



IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

**THE WATER WORKS AND SEWER)
BOARD OF THE CITY OF GADSDEN,)**

Plaintiff,)

v.)

CIVIL ACTION NO:

**3M COMPANY; APRICOT)
INTERNATIONAL, INC.;)
ARROWSTAR, LLC; BEAULIEU)
GROUP, LLC, BEAULIEU OF)
AMERICA, INC.; COLLINS &)
AIKMAN FLOOR COVERING)
INTERNATIONAL, INC.;)
DALTONIAN FLOORING, INC.;)
DEPENDABLE RUG MILLS, INC.;)
DORSETT INDUSTRIES, INC.;)
DYSTAR, L.P.;)
ECMH, LLC d/b/a CLAYTON)
MILLER HOSPITALITY CARPETS;)
EMERALD CARPETS, INC.;)
FORTUNUE CONTRACT, INC.;)
HARCROS CHEMICAL, INC.; HOME)
CARPET INDUSTRIES, LLC; INDIAN)
SUMMER CARPET MILLS, INC.;)
INDUSTRIAL CHEMICALS, INC.;)
J&J INDUSTRIES, INC.; KALEEN)
RUGS, INC.; LEXMARK CARPET)
MILLS, INC.; LYLE INDUSTRIES,)
INC.; MFG CHEMICAL, INC.;)
MOHAWK CARPET, LLC;)
MOHAWK GROUP, INC.; MOHAWK)
INDUSTRIES, INC.; NPC SOUTH,)
INC.; ORIENTAL WEAVERS USA,)
INC.; S & S MILLS, INC.; SAVANNAH)
MILLS GROUP, LLC; SHAW)
INDUSTRIES, INC.; TANDUS)
CENTIVA, INC.; TANDUS CENTIVA)
US, LLC; THE DIXIE GROUP, INC.;)
TIARCO CHEMICAL COMPANY,)
INC.; VICTOR CARPET MILLS, INC.;)
and FICTITIOUS DEFENDANTS A-J,)**

TRIAL BY JURY REQUESTED

those persons, corporations,)
partnerships or entities who acted either)
as principal or agent, for or in concert)
with the other named Defendants and/or)
whose acts caused or contributed to the)
damages sustained by the Plaintiff,)
whose identities are unknown to the)
Plaintiff, but which will be substituted)
by amendment when ascertained,)
Defendants.)

COMPLAINT

Plaintiff Water Works and Sewer Board of the City of Gadsden (“Gadsden Water”) brings this Complaint against Defendants 3M Company, Apricot International, Inc., ArrowStar, LLC, Beaulieu Group LLC, Beaulieu of America, Inc., Collins & Aikman Floor covering International, Inc., Daltonian Flooring, Inc., Dependable Rug Mills, Inc., Dorsett Industries, Inc., Dystar, L.P., ECMH, LLC d/b/a Clayton Miller Hospitality Carpets, Emerald Carpets, Inc., Fortune Contract, Inc., Harcros Chemical, Inc., Home Carpet Industries LLC, Indian Summer Carpet Mills, Inc., Industrial Chemicals, Inc., J&J Industries, Inc., Kaleen Rugs Inc., Lexmark Carpet Mills Inc., Lyle Industries, Inc., MFG Chemical, Inc., Mohawk Carpet LLC, Mohawk Group, Inc., Mohawk Industries, Inc., NPC South, Inc., Oriental Weavers USA, Inc., S & S Mills, Inc., Savannah Mills Group, LLC, Shaw Industries, Inc., Tandus Centiva Inc., Tandus Centiva US LLC, The Dixie Group, Inc., Tiarco Chemical Company, Inc., and Victor Carpet Mills, Inc. (“Defendants”), and allege as follows:

STATEMENT OF THE CASE

1. Plaintiff, Gadsden Water, has and continues to be damaged due to the negligent, willful and wanton conduct of the Named and Fictitious Defendants, as well as nuisance and trespass caused by the Defendants’ past and present release of toxic chemicals, including

perfluorinated compounds (“PFC”) perfluorooctanoic acid (“PFOA”), perfluorooctane sulfonate (“PFOS”), and related chemicals from their manufacturing facilities in and around the City of Dalton, Georgia.

2. Gadsden Water provides drinking water directly to its own residential and commercial customers in Etowah County, and also sells finished water to the Attalla Water Works Board, Highland Water Authority, Northeast Etowah Water Co-op, Utilities Board of Rainbow City, Reece City water system, Southside Water Department, Tillison Bend Water Authority, West Etowah County Water Authority, and Whorton Bend Water Authority, who provide water to their own customers in surrounding areas. Gadsden Water utilizes the Coosa River as its raw water source, specifically drawing its source water from Lake Neely Henry in the Middle Coosa Basin.

3. Named and Fictitious Defendants operate, or supply chemical products to, manufacturing facilities located upstream of Gadsden Water’s intake site, in or near the City of Dalton, Georgia. Names and Fictitious Defendants use PFCs, such as PFOA and PFOS, at their facilities to impart water, stain, and grease resistance to their carpet and other textile products. Industrial wastewater discharged from Named and Fictitious Defendants’ manufacturing plants contains high levels of PFOA and PFOS. These chemicals resist degradation during processing at Dalton Utilities’ wastewater treatment center and contaminate the Conasauga River. The Conasauga River is one of the Coosa River’s five major tributaries.

4. Named and Fictitious Defendants’ toxic chemicals have contaminated the water in the Coosa River at Gadsden Water’s intake site, and the chemicals cannot be removed by the water treatment processes utilized by Gadsden Water’s C.B. Collier Water Treatment Plant.

5. As a direct and proximate result of Named and Fictitious Defendants’ contamination of the Plaintiff’s raw water source, Plaintiff Gadsden Water has suffered substantial

economic and consequential damage, including, but not limited to, expenses associated with the future installation and operation of a filtration system capable of removing the Named and Fictitious Defendants' chemicals from the water; expenses incurred to monitor PFC contamination levels; and lost profit and sales.

6. Wherefore, Plaintiff Gadsden Water seeks compensatory and punitive damages to the fullest extent allowed by award from a jury. Plaintiff also seeks equitable and injunctive relief compelling the Named and Fictitious Defendants to remediate their contamination and prevent additional releases of PFCs, including PFOS and PFOA, into the water supply.

JURISDICTION

7. Jurisdiction is proper in this Court pursuant to ALA. CODE §12-11-30(1)(1975), as Plaintiff's claims exceed \$10,000.

8. Plaintiff asserts no federal cause of action in this Complaint.

PARTIES

9. Plaintiff Gadsden Water is a domestic municipal corporation formed pursuant to Ala. Code §11-50-230, with its principal place of business in Etowah County, Alabama.

10. Defendant 3M Company ("3M") is a foreign corporation qualified to do business in the State of Alabama, and is causing injuring in Etowah County, Alabama.

11. Defendant Apricot International, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

12. Defendant Arrowstar, LLC, is a foreign corporation causing injury in Etowah County, Alabama.

13. Defendant Beaulieu Group LLC is a foreign corporation causing injury in Etowah County, Alabama.

14. Defendant Beaulieu of America, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

15. Defendant Collins & Aikman Floor Covering International, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

16. Defendant Daltonian Flooring, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

17. Defendant Dependable Rug Mills, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

18. Defendant Dorsett Industries, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

19. Defendant Dystar, L.P., is a foreign corporation causing injury in Etowah County, Alabama.

20. Defendant ECMH, LLC d/b/a Clayton Miller Hospitality Carpets is a foreign corporation causing injury in Etowah County, Alabama.

21. Defendant Emerald Carpets, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

22. Defendant Fortune Contract, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

23. Defendant Harcros Chemical, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

24. Defendant Home Carpet Industries LLC is a foreign corporation causing injury in Etowah County, Alabama.

25. Defendant Indian Summer Carpet Mills, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

26. Defendant Industrial Chemicals, Inc., is a domestic corporation with its principal place of business in Birmingham, Alabama, and is causing injury in Etowah County, Alabama.

27. Defendant J&J Industries, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

28. Defendant Kaleen Rugs, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

29. Defendant Lexmark Carpet Mills, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

30. Defendant Lyle Industries, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

31. Defendant MFG Chemical, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

32. Defendant Mohawk Carpet, LLC, is a foreign corporation causing injury in Etowah County, Alabama.

33. Defendant Mohawk Group, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

34. Defendant Mohawk Industries, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

35. Defendant NPC South, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

36. Defendant Oriental Weavers USA, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

37. Defendant S&S Mills, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

38. Defendant Savannah Mills Group, LLC, is a foreign corporation causing injury in Etowah County, Alabama.

39. Defendant Shaw Industries, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

40. Defendant Tandus Centiva, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

41. Defendant Tandus Centiva US, LLC, is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

42. Defendant The Dixie Group, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

43. Defendant Tiarco Chemical Company, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

44. Defendant Victor Carpet Mills, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

45. Fictitious Defendants A, B, C, D, E, F, G, H, I, & J are those persons, corporations, partnerships, or entities who discharged PFOA, PFOS, or other related chemicals into the water supply upstream of Plaintiff Gadsden Water's intake site, who acted either as principal or agent, for or in concert with the named Defendants, and/or who acts caused or contributed to the damages

sustained by the Plaintiff, whose identities are unknown to Plaintiff, but which will be substituted by amendment when ascertained.

FACTUAL ALLEGATIONS

46. The City of Dalton, Georgia, contains over 150 carpet manufacturing plants, and more than 90% of the world's carpet is produced within a 65-mile radius of the city. These manufacturing plants have used PFOA, PFOS, and other related chemicals in the stain-resistant carpeting manufacturing process.

47. Defendants are owners and operators of, or the chemical suppliers to, manufacturing facilities in and around Dalton, Georgia, which utilize various PFCs and their precursors in the manufacturing process. Defendants discharge PFOA, PFOS, and related chemicals in their industrial wastewater, which is then treated by Dalton Utilities wastewater treatment plants before being pumped to a 9,800-acre Land Application System ("LAS") where it is sprayed onto the property.

48. PFOA and PFOS, along with many other PFCs, resist degradation during the treatment process utilized by Dalton Utilities and can increase in concentration as waste accumulates in the LAS. The LAS is bordered by the Conasauga River, and runoff contaminated with PFCs pollutes the river as it flows past the LAS.

49. The United States Environmental Protection Agency ("EPA") has identified industrial wastewater from defendants' manufacturing facilities as the source of PFOA and PFOS being applied to the LAS and entering the Conasauga River.

50. The human health risks caused by exposure to low levels of PFOA, PFOS, and related chemicals include testicular cancer, kidney cancer, ulcerative colitis, thyroid disease, high

cholesterol, and pregnancy-induced hypertension. The stable carbon-fluorine bonds that make PFOA and PFOS so pervasive in industrial and consumer products also results in their environmental persistence, as there is no known environmental degradation mechanism for these chemicals. They are readily absorbed into biota and have a tendency to accumulate with repeated exposure.

51. The association of exposure to these chemicals and certain cancers has been reported by the C8 Health Project, an independent Science Panel charged with reviewing the evidence linking PFOA, PFOS, and related chemicals to the risk of disease. The C8 Panel determined that kidney and testicular cancers have a “probable link” to PFOA exposure. Epidemiological studies of workers exposed to PFOA support the association between PFOA exposure and kidney and testicular cancers. These studies also suggest associations between PFOA exposure and prostate and ovarian cancers and non-Hodgkin lymphoma. Rodent studies also support the link with cancer. The majority of a United States Environmental Protection Agency (“EPA”) Science Advisory Board expert committee recommended in 2006 that PFOA be considered “likely to be carcinogenic to humans.”

52. Defendant 3M Company has long been aware of the persistence and toxicity of PFOA, PFOS, and related chemicals, yet it knowingly and intentionally continued to sell these chemicals to the carpet and textile manufacturing industry. Blood tests of 3M workers conducted in 1978 found elevated organic fluorine levels proportionate to the length of time the employees had spent in production areas. Furthermore, a 1979 3M study of the effects of fluorochemical compounds on Rhesus monkeys was terminated after only 20 days after every monkey, at every dosage level, died from exposure to the chemicals.

53. Defendant 3M Company has also known for at least 14 years that PFOA, PFOS, and related chemicals are not effectively treated by conventional wastewater treatment plant processes after finding high concentrations of these chemicals in samples taken from the effluent of a wastewater treatment plant located only a few miles downstream from one of its production facilities.

54. The EPA took regulatory action on March 11, 2002, and December 9, 2002, by publishing two significant new use rules under the Toxic Substances Control Act to limit the future manufacture and use of PFOA, PFOS, and related chemicals.

55. The State of New Jersey adopted a drinking water health advisory in 2006 for PFOA that is 0.04 ppb.

56. The EPA in 2009 published provisional drinking water health advisories for PFOA and PFOS, the limits being 0.4 ppb for PFOA and 0.2 ppb for PFOS.

57. More recent studies have shown that the 2009 EPA advisory limits were far too high. In 2014, the EPA released a draft of its proposed “reference dose” for PFOA, which is an estimate of how much a person could safely consume daily over their lifetime. That proposed reference dose translated to a limit of 0.1 ppb for PFOA, which was one-quarter the 2009 advisory level.

58. In May 2016, the EPA issued a new drinking water health advisory for PFOA and PFOS, warning that exposure to elevated levels of these compounds can lead to a number of health problems, such as cancer in adults and developmental effects in fetuses and breastfed infants. This advisory stated that, in order to provide a margin of protection from lifetime exposure to PFOA and PFOS in drinking water, the combined concentration of these chemicals should be no greater than 0.07 ppb. The EPA health advisory was based on peer-reviewed studies of the effects of

PFOA and PFOS on laboratory animals, as well as epidemiological studies of human populations exposed to these chemicals.

59. Gadsden Water began regular testing for PFOA and PFOS in its water supply following the issuance of the May 2016 EPA health advisory, and has consistently found PFOA and PFOS levels that combine to meet or exceed the 0.07 ppb limit.

60. Gadsden Water's current water filtration system, found at the C.B. Collier Water Treatment Plant, is not capable of removing or reducing levels of PFOA or PFOS.

61. Due to the high levels of PFOA and PFOS found in its water supply, many of Gadsden Water's residential consumers have turned to alternate sources of drinking water, resulting in Plaintiff's lost profits and sales. If the levels of PFOA and PFOS found in Plaintiff's water supply continue to meet or exceed the 0.07 ppb EPA advisory limit, Plaintiff's water system purchase customers will be forced to find an alternate water supply, resulting in further lost profits and sales.

62. As a direct and proximate result of Defendants' contamination of Plaintiff's water supply, Plaintiff Gadsden Water has been damaged, including, but not limited to past and future monitoring and testing expenses, lost revenues and profits, and expenses in remediating and maintaining its water system.

COUNT ONE
Negligence

63. Plaintiff incorporates all prior paragraphs by reference as if fully set forth herein.

64. Named and Fictitious Defendants owe a duty to Plaintiff to exercise due and reasonable care in their manufacturing and chemical supply operations to prevent the discharge of toxic chemicals, including PFOA, PFOS, and related chemicals, into the water supply.

65. Named and Fictitious Defendants breached the duty owed to Plaintiff, and under the circumstances, Defendants' breaches constitute negligent, willful, and/or reckless conduct.

66. As a direct, proximate, and foreseeable result of the Named and Fictitious Defendants' conduct, practices, actions, and inactions, Plaintiff Gadsden Water has incurred expenses and will incur reasonably ascertainable expenditures in the future.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for compensatory damages against all defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT TWO
Nuisance

67. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

68. Plaintiff Gadsden Water owns and occupies property used to serve its water customers and other water utilities, including a water treatment plant, water distribution system, and offices.

69. Named and Fictitious Defendants have created a nuisance by their discharge of PFOA, PFOS, and related chemicals into the Coosa River's tributaries, which has caused contamination of the Plaintiff's water supply, thereby causing Plaintiff Gadsden Water hurt, inconvenience, and harm.

70. The levels of toxic chemical contamination found in the Plaintiff's water supply, directly caused by the Named and Fictitious Defendants' pollution, have created a condition that threatens the health and well-being of Gadsden Water's employees and customers.

71. It was reasonably foreseeable, and in fact known to the Named and Fictitious Defendants, that their actions would place, and have placed, the Plaintiff at risk of harm. The

nuisance has caused substantial damages, and will continue to cause damages until it is satisfactorily abated.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for compensatory damages against all Defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT THREE
Trespass

72. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

73. Plaintiff Gadsden Water owns and occupies property used to serve its water customers and other water utilities, including a water treatment plant, water distribution system, and offices.

74. Named and Fictitious Defendants' intentional acts in discharging PFOA, PFOS, and related chemicals, knowing that they would contaminate the water supply and flow downstream, caused an invasion of Plaintiff's property by Defendants' chemicals, which has affected and is affecting Plaintiff's interest in the exclusive possession of its property.

75. Plaintiff did not consent to the invasion of its property by Named and Fictitious Defendants' chemicals.

76. Named and Fictitious Defendants knew or should have known that their discharges of PFOA, PFOS, and related chemicals could contaminate the water supply and result in an invasion of Plaintiff's possessory interest in their property.

77. Named and Fictitious Defendants' trespass is continuing.

78. Named and Fictitious Defendants' continuing trespass has impaired Plaintiff's use of its property and has caused it damages by diminishing its value.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for compensatory damages against all Defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT FOUR
Wantonness and Punitive Damages

79. Plaintiff re-alleges all prior paragraphs as if restated herein.

80. Named and Fictitious Defendants owe a duty to Plaintiff to exercise due and reasonable care in their manufacturing and chemical supply operations to prevent the discharge of toxic chemicals, including PFOA, PFOS, and related chemicals, into the water supply.

81. In breaching the duties described above, Named and Fictitious Defendants acted in a wanton, willful, and reckless manner.

82. Named and Fictitious Defendants knew or should have known the danger to Plaintiff created by Defendants' conduct, practices, actions, and inactions.

83. Named and Fictitious Defendants knew or should have known of the likely impact, harm, damage, and injury their conduct would have on the Plaintiff.

84. Named and Fictitious Defendants' conduct, practices, and inactions evidence Defendants' reckless disregard for Plaintiff's property.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for punitive damages against all Defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT FIVE
Injunctive Relief

85. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

86. Plaintiff requests that this Court enter an Order enjoining Named and Fictitious Defendants from continuing the conduct described above and requiring Named and Fictitious Defendants to take all steps necessary to remove their chemicals from Plaintiff's water supplies and property.

87. There is continuing irreparable injury to Plaintiff if an injunction does not issue, as Named and Fictitious Defendants' chemicals in its water supplies pose a continuing threat to Plaintiff's property interests, and there is no adequate remedy at law.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands injunctive relief against all Defendants, both named and fictitious, jointly and severally, requiring Defendants to remove their chemicals from Plaintiff's water system and to prevent these chemicals from continuing to contaminate Plaintiff's water supply.

RELIEF DEMANDED

Wherefore, Plaintiff Gadsden Water respectfully requests this Court grant the following relief:

- a) Award Plaintiff damages in an amount to be determined by a jury sufficient to compensate it for real property damage, out of pocket expenses, lost profits and sales, and future expenses;
- b) Issue an injunction requiring Named and Fictitious Defendants to remove their chemicals from Plaintiff's water supply and to prevent these chemicals from continuing to contaminate Plaintiff's water supply;
- c) Award attorney fees and costs and expenses incurred in connection with the litigation of this matter;

- d) Award such other and further relief as this Court may deem just, proper, and equitable.

JURY DEMAND

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES OF THIS CAUSE.

Dated: September 22, 2016.

Respectfully submitted,

s/ Rhon E. Jones
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