

2025CA40060

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Kim Windle James

Kim Windle James, Clerk
Chattooga County, Georgia

IN THE STATE COURT OF CHATTOOGA COUNTY
STATE OF GEORGIA

THE TOWN OF LYERLY,
GEORGIA,

Plaintiff,

v.

3M COMPANY; DAIKIN
AMERICA, INC., E.I. DUPONT DE
NEMOURS AND COMPANY;
DUPONT DE NEMOURS, INC.;
CORTEVA, INC.; EIDP, INC.;
THE CHEMOURS COMPANY;
THE CHEMOURS COMPANY FC,
LLC; MOHAWK INDUSTRIES,
INC.; MOHAWK CARPET, LLC;
ALADDIN MANUFACTURING
CORPORATION; TRY-CON
TUFTERS, INC.,

Defendants.

Case No. 24CA4052

DEFENDANT 3M COMPANY, INC.'S
MOTION TO DISMISS COMPLAINT

3M Company, Inc. ("3M") moves under O.C.G.A. § 9-11-12(b)(6) to dismiss all of the Plaintiff's claims against it with prejudice. Plaintiff asserts claims against two groups of Defendants: (1) "PFAS User Defendants," a group composed of carpet manufacturers, and (2) "PFAS Manufacturing Defendants," a group that includes 3M and certain other manufacturers of PFAS-containing products. Despite asserting that any alleged harmful discharge was made by the PFAS User Defendants

(“PFAS Users”), Plaintiff asserts claims against 3M for Negligence (Count I), Public Nuisance (Count II), Private Nuisance (Count III), Trespass (Count IV), Wantonness and Punitive Damages (Count V), Attorneys’ Fees and Expenses of Litigation (Count VI), and violation of the Georgia Water Quality Control Act (“GWQCA”) (Count VII).

In general, Plaintiff’s claims against 3M fail because Plaintiff does not allege that 3M itself discharged any PFAS into Plaintiff’s water supply. Plaintiff also does not allege that 3M controlled those who did. Plaintiff seeks to impose liability on 3M for possibly selling a legal product to unspecified purchasers. This attenuated and speculative causal chain does not support liability under Georgia law. Specifically, Plaintiff’s claims should be dismissed for the following reasons:

First, all of Plaintiff’s claims should be dismissed because Plaintiff does not sufficiently allege that 3M caused its alleged injuries. Rather, its alleged injuries result from the PFAS Users’ independent, unforeseeable actions.

Second, Plaintiff’s negligence claim (Count I) fails because Georgia law does not establish a legal duty on the part of a *chemical manufacturer* to protect a *municipality* from a *third party*’s alleged negligent use or disposal of a chemical that results in harm.

Third, Plaintiff cannot bring a public nuisance claim (Count II) because 3M has no control over the alleged nuisance.

Fourth, Plaintiff cannot bring a private nuisance claim (Count III) because it alleges harm to more than a small number of individuals, and a nuisance cannot be both public and private.

Fifth, Plaintiff's trespass claim (Count IV) is subsumed by its nuisance claim. Further, Plaintiff does not allege 3M engaged in conduct that gives rise to a trespass claim under Georgia law because 3M neither physically invaded Plaintiff's properties nor controlled any of the third-party conduct that caused the alleged trespass.

Sixth, Plaintiff's claim under the GWQCA (Count VII) fails because it does not allege that 3M negligently caused or permitted any PFAS to be spilled, discharged, or deposited into Plaintiff's water. 3M simply sold PFAS to sophisticated purchasers. Moreover, the GWQCA does not give Plaintiff a cause of action as it is not a political subdivision of the State of Georgia.

Finally, because Plaintiff's substantive claims are subject to dismissal, its derivative claims for punitive damages and attorney fees (Counts V and VI) should also be dismissed.

BACKGROUND

In its Complaint, Plaintiff alleges that the carpet-manufacturing PFAS Users "caused and permitted PFAS-contaminated waste to be discharged into the environment and surrounding areas where Plaintiff collects its drinking water." Dkt.

1, Compl. ¶ 9.¹ Plaintiff does not allege that 3M disposed of any PFAS-containing products or waste. Nor does Plaintiff allege that 3M had any control over those that supposedly did. Instead, the Complaint specifically asserts that the discharge and alleged contamination stemmed from carpet manufacturers. *Id.* ¶¶ 9, 53-57 (alleging PFAS Users discharged industrial wastewater containing PFAS that “invaded the environment and groundwater source(s) where Plaintiff collects its drinking water,” and that now “contaminate the drinking water supply;” that they knew or should have known that the release of the wastewater would contaminate the drinking water supply and that it was prohibited by law; and that they continue to discharge such waste); *id.* ¶¶ 30, 105-107 (alleging all injuries and damages are related to claimed water contamination associated with PFAS Users’ discharge). The only alleged connection between 3M and this discharge was the possible decades-old sale of products employed by the PFAS Users in their production processes. But *only* the PFAS Users generated PFAS-containing waste and discharged it such that it allegedly made its way into Plaintiff’s drinking water sources. *Id.* ¶¶ 53-57, 105, 107.

Plaintiff does not allege which of the PFAS Users 3M sold its products to or when; does not allege which PFAS User of 3M’s products allegedly discharged

¹ For purposes of this motion only, 3M accepts as true all the well-pleaded allegations in Plaintiff’s Complaint. 3M reserves its rights to contest those allegations.

PFAS-containing waste and when; and does not allege how and when any PFAS sold by 3M to PFAS Users made its way into Plaintiff's water supply. Instead, Plaintiff lumps all of the PFAS Manufacturers and PFAS Users together without any allegations specific to 3M or its purported conduct. *See, e.g., id.* ¶¶ 32, 42, 63, 64, 105. Based on this highly attenuated and non-specific causal chain, Plaintiff seeks to recover past and future expenses and costs associated with installing, maintaining, and operating drinking water treatment systems as well as testing and monitoring raw and finished water, for undefined damage to goodwill and reputation, and for lost revenue and sales. *Id.* ¶ 128.

LEGAL STANDARD

Under O.C.G.A. § 9-11-12(b)(6), a motion to dismiss for failure to state a claim upon which relief may be granted should be sustained when, construing the facts in Plaintiff's favor: "(1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought." *Anderson v. Flake*, 267 Ga. 498, 501, 480 S.E.2d 10, 12 (1997). While a plaintiff need not plead "facts sufficient to set out each element of a cause of action," a complaint is sufficient only if "within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to

the plaintiff.” *TechBios, Inc. v. Champagne*, 301 Ga. App. 592, 593, 688 S.E.2d 378, 380 (2009) (quoting *Martin v. Brown*, 222 Ga. App. 577, 567, 474 S.E.2d 742, 744 (1996)). All of Plaintiff’s claims fall short of this standard and should be dismissed with prejudice.

I. The Complaint Fails To Sufficiently Allege Causation, Dooming Plaintiff’s Negligence (Count I), Nuisance (Counts II And III), Trespass (Count IV), And GWQCA (Count VII) Claims.

Plaintiff does not allege that 3M discharged any PFAS-containing products or waste into Plaintiff’s water. On the contrary, Plaintiff repeatedly alleges that PFAS entered its water supply due to the independent actions of third parties—the PFAS Users. *See* Compl. ¶¶ 9, 53-57, 105-107. But causation is an essential element of each of Plaintiff’s claims. *See Alexander v. Hulsey Envtl. Servs.*, 306 Ga. App. 459, 462, 702 S.E.2d 435, 439 (2010) (causation is essential for nuisance, trespass, and negligence claims); O.C.G.A. § 12-5-51 (requiring causation for GWQCA claim). Because Plaintiff fails to plausibly allege that 3M caused its alleged injuries, its claims against 3M should be dismissed.

Proximate cause is the “legally attributable causal connection between the defendant’s conduct and the alleged injury.” *Alexander*, 306 Ga. App. at 462, 702 S.E.2d at 439. It is “that which, in the natural and continuous sequence, **unbroken by other causes**, produces an event, and without which the event would not have occurred.” *Yearty v. Scott Holder Enters.*, 349 Ga. App. 718, 722, 824 S.E.2d 817,

821 (2019) (quoting *Zwiren v. Thompson*, 276 Ga. 498, 500, 578 S.E.2d 862, 865 (2003)) (emphasis added). A court also must evaluate “whether the causal connection between [the defendant’s] conduct and the injury is too remote for the law to countenance a recovery.” *Dowdell v. Wilhelm*, 305 Ga. App. 102, 104, 699 S.E.2d 30, 32 (2010). When a new cause that is not the “natural consequence[]” of the alleged “original wrongful act” subsequently intervenes, the causal chain is broken. *Edwards v. Campbell*, 338 Ga. App. 876, 881, 792 S.E.2d 142, 147 (2016); see *Hynes v. Cagle*, 264 Ga. App. 367, 369, 590 S.E.2d 770, 773 (2003) (intervening “distinct, successive, unrelated, [and] efficient cause of the injury . . . broke the causal chain with the defendants”).

Plaintiff does not allege that 3M disposed of *any* PFAS-containing products or waste in or around Chattooga County or in the source of its drinking water. Indeed, Plaintiff concedes this point expressly. See Compl. ¶ 43 (alleging that 3M and the other PFAS Manufacturers merely “sold” PFAS-containing products “to the PFAS Users,” who “subsequently” discharged PFAS into the environment).² Nor does Plaintiff allege that 3M controlled or directed those who did use or dispose of PFAS-containing products in or around Chattooga County. In fact, Plaintiff does not even specify which PFAS Users 3M allegedly sold its products to or when. Rather,

² Despite a conclusory allegation that the PFAS Manufacturers engaged in the “manufacture, use, purchase, sale, supply, discharge, and/or release of PFAS,” Compl. ¶ 45, the balance of Plaintiff’s pleading makes plain that the alleged discharge and release was limited to the PFAS Users.

Plaintiff asserts that its damages resulted from the wrongful acts of others. Plaintiff repeatedly alleges entities independent of 3M used, disposed of, and disseminated the PFAS at issue. *See id.* ¶¶ 9, 53-57, 105-107. Specifically, Plaintiff alleges that the PFAS Users (not 3M) applied PFAS-containing products to their carpets and other textiles. *See id.* ¶¶ 54-57. Plaintiff asserts that the PFAS Users—allegedly acting in violation of their own permits and with full knowledge that PFAS was “harmful”—discharged “PFAS-contaminated waste streams” into “the environment and surrounding areas from where Plaintiff collects its drinking water.” *Id.* ¶¶ 43, 56; *see also id.* ¶¶ 10, 79, 83–85, 91, 106. The PFAS Users allegedly did so “both directly and indirectly,” via “industrial wastewater” but also through unspecified “releases, leaks, and spills.” *Id.* ¶¶ 43, 55. These discharges “ultimately” contaminated Plaintiff’s water supply. *Id.* ¶ 55.

This chain of events is far too attenuated to sustain a conclusion that 3M proximately caused Plaintiff’s alleged harm. Plaintiff does not allege a single fact to support its conjecture that 3M should have foreseen (or did foresee) that any of this conduct by the PFAS Users (including alleged permit violations, leaks, and spills) would occur, much less a single fact to show that 3M “had full knowledge” that the PFAS it manufactured “would invade the environment and surrounding areas from where Plaintiff collects its drinking water.” *Id.* ¶ 44. *See Edwards*, 338 Ga. App. 876, 885, 792 S.E.2d at 149 (affirming dismissal where it was not reasonably

foreseeable to a defendant that co-defendant would violate its independent legal obligation). Rather, the alleged intervening acts of the PFAS Users “break the chain of causation,” rendering any alleged act by 3M (i.e., the sale of certain PFAS) “too remote” to be actionable. *Id.* at 147-48; *see also Alexander*, 306 Ga. App. at 461, 702 S.E.2d at 438 (affirming summary judgment for a customer who merely brought waste to disposal facility because he did “not direct or control any conduct of the waste disposal operation” and therefore did not proximately cause the nuisance); *Zwiren*, 276 Ga. at 500, 578 S.E.2d at 864 (proximate cause requires a connection “unbroken by other causes”).

Rather, Plaintiff expressly alleges that its injuries are caused by the nuisance and trespass of the PFAS Users who release “PFAS-contaminated waste” unlawfully through “wastewater, stormwater, and other discharges.” Compl. ¶ 56. This conduct, according to Plaintiff, has caused and continues to cause damages and injury, which the PFAS Users allegedly “knew or should have known.” *Id.* ¶¶ 10, 53-55, 82-95, 91, 106. Because the only plausible way for Plaintiff to prove harm is through the PFAS Users’ independent tortious actions, it cannot also be true that 3M’s actions triggered an inevitable course of events that led to the harm. To hold otherwise would allow Plaintiff to pursue liability against 3M merely for “what happened,” rather than because “the facts measure up to the legal standard” of proximate causation. *Johnson v. Avis Rent A Car Sys., LLC*, 311 Ga. 588, 593, 858 S.E.2d 23, 29 (2021).

II. Plaintiff's Negligence Claim (Count I) Should Be Dismissed Because Georgia Law Does Not Establish A Legal Duty On The Part Of A Chemical Manufacturer To Protect A Municipality From A Third Party's Alleged Negligent Use Or Disposal Of A Chemical That Results In Harm.

Beyond its fatal causation defects, the negligence claim should also be dismissed because Plaintiff fails to plead that 3M breached any legal duty recognized under Georgia law. “Before negligence can be predicated upon a given act, some duty to the individual complaining must be sought and found.” *S. Ry Co. v. Liley*, 75 Ga. App. 489, 493, 43 S.E.2d 576, 579 (1947). “Whether or not a legal duty exists is a question of law for the court.” *Murray v. Ga. Dep’t of Transp.*, 284 Ga. App. 263, 272, 644 S.E.2d 290, 298 (2007). “A legal duty sufficient to support liability in negligence is either a duty imposed by a valid statutory enactment of the legislature or a duty imposed by a recognized common law principle declared in the reported decisions of our appellate courts.” *Id.* (quotation marks omitted).

Here, however, Georgia law does not establish a legal duty on the part of a *chemical manufacturer* to protect a *municipality* from a *third party*’s alleged negligent use or disposal of a chemical that results in harm. Plaintiff wrongly alleges that 3M owes a “duty to . . . **all** persons whom Defendants’ PFAS might foreseeably harm, in their handling, control, use and disposal of PFAS”—no matter how far down the causal chain. Compl. ¶ 118 (emphasis added). It is well-established that mere foreseeability is not enough to establish duty under Georgia law. *See, e.g., CXS Transp., Inc. v. Williams*, 278 Ga. 888, 890, 608 S.E.2d 208, 209 (2005); *Ramirez v.*

Paradies Shops, LLC, 69 F.4th 1213, 1220 (11th Cir. 2023) (“Georgia courts will not expand traditional tort concepts merely because a harm is foreseeable.”). As cautioned by the Supreme Court, extending a duty of care to any potential third party who may eventually come into contact with the product in issue would impermissibly create an “almost infinite universe of potential plaintiffs.” *CSX Transp.*, 608 S.E.2d at 209 (refusing to impose a duty on an employer to “any third-party, non-employees, who comes into contact with its employee’s asbestos-tainted work clothing at locations away from the workplace); *see Dep’t of Labor. v. McConnell*, 305 Ga. 812, 816, 828 S.E.2d 352, 358 (2019) (declining to recognize a “generalized duty to all the world”); *see also Hare Krishna Roswell Hotel v. Corsino*, 369 Ga. App. 166, 892 S.E.2d 785 (2023) (observing there is no “general legal duty to all the world not to subject others to an unreasonable risk of harm”).

Plaintiff’s theory of liability would do just that—create an infinite universe of potential plaintiffs. Indeed, under Plaintiff’s pleaded theory, liability would extend from 3M to any downstream third party anywhere in Georgia who comes into contact with wastewater created and disposed of by 3M customers (regardless of where those 3M customers are located). This Court should decline to recognize such a broad and amorphous duty that would effectively eviscerate the duty requirement.

Moreover, even assuming 3M has a duty to “prevent the discharge of toxic PFAS chemicals into the Plaintiff’s water supply, water treatment plant, and related

property,” Compl. ¶ 121, which it does not, Plaintiff fails to allege that 3M breached any such duty. Indeed, Plaintiff admits that 3M *did not* discharge PFAS into Plaintiff’s water supply. *See id.* ¶¶ 9, 53-57, 105-107. And Georgia law is clear that a defendant has no duty to control the conduct of another. *See, e.g., Shortnacy v. N. Atlanta Internal Med., P.C.*, 252 Ga. App. 321, 325, 556 S.E.2d 209, 213 (2001) (“[T]here is no duty to control the conduct of third persons to prevent them from causing physical harm to others.”).

Plaintiff’s reference to the GWQCA as the source of 3M’s duty to it under a negligence standard is unsustainable because Plaintiff does not allege that 3M caused or permitted a spill, discharge, or deposit of prohibited substances into the waters of Georgia. *See* Compl. ¶¶ 119-122. The inapplicability of the GWQCA to 3M is more fully addressed in Section VI, *infra*.

Because Plaintiff fails to allege that 3M has any cognizable legal duty that it breached, Plaintiff’s negligence claim must be dismissed.

III. Plaintiff’s Public Nuisance Claim (Count II) Should Be Dismissed Because It Fails To Allege 3M Had Control Over The Alleged Nuisance.

Plaintiff alleges 3M is responsible for the alleged contamination of Lyerly’s water supply simply because 3M was one of many PFAS suppliers. Compl. ¶¶ 44-45. Such allegations ignore the basic principle that “a nuisance claim may only be alleged against one who is *in control of the nuisance creating instrumentality*.”

Corp. of Mercer Univ. v. Nat'l Gypsum Co., No. CIV.A. 85-126-3-MAC, 1986 WL 12447, at *6 (M.D. Ga. Mar. 9, 1986) (emphasis added).

To have “control,” a defendant must have a legal right to abate the nuisance. *See id.* at *6–7; *Fielder v. Rice Const. Co.*, 239 Ga. App. 362, 366, 522 S.E.2d 13, 16 (1999); *see also* O.C.G.A. § 41-1-1 (defining nuisance as anything that “causes hurt, inconvenience, or damage to an ordinary, reasonable man”). In *Mercer*, the nuisance claim was dismissed for lack of proof that the defendant manufacturer of asbestos-containing products—the claimed nuisance—had “a legal right to go into [plaintiff’s] buildings and remove their products.” 1986 WL 12447, at *5. That inability to enter the premises and abate the nuisance meant that the defendant lacked the control needed to sustain a nuisance claim. 3M has had no such legal right to enter either Lyerly’s or the User Defendants’ properties, which is fatal to the nuisance claim.

The same was true in *Jordan v. Southern Wood Piedmont Co.*, 805 F. Supp. 1575, 1577 (S.D. Ga. 1992), where landowners whose properties were allegedly contaminated with a pesticide sued a nearby wood treatment plant and the pesticide supplier, Dow Chemical. The court found a nuisance claim could not be sustained against Dow because it was not associated with the plant’s handling and disposal activities. *Id.* at 1582.

Plaintiff alleges only that 3M manufactured PFAS and that, through a series of unforeseeable and independent actions by entities outside of 3M's control, PFAS somehow ended up in Lyerly's water. *See* Compl. ¶¶ 44-45, 53-57. Plaintiff does *not* allege that 3M had any legal authority to enter its or the PFAS Users' properties, much less to control the alleged PFAS-containing discharges from the PFAS Users into any water supply. In case after case in other jurisdictions, courts have found that chemical suppliers lack the control necessary to support a claim for public nuisance.³ The same result should follow here.

IV. Plaintiff Cannot State A Private Nuisance Claim (Count III), And It Should Be Dismissed.

As a threshold matter, a nuisance cannot be both private and public. O.C.G.A. § 41-1-2 ("Nuisances are *either* public *or* private." (emphasis added)). And under Georgia law, "[a] private nuisance is one limited in its injurious effects to *one or a*

³ *See City of Bloomington, Ind. v. Westinghouse Elec. Corp.*, 891 F.2d 611, 614 (7th Cir. 1989) (affirming dismissal of nuisance claim where pleading did not sufficiently allege that the manufacturer/seller of polychlorinated biphenyls retained product control beyond sale); *Cloverleaf Car Co. v. Phillips Petroleum Co.*, 540 N.W.2d 297, 301 (Mich. Ct. App. 1995) (concluding that a supplier of gasoline could not be held liable for a public nuisance due to lack of control over the nuisance); *E.S. Robbins Corp. v. Eastman Chem. Co.*, 912 F. Supp. 1476, 1494 (N.D. Ala. 1995) (concluding that the supplier of a chemical product was not liable for public nuisance due to lack of control); *see also, e.g., Tioga Pub. Sch. Dist. No. 15 v. U.S. Gypsum Co.*, 984 F.2d 915, 920 (8th Cir. 1993); *City of Huntington v. AmerisourceBergen Drug Corp.*, 609 F. Supp. 3d 408, 471-75 (S.D.W. Va. 2022); *State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719, 728-29 (Okla. 2021); *In re Dicamba Herbicides Litig.*, 359 F. Supp. 3d 711, 727-30 (E.D. Mo. 2019); *In re Syngenta AG MIR*, 131 F. Supp. 3d 1177, 1213 (D. Kan. 2015); *Town of Westport v. Monsanto Co.*, No. 14-12041-DJC, 2015 WL 1321466, at *4 (D. Mass. Mar. 24, 2015); *L'Henri, Inc. v. Vulcan Materials Co.*, No. 2006-117, 2010 WL 924259, at *5 (D.V.I. Mar. 11, 2010); *State v. Lead Indus. Ass'n, Inc.*, 951 A.2d 428, 449 (R.I. 2008); *Camden Cnty. Bd. of Chosen Freeholders v. Beretta U.S.A. Corp.*, 123 F. Supp. 2d 245, 266 (D.N.J. 2000).

few individuals,” whereas a public nuisance “is one which damages all persons who come within the sphere of its operation, though it may vary in its effects on individuals.” O.C.G.A. § 41-1-2 (emphasis added). Here, Plaintiff’s nuisance claim is clearly based on a purported injury to the entire Town of Lyerly whose citizens could come into contact with allegedly contaminated water. Compl. ¶ 129. Therefore, Plaintiff does not plead a private nuisance, and its claim should be dismissed.

V. Plaintiff’s Trespass Claim Should Be Dismissed As Duplicative And Inadequately Pleaded (Count IV).

Plaintiff’s trespass claim is subsumed within its nuisance claim. *Briggs & Stratton Corp. v. Concrete Sales & Serv., Inc.*, 971 F. Supp. 566, 573 (M.D. Ga. 1997) (“Under Georgia law a claim of continuing trespass is subsumed within a nuisance claim,” and also dismissing nuisance claim where plaintiff did not show that defendant had a “legal duty” to involve itself in a third party’s handling of hazardous substances) (citing *Brand v. Montega Corp.*, 233 Ga. 32, 33, 209 S.E.2d 581, 582 (1974), which held that, when the factual allegations are the same, continuous trespass and continuous nuisance are “one and the same,” and it was not error for court to instruct jury on only one of the claims). On this basis alone, Plaintiff’s trespass claim should be dismissed.

But even if Plaintiff’s trespass claim could exist alongside its nuisance claim (which it cannot), Plaintiff does not plead a trespass claim. A trespass is a “voluntary,

intentional” “invasion” of another’s property. *Lanier v. Burnette*, 254 Ga. App. 566, 570, 538 S.E.2d 476, 480 (2000). It “generally involves a wrongful act that interferes with an owner’s right to the exclusive use and enjoyment of his property.” *Ga.-Pac. Consumer Prods., LP v. Ratner*, 345 Ga. App. 434, 443, 812 S.E.2d 120, 128 (2018) (citation and punctuation omitted in original). In *Ratner*, property owners alleged that Georgia Pacific’s release of hydrogen sulfide during its manufacturing processes damaged the plaintiffs’ property. *Id.* at 123. The court found that the emissions did not constitute a trespass because the mill was not taking “direct action to send hydrogen sulfide onto the Plaintiffs’ property.” *Id.* at 129.

Any trespass claim here is even further attenuated, as 3M is not the discharger of any alleged trespassing emission. Plaintiff does not—and cannot—allege that 3M ever invaded, interfered with, or infringed on its property—wrongfully, voluntarily, intentionally, or otherwise. Plaintiff therefore lumps 3M in with all other Defendants to allege generally that “Defendants” invaded “Plaintiff’s possessory interest in its property.” Compl. ¶ 144. Those general allegations do not sufficiently identify any intentional act by 3M to trespass on Lyerly’s property. *See also Page v. Braddy*, 255 Ga. App. 124, 127, 564 S.E.2d 538, 541–42 (2002) (defendant could not be held liable for trespass where he did not trespass on the plaintiff’s land or direct the actions of the trespasser).

Because Plaintiff does not allege that 3M discharged PFAS into its water source or that it controlled those who allegedly did, Plaintiff's trespass claim should be dismissed.

VI. Plaintiff's Claim Under The GWQCA (Count VII) Should Be Dismissed Because 3M Did Not Discharge Contaminants Into The Water.

Plaintiff alleges that it is entitled to “damages, including, but not limited to the costs and expenses set forth” in § 12-5-51 of the GWQCA. Compl. ¶ 85; *see also id.* ¶¶ 119-122 (citing GWQCA as basis for duty under negligence claim).

The GWQCA, however, only provides a right of action to “the state and any political subdivision thereof.” O.C.G.A. § 12-5-51. While the term “political subdivision” is not defined in the statute, Georgia law has historically held that a municipality is not a political subdivision of the state but rather a creature of the legislature. Counties, which are created by the Georgia Constitution, are political subdivisions of the state. *See City of Thomaston v. Bridges*, 264 Ga. 4 (1994) (Carley, J. concurring specially). Plaintiff therefore has no right of action under the GWQCA.

The GWQCA also does not apply to 3M because 3M neither caused nor permitted—negligently or otherwise—a spill, discharge, or deposit of any prohibited substance into the waters of Georgia. O.C.G.A. § 12-5-51 states:

Any person who intentionally or **negligently causes** or **permits** any sewage, industrial wastes, or other wastes, oil, scum, floating debris, or other substance or substances to be **spilled, discharged, or deposited** in the waters of the state, resulting in a condition of pollution as defined by this article, shall be liable in damages to the state and any political

subdivision thereof for any and all costs, expenses, and injuries occasioned by such spills, discharges, or deposits.

(emphasis added). This statute and its implementing regulations prohibit the “use of any waters of the state for the disposal of sewage, industrial wastes, or other wastes.” O.C.G.A. § 12-5-29(a).

3M allegedly supplied PFAS-containing products to the PFAS Users, who “subsequently” used them in their industrial processes. Compl. ¶ 43. Plaintiff does not allege that 3M “caused” or “permitted” any PFAS to be “discharged” into any of the bodies of water at issue. To the contrary, the Complaint clearly alleges that the PFAS Users stood between 3M’s sale of its products and the discharge of PFAS wastewater into “surrounding areas from where Plaintiff collects its drinking water.” *Id.* ¶¶ 9, 43, 53-57, 105. Applying this statute to a supplier like 3M makes little sense, as taken to its logical end, it would create potential statutory liability for every person or entity that supplied any part of any product that found its way into Georgia waters—no matter how far removed from the spill, discharge, or deposit supposedly triggering the GWQCA.

Because 3M did not spill, discharge, or deposit PFAS in Plaintiff’s water supply, Plaintiff’s GWQCA claim should be dismissed.

VII. Plaintiff Is Not Entitled To Compensatory Damages, Punitive Damages, Or Attorneys' Fees.

Because Plaintiff's substantive claims are subject to dismissal, its derivative claims for punitive damages and attorneys' fees⁴ should also be dismissed. *Popham v. Landmark Am. Ins. Co.*, 340 Ga. App. 603, 612, 798 S.E.2d 257, 264 (2017) (“[A]wards of punitive damages and attorney fees are derivative of underlying claims, and where those claims fail, claims for punitive damages and attorney fees also fail.”); *Carter v. Progressive Mountain Ins.*, 295 Ga. 487, 490, 761 S.E.2d 261, 264 (2014) (“Punitive damages may not be recovered where there is no entitlement to compensatory damages” (citation and quotation marks omitted)); *Brown v. Baker*, 197 Ga. App. 466, 467, 398 S.E.2d 797, 799 (1990) (“OCGA 13-6-11 does not create an independent cause of action. That statute merely establishes the circumstances in which a plaintiff may recover the expenses of litigation as an additional element of his damages.”).

CONCLUSION

For these reasons, 3M respectfully requests that Plaintiff's Complaint as to 3M be dismissed with prejudice.

⁴ Plaintiff's claim for attorney fees and expenses under O.C.G.A. § 13-6-11 should also be dismissed because, when the Georgia General Assembly amended O.C.G.A. §§ 1-1-1 and 1-1-8 in 2021 by Senate Bill 238, it changed the meaning of § 13-6-11 to permit only plaintiffs asserting contract claims—not tort claims—to seek attorneys' fees and litigation expenses. *See Willis v. Blunt*, 1:21-CV-03334-ELR, 2022 WL 1714857, at *2 (N.D. Ga. May 4, 2022).

Respectfully submitted on this 14th day of August 2024.

/s/ Benjamin P. Harmon

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Counsel for Defendant 3M Company

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing DEFENDANT 3M COMPANY, INC.'S MOTION TO DISMISS by filing same with the clerk of court using PeachCourt, which will send email notification of such filing to all attorneys of record.

This 14th day of August, 2024.

/s/ Robert B. Remar
Counsel for Defendant 3M Company