IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION	MDL No. 2:18-mn-2873-RMG **This Order Relates To All Cases**

This matter is before the Court on Plaintiffs' Motion to Compel Compliance with Rule 30(b)(6) Notice of Deposition to Arkema Inc. (Dkt. No. 6413). Arkema responded in opposition to Plaintiffs' motion. (Dkt. No. 6454). For the reasons set forth below, the Court grants-in-part Plaintiffs' motion.

I. Background

Plaintiffs served a Rule 30(b)(6) Notice of Deposition ("NOD") on Arkema. (Dkt. No. 6413-1). The NOD identified topics that Plaintiffs wish to question Arkema about. (*Id.* at 6) For example, in the first topic, Plaintiffs requested a corporate deponent designee of Arkema that can testify about Arkema's knowledge of the dangers of their fluorosurfactants. (*Id.* ("The nature, extent, substance and timing of Defendant's knowledge of the chemical characteristics of PFOA prescursors, PFOS, PFOA, and surfactants used in AFFF . . . .")). Plaintiffs did not limit their topics to a certain time frame. (*Id.* at 5 ("Unless otherwise indicated, the relevant time period for the information sought for each request is from the date you first conceived or began to research or develop YOUR earliest Per-and/or Polyfluorinated Substances, Perfluorooctane Sulfonate and Perfluorooctanoic Acid and/or Perfluorohexanoic acid, and / or their precursors and derivatives, whichever is earliest, to the present.")).

Arkema responded to the NOD, objected to Plaintiffs definition of relevant time period, and agreed only to produce a witness to testify as to the time period during which Arkema sold fluorosurfactants. (Dkt. No. 6413-2 at 2-8). Arkema argued that the relevant time period for the depositions should end in September 2002 because it sold its entire fluorosurfactant business in September 2002 to E.I. DuPont de Nemours and Co. ("DuPont"). (*Id.* at 2-3).

Because the Parties could not agree on the temporal scope of the deposition, Plaintiffs moved the Court to compel Arkema to prepare and produce a witness that can testify about each of the topics identified in the NOD up to the present date. (Dkt. No. 6413). Arkema responded in opposition. (Dkt. No. 6454). The matter is now ripe for the Court's review.

II. Standard

Generally, parties to a civil litigation "may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Information is relevant if it has any tendency to make a fact of consequence to the action more or less probable than it would be otherwise. Fed. R. Evid. 401. The district court may broadly construe rules enabling discovery, but it "must limit the frequency of extent of discovery otherwise allowed" if it determines that the discovery sought is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive"; if the requesting party "had had ample opportunity to obtain the information by discovery in the action"; or if it is otherwise "outside the scope permitted by Rule 26(b)(1)." Fed. R. Civ. P. 26(b)(2). The same "undue burden" test applicable to document discovery applies to testimonial discovery. *See Virginia Dept. of Corrs v. Jordan*, 921 F.3d 180, 193 (4th Cir. 2019). "The scope and conduct of discovery are within the sound discretion of the district court." *Columbus-Am. Discovery Grp. V. Atl. Mut. Ins. Co.*, 56 F.3d

556, 568 n.16 (4th Cir. 1993). And a transferee court presiding over a multi-district litigation has broad discretion to manage such a docket containing voluminous cases. *See, e.g., In re Guidant Corp. Implantable Defibrillators Prod Liab. Litig.*, 496 F.3d 863, 867 (8th Cir. 2007).

Rule 30 governs depositions by oral examination and provides that where a party names a corporation as the deponent, the "named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify." Fed. R. Civ. P. 30(b)(6). In the deposition notice, the party "must describe with reasonable particularity the matters for examination." *Id.* And the parties must "confer in good faith about the matters for examination" before or promptly after the notice is served. *Id.* "The persons designated must testify about information known or reasonably available to the organization." *Id.* If "a corporation or other entity fails to make a designation under Rule 30(b)(6)," the noticing party may move to compel designation under Rule 37. Fed. R. Civ. P. 37(a)(3)(ii).

III. Discussion

Plaintiffs argue that post-2002 information is relevant because Arkema currently engages with regulators regarding its legacy use of PFOA precursors and what Arkema may have said to regulators after 2002 may be relevant to understanding what Arkema knew about PFOA precursors and when. (Dkt. No. 6413 at 5). Plaintiffs have asserted negligence as a theory of recovery and, therefore, argue that what Arkema knew about the environmental risks posed by fluorosurfactants should not be confined to the time period when Arkema was an active supplier of those materials to the AFFF market. (*Id.* at 5-6). Additionally, Plaintiffs argue that Arkema's state of the art defense, that it was unknowable whether its products were capable of posing the alleged environmental impact, requires discovering when Arkema acquired that knowledge. (*Id.* at 5).

Arkema argues that any testimony regarding time periods after 2002 is irrelevant and outside the scope of this litigation. (Dkt. No. 6454 at 6-8). Arkema argues that it did not interact with regulators regarding the use of fluorosurfactants in AFFF or engage with other industry groups or associations after it stopped selling fluorosurfactants used in AFFF in 2002. (*Id.* at 6-7). Arkema further argues that its state-of-the-art defense only calls into question what Arkema knew at the time the design was prepared and the products were manufactured and tested, which all occurred before Arkema sold its fluorosurfactant business to DuPont. (*Id.* at 9). Arkema further argues that Plaintiffs have had an opportunity to seek post-2002 evidence related to Arkema's products from DuPont, a party in this MDL that has remained in the AFFF market and has provided extensive discovery in this litigation. (*Id.* at 8).

With regard to temporal scope, discovery of information both before and after the alleged liability period may be relevant and/or reasonably calculated to lead to the discovery of admissible evidence and courts commonly extend the scope of discovery to encompass such a time frame. The task of the trial court is to balance the relevance of the information against the burden of production.

Here, the Court finds information after Arkema's sale of its fluorosurfactant business may be relevant to Arkema's knowledge during its period of alleged liability. Additionally, information in Arkema's possession post-2002 may be relevant to another party's claim or defense, and the broad standards of relevancy which govern discovery provides that discovery shall be granted as to "any non-privileged matter that is relevant to *any* party's claim or defense," Fed. R. Civ. P. 26(b) (emphasis added). Moreover, Arkema has not provided any evidence that preparing and producing a witness able to testify on the topics up to a post-2002 date would impose an undue burden. The Court notes, however, that Plaintiffs request should be reasonably limited and finds

that twelve years after Arkema's sale of its fluorosurfactant business is reasonable for the temporal scope of otherwise relevant discovery.

For these reasons, the Court overrules Arkema's objection to temporal scope and directs Arkema to prepare and produce a witness to speak for the corporation regarding each of the topics identified in the NOD for the time period through September 2014.

IV. Conclusion

For the reasons stated above, the Court **GRANTS-IN-PART** Plaintiffs' motion to compel (Dkt. No. 6413). Arkema is directed to prepare and produce a witness to speak for the corporation regarding each of the topics identified in the NOD for the time period through September 2014.

s/Richard Mark Gergel
Richard Mark Gergel
United States District Judge

December 10, 2024
Charleston, South Carolina