



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

To: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Ianello, Treasurer

Cc: Terrence D. McCracken, Secretary to the Authority
Joyce A. Tomaka, Chief Financial Officer
Leonard F. Kowalski, Executive Engineer
Sabrina A. Figler, Director of Water Quality

From: Mark S. Carney, General Counsel

Date: September 7, 2023

Subject: Douglas and London, P.C.

Currently, there are several pending lawsuits seeking damages for contamination of drinking water with per- and polyfluoroalkyl substances (“PFAS”). The Legal Department has reviewed these lawsuits, involving 3M and DuPont, among others, regarding liability to public water providers and municipalities throughout the country.

One of these lawsuits involves a class action claim against 3M made by public water providers throughout the United States. On August 29th, a federal judge granted preliminary approval of a \$10.3 billion settlement agreement against 3M. These settlement funds will be paid out over a number of years to qualifying public water providers for funding of testing for and treating PFAS contamination. A formula is in the process of being developed to distribute funds among the qualifying public water providers throughout the country.

The Legal Department has reached out to other water providers in our area regarding their participation in the 3M settlement and other claims against other entities causing PFAS contamination. OCWA and MCWA have joined this lawsuit and are currently closely monitoring test results to determine if they can participate.

ECWA test results have not fallen under current testing parameters for recovery for contamination, however we can still recoup costs for additional testing. Should our results change over the next four years, we would also be entitled to a recovery for contamination.

After discussion with our outside counsel at Harris Beach and with counsel at OCWA, I reached out to Douglas and London, P.C. to begin discussions to retain their legal services to potentially recover from parties responsible for PFAS contamination.

After review of the retainer agreement and consultation with the Engineering Department, it is the recommendation of the Legal Department that the Authority retain Douglas and London, P.C. (and the associated firms) to represent ECWA as a plaintiff in both the 3M settlement, as well as any other potential litigation against a PFAS contamination causing party.

MSC:mes

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** _____
Project Description: Authorization to retain Douglas & London PC as counsel in lawsuit against 3M in PFAS litigation.

Item Description:






- | | | | |
|--|--|---|---------------------------------------|
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input checked="" type="checkbox"/> Other <u>Board Authorization to enter into Retainer Agreement with Douglas & London PC</u> | | | |

Action Requested:

- | | |
|---|--|
| <input type="checkbox"/> Board Authorization to Execute | <input type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input checked="" type="checkbox"/> Other <u>Authorize Chair to execute Retainer Agreement with Douglas & London PC</u> | |

Approvals Needed:

APPROVED AS TO CONTENT:

- | | | |
|--|---|-------------------------|
| <input checked="" type="checkbox"/> Water Quality Director |  | Date: <u>9/11/2023</u> |
| <input type="checkbox"/> Chief Operating Officer | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Executive Engineer |  | Date: <u>09/08/2023</u> |
| <input checked="" type="checkbox"/> Director of Administration |  | Date: <u>09/07/2023</u> |
| <input type="checkbox"/> Risk Manager | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Financial Officer |  | Date: <u>09/08/2023</u> |
| <input checked="" type="checkbox"/> Legal |  | Date: <u>9/7/2023</u> |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|--|------------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority |  | Date: <u>9/11/2023</u> |
|--|--|------------------------|

Remarks: _____

Resolution Date: _____ **Item No:** _____

**ERIE COUNTY WATER AUTHORITY
LEGAL SERVICES AGREEMENT**

I. INTRODUCTION

A. RECITALS.

1. Erie County Water Authority, (“Client”) is committed to delivering clean drinking water to its citizens and protecting its property interests. Client is also committed to identifying responsible parties and taking reasonable steps to avoid passing on the costs to its consumers for the treatment and remediation of contamination.

2. Taft Stettinius & Hollister, LLP; Law Office of Kevin Madonna, PLLC; SL Environmental Law Group PC; Douglas & London, P.C.; Levin, Papantonio, Rafferty, Proctor, Buchanan, O’Brien, Barr, Mougey, P.A. (collectively the “Firms”) have joined together to assist public entities facing the challenges posed by contamination with per- and polyfluoroalkyl substances (“PFAS”). The Firms are experienced both in PFAS litigation and in the representation of public entities and water suppliers in cases involving groundwater and property contamination.

3. The purpose of this Legal Services Agreement (“LSA” or “Agreement”) is (i) to enter into an attorney-client relationship between Client and the Firms (collectively, the “Parties”) for the purpose of investigating and assessing potential claims arising out of the presence of contaminants in water supply wells affecting Client’s water systems and/or Client’s other property; and (ii) to provide for the terms and conditions for the representation of Client in any civil action that may be filed in the appropriate court and any proceeding by writ or appeal related to that action filed on behalf of Client by the Firms (“Legal Action”).

II. INVESTIGATION AND ASSESSMENT OF POTENTIAL CLAIMS

A. PRE-LITIGATION SCOPE OF SERVICES.

1. ***Contaminants.*** Client has detected the presence of several PFAS compounds (the “Contaminants” or “Contamination”) during testing of its drinking water or property. The engineering, construction, and operation and maintenance of systems to treat contamination in affected wells and/or remediate property will result in significant financial costs to Client.

2. ***Investigation.*** Client has retained the Firms to assist Client in investigating the presence of the Contaminants throughout its system and potential sources of the Contamination, evaluate the potential to recover the costs associated with the Contamination, provide advice, and represent Client in any Legal Action against parties potentially responsible for the Contamination.

B. PRE-LITIGATION COSTS AND FEES.

1. ***Client.*** All costs associated with Client’s pre-litigation investigation of the Contaminants, including those associated with water and soil sampling, laboratory testing

and engineering expenses shall be paid directly by Client. For the avoidance of doubt, nothing contained herein shall obligate Client to incur any costs to investigate the Contaminants beyond what it has already expended.

2. **The Firms.** All costs and fees incurred by the Firms during any pre-litigation investigation shall not be charged to Client nor recoverable by the Firms against Client under this Agreement.

3. **Other.** Nothing contained herein should be interpreted to preclude seeking recovery of such fees and costs incurred by either Party as part of any Legal Action that may be filed pursuant to this Agreement. In addition, if the Firms file any Legal Action, the Firms may use the time incurred for any investigation contemplated herein to support the reasonableness of this Agreement.

C. RETENTION OF FIRM RATHER THAN PARTICULAR ATTORNEYS. Client is retaining the Firms, not any particular attorney, and attorney services to be provided to Client shall not necessarily be performed by any particular attorney.

D. DESIGNATION. Client designates _____ as its authorized representative to direct the Firms and to be the primary individual to communicate with the Firms regarding the subject matter of its representation of Client under this Agreement. This designation is intended to establish a clear line of authority and to minimize potential uncertainty, but not to preclude communication between the Firms and other representatives of Client. Client may designate additional authorized representatives at its discretion.

III. LITIGATION SERVICES

A. LITIGATION SERVICES TO BE PROVIDED.

1. **Inclusions.** It is the intent of the Parties that the Firms shall represent Client in a civil action for damages in the appropriate court as well as in any proceeding by writ or appeal related to that action. The legal services to be provided by the Firms consist of representation of Client with respect to:

a. The contamination of groundwater supplies and/or soil by the Contaminants or other contaminants identified during the investigation stage described in Section II of this Agreement, as approved by Client and the Firms.

b. Claims and/or actions for damages sustained by Client as a result of actual or threatened conduct relating to contamination of groundwater, the loss of use of groundwater, and any past, present, and future costs incurred to remove the Contaminants from drinking water, groundwater and/or soil, and any related appeals in such actions.

2. **Retention; Filing of Legal Action.** The filing of any Legal Action pursuant to this Agreement shall be at the discretion of the Parties. Nothing in this Agreement shall be construed as obligating Client to retain the Firms in connection with any Legal Action or obligating the Firms to file a Legal Action on behalf of Client.

B. LEGAL SERVICES SPECIFICALLY EXCLUDED.

1. ***Exclusions.*** Legal services that are not to be provided by the Firms under this Agreement specifically include, but are not limited to, the following:

a. Proceedings before any administrative or governmental agency, department or board. However, at Client's election, the Firms shall appear at such administrative proceedings to protect Client's rights to pursue any Legal Action filed pursuant to this Agreement, without Client being assessed any additional attorneys' fees in connection with such appearance.

b. Defending any legal action(s) against Client commenced by any person, with the exception of any cross-complaints, counterclaims, or other third-party claims filed in a Legal Action pursuant to this Agreement.

c. Defending any claim against Client for unreasonable use of water and/or waste of water.

d. Defending any action concerning water rights.

2. ***Additional Legal Services.*** If Client wishes to retain the Firms to provide any legal services for additional compensation not provided under this Agreement, a separate written agreement between the Firms and Client shall be required.

3. ***Non-PFAS Legal Services.*** This Agreement only applies to PFAS litigation activities and any other/non-litigation activities that one or more of the Firms may already be providing to client, or may provide in the future, is not affected by this Agreement.

C. RESPONSIBILITIES OF ATTORNEY AND CLIENT.

1. ***The Firms Responsibilities.*** The Firms shall perform the legal services called for under this Agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. The Firms shall provide status reports to Client on a mutually agreeable schedule, as events reasonably warrant further reporting, and at the further request of Client.

2. ***Client Responsibilities.*** Client shall cooperate with the Firms and keep the Firms reasonably informed of developments in connection with any Legal Action.

3. ***Selection of Experts.*** The Firms and Client shall meet and confer regarding selection and retention of experts in the Legal Action. Client shall not unreasonably withhold approval of selection and retention of such experts. Client shall not be required to pay for the selection or retention of experts. These costs will be advanced by the Firms and be reimbursed pursuant to this Agreement only in the event of a recovery.

4. ***Settlement.*** The Firms shall not settle any Legal Action without the approval of Client. Client shall have the absolute right to accept or reject any settlement. The Firms shall notify Client promptly of the terms of any settlement offer received by the Firms.

5. ***Client Agreement Not to Use, Share, or Disclose the Firms' Work Product Outside the Context of this Legal Action.*** Client agrees that it shall not use or disclose in any legal proceeding, case, or other context of any kind, other than this Legal Action, or share or disclose to any person not a Party to this Agreement, any documents, work product, or other information made available to or to which Client or their counsel acquire access through the Firms or any co-counsel of the Firms, including any fact or expert materials produced and/or generated in any prior discovery proceedings in any litigation involving E. I. du Pont de Nemours and Company, The Chemours Company, and/or the 3M Company, without the express written prior approval and consent of the Firms and all such other co-counsel of the Firms.

D. ATTORNEYS' FEES.

1. ***Contingent Fee.*** The amount the Attorneys shall receive as fee for the legal services provided under this Agreement shall consist of a contingent fee ("Contingent Fee"), which shall be twenty-five percent (25%) of/from the Gross Recovery.

Definitions Relevant to Attorneys' Fees.

a. "Costs" include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, reasonable travel and hotel expenses, messenger service fees, photocopying expenses, and process server fees. Items that are not to be considered Costs, and that must be paid by Client without being either advanced or contributed to by the Firms, include Client's expenses incurred in providing information to the Firms or defendants.

b. "Settlement" refers to any voluntary agreement executed by Client and any third party to this Agreement, whether resulting from a settlement conference, mediation, or court stipulation, terminating any Legal Action filed pursuant to this Agreement and finally determining the rights of parties to the Legal Action where no issue is left for future consideration or appeal.

c. "Cash Recovery" means, without limitation, the total monetary amount received by Client in a Settlement or Final Judgment arising from an actual or threatened Legal Action by the Firms pursuant to this Agreement, including interest of any kind received by Client.

d. "Non-Cash Recovery" means, without limitation, the fair market value of any property delivered to Client, any services rendered for Client's benefit, and any other non-cash benefit, including but not limited to the construction, operation, and maintenance of one or more water treatment facilities; delivery of replacement water; modification, alteration, construction or operation of well(s) and/or any part of a public or private water system; or any other types of injunctive and/or equitable relief conferred on Client, in a Settlement or Final Judgment of an actual or threatened Legal Action by the Firms pursuant to this Agreement.

e. "Present Value" means the interest rate of the one-year treasury bill as reported by the United States Federal Reserve in the weekly Federal Reserve Statistical Release closest in time to the date of the recovery for which the present value is being calculated.

f. “Reasonable Fees” or “Reasonable Attorney’s Fee” means such fees as is reasonably determined by taking into account the amount of time spent on the Legal Action by the Firms and associate counsel retained by the Firms, the value of that time, the complexity of the Legal Action, the benefit conferred on Client, and the financial risk to the Firms and associate counsel by their agreeing to represent Client in the Legal Action and to invest time and advance Costs without compensation or reimbursement in the event that there is no Gross Recovery or a Gross Recovery that does not fully compensate or reimburse the Firms and associate counsel for their time and advanced Costs.

3. ***Calculation of Non-Cash Recovery.***

a. For any Non-Cash Recovery resulting in the receipt of property, the provision of services, or the receipt of other non-monetary benefits by Client, such property, services, or other non-monetary benefits shall be deemed for purposes of this Agreement to have been received by Client upon the execution of a Settlement or Final Judgment. The value of the services shall be discounted to Present Value.

b. If any Non-Cash Recovery is awarded in a Final Judgment, or before accepting any settlement offer that involves a Non-Cash Recovery, Client shall provide the Firms with its estimate of the value of the Non-Cash Recovery. The Firms shall promptly respond in writing, indicating whether the firms accept said estimate. If the Firms object to Client’s estimate, the Parties shall proceed as set forth in Section III.G (“Disagreements Concerning Value of Recoveries”). Nothing herein shall impede or restrict Client’s right to include a Non-Cash Recovery in any Settlement, nor the Firms’ right to receive a Non-Cash Recovery.

E. DISTRIBUTION OF PROCEEDS.

1. ***Pay-if-Paid; Option for Advance Payment.*** Receipt of any Gross Recovery by Client is a condition precedent to payment of any portion of the Contingent Fee by Client to the Firms. Undisputed payment(s) of the Contingent Fee owed to the Firms in accordance with Agreement shall be made no later than seven (7) days after receipt by Client of any Gross Recovery. Notwithstanding the foregoing, Client, in its sole and absolute discretion, may choose to pay any Cash Recovery portion of the Contingent Fee prior to receipt of any Gross Recovery by Client (“Advance Payment”). Upon Client’s election to make an Advance Payment, Client shall estimate the amount and timing of outstanding Cash Recoveries, treat all such outstanding payments as constructively received by Client upon the execution of a Settlement or Final Judgment requiring such payments, discount all such payments to their Present Value as of the time of said Settlement or Final Judgment, and pay the Firms the Contingent Fee due on the Present Value of such portion of the Cash Recovery at that time. Nothing herein shall be construed to modify how any amount shall be distributed or the Parties’ remedies in this Agreement upon a dispute over any estimate or amount due under this Agreement.

2. ***Distribution; Revolving Fund.*** The receipt of any Gross Recovery by Client shall be distributed as follows: (i) all unpaid Costs shall be paid, including all Costs advanced by the Firms, which shall be reimbursed, (ii) the Contingent Fee shall be paid until the Firms are paid in

full, and (iii) any remaining amounts shall be paid to Client. Notwithstanding the foregoing, if Client receives a Cash Recovery in a Settlement that is entered while a Legal Action remains pending, and the Cash Recovery is in excess of any unpaid Costs, the unreimbursed Costs advanced by the Firms, and the Contingent Fee, a revolving fund of \$500,000 (“Revolving Fund”) shall be maintained from Client’s share of said Cash Recovery to apply to subsequent Costs incurred as part of the then-ongoing Legal Action. Replenishment of the Revolving Fund shall occur within thirty (30) days of the fund becoming drawn down to \$250,000; however, in no event shall Client be required to replenish the Revolving Fund with monies in excess of Client’s share of the Cash Recovery obtained to date.

Use of Monies Held in Trust. The firms are authorized to apply any funds received on behalf of Client in connection with a Settlement or Final Judgment and held in The Firms’ trust account to the payment of any Costs owed to third parties to this Agreement; provided that for any payments in excess of \$1,000, the Firms shall furnish copies of third-party invoices for Client’s review at least seven (7) days prior to making said payments.

F. REASONABLE FEE IF CONTINGENT FEE UNENFORCEABLE.

1. ***Reasonable Fee.*** In the event of a Final Judgment finding that the Contingent Fee portion of this Agreement is unenforceable for any reason or that the Firms cannot represent Client on a Contingent Fee basis, Client shall pay a reasonable fee for the services rendered.

2. ***Fee Determination.*** The Parties shall use best efforts to negotiate a reasonable fee. If the Parties fail to do so, said fee shall be determined by arbitration proceedings before a mutually agreeable arbitration service, but absent such agreement, before the Judicial Arbitration and Mediation Services (JAMS), with any costs of such proceedings born equally by Client and the Firms.

G. COURT-AWARDED AND/OR SETTLEMENT-AWARDED ATTORNEYS’ FEES.

1. ***Duty to Seek Attorneys’ Fees and Costs in Legal Action.*** Client may obtain an award of Attorneys’ Fees and/or Costs in a Final Judgment or Settlement. The Firms agree to seek any such award(s) in any Legal Action it files on behalf of Client.

2. ***Credit for Court-Awarded Fees and Costs.*** Any Attorneys’ Fees or Costs awarded in connection with a Legal Action shall not be considered part of the Gross Recovery for purposes of calculating the Firms’ Contingent Fee but said fees and costs shall be applied as a credit against Client’s obligation to pay the Firms’ Contingent Fee under this Agreement.

3. ***Court-Awarded Fees and Costs in Excess of Contingent Fee.*** Notwithstanding any other provision of this Agreement, if court-awarded Attorneys’ Fees and costs exceed the Contingent Fee to which the Firms would otherwise be entitled under this Agreement, the amounts due to the Firms under this Agreement shall be the court-awarded fees and costs, and Client shall receive all other amounts awarded in a Legal Action.

H. DIVISION OF ATTORNEYS' FEES.

1. ***Division of Fees; Disclosure.*** The Firms may divide the fees and/or costs to which it is entitled under this Agreement with another attorney or law firm retained as associate counsel. The terms of such additional division, if any, shall be disclosed to Client. Client is informed that, under the Rules of Professional Conduct, such a division may be made only with Client's written consent after a full disclosure to Client in writing that a division of fees shall be made and of the terms of such division. The division of fees and costs between the Firms has been separately provided to Client.

2. ***Retention of Associate Counsel.*** The Firms may retain associate counsel to assist with litigating a Legal Action pursuant to this Agreement. The attorney or law firm selected by the Firms shall be subject to Client's approval.

I. COSTS.

1. ***Costs Advanced by the Firms; Interest.*** The Firms shall advance all Costs incurred in connection with the Firms' representation of Client under this Agreement. Costs shall be advanced by the Firms and then paid by Client from any Gross Recovery. Interest at the rate of six percent (6%) per year shall accrue on all Costs advanced by the Firms, from the date of each advance to the date of reimbursement. The Firms shall notify Client of the total amount of Costs advanced every quarter.

2. ***Reimbursement; Risk of Loss.*** The Firms shall be reimbursed for any Costs before any distribution to Client. If there is no Gross Recovery or the Gross Recovery is insufficient to reimburse the Firms in full for Costs advanced, the Firms shall bear the loss for any Costs not reimbursed under this Agreement.

3. ***Defense of Attorneys' Fees and Costs to Third Party.*** Notwithstanding any provision of this Agreement to the contrary, the Firms shall defend Client in any motion seeking an award of Attorneys' Fees or costs against Client in any Legal Action brought under this Agreement. Any costs incurred in such defense shall be treated as Costs for purposes of, and in the manner provided by, this Agreement.

IV. REPRESENTATION OF ADVERSE INTERESTS

A. DISCLOSURE.

1. ***Duty to Disclose; No Conflicts Identified.*** If any of the Firms have a relationship with another party with interests adverse to Client, or with someone who would be substantially affected by any action taken under this Agreement, the Rules of Professional Conduct require the Firms to disclose that to Client so Client can evaluate whether that relationship causes Client to have any concerns regarding any of the Firms' loyalty, objectivity, or ability to protect Client's confidential information. To the extent required, the Client waives any conflict under applicable Rules of Professional Conduct.

2. ***Representation of Other Clients; Waiver of Potential Conflicts.*** Client understands that currently, and from time to time, the Firms represent other municipalities,

governmental agencies, governmental subdivisions, or investor-owned public water utilities in other actions or similar litigation, and that such work is the focus of the Firms' practice. Further, Client understands that the Firms represent other clients in actions similar to what would be brought under this Agreement and against the same potential defendants. Client understands that a recovery obtained on behalf of another client in a similar suit against the same defendants could, in theory, reduce the total pool of funds available from these same defendants to pay damages in a Legal Action brought under this Agreement. Client understands that the Firms would not take on this engagement if Client required the Firms to forgo representations like those described above. Client has conferred with its own separate and independent counsel about this matter, and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest that may occur as the result of the Firms' current and continuing representation of cities and other water suppliers in similar litigations, because such waiver enables Client to obtain the benefits of the Firms' experience and expertise. Therefore, Client consents that the Firms may continue to handle such work, and may take on similar new clients and matters, without disclosing each such new matter to Client or seeking the consent of Client while representing it. The Firms shall not, of course, take on such other work if it requires the Firms to be directly adverse to Client while the Firms are still representing Client under this Agreement.

V. TERMINATION

A. DISCHARGE OF ATTORNEY.

1. ***Right to Discharge.*** Client may discharge the Firms at any time, with or without cause, by written notice effective when received by the Firms. Client shall have the right to terminate this Agreement with cause upon the Firms breach of this Agreement or its failure to strictly adhere to applicable Rules of Professional Conduct. Unless specifically agreed by the Firms and Client, the Firms shall provide no further services and advance no further Costs on Client's behalf after receipt of the notice. If any or all of the Firms are Client's attorney of record in any proceeding, the Firms shall immediately execute and return a substitution-of-attorney form.

2. ***Reimbursement of Costs; Fees.*** In the event the Firms are discharged without cause before the conclusion of a Legal Action, Client shall (i) reimburse the Firms for any and all Costs advanced by the Firms for such Legal Action not later than thirty (30) days from receipt of a reasonably detailed final cost accounting from the Firms, and (ii) upon the conclusion of the Legal Action, pay the Firms a Reasonable Attorneys' Fee for services performed up to the point of the discharge. Nothing herein shall be construed to limit Client's rights and remedies in the event of a discharge of the Firms for cause.

B. WITHDRAWAL OF ATTORNEY.

1. ***Right to Withdraw.*** The Firms may withdraw from representation of Client (i) with Client's consent, (ii) upon court approval, or (iii) if no Legal Action is filed, for good cause upon reasonable notice to Client. Good cause includes Client's breach of this Agreement, Client's unreasonable refusal to cooperate with the Firms or to follow the Firms' advice on a material matter, or any other fact or circumstance that would render the Firms' continuing representation unlawful or unethical. Notwithstanding the Firms' withdrawal for good cause, Client shall remain

obligated to pay the Firms and any associated counsel, out of the Gross Recovery, a Reasonable Fee for all services provided and to reimburse the Firms for all reasonable Costs advanced before the withdrawal.

2. ***Withdrawal Without Cause.*** The Firms may terminate this Agreement at any time, without cause, by giving Client not less than sixty (60) days prior written notice of termination, said notice to specify the effective date of the termination. Where the Firms terminate this Agreement without cause, the Firms shall not be entitled to the recovery of any amount, regardless of the status of any pending Legal Action, and regardless of whether any amounts have been or are subsequently received by Client.

VI. MISCELLANEOUS

A. LIEN. Client hereby grants the Firms a lien on any and all claims or causes of action that are the subject of the Firms' Contingent Fee and/or Costs advanced under this Agreement. The Firms' lien shall be for sums owed to the Firms for any unpaid Contingent Fee or Costs at the conclusion of the Firms' services. The lien shall attach to any Gross Recovery Client may obtain.

B. RELEASE OF CLIENT'S PAPERS AND PROPERTY. Upon the conclusion of services under this Agreement, the Firms shall release promptly to Client on request all of Client's papers and property. "Client's papers and property" includes correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to Client's representation, regardless of whether Client has paid for said documents or property.

C. INDEPENDENT CONTRACTOR. The relationship to Client of the Firms, and any associate counsel or paralegal provided through the Firms, in the performance of services hereunder, is that of independent contractor and not that of employee of Client, and no other wording of this Agreement shall stand in derogation. The fees and expenses paid to the Firms hereunder shall be deemed revenues or expense reimbursements of the Firms' offices practices and not remuneration for individual employment apart from the business of the individual Firm's law offices.

D. NOTICES. All written notices and communications to Client relating to this Agreement shall be mailed to or personally delivered to Client, addressed to:
_____. Written notices and communications to the Firms relating hereto shall be mailed to or personally delivered to Law Office of Kevin Madonna, PLLC, 48 Dewitt Mills Road, Hurley, NY 12443.

E. CONFIDENTIALITY. This Agreement establishes the relation of attorney-client between the parties hereto. The Firms shall hold all money and property of Client in trust for Client's benefit, with all funds deposited and managed in the Firms' client trust account as required by law. The Firms shall not divulge Client's confidences and shall be entitled to the candid cooperation of all Client's employees in all matters related to the assigned files and any related actions. Furthermore, this Agreement is an attorney-client communication and shall not be disclosed by Client or the Firms to any third party, except as may otherwise be required by

law. In the event of a request, demand, or lawsuit to compel Client to provide a copy of this Agreement or a description of its terms, the Firms shall work with Client to provide an appropriate response and the Firms shall defend any such litigation at the Firms' cost. Nothing herein shall preclude the Firms and Client from agreeing together to disclose the Agreement or its terms.

F. DISCLAIMER OF GUARANTEE. Although the Firms may offer an opinion about possible results regarding the subject matter of this Agreement, the Firms cannot guarantee any particular result. Client acknowledges that none of the Firms have made promises about the outcome and that any opinion offered by the Firms in the future shall not constitute a guarantee.

G. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement shall be binding on the parties.

H. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement shall be severable and remain in effect.

I. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing, approved and executed in the same manner as the initial Agreement.

J. RECITALS; TITLES, SUBTITLES, HEADINGS. The recitals to this Agreement are part of this Agreement, but all titles, subtitles, or headings in this Agreement have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Agreement.

K. ARBITRATION OF DISPUTES. Notwithstanding any other provision of this Agreement, any disputes relating to the Firms' Contingent Fee and/or arising out of this Agreement may first be arbitrated. If a fee dispute arises, the parties shall arbitrate the dispute with the Honorable Wayne R. Andersen (Ret.) or another agreed arbitrator from the Chicago JAMS office.

L. VENUE IN ACTION ON AGREEMENT. In any dispute relating to the Contingent Fee or other dispute arising out of this Agreement, the venue shall be Erie County, New York.

M. GOVERNING LAW. The terms and provisions of this Agreement and the performance of the parties hereunder shall be interpreted in accordance with, and governed by, the laws of the State of New York.

N. EFFECTIVE DATE OF AGREEMENT. The effective date of this Agreement shall be the date when last executed by the Parties. Once effective, this Agreement shall, however, apply to services provided by the Firms on this matter before its effective date.

O. AUTHORITY OF PARTIES. Each of the signatories to this Agreement warrants that he or she has the authority to enter into and execute this Agreement and to bind the entity or entities on whose behalf each sign.

P. EXECUTION. This Agreement may be executed by transmittal of electronic (.pdf) signature counterparts.

The foregoing is agreed to by:

CLIENT Date

Kevin J. Madonna Date
Law Office of Kevin Madonna, PLLC
48 Dewitt Mills Rd
Hurley, NY 12443

Michael A. London Date
Douglas and London, P.C.
59 Maiden Lane, 5th Floor
New York, NY 10038

Ned McWilliams Date
Levin, Papantonio, Rafferty, Proctor, Buchanan,
O'Brien, Barr, Mougey, P.A.
316 S. Baylen Street
Pensacola, FL 32502

Alexander Leff Date
SL Environmental Law Group PC
201 Filbert Street, Suite 401
San Francisco, CA 94133

Robert A. Bilott Date
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957

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

IN RE: Aqueous Film-Forming Foams (AFFF)
Products Liability Litigation

MDL No. 2873

**EXHIBIT 8
TO CASE MANAGEMENT ORDER RE:
WATER PROVIDER PLAINTIFF FACT SHEET**

***IN RE: Aqueous Film-Forming Foams (AFFF)
Products Liability Litigation***

This Plaintiff Fact Sheet is to be completed by each Plaintiff in any action transferred to or originally filed in this multi-district litigation that has been brought by or on behalf of one or more public or private water suppliers, including municipalities or other local or county government entities pursuing claims related to alleged contamination of water supplies within or impacting their jurisdictions. This Fact Sheet does not include States that are plaintiffs in this MDL. For the purposes of this Plaintiff Fact Sheet, “you” and “your” refer to the public or private entity that is the Plaintiff; the Plaintiff’s divisions, departments, officers, directors, agents, employees, and/or representatives; any public or private water suppliers that Plaintiff purports to represent in this litigation, and any municipality or other local or county government pursuing claims related to alleged contamination of water supplies within or impacting their jurisdictions, as well as for other Plaintiffs, but only to the extent they represent the interests of such entities in Member Actions. In completing this Plaintiff Fact Sheet, you are under oath, subject to the penalties of perjury, and must provide information that is true and correct to the best of your knowledge. If you cannot recall all the details requested, please provide as much information as you can. Materials prepared by your attorneys for use in the litigation (Attorney Work Product) are not required to be produced. You must complete the Plaintiff Fact Sheet in accordance with the requirements and guidelines set forth in the applicable Case Management Order. To the extent that any response requires additional space, please insert additional space or information or attach a continuation sheet referencing the question at issue. **ALL ASPECTS OF THIS PLAINTIFF FACT SHEET ARE DESIGNATED AS CONFIDENTIAL AND COVERED BY THE PROTECTIVE ORDER.**

I. CASE INFORMATION

1. Caption:

Docket No.

II. PLAINTIFF INFORMATION

2. Plaintiff’s Name:

(If Plaintiff has operated or existed under other names during the time periods alleged in the complaint, please also identify any prior names.)

3. Plaintiff’s Address:

4. Identify whether Plaintiff is a public utility or an investor-owned utility.

5. If the Plaintiff is not a water provider, but Plaintiff is filing on behalf of a water provider: Specify the names and addresses of all public or investor-owned utilities that Plaintiff purports to represent in this lawsuit (as well as any prior names), and state Plaintiff’s relationship to those utilities.

PLEASE COMPLETE PARTS III AND IV SEPARATELY

FOR EACH WATER PROVIDER

III. WATER PROVIDER INFORMATION

6. Identify all geographic regions or communities where the water system currently operates to provide water to customers.

Attach or provide GIS files, maps, or other data or documentation describing the water system's wells and distribution systems.

7. State the number of metered accounts currently served by the water system.
8. State the water system's current maximum and average daily demand (MGD) by month over the past three (3) years.

	<i>2018</i>	<i>2019</i>	<i>2020</i>
<i>Total Annual Flow</i>			
<i>Average Gallons per Month</i>			
<i>Average Gallons per Day</i>			

Maximum Capacity:

9. Identify and describe below the water system's current treatment system(s), including any existing method for treating water that is capable of removing PFAS contamination.
10. Identify and describe all water resources and/or water supplies that the water system has used at any time since either January 1, 2000 or the date you claim contamination began, whichever is earlier, that you contend contributed to the contamination, including the geographic location of the water resource or water supply (e.g., wells, surface water), the dates each well or water resource was available to be used, and the manner in which it entered the water distribution system.

Attach or provide documentation reflecting the information requested in the above question.

11. Identify and describe all water resources and/or water supplies not described above that are actually or potentially available to the water system currently, including the geographic location of the water resource or water supply (e.g. wells, surface water).

IV. ALLEGED CONTAMINATION

12. As to your claims against the Defendants, state the location or locations where you claim that the water system allegedly contains any per- or polyfluoroalkyl substances (“PFAS,” an umbrella term that includes, among other substances, perfluorooctane sulfonate (PFOS) and/or perfluorooctanoic acid (PFOA)); the sites which you claim to be the source of the PFAS (if attributed in whole or in part to the use of or disposal of AFFF at some site, identify the site); the specific PFAS-containing products whose use or disposal you claim gave rise to the presence of PFAS (if known); and the time period during which PFAS was allegedly contained in the water system (approximate start, end date, or continuing if applicable):

The investigation into sources and site locations of PFAS contamination are preliminary in nature and are subject to further discovery and expert analysis. Furthermore, the approximate start dates of PFAS contamination provided below are based on the date that Plaintiff began testing for PFAS, and it is possible that PFAS contamination existed prior to these dates.

Site/Location of PFAS	Source(s) of PFAS	Product	Approximate Dates (Start Date, End Date or Continuing)
	AFFF		
	AFFF		
	AFFF		

13. As to the time period listed in your response to question 12, provide the test results and test data for all tests that you have conducted or of which you are aware of any water for the presence of PFAS or other contaminants. Include the results of all testing of the water in your water system, any storage system used by your water system, any endpoint of your water system (including homeowner or commercial taps), or any water supply or other water resource used or available for use by your water system. Specify: (a) the test date, (b) the location, depth, and description of the water tested, (c) the person or entity who conducted the test, (d) the level of any PFAS and/or other contaminants that were detected, and (e) what treatment the water received, if any, before testing.

Please attach to this form or provide copies of all testing data and results.

Date	Location/Water Tested	Test Provider	Test Results (substance in PPT or “Not detected”)	Treatment

14. Do you have any documents or other information identifying the specific products that you claim to have caused the alleged contamination (*i.e.* photos of product labels at the site, invoices, shipping labels, identity of witnesses, etc.)? Yes No

If yes: Do you have any documents or other information identifying the specific location where these products were allegedly used? Yes No

If yes to either/both of the above questions, attach to this form or provide copies of those documents, referencing this question.

If you have other information that is responsive to this question, that is not contained in actual documents, identify that responsive information below.

15. Do you possess information that there are or are you aware of any other sources of PFAS other than use or disposal of AFFF that have contaminated or may be contaminating your water supply? Yes No

If yes: Identify any such sources or attach or provide documents identifying such sources.

V. REMEDIATION

16. Have any steps been taken to mitigate the claimed impact of any water allegedly containing any PFAS (*e.g.*, installation of any treatment or remediation systems, including GAC, reverse osmosis, ion exchange systems, discontinuing use of wells, drilling of additional or new wells, securing alternative water sources, providing bottled water, point of entry or other treatment or filter systems to customers)?

Yes No Unsure

If yes, describe steps taken to mitigate the claimed impact of any water allegedly containing any PFAS, the dates on which such efforts were undertaken, and what parties took and paid for those mitigating steps.

17. Do you or others currently plan to take any steps in the future to mitigate the claimed impact of any water allegedly containing any PFAS? Yes No Unsure

If yes, describe all such steps, the dates on which such efforts are to be undertaken, and what parties will take and pay for those mitigating steps.

Plaintiff is taking all steps reasonably necessary to remove PFAS, including PFOA and PFOS, from its water supply. Plaintiff continues to follow guidance as well as requirements of current and future drinking water regulations. Plaintiff has tested and continues to test its water supply for the presence of PFAS. Plaintiff has also researched various methods of removal of PFAS in its water supply and has kept abreast of the latest information regarding PFAS and governmental oversight of PFAS.

Plaintiff will determine how to pay for the capital costs, operation and maintenance, and the installation of the mitigation plan which will include water treatment plant expansion and installation of treatment, which may include Granular Activated Carbon filtration. Plaintiff however is staying abreast of other feasible treatment options that could include reverse osmosis, ion exchange or other membrane technologies.

18. Have you obtained any recovery or reimbursement of funds for investigation, testing, or remediation from any other entities (public or private) in connection with the alleged presence of PFAS in that water system? Yes No

If yes, please identify any such recoveries or attach or provide document sufficient to identify them, and attach or provide any documents reflecting efforts to obtain such recovery or reimbursement.

DOCUMENTS

Provide all the documents and records in your possession which you used and/or relied upon to complete this PFS form, including but not limited to those documents specifically requested in the above questions.

VERIFICATION

On behalf of the Plaintiff, I declare under penalty of perjury subject to all applicable laws, that I have carefully reviewed the final copy of this Plaintiff Fact Sheet and verified that all of the information provided is true, correct, and complete based on the information known or reasonably available to the Plaintiff.

Signature

Print Name and Title/Relationship to Plaintiff

Date