeking abatement of the public nuisance). Transfer of *City Utilities* thus is appropriate.

Accordingly, 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 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 AFFF*, 357 F. Supp. 3d at 1394. For the reasons stated, *Long* and *City Utilities* will share common questions of fact with the AFFF actions in the MDL and will benefit from inclusion in the centralized proceedings.

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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



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

MDL No. 2873

SCHEDULE A

Eastern District of Missouri

LONG, ET AL. v. 3M COMPANY, ET AL., C.A. No. 2:24-00040

Western District of Missouri

CITY UTILITIES OF SPRINGFIELD, MO v. 3M COMPANY, C.A. No. 6:24-03164