

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

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

)
)
)
)
)
)
)

MDL No.2:18-mn-2873-RMG

CASE MANAGEMENT ORDER NO. 26F.

This Order Relates to All Actions

**SCHEDULING ORDER GOVERNING GROUP B PERSONAL
INJURY BELLWETHER TRIAL POOL CASES**

The Court hereby issues the following Case Management Order (“CMO”) to govern the schedule for completing further discovery in the Tier 2 Group B cases selected by the Court by Order dated July 19, 2024 [ECF 5361]. The Tier 2 Group B cases currently include two plaintiffs who allege thyroid disease as their injuries and one plaintiff who alleges ulcerative colitis as his injury.

General Schedule for Additional Tier 1 Group B Cases Alleging Ulcerative Colitis

1. The parties previously conducted Tier 1 discovery as to four plaintiffs who allege ulcerative colitis as an injury. The Court selected one such plaintiff to proceed to Tier 2 discovery, but declined to adopt the Parties’ competing proposals for additional Tier 2 selections. [ECF 5361]. In order to ensure that a sufficient number of ulcerative colitis cases are selected, the Court directs the parties to attempt to select additional ulcerative colitis cases and conduct Tier 1 discovery as to these Additional Discovery Pool Plaintiffs.

2. The Court shall select Additional Discovery Pool Plaintiffs alleging ulcerative colitis in accordance with the rules laid out in CMOs 26-26E. except as modified herein.

3. All deadlines set forth in Paragraphs 8 through 11 of CMO 26E. as to Group B cases are superseded by this Order, except as otherwise set forth below.

4. Additional Discovery Pool Plaintiffs alleging Ulcerative Colitis shall be subject to the following eligibility requirements:

- a. The Additional Discovery Pool Plaintiffs shall be limited to those who claim exposure to PFAS from AFFF use at Peterson Air Force Base and/or Colorado Springs Municipal Airport and do not allege PFAS exposure from direct exposure to AFFF.
- b. Only plaintiffs alleging ulcerative colitis in their Personal Injury PFS shall be eligible for selection as an Additional Discovery Pool Plaintiff. Plaintiffs alleging any other CMO 26 injury in addition to ulcerative colitis shall not be eligible.
- c. For a plaintiff to be eligible for consideration, the plaintiff must have filed and served his or her complaint on all named defendants and that plaintiff must have served a substantially complete Personal Injury PFS pursuant to CMO 5 by December 17, 2024.

5. On or before December 23, 2024, the PEC will identify the cases currently pending that are eligible as Additional Discovery Pool cases (“Eligibility List”).

6. On or before January 17, 2025, Defendants will review the Eligibility List provided by the PEC, and either agree to the list as provided by PEC, identify any case(s) on the list which the Defendants believe are not eligible and/or identify any cases which the Defendants believes are eligible but not on the Eligibility List.

7. On or before January 31, 2025, the Parties will meet and confer to reconcile the Eligibility List.

8. Within fourteen (14) days of the Parties’ reconciliation of the Eligibility List, counsel for the plaintiffs on the Eligibility List will provide Defendants (via email at AFFFMDL.Authorizations@nelsonmullins.com) (1) to the extent not previously provided, any medical, property, water, PFAS testing results (to include any blood or water PFAS testing results in Plaintiff’s possession), and/or utility records called for by the Plaintiffs’ Fact Sheets that are in each eligible plaintiff’s possession, custody, or control and (2) new duly executed medical record and water

and utility company record authorizations. To be clear, new authorizations shall be provided if the previously served authorizations are greater than six months old.

9. The Additional Discovery Pool Plaintiffs shall be selected by the Parties on or before February 28, 2025. For the avoidance of doubt, selection shall be of individual plaintiffs and not entire cases where plaintiffs may have been part of multiple-plaintiff complaints. (However, an individual plaintiff named in a multi-plaintiff complaint can be selected). All claims brought by the selected individual plaintiff, including any dependent or derivative claims (e.g., loss of consortium), shall be litigated in this process, including, for example, claims for property damage or diminution in value.

10. The Parties shall select no fewer than two and up to four Additional Discovery Pool Plaintiffs alleging ulcerative colitis.

11. In the event the Parties cannot agree on the Additional Discovery Pool Plaintiffs—and the Parties are strongly encouraged to agree and to make their best efforts to select representative cases—by March 7, 2025, the Parties shall exchange a list of proposed plaintiffs to fill the remaining slots.

12. By no later than March 14, 2025, the Parties shall jointly submit to the Court a list with each selected or proposed case, including the following information: (1) Plaintiff's counsel information, (2) list of all defendants in the case (and counsel information), (3) a certification that all parties have waived Lexecon rights, (4) a brief summary of the alleged injury(ies) and site(s) from which exposure occurred, (5) ECF references to the proposed Bellwether Plaintiff's operative Complaint and relevant Defendants' general denials and preliminary statements of affirmative defenses, and (6) if a plaintiff is not agreed, a brief explanation for why the proponent contends that plaintiff is representative and why the opponent contends that plaintiff is not representative. The Court shall select between two and four Additional Discovery Pool Plaintiffs from this submission.

13. Tier 1 Discovery as to the Additional Discovery Pool Plaintiffs selected as part of this

process shall proceed in compliance with the principles of CMO 26C. (ECF No. 4276) except that Tier 1 Discovery shall take place from March 21, 2025 to July 18, 2025 (“Tier 1 Discovery Period”). In the event that the Court has not ruled on the selection of the Additional Discovery Pool Plaintiffs as contemplated in Paragraph 11 by March 21, 2025, the Parties will meet and confer and propose a reasonable extension of the Tier 1 Discovery Period.

14. By no later than June 27, 2025, the Parties shall propose a process for selecting which of the Additional Discovery Pool Plaintiffs should be included as Tier 2 Group B cases.

15. Following completion of Tier 1 Discovery in the Additional Discovery Pool Cases, the Court shall determine whether to include any of these Additional Discovery Pool Plaintiffs in the Tier 2 Group B cases. The presumption shall be that the Court will select one additional ulcerative colitis plaintiff to move into Tier 2 discovery but the Court shall make the ultimate determination as to whether to include more than one additional plaintiff.

16. Nothing in the Order is intended to alter or modify the Court’s selection of Plaintiff James Zajicek as a Tier 2 Bellwether Plaintiff.

General Schedule for Tier 2 Group B Cases

17. For cases already designated for Group B, Tier 2 discovery prior to the date of this order, Tier 2 discovery commenced on July 16, 2024 and shall continue through September 12, 2025. The Parties shall conduct any additional fact discovery related to newly selected Group B cases after the process described in this order beginning on July 18, 2025, or on the day following selection of any such Group B cases. Regardless of when Tier 2 discovery commenced, Tier 2 discovery for all Group B Plaintiffs shall be presumed to close on September 12, 2025. Prior to the scheduled August 8, 2025 status conference, the parties shall advise the Court as to the progress of Tier 2 Discovery for the Group B cases including whether the Tier 2 Discovery end date should be further extended. In the event that the Court has not ruled on the selection of the Additional Discovery Pool Plaintiffs as

contemplated in Paragraph 15 by July 28, 2025, the Parties will meet and confer and propose a reasonable extension of the Tier 2 Discovery Period.

18. It is currently contemplated that at the conclusion of Tier 2 Discovery for all Group B cases, the Parties shall exchange expert discovery related to the Tier 2 Group B cases according to a schedule that the parties will continue to negotiate and submit to the Court in advance of the August 8, 2025 Case Management Conference. Such proposal shall address a schedule as to both the currently selected Group B cases and any proposed additional Group B cases as addressed above, including whether to further extend the Tier 2 Discovery Period.

IT IS SO ORDERED.

Dated: December 30, 2024
Charleston, South Carolina

s/Richard M. Gergel
Hon. Richard M. Gergel
United State District Judge