

2025CA4052

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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, et al.,

Defendants.

Case No. 24SCA4052

**MOHAWK’S REPLY BRIEF IN SUPPORT OF ITS
MOTION TO DISMISS THE AMENDED COMPLAINT**

Lyerly consolidates its response to separate motions to dismiss filed by separate defendants, seeking to tar Mohawk with a dispute that is really between Lyerly and the Chemical Manufacturers. The Opposition focuses overwhelmingly on the Chemical Manufacturers’ misconduct and even acknowledges that “[a]ny PFAS products utilized by Mohawk and disposed via wastewater . . . had to begin with the manufacturers of those products” and that “any subsequent acts by . . . Mohawk were initially ‘triggered by’ the PFAS Manufacturers.” Opp. at 22. In fact, those Chemical Manufacturers “actively concealed and withheld [that] information from . . . [their] customers,” which include Mohawk, regarding the risks posed by their chemicals. Am. Compl. ¶ 8. Lyerly further admits that discovery will likely reveal that the Chemical Manufacturers “exercised some level of control or direction over [Mohawk’s] manufacturing and disposal processes.” Opp. at 29.

On top of that, Mohawk complied with its permits from the Georgia EPD in discharging its wastewater, which further distinguishes Mohawk from the Chemical Manufacturers. Lyerly alleges that environmental regulators have known about PFAS since at least 1999 (*see* Am. Compl.

¶¶ 71-74), yet Mohawk’s permits have never limited PFAS in wastewater discharges—although they have specifically limited a large number of other hazards, including fecal coliform, oil and grease, ammonia-nitrogen, phosphorous, sulfide, and phenols (among other things). *See* Mohawk Answer, Ex. A.

To prop up its weaker claims against Mohawk, Lyerly asks this Court to blindly follow decisions of other trial courts in a small handful of cases that have denied motions to dismiss filed by Mohawk and other defendants. *See* Opp. at 4-5. Lyerly fails to note, however, that Mohawk was ***not a defendant in many of those cases***, including *Parris v. 3M Co.*, No. 4:21-cv-00040-TWT (N.D. Ga.), *City of Guin, Alabama Water Works and Sewer Board v. 3M Co.*, No. CV-2020-900082 (Ala. Cir. Ct.), *In re Aqueous Film-Forming Foams Products Liability Litigation*, No. 2:18-mn-02873-RMG (D.S.C.), and *West Morgan-East Lawrence Water and Sewer Authority v. 3M Co.*, No. 5:15-cv-01750-MHH (N.D. Ala.). Furthermore, none of those cases have paved the way for this novel ***groundwater*** case against a non-chemical company, especially an industrial manufacturer that discharged water according to a permit. Unlike other cases where Mohawk was a defendant, Mohawk is not alleged to have bought any water from Lyerly or sent any wastewater to Lyerly. This is a new case with new theories that have never been tested in any court.

At bottom, Mohawk should not be held liable to Lyerly when Lyerly itself admits that Mohawk lacked the knowledge necessary to remove PFAS from its wastewater and environmental regulators never required Mohawk to remove PFAS from its wastewater. And there are other compelling reasons to grant Mohawk’s Motion, as the public services and state preemption doctrines mandate dismissal across the board and each individual claim also fails on the merits.

ARGUMENT

I. The Court Should Dismiss Lyerly's Negligence Claim Against Mohawk for Failure to Plead a Legally Cognizable Duty.

Lyerly's negligence claim fails as a matter of law because Mohawk did not owe a specific duty to Lyerly to remove PFAS from its wastewater, which was not sent directly to Lyerly and thus distinguishes this case from the other PFAS cases. Mot. at 9-11. In response, Lyerly cites a slew of statutes, regulations, and permit provisions, as well as the common-law duty of ordinary care, that purportedly imposed duties on Mohawk. Opp. at 11-15 & n.24. Lyerly also argues that Mohawk owed those duties to Lyerly because Mohawk allegedly knew that its conduct "would pollute Lyerly's drinking water." *Id.* at 15-17. Lyerly is wrong on both points.

First, none of the authorities cited by Lyerly imposed a duty on Mohawk to remove PFAS from its wastewater or Lyerly's well water. As discussed below, the GWQCA does not regulate PFAS and is limited to the "waters of the state," O.C.G.A. § 12-5-51, which are not at issue here because Lyerly's claims relate to its own water and its water treatment facility. The Georgia Department of Natural Resources' Rules and Regulations are inapplicable for the same reason, as the cited provisions do not regulate PFAS and concern the "waters of the State." *See* Ga. Comp. R. & Regs. § 391-3-6-.03(5). As for the trespass statute cited by Lyerly, that statute is limited to "the water in such streams" of "nonnavigable watercourses" that "flow" through an owner's land. O.C.G.A. § 51-9-7. Lyerly's well water is certainly not a "stream" that "flow[s]" through Lyerly's land, and Lyerly cites no case to show otherwise. With respect to the common-law duty of care required for a negligence claim, Lyerly does not identify a single case "in the reported decisions of [Georgia's] appellate courts" that imposes a duty to remove PFAS from wastewater, and it cites no statute specifically addressing the issue. *See Ceasar v. Wells Fargo Bank, N.A.*, 322 Ga. App.

529, 533 (2013). For this reason, it has failed to plead a legal duty susceptible of being breached in tort. *Id.*

Mohawk's permits likewise did not impose a duty on Mohawk to remove PFAS from its wastewater, as the permits do not address PFAS specifically. While the permits do state that Mohawk will not discharge "toxic pollutants" under the Clean Water Act, *see* Opp. at 13 n.24, that term of art is technically defined by a list in the Clean Water Act. That list has **65** toxic pollutants, but PFAS are not included. *See* 40 C.F.R. § 401.15.

In its Opposition, Lyerly first agrees with Mohawk that "PFAS are not identified in the Defendants' permits" but then draws the wrong conclusion that, as a result, "any discharge of PFAS . . . is made without, or in violation of, a valid permit." Opp. at 42 (emphasis omitted). This argument misstates how permits work. Consistent with the basic etymology of the term, Mohawk's *permits* are *permissive*, not prohibitive. The permit clearly bars a set of conduct but then permits discharge of wastewater if it does not contain items on the prohibited list.

And the Court need not take Mohawk's word for it. Mohawk attached an exemplar permit to its Answer to the Complaint (which the Court can consider on a motion to dismiss),¹ and that permit confirms Mohawk's position. For example, the permit states that Mohawk was authorized to discharge water "in accordance with the effluent limitations, monitoring requirements and other conditions *set forth in the permit*," which (i) allows wastewater discharges but (ii) nowhere limits PFAS. Mohawk Answer, Ex. A. While Lyerly notes that the exemplar permit states that the permit does not "relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation" (Opp. at 42), that does not change the calculus

¹ *See Dennis v. City of Atlanta*, 324 Ga. App. 659, 664 (2013) ("A trial court may consider exhibits attached to and incorporated into the pleadings when ruling upon a motion to dismiss.").

when there is no state law or regulation limiting PFAS. Lyerly has not identified a specific law or regulation in the State of Georgia that requires a permitholder to act or not act on the issue of PFAS in wastewater. Accordingly, because Mohawk's permits did not limit PFAS, Mohawk could not have violated its permits or the GWQCA in discharging wastewater that may have contained PFAS.

Lyerly separately argues that Mohawk cannot "contradict the allegations of Lyerly's Complaint . . . based on nothing more than its word" that it complied with its permits. Opp. at 41. But Mohawk's argument is not based on its word alone—instead, Mohawk's permits are attached to the pleadings and thus can be properly considered by the Court at the motion to dismiss stage. *See Dennis*, 324 Ga. App. at 664. And, on their face, the permits do not limit PFAS. Moreover, Lyerly entirely fails to address Mohawk's argument in the Motion that the "allegations in pleadings must yield to contradictory facts shown in the exhibits attached thereto." *Kennedy v. Schultz*, 105 Ga. App. 522, 523 (1962); *see also Black v. Franklin Credit Mgmt. Corp.*, 2024 Ga. Super. LEXIS 52, at *4 (Ga. Super. Ct. Feb. 2, 2024) (granting motion to dismiss when "allegation[s] contained in the Complaint [were] directly contradicted by the exhibits incorporated into Defendant's Answer"). Here, the permits directly contradict Lyerly's conclusory allegation that Mohawk, by discharging water containing PFAS, violated the terms of its permits. No additional fact discovery or a different procedural standard will change the fact that the permits say what the permits say.

Separately, Mohawk did not owe any duties here because the Chemical Manufacturers' misconduct made it unforeseeable to Mohawk that its wastewater would contaminate Lyerly's drinking water. "As negligence necessarily involves a violation or disregard of some duty which is known to the person charged therewith, it follows that knowledge of the facts out of which the duty arises is an essential element for consideration in determining whether one has exercised

reasonable care or has been guilty of negligence.” *Porch v. Wright*, 116 Ga. App. 138, 138 (1967). Mohawk could not have owed any duties with respect to any PFAS in its wastewater because Mohawk was misled by the Chemical Manufacturers and thus did not know of the PFAS-related risks. As Lyerly alleges, while the Chemical Manufacturers had “full knowledge of their products’ pernicious effects and likelihood of causing pollution to [Lyerly’s] water supply,” they “actively concealed and withheld [that] information from . . . [their] customers” like Mohawk. Am. Compl. ¶ 8. Because knowledge is essential to breach of duty and because Lyerly affirmatively pleads that Mohawk was misled regarding the dangers inherent in the Chemical Manufacturers’ products, ordinary negligence is unavailable to Lyerly. The Court should thus dismiss the negligence claim.

II. The Public Services Doctrine Precludes Lyerly from Recovering Damages from Mohawk Under Any Tort Theory.

Next, as explained in the Motion (Mot. at 5-7), the Court should dismiss all of Lyerly’s claims for damages because the public services doctrine precludes a municipality from suing to “recover the costs of carrying out public services from a tortfeasor whose conduct caused the need for the services,” unless the municipality can show “specific statutory authorization or damage to government-owned property.” *Walker County v. Tri-State Crematory*, 284 Ga. App. 34, 37 (2007). In response, Lyerly argues that (i) it is acting in a private capacity in providing water, such that the public services doctrine does not apply; (ii) Georgia law authorizes its claims, such that the first exception to the doctrine applies; and (iii) it is seeking recovery for damage to government-owned property, such that the second exception applies. *See Opp.* at 44-48. All three arguments fail.

First, Lyerly’s argument that there is no public service at issue in this case is surprising. Why is a town suing if the lawsuit doesn’t relate to a public service? Lyerly is seeking to avoid clear case law that clean-up operations are public services for which no tort liability is available.

See Tri-State Crematory, 284 Ga. App. at 37 (affirming dismissal of Walker County’s claims related to “the costs it incurred in performing the public services of cleaning up” a site).

And, even if the relevant public service was the provision of clean water, rather than cleaning the water, the Georgia Constitution makes clear that this also is a quintessential public service. *See* Ga. Const. Art. IX, § II, ¶ III (enumerating the “[d]evelopment, storage, treatment, purification, and distribution of water” as a municipal “service[.]”). While Lyerly cites certain cases that purportedly suggest that it is acting in a “private capacity” in providing water (Opp. at 45), that position is belied by Lyerly’s own allegations, which state that it is a “**public** water provider.” Am. Compl. ¶ 12 (emphasis added). Moreover, those cases do not even address the public services doctrine, which asks whether the service is for the public, rather than arcane legal distinctions between acts in a public and private capacity. *See, e.g., McCrary Eng’g Corp. v. City of Bowdon*, 170 Ga. App. 462, 464-65 (1984) (addressing city’s sovereign immunity).

Thus, even if Lyerly is acting in a **private capacity**, that does not mean that Lyerly is not providing **public services** in that capacity, which is the relevant inquiry under the public services doctrine. *See Tri-State Crematory*, 284 Ga. App. at 37 (stating that the doctrine applies to “the costs of carrying out **public** services”). Indeed, in another context, the Georgia Supreme Court has recognized that even “[w]hen a private corporation undertakes to supply water to a municipality and its inhabitants for toll, it enters upon a public service.” *Freeman v. Macon Gas Light & Water Co.*, 126 Ga. 843, 845 (1906). *Freeman* suggests that even the act of supplying water by Lyerly in a private capacity would still be a public service. *See id.* And the public service of cleaning water prohibits using tort law to charge some but not all of a community for the cost of that service.

Second, the exception for specific statutory authorization does not apply here. To invoke the exception, Lyerly cites only the GWQCA, Georgia’s public nuisance abatement statutes, and

Georgia’s trespass statute. *See* Opp. at 46. The problem for Lyerly is that none of those provisions provide “*specific* statutory authorization” for Lyerly’s damages claims, which is required for this exception to apply. *See Tri-State Crematory*, 284 Ga. App. at 37 (emphasis added). Indeed, in *Tri-State Crematory*, Walker County also sought to rely on generic public nuisance abatement statutes, but the Court of Appeals rejected that position: “[T]hose provisions do not separately and specifically authorize Walker County to do what it seeks to do here — obtain compensatory damages in a tort action as a means of redress for abating a public nuisance.” *Tri-State Crematory*, 284 Ga. App. at 38. If nuisance law did not supply a specific statutory authorization in *Tri-State Crematory*, then such general references to these statutes do not supply an adequate exception here.

Third, the exception for damage to government-owned property does not apply here—otherwise the use of government equipment to clean non-cremated bodies should have resulted in a different outcome in *Tri-State Crematory*. Lyerly’s relief sought demonstrates that this case does not involve damage to government-owned property. In particular, Lyerly seeks a new filtration system, not a repair of an existing system. *See, e.g.*, Am. Compl. ¶ 13 (“Plaintiff will be required to upgrade to costly and sophisticated new treatment technologies in order to remove Defendants’ PFAS from its drinking water.”). This is the sort of public service (filtered water) that the public services doctrine was intended to bar, not damage to property sufficient for the exception to apply.

Finally, these arguments by Lyerly contain irreconcilable inconsistencies. On the one hand, Lyerly suggests that it is acting solely in a private capacity in providing its public water services. *See* Opp. at 45. On the other hand, Lyerly argues that the relevant property—its water treatment plants and the water in its possession—is also government-owned (i.e., public). *See* Am. Compl. ¶¶ 25-26 (alleging that Lyerly “is a municipal corporation organized under the laws of the

State of Georgia” that “owns and operates multiple wells that draw water from the Conasauga Aquifer”). The law does not tolerate these sorts of “heads, I win, tails, you lose” type arguments.

III. Lyerly’s Claims Against Mohawk Are Preempted by the GWQCA.

In response to Mohawk’s arguments that Lyerly’s claims are preempted by the GWQCA (Mot. at 7-9), Lyerly argues solely that the GWQCA purportedly “states that common law rights of action are not preempted” and that the GWQCA authorizes political subdivisions of the State “to bring claims just like those asserted in this case.” Opp. at 48-49 (citing O.C.G.A. §§ 12-5-46, -51). That argument ignores the constitutional duty of localities not to impair state law. *See* Ga. Const. Art. III, § VI, ¶ IV; *see also Franklin County v. Fieldale Farms Corp.*, 270 Ga. 272, 275 (1998) (citing the 1983 amendment to the Georgia Constitution).

Lyerly has entirely failed to address the fact that the Georgia Constitution prohibits local governments from challenging state decisions either through statute or litigation. *See Sturm, Ruger & Co. v. City of Atlanta*, 253 Ga. App. 713, 719 (2002) (holding that a municipality could not “punish conduct which the State, through its regulatory and statutory scheme, expressly allows and licenses” and thus the municipality could “not attempt to usurp that power, whether by litigation or regulation”). Lyerly may not flout the GWQCA by contradicting the Georgia EPD’s decision to not limit PFAS in Mohawk’s permits.

Here, the State of Georgia and the Georgia EPD have comprehensively regulated wastewater discharges through the GWQCA and its regulations. And despite the fact that environmental regulators have known for at least two decades about PFAS (*see* Am. Compl. ¶¶ 74-74), those laws and regulations have never limited PFAS in wastewater. As such, Lyerly cannot usurp the State’s authority by prosecuting a case that goes against the State’s comprehensive regulation and the permit issued pursuant to the State’s regulatory choices.

IV. Lyerly's Nuisance Claims Fail Because Mohawk Did Not Control the Nuisance or Have a Legal Right to Abate the Nuisance.

Lyerly's public and private nuisance claims must be dismissed because it does not adequately demonstrate that Mohawk controlled the alleged nuisance. *See* Mot. at 11-12. Lyerly attempts to avoid this conclusion by arguing that the control element may be satisfied when the defendant is "the cause or a concurrent cause of the creation, continuance, or maintenance of the nuisance." Opp. at 26-27 (quoting *Sumitomo Corp. of Am. v. Deal*, 256 Ga. App. 703, 707 (2002)). But this argument is a classic example of the exception swallowing the rule. Mohawk was not a concurrent cause in the Chemical Manufacturers' conduct merely by purchasing product and using it in its industry. To hold otherwise would unreasonably expand the meaning of "control" to anyone who purchased and used the product.

Along the same lines, Lyerly's "inability to allege that the defendants had a legal right to abate the nuisance is fatal to its nuisance claim." *See Corp. of Mercer Univ. v. Nat'l Gypsum Co.*, 1986 WL 12447, at *7 (M.D. Ga. Mar. 9, 1986). Lyerly does not even address *Mercer* and instead simply suggests that Mohawk could have simply "stop[ped] . . . discharging PFAS-containing products." Opp. at 27. But this again ignores Lyerly's crucial admission that the Chemical Manufacturers had "full knowledge of their products' pernicious effects and likelihood of causing pollution to Plaintiff's water supply," but they "actively concealed and withheld [that] information from . . . [their] customers," which include Mohawk. Am. Compl. ¶ 8. Under these facts, Mohawk did not have the ability, let alone the right, to abate any alleged nuisance.

In fact, Lyerly tacitly admits as much in its Opposition by recognizing that "Lyerly may be able to establish, through discovery, that the PFAS Manufacturers exercised some level of control or direction over [Mohawk's] manufacturing and disposal processes." Opp. at 29. This is a fact that is known to all of the counsel in this matter, who have litigated these regional PFAS

contamination cases for years—the Chemical Manufacturers controlled Mohawk’s application of their PFAS products, such that Mohawk had no control over any alleged nuisance and had no legal right to abate any purported nuisance. Mohawk did what it was told by the Chemical Manufacturers and by its regulators. It is hard to imagine that Mohawk’s only way to avoid liability was to disregard what the Chemical Manufacturers and the regulators were telling Mohawk to do.

V. The Court Should Dismiss Lyerly’s Trespass Claim Because Mohawk Did Not “Directly” Infringe Lyerly’s Property Rights and Did Not Have a Duty to Terminate Any Purported Trespass.

As set out in the Motion, Lyerly cannot state a claim for trespass because Mohawk did not “*directly* infringe[] on its property rights” and because Mohawk was “not under a legal duty to terminate its wastewater discharges.” Mot. at 12-13. On the first issue, Lyerly functionally ignores Mohawk’s argument and confusingly states that it has “property rights in its water supply” and cites a number of allegations without any context. See Opp. at 32-33. Based solely on this, Lyerly asserts that it “put Defendants on notice that Rome’s [sic] trespass claim is based on the entry of Defendants’ chemicals into water owned by Lyerly.” *Id.* at 33-34. But that’s not *direct* infringement of those purported property rights. It’s not as if Mohawk took a bucket full of PFAS-laden water and poured it into one of Lyerly’s wells, which would undoubtedly be a direct infringement. Instead, the Amended Complaint’s own allegations acknowledge that Mohawk discharged its wastewater either “directly” to wastewater treatment plants or into the environment—not directly to Lyerly’s wells. Am. Compl. ¶¶ 42, 102.

As for the second issue, Lyerly claims that certain language in Mohawk’s permit imposed a duty to not discharge PFAS in its wastewater. Opp. at 34. But that language does not impose any such duty on Mohawk. That language simply states that Mohawk “shall take all reasonable

steps to minimize or prevent any discharge *in violation of this permit* which has a reasonable likelihood of adversely affecting human health or the environment.” *Id.* (emphasis added). As discussed throughout this brief, Mohawk did not violate its permit in discharging wastewater that allegedly contained PFAS, and thus Mohawk had no duty under this provision to remove any such PFAS.

VI. Lyerly’s GWQCA Claim Fails Because Mohawk Complied with Its Permits and Lyerly Does Not Seek to Remediate the “Waters of the State.”

Lyerly’s claim under the GWQCA fails for two independent reasons. *See* Mot. at 13-15. First, there is no liability under the GWQCA when a party operates under lawful permits, and here, Mohawk complied with its lawful permits, which do not limit PFAS. *See id.* at 13-14; *see also Save America’s Vital Env’t, Inc. v. Butz*, 347 F. Supp. 521, 522 (N.D. Ga. 1972) (highlighting that the GWQCA “prohibits the discharge of harmful or toxic materials in Georgia waters *without a permit*”) (emphasis added). As established above with respect to the negligence claim, Lyerly is incorrect in arguing that Mohawk’s permits required it to remove PFAS from its wastewater. The Court can and should consider the exemplar permit attached to Mohawk’s Answer, which directly contradicts Lyerly’s conclusory allegations and which shows that the Georgia EPD did not set any limits on PFAS.

Second, Lyerly has not shown that it seeks to recover costs and expenses incurred in cleaning up substances that were “spilled, discharged, or deposited *in the waters of the state.*” O.C.G.A. § 12-5-51 (emphasis added); *see also* Mot. at 14-15. That is a clear, unambiguous, and absolute requirement of civil liability under that statute. But, according to its own allegations, Lyerly seeks damages associated with the removal of PFAS *from its own water*. *See* Am. Compl. ¶ 13 (“Plaintiff will be required to upgrade to costly and sophisticated new treatment technologies in order to remove Defendants’ PFAS from its drinking water[.]”). Lyerly does not credibly

dispute that. Instead, Lyerly promotes a tortured reading of the statute in arguing that “the GWQCA does not . . . limit damages to cleaning up ‘waters of the state’” because the GWQCA provides for damages for “any and all costs, expenses, and injuries occasioned by such spills, discharges, or deposits,” which “shall not be limited to, any costs and expenses reasonably incurred . . . in cleaning up and abating such spills, discharges, or deposits.” Opp. at 43 (emphasis in original).

The Court should reject Lyerly’s reading of the GWQCA, which completely reads the entire first sentence out of the statute. To be sure, the GWQCA provides for “any and all costs, expenses, and injuries”—but only related to “*such spills, discharges, or deposits,*” which Lyerly tellingly glosses over. See O.C.G.A. § 12-5-51 (emphasis added). And what are “*such* spills, discharges, or deposits” under the GWQCA? The statute provides the clear answer: “spill[s], discharge[s], or deposit[s] *in the waters of the state.*” *Id.* (emphasis added). Lyerly cannot rewrite the GWQCA statute to create liability where the General Assembly did not permit. As such, because Lyerly admits that it is seeking damages related to its own water and its own water treatment facility—and not “the waters of the state”—Lyerly cannot state a claim under the GWQCA.

VII. The Court Should Dismiss Lyerly’s Claims for Punitive Damages and for Attorneys’ Fees.

Finally, Lyerly acknowledges that its claims for punitive damages and attorneys’ fees depend upon the viability of its underlying substantive claims. See Mot. at 15-16; Opp. at 49; see also *Sparra v. Deutsche Bank Nat’l Tr. Co.*, 336 Ga. App. 418, 422-23 (2016) (holding that the plaintiff was “not entitled” to punitive damages and attorneys’ fees “because he has failed to state a claim upon which relief could be granted with respect to his substantive claims for relief”).

Accordingly, the Court should dismiss Lyerly's claims for punitive damages and attorneys' fees because—as discussed above—Lyerly fails to state a claim on its underlying substantive claims.

As a separate matter, Lyerly's claims for punitive damages and attorneys' fees also fail because Lyerly fails to plead any facts showing that Mohawk “showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences” (as required to obtain punitive damages) or that Mohawk “acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense” (as required to obtain attorneys' fees). *See* Mot. at 15-16. This is confirmed by the fact that Mohawk complied with its permits, as such “compliance with the law . . . tend[s] to show that there is no clear and convincing evidence of ‘willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.’” *Stone Man, Inc. v. Green*, 263 Ga. 470, 472 (1993).

Lyerly's sole argument in response is that, “[u]nder Georgia's notice pleading standards, Lyerly has more than set forth claims for attorneys' fees and punitive damages.” Opp. at 50 & n.105 (citing Am. Compl. ¶¶ 53-54, 76, 149-55). Lyerly is wrong again. Importantly, in contrast to specific allegations concerning 3M and DuPont (*see* Am. Compl. ¶¶ 62-75), nowhere in Paragraphs 53-54, 76, and 149-55 of the Amended Complaint—nor anywhere else in the Amended Complaint, for that matter—are there any allegations with respect to ***Mohawk's conduct specifically***. Moreover, Lyerly's own allegations confirm that the Chemical Manufacturers “actively concealed and withheld information from . . . customers,” including Mohawk, (*id.* ¶ 8), which belies any conclusory assertion that Mohawk engaged in the sort of conduct that justifies punitive damages and attorneys' fees. *See Tavistock Freebirds LLC v. Coca-Cola Co.*, 366 Ga.

App. 443, 449 (2023) (observing that a plaintiff can “plead himself out of court by revealing a state of facts which affirmatively shows that there is no liability on the defendant”).

Contrary to Lyerly’s position, Georgia courts dismiss derivative claims at the motion to dismiss stage when plaintiffs fail to plead any facts to support their conclusory allegations that they are entitled to punitive damages and attorneys’ fees. *See Grant v. Henderson*, 2019 Ga. State LEXIS 2680, at *8 (Ga. State Ct. Aug. 13, 2019) (granting motion to dismiss claim for punitive damages because there were “no factual allegations of misconduct . . . that would provide a basis for such relief”); *McLeod v. Costco Wholesale Corp.*, 2022 Ga. Super. LEXIS 4279, at *22 (Ga. Super. Ct. Dec. 16, 2022), *rev’d in part on other grounds*, 369 Ga. App. 717 (2023) (granting motion to dismiss claim for attorneys’ fees under O.C.G.A. § 13-6-11 “because [the] complaint fail[ed] to allege any facts” and instead “parrot[ed] the statutory language” in a “formulaic recitation of the statutory elements,” which is “insufficient to sustain a claim for attorney’s fees”). This Court should follow suit here.

CONCLUSION

For the foregoing reasons and the reasons set out in the Motion, Mohawk respectfully requests that the Court dismiss Lyerly’s First Amended Complaint against Mohawk.

Respectfully submitted this 6th day of November, 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have caused a true and correct copy of the foregoing document to be served upon all counsel of record by filing same with the PeachCourt e-filing system, which automatically notifies counsel of record in the PeachCourt e-filing system.

This 6th day of November, 2024.

/s/ Andrew A. Roberts

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