

# Tyco and 3M Ask for MDL Treatment in Dozens of Firefighting Foam Lawsuits

*The lawsuits come on the heels of a \$670.7 million settlement with DuPont and Chemours Co. last year involving an MDL over a related chemical that has been linked to cancer and hypertension in pregnant women and other illnesses.*

By **Amanda Bronstad** | October 02, 2018 at 02:50 PM | Photo: Shutterstock



Manufacturers of foams used to fight fuel fires have asked to coordinate about 85 lawsuits that allege toxic chemicals in their products have leaked into drinking water, putting residents at risk of getting cancer and other illnesses.

In a motion filed last week, Tyco Fire Products LP and Chemguard Inc. asked the U.S. Judicial Panel on Multidistrict Litigation to send 75 cases to Massachusetts, where a federal judge is overseeing four actions “well into the litigation process.” The cases span seven states: Colorado, Delaware, Florida, Massachusetts, New York, Pennsylvania and Washington. 3M Co. filed a motion two days later to add nine more lawsuits from Alabama, Michigan, Minnesota and upstate New York.

The motions come after a federal judge in Colorado issued a Sept. 25 order in a class action brought on behalf of 64,000 residents of communities near Colorado Springs. They claim chemicals from the foam—referred to in court papers as aqueous film-forming foams—at the Peterson Air Force Base and the Colorado Springs Municipal Airport have leaked into their drinking water, causing pregnancy problems and kidney and thyroid diseases. They are seeking a medical monitoring fund and compensation for lost property values.

Plaintiffs in that case have filed a class certification motion, which the manufacturers have opposed. The motion goes before U.S. District Judge R. Brooke Jackson of the

District of Colorado on Nov. 30—one day after the MDL panel’s next hearing in New York.

“This is a case we’ve been aggressively litigating for two years now,” said Hunter Shkolnik, whose New York firm, Napoli Shkolnik, is involved in a large share of the foam cases, including the Colorado class action. “And, on the eve of a class certification in Colorado, the defendants are doing everything in their power to remove the case from Judge Jackson. And it’s nothing more than forum shopping.”

Stephen Raber, a partner at Williams & Connolly in Washington, D.C., filed the motion on behalf of Tyco and Chemguard, both part of Johnson Controls. He did not respond to a request for comment.

Fraser Engerman, a spokesman for Johnson Controls, said in a statement: “Tyco and Chemguard acted appropriately and responsibly in connection with products containing PFOA, including aqueous film forming foams (AFFFs). AFFFs have prevented catastrophic fires and saved many lives, which is why the U.S. military and fire-fighting professionals have chosen to use them for decades and continue to use them today.”

3M attorney Timothy Bishop, a partner at Mayer Brown in Chicago, did not respond to a request for comment.

The lawsuits come on the heels of a \$670.7 million settlement with DuPont and Chemours Co. last year involving multidistrict litigation over a related chemical, C8, a type of perfluorooctanoic acid, or PFOA, used to make Teflon and other household items that has been linked to cancer, hypertension in pregnant women and other illnesses.

The new cases focus primarily on foams used at military bases, airports and other sites to fight fuel fires. In 2016, the Environmental Protection Agency issued recommendations on the safe level of those chemicals in drinking water.

Among the New York sites referenced in the complaints are New York Stewart International Airport, Stewart Air National Guard Base, Francis S. Gabreski Airport and East Hampton Airport. Pennsylvania sites involve the Naval Air Station Joint Reserve Base Willow Grove and the Naval Air Warfare Center in Warminster. Two separate complaints mention New Castle Airport in Delaware and Pensacola International Airport in Florida.

Other defendants include National Foam Inc., Buckeye Fire Equipment Co. and United Technologies Corp.'s Kidde division. In a few cases, the defendants include local governments, and a case brought by the city of Newburgh, New York, names the U.S. government, U.S. Department of Defense and U.S. Air Force. In their Sept. 25 motion, Tyco and Chemguard said they anticipated asserting a "governmental contractor defense."

The cases are a hodgepodge of class actions, individual personal injury lawsuits and actions brought by water districts and other municipal entities. But Tyco and Chemguard want all of them in the same MDL.

"The panel has almost always found that centralization is appropriate in purported environmental contamination cases—including cases involving one of the chemicals at issue in this litigation, PFOA," Raber wrote, citing the C8 cases.

3M's motion, filed on Sept. 27, addressed a separate set of cases involving products sold to third parties or manufactured at its own facilities. In its motion, 3M said more than 100 additional cases are pending in state courts in Alabama and Michigan. In February, 3M agreed to pay \$850 million to settle a case by the state of Minnesota over water pollution from its manufacturing plant.

Both motions asked to send the cases to U.S. District Judge Denise Casper, who on Dec. 18 dismissed some of the claims in a case brought by Barnstable County, Massachusetts, alleging water contamination from the Barnstable County Fire Rescue Training Academy. As an alternative, they suggest U.S. District Judge Kenneth Karas in the Southern District of New York, who is overseeing four cases, including the city of Newburgh's case.

The motions come after Jackson ruled against the defendants in the Colorado class action, concluding that the Colorado Supreme Court "would probably recognize a claim for medical monitoring absent present physical injury." But he agreed that the complaint lacked specifics about medical testing, so he dismissed the medical monitoring claims so that plaintiffs could amend the complaint.

On Monday, Jackson denied a motion the defendants filed to stay the Colorado class action.

In addition to the class action, nearly 7,000 individuals alleging personal injuries have brought more than 40 cases in Colorado that would be part of an MDL, if granted.

[ORIGINAL ARTICLE](#)