

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

IN RE: AQUEOUS FILM-FORMING)	MDL No. 2:18-mn-2873-RMG
FOAMS PRODUCT LIABILITY)	
LITIGATION)	This Order Relates To:
		Those Cases Listed on Exhibit "A"

**ORDER OF DISMISSAL WITHOUT PREJUDICE
PURSUANT TO STIPULATION AND TOLLING AGREEMENT**

Before the Court is a joint motion for entry of dismissal without prejudice and a tolling agreement, brought pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure by Plaintiffs in the attached Exhibit "A" and Defendant National Foam, Inc. ("National Foam"). (Dkt. No. 544.) The motion is **granted**.

RECITALS

WHEREAS, Napoli Shkolnik PLLC (Plaintiffs' Counsel") represents Plaintiffs in the attached Exhibit "A" who currently serve as individual plaintiffs and putative class representatives in certain actions pending against National Foam in the matter of *In Re: Aqueous Film-Forming Foams Product Liability Litigation*, in the United States District Court for the District of South Carolina, MDL No. 2:18-mn-2873-RMG (the "MDL"), alleging certain claims in connection with National Foam's aqueous film forming foam ("AFFF") product;

WHEREAS, Plaintiffs' Counsel and National Foam represent and warrant that the cases subject to this Tolling Agreement are enumerated in attached Exhibit A to this Stipulation and Tolling Agreement, and is the complete list of cases currently being dismissed without prejudice as against National Foam, Inc. and subject to tolling under this Tolling Agreement (the "Lawsuits").

WHEREAS, the Parties have reached an agreement, the terms of which are set forth herein,

which will result in National Foam being dismissed from the Lawsuit without prejudice, subject expressly to the terms of this Tolling Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

TERMS

1. **Effective Date.** This Tolling Agreement shall be effective as of the date entered by the Court.

2. **Agreement.** Plaintiffs hereby voluntarily dismiss National Foam from the Lawsuits listed on Exhibit “A” without prejudice, as of the Effective Date.

3. **Period of Tolling.** In exchange for such dismissal, National Foam agrees that any and all limitations of action time periods, statute of limitations, and/or statutes of repose for the claims advanced in the Lawsuits are tolled, suspended, and stayed as of the Effective Date of this Tolling Agreement through and until this Tolling Agreement is terminated by any Party subject to Paragraph 5 of this Tolling Agreement (the “Tolling Period”). This Tolling Agreement, however, does not revive any claims that have already expired.

4. **Adding Cases to Tolling Agreement.** Additional cases or claims, filed or unfiled, may be added by Plaintiffs’ Counsel to this Tolling Agreement at any time upon the agreement of the parties. For an unfiled claim, Plaintiffs’ Counsel shall provide written notice of the intent to include such claim in this Tolling Agreement, providing information sufficient to identify and distinguish the claimants, including names, addresses and/or social security numbers. The statute of limitations for any filed case that becomes subject to this Tolling Agreement shall relate back to the original filing of that lawsuit. The statute of limitations for any unfiled case shall be tolled from the date that that Plaintiffs’ Counsel notified counsel for National Foam of the intent to

include the claimant in this Tolling Agreement.

5. **Right to Terminate; Reinstate.** Either party may terminate this Tolling Agreement and have the cases or claims reinstated against National Foam at any time upon sixty (60) days' notice. Should Plaintiffs terminate this Tolling Agreement and reinstate, the Parties agree that such action shall be filed as stipulated amendment to the current lawsuits to re-name National Foam as a party in the above-captioned litigation in the United States District Court for the District of South Carolina and shall be assigned to the Honorable Richard M. Gergel, or to such other court if the individual action has been transferred back to an individual district court. Any request for reinstatement that will not require a new filing fee.

6. **Relation Back; Waivers/Defenses.** Any case that is re-filed against National Foam during the Tolling Period shall be deemed by the terms of this Tolling Agreement to relate back to the date each individual lawsuit was originally filed in the state court or district court that first initiated the action. Nothing in this Tolling Agreement shall be deemed a waiver of any arguments or defenses existing as of the Effective Date of this Tolling Agreement, including but not limited to any prior defenses based on the timeliness of the claims such as defenses based on statutes of limitation and statutes of repose. The Parties hereto agree that any prior depositions taken and written discovery and documents exchanged prior to this dismissal may be used by the parties in the MDL and any reinstated action. Any discovery taken in the MDL against National Foam during the Tolling Period may be used in any reinstated case as if that case was pending at the time of the discovery. If necessary, upon reinstatement of any action, Plaintiffs' Counsel and counsel for National Foam shall meet and confer with each other and with other parties' counsel in this action and attempt to agree upon an appropriate scheduling order for the re-inclusion of National Foam, including any time needed for additional discovery or motion practice.

7. **Waiver/Acceptance of Service.** Should Plaintiffs' Counsel reinstate suit against National Foam, the Parties agree that the undersigned counsel for National Foam shall waive and accept service on behalf of National Foam.

8. **Substantive Court Decisions.** If any suit should be reinstated National Foam will not relitigate issues that have been previously decided in that suit by the Court; and agree to be bound to any motions made or decisions rendered by the Court including with regard to the "government contractor" defense in such suit.

8. **Modifications; Extensions.** This Tolling Agreement constitutes the entire agreement between the Parties on the issues addressed herein and may not be modified, altered, or amended except by a writing signed by or on behalf of the Parties to this Tolling Agreement. This Tolling Agreement may be extended by further written agreement signed by or on behalf of the Parties.

9. **Authority.** Each undersigned Party entering into and executing this Tolling Agreement represents, warrants, and states that such Party has the full authority and legal power to do so and that the individuals whose signatures appear below on behalf of each Party are duly authorized to execute this Tolling Agreement on behalf of their respective Parties.

10. **Multiple Counterparts.** This Tolling Agreement may be executed in counterparts and/or by facsimile or PDF electronic mail, and each such counterpart shall be considered an original and together with the others shall constitute one and the same instrument.

11. **Governing Law.** This Tolling Agreement shall be construed and governed in accordance with the laws of the State of South Carolina.

12. **Notices.** Notices pursuant to this Tolling Agreement shall be given both via electronic mail (where indicated below) and in writing addressed as follows:

To Plaintiffs:

Paul J. Napoli
Napoli Shkolnik PLLC
1301 Avenue of The Americas 10th Floor
New York, NY 10019
P: (212)-397-1000
F: (646)-843-7603
pnapoli@napolilaw.com

To National Foam, Inc.:

Keith E. Smith
Greenberg Traurig, L.L.P.
Three Logan Square, Suite 400
1717 Arch Street
Philadelphia, PA 19103
P: (215) 988-7800
smithkei@gtlaw.co

13. **Severability.** Should any provision of this Tolling Agreement be declared invalid by a court of competent jurisdiction, such declaration shall not invalidate the remaining provisions of this Tolling Agreement, which shall be construed as nearly as possible to effectuate the original intentions of the Parties hereto based upon the entire Tolling Agreement, including the invalid provision.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Tolling Agreement.

DATED at this 6th day of April 2020.

/s/ Paul J. Napoli
Paul J. Napoli
Napoli Shkolnik PLLC
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New York, NY 10019
P: (212)-397-1000
F: (646)-843-7603
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Counsel for Plaintiffs.

/s/Keith E. Smith
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1717 Arch Street
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P: (215) 988-7800
smithkei@gtlaw.com
*Counsel for Defendant,
National Foam, Inc.*

AND IT IS SO ORDERED.

April 7, 2020
Charleston, South Carolina

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

In Re: AFFF, MDL No. 2873
Exhibit A
List of Napoli Shkolnik Cases

1. Ackerman et al. v. The 3M Co., et al, 2:18-cv-03311-RMG
2. Adamo et al. v. The 3M Co., et al, 2:18-cv-03356-RMG
3. Adams, et al., v. The 3M Co., et al. 2:18-cv-03369-RMG
4. Anderson et al. v. The 3M Co., et al, 2:18-cv-~~03344~~-RMG -3334
5. Ayo et al. v. The 3M Co., et al, 2:18-cv-03338-RMG
6. Barker, et al., v. The 3M Co., et al. 2:18-cv-03392-RMG
7. Bell, et al., v. The 3M Co., et al. 2:18-cv-03366-RMG
8. Bleichert, et al., v. The 3M Co., et al. 2:18-cv-03380-RMG
9. Braun, et al., v. The 3M Co., et al. 2:18-cv-03370-RMG
10. Burbidge et al. v. The 3M Co., et al, 2:18-cv-03457-RMG
11. Butts, et al., v. The 3M Co., et al., 2:18-cv-03394-RMG
12. Cadrette et al. v. The 3M Co., et al, 2:19-cv-01707-RMG
13. Castro, et al., v. The 3M Co., et al., 2:18-cv-03413-RMG
14. Chisholm, et al. v. The 3M Co., et al. 2:18-cv-03383-RMG
15. Civitarese et al. v. The 3M Co., et al, 2:18-cv-03434-RMG
16. Crow, et al. v. The 3M Co., et al. 2:18-cv-03403-RMG
17. Davis et al. V 3M Company et al, 2:18-cv-03368-RMG
18. Dilwood, et al. v. The 3M Co., et al. 2:18-cv-03407-RMG
19. Eynon et al. v. The 3M Co., et al, 2:18-cv-03365-RMG
20. Fogarty et al. v. The 3M Co., et al, 2:18-cv-03354-RMG
21. Garcia, et al. v. The 3M Co., et al. 2:18-cv-03418-RMG
22. Gibson, et al. v. The 3M Co., et al. 2:18-cv-03416-RMG
23. Gokey, et al. v. The 3M Co., et al. 2:18-cv-03385-RMG
24. Gordon, et al. v. The 3M Co., et al. 2:18-cv-03371-RMG
25. Green et al. v. The 3M Co., et al, 2:18-cv-03335-RMG
26. Gutierrez, et al. v. The 3M Co., et al. 2:18-cv-03381-RMG
27. Guttenberg, et al. v. The 3M Co., et al. 2:18-cv-03411-RMG
28. Hall, et al. v. The 3M Co., et al. 2:18-cv-03414-RMG
29. Hartley, et al. v. The 3M Co., et al. 2:18-cv-03398-RMG
30. Helm, et al. v. The 3M Co., et al. 2:18-cv-03401-RMG
31. Hicks, et al. v. The 3M Co., et al. 2:18-cv-03393-RMG
32. Hutchison, et al. v. The 3M Co., et al. 2:18-cv-03395-RMG
33. Ingemansen, et al. v. The 3M Co., et al. 2:18-cv-03396-RMG
34. Johnson, et al. v. The 3M Co., et al. 2:18-cv-03410-RMG
35. Kahler, et al. v. The 3M Co., et al. 2:18-cv-03391-RMG
36. Kelley, et al. v. The 3M Co., et al. 2:18-cv-03412-RMG
37. Mann, et al. v. The 3M Co., et al. 2:18-cv-03378-RMG
38. McCloskey, et al. v. The 3M Co., et al. 2:18-cv-03419-RMG
39. Miller et al. v. The 3M Co., et al, 2:18-cv-03357-RMG
40. Niskern, et al. v. The 3M Co., et al. 2:18-cv-03417-RMG
41. Oquendo, et al. v. The 3M Co., et al. 2:18-cv-03415-RMG
42. Padilla, et al. v. The 3M Co., et al. 2:18-cv-03404-RMG

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Exhibit A
List of Napoli Shkolnik Cases

43. Parker, et al. v. The 3M Co., et al. 2:18-cv-03377-RMG
44. Rice, et al. v. The 3M Co., et al. 2:18-cv-03397-RMG
45. Roderick, et al. v. The 3M Co., et al. 2:18-cv-03382-RMG
46. Sherban, et al. v. The 3M Co., et al. 2:18-cv-03408-RMG
47. Singer et al. v. The 3M Co., et al, 2:18-cv-03336-RMG
48. Smith et al. v. The 3M Co., et al, 2:18-cv-03372-RMG
49. Smith et al. v. The 3M Co., et al, 2:19-cv-01746-RMG
50. Smith, et al. v. The 3M Co., et al. 2:18-cv-03387-RMG
51. Stacy, et al. v. The 3M Co., et al. 2:18-cv-03402-RMG
52. Taylor, et al. v. The 3M Co., et al. 2:18-cv-03406-RMG
53. Thomas, et al. v. The 3M Co., et al. 2:18-cv-03389-RMG
54. Thompson, et al. v. The 3M Co., et al. 2:18-cv-03390-RMG
55. Walker, et al. v. The 3M Co., et al. 2:18-cv-03409-RMG
56. Wolfe, et al. v. The 3M Co., et al. 2:18-cv-03388-RMG
57. Zysk et al. v. The 3M Co., et al, 2:18-cv-03439-RMG
58. Katz v. 3M Company, The et al., 2:20-cv-00502-RMG
59. Phipps v. 3M Company, The et al., 2:20-cv-00504-RMG
60. Daguanno et al v. 3M Company, The et al., 2:20-cv-00506-RMG
61. McCallister v. 3M Company, The et al., 2:20-cv-00507-RMG
62. Rosenberger et al v. 3M Company, The et al., 2:20-cv-00508-RMG
63. Giardetti et al v. 3M Company, The et al., 2:20-cv-00509-RMG
64. Davis v. 3M Company, The et al., 2:20-cv-00510-RMG
65. Zimmerman v. 3M Company, The et al., 2:20-cv-00512-RMG
66. Cavallo v. 3M Company, The et al., 2:20-cv-00513-RMG
67. Massari v. 3M Company, The et al., 2:20-cv-00514-RMG
68. Sebastian v. 3M Company, The et al., 2:20-cv-00515-RMG
69. Tesno-Manning v. 3M Company, The et al., 2:20-cv-00516-RMG
70. Wagner v. 3M Company, The et al., 2:20-cv-00517-RMG
71. Dontas v. 3M Company, The et al., 2:20-cv-00518-RMG
72. Hessenthaler v. 3M Company, The et al., 2:20-cv-00519-RMG
73. Wills v. 3M Company, The et al., 2:20-cv-00520-RMG
74. Feite v. 3M Company, The et al., 2:20-cv-00521-RMG
75. Oerth v. 3M Company, The et al., 2:20-cv-00522-RMG
76. Samuel v. 3M Company, The et al., 2:20-cv-00523-RMG
77. Wewer v. 3M Company, The et al., 2:20-cv-00524-RMG
78. Skversky v. 3M Company, The et al., 2:20-cv-00525-RMG
79. Zimmerman v. 3M Company, The et al., 2:20-cv-00526-RMG
80. Jones v. 3M Company, The et al., 2:20-cv-00527-RMG
81. Smigo v. 3M Company, The et al., 2:20-cv-00528-RMG
82. Wadsworth v. 3M Company, The et al., 2:20-cv-00529-RMG
83. Hargraves v. 3M Company, The et al., 2:20-cv-00532-RMG
84. Holm v. 3M Company, The et al., 2:20-cv-00536-RMG

Exhibit "A"

In Re: AFFF, MDL No. 2873
Exhibit A
List of Napoli Shkolnik Cases

85. Stein et al v. 3M Company, The et al., 2:20-cv-00539-RMG
86. Haage v. 3M Company, The et al., 2:20-cv-00547-RMG
87. Rinius v. 3M Company, The et al., 2:20-cv-00555-RMG
88. Romaniello v. 3M Company, The et al., 2:20-cv-00557-RMG
89. Buck v. 3M Company, The et al., 2:20-cv-00561-RMG
90. Puggnetti v. 3M Company, The et al., 2:20-cv-00592-RMG
91. Wolcott v. 3M Company, The et al., 2:20-cv-00596-RMG
92. Hillman v. 3M Company, The et al., 2:20-cv-00610-RMG
93. Braithwaite, Jr v. 3M Company, The et al., 2:20-cv-00614-RMG
94. Tucker v. 3M Company, The et al., 2:20-cv-00617-RMG
95. Planinshek v. 3M Company, The et al., 2:20-cv-00620-RMG
96. Fearnley et al v. 3M Company, The et al., 2:18-cv-03440-RMG
97. Kervin v. 3M Company, The et al., 2:18-cv-03558-RMG
98. Andrews et al. v. The Port Authority of New York and New Jersey et al., 2:18-cv-03521-RMG
99. Bermo et al v. The Port Authority of New York and New Jersey et al., 2:18-cv-03522-RMG
100. Allen et al v. The Port Authority of New York and New Jersey et al., 2:18-cv-03523-RMG
101. Hebrank et al v. City of Newburgh., 2:19-cv-02219-RMG

Exhibit "A"