

24CV73929

FEB 22, 2024 03:27 PM


 Grant Walraven, Clerk
 Gordon County, Georgia

IN THE SUPERIOR COURT OF GORDON COUNTY
 STATE OF GEORGIA

MOSS LAND COMPANY, LLC, and)
 REVOCABLE LIVING TRUST OF)
 WILLIAM DARRYL EDWARDS, by)
 and through WILLIAM DARRYL)
 EDWARDS, TRUSTEE,)

Plaintiffs,

vs.

Case Number: 24CV73929

CITY OF CALHOUN, GEORGIA;)
 3M COMPANY; DAIKIN AMERICA,)
 INC.; E.I. DUPONT DE NEMOURS)
 AND COMPANY; THE CHEMOURS)
 COMPANY; INV PERFORMANCE)
 SURFACES, LLC; ARROWSTAR,)
 LLC; ALADDIN MANUFACTURING)
 CORPORATION; MOHAWK CARPET,)
 LLC; MOHAWK INDUSTRIES, INC.;)
 SHAW INDUSTRIES, INC.; SHAW)
 INDUSTRIES GROUP, INC.;)
 MILLIKEN & COMPANY;)
 MANNINGTON CARPETS INC.; THE)
 DIXIE GROUP, INC.; and MARQUIS)
 INDUSTRIES, INC.,)

Defendants.

ANSWER AND CROSSCLAIM FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW, the City of Calhoun, Georgia (hereinafter also referred to as
 “Calhoun” or “this Defendant”), and in response to the Complaint filed herein, provides its
 Answer and Crossclaim For Damages and Injunctive Relief as follows:

FIRST DEFENSE

To the extent applicable to Plaintiffs' claims, this Defendant is not liable to Plaintiffs because Plaintiffs' claims against this Defendant may be barred by Plaintiffs' failure to provide timely and sufficient ante litem notice as required by O.C.G.A. § 36-33-5.

SECOND DEFENSE

This Defendant is not liable to Plaintiffs because this Defendant did not breach any duty owed to Plaintiffs.

THIRD DEFENSE

To the extent applicable to Plaintiffs' claims, this Defendant asserts the defenses of sovereign immunity, official immunity, legislative immunity, or other similar immunities available to governmental entities or officers within the State of Georgia.

FOURTH DEFENSE

Any prayers or requests in Plaintiffs' Complaint for punitive damages are not proper because such damages are barred against Calhoun. *See, e.g., City of Columbus v. Myszka*, 246 Ga. 571 (1980).

FIFTH DEFENSE

This Defendant is not liable to Plaintiffs because Plaintiffs' alleged injuries and/or damages were directly and proximately caused by persons or forces over which this Defendant had no control.

SIXTH DEFENSE

None of this Defendant's alleged acts or omissions were the proximate cause of Plaintiffs' alleged injuries or damages, and therefore, Plaintiffs are not entitled to relief against this Defendant.

SEVENTH DEFENSE

Because of an intervening or superseding cause, this Defendant is not liable to Plaintiffs.

EIGHTTH DEFENSE

Some of all of Plaintiffs' claims against this Defendant are barred or diminished by the doctrine of assumption of the risk.

NINTH DEFENSE

Some or all of Plaintiffs' claims against this Defendant are barred or diminished by the doctrines of comparative negligence and/or apportionment.

TENTH DEFENSE

Subject to and without waiving any of the defenses stated above or below, Calhoun responds to the individually numbered paragraphs of Plaintiffs' Complaint as follows:

STATEMENT OF THE CASE

1. Calhoun affirmatively states that PFAS are considered toxic by the Environmental Protection Agency ("EPA"). As to the remainder of paragraph 1 of the Complaint, Calhoun is without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in paragraph 1 of the Complaint, and therefore the same is denied.

2. Calhoun affirmatively states that sewage treatment sludge was allowed to be placed on certain properties in Gordon County, Georgia, and that PFAS are considered toxic by the EPA. As to the remainder of paragraph 2 of the Complaint, Calhoun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint, and therefore the same is denied.

3. Calhoun affirmatively states that it has learned that PFAS contaminated wastewater has been placed into the City of Calhoun, Georgia's public sewer system and the wastewater has been, and is ultimately, collected at the Calhoun Water Pollution Control Plant ("WPCP"). As now known, PFAS in the wastewater resists degradation during conventional wastewater processing at WPCP and collects in the sludge, which is residue from the water treatment process. Calhoun affirmatively states that sludge from the WPCP has been disposed of by land application on certain properties in Gordon County, Georgia. Calhoun is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Complaint, and therefore the same is denied.

4. The allegations contained in paragraph 4 of the Complaint are admitted.

5. Calhoun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint, and therefore the same is denied.

JURISDICTION AND VENUE

6. The allegations contained in paragraph 6 of the Complaint are admitted.

7. The allegations contained in paragraph 7 of the Complaint are admitted.

8. Calhoun denies that the Plaintiffs' alleged damages have been proximately caused by the actions of the City. Calhoun admits that the Plaintiffs' property is located in Gordon County, Georgia. The remaining allegations contained in paragraph 8 of the Complaint are denied.

9. The allegations contained in paragraph 9 of the Complaint are admitted.

10. The allegations contained in paragraph 10 of the Complaint are admitted.

11. The allegations contained in paragraph 11 of the Complaint are admitted.

12. The allegations contained in paragraph 12 of the Complaint are admitted.

Calhoun denies, however, that the ante litem notice substantially complies with O.C.G.A. § 36-33-5.

PARTIES

13. The allegations contained in paragraph 13 of the Complaint are admitted.

14. Calhoun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, and therefore the same is denied.

15. The allegations contained in paragraph 15 of the Complaint are admitted.

16. The allegations contained in paragraph 16 of the Complaint are admitted.

17. The allegations contained in paragraph 17 of the Complaint are admitted.

18. The allegations contained in paragraph 18 of the Complaint are admitted.

19. The allegations contained in paragraph 19 of the Complaint are admitted.
20. The allegations contained in paragraph 20 of the Complaint are admitted.
21. The allegations contained in paragraph 21 of the Complaint are admitted.
22. The allegations contained in paragraph 22 of the Complaint are admitted.
23. The allegations contained in paragraph 23 of the Complaint are admitted.
24. The allegations contained in paragraph 24 of the Complaint are admitted.
25. The allegations contained in paragraph 25 of the Complaint are admitted.
26. The allegations contained in paragraph 26 of the Complaint are admitted.
27. The allegations contained in paragraph 27 of the Complaint are admitted.

FACTUAL ALLEGATIONS

Carpet Manufacturers' Discharges to Calhoun's WPCP

28. The allegations contained in paragraph 28 of the Complaint are admitted.
29. Calhoun affirmatively states that facilities in and around Calhoun have used products containing PFAS and discharged the same to the Calhoun Public Sewer System and ultimately the WPCP. The remaining allegations contained in paragraph 29 of the Complaint are denied.
30. Calhoun has ceased land applying biosolids generated by the WPCP; otherwise, the remaining allegations contained in paragraph 30 of the Complaint are admitted.

31. Calhoun affirmatively states that its WPCP lacks the ability to remove PFAS from wastewater. The remaining allegations contained in paragraph 31 of the Complaint are denied.

32. The allegations contained in paragraph 32 of the Complaint are admitted.

Persistence and Toxicity of PFAS

33. The allegations contained in paragraph 33 of the Complaint are admitted.

34. The allegations contained in paragraph 34 of the Complaint are admitted.

35. Calhoun affirmatively states that PFOA and PFOS are considered persistent by the EPA and that Calhoun has land applied PFAS with permission of property owners in Gordon County, Georgia. Calhoun is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 35 of the Complaint, and therefore the same is denied.

36. The allegations contained in paragraph 36 of the Complaint are admitted.

37. The allegations contained in paragraph 37 of the Complaint are admitted.

38. The allegations contained in paragraph 38 of the Complaint are admitted.

39. The allegations contained in paragraph 39 of the Complaint are admitted.

40. The allegations contained in paragraph 40 of the Complaint are admitted.

41. The allegations contained in paragraph 41 of the Complaint are admitted.

42. The allegations contained in paragraph 42 of the Complaint are admitted.

43. The allegations contained in paragraph 43 of the Complaint are admitted.

44. The allegations contained in paragraph 44 of the Complaint are admitted.

45. The allegations contained in paragraph 45 of the Complaint are admitted.

46. Calhoun affirmatively states that an MCLG of 0 has been established by the EPA for PFOS and PFOA. The remaining allegations contained in paragraph 46 of the Complaint are admitted.

Defendants' Knowledge of the Toxicity and Persistence of PFAS

47. Calhoun affirmatively states that the allegations contained in paragraph 47 of the Complaint, to the extent that said allegations pertains to the "PFAS Manufacturing Defendants," are admitted. To the extent the PFAS Manufacturing Defendants' knowledge of the toxicity and persistence of their PFAS chemicals is alleged against Calhoun, this paragraph is denied. Calhoun agrees that proper warnings on the handling and disposal of PFAS chemicals should have been provided to avoid pollution of the City's water supply.

48. This paragraph asserts allegations against 3M and other manufacturers. Since paragraph 48 of the Complaint does not contain an allegation against Calhoun, no response by this Defendant is necessary.

49. This paragraph asserts allegations against 3M and other manufacturers. Since paragraph 49 of the Complaint does not contain an allegation against Calhoun, no response by this Defendant is necessary.

50. This paragraph is directed to "PFAS Manufacturing Defendants" and since paragraph 50 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

51. This paragraph is directed to "PFAS Manufacturing Defendants" and since paragraph 51 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

52. This paragraph is directed to “PFAS Manufacturing Defendants” and since paragraph 52 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

53. The allegations contained in paragraph 53 of the Complaint are admitted, but Calhoun denies that the information was provided by the other Defendants to Calhoun.

54. The allegations contained in paragraph 54 of the Complaint are admitted, but Calhoun denies that the information was provided by the other Defendants to Calhoun.

55. This paragraph is directed to 3M and since paragraph 55 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

56. This paragraph is directed to DuPont and since paragraph 56 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

57. This paragraph is directed to DuPont and 3M and since paragraph 57 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

58. This paragraph is directed to DuPont and since paragraph 58 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

59. This paragraph is directed to DuPont and 3M and since paragraph 59 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

60. This paragraph is directed to DuPont and since paragraph 60 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

61. This paragraph is directed to Defendants other than Calhoun and since paragraph 61 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

62. This paragraph is directed to Defendants other than Calhoun and since paragraph 62 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

63. This paragraph is directed to Defendants other than Calhoun and since paragraph 63 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

64. This paragraph is directed to Defendants other than Calhoun and since paragraph 64 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary—except that the PFAS Manufacturing Defendants and the Carpet Manufacturers did not disclose their knowledge to Calhoun.

65. This paragraph is directed to Defendants other than Calhoun and since paragraph 65 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

Contamination of Plaintiffs' Properties with PFAS

66. Calhoun affirmatively states that it applied sludge on properties with permission in Gordon County beginning in the 1990s and continuing until it ceased in 2023.

The remaining allegations contained in paragraph 66 of the Complaint are denied.

67. Calhoun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint, and therefore the same is denied.

68. Calhoun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint, and therefore the same is denied.

69. Calhoun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint, and therefore the same is denied.

70. Calhoun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint, and therefore the same is denied.

COUNT ONE
NEGLIGENCE
(ALL DEFENDANTS)

71. Calhoun hereby adopts and incorporates by reference each affirmative defense set forth in this Answer and adopts and incorporates by reference its responses and answers to Paragraphs 1 through 70, inclusive, of the Complaint as set forth hereinabove and as if each affirmative defense and each response and answer to said paragraphs were set forth herein verbatim.

72. This paragraph is directed towards the other Defendants and since paragraph 72 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

73. This paragraph is directed towards the other Defendants and since paragraph 73 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

74. This paragraph is directed towards the other Defendants and since paragraph 74 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

75. This paragraph is directed towards the other Defendants and since paragraph 75 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

76. This paragraph is directed towards the other Defendants and since paragraph 76 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

77. This paragraph is directed towards the other Defendants and since paragraph 77 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

78. The allegations contained in paragraph 78 of the Complaint are denied because Calhoun did not possess the same knowledge regarding these chemicals as the other Defendants did.

79. The allegations contained in paragraph 79 of the Complaint are denied.

80. The allegations contained in paragraph 80 of the Complaint are denied.

81. The allegations contained in paragraph 81 of the Complaint, as they relate to Calhoun only, are denied.

82. The allegations contained in paragraph 82 of the Complaint, as they relate to Calhoun only, are denied.

COUNT TWO
NEGLIGENCE PER SE
(CALHOUN AND CARPET MANUFACTURERS)

83. Calhoun hereby adopts and incorporates by reference each affirmative defense set forth in this Answer and adopts and incorporates by reference its responses and answers to Paragraphs 1 through 82, inclusive, of the Complaint as set forth hereinabove and as if each affirmative defense and each response and answer to said paragraphs were set forth herein verbatim.

. 84. The allegations contained in paragraph 84 of the Complaint are denied, but Calhoun affirmatively states that Calhoun is permitted in accordance with the Georgia Water Quality Control Act (“GWQCA”) and is in compliance with GWQCA’s requirements.

85. The allegations contained in paragraph 85 of the Complaint are admitted.

86. The allegations contained in paragraph 86 of the Complaint are admitted.

87. The allegations contained in paragraph 87 of the Complaint, as they relate to Calhoun only, are denied.

88. The allegations contained in paragraph 88 of the Complaint, as they relate to Calhoun only, are denied.

COUNT THREE
NEGLIGENT FAILURE TO WARN
(PFAS MANUFACTURING DEFENDANTS AND CARPET MANUFACTURERS)

89. Calhoun hereby adopts and incorporates by reference each affirmative defense set forth in this Answer and adopts and incorporates by reference its responses and answers to Paragraphs 1 through 88, inclusive, of the Complaint as set forth hereinabove and as if each affirmative defense and each response and answer to said paragraphs were set forth herein verbatim.

90. This paragraph is directed towards the other Defendants and since paragraph 90 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

91. This paragraph is directed towards the other Defendants and since paragraph 91 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

92. This paragraph is directed towards the other Defendants and since paragraph 92 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

93. This paragraph is directed towards the other Defendants and since paragraph 93 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

94. This paragraph is directed towards the other Defendants and since paragraph 94 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

95. This paragraph is directed towards the other Defendants and since paragraph 95 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

96. This paragraph is directed towards the other Defendants and since paragraph 96 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

97. This paragraph is directed towards the other Defendants and since paragraph 97 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

98. This paragraph is directed towards the other Defendants and since paragraph 98 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

99. This paragraph is directed towards the other Defendants and since paragraph 99 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

COUNT FOUR
WANTON CONDUCT AND PUNITIVE DAMAGES
(PFAS MANUFACTURING DEFENDANTS AND CARPET MANUFACTURERS)

100. Calhoun hereby adopts and incorporates by reference each affirmative defense set forth in this Answer and adopts and incorporates by reference its responses

and answers to Paragraphs 1 through 99, inclusive, of the Complaint as set forth hereinabove and as if each affirmative defense and each response and answer to said paragraphs were set forth herein verbatim.

101. This paragraph is directed towards the other Defendants and since paragraph 101 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

102. This paragraph is directed towards the other Defendants and since paragraph 102 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

103. This paragraph is directed towards the other Defendants and since paragraph 103 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

104. This paragraph is directed towards the other Defendants and since paragraph 104 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

105. This paragraph is directed towards the other Defendants and since paragraph 105 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

106. This paragraph is directed towards the other Defendants and since paragraph 106 of the Complaint does not contain an allegation against Calhoun, no response from this Defendant is necessary.

COUNT FIVE
ATTORNEY FEES AND EXPENSES
(O.C.G.A. § 13-6-11)

107. Calhoun hereby adopts and incorporates by reference each affirmative defense set forth in this Answer and adopts and incorporates by reference its responses and answers to Paragraphs 1 through 106, inclusive, of the Complaint as set forth hereinabove and as if each affirmative defense and each response and answer to said paragraphs were set forth herein verbatim.

108. The allegations contained in paragraph 108 of the Complaint, as they relate to Calhoun only, are denied.

COUNT SIX
PUBLIC NUISANCE/DAMAGES
(ALL DEFENDANTS)

109. Calhoun hereby adopts and incorporates by reference each affirmative defense set forth in this Answer and adopts and incorporates by reference its responses and answers to Paragraphs 1 through 108, inclusive, of the Complaint as set forth hereinabove and as if each affirmative defense and each response and answer to said paragraphs were set forth herein verbatim.

110. Calhoun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 110 of the Complaint, and therefore the same is denied.

111. Calhoun did not “create or cause” the PFAS chemicals that are the subject of the Public Nuisance claims. Calhoun was not provided information from the other

Defendants to aid or inform Calhoun about the handling of wastewater contamination and the accumulation of PFAS in the City's POTW. The allegations contained in paragraph 111 of the Complaint, as they relate to Calhoun only, are denied.

112. Calhoun affirmatively states that the PFAS Manufacturing Defendants have created and caused a public nuisance in and around Calhoun and Gordon County. The remaining allegations contained in paragraph 112 of the Complaint, as they relate to Calhoun only, are denied. Calhoun did not cause or contribute to the PFAS contamination in and around Calhoun and Gordon County.

113. Calhoun affirmatively states that the Carpet Manufacturers have created and caused a public nuisance in and around Calhoun and Gordon County. The remaining allegations contained in paragraph 113 of the Complaint, as they relate to Calhoun only, are denied and Calhoun denies that it has caused or contributed to the PFAS contamination in and around Calhoun and Gordon County.

114. Calhoun denies that it caused the PFAS contamination in and around Calhoun and Gordon County. The allegations contained in paragraph 114 of the Complaint, as they relate to Calhoun only, are denied.

115. Calhoun denies that it caused the PFAS contamination in and around Calhoun and Gordon County. The allegations contained in paragraph 115 of the Complaint, as they relate to Calhoun only, are denied.

116. Calhoun is without knowledge or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 116 of the Complaint, and therefore denies that it has caused the Plaintiffs' damages.

117. Calhoun denies that it caused the PFAS contamination in and around Calhoun and Gordon County. The allegations contained in paragraph 117 of the Complaint, as they relate to Calhoun only, are denied.

118. Calhoun is without knowledge or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 118 of the Complaint, and therefore denies that it has caused the Plaintiffs' damages.

119. Calhoun denies that it caused the PFAS contamination in and around Calhoun and Gordon County. The allegations contained in paragraph 119 of the Complaint, as they relate to Calhoun only, are denied.

COUNT SEVEN
ABATEMENT OF PUBLIC NUISANCE
(ALL DEFENDANTS)

120. Calhoun hereby adopts and incorporates by reference each affirmative defense set forth in this Answer and adopts and incorporates by reference its responses and answers to Paragraphs 1 through 119, inclusive, of the Complaint as set forth hereinabove and as if each affirmative defense and each response and answer to said paragraphs were set forth herein verbatim.

121. The allegations contained in paragraph 121 of the Complaint, as they relate to Calhoun only, are denied.

122. Calhoun denies that it caused the PFAS contamination in and around Calhoun and Gordon County. The allegations contained in paragraph 122 of the Complaint, as they relate to Calhoun only, are denied.

123. Calhoun is without knowledge or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 123 of the Complaint, and therefore denies that it has caused the Plaintiffs' damages.

124. Calhoun is without knowledge or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 124 of the Complaint, and therefore denies that it has caused the Plaintiffs' damages.

RELIEF REQUESTED

Calhoun is without knowledge or knowledge sufficient to form a belief as to the truth of the allegations contained in the Section "RELIEF REQUESTED" of the Complaint, and therefore denies that it has caused Plaintiffs' injuries, damages, or the necessity of the "Relief Requested" in the Complaint. As set forth in greater detail in Calhoun's affirmative defenses, this Defendant did not manufacture, purchase, or utilize the PFAS chemicals that entered into the public sewer system through the carpet manufacturing process.

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

MOSS LAND COMPANY, LLC, and)
REVOCABLE LIVING TRUST OF)
WILLIAM DARRYL EDWARDS, by)
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EDWARDS, TRUSTEE,)

Plaintiffs,)

vs.)

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CITY OF CALHOUN, GEORGIA;)
3M COMPANY; DAIKIN AMERICA,)
INC.; E.I. DUPONT DE NEMOURS)
AND COMPANY; THE CHEMOURS)
COMPANY; INV PERFORMANCE)
SURFACES, LLC; ARROWSTAR,)
LLC; ALADDIN MANUFACTURING)
CORPORATION; MOHAWK CARPET,)
LLC; MOHAWK INDUSTRIES, INC.;)
SHAW INDUSTRIES, INC.; SHAW)
INDUSTRIES GROUP, INC.;)
MILLIKEN & COMPANY;)
MANNINGTON CARPETS INC.; THE)
DIXIE GROUP, INC.; and MARQUIS)
INDUSTRIES, INC.,)

Defendants; and)

CITY OF CALHOUN, GEORGIA,)

Crossclaimant,)

vs.)

DAIKIN AMERICA, INC.;)
INV PERFORMANCE SURFACES,)
LLC; ARROWSTAR, LLC)
ALADDIN MANUFACTURING)
CORPORATION; MOHAWK CARPET,)
LLC; MOHAWK INDUSTRIES, INC.;)

SHAW INDUSTRIES, INC.; SHAW	)
INDUSTRIES GROUP, INC.;	)
MILLIKEN & COMPANY;	)
MANNINGTON CARPETS INC.; THE	)
DIXIE GROUP, INC.; and MARQUIS	)
INDUSTRIES, INC.,	)
	)
Defendants in Crossclaim.	)
	)
3M COMPANY; INC.;	)
E.I. DUPONT DE NEMOURS	)
AND COMPANY; THE CHEMOURS	)
COMPANY;	)
	)
Defendants in Crossclaim to be	)
included after the Stay of	)
March 1, 2024.	)
	)
	)

CROSSCLAIM FOR DAMAGES AND INJUNCTIVE RELIEF

INTRODUCTION

The City of Calhoun, Georgia never manufactured or commercially applied PFAS for any reason. The PFAS that are referenced in the Complaint were manufactured and delivered to Gordon County by Chemical Manufacturers that knew PFAS were harmful to the environment and public health. The PFAS Manufacturing Defendants knew their PFAS chemicals were Persistent, Bioaccumulative, and Toxic (“PBT”), as that term is used by the EPA to describe the chemicals. This information was also known to the Carpet Manufacturers, but was not shared with Calhoun.

The PFAS Manufacturing Defendants spread misinformation and actively worked to mislead the public about the environmental harm and negative human health associations

caused by their chemicals. These efforts were undertaken individually and collectively through associations like the Fluoro Council.

Carpet Manufacturers in Gordon County have applied significant amounts of PFAS to treat their carpets for soil resistance. In many cases, the Carpet Manufacturing Defendants were misled by Chemical Manufacturers about the dangers of PFAS. Eventually, through the EPA and manufacturing associations like the Carpet & Rug Institute, the Carpet Manufacturers learned the truth about the dangers of PFAS. But the Carpet Manufacturers failed to inform Calhoun about the PFAS in their wastewater and failed to fulfill their statutory and legal duties to avoid harming the environment, which has led to the presence of PFAS in area groundwater, rivers, and the Publicly Owned Treatment Works (“POTW”)¹ where PFAS has adhered to sludge from the wastewater treatment process. The sludge that is left over from the treatment process, in many cases, has been land applied as fertilizer on local properties. Calhoun has discontinued this practice.

In this Crossclaim, Calhoun seeks to hold those responsible – the Carpet Manufacturing Defendants and Chemical Manufacturers for their actions, that have caused a nuisance and damages to Calhoun.

DISCLAIMER AND PARTIES

1. This Crossclaim is brought on behalf of the City of Calhoun, Georgia against the Carpet Manufacturers and certain PFAS Manufacturing Defendants, pursuant to

¹ Also referred to as the Calhoun Water Pollution Control Plant (“WPCP”).

O.C.G.A. § 9-11-13(g) because the claims against the Co-Defendants in the Crossclaim arise out of the same transactions, occurrences, and facts that comprise the underlying lawsuit.

2. The Crossclaim brought by the City of Calhoun, Georgia is not a claim for indemnity and is not a claim for contribution. Any potential claims on behalf of the City of Calhoun for indemnity or contribution are outside the scope of Calhoun's Crossclaim as set forth below. Specifically, Calhoun is not seeking any indemnification or contribution from the Co-Defendants and any apportionment of fault for Plaintiffs' claims shall be determined by the trier of fact and is not addressed in this Crossclaim.

3. As set out in the underlying lawsuit, the "Carpet Manufacturers" include Defendants Aladdin Manufacturing Corporation, Mohawk Carpet, LLC, Mohawk Industries, Inc., Shaw Industries, Inc., Shaw Industries Group, Inc., Milliken & Company, Engineered Floors, LLC, Mannington Mills, Inc., The Dixie Group, Inc., and Marquis Industries, Inc. (collectively, "Carpet Manufacturers" or "Carpet Manufacturing Defendants"),² that have operated carpet mills in Calhoun, Georgia, and have used products from 3M Company ("3M"), Daikin America, Inc. ("Daikin"), E.I. DuPont de Nemours and Company ("DuPont"), The Chemours Company ("Chemours"), INV Performance Surfaces, LLC ("INV"), and Arrowstar, LLC ("Arrowstar") (collectively, "PFAS Manufacturing Defendants").³

² Calhoun adopts the identification of "Carpet Manufacturers" set forth in Paragraphs 16-20 of the Complaint as if fully restated and set forth herein.

³ Calhoun adopts the identification of "PFAS Manufacturing Defendants" set forth in Paragraphs 21-27 of the Complaint as if fully restated and set forth herein.

4. While the Complaint does not include a party allegation concerning Mannington Mills, Inc. (“Mannington”), Mannington is clearly identified in the heading of Complaint. Calhoun admits that Mannington is a New Jersey corporation that at all times relevant hereto has conducted business within this State. Calhoun further admits that Mannington was and is the owner and operator of facilities that manufacture carpet and various floor products, including facilities in Calhoun, which, upon information and belief, have discharged industrial wastewater containing PFAS into the Calhoun WPCP.

5. The “PFAS Manufacturing Defendants” include Defendants 3M, Daikin, DuPont, Chemours, INV, and Arrowstar, as set forth above.

6. For the purposes of this Crossclaim, Defendants 3M, DuPont, and Chemours (the “Class Settlement Defendants”) have been initially omitted because of the stay imposed related to the Proposed Class Settlements described in paragraph 7 of this Crossclaim.

7. Certain PFAS Manufacturing Defendants—including 3M, DuPont, and Chemours—entered into Proposed Class Settlement(s) in the United States District Court for the District of South Carolina, Charleston Division, (MDL No. 2:18mm-02873). The PFAS Manufacturing Defendants included in this Crossclaim—INV Performance Surfaces, LLC, Arrowstar, LLC, and Daikin America, Inc.—are not parties to the Proposed Class Settlement(s) in federal court.

8. Notwithstanding the initial omission of the Class Settlement Defendants, Calhoun has provided timely notice of its intention to be excluded from the Proposed Class Settlement(s), has opted out of the proposed settlements, and asserts that such settlements

do not impair or limit the legal claims and damages asserted in this Crossclaim against the Class Settlement Defendants. Further, Calhoun has confirmed with the Notice Administrator in the Proposed Class Settlement(s) in the United States District Court for the District of South Carolina, Charleston Division, that Calhoun's Opt-Out was "compliant" so Calhoun has fulfilled any obligations to be excluded from the Proposed Class Settlement(s) and can and will assert its claims independently in an action separate from MDL No. 2:18mm-02873 against the Class Settlement Defendants identified in Paragraph 5.

9. This Crossclaim is brought under the laws of the State of Georgia. Calhoun asserts no federal cause of action, invokes no federal statutes, and seeks no relief whatsoever that is based on any federal statute or laws. Any federal cause of action is expressly disclaimed by Calhoun.

10. Calhoun makes no claim, asserts no cause of action, and does not assert or otherwise implicate that the manufacture, sale, or use of PFAS containing firefighting foam (often referred to as "AFFF") in any way caused or contributed to cause the damages or claims asserted in the present Crossclaim.

11. Calhoun expressly disclaims any cause of action or damages arising from or associated with AFFF manufacture, sale, use, or disposal by any named or unnamed entities, including any legal or factual claim based on alleged "Mil Spec AFFF," as well as any potential claims arguably arising from any federal enclaves.

CROSSCLAIM
STATEMENT OF FACTS

12. Calhoun is part of the geographic area in North Georgia where it is estimated that 90% of the world's carpet is manufactured. The carpet manufacturing plants in Calhoun have used PFAS in their carpet manufacturing process for many years.

13. The PFAS Manufacturing Defendants have sold and delivered environmentally harmful products such as PFOS, PFOA, and other types of PFAS to the Carpet Manufacturers in Calhoun.

14. The Carpet Manufacturing Defendants have discharged PFAS in their wastewater for many years. Calhoun's water treatment facilities cannot remove these chemicals from the wastewater through conventional wastewater treatment. PFAS resists degradation throughout the conventional treatment process conducted at the Calhoun WPCP.

15. The PFAS Manufacturing Defendants and the Carpet Manufacturers knew for decades, if not longer, that PFAS should not be discharged in wastewater to treatment facilities like the Calhoun WPCP. PFAS is not identified in any of the Carpet Manufacturing Defendants' discharge permits to the Calhoun WPCP.

16. Wastewater from carpet and textile manufacturing facilities poured PFAS into the public water supply in Gordon County for decades. This wastewater contained PFAS used by the carpet manufacturers to treat their carpets to make them soil resistant.

17. Through their membership in the Carpet & Rug Institute ("CRI"), and from environmental and industry information, the Carpet Manufacturing Defendants became

aware that PFAS soil resistance agents were harmful to the environment and were associated with harm to human health.

18. As early as 2000, the carpet manufacturing industry was informed that some PFAS were being withdrawn from the market due to environmental concerns. The carpet manufacturers knew that some PFAS chemicals were being taken off the market and that the EPA was investigating the chemical manufacturers that made PFAS.

19. Carpet Manufacturing Defendants ignored warnings and the instructions provided by chemical companies (belatedly in most cases) that wastewater containing PFAS should not be allowed to flow into municipal sewer systems because of distinct chemical characteristics that makes PFAS highly mobile and environmentally harmful in water bodies.

20. The Carpet Manufacturing Defendants knew or should have known that their wastewater contained PFAS that was persistent, bioaccumulative, and toxic, which is harmful to the environment and human health. The Carpet Manufacturing Defendants knew or should have known that PFAS pollution in public water supplies created damage to the environment and potential harm to public health.

21. Despite their knowledge of the environmental harm caused by placing PFAS into the public water supply, including rivers, groundwater, and Publicly Owned Treatment Works (“POTW”), the Crossclaim Defendants negligently failed and refused to take actions to protect the public, including their failure to pretreat wastewater and notify Calhoun and the public of the harm being caused to drinking water safety.

22. The stable carbon-fluorine bonds that make PFAS such pervasive industrial and consumer products also result in their persistence in the environment. There is no known environmental breakdown mechanism for these chemicals. They are readily absorbed into biota and have a tendency to bioaccumulate with repeated exposure. PFOS crosses the placenta in humans, accumulates in amniotic fluid, and has been detected in the umbilical cord blood of babies.

23. In addition to discharging PFAS in industrial wastewater to Calhoun's WPCP, the Crossclaim Defendants have also discharged PFAS by way of releases, leaks, and spills into stormwater drains, which feed into local creeks, waterways, streams, and rivers. The PFAS Chemical Manufacturing Defendants and the Carpet Manufacturing Defendants have known for decades that PFAS should not be released into any stormwater or sewer systems or allowed in any way to impact sources of drinking water.

24. When humans ingest PFAS, these toxic chemicals bind to plasma proteins in the blood and are readily absorbed and distributed throughout the body. The liver and kidneys are important binding and processing sites for PFAS, which results in physiologic changes to these and other organs. Because of strong carbon-fluorine bonds, PFAS are stable to metabolic degradation, resistant to biotransformation, and have long half-lives in the body. These toxic chemicals accumulate in the body over time and cause long-term physiologic alterations and damage to the blood, liver, kidneys, immune system, and other organs.

25. Studies have found that the human diseases caused by exposure to certain PFAS include cancer, immunotoxicity, thyroid disease, ulcerative colitis, and high

cholesterol. The association between 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 certain PFAS to diseases based on health research carried out by the Science Panel in the Mid-Ohio Valley population exposed to certain PFAS that were released by chemical manufacturers. The C8 Science Panel identified kidney cancer and testicular cancer as having a “probable link” to PFOA exposure in the Mid-Ohio Valley population exposed to PFOA in drinking water. Epidemiological studies of workers exposed to PFOA on the job support the association between PFOA exposure and both kidney and testicular cancer; those studies also suggest associations with prostate and ovarian cancer and non-Hodgkin’s lymphoma. Rodent studies also support the link with cancer. The majority of an EPA Science Advisory Board expert committee recommended in 2006 that PFOA be considered “likely to be carcinogenic to humans.”

26. Additionally, the C8 Science Panel has found a probable link between exposure to certain PFAS and the following human diseases: pregnancy-induced hypertension, ulcerative colitis, and high cholesterol. Furthermore, in recent years, immunotoxicity of PFAS has been demonstrated in a wide variety of species and models, including humans. For instance, a study of ninety-nine Norwegian children at age three found that maternal serum PFOA concentrations were associated with decreased vaccine responses, especially toward rubella vaccine, and increased frequencies of common cold and gastroenteritis. The combined human and experimental evidence strongly support the conclusion that there are adverse effects on immune functions at relatively low exposure levels.

27. On May 19, 2016, due to the evolution of the science surrounding the health effects associated with the consumption of PFOA and PFOS in drinking water, the EPA published a lifetime Drinking Water Health Advisory of 70 ppt (0.07 ppb)⁴ for combined concentrations of PFOA and PFOS (“2016 EPA Health Advisory” or “Health Advisory limit”).

28. The 2016 EPA Health Advisory is based on peer-reviewed studies of the effects of PFOA and PFOS on laboratory animals and were also informed by epidemiological studies of human populations exposed to PFOA and PFOS. These studies indicate that exposure to PFOA and PFOS over certain levels may result in adverse health effects, including developmental defects to fetuses, cancer (testicular, kidney), liver effects, immune effects, thyroid effects, and other adverse effects.

29. The 2016 EPA Health Advisory states that PFOA and PFOS have “extremely high” persistence in the environment and the human body, and that the developing fetus and newborn are “particularly sensitive” to PFOA and PFOS induced toxicity. The 2016 EPA Health Advisory also states that single exposure to a developmental toxin at a critical time can produce an adverse effect, and that short-term exposure to these chemicals can result in a body burden that persists for years and can increase with additional exposures.

30. The 2016 EPA Health Advisory states that, because PFOA and PFOS have similar adverse effects – including effects on the liver, neonatal development, responses to immune challenges, and association with tumors – when they co-occur in a drinking water

⁴ The lifetime limit of 70 ppt (0.07 ppb) set by the May 2016 EPA Health Advisory is equal to 0.07 µg/L.

source, the combined concentrations of PFOA and PFOS should be compared with the Health Advisory limit of 70 ppt (0.07 ppb) in order to offer the necessary margin of protection to all Americans with these chemicals in their drinking water.

31. The PFAS Manufacturing Defendants have known for decades that PFAS persists in the environment and accumulates in the bodies of humans, fish, and test animals. Both the PFAS Manufacturing Defendants and the Carpet Manufacturing Defendants have known for decades that PFAS cannot be removed from wastewater by conventional wastewater treatment processes.

32. The State of Minnesota filed a lawsuit against 3M in 2010 seeking payment for damages to natural resources caused by 3M's disposal of PFAS. According to the Minnesota Attorney General's website, 3M settled its lawsuit with the State of Minnesota on February 20, 2018. According to the website, "[t]he Agreement required 3M Company to pay \$850 million to the State of Minnesota" The 3M-Minnesota settlement was followed closely by the PFAS manufacturers that continued to manufacture and sell PFAS chemicals without regard to the harm caused by the chemicals to the environment.

33. A 1997 Material Safety Data Sheet ("MSDS") for a product made by 3M listed its only ingredients as water, PFOA, and other per-fluoroalkyl substances and warned that the product includes "a chemical which can cause cancer." The MSDS cited "1983 and 1993 studies conducted jointly by 3M and DuPont" as support for this statement. This warning was subsequently removed and no PFAS manufacturer ever publicly mentioned the studies again.

34. In 1978, DuPont began to review and monitor the health conditions of its workers who were potentially being exposed to PFOA. DuPont subsequently found that PFOA is “toxic” and that “continued exposure is not tolerable,” but did not disclose this to the public or to the EPA.

35. In 1981, DuPont failed to disclose data demonstrating the transplacental movement of PFOA to fetuses to the public or to the EPA. It also failed to disclose to the public or to the EPA widespread PFOA contamination in public drinking water sources resulting from discharges at its Washington Works facility in Washington, West Virginia, where PFOA concentrations exceeded DuPont’s own Community Exposure Guideline.

36. In 1991, DuPont researchers recommended a follow-up study to a study from ten years earlier of employees who might have been exposed to PFOA. The earlier study showed elevated liver enzymes in the blood of DuPont workers. On information and belief, DuPont chose not to conduct the follow-up study for the purpose of avoiding or limiting liability; instead, DuPont postponed the study until after it was sued.

37. In or around December 2005, DuPont agreed to pay a \$10.25 million fine to the EPA for withholding and failing to disclose information about PFAS that it manufactured and sold relating to the persistence of PFAS chemicals in the environment and health risks associated with the chemicals.

38. DuPont has repeatedly and falsely claimed that human exposure to PFOA has no adverse health consequences. In a May/June 2008 publication, for example, DuPont stated that “the weight of the evidence indicates that PFOA exposure does not pose a health

risk to the general public,” and “there are no human health effects known to be caused by PFOA, although study of the chemical continues.”

39. Similar to DuPont, 3M agreed to pay \$1.5 million fine to the EPA in 2006 as a penalty for withholding and failing to disclose information about the PFAS that it manufactured and sold relating to the persistence of PFAS chemicals in the environment and health risks associated with the chemicals. 3M continued to deny that PFAS chemicals are persistent, bioaccumulative, and toxic despite overwhelming evidence to the contrary.

40. The PFAS Manufacturing Defendants, including Daikin, INV, and Arrowstar, have continuously denied any negative human health associations and environmental damages that are caused by PFAS despite overwhelming findings to the contrary by the EPA and findings from over 20 state environmental departments. Through their sales literature and participation in trade groups, as well as the Fluor Council, the PFAS Manufacturing Defendants encouraged sales of PFAS to the Carpet Manufacturers even after certain PFAS chemicals were withdrawn from the market following “negotiations” with the EPA and the issuance of millions of dollars of fines against PFAS chemical manufacturers under the Federal Toxic Substances Control Act (“TSCA”), and despite their knowledge of the falsity of their statements.

41. The PFAS Manufacturing Defendants and Carpet Manufacturers have known for many years that PFAS chemicals, regardless of the designation of the chemicals as “long chain” or “short chain,” should not be discharged or released to public water systems, waterways, and groundwater because of their toxicity, persistence, bioaccumulation, and that PFAS cannot be removed from water by any conventional methods which results in

dangerous pollution to public drinking water. Calhoun adopts Paragraphs 61 through 65 of the Complaint by reference and incorporates the same as if fully set forth and restated in this Crossclaim.

CROSSCLAIM – COUNT ONE
PUBLIC NUISANCE

42. Calhoun realleges all prior paragraphs of the Crossclaim as if fully restated and set forth herein.

43. Calhoun owns and occupies property used to serve its water customers, including raw water treatment intakes, water treatment facilities, sewer treatment facilities (also referred to as “POTW” or Calhoun Water Pollution Control Plant “WPCP”), and a water and sewer distribution system.

44. Calhoun also holds the right—granted by statute and permit—to collect, draw, and process the drinking water for the City of Calhoun as a public utility. The water provided by Calhoun to its customers is used for drinking, bathing, cleaning, washing, cooking, watering gardens, and other uses that, collectively, are essential to supporting health and welfare.

45. The people of Calhoun, as well as the City of Calhoun, have the right to expect and to know that their public water sources are clean, safe, and free of persistent, bioaccumulative, and toxic pollutants, such as the PFAS created, manufactured, and sold by the PFAS Manufacturing Defendants and purchased, processed, and discharged by the Carpet Manufacturing Defendants.

46. Calhoun has two water treatment facilities that provide drinking water. These facilities are the Mauldin Road Water Treatment Plant (“WTP”) and the Brittany Drive WTP. These facilities have the capacity to process 18 million gallons per day (“MGD”) and 12.8 MGD, respectively. Calhoun’s raw water intakes include the Coosawattee River and groundwater supplied by local wells.

47. Under the current EPA Lifetime Health Advisory, the levels of PFOS and PFOA in Calhoun’s raw water supply exceed levels deemed safe for public consumption. These levels also exceed the EPA’s proposed MCL of 4 ppt for PFOS and PFOA. The readings are also vastly in excess of the EPA level of zero ppt (MCLG), which is the health-based limit for eliminating human health threats. For example, recent PFAS testing of the Coosawattee River, where Calhoun operates a surface water intake, has shown a combined total of 43 ppt for PFOA and PFOS. Testing of Calhoun’s Well #4 at one of Calhoun’s water treatment plants has shown a combined total of 63 ppt for PFOA and PFOS.

48. PFOS and PFOA, like all PFAS, do not occur in nature and are present in Calhoun’s water as a result of surface and groundwater pollution caused by the Crossclaim Defendants.

49. The PFAS Manufacturing Defendants have created a continuous nuisance by selling and supplying PFAS to the Carpet Manufacturing Defendants without adequate warnings of nonobvious dangers and safe disposal requirements.

50. The Carpet Manufacturing Defendants have created a continuous nuisance by discharging PFAS chemicals into the Calhoun sewer system and to the Calhoun Waste

Pollution Control Plant, which has caused pollution to Calhoun's water supply and natural resources.

51. The contamination of PFAS caused by the Crossclaim Defendants unreasonably interferes with the rights of the general public to enjoy public waters in Gordon County and Calhoun, and unreasonably interferes with public health.

52. The harm caused by the Crossclaim Defendants' PFAS pollution is not fanciful or such that would affect only one of fastidious taste. Rather, the Crossclaim Defendants' conduct, and the resulting damages, is such that affects ordinary and reasonable persons. *See* O.C.G.A. § 41-1-1.

53. Calhoun has incurred special damages. The special damages incurred by the City include, but are not limited to, damages to Calhoun's water and its proprietary and ownership interest in its water; expenses associated with mitigation and remediation, including the installation of emergency filtration; the future construction and installation of a permanent filtration system capable of removing PFAS from the City's drinking water; expenses incurred to test and monitor PFAS contamination levels; lost revenue and sales of water; remediation of Calhoun's Water Pollution Control Plant to remove imbedded PFAS; filtration costs of wastewater polluted with PFAS; and future treatment and disposal of PFAS contaminated wastewater treatment plant sludge.

54. In addition to the special damages sustained by Calhoun, the levels of PFAS contamination, directly caused by the Crossclaim Defendants' pollution, have created a condition that threatens the health, safety, and well-being of Calhoun's customers.

55. It was reasonably foreseeable, and in fact known to the Crossclaim Defendants, that their actions would place, and have placed, Calhoun at risk of harm.

56. The nuisance caused by the Crossclaim Defendants is continuous and has caused substantial damages to Calhoun and will continue to cause damages in the future.

57. The Crossclaim Defendants knew it was substantially certain that their acts and omissions described herein would cause Calhoun's water supply to become contaminated by PFAS. Carpet manufacturing requires unusually large amounts of water, PFAS based soil resistance finishes are applied in large volumes, and the amount of PFAS discharged to wastewater, spilled, and otherwise released into the environment, has made Calhoun a hot spot for extensive PFAS pollution.

58. The Crossclaim Defendants have acted with conscious indifference to the likely and probable consequences of their actions, which include environmental pollution and potential harm to public health.

Because of the tortious conduct of the Crossclaim Defendants, Calhoun is entitled to damages, compensatory, past and future, punitive damages, attorney fees, and expenses, plus interest and costs.

CROSSCLAIM – COUNT TWO
NEGLIGENCE

59. Calhoun realleges all prior paragraphs of the Crossclaim as if fully restated and set forth herein.

60. The Crossclaim Defendants, including the PFAS Manufacturing Defendants and the Carpet Manufacturing Defendants, owe a legal duty to Calhoun, as well as to all

persons whom they might foreseeably harm, in the manufacture, sale, distribution, supply, use, and disposal of PFAS.

61. As chemical manufacturers and carpet manufacturers, the Crossclaim Defendants jointly and individually breached their duty of reasonable care owed to Calhoun by releasing environmentally dangerous PFAS chemicals into the environment without regard and without reasonable care to ensure their PFAS chemicals would not contaminate public sewer systems, public sewer system-wastewater treatment plants, public drinking water treatment facilities, and the Calhoun facilities dedicated for providing safe water to the residents of the City.

62. As chemical manufacturers and carpet manufacturers, the Crossclaim Defendants breached their duty not to pollute public waterways, surface water, groundwater, public facilities, and properties where PFAS containing chemicals are applied to carpet and other textiles with knowledge that releasing PFAS containing wastewater and PFAS would cause direct and irreversible harm to the Calhoun environment.

63. The PFAS Manufacturing Defendants knowingly breached their duty of reasonable care owed to Calhoun by supplying environmentally dangerous PFAS chemicals to the carpet manufacturing industry without regard or reasonable care to ensure that the PFAS chemicals would not contaminate public sewer systems, public waterways, properties where the PFAS containing chemicals are applied to carpets and other products, and otherwise released to publicly operated treatment works. As a result of these actions, PFAS chemicals were released into the environment and into the public water supply in Calhoun in amounts that are associated with public harm, including accumulation in human

blood and build up in human organs, such as liver, kidneys, immune systems, and other organs. PFAS chemicals present a “substantial danger to human health and welfare and the environment,” according to the EPA, and have been related to loss of immune system function and associated with liver damage, thyroid disease, and various types of cancer.

64. The PFAS Manufacturing Defendants breached their duty to use reasonable care by supplying PFAS chemicals in a responsible manner to carpet manufacturers with reasonable steps to ensure that chemicals would not be released into the environment and specifically in public drinking water sources.

65. The PFAS Manufacturing Defendants knew from experience, or at least should have known through industry research, as well as the manufacture, distribution, and their superior knowledge of PFAS, that improper handling would result in the contamination of public water supplies, including river water, groundwater, surface water, and eventually it would contaminate soil due to the inherent known dangers of PFAS including persistence, bioaccumulation, and toxicity.

66. Calhoun has been harmed by the release of the PFAS chemicals into the environment, which was a foreseeable and known consequence to the PFAS Manufacturers based on their actual knowledge or through the exercise of due and reasonable care. The PFAS Manufacturing Defendants failed to exercise reasonable care in preventing the improper discharge and disposal of toxic PFAS into the Calhoun public sewer system, waterways, and manufacturing facilities which in turn released PFAS through stormwater run-off to the environment.

67. The Carpet Manufacturer Defendants in Calhoun knew or should have known that their failure to safely handle, discharge, and/or dispose of PFAS containing wastewater would result in environmental pollution. The presence of PFAS pollution in Calhoun, and PFAS contamination in public waterways, was reasonably foreseeable and, in many cases, known. But the Carpet Manufacturing Defendants did not advise (and made no effort to so advise) Calhoun of the dangers that release of PFAS containing wastewater into the Calhoun public sewer system, without pretreatment, incineration, or capture, would place a persistent, bioaccumulative, and toxic chemical to the public water supply. Carpet Manufacturing Defendants also knew, through their permits, that they should not, and could not, release a non-disclosed contaminant to the Calhoun sewer system that would cause a bypass, pass-through, or upset to the Calhoun Water Pollution Control Plant (also referred to as the “WPCP”).

68. As a direct and proximate cause that was foreseeable and that was the known result of the acts and omissions of the PFAS Manufacturing Defendants and the Carpet Manufacturing Defendants, Calhoun has been damaged in that it will be required to expend money to rebuild its drinking water treatment facilities, sewer, and wastewater treatment facilities, and spend millions of dollars to provide safe drinking water to its residents.

Because of the tortious conduct of the Crossclaim Defendants, Calhoun is entitled to damages, compensatory, past and future, punitive damages, attorney fees, and expenses, plus interest and costs.

CROSSCLAIM – COUNT THREE
NEGLIGENT FAILURE TO WARN

69. Calhoun realleges all prior paragraphs of the Crossclaim as if fully restated and set forth herein.

70. The PFAS Manufacturing Defendants were in the business of manufacturing, formulating, distributing, and supplying PFAS chemicals to carpet manufacturers in Calhoun and Gordon County.

71. The PFAS Manufacturing Defendants knew, or reasonably should have known, the danger of supplying a man-made synthetic chemical that was environmentally persistent, bioaccumulative, and toxic that was otherwise impervious to all conventional methods of filtration and pollution removal. Given the extent of the risks associated with PFAS to potentially harm human health and pollute the environment, the PFAS Manufacturing Defendants had a duty to warn their customers of the harm that would have occurred by releasing PFAS chemicals into the environment through manufacturing wastewater. This duty extended to Calhoun because it was foreseeable, and in fact known, by PFAS Manufacturers Defendants that publicly operated treatment works could not remove the pollutants from wastewater and thus the pollutants would, in turn, be released into the environment.

72. The PFAS Manufacturing Defendants breached their duty to warn their customers and Calhoun, and, as a direct and proximate result of this breach, Calhoun has sustained damages.

73. For decades, the PFAS Manufacturing Defendants sold PFAS chemicals to carpet manufacturers in Gordon County and Calhoun, including the Carpet Manufacturing Defendants, without adequate warnings of the environmental and human health dangers associated with their products, which includes danger to human health, environmentally persistent, bioaccumulative, and highly mobile (soluble) in water bodies. The PFAS Manufacturing Defendants knew that PFAS tainted wastewater could not be properly disposed of without sophisticated pretreatment equipment and, when discharged to a public sewer system, a publicly owned water treatment facility, and/or directly into the environment, the result would be pollution of drinking water.

74. In fact, the PFAS manufacturing industry, including the Crossclaim Defendants, knew that their own manufacturing wastewater containing PFAS (and the sludge built up in their treatment facilities) should not be discharged and could not be discharged to conventional water treatment facilities because these dangerous chemicals would be “passed through” to public waterways causing great public harm.

75. The PFAS Manufacturing Defendants knew that their PFAS-polluted wastewater and their PFAS-polluted sludge had to be incinerated and not released into the environment in order to avoid the exact situation that has now occurred in Calhoun. Despite this knowledge, the PFAS Manufacturing Defendants breached their duty to warn of the dangers associated with PFAS from the anticipated disposal of PFAS wastewater to Calhoun without adequate warnings of the hazard and instructions as to how the contamination could be avoided through the proper sophisticated filtration, incineration, collection, and transport of the pollutants to a certified treatment facility.

76. As a result of the PFAS Manufacturing Defendants' negligent failure to warn, and as described in this Count and throughout this Crossclaim, Calhoun has been harmed. Among other things, its drinking water is polluted with PFAS. The harm caused to Calhoun and by the PFAS Manufacturers was done maliciously and with knowledge, to a high degree of probability, and with reckless indifference to the consequences of their actions.

77. As a direct and proximate result of the conduct of the PFAS Manufacturing Defendants, Calhoun must build sophisticated drinking water and wastewater treatment facilities that will cost millions of dollars. Such facilities are necessary to remove the PFAS pollutants from Calhoun's drinking water to a safe consumption level and in order to meet the Health Advisories promulgated by the EPA. As a result of the PFAS contamination caused by the PFAS Manufacturing Defendants, Calhoun will incur millions of dollars of compensatory damages, real property damages to its POTW, and other damages to be proved at trial, including punitive damages.

Because of the tortious conduct of the Crossclaim Defendants, Calhoun is entitled to damages, compensatory, past and future, punitive damages, attorney fees, and expenses, plus interest and costs.

CROSSCLAIM – COUNT FOUR
GEORGIA WATER QUALITY CONTROL ACT

78. Calhoun realleges all prior paragraphs of the Crossclaim as if fully restated and set forth herein.

79. Under O.C.G.A. § 12-5-51, “any person who intentionally or negligently causes or permits any sewage, industrial waste, or other waste, oil, scum, floating debris,

or other substance or substances to be spilled, discharged, or deposited in the waters of the state, resulting in a condition of pollution as defined by this article, shall be liable in damages to the state and any political subdivision thereof for any and all costs, expenses, and injuries occasioned by such spills, discharges, or deposits.”

80. Each of the Crossclaim Defendants is a “person” within the meaning of O.C.G.A. § 12-5-51.

81. The Crossclaim Defendants intentionally, wantonly, and/or negligently caused or allowed PFAS to be deposited into the groundwater and surface water of Gordon County and Calhoun, Georgia through their unpermitted discharges of PFAS into the Calhoun public sewer system, which resulted in a condition of pollution as defined by George Code Title 12, Chapter 5, Article 2.

82. PFAS are industrial wastes within the meaning of O.C.G.A. § 12-5-51.

83. The amount of the damages assessed pursuant to O.C.G.A. § 12-5-51 “shall include, but not be limited to, any costs and expenses reasonably incurred by the state or any political subdivision thereof...” to remedy the harm caused by the pollution condition. Under the O.C.G.A. § 12-5-51, “damages to a political subdivision shall be recoverable in a civil action instituted by each such subdivision.”

84. Calhoun is a municipal corporation organized and chartered under the laws of the State of Georgia.

85. As a direct and proximate result of Crossclaim Defendants’ conduct, Calhoun has incurred, and will continue to incur, damages including, but not limited to, the cost and expenses set forth in O.C.G.A. § 12-5-51.

Because of the tortious conduct of the Crossclaim Defendants, Calhoun is entitled to damages, compensatory, past and future, punitive damages, attorney fees, and expenses, plus interest and costs.

CROSSCLAIM – COUNT FIVE
WANTON CONDUCT AND PUNITIVE DAMAGES

86. Calhoun realleges all prior paragraphs of the Crossclaim as if fully restated and set forth herein.

87. As manufacturers, distributors, suppliers, users, and dischargers of PFAS, the PFAS Manufacturing Defendants and the Carpet Manufacturing Defendants owe a duty to Calhoun to exercise reasonable care to prevent the release of PFAS, and PFAS containing wastewater, into the Calhoun public water supply. By releasing PFAS and PFAS containing wastewater into the Calhoun public sewer system, the Crossclaim Defendants knew or should have known that the Calhoun WPCP, as a conventional wastewater treatment facility, had no way of removing or eliminating PFAS chemicals from the wastewater and therefore the pollution passed through directly into the public groundwater and surface water. Calhoun—by common law, state law, and local ordinances—has the expectation that the Crossclaim Defendants would not contaminate its public sewer system, WPCP, groundwater, or surface water with PFAS.

88. The Crossclaim Defendants have breached their duties to Calhoun by the acts and omissions stated throughout this Crossclaim with willful misconduct, wantonness, oppression, and/or that entire want of care which raises the presumption of their conscious

indifference to the consequences of their actions in polluting the public waters of Calhoun and Gordon County.

89. The Crossclaim Defendants knew or should have known that their distribution, sale, use, disposal, and/or discharge of PFAS chemicals would result in the pass-through of these chemicals to the Calhoun and Gordon County environment, and thus endangering the environment and human health.

90. The Crossclaim Defendants' actions and omissions, and the harm created by those actions and omissions, were reasonably foreseeable and were undertaken with knowledge that such acts and omissions would cause harm to Calhoun. As a result of the willful and wanton misconduct of the Crossclaim Defendants, punitive damages should be imposed in an amount sufficient to penalize and deter them from repeating such willful and wanton conduct as determined by the enlightened conscience of a jury.

Because of the tortious conduct of the Crossclaim Defendants Calhoun is entitled to damages, compensatory, past and future, punitive damages, attorney fees, and expenses, plus interest and costs.

CROSSCLAIM – COUNT SIX
ATTORNEYS' FEES AND EXPENSES OF LITIGATION

91. Calhoun realleges all prior paragraphs of the Crossclaim as if fully restated and set forth herein.

92. The Crossclaim Defendants have acted in bad faith, have been stubbornly litigious, and have caused Calhoun unnecessary trouble and expense such that Calhoun is

entitled to recover its attorneys' fees and other expenses of litigation pursuant to O.C.G.A. § 13-6-11.

RELIEF DEMANDED

WHEREFORE, Calhoun respectfully requests this Court grant the following relief:

- a) A judgment in its favor on the claims set forth in this Crossclaim;
- b) Award Calhoun damages in an amount to be determined by a jury sufficient to compensate it for real property damage, out-of-pocket expenses, lost profit and sales, remediation, and all future construction and operational expenses;
- c) Issuance of an Order requiring Crossclaim Defendants to prevent PFAS chemicals from continuing to enter the Calhoun WPCP;
- d) An award of punitive damages in an amount to be determined by the enlightened conscience of a jury;
- e) An award of attorneys' fees, costs and expenses incurred in connection with the litigation of this Crossclaim; and
- f) Award such other and further relief as this Court may deem just, proper and equitable.

JURY DEMAND

THE CITY OF CALHOUN, GEORGIA HEREBY DEMANDS A TRIAL BY JURY
ON ALL ISSUES OF THIS CAUSE.

(signatures on next page)

Respectfully submitted this 22nd day of February, 2024.

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Counsel for the City of Calhoun, Georgia

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

MOSS LAND COMPANY, LLC, and)
REVOCABLE LIVING TRUST OF)
WILLIAM DARRYL EDWARDS, by)
and through WILLIAM DARRYL)
EDWARDS, TRUSTEE,)

Plaintiffs,)

vs.)

Case Number: 24CV73929

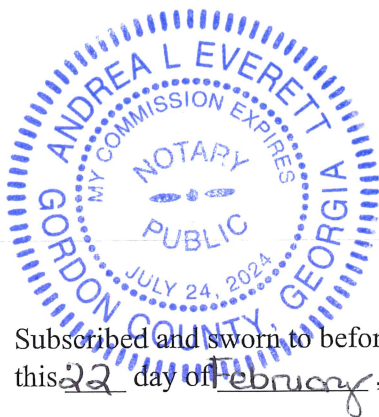
CITY OF CALHOUN, GEORGIA;)
3M COMPANY; DAIKIN AMERICA,)
INC.; E.I. DUPONT DE NEMOURS)
AND COMPANY; THE CHEMOURS)
COMPANY; INV PERFORMANCE)
SURFACES, LLC; ARROWSTAR,)
LLC; ALADDIN MANUFACTURING)
CORPORATION; MOHAWK CARPET,)
LLC; MOHAWK INDUSTRIES, INC.;)
SHAW INDUSTRIES, INC.; SHAW)
INDUSTRIES GROUP, INC.;)
MILLIKEN & COMPANY;)
MANNINGTON CARPETS INC.; THE)
DIXIE GROUP, INC.; and MARQUIS)
INDUSTRIES, INC.,)

Defendants.)

VERIFICATION

Personally appeared before the undersigned official, duly authorized by law to administer oaths, **KYLE ELLIS**, Utilities Administrator with the City of Calhoun, who, after first being duly sworn, states on oath that the information and responses set out in the foregoing **Answer and Crossclaim** are true and correct to the best of his knowledge and belief.

This 22 day of February, 2024.



Subscribed and sworn to before me
this 22 day of February, 2024.

Andrea L. Everett

Notary Public

My commission expires: 7-24-2024

Kyle W. Ellis
Kyle Ellis, Utilities Administrator

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

MOSS LAND COMPANY, LLC, and)
REVOCABLE LIVING TRUST OF)
WILLIAM DARRYL EDWARDS, by)
and through WILLIAM DARRYL)
EDWARDS, TRUSTEE,)

Plaintiffs,)

vs.)

Case Number: 24CV73929

CITY OF CALHOUN, GEORGIA;)
3M COMPANY; DAIKIN AMERICA,)
INC.; E.I. DUPONT DE NEMOURS)
AND COMPANY; THE CHEMOURS)
COMPANY; INV PERFORMANCE)
SURFACES, LLC; ARROWSTAR,)
LLC; ALADDIN MANUFACTURING)
CORPORATION; MOHAWK CARPET,)
LLC; MOHAWK INDUSTRIES, INC.;)
SHAW INDUSTRIES, INC.; SHAW)
INDUSTRIES GROUP, INC.;)
MILLIKEN & COMPANY;)
MANNINGTON CARPETS INC.; THE)
DIXIE GROUP, INC.; and MARQUIS)
INDUSTRIES, INC.,)

Defendants.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I have served the foregoing **ANSWER AND CROSSCLAIM FOR DAMAGES AND INJUNCTIVE RELIEF** via eService using the PeachCourt E-Filing system. This 22nd day of February, 2024.

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/s/ J. Anderson Davis

J. Anderson Davis

Georgia Bar No. 211077