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Robert W. Batsel, Jr., General Counsel
Withlacoochee Regional Water Supply Authority
3600 W. Sovereign Path
Suite 228
Lecanto, FL 34461

Dear Mr. Batsel,

We appreciate the opportunity to present this letter to your client, the Withlacoochee Regional Water Supply Authority.

I. Introduction

This letter addresses the viability of the claims of the Withlacoochee Regional Water Supply Authority against 3M Company (3M) and multiple other defendants for contamination caused by per- and polyfluoroalkyl substances (PFAS), including perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). For decades, these chemicals were designed, manufactured, and/or sold by defendants for use in many different consumer, commercial, and industrial products, such as aqueous film-forming foam (AFFF). These potential claims revolve around the allegation that, as a result of the use and disposal of defendants' PFAS-products, the groundwater, surface water, soil, and/or property has been contaminated with PFAS.

Our firms are currently working as co-counsel to represent a number of public entities against 3M and other defendants for drinking water and site contamination caused by PFAS and AFFF. Additionally, Baron & Budd and Cossich, Sumich, Parsiola & Taylor also play a prominent role in the nationwide PFAS litigation. Judge Richard M. Gergel has appointed Scott Summy of Baron & Budd as Co-Lead Counsel for the multi-district litigation (MDL). The Judge has also appointed Christina Cossich of Cossich, Sumich, Parsiola & Taylor as a member of the Plaintiffs' Executive Committee (PEC). Members of both firms are also on Plaintiffs' committees for science, experts, law and briefing, state cases, settlement, and bellwether trials. As such, the firms have a detailed knowledge of this litigation from all aspects and the leadership roles will keep the firms at the forefront of litigation.

II. PFAS Background

In the 1940s, 3M began manufacturing PFOS, PFOA, and other PFAS chemicals. 3M learned that these chemicals have a unique ability to reduce surface tension between a liquid and another liquid or solid allowing them to create products like Scotchgard, that resist heat, stains, oil and water. Because of these novel properties, 3M developed AFFF containing PFOS and PFOA in the 1960s to suppress Class B fuel fires, which were of significant concern at military bases, fire training facilities, airports, and petroleum terminals. While 3M was the sole manufacturer of PFOS, PFOA was produced by other major U.S. companies including Arkema, Asahi, Ciba-Geigy, Clariant, Dynax, and DuPont.

PFOS and PFOA are particularly dangerous when released into the environment through an exposure pathway such as AFFF. These chemicals easily dissolve in water, increasing the rate at which they can spread through the environment while contaminating soil, groundwater, and surface water. This mobility is made more dangerous by the fact that PFOS and PFOA are remarkably persistent and do not degrade over time. Furthermore, both chemicals bioaccumulate, and have half-lives in humans ranging from 3 to 5 years. Because of these chemical properties, PFOS and PFOA are called the “forever chemicals.”

As early as the 1970s, 3M conducted and sponsored studies that showed adverse effects from exposure to PFOS and PFOA and that PFOS and PFOA were widely present in the blood of the U.S. population. These 3M studies and anecdotal findings continued for decades and eventually resulted in 3M voluntarily removing these chemicals from the U.S. market.

In light of the thousands of recent scientific studies and journal publications focusing on PFOS and PFOA, on June 15, 2022, the EPA published new interim health advisory levels of 0.02 parts per trillion for PFOS and 0.004 ppt for PFOA. These newest health advisory levels are a significant reduction from the previous health advisory levels of 70 ppt for PFOS and PFOA.

III. Current Litigation

A number of lawsuits have been filed by both public and private entities for water and site contamination. Given the broad coverage of this issue, an MDL was applied for and granted before Judge Richard M. Gergel in the United States District Court for the District of South Carolina. Upon formation of the MDL, the Judicial Panel on Multidistrict Litigation limited consolidation to cases only involving AFFF and excluded those cases relating to other products containing PFOS and PFOA.

There are numerous Defendant Manufacturers named in the MDL, including 3M Company, E. I. DuPont de Nemours and Company, The Chemours Company, The Chemours Company FC, LLC, DuPont de Nemours, Inc., Corteva, Inc., Tyco Fire Products, LP, Chemguard, Inc., Buckeye Fire Equipment Company, National Foam, Inc., Kidde-Fenwal, Inc., Kidde PLC, Inc., UTC Fire & Security Americas Corporation, Inc., Chubb Fire, Ltd., Carrier Global Corporation, Raytheon Technologies Corporation, Arkema, Inc., BASF Corporation, Chemdesign Products, Inc., Clariant Corporation, Chemicals Incorporated, Nation Ford Chemical Company, Dynax Corporation, AGC Chemicals Americas, Inc., AGC, Inc., Deepwater Chemicals, Inc., Archroma Management, LLC,

and Archroma U.S., Inc. The primary causes of action alleged by plaintiffs against the Defendant Manufacturers are products liability, negligence, public and/or private nuisance, and trespass.

The Defendant Manufacturers were engaged in the business of designing, manufacturing, testing, distributing, marketing and/or selling PFOS, PFOA, and/or AFFF containing PFOS or PFOA. As such, the Defendant Manufacturers had a duty to not market a product that is unreasonably dangerous for its intended and foreseeable uses. Furthermore, the Defendant Manufacturers failed to provide warnings or instructions that were sufficient to notify the users of the dangers inherent in their products or of the methods of use that could reduce or eliminate those dangers. The Defendant Manufacturers also had a duty to exercise reasonable care in their design and manufacturing of these products as to avoid harm to those who would be foreseeably injured by PFOS and/or PFOA contamination. As a result of the Defendant Manufacturers' acts and omissions, their products have directly and proximately caused water and soil contamination as well as health hazards that have unreasonably interfered with, and continue to interfere with, Plaintiffs' use and enjoyment of their property. Lastly, plaintiffs did not grant permission to the defendants to allow PFOS and/or PFOA to enter into plaintiffs' property, such as soil, groundwater, water supply wells, and drinking water systems.

Despite the substantial number of plaintiffs and defendants, Judge Gergel has moved the MDL forward very efficiently. On August 19, 2022, Judge Gergel held oral arguments in Charleston regarding the Defendant Manufacturers' "government contractor defense." Members of our firms have been heavily involved in discovery and legal research specific to this defense, and many of our lawyers were involved in preparing for, and arguing, at this hearing. On September 16, 2022, plaintiffs received a favorable ruling from the Court denying the defendants' motion.

While addressing this and other issues on a regular basis, the Court and the party leadership have also been preparing water provider plaintiffs for the Bellwether process. Ten water provider cases were originally chosen as Bellwether Plaintiffs and Baron & Budd along with Cossich, Sumich, Parsiola & Taylor represent five of those ten plaintiffs. The bellwether candidates were reduced to three, of which our firms represent two. Judge Gergel selected the City of Stuart as the first public water provider bellwether case to go to trial in June of 2023. This process has greatly expedited those particular cases and has helped to frame critical legal and factual issues that will potentially impact all cases. In late October 2022, Judge Gergel appointed retired federal Judge Layn Phillips as a mediator in order to facilitate settlement discussions.

Outside of the Bellwether plaintiffs, the only discovery required of plaintiffs at this time is completion of a brief Plaintiff Fact Sheet, which is due to defendants within 98 days of filing suit.

IV. Potential Legal Actions

While you will always have the option to file in state or federal court, if there is any connection between the PFAS contamination and AFFF, the case will be removed to federal court and/or transferred to the MDL. Accordingly, early participation in the MDL is recommended, as it provides the advantages of limited short-term discovery, cost sharing on liability aspects of the case, and a seat at the table for any potential settlement discussions. If the case does not resolve

within the confines of the MDL, then it will likely be returned to your home state for litigation in state or federal court. In any case, there is no financial risk in taking such an action. This litigation will be handled on a contingent basis. If unsuccessful, the litigation will cost you nothing in fees or advanced expenses.

This is one of the most pressing environmental issues currently facing our country and the impact of these chemicals on the natural resources are essentially unavoidable. Accordingly, once contamination is confirmed, a proactive approach of filing suit, joining the MDL, and further evaluating potential claims is recommended.

Sincerely,

/s/ Christina M. Cossich