

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTOWN DIVISION

IN RE: AQUEOUS FILM-FORMING
FOAMS PRODUCTS LIABILITY
LITIGATION

JUDGE: RICHARD M. GERGEL
MDL NO. 2:18-MN-2873-RMG

Joan Campbell and Richard Campbell,
for themselves and on behalf of all others
similarly situated,

This Document relates to
Campbell v. Tyco Fire Products LP et al.
No. 2:19-cv-00422-RMG

Plaintiffs,

vs.

Tyco Fire Products LP; Chemguard, Inc.; and
Chemdesign Products, Inc.

Defendants,

MOTION FOR PLAINTIFFS' COUNSEL'S ATTORNEYS' FEES AND COSTS

COME NOW, Plaintiffs, Joan Campbell and Richard Campbell, for themselves and on behalf of all others similarly situated, by and through the undersigned, pursuant to all applicable Federal law and Rules of Civil Procedure, and move for an Order to award Plaintiffs' Counsel's attorneys' fees and costs, and states in support as follows:

1. Plaintiffs and Defendants entered into a First Amended Class Settlement and Release Agreement, dated January 6, 2021 (the "Settlement Agreement") [ECF No. 1087-1] that establishes a private settlement program to resolve the case of *Campbell v. Tyco Fire Products LP et al.* No. 2:19-cv-00422-RMG (the "Action"), which is part of the above-captioned Multi-district Litigation pending before this Court.

2. On January 25, 2021, this Court issued an Order that 1) conditionally certified the Settlement Class; 2) preliminarily approved the Settlement Agreement terms and conditions (subject to a fairness hearing and subsequent final approval); 3) approved the Notice Plan and Class Notice; 4) appointed and designated class representatives and class counsel; and 5) preliminarily approved the settlement distribution plan (the “Preliminary Approval Order”) [ECF No. 1127].

3. Sections 4.6 and 4.7 of the Settlement Agreement provide that Plaintiffs’ Counsel will move the Court for an order of Plaintiffs’ Counsel fees, costs and, including without limitation the fees, costs and expenses of Plaintiffs’ Counsel’s vendors, consultants, and experts, including the cost of class notice and class administration.

4. Under the Preliminary Approval Order and the Joint Stipulation of the Parties approved and entered by the Court on February 23, 2021 [ECF No. 1210] (the “Stipulation”), Plaintiffs are required to file their motion for approval of attorneys’ fees and costs by March 9, 2021.

5. Consistent with Sections 4.6 and 4.7 of the Settlement Agreement, the Preliminary Approval Order, and the Stipulation, Plaintiffs hereby move this Court to award Plaintiffs’ Counsel’s attorneys’ fees, costs and, including without limitation the fees, costs and expenses of Plaintiffs’ Counsel’s vendors, consultants and experts, including settlement administration and class notice costs.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ COUNSEL’S
ATTORNEYS’ FEES AND COSTS**

I INTRODUCTION

The Settlement Agreement, which provides for the payment of \$17.5 million in cash to resolve the Action, is an excellent result for the Settlement Class Members. Upon review of the terms of the Settlement Agreement and the context in which it was negotiated, this Court already

has noted that “a cash compensation from Defendants of \$17,500,000 to the class members represents adequate relief – including in the light of the costs of going to trial, the effectiveness of the proposed distribution, and the terms of the proposed attorneys’ fees” to warrant preliminary approval of the settlement. (Prelim. Approval Order [ECF No. 1127] at 9-10.) The Court similarly recognized that, “class counsel’s extensive engagement and leadership in litigating this multi-district litigation and pursuing the instant proposed settlement indicate that they have adequately represented the class,” particularly in light of “the parties’ extensive arm’s length negotiations to draft and amend their agreement in light of the issues illuminated by the simultaneously prosecuted litigation.” (*Id.* at 9.) The Court also found that the Settlement Agreement “treats class members equitably in relation to one another in the context of settlement fund allocation and the claim submission process.” (*Id.* at 10.) This significant monetary recovery was achieved through the skill, expertise, and effective advocacy of Plaintiffs’ Counsel, who litigated this Action on a fully contingent basis against highly skilled defense counsel.

As agreed and required under the Settlement Agreement, Preliminary Approval Order, and Stipulation, steps have been taken to begin the Court-approved class-wide notice program through the Court-appointed Notice Administrator (the “Notice”). This Notice will be sent to all Class Members through multiple media sources, a website, and direct mailing according to the schedule agreed to by the Parties and approved by the Court. (*See* Stipulation [ECF No. 1210].). The long-form, written notice, attached as Exhibit A, fully informs Class Members of the terms of the settlement, including the fact that Plaintiffs’ Class Counsel would request an award of attorneys’ fees and costs.

Plaintiffs’ Counsel have negotiated and achieved a settlement with Defendants that will provide Class Members with a substantial monetary recovery. Class Counsel, at the law firm of

Napoli Shkolnik PLLC, have spent in excess of 600 hours over the last several years on work leading to this Settlement Agreement, and Class Counsel at the law firm of Taft Stettinius & Hollister LLP has spent more than 375 hours on such activities, with both firms performing such services on a purely contingent fee basis. Counsel have also spent significant additional time learning and litigating the Defendants' overall product liability risks, issues and documents, not included in this time. Plaintiffs, therefore, respectfully submit that it is reasonable and appropriate to approve Plaintiffs' request for payment of Plaintiffs' Counsel's attorneys' fees and costs, as set forth in more detail below.

II. ARGUMENT

A. Plaintiffs' Counsel's requested fees are fair, reasonable, and appropriate.

In this Action, Plaintiffs and the Class sought recovery for negligence, trespass, abnormally dangerous activity, absolute and strict liability, private nuisance, and product liability failure to warn and were represented by counsel on a contingent basis. It is an established practice to reward attorneys who assume representation on a contingent basis to compensate them for the risk that they might be paid nothing at all. *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994). Such a practice encourages the legal profession to assume such a risk and promotes competent representation for plaintiffs who could not otherwise hire an attorney. Plaintiffs' Counsel worked for over 2 years on the class portion of this litigation without payment, risking recovery of nothing in the event they were to generate no benefit for the class. Plaintiffs' Counsel devoted significant time and advanced whatever costs were necessary to investigate and see this case through to a successful outcome, all with no guarantee of reimbursement.

These were uncharted waters. Despite the fact that many cases asserting similar claims against similar defendants (including some of these same defendants in this Action) had been filed

across the United States and made part of this Multi-District Litigation (the “MDL”), this was the first such case in the country – and the first in the MDL – to be settled. Moreover, it is the first settlement in the country where manufacturers of aqueous film-forming foam (“AFFF”) containing per- and/or polyfluoroalkyl substances (“PFAS”) have agreed to compensate people claiming property damage, PFAS exposure damages, and/or actual disease as a result of their alleged exposure to PFAS through AFFF.¹ This settlement thus represents not only an important step forward and benefit for the Class Members in this Action and those in this MDL, but potentially hope for millions of people across the country with similar claims.

Based on the unprecedented outcome in this case by counsel undertaking such work on a contingency fee basis, Plaintiffs’ Counsel are requesting a total attorneys’ fee of 33.33% of the total cash settlement value, inclusive of the MDL common benefit attorneys’ fee and expense assessments required pursuant to Case Management Order No. 3 entered in this MDL on April 26, 2019 [ECF No. 72], and as agreed pursuant to Section 6.8 of the Settlement Agreement. For well over a century the United States Supreme Court has recognized the “common fund” exception to the general rule that a litigant bears his or her own attorney’s fees. *Trs. v. Greenough*, 105 U.S. 527, 26 L. Ed. 1157 (1882). The rationale for the common fund principle was explained in *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980), “that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee from the fund as a whole.” In *Blum v. Stevenson*, the Supreme Court expressed its preference for determining reasonable fees as a percentage of the fund under the common fund doctrine. 465 U.S. 886, 900, n. 16, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984).

¹ Defendants are already addressing alternative water issues in the Class Area separate and apart from this Settlement Agreement through commitments and negotiations with the State of Wisconsin and local municipalities.

Within the Fourth Circuit, the percentage of the fund approach is not only permitted but is the preferred approach to determining attorneys' fees. *See Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 438 (D.Md. 1998) (noting endorsement of percentage-of-recovery method by several courts in the Fourth Circuit); *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 786-87 (E.D.Va. 2001); *Strang v. JHM Mortgage Sec. Ltd. Partnership*, 890 F. Supp. 499, 503 (E.D.Va. 1995) ("the percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases"); *Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 760 (S.D.W.Va. 2009).

Plaintiffs' request for attorneys' fees is reasonable and in accordance with *Barber v. Kimbrell's Inc.*, 755 F.2d 216 (4th Cir. 1978), which sets out the relevant factors in making the determination. These include: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases. As explained below, each of these factors support the attorneys' fee requested in this case:

a. Time and Labor Expended

Class Counsel have invested significant amounts of time and effort learning the highly complex and technical aspects of Defendants' products containing PFAS, their manufacture, sale and distribution, and in ascertaining the impact the site has had on the local aquifer, surrounding

community, private wells and the health of the community. Class Counsel also spent considerable time meeting and talking with various class members to understand and address their concerns, interests, and claims, including alleged impacts to property values, the desire for medical monitoring and diagnostic testing funds, and disease occurrence in the community, leading to lengthy negotiations to address such issues on a class-wide basis. The process of achieving this resolution took hundreds of hours of work.

b. Novelty and Difficulty.

The issues represented required counsel with significant experience in environmental, toxic tort, PFAS, and product liability litigation to navigate the emerging and evolving scientific research on environmental fate and transport of PFAS in groundwater, health impacts linked to PFAS exposures, and the changing regulatory framework of PFAS at the national and state level. These are all very complex and nuanced issues requiring many years of experience and resulted in a novel and unique settlement that is the first of its kind in any AFFF litigation to date.

c. Legal Skills Required.

As noted above, the particular situation at issue involved highly complex and evolving issues, many of which required special skills and understanding of PFAS science and litigation theories, with highly skilled and sophisticated parties and counsel on the other side. Class Counsel are among the most experienced and skilled practitioners in the class and mass action, environmental, and product liability fields and the firms have long and successful track record in these cases throughout the country. Class Counsel here include counsel that led, litigated, and settled the first and largest PFAS individual and class actions in the country, including the first cases to address medical monitoring and personal injuries linked to PFAS exposures and the first trials in the country for those claiming personal injuries linked to PFAS exposures. Class Counsel

have drawn on their decades of prior experience in these and other complex environmental, toxic tort, and product liability cases, to negotiate a novel and first-of-its-kind settlement that provides an extensive array of potential benefits to class members, including compensation now for property damage, PFAS exposures, and disease claims, without class members having to face the delay and expense of litigating these issues any further or going to trial.

d. Attorneys' Opportunity Costs in Pressing the Litigation.

In this case, Class Counsel have spent hundreds of hours and invested significant expenses over several years investigating and pursuing the claims of Class Members and negotiating the Settlement while receiving no compensation. Any fee award and expense reimbursement has always been at risk and contingent on the result achieved, and the time and expense invested was time and expense that could have been spent or invested on other cases for other clients. Significant additional work will still be required to finalize and implement the Settlement and claims administration processes.

e. Customary Fees.

It is customary for Plaintiffs' counsel, as they did here with the class representatives, to accept a case like this seeking property damages, exposure damages or personal injury damages on a contingency fee basis, as it is not uncommon for individuals with such claims to not be in a position to be able to pay hourly rates with the risk of no recovery. In such circumstances, it is also not uncommon for lawyers agreeing to pursue such claims on a contingency basis to set the contingency fee at 33.3% of the ultimate recovery. As stated *supra* the Fourth Circuit prefers the percentage of fund approach in determining attorneys' fees. *See e.g. Savani v. URS Prof'l Solutions LLC.*, 121 F. Supp.3d 564 (D.S.C. 2015) (awarding a common fund fee of 39.57%).

f. Attorney's Expectation at Outset of Litigation.

The risks in complex, multi-year litigation are real, and despite the most vigorous and competent efforts, success in contingent litigation such as this is never guaranteed. Class Counsel expected to be rewarded if successful based on the results obtained for the benefit of the class.

g. Time Limitations Imposed by Client or Circumstances.

This case was removed from state court and subsequently transferred to this AFFF MDL court where there have been regular deadlines imposed and active discovery. The Settlement was reached only after over two years of hotly contested, difficult litigation conducted through the ongoing AFFF MDL proceedings, including substantial fact discovery, which required Class Counsel to dedicate a significant amount of time and resources to such issues.

h. Amount in Controversy and Results Obtained.

Class Counsel were able to obtain a recovery of \$17.5 million for hotly-contested PFAS property damage, exposure, and personal injury claims. \$11 million is allocated to property damage claimants, \$4 million is allocated to individual exposure claimants, and \$2.5 million is allocated to personal injury claimants. These are significant amounts in light of the level and extent of litigation and debate among the Parties on the scientific and legal issues underlying the claims of the Class Members and the procedural posture of the case within the AFFF MDL.

i. Experience, Reputation and Ability of Counsel.

Class Counsel's experience in complex litigation in the mass tort arena, including class actions and PFAS litigation, is well known throughout the country and is described in further detail in Plaintiff's Motion for Preliminary Approval of the Settlement (ECF No. 1087).

j. Undesirability of Case Within the Legal Community in Which Suit Arose.

Class counsel were approached to take on this case because of their unique abilities to handle complex environmental and toxic tort cases, along with their unique PFAS experience,

which were unusual within the local community. Class Counsel then agreed to take on this case on a contingency basis and thereafter devoted substantial time and resources with no assurance or a successful outcome.

k. Nature and Length of Professional Relationship Between Attorney and Client.

Class Counsel include counsel who were first retained in April of 2018 and have since been retained by the other class representatives. During that time, counsel have worked with the Class Representatives to achieve the goals set out for the class.

l. Attorneys' Fees Awards in Similar Cases.

Courts often award fees in class actions that are in the range of 30% or more. *LandAmerica 1031 Exch. Servs. v. Chandler*, No. MDL No. 2054, 2012 U.S. Dist. LEXIS 159630 (D.S.C. Nov. 7, 2012) (noting the survey of common fund fee awards in the Fourth Circuit and elsewhere by the Honorable Liam O'Grady). *See e.g., In re Heritage Bond Litig.*, No. 02-ML-1475 DT(RCx), 2005 U.S. Dist. LEXIS 13555, at *61 (C.D. Cal. June 10, 2005) (awarding 33 1/3% of \$ 27.783 million settlement); *In re Ravisent Techs., Inc. Sec. Litig.*, No. 00-CV-1014, 2005 U.S. Dist. LEXIS 6680, at *51 (E.D. Pa. Apr. 18, 2005) (awarding attorneys' fees of one-third of \$ 7 million settlement); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 498 (E.D. Pa. 2003) (awarding 33 1/3% of \$ 7 million settlement); *In re E.W. Blanch Holdings, Inc. Sec. Litig.*, No. 01-258, 2003 U.S. Dist. LEXIS 26402, at *10 (D. Minn. June 16, 2003) (awarding 33 1/3% of \$ 20 million settlement); *Faircloth v. Certified Fin. Inc.*, No. 99-3097, 2001 U.S. Dist. LEXIS 6793, at *37 (E.D. La. May 16, 2001) (awarding attorneys' fees of 35% of \$ 1.6 million settlement fund); *In re Eng'g Animation Sec. Litig.*, 203 F.R.D. 417, 423-24 (S.D. Iowa 2001) (awarding attorneys' fees of \$ 2.5 million, or one third of common fund); *In re Unisys Corp. Sec. Litig.*, No. 99-5333, 2001 U.S. Dist. LEXIS 20160, at * 10 (E.D. Pa. Dec. 6, 2001) (approving fee of 33% as "fair and

reasonable"); *In re Safety Components Int ' , Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 101-02 (D.N.J. 2001) (approving fee request of one-third of \$ 4.5 million settlement); *Neuberger v. Shapiro*, 110 F. Supp. 2d 373, 386 (E.D. Pa. 2000) (approving one third of \$ 4,325,000 settlement fund).

In sum, for reasons set forth above, the 33.3% percentage requested in this case is reasonable and appropriate under the circumstances, and consistent with prior decisions in this Circuit

B. Plaintiffs' Counsel are Entitled to Reimbursement of Out-of-Pocket Costs.

Plaintiffs' Counsel also request that the Court grant their application for reimbursement of their costs incurred in prosecuting and resolving this litigation for the Class Members, along with the costs and expenses of the Class Notice, Settlement, and Class Administration, as agreed under the Settlement Agreement and as preliminarily approved under the Preliminary Approval Order. The costs incurred in this regard and for which Plaintiffs' Counsel seek reimbursement are listed and identified in more detail on Exhibit B hereto.

As courts have recognized, "Class Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk of no recovery when the fee is contingent." *Beesley v. Int'l Paper Co.*, No. 3:06-CV-703-DRH-CJP, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014). This is true here, where Plaintiffs' Counsel expended only that which they believed was necessary to advance the interests of the Class Members and as required under the Settlement Agreement and Preliminary Approval Order. Plaintiffs' Counsel respectfully submits that the cost and expense reimbursement requested here is reasonable and appropriate, given the nature of the litigation and settlement achieved, and should be reimbursed.

III. CONCLUSION

From the outset of this litigation, Plaintiffs faced a determined adversary represented by experienced counsel in a highly complex case. With no assurance of success in a case presenting substantial risks, Plaintiffs' Counsel pursued the case and successfully obtained \$17.5 million in settlement benefits for the Class Members. The settlement reflects Plaintiffs' Counsel's determination and efforts in the face of significant risk. Accordingly, Plaintiffs' Counsel respectfully requests that the Court grant this Motion and: (i) award Plaintiffs' Counsel 33.33% of the \$ 17.5 settlement value as attorneys' fees; and (ii) award \$390,810.02 as reimbursement of Plaintiffs' Counsel's costs and expenses of this Action.

DATED: March 9th, 2021

Respectfully Submitted,

By: /s/ Paul J. Napoli

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Plaintiffs' and Class Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of March, 2021, I electronically filed the foregoing document with the Courts E-Filing Portal, which will automatically send notice and a copy of same to all parties on the service list below:

Counsel for Tyco Fire Products LPO and
Chemguard, Inc.:

Joseph G. Petrosinelli, Esq.
Liam J. Montgomery, Esq.
Williams and Connolly, LLP
725 12th Street, N.W.
Washington, DC 20005

Counsel for ChemDesign Products, Inc.:

J. Hayes Ryan, Esq.
Jonathan B. Blakely, Esq.
Gordon Rees Scully Mansukhani, LLP
1 N. Franklin Street, Ste. 800
Chicago, IL 60606

/s/ Patrick J. Lanciotti, Esq.

EXHIBIT A

Tyco Fire Products Administrator
P.O. Box 5855
Portland, OR 97228-5855

NOTICE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

If, during the period between January 1, 1965, and December 31, 2020, you currently reside or formerly resided in or currently own or formerly owned, (i) a property with a Private Well Drinking Water Source; (ii) within the area bounded in the north by University Drive, in the south by Heath Lane, in the west by Roosevelt Road and in the east by the Bay of Green Bay, all in the Town of Peshtigo, Wisconsin; (iii) for at least one (1) year during the Class Period,

You may be eligible for a cash payment and your rights may be affected by a proposed class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

The proposed Settlement is with Tyco Fire Products LP, Chemguard Inc., and ChemDesign Products Inc., (“Defendants”) in a lawsuit alleging the contamination of Private Well Drinking Water Sources with perfluorinated chemicals (“PFAS”) in the portion of the Town of Peshtigo, Wisconsin described above (the “Class Area”). The proposed Settlement provides payments to affected current and former residents in the Class Area who owned real property in the Class Area and/or used a private well drinking water source while residing in the Class Area for (1) alleged loss of value to real property within the Class Area caused by the presence of PFAS in drinking water, (2) exposure to PFAS in drinking water, and/or (3) certain personal injuries allegedly caused by exposure to PFAS in drinking water.

The Court in charge of this case must conduct a hearing to decide whether to approve the proposed Settlement. No proceeds from the Settlement will be distributed until the Court approves the Settlement and the time for any and all appeals has expired.

Your legal rights and options—and the deadlines to exercise them—are explained in this notice. Your rights are affected whether you act or don’t act. Please read this notice carefully.

WHAT THIS NOTICE CONTAINS

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2. What is this lawsuit about?
3. Why is this case a class action?
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14. When and where will the Court decide whether to approve the Settlement?
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BASIC INFORMATION

1. Why did I get this notice package?

You have received this Notice of Class Action Settlement because you have been identified as a potential member of the class on whose behalf claims will be settled, if the Court approves the proposed Settlement. The case involved in this proposed Settlement is *Campbell v. Tyco Fire Products LP, Chemguard Inc. and ChemDesign Products Inc.*, No. 2:19-cv-00422-RMG. The Court in charge of this cases is the United States District Court for the District of South Carolina, the Honorable Richard M. Gergel presiding. The people who sued are called the Plaintiffs, and the companies they sued are called the Defendants.

The claims in the case are described in greater detail on page 3. The people covered by the proposed Settlement (“the Class Members”) are individuals who, during the period between January 1, 1965, and December 31, 2020, currently reside or formerly resided in or currently own or formerly owned, (i) a property with a Private Well Drinking Water Source; (ii) within the area bounded in the north by University Drive, in the south by Heath Lane, in the west by Roosevelt Road and in the east by the Bay of Green Bay, all in the Town of Peshtigo, Wisconsin (the “Class Area”); (iii) for at least one (1) year during the Class Period.

The Court approved this notice being sent to you because you have a right to know about the proposed Settlement of this class action lawsuit, and about your options and your opportunity to object, before the Court decides whether to approve the Settlement. If the Court approves the proposed Settlement, and after any objections and appeals are resolved, the parties will proceed to fulfill their obligations in accordance with the terms of the Settlement Agreement.

2. What is this lawsuit about?

Tyco Fire Products LP owns and operates a Fire Technology Center at 2700 Industrial Parkway, in Marinette, Wisconsin and an additional facility at 1 Stanton Street in Marinette, Wisconsin, both of which are located to the north/northwest of the Class Area. This case arises from Defendants’ alleged releases of perfluorinated chemicals, including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), into the groundwater at the Fire Technology Center and/or the Stanton Street facility that subsequently made its way to private well drinking water sources in the Class Area. In 2018, Class Counsel filed an individual and class action lawsuit against Defendants alleging that their releases have impacted and continue to impact the private drinking water wells in the Class Area, causing loss of property value, damages related to exposure to PFAS, and certain personal injuries allegedly caused by PFAS exposure. The Court filings setting forth the Plaintiffs’ claims against the Defendants may be viewed at www.FirefightingFoamSettlement.com. That website also contains all other relevant filings in this case.

Defendants deny the allegations in this lawsuit and specifically deny and dispute the factual, scientific, medical, or other bases asserted in support of Plaintiffs’ claims, including the Class Representatives’ demands for damages related to PFAS, including PFOA and PFOS.

3. Why is this case a class action?

In a class action, one or more people, called Class Representatives sue on behalf of people who may have similar claims. All of the people represented by the Class Representatives are a “Class” or “Class Members.” One court presides over the class-wide claims that the court determines should be addressed in one proceeding for all Class Members. In this case, the Plaintiffs and Defendants have also made available a fund that can be used to provide payments to individuals who claim to have suffered certain personal injuries allegedly as a result of their exposure to PFAS in private well drinking water in the Class Area.

On January 25, 2021, U.S. District Judge Richard M. Gergel preliminarily certified the proposed class for purposes of a Class Settlement.

4. Why is there a Settlement?

The Court did not decide in favor of the Class Representatives or Defendants in this case. The Class Representatives, with the advice of Class Counsel, and Defendants have agreed to the terms of this Settlement to avoid the cost, delay, and uncertainty that would come with additional litigation and trial. The Class Representatives and Class Counsel think the Settlement is best for Class Members because it provides certain relief now. The agreement to settle is not an admission of fault by Defendants. Defendants specifically dispute the claims asserted in this case, including the claims of damages related to PFAS, including PFOA or PFOS.

WHO IS IN THE SETTLEMENT?

In order to be included in this Settlement, you must be a Class Member.

5. How do I know if I am part of the Settlement?

Judge Gergel has preliminarily certified a class which includes everyone who fits the following description:

All Persons who, during the period between January 1, 1965, and December 31, 2020, currently reside or formerly resided in or currently own or formerly owned, (i) a property with a Private Well Drinking Water Source; (ii) within the area bounded in the north by University Drive, in the south by Heath Lane, in the west by Roosevelt Road and in the east by the Bay of Green Bay, all in the Town of Peshtigo, Wisconsin; (iii) for at least one (1) year during the Class Period.

Because you have received this Notice of Class Action Settlement, you may be a member of the class described above.

6. Which companies are included?

Tyco Fire Products LP, Chemguard Inc. and ChemDesign Products Inc., all of the Defendants in this Action, are included in this proposed Settlement.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

Certain provisions of the proposed Settlement are described in this notice, but the documents on file with the Court set forth the Settlement and its terms more fully. Those documents are available for you to review at www.FirefightingFoamSettlement.com. The proposed Settlement is subject to Court approval.

The Settlement provides for benefits to the Class Members to resolve the Class Claims against Defendants.

Specifically, the Settlement provides for a Total Settlement Amount of \$17.5 million, which will include attorney fees, litigation expenses, and administrative costs for this Settlement, in an amount to be determined by the Court at a later date, inclusive of common benefit fees of MDL 2873 if such fees and expenses are approved by the Court. The Total Settlement Amount (\$17,500,000) will consist of \$15 million for class action claims and \$2.5 million for individual personal injury claims. Of the total, \$11 million of the Total Settlement Amount will be used for the alleged loss of value to real property within the Class Area caused by the presence of PFAS in drinking water (“Real Property Class Damages”). A further \$4 million has been allocated for alleged harms related to exposure to PFAS in drinking water (“Exposure Class Damages”).

Finally, \$2.5 million has been allocated to those individual Class Members who can provide proof that they suffered from (1) testicular cancer; (2) kidney cancer; (3) pregnancy-induced hypertension; (4) ulcerative colitis; and/or (5) thyroid disease (the “Eligible Personal Injuries”) allegedly caused by exposure to PFAS in drinking water (“Personal Injury Damages”). Personal Injury Damages are separate and apart from the Class damages. Any monies from the Property Class Damages or Exposure Class Damages Settlement funds that are not paid to eligible Class Members or for attorney fees, litigation expenses or administrative costs of this Settlement will escheat to the State of Wisconsin.

More specific information on potential ranges of Settlement benefits available to Participating Class Members can be found on this webpage maintained by Class Counsel: www.FirefightingFoamSettlement.com.

Once the Court enters final approval, this Settlement provides that Class Members, in exchange for these class benefits, will release and agree not to sue Defendants for any and all past, present or future claims, demands, obligations, causes of action, rights, damages, costs, attorneys’ fees, loss of services, earnings or consortium, future medical expenses, expenses and compensation of any nature whatsoever, whether based on tort, contract (express, implied or otherwise), statute or any other theory of recovery, and whether for compensatory or punitive damages, that the Class Members now have or may hereafter accrue or otherwise be acquired, in any way, including those arising out of or relating to (i) the acts, omissions or events alleged in the Action, (ii) the Class Members’ alleged exposure to or consumption of PFAS, (iii) the alleged presence of PFAS in, on, or around any property owned or occupied by the Class Members, including the Class Members’ homes and drinking water wells, and (iv) the alleged presence of PFAS in the Class Members’ water supply. The Release will not, however, include latent or unknown personal injury/disease claims, including those arising from Eligible Personal Injuries, that are held by Class Members who neither opt out of nor participate in the Settlement.

Defendants deny the claims in this case. If you have questions about the proposed Settlement, please do not contact Defendants. Instead, you should contact Class Counsel at:

Paul J. Napoli, Esq.
Hunter Shkolnik, Esq.
Napoli Shkolnik
270 Munoz Rivera Ave, Ste 201
Hato Rey, PR 00918
(787) 493-5088
PNapoli@NSPRLaw.com
Hunter@NSPRLaw.com

Robert A. Bilott, Esq.
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
(513) 381-2838

8. What do I have to do to receive class benefits?

To receive the Real Property Class Damages and/or Exposure Class Damages (the “Class Damages”) you will be required to do the following by no later than 49 days after the Effective Date¹ of this Settlement (which may be as early as July 12, 2021). To claim Real Property Class Damages and/or Exposure Class Damages, as described above, you will be required to submit a sworn declaration that certifies as truthful records sufficient to demonstrate that (1) you currently reside or formerly resided in or currently own or formerly owned a residential property in the Class Area for at least one year between January 1, 1965, and December 31, 2020; and, if applicable, that (2) you drank, cooked with, bathed in, or otherwise were exposed to water supplied from a Private Well Drinking Water Source.

To claim the Personal Injury Damages you will be required to do the following by no later than 28 days after the Effective Date of this Settlement (which may be as early as June 21, 2021). To claim Personal Injury Damages, you will also need to submit an additional sworn declaration that certifies as truthful records sufficient to demonstrate that you (1) currently reside or formerly resided in a residential property in the Class Area for at least one year between January 1, 1965, and December 31, 2020, (2) drank, cooked with, bathed in, or otherwise were exposed to water supplied from a Private Well Drinking Water Source, and (3) were medically diagnosed with one or more of the Eligible Personal Injuries, with the initial diagnosis occurring more than one year after you first resided in or lived on a residential property in the Class Area.

9. Does this Settlement affect ongoing Tyco remediation measures in this area?

Tyco has separately offered or been providing an alternative source of water – such as bottled water, a Point of Entry Treatment (POET) system, a municipal water line connection, or some other permanent drinking water source – to *some* residents within a portion of the Class Area. Tyco does not currently intend to expand access to these alternative sources of water beyond the range Tyco refers to as the “Study Area,” which is smaller than the Class Area.

Tyco is negotiating separately with the Wisconsin Department of Natural Resources (WDNR) and local municipalities regarding provision of alternative sources of water. Whether any particular property within the Class Area is eligible for an alternative source of water will be addressed through these separate negotiations. This Settlement does not affect those negotiations and does not affect the alternative water sources Tyco has already offered or been providing to residents in the Study Area.

It is very important to note that all Class Members will be releasing their right to sue Defendants to obtain an alternative water source, even if the Class member does not make a claim under the Settlement. A Class Member will retain that right *only* if they formally opt out of the Settlement and forego any and all of the benefits offered under the Settlement.

This means that, if you are a Class Member who owns property outside of the Study Area, you must consider your options carefully, because there is no current commitment by Tyco to provide you with clean water. Class Members who own property with a private drinking water well that has not yet been tested for PFAS may request testing through this Settlement, and the test will be paid for by Defendants Tyco and Chemguard. These test results will not affect whether Tyco will provide an alternative water source, but may affect a Class Member’s decision whether to submit a claim or instead opt out. Please *immediately* let Class Counsel know if you want Defendants to test your private well.

¹ “Effective Date” means the date on which the time for any appeals of the Court’s Final Approval Order has expired with no appeal filed, or, in the case that any appeal is filed, the date on which all appeals are finally dismissed or decided in favor of affirming the Settlement without modification.

Please note that the timing of test results will vary depending on the timing of the request, laboratory processing times, and mailing times, which may be affected by pandemic-related delays and is not controlled by Class Counsel or Defendants.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The Court approved the law firms of Napoli Shkolnik PLLC and Taft Stettinius & Hollister LLP as Interim Class Counsel to represent you and other Class Members. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

As part of the final approval of this Settlement, Class Counsel will ask the Court to approve payment of their reasonable attorneys' fees and expenses related to their work in this case.

Class Counsel will make their request for Attorneys' Fees and Expenses through a motion that will be filed with the Court prior to date of the Fairness Hearing and prior to the deadline for Class Members to file their Objections. That motion will be made available at www.FirefightingFoamSettlement.com.

The Court will determine whether the payments and the specific amounts requested at that time are appropriate. These amounts will come out of the Settlement Amount. Defendants do not oppose this request for fees and expenses.

REQUESTING EXCLUSION FROM THE CLASS ACTION SETTLEMENT

12. How do I opt out of the Settlement?

If you do not want to participate in the Settlement, you must exclude yourself by filing a written request for exclusion. If you exclude yourself, you will receive none of the Settlement benefits, but will be free to pursue on your own behalf whatever legal rights you may have. Written requests for exclusion must be signed under penalty of perjury and include the potential Class Member's name, address, and telephone number, and expressly state the desire to be excluded from the Settlement Class in *Campbell v. Tyco Fire Products LP*, No. 2:19-cv-00422-RMG. Such request must be (a) filed with the U.S. District Court Clerk, identifying this Action and its case number, postmarked on or before March 29, 2021 (which is the end of the Opt Out Period), and (b) sent by First-Class Mail to Class Counsel and Defendant's counsel and postmarked on or before March 29, 2021 (which is the end of the Opt Out Period) at the following addresses:

1) U.S. District Court Clerk:

Robin L. Blume
Clerk of Court, United States District Court for the District of South Carolina
Charleston Federal Courthouse
85 Broad Street
Charleston, SC 29401

2) Class Counsel:

Paul J. Napoli, Esq.
Hunter Shkolnik, Esq.
Napoli Shkolnik
270 Munoz Rivera Ave, Ste 201
Hato Rey, PR 00918
(787) 493-5088
PNapoli@NSPRLaw.com
Hunter@NSPRLaw.com

Robert A. Bilott, Esq.
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
(513) 381-2838

3) Counsel for Tyco Fire Products LP and Chemguard, Inc.:

Joseph G. Petrosinelli, Esq.
Liam J. Montgomery, Esq.
Williams & Connolly, LLP
725 12th Street, N.W.
Washington, DC 20005

4) Counsel for ChemDesign Products, Inc.:

J. Hayes Ryan, Esq.
Jonathan B. Blakley, Esq.
Gordon Rees Scully Mansukhani, LLP
1 N. Franklin Street, Ste. 800
Chicago, IL 60606

OBJECTING TO THE SETTLEMENT

13. How do I tell the Court if I don't like the Settlement?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. The Court will consider your views. To object, you must send a letter saying that you object to the *Campbell v. Tyco Fire Products LP* Settlement, and you must specifically state your objections. You must include your name, address, telephone number, and your signature; indicate whether you are a current or former employee, agent, or contractor of any Defendant or Class Counsel; and provide a detailed statement of the reason why you object to the Settlement. Mail the objection to the three places listed below, postmarked no later than March 29, 2021:

1) U.S. District Court Clerk:

Robin L. Blume
Clerk of Court, United States District Court for the District of South Carolina
Charleston Federal Courthouse
85 Broad Street
Charleston, SC 29401

2) Class Counsel:

Paul J. Napoli, Esq.
Hunter Shkolnik, Esq.
Napoli Shkolnik
270 Munoz Rivera Ave, Ste 201
Hato Rey, PR 00918
(787) 493-5088
PNapoli@NSPRLaw.com
Hunter@NSPRLaw.com

Robert A. Bilott, Esq.
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
(513) 381-2838

3) Counsel for Tyco Fire Products LP and Chemguard, Inc.:

Joseph G. Petrosinelli, Esq.
Liam J. Montgomery, Esq.
Williams & Connolly, LLP
725 12th Street, N.W.
Washington, DC 20005

4) Counsel for ChemDesign Products, Inc.:

J. Hayes Ryan, Esq.
Jonathan B. Blakley, Esq.
Gordon Rees Scully Mansukhani, LLP
1 N. Franklin Street, Ste. 800
Chicago, IL 60606

If you object to the Settlement and if the Court denies your objection, you shall have seven (7) days from the date of the Court's order to opt out of the Settlement following the procedure set forth above in Question 14.

THE COURT'S FAIRNESS HEARING

14. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a Fairness Hearing on May 24, 2021. The Fairness Hearing may be held either by video conference (such as Zoom) or in person at the United States District Court for the District of South Carolina, 83 Meeting Street, Charleston, South Carolina 29401. Once the Court confirms the manner in which the hearing will take place (i.e. either by video conference or in person at the court house), that information will be made available on the website and/or you will be notified by Class Counsel. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also address Class Counsel's Motion for Attorney Fees and Expenses. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

15. Do I have to attend the hearing?

You do not have to attend the Fairness Hearing. Class Counsel will answer questions Judge Gergel may have, but you are welcome to attend at your own expense. If you send an objection, you do not have to attend to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

16. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in the Fairness Hearing for *Campbell v. Tyco Fire Products LP, Chemguard Inc.* and ChemDesign Products Inc., No. 2:19-cv-00422-RMG." Be sure to include your name, address, telephone number, and your signature. Your "Notice of Intention to Appear" must be postmarked no later than March 29, 2021, and must be sent to the three addresses listed in the "Objecting to the Settlement" section of this Notice.

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing at all, you will be bound by the Release of Defendants in the lawsuit as described above, with the exception of latent or unknown personal injury/disease claims, including those arising from Eligible Personal Injuries, as described earlier.

GETTING MORE INFORMATION

18. How do I get more information?

DO NOT CALL the Court or Defendants with questions about this Settlement. If you have questions about this Settlement, you should contact Class Counsel at:

Paul J. Napoli, Esq.
Hunter Shkolnik, Esq.
Napoli Shkolnik
270 Munoz Rivera Ave, Ste 201
Hato Rey, PR 00918
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Robert A. Bilott, Esq.
Taft Stettinius & Hollister LLP
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Additional information and documents pertaining to the Settlement can be found by visiting the website www.FirefightingFoamSettlement.com.

EXHIBIT B

COMMON COST CATEGORIES	Reason for Common Costs	Common Cost Totals
Experts:		
Napoli Shkolnik PLLC Expert costs		
Earth Foresics Inc.	Contamination plume mapping	\$24,820.00
Filing fees, service of process	Court filings and service of process	
Napoli Shkolnik PLLC		\$1,530.00
Travel:		
Napoli Shkolnik travel	Travel	1,077.07
Research		
Napoli Shkolnik PLLC costs	Lexis research costs	\$342.85
Court Approved Class Notice Fees		
Napoli Shkolnik PLLC costs:		
Court Appointed Special Master/Administrator, estimated total costs**	Estimated costs for work of Court approved Special Master and Administrator	\$163,131.50
Signal Interactive Media LLC	Costs of Court approved media and not	\$114,908.60
Epiq, estimated total costs**	Estimated costs of administration of lien checks, class mailings, website intakes and claims data support.	\$85,000.00
GRAND TOTAL		\$390,810.02
**Estimated total costs for class related services		