

2025CA4052

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Kim Winkle James

Kim Winkle James, Clerk
Chattooga County, Georgia

IN THE STATE COURT OF CHATTOOGA COUNTY
STATE OF GEORGIA

THE TOWN OF LYERLY, GEORGIA,

Plaintiff,

v.

3M COMPANY, et al.,

Defendants.

CASE NO.: 24SCA4052

**MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

COME NOW defendants EIDP, Inc. f/k/a E.I. du Pont de Nemours and Company¹ ("Old DuPont"); DuPont de Nemours, Inc. ("New DuPont"); The Chemours Company and The Chemours Company FC, LLC ("Chemours"); and Corteva, Inc. (collectively "Defendants") by and through their undersigned counsel, and respectfully move under Ga. Code Ann. § 9-11-12(b)(6) to dismiss all claims asserted by Plaintiff insofar as they apply against Defendants as either inadequately pleaded and/or unavailable under Georgia law. Defendants incorporate by reference the arguments made by 3M Company, Inc., in its Motion to Dismiss dated August 14, 2024. Specifically, and as

¹ Plaintiff filed this action asserting claims against both E.I. du Pont de Nemours and Company and EIDP, Inc. as separate defendants. E.I. du Pont de Nemours and Company is now known as "EIDP, Inc." This Motion is brought on behalf of both entities.

discussed more fully in the Motion incorporated herein, Plaintiff's claims should be dismissed for the following reasons:

- **All Claims (Counts I through VII):** All of Plaintiff's claims should be dismissed because Plaintiff does not sufficiently allege that Defendants caused their alleged injuries. Rather, their alleged injuries result from the independent and unforeseeable actions of various "PFAS Users". *See, e.g.,* First Amended Complaint ("Compl.") ¶¶ 9, 50-54, 102-104.² Plaintiff fails to allege that Defendants' conduct was the proximate cause of any of its alleged injuries as required by Georgia law. *See, e.g., Johnson v. Avis Rent-A-Car Sys., LLC*, 311 Ga. 588, 592 (2021).
- **Count I (Negligence):** Plaintiff's negligence claim asserted against Defendants should be dismissed for the same reasons stated by 3M Company. Plaintiff's negligence claim 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. Plaintiff wrongly alleges that Defendants owe a duty to "all persons whom Defendants' PFAS might foreseeably harm"—no matter how far down the causal chain. Compl. ¶ 118. It is

² For purposes of this motion only, Defendants accept as true all the well-pleaded allegations in Plaintiff's Complaint. Defendants reserve its right to contest those allegations.

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 (2005); *Ramirez v. Paradies Shops, LLC*, 69 F.4th 1213, 1220 (11th Cir. 2023). And, the Georgia Supreme Court has made clear that there is no “general legal duty to all the world not to subject others to an unreasonable risk of harm.” *Dep’t of Labor v. McConnell*, 305 Ga. 812, 816 (2019) (citation omitted); *see also Johnson v. 3M Co.*, 563 F. Supp. 3d 1253, 1325 (N.D. Ga. 2021) (dismissing negligence claim for lack of duty, recognizing that there is no “authority from Georgia establishing a duty on the part of a chemical supplier to protect an unknown third-party, rather than its consumer, from harm resulting from the negligent use or disposal of the chemical”). Furthermore, Plaintiff fails to allege that Defendants breached any purported duty—and instead, admits that Defendants *did not* discharge PFAS into Plaintiff’s water supply. *See* Compl. ¶¶ 9, 50-54, 102-104.³ Furthermore, as discussed below regarding Count VII, the Georgia Water Quality Control Act is inapplicable to Plaintiff’s claims and cannot serve as the source of any “duty” allegedly owed to Plaintiff by Defendants.

³ Despite a conclusory allegation that the PFAS Manufacturers engaged in the “manufacture, use, purchase, sale, supply, discharge, and/or release of PFAS,” Compl. ¶ 44, the balance of Plaintiff’s pleading makes plain that the alleged discharge and release was limited to the PFAS Users.

- **Count II (Public Nuisance):** Plaintiff's public nuisance claim asserted against Defendants should be dismissed for the same reasons stated by 3M Company. Plaintiff cannot bring a public nuisance claim because Defendants have no control over the alleged nuisance. *See, e.g., 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); *see also Jordan v. Southern Wood Piedmon Co.*, 805 F. Supp. 1575, 1577 (S.D. Ga. 1992).
- **Count III (Private Nuisance):** Plaintiff's private nuisance claim asserted against Defendants should be dismissed for the same reasons stated by 3M Company. Plaintiff cannot bring a private nuisance claim because it alleges harm to more than a small number of individuals, and a nuisance cannot be both public and private. *See* O.C.G.A. § 41-1-2. Plaintiff's nuisance claims is based on a purported injury to the entire Town of Lyerly, Comp. ¶ 126, and therefore, Plaintiff does not plead a private nuisance and its claim should be dismissed.
- **Count IV (Trespass):** Plaintiff's trespass claims asserted against Defendants should be dismissed for the same reasons stated by 3M Company. Plaintiff's trespass claim is subsumed by its nuisance claim. *See Briggs & Stratton Corp. v. Concrete Sales & Serv., Inc.*, 971 F. Supp. 566, 573 (M.D. Ga. 1997). Furthermore, Plaintiff does not allege Defendants engaged in conduct that gives rise to a trespass claim under

Georgia law because Defendants neither physically invaded Plaintiff's properties nor controlled any of the third-party conduct that caused the alleged trespass. *Lainer v. Burnette*, 254 Ga. App. 566, 570 (2000); *Ga.-Pac. Consumer Prods., LP v. Ratner*, 345 Ga. App. 434, 443 (2018); *Page v. Braddy*, 255 Ga. App. 124, 127 (2002).

- **Count V (Wantonness and Punitive Damages) and Count VI (Attorney's Fees and Litigation Expenses):** Plaintiff's claims for punitive damages and attorney's fees and expenses⁴ asserted against Defendants should be dismissed for the same reasons stated by 3M Company. Because Plaintiff's substantive claims asserted against Defendants are subject to dismissal, their derivative claims for punitive damages and attorney fees must also be dismissed. *E.g.*, *Popham v. Landmark Am. Ins. Co.*, 798 S.E.2d 257, 264 (Ga. Ct. App. 2017).
- **Count VII (Georgia Water Quality Control Act):** Plaintiff's claim under the Georgia Water Quality Control Act ("GWQCA") should be dismissed for the same reasons stated by 3M Company. Plaintiff's claim under the GWQCA fails because Plaintiff does not allege that

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).

Defendants negligently caused or permitted any PFAS to be spilled, discharged or deposited into Plaintiff's water. *See* O.C.G.A. § 12-5-51 (limiting application of the statute to instances where one “intentionally or negligently *causes or permits* . . . substances to be *spilled, discharged or deposited* in the waters of the state, resulting in a condition of pollution”) (emphasis added). Defendants simply sold PFAS to sophisticated purchasers, and Plaintiff does not allege that Defendants “caused” or “permitted” any PFAS to be “discharged” into any of the bodies of water at issue, and instead, alleges that the PFAS Users stood between Defendants’ sale of products and the discharge of PFAS wastewater into “surrounding areas from where Plaintiff collects its drinking water.” Compl. ¶¶ 9, 42, 50-54, 102. Moreover, the GWQCA does not give Plaintiff a cause of action as it is not a political subdivision of the State of Georgia. *See City of Thomaston v. Bridges*, 264 Ga. 4 (1994) (Carley, J. concurring specially).

For these reasons, Defendants respectfully moves the Court to dismiss all claims asserted against them with prejudice.

Dated: September 6, 2024

Respectfully submitted,

SHOOK, HARDY & BACON LLP

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***Attorneys for Defendants EIDP, Inc. f/k/a
E.I. du Pont de Nemours and Company,
DuPont de Nemours, Inc., The Chemours
Company, The Chemours Company FC,
LLC and Corteva, Inc.***

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2024, I electronically filed the foregoing with the Clerk of Court using the Court's electronic filing system, which will automatically send e-mail notification of such filing to all attorneys of record.

/s/ Caroline M. Gieser

Caroline M. Gieser