

2025CA40060

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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'S
REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT

Plaintiff's Response confirms that the Court should dismiss its Complaint against 3M. The Response highlights the broad, speculative nature of Plaintiff's allegations, dooming all of its claims for lack of proximate causation. The negligence claim also fails because the duty alleged by Plaintiff does not exist under Georgia law, and because Plaintiff has not alleged that 3M breached any such duty. Plaintiff's public nuisance claim fails because Plaintiff does not—and cannot—allege the required element of control. In addition, Plaintiff's private nuisance claim fails because a nuisance cannot be both public and private, and the Complaint here plainly alleges harm to more than a small number of individuals. Plaintiff's attempt to craft a trespass theory that is not recognized under Georgia law should also be rejected. Finally, Plaintiff distorts the plain meaning

of the GWQCA (which affords it no right of action in any event) to argue, erroneously, that 3M “caused or permitted” the discharge of PFAS into the waters of the State.

I. The Complaint Fails To Allege Causation.

Plaintiff concedes (Compl. ¶ 43) that 3M did not dispose of any PFAS-containing products or waste; it does not allege 3M controlled or directed those who did;¹ and it does not specify which PFAS Users 3M allegedly sold its products to or when.² Plaintiff’s highly attenuated causal chain cannot sustain a conclusion that 3M caused its alleged injuries. *See* 3M’s Mot. at 6-9. Nothing in the Response alters that conclusion, compelling dismissal of all claims against 3M.

Plaintiff observes that 3M’s conduct did not need to be the “last act or cause, or the nearest act to the injury,” to satisfy the proximate cause requirement, as long as the alleged injury was the “natural and probable consequence[]” of 3M’s alleged conduct. Pl.’s Resp. at 21 (cleaned up). That argument by Plaintiff is non-responsive to 3M’s Motion, which laid out that precise legal standard and explained that it cannot be met where, as here, the Complaint establishes that Plaintiff would not have been injured without a *series* of subsequent, independent, wrongful acts of others—none of whom is controlled by 3M. *See* 3M’s Mot. at 6-7 (describing proximate cause standard); *id.* at 8 (citing Plaintiff’s allegations that PFAS Users (1) applied PFAS-containing products to their carpets and textiles; (2) discharged “PFAS-contaminated waste streams” into “the environment

¹ Plaintiff’s Response includes a conclusory assertion (at 19) that the PFAS Users “sometimes” “applied” PFAS “at the direction of the PFAS Manufacturers,” but the cited paragraph of the Complaint (¶ 44) contains no such allegation. Moreover, even this unsupported assertion in the Response concedes that any discharge occurred *later*. Pl.’s Resp. at 19 (“and then discharged”).

² Notably, just last week, an Alabama court dismissed a city’s claims against PFAS Manufacturers (including 3M) where the city did not allege that the PFAS Manufacturers “were responsible for discharging any PFAS products, or any waste or residuals from any PFAS products, into or near [the city’s] water supply.” Ex. 1: *City of Mobile v. 3M, Inc.*, Order, Case No. 2024-900933 (Cir. Ct., Ala., Oct. 24, 2024) (concluding, *inter alia*, that the city failed to allege proximate causation or any cognizable duty owed by the PFAS Manufacturers to the city).

and surrounding areas from where Plaintiff collects its drinking water,” with knowledge that PFAS was harmful and *in violation of their permits*; and (3) did so “both directly and indirectly,” via “industrial wastewater” and also through unspecified “releases, leaks, and spills”).

Plaintiff then contends that, even if there were intervening acts here (which there plainly were), those acts do not break the causal chain because (1) they were foreseeable, (2) the PFAS Manufacturers’ conduct triggered them, and (3) the intervening acts alone could not have caused the alleged injuries. Pl.’s Resp. at 21. Plaintiff is wrong on all three fronts.

First, as to foreseeability, Plaintiff’s bald assertion that the PFAS did not end up in Lyerly’s water due to “downstream misuses” and thus was a natural consequence of the sale of PFAS-containing products is belied by its allegations against the PFAS Users. *See, e.g.*, Compl. ¶¶ 56, 79 (alleging that PFAS Users acted with “full knowledge” and that the discharges violated their permits); *see Edwards v. Campbell*, 338 Ga. App. 876, 885, 792 S.E.2d 142, 149 (2016) (co-defendant’s violation of its independent legal duty was not the “natural or probable” consequence of defendant’s negligent training two years prior). None of the allegations cited in the response supports Plaintiff’s conjecture (Pl.’s Resp. at 21) that this intervening conduct (including alleged permit violations, leaks, and spills) was foreseeable—let alone “in fact known”—to 3M.

Second, Plaintiff’s argument that 3M “triggered” subsequent links in the causal chain merely by manufacturing and supplying PFAS is insufficient. Pl.’s Resp. at 22. No alleged conduct by 3M caused the PFAS Users to violate their permits and discharge PFAS-containing wastewater into Plaintiff’s drinking water, such that the mere sale of PFAS-containing products constitutes an uninterrupted trigger. Thus, 3M’s alleged presence earlier in the causal chain (as a mere manufacturer/seller) cannot sustain a conclusion that 3M somehow “triggered” the PFAS Users’

intervening decision to, *inter alia*, knowingly discharge hazardous waste or allow leaks or spills in violation of their permits.

Third, Plaintiff suggest that the PFAS Users’ act of discharging PFAS-containing wastewater was not alone sufficient to cause Plaintiff’s alleged injuries because the PFAS Users could not have “use[d] PFAS products” or “generate[d] PFAS-contaminated wastewater” if PFAS had never been sold in the first place. Pl.’s Resp. at 22-23. But Plaintiff has it exactly backwards: the sale of the PFAS would not have caused injury had the PFAS Users not **discharged** their wastewater in violation of their permits, as Plaintiff alleges. *See* Compl. ¶¶ 9, 53-55, 57, 105. Had the PFAS Users properly disposed of the wastewater, then no contamination would have occurred. Thus, the alleged unlawful discharge is an intervening act that severs the causal chain.

Because Plaintiff’s own allegations demonstrate that the alleged contamination was not the “natural consequence” of 3M’s sale of PFAS-containing products, the Complaint should be dismissed.³

II. The Negligence Claim Should Be Dismissed Because Plaintiff Fails To Plead Either Duty Or Breach.

Plaintiff’s negligence claim should be dismissed because Plaintiff seeks to impose a duty on 3M that the Georgia legislature has not enacted and that Georgia appellate courts have not recognized—and, in any event, because Plaintiff has not alleged a breach of any such duty. *See* 3M’s Mot. at 10-12.

³ Plaintiff contends that “questions regarding proximate causation” are generally jury questions. Pl.’s Resp. at 20. Here, though, the Complaint itself demonstrates that the acts that allegedly caused Plaintiff’s injuries were caused by others over whom 3M had no control. Thus, Plaintiff “cannot introduce evidence within the framework of [its] complaint to show” that its claims are tenable, and the claims are “due to be dismissed.” *L’Oreal USA, Inc. v. Burroughs*, 372 Ga. App. 30, 37, 903 S.E.2d 740, 748 (2024); *see Villa Sonoma at Perimeter Summit Condo. Ass’n, Inc. v. Com. Indus. Bldg. Owners All., Inc.*, 349 Ga. App. 666, 667, 824 S.E.2d 738, 741 (2019).

First, none of the statutes or regulations Plaintiff cites in its Response imposes a duty on 3M. *See Dep't of Lab. v. McConnell*, 305 Ga. 812, 816, 828 S.E.2d 352, 358 (2019) (the law must “explicitly establish” duty). Specifically, Plaintiff restates its citation to the GWQCA and its implementing regulations,⁴ which 3M already explained (and explains further below) are unavailing because 3M did not “cause[] or permit[]” any alleged spill, discharge, or deposit of PFAS. *See* 3M’s Mot. at 12; *infra* Section VI. Plaintiff’s reliance on the *trespass* statute (O.C.G.A. § 51-9-7) is similarly misplaced. Setting aside that Plaintiff did not allege that statute as the predicate for the purported duty of care in its Complaint, the trespass statute merely defines pollution as a potential form of trespass (an intentional tort). O.C.G.A. § 51-9-7 (“Watercourses; ... pollution as constituting trespass”). It does not purport to impose a duty of care for negligence cases.

Second, Plaintiff does not even try to identify any Georgia appellate decisions establishing 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. Instead, Plaintiff alleges that 3M “owe[d] Lyerly a general common law duty of ordinary diligence or care.” Pl.’s Resp. at 13. But the Georgia Supreme Court has expressly rejected the notion that “everyone owes a general duty not to subject others to an ‘unreasonable risk of harm.’” *McConnell*, 305 Ga. at 815. It has also rejected the proposition that mere foreseeability can impose a generic legal duty not to subject others to risk of harm. *See id.* at 815-16; *see also 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

⁴ Although the Response includes a standalone discussion of Ga. Comp. R. & Regs. § 391-3-6-.03 (Pl.’s Resp. at 12-13), that is merely the implementing regulation for the GWQCA—not an independent basis for imposing a duty. Moreover, PFAS are not listed among the more than 90 other chemical constituents in the regulations establishing Georgia’s water quality standards. *See* Ga. Comp. R. & Regs. § 391-3-6-.03.

foreseeable.”).⁵ Plaintiff’s inability to “point to ‘a duty imposed by a recognized common law principle declared in the reported decisions of [Georgia] appellate courts’” is therefore fatal to its claims against 3M. *Johnson v. 3M*, 563 F. Supp. 3d 1253, 1325 (N.D. Ga. 2021).

By this same token, the Court should reject Plaintiff’s reliance on Section 389 of the Second Restatement. *See* Pl.’s Resp. at 13-14. It is indisputable that “no Georgia court has ever applied section 389 in an environmental pollution case.” *Parris v. 3M Co.*, 595 F. Supp. 3d 1288, 1329 (N.D. Ga. 2022) (acknowledging the limitation of Georgia law yet relying on a case from the Virgin Islands in predicting “how a Georgia court might evaluate this action”); *cf. Ogletree v. Navistar Int’l Transp. Corp.*, 194 Ga. App. 41, 390 S.E.2d 61 (1989) (citing Section 389 in discussing duty in wrongful death case), *overruled by Weatherby v. Honda Motor Co.*, 195 Ga. App. 169, 393 S.E.2d 64 (1990); *Greenway v. Peabody Int’l Corp.*, 163 Ga. App. 698, 294 S.E.2d 541 (1982) (same); *Dupree v. Keller Indus., Inc.*, 199 Ga. App. 138, 404 S.E.2d 291 (1991) (citing Section 389 in personal injury case). As the court in *Johnson* recently explained, there is no “authority from Georgia establishing a duty on the part of a chemical supplier to protect an unknown third-party.” 563 F. Supp. 3d at 1325.

Third, even if Plaintiff had alleged a duty (which it has not), the negligence claim would still fail because there is no alleged breach by 3M. *See* 3M’s Mot. at 11-12. The Complaint does not allege that 3M discharged any PFAS, and it has no duty to control the allegedly negligent actions of the PFAS Users. *See Shortnacy v. N. Atlanta Internal Med., P.C.*, 252 Ga. App. 321,

⁵ For this reason, Plaintiff’s foreseeability arguments (Pl.’s Resp. at 15-17) are legally irrelevant. In any event, those arguments fail because Plaintiff has not alleged any facts that would support a conclusion that the harms alleged here were foreseeable (or known) as to 3M. *See supra* Section I.

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.”).⁶

The Response seeks to evade the relevant legal standard by contending that breach is “almost always” a jury question, which is no response to Plaintiff’s threshold pleading failure. Pl.’s Resp. at 17. Indeed, as discussed, Plaintiff’s own Complaint *confirms* that 3M was not the discharging party. Nor can Plaintiff supply that missing breach element by citing general allegations about 3M’s alleged knowledge and concealment of the risk (*id.*)—especially where, as here, the concealment allegation is contradicted by Plaintiff’s separate allegation that the PFAS Users acted with full knowledge of those risks. Compl. ¶ 79.

Plaintiff’s failure to identify a legally cognizable duty—or any breach thereof causing injury—is fatal to its claims against 3M. *See Johnson*, 563 F. Supp. 3d at 1324-25 (dismissing negligence claim against 3M after concluding that 3M owed no duty to Rome resident).

III. Plaintiff Fails To Adequately Plead A Public Nuisance Claim.

Plaintiff’s public nuisance claim fails because there is no allegation that 3M had “control of the nuisance creating instrumentality.” *Corp. of Mercer Univ. v. Nat’l Gypsum Co.*, No. 85-126-3-MAC, 1986 WL 12447, at *6 (M.D. Ga. Mar. 9, 1986); *see* 3M’s Mot. at 12-14.⁷

Plaintiff contends that 3M somehow retained control over its products post-sale, but that argument conflicts both with the Complaint and with Georgia law. The Complaint specifically alleges that the PFAS Users purchased 3M’s products and later improperly disposed of those products in wastewater discharged into Plaintiff’s drinking water source, causing the alleged

⁶ Plaintiff ignores *Shortnacy* and erroneously contends that 3M failed to cite “any supporting law” for its arguments on the breach element. Pl.’s Resp. at 17.

⁷ Plaintiff misleadingly suggests that all “Defendants” argued that a nuisance claim requires “control over the land where the nuisance was created,” Pl.’s Resp. at 26, whereas 3M’s argument focuses on control over the nuisance itself and the ability to abate it.

nuisance. Compl. ¶¶ 9, 30, 53-57, 105-107; *see also* Pl.’s Resp. at 27 (conceding that the nuisance would not exist without PFAS Users “continuous use and discharge of products containing PFAS” *after* they were purchased from 3M). Plaintiff does not allege—nor could it—that 3M had any right to control the use or disposal of those products after it sold them to third parties in the ordinary stream of commerce. Plaintiff’s suggestion that it somehow “may be able to establish” otherwise “through discovery” (Pl.’s Resp. at 29) is pure unfounded speculation.

Plaintiff cannot evade the control requirement by contending that 3M is a “concurrent cause of the creation, continuance, or maintenance of the nuisance.” Pl.’s Resp. at 26. Regardless of whether the inquiry is styled in terms of concurrent or exclusive causation, the fatal defect in Plaintiff’s claim is still that 3M did not control the alleged nuisance *at all*. That sets this case apart from the one Plaintiff cites, in which the defendant *did* control the nuisance-causing instrumentality (there, a detention pond) at the time of the alleged injury to neighboring property. *See Sumitomo Corp. of Am. v. Deal*, 256 Ga. App. 703, 707, 569 S.E.2d 608, 613 (2002).

Moreover, Plaintiff admits that “control” in this context requires that the defendant have a legal right to abate the nuisance. *See* Pl.’s Resp. at 26; *see also Corp. of Mercer*, 1986 WL 12447, at *6-7; *Fielder v. Rice Const. Co.*, 239 Ga. App. 362, 365-66, 522 S.E.2d 13, 16 (1999). Although nothing of the sort is alleged in the Complaint, Plaintiff now contends that 3M could have abated the nuisance by stopping the sale of PFAS-containing products or installing water treatment systems capable of removing PFAS from wastewater. Pl.’s Resp. at 27. But despite arguing that 3M “could stop selling” PFAS-containing products to abate the nuisance (*id.*), Plaintiff admits that 3M “announced it was withdrawing PFOS and PFOA from the market in 2000”—i.e., 24 years ago. Compl. ¶ 78. And, in any event, it was the *disposal* of PFAS-containing products—not their initial sale—that caused the alleged nuisance. Just as in *Jordan v. Southern Wood Piedmont Co.*,

805 F. Supp. 1575, 1577 (S.D. Ga. 1992), the mere sale of a product causing contamination does not suffice to support a nuisance claim absent any association by the seller with the handling and disposal activities of the purchaser. Further, 3M has no legal right to enter Plaintiff's property or modify its treatment facilities—and there are no facts alleged in the Complaint to support a different conclusion. *See Briggs & Stratton Corp. v. Concrete Sales & Servs., Inc.*, 971 F. Supp. 566, 573 (M.D. Ga. 1997) (“[T]he Trustees and McCord have not overcome Simplex Nails’ assertion that it had no legal right to enter on the PMI site to correct the PMI’s hazardous waste disposal activities. Thus, the nuisance/continuing trespass claims must fail.”).⁸

Plaintiff’s public nuisance claim should be dismissed.

IV. Plaintiff Cannot State A Private Nuisance Claim.

The private nuisance claim fails because a nuisance cannot be both public and private, and the nuisance Plaintiff is trying (unsuccessfully) to allege here is plainly public. *See* 3M’s Mot. at 14-15. Plaintiff erroneously contends that, because it is entitled to assert alternative theories of liability, its private nuisance claim should proceed. Pl.’s Resp. at 30-31. But Georgia law is clear that a nuisance is “*either* public *or* private” as a matter of law; thus, the statute itself does not permit “alternative pleading.” O.C.G.A. § 41-1-2 (emphasis added).⁹

⁸ Plaintiff also suggests 3M could have abated the alleged nuisance by issuing “warn[ings] [to] downstream users.” Pl.’s Resp. at 27. That is not an abatement argument, but rather an eleventh-hour attempt to interpose a failure to warn claim that appears nowhere in the Complaint. Even if such a claim had been asserted, it would have lacked merit. *See, e.g., CertainTeed Corp. v. Fletcher*, 300 Ga. 327, 331, 794 S.E.2d 641, 645 (Ga. 2016) (“We are disinclined to conclude that [the manufacturer defendant] owed a duty to warn third parties based on the fact that, in this case, such a warning may have been effective.”). That holding applies with even greater force here, given that the PFAS Users allegedly discharged contaminated wastewater despite knowing the risks, *belying* any inference that a warning by 3M would have been effective. *See, e.g., Compl.* ¶¶ 9, 56, 79, 82-87.

⁹ None of the cases Plaintiff cites on this point involves public and private nuisance theories. Pl.’s Resp. at 30-31.

In any event, Plaintiff is not actually pleading alternative nuisance theories. Rather, it is bringing a single claim based on a purported injury to the entire Town of Lyerly—PFAS in *everyone's* drinking water. Compl. ¶¶ 12-13, 30. The Response confirms as much by attempting to draw an illusory distinction between (1) allegations of widespread contamination that allegedly caused special damages to Plaintiff and (2) purported contamination that “intrude[d] upon” Plaintiff’s property. *See* Pl.’s Resp. at 31. Those are just two ways of describing the same allegation. Because the alleged injurious effects of PFAS contamination are not limited to “one or a few individuals” (O.C.G.A. § 41-1-2), Lyerly’s private nuisance claim should be dismissed.

V. Plaintiff’s Trespass Claim Is Duplicative And Inadequately Pleaded.

Plaintiff’s trespass claim should be dismissed both because it is subsumed by the nuisance claim and because Plaintiff does not (and cannot) allege any intentional invasion of Plaintiff’s property by 3M. *See* 3M’s Mot. at 15-17.

First, pleading a claim that is subsumed as a matter of law by another pleaded claim is not the same as pleading an “alternative theory.” Pl.’s Resp. at 35. Instead, because of subsumption, only one claim *exists* to be pleaded. *Briggs & Stratton Corp. v. Concrete Sales & Serv., Inc.*, 971 F. Supp. 566, 573 (M.D. Ga. 1997). Because they are the equivalent of a single claim, Plaintiff’s trespass claim is subsumed within the nuisance claim and should be dismissed.

Second, Plaintiff is unable to conjure any “voluntary, intentional” “invasion” of Plaintiff’s property by 3M, which neither discharged any PFAS nor controlled those who did. *Lanier v. Burnette*, 254 Ga. App. 566, 570, 538 S.E.2d 476, 480 (2000). Plaintiff thus seeks to sidestep this core element of its claim by arguing that 3M “intended to manufacture and sell” and “intentionally concealed the risks” of PFAS. Pl.’s Resp. at 36. This sleight of hand is unavailing, because none of those alleged “intentional acts” speaks to whether 3M intended to (let alone did) *invade* anyone’s (let alone Plaintiff’s) private property. Because Plaintiff cannot overcome black-letter

law that trespass requires direct and intentional infringement on the plaintiff's property rights, its trespass claim should be dismissed.¹⁰

VI. Plaintiff Cannot And Does Not Plead A Viable GWQCA Claim.

Plaintiff's GWQCA claim should be dismissed for two reasons: (1) Plaintiff is a municipality and thus has no right of action under the statute; and, in any event, (2) Plaintiff cannot allege that 3M caused or permitted any discharge. *See* 3M's Mot. at 17-18.

First, "a municipality is not a political subdivision of this state, but is a public corporation and a creature of the legislature." *City of Thomaston v. Bridges*, 264 Ga. 4, 8, 439 S.E.2d 906, 910 (1994) (Carly, concurring specially). Because the GWQCA does not itself define the term "political subdivision," that general rule applies here.¹¹

Second, and in any event, Plaintiff has not adequately pleaded its GWQCA claim. That statute applies only to those who "intentionally or negligently cause[] or permit[]" a spill, discharge, or deposit of substances into State waters. O.C.G.A. § 12-5-51(a). Here, 3M did not discharge *any* PFAS into the waters of the State, either directly or indirectly. Plaintiff misleadingly cites *Parris* to suggest that 3M can be held liable for indirectly discharging PFAS "through their

¹⁰ Plaintiff erroneously suggests that 3M is making the same "direct infringement" argument made by certain of the other defendants, cross-referencing a discussion of whether Plaintiff has property rights in water. Pl.'s Resp. at 32 n.66, 36. That has nothing to do with 3M's argument, which is that Plaintiff does not and cannot allege that 3M ever invaded or interfered with Plaintiff's property.

¹¹ Plaintiff cites inapposite cases construing the term "political subdivision" in unrelated contexts. *Spence v. Rowell*, 213 Ga. 145, 148, 97 S.E.2d 350, 353 (1957) (noting that "the words 'city' and 'town' are not synonymous" and discussing statutory provisions concerning repeal of a city charter); *Citizens' Bank of Moultrie v. Rockdale Cnty.*, 156 Ga. 500, 119 S.E. 322, 325 (1923) (discussing in passing that "the question as to whether a political subdivision, such as a town, township or county" can deny recitals in debt documents is not different than whether individuals can do so; but the party at issue was a county); *Beazley v. De Kalb Cnty.*, 210 Ga. 41, 77 S.E.2d 740 (1953) (discussing "political subdivision" as counties); O.C.G.A. § 23-3-120 (defining "local government" in statute concerning taxpayer protection against false claims). Plaintiff's citation to O.C.G.A. § 23-3-120 illustrates that the legislature can define terms with specificity if the intention is to have the statute apply to specific entities. The GWQCA does not do so.

manufacture and sale of PFAS and PFAS-containing products to the PFAS User Defendants.” Pl.’s Resp. at 39-40. But the defendant in *Parris* was a *textile manufacturer* (akin to the PFAS Users here) who sought to evade liability on the basis that it discharged wastewater to a treatment plant, rather than directly into State waters. *Parris*, 595 F. Supp. 3d at 1334. That ruling—as to the directness of the *discharge itself*—in no way suggests that ordinary commercial sales of products somehow *constitute* “discharges.”

Nor does 3M’s argument read the “causes or permits” language out of the statute. *See* Pl.’s Resp. at 39-40 & n.85. To the contrary, 3M gives those words their customary meaning. As 3M has already explained (3M’s Mot. at 18), it is *Plaintiff* who contorts the GWQCA beyond recognition, proposing an overbroad reading of the statute that would extend potential statutory liability to anyone who supplies any part of any product that later finds its way into Georgia waters. Nothing in the statute’s text permits such an absurd result.

The GWQCA claim should be dismissed.

VII. Plaintiff Is Not Entitled To Damages Or Fees.

Because Plaintiff’s substantive claims fail, its derivative claims should be dismissed as well. *See* 3M’s Mot. at 19.¹²

CONCLUSION

For these reasons, and all those set forth in 3M’s Motion, 3M respectfully requests that the Court dismiss Plaintiff’s Complaint in its entirety.

¹² Plaintiff’s fees claim also fails because O.C.G.A. § 13-6-11 only permits fee-shifting in contract cases. *See* 3M’s Mot. at 19 n.4. Although *Willis v. Blunt*, No. 1:21-CV-03334-ELR, 2022 WL 1714857, at *4–5 (N.D. Ga. May 4, 2022), recognized that Georgia courts had historically applied this statute to tort claims as well, Senate Bill 238 (2021) gives “the force of law” to the Code’s “arrangement and numbering system.” Thus, because the fee-shifting statute is codified in Title 13 (Contracts), broader historical applications of that provision should be deemed superseded. The *Willis* court did not reach this issue, as Senate Bill 238 had not taken effect when that case was filed.

Respectfully submitted on this 28th day of October, 2024.

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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 REPLY IN SUPPORT OF MOTION TO DIMISS COMPLAINT by filing same with the clerk of court using PeachCourt, which will send email notification of such filing to all attorneys of record.

This 28th day of October, 2024.

/s/ Robert B. Remar

GA Bar No. 600575

Counsel for Defendant 3M Company

Exhibit 1



AlaFile E-Notice

02-CV-2024-900933.00

Judge: VICKI M DAVIS

To: SPEEGLE CLINTON TIMOTHY
cspeegle@lightfootlaw.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

THE BOARD OF WATER AND SEWER COMMISSIONERS OF THE CITY OF MOBILE V. 3M
02-CV-2024-900933.00

The following matter was FILED on 10/24/2024 1:02:35 PM

Notice Date: 10/24/2024 1:02:35 PM

SHARLA KNOX
CIRCUIT COURT CLERK
MOBILE COUNTY, ALABAMA
CIRCUIT CIVIL DIVISION
205 GOVERNMENT STREET 9TH FLOOR, N TOWER
MOBILE, AL, 36644

251-574-8420

1. Plaintiff alleges that each of the Manufacturing Defendants manufactures and supplies PFAS products to various industries in Alabama (Compl. ¶¶ 17–27), but there are no allegations that any of the Manufacturing Defendants were responsible for discharging any PFAS products, or any waste or residuals from any PFAS products, into or near Plaintiff’s water supply at Big Creek Lake. Those basic allegations mean that Plaintiff’s claims fail on several grounds.

2. While Plaintiff’s factual allegations must be accepted as true at the motion to dismiss stage, “conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.” *Ex Parte Gilland*, 274 So. 3d 976, 985 n.3 (Ala. 2018) (quoting *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002)). Plaintiff’s Complaint must be dismissed in its entirety because, as explained below, even “when the allegations of the complaint are viewed most strongly in the pleader’s favor, it appears that the pleader could [not] prove any set of circumstances that would entitle [Plaintiff] to relief.” *Melton v. Bowie*, 296 So. 3d 281, 283–84 (Ala. 2019) (quoting *Nance v. Matthews*, 622 So. 2d 297, 299 (Ala. 1993)).

3. Plaintiff’s claims fail for lack of standing. *See Ala. Alcoholic Beverage Control Bd. v. Henri-Duval Winery, L.L.C.*, 890 So. 2d 70, 74 (Ala. 2003), *as modified on denial of reh’g* (Apr. 30, 2004). Even under a generous reading, Plaintiff offers only a “highly attenuated chain of possibilities” leading to its claimed injury, and that cannot satisfy the requirement that any alleged injury must be “fairly traceable” to a particular defendant’s actions. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013); *see Morrow v. Bentley*, 261 So. 3d 278, 289 (Ala. 2017). Plaintiff’s Complaint also fails to state a claim because Plaintiff conceded at oral argument that the water that it draws, and then treats, from Big Creek Lake is below the EPA’s Maximum Contaminant Levels for PFAS. Alabama law “provides no redress for a plaintiff who has no

present injury or illness.” *Hinton v. Monsanto Co.*, 813 So. 2d 827, 831–32 (Ala. 2001).

Accordingly, the Court hereby **GRANTS** the Manufacturer Defendants’ Motions to Dismiss as to Counts I, II, III, IV, V, and VI of Plaintiff’s Complaint.

4. Plaintiff’s claims would fail on the merits for several reasons. The first reason is that Plaintiff has failed to allege proximate causation, which is necessary for its claims under all of its counts. Alabama law requires that a plaintiff’s injury “must be a natural and probable sequence of the negligent act or omission which an ordinarily prudent person ought to reasonably foresee would result in the injury.” *Gilmore v. Shell Oil Co.*, 613 So. 2d 1272, 1274–75 (Ala. 1993) (quoting *Vines v. Plantation Motor Lodge*, 336 So.2d 1338, 1339 (Ala.1976)). The injury alleged must also be “a natural and unbroken sequence, without intervening, efficient causes.” *City of Mobile v. Harvard*, 268 So. 2d 805, 810 (Ala. 1972). Accordingly, on that additional ground, the Court hereby **GRANTS** the Manufacturer Defendants’ Motions to Dismiss as to Counts I, II, III, IV, V, and VI of Plaintiff’s Complaint.

5. The Court finds that Plaintiff’s claims for Negligence (Count I), Public Nuisance (Count II), Private Nuisance (Count III), and Wantonness (Count V) fail for lack of any allegations establishing an underlying duty to Plaintiff. As a matter of law, a defendant cannot be liable for injuries that it did not cause, arising out of the conduct of third parties that it did not control and had no “duty to control.” *Russell Corp.*, 790 So. 2d at 945. Duty is a necessary element of both negligence and wantonness claims, *see, e.g., Thompson*, 692 So. at 806–08, as well as nuisance claims, *see, e.g., Tipler*, 547 So. 2d at 440. Accordingly, the Court hereby **GRANTS** the Manufacturer Defendants’ Motions to Dismiss as to Counts I, II, III, and V of Plaintiff’s Complaint.

6. Plaintiff's trespass claim (Count IV) also fails. Plaintiff does not allege a direct trespass claim, and to plead a claim for indirect trespass, a plaintiff "must show that 'some substance has entered upon the land itself, affecting its nature and character, and caus[ed] substantial actual damage to the res.'" *Russell Corp.*, 790 So. 2d at 947 (quoting *Borland v. Sanders Lead Co.*, 369 So. 2d 523, 530 (Ala.1979)). The Court hereby **GRANTS** the Manufacturer Defendants' Motions to Dismiss as to Count IV of Plaintiff's Complaint.

7. Plaintiff's injunctive relief claim (Count VI) cannot be sustained absent any corresponding substantive count. Plaintiff has not alleged that any of the Manufacturing Defendants have control over the H&S Landfill or Big Creek Lake such that they could take any action to prevent further alleged contamination from occurring. *See Montgomery Cnty. v. Montgomery Traction Co.*, 37 So. 208, 208 (Ala. 1904). Accordingly, the Court hereby **GRANTS** the Manufacturer Defendants' Motions to Dismiss as to Count VI of Plaintiff's Complaint.

For these reasons, and those stated by counsel at the hearing and in the Manufacturer Defendants' briefs filed in support of their Motions, the Complaint against the Manufacturer Defendants is due to be dismissed in its entirety. The Manufacturer Defendants' Motions to Dismiss (Dkt. 39, 73, 83, 87) are **GRANTED**, and Plaintiff's claims against the Manufacturer Defendants are hereby **DISMISSED**. Costs will be taxed as paid.

DONE this 24th day of October, 2024.

/s/ VICKI M. DAVIS
CIRCUIT JUDGE