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Tyco Fire Products LP and Chemguard, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA,
Plaintiff,

vs.

3M COMPANY, E.I. DU PONT DE NEMOURS
& COMPANY, THE CHEMOURS COMPANY,
THE CHEMOURS COMPANY FC, LLC,
DUPONT DE NEMOURS, INC., CORTEVA,
INC., TYCO FIRE PRODUCTS LP,
CHEMGUARD, INC., JOHNSON CONTROLS
INTERNATIONAL PLC, CENTRAL
SPRINKLER, LLC, FIRE PRODUCTS GP

Case No. 4:21-cv-00020-HRH

State of Alaska v. 3M Co., et al.
Case No. 4:21-cv-00020-HRH

HOLDING, LLC, KIDDE-FENWAL, INC.,
KIDDE PLC, INC., CHUBB FIRE LTD., UTC
FIRE & SECURITY AMERICAS
CORPORATION, INC., RAYTHEON
TECHNOLOGIES CORPORATION, CARRIER
GLOBAL CORPORATION, NATIONAL
FOAM, INC., ANGUS INTERNATIONAL
SAFETY GROUP, LTD, BUCKEYE FIRE
EQUIPMENT COMPANY, ARKEMA, INC.,
BASF CORPORATION, CHEMDESIGN
PRODUCTS, INC., DYNAX CORPORATION,
CLARIANT CORPORATION, CHEMICALS
INCORPORATED, NATION FORD
CHEMICAL COMPANY, AGC, INC., AGC
CHEMICALS AMERICAS, INC.,
DEEPWATER CHEMICALS, INC.,
ARCHROMA MANAGEMENT, LLC,
ARCHROMA U.S., INC., and JOHN DOE
DEFENDANTS 1-49,

Defendants.

NOTICE OF REMOVAL

Defendants The 3M Company (“3M”), Tyco Fire Products LP (“Tyco”), and Chemguard, Inc. (“Chemguard”; collectively, “Removing Defendants”) hereby give notice of removal of this action, pursuant to 28 U.S.C. §§ 1441, 1442(a)(1), and 1446, from the Superior Court for the State of Alaska, Fourth Judicial District at Fairbanks, to the United States District Court for the District of Alaska. Removing Defendants are entitled to remove this action based on federal officer jurisdiction under 28 U.S.C. § 1442(a)(1). As further grounds for removal, Removing Defendants state as follows:

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Case No. 4:21-cv-00020-HRH

PRELIMINARY STATEMENT

1. The State of Alaska (“State”) seeks to hold Removing Defendants liable for their alleged conduct in designing, manufacturing, and selling per- and polyfluoroalkyl substances (“PFAS”)—including perfluorooctanoic acid (“PFOA”), and perfluorooctane sulfonic acid (“PFOS”)—as well as products containing PFOA or PFOS, including aqueous film-forming foams (“AFFF”). PFAS chemicals purportedly have resulted in alleged damages to the natural resources, properties, and residents throughout the State of Alaska.

2. Military facilities in Alaska are a plausible source of the AFFF that has allegedly caused the State’s injuries. AFFF sold to the U.S. military must appear on the Department of Defense (“DOD”) Qualified Products List and comply with the military’s rigorous specifications (“MilSpec”). “Part 139” civilian airports in Alaska, which are required by law to stock and use MilSpec AFFF, are also a plausible source of the AFFF that has allegedly caused the State’s injuries. Under the federal “government contractor” defense recognized in *Boyle v. United Technologies. Corp.*, 487 U.S. 500 (1988), Removing Defendants are immune to tort liability for their design and manufacture of MilSpec AFFF and their provision of warnings for the product.

3. Removing Defendants are entitled to remove this action under the federal officer removal statute, 28 U.S.C. § 1442(a)(1), to have their federal defense adjudicated in a federal forum. Multiple courts have held that AFFF manufacturers properly removed

cases on the ground that the plaintiffs’ claims plausibly arose at least in part from MilSpec AFFF. *See, e.g., Nessel v. Chemguard*, No. 1:20-cv-1080, 2021 WL 744683, at *4 (W.D. Mich. Jan. 6, 2021); *In re Aqueous Film-Forming Foams Prods. Liab. Litig.* (“*In re AFFF*”), No. 2:18-mn-2873, 2019 WL 2807266, at *2 (D.S.C. May 24, 2019); *Ayo v. 3M Comp.*, No. 18-cv-0373, 2018 WL 4781145, at *6-15 (E.D.N.Y. Sept. 30, 2018). Such removal “fulfills the federal officer removal statute’s purpose of protecting persons who, through contractual relationships with the Government, perform jobs that the Government otherwise would have performed.” *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 133 (2d Cir. 2008).

THE STATE’S COMPLAINT

4. The State filed this action on April 6, 2021, in the Superior Court for the State of Alaska, Fourth Judicial District at Fairbanks, bearing Case No. 4FA-21-01451CI. (Ex. 1, Complaint.) None of the Removing Defendants have been served with the Complaint.

5. The State “brings this action against Defendants for contamination of the natural resources of the State, including but not limited to lands, waters, biota, and wildlife, as a result of the release of per- and polyfluoroalkyl substances (‘PFAS’) into the environment through the handling, use, disposal, and storage of products containing PFAS.” *Id.* ¶ 1.

6. The State generally alleges that Defendants (including Removing Defendants) have manufactured, marketed, and sold “PFOS, PFOA, and/or products

containing PFOS or PFOA, including but not limited to aqueous film-forming foams (‘AFFF’),” and Defendants are therefore responsible “for the release of vast amounts of PFOS and PFOA into Alaska’s environment,” which purportedly have resulted in injuries to natural resources, properties, and residents “throughout Alaska.” *Id.* ¶¶ 4, 7, 10; *see also id.* ¶¶ 19-20, 27-28, 67, 90-93.

7. Among other sources, the Complaint alleges that PFOS and PFOA were released into the State of Alaska as a result of the use of AFFF “at airports and military bases, among other places.” *Id.* ¶ 65; *see also id.* ¶¶ 70-73. Further, the State alleged that it is “the owner and operator of a[n] . . . airport” (*id.* ¶ 116), and that Defendants sold “Fluorosurfactant Products throughout Alaska, including to airports owned by the State” (*id.* ¶ 145). The Complaint defines “Fluorosurfactant Products” as “PFOS, PFOA, and/or products containing PFOS or PFOA, including but not limited to aqueous film-forming foam (‘AFFF’).” (*Id.* ¶ 4.)

8. The State asserts claims against Removing Defendants and other Defendants for strict products liability – design defect (*id.*, First Cause of Action), strict products liability – failure to warn (*id.*, Second Cause of Action), trespass (*id.*, Third Cause of Action), negligence (*id.*, Fourth Cause of Action), public nuisance (*id.*, Fifth Cause of Action), Violation of the Alaska Unfair Trade Practices and Consumer Protection Act (*id.*,

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