## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY	MDL No. 2:18-mn-2873-RMG
LITIGATION	ORDER
	This Order Relates to All Cases.
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Before the Court is the United States of America's notice of *ex parte* motion. (Dkt. No. 490.) The United States of America provided twelve documents to the Court for *in camera* review, requesting that the Court rule the documents are irrelevant and that the burden of producing them and a larger pool of similar documents far outweighs any potential relevancy. The Defendants moved to allow discovery on those documents. The Court conducted a hearing on the matter on April 29, 2020.

The scope of discovery in civil litigation generally encompasses nonprivileged matter that is both relevant to a claim or defense "and proportional to the needs of the case, considering . . . whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). The district court "must limit the frequency or extent of discovery" otherwise allowed if the discovery sought "can be obtained from some other source that is more convenient, less burdensome, or less expensive." Fed. R. Civ. P. 26(b)(2)(c)(i).

The Defendants contend that two of the twelve documents contain information relevant to the issues in this MDL and, therefore, that they are entitled to discovery of other potential "policy level" documents relating to the United States Navy's knowledge of and past use of AFFF. The Government responds that these documents are irrelevant to issues concerning AFFF land-use and groundwater contamination, and that any relevance is far outweighed by the burden of conducting multi-level national security reviews and a relevancy review, on what are potentially 40,000 documents, for any such information.

After conducting an *in camera* review of these twelve documents, including the two that Defendants specifically contend are indicative of a larger pool of relevant information, the Court agrees with the Government. Rule 26 is intended to provide a "proportionality calculation" in order to ensure that otherwise broad discovery is facilitated through "case-specific determination[s]." Fed. R. Civ. P. 26, 2016 Amendment. In these circumstances—considering the substance of the twelve documents in light of the burden of reviewing thousands of similar documents for similarly relevant information—the burden of the proposed discovery far outweighs its likely benefit. Moreover, the parties have indicated that they are amenable to negotiating obtaining any potentially relevant information through less burdensome discovery tools such as stipulation, agreement, requests for admission, interrogatories or deposition questioning. Defendants are free to again raise this issue to the Court, if necessary, after they have had the benefit of reviewing that discovery.

For the foregoing reasons, the Court **GRANTS** the Government's motion (Dkt. No. 490) and finds that the burden of producing these and similar documents, which may be discovered through less burdensome means, far outweighs the potential benefit of any relevancy. The Court **DENIES WITHOUT PREJUDICE** the Defendants' request to allow discovery on the basis of these documents.

## AND IT IS SO ORDERED.

April 30, 2020 Charleston, South Carolina s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge